

State Emergency Service Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the State Emergency Service Bill 2023.

Policy objectives and the reasons for them

Queensland is the most disaster affected State in Australia, experiencing almost 90 significant natural disasters and weather events in the past decade. Research forecasts natural disasters will increase the cost to the Australian economy from \$38 billion annually in 2021 to at least \$73 billion a year by 2060. This increase is due to the three main cost drivers of population growth, climate change and rising property values.

The significant impact of disasters upon Queensland highlights the importance of emergency services agencies performing optimally and has prompted various organisational arrangements at a Local, State and Commonwealth Government level to be developed to meet the four phases of the State's emergency management and disaster response system namely Prevention, Preparedness, Response and Recovery.

Queensland's disaster management arrangements (QDMA) operate through a tiered system outlined in the *Disaster Management Act 2003* (DM Act) enabling a progressive escalation of support and assistance to affected communities. Disaster management groups are formed at a local, district and State level, and are responsible for the planning, organisation, coordination, and implementation of all measures to mitigate or prevent, prepare for, respond to, and recover from disaster events. These disaster management groups are supported by coordination centres that also operate at the local, district and State level to coordinate the information, resources, and services necessary for disaster operations.

Local governments have primary responsibility for managing a disaster at the community level through the implementation of their Local Disaster Management Plan which is managed by their Local Disaster Management Group (a local group). If a local group does not have the capacity to deal with a disaster and requires additional resources, a request for support may be made to a District Disaster Management Group (DDMG). Currently, the DM Act divides the State into 23 disaster districts, each with a DDMG which may be comprised of one or more local groups. DDMGs are responsible to the State government through the Queensland Disaster Management Committee (QDMC).

In the event the DDMG cannot facilitate a request for support from a local group, the request may be escalated onwards to the State level, via the State Disaster Coordination Centre or the State Disaster Coordination Group to the QDMC. The QDMC provides strategic leadership for disaster management in the State and performs a range of high-level disaster management functions including, for example, making a request for assistance to the Federal Government or international governments on behalf of Queensland.

The QDMC's membership consists of Ministers, supported by Directors-General, observers and invitees and is chaired by the Premier and Minister for the Olympic and Paralympic Games.

The QDMC is assisted by the State Disaster Management Group which provides strategic leadership to Queensland when the QDMC is not convened.

Currently, Queensland Fire and Emergency Services (QFES) coordinates and manages various elements of Queensland's disaster response including the Fire and Rescue Service (FRS), the Rural Fire Service and the Queensland State Emergency Service (SES).

Recent machinery of government changes have assigned the Queensland Police Service Commissioner (Commissioner) as the chief executive of the DM Act responsible for:

- establishing and maintaining arrangements between the State and the Commonwealth for effective disaster management;
- ensuring disaster management and operations are consistent with the State's disaster management plans, standards, guidelines and strategic policy;
- ensuring persons performing functions under the DM Act are appropriately trained; and
- providing advice and support about disaster management and disaster operations to the local, district and State groups.

The Queensland Police Service (QPS) is now responsible for the administration of grants and service agreements to volunteer entities including Police-Citizens Youth Club Queensland (PCYC), Emergency Services Cadets, Queensland flotillas of the Australian Volunteer Coast Guard Association of Queensland (AVCGA), Volunteer Marine Rescue Association of Queensland (VMRAQ), Surf Life Saving Queensland (SLSQ) and Royal Life Saving Society Queensland (RLSSQ).

The State Emergency Service (SES)

The SES provides assistance in circumstances ranging from non-life-threatening emergency situations during floods, storms or other similar events to supporting other agencies such as the QPS and the FRS with road crash rescue, emergency traffic management, flood boat rescue and urban, rural and evacuation searches. The SES is a 'not-for-profit' organisation consisting of SES units established within local government areas. These SES units may be comprised of separate SES groups depending on the local government area's specific needs. Currently, there are 75 SES units comprised of 303 SES groups. While the membership of the SES consists of State and local government employees, the SES relies heavily on the support it receives from its large cohort of about 5,400 volunteers.

The SES has evolved from its inception in response to the January 1974 Brisbane floods and historically has been closely linked with local government. In 2003, the DM Act enshrined the responsibility that local governments hold in ensuring they have a disaster response capability. Local governments have entered into various memorandums of agreement with the State government detailing the funding, training and administration of SES units.

Following the Police and Community Safety Review in 2013, Emergency Management Queensland, the SES and disaster management functions transitioned to the newly formed Department of Queensland Fire and Emergency Services. The *Fire and Emergency Services Act 1990* (FES Act) currently provides the legislative framework for the SES.

Marine Rescue Services

In Queensland, marine rescue volunteers play a critical role in keeping the community safe on the water through providing general marine assistance and assisting with search and rescue operations. Marine rescue services are provided by two principal organisations namely VMRAQ which has 26 squadrons and an estimated 1,400 members and AVCGA which has 21 flotillas and an estimated 1,200 members.

VMRAQ and AVCGA are two separate independent organisations with different structures. VMRAQ consists of Volunteer Marine Rescue Queensland which is incorporated as a charitable entity and is affiliated with the 26 individual squadrons that mostly hold charitable status. A hierarchy is formed by individual squadrons providing representatives to a Volunteer Marine Rescue (VMR) zone which acts subordinate to the State body. For example, the VMR Southport Inc. squadron elect representatives to a VMR zone from which elected zone representatives become State Council members. Members of each squadron are only responsible to their squadron and do not have voting rights at the State level.

In contrast, the AVCGA is a national entity incorporated in the Australian Capital Territory. Coast Guard Flotillas are unincorporated and are full members of the AVCGA. Flotillas report through a regional flotilla arrangement. Flotilla representatives operate at a State and national level. However, State level arrangements are an administrative tool to allow funding from the various State Governments to reach flotillas. Governance is conducted by the National Executive and National Board.

VMRAQ and AVCGA have many common features. Both organisations provide similar services, place a great reliance upon volunteers and local community fundraising to operate, and are also subsidised by the Queensland Government. However, issues with the current provision of marine rescue services may arise when VMRAQ squadrons and AVCGA flotillas operate in overlapping and occasionally unclear areas. A lack of integration between these organisations may lead to inefficiencies through the duplication of services, assets and costs.

The advantages of an integrated statewide marine rescue service include:

- enhanced service delivery through better interoperability between units;
- better clarity around roles and responsibilities for the multiple agencies responsible for providing marine rescue services;
- an increase in the quality of services provided by developing standardised training, procedures and policies; and
- enhanced asset management.

The review of Queensland's emergency services and disaster management arrangements

The efficiency of the delivery of emergency services in Queensland has been considered in a series of reviews including the *Review into Volunteer Marine Rescue Organisations in Queensland* and the *SES Review "Sustaining the SES – Partnering for Change"*, culminating in the *'Independent review of Queensland Fire and Emergency Services'* (the Independent Review Report) and the *'Review of Queensland's Disaster Management Arrangements (QDMA)'* (the IGEM Review).

On 26 October 2022, the Government published *Good Jobs and Better Fire and Emergency Services to Support Queensland's Great Lifestyle* accepting in principle all recommendations made in the Independent Review Report excepting recommendation 12. The Government also

announced the formation of the Reform Implementation Taskforce (RIT), led by Special Coordinator for Police and Emergency Services Reform Steve Gollschewski. The RIT has been established to oversee and coordinate the implementation of the reforms to the emergency services portfolio over a two-year period.

The Independent Review Report

In July 2021, the Queensland Government commissioned an independent review of QFES and its associated volunteer entities. The Independent Review Report examined the effectiveness, efficiency, and sustainability in the delivery of fire and emergency services in Queensland, including assessing the scope, functions, and suitability of the QFES structure and funding arrangements.

The Government has accepted in principle the following recommendations made in the Independent Review Report. These recommendations address various facets of emergency services management in Queensland:

Function and Structure

1. To simplify, emphasise and focus efforts in relation to fire and emergency services activities in Queensland, establish a new, integrated department consisting of the current Fire and Rescue Service (including Auxiliary staff), Rural Fire Service, FireCom and appropriate elements of QFES' current Corporate Services Division.
2. The State Emergency Service and Disaster Management functions be transferred through a machinery-of-government change to the Queensland Police Service.
3. In-line with the Queensland Government's commitment to the creation of a single Marine Rescue entity, the Marine Rescue functions within QFES (including grants arrangements for Surf Life Saving Queensland and the Royal Life Saving Society Queensland) be transferred through a machinery-of-government change to the Queensland Police Service.
4. Establish a future-focused service planning capability that supports data driven, risk adjusted resource allocation decisions, including workforce planning with a focus on increased use of auxiliary, that cascade across all services within the new organisation including but not limited to, budget allocations, station and fleet locations, staffing levels, and technology investments.
5. Create the new entity as a department of the Queensland Government, with the [QFES] Commissioner maintaining all powers of the chief executive under the [then] *Public Service Act 2008*.
6. Establish a specific Project Management and Cultural Reform Office to drive the implementation of recommendations and focus specifically on the cultural and organisational reforms necessary to give effect to the structural changes, ongoing integration of the new entity and drive collaboration between the elements of the new agency.
7. Conduct a detailed functional and structural review prior to the separation of functions from QFES, focused on: reducing duplicated functions and organisational layers to allow more effective decision making; examining opportunities to centralise administrative processes to reduce their impact on front line service delivery; and considering ways in which the existing workforce could

be better utilised to address any latency that may be present in current staffing models.

Culture

8. Establish a specific leadership program to support continued focus on a diverse and inclusive culture that is representative of the community, with a clear emphasis on continuing to modernise, diversify and establish operational and strategic leadership capabilities in a way that break down silos, drives on inclusive fire and emergency service and which ensures ethical decision-making and acceptable workplace conduct is central to operations.
9. Develop and publish performance against (on a regular basis, ideally quarterly) an Outcomes Framework setting out:
 - Outcomes-based fire (and broader emergency) services' performance measures;
 - Strategic effectiveness measures across the Prevention, Preparedness, Response and Recovery (PPRR) framework, but focussed within the remit of the new organisation;
 - A formal interoperability plan, focused in two specific parts to drive interoperability between elements within the new organisations and more broadly to clarify the new entity's role within the emergency and disaster management system in Queensland;
 - A clear link between resource planning/service analysis and community outcomes; and
 - Goals to (and progress against) improve(d) operability across professional, auxiliary and volunteer firefighter organisations.

The Outcomes Framework should emphasise the breadth of the PPRR framework, adopting an 'all hazards' approach, and not be solely focused on traditional fire and rescue response activities'

10. The new agency undertakes a detailed workforce culture assessment, inclusive of volunteers, to improve collaboration, performance and workforce experience, as the basis for establishing reforms to support integration of fire and emergency services activities in a manner that aligns to the requirement of the community articulated through data driven, risk-based service planning.
11. In light of the significant need for a continued focus on establishing a diverse workforce, representative of the community the organisation serves and where all staff feel safe, respected and included, specific targets be established in-line with the Queensland Government's Inclusion and Diversity Strategy 2021-2025 for women, people with a disability, Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse people and the LGBTIQ+ community for each of the services and the corporate support functions within the new agency.

Efficiency and Funding

13. Work with local government to establish a reporting requirement for Councils' funding, costs, assets and liabilities that support services currently provided by Queensland Fire and Emergency Services, including the Rural Fire Service Levy and local government expenditure for the State Emergency Service, to create a 'full financial picture' of the services operated by the new entity and the Queensland Police Service.

14. As part of the machinery-of-government changes to relocate State Emergency Services, Disaster Management and Marine Rescue functions, subject to the extent to which the State Emergency Service Levy ameliorates the cost impact of moving those functions to the Queensland Police Service, conduct a zero-base budgeting exercise to determine the elements (if any) of the Service Delivery Statement funding breakdowns (as set out in KPMG's report) to be re-allocated, focussing on budgeting within agencies to clarify the cost of service delivery. This should occur following the establishment of a State Emergency Service Levy which would likely offset the funding requirements relating to the State Emergency Service, Disaster Management and existing Marine Rescue moving to the Queensland Police Service.
15. Following the necessary budget adjustments arising through machinery-of-government changes, adopt a staged process - using a risk-based approach that considers the changing nature of fire services, the impact of climate change and which leverages the newly created service planning capability recommended in this Report - to prioritise funding for the Rural Fire Service to address bushfire, landscape fire and broader rural and seasonal risks into the future.
16. Reduce the senior executive structure (Deputy Commissioner and Assistant Commissioner levels) of the new department to reflect the streamlined, more focussed nature of the new entity, informed by the detailed structural and functional review set out in Recommendation 7. The structure should support a geographic leadership model that clarifies command and control arrangements.

Sustainability

17. In recognition of both the substantive changes arising because of the recommendations contained within the Report, and the age of the statutes, undertake the following legislative and policy reform projects:
 - Review the *Fire and Emergency Services Act 1990* and the *Disaster Management Act 2003*, with a view to modernising both pieces of legislation and (with regard to the *Fire and Emergency Services Act 1990*) clearly addressing the role of professional and volunteer firefighters (including providing the same legislative protections to auxiliary and volunteer firefighters as afforded to professional firefighters);
 - Move the provisions of the *Fire and Emergency Services Act 1990* relating to the State Emergency Service into the *Disaster Management Act 2003*;
 - Clarify the Commissioner of Police as the Chief Executive for the purposes of the *Disaster Management Act 2003*;
 - Clarify that the Commissioner of Fire continues to play a key leadership role as part of the State's emergency response and disaster arrangements where they relate to fire or emergency services activities within the remit of the new agency;
 - Update [the] *Public Safety Preservation Act 1986* to reflect the importance of protecting economic, heritage and cultural sites (in addition to current considerations relating to life and property);
 - Examine the role of landholders in relation to prevention, preparation and response activities, with a specific focus on determining whether additional powers are required for firefighters to address at-risk circumstances and more rapid action as fire events escalate;

- Make consequential amendments arising as a result of the recommendations in this Review, where necessary; and
 - Review and update the Queensland State Disaster Management Plan, following the machinery-of-government changes.
18. Develop a formal interoperability plan for the new organisation, supported through an appropriate legislative remit developed as part of legislative review activities recommended by this Review, with a long-term vision of clearly defining, drawing together and empowering the services provided by professional, auxiliary and volunteer firefighters. This plan should recognise the histories and respect the differing levels of expertise required of different services types and ultimately acknowledge the need to modernise approaches across the PPRR framework - specifically relating to fire and emergency activities. This should be done in a manner to address changing risk profiles, harmonise training activities and provide a more coordinated approach (across urban and rural operations) to planning, funding and support, to achieve a more integrated approach that meets the needs of the Queensland community into the future.
19. The implementation of reforms set out in this Report should adopt an approach that is staged, planned and that recognises certain high priority recommendations can be expedited, while others will require further consultation and engagement as part of the implementation process.

The Government's response also requested the Inspector-General of Emergency Management (IGEM) review Queensland's disaster management arrangements and propose any necessary legislative reforms and updates to the State Disaster Management Plan.

The IGEM Review

On 28 April 2023, the IGEM delivered its *Review of Queensland's Disaster Management Arrangements (QDMA)* which made 10 broad recommendations that were subsequently accepted in principle by the Government. These recommendations are:

1. The Inspector-General of Emergency Management recommends the following changes to Queensland's Disaster Management legislation:
 - a. That the Commissioner of the Queensland Police Service be appointed as the Chief Executive of the *Disaster Management Act 2003*;
 - b. That the *Disaster Management Act 2003* be amended to reflect the new role and function of the Queensland Disaster Management Committee;
 - c. That a State Disaster Management Group is established within the *Disaster Management Act 2003*.
 - d. That the *Disaster Management Act 2003* be amended to establish the position, role and functions of the State Recovery Policy and Planning Coordinator.
2. The Inspector-General of Emergency Management recommends the following changes to Queensland's Disaster Management structures:
 - a. That the State Disaster Coordination Group revert to a single Chair arrangement (chaired by a Senior Queensland Police Officer), focussed on response and the aspect of preparedness for, and resilience in, response. The Terms of Reference should be amended to incorporate this and other changes to its role and functions.

- b. That a State Recovery and Resilience Group be established and embedded in the Queensland Disaster Management Arrangements alongside the State Disaster Coordination Group, to focus on disaster management functions outside of response. The Queensland Reconstruction Authority should lead the establishment of the State Recovery and Resilience Group, develop the Terms of Reference and chair the group.
 - c. That, to support the State Recovery and Resilience Group, the Functional Recovery Groups expand their remit to incorporate resilience and be renamed Functional Recovery and Resilience Groups.
 - d. That clear lines of reporting be established between any appointed State Recovery Coordinator and the State Recovery Policy and Planning Coordinator.
 - e. That an Emergency Relief Subcommittee of the State Disaster Coordination Group and the State Recovery and Resilience Group be established to reflect a strong partnership arrangement to address all aspects of Emergency Relief. The roles of Chair and Deputy Chair are to be determined via consultation between the Queensland Police Service, the Queensland Reconstruction Authority, and the Department of State Development, Infrastructure, Local Government and Planning.
 - f. That the final composition of the Emergency Relief subcommittee's inner and outer core membership be a joint responsibility of the Queensland Police Service, the Queensland Reconstruction Authority and the Department of State Development, Infrastructure, Local Government and Planning, in consultation with the State Disaster Coordinator and the State Recovery Policy and Planning Coordinator.
 - g. That the Queensland Reconstruction Authority leads state-level hazard and risk function, including the design and delivery of a risk assessment tool that is locally appropriate, cost-effective and fit for purpose.
3. The Inspector-General of Emergency Management recommends the following changes to Queensland's disaster management plan and guidelines:
 - a. That there should be one State Disaster Management Plan that succinctly describes all of Queensland's Disaster Management Arrangements, supported by separate sub-plans across the Prevention, Preparedness, Response and Recovery comprehensive model, including Resilience, mirroring the new governance structure. The State Disaster Management Plan should be reviewed biannually and/or following debriefs from significant disaster operations where relevant.
 - b. That the term 'Emergency Supply' be changed to 'Emergency Relief' in the State Disaster Management Plan.
 - c. That the Queensland Police Service, Queensland Reconstruction Authority and the Department of State Development, Infrastructure, Local Government and Planning develop an Emergency Relief strategy.
 4. The Inspector-General of Emergency Management recommends the following changes to the ways that Queensland's Disaster Management Arrangements support cross-border collaboration:
 - a. That documents and plans that support the operationalisation of Queensland's Disaster Management Arrangements is updated to encourage and enable cross-border disaster management engagement and relationships at officer-level, council to council, and district to district.

- b. That all Local and District Disaster Management Groups who share a border or borders with other States or Territories conduct collaborative disaster management planning and exercising.
5. The Inspector-General of Emergency Management recommends the following changes to the ways that ‘resilience’ is reflected in Queensland’s Disaster Management Arrangements:
 - a. That the *Disaster Management Act 2003* be amended to include a definition of ‘resilience’ that reflects the Queensland Government’s endorsed definition within the Queensland Strategy for Disaster Resilience, clarifying that Resilience functions incorporate activities related to the phases of Prevention, Preparedness, Response and Recovery.
6. The Inspector-General of Emergency Management recommends the following change to the way that Disaster Recovery Funding Arrangements are supported through Queensland’s Disaster Management Arrangements:
 - a. That the Queensland Reconstruction Authority be Queensland’s lead agency coordinating Disaster Recovery Funding Arrangements. Ministerial responsibility for activation of Disaster Recovery Funding Arrangements should transfer from the Minister for Police and Corrective Services and Minister for Fire and Emergency Services to the Minister responsible for the Queensland Reconstruction Authority.
7. The Inspector-General of Emergency Management recommends the following action linked to disaster management preparedness messaging:
 - a. That the Queensland Reconstruction Authority ‘Get Ready Queensland’ brand expands to include bushfire awareness campaigns and ‘If It’s Flooded Forget It’.
8. The Inspector-General of Emergency Management recommends the following actions linked to Disaster Management sector capability and accreditation:
 - a. That all training associated with the Queensland Disaster Management Training Framework should, wherever possible, identify and utilise pathways to achieve nationally recognised qualifications.
 - b. That the Queensland Police Service undertake a capability assessment of the State Emergency Service, Marine Rescue Queensland, and the broader disaster management sector, for the present and future. This should include a review of the Queensland Disaster Management Training Framework.
9. The Inspector-General of Emergency Management recommends the following actions to support a seamless transition of Disaster Management responsibilities from Queensland Fire and Emergency Services to the Queensland Police Service:
 - a. That the roles and Terms of Reference of all current state and national disaster management committees that are non-hazard specific, and that reflect state disaster management arrangements and policy, be tabled at the Reform Implementation Taskforce for discussion and consideration of future representation.
 - b. That the Reform Implementation Taskforce seeks clarity on all Memorandum of Understanding and agreements that are currently in scope as a result of the proposed Machinery of Government changes.
 - c. That any open Queensland Fire and Emergency Services recommendations made by the Inspector-General of Emergency Management, that are not hazard specific, transition to the Queensland Police Service at a time to be

- identified by the Reform Implementation Taskforce. Queensland Fire and Emergency Services should continue to progress implementation of recommendations, in consultation with the Queensland Police Service, until Machinery of Government changes are implemented.
- d. That the Reform Implementation Taskforce determines the most appropriate agency to manage the ongoing whole-of-government coordination of implementation and reporting on the recommendations of the Royal Commission into National Natural Disaster Arrangements. Until this time, Queensland Fire and Emergency Services should continue to progress implementation of recommendations, in consultation with the Reform Implementation Taskforce.
10. The Inspector-General of Emergency Management recommends the following actions linked to the effective implementation and evaluation of the changes to Queensland's Disaster Management Arrangements accepted from this Review:
- a. That, in the 2027/28 financial year, the Inspector-General of Emergency Management partner with the Queensland Police Service and Queensland Reconstruction Authority to review the implementation of the Machinery of Government changes, and revised Queensland Disaster Management Arrangements.
 - b. That, for the recommendations arising from this review, the Office of the Inspector-General of Emergency Management is involved in consultation prior to the finalisation of the government action plan, to align intended actions with the intent of the recommendations.
 - c. That this Review report be returned to the Office of the Inspector-General of Emergency Management to monitor, evaluate and report on progress and implementation of the recommendations that are accepted in whole or in part by government.

Undertaking the recommended emergency services reform requires the successful completion of a multitude of tasks including amendments to legislation, machinery-of-government changes and policy development including the negotiation and preparation of service agreements and grants allocations. Legislative amendments are also required to either specifically meet these reforms or to allow later administrative processes to achieve that outcome.

Achievement of policy objectives

Legislative reform of Queensland's emergency services and disaster management arrangements will be progressed in two stages. The first stage consists of three Bills that will make the legislative amendments necessary to restructure emergency service arrangements as recommended in the Independent Review Report and meet certain recommendations made in the IGEM Review. This will be achieved by:

- establishing Marine Rescue Queensland (MRQ) as a state-wide marine rescue service through the Marine Rescue Queensland Bill 2023;
- establishing the SES through the State Emergency Service Bill 2023;
- aligning MRQ and SES under the control of the QPS through the Emergency Services Reform Amendment Bill 2023 which will make the necessary administrative and consequential amendments for this to occur; and
- formally establishing the State Disaster Management Group within the DM Act through the Emergency Services Reform Amendment Bill 2023.

The importance of SES and marine rescue volunteers to the success and effectiveness of the SES and MRQ is acknowledged through the State Emergency Service Bill 2023 and the Marine Rescue Queensland Bill 2023. These Bills will establish the SES and MRQ in ‘standalone Acts’ which will emphasise the value of each organisation, promote volunteer engagement and provide a framework that outlines the purpose, functions and command structures of each organisation and the roles of their members.

The State Emergency Service Bill 2023 (the Bill) will achieve its objectives by establishing the SES through the new *State Emergency Service Act 2023* (SES Act).

The new *State Emergency Service Act 2023* (SES Act)

The new SES Act will establish the SES by relocating and expanding upon a number of provisions currently outlined in the FES Act.

The functions of the SES have been expanded to reflect the services that the SES provides, or may be expected to provide, for the community. These functions include:

- to perform rescue or similar operations in an emergency situation including:
 - the helping of injured persons; or
 - protecting persons, or property or the environment from danger or potential danger associated with the situation;
- to perform search operations in an emergency or similar situation;
- to perform response activities in severe weather events;
- to perform other activities to help communities or other entities prepare for, respond to, recover from and enhance resilience from an event or a disaster;
- to perform activities to raise the profile of the SES or raise funds that are to be dedicated to the support of the SES in the performance of its other functions; and
- to provide services, and give help reasonably requested, in an emergency or another situation as required of a member of the SES under any Act or law or the reasonable expectations of the community; and
- to perform any other functions given to the SES under this Act or another Act.

The Bill will provide that SES membership will consist of the SES chief officer, SES employees and SES volunteers.

The Bill will provide the Commissioner with functions that will assist in the administration of the SES and ensure that SES is strategically aligned with other emergency services agencies.

The Commissioner is to have the following functions:

- the establishing of SES units and the designation of areas of SES units;
- the appointing of a person as:
 - the SES chief officer;
 - an SES commander;
 - a local controller of an SES unit;
 - an SES member; and
 - an authorised rescue officer;
- the establishing of management and support services for the SES;
- developing policies to help the SES perform its functions effectively and efficiently;
- the giving of direction and guidance to the SES chief officer, an SES commander, a local controller of an SES unit and SES members; and

- the performance of any other function relating to the SES that is given to the Commissioner under this, or another, Act.

The Commissioner may issue codes of practice about:

- the conduct or practice of SES members;
- the operation of SES units to provide guidance to SES members; and
- other matters the Commissioner considers appropriate for the effective performance of the functions of SES members or SES units.

Before establishing an SES unit, the Commissioner must obtain the agreement of the local government for the area and consult such representatives as the Commissioner considers represents the local community and have regard to the following considerations:

- the needs of the community in the local government area in which the unit is to be located;
- whether establishing a unit at the location would represent an appropriate distribution of the capability of SES members and assets across the State and would provide a response capability commensurate with the risk and costs associated with the unit's establishment;
- whether sufficient volunteers are likely to be available at the location to ensure the sustainability of the unit; and
- whether the unit can appropriately maintain the equipment necessary for the unit to perform SES functions.

Appointments made by the Commissioner of a person to a position in the SES, such as the role of the SES chief officer, SES commander and a local controller of an SES unit may only be made if the Commissioner is satisfied that the person is appropriately qualified to perform the functions and responsibilities of that role.

Command and control within the SES will be achieved through the appointment of an SES chief officer, SES commanders and SES local controllers. These roles are designed to ensure appropriate management of the SES is achieved at a state, regional and local level.

Management of the SES at a state level will be the responsibility of the SES chief officer who is responsible for the day to day running of the SES by ensuring the SES is managed efficiently and effectively. Further, the SES chief officer is obliged to give effect to any direction given by the Commissioner that relates to the functions of the SES or SES members. The SES chief officer is also obliged to perform any other function given to the SES chief officer under this or another Act.

At a local level, a local controller of an SES unit is responsible for the management of an individual SES unit. SES local controllers must ensure:

- the unit's members have the necessary skills to competently perform their roles within the unit;
- the unit's equipment is maintained in an appropriate condition;
- the unit performs its functions and other activities in a way that is consistent with departmental policies about the performance of its functions and activities;
- the unit performs its functions in compliance with all relevant legislative and regulatory obligations, and in accordance with all relevant operational permits and approvals; and
- the unit members comply with any direction to given by the Commissioner, the SES chief officer or SES commander.

At a regional level, the Bill will provide for the appointment of SES commanders that will be tasked with the performance of SES functions across local government areas. An SES commander will have the following functions:

- to coordinate the performance of SES functions in the local government areas for which the SES commander is appointed in circumstances where SES unit resources may be made available within the local government area from outside of the area;
- to provide advice to a local controller of an SES unit about—
 - SES functions;
 - managing the safety and fatigue of the members of the SES unit; and
 - logistical and financial matters;
- to perform other functions agreed between the SES commander and the local disaster coordinator for the relevant local group; and
- to give effect to any direction given by the Commissioner or the SES chief officer.

SES commanders will have oversight of a number of SES units to facilitate the coordination and cooperation between SES units. In performing their functions, SES commanders must have regard to:

- the advice of the local disaster coordinator for a relevant local group; and
- any applicable disaster management plans.

The Commissioner must advise the chairperson of each relevant local group and the relevant district disaster coordinator of the appointment or the termination of the appointment of an SES commander.

The Bill also provides a distinction between SES employees under the *Public Sector Act 2022* and other SES members. The maintenance and protection of the reputation of the SES is a significant issue. One method of protecting an organisation's reputation is the implementation of appropriate discipline mechanisms for its members. This is a challenge for organisations that rely heavily on the support and participation of volunteers. Public sector provisions about discipline, including the ability of the chief executive to suspend an employee under the *Public Sector Act 2022*, do not extend to volunteers or SES employees by a local government. Consequently, in response to an allegation of wrongdoing, the only courses available to resolve the matter are often to do nothing or to revoke a volunteer's appointment.

The Bill will address this by authorising the Commissioner to suspend an SES volunteer or SES member employed by a local government if the Commissioner reasonably believes:

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

A suspension is made by written notice stating the start and end of the suspension. Before suspending the SES volunteer or SES member employed by a local government, the Commissioner must consider all reasonable alternatives available to the person such as alternative duties, a change to the location where the person performs duties or other alternative ways the person may continue to participate in the organisation. The unique circumstances of each case will determine which, if any, reasonable alternatives can be utilised.

This suspension power benefits both SES as an organisation and the affected person. The SES benefits from the protection of its reputation by the power to suspend an SES member who has allegedly acted inappropriately from their duties. The suspension power also benefits the affected person by affording that person the opportunity to have the allegation investigated and by allowing the person to continue with the organisation where the allegation is found to be baseless.

The Bill will replicate provisions currently found within part 4 ‘Authorised rescue officers’ of chapter 4 of the FES Act. These provisions will outline the appointment, administration and powers of authorised rescue officers.

The Bill will authorise the Commissioner to appoint the following persons as an authorised rescue officer:

- an SES member;
- a person who performs emergency-related functions or similar function under a law of another State or country; or
- a member of a class of persons prescribed by regulation.

The Commissioner may only appoint the person as an authorised rescue officer if the Commissioner is satisfied the person has the necessary expertise or experience to be an authorised rescue officer.

An authorised rescue officer holds office on any conditions outlined in the instrument of appointment, a signed notice given to the officer or as prescribed by regulation.

In performing a function of the SES, an authorised rescue officers may take reasonable steps to protect:

- a person who is trapped or in danger in a place; or
- the officer or another person from danger, potential danger or assault.

The reasonable steps that an authorised rescue officer may take includes:

- (a) entering a place using reasonable force;
- (b) searching any part of a place;
- (c) opening, using reasonable force, a container or other thing;
- (d) removing any thing from a place;
- (e) destroying or damaging premises, a vehicle, container or other thing;
- (f) taking into or onto a place the equipment, persons or materials the authorised rescue officer reasonably requires to exercise a power under this section;
- (g) directing a person to leave, or not to enter, an area in or near a place if the authorised rescue officer reasonably considers the direction is necessary to protect a person’s life or health;
- (h) requiring a person at or near the place to give the authorised rescue officer reasonable help to exercise the officer’s powers under paragraphs (a) to (f).

When giving a direction or making a requirement mentioned in points (g) or (h), the authorised rescue officer must warn the person, if it is practicable, that it is an offence to fail to comply with the direction or requirement unless the person has a reasonable excuse.

In exercising these powers, an authorised rescue officer may enter a place without a warrant or the consent of the owner or occupier of the place. However, if the occupier is present at the place, before entering the place, the authorised rescue officer must or reasonably attempt to:

- tell the occupier the purpose of the entry;
- seek the consent of the occupier to the entry; and
- tell the occupier the authorised rescue officer is permitted under this Act to enter the place without the occupier's consent.

However, this obligation does not apply if the authorised rescue officer reasonably believes that to do so would endanger a person.

When exercising a power of an authorised rescue officer, an authorised rescue officer who is not an SES member is subject to the directions of an SES member who is an authorised rescue officer.

The Bill will also relocate a number of existing provisions from the FES Act to the new SES Act. These amendments will provide:

- offence provisions that:
 - deter offenders from assaulting or obstructing an SES member or authorised rescue officer performing a function or exercising a power under the SES Act;
 - prohibit a person from impersonating an SES member or authorised rescue officer;
 - prohibit a person from using without reasonable excuse the expressions 'State Emergency Service' or 'SES' or a similar expression in a way that suggests the person is an SES member if the person is not an SES member;
 - prohibit a person who, without reasonable excuse and without the Commissioner's written approval, uses the words 'SES' or 'State Emergency Service' to raise funds or to use these terms in, or as, the name of a business carried on by the person or to advertise or otherwise promote goods or services provided by the person;
 - prohibit a person who is not an SES member from activating a warning device or warning lights fitted to an SES vehicle without reasonable excuse;
 - prohibit an SES member from activating a warning device or warning light fitted to an SES vehicle unless the SES member:
 - is performing an SES function and considers it necessary to activate the warning device or warning lights to ensure a person's safety; or
 - has a reasonable excuse.
 - prohibit a person who is required to assist or give reasonable help under the new SES Act to fail to comply with that requirement unless the person has a reasonable excuse;
 - prohibit a person from failing to comply with a direction or requirement made under the new SES Act unless the person has a reasonable excuse; and
 - require a former authorised rescue officer to return their identity card to the Commissioner within 21 days.
- protections for SES members, authorised rescue officers and the State from civil liability that may arise through any act done or omission made honestly and without negligence in the performance of their duties;
- exemption for an SES member from paying a toll for using a road, bridge or ferry while travelling in the performance of their duties in an SES vehicle fitted with a warning device that is, or warning lights that are activated;
- an obligation on the Commissioner to enter into a contract of insurance with WorkCover or another entity to insure SES commanders and SES members. This contract of insurance

must cover these members when they are performing a function under the SES Act or involved in an activity related to the carrying out of disaster or emergency operations such as training for these operations; and

- evidentiary aids including:
 - that the appointment of the SES chief officer, an SES member, a local controller of an SES unit, and an SES commander is presumed unless a party to the proceeding gives reasonable notice that the party requires the appointment to be proved; and
 - that the production of a certificate from the Commissioner is evidence that a stated document is an approval, authorisation, decision, direction, notice or requirement given or made under this Act.

Finally, the Bill will ensure that confidential information in the possession of the SES will be protected by introducing an offence provision mirrored on an existing offence provision outlined in section 10.1 'Use of confidential information' under the *Police Service Administration Act 1990* (PSA Act). The proposed offence provision is designed to be an appropriate deterrent to the misuse of confidential information held by Government agencies.

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

The Government has allocated a total funding package of up to \$578 million over 5 years from 2023-2024 and \$142 million per annum ongoing.

This will be achieved by:

- allocating up to \$10 million over two years (2022-2032 and 2023-2024) and providing 30 temporary full-time equivalent (FTE) positions to the RIT;
- allocating approximately \$142 million per annum ongoing from 2023-2024 through the following distributions:
 - \$60 million per annum for the SES;
 - \$27 million per annum for the establishment of MRQ;
 - \$20 million per annum for disaster management functions in the QPS;
 - \$11 million per annum to contribute to the cost of 143 additional firefighters;
 - \$10 million per annum for QPS corporate support;
 - \$9 million per annum for service level agreements with SLSQ, RLSSQ and PCYC Emergency Service Cadets;
 - \$4 million per annum to the Queensland Reconstruction Authority (QRA); and
 - \$1 million per annum for the Office of the Chief Fire Officer; and
- allocating up to 550 FTE positions to support implementation of the Independent Review Report recommendations which includes the provision of an additional 60 FTE positions for the SES.

Finally, an additional 30 FTE positions have been allocated to the QRA to support further disaster preparedness and resilience programs and initiatives.

Consistency with fundamental legislative principles

The amendments have been drafted with due regard to the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992* (LSA). The principles include requiring that legislation has sufficient regard to:

- the rights and liberties of individuals; and
- the institution of Parliament.

The amendments that may impact upon those principles are considered further in these notes.

Whether a Bill has sufficient regard to the rights and liberties of individuals

The Bill introduces new offence provisions which may be considered to impact upon the rights and liberties of individuals by making the subject person liable to criminal sanctions for non-compliance. For brevity, the offence provisions will be listed, immediately followed by commentary about their potential impact upon FLPs.

- Offences involving the unauthorised use of confidential information held by the SES (clause 42 of the Bill).

The proposed amendment will introduce an offence for an SES member to misuse confidential information acquired through performing functions under the SES Act. This offence provision will impose a maximum penalty of 100 penalty units or two years imprisonment.

In determining whether this amendment is consistent with 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.

This emergency services organisation will maintain personal and confidential information on a range of matters. The unlawful disclosure or use of such information could cause great detriment to the individuals to whom the information relates as well as compromise the reputation of this organisation.

The proposed increase in maximum penalty is considered warranted in order to reflect the potential serious consequences of disclosing confidential 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 with other equivalent offences in other Acts.

The potential breach of FLPs is justified by the need to protect the confidential information that the SES may hold and to protect the rights to privacy of the individuals to which that information relates.

- Offence to assault or obstruct an SES member or an authorised rescue officer (clause 38 of the Bill).

The Bill will introduce a new offence provision prohibiting a person from assaulting or obstructing an SES member or an authorised rescue officer who is performing their duties. The

maximum penalty of 100 penalty units or 6 months imprisonment will reflect the seriousness of assaulting or obstructing emergency services personnel and is consistent with the maximum penalty imposed for similar offences against equivalent emergency services workers.

Although it may be argued that these offence provisions may infringe upon FLPs by potentially subjecting a transgressor to sanctions including imprisonment, this is justified as emergency services personnel including volunteers should be protected from violence by the law when performing their duties which benefit the community.

- The offence of impersonating an SES member or authorised rescue officer (clause 41 of the Bill).

The Bill will introduce a new offence provision prohibiting a person from impersonating an SES member or an authorised rescue officer. The proposed offence will carry a maximum penalty of 100 penalty units.

This penalty is consistent with other penalties involved with impersonating other emergency services workers such as police officers or fire service officers.

Any concerns about a breach of FLPs must be balanced against the benefits in deterring persons from pretending to be SES members or authorised rescue officers. These emergency services personnel hold a unique position in our community. Unlike many other public officials, these emergency services personnel may exercise powers in circumstances where members of the community are under great stress such as when confronting an emergency. These new offence provisions are justifiable to ensure that the public can trust in the authority of these personnel and not be misled into thinking that a person is part of the emergency services when they are not.

- The offence of using restricted expressions unique to SES (clause 43 of the Bill).

The Bill will create an offence prohibiting a person from using without reasonable excuse the expressions ‘State Emergency Service’ or ‘SES’ or a similar expression in a way that suggests the person is an SES member if the person is not an SES member.

Additionally, a separate offence will prohibit a person who without reasonable excuse and without the Commissioner’s written approval uses the words ‘SES’ or ‘State Emergency Service’ to raise funds or to use these words in, or as, the name of a business carried on by the person or to advertise or otherwise promote goods or services provided by the person.

Both offences have a maximum penalty of 40 penalty units. The proposed offence provisions are consistent with similar provisions employed by other emergency services agencies, such as section 10.18 ‘Prohibited use of words suggesting association with police’ of the PSA Act and are mirrored on the current section 150H ‘Using restricted expressions etc.’ of the FES Act.

Organisations, such as the SES, that provide emergency services to the community are held in high regard. The reputation of the SES could be compromised if persons inappropriately traded on that reputation for financial gain. These new offence provisions are justifiable to ensure that the public may place their trust in the use of these expressions and not be misled into thinking that a thing, or activity is associated with the SES when this is not the case.

- Offences prohibiting the failure to assist, to give reasonable help or comply with a direction (clauses 39 and 40 of the Bill).

Currently, section 150D ‘Failure to assist or give reasonable help’ of the FES Act provides that a person who is required to assist under section 53(2)(j) of that Act or give reasonable help under section 149(2)(h) of that Act must comply and must not fail to comply with a requisition unless the person has a reasonable excuse.

This offence provision recognises that, in certain circumstances, there is an expectation that a person will act to the benefit of another. For example, under section 53 of the FES Act ‘Powers of authorised fire officer in dangerous situations’, an authorised fire officer may take any reasonable measure to protect persons, property or the environment from danger caused by a fire or a hazardous materials emergency or to protect a person who is trapped in any premises or otherwise endangered. In doing so, that officer may require an occupier of a premises near to, or at the site of, the danger who is in charge of something that is the source of the danger, or likely to increase the danger, to take any reasonable measure to deal with that danger or to provide any information for that purpose.

Similarly, an authorised rescue officer performing an emergency-related function may take reasonable steps to protect a trapped or endangered person or themselves, or another person from danger, or assault. In doing so, the authorised rescue officer may require a person to give reasonable help to exercise the prescribed powers.

The Bill will relocate this provision into the new SES Act. It may be suggested that this offence provision impacts upon a person’s freedoms and liberties by requiring a person to take certain actions or face criminal liability. However, the impact of these amendments is mitigated by the fact that these offence provisions do not have general application and may only apply in circumstance where an individual or property is endangered. Further, the subject person may escape liability if the person can prove to the requisite standard that they had a reasonable excuse for their actions.

This amendment is justifiable as the interests of the community will in certain instances outweigh the freedoms and liberties of an individual. In the circumstances described, these provisions recognise the need to promote an individual’s humanity by encouraging a person to assist another during emergencies.

- Offences prohibiting the activation of a warning device or light fitted to SES vehicles (clause 44 of the Bill).

Currently, section 150I ‘Warning device or lights on SES or ES vehicle’ of the FES Act prohibits a person, who is not an SES member, from activating a warning device or warning light fitted to an SES vehicle without reasonable excuse. Additionally, this section prohibits an SES member, without reasonable excuse, from activating a warning device or warning light fitted to an SES vehicle unless the member is performing an SES function and considers it necessary to activate the warning device or warning light to ensure a person’s safety. Both offences impose a maximum penalty of 40 penalty units.

These offences will be relocated to the new SES Act. It may be suggested that this provision impacts upon a person’s freedoms and liberties by subjecting the person to criminal liability for non-compliance with this provision. However, this concern is mitigated as the offence does not have general application. This offence provision is limited to SES members or the limited

subset of persons that have access to SES vehicles. Further, the alleged offender may escape liability if they have a reasonable excuse for their actions.

Activating a warning device or light fitted on a parked SES vehicle obliges other road users to use particular care when driving near that vehicle. A driver on a road that is not a multi-lane road must not drive past the SES vehicle unless sufficient distance is given to avoid a collision with the SES vehicle or a person, and the driver must proceed at a speed that does not put the safety of any person at risk. If the road is a multi-lane road, the driver may only drive past the SES vehicle in certain circumstances including if the driver can pass the SES vehicle leaving at least one other clear lane between the vehicles.

These offence provisions are justifiable as the interests of the individual are outweighed by the interests of others in the community including other road users who should be allowed to travel unimpeded and not be required to adopt certain driving practices as a consequence of the unlawful activation of warning devices fitted to SES vehicles.

Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer (section 4(3)(e) of the LSA) (clauses 36 and 37 of the Bill).

This FLP issue supports a long established rule of common law that protects the property of citizens and frequently arises in the context of inspectorial powers as such powers are very likely to interfere directly with the rights and liberties of individuals.

The Bill will relocate to the new SES Act the existing powers that SES members appointed as authorised rescue officers currently hold in relation to a person and property. These powers apply to an SES member who has been appointed as an authorised rescue officer. When performing an emergency-related function the authorised rescue officer may take the reasonable steps to protect:

- a person who is trapped, or endangered in another way, in a place; or
- the officer or another person from danger, potential danger or assault.

These powers may include entering a place using reasonable force, searching the place, removing any thing from the place, and destroying or damaging premises, a vehicle or other thing. Further, an authorised rescue officer may direct a person to leave or not to enter a place if the officer reasonably considers the direction is reasonably necessary to protect a person's life or health.

Although it may be argued that these powers may infringe with a person's property rights, it should be noted that these powers are not designed for inspectorial or investigative purposes but for use in exceptional circumstances where the power is needed to protect a person's life in danger.

The power of an SES member appointed as an authorised rescue officer to enter a place is appropriate as the power is limited to specific extraordinary circumstances and designed to have as minimal an impact as possible upon the owner or occupier. In these circumstances it is in the interest of the community that SES members are authorised to take the reasonable measures outlined in the Bill to reduce danger to persons or property.

Legislation should not confer immunity from proceedings or prosecution without adequate justification (section 4(3)(h) of the LSA) (clause 45 of the Bill).

The previous Scrutiny Committee has stated that one of the fundamental principles of the law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. However, the Committee did recognise that the conferral of immunity is appropriate in certain situations.

The Bill will confer civil liability protections on certain persons for an act done or omission made, honestly and without negligence when performing an SES function. This civil liability protection will extend to the following entities:

- an authorised rescue officer; and
- a person helping an authorised rescue officer under the proposed section 35(3)(h) of the new SES Act;
- the State;
- a local government; and
- the Minister.

Any potential breach is considered to be justified on the basis that:

- immunity from prosecution is appropriate if it is conferred on persons carrying out statutory functions; and
- it is consistent with the existing civil liability provisions outlined in section 153C ‘Protection from civil liability-acts or omissions under chapter 4’ of the FES Act.

The previous Scrutiny Committee has considered immunity provisions conferred to parties involved in disaster management. Although not surprised at the level of immunity conferred, having regard to the nature of the legislation which provided for disaster management, the Scrutiny Committee has referred to Parliament, without express objection, provisions that conferred immunity of the State and local governments and on ‘officials’ to the extent of things done under the legislation ‘in good faith and without reckless disregard’.

In the context of these amendments, the provision of civil liability protection is justified as SES members, many of whom are volunteers, undertake activities that are of significant benefit to the public interest such as responding to a natural disaster. Exposing these persons to potential civil liabilities would be inappropriate and may lead to a reduction in volunteer participation deleterious to the SES as an organisation.

Consultation

A consultation draft of the Bill was circulated with the following stakeholders:

- Crime and Corruption Commission;
- Inspector-General of Emergency Management;
- Local Government Association of Queensland;
- Office of the Information Commissioner;
- PCYC Queensland;
- Queensland Auxiliary Firefighters Association;
- Queensland Fire and Emergency Service Senior Officers Union of Employees;
- Queensland flotillas of the Australian Volunteer Coast Guard Association Inc;
- Queensland Police Commissioned Officers’ Union of Employees;

- Queensland Police Union of Employees;
- Queensland Recreational Boating Council;
- Royal Life Saving Society Queensland;
- Rural Fire Brigade Association Queensland;
- State Emergency Service Volunteer Association;
- State Emergency Service Volunteer Consultative Committee;
- Surf Life Saving Queensland;
- Together Union;
- United Firefighters Union Queensland;
- Volunteer Marine Rescue Association Queensland Inc and affiliated bodies; and
- Volunteering Queensland.

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 are not uniform with, or complementary to, the legislation of the Commonwealth or any other State.

Notes on provisions

Part 1 Preliminary

1. Short title

Clause 1 provides that, when enacted, the Act may be cited as the *State Emergency Service Act 2023*.

2. Commencement

Clause 2 provides that the Act will commence on a date to be fixed by proclamation.

3. Main purpose of Act

Clause 3 provides the main purposes of the Act is to establish the State Emergency Service. The State Emergency Service is to provide emergency services in the State and other related services to government entities and the community.

4. Act binds all persons

Clause 4 provides that the Act binds all persons, including the State, and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States. The Commonwealth or a State cannot be prosecuted for an offence against this Act.

5. Definitions

Clause 5 provides that the dictionary in schedule 1 defines particular words used in the Act.

Part 2 State Emergency Service

Division 1 Establishment, functions, powers and membership

6. Establishment of SES

Clause 6 establishes the State Emergency Service (SES).

7. Functions and powers

Clause 7 outlines the functions and powers of the SES. The functions of the SES have been expanded to reflect the range of activities that the SES undertake. These functions are, by necessity, broad and include:

- to perform rescue or similar operations in an emergency situation including helping injured persons and protecting persons, property or the environment from danger or potential danger associated with the situation; and
- to perform search operations in an emergency or similar situation; and
- to perform activities in response to a severe weather; and
- to perform other activities to help communities or other entities prepare for, respond to, recover from and enhance resilience to, an event or a disaster; and

- to perform activities to raise the profile of the SES or raise funds to support the SES in the performance of its other functions; and
- to provide services, and give help reasonably requested, in an emergency or another situation, as required of a member of the SES under any Act or law or the reasonable expectations of the community; and
- to perform any other functions conferred on the SES under this Act or another Act.

The SES has the power to do anything necessary or convenient to be done for the performance of its functions.

8. Membership

Clause 8 states that SES members include the SES chief officer, SES employees and SES volunteers.

Division 2 Functions of commissioner and related matters

9. Functions

Clause 9 provides for the Commissioner's functions relating to the SES. These include:

- the establishment of SES units and the designation of areas for SES units; and
- the appointment of persons as SES chief officer, local controllers, SES commanders and other SES members; and
- the establishment of management and support services for the SES; and
- the development of policies to help the SES perform its functions effectively and efficiently including, for example, policies about training SES members;
- the giving of directions and guidance to the SES chief officer, local controllers, SES commanders and SES members; and
- the performance of any other function relating to the SES that is given to the Commissioner under this Act or another Act.

10. Commissioner may make code of practice

Clause 10 provides the Commissioner may issue codes of practice about the conduct or practice of SES members, the operation of SES units to provide guidance to SES members, and another matter the Commissioner considers appropriate for the effective performance of the functions of SES members or SES units.

The Commissioner must, as soon as practicable after making a code of practice, give a copy of the code to each SES unit and publish the code on the department's website.

A code of practice issued by the Commissioner under this section is a statutory instrument.

11. Agreements between commissioner and local government about SES and SES employees

Clause 11 provides the Commissioner may enter into an agreement with a local government about the responsibilities of each party in relation to the SES in the local government area, or the performance of SES functions by persons employed by the local government.

Division 3 SES members

Subdivision 1 SES chief officer

12. Appointment of SES chief officer

Clause 12 provides for an SES chief officer to be appointed by the Commissioner only if the Commissioner is satisfied the person is appropriately qualified to perform the functions and exercise the powers of the SES chief officer effectively and efficiently. The SES chief officer is to be employed under the *Public Sector Act 2022*.

13. Functions and powers

Clause 13 provides for the functions of the SES chief officer. The SES chief officer is responsible for the day to day running of the SES and is to:

- manage the SES in a way that ensures the SES operates effectively and efficiently;
- comply with any direction given by the commissioner that is relevant to—
 - the functions of the SES chief officer or the SES; or
 - SES members;
- perform any other function relating to the SES given to the SES chief officer under this Act or another Act.

The SES chief officer has power to do anything necessary or convenient to be done for the performance of the SES chief officer's functions.

14. Acting SES chief officer

Clause 14 provides for the Commissioner to appoint a person as an acting SES chief officer during a vacancy in the office or during any period when the SES chief officer is unable to perform the duties of the office. The Commissioner must only appoint a person as an acting SES chief officer if the person could have been appointed as the SES chief officer.

15. Delegations

Clause 15 provides that the SES chief officer may delegate the SES chief officer's functions and powers under this Act to an appropriately qualified SES member.

Subdivision 2 Other SES members

16. Appointment of other SES members

Clause 16 provides that the Commissioner may appoint a person as a member of the SES, other than the SES chief officer.

17. Functions and powers of other SES members

This clause provides that an SES member has the following functions:

- to perform a function of the SES in a way that helps ensure the SES operates effectively and efficiently;
- to comply with any direction given by the Commissioner or the SES chief officer that is relevant to the functions of the SES or SES members; and

- to perform any other function relating to the SES given to the SES member under this Act or another Act.

The SES member has power to do anything necessary or convenient to be done for the performance of the SES members' functions.

18. SES employees

Clause 18 provides that an SES member who performs an SES function as an employee of the State under the *Public Sector Act 2022*, or the Brisbane City Council under the *City of Brisbane Act 2010*, or another local government under the *Local Government Act 2009* is an SES employee.

19. SES volunteers

Clause 19 provides that an SES member who performs an SES function may do so as an SES volunteer.

20. Commissioner to insure volunteers

Clause 20 specifies that the Commissioner must enter into a contract of insurance with WorkCover or another entity to insure SES volunteers. The contract must cover SES volunteers while they are performing a function under the *State Emergency Service Act 2023*. The contract of insurance will also cover SES volunteers involved in another activity including training that is related to the carrying out of a function of the SES or disaster operations under the DM Act.

The clause also inserts a definition for WorkCover to mean WorkCover Queensland established under the *Workers' Compensation and Rehabilitation Act 2003*.

21. Suspension of SES local government employee or SES volunteer

Clause 21 applies to a person who is an SES employee performing a function of the SES as an employee of a local government or is an SES volunteer.

The Commissioner may suspend the person from duty as an SES member if the Commissioner reasonably believes the person, had they been an employee under the *Public Sector Act 2022*, would be liable to discipline under that Act, or the proper and efficient management of the SES might be prejudiced if the person is not suspended.

Before suspending a person, the Commissioner must consider all reasonable alternative actions available in relation to the person. For example, consideration could be given to engaging the SES volunteer in alternative duties, changing the location where the SES volunteer performs duties, or another alternative arrangement about how the SES volunteer may continue to participate in the SES.

If the suspension is imposed by the Commissioner, notice must be given to the person and the notice must state when the suspension starts and ends. The suspension may be extended or further extended by the Commissioner before the period ends.

The Commissioner must ensure the matter is investigated promptly to ensure the timely resolution of the suspension and may cancel the suspension at any time.

Division 4 Arrangements for police officers

22. Secondment of police officers

Clause 22 provides for the SES chief officer to arrange with the Commissioner for the services of police officers to be made available to the SES. The arrangement must be approved by the Minister.

A police officer seconded to the SES is subject to the direction and control of the SES chief officer in relation to the performance of SES functions but continues to be a police officer for all other purposes and retains the functions and powers of a police officer without being limited to the performance of SES functions.

Division 5 SES units, local controllers and SES commanders

23. Establishment of SES units

Clause 23 provides the Commissioner may establish an SES unit for a local government area by publishing a notice on the QPS or SES website. An SES unit may only be established if the Commissioner is satisfied it is necessary or desirable to establish the SES unit to perform an SES function in the local government area and the local government for the local government area agrees to the establishment of an SES unit for the area.

The Commissioner must have regard to the following considerations to decide whether it is necessary or desirable to establish an SES unit for a local government area:

- the needs of the community in the local government area;
- whether establishing the unit would—
 - represent an appropriate distribution of the capability of SES members and assets available to the SES for the State;
 - provide the SES with the capability to perform its functions commensurate with the costs and risks associated with the establishment of the unit for the local government area;
- whether sufficient volunteers are likely to be available to ensure the unit is sustainable; and
- whether the unit can appropriately maintain the equipment necessary for the unit to perform the SES's functions.

Before establishing an SES unit, the Commissioner must also consult with any other entity the Commissioner considers represents the local community for the area.

24. Local controller of SES unit

Clause 24 provides that the Commissioner may appoint an SES member, by notice to the member, to be the local controller for an SES unit for a local government area only if:

- the local government for the local government area has nominated the member for appointment as the local controller; and
- the Commissioner is satisfied the member has the necessary experience or expertise to perform the functions of the local controller.

25. Functions of local controller

Clause 25 provides for the functions of a local controller of an SES unit. A local controller for an SES unit must maintain the operational effectiveness of the unit and give effect to any direction given by the Commissioner or SES chief officer. A local controller may delegate the functions to an SES member in the unit.

The functions are required to be performed by ensuring:

- the SES members in the unit have the necessary skills to perform their roles in the unit competently;
- the unit's equipment is maintained in an appropriate condition;
- the unit performs its functions and other activities in a way that is consistent with departmental policies about the performance of an SES unit's functions and other activities;
- the unit performs its functions in compliance with—
 - this Act and any other applicable Act or law; and
 - any operational permits and approvals applying to an SES unit; and
- the SES members in the unit comply with any direction given by the Commissioner, the SES chief officer or an SES commander.

26. SES commanders

Clause 26 provides for the appointment by the Commissioner of an SES member as an SES commander for a group of SES units. The Commissioner must be satisfied the SES member is appropriately qualified to perform the functions of an SES commander.

The SES commander is responsible for coordinating the performance of SES functions by a group of SES units. The SES commander holds office on any conditions the Commissioner considers appropriate and stated in the notice given to the appointed SES commander.

The Commissioner may terminate the appointment of the SES commander if the Commissioner considers it is no longer necessary for an SES commander to be appointed for the group.

The Commissioner must advise the chairperson of each relevant local group and the relevant district disaster coordinator that an appointment of an SES commander has been made or has ended.

This section provides definitions for the following terms:

- chairperson;
- disaster district;
- district disaster coordinator;
- local group;
- relevant district disaster coordinator; and
- relevant local group.

27. Functions of SES commanders

Clause 27 provides the functions of SES commanders. In performing the SES commander's functions, the commander must have regard to the advice of the local disaster coordinator for a relevant local group and any applicable disaster management plans.

The functions of an SES commander are:

- to coordinate the performance of SES functions in the local government areas for which the commander is appointed in circumstances where resources of the SES are made available from outside the local government areas;
- to provide advice to local controllers of the SES units about SES functions and managing the safety and fatigue of the member of the SES units, and logistical and financial matters;
- to perform other functions agreed between the SES commander and the local disaster coordinator for the relevant local group; and
- to give effect to any direction given by the Commissioner or SES chief officer.

This section provides definitions for the following terms:

- disaster management plan;
- local disaster coordinator;
- local group; and
- relevant local group.

Part 3 Authorised rescue officers

Division 1 Appointment

28. Appointment

Clause 28 provides that the Commissioner may appoint any of the following persons as an authorised rescue officer, where the Commissioner is satisfied the person has the necessary expertise or experience to be an authorised rescue officer:

- an SES member;
- a person who performs a function similar to an emergency-related function of the SES under a law of another State or country; and
- a member of a class of persons prescribed by a regulation.

29. Appointment conditions and limit on powers

Clause 29 provides that an authorised rescue officer holds office on any conditions stated in the officer's instrument of appointment, or a signed notice given to the officer, or a regulation. 'Signed notice' is provided to mean a notice signed by the Commissioner.

30. Resignation

Clause 30 provides that an authorised rescue officer may resign by signed notice given to the Commissioner.

31. Issue of identity card

Clause 31 provides that the Commissioner must issue an identity card to each authorised rescue officer. The identity card must contain a recent photo of the officer, identify the person as an authorised rescue officer under this Act, and state an expiry date. This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

32. Production or display of identity card

Clause 32 provides that in the exercise of a power under this Act in relation to a person, an authorised rescue officer must produce the officer's identity card for the person's inspection before exercising the power, or have the identity card displayed so it is clearly visible to the person when exercising the power. If it is not practicable to comply with this requirement, the authorised rescue officer must produce the identity card for the person's inspection at the first reasonable opportunity.

33. Return of identity card

Clause 33 provides that a person who stops being an authorised rescue officer must return the person's identity card to the Commissioner within 21 days after the person stops being an authorised rescue officer, unless the person has a reasonable excuse. The offence provision carries a maximum penalty of 50 penalty units.

Division 2 Powers of authorised rescue officers

34. Exercise of powers subject to direction of SES member

Clause 34 provides that an authorised rescue officer who is not an SES member is subject to the directions of an authorised rescue officer who is an SES member.

35. Powers for performing emergency-related SES function

Clause 35 provides that where an authorised rescue officer is performing an emergency-related function, the officer may take reasonable steps to protect:

- a person who is trapped or endangered in another way, in a place; or
- the officer or another person from danger, potential danger or assault.

The section provides that each of the following is a reasonable step:

- entering a place under section 36;
- searching any part of a place;
- opening a container or other thing;
- removing any thing from a place;
- destroying or damaging premises, a vehicle, container or other thing;
- taking into or onto a place the equipment, persons or materials the authorised rescue officer reasonably requires to exercise a power under this section; and
- giving a person a direction to leave, or not to enter, an area in or near a place if the authorised rescue officer reasonably considers the direction is necessary to protect a person's life or health.

An authorised rescue officer may require a person at or near a place to give the authorised rescue officer reasonable help to exercise the officer's powers. When giving such a direction or making such a requirement, the authorised rescue officer must warn the person it is an offence to fail to comply with the direction or requirement unless the person has a reasonable excuse.

36. Power of entry

Clause 36 provides that an authorised rescue officer may enter a place for performing an emergency-related SES function without a warrant or the consent of the owner or occupier of the place. However, if the occupier is present at the place, the authorised rescue officer must do, or make a reasonable attempt to do, the following things before entering the place:

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

The authorised rescue officer is not required to do this if the officer believes to do so may frustrate or otherwise hinder the officer's ability to give the protection mentioned in clause 35(2).

This section provides a definition for the term 'occupier'.

37. Power to use force

Clause 37 provides it is lawful for an authorised rescue officer to use reasonably necessary force when performing or attempting to perform an SES function, but this does not include the application of force against an individual.

Part 4 Offences

38. Offence to assault or obstruct official

Clause 38 provides that it is an offence to assault or obstruct an SES member or authorised rescue officer who is acting in the performance of their duties, without a reasonable excuse. The offence will carry a maximum penalty of 100 penalty units or 6 months imprisonment to reflect the seriousness of the offence.

The provision is similar to section 790 of the *Police Powers and Responsibilities Act 2000* and the existing section 150C of the *Fire and Emergency Services Act 1990*. If a person has obstructed an official and the official decides to proceed with the performance of the function, the official must warn the person that it is an offence to cause an obstruction unless the person has a reasonable excuse, and the official considers the person's conduct an obstruction.

This section provides definitions for the following terms:

- assault;
- obstruct; and
- official.

39. Failure to comply with direction of authorised rescue officer

Clause 39 provides that a person must not fail to comply with a direction given by an authorised rescue officer, unless the person has a reasonable excuse. The maximum penalty for this offence is 50 penalty units or 6 months imprisonment.

40. Failure to comply with requirement to give authorised rescue officer reasonable help

Clause 40 provides that a person must comply with a requirement made by an authorised rescue officer under the new SES Act unless the person has a reasonable excuse. The maximum penalty for this offence is 100 penalty units.

41. Impersonating SES member or authorised rescue officer

Clause 41 provides that a person must not impersonate an SES member or an authorised rescue officer. The maximum penalty for this offence is 100 penalty units.

42. Unauthorised use of confidential information

Clause 42 creates the offence of unauthorised use of confidential information which carries a maximum penalty of 100 penalty units or 2 years imprisonment.

The section applies to a person who:

- is or has been an SES member or authorised rescue officer performing functions under or relating to the administration of this Act; or
- is or has been another individual engaged to perform functions under or relating to the administration of this Act; or
- is or has been an individual engaged by an entity that is engaged to perform functions under or relating to the administration of this Act; and
- in that capacity, has acquired confidential information or has access to, or custody of, confidential information.

This section also applies to a person who has acquired or has access to confidential information whether directly or indirectly, from a person mentioned above, or as authorised under an Act, another law or an arrangement with the QPS.

The person may use the confidential information—

- 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 production of documents or giving of evidence before a court or tribunal; or
- if the use is otherwise required or permitted under another law.

This section uses particular definitions for the following terms:

- confidential information;
- personal information; and
- use.

43. Using restricted expressions etc.

Clause 43 provides for the offence of using restricted expressions. This offence carries a maximum penalty of 40 penalty units. The section provides that a restricted expression means the ‘State Emergency Service’, ‘SES’ or another expression that includes either of those terms.

A person must not use a restricted expression without the Commissioner's written approval or authority as a business name, to advertise or promote goods or services, or to raise funds whether for the SES or another entity. A person also must not use the expression 'State Emergency Service' or 'SES' or similar expression in a way that suggests the person is an SES member if the person is not an SES member.

The proposed offence provisions are to ensure consistency with similar provisions employed by other emergency services agencies (for example, section 10.18 of the PSA Act).

44. Warning device or light on SES vehicle

Clause 44 provides that a person, other than an SES member, must not activate a warning device or warning light fitted to an SES vehicle unless the person has a reasonable excuse. This offence provision carries a maximum penalty of 40 penalty units.

An SES member may activate a warning device or warning light fitted to an SES vehicle only when performing a function of the SES, and the member considers it necessary to activate the warning device or warning light to ensure a person's safety. This offence provision carries a maximum penalty of 40 penalty units.

Part 5 Miscellaneous

45. Protection from liability

Clause 45 provides civil liability does not attach to the State, a local government, the Minister, an SES member, an authorised rescue officer, a person helping an authorised rescue officer under section 35(3)(h) because of an act done, or omission made, honestly and without negligence under the Act.

46. Appointments and authority

Clause 46 provides that a person's appointment as an SES chief officer, a local controller of an SES unit, an SES commander, another SES member, or an authorised rescue officer and the power of these persons to do anything under this Act is presumed, unless a party to the proceeding gives reasonable notice that the party requires the proof of it.

47. Other evidentiary aids

Clause 47 provides that a certificate purportedly signed by the Commissioner is evidence of the following matters:

- a stated document is an appointment, approval, authorisation, decision, direction, notice or requirement given or made under this Act;
- a stated document is a copy of, or an extract from or part of, an aforementioned document; and
- that on a stated day, a stated person was given a stated decision, direction or notice under this Act; or a stated requirement under this Act was made of a stated person.

48. Exemption from toll

Clause 48 provides an SES member travelling in an SES vehicle is exempt from paying tolls for the use of a road, bridge or ferry. The exemption applies if an SES member is travelling in

an SES vehicle in the person's capacity as an SES member, and the SES vehicle is fitted with a warning device or warning light that is activated.

49. Regulation-making power

Clause 49 provides the Governor in Council may make regulations under this Act.

Part 6 Transitional provisions for Emergency Services Reform Amendment Act 2023

50. Definitions for part

Clause 50 provides definitions for the following terms used in this part:

- former; and
- former SES.

The former SES is defined to mean the SES established under the FES Act.

51. Appointment of former SES member as new SES member

Clause 51 applies to a person who, immediately before the commencement of this Act, was a member of the former SES. Upon commencement of this Act, that person is taken to be appointed as a member of the SES under section 16 of this Act.

52. Continuation of former SES unit as new SES unit and appointment of local controller as new local controller

Clause 52 applies to an SES unit established under section 133 of the FES Act, and in existence immediately before the commencement of this Act. Upon commencement of this Act, that SES unit is taken to be established as an SES unit under section 23 of this Act.

The section also applies to a local controller appointed under section 134 of the FES Act, and whose appointment is in effect immediately before the commencement of this Act. Upon commencement of this Act, that local controller is taken to be appointed under section 24 of this Act.

53. Appointment of former SES coordinator as new SES commander

Clause 53 applies to an SES coordinator appointed under section 136 of the FES Act and whose appointment is in effect immediately before the commencement of this Act. Upon commencement of this Act, the SES coordinator is taken to be appointed under section 26 of this Act as the SES commander for the group of SES units for each of the local government areas.

54. Appointment of former authorised rescue officer as new authorised rescue officer

Clause 54 applies to an authorised rescue officer appointed under section 148 of the FES Act and whose appointment is in effect immediately before the commencement of this Act. Upon commencement of this Act, the authorised rescue officer is taken to be appointed under section 28 of this Act.

55. Preserved employment conditions

Clause 55 applies to a person who, immediately before the commencement of the Act, was employed by the State or a local government to perform a function of the former SES. Upon commencement of this Act, the person is taken to be appointed to a position under section 51(2), 52(4), 53(2) or 54(2). The section provides that the person's benefits, entitlements or remuneration as an employee under this section are not affected by the appointment under the new Act.

56. Continuation of WorkCover insurance for SES volunteers

Clause 56 provides that an insurance contract for an SES volunteer that was entered into under section 154C of the FES Act prior to the commencement of this Act continues to have effect as if the amending Act had not been enacted.

57. References to former SES

Clause 57 provides a reference in an Act or document to the former SES, whether it is referred to as the 'SES' or the 'State Emergency Service', may, if the context permits, be taken to be a reference to the SES established under section 6 of this Act.

Schedule 1 Dictionary

The schedule provides definitions for the following terms:

- commissioner;
- emergency-related SES function;
- local controller;
- notice;
- of, a place;
- place;
- police service;
- premises;
- reasonably believes;
- SES;
- SES chief officer;
- SES commander;
- SES employee;
- SES function;
- SES member;
- SES unit;
- SES vehicle;
- SES volunteer; and
- vehicle.