



State Emergency Service Bill 2023

Report No. 41, 57th Parliament
Community Support and Services Committee
March 2024

Community Support and Services Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the State Emergency Service Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public briefing and hearing.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and provided evidence at the public hearing. I also thank our Parliamentary Service staff and staff of the Queensland Police Service.

I commend this report to the House.



Mr Linus Power MP

Acting Chair

Recommendations

Recommendation 1

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The committee recommends the State Emergency Service Bill 2023 be passed.

Executive Summary

The Bill's stated purpose is to establish a new State Emergency Service Act whose main purpose is to establish the State Emergency Service (SES) to provide emergency services in the State and other related services to government entities and the community.

The Bill also proposes to establish the functions, powers and membership of the SES, the role and functions of the Commissioner of the Queensland Police Service, and the appointment and administrative arrangements of authorised rescue officers. The Bill would relocate a number of offence provisions from the *Fire and Emergency Services Act 1990* to the new State Emergency Services Act designed to better protect SES officers performing their duties in the community.

Submitters to the Inquiry were generally supportive of the Bill with a number of stakeholders providing additional feedback to aspects of the Bill as well as to the wider reform process of Queensland's emergency service and disaster management arrangements.

The committee identified and considered issues of fundamental legislative principle (FLP) in the Bill and is satisfied that sufficient regard has been given to the rights and liberties of individuals and the institution of parliament.

Having considered the issues raised by submitters and the explanations provided in the statement of compatibility, the committee is also satisfied that the Bill is compatible with human rights in accordance with the *Human Rights Act 2019*.

The committee makes one recommendation, that the Bill be passed by the Legislative Assembly.

1 Introduction

1.1 Policy objectives of the Bill

On 28 November 2023, Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services introduced the State Emergency Service Bill 2023 (the Bill). At the same time, the Minister introduced the Emergency Services Reform Amendment Bill 2023 and the Marine Rescue Queensland Bill 2023 as part of a suite of legislative reform. On 30 November 2023 the Legislative Assembly referred the Emergency Services Reform Amendment Bill 2023, the Marine Rescue Queensland Bill 2023 and the State Emergency Service Bill 2023 (the three Bills) to the Community Support and Services Committee for detailed consideration.

The three Bills propose to enable a range of disaster and emergency services reforms to enhance Queensland's capacity to respond to natural disasters and keep people safe in the state's oceans and waterways.¹ The Emergency Services Reform Amendment Bill 2023 recognises the Queensland State Emergency Service (SES) and Marine Rescue Queensland (MRQ) and aligns both entities under the control of the Queensland Police Service (QPS).²

The objectives of the Bill are to:

- establish the SES through a new State Emergency Service Act (SES Act), and relocate and expand on a number of provisions currently set out the *Fire and Emergency Services Act 1990* (FES Act)
- provide that SES membership will consist of the SES chief officer, SES employees and SES volunteers
- provide the Commissioner of the Queensland Police Service (the Commissioner) with functions that will assist in the administration of the SES and align the SES with other emergency services entities, including establishing SES units and their dedicated areas, appointing and giving direction and guidance to statutory SES officers, and authorising the Commissioner to suspend an SES member or volunteer under certain circumstances
- enable the Commissioner to issue codes of practice about the conduct or practice of SES members, the operation of SES units to provide guidance to SES members, and other matters the Commission considers appropriate
- ensure the Commissioner obtain agreement from local government regions and consult with representatives of the local community before establishing an SES unit³
- clarify the functions of an authorised rescue officer who is taking reasonable steps to protect a person who is trapped or in danger in a place, or to protect themselves or another person from danger, potential danger or assault⁴
- ensure that confidential information held by the SES will be protected by introducing a new offence provision similar to an existing offence provision outlined in the *Police Service Administration Act 1990* (s 10.1).⁵

¹ Hon Mark Ryan MP, Minister for Police and Corrective Services, 'Bills to shape new era of disaster and emergency services for Queensland', media release, 28 November 2023.

² Refer to Emergency Services Reform Bill 2023.

³ Explanatory notes, pp 11-13.

⁴ Explanatory notes, p 14.

⁵ Explanatory notes, p 16.

The Bill also provides for a distinction between SES employees under the *Public Sector Act 2022* and other SES members in regard to the management of allegations of wrongdoing by volunteers. The Bill contains provisions that would authorise the Commissioner to suspend an SES volunteer or SES member employed by a local government if the Commissioner reasonably believes the volunteer would, if deemed an employee under the *Public Sector Act 2022*, be liable to be disciplined under a disciplinary law; or the proper and efficient management of the entity might be prejudiced if the person is not suspended.⁶

1.2 Background

Queensland's disaster management arrangements operate through a tiered system outlined in the *Disaster Management Act 2003* (DM Act) enabling a progressive escalation of support and assistance to affected communities. Disaster management groups are formed at a local, district and state level, and are responsible for the planning, organisation, coordination, and implementation of all measures to mitigate or prevent, prepare for, respond to, and recover from disaster events. These disaster management groups are supported by coordination centres that also operate at the local, district and state levels to coordinate the information, resources, and services necessary for disaster operations.⁷

Following the Police and Community Safety Review in 2013, Emergency Management Queensland, the SES and disaster management functions transitioned to the newly formed Department of Queensland Fire and Emergency Services. The FES Act currently provides the legislative framework for the SES.⁸ Queensland Fire and Emergency Services (QFES) coordinates and manages various elements of Queensland's disaster response including the Fire and Rescue Service (FRS), the Rural Fire Service (RFS) and the Queensland State Emergency Service (SES).⁹

1.2.1 Review of Queensland's emergency services and disaster management arrangements

The delivery of emergency services in Queensland has been considered in a series of reviews including:

- *Review into Volunteer Marine Rescue Organisations in Queensland*, conducted by Campbell Darby DSC AM, and published in November 2018 (referred to as the Bluewater Review)¹⁰
- *SES Review, "Sustaining the SES – Partnering for Change"* (the SES Review), conducted by Campbell Darby DSC AM, and published in March 2020¹¹
- *Independent review of Queensland Fire and Emergency Services* (the Independent Review), prepared by KPMG for the Queensland Fire and Emergency Services, and final report published in November 2021.¹²

The SES Review considered the relationship, role and functions of the state and local governments in providing the SES service. The review undertook consultation with Queensland and interstate stakeholders, including councils, SES volunteers and individuals. It contemplated changes that would

⁶ Explanatory notes, p 13.

⁷ Explanatory notes, p 1.

⁸ Explanatory notes, p 2.

⁹ Explanatory notes, p 2.

¹⁰ Campbell Darby DSC AM, *Review into Volunteer Marine Rescue Organisations in Queensland (Blue Water Review)*, 30 November 2018, <https://www.qfes.qld.gov.au/sites/default/files/2021-03/Review-into-VMR-Organisations-in-QLD.pdf>

¹¹ Campbell Darby DSC AM, *SES Review, "Sustaining the SES – Partnering for Change"*, 13 March 2020, <https://www.qfes.qld.gov.au/sites/default/files/2022-10/SES-Review-Report-Sustaining-the-SES-Partnering-for-Change.pdf>

¹² KPMG (prepared for Queensland Fire and Emergency Services), *Independent Review of Queensland Fire and Emergency Services*, 2 November 2021, <https://www.qfes.qld.gov.au/sites/default/files/2022-10/Independent-Review-of-QFES.pdf>

ensure sustainable funding, and would provide a clear delineation of responsibilities, authorities and expectations between the QFES, local government and volunteers.

In response to the SES Review and the Independent Review, the Queensland Government published a response to the report's recommendations in October 2022, entitled *Good Jobs and Better Fire and Emergency Services to Support Queensland's Great Lifestyle*.¹³ In this response, the government requested the Inspector-General of Emergency Management (IGEM) to conduct a review of the state's disaster arrangements.

The Office of the IGEM worked with the Department of the Premier and Cabinet, the QPS, QFES, Queensland Reconstruction Authority, Department of State Development, Infrastructure, Local Government and Planning, relevant state agencies involved in disaster management, the State Disaster Coordinator (SDC), the Local Government Association of Queensland, and other relevant stakeholders to obtain information necessary to the Review.

The IGEM presented a final review report, *Review of Queensland's Disaster Management Arrangements* (the IGEM Review), to government for consideration on 28 April 2023. The report made 10 recommendations, including that the Commissioner be appointed as the Chief Executive of the *Disaster Management Act 2003* (DM Act).

On 30 October 2023, a machinery-of-government change allocated the responsibilities of the chief executive under the DM Act to the Commissioner and certain response elements transitioned from QFES to the QPS to ensure that there was no diminishing of the delivery of emergency services to the community. Additionally, the QPS also formally assumed the responsibility of administering grants and service agreements for volunteer entities such as Emergency Services Cadets, Australian Volunteer Coast Guard Association of Queensland (AVCGA) and Volunteer Marine Rescue Association of Queensland (VMRAQ).¹⁴

1.2.2 Proposed reform of Queensland's emergency services and disaster management arrangements

The three Bills are described in the explanatory notes as an emergency services reform amendment 'package', and as one part of a suite of measures to enable reform.¹⁵ Other tasks listed as part of the suite of reforms include the making of machinery-of-government changes, development of appropriate policies, and the negotiation and preparation of service agreements and grant allocations. However, the explanatory notes state that legislative amendment must occur before certain implementation processes can begin.¹⁶

Legislative reform is expected to occur in two stages, the first stage being the reforms proposed in the three Bills, and the second stage being reforms proposed by legislation to be introduced in 2024, which will make the legislative amendments required to meet the remaining recommendations in the Independent Review Report and the IGEM Review.¹⁷ That legislation is expected to include supporting the creation of the new Queensland Fire Department with the Rural Fire Service established as its own entity within the new department in 2024.¹⁸

¹³ Queensland Government, *Good Jobs and Better Fire and Emergency Services to Support Queensland's Great Lifestyle*, 2022, <https://documents.parliament.qld.gov.au/tp/2022/5722T1747-83F4.pdf>.

¹⁴ Explanatory notes, p 2.

¹⁵ Public briefing transcript, Brisbane, 12 February 2024, p 1.

¹⁶ Explanatory notes, p 2.

¹⁷ Explanatory notes, p 2.

¹⁸ Hon Mark Ryan MP, Minister for Police and Corrective Services, 'Bills to shape new era of disaster and emergency services for Queensland', media release, 28 November 2023.

The explanatory notes state that a Reform Implementation Taskforce (RIT) has been established to oversee and coordinate the implementation of the reforms over a two-year period. The RIT is committed to implementing these reforms by 30 June 2024 without any diminishing of the delivery of emergency services.¹⁹

1.2.3 The State Emergency Service

The SES provides assistance to Queensland communities in a wide range of circumstances extending from non-life-threatening emergency situations such as floods, storms or other similar events, to supporting partner agencies such as the QPS and FRS with road crash rescue, emergency traffic management, flood boat rescue, and urban, rural and evacuation searches.²⁰

The SES is a 'not-for-profit' organisation consisting of SES units established within local government areas. These SES units may have separate SES Groups depending on the local government area's specific needs. The QPS advised that the SES is predominately comprised of volunteers numbering approximately 5,400 members.²¹ There are currently 75 SES units comprised of 303 SES groups.²²

The emergency services reform package includes allocation of additional funding to the SES.²³ Mr Marcus Hill, Queensland Police Service, advised the committee the SES were provided with an annual budget 'uplift' as part of the reform package, to \$60 million ongoing from 2023-2024.²⁴

1.3 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.3.1 Legislative Standards Act 1992

The *Legislative Standards Act 1992* sets out 'Fundamental legislative principles' that are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.²⁵ The principles include that legislation has sufficient regard to:

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

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified issues which may be considered to have insufficient regard to rights and liberties of individuals, as summarised below:

- the suspension of State Emergency Service (SES) volunteers²⁶
- protection from liability for SES members²⁷ and other entities
- powers for authorised rescue officers, including power to enter places without a warrant or consent

¹⁹ Explanatory notes, p 2.

²⁰ Explanatory notes, p 2.

²¹ Queensland Police Service, correspondence, 13 December 2023.

²² Explanatory notes, p 2.

²³ Explanatory notes, p 16.

²⁴ Public briefing transcript, Brisbane, 12 February 2024, p 6.

²⁵ *Legislative Standards Act 1992*, s 4.

²⁶ The SES employees performing an SES function as an employee of a local government. Bill, cl 8.

²⁷ The SES chief officer, SES employees and SES volunteers are all SES members. Bill, cl 8, sch 1.

- penalties for new offences.

These matters are considered in more detail in chapter 2 of this report.

Committee comment

The committee considers, having regard to the evidence received from stakeholders during the Inquiry into the Bill and in balance with the wider responsibility to maintain community safety, that the provisions of the Bill have sufficient regard to fundamental legislative principles in terms of the rights and liberties of individuals.

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.3.2 Human Rights Act 2019

The committee's assessment of the Bill's compatibility with the *Human Rights Act 2019* (HRA) is included in chapter 2 below in relation the suspension of SES volunteers as a potential limitation on the right to a fair hearing. The committee finds the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Inquiry process

Following the referral of the three Bills to the committee and recognising that they are inextricably linked to each other, the committee resolved to align key engagement activities in relation to its examination of the Bills, including receiving submissions, a public briefing from the QPS on 12 February 2024, and a public hearing on 4 March 2024.

In accordance with the referrals of the three Bills by the Queensland Parliament, the committee has reported separately on each Bill. Refer to *Report No. 40, 57th Parliament, Emergency Service Reform Bill 2023* and *Report No. 42, 57th Parliament, Marine Rescue Services Bill 2023* tabled on 15 March 2024.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the State Emergency Service Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

The committee received 20 submissions to the three bills, of which 3 submissions spoke exclusively to the Bill²⁸ and 5 submissions referred to the Bill as well as one or both of the other Bills in the emergency reform amendment package.²⁹

Most stakeholders were supportive of the proposed reforms in the Bill.³⁰

Overall, the LGAQ is broadly supportive of the SES Bill, which will help to further emphasise the value of the SES and is an important step in helping to promote volunteer engagement and in providing a framework that outlines the purpose, functions and command structure as well as the roles of SES members.³¹

A number of stakeholders provided additional comment to aspects of the Bill, as outlined below.

2.1 Proposed reforms as a response to previous reviews

The Local Government Association of Queensland (LGAQ) noted that the SES Review identified an opportunity for enhanced legislation to provide greater guidance and to create consistency to address issues encountered.

There is an acknowledgement that the previous feedback we have provided on the drafting of these arrangements has been considered, as well as some of the feedback that our councils provided with regard to the drafting of this legislation.³²

Mr Neil Percival submitted that many of the issues the SES Review identified relating to current legislation have not been addressed, including providing a comprehensive review of the current legislation, and establishing specific roles within the SES.³³

To Mr Percival's observation, the QPS stated:

Recommendations made in the SES Review are outside of the scope of the [three] Bills. Nonetheless, relevant legislation required to be amended to meet the legislative reforms desired by Government was reviewed by the Reform Implementation Taskforce, with the purpose of effecting necessary changes by 30 June 2024 without a degradation of the services provide [sic] by our emergency services agencies.³⁴

2.2 Role of local governments in the establishment of an SES unit

Clause 23 of the Bill would provide that the Commissioner could establish an SES unit for a local government area. The Bill would also provide that an SES unit could only be established if the Commissioner was satisfied it was necessary or desirable to establish the SES unit to perform an SES function in the local government area, and the local government for the local government area agreed to the establishment of an SES unit for the area.³⁵

²⁸ Submissions 8, 14, 19.

²⁹ Submissions 1, 7, 13, 17, 18.

³⁰ Submissions 7, 8, 18, 19. Submission 1 was opposed to the Bill as currently written.

³¹ Submission 18.

³² Public hearing transcript, Brisbane, 4 March 2024, p. 2.

³³ Submission 1.

³⁴ Queensland Police Service, correspondence, 9 February 2024, p 4.

³⁵ Explanatory notes, p 27.

The LGAQ expressed support for the inclusion of the legislative provision in the Bill, that a local government must agree to the establishment of an SES Unit, and not just be consulted under Division 5, cls 23(b) (Establishment of SES Units).³⁶ The LGAQ submitted that:

Considering the operational and financial obligations often incurred by local governments in supporting local SES units, the inclusion and retention of this provision in the Bill ... is important.³⁷

Mr Percival submitted that the Bill does not address amendments suggested in the SES Review in regard to local council requirements to support the SES, especially that ‘the detail of the requirements of local government should be included in legislation’.³⁸

The QPS acknowledged that the Bill does not contain specific detail of the requirements of local governments to support the SES, because the issue falls ‘outside of current government policy’.³⁹

2.3 Industrial conditions and the suspension of SES local government employees or SES volunteers

A primary objective of the reforms would be to align MRQ and the SES under the control of the QPS and the direction of the Commissioner. Following passage of the Bill, clause 9 would provide that the Commissioner functions would include:

- establishing SES units
- appointing chief officers, local controllers, SES commanders, and other SES members
- establishing management and support services
- developing policies to help the SES perform its functions
- giving guidance to chief officers, local controllers, SES commanders, and other SES members.

Clause 21 of the Bill applies to those who are SES employees performing a function of the SES as employees of a local government, and to SES volunteers. If the Bill were implemented, the Commissioner would be able to suspend the person from duty as an SES member if:

- the Commissioner reasonably believed the person, had they been an employee under the *Public Sector Act 2022*, would be liable to discipline under that Act; or,
- the proper and efficient management of the SES might be prejudiced if the person is not suspended.

2.3.1 Stakeholder views

The LGAQ expressed concern in regard to effective management considerations for local government SES employees operating under the provisions of the Bill. The LGAQ recommended that:

... there be further consultation with the LGAQ as the Industrial Advocate for local government regarding the secondment, employment, termination and management of SES Local Controllers under the SES Bill, Division 3, s 21 (Suspension of SES local government employee or SES volunteer).⁴⁰

³⁶ Bill, cls 9, 23; submission 8.

³⁷ Submission 8.

³⁸ Submission 1.

³⁹ Queensland Police Service, correspondence, 9 February 2024, p 6.

⁴⁰ Submission 18.

The Brisbane City Council submitted that, with respect to the employment obligations of Council, the ability for the Commissioner to suspend a local government employee ‘creates a significant risk for Council’.⁴¹

As a local government employee is subject to relevant industrial instruments, including processes for matters such as suspension and termination, the Commissioner’s determination to suspend a local government employee could create a legal and financial liability for Council.⁴²

The QPS advised that it is the Commissioner that bears the responsibility for the proper administration, management and functions of the SES, including ‘ensuring there are appropriate mechanisms that allow for the management and discipline, where necessary, for the members of the SES’.⁴³

Volunteering Queensland submitted that it did not oppose the legislation proposed by the Bill but emphasised that any process used when considering the suspension of a volunteer ‘must fully comply with due process and natural justice’.⁴⁴

In response, the QPS noted the power to suspend in the Bill ‘is not intended to be punitive’.⁴⁵ The QPS stated:

It also preserves public confidence in MRQ and SES by suspending a volunteer member who is alleged to have acted inappropriately or improperly until such time that the allegation is investigated and resolved. In the absence of a suspension power, the Commissioner may be compelled to consider the immediate revocation of the volunteer member’s appointment to SES or MRQ, effectively ending their engagement with the organisation.

And,

The QPS is cognisant of the volunteer cohort’s desire for the fair and prompt resolution of complaints and undertakes to, in conjunction with MRQ and the SES, develop policies to address the suspension process and, more globally, develop complaint management guidelines for MRQ and SES volunteers that align with due process and natural justice principles.⁴⁶

During the public hearing the LGAQ clarified its position, stating its concern that as the Bill is currently drafted, ‘the association does not believe that the legislation provides a comprehensive answer to employment related questions’ relating to the ‘employment, secondment, management, suspension and/or indeed dismissal of SES employees within the local government system’. The LGAQ noted that it is possible mechanisms aside from legislation may help to clarify this and ‘close this gap’; nonetheless, it believes a lack of specificity in the legislation needs to be flagged.⁴⁷

2.3.2 Fundamental legislative principles and human rights considerations

2.3.2.1 Matters of legislative principle – regard to rights and liberties of individuals

Clause 21 would permit the Commissioner to extend, or further extend, a period of suspension before that period had ended, if the Commissioner reasonably believes the circumstances which formed the basis of the suspension still exist. The Commissioner would have the power to cancel the suspension at any time.

⁴¹ Submission 7.

⁴² Submission 7.

⁴³ Queensland Police Service, correspondence, 9 February 2024, p 23.

⁴⁴ Submission 17.

⁴⁵ Queensland Police Service, correspondence, 9 February 2024, p 23.

⁴⁶ Queensland Police Service, correspondence, 9 February 2024, p 24 and 36.

⁴⁷ Greg Beckett, Local Government Association of Queensland, public hearing transcript, Brisbane, 4 March 2024, p 2.

As the Bill does not require the Commissioner to consider any input from the volunteer regarding the proposed suspension, nor provide any avenue in the Bill for the volunteer to appeal the decision, the provision potentially has insufficient regard to rights and liberties of individuals.

The explanatory notes do not address this potential inconsistency with fundamental legislative principles, but elsewhere the notes explain that suspension will offer another available alternative because at present, ‘in response to an allegation of wrongdoing, the only courses available to resolve the matter are often to do nothing or to revoke a volunteer’s appointment’.

The proposed power to suspend an SES employee or an SES volunteer mirrors provisions in the *Public Sector Act 2022* that outline discipline processes for public sector employees.

The QPS advised that the clause was drafted to ‘ensure fairness to SES members’.⁴⁸ The Bill places limits on the circumstances whereby the Commissioner may suspend an SES volunteer or employee:

- suspension is made by written notice stating the start and end of the suspension period, and cannot be onerously long to ensure the timely resolution of the matter
- before suspending an SES member employed by a local government as a local controller for an SES unit, the Commissioner must consider all reasonable alternatives available in relation to the management of the person.⁴⁹

Committee comment

The committee is satisfied that the proposed provision, that would enable the Commissioner to suspend an SES employee or volunteer from duty, is justified and appropriate in the circumstances, with sufficient regard to rights and liberties of individuals.

2.3.2.2 Human rights issue – Right to a fair hearing

Section 31 of the HRA is a procedural fairness provision that aims to ensure that persons coming before courts and tribunals for criminal or civil proceedings receive a fair and public hearing, following which a decision on a charge or proceeding must be made by a competent, independent and impartial court or tribunal.

As noted in the statement of compatibility, the decision to suspend an SES volunteer or an SES member employed by local government is an administrative decision within the authority of the Commissioner. It is not a decision of a court or tribunal. However, it is possible that – upon challenge – it could be determined that fair hearing rights extend to this type of decision. In any case, the legislation should aim to ensure that such a decision is made in the spirit of the right to a fair hearing.

The purpose of any limitation imposed on the right to a fair hearing for SES volunteers or members employed by local government would be to ensure that only persons of good character who conduct their duties appropriately are permitted to be in active SES service. This purpose is advanced by ensuring that the Commissioner has appropriate disciplinary measures available when a matter arises that calls for the discipline of a volunteer member.

Committee comment

The committee notes that the purpose of the limitation is important as it helps to maintain public trust in the SES, supports the Commissioner in appropriate and limited disciplinary action and enables considered decision-making in a situation where a volunteer member’s conduct may indicate their incapacity to serve the SES appropriately.

The committee is satisfied that an appropriate balance has been struck between the importance of the purpose of the limitation and the importance of preserving the human right to a fair hearing.

⁴⁸ Queensland Police Service, correspondence, 9 February 2024, p 24.

⁴⁹ Queensland Police Service, correspondence, 9 February 2024, p 24; see also, Bill, cl 23.

2.4 Local controller of SES unit

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

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

At a local level, a local controller of an SES unit is responsible for the management of an individual SES unit. The proposed functions of the local controller are set out in clause 25.

2.4.1 Stakeholder views

Mr Neil Percival submitted the Bill does not address observation 6 from the SES Review in relation to establishing a position between the Commissioner and a local controller to ensure legislated responsibilities are being met.

Mr Percival noted that Key Observation 6 of the SES Review identified the local controller of an SES unit as a potential single point of failure. Drawing further from Key Observation 6 of the SES Review, the submission stated, ‘there is nobody between the Commissioner QFES and the local controller with the delegations to ensure legislated responsibilities are being met’. This could be remedied through a legislative or regulatory change, or achieved through a formal delegation from the Commissioner to regional SES staff.⁵⁰

In response, the QPS stated the Bill makes provision for specific roles within the SES including the Commissioner, the SES chief officer, SES commanders and local controllers of SES units, and that this establishes a clear hierarchy. In addition, the QPS stated:

Consistent with Key Observation 6 of the SES Review, the Commissioner may appoint the SES chief officer who will be responsible for the day to day running of the SES. The SES chief officer, as a member of the SES, may also be delegated functions of the Commissioner.⁵¹

Clause 21 (Suspension of SES local government employee or SES volunteer) would apply to a local controller of an SES unit, as an SES member.

The Brisbane City Council submitted that there could be a legal and financial liability created due to a local government employee being subject to relevant industrial instruments, including processes for matters such as suspension and termination caused by the Commissioner’s determination to suspend a local government employee.⁵²

The LGAQ observed that currently, there is significant operational diversity regarding the employment of SES local controllers, resulting in challenges for councils and the SES and, indeed, for both employees and volunteers.⁵³ The LGAQ recommended there be further consultation with the LGAQ as the Industrial Advocate for local government regarding the secondment, employment, termination and management of SES Local Controllers.⁵⁴

The QPS advised that the SES Bill ‘reflects current government policy’ that provides that the Commissioner may enter into arrangements with local governments about the responsibilities of

⁵⁰ Queensland Police Service, correspondence, 9 February 2024, p 5.

⁵¹ Queensland Police Service, correspondence, 9 February 2024, p 5.

⁵² Submission 7.

⁵³ Greg Beckett, Local Government Association of Queensland, public hearing transcript, Brisbane, 4 March 2024, p 2.

⁵⁴ Submission 18.

parties in relation to the SES in the local government's area and the performance of SES functions by persons employed by the local government.⁵⁵ The QPS further advised:

These agreements do not extend to include third parties such as the LGAQ. Further, LGAQ's recommendation is contingent on the assumption that local government's wish LGAQ to advocate on their behalf and not represent themselves. The QPS would suggest that any change as proposed should be undertaken after consultation with all local governments and consideration given to the consequences of sharing information, which potentially may impact on the privacy of SES members with LGAQ particularly in circumstances involving local controllers of SES units who are not employed by a local government.⁵⁶

2.5 Civil liability

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

Acting Assistant Commissioner Mr Marcus Hill, of the QPS, advised the committee:

In relation to civil liability protections, exposing Marine Rescue Queensland and State Emergency Service members to civil liabilities would be unfair and may lead to a reduction in volunteer participation, which would have a substantial impact on Marine Rescue Queensland and the State Emergency Service as organisations.

...

The current protection under section 153C of the *Fire and Emergency Services Act 1990* will continue to apply to the State Emergency Service. The only difference is that the package takes this provision out of that Act and places it directly into the State Emergency Service Bill.⁵⁷

Mr Hill confirmed that the amendments made by these reforms 'will not denigrate the civil liability protections currently enjoyed' by both the SES and existing marine rescue entities.⁵⁸

2.5.1 Matters of legislative principle – conferral of immunity

The committee notes that to have sufficient regard to rights and liberties of individuals, legislation should not confer immunity from proceeding or prosecution without adequate justification.⁵⁹

The explanatory notes state that the conferral of immunity in this instance is justified because immunity from civil liability is appropriate if it is conferred on persons carrying out statutory functions, and the immunity provided in the Bill is consistent with that in the *Fire and Emergency Services Act 1990*. The explanatory notes also state that exposing SES members, many of whom are volunteers, to potential civil liabilities when they are assisting in a response to natural disasters would be inappropriate and could reduce the number of people willing to join the SES.⁶⁰

The immunity appears to be appropriately limited in scope as it will only attach to acts done or omissions made honestly and without negligence.

⁵⁵ Queensland Police Service, correspondence, 9 February 2024, p 39.

⁵⁶ Queensland Police Service, correspondence, 9 February 2024, p 39.

⁵⁷ Public briefing transcript, Brisbane, 12 February 2024, pp 3-4.

⁵⁸ Public briefing transcript, Brisbane, 12 February 2024, p 4.

⁵⁹ *Legislative Standards Act 1992*, s 4(3)(h).

⁶⁰ Explanatory notes, p 21.

Committee comment

With respect to the immunity that the Bill would provide for SES members, authorised rescue officers and persons assisting them, noting the justifications in the explanatory notes to the Bill, and that the immunity only applies to limited acts and omissions, the committee is satisfied that the conferral of immunity from civil liability is adequately justified and limited, and therefore the provision has sufficient regard to rights and liberties of individuals.

2.6 Terminology used in the Bill

Submissions from Neil Percival and Edward John Moynihan suggested amendment to the Bill's use of certain terms and definitions.⁶¹ For example, Mr Moynihan suggested the term *commander* in the context of this SES position referred to in the Bill, be replaced with the term *co-ordinator*, 'which better describes the role and is consistent with the current legislation'.

Th QPS acknowledged the suggestion of Mr Moynihan and stated:

SES commanders are distinct to SES coordinators who through the application of the FES Act are appointed for a limited time to deal with a specific disaster event. SES commanders will be tasked with overseeing the performance of SES functions across local government areas and facilitating the coordination and cooperation between SES units.

The SES Bill sets out a clear command and control structure for the SES by providing for specific roles within the SES including the Commissioner, the SES chief officer, SES commanders and local controllers which establishes a clear hierarchy at the State, regional and local level. The QPS considers the role of the SES commander is necessary to ensure appropriate management of the SES is achieved at a regional level.⁶²

2.7 SES vehicle exemption from toll

Clause 48 of the SES Bill provides that an SES member travelling in an SES vehicle in the person's capacity as an SES member is exempt from the payment of a toll on a road, bridge or ferry if the SES vehicle is fitted with a warning device or light that is activated.

A number of individual submitters raised concern about this provision and called for it to be clarified.⁶³ For example, Neil Percival noted that other Queensland emergency service statutes do not require that an operational vehicle be using warning lights or sounding an alarm to be exempt from tolls and called for all SES vehicles to be exempt from tolls.⁶⁴ Edward John Moynihan submitted that under current directions, warning lights on SES vehicles cannot be used while mobile.⁶⁵

In response to stakeholders' views on this provision, the QPS stated that cl 48 of the Bill 'reflects the current government policy by mirroring the existing section 152 of the FES Act'.⁶⁶

2.8 Proposed powers for authorised rescue officers

The Bill, at clause 7, proposes to grant various powers to authorised rescue officers for performing emergency-related SES functions.⁶⁷

⁶¹ Submissions 1, 8.

⁶² Queensland Police Service, correspondence, 9 February 2024, pp 25-26.

⁶³ Submissions 1, 8, 14.

⁶⁴ Submission 1.

⁶⁵ Submission 8.

⁶⁶ Queensland Police Service, correspondence, 9 February 2024, p 12.

⁶⁷ 'Emergency-related SES function' means a function to: perform rescue or similar operations in an emergency situation; perform search operations in an emergency or similar situation; and perform activities in response to a severe weather event. Bill, cl 7, sch 1.

Under clause 35 of the Bill, an authorised rescue officer may take reasonable steps to protect:

- a person who is trapped, or endangered in another way, in a place or;
- the officer or another person from danger, potential danger or assault.⁶⁸

Clause 35 also lists the ‘reasonable steps’ that may be taken.

An authorised rescue officer may use reasonably necessary force when performing or attempting to perform an SES function, except against an individual.⁶⁹

These provisions⁷⁰ effectively replicate the ‘Authorised rescue officers’ provisions in the FES Act.⁷¹

The explanatory notes recognise that these powers may impact an individual’s rights. However, the explanatory notes contend that their impact is minimised because they are for use only in exceptional circumstances and they are designed to minimise the impact on the owner or occupier:

... these powers are not designed for inspectorial or investigative purposes but for use in exceptional circumstances where the power is needed to protect a person’s life in danger.

The power of an SES member appointed as an authorised rescue officer to enter a place ... is limited to specific extraordinary circumstances and designed to have as minimal an impact as possible upon the owner or occupier.⁷²

The explanatory notes conclude that it is in the interest of the community that SES members can use these powers to ‘reduce danger to persons or property’.⁷³

Committee comment

The committee notes the breadth of the powers that authorised rescue officers may use, including entering a place without a warrant or the consent of the owner or occupier, but also recognises the limited circumstances in which these powers apply. On balance, the committee is satisfied there is sufficient justification for the powers that the Bill would give authorised rescue officers, such that the provisions have sufficient regard to the rights and liberties of individuals.

2.9 Penalties for new offences

The Bill proposes to establish new offences prohibiting:

- unlawful use or disclosure of confidential information⁷⁴
- activation of a warning device or warning light fitted to an SES vehicle⁷⁵
- failure to comply with a requirement made by an authorised rescue officer to give reasonable help⁷⁶
- the impersonation of an SES member or an authorised rescue officer⁷⁷

⁶⁸ Bill, cl 35.

⁶⁹ Bill, cl 37.

⁷⁰ Along with others in part 3 of the Bill.

⁷¹ See *Fire and Emergency Services Act 1990*, ch 4, pt 4; explanatory notes, p 14.

⁷² Explanatory notes, p 20.

⁷³ Explanatory notes, p 20.

⁷⁴ Bill, cl 42. The maximum penalty is 100 penalty units (\$15,480) or 2 years imprisonment.

⁷⁵ Except in certain circumstances. Bill, cl 44. The maximum penalty is 40 penalty units (\$6,192).

⁷⁶ Unless the person has a reasonable excuse. Bill, cl 40. The maximum penalty is 100 penalty units (\$15,480).

⁷⁷ Bill, cl 41. The proposed maximum penalty is 100 penalty units (\$15,480).

- using restricted expressions, such as ‘State Emergency Service’, in particular ways or without authority.⁷⁸

To have sufficient regard for the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁷⁹

The QPS advised the committee that this Bill, and the Marine Rescue Queensland Bill 2023, contain various protections for SES and Marine Rescue Queensland members, upholding and recognising the services emergency responders provide to the community.

Committee comment

The committee is satisfied with the justifications for the new offences provided in the explanatory notes and considers the new offences and their penalties to be relevant and proportionate.

⁷⁸ Bill, cl 43. The maximum penalty is 40 penalty units (\$6,192).

⁷⁹ Queensland Government, Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120. See also *Legislative Standards Act 1992*, s 4(2)(a).

Appendix A – Submitters

Sub #	Submitter
1	Neil Percival
2	Australian Volunteer Coast Guard Association
3	David Finlay
4	James Wilkinson
5	David Skinner
6	James Deck
7	Brisbane City Council
8	Edward John Moynihan
9	Jill Barclay
10	Queensland Council of Social Service (QCOSS)
11	Hopgood Ganim Lawyers
12	Murray Peterson
13	Community Legal Centres Queensland
14	Warren Smith
15	Neighbourhood Centres Queensland
16	Janne Peterson
17	Volunteering Queensland
18	Local Government Association of Queensland (LGAQ)
19	Australasian College of Paramedicine
20	Mark McCombie

Appendix B – Officials at public departmental briefing

Queensland Police Service

- Marcus Hill, Acting Assistant Commissioner; Reform Implementation Taskforce, Disaster and Emergency Management
- Brian Cox, Acting Assistant Commissioner; State Emergency Service
- Greg Ringuet, Business Reform Coordinator; Marine Rescue Queensland
- Greg Obst, Director; Legal, Police & Emergency Services Reform Program
- John Henderson, Inspector; Policy and Performance Division

Appendix C – Witnesses at public hearing

Local Government Association of Queensland

- Glen Beckett, Head of Assist
- Elle Ackland, Manager Workforce and Industrial Relations
- Liz Drumm, Disaster Management Lead

Australian Volunteer Coast Guard Association

- Hugh Webster, National Administration Commodore

Volunteering Queensland

- Mara Basanovic, Chief Executive Officer
- Samuel Delamoir, Advocacy, Policy and Research Manager
- Andrew Bartlett, Advocacy Advisor

Personal capacity

- Judith Carne

Community Legal Centres Queensland

- Monica Taylor, Disaster and Climate Resilience Project Coordinator

Queensland State Emergency Service Volunteer Association Inc.

- Edward Cowie, State President



State Emergency Service Bill 2023 LNP STATEMENT OF RESERVATION

The LNP fully supports any attempt to improve the emergency response of agencies and volunteer groups for regular operations and disaster management. The opposition does, however, have reservations about the State Emergency Service Bill 2023.

The Opposition has concerns regarding the lack of information provided to volunteers as to how the new arrangements will operate in respect to the potential compulsory acquisition of equipment and finances of individual SES, Marine Rescue and VMR organisations.

It should be noted that volunteers are the backbone of VMR, SES and the Volunteer Coast Guard. It is very important that the culture of these organisations is maintained within the structure. There are concerns amongst volunteers of being subject to the *Police Service Administration Act*.

In relation to a reliance on regulations (unclear, unpublished) to implement reforms –

The QPS' written Response to submissions provided to the committee states *multiple times* that changes or reforms suggested by submitters are 'outside of the scope of the Bills', and/or that submitters' suggestions are matters that address, or are outside of, 'current government policy'.¹

Mr Edward Cowie, State President, Queensland State Emergency Service Volunteer Association Inc said:

What underpins the successful reform of these agencies and organisations is strong and sustainable legislation supported by regulations that assist in the smooth transition of SES and VMR under the auspices of the Queensland Police Service. The [Volunteer Association] VA is informed by many years of support and advocacy of volunteers and, in many instances, the ineffective application of regulation and legislation by non-volunteer staff of SES and QFES. The VA must look back to inform our responses. However, we are delighted to look forward for our collective futures.²

¹ Queensland Police Service, correspondence, 9 February 2024.

² Public hearing, Brisbane, 4 March 2024, p 20.

The QPS advised the committee that the Office of the Inspector-General of Emergency Management (IGEM):

*... is responsible for providing the Premier, Government and the people of Queensland with an assurance of public safety through establishing and implementing frameworks that direct, guide and focus the work of all agencies, across all tiers of Government to the desired outcomes of the disaster and emergency management arrangements of Queensland.*³


For any future or ongoing review of disaster management activities, Community Legal Centres Queensland stated:

*In relation to the Inspector-General Emergency Management, they may be the appropriate independent entity to conduct a statutory review, but a statutory review will not happen unless it is in the legislation. We are suggesting that there be a legal requirement to review the conduct of QPS further down the track. That happens in other pieces of law where a new piece of law is enacted. However, for a check and balance purpose we want to make sure we are tracking right so we will have a statutory review at the two-year mark or four-year mark. It needs to be activated; it cannot just be assumed that because IGEM exists, an independent review is going to happen.*⁴

The Opposition will detail additional concerns during the parliamentary debate on the Bill.



Stephen Bennett



Mark Robinson

³ Queensland Police Service, correspondence, 9 February 2024, p 33.

⁴ Public hearing, Brisbane, 4 March 2024, p 18.