

**EMERGENCY SERVICES REFORM AMENDMENT BILL 2023; STATE EMERGENCY SERVICE BILL 2023;
MARINE RESCUE QUEENSLAND BILL 2023**

Submission No: 1
Submitted by: Neil Percival
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Community Support and Services Committee, Queensland Legislative Assembly
Parliament House George Street Brisbane Qld 4000

CC:

The Hon Mark Ryan MP, Minister for Police and Community Safety

Mr Dale Last MP, Member for Burdekin, Shadow Minister for Fire and Emergency Services

Submission on the *State Emergency Service Bill 2023* and the *Emergency Services Reform Amendment Bill 2023*

Summary

Dear Committee Members

I do NOT support the bills as currently written. Chief among these reasons is that the *State Emergency Service Bill 2023* does not address many of the issues identified with the current legislation by the *SES Review*¹.

In addition to these concerns, there are some clauses that should be improved now on unrelated grounds whilst the bill is in committee, including some text carried over from previous legislation. The *Emergency Services Reform Amendment Bill 2023* should be amended in parts to move some clauses to other Acts for better legislative consistency. For brevity I will refer to the *State Emergency Service Bill 2023* as the “SES Bill” and the *Emergency Services Reform Amendment Bill 2023* as the “ESRA Bill”

I submit

1. That the Committee amend the bill to bring terminology in line with other Queensland emergency services and interstate SES.
2. The mechanism of determining “The Commissioner” should be contained in the SES Bill, not the Police Service Administration Act 1990.
3. The mechanism of determining “The Commissioner” be by an appointment from the Governor in Council.
4. The text of the SES bill does not address observation 14² of the SES Review for a “a comprehensive review of the legislation” as much of the text is directly transposed from previous act.

¹ “Sustaining the SES - Partnering for Change” by Commodore (Retired) Campbell Darby DSC AM, 2020

² SES Review (Sustaining the SES – Partnering for Change) 2020, s. 17.17, pg.53

5. The text of the bill does not address the key observation 6³ of the SES Review that

There is nobody between the Commissioner and a local controller, with the delegations to ensure legislated responsibilities are being met
6. The Bills as written do not address the SES Review's suggested Amendments to Legislative Arrangements 18.1.18 regarding "Council Requirements to support the SES" particularly that "the detail of the requirements of local government should be included in legislation"⁴
7. That the Committee alter the SES Bill, with an extensive rewrite of Part 2 Division 5 particularly.
8. That the Committee should look at the State Emergency Service Act 1989 (NSW) as an example that addresses several of these issues.
9. That the SES Bill allows interstate SES to be explicitly empowered as if they were part of the QSES whilst assisting in Queensland (see S.23 of the NSW Act)
10. For legislative consistency, the clauses regarding use or misuse of warning lights be removed from the SES Bill, and the issue be managed in a similar manner to Police, Fire or Ambulance vehicles.
11. If submission 10 is not accepted, that the clause be moved via the ESRA Bill into the Transport Operations – Road Use Management Act 1995 or its subordinate legislation.
12. That the ESRA Bill (Part 8) amendment to Transport Operations (Road Use Management—Road Rules) Regulation 2009 also update the definition of "Emergency Worker" and "Emergency Vehicle" to include the State Emergency Service and the Rural Fire Service to avoid any ambiguity.
13. That the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021 be updated via the ESRA Bill to update the definition of an emergency vehicle to include the SES separate from QFES
14. That the toll exemption in the SES Bill be extended to all use of SES vehicles by SES Members, not just when warning devices are active, as is the case for Fire and Ambulance vehicles.

³ SES Review (Sustaining the SES – Partnering for Change) 2020, s. V.6, pg.7

⁴ SES Review (Sustaining the SES – Partnering for Change) 2020, s. 18.1.8, pg.54

The primary basis for my submission is personal experience as an SES Volunteer for over 10 years across Queensland and my many interactions with Councils, Queensland emergency services and interstate SES in that time. Some of the referenced statements I would submit as facts, such as findings of the SES Review or the 2012 Queensland Floods Commission of Inquiry, which the receiving Governments accepted.

The Ministerial Release and indeed much of the reform implementation communication makes frequent mention of the KPMG *Independent Review of Queensland Fire and Emergency Services (QFES)* and now also the *Review of Queensland's Disaster Management Arrangements (QDMA)*, but one must delve deep into the Explanatory Notes to even find mention of the Darby SES Review, and there seems to be a significant mismatch between the numerous issues identified in the SES Review, and the small number changes made to the pertinent text of the SES Bill in comparison to the previous legislation. To be vulgar, the SES Bill was described to me by a fellow SES member as a “cut and paste job”.

The QFES reform is happening at breakneck speed now to meet the July 2024 deadline set by Cabinet, that is understandable. The completed SES Review was kept in Cabinet for the duration of the KPMG review, and frankly seems to have been forgotten about. SES volunteers and the Queensland community they serve should not have to bear the lasting impacts of the drafting of the SES's enabling legislation being rushed to satisfy other goals.

Part 1 S5 - Definitions and Schedule 1

I suggest that the committee replace the use of “unit” to refer SES within a Local Government Area to other terminology, preferably a term that emphasises the LGA boundaries in defining that administrative division, or just use “LGA”. This will allow the Commissioner and Chief Officer *the choice* to change terminology in the future without requiring an amendment to the Act. Why they might do this is reduce confusion across Australian states where “unit” is used as the lowest possible administrative/geographic division, which are referred to as ‘groups’ in Queensland. Conversely, “Groups” in the Queensland Rural Fire Service and interstate SES refer to groupings of units or individual rural brigades. Multiple previous attempts to simplify and standardise this terminology has been discontinued early on the grounds it would require an Act of Parliament. Now is the time to rectify this, while the Bill is still before the Parliament.

Part 2 Division 1

In direct reference to section 7 (1) (b) of the SES Bill, I submit that this be amended to reflect that SES functionality is providing assistance to the Queensland Police Service. Whilst this arrangement is currently clearly understood between the QSES and the QPS, the current clause of the SES Bill as read could imply that the QSES

could perform “a search to find a weapon used in the commission of an alleged offence” independent of the QPS.

Part 2 Division 2 The Commissioner

The SES Bill provides no provision for the appointment of “the Commissioner”, and therefore requires reference to other legislation to determine key components of administering the proposed SES Act (Namely the Police Service Administration Act 1990 after being amended by the ESRA Bill). I submit to the Committee that this does not meet Principles of good legislation⁵

legislation should be user-friendly and accessible, so ordinary Queenslanders can gain an understanding of the laws relating to a particular matter without having to refer to multiple Acts of Parliament

The Police Service Administration Act 1990 (S4.2),
The Ambulance Service Act 1991 (S4) and
The Fire and Emergency Services Act 1990 (S5), and before it
The FIRE AND RESCUE SERVICE ACT 1990 (S9),

all hold that their respective Commissioners are appointed by the Governor in Council. If the Minister of the Day advises the Governor and Cabinet to appoint the Queensland Police Commissioner to role of "the Commissioner" for the meaning of the proposed SES Act as well, then the same Machinery of Government outcome is achieved and better legislative outcomes achieved by consistency across Acts.

- As "the Commissioner" is stated to exist in section 9 of the bill, it should follow that an instrument exists within the act to determine who fulfills that role, thereby making the proposed Act more self-contained.
- Having the Governor in Council explicitly appoint "the Commissioner" through the proposed State Emergency Service Act would seem like good legislative practice.

This is not trying to get our own Commissioner, or a slight against either Commissioner Carroll, Minister Ryan or the Cabinet’s new organisational structure.

⁵ Principles of good legislation: OQPC guide to FLPs: Clear Meaning, page 3

Part 2 Division 5

It is this part of the SES Bill that I submit is the primary missed opportunity to address problems identified in the SES Review, and requires redrafting instead of the current transplantation of the previous Legislation's clauses. Table 1 on the next page compares the text.

I know that the department has consulted with the LGAQ prior to submitting to the Minister their proposal for the SES Bill. Unfortunately I have not seen the LGAQ's submission (as it has not been made public or available even to SES volunteers). As a body representing 77 Councils I imagine that it must often act on majority not unanimous agreement of its members. It is known from the SES Review that Local Governments have a broad spectrum of support for the SES⁶

State-wide there is great disparity in the level of support provided by local government to the SES and a resultant variability in their capability. QFES support to the SES is also variable especially in rural regions. This results in volunteer disillusionment, impacts volunteer morale and deployable capability. The future disaster landscape will require better integrated, more capable and highly deployable volunteer groups and the current structures do not support such a growth in capability.

I submit to the Committee that the SES Bill does not consider adequate mechanisms for managing the QSES in the LGAs of a minority of Local Governments that are disinterested in or actively against local management of the SES. This minority includes those Local Governments that proclaim support but fail to resource or engage with the SES within their jurisdiction. In this regard the Bill gives no explicit authority for the State Government to act where the Local Government fails to do so.

Local Controllers in particular are left out to dry if they are not properly resourced.⁷

Volunteer local controllers have weighty responsibilities that seem incompatible with a volunteer position. The authority of the local controller is also not well understood or clearly articulated within policy documents."..." In sum the local controller is a potential single point of failure and the lack of support a significant risk.

Under the SES Bill as proposed, the Local Controller retains all this legislative responsibility and the addition in the SES Bill of

S25 (1)(e)the SES members in the unit comply with any direction given by the commissioner, the SES chief officer or an SES commander.

really only piles on the "weight of responsibility" if the Local Controller is not being properly supported by the Local Government. I suggest that the clauses are redrafted to have management default to the State, which is then delegated to the Local Controller/Local Government if the State is satisfied the Local Government will sufficiently support the SES. I envision that Control would remain in Local hands in the vast majority of LGAs.

⁶ SES Review (Sustaining the SES – Partnering for Change) 2020, s. 19.2, pg.54-55

⁷ SES Review (Sustaining the SES – Partnering for Change) 2020, s. 17.6, pg.50

Table 1 : Evolution of wording regarding the Local Controller across previous legislation.

<p>Disaster Management Act 2003</p> <p>Original Text - Before 21/05/2014</p>	<p>Fire and Emergency Services Act 1990</p> <p>As at 21 May 2014</p>	<p><i>State Emergency Service Bill 2023</i></p>
<p>85 Local controller of SES unit</p> <p>(1) The chief executive is to appoint a member of an SES unit as the local controller of the unit.</p> <p>(2) The member appointed as the local controller of an SES unit is to be nominated by the local government for whose area the unit performs SES functions.</p> <p>(3) A person may be appointed as a local controller at the same time the person is appointed as an SES member.</p>	<p>134 Local controller of SES unit</p> <p>(1) The commissioner is to appoint a member of an SES unit as the local controller of the unit.</p> <p>(2) The member appointed as the local controller of an SES unit is to be nominated by the local government for the area for which the unit performs SES functions.</p> <p>(3) A person may be appointed as a local controller at the same time the person is appointed as an SES member.</p>	<p>24 Local controller of SES unit</p> <p>(1) For each SES unit, the commissioner must appoint an SES member to be the local controller of the unit.</p> <p>(2) The appointment must be made by notice given to the SES member.</p> <p>(3) The commissioner may appoint an SES member as the local controller for an SES unit for a local government area only if—</p> <p>(a) the local government for the local government area has nominated the member for appointment as the local controller; and</p> <p>(b) the commissioner is satisfied the member has the necessary expertise or experience to perform the functions of a local controller.</p> <p>(4) A local controller holds office on any conditions the commissioner considers appropriate and stated in the notice given to the controller.</p>

<p>86 Function of local controller</p> <p>The function of a local controller of an SES unit is to maintain the operational effectiveness of the unit by ensuring—</p> <p>(a) the unit’s members have the necessary skills to competently perform their roles within the unit; and</p> <p>(b) the unit’s equipment is maintained in an appropriate condition; and</p> <p>(c) the unit performs its functions and other activities in a way that is consistent with departmental or local government policies about the performance of the functions and activities.</p>	<p>135 Function of local controller</p> <p>The function of a local controller of an SES unit is to maintain the operational effectiveness of the unit by ensuring—</p> <p>(a) the unit’s members have the necessary skills to competently perform their roles within the unit; and</p> <p>(b) the unit’s equipment is maintained in an appropriate condition; and</p> <p>(c) the unit performs its functions and other activities in a way that is consistent with departmental or local government policies about the performance of the functions and activities.</p>	<p>25 Functions of local controller</p> <p>(1)The local controller for an SES unit is responsible for maintaining the operational effectiveness of the unit by ensuring—</p> <p>(a)the SES members in the unit have the necessary skills to perform their roles in the unit competently; and</p> <p>(b)the unit’s equipment is maintained in an appropriate condition; and</p> <p>(c)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; and</p> <p>(d)the unit performs its functions in compliance with—</p> <p>(i)this Act and any other applicable Act or law; and</p> <p>(ii)any operational permits and approvals applying to an SES unit; and</p> <p>(e)the SES members in the unit comply with any direction given by the commissioner, the SES chief officer or an SES commander.</p> <p>(2)In performing the functions under subsection (1), the local controller must give effect to any direction given by the commissioner or the SES chief officer.</p> <p>(3)A local controller of an SES unit may delegate the local controller’s functions under this section to another SES member.</p>
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None of the additions, some of which are quite positive, address the fundamental problems in relation to the Local Controller clearly identified in the SES Review by Commodore Darby, and indeed even earlier by Justice Holmes in Queensland Floods Commission of Inquiry, over a decade ago. The vast weight of the legislation falls upon an official who as a result of being *local*, is both relatively junior, and is often a volunteer. (Then) Justice Catherine Holmes SC⁸ observed

Despite the SES's being a 'state' service, the Act does not confer responsibility for SES operations on anyone above local controller level

The SES Co-ordinator section then introduced to the Act (proposed now as SES Commander) are sloppy in that they concern "*when resources of the SES from outside the local government areas are made available to the group*" or to "*provide advice to local controllers*"

The SES Coordinator/Commander is technically still restrained by the Local Disaster Coordinator

*Sections 84A and 85 of the Disaster Management Act 2003 make it tolerably clear that there should be one SES unit in each council area with a local controller in charge of the unit.*⁹

Despite the State having been told this by a Supreme Court Judge in their official report, over a decade later the meaning of the Act has not been implemented, for example, the Cairns Regional Council (a category 5 Council) has had up to 9 Local Controllers simultaneously in the period 2016-2023.

I do not ascribe this to malice on behalf of either the State or Local Governments or any officer thereof, but this lack of legislative compliance to me indicates that the text of the old Act(s) is not achievable across the whole State, and that the SES Bill needs to consider the minority case, and either a mechanism for the resumption of State Control or penalties for the Local Governments that do not comply with their legislative responsibilities. The later I imagine would be deeply unpopular with the affected Councils, the LGAQ and potentially the voting public, and so I suggest the State Control option. I would submit that the means to monitor the Local Governments' compliance already exists as Chapter 5 of the *Local Government Act 2009*, and that the State does not use those provisions except as a last resort further demonstrates that the presumption of State Control is the more suitable method.

The Local Controller's "weighty responsibilities" (to use Commodore Darby's term) should default instead to an officer both more senior, and guaranteed to paid. To me, the obvious level, especially in comparison to other Queensland and interstate emergencies services, is the current level of Area Controller within QSES,

⁸ Queensland Floods Commission of Inquiry, 2012, page 409

⁹ Queensland Floods Commission of Inquiry, 2012, page 409

which is broadly considered to be equivalent to an Inspector in other Queensland emergency services, and interstate. Also this is typically considered the beginning of "commissioned officer" or "senior officer" ranks in most emergency services, including the QSES's new and old hosts, the QPS and QFRS respectively.

However that rank need not be so explicitly enshrined in legislation, should the Commissioner or Chief Officer wish to revise staff organisation structures at a later date. This can be achieved by the SES Bill giving the operational control foremost to the State, and requiring that any appointment of a Local Controller must be to a "SES Employee" as already defined in the Bill.

This format is not to say to exclude Local Governments from the opportunity to be involved in the running of the SES, in fact the NSWSES's enabling legislation provides a readymade draft of law to this end.

16 Zone commanders

- (1) The Commissioner may appoint a member of staff of the State Emergency Service as the zone commander for a zone.*
- (2) A zone commander is, subject to any direction of the Commissioner, responsible for the control and co-ordination of the activities of SES units in the relevant zone.*
- (3) The Commissioner may appoint any person to act as a deputy to a zone commander.*
- (4) The functions of a zone commander may be exercised by his or her deputy during any absence from duty of the zone commander.*

17 Local commanders

- (1) The Commissioner may, on the recommendation of the council of a local government area, appoint one or more persons as a local commander for the area.*
- (2) The Commissioner may revoke an appointment under this section at any time and for any reason.*
- (3) A local commander is, subject to any direction of the Commissioner or the relevant zone commander, responsible for the control and co-ordination of the activities of SES units in the relevant local government area.*
- (4) The Commissioner may appoint as a local commander an emergency officer not recommended by the council of the local government area concerned if the council fails to make a recommendation which is acceptable to the Commissioner within 30 days after the council is requested to do so by the Commissioner.*
- (5) The council of a local government area must, within 3 months of the appointment of a local commander for the area, provide (free of charge)*

suitable training facilities and storage and office accommodation to enable the local commander to exercise his or her functions.

(6) Any such facilities and accommodation are to be of a standard approved by the Commissioner.

State Emergency Service Act 1989 (New South Wales)

Highlighted emphasis mine

The Ministerial Release of 28th November emphasises operational simplicity as a goal. Simplicity is improved through flexibility by clearly defining a suitable officer in charge, even in the absence of a local controller or local government input.

A legislative structure with some of the NSW formatting above would allow the flexibility to have local control where the respective Local Government is engaged and active in management of the SES (most of the State), whilst also providing a legislative basis for State Officers to intervene and wield control where local resources do not meet the standards expected by the Service and the public.

I suggest that the NSW act provides a good template to the Committee for balance between Local Government interests, and maintaining a functional SES that adheres to its own legislation.

If the Parliament is adamant in control must only be exercised through a local controller, then I suggest that the requirement for remuneration be written into the SES Bill, and dollar amounts proscribed by regulation or other means of the State Government. There already exists a mechanism for determining the remuneration of councillors based on the complexity of the LGA¹⁰, using determining factors that have much in common with the complexity of a Local Controller in managing the SES within an LGA. For example for a category 2 or 3 would probably not require their Local Controller to fulfill a full time role, and a larger category 6 Council may require a FTE beyond one spread across additional deputy local controllers.

Commodore Darcy understood that most current volunteer Local Controllers do not want to be paid for the role if it continued unchanged. As a volunteer I understand an individual's wish for themselves to remain a volunteer, but that should not extend to their role in perpetuum, which must evolve with the community's needs. I suggest that the Parliament/Government needs to break a few eggs to make the omelette and demote either in responsibility and rank those volunteer Local Controllers who do not make the transition to paid roles. This will be unpopular but necessary for the good of the Service.

I submit to the Committee some draft clauses how this might look, for their consideration and editing. I don't imagine that they are ready to be legislation but hope through them the Committee sees the utility of the NSW style approach.

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Part 4 – Offences

No mechanism whatsoever is implemented for the management of Local Governments, their officers or Councillors/Aldermen that do not pull their weight in resourcing the SES. The SES Review clearly identifies that “perverse outcomes”¹¹ arise from the status quo of Councils determining their own minimum inputs with no penalty, including that resources funded by other Local Governments or the State will often be required to assist the community. Quite simply some Councils are taking a free ride at their fellow Queenslanders expense.

If it is indeed the position of the LGAQ and a majority of Local Governments that they want to remain deeply enrooted in the running of the SES, then they should accept that the State (and the community) requires a protection against the minority of Councils that fail to uphold the bargain, and in doing so cause reputational damage to the SES that pervades far beyond their LGA boundaries, and damages volunteering and trust in government¹².

If my submission for the presumption of State Control is rejected, I submit that the SES Bill should make a Local Government liable for a financial penalty if the SES within their LGA is not resourced to the Commissioner’s satisfaction.

Part 5 - Miscellaneous

None of the Police Service Administration Act 1990, The Ambulance Service Act 1991 or The Fire and Emergency Services Act 1990/The Fire and Rescue Service Act 1990 require that an operational vehicle be using warning lights or sounding an alarm to be exempt from tolls, recognising that there are many genuine operational reasons for a emergency vehicle to travel through a toll route without using lights or sirens. This is also the case for the State Emergency Service, and should be reflected in the SES Bill.

¹¹ SES Review (Sustaining the SES – Partnering for Change) 2020, s. 6.8, pg.18

¹² “From the public perspective they just want a ‘uniform’ to assist” SES Review (Sustaining the SES – Partnering for Change) 2020, s. 6.39, pg.26

Section x State Controller

- (1) The SES Chief Officer, in connection with the exercise of his or her functions under this Act, may use the title “State controller” and may appoint deputies who may use the title “Deputy State controller”.
- (2) A Deputy State Controller is any intermediary Officer the Commissioner sees fit to appoint, including but not limited to Directors, Regional Directors or temporary staff who have previously held these ranks.
- (3) The Commissioner may appoint a member of staff of the State Emergency Service under Section 18 (1) (a) as an Area Controller for a geographical area or Disaster District.
- (4) An Area Controller is, subject to any direction of the Commissioner responsible for the control and co-ordination of the activities of SES units in the relevant area.
- (5) The Commissioner may appoint any **SES employee** under section 18, to act as a deputy to an Area Controller.
- (6) The functions of an Area Controller may be exercised by his or her deputy during any absence from duty of the Area Controller.
- (7) The Area Controller, or their delegate, for SES is responsible for maintaining the operational effectiveness of the unit by ensuring—
 - (a) the SES members in the Area have the necessary skills to perform their roles in the unit competently; and
 - (b) the SES units’ equipment is maintained in an appropriate condition; and
 - (c) the SES units performs their 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
- (8) In performing their functions, the relevant State Controller must have regard to—
 - (a) the advice of the local disaster coordinator for a relevant local group; and
 - (b) any applicable disaster management plans

Section x+1 Local Controller

- (1) The Commissioner may, on the recommendation of the council of a local government area and the relevant Area Controller, appoint one person as a Local Controller for the local government area.
- (2) The commissioner may appoint an SES member as the local controller for an SES unit for a local government area only if—
 - (a) the local government for the local government area has nominated the member for appointment as the local controller; and

(b) the commissioner is satisfied the member has the necessary expertise or experience to perform the functions of a local controller; and

(c) the Commissioner is satisfied the member has or will have status as an **SES Employee** under Section 18 (1) (b) or (c)

(3) The Commissioner may revoke an appointment under this section at any time and for any reason.

(4) A Local Controller is, as a delegate of the Area Controller, subject to any direction of the Commissioner or the relevant Area Controller, responsible for the control and co-ordination of the activities of SES unit in the relevant local government area.

(5) The appointment must be made by notice given to the SES Employee.

(6) A local controller holds office on any conditions the commissioner considers appropriate and stated in the notice given to the Local Controller.

(6) A local controller of an LGA may delegate the local controller's functions under this section to another SES member.

Section X+2 Unit Officer

(1) The Commissioner may appoint any person as the unit officer for an SES unit and may revoke the appointment at any time and for any reason.

(2) A unit officer is, subject to any direction of the Commissioner, the relevant Area Controller or the relevant Local Controller, responsible for the control and co-ordination of the activities of the unit.

(3) An Area Controller may, in consultation with a unit officer in the relevant zone, appoint any person to act as a deputy to the unit officer.

(3) An appointment made under subsection (3) may be revoked at any time and for any reason by the Area Controller who made the appointment.

(4) The functions of a unit officer may be exercised by his or her deputy during any absence from duty of the unit officer.

Explanatory note: This top-down format removes the need for the clunky clauses 26 and 27 regarding the SES Commander (formerly SES co-ordinator), as all the Commander's functions are within their remit already.

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