

Parliamentary Committee briefing note Disaster Management and Other Legislation Amendment Bill 2024

Overview and policy intent

In July 2021, KPMG International Limited (KPMG) was commissioned by the Queensland Government to undertake an independent review of Queensland Fire and Emergency Services (QFES) and its associated volunteer entities.

The purpose of the review was to look at the effectiveness, efficiency and sustainability of QFES and its associated volunteer entities in delivering fire and emergency services in Queensland, including through assessing the scope, functions and suitability of the QFES structure.

As part of the Terms of Reference for the review consideration was also given to previous reviews including the *'Review into Volunteer Marine Rescue Organisations in Queensland'* and the *'SES Review Sustaining the SES – Partnering for Change'*.

The resulting report titled, *'Independent review of Queensland Fire and Emergency Services'* (the Independent Review Report) made 19 recommendations for administrative and legislative reform including:

- establishing a new department consisting of the current Fire and Rescue Service, Rural Fire Service, FireCom and appropriate elements of QFES' Corporate Services Division;
- legislative and policy reform, including a review of the *Fire and Emergency Services Act 1990* (FES Act) and the *Disaster Management Act 2003* (DM Act) with a view to modernising both pieces of legislation and (with regard to the FES Act) 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);
- reallocating the responsibility of Queensland's disaster management functions to the Queensland Police Service (QPS) Commissioner (Police Commissioner);
- aligning the State Emergency Service (SES) under the QPS;
- establishing the new Marine Rescue Queensland (MRQ) as the single entity responsible for blue water marine rescue for Queensland aligned under the QPS; and
- transferring responsibility for service agreements and grants arrangements for PCYC Emergency Services Cadets, Surf Life Saving Queensland and the Royal Life Saving Society Queensland to the QPS.

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, except for recommendation 12 (establishing a State Emergency Service levy). The Government's response also requested the Inspector-General of Emergency Management (IGEM) review Queensland's disaster management arrangements.

On 28 April 2023, the IGEM delivered its *Review of Queensland's Disaster Management Arrangements (QDMA)* (the IGEM Review) to the Government which made 10 broad recommendations for reform. The Queensland Government accepted in principle all 10 recommendations. Recommendations included:

- appointing the Police Commissioner as the Chief Executive of the DM Act;
- establishing the State Disaster Management Group (SDMG) within the DM Act;
- amending the role of the Queensland Disaster Management Committee (QDMC) under the DM Act to focus on strategic direction and leadership during events and crisis;
- providing that the chief executive officer (CEO) of the Queensland Reconstruction Authority (QRA) is the State Recovery Policy and Planning Coordinator (SRPPC);
- outlining the functions of the SRPPC and this role's relationship with the State Recovery Coordinator (SRC) and State Disaster Coordinator (SDC);
- defining the term 'resilience' within the DM Act; and
- expanding the functions of QRA in the *Queensland Reconstruction Authority Act 2011* (QRA Act) to lead State level hazard and risk assessments.

A Reform Implementation Taskforce (RIT) was established to oversee and coordinate the implementation of the reforms over a two-year period. The RIT has committed to implementing these reforms by 30 June 2024 without any diminishing of the delivery of emergency services.

Legislation to establish the SES and MRQ as organisations under the QPS, and to establish the SDMG within the DM Act, was introduced into the Legislative Assembly on 28 November 2023 and is being considered by the Community Support and Services Committee.

The Disaster Management and Other Legislation Amendment Bill 2024 (the Bill) seeks to meet the remaining recommendations requiring legislative amendments to implement the Government's response to the Independent Review Report and IGEM Review.

Fire and Emergency Services Act 1990

The Commissioner of QFES (the Commissioner) is appointed under the FES Act, with the Act outlining the responsibilities of the Commissioner in relation to the delivery of fire and emergency services. The Bill will make key amendments to the FES Act to establish a legislative framework within which the new Queensland Fire Department (QFD) will operate, including renaming the FES Act to the *Fire Services Act 1990* (FS Act) to reflect the sharpened focus on fire service delivery including fire prevention, fire control and fire response.

Importantly, this includes making structural reforms to establish Queensland Fire and Rescue (QFR) and Rural Fire Service Queensland (RFSQ) as separate fire services under the FES Act and address matters regarding protections from civil liability for volunteers of rural fire brigades (brigades) and the legal status of brigades.

Amendments are also included to facilitate an environment which provides the Commissioner with an appropriate level of oversight and levers to effect change, while providing both services with an operational framework that supports best practice and continuity in service delivery.

Key changes include:

- expanding the objects of the Act to include establishing a framework for the operation, management and administration of the fire services;
- expanding the Commissioner's functions to reflect the extent of the role's responsibilities; and
- consolidating the power of the Commissioner to direct certain persons under the FS Act to ensure the efficient and proper functioning of the fire services.

Amendments will further support QFR and RFSQ service delivery by:

- establishing the role of Chief Fire Officer, to provide operational advice to the Commissioner about the fire services; and
- establishing an advisory committee, to advise the Chief Officer, RFSQ on matters relevant to rural fire brigades and volunteer members.

A range of amendments have also been included to support accountability and assurance both administratively and operationally. Regarding the latter, this includes amendments setting out the experience and expertise required to perform certain roles and when consideration is to be given to mandatory requirements for a role as part of recruitment and selection processes.

Separate to recommendations contained in the review reports, the Bill will amend the FES Act, the *Fire and Emergency Services Regulation 2011* and the *State Penalties Enforcement Regulation 2014*, to require smoke alarms be installed in caravans and motorised caravans. Currently, QFES provides guidance about fire safety in caravans and mobile homes. However, following a number of recent fire related fatalities in moveable dwellings, the Bill includes amendments to require newly registered caravans and motorhomes and those for which the registration is transferring to be fitted with battery powered, photoelectric smoke alarms that comply with the relevant Australian Standard (AS 3786-2014). From January 2027, this will apply to all registered caravans and motorised caravans in Queensland, aligning with the final stage of the roll out of legislation for domestic dwellings.

Disaster Management Act 2003 and Disaster Management Regulation 2014

Amendments in the Bill will also enhance Queensland's disaster management arrangements. The amendments to the DM Act and *Disaster Management Regulation 2014* give effect to structural, administrative and operational reforms recommended by the Independent Review Report and IGEM Review.

The Bill clarifies the responsibilities of the Police Commissioner under the DM Act and provides that the role of the QDMC is to provide strategic leadership for disaster management and disaster operations for the State.

The Bill declares the CEO of QRA as the SRPPC and provides for the functions of the SRPPC, along with its relationship with the SRC and SDC.

The Bill also inserts a definition of 'resilience' that aligns with the Queensland Government endorsed definition and inserts resilience as a guiding principle of the DM Act.

Queensland Reconstruction Authority Act 2011

The Bill also makes minor amendments to the QRA Act.

The IGEM Review recommended that QRA should lead state level hazard and risk functions and should be Queensland's lead agency coordinating Disaster Recovery Funding Arrangements.

The Bill expands the functions of QRA by including the functions of, coordinating the development and implementation of whole-of-government policies for carrying out risk assessments of potential disasters and administration of financial assistance for communities in relation to mitigating against, recovering from, or improving resilience for disasters.

Additional amendments will address issues regarding reaching a quorum for a meeting of the Queensland Reconstruction Board (Board) where there are vacancies in the Board membership and ensure that the CEO of QRA is able to delegate their functions under the QRA Act to an appropriately qualified person appointed under either the *Public Sector Act 2022* (PS Act) or the QRA Act.

Consultation

Broad consultation on emergency service and disaster management reform occurred with key stakeholders as part of the Independent Review and the IGEM Review.

Stakeholders included representatives from QFES, industrial organisations, volunteer fire and emergency service associations, marine rescue authorities, Surf Life Saving Queensland, Royal Life Saving Society Queensland, the Local Government Association of Queensland (LGAQ), various Local Government councils and interstate authorities such as Fire and Rescue New South Wales.

Targeted consultation also occurred with a number of stakeholders in the period before an exposure version of the Bill was drafted.

The exposure draft of the Bill was provided for comment in January 2024, to the IGEM, LGAQ, the Queensland Police Union of Employees, Queensland Police Commissioned Officers' Union, Together Union, Rural Fire Brigade Association Queensland, United Firefighters Union Queensland, Queensland Auxiliary Firefighters Association, Queensland Fire and Emergency Service Senior Officers Union of Employees, the State Emergency Service Volunteer Association, the Queensland flotillas/squadrons of the Australian Volunteer Coast Guard Inc and Volunteer Marine Rescue Association Queensland Inc.

Feedback on the FES Act amendments focused on:

- eligibility requirements for appointment to offices (clauses 25, 28 and 34);
- application of the provision relating to 'person in charge of operations' (clause 49); and
- powers of appointment and implied powers of removal and suspension of rural fire brigade members (clause 46 and section 25 of the *Acts Interpretation Act 1954*).

In relation to the DM Act amendments, stakeholders suggested further prescription regarding particular positions and a review of related DM documents.

Disaster Management Amendments

On 30 October 2023, machinery of government changes allocated the responsibilities of the chief executive under the DM Act from the Commissioner to the Police Commissioner. The Bill clarifies the responsibility of the Police Commissioner for disaster management by amending the DM Act to replace references to the term 'chief executive' with 'police commissioner' (IGEM recommendation 1.a).

The Bill recognises the status of the QDMC as the most important and strategic committee for Queensland during significant events and disasters by providing that a function of the QDMC is to provide strategic leadership for disaster management and disaster operations for the State (IGEM recommendation 1.b). Where the QDMC is not convened, the SDMG, proposed to be established in the Emergency Services Reform Amendment Bill 2023, will be able to act as a

precursor to the convening of the QDMC by providing strategic leadership to the state (IGEM recommendations 1.b and 1.c). The Bill will also expand the membership of the QDMC by including the chairperson of the Government's Crisis Communication Network as an observer to the QDMC.

The Bill formally establishes the role of the SRPPC which provides a state-wide view on the impacts of a disaster to the QDMC (IGEM recommendation 1.d). The Bill clarifies the CEO of QRA is the SRPPC. The functions of the SRPPC are defined to include making policies and plans for the QDMC about coordinating effective disaster recovery operations and overseeing the implementation of policies for effective disaster recovery operations and for improving resilience of the State. The Bill clarifies the appointment process for the SRC to allow the SRPPC to provide input to the chairperson of the QDMC about a potential appointment.

The relationship between the SRPPC, SDC, SRC and QDMC is clarified through the Bill to ensure appropriate reporting arrangements (IGEM recommendation 2.d). The SRPPC reports regularly to the QDMC about the state-wide coordination of disaster recovery operations, and liaises with the SDC by advising them about such operations. Each SRC reports to the SRPPC and the chairperson of the QDMC about disaster recovery operations.

The Bill emphasises the importance of 'resilience' by amending the guiding principles of the DM Act to state that consideration should be given to the improvement of the resilience of a community across the four phases of prevention, preparedness, response and recovery when planning disaster management (IGEM recommendation 5). A definition for 'resilience' is inserted to align the DM Act and the QRA Act.

Queensland Reconstruction Authority Amendments

Clause 86 amends the QRA Act, with amendments detailed in clauses 87 to 89.

Currently the functions of the QRA are set out in section 10 of the QRA Act. A primary function of the QRA is to coordinate the development and implementation of whole-of-government policies for carrying out risk assessments of potential disasters across Queensland.

As part of this function, QRA is already responsible for coordinating flood risk, as well as recovery and resilience State-wide policies for all potential disaster types. Clause 87 amends section 10 of the QRA Act to further expand this responsibility, in line with IGEM recommendation 2.g, to include risk assessments at a State level.

Expanding QRA's functions recognises the importance of creating State-wide policy for undertaking disaster risk assessments, ensuring best practice and consistency.

Currently, section 30 of the QRA Act states that membership of the Board consists of the following persons (each a member): the chairperson; two members nominated by the Commonwealth; one member nominated by the Local Government Association of Queensland (LGAQ); and at least three other members. Further, section 36 of the QRA Act states that a quorum for a meeting of the Board is at least half of the members. To ensure the Board remains functional in periods of membership vacancies, there is a need to clarify that quorum of the board is at least half the appointed members, rather than half of membership as listed under section 30. This is particularly important where the State does not have full control of when membership nominations are provided by the Commonwealth or LGAQ. Therefore clause 88 clarifies that the quorum of the Board is a majority of the members for the time being.

Currently, the CEO of QRA can appoint persons to assist the CEO in the performance of their functions under section 24 of the QRA Act. The CEO can also arrange with the chief executive of a department, a local government, a government entity, or a government owned corporation, for the services of officers or employees of the department, local government, entity or corporation to be made available to the QRA under section 27 (Alternative staffing arrangements) of the QRA Act. A person appointed under section 24 is employed under the QRA Act and not the PS Act.

Section 132 of the QRA Act allows the CEO to delegate their functions, however, it also limits the CEO's ability to delegate their functions to anyone other than those engaged as a senior executive under the PS Act. This means that the CEO can not delegate their functions to QRA senior executive officers appointed under section 24. Amendments in clause 89 rectify this issue.

Queensland Fire and Emergency Services Amendments

Title and objects of the Act

Given the transition of the SES to the QPS, clause 20 amends the short title of the FES Act to the FS Act to reflect the renewed focus on fire service delivery.

The objects of the amended FS Act have been updated to reflect the establishment of the QFR and the RFSQ as fire services under the Act, with clause 21 providing that the objects of the Act include to establish a framework for the operation and management of the QFR and the RFSQ.

The two fire services will continue to work cooperatively to secure the effective delivery of fire and emergency services for the community.

Consequently, clause 22 inserts new section 2A regarding how the objects of the Act are to be achieved. In particular, processes are to be established to ensure on-going operational and strategic collaboration and coordination between the fires services and to recognise the valuable role of volunteers in supporting the delivery of fire and emergency services in the State.

Collaboration and coordination between the services will be enhanced by the establishment of a State Operations directorate that will encompass those elements of service delivery where consistency and a joint approach are critical to achieving positive outcomes. State Operations is proposed to include high risk operational functions such as Fire Communications, Air Operations and the State Operations Centre, and vital operational support capabilities such as intelligence services and public information and warnings. Key benefits of the State Operations model are in driving consistency and limiting risks arising from misalignment, and setting standards, policy and process for the coming together of the services.

Provision of advice regarding strategic and operational collaboration and coordination will also be a primary function of the new role of Chief Fire Officer.

Establishment, membership and functions

Establishment and membership

The FES Act currently provides for the establishment of QFES (the service, not the department).

Fire service officers are employed under the FES Act as staff of QFES. Public service employees are employed in Queensland Fire and Emergency Services (department) and will continue to be employed in QFD, which will be established under a Departmental Arrangements Notice.

Clause 31, new section 8 establishes the QFR and RFSQ as separate fire services to be housed within the QFD. The QFR and RFSQ will collectively be called ‘the fire services’. In recognition of the Commissioner’s role as the operational and strategic lead of the QFD, the Commissioner is a member of both services.

QFR will consist of the Commissioner, the Deputy Commissioner and fire service officers assigned to the FRS by the Commissioner (new section 8A(1)). RFSQ will consist of the Commissioner, the Chief Officer, fire service officers assigned to the RFSQ by the Commissioner, rural fire brigades and rural fire brigade members (new section 8A(2)).

Establishing the RFSQ in legislation recognises the important functions that volunteers perform on behalf of the State and enhances the civil liability protections that apply to volunteers under the PS Act and the *Civil Liability Act 2003*.

The PS Act (chapter 7, part 1) gives particular persons, other than public service employees, protection from civil liability for engaging in conduct in an official capacity. The *Civil Liability Act 2003* (section 39) provides an indemnity to individual volunteers, either engaged in community work for community organisations or as an office holder of such an organisation, in relation to any act or omission done in good faith.

While rural fire brigades and rural fire brigade members currently have certain protections under sections 153B(1) (protection from liability for acts done honestly and without negligence) and 153B(2) (protection from being charged with offences) of the FES Act and sections 26 and 27 of the *Civil Liability Act 2003* (protections when performing duties to enhance public safety), volunteer members of rural fire brigades do not currently have the same protections that are available, for example, to volunteers of the State Emergency Service, due to their legal status and the way they are formed.

A potential disincentive to volunteering is the prospect of a volunteer incurring serious personal liability for damages and legal costs in proceedings for negligence. By providing that rural fire brigades are part of the State, members of rural fire brigades acquire similar protection to QFES fire officers and other emergency service volunteers, noting that all protection from liability provisions require the action or omission to have been performed to a certain threshold (for example, honestly and without negligence). This approach reflects the important role that volunteers serve and creates consistency for volunteer participation, which is essential in establishing a sustainable prevention and response capability for Queensland communities.

Functions of the fire services

Amendments to section 8B (clause 19) ensure that both services can continue to deliver existing functions. An additional provision also sets out that the fire services can do anything necessary or convenient to be done for the performance of the functions of the services.

Historically, the RFSQ has been responsible for the management of the ‘permit to light’ system administered by fire wardens, bushfire mitigation and the provision of support to rural fire brigades to give effect to the Commissioner’s responsibilities under section 85 of the FES Act.

With the proposed establishment of the RFSQ in legislation, clause 62, new section 129 formally recognises these functions, which are in addition to the general functions of the fire services in section 8B. Amendments were made following consultation with the RFSQ to acknowledge the significant role of the service in carrying out activities, in and with communities, in regard to the prevention of, preparedness for, response to and recovery from bushfires and supporting communities to build resilience to bushfires.

Commissioner

Chapter 2 of the FES Act provides for the appointment, conditions of employment and functions of the Commissioner. The chapter also details acting arrangements and provides the authority for the Commissioner to issue codes of practice relating to certain matters.

Appointment and conditions of employment

The Commissioner of QFES is both the Commissioner under the FES Act and the responsible chief executive for QFES, under section 173 of the PS Act.

The Bill maintains existing arrangements for the appointment of the Commissioner by Governor in Council, upon recommendation by the Minister.

Clause 25 of the Bill amends section 5 to provide that a person is eligible for appointment as Commissioner only if the person has professional firefighting experience, and incident control expertise, and fire prevention expertise.

Under the command structure of the organisation, the Commissioner is the repository of legislative powers, with those powers then flowing down to other executive officers, senior officers and so on. QFES’ command hierarchy and procedures accord with Australia-wide protocols. The Commissioner is an authorised fire officer and is therefore conferred with significant powers.

The Commissioner must understand the risks of firefighting and emergency operations to ensure a safe workplace and to reduce the likelihood of persons under his or her control being exposed to harm during operations. Failure to do so could lead to injuries and fatalities, reputational damage, operational disruption, litigation, and loss of public confidence in the fire services. Therefore, mandatory requirements for appointment have been included in the Bill for the Commissioner to ensure that any appointee has significant experience in firefighting to be able to assume direct operational command of fire services officers.

It is noted that more general leadership and management skills relevant to the Commissioner's role as chief executive are not dealt with in the section as expectations regarding chief executive obligations are considered across several other Acts, including the PS Act.

Chief Fire Officer

Clause 28 establishes the role of Chief Fire Officer as a statutory position responsible for providing advice to the Commissioner on matters relating to service delivery, integration of the fire services, operational culture, best practice and innovation and research.

The Chief Fire Officer is not a member of the fire services, however, is subject to the direction of the Commissioner in performing the Chief Fire Officer's functions.

Stakeholders did raise differing views on whether the Chief Fire Officer should be able to perform operational functions, however, the Chief Fire Officer has not been given operational functions due to the potential conflicts of interest issues that could arise.

While the role is not operational, the Chief Fire Officer is required to have had significant experience across all aspects relevant to a fire agency. New section 7Q provides that a person is eligible for appointment as Chief Fire Officer only if the person has professional firefighting experience, and incident control expertise, and fire prevention expertise.

The Chief Fire Officer holds office on any conditions stated in the person's contract of employment and may resign at any time by giving signed notice to the Commissioner. The Commissioner can appoint an acting Chief Fire Officer during any vacancies or any period when the Chief Fire Officer is absent from duty or cannot otherwise perform the functions of the office. All rights accrued or accruing to the Chief Fire Officer as a public service officer are preserved.

Importantly, the fire services will be required to give the Chief Fire Officer all reasonable assistance required to perform the Chief Fire Officer's functions, this includes information held by a fire service that relates to the Chief Fire Officer's functions.

To provide assurance of the work the Chief Fire Officer is undertaking, the Chief Fire Officer is to prepare a report on the functions performed by the Chief Fire Officer and give the report to the Commissioner on a quarterly basis or another period prescribed by regulation. The Commissioner must provide this report to the Minister (section 7A(1A)(k)).

Deputy Commissioner, QFR and Chief Officer, RFSQ

The Bill establishes the roles of Deputy Commissioner, QFR and Chief Officer, RFSQ with responsibility for managing the day-to-day service delivery of the fire services. The functions of each role are to:

- support the Commissioner in the delivery of the Commissioner's functions;
- manage service delivery to ensure the effectiveness and efficiency of the respective service;
- ensure the development of the respective service's capability including the systems, frameworks and resources required to support service delivery;

- ensure minimum standards and training for members of the respective service are in place to the satisfaction of the Commissioner; and
- perform any other function given by the Commissioner.

Like the Chief Fire Officer, a person holds office on any conditions stated in the person's contract of employment and may resign at any time by giving signed notice to the Commissioner. All rights accrued or accruing to the roles as a public service officer are preserved.

During any vacancies or periods of absence from duty the Commissioner can appoint another person to the Act in the role, however the person must be able to meet the eligibility requirements for appointment.

A transitional provision under clause 81, new section 223 preserves the unexpired portion of any contract of employment for person in these roles upon commencement.

Executive and senior officers

The Commissioner may employ the persons the Commissioner considers necessary to perform the service's functions under section 25 of the FES Act. RFSQ and QFR officers are currently employed under the FES Act and recognised as 'fire service officers'. Fire service officers, who have the functions of fire prevention and fire control, are defined as 'fire officers'. The Commissioner may authorise a fire officer to exercise all the powers conferred on 'authorised fire officer' under the Act. The definitions for 'fire service officer' and 'fire officer' are unchanged by the Bill.

Amendments have however been made to section 25 to also set out that the Commissioner may employ the number of executive officers or senior officers as is necessary for the effective administration of the Act and the performance of the fire services' functions. Executive officer is defined to mean a person employed in a role equivalent to that of a senior executive under section 188 of the PS Act, this will include officers holding the rank of Deputy Commissioner, Assistant Commissioner, Chief Officer, Deputy Chief Officer and Chief Fire Officer. Senior officer means a person employed in a role equivalent to that of senior officer under schedule 2 of the PS Act. This will include the ranks of Inspector, Superintendent and Chief Superintendent.

A transitional provision under clause 81, new section 225 preserves the unexpired portion of any contract of employment of an executive officer upon commencement. A transitional provision is not required for senior officers who are not appointed on contract.

Eligibility requirements and mandatory qualifications

To be eligible for appointment as Commissioner or Chief Fire Officer a person must have professional firefighting experience, incident control expertise, and fire prevention expertise. Similarly, executive (e.g. Deputy Commissioner and Assistant Commissioner), or senior officer (e.g. Inspector, Superintendent and Chief Superintendent) appointees in QFR must have those same eligibility requirements. Appointment as Chief Officer or Deputy Chief Officer (RFSQ) requires rural firefighting experience, or rural incident control expertise, or rural fire prevention expertise.

Clause 83 of the Bill defines the following terms in the schedule dictionary:

Professional firefighting experience requires significant knowledge of and practical experience, obtained by employment as a firefighter in QFR or a fire service in another state or New Zealand (NZ) equivalent to QFR, in: responding to, combating and managing structural fires, bushfires, and incidents involving hazardous materials; carrying out specialist and technical rescues; and responding to and managing disasters.

Fire prevention expertise requires significant knowledge of and practical experience in fire prevention, including in relation to: building fire safety; community education and enforcement; and mitigation and prevention strategies in the built environment and rural environments that are susceptible to bushfires.

Incident control expertise requires significant knowledge of and practical experience in the control of: incidents of large-scale structural fires and bushfires; incidents involving hazardous materials; specialist and technical rescues; and responses to disasters.

Rural firefighting experience requires significant knowledge of and practical experience in responding to, combating and managing bushfires.

Rural fire prevention expertise requires significant knowledge of and practical experience in mitigation and prevention of bushfires in rural environments that are susceptible to bushfires, including in relation to: land management practices; and community education and engagement.

Rural incident control expertise requires significant knowledge of and practical experience in the control of bushfires and disaster-related events.

The mandatory requirements reflect the level of command-and-control proficiency and experience expected for making and overseeing operational decisions, including strategic, operational and tactical decisions for the use of assets and human resources, in a high-risk, dynamic environment. Mandatory requirements for officers in RFSQ are discrete and not cumulative. This is aligned with the RFSQ's operational functions.

The FES Act is operational in nature and provides the authorising environment for salaried staff and volunteer members to prepare for, prevent and respond to fire. The functioning of QFD as a department is governed by a range of other Acts. Positions identified as requiring operational experience are in the fire services and not in the support structure in QFD. Positions identified as requiring operational experience are restricted to service delivery roles in the fire services who exercise command and control and are not roles that, for example, public service executives in QFD could expect to be appointed to or act in. Similarly, the Chief Fire Officer would be expected to have significant experience in firefighting to provide authoritative advice. The Deputy Commissioner, QFR and Chief Officer, RFSQ are also in direct operational command and control in a major incident.

In the context of the organisation's command structure, in which powers vested in the Commissioner flow down through the chain of command, all such executives and senior officers required to participate in on-call rosters and take operational command and control of major incidents. For example, the types of operational decisions needed to be made could include decisions about the priority of deployment of air assets where there are multiple serious

fires across the state. The mandatory experience is relevant to critically analysing information received for decision making and undertaking command of assigned resources. The mandatory requirements are also relevant to other legislative responsibilities, with all fire service executives also authorised fire officers under the current Act and the Bill, with associated significant powers.

Employment on merit

The Bill will insert new section 25B (Employment on merit) which sets out that operational mandatory qualifications, skills and experience determined by the Commissioner must be given primacy of consideration when deciding the applicant best suited to a position in the appointment of staff in the fire services. The amendment seeks to clarify the application of sections 44 and 45 of the PS Act, in an operational context and on in which operational proficiency (as opposed to other merit and suitability assessment considerations under the PS Act) is paramount.

Sections 44 and 45 of the PS Act require the selection of the person best suited to the position. Section 45(2)(a) provides that a public sector entity undertaking a recruitment and selection process must consider each applicant's ability to perform the requirements of the position. Section 45(2)(b) provides that in deciding the eligible applicant best suited to a position, a person undertaking a recruitment and selection process in a public sector entity must consider each eligible applicant's ability to perform the requirements of the position and then may consider the following further factors:

- the way in which each eligible applicant carried out any previous employment;
- the potential of each eligible applicant to make a future contribution to the entity; and
- the extent to which the proposed decision would contribute to fulfilment of the entity's obligations under chapter 2 of the PS Act, including, for example, the objectives, strategies and targets stated in the entity's equity and diversity plan.

New section 25B clarifies the requirements in section 45(2)(a) for appointment to operational roles in the fire services by providing that an applicant's eligibility to perform the requirements of the position is to be determined by considering the mandatory qualifications, skills or experience determined by the Commissioner. Section 45(2)(b) will continue to operate as further discretionary considerations as part of a recruitment process, with section 25B clarifying, however, that primacy must be given to the mandatory considerations assessed under section 45(2)(a).

It is considered that this approach is consistent with the provisions and intent of the PS Act. The PS Act implemented stage two public sector legislative reforms arising from the recommendations of an independent review of public sector employment laws by Mr Peter Bridgman, titled *A Fair and Responsive Public Service for All* (the Bridgman Review). The Bridgman Review recommended that the new Act should retain the primacy of the merit principle, restated in terms that acknowledge merit and diversity working together to ensure employment decisions prefer the person best suited to the job. The Explanatory Notes to the PS Act outlined that, "in accordance with the Bridgman Review, the Bill retains the primacy of merit, while reconciling this with the role that recruitment and selection plays in supporting equity, diversity, respect and inclusion in public sector employment". It is considered, therefore, that the Bill is consistent and appropriate in supporting the primacy of merit in the appointment of operational fire officers, with further factors relating to suitability continuing

to operate to support recruitment and selection. To do otherwise has the potential to put both firefighters and the community at risk.

Fire wardens

A network of fire wardens and chief fire wardens operates across Queensland as part of QFES' approach to enhance fire awareness and promote fire safety. The primary function of wardens is to grant or refuse an application for a permit to light a fire made under section 65 of the FES Act and to impose appropriate conditions to manage fire risk. This function is carried out under a delegation from the Commissioner. Administratively, wardens operate within designated Fire Warden Districts. Most wardens are also members of a rural fire brigade and understand the issues that affect fire risk in their local area.

This system ensures that decisions about permits to light fires are made by persons with understanding and knowledge of local issues and conditions who can provide guidance to permit holders about how to manage the fire and impose conditions on the permit to minimise the risk of fire affecting life, property or the environment.

Section 76 of the FES Act provides that wardens have the same powers as authorised fire officers subject to any limitations imposed by the Commissioner.

Given the functions and powers of wardens, it is important to provide a legislative requirement that they are appropriately qualified and to provide additional clarity around their appointment.

Clause 41 amends section 75 to provide that the Commissioner may appoint a person to be a chief fire warden or fire warden (each a relevant fire warden) only if satisfied the person is appropriately qualified to perform the functions and exercise the powers of a relevant fire warden. Under the amended section a relevant fire warden holds office for the term and on the conditions stated in the relevant fire warden's instrument of appointment. The instrument of appointment must state the geographical area in which the relevant fire warden can perform their functions or exercise their powers.

Clause 42 amends section 76 to clarify that the Commissioner may direct a chief fire warden or a fire warden in the performance of their functions and to perform additional functions to those conferred by the Act.

Clause 43 replaces section 77 to provide that a chief fire warden or fire warden may resign at any time by giving signed notice to the Commissioner. Current section 77 (which provides that a chief fire warden or a fire warden may be paid such expenses as are approved by the Governor in Council) is no longer required. Provisions in the *Financial Accountability Act 2009* and the *Financial and Performance Management Standard 2019* provide a process for expense management and special payments which is sufficient to enable payment for expenses and loss of personal property. In practice, wardens are remunerated by QFES.

These provisions will be included under the new chapter 4, Rural Fire Service Queensland.

A transitional provision under clause 81, ensures that persons who hold office as a chief fire warden or warden immediately before commencement of the amended Act will continue to hold office. This however does not affect the Commissioner's power to change the conditions of a fire warden's appointment.

Rural Fire Brigades

Registration and appointment

Currently, section 79 of the FES Act provides that any group of persons may apply to the Commissioner for registration as a rural fire brigade. The Commissioner may grant or refuse an application, and if the application is granted, must assign a registration number to the brigade. Section 79 also expressly provides that the Commissioner may, at any time, cancel the registration of a rural fire brigade. Deregistration of a brigade would be rare. The decision to deregister a brigade is subject to natural justice requirements.

There are no legislative provisions relating to appointment of members of a brigade. The group of persons making the application therefore become members of the brigade upon the Commissioner granting the application. The group is however not recognised as part of QFES. There is also a lack of clarity about the status and membership of the brigade if membership of the brigade changes from the group of persons making the initial application for registration.

Rural fire brigades are not separate legal entities, but rather unincorporated associations. The legal status of rural fire brigades has been an ongoing issue for some time and has been raised by a number of reviews, including the Independent Review Report. Due to the way that rural fire brigades are formed, they do not enjoy a separate legal identity which would allow them to hold assets, sue and be sued. As rural fire brigades are not separate legal entities, individual members may be unnecessarily exposed to personal liabilities. Consequently, risk sits with individuals for things such as financial and property matters and possibly for other decisions that are incidental to the operation of rural fire brigades but not part of their statutory functions. There are also gaps in the protections from civil liability that apply to rural fire brigade members who are performing functions on behalf of the State.

The Independent Review Report noted that the implications of not having rural fire brigades formally established under legislation has been consistently acknowledged by stakeholders as providing minimal legal protection for rural fire brigade volunteers in the performance of their duties.

The Independent Review Report recommended that a legislative review of the FES Act and the *Disaster Management Act 2003* be undertaken, with a view to modernising both pieces of legislation and (with regard to the FES Act) 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), which may necessitate consideration of the a change to the legal status of rural fire brigades.

The proposed new section maintains the ability for a group of persons that identify the need for a new brigade in an area to apply to the Commissioner to register a rural fire brigade. This ensures that new brigades can continue to be formed where there is local support for one. However, if the application is approved and the brigade is established, the appointment of members of the brigade is by the power of the Commissioner. This will provide consistency with other emergency service volunteer appointments proposed under the State Emergency Service Bill 2023 and Marine Rescue Queensland Bill 2023.

It is also consistent with the appointment of rural fire brigade members in most other Australian jurisdictions. The State Fire Commission appoints rural fire brigade members in Tasmania. In South Australia, a person will not be recognised as a member of a brigade unless the person is

registered as a member of that brigade by the Chief Officer. In Western Australia, no election or appointment of the officers and members of any volunteer brigade has any force or effect until approved by the Commissioner. In Victoria, a person is not a member of a brigade unless the person is enrolled by the Authority as a member of the brigade.

The position is somewhat different in New South Wales where the body or person that forms a rural fire brigade is required to keep a register of members. The members of a rural fire brigade are the persons listed on the register for the brigade. A person is eligible to be listed on the brigade register if the person complies with the procedures for attainment membership set out in the constitution of the rural fire brigade and satisfies the membership requirements decided by the responsible authority (meaning the local authority who formed the brigade or if the brigade is formed by the Commissioner – the Commissioner).

Clause 45 amends the heading of section 79 to provide for the registration of rural fire brigades. Section 79(1) replaces the words ‘for registration’ with ‘to register an entity’. While the amended provision retains the current arrangements for community driven registration, new section 79(2) inserts a note which provides that if an application for registration of an entity as a rural fire brigade is granted, each person in the group who applied for registration is not necessarily a member of the rural fire brigade. Membership is subject to a new appointment provision (see clause 46).

Clause 46 replaces section 80(1) to provide that the Commissioner may appoint a person as a member of a rural fire brigade. Subsection (2) provides that a rural fire brigade member: (a) is appointed on the terms stated in the instrument of appointment; and (b) may resign the appointment by signed notice given to the Commissioner. In making a decision that Commissioner is able to consider information from a number of sources regarding new brigade membership, including from current brigade members.

Provisions regarding brigades will be included under the name RFSQ chapter.

Importantly, transitional provisions (clause 81) provide for the continuation of rural fire brigades and rural fire brigade members in existence immediately before commencement of the amended Act. Members of these brigades will be taken to be appointed under the new section.

Rules for rural fire brigades

Clause 46 also inserts new section 80A which provides that the Commissioner may make model rules for the proper management and operation of rural fire brigades. Brigades already operate under rules, however, the use of model rules will ensure that brigades throughout the State have a consistent base-level of operation. RFSQ will undertake consultation.

Importantly, individual brigades will, with the approval of the Commissioner, be able to supplement the model rules with their own specific rules to deal with their individual circumstances. Any additional rules must, however, not be inconsistent with the FS Act or with the model rules.

The Commissioner may amend the model rules from time to time to ensure they comply with best practice for the management and operation of rural fire brigades. Under new section 80A

a rural fire brigade and its members must comply with the model rules and any additional rules approved by the Commissioner.

A transitional provision provides that existing brigade rules will continue to apply from commencement. Once the Commissioner makes the model rules, however, rural fire brigades must adopt those model rules (including any amendments approved by the Commissioner) within a six-month period. If a rural fire brigade fails to adopt the model rules, or amended model rules, within this period, they are deemed to have adopted the model rules.

Officers of a rural fire brigade

Clause 47 amends section 81 to recognise the important management committee roles undertaken by volunteers to support the efficient operation of rural fire brigades. These ‘office bearers’ are elected by the brigade and perform the roles of chairperson, secretary and treasurer. As members of the management committee, these office bearers are responsible for administrative functions within the brigade including, for example, maintaining an up-to-date list of current members of the brigade, ensuring a Brigade Asset Register is maintained and the provision of an annual statement of income and expenditure, assets and liabilities and charges affecting the brigade’s previous financial year.

To date, these office bearers have not been expressly recognised within the legislation. The Bill addresses this by amending section 81 to provide that brigades may elect any member of the brigade to be chairperson, secretary or treasurer of the brigade. Importantly, the Bill also provides, in new section 230 (inserted by clause 81), that any previously elected office bearers continue in those roles following the commencement of the amendments.

Currently, section 81(5) of the FES Act provides that the Commissioner may dismiss a person from any office held with a rural fire brigade or may disqualify a person from holding any office. With the express recognition of office bearers being introduced by the Bill, section 81(5) is being amended to provide that the Commissioner may:

- dismiss a person from an office held with, or as an office bearer of, a rural fire brigade; and/or
- disqualify a person from holding any office with, or being an office bearer of, a rural fire brigade.

This provision will rarely be required in practice but is an important protection to ensure that action can be taken where an office bearer is not performing their duties appropriately.

Functions of a rural fire brigade

Clause 48 amends section 82 to better reflect functions undertaken by rural fire brigades. Rural fire brigades cover approximately 93 percent of Queensland and the functions they perform to protect their local communities are necessarily wide and varied. The Bill recognises this by providing that, in addition to the existing functions of fire fighting and fire prevention, there are a range of other functions performed by brigades that should be recognised within the legislation.

These additional functions include, for example, using fire for land management. This is a critical task for fire preparation and prevention as it reduces excess vegetation and minimises

the potential for bushfires to get out of control. It is a task that is generally conducted in consultation and cooperation with local landholders as the whole community has an interest in preparing for and preventing the potentially catastrophic outcomes of bushfires.

The additional functions included in the Bill also include recognising that brigades perform a range of other activities to help communities or other entities prepare for and respond to fires. For example, there is no doubt that increased awareness and education can contribute to saving lives and property during fires and other disasters. In that regard, rural fire brigade members often deliver community education programs within their communities based on their knowledge of fire behaviour and prevention and, importantly, on their knowledge of local conditions and characteristics. The Bill specifically recognises the role brigades play in carrying out these activities and in promoting bushfire safety.

Given the unpredictable nature of fires and other events, the Bill also recognises that there may be times that the Commissioner requires the brigade to perform other functions.

Appointment of person in charge of operations

The FES Act currently provides for specified persons to exercise the powers of an authorised fire officer, including, in certain circumstances, a first officer of a brigade and, where the first officer is unavailable the next senior officer. Consequently, a person acting at the direction of the first officer may exercise any of the powers available to the first officer.

There may however be circumstances where a first officer or next senior officer is not available due to personal or work reasons or other circumstances (e.g. impacted by a disaster event). This means that the powers relied on by brigade members may not be able to be exercised lawfully.

Clause 49 inserts new section 83A which seeks to resolve this issue by allowing for the Commissioner to appoint a person in charge of operations for controlling and extinguishing a fire or for controlling another incident if the Commissioner considers that appointment appropriate and necessary in the circumstances. For expediency, it is likely that the person in charge will be a first officer from a neighbouring brigade area or an authorised fire officer from the locality where the fire is occurring.

The appointment by the Commissioner may be written or oral and for the duration of an event or for a stated or indefinite period. The Commissioner is able to delegate this power to an appropriate level.

RFSQ Advisory Committee

Clause 62, new chapter 4, part 2, new section 130 establishes an RFSQ advisory committee. While not a decision-making body, the advisory committee will advise the Chief Officer on matters relating to the performance of the functions of the RFSQ, including the administration and management of rural fire brigades. The body is established as a committee, rather than a board, in consideration of government guidance regarding Queensland Government Boards, committees and statutory authorities.

Members of the advisory committee are to be appointed by the Minister in consultation with the Chief Officer. A member of the RFSQ advisory committee holds their appointment on the conditions decided by the Minister. It is intended that committee, chaired by the Chief Officer, include strong volunteer representation.

False calls

Section 150B of the FES Act currently provides that a person must not ask QFES to provide a fire and emergency service at a place unless the service is required at the place and must not give a false alarm of fire. It is an offence, carrying a maximum penalty of 100 penalty units or one year imprisonment or 250 penalty units or one year imprisonment if the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies.

Clause 65 of the Bill extends the false calls offence in section 150B to include a false alarm of a hazardous materials emergency given that the same considerations apply in terms of wasted resources and an inappropriate diversion of emergency response capability that would apply to a false call involving a fire.

Restricted expressions offence

Under section 150H of the FES Act, it is an offence to use certain expressions relevant to QFES for the purposes of business names or to advertise or otherwise promote goods or services provided by the person without reasonable excuse. The proposed amendments will insert references to the newly established fire services and rural fire brigades. The application of the existing offence to these additional expressions is considered necessary to ensure that the use of these expressions in business or to promote goods or services is permitted only where it does not damage the reputation of the fire services in the community.

An approval to use a restricted expression may be given on conditions and amended, suspended or cancelled by the Commissioner. A person must also not use the expressions, or similar, in a way that suggests the person is a fire services officer or a rural fire brigade member if the person is not a fire services officer or a rural fire brigade member. Unlawful use of a restricted expression carries a maximum penalty of 40 penalty units.

A transitional provision which provides a 12-month moratorium on the application of the using restricted expressions offence is included to provide impacted persons with the ability to apply to use a new restricted term.

Appointments and authority

Section 151I of the FES Act provides that in a proceeding under an Act, the appointment and authority of specified persons is presumed unless a party to the proceeding gives reasonable notice that the party requires the appointment to be proved. Clause 68 amends section 151I(1) to insert references to the Chief Fire Officer, the Deputy Commissioner, the Chief Officer and a rural fire brigade member.

Use of unregistered vehicle

Under section 152B of the FES Act, an unregistered vehicle may be used on a road by a rural fire brigade in certain circumstances, including when the vehicle is carrying persons or equipment for the purpose of preventing, controlling or extinguishing a fire, or for training relating to firefighting or fire prevention. For an unregistered vehicle to be used on a road it must be clearly identified as a vehicle of a brigade and be covered by an insurance policy, of the kind mentioned in section 23(1) of the *Motor Accident Insurance Act 1994*. It has been

identified that there are additional persons who may need to drive these vehicles on the road in certain circumstances, for example mechanics who are servicing or repairing the vehicle and also members of interstate fire brigades assisting with fires in Queensland. Equivalent provisions in New South Wales in the *Road Transport (Vehicle Registration) Regulation 2017* (Schedule 1, Part 2, Item 12 – “Vehicles used to fight rural fires”) are framed more in terms of vehicle use, without reference to who is driving, and provide that vehicles may be used on a road or road related area for a purpose necessary or incidental to the service or repair of the vehicle.

The Bill will include a new regulation making power to provide that an unregistered vehicle may be used on a road for a purpose and by a person set out in a regulation. The use of the vehicle would still need to meet the other requirements of the section, namely that the vehicle is clearly identified as a brigade vehicle and an insurance policy is in force for the vehicle. The regulation making power will provide some flexibility to deal with changing and uncertain situations that may arise with significant fire events.

The Bill will also include reference in section 152B to “fire service officers assigned to RFSQ” as persons who may use an unregistered vehicle on a road provided the other requirements of the section are met. This reflects the establishment of RFSQ, as including rural fire brigades and fire service officers assigned to RFSQ.

Regulation-making power

Section 104S of the FES Act is a regulation-making power for part 9A of the Act. Part 9A provides for building fire safety and fire safety systems that are required to be installed in particular buildings. Section 104S(k) of the FES Act currently allows a regulation to be made for matters necessary to protect persons, property and the environment from fire and hazardous materials emergencies. However, there are a number of specific matters in section 104S for which the FES Act only provides that regulations may be made relating to fire. Clause 55 expands the current matters for which regulations can be made to include hazardous materials emergencies in addition to fires.

The Bill amends the regulation-making power in section 154E to provide that a regulation may provide for matters relating to the management and administration of the fire services. This is intended to support the Commissioner in the discharge of their prescribed functions, which includes the management and administration of the fire services, under section 7A of the Act.

Smoke alarms in caravans and motorhomes

Following a fatal Slacks Creek house fire in 2011, significant changes are being rolled out to smoke alarm requirements for domestic dwellings. The changes will require all Queensland homes to have interconnected, photoelectric smoke alarms in every bedroom, in hallways, and on every level from 1 January 2027.

Currently, Queensland Fire and Emergency Services (QFES) provides guidance on, rather than mandates, fire safety in caravans and motorised caravans. As part of consideration of fire safety in different types of dwellings and places people sleep and following a number of recent fire-related deaths in Queensland, the Government has decided to extend obligations for having smoke alarms to caravans and motorised caravans to enhance public safety.

Clause 54 inserts a new Chapter 3, Part 9A, Division 5B (Clauses 104RN to 104RQ) which will require smoke alarms in caravans and motorised caravans.

The proposed requirement to install a working, photoelectric smoke alarm will apply to newly registered caravans and motorised caravans, those for which the registration is transferring and, from 1 January 2027, all remaining registered caravans and motorised caravans in Queensland. Failure to comply with the provision will be an offence with a maximum penalty of five (5) penalty units.

Clause 85 inserts a new Part 2A of the *Fire and Emergency Services Regulation 2011* which provides for requirements for the positioning of smoke alarms and the requirements for the alarm, including that they comply with the relevant Australian Standard (AS 3786-2014).

Clause 91 amends Schedule 1 of the *State Penalties Enforcement Regulation 2014* to include the new offence as a prescribed infringement notice offence (2 penalty units). This aligns the penalty for failing to ensure that a smoke alarm is fitted to a caravan or a motorised caravan with that applying to smoke alarms in domestic dwellings.

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