



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

**Report No. 26, 57th Parliament
Community Support and Services Committee
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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 Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022.

Queensland's first responders are part of a public service that is constantly evolving to deliver essential services to the people of Queensland effectively, efficiently and responsively with the best possible outcomes. The administration of these services are complex and must continually anticipate, reflect and improve its processes in line with community expectations.

Accordingly, the Bill's proposed changes aim to improve the operations and effectiveness of the Queensland Police Service and the Queensland Fire and Emergency Services by amending the legislation that impacts on their operations, including the *Police Service Administration Act 1990*, the *Police Powers and Responsibilities Act 2000*, the *Weapons Act 1990*, the *Fire and Emergency Services Act 1990* and the *Disaster Management Act 2003*.

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*.

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

On behalf of the committee, I thank those organisations which made written submissions on the Bill. I also thank the Queensland Police Service, the Queensland Fire and Emergency Services and our Parliamentary Service staff.

I commend this report to the House.



Ms Corrine McMillan MP

Chair

Recommendations

Recommendation 1

2

The committee recommends the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 be passed.

Recommendation 2

4

The committee recommends the Minister for Police and Corrective Services, through the Queensland Police Service, continue to monitor the effectiveness and efficiency of the application of the *Police Service Administration Act 1990*, and where improvements are identified, consider further enhancements to maintain optimal operational efficiency.

Recommendation 3

16

The committee recommends the Queensland Government continue to engage with other Australian jurisdictions and the Commonwealth Government to ensure a consistent, efficient and safe approach to Australian weapons licencing practices.

Report summary

This report presents a summary of the committee's examination of the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 (Bill).

The committee recommends the Bill be passed.

The main objective of the Bill is to deliver operational improvements and efficiencies for the Queensland Police Service (QPS) and the Queensland Fire and Emergency Services (QFES).

The Bill proposes amendments to the:

- *Police Service Administration Act 1990* (PSAA)
- *Police Powers and Responsibilities Act 2000* (PPRA)
- *Weapons Act 1990* (WA)
- *Fire and Emergency Services Act 1990* (FES Act)
- *Disaster Management Act 2003* (DM Act).¹

The key issues raised by stakeholders and considered by the committee during the examination of the Bill included:

- in relation to the police discipline system under the PSAA:
 - delaying the commencement of police disciplinary proceedings until related applications for domestic violence protection orders are finalised
 - providing for the dismissal of a police officer or a police recruit immediately on being sentenced to imprisonment, including a suspended sentence, for an offence
- in relation to reducing the legislative burden on the QPS under the PSAA and PPRA:
 - creating a new offence in relation to the unauthorised use of confidential information
 - allowing medically unfit police officers to transfer to staff member employees under the *Public Service Act 2008*
- in relation to weapons licensing under the WA:
 - the delegation of administrative power for more efficient processing of applications
- in relation to proposed amendments to the FES Act and the DM Act:
 - clarifying the power to enter premises without a warrant
 - communicating local fire bans via community radio
 - the proposed new or amended offences.

Overall, the committee supported the purpose of the Bill to enhance the operational effectiveness of the QPS and QFES and to ensure that the QPS and QFES are able to meet the needs and expectations of Queensland communities.

The committee is satisfied that sufficient regard has been given to fundamental legislative principles, to the rights and liberties of individuals and the institution of parliament, and that any limitations on human rights are reasonable and justifiable.

¹ Explanatory notes, p 1.

1 Introduction

1.1 Policy objectives of the Bill

The main objectives of the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 (Bill) are to deliver operational improvements and efficiencies for the Queensland Police Service (QPS) and Queensland Fire and Emergency Services (QFES) by amending the following acts:

- Police Service Administration Act 1990 (PSAA)²
- Police Powers and Responsibilities Act 2000 (PPRA)
- Weapons Act 1990 (WA)
- Fire and Emergency Services Act 1990 (FES Act)
- Disaster Management Act 2003 (DM Act).³

1.2 Background

1.2.1 *Police Service Administration Act 1990 and Police Powers and Responsibilities Act 2000*

The explanatory notes to the Bill state that the QPS evaluated the PSAA to identify opportunities for improvements and to consolidate the definitions of terms used within the Act. Amendments in the Bill address some of the administrative issues identified, for example by removing duplicated or obsolete provisions.⁴

Significant changes were made to the police discipline system by the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*. The amendments introduced ‘reduced delays in finalising discipline investigations, modernised the disciplinary sanctions that could be imposed on a police officer and formalised the role and range of management strategies within the discipline process’.⁵

The QPS has monitored the new discipline system and has identified improvements that may be made while remaining vigilant for any further enhancements in the future.⁶

1.2.2 *Weapons Act 1990*

The QPS Weapons Licensing processes thousands of applications for licences and permits to acquire (PTAs) a firearm under the WA annually. As of 31 August 2022, there are 213,917 weapons licences issued in Queensland and 962,374 firearms on the register. On a weekly basis, Weapons Licensing receives an average of 350 new licence applications, 360 renewal applications and 1,100 PTAs.⁷

Certain decisions under the WA can only be made by authorised officers, for example decisions about whether a licence or a PTA should be issued. An internal review conducted by Weapons Licensing identified some potential uncertainty about the extent to which QPS staff members could assist authorised officers in the performance of their functions under the WA. There is currently no express authority under that Act for staff members to act as agents or delegates of an authorised officer.⁸

² The *Police Service Administration Act 1990* (PSAA) establishes the legislative framework for the Queensland Police Service (QPS) by providing for its maintenance, membership, development and administration: explanatory notes, p 1.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

⁵ Explanatory notes, p 1.

⁶ QPS, public briefing transcript, Brisbane, 14 November 2022, p 2.

⁷ QPS and Queensland Fire and Emergency Services (QFES), correspondence, 7 November 2022, p 9.

⁸ Explanatory notes, p 14.

The Bill proposes amendments to allow the powers of an authorised officer to be delegated to a police officer or a QPS staff member. This will allow weapons licensing to more efficiently address the high volume of applications that it receives while simultaneously improving its workplace management.⁹

1.2.3 Fire and Emergency Services Act 1990 and Disaster Management Act 2003

The purpose of the QFES is to deliver contemporary and effective fire, emergency and disaster management services that meet Queensland communities' needs. The Bill aims to deliver efficiencies and improvements to the services delivered by QFES to Queensland communities by making minor amendments to the FES Act and the DM Act.¹⁰

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

⁹ QPS and QFES, correspondence, 7 November 2022, p 10.

¹⁰ QFES, public briefing transcript, Brisbane, 14 November 2022, p 6.

2 Examination of the Bill

In its examination of the Bill, the committee considered all the material before it, including submissions, evidence received through briefings and the public hearing. This section discusses a number of the key issues raised during the committee's examination of the Bill.

2.1 Proposed changes to the *Police Service Administration Act 1990* and *Police Powers and Responsibilities Act 2000*

The Bill proposes changes to the *Police Service Administration Act 1990* (PSAA) and *Police Powers and Responsibilities Act 2000* (PPRA) for the purpose of delivering operational improvements and efficiencies for the QPS in relation to the following aspects of the legislation:

- improving the **police discipline system** by:
 - allowing the commencement of a police disciplinary proceeding to be delayed until related applications for domestic violence protection orders, where the subject officer is the respondent, are finalised
 - clarifying the timeframe that will apply to a discipline process when an Abbreviated Disciplinary proceeding is initially offered but later fails
 - expanding the definition of 'prescribed operation' to include investigations using surveillance devices and similar operations conducted by other law enforcement agencies so that the grounds for disciplinary action will be deemed to commence at the end of these operations avoiding any potential impact that may arise through instituting a police disciplinary proceeding during the course of a prescribed operation
 - allowing another 'prescribed officer' to continue a disciplinary proceeding if the originally assigned prescribed officer cannot finalise the proceeding¹¹
 - providing for the dismissal from the QPS of a police officer or a police recruit immediately on being sentenced to imprisonment, including a suspended sentence for an offence¹²
- **reducing the legislative burden on the QPS** by removing duplicated or obsolete provisions, and remedy issues arising from the operation of the Acts by:
 - allowing medically unfit police officers transferred to staff member positions to be employed under the *Public Service Act 2008* so that appropriate employee arrangements including discipline processes can apply
 - inserting a new offence provision, 's 10.1 Unauthorised use of confidential information' into the PSAA to more appropriately address the misuse of police information
 - updating the definition of 'external service provider' in the PSAA to more accurately reflect the employment practices used to manage these providers
 - removing the obligation for police officers to obtain written approval from the commissioner prior to instituting proceedings for certain offences under the PSAA
 - consolidating definitions used in the PSAA
 - clarifying the information that may be considered by the commissioner in determining if a person should be engaged or continue to be engaged by the QPS

¹¹ Explanatory notes, pp 1-2.

¹² Explanatory notes, p 2.

- omitting out-dated provisions within the PSAA that prohibit the harbouring of a police officer, refer to the now obsolete software system 'MINDA' and require the review of the PSAA within timeframes that have since passed
- omitting provisions in the PSAA duplicated in other Acts
- clarifying that a reference to an officer of the rank of detective superintendent in the PPRA is a reference to a police officer of the rank of superintendent who has been appointed as a detective.¹³

The Queensland Police Union of Employees (QPU) stated that overall the QPU supported the proposed amendments to the PSAA and PPRA.¹⁴

Committee comment

The committee acknowledges the work of the Queensland Police Service in updating and modernising policing legislation to remove out-of-date and duplicated references, thereby improving policing operational capacity.

Recommendation 2

The committee recommends the Minister for Police and Corrective Services, through the Queensland Police Service, continue to monitor the effectiveness and efficiency of the application of the *Police Service Administration Act 1990*, and where improvements are identified, consider further enhancements to maintain optimal operational efficiency.

2.1.1 Police discipline system

The amendments proposed in the Bill aim to make further improvements to the police discipline system introduced in 2019. These amendments reflect the unique position of police officers and police recruits in the community and the high standards of integrity expected by the community.¹⁵

2.1.1.1 Domestic violence protection orders

The Bill proposes changes to allow the commencement of police disciplinary proceedings to be delayed until related applications for domestic violence protection orders under the *Domestic and Family Violence Protection Act 2012* are finalised.¹⁶

The proposal is consistent with changes introduced in 2019 to delay the commencement of police disciplinary proceedings until relevant criminal charges had been finalised.¹⁷ The Queensland Government position, as set out in the explanatory notes, is that a delay in the commencement of disciplinary proceedings ensures:

- procedural fairness is maintained for the criminal proceeding as no assertion could be made that the pending disciplinary proceeding could exert an undue influence

¹³ Explanatory notes, pp 2-3.

¹⁴ Submission 3.

¹⁵ Explanatory notes, p 2.

¹⁶ Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 (Bill), cl 54. See also PSAA, ss 7A.1(1)(b) and 7.12(4).

¹⁷ Explanatory notes, p 4; PSAA, s 7.12.

- the disciplinary proceedings would be better informed as the criminal proceedings would be finalised and the facts in relation to that matter known before the disciplinary proceedings start.¹⁸

The amendments will mean domestic violence protection orders are treated in the same way as other criminal proceedings in the context of the police disciplinary system.¹⁹

The QPU supported this proposed amendment.²⁰

The community holds police in high regard and has high expectations [of] the standard police must hold themselves [to] today. The [QPU] acknowledges the work of the commission of inquiry and the reflections the QPS must undertake in responding to that report. Let me be clear to the parliament today: police in Queensland work very difficult jobs, and the conduct of some does not reflect the hard work and tireless dedication of the many. The men and women who serve Queensland as police officers are united in a common goal of protecting our community and preserving the peace of our community.

Mr Shane Prior, Acting General President and Acting Chief Executive Officer, Queensland Police Union of Employees (QPU), public hearing transcript, Brisbane, 5 December 2022.

Natural justice

Legislation should be consistent with principles of natural justice.²¹ Natural justice requires procedural fairness.²² Procedural fairness means acting fairly in the process of decision making.²³ It involves ‘a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case’.²⁴

The Queensland Government position, as set out in the statement of compatibility, is that:

... the proposed amendments to the new police discipline system may be considered to ensure procedural fairness is maintained by allowing disciplinary proceedings and applications for domestic violence protection orders to be considered and finalised without any undue influence that could arise if these matters were to progress simultaneously. This will avoid circumstances that could conceivably impact upon procedural fairness. For example, a police officer may provide submissions to a prescribed officer in a disciplinary proceeding. As this will occur after a related domestic violence protection order application has been finalised, there can be no concern that the making of the submission would be unfair to the police officer through fears that the information disclosed could be used in the application.

Additionally, the amendment will allow a decision made in a disciplinary proceeding to be better informed as the related proceedings for an application for a domestic violence protection order will be finalised and the facts in relation to that matter will be known before the disciplinary proceedings starts.²⁵

¹⁸ Explanatory notes, p 4.

¹⁹ Explanatory notes, p 4.

²⁰ Submission 3.

²¹ *Legislative Standards Act 1992* (LSA), s 4(3)(b).

²² Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 25.

²³ Australian Law Reform Commission (ALRC), ‘Chapter 14: Procedural fairness: the duty and its content’, *ALRC report 129: Traditional rights and freedoms – encroachments by Commonwealth laws*, <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/>.

²⁴ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 25.

²⁵ Statement of compatibility, p 5.

The committee sought additional information from the QPS in relation to the average length of time for proceedings for a protection order to be finalised, to better understand the impact of the potential delay on an officer.

The QPS responded as follows:

Queensland Courts have publicly indicated the application process for a full protection order can take several weeks [.]

...

Generally speaking, an officer who is named as a respondent in a police-initiated application for a protection order will be stood down from duty. Pursuant to section 6.2 of the PSAA, 'an officer who is stood down from duty under section 6.1 is entitled to be paid salary and allowances at the rate at which the officer would have received salary and allowances had the standing down not occurred'. While the officer is stood down from duty, they would generally be moved to alternative duties. In serious matters involving multiple allegations of domestic violence and/or breaches of domestic violence protection orders, consideration may be given to suspending an officer.²⁶

Committee comment

Taking into account the justification provided in the statement of compatibility, the committee is satisfied that the proposed amendment is consistent with the principles of natural justice.

Human rights

The amendments proposed by the Bill allow the commencement of police disciplinary proceedings to be delayed until related applications for domestic violence orders are finalised will engage the right to a fair hearing under the *Human Rights Act 2019* (HRA).²⁷

Section 13 of the HRA provides that human rights may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Aspects of a fair hearing include:

... the application of procedural fairness through an independent court, a public trial, the presumption of innocence, the defendant told of the charge, the allocation of time and facilities to prepare a defence and a trial without undue delay etc.²⁸

Delays in the commencement of police disciplinary proceedings, to allow for domestic violence protection orders to be finalised, are unlikely to constitute an undue delay.

There do not appear to be any less restrictive and reasonable ways available to achieve the purpose of the Bill.²⁹

Committee comment

The committee accepts the limitation on the right is reasonable and necessary and outweighs any limitations on human rights.³⁰

The committee is satisfied that the proposed amendments are a justifiable limit to s 31 of the HRA.

²⁶ QPS, correspondence, 16 December 2022, attachment, pp 1, 2.

²⁷ Statement of compatibility, pp 3-4; *Human Rights Act 2019* (HRA), s 31.

²⁸ Statement of compatibility, p 4.

²⁹ Statement of compatibility, p 5.

³⁰ Statement of compatibility, p 5.

2.1.1.2 *Summary dismissal*

The Bill proposes changes to provide for the summary dismissal of a police officer or a police recruit immediately on being sentenced to imprisonment, including a suspended sentence, for an offence.³¹

Currently, a police officer who has not resigned and is sentenced to imprisonment will not be dismissed from the QPS until all criminal appeals and all police discipline processes have been finalised.³²

The position of the Queensland Government, as set out in the explanatory notes, is that a conviction for an offence resulting in a sentence of imprisonment is inconsistent with the high standards expected of a police officer. The proposed amendment would avoid the 'unpalatable situation' where an offender imprisoned in jail continues to be employed by the QPS as a police officer or police recruit.³³ The statement of compatibility asserts that the change would avoid 'any community concern about why a police officer in jail may still be employed by the QPS'.³⁴

The summary dismissal is not reviewable as it is based on statute rather than an administrative decision.³⁵ However, the Bill does provide for the reappointment of an officer if the sentence is changed on appeal to something other than imprisonment.³⁶ A police officer or police recruit may still face police discipline proceedings on reappointment following the change in sentence.³⁷

The QPS advises:

These amendments will result in reputational benefits for the QPS by confirming the standards the community expect police officers and police recruits to maintain. It also confirms the standards other officers expect of their colleagues. Additionally, efficiency gains will be realised through obviating the need to conduct protracted disciplinary investigations into matters that will inevitably result in the dismissal of the subject officer because they have been found guilty by a court and sentenced to a term of imprisonment, actual or suspended.³⁸

The QPS also stated this is 'a comparatively rare event':

Since January 2014 to August 2022, nine police officers have been sentenced to imprisonment for offences ranging from possession of dangerous drugs to child sex offences. This is a very small number when compared to the thousands of police officers who every day serve our community honourably.³⁹

All Australian jurisdictions have legislation that allows a police commissioner to dismiss police officers as part of police disciplinary proceedings. No other jurisdiction has similar dismissal provisions that operate as a result of legislative provisions rather the police commissioner's discretion.⁴⁰

The Crime and Corruption Commission (CCC) stated that the CCC supported the proposed amendments.⁴¹

³¹ Bill, cl 39 (PSAA, new pt 8, div 2); explanatory notes, pp 2, 7 and 22.

³² Explanatory notes, pp 2 and 7.

³³ Explanatory notes, p 2.

³⁴ Statement of compatibility, p 1.

³⁵ Explanatory notes, p 7.

³⁶ Explanatory notes, p 7.

³⁷ QPS and QFES, correspondence, 7 November 2022, p 5.

³⁸ QPS and QFES, correspondence, 7 November 2022, p 5.

³⁹ Public briefing transcript, Brisbane, 14 November 2022, p 3.

⁴⁰ QPS and QFES, correspondence, 7 November 2022, p 5.

⁴¹ Public hearing transcript, Brisbane, 5 December 2022, p 1.

The QPU stated that the proposed amendments are ‘really a codification of existing case law from QCAT [Queensland Civil and Administrative Tribunal]’.⁴² The QPU further stated that the proposed amendments are balanced by provisions which revoke any dismissal and deem it to have never occurred in circumstances where the conviction is overturned on appeal, or where the sentence is reduced to one other than imprisonment.⁴³

The Aboriginal and Torres Strait Islander Legal Service (Qld) (ATSILS) expressed reservations about the drafting of proposed s 8.7, suggesting that it was ‘so broadly drafted that it may allow for the reappointment of a police officer or police recruit that has, notwithstanding the change to their sentence, engaged in serious behaviour that is worthy of summary dismissal.’⁴⁴ By way of example, the ATSILS stated:

According to the Australian Bureau of Statistics publication, Criminal Courts in Australia, for the financial year of 2020-21, 66% of the 16,511 family and domestic violence defendants with a guilty outcome were sentenced to a non-custodial order.⁴⁵

The ATSILS considered that the proposed amendments ‘appear to be counter-productive and do not inspire confidence in the QPS’s ability to appropriately deal with offending behaviour by police officers and police recruits.’⁴⁶

The ATSILS recommended that, rather than a police officer or police recruit being automatically reinstated to their prior position when their sentence is changed to a sentence other than imprisonment, reappointment should be at the discretion of the police commissioner.⁴⁷

The QPS, in its response to submissions, stated:⁴⁸

... should a police officer receive a non-imprisonment sentence for an offence, then there will be no change to the current discipline process contained in Part 7 of the PSAA that allows for a discipline investigation and sanction to be imposed after all criminal appeals have been exhausted. Such a sanction could include dismissal.

Committee comment

The committee acknowledges the concerns of ATSILS in relation to the Bill’s proposed amendments to provide for the summary dismissal of a police officer or a police recruit immediately on being sentenced to imprisonment. The committee is satisfied that the proposed amendments strike an appropriate balance between maintaining public confidence in the QPS and the rights of police officers and police recruits to fair treatment.

Natural justice

As stated above, legislation should be consistent with principles of natural justice, including procedural fairness.⁴⁹

⁴² Submission 3.

⁴³ Submission 3.

⁴⁴ Submission 2.

⁴⁵ Submission 2.

⁴⁶ Submission 2.

⁴⁷ Submission 2.

⁴⁸ QPS, correspondence, 1 December 2022, p 10.

⁴⁹ LSA, s 4(3)(b); OQPC, *Fundamental legislative principles: the OQPC notebook*, 2008, p 25.

The Bill does not include a right to review dismissals under the proposed amendments to part 8 of the PSAA, which may be regarded as inconsistent with the principles of natural justice.⁵⁰

The position of the Queensland Government, as set out in the explanatory notes, is that:

... any potential breach of [fundamental legislative principles] is considered justifiable as the conduct of police officers and police recruits are the most critical and visible reflection of the professional standards and reputation of the QPS. It is considered appropriate to amend the PSAA to enable the timely dismissal of a police officer or a police recruit sentenced to imprisonment for an offence without an ability for the employee to challenge the dismissal to ensure that the standards and reputation of the QPS are maintained.

The Bill mitigates concerns about fairness to the police officer or police recruit by requiring that the Commissioner must, within 5 business days, reappoint the person to the same or similar position that they held prior to being dismissed should they be successful on appeal in overturning their imprisonment sentence or reducing it to something other than imprisonment. If the person was appointed by the Governor in Council as an executive officer, the Governor in Council must reappoint the person to the same position held in the QPS prior to dismissal.⁵¹

If the police officer or recruit is reappointed, they will be entitled to seek reimbursement of salary and entitlements from the date of dismissal at the discretion of the QPS commissioner.⁵²

The QPS commissioner intends to bring these proposed provisions to the attention of all QPS members.⁵³

Committee comment

The committee considers that the proposed amendments providing for summary dismissal of a police officer or recruit on being sentenced to imprisonment, including a suspended sentence, has sufficient regard to the rights and liberties of individuals.

The committee commends the Queensland Government's proposed reforms in reflecting the high community standards expected of members of the Queensland Police Service by streamlining provisions relating to the dismissal of convicted members of the service.

Human rights

The HRA includes the right to a fair hearing.⁵⁴

The Bill's proposed summary dismissal of a police officer or a police recruit sentenced to imprisonment without the exhaustion of appeals processes and the conduct of disciplinary processes may be a limitation on the right to a fair hearing.⁵⁵

The purpose of the limitation, as set out in the statement of compatibility, is to:

... ensure community expectations that certain government officials, such as police officers and police recruits, should be of good character and standing and not continue to be employed if they have been imprisoned for an offence, even if that imprisonment is suspended.⁵⁶

⁵⁰ Explanatory notes, p 22.

⁵¹ Explanatory notes, pp 22-23.

⁵² Public briefing transcript, Brisbane, 14 November 2022, p 3.

⁵³ Explanatory notes, p 23.

⁵⁴ HRA, s 31.

⁵⁵ Statement of compatibility, p 11.

⁵⁶ Statement of compatibility, p 13.

The statement of compatibility further provides:

As employment as a police officer or police recruit has character and conduct standards that are especially high because of the responsibility attached to the role, a conviction for an offence and sentencing to imprisonment is inconsistent with those high standards. Particularly given that a court of law has decided the person's guilt beyond a reasonable doubt and imposed a sentence of imprisonment, the employer cannot reasonably be expected to provide the employee with a further opportunity to relitigate their matter through allowing the person to provide further information by way of a notice and response in a disciplinary process.⁵⁷

There are no less restrictive and reasonable ways available to achieve the purpose of the Bill. The limitation is mitigated by the proposed requirement that an officer or recruit must be reappointed to the QPS if their imprisonment conviction be overturned or the sentence is reduced on criminal appeal to one other than imprisonment.⁵⁸

The limitation on the right reflects police and community expectations and outweighs any limitations on human rights.⁵⁹

Committee comment

The committee is satisfied that the proposed summary dismissal provisions are a justifiable limit to s 31 of the HRA.

2.1.2 Reducing legislative burden

In relation to the proposed amendments aimed at reducing the legislative burden on the QPS, submitters were concerned about:

- unauthorised use of confidential information
- unfitness for duty on medical grounds.

2.1.2.1 Unauthorised use of confidential information

The Bill proposes amendments to replace existing ss 10.1 and 10.2C of the PSAA, relating to the improper disclosure of information, with a new s 10.1.⁶⁰

Currently, s 10.1 applies to current or former police officers or QPS staff members.⁶¹ Existing s 10.2C may apply to a person outside the QPS but is limited to disclosures of a person's criminal history.⁶²

The explanatory notes state that the range of persons accessing QPS information has expanded since the commencement of the PSAA and now includes 'contractors, subcontractors, recruits, and other persons or agencies performing a function for the QPS'.⁶³ The proposed new s 10.1 would apply to a wider range of persons including any person that accesses QPS information:

- in the course of performing a function for the QPS
- through being provided access to it under the provisions of the PSAA or another Act, or lawful purpose.⁶⁴

⁵⁷ Statement of compatibility, p 13.

⁵⁸ Statement of compatibility, p 13.

⁵⁹ Statement of compatibility, p 14.

⁶⁰ Bill, cl 43.

⁶¹ PSAA, s 10.1; explanatory notes, p 8.

⁶² Explanatory notes, p 8.

⁶³ Explanatory notes, p 9.

⁶⁴ Explanatory notes, p 9.

The Bill provides guidance on the circumstances in which a person may lawfully use QPS confidential information, including:

- where it is required or permitted under the PSAA or another Act
- with the consent of the person to whom the information relates if the information would normally be made available to any member of the public on request
- in compliance with lawful process requiring the production of documents or the giving of evidence.⁶⁵

The Bill also proposes that proceedings in relation to the misuse of confidential information must be commenced within one year from their commission or within 6 months after the commission of the offence first came to the knowledge of the complainant.⁶⁶

The CCC stated that the proposed amendments did not address the issues raised in the CCC's 2020 report, *Operation Impala – report on misuse of confidential information in the Queensland public sector*, particularly recommendation 10 which proposed a new offence of misuse of confidential information by a public officer.⁶⁷

The QPS, in its response to submissions, stated that the matters raised by the CCC were beyond the scope of the Bill and further 'as it relates to the entire public sector would require a whole of government response.'⁶⁸

The QPU stated that the proposed amendments would 'provide a useable offence for information misuse'.⁶⁹ The QPU further stated that the amendments will make it clear to QPS personnel and to the general public how information in the QPS's possession can be lawfully used.⁷⁰

The QPU considered changes to the commencement of proceedings were 'significant' and recognise the length of time an investigation into information misuse offences can take.⁷¹ The QPU stated:

It means members of the public can be more confident that people who misuse police information are able to be brought to justice. It also means those who do offend are dealt with for a specific offence designed to capture their behaviour, rather than a generic computer hacking offence which was not intended to be misused or released.⁷²

Committee comment

While recognising the importance of dealing with misuse of confidential information across the public service, the committee considers that the proposed amendments are appropriate in the context of the use of QPS information in certain circumstances.

⁶⁵ Explanatory notes, p 9.

⁶⁶ Explanatory notes, p 9.

⁶⁷ Submission 1.

⁶⁸ QPS, correspondence, 1 December 2022, p 5.

⁶⁹ Submission 3.

⁷⁰ Submission 3.

⁷¹ Submission 3.

⁷² Submission 3.

New penalties

Currently, s 10.1 includes a maximum penalty of 100 penalty units (\$14,375).⁷³ The proposed new s 10.1 has a maximum penalty of 100 penalty units (\$14,375) or 2 years imprisonment.⁷⁴

The explanatory notes explain that the increase in penalty is:

... to reflect the seriousness and the potential harm that can be caused by a misuse of QPS information, including not only to individuals to whom the information relates, but also the potential impact that can occur to criminal investigations and operations.⁷⁵

The explanatory notes state that the proposed new maximum penalty is consistent with the maximum penalties for equivalent offences under the PSAA⁷⁶ and other Acts including the *Corrective Services Act 2006*,⁷⁷ the *Child Protection Act 1999*⁷⁸ and the *Youth Justice Act 1992*.⁷⁹

The explanatory notes state that the misuse of confidential information is rare but the 'harm that could be caused by such breaches, however, is significant'.⁸⁰

The CCC stated that it supports the proposed increase in the maximum penalty.⁸¹

Penalties imposed by legislation should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁸² The explanatory notes state that any potential breach of fundamental legislative principles is justified 'by the need for the QPS to protect the confidential information that it holds and to protect the rights to privacy of individuals to which that information relates'.⁸³

Committee comment

Given that the unlawful disclosure of personal and confidential information held by the QPS could be detrimental to individuals and to police investigations, and that the proposed penalty for the replacement provision is consistent with other penalties in the PSAA and other legislation, the committee is satisfied the proposed new offence and penalty has sufficient regard to the rights and liberties of individuals.

Human rights

The HRA includes the right to liberty and prohibits arbitrary arrest and detention.⁸⁴

The Bill proposes an amendment to the penalty to include a term of imprisonment, which may be a limitation on the right to liberty and prohibition on arbitrary arrest and detention.

⁷³ PSAA, s 10.1. The value of a penalty unit is \$143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5 and 5A.

⁷⁴ Explanatory notes, pp 8-9.

⁷⁵ Explanatory notes, p 9.

⁷⁶ See PSAA, s 5AA.14 Secrecy; explanatory notes, p 9.

⁷⁷ See *Corrective Services Act 2006*, s 341 Confidential information; explanatory notes, p 9.

⁷⁸ See *Child Protection Act 1999*, s 187 Confidentiality of information obtained by persons involved in administration of Act; explanatory notes, p 9.

⁷⁹ See *Youth Justice Act 1992*, s 288 Preservation of confidentiality; explanatory notes, p 9.

⁸⁰ Explanatory notes, p 8.

⁸¹ Submission 1.

⁸² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 120.

⁸³ Explanatory notes, p 21.

⁸⁴ HRA, s 29(3).

The purpose of the limitation is to protect confidential information, particularly in relation to witnesses and victims of crime, which may also involve the privacy and reputation of others. The statement of compatibility states:

This amendment will promote an individual’s right to privacy through deterring the inappropriate use of confidential information by increasing the maximum penalty of the offence in recognition of its seriousness and the potentially significant harm that can be caused by the misuse of QPS information. This harm includes not only to individuals to whom the information relates, but also potentially the wider community if the information impacts on criminal investigations and operations.⁸⁵

There are no less restrictive and reasonable ways available to achieve the purpose of the Bill.⁸⁶

The limitation on the right is necessary and proportionate in light of the strong community expectation that QPS information is protected. In protecting such information, the amendment promotes the right to privacy for those individuals whose information is held by the QPS.⁸⁷

Committee comment

The committee is of the view that the proposed new s 10.1 is a justifiable limit to s 29 of the HRA.

2.1.2.2 Unfitness for duty on medical grounds

Currently, s 8.3(5) of the PSAA allows the QPS commissioner to appoint a police officer, who cannot continue to perform their duties on medical grounds, to a position as a staff member.⁸⁸ These staff members continue to be employed under the PSAA, which means they fall outside the scope of the discipline processes in both the PSAA and the *Public Service Act 2008*.⁸⁹

The Bill proposes to insert a new s 8.3(6) into the PSAA to allow medically unfit police officers transferred to staff member positions to be employed under the *Public Service Act 2008*.⁹⁰

The proposed amendments will ensure the medically unfit police officers are subject to disciplinary processes under the *Public Service Act 2008*.⁹¹

The explanatory notes further state that disciplinary issues with these staff members have rarely arisen but the process is ‘inefficient and cumbersome’.⁹² Transitional provisions in the Bill ensure the employment arrangements of existing staff members will not be impacted.⁹³

The QPU supported the proposed amendments, stating:

... people who have experience and who have a high degree of technical training who have spent many years as serving police officers—men and women—should have a pathway to continuing employment ... We value any opportunity which gives people who have been deemed unfit to be police officers further opportunities to continue serving the people of Queensland.⁹⁴

⁸⁵ Statement of compatibility, p 10.

⁸⁶ Statement of compatibility, p 11.

⁸⁷ Statement of compatibility, p 11.

⁸⁸ PSAA, s 8.3(5).

⁸⁹ Public briefing transcript, Brisbane, 14 November 2022, p 3.

⁹⁰ Bill, cl 38.

⁹¹ Explanatory notes, p 8.

⁹² Explanatory notes, p 8.

⁹³ Explanatory notes, p 8.

⁹⁴ Queensland Police Union of Employees (QPU), public hearing transcript, Brisbane, 5 December 2022, p 6.

The ATSILS raised concerns that, in light of ‘damning evidence of systemic failures relating to internal disciplining of police officers even for behaviours that were exceptionally abhorrent’ revealed in the recent Independent Commission of Inquiry into the QPS:

... the proposed amendments open the door for a police officer whose behaviour is not congruent with community expectations to be deemed to be mentally unfit and that, by operation of this proposed amendment, they will be automatically appointed under the Public Service Act 2008 which may, in effect, result in that individual avoiding appropriate disciplinary action in line with community expectations.⁹⁵

The ATSILS was of the view that individuals hired under the PSAA and subsequently deemed ‘mentally unfit’, but who are re-appointed as an employee under the *Public Service Act 2008*, should continue to be subject to the disciplinary provisions that applied when they were on active service, that is, the PSAA.⁹⁶ Further, ATSILS suggested that the CCC should be given explicit powers over disciplinary matters concerning such medically unfit police officers.⁹⁷

... for Aboriginal and Torres Strait Islander peoples, the quality and integrity of our police force is quite literally a critical issue, and for some it may mean the difference between life and death. In our view, some of the proposed amendments in this bill appear to pull QPS further away from the transparency and reform that is needed to regain public confidence in its operations.

Aboriginal and Torres Strait Islander Legal Service (Qld) (ATSILS), public hearing transcript, Brisbane, 5 December 2022.

The QPS, in its response to submissions, stated that the ‘concerns raised by ATSILS appear to stem from a misunderstanding of how the discipline processes employed within the public sector operate.’⁹⁸ The QPS further stated:

The amendment ensures that police officers medically retired to staff member positions will be subject to the disciplinary laws consistent with their appointment as a staff member.

Any open allegations of misconduct or other grounds for discipline that exist at the time of the provisions of s 8.3 being used, would be a matter for the Commissioner to consider in exercising the discretion to appoint the officer as a staff member.⁹⁹

Committee comment

The committee notes ATSILS’s concern in relation to the potential operation of the proposed amendments in relation to medically unfit police officers being appointed as staff members. However, the committee is of the view that it is appropriate to deal with police officers under the PSAA and staff members under the *Public Service Act 2008*.

2.2 Proposed changes to the *Weapons Act 1990*

The Bill proposes changes to the WA to facilitate more efficient licensing functions under the WA by allowing certain authorised officers’ powers to be delegated to police officers and QPS staff members.¹⁰⁰

⁹⁵ Submission 2.

⁹⁶ Submission 2.

⁹⁷ Submission 2.

⁹⁸ QPS, correspondence, 1 December 2022, p 7.

⁹⁹ QPS, correspondence, 1 December 2022, p 8.

¹⁰⁰ Explanatory notes, p 3.

2.2.1 Weapons licensing functions

The Bill proposes to amend s 153 of the WA to allow the commissioner, an executive officer or commissioned officer to delegate their authorised officer powers relating to licences and PTAs to a police officer or a staff member of the QPS under the PSAA.¹⁰¹ The powers delegated are limited to the powers in part 2 (Licences) or part 3, division 3 (Permits to acquire) of the WA.¹⁰² The police officer or staff member must, in the authorised officer's opinion, have the necessary expertise or experience to exercise the power.¹⁰³

The Bill also proposes to retrospectively validate approvals given by police officers or staff members who were not authorised officers.¹⁰⁴

The explanatory notes state that the proposal to allow delegations is necessary 'to ensure the efficient processing of applications under the [WA] for a PTA, licence or renewal of a licence'.¹⁰⁵ Further, the retrospective amendment would 'ensure that there is no doubt about the validity of licences and PTAs approved by Weapons Licensing staff by clarifying that any licence or PTA issued before the commencement of this Bill is valid'.¹⁰⁶

The QPS further stated that this is consistent with the practices of firearms registries in other Australian jurisdictions including New South Wales, Victoria, Tasmania and South Australia.¹⁰⁷

The QPU welcomed the proposed changes.¹⁰⁸ The QPU stated:

The community expects a high degree of caution and expertise to be deployed around the licensing of weapons in the community, the QPU notes, however, that license owners and those who seek to become license holders want a system that is robust and timely.

The Bill will allow the Commissioner, an executive officer or a commissioned officer to delegate to a police officer or a QPS staff member the licensing functions of an authorised officer under the Weapons Act 1990. The QPU are satisfied that this will ensure the technical knowledge required to make licensing decisions will remain and timeframes around license applications will benefit.¹⁰⁹

2.2.2 Delegation of administrative power

Legislation should delegate administrative power only in appropriate cases and to appropriate people.¹¹⁰

The proposed amendments limit the power that may be delegated to decisions relating to licences and PTAs. The Bill proposes that those powers only be delegated to a police officer or a staff member who, in the authorised officer's opinion, has the necessary expertise or experience to exercise the power.

¹⁰¹ Bill, cl 65; amending s 153 of the *Weapons Act 1990* (WA).

¹⁰² Bill, cl 65; amending s 153 of the WA; QPS, public briefing transcript, Brisbane, 14 November 2022, p 4.

¹⁰³ Bill, cl 65; amending s 153 of the WA.

¹⁰⁴ Bill, cl 67; proposed new s 195 of the WA.

¹⁰⁵ Explanatory notes, p 23.

¹⁰⁶ Explanatory notes, p 14.

¹⁰⁷ QPS and QFES, correspondence, 7 November 2022, p 10.

¹⁰⁸ Submission 3.

¹⁰⁹ Submission 3.

¹¹⁰ LSA, s 4(3)(c).

Committee comment

The committee is satisfied that the provision has sufficient regard to fundamental legislative principles because of the limits placed on the proposed delegation, both in terms of the powers that may be delegated and ensuring the delegation is only made to a police officer or staff member with appropriate expertise or experience.

The committee commends the Queensland Government's recent calls for further discussion on the development of a national gun register.

Recommendation 3

The committee recommends the Queensland Government continue to engage with other Australian jurisdictions and the Commonwealth Government to ensure a consistent, efficient and safe approach to Australian weapons licencing practices.

2.3 Amendments to the *Fire and Emergency Services Act 1990* and *Disaster Management Act 2003*

The Bill proposes changes to the FES Act and the DM Act to support the ongoing effectiveness of services delivered by QFES by:

- clarifying that an authorised fire officer may enter premises and open a receptacle using a remote-controlled device for preventative or investigative purposes
- allowing the QFES commissioner to suspend as well as grant, amend or revoke, a permit to light a fire
- clarifying the circumstances in which the QFES can share information with the QPS about investigations into fires and hazardous materials, emergencies involving death or serious injury to a person
- clarifying an occupier's obligation to maintain prescribed fire safety installations that are located outside of the occupier's building
- extending the offence of impersonating an officer of the Fire and Rescue Service (FRS) or a member of the State Emergency Service (SES) to also apply to a member of a rural fire brigade (RFB)
- enabling members of interstate fire brigades to assist at hazardous materials emergencies and rescues, as well as at fires, in Queensland
- providing for online publications consistent with the online publication requirements of the *Financial Accountability Act 2009*
- clarifying the Building Code of Australia specifications that apply to the domestic dwelling smoke alarm requirements that are being phased out
- making minor corrections and amendments to the FES Act.¹¹¹

¹¹¹ Explanatory notes, p 3.

2.3.1 Power to enter premises

The FES Act gives power to authorised fire officers to enter any premises or open (using such force as is reasonably necessary) any receptacle for purposes including to prevent, or reduce the likelihood of, the occurrence of a fire or a hazardous materials emergency. The power of entry may only be used for a dwelling:

- with the occupier’s approval, or
- during or in the aftermath of a fire or hazardous materials emergency occurring at the dwelling, for the purpose of ascertaining its cause.¹¹²

The Bill proposes changes that would permit an authorised fire officer, or an appropriately qualified person acting under the supervision of the officer, to enter premises or open a receptacle using a device remotely controlled by the officer or person.¹¹³

The QFES stated that:

Technological advances now allow officers to use remote-controlled devices such as drones to assess the safety of a premises before entering or opening receptacles. While these devices are currently utilised, the amendment will put beyond doubt that the existing powers can be exercised through the use of a device which is controlled either by the officer or an appropriately qualified person acting under the supervision of the officer.¹¹⁴

The QFES explained that the proposal’s reference to ‘an appropriately qualified person acting under the supervision of the officer’ would allow for ‘a person other than the authorised fire officer to control the device as the operator may require specialist technical expertise and licenses’.¹¹⁵ For example, the QFES operates a Remotely Piloted Aircraft System (RPAS or drone) under a Remotely Piloted Aircraft Operators Certificate and in accordance with the Civil Aviation Safety Regulations 1998 (Cth). The pilot of an RPAS must hold a Civil Aviation Safety Authority Remote Pilot Licence, Aeronautical Radio Operators Licence and be inducted into QFES RPAS policies and procedures.¹¹⁶

The ATSILS stated that these entry powers are ‘police-like powers’.¹¹⁷ The ATSILS did not support the proposed amendment as it was ‘quite broad in its application’.¹¹⁸ The ATSILS considered that there were ‘no circumstances that would justify an ambulance officer or a Special Emergency Services (SES) volunteer, for example, to be able to exercise these police-like powers.’¹¹⁹

The QFES, in its response to submissions, stated that the powers in s 55 of the FES Act are limited to specific purposes and do not provide a general right of entry.¹²⁰ The QFES stated that the proposed amendment ‘does not extend the powers, rather it provides another means to enter premises or open a receptacle using a remote-controlled device, including where there is a potential safety risk to authorised fire officers’.¹²¹ The QFES also noted that the person operating the remote controlled device must be acting under the supervision of an authorised fire officer while using the device.¹²²

¹¹² *Fire and Emergency Services Act 1990* (FES Act), s 55.

¹¹³ Bill, cl 19; amending s 55 of the FES Act.

¹¹⁴ QPS and QFES, correspondence, 7 November 2022, p 11.

¹¹⁵ QPS and QFES, correspondence, 7 November 2022, p 11.

¹¹⁶ QPS and QFES, correspondence, 7 November 2022, p 11.

¹¹⁷ Submission 2.

¹¹⁸ Public hearing transcript, Brisbane, 5 December 2022, p 11.

¹¹⁹ Submission 2.

¹²⁰ QPS, correspondence, 1 December 2022, p 12.

¹²¹ QPS, correspondence, 1 December 2022, p 13.

¹²² QPS, correspondence, 1 December 2022, p 13.

Committee comment

The committee acknowledges ATSILS's concerns in relation to the power of entry in the Bill's proposed amendments to s 55 of the FES. However, the committee considers there are sufficient safeguards in the Bill with the appropriately qualified person having to act under the supervision of an authorised fire officer and the limited purposes set out in the Act.

2.3.1.1 Power to enter premises only with a warrant

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, legislation confers power to enter premises only with a warrant issued by a judge or other judicial officer.¹²³

Section 55 of the FES, in its current form and with the proposed amendments, provides for a power to enter premises without a warrant.

The proposed changes are consistent with the functions of the QFES under s 8B of the FES Act to protect persons, property and the environment from fire and hazardous materials emergencies.¹²⁴ The position of the Queensland Government, as set out in the explanatory notes, is that the power to enter premises without a warrant is justified by 'the need for authorised fire officers to perform their functions to protect persons, property and the community from fire and hazardous materials emergencies in a way that minimises risks to the officers.'¹²⁵

Committee comment

The committee notes the power to enter premises is already conferred on authorised fire officers and that the Bill provides for a different way the power to enter premises may be exercised. As such, the committee is satisfied that the provision has sufficient regard to the rights and liberties of individuals.

2.3.1.2 Human rights

The amendments proposed by the Bill allowing entry to premises will engage the right to property under the HRA.¹²⁶

The statement of compatibility states:

The purpose of the limitation is to protect persons, property and the environment from fire and hazardous materials emergencies in a way that minimises risks to authorised fire officers. Enhancing the safety of authorised fire officers in the pursuit of their duties to protect the public is consistent with a free and democratic society based on human dignity, equality and freedom.¹²⁷

There are no less restrictive and reasonable ways available to achieve the purpose of the Bill.¹²⁸

¹²³ LSA, s 4(3)(e).

¹²⁴ Explanatory notes, p 24.

¹²⁵ Explanatory notes, p 24.

¹²⁶ Statement of compatibility, p 16; HRA, s 24.

¹²⁷ Statement of compatibility, p 17.

¹²⁸ Statement of compatibility, p 17.

Committee comment

The committee is of the view that limitation on the right is necessary and proportionate and outweighs any harm caused by the limitation on human rights.¹²⁹

The committee is satisfied that the proposed amendments are a justifiable limit to s 24 of the HRA.

2.3.2 Use of community radio

The Bill proposes amendments to ss 86B and 86C of the FES Act, which deals with how the QFES commissioner must notify the imposition or cancellation of a local fire ban.¹³⁰ Proposed new s 86B of the FES Act states that notice of the imposition of a local fire ban must be published on the department's website.¹³¹ This would replace existing s 86B which provides a notice may be published in a newspaper circulating in the fire ban area or by a broadcast notice transmitted by a broadcasting service generally able to be received by persons in the fire ban area.¹³² The same amendments are proposed to s 86C in relation to notification of cancellation of a local fire ban.¹³³

The Bill also proposes that, if notice of the imposition of a local fire ban cannot for technical or other reasons be conveniently published on the department's website, the notice may be published in another way decided by the QFES commissioner.¹³⁴

One submitter expressed concern about these amendments and suggested that proposed new s 86B should include an express obligation for local fire bans to be publicised via community radio stations in remote and regional communities to ensure that such communications are being received by individuals living in those communities.¹³⁵ This was based on the Report of the Royal Commission into Natural Disaster Arrangements delivered in 2020, which stated:

Community radio stations are also an important source of information for Indigenous and culturally and linguistically diverse Australians. There are 89 regions across Australia where Indigenous Australian community radio stations are the only broadcast services available in the region. During the 2019-2020 bushfires, over 80 community radio stations broadcast emergency warnings advice to fire affected remote Indigenous communities.¹³⁶

The QFES stated, in its response to submissions:

In order to minimise risks during a fire emergency, it is essential that the affected community is aware that a local fire ban is in place. In addition to the QFES website, QFES currently uses a range of methods to ensure widespread knowledge of local fire bans including distributing information to media services such as radio stations, television networks and by posting on social media platforms such as Facebook. The amendment will not change or limit this process.

In remote communities, fire risk is managed through communication with communities rather than by the imposition of local fire bans. Multiple approaches are taken to communicate with communities,

¹²⁹ Statement of compatibility, p 18.

¹³⁰ Bill, cls 8 and 9; amending ss 86B and 86C of the FES Act.

¹³¹ Bill, cl 8.

¹³² FES Act, s 86B.

¹³³ Bill cl 9; amending s 86C of the FES Act.

¹³⁴ Explanatory notes, p 18.

¹³⁵ Aboriginal and Torres Strait Islander Legal Service (Qld) (ATSILS), submission 2.

¹³⁶ Royal Commission into National Natural Disaster Arrangements, *Report*, 28 October 2020, <https://naturaldisaster.royalcommission.gov.au/system/files/2020-11/Royal%20Commission%20into%20National%20Natural%20Disaster%20Arrangements%20-%20Report%20%20%5Baccessible%5D.pdf>, [13.119].

including through first officers of Rural Fire Brigades, fire wardens, local governments, and Area Fire Management Groups.¹³⁷

Committee comment

The committee notes that community radio is an effective means of communicating the imposition or cancellation of a local fire ban in rural and remote areas in Queensland. The committee is of the view that the drafting of the provision is sufficiently wide to include community radio if it is considered an appropriate means of communication in particular circumstances.

2.3.3 New or amended offences

The Bill proposes to amend various offences in the FES Act including:

- extending a requirement to maintain fire safety installations¹³⁸ in buildings to include a requirement to maintain fire safety installations outside buildings¹³⁹
- adding impersonating a member of the RFB to an offence that prohibits pretending to be a fire service officer, an authorised rescue officer, an emergency service unit member, an SES coordinator, or an SES member.¹⁴⁰

Penalties imposed by legislation should be proportionate to the offence, and penalties within legislation should be consistent with each other.¹⁴¹

2.3.3.1 Failing to maintain fire safety installations

The maximum penalties for failing to maintain prescribed fire safety installations in buildings are graduated, depending on the harm caused. The penalties are significant – up to a maximum of 2,000 penalty units (\$287,500) or 3 years imprisonment if the contravention causes multiple deaths.¹⁴²

The Bill proposes changes to the offence to include all the prescribed fire safety installations for the building, not just those in the building.¹⁴³

The explanatory notes state:

Prescribed fire safety installations that are outside a building form part of the overall system of fire safety management that is required under legislation for the building. Risks to the safety of occupants and property arise if the overall fire safety system for the building is compromised by failure to maintain prescribed fire safety installations, whether they are inside or outside the building. Therefore, it is appropriate that the equivalent penalties should apply for failure to maintain any prescribed fire safety installation, whether the installation is inside or outside of the building.¹⁴⁴

¹³⁷ QPS, correspondence, 1 December 2022, p 11.

¹³⁸ A ‘fire safety installation’ for a building means any of the following items for the building: structural features (e.g. fire windows, fire control centres), fire protection systems (e.g. smoke exhaust systems, fire detection and alarm systems), firefighting equipment (e.g. fire hose reels, fire hydrants), occupant safety features (e.g. emergency lighting, exit signs) and specified other features: *Building Act 1975*, sch 2.

¹³⁹ Bill, cl 21; amending s 104D of the FES Act.

¹⁴⁰ Bill, cl 16; amending s 150G of the FES Act.

¹⁴¹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 120.

¹⁴² FES Act, s 104D.

¹⁴³ Bill, cl 21.

¹⁴⁴ Explanatory notes, p 24.

Committee comment

Given the potential for great harm if prescribed fire safety installations outside a building are not properly maintained, the committee is satisfied that the proposed penalties are proportionate to the offence and the proposed amendment has sufficient regard to the rights and liberties of individuals.

Human rights

The amendment proposed by the Bill to include a term of imprisonment as a penalty in s 104D of the FES Act raise issues regarding the right to liberty under the HRA.¹⁴⁵

The statement of compatibility states:

The purpose of the limitation is to protect occupants of a building by ensuring that the overall system of fire safety management for a building is maintained. The prescribed fire safety installations which form part of the fire management system protect occupants of the building by providing for evacuation during a fire and facilities to undertake firefighting operations and prevent the spread of fire.¹⁴⁶

There are no less restrictive and reasonable ways available to achieve the purpose of the Bill.¹⁴⁷

The limitation on the right is necessary to protect the safety of building occupants, which outweighs any harm caused by limiting the right to liberty.¹⁴⁸

Committee comment

The committee is satisfied that the proposed amendments are a justifiable limit to s 29 of the HRA.

2.3.3.2 Impersonating a rural fire brigade member

Section 150G of the FES Act makes it an offence to impersonate an authorised rescue officer, including a fire service officer and an SES member.¹⁴⁹

The Bill proposes to amend the provision to make it an offence to impersonate an RFB member.¹⁵⁰

The maximum penalty for the offence would be:

- 100 penalty units (\$14,375), or
- if the person pretends to be an RFB member during a state of fire emergency at a place to which the declaration of emergency applies, 250 penalty units (\$35,937.50) or one year imprisonment.¹⁵¹

The explanatory notes state that the amendment is being made for consistency:

Like FRS officers and SES members, RFB members perform functions under the FES Act ... and may exercise the powers of authorised fire officers in certain circumstances[.]¹⁵²

The explanatory notes justify the inclusion of an RFB member in the offence, stating:

There are serious risks to safety and to public confidence in the services provided by [Queensland Fire and Emergency Services] if a person pretends to be an FRS officer or a SES member. The higher penalty

¹⁴⁵ Statement of compatibility, p 16; HRA, s 29(3).

¹⁴⁶ Statement of compatibility, p 19.

¹⁴⁷ Statement of compatibility, p 19.

¹⁴⁸ Statement of compatibility, p 19.

¹⁴⁹ See FES Act, s 150G.

¹⁵⁰ Bill, cl 16; amending s 150G of the FES Act.

¹⁵¹ Bill, cl 16; amending s 150G of the FES Act.

¹⁵² Explanatory notes, p 16.

during a state of fire emergency reflects the seriousness of the situation, where the community must be able to reliably identify RFB members. Persons who impersonate RFB members raise equivalent risks to safety and public confidence as persons who impersonate FRS officers and SES members and it is therefore appropriate to apply consistent penalties.¹⁵³

Committee comment

Noting the justification provided in the explanatory notes, the committee is satisfied that the penalties in the proposed amendment are proportionate to the offence and the proposed amendment has sufficient regard to the rights and liberties of individuals.

The committee recognises the work undertaken by the Queensland Government to extend the offence of impersonation to include a member of the rural fire brigade, reflecting community expectations and enhancing integrity in frontline service delivery.

Human rights

As set out above, the inclusion of a term of imprisonment as a penalty in s 150G of the FES Act in the proposed amendments raises issues regarding the right to liberty under the HRA.¹⁵⁴ The proposed amendment will also engage the right of freedom of expression as it limits a person's dress, speech and conduct.¹⁵⁵

The statement of compatibility states:

The purpose of the limitation is to maintain public trust, confidence and respect in RFBs by ensuring that those who hold themselves out as being members of an RFB are properly trained and screened to safely and effectively carry out their functions to protect persons and properties. This is consistent with a free and democratic society, based on human dignity, equality and freedom.¹⁵⁶

There may be less restrictive ways available to achieve the purpose of the Bill.¹⁵⁷ However, the view of the Queensland Government is that:

... this would not provide a sufficient deterrent from committing the offence during the heightened risk of a state of fire emergency when members of the public may be more vulnerable to exploitation by a person pretending to occupy a position of trust in the community.¹⁵⁸

The limitation on the right is necessary to ensure public confidence in RFB members.¹⁵⁹

Committee comment

The committee is of the view that the proposed amendments to include a term of imprisonment as a penalty are justifiable limits to both ss 21 and 29 of the HRA.

The committee acknowledges the Queensland Government's ongoing commitment to ensure that Queensland Fire and Emergency Services continue to deliver services efficiently and effectively in the interest of community safety, by removing unnecessary operational and administrative restrictions.

¹⁵³ Explanatory notes, p 25.

¹⁵⁴ Statement of compatibility, p 16; HRA, s 29(3).

¹⁵⁵ Statement of compatibility, p 20; HRA, s 21.

¹⁵⁶ Statement of compatibility, p 21.

¹⁵⁷ Statement of compatibility, p 21.

¹⁵⁸ Statement of compatibility, p 21.

¹⁵⁹ Statement of compatibility, p 21.

2.4 Compliance with fundamental legislative principles and human rights

The committee has examined the Bill and considered the application of fundamental legislative principles contained in Part 2 of the LSA to the Bill. Where relevant, matters arising of fundamental legislative principles are discussed in sections 2.1-2.3 of this report above.

Committee comment

The committee is satisfied that any restrictions on individuals' rights and liberties proposed by the Bill are justified and reasonable in the circumstances.

Part 4 of the LSA 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 and examined for compliance by the committee.

Committee comment

Explanatory notes were tabled with the introduction of the Bill. The committee is satisfied that the explanatory notes contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee has examined the Bill for human rights compatibility.

Committee comment

The committee has examined the Bill for human rights compatibility and finds the Bill to be compatible with human rights.

The HRA requires that a statement of compatibility must be tabled for a Bill.¹⁶⁰ The committee has examined the statement of compatibility tabled with the introduction of the Bill.

Committee comment

The committee finds the statement of compatibility tabled with the introduction of the Bill contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

¹⁶⁰ HRA, s 38.

Appendix A – Abbreviations

| | |
|-----------|---|
| ALRC | Australian Law Reform Commission |
| ATSILS | Aboriginal and Torres Strait Islander Legal Service (Qld) |
| Bill | Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 |
| CCC | Crime and Corruption Commission |
| committee | Community Support and Services Committee |
| DM Act | <i>Disaster Management Act 2003</i> |
| FES Act | <i>Fire and Emergency Services Act 1990</i> |
| FRS | Fire and Rescue Service |
| HRA | <i>Human Rights Act 2019</i> |
| LSA | <i>Legislative Standards Act 1992</i> |
| OQPC | Office of the Queensland Parliamentary Counsel |
| PPRA | <i>Police Powers and Responsibilities Act 2000</i> |
| PSAA | <i>Police Service Administration Act 1990</i> |
| PTA | Permit to acquire |
| QFES | Queensland Fire and Emergency Services |
| QPS | Queensland Police Service |
| QPU | Queensland Police Union of Employees |
| RFB | Rural fire brigade |
| RPAS | Remotely piloted aircraft system |
| SES | State Emergency Service |
| WA | <i>Weapons Act 1990</i> |

Appendix B – Submitters

| Submission No. | Submitter |
|-----------------------|---|
| 001 | Crime and Corruption Commission |
| 002 | Aboriginal and Torres Strait Islander Legal Service (Qld) |
| 003 | Queensland Police Union of Employees |

Appendix C – Officials at public departmental briefing

14 November 2022

Queensland Police Service

- Acting Deputy Commissioner Shane Chelepy, Strategy and Corporate Services
- Superintendent David French, Specialist Services Group
- Senior Sergeant John Henderson, Legislation Branch
- Senior Sergeant Ian Carroll, Legislation Branch

Queensland Fire and Emergency Services

- Ms Jane Houston, Acting Executive Director, Strategy Directorate
- Ms Carly Osborne, Acting Director, Strategic Policy and Legislation
- Chief Superintendent Tony Johnstone, Rural Fire Service
- Acting Superintendent Mark Halverson, Executive Manager, State Fire Safety Section

Appendix D – Witnesses at public hearing

5 December 2022

Crime and Corruption Commission

- Mr David Caughlin, Executive Director, Legal, Risk and Compliance

Queensland Police Union of Employees

- Mr Luke Moore, Project Officer
- Mr Shane Prior, Acting President

Aboriginal and Torres Strait Islander Legal Service

- Mrs Pree Sharma, Prevention, Early Intervention and Community Legal Education Officer
- Mr Lewis Shillito, Director, Criminal Law