

Emergency Services Legislation Amendment Bill 2008

Explanatory Notes

Introduction

The purpose of the *Emergency Services Legislation Amendment Bill 2008* (the Bill) is to make various amendments to the *Ambulance Service Act 1991* and the *Fire and Rescue Service Act 1990*.

The amendments to the *Ambulance Service Act 1991* are to bring into effect the recommendations of the *Queensland Ambulance Service Audit Report*, deal with inappropriate use of resources through a framework for addressing false calls, and clarify confidentiality requirements for Ambulance employees.

The amendments to the *Fire and Rescue Service Act 1990* are to abolish the Rural Fire Advisory Council and to deal with false calls in a consistent manner by reflecting the framework for addressing false calls established in the *Ambulance Service Act 1991*.

The Bill also provides for other minor amendments to be made to both Acts.

Short Title of the Bill

The short title of the Bill is the *Emergency Services Legislation Amendment Bill 2008*.

Policy Objectives of the Bill and how they will be achieved

The policy objectives of the Bill are as follows:

- To give effect to recommendations from the *Queensland Ambulance Service Audit Report* by providing legislative support for the expanded scope of role for paramedics to provide treatment or alternative referral paths where an ambulance transport to a medical facility is not necessary (Recommendation 2.1, dot points 2 and 3). This will be

achieved by amending the definition of ambulance service and adding referral functions into the functions of the service.

- To clearly articulate the discretionary nature of Queensland Ambulance Service (QAS) community service education functions in accordance with Recommendation 3.3 (paragraph 1) of the *Queensland Ambulance Service Audit Report*. This recommendation reflects the focus on ensuring resources are utilised for front line service delivery.
- To enhance the enforcement framework to deter false calls (including enabling infringement notices for false calls) by amending the false call provisions to make them amenable to infringement notices, increasing the penalty in the *Ambulance Service Act 1991* to align with the penalty provided for in the *Fire and Rescue Service Act 1990*, and inserting provision for investigation officers with appropriate investigative powers. These amendments are aimed at addressing instances in which ambulance and fire resources are unnecessarily diverted from genuine life saving work.
- To clarify confidentiality requirements for ambulance employees and third parties including providing for disclosure in a range of appropriate circumstances to improve operational efficiency and support funding arrangements. These amendments provide enhanced certainty for paramedics and communications staff in undertaking their usual roles and clarity regarding the protection of confidential information.
- To abolish the Rural Fire Advisory Council (RFAC) and transfer the functions of RFAC to the Emergency Services Advisory Council (ESAC). Combining the functions of the councils will reflect the integrated service delivered by the Department of Emergency Services (DES) and reduce duplication of administrative support. The role of ESAC in providing advice on disaster management matters will also be specified. This function is currently provided for in general terms and the amendment merely seeks to make this specific.
- To remove the requirement for the Commissioners, QAS and Queensland Fire and Rescue Service (QFRS) to prepare an annual strategic plan. DES prepares a strategic plan, in accordance with the *Financial Management Standard 1997*, which encompasses all elements of the department. Individual strategic plans for the QAS

and QFRS duplicate the departmental plan in many respects and represent an unnecessary use of resources.

Alternative method of achieving the policy objectives

There are no other viable alternatives that would achieve the Government's policy objectives.

Estimated cost for Government implementation

There are no additional anticipated financial costs for Government arising from the amendments.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in section 23 of the *Legislative Standards Act 1992*.

Consultation

Government agencies consulted support the proposed amendments with the exceptions and provisos outlined below.

The Department of Justice (JAG) notes that the proposed false call offences retain some elements of subjectivity and are concerned to ensure that clear and transparent guidelines are developed to assist officers in determining whether to issue an infringement notice. The QAS and QFRS agree that such guidelines will be necessary and undertake to include JAG in the development process.

The Queensland Police Service (QPS) also notes the subjectivity of the offence provisions and supports the development of guidelines for administering officers. QPS have also sought to be informed on an ongoing basis of the prosecution of false calls in order to identify serial false callers across all departments and this proposal is supported.

Queensland Health expressed concern about specifically legislating for disclosures to stated government departments, under clause 50J. In Queensland Health's experience, the mechanism established in clause 50L, provides a more robust, accountable and flexible framework for enabling the disclosure of confidential health information. Clause 50L requires an agreement to be prescribed between the entities. Queensland Health is

satisfied that other issues raised such as the need for annual reporting of public interest disclosures have been appropriately addressed.

The QAS works closely with the QPS, both on scene and in relation to matters in which both services have an interest. The inclusion of clause 50J reflects the QAS commitment to timely information sharing that is appropriate in the circumstances and is supported by the Office of the Queensland Parliamentary Counsel.

Disability Services Queensland is concerned that the false call provisions have the potential to impact on those people with intellectual or psychological impairments who do not have an understanding of the consequences of their actions. It has been agreed that the guidelines for administering officers will specify that such impairments will be a factor to be taken into consideration when determining if an infringement notice is to be issued.

The Environmental Protection Agency has provided feedback in regard to the requirement for a Climate Change Impact Statement to be undertaken.

ESAC and RFAC support the abolition of RFAC and the transfer of functions to ESAC.

The Liquor Hospitality and Miscellaneous Union supports the proposed legislative amendments. The United Firefighters' Union was provided details of proposed changes and no objections have been raised to date.

Notes on Clauses

Part 1 Preliminary

Clause 1 states the short title as the *Emergency Services Legislation Amendment Act 2008*.

Clause 2 states that the Act commences on a day to be fixed by proclamation.

Part 2 **Amendment of Ambulance Service Act 1991**

Clause 3 states that Part 2 amends the *Ambulance Service Act 1991*.

Clause 4 amends section 3D. At 3D(h) the function of referring a person to another health service is inserted. This provides legislative support for the recommendation of the *Queensland Ambulance Service Audit Report* for the expanded scope of role for paramedics to provide treatment or alternative referral paths where an ambulance transport to a medical facility is not necessary (Recommendation 2.1, dot points 2 and 3).

At 3D(i) the existing function of the service to provide community and workplace education in first aid, cardiopulmonary resuscitation and other related matters is limited by the insertion of the proviso that it is only to occur to the extent that the service's personnel and equipment can reasonably be deployed or used for the purpose. This reflects the focus on ensuring resources are utilised for front line service delivery and is in accordance with Recommendation 3.3 (paragraph 1) of the *Queensland Ambulance Service Audit Report*.

Clause 5 amends the role of the Commissioner to omit the requirement to prepare an annual strategic plan incorporating performance targets approved by the Minister. DES prepares a strategic plan, in accordance with the *Financial Management Standard 1997*, which encompasses all elements of the department. An individual strategic plan for the QAS duplicates the departmental plan in many respects and represents an unnecessary use of resources.

Clause 6 provides for the insertion of a new Part 5A Investigation Officers. This part relates to investigations regarding offences against the false calls provision of the Act and offences associated with the investigation of false calls. It includes the establishment of the role of investigation officer, powers of investigation officers and offences.

Part 5A Investigation Officers

Division 1 Investigation officers

41A specifies who the Commissioner may appoint as an investigation officer. It is intended that the Commissioner have the discretion to utilise persons who are either employed by the QAS or undertake functions for the QAS in some other capacity, as investigation officers. The Commissioner may also appoint other persons as prescribed by a regulation.

41B provides that an investigation officer may be appointed under any conditions stated in the instrument of appointment, a signed notice to the officer or a regulation.

41C provides for the ways in which an investigation officer may cease to hold office including that their term of office comes to an end. The ways are not limited by the examples provided in the section. Other conditions of office may be, for example, that an officer ceases to hold office as an investigation officer when their employment with the QAS ceases.

41D limits the functions of an investigation officer to investigating offences against sections 44 to 45C and 47. It is intended that investigation officers under this part will only investigate false call offences and associated matters and not undertake general investigative duties.

41E provides that an identity card must be issued to each investigation officer and specifies the form of the identity card.

41F specifies the circumstances in which the investigation officer must display or produce their identity card.

41G provides for the return of identity cards within 21 days after ceasing to be an investigation officer. Failure to return a card within the required timeframe incurs a penalty of 10 penalty units.

Division 2 Powers of Investigation Officers

41H provides for the circumstances in which investigation officers may enter places. Entry must be effected in accordance with this section prior to exercising powers under section 41J.

41I specifies the procedure to be undertaken in seeking the consent of a person to enter a place.

41J provides for the powers that may be exercised by an investigation officer after consent is given to enter a place or entry is otherwise authorised. These powers include copying documents (including electronic documents and video footage), requiring reasonable help to copy documents and requiring answers to questions. The powers must be exercised in relation to monitoring and enforcing compliance with sections 44 to 45C and 47 (false call related sections).

41K provides for the circumstances in which investigation officers may require persons to state their name and residential address. The investigation officer must warn the person that it is an offence to fail to state their name or address unless they have a reasonable excuse.

Division 3 Protection from Liability

41L provides protection from liability for investigation officers undertaking their role. This protection only applies to investigation officers carrying out their role in accordance with the Act, in good faith and without negligence.

Clause 7 provides for the insertion of new sections 44 to 45C. These sections describe offences related to the investigation of false calls.

44 provides that a person must give reasonable help to an investigation officer in copying a document under section 41J unless they have a reasonable excuse. Failure to do so is an offence and a maximum penalty of 10 penalty units will apply.

45 provides that a person must answer questions from an investigation officer unless they have a reasonable excuse. Failure to do so is an offence and a maximum penalty of 10 penalty units will apply.

45A provides that where a person fails to give their name and address, when appropriately requested and without reasonable excuse, they commit an offence and a maximum penalty of ten penalty units will apply. No offence is deemed to have been committed under this section if it is subsequently proved that the person did not commit the offence they were suspected of committing.

45B provides that a person must not state anything to an investigation officer the person knows is false or misleading in a material particular. To do so is an offence and a maximum penalty of 10 penalty units will apply.

45C provides that a person must not give an investigation officer a document that is false or misleading unless they inform the investigation officer in what way the document is false or misleading and, if it is available to them, gives the correct information. To do so is an offence and a maximum penalty of 10 penalty units will apply.

Clause 8 amends the false calls section of the Act (section 47).

47 is now framed in a way that makes it amenable to infringement notices by removing the requirement to know the offender's state of mind (previously "falsely and with knowledge of the falsity").

The provisions now specify that a person must not request that a service be provided where one is not required. An element of subjectivity remains in the offence provision in that, for a call to be valid, a patient must be sick or injured and require an ambulance service. A subjective determination of whether an ambulance was required must be made. Additionally, it may be a matter of debate whether a person is actually sick.

In order to overcome this issue, it is proposed to develop guidelines for administering officers that will outline that the false call provisions are aimed only at false calls. There is no intention to use these provisions against people who have a genuine belief that the ambulance service is needed, even if that belief is not borne out by the actual severity of the illness or injury.

The guidelines will also state that, in making a decision about whether to issue an infringement notice, the particular circumstances of people with an intellectual or psychological impairment should be taken into consideration. This consideration would include whether there are other appropriate ways to address false calls from people who officers believe may have such an impairment.

The maximum penalty has been increased to 100 penalty units or 1 year's imprisonment to reflect the seriousness with which this offence is viewed and to bring it into alignment with the similar penalty existing in the *Fire and Rescue Service Act 1990*.

At (2) the section specifies that a request under the section may be made orally, in writing or by conduct. This acknowledges that, in many cases, callers do not specifically ask for a service to be provided but rather

provide information and behave in such a manner that would lead a reasonable person to believe that a patient requires an ambulance service.

At (3) the section provides that, before an infringement notice can be issued, any lawful excuse of the alleged offender must be investigated and the investigation officer must be satisfied that the person does not have a lawful excuse. This provides protection for genuine but mistaken callers.

The order for payment of expenses previously part of this section has been inserted at 50C in accordance with contemporary drafting practice.

Clause 9 replaces section 49 – confidentiality. This section is substantially the same as the existing provision however the exemptions previously contained within section 49 have been broadened and are now specified in separate sections under Part 7. Additionally, the term “designated officer” is included to encompass the chief executive, honorary ambulance officers and agents of the service in addition to service officers. This ensures that all relevant officers who may have a need to know and disclose confidential information are included. A “former designated officer” is also defined.

Section 49A has also been included. This section specifies that a person who has confidential information disclosed to them by a designated officer must not disclose that information to anyone else unless it is to the person to whom the confidential information relates, for a lawful purpose for which the information was originally disclosed, required or allowed under an agreement of a type specified in Section 50L or authorised under an Act or another law.

Clause 10 moves the provision regarding orders for payment if guilty of a false call from section 47 to a more appropriate location at section 50C.

Clause 11 inserts a new Part 7, Division 1 containing confidentiality exemptions and other matters.

Division 1 Confidentiality

50D contains the definitions related to confidentiality exemptions. “Confidential information” has been amended to include information acquired because of being a designated officer. This was previously limited to service officers and now also includes the chief executive, an honorary ambulance officer or an agent of the service.

“Health professional” has been defined to encompass those persons, appropriately registered or established under an Act, in a health related field to whom designated officers may reasonably be required to provide confidential information in the course of their duties.

50E restates the exemption that was previously at 49(2)(a) in relation to disclosures required or permitted by an Act or another law.

50F provides that a disclosure is authorised if the person to whom the confidential information relates consents to the disclosure. Where the person does not have the capacity to consent (for example a very young child) an authorised person can consent on their behalf.

50G extends the disclosure that would normally be provided to spouses and next of kin to a wider range of family, close friends and carers on the basis that they can reasonably be determined to have a sufficient personal interest in the health and welfare of the person to whom the confidential information relates. This reflects the variety of caring relationships that exist in today’s society. The designated officer retains discretion over whether the person’s interest is sufficient to warrant disclosure. Additionally, the person to whom the confidential information relates may request that the information not be released, in which case the exemption does not apply.

50H clarifies the range of health professionals to whom information can be provided for the care or treatment of the person to whom the information relates. The intention is for the full range of doctors, nursing staff and allied health professionals to be included. Hospital admissions staff have also been added to this section to reflect the reality of ambulance operations. It is intended to ensure that disclosures can be made at the point of handing the care of a patient over to another person. This is most commonly between officers of the service, to another service or to staff within a hospital or other medical facility.

50I allows for very broad, general information about the condition of a person to be released. The person to whom the confidential information relates may request that this information not be released, in which case the exemption does not apply.

50J provides for disclosures to police or corrective services officers. (1)(a) provides for the range of circumstances in which paramedics and police officers share information both on scene and later, in relation to patients who may have been either victims or witnesses to crimes. The QAS works closely with the Queensland Police Service and this amendment reflects

the QAS commitment to timely information sharing that is appropriate in the circumstances.

(1)(b) addresses coronial recommendations related to the provision of information to police in circumstances where a patient does not require transportation to hospital but where they may require observation subsequent to being taken into the custody of police.

(1)(c) provides a similar exemption for disclosures related to patients who are in custody in some form of correctional facility or otherwise in the custody of the chief executive (corrections).

50K encompasses disclosures made for the purpose of administering, monitoring or enforcing compliance with the *Ambulance Service Act 1991* and for proceedings in courts or tribunals.

Under the terms of the Act, the Commissioner may issue codes of practice regarding a broad range of service related matters. Failure to comply with a code of practice is grounds for disciplinary action. **50K(c)** provides an exemption for disclosures made in the course of investigating or determining such a failure to comply. It is intended that the exemption be available to disclosures made to any entity that has been appropriately authorised by the chief executive, Commissioner or delegate, including, but not limited to, internal bodies such as the Ethical Standards Unit and independent consultants.

50L covers disclosures that may be made to facilitate the operation of agreements between government entities, both State and Commonwealth. Such agreements include those established for funding purposes. Eligible agreements must be prescribed under a regulation.

50M provides an exemption for any disclosures made to the Health Quality and Complaints Commission in specified circumstances. This amendment directly reflects the exemption provided under the *Health Services Act 1991*.

50N continues the existing exemption for disclosures to the Australian Red Cross Society.

50O covers those disclosures routinely made by designated officers in submissions to, or at the request of the Coroner. It is intended that the exemption extend to material provided to anyone who requires the information to perform a function under the *Coroners Act 2003*. This amendment directly reflects the exemption provided under the *Health Services Act 1991*.

50P encompasses those circumstances in which there is an overriding public interest or where the life, health or safety of a person would be at risk if the disclosure was not made. Such disclosures may only be made with the written approval of the chief executive. Only the chief executive may give an approval and the function may not be delegated. As an additional safeguard and to ensure due regard is given to the seriousness of the decision, the chief executive must report those instances in which such approval has been given.

The section also continues the existing exemption for approved research however removing the reference to identification of individual patients which was meaningless in the context of the confidentiality requirement (ie only relates to identification of individuals). The requirement for chief executive approval of disclosures regarding research has been added as an additional safeguard to ensure disclosures are made to appropriate research bodies and that agreements can be put in place for the treatment of disclosed information.

50Q provides an exemption for those disclosures that are necessary or incidental to otherwise permitted disclosures. It is intended to cover primarily those matters that are of a routine or administrative nature. This amendment reflects the exemption provided under the *Health Services Act 1991*.

50R ensures that the relevant exemptions remain in place after a person has ceased to be a designated officer. Under section 49 the duty of confidentiality continues indefinitely. This section provides that, for example, persons who are no longer employed within the service may continue to provide evidence to a court, tribunal or disciplinary hearing.

Division 2 Other matters

Clause 12 removes the reference to the service's annual strategic plan in the functions of ESAC. DES prepares a strategic plan, in accordance with the *Financial Management Standard 1997*, which encompasses all elements of the department. Individual strategic plans for the QAS and QFRS duplicate the departmental plan in many respects and represent an unnecessary use of resources. This Bill removes the requirement to prepare a strategic plan and, as a consequence, alters the functions of ESAC that refer to the content of the plan. Advice in relation to

performance targets more generally may still be provided under the remaining expressed functions of ESAC.

Clause 13 amends the dictionary to include a definition of a “health service” and an “honorary ambulance officer” referred to in the preceding clauses.

This clause also amends the definition of “ambulance service” to remove the term “prehospital”. This amendment is to give effect to recommendation 2.1 of the *Queensland Ambulance Service Audit Report* regarding facilitation of an expanded scope of role for paramedics to provide treatment or alternative referral paths where an ambulance transport to a medical facility is not necessary. Removal of prehospital clarifies that services provided do not necessarily have to result in transport to hospital.

Part 3 **Amendment of Fire and Rescue Service Act 1990**

Clause 14 states that Part 3 amends the *Fire and Rescue Service Act 1990*.

Clause 15 amends the role of the Commissioner to omit the requirement to prepare an annual strategic plan incorporating performance targets approved by the Minister. DES prepares a strategic plan, in accordance with the *Financial Management Standard 1997*, which encompasses all elements of the department. An individual strategic plan for the QFRS duplicates the departmental plan in many respects and represents an unnecessary use of resources.

Clause 16 amends the functions of ESAC to encompass the functions of RFAC which is abolished by this Bill.

The public sector reforms announced by the Premier have necessitated a critical focus on the effectiveness of advisory councils. DES supports both ESAC and RFAC.

The department provides integrated ambulance, fire and emergency management services throughout Queensland. A single council with key stakeholder representation will provide a coordinated approach to emergency services advisory processes consistent with the role of the

department and will also remove the duplication of administrative support provided to the councils.

The revised functions of ESAC include the provision of advice regarding the functions, capacity and capability of the department in supporting disaster mitigation and response activity. This function is currently provided for in general terms and the amendment merely seeks to make this specific.

At (2) the clause omits section 35(2) which previously prevented ESAC from advising on rural fire matters.

(3) renumbers 35(3) as 35(2).

Clause 17 removes part 5 which refers to the establishment and functions of RFAC.

Clause 18 is a drafting amendment that adjusts the format of the section to reflect current practice.

Clause 19 is a drafting amendment to align the part headings.

Clause 20 inserts a new part 6A which establishes the role of investigation officers for false calls, details the powers of those officers and specifies the offences related to the part. The sections within this part reflect those inserted into the *Ambulance Service Act 1991*.

Part 6A Powers of investigation officers

Division 1 Investigation Officers

60B specifies who the Commissioner may appoint as an investigation officer. It is intended that the Commissioner have the discretion to utilise persons who are either employed by the QFRS or undertake functions for the QFRS in some other capacity, as investigation officers. The Commissioner may also appoint other persons as prescribed by a regulation.

60C provides that an investigation officer may be appointed under any conditions stated in the instrument of appointment, a signed notice to the officer or a regulation.

60D provides for the ways in which an investigation officer may cease to hold office including that their term of office comes to an end. The ways are not limited by the examples provided in the section. Other conditions of office may be, for example, that an officer ceases to hold office as an investigation officer when their employment with the QFRS ceases.

60E limits the functions of an investigation officer to investigating offences against this part and section 146A. It is intended that investigation officers under this part will only investigate false call offences and associated matters and not undertake general investigative duties.

60F provides that an identity card must be issued to each investigation officer and specifies the form of the identity card.

60G specifies the circumstances in which the investigation officer must display or produce their identity card.

60H provides for the return of identity cards within 21 days after ceasing to be an investigation officer. Failure to return a card within the required timeframe incurs a penalty of 10 penalty units.

Division 2 Powers of investigation officers

60I provides for the circumstances in which investigation officers may enter places. Entry must be effected in accordance with this section prior to exercising powers under section 60K.

60J specifies the procedure to be undertaken in seeking the consent of a person to enter a place.

60K provides for the powers that may be exercised by an investigation officer after consent is given to enter a place or entry is otherwise authorised. These powers include copying documents (including electronic documents and video footage), requiring reasonable help to copy documents and requiring answers to questions. The powers must be exercised in relation monitoring and enforcing compliance with this part and section 146A (false call related sections).

60L provides that a person must give reasonable help to an investigation officer in copying a document under section 60K unless they have a reasonable excuse. Failure to do so is an offence and a maximum penalty of 10 penalty units will apply.

60M provides that a person must answer questions from an investigation officer unless they have a reasonable excuse. Failure to do so is an offence and a maximum penalty of 10 penalty units will apply.

60N provides for the circumstances in which investigation officers may require persons to state their name and residential address. The investigation officer must warn the person that it is an offence to fail to state their name or address unless they have a reasonable excuse.

60O provides that where a person fails to give their name and address, when appropriately requested and without reasonable excuse, they commit an offence and a maximum penalty of ten penalty units will apply. No offence is deemed to have been committed under this section if it is subsequently proved that the person did not commit the offence they were suspected of committing.

60P provides that a person must not state anything to an investigation officer the person knows is false or misleading in a material particular. To do so is an offence and a maximum penalty of 10 penalty units will apply.

60Q provides that a person must not give an investigation officer a document that is false or misleading unless they inform the investigation

officer in what way the document is false or misleading and, if it is available to them, gives the correct information. To do so is an offence and a maximum penalty of 10 penalty units will apply.

Clause 21 inserts a new section 146A that establishes a false call offence in a similar vein to that established under the *Ambulance Service Act 1991*. The clause makes requesting a fire and rescue service when one is not required an offence. This includes requests for attendance at non fire related incidents such as road crashes, entrapments and hazardous materials responses where no fire and rescue service is required.

The clause also retains the existing offence of giving false alarm of a fire (to encompass, for example, those circumstances in which a person may falsely raise the alarm of a fire, causing community concern, without requesting the response of the service).

146A is now framed in a way that makes it amenable to infringement notices.

Existing penalties have been retained.

At (2) the section specifies that a request under the section may be made orally, in writing or by conduct. This acknowledges that, in many cases, callers do not specifically ask for a service to be provided but rather provide information and behave in such a manner that would lead a reasonable person to believe that a fire and rescue service is required.

At (3) the section provides that, before an infringement notice can be issued, any lawful excuse of the alleged offender must be investigated and the investigation officer must be satisfied that the person does not have a lawful excuse. This provides protection for genuine but mistaken callers.

Clause 22 removes the offence of wilfully giving a false alarm of a fire and the related penalties that are now included under section 146A.

Clause 23 inserts a new section 150 that provides for orders for payment of expenses to be made by the court if a person is convicted of an offence against section 146A. This reflects the similar provision already in existence in the *Ambulance Service Act 1991*.

Clause 24 amends the dictionary to remove the reference to RFAC.