Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

www.atsils.org.au

Level 5, 183 North Quay Brisbane Qld 4000
PO Box 13035, George Street Brisbane Qld 4003
T: 07 3025 3888 | F: 07 3025 3800
Freecall: 1800 012 255
ABN: 116 314 562

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Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane QLD 4000
By email: cssc@parliament.qld.gov.au

Dear Secretary,

RE: SUBMISSION ON THE POLICE SERVICE ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL (NO. 2) 2022

Thank you for the opportunity to provide comments on the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 (**Bill**) which includes proposed amendments to the *Disaster Management Act 2003* (Qld) (**DM Act**), *Fire and Emergency Services Act 1990* (Qld) (**FES Act**), *Police Powers and Responsibilities Act 2000* (Qld) (**PPR Act**), *Police Service Administration Act 1990* (Qld) (**PSA Act**) and its associated regulation, and the *Weapons Act 1990* (Qld). Whilst many of the amendments in this Bill are administrative in nature, there are some substantive amendments which we have considered to be worthy of comment for various reasons as outlined below.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**), is a community- based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland.

Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by nearly five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Amendments to the FES Act

Clause 8 – Replacement of s 86B (Publicising local fire ban)

Proposed new section 86B appears to favour publication of a local fire ban on the department's website, rather than by other broadcast methods. We are concerned about how this will work in regional and remote communities where internet may be intermittent if not non-existent.

As stated in the Final Report of the Royal Commission into Natural Disaster Arrangements delivered in 2020:

> *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.* [1]

In our view, section 86B should contain 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.

Clause 9 – Amendment of section 86C (Cancelling a local fire ban)

Our concerns regarding the proposed section 86B also apply to the amendments proposed to section 86C. In our view, section 86C should contain an express obligation for cancellation of 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.

Clause 10 – Amendment of section 86D (Period of a local fire ban)

If the Queensland government is minded to make adjustments to the drafting of sections 86B and 86C in the manner outlined above, then incidental amendments will need to be made to the proposed revised version of section 86D.

Clause 19 – Amendment of section 55 (Powers of authorised fire officer for preventative or investigative purposes)

[1] Royal Commission into National Natural Disaster Arrangements (Final Report, 28 October 2020) 13.119.

Section 55 of the FES Act provides that at any time, an authorised fire officer may enter any premises or open (using such force as is reasonably necessary) any receptacle for certain stated purposes including to prevent, or reduce the likelihood of, the occurrence of a fire or a hazardous materials emergency.

Clause 19 of the Bill proposes to amend section 55 to add proposed subsection (4) which states as follows (emphasis added):

> *(4) An authorised fire officer's powers to enter premises or open a receptacle under subsection (1) may be exercised by the officer, or an appropriately qualified person acting under the supervision of the officer, using a device remotely controlled by the officer or person.*

The powers contained under section 55 of the FES Act are police-like powers. To ensure accountability and responsibility for lawful use of such powers, only authorised fire officers (per the statutory framework contained in the FES Act) should be able to exercise them.

While we can understand the policy reasons for extending such powers to senior fire fighters, in our view, such officers should be the equivalent of sworn special constables and the Crime and Corruption Committee should have explicit supervisory powers over the exercise of those powers including the ability to accept complaints regarding misuse of the same.

In our view, there are no circumstances that would justify an ambulance officer or a Special Emergency Services (SES) volunteer, for example, to be able to exercise those police-like powers.

Accordingly, we do not support this proposed amendment as it is currently drafted.

Amendments to the PSA Act

Clause 32 – Omission of section 5AA.8 (Requirements for disclosure)

Under sections 5AA.6 and 5AA.7, a person who is engaged, or a person who is seeking to be engaged, by the Queensland Police Service (**QPS**) has an obligation to disclose to the Commissioner relevant information (including changes to information) which may affect their suitability to be engaged by QPS.

Section 5AA.8 provides that provision of this information must be made in the "approved form" and, notably, states in subsection (2) that approved form must make provision for the disclosure of the following relevant information:

- the existence of a conviction or charge
- when an offence was committed or alleged to have been committed
- details of an offence or an alleged offence
- in relation to a conviction, whether or not the conviction was recorded and other details of the sentence
- disciplinary action under a public sector disciplinary law involving termination, demotion, transfer, reduction of remuneration, etc.

The Bill seeks to omit section 5AA.8 of the PSA Act entirely and in its stead amend section 5AA.6 and 5AA.7 such that disclosure can be done "in the way approved by the commissioner".

The explanatory notes for the Bill state that the reason for this proposed amendment is as follows:

> *Requiring information be provided only through an 'approved form' is limiting. It does not allow the information to be easily shared through other means of communication. The Bill will address this issue by allowing the disclosure of information to occur in a manner approved by the Commissioner. This will allow the Commissioner to allow other more efficient methods of information sharing to be employed such as email etc.*

We assume that, in the absence of having the process relating to what needs to be disclosed (and how) sit in the legislation itself, the intention is for the process to be contained in a QPS policy/procedure which sits behind this legislation.

Following the recent Independent Commission of Inquiry into the Queensland Police Service (**QPS Inquiry**), it is clear that public confidence in QPS as an agency needs to be addressed as a priority. Matters relating to suitability of a person to be engaged by QPS or which relate to the ongoing suitability of a person that is engaged by QPS, go to the heart of public confidence QPS's ability to hire the right people and ensure that those people remain suitable for the duration of their employment with QPS.

In our view, the proposed amendments remove a level of transparency and rigour in the suitability matters disclosure process. We are concerned that they remove the formality from the current disclosure process but, also fundamentally, that the list of matters which must be disclosed as contained in section 5AA.8 will be deleted from the legislation entirely and instead be replaced with vague language which states that disclosure can be undertaken "in the way approved by the Commissioner".

Accordingly, we are not supportive of the proposed amendments to section 5AA.6, 5AA.7 and 5AA.8. If the Queensland government, notwithstanding our concerns, intends to amend these provisions, we recommend that the list of matters which is currently contained in section 5AA.8 be expressly incorporated into sections 5AA.6 and 5AA.7.

Clause 38 - Amendment of section 8.3 (Unfitness for duty on medical grounds)

The Bill seeks to make amendments which, when a police officer is deemed by the Commissioner to be unfit for duty on medical grounds, automatically makes them a public service employee under the *Public Service Act 2008*.

The reasons for this are as follows per the explanatory notes:

> *Currently, the PSAA allows the Commissioner to appoint a police officer who cannot continue to perform their duties on medical grounds to a position as a staff member. These members, as distinct from other staff members in the QPS, are employed under the PSAA rather than the Public Service Act 2008. As these staff members are no longer considered to be police officers, they are*

not subject to the disciplinary proceedings outlined in the PSAA. Similarly, these staff members are not subject to the disciplinary proceedings under the Public Service Act 2008. Historically, disciplinary issues with these staff members have rarely arisen. However, the process to deal with these issues is inefficient and cumbersome. The Bill will address this by providing that police officers medically retired to staff member positions will be employed under the Public Service Act 2008.

The recent QPS Inquiry revealed damning evidence of systemic failures relating to internal disciplining of police officers even for behaviours that were exceptionally abhorrent. We are concerned that 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.

Noting the important public policy considerations behind ensuring that police officers are held to a high standard of conduct and the importance of an effective and transparent process relating to disciplinary matters of individuals engaged by the QPS, it is our view that:

- individuals that are hired under the PSA Act 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, i.e., under the PSA Act; and
- the Crime and Corruption Commission be given explicit powers over disciplinary matters concerning any such individual for the time they were appointed under the PSA Act and for the time they are appointed under the *Public Service Act 2008*.

CONCLUSION

The recent QPS Inquiry has revealed damning evidence of systemic cultural issues within its ranks including evidence of police officers perpetrating racism against, or holding racist views with respect to, Aboriginal and Torres Strait Islander peoples (amongst other ethnic minority groups). As has been identified in the report of the QPS Inquiry, *A Call for Change* (2022), such cultural issues have contributed to the overrepresentation of Aboriginal and Torres Strait Islander people in prison. In the domestic and family violence context, it was identified that Aboriginal and Torres Strait Islander peoples have been found to be over-policed as police-assessed respondents and under-policed as victim-survivors. 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 even farther away from the transparency and reform that it needs to regain public confidence in its operations. In this submission, we have sought to outline our reasons as to why those proposed amendments are not supported. We also have outlined some of the proposed amendments to the FES Act which we do not support for the reasons outlined in this submission.

We thank you for the opportunity to provide feedback on this Bill.

Yours faithfully,

Shane Duffy

Chief Executive Officer