Police Service Administration and Other Legislation Amendment Bill 2021

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services make this statement of compatibility with respect to the Police Service Administration and Other Legislation Amendment Bill 2021.

In my opinion, the Police Service Administration and Other Legislation Amendment Bill 2021 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Providing for the safety and security of persons employed within or attending state buildings is a legitimate government concern and responsibility. The Queensland Government is obliged to implement appropriate security measures to reduce potential threats to personal safety in state buildings.

Government buildings, and the staff that use them, face unique security risks. In addition to customary security concerns, the National Terrorism Threat Level is currently 'probable' and is likely to remain at this level for the foreseeable future. This level indicates that Australian security agencies have assessed that individuals or groups continue to possess the intent and capability to conduct a terrorist attack in Australia. This threat is elevated for governments or authorities, in particular the military, police and security agencies, as appeals for symbolic attacks have been made against these agencies.

Across Australia, common measures have been adopted to address the security risks associated with government buildings. These measures include authorising the:

- screening of a person entering or in the protected area either by electronic screening and/or a frisk search;
- inspection of a vehicle and its contents entering or in the protected area;
- demand of the name and address details of an entrant and their reason for entry;
- seizing of contraband;
- directing of a person to leave the area if the person does not comply with security arrangements; and
- removal of a person who has failed to comply with directions, from the area.

In Queensland, the *State Buildings Protective Security Act 1983* (the SBPSA) and the *Police Powers and Responsibilities Act 2000* (PPRA) provides for the security of state buildings by authorising protective security officers, senior protective security officers and police officers to exercise security powers within these areas.

The Bill improves upon these current security arrangements by:

- combining protective security officers and senior protective security officers into one class of security officers named protective services officers (PSOs); and
- standardising the security powers that may be exercised by PSOs and police officers in a state building.

In addition to the amendments to state building security arrangements, the Bill also increases efficiencies for police officers acting as public officials under the *Nature Conservation Act 1992*, the *Forestry Act 1959*, the *Recreation Areas Management Act 2006* and the *Marine Parks Act 2004* (Queensland Parks and Wildlife Service Legislation). The amendments in the Bill will obviate the need for Queensland Parks and Wildlife Service Legislation identity cards to be issued to police officers, and for the identity cards to be returned when the appointments end, and will create efficiencies in identity card administration. Operational efficiencies will also be gained through clarifying that a police officer appointed under Queensland Parks and Wildlife Service Legislation need only comply with the statutory requirements outlined in the PPRA when identifying themselves.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- section 19 'Freedom of movement' of the *Human Rights Act 2019* (HRA);
- section 20 'Freedom of thought, conscience, religion and belief' of the HRA;
- section 23 'Taking part in public life' of the HRA;
- section 24 'Property rights' of the HRA;
- section 25 'Privacy and reputation' of the HRA; and
- section 29 'Right to liberty and security of person' of the HRA.

If human rights may be subject to limitations if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the HRA)

The promotion of human rights

Section 29 of the HRA provides that every person has the right to liberty and security. Under international law, the right to security is considered separate to the right to liberty placing an obligation on public authorities to take reasonable and appropriate measures to protect the security of persons under their jurisdiction. Regardless of whether section 29 of the HRA imposes a similar obligation on Queensland authorities, it is undoubtedly in the public interest that all persons such as employees, attendees and the general community are provided with a safe environment in state buildings. The paramount importance of ensuring the safety and security of these areas is made evident through the variety of human rights that may be subsequently promoted through the provision of a safe environment. For example, section 23 'Taking part in public life' of the HRA provides in part that an eligible person has the right and is to have the opportunity to have access on general terms of equality to public service positions. This right is promoted through this Bill as providing adequate security for

government areas ensures a person will not be deterred from seeking employment in the public service through concerns about their safety.

Power to demand name, address and reason for entry into a state building:

A police officer and a PSO will be authorised to demand of a person in or about to enter a state building:

- their name and address;
- evidence of the person's name and address; and
- their reason for being in or attempting to enter the state building.

A human right that is impacted through the exercise of this power is section 25 'Privacy and reputation' of the HRA which provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with. Requiring a person to provide his or her personal details and reason for being present in a state building impacts on this right.

(a) the nature of the right

Section 25 of the HRA provides that a person has the right to privacy. A right to privacy is a fundamental right which acts as the foundation for many other human rights. By its nature, this right is very broad, extending beyond protections for personal information and data collection. However, this right is qualified as the right to privacy only applies to acts of interference that are unlawful or arbitrary.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The primary purpose of the Bill is to provide for the security of state buildings. Providing for the security of a state building involves adopting measures that promote the safety of persons or things in a state building, and the good order and safe operation of these areas.

It is essential to note that the power to require the name and address of entrants to places has been ubiquitously recognised across Australia as necessary to provide an adequate security overlay. This power has been employed in government buildings and protected places such as major airports across Australia and in private places such as licensed premises within safe night precincts. Appropriate levels of security cannot be provided without this power as it is not possible to properly secure a building without knowing the occupancy of the building at any given time. For example, reliable information may be received outlining that a particular person is a security threat. The ability to provide a basic level of security against such a threat would be jeopardised without the ability to verify the personal details of persons entering or in a state building.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Imposing on the right to privacy is necessary to appropriately identify a person and to determine whether his or her presence in a state building is bona fide. This is necessary to allow for security measures that may appropriately provide for the safety of all persons, including the person who is required to provide information.

Concerns about this limitation are mitigated through the safeguards that are associated with the exercise of this power. As it is an offence for an entrant to a state building to refuse to comply with a requirement to provide their name and address or reason for being present in a state building, the PPRA will require a PSO and police officer to remind an entrant that failing to comply with the requirement is an offence.

Additionally, the PPRA will provide that a PSO will be readily identifiable. PSOs generally will be in uniform when exercising this power. In circumstances where the PSO is not in uniform, the PSO must produce his or her identity card for inspection or have the identity card clearly visible before exercising this power. If this is not reasonably practical, the PSO must produce his or her identity card for inspection at the first reasonable opportunity. This safeguard provides assurance to the entrant that the officer making the requirement has the authority to do so.

Finally, a police officer or PSO may only require an entrant to state their name and address and reason for being present in a state building if the officer reasonably suspects it is necessary to maintain the security of a state building. This safeguard will ensure that the requirement is made in appropriate circumstances.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no reasonably available and less restrictive way to achieve the purpose identified. The amount of information sought is not overly intrusive, only applies to a specific area i.e. a state building and is the minimum needed to identify a person and to determine that the person has a legitimate reason for being present.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendment is aimed at promoting the safety of the individual, and the public generally, through providing an appropriate level of security in state buildings. In doing so, it minimally impacts upon a person's right to privacy. The importance of providing for the safety and security of persons entering in or within state buildings greatly outweighs the proposed impact upon a person's right to privacy.

(f) any other relevant factors

It should be noted that senior protective security officers currently have the power to demand from a person in, or about to enter, a state building the person's name and address, evidence of the person's name and address and their reason for being in or about to enter the state building. Similarly, police officers may require an entrant to state their reason for being in or about to enter the state building. In this context, the amendments are a general restatement of existing provisions which are customarily employed in Queensland state buildings.

Concerns about the impact on human rights by these amendments should be mitigated through recognising that these powers have previously been considered by Parliament in recent amendments made primarily by the *Law Courts and State Buildings Protective Security Amendment Act 1998* and the *Police Powers and Responsibilities Act 2000* (the amending

Acts). These amendments were drafted by the Office of the Queensland Parliamentary Counsel in accordance with the *Legislative Standards Act 1992* (the LSA). The LSA provides that a function of the Office of the Queensland Parliamentary Counsel is to advise Ministers and government entities on the application of fundamental legislative principles. Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The principles include requiring that legislation has sufficient regard to the rights and liberties of individuals. Section 4 (Meaning of fundamental legislative principles) of the LSA provide examples on whether legislation has sufficient regard to rights and liberties of individuals. Examples include whether the legislation is consistent with the principles of natural justice or whether the legislation provides for the compulsory acquisition of property only with fair compensation. Explanatory material associated with these amendments indicate that neither of the amending Acts were inconsistent with fundamental legislative principles.

Finally, concerns about human rights are further reduced through the proposed amendments adding further safeguards to the current provisions including by requiring a PSO or police officer to form the requisite suspicion that the requirement is needed to maintain the security of a state building before the requirement may be made.

Power to screen entrants to state buildings

If systems for the security of a state building involve the use of electronic screening devices, the amendments will authorise a police officer or a PSO to ask an entrant of the building to:

- walk through a walk-through detector;
- pass their belongings through an X-ray scanner; and
- allow an officer to pass a hand held scanner in close proximity to the person or their belongings.

Regardless of whether the entrant or their belongings has been subject to electronic screening and if the police officer or PSO tells the entrant about the grounds for making the request, the PPRA provides that the police officer or PSO may ask the entrant to:

- allow the officer to inspect the entrant's belongings;
- remove outer garments as specified and allow them to be inspected;
- remove articles from the entrant's pockets and allow them to be inspected;
- open an article for inspection;
- open a vehicle for inspection; and
- remove an article from the vehicle as specified and allow them to be inspected.

Section 25 'Privacy and reputation' of the HRA extends to a person's bodily integrity. Permitting persons and their belongings to be screened and their belongings inspected impacts on a person's right to privacy.

(a) <u>the nature of the right</u>

As mentioned previously, section 25 of the HRA is very broad and may extend to instances where a person is screened within a state building. However, this right is qualified and may be balanced against other rights and interests such as the right to liberty and security.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

When balancing a person's right to privacy with the need to provide security for state buildings, it is necessary to recognise that the purpose of this screening is to ensure that proscribed matter is not being conveyed into the state building. Proscribed matter includes items such as explosives and firearms. These items directly impact upon the safety or security of an area as they could easily be used to damage property, threaten someone's life or affect the good order or safe operation of the place. Adopting security measures such as screening to ensure these items are not brought into state building and, allowing for the seizure of any proscribed matter that is detected, prevents these items being used. This measure is appropriate and consistent with the purpose of this Bill namely, to provide for the security of state buildings.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Screening and inspections are an essential security measure adopted universally across Australian jurisdictions to provide adequate security to protected areas. An impact on a person's right to privacy is inherent and inevitable in this process as screening may only be undertaken through inspecting a person's garments and belongings. Screening is the least intrusive method of conducting an inspection of a person's garments and belongings. Screening does not involve physically searching a person and may, at worst, only involve incidental touching of a person. Further, these amendments incorporate safeguards that further mitigate any concerns about the impact upon a person's right to privacy. These safeguards include:

- only allowing a garment worn by the entrant to be touched by a police officer, a PSO or an adult assisting a PSO or police officer of the same sex;
- requiring a PSO and a police officer to touch garments worn by an entrant in a way that preserves the person's dignity to the greatest extent practicable; and
- allowing a PSO or a police officer to, if appropriate, move a person to a location that is out of view of the general public for the inspection of an outer garment.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no reasonably available and less restrictive way to achieve the purpose of the Bill. As mentioned previously, screening is the least intrusive method of conducting an inspection of a person's garments and belongings.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The appropriateness of this amendment may be decided by determining if a person's right to privacy in participating in a non-intrusive screening process outweighs the public interest in providing safe state buildings. Proscribed material may be used to damage property or, more concerningly, to injure or kill another. As these consequences can be severe, the importance of a person's safety and security easily outweighs the minimum impact upon a person's right to privacy that may arise through the proposed amendment.

(f) any other relevant factors

It should be noted that protective security officers and police officers currently have the power to ask an entrant to a state building to participate in screening. These amendments generally restate existing provisions customarily employed in Queensland state buildings.

Additionally, the adoption of screening as a security measure is progressively becoming more widespread. This measure has been adopted in other government places such as major airports and even used at privately owned premises such as licensed venues. As screening becomes more endemic and acknowledged as an acceptable security practice, concerns about the impact upon a person's privacy may be alleviated.

Seizure of contraband

Currently, police officers and senior protective security officers may seize proscribed matter found in the possession of a person in a state building. As these items can be used to damage property or threaten the safety of persons in state buildings the need to seize these items to prevent their use in that way is self-evident. The proposed amendments will expand the current definition of proscribed matter to address a greater range of items of concern. This will include all weapons under the *Weapons Act 1990* (including replicas of weapons), explosives and replicas of explosives, and anything the person is not lawfully entitled to possess (such as dangerous drugs).

Human rights that are impacted through the exercise of this power are section 24 'Property rights' and section 20 'Freedom of thought, conscience, religion and belief' of the HRA.

(a) the nature of the right

Section 24(2) of the HRA is a conditional right that applies to the arbitrary deprivation of property. This right does not provide a right to compensation for property.

Section 20 of the HRA provides that a person has the freedom to demonstrate the person's religion or belief through observance, practice and teaching, in public or in private. A person must not be coerced or restrained in any way that limits the person's freedom. This right would be impacted if an article of faith falls within the definition of proscribed matter.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The power afforded to a PSO and a police officer to seize property is not arbitrary but considered and limited in scope.

The power to seize property will be limited in the following ways:

- the power may only apply to areas within the boundaries of state buildings;
- the power will only apply to property that a person has no reasonable excuse to possess. For example, possessing a proscribed thing for use in the course of the person's trade, business or calling in the state building may be considered to be a reasonable excuse for possessing a proscribed thing; and
- the power to seize property only applies to property that falls within the definition of proscribed matter.

The power to seize property is considered as it is, by design, focused on the seizure of proscribed matter. The power to seize property is an essential security measure to ensure that these items are not available to be used to threaten life or damage property in state buildings.

The power to seize property is balanced by safeguards in the PPRA that protect a person's property rights. If the proscribed matter is not required to be retained (e.g. for court purposes), any proscribed matter seized by a PSO may be disposed of under section 714 'Disposal of weapons' of the PPRA as if the item was a weapon or other thing held by or in the custody of a police officer. This section may also be used by a police officer if the officer considered the proscribed matter to be a weapon under the *Weapons Act 1990*. Section 714 of the PPRA allows a police officer to return proscribed matter to the owner or a person nominated by the owner if the police officer is reasonably satisfied that the person is complying with the *Weapons Act 1990* and is lawfully entitled to possess the item.

Additionally, section 692 'Application by owner etc. for return of relevant thing' of the PPRA allows the commissioner of police to return proscribed matter to a person who has a legal or equitable interest in the property provided that:

- the proscribed matter has been in the possession of the police service for at least 30 days;
- the proscribed matter is not the subject of an application to a court order under section 693 'Application by owner etc. for court order for return of relevant thing' of the PPRA;
- the proscribed matter is not described in a notice given under section 719(4) of the PPRA; and
- the commissioner is satisfied:
    - that the applicant may possess the thing; and
    - it is appropriate that the thing be delivered to the person.

Further, under section 693 'Application by owner etc. for court order for return of relevant thing' of the PPRA, a person with a legal or equitable interest in proscribed matter may apply to a magistrate for its return provided that:

- the proscribed matter has been in the possession of the police service for at least 30 days;
- the proscribed matter has not been returned under section 692 'Application by owner etc. for return of relevant thing' of the PPRA;
- the proscribed matter is not described in a notice given under section 719(4) of the PPRA; and
- the magistrate is satisfied:
    - that the applicant may possess the thing; and
    - it is appropriate that the thing be delivered to the person.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The purpose of these amendments is to promote the security of state buildings. Authorising the seizure of items that may be used in these areas to cause damage to property or endanger persons is necessary to achieve this objective.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no reasonably available and less restrictive way to achieve the purpose identified.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The power to seize proscribed matter is justified given the paramount importance of ensuring the safety of visitors and employees at state buildings. Concerns about this power's impact upon a person's property rights are mitigated through the restriction of this power to a clearly defined area, the limitation of the application of these powers to property that is unlawful or is inherently dangerous if inappropriately used and the availability of avenues that allow for the return of any seized property.

(f) any other relevant factors

Senior protective security officers and police officers currently have the power to seize proscribed matter and property that is reasonably suspected to be evidence of the commission of an offence. These amendments largely restate existing provisions that are currently used to address the issue of proscribed items or other illicit property being brought into state buildings. As previously indicated in this statement, concerns about the impact on human rights by these amendments should be mitigated through recognising that these powers have previously been considered appropriate by Parliament.

Directions that may be given by a police officer or a PSO in a state building and removal of persons from a state building

Currently, where the entrant to a state building has failed to:
- allow examination/inspection of garments etc.; or
- in the case of a police officer, provide a reason to be in the building; or
- in the case of a senior protective security officer, provide the entrant's name and address or a reason to be in the building;

a police officer or a senior protective security officer is authorised to direct an entrant to leave a state building immediately and to take their belongings with them.

Additionally, where the entrant to a state building has failed to:
- allow examination/inspection of garments etc.;
- comply with a direction; or
- provide a good and lawful reason to be in the building;

a senior protective security officer or a police officer may remove a person from a state building or prevent the person's entry into a state building.

The proposed amendments in the Bill will authorise a PSO and a police officer to direct an entrant to leave a state building immediately and to take their belongings if an entrant:
- fails to state the person's name and address or reason for being in or about to enter the building;
- fails to participate in screening;
- is in or about to enter a state building and the person is disorderly, indecent, offensive, or threatening to someone entering, at or leaving the state building; or
- has no good and lawful reason (i.e. trespass) for entering or being in a state building.

The Bill will also authorise a PSO or a police officer to remove a person from a state building or prevent their entry if the person is disorderly, indecent, offensive, or threatening to someone entering, at or leaving the state building or where the person has failed to:

- allow examination/inspection of garments etc.;
- comply with a direction; or
- provide a good and lawful reason to be in the building.

This power impacts upon section 19 'Freedom of movement' of the HRA when either a direction to leave a state building is given to a person or through the removal of an entrant to or in a state building.

(a) the nature of the right

Section 19 of the HRA ensures that an individual has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live. Although the right to freedom of movement is broad in nature, it should not be considered to be an authority that permits the unfettered access to any place at any time. For example, Mason J, in the context of the *International Convention on the Elimination of All Forms of Racial Discrimination*, indicated that although this right included a right of access to places and services used by members of the public it was subject to reasonable limitation (*Gerhardy v Brown* (1985) 159 CLR 70, 102, cited in *DPP v Kaba* (2014) 44 VR 526).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the proposed amendments is to promote the security of state buildings by allowing entrants in a state building to be removed either in response to a direction to leave the area or through the use of force. The proposed amendment provides for a power that is qualified. It does not authorise the removal of any person within a state building. This power may only be exercised in circumstances where the subject person has not complied with appropriate security measures (such as the person refusing to be screened or failing to provide reasons as to why they are present) or in circumstances where the person is acting inappropriately. As such, these powers may only apply to those individuals who, through their actions, have demonstrated that they are a security risk to the area.

Additionally, a police officer or PSO directing a person to leave a state building must comply with legislative safeguards outlined in the PPRA. For example, the Bill provides that a PSO is not to give this direction in relation to a person who has not complied with a request to participate in electronic screening or allow the person's belongings to be inspected, if:

- the entrant tells that PSO that they do not want the new sections 551 or 552 proposed in the Bill exercised in relation to the entrant's person or belongings and is prepared to leave the state building immediately;
- if the PSO has started to exercise the power, the entrant does not want the power exercised further and is prepared to leave the state building immediately with their belongings; and

the person leaves the state building immediately with their belongings.

Further, police officers and PSOs must, if practical, warn the person failing to comply with the direction that it is an offence to fail to comply with the direction and give the person a reasonable opportunity to comply with the direction. Finally, the giving of a direction will be considered to be an enforcement act under the PPRA, requiring the PSO or police officer to record this direction in a register.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The purpose of these amendments is to promote the security of state buildings. Authorising the removal of persons who have demonstrated a risk to the security of the place is a reasonable measure to ensure that the safety of other persons or property with state buildings is maintained.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no reasonably available and less restrictive way to achieve the purpose identified.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Deciding whether the limitation on the right to freedom of movement has been inappropriately curtailed requires balancing this right against other rights and the public interest in allowing persons to safely attend state buildings. The safety of a person or the security of property in these areas is a paramount concern that outweighs the proposed limitation on the right to freedom of movement, particularly as the power to remove a person (either by force or via a direction) may only be applied if the person has failed to comply with security measures or is otherwise acting inappropriately.

(f) any other relevant factors

Senior protective security officers and police officers currently have the power to direct a person to leave a state building under certain circumstances. These officers may also, in certain circumstances forcibly remove subject persons from these areas. The proposed amendments simply restate existing provisions excepting for the power to give a direction to leave a state building. The proposed amendment will authorise a police officer or a PSO to direct a trespasser to leave a state building. As these officers currently have the authority to use force to remove trespassers, this proposed power is considered to be a less intrusive enforcement option.

This proposed power is also consistent with security powers already used in Queensland and other Australian jurisdictions. For example, the *Hospital and Health Boards Act 2011* authorises security officers in Queensland hospitals to give directions to a person to leave health service land if it is reasonably believed that a person has no lawful or good reason for being present. Similarly, New South Wales, Victoria, South Australia and Western Australia all make provision for directions to be given to people behaving inappropriately in certain government buildings, in particular Court precincts.

The detention of an entrant by a PSO

Currently, if a senior protective security officer reasonably suspects a person has committed an offence in a state building or has committed an offence through having done anything or having had anything in the person's possession in a state building, the SPBS Act authorises the senior protective security officer to use reasonably necessary force to detain the person until the person can be surrendered to a police officer for investigation of the offence.

The proposed amendment will restate this provision for PSOs. The Bill will include new safeguards as a PSO detaining a suspect will be required to enter information into an enforcement register such as the identity of the suspect (if known), the time the person was detained, where the person was detained, why the person was detained and any apparent injury the person received during the detention.

Additionally, a PSO will be authorised to release a detained person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was detained.

Section 29 'Right to liberty and security of person' of the HRA is impacted by the exercise of this power.

(a) the nature of the right

Section 29 of the HRA provides that every person has the right to liberty and security and must not be subjected to arbitrary arrest or detention. It should be noted that while section 29 of the HRA focuses on personal liberty, it does not prohibit deprivation of liberty generally. This right restricts its protections to deprivation of liberties that are arbitrary and unlawful.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendment does not authorise a PSO to arbitrarily detain persons. The power to detain a person is conditional. A PSO may detain a person only if the person is reasonably suspected of committing an offence at or in connexion with a state building. It is similar to the general power of arrest outlined in section 546 'Arrest without warrant generally' of the Criminal Code that every citizen may rely upon.

The right to liberty and security of persons also provides that a person detained on a criminal charge must be promptly brought before a court. This requirement is similar to the obligations imposed upon a person arresting another under the Criminal Code. Section 552 'Duty of person arresting' of the Criminal Code outlines that it is the duty of a person arresting another for an offence to take that person to a justice to be dealt with according to law. However, this section provides that this duty will be met if the person immediately delivers the arrested person into the custody of a police officer. The proposed amendments will mirror this obligation by authorising the detention of the entrant for the time reasonably necessary to give the entrant into the custody of a police officer.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The purpose of these amendments is to promote the security of state buildings. Authorising the detention of persons who are reasonably suspected of committing offences within state buildings is a reasonable measure to ensure that the safety of other persons or property with state buildings is maintained.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no reasonably available and less restrictive way to achieve the purpose identified.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Deciding whether the limitation on the right to liberty and security of has been inappropriately curtailed requires balancing this right against the importance of a person to safely attend state buildings. The proposed power does not authorise an arbitrary detention of any individual. Subject persons may only be detained if they are reasonably suspected of committing an offence. As the safety of a person or property in these areas is a paramount concern, it is appropriate for suspects to be detained under these circumstances so that police officers may conduct investigations.

(f) any other relevant factors

As these powers have previously been considered by Parliament and as the proposed amendments add additional safeguards to these powers, concerns about impacts upon human rights is mitigated.

Authorising PSOs to use a body-worn camera

The proposed amendments will confirm the use of a body-worn camera by a PSO is lawful. Currently, the *Invasion of Privacy Act 1971* regulates the monitoring, listening or recording of conversations. As a body-worn camera could be considered to be a 'listening device' under this Act, this Act would prohibit the recording of a private conversation by a body-worn camera. There are a number of exceptions to this offence such as where the person recording the conversation is a party to the conversation or if the person using the device is authorised to do so under an Act.

Regardless of whether any offences are committed, it may be suggested that, in certain circumstances, the use of a body-worn camera impacts on a person's right to privacy by recording a person's image and any conversations held at the time the camera was recording.

(a) the nature of the right

Section 25 of the HRA provides that a person has the right to privacy. A right to privacy is a fundamental right which acts as the foundation for many other human rights. By its nature, this right is very broad extending beyond protections for personal information and data collection.

However, this right is qualified as the right to privacy only applies to acts of interference that are unlawful or arbitrary.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

In the vast majority of instances, body-worn camera recordings of entrants to state buildings will be analogous with CCTV recordings. Generally, PSOs will not be engaging in private conversations or will be party to these conversations. The recording of interactions of PSOs with entrants is invaluable as it provides an incontrovertible record of events and circumstances. This record may be examined to ensure that proper verbal directions have been provided to entrants and may assist in any investigation of complaints.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The purpose of these amendments is to promote the security of state buildings. This is enhanced through authorising the use of body-worn cameras in these places. These devices promote the professionalism of PSOs as recordings may be later reviewed to ensure that PSOs have acted appropriately and to assist in any investigations.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no reasonably available and less restrictive way to achieve the purpose identified.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Body-worn cameras are a recent innovation that have provided invaluable assistance to a range of public officials by providing an incontrovertible record of events and circumstances. Body-worn cameras are increasingly being used by private and government agencies, particularly when the user is confronted with aggressive behaviour. They are also useful in providing a record of verbal directions and assist in the investigation of complaints.

These devices will assist in ensuring the accountability of PSOs which will ultimately lead to an increase in professionalism. Any concern of the misuse of information about a person is tempered through the liability a PSO may face under section 10.1 of the *Police Service Administration Act 1990* for the unlawful disclosure of confidential information.

(f) any other relevant factors

Currently, the PPRA confirms that the use of body-worn cameras by police officers is lawful. The proposed amendment merely expands upon these provisions to include PSOs. Over recent years, Parliament has authorised a range of public officials to use body-worn cameras. For example, public officials under the *Biosecurity Act 2014*, the *Drugs Misuse Act 1986*, the *Exhibited Animals Act 2015*, the *Fisheries Act 1994* and the *Youth Justice Act 1992* are all authorised to use body-worn cameras. Further, in private industry the use of body-worn

cameras is becoming more prevalent. Concerns about the impact on human rights by these amendments may be mitigated as the use of body-worn cameras has been approved by Parliament and has widespread support in the community as a legitimate means of recording events that may occur around the user.

Alcohol and drug testing

The amendment will expand the QPS drug and alcohol testing regime to apply to PSOs in prescribed circumstances. The QPS drug and alcohol testing regime allows for random alcohol testing and targeted testing for alcohol and dangerous drugs. Targeted testing of a PSO may occur if the relevant person is reasonably suspected of being in excess of permissible levels of alcohol or dangerous drugs or is in involved in a critical incident such as a death in custody or the discharge of a firearm in circumstances that could have or caused injury to a person. This amendment will limit the following rights:

- Freedom of movement (section 19) of the HRA; and
- Right to privacy (section 25) of the HRA.

(a) the nature of the right

Section 19 of the HRA ensures an individual has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live. The right to freedom of movement is broad in nature, however for the purposes of the alcohol and drug testing amendments in the Bill, the potential limitation of the right occurs where a person is obliged to remain at a place to permit or undergo a test required under the provisions.

Section 25 of the HRA outlines that a person has the right not to have the person's privacy arbitrarily or unlawfully interfered with. The amendment may limit this right as the provision of a specimen of breath or urine would reveal the bodily condition of the person.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendments identify staff with substance abuse problems. Staff with substance abuse problems are more likely to engage in poor decision-making and behaviour. This is particularly significant in relation to PSOs who, due to their position, are entrusted to protect others and are authorised to use force in the performance of their duties. This amendment is required to ensure the integrity of critical incident investigations through ensuring that a PSO involved in a critical incident is subject to the QPS alcohol and drug testing regime. Extending the QPS alcohol and drug testing regime to PSOs ensures that:

- the health, welfare and safety of QPS members is supported;
- public confidence in the QPS is promoted; and
- the integrity of the QPS is enhanced.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

There is currently no power to require PSOs to undergo alcohol or drug testing. Therefore, testing of staff does not occur and the QPS has no ability to proactively identify officers who may be intoxicated by alcohol or using illicit substances. The amendment will provide QPS

with the power to require a PSO to submit to a random alcohol test or targeted alcohol or drug test.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is no reasonably available and less restrictive way to achieve the purpose identified.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the purpose of the proposed amendment outweighs the potential limited impact on a PSO's rights, noting the absence of suitable alternative testing methods and the significant risk that inappropriate drug and alcohol consumption poses to other members of the community.

(f) any other relevant factors

The QPS drug and alcohol testing regime already applies to police officers, watchhouse officers and staff who work in critical areas as defined under the *Police Service Administration Act 1990*. The proposed amendment should be considered to merely be an extension of existing processes already endorsed by Parliament.

Removal of Queensland Parks and Wildlife Service Legislation identity card requirements for police officers appointed under these Acts

The proposed amendments to the Queensland Parks and Wildlife Service Legislation will have the effect of removing a duplication of requirements relating to police identifying themselves when exercising powers under those Acts. The proposed amendments do not engage any rights under the HRA.

Conclusion

In my opinion, the Police Service Administration and Other Legislation Amendment Bill 2021 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Mark Ryan
Minister for Police and Corrective Services and
Minister for Fire and Emergency Services