

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

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 MP, 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 (No. 2) 2022 (the Bill).

In my opinion, the Bill 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

The Bill will improve the effectiveness of the Queensland Police Service (QPS) and the Queensland Fire and Emergency Services (QFES) through amending legislation impacting on these agencies.

In relation to the QPS, amendments in the Bill to the *Police Service Administration Act 1990* (PSAA) will improve the police discipline system by:

- allowing the timeframe for commencing a disciplinary proceeding to be delayed until an application for a domestic violence protection order naming the subject member as the respondent is finalised;
- clarifying the timeframe that will apply to a discipline process when an Abbreviated Disciplinary proceeding is initially offered but later fails;
- expanding the definition of ‘prescribed operation’ to include investigations using surveillance devices, telephone interceptions, and similar operations conducted by other law enforcement agencies; and
- allowing another ‘prescribed officer’ to continue a disciplinary proceeding if the originally assigned prescribed officer cannot complete this process.

The Bill will also provide for the summary dismissal of police officers and police recruits who are sentenced to imprisonment for an offence. This will avoid any community concern about why a police officer in jail may still be employed by the QPS. Currently, a police officer or police recruit can be convicted of an offence and sentenced to a term of imprisonment, but not be dismissed from the QPS until all criminal appeals have ended and a potentially lengthy police disciplinary process is finalised.

The Bill will also make minor amendments to the PSAA and the *Police Powers and Responsibilities Act 2000* (PPRA) that reduce the legislative burden through removing duplicated or obsolete provisions and remedying issues effecting these Acts.

In addition, the Bill will amend the *Weapons Act 1990* to allow certain authorised officer powers to be delegated to police officers and QPS staff members so that licensing functions can be carried out more efficiently.

The Bill also includes amendments to the *Fire and Emergency Services Act 1990* (FES Act) and the *Disaster Management Act 2003* (DM Act) that will support the ongoing effectiveness of services delivered by QFES by:

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

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:

- Freedom of expression – section 21 (clause 16);
- Property rights – section 24 (clause 19);
- Privacy and reputation – section 25 (clauses 19, 23, 34, 35, and 43);
- Right to liberty and security of person – section 29 (clauses 16, 21 and 43); and
- Fair hearing – section 31 (clauses 39, 54 and 55).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019* (HR Act))

Amendments to the police disciplinary system

On 30 October 2019, the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019* (the Discipline Reform Act) commenced, establishing a modernised and more efficient police discipline system. This was achieved through amendments that reduced delays in finalising discipline investigations, modernised the disciplinary sanctions that could be imposed on a police officer and formalised the role and range of management strategies that are part of the discipline process. Aspects of the new police discipline system are comprehensively outlined in the Explanatory Notes that accompanied the

Discipline Reform Act including the factors that were considered in determining that this Act was consistent with fundamental legislative principles.

The Discipline Reform Act was 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. These principles include requiring that legislation has sufficient regard to the rights and liberties of individuals.

The Explanatory Notes for the Discipline Reform Act outlined the fundamental legislative principles impacted through that Act including whether the amendments in the Act were consistent with the principles of natural justice. It should be noted that amendments in the Bill simply make minor corrections to the existing police discipline system. Any human rights considerations about the amendments in the Bill should be made acknowledging that the current framework of the police discipline system has received support from all affected employee unions and been endorsed by the Legislative Assembly of Queensland.

Clarifying when a disciplinary proceeding may be started where a domestic violence protection order application naming the subject officer as the respondent is yet to be finalised

Currently, disciplinary proceedings against police officers are required to be instituted within a prescribed timeframe. Section 7.12 ‘When disciplinary proceedings must be started’ of the PSAA provides that a disciplinary proceeding must start within the latest of the following periods to end:

- 1 year from the date the ground for disciplinary action arises;
- 6 months after a complaint is received by the Police Commissioner (the Commissioner) or the Crime and Corruption Commission (CCC); or
- 6 months from the finalisation of a criminal proceedings relating to the conduct giving rise to the disciplinary matter.

Disciplinary proceedings are authorised to start 6 months after the finalisation of a criminal proceedings, allowing disciplinary proceedings to be informed of a court outcome arising from the alleged disciplinary action prior to any determination being made.

No such provision, however, is made for an application for a protection order made under the *Domestic and Family Violence Protection Act 2012* that relates to conduct substantially associated with the grounds for disciplinary action. This means that a police officer may simultaneously be the subject of a disciplinary proceedings while an application for a protection order arising from the behaviour that constitutes the grounds for disciplinary action is still under consideration.

The proposed amendment will allow an application for a domestic violence protection order that names the subject police officer as the respondent to be finalised prior to commencing disciplinary proceedings against the officer. This will allow these two proceedings to be dealt

with separately, minimising the likelihood that these procedures will interfere with each other, thereby ensuring procedural fairness can be maintained.

The amendment will engage the human right to a fair hearing.

(a) the nature of the right

Right to a fair hearing – section 31 of the HR Act

Section 31 of the HR Act affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

While the QPS discipline system outlined in part 7 of the PSAA does not constitute either a court or tribunal, in the Victorian decision of *Kracke v Mental Health Review Board* (2009) 29 VAR 1, the Victorian Civil and Administrative Tribunal decided that the right to a fair hearing was not confined to civil judicial proceedings, but also to administrative proceedings.

Regardless of whether this decision would apply to the Queensland police discipline system, the principles of supporting a fair hearing in an administrative context may still be thought to be in scope of the intent of the HR Act.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing and balancing of a number of public interest factors. Widely accepted aspects of a fair trial include the application of procedural fairness through an independent court, a public trial, the presumption of innocence, the defendant told of the charge, the allocation of time and facilities to prepare a defence and a trial without undue delay etc.

(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

One criticism made of the old police discipline system was that, on occasion, there could be a lengthy delay in finalising police discipline matters. The legal maxim ‘Justice delayed is justice denied’ emphasises the importance of prompt decision-making and that undue delay can constitute a denial of procedural fairness.

The new police discipline system addresses this by statutorily requiring that disciplinary proceedings must start within 1 year from the date the ground for disciplinary action arises. The amendment will have the effect that a police disciplinary proceeding involving conduct that is associated with a proceeding for an application for a domestic violence protection order may start outside of this 1 year timeframe and may start up to 6 months after the application is finalised. This could give rise to concerns that the length of time taken to deal with the police disciplinary proceedings is unacceptable.

It should be noted that a delay in proceedings does not in itself constitute a denial of procedural fairness. Rather, a denial of procedural fairness may occur where the delay in the proceedings is undue or excessive. The proposed amendment would not be considered to be a denial of procedural fairness as it imposes a strict timeframe in which a disciplinary proceeding must start i.e. either within 1 year from the date the ground for disciplinary action arises or within 6

months from the finalisation of the application for the domestic violence protection order. A period of 6 months, from the finalisation of an application for a domestic violence protection order, is a reasonable length of time needed to conduct any necessary investigations as a precursor to a disciplinary proceeding and cannot be considered excessive in this context.

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

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

(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

Allowing a discipline proceeding to start after any relevant applications for domestic violence protection orders is finalised will ensure that procedural fairness is maintained for both processes.

Any concerns about whether this amendment transgresses upon human rights should be further mitigated through recognising that this amendment will not apply to the majority of discipline matters but only to the limited subset of disciplinary proceedings that involves conduct that would engage both the police discipline system and a proceeding for an application for a domestic violence protection order in which the subject officer is named.

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

No other less restrictive, reasonably available alternatives have been identified.

(e) the balance between the importance of the purpose of the Bill, 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

While the proposed amendment may potentially delay the finalisation of a police discipline matter, this delay cannot be considered to be a denial of procedural fairness. The timeframe imposed by the amendment, within which a disciplinary proceeding must start, is reasonable and is necessary to allow an investigation to be completed to determine if a subject officer should face disciplinary action. Further, the amendment will ensure that procedural fairness is maintained by ensuring that neither a police disciplinary proceeding or a related proceeding for an application for a domestic violence protection order will have an undue influence on each other.

As such, on balance it is considered that the advantages of this amendment outweighs any limitations it may be considered to cause.

(f) any other relevant factors

Not applicable.

When grounds for disciplinary action arise for investigations involving telephone interceptions and surveillance devices or controlled operations and activities conducted by other police agencies

The new police discipline system requires disciplinary proceedings to start within 1 year from the date the ground for disciplinary action arises. Generally, the grounds for disciplinary action arise on the day that the inappropriate conduct occurred or if the conduct is ongoing, the latest day that the conduct occurs.

However, specific provision has been made for prescribed operations which fall within the following criteria:

- a controlled activity or controlled operation under the *Crime and Corruption Act 2001* or the PPRA; or
- a specific intelligence operation under the *Crime and Corruption Act 2001*; or
- an investigation by the Crime and Corruption Commission (CCC).

In these instances, the ground for disciplinary action is deemed to be taken at the end of the prescribed operation provided that the responsible officer for the operation reasonably believes that starting disciplinary action would compromise the operation.

The proposed amendment will expand the definition of ‘prescribed operation’ to include:

- an investigation by an Australian integrity agency;
- an investigation involving telecommunication interceptions by the CCC, an Australian integrity agency, the QPS or another Australian police agency;
- an investigation involving a surveillance device authorised under a PPRA surveillance device warrant; and
- an activity, operation or investigation that corresponds to a controlled activity or controlled operation conducted by another Australian police agency.

The proposed amendment will ensure that investigations into serious offences that may involve disciplinary action against a police officer will not be unduly compromised as a consequence of the officer’s inappropriate behaviour. As this amendment deems that grounds for disciplinary action will be the day the operation ends, this amendment ensures that any disciplinary action against the relevant officer will be conducted in a timely manner.

The proposal will engage the human right to a fair hearing.

(a) the nature of the right

Fair hearing – section 31 of the HR Act

Section 31 of the HR Act affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

While the QPS discipline system outlined in part 7 of the PSAA does not constitute either a court or tribunal, in the Victorian decision of *Kracke v Mental Health Review Board* (2009) 29 VAR 1, the Victorian Civil and Administrative Tribunal decided that the right to a fair hearing was not confined to civil judicial proceedings, but also to administrative proceedings.

Regardless of whether this decision would apply to the Queensland police discipline system, the principles of supporting a fair hearing in an administrative context may still be thought to be in scope of the intent of the HR Act.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing of a number of public interest factors. Widely accepted aspects of a fair trial include the application of procedural fairness through an independent court, a public trial, the presumption of innocence, the defendant told of charge, allocation of time and facilities to prepare a defence and a trial without undue delay etc.

(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

One criticism made of the old police discipline system was that, on occasion, there could be a lengthy delay in finalising police discipline matters. The legal maxim ‘Justice delayed is justice denied’ emphasises the importance of prompt decision-making and an undue delay can constitute a denial of procedural fairness.

Concerns about the fairness of this amendment may arise due to the delay that may be experienced before a disciplinary proceeding starts. Although generally a disciplinary proceeding must start within 1 year from the date of the inappropriate conduct, the amendment will, in certain circumstances, deem the grounds for disciplinary action to arise on the day the operation ends. This means that a disciplinary proceeding may start more than 1 year after the actual inappropriate behaviour occurred.

It should be noted that a delay in proceedings does not in itself constitute a denial of procedural fairness. Rather, a denial of procedural fairness may occur in circumstances where the delay in the proceedings is undue or excessive. In considering whether this delay is reasonable and justifiable, other considerations should be made including whether it is appropriate to commence a disciplinary proceeding before a related criminal investigation into serious offences are completed.

The proposed amendment widens the scope of prescribed operations to include investigations using surveillance devices, telephone interceptions and equivalent controlled activities or controlled operations conducted by other Australian police agencies. These investigation

techniques and methodologies are usually reserved for investigations into major or organised crime involving serious offences.

Commencing disciplinary proceedings before the completion of a criminal investigation into serious offences may, in certain instances, lead to adverse outcomes, particularly if, for example, pursuing the discipline matter would reveal the existence of the covert operation thereby jeopardising the whole investigation.

Prior to this amendment, a dilemma could arise in deciding if it is more appropriate to compromise an investigation into a serious criminal investigation by commencing a disciplinary proceeding or whether the investigation should continue, and the subject officer avoid any disciplinary sanction through the expiration of time.

The proposed amendment avoids this dilemma by balancing the benefits of disciplinary proceedings being dealt with promptly against the public interest of investigations into serious offences being conducted appropriately.

(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

Allowing the delay in the start of a discipline investigation until an associated prescribed operation is concluded will enhance community safety by allowing these investigations to continue unhindered, as well as upholding community expectations that police officers be held to a high level of accountability.

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

No other less restrictive, reasonably available alternatives have been identified.

(e) the balance between the importance of the purpose of the Bill, 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 potential adverse impact of these amendments is the delay that may be caused through authorising a police disciplinary proceeding to start within the later of 1 year from the ground for disciplinary action arose or 6 months after a relevant proceeding has been finalised.

This concern is mitigated as this delay does not apply to all criminal investigations. It is limited to prescribed operations and only applicable, in the case of a matter involving a criminal investigation where the Commissioner, the chairperson of the CCC or their respective delegates reasonably believe that the start of a disciplinary action against an officer would compromise the prescribed operation. Finally, further concerns about this amendment are mitigated as the delay is not unlimited. The potential length of delay is strictly restricted to a prescribed period of 6 months ensuring that police discipline matters will be finalised promptly.

As such, on balance it is considered that the advantages to making this amendment outweighs any limitation placed on the right to a fair hearing.

(f) any other relevant factors

Not applicable.

Amendment of the offence of disclosing QPS information to encompass a wider range of persons and increase the penalty to include a period of imprisonment.

Currently, section 10.1 ‘Improper disclosure of information’ of the PSAA provides an offence provision for the unlawful disclosure of QPS information. The offence is limited in scope as it only applies to officers or staff members or former officers or staff members. This offence does not apply to police recruits, contractors, or members of other agencies who have access to QPS information.

Additionally, section 10.2C ‘Misuse of information obtained under ss 10.2A-10.2B’ of the PSAA provides an offence provision for the disclosure of a person’s criminal history without the person’s written consent or the use of that information for a purpose other than the purposes outlined within sections 10.2A-10.2B of the PSAA.

The proposed amendments will amalgamate these offence provisions into the new section 10.1 ‘Unauthorised use of confidential information’ of the PSAA. This new offence provision will apply to all QPS members and any individual engaged to perform functions under or relating to the administration of this Act. Additionally, this provision will apply to any person who acquires or has access to confidential QPS information as authorised under an Act or through any person mentioned above. The amendment will prohibit the person from using confidential information unless one of the following statutory exemptions applies:

- to the extent the use is required or permitted under this Act or another Act or to perform the person’s functions under this Act or another Act;
- with the consent of the person to whom the information relates if the information would normally be made available to any member of the public on request;
- in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- if the use is otherwise required or permitted under another law.

The proposed amendment will also increase the maximum penalty for the offence to include a term of imprisonment of 2 years.

This amendment will potentially engage the human right to liberty and security of person and will promote a person’s right to privacy by protecting an individual’s personal information.

(a) the nature of the right

Right to liberty and security of person - section 29 of the HR Act

Section 29 of the HR Act protects a person’s right to liberty and security. This includes that a person must not be subjected to arbitrary arrest or detention and must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law. It also outlines procedures that should be followed following a person’s arrest for a charge.

The right to liberty means that people must not be arrested and detained, unless provided for by law. Their arrest and the detention must also not be arbitrary. This right applies to all forms of detention where people are deprived of their liberty, not just criminal justice processes. This can be relevant any time a person is not free to leave a place by their own choice.

Subsection 2 states that a person must not be subject to arbitrary arrest or detention. 'Arbitrary' might involve injustice, inappropriateness, unpredictability, or a lack of due legal process. Subsection 3 means that someone can only be detained or have their liberty denied in accordance with the law.

The proposal may be seen to engage this right as it increases the range of persons that the current offence provision under section 10.1 of the PSAA applies to and increases the maximum penalty for the offence to include a term of imprisonment.

(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 new section 10.1 of the PSAA imposes a maximum penalty of 100 penalty units or 2 years imprisonment. A person who offends against this section may be arrested and face serious penalties including a custodial sentence. However, this offence and the consequences that may occur through the commission of this offence are not arbitrary in nature. The imposition of this offence is a deliberate measure adopted to ensure that confidential information is protected. This new offence provision is nuanced as it provides clear circumstances where the use of confidential information will be permissible and further reduces any concerns about the impact of this amendment on human rights by:

- limiting this offence provision to a select cohort of persons i.e either a person who would be authorised to have access to confidential information through being engaged to perform functions under the PSAA or a person who has acquired or accessed the confidential information from the aforementioned person; and
- limiting the offence provision to confidential information which is clearly defined to mean personal information or other information of a confidential nature that is not publicly available.

The concerns about the impacts of this amendment have to be balanced against any benefits that will arise through its implementation. This amendment will promote an individual's right to privacy through deterring the inappropriate use of confidential information by increasing the maximum penalty of the offence in recognition of its seriousness and the potentially significant harm that can be caused by the misuse of QPS information. This harm includes not only to individuals to whom the information relates, but also potentially the wider community if the information impacts on criminal investigations and operations.

(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

While it is not possible to quantify the deterrence effect that this amendment may have, it is known that the potential harm that may be caused by the release of QPS information is great. The QPS holds a wide range of personal and sensitive information on an extensive range of persons. This information is not only restricted to offenders, but extends to victims of crime,

witnesses and other associated persons. Some of these persons could be placed at risk if their personal details were released. Similarly, the QPS has vast holdings of information regarding serious and organised crime which would likewise be extremely detrimental if released.

As such, creating strong disincentives from the misuse of this confidential information is in the public interest.

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

No other less restrictive, reasonably available alternatives have been identified.

(e) the balance between the importance of the purpose of the Bill, 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 limitation of the right caused by the proposal is outweighed by the strong community expectation that QPS information is protected. In protecting such information, the amendment promotes the right to privacy for those individuals whose information is held by the QPS.

As such, on balance it is considered that the advantages to making this change outweigh the limitation placed on the right.

(f) any other relevant factors

Not applicable.

Summary dismissal of a police officer or recruit upon being sentenced to imprisonment

The Bill will provide for the automatic dismissal of police officers and recruits who are sentenced to imprisonment for offences, including suspended imprisonment sentences. Currently, a police officer can be convicted of an offence and sentenced to a term of imprisonment, but not be dismissed from the QPS until all criminal appeals have ended and a potentially lengthy police disciplinary process is finalised.

The proposal will potentially engage the human right to a fair hearing.

(a) the nature of the right

Fair hearing – section 31 of the HR Act

Although the HR Act does not specifically provide a right to work, reference may be made to section 31 of the HR Act which affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing of a number of public interest factors. Widely accepted aspects of a fair trial include the application of procedural fairness through an independent court, a public trial, the

presumption of innocence, the defendant being informed of their charge, allocation of time and facilities to prepare a defence and a trial without undue delay etc.

Australia is a party to a number of international human rights treaties. Relevantly, article 6 of the International Covenant on Economic, Social and Cultural Rights recognises the right to work, which includes the right of everyone to the opportunity to gain a living by work that is freely chosen or accepted.

Additionally, the Termination of Employment Convention (1982 – No. 158) (the Convention) has been recognised in Queensland employment law through section 4(r) ‘How main purpose is primarily achieved’ of the *Industrial Relations Act 2016* (IR Act). The main purpose of the IR Act is to provide a framework for cooperative industrial relations that is fair and balanced and supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

Article 3 of the Convention provides that for the purpose of the Convention, the terms *termination* and *termination of employment* mean termination of employment at the initiative of the employer. Article 7 of the Convention provides procedures prior to or at the time of termination, namely, the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before they are provided an opportunity to defend themselves against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Articles 8 to 10 provide a procedure of appeal against termination. Article 8.1 provides that where a worker considers that their employment has been unjustifiably terminated, they shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

Article 9.1 provides that the bodies referred to in Article 8 of the Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified. Article 11 provides for a period of notice. Article 12 provides for severance allowance and other income protection.

The proposed amendment limits this right by abrogating the need for a sentenced person to have their police disciplinary allegations presented to them by way of a disciplinary proceeding notice with a copy of the relevant evidence relied upon by employer to determine the matter. Further, the proposed amendment removes the need for the person to make a response to the disciplinary allegations and the proposed disciplinary sanction that may be issued by the employer. As a consequence of the employment ending by way of statute, the sentenced person does not have the availability of having an administrative review of their dismissal.

(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 amendment is to dismiss a police officer or police recruit immediately upon being sentenced to imprisonment (including a suspended imprisonment sentence). This will occur without the delay of potential criminal appeals having to be finalised and without the

delay and resource costs incurred through conducting a disciplinary proceeding to dismiss the officer. This will ensure community expectations that certain government officials, such as police officers and police recruits, should be of good character and standing and not continue to be employed if they have been imprisoned for an offence, even if that imprisonment is suspended.

(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 amendment helps achieve its purpose by ensuring that upon being sentenced to a period of imprisonment, including suspended imprisonment, the police officer or police recruit who has not already resigned from the QPS, is automatically and immediately dismissed. The limitation of the human right helps achieve this purpose by removing any need for the Commissioner to make a decision to dismiss the person. In doing so, there is no need to allow for any criminal appeals to be finalised before a disciplinary proceeding can be started and finalised.

Regarding the potential limitations on the rights outlined in the Termination of Employment Convention, as there is no decision being made by the Commissioner, it could be said that obligations in relation to right of reply and appeal are not engaged because there is no decision by the employer to consider. Consequently, the relevant provisions of the Convention are arguably not engaged at all.

To the extent that the Convention is engaged, it is argued that the proposal does not fall foul of the Convention. Article 7 of the Convention provides that employment must not be terminated for conduct/performance reasons before the employee has had the opportunity to defend themselves against the allegations, unless the employer cannot reasonably be expected to provide this opportunity.

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

To assist in providing an element of natural justice to the proposal, it is intended that the Commissioner will inform all members of the QPS of the consequences of being sentenced to imprisonment, including a suspended imprisonment sentence. This will effectively provide officers and recruits with prior notice and knowledge of the termination of their employment should they be sentenced to imprisonment.

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

The limitation of the human right is mitigated by the requirement contained in the proposal that an officer or recruit must be reappointed to the QPS should their imprisonment conviction be overturned or the sentence is reduced on criminal appeal to one other than imprisonment. Upon reappointment, they are deemed to have been suspended from duty without pay for the period

from their summary dismissal to successful appeal. The proposal then allows the person to seek salary and entitlements for that period.

(e) the balance between the importance of the purpose of the Bill, 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

As to the impact on the right to a fair hearing before a tribunal, it is recognised that removing the ability for a police officer or police recruit to have their instant dismissal reviewed by the Queensland Civil and Administration Tribunal or the judicial review ambit of the Supreme Court limits this right. While the majority of police officers sentenced to imprisonment resign from the QPS before their sentence is handed down, some officers choose to appeal their criminal sentence and are then considered for dismissal by the Commissioner after a disciplinary process. The delay in waiting for all criminal appeals to be exhausted after an imprisonment sentence has been handed down, and the additional delay and associated workload in starting a disciplinary proceeding before finally dismissing the officer is considered unacceptable to the QPS.

Police officers and police recruits hold a special position of trust and responsibility, in particular, they are empowered to uphold and enforce the law and to use coercive force within the limits of the law. These extraordinary powers and responsibilities require good character, and that must include abiding by the law. If a police officer or police recruit is found beyond reasonable doubt to have committed an offence against the law and been sentenced to imprisonment, not only have relevant facts about their conduct been proven to a higher standard than would be required in disciplinary proceedings, but the seriousness of the conduct is such that a court has found it appropriate to sentence them to imprisonment. Community expectations and confidence in the reputation of the QPS require that swift action be taken in relation to the employment of those officers and recruits.

(f) any other relevant factors

Not applicable.

On balance, providing an immediate and efficient legislative dismissal requirement for police officers and police recruits sentenced to imprisonment reflects community and police expectations and outweighs any limitations on human rights.

Expanding the definition of External Service Providers

The PSAA currently defines external service providers as public service employees, employed or engaged by an entity other than the QPS, to perform a corporate service support for the QPS that involves accessing QPS information. The Act also states that such persons are to be declared by regulation to be an external service provider.

The Bill will expand the range of persons who will be considered to be external service providers for the QPS by amendments that remove the requirement that an external service provider is to be a public service employee and by prescribing a greater number of entities that may employ external service providers.

The amendment will result in a greater number of persons being assessed for their suitability to be engaged by the QPS. To conduct this assessment, the person must provide relevant information including the person's criminal history to the Commissioner.

This amendment will engage the right a person has to privacy.

(a) the nature of the right

Privacy and reputation – section 25 of the HR Act

Section 25 of the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The right to privacy is very broad and includes privacy in the sense of personal information, data collection and correspondence. The concept of arbitrariness carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.¹

The amendment may limit a person's right to privacy by authorising the disclosure of information, including personal information, to QPS under specific circumstances.

(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 limitation is to ensure that QPS information is properly protected. The QPS holds confidential information including personal information that could cause damage if it was inappropriately disclosed. External service providers provide corporate support to the QPS and may have access to confidential information. There is a legitimate community expectation that an external service provider used by the QPS will have integrity so that the risk that they will commit offences particularly in relation to the misuse of QPS information will be minimised.

(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 limitation on an individual's right to privacy and reputation is necessary to ensure that external service providers engaged by the QPS have integrity thereby minimising the risk that QPS information that these people have access to will be misused. This can only be achieved by assessing the personal information of the external service provider.

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

There is not a less restrictive way to achieve the intent of this amendment.

Further safeguards are employed to protect the information that the QPS holds. For example, the offence provision outlined in section 10.1 of the PSAA (as amended by the Bill) prohibits the unauthorised use of confidential information by employees of the police service and may be considered to act as a deterrent by imposing a maximum penalty of 100 penalty units or 2 years imprisonment.

¹ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 [114]

In addition, the Information Privacy Principles in the *Information Privacy Act 2009* will apply to the disclosure of any personal information by QPS staff and to the storage, use and further disclosure of the personal information once received by a police officer or staff member.

(e) The balance between the importance of the purpose of the Bill, 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 benefits gained by fulfilling the purpose of the amendment, which may impose a limitation on human rights, outweigh the harm caused to the human right.

An external service provider is only required to disclose to the Commissioner the minimal amount of information necessary to determine if that person is suitable to be engaged by the QPS. This impingement has to be weighed against the legitimate expectation of the community that the QPS will protect the information that it holds including the personal information of others.

(f) Any other relevant factors

Nil.

Use of remote-controlled devices by authorised fire officers

Currently, section 55 of the FES Act allows authorised fire officers to access premises and open receptacles under specific circumstances for preventing or investigating a fire or a hazardous materials emergency. For dwellings, the occupier is required to give consent for entry except during or in the aftermath of a fire or hazardous materials emergency.

Technological advances now allow officers to use remote-controlled devices such as drones and robots to assess the safety of premises before entering or opening receptacles.

To ensure that legislation keeps pace with technology, it is proposed to clarify that an authorised fire officer may enter premises or open a receptacle in the same circumstances as currently prescribed, by using a remote-controlled device being controlled by an authorised fire officer or by a qualified person acting under the supervision of the officer.

(a) the nature of the right

Right to property – section 24 of the HR Act

Section 24 of the HR Act provides that every person has the right to own property alone or in association with others and that a person must not be arbitrarily deprived of their property. The right includes protection from the deprivation of property by restricting a person's use or enjoyment of their property, including enjoying exclusive possession of it.²

The amendment engages this right by authorising the use of remote-controlled devices to enter a premises, including dwellings, and to open a receptacle belonging to a person using such force as is reasonably necessary for particular purposes.

² Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Lawbook, 2nd ed, 2019) 184.

Right to privacy and reputation – section 25 of the HR Act

Section 25 of the HR Act provides that every person has the right to privacy in their family, home and correspondence and that privacy must not be unlawfully or arbitrarily interfered with. A person also has the right not to have their reputation unlawfully attacked.

The amendment engages this right as it provides for entry to a person's home where there is an expectation that the person's privacy should not be interfered with.

(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 functions of QFES include protecting persons, property and the environment from fire and hazardous materials emergencies. In order to carry out preventative and investigative functions, authorised fire officers may be required to enter property or open receptacles and therefore, the FES Act provides for these powers with appropriate safeguards.

However, entry by authorised fire officers to prevent or investigate a fire or hazardous materials emergency may place the officers at risk of injury or death and therefore limit their right to life. The amendment will enable authorised fire officers to exercise their existing powers through the use of a remote-controlled device when it may not be safe for a human to do so. An example of a remote-controlled device may be a drone or other such unmanned vehicle that is controlled by a human operator from afar.

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

(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 limitations on an individual's rights to privacy and property are currently existing under the FES Act and are necessary to enable authorised fire officers to perform duties to achieve the purpose of protecting persons, property and the environment from fire and hazardous materials emergencies. The amendment will achieve the purpose of minimising risks to authorised fire officers by providing a clear legislative authority for new technology to be used that can protect the health and safety of authorised fire officers.

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

There is no less restrictive way to achieve the intent of this amendment than providing a clear legislative authority for authorised fire officer to use devices to effect entry to premises or to open a receptacle.

The FES Act includes appropriate safeguards on the exercise of the powers, including by providing that the powers may only be exercised by authorised fire officers who are those fire service officers authorised by the Commissioner under section 52; restricting the purpose for which the powers may be exercised (section 55(1)); further limiting the exercise of the power

of entry for dwellings (section 55(2)); and providing for protections in relation to things seized after entry (sections 56C, 56D, 56E, 56F).

(e) the balance between the importance of the purpose of the Bill, 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 benefits of the limitation are to ensure that an authorised fire officer is not placed in harm's way while carrying out duties to meet the QFES function to protect persons, property and the environment from fire and hazardous materials emergencies. The limitation on a person's property and privacy rights through providing for a power of entry to premises and to open receptacles is balanced by a number of safeguards. Therefore, on balance the benefits gained by achieving the purpose of the amendment outweigh the harm caused by the limitation on human rights.

(f) Any other relevant factors

Nil.

Maintenance of prescribed fire safety installations

Section 104D of the FES Act provides that occupiers of buildings must maintain at all times every prescribed fire safety installation to a standard of safety and reliability in the event of fire and provides for penalties for failure to comply. The maximum penalties for this offence are significant, and increase depending on the seriousness of the outcome caused by the contravention up to 2,000 penalty units or 3 years imprisonment if the failure to maintain the installations causes multiple deaths.

Some fire safety installations must be located outside a building such as fire hydrants which allow authorised fire officers access to a water supply with sufficient pressure and flow at a sufficient distance to allow for fighting a fire from the outside. Because these installations are not located in the building they do not fall within the definition of 'prescribed fire safety installation'. The Bill amends the definition of 'prescribed fire safety installation' to include all installations required to be maintained 'for' the building under any Act, to include those that are outside the building.

(a) the nature of the right

Right to liberty and security of person - section 29 of the HR Act

Section 29 of the HR Act protects a person's right to liberty and security. This includes that a person must not be subjected to arbitrary arrest or detention and must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law.

The amendment limits a person's right to liberty by making them liable to imprisonment for failure to maintain a prescribed fire safety installation which is outside the building in certain circumstances.

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

- (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 imposition of significant penalties for the offence in section 104D of the FES Act provides a deterrent against failing to maintain prescribed fire safety installations which may result in property loss, bodily harm, grievous bodily harm or death. A person would not be subject to detention arbitrarily, but in accordance with law and having regard to the seriousness of the consequences resulting from the non-compliance.

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

There are no less restrictive ways to achieve the intent of this amendment.

- (e) the balance between the importance of the purpose of the Bill, 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 benefits gained by fulfilling the purpose of the amendment are to enhance safety of occupants and for the building, and this outweighs the harm caused to human rights through limitations on freedom of liberty.

- (f) Any other relevant factors

Nil

Offence to impersonate a member of a Rural Fire Brigade

The FES Act provides that it is an offence to impersonate a fire service officer, an authorised rescue officer, an SES or emergency services unit member or an SES coordinator (section 150G).

The application of the provision is broad in terms of the types of volunteers and office holders for which it is an offence to impersonate however, it does not apply to persons impersonating a member of a Rural Fire Brigade (RFB). As RFB members also carry out functions and exercise powers under the FES Act, the offence will be amended to also apply to RFB members.

(a) the nature of the right

Right to freedom of expression – section 21 of the HR Act

Section 21 of the HR Act provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether orally, in writing, in print, by way or art or in another medium chosen by the person. The right has a broad scope, protecting almost all forms of expression, including verbal or through art or conduct. The expression must be able to convey some kind of meaning, whether or not it does actually convey an objectively clear meaning to a particular person,³ and includes attempting to convey a meaning.⁴

The amendment proposes that it will be an offence to pretend to be a member of a rural fire brigade. Depending on the circumstances, a person may commit this offence by wearing an official Rural Fire Service (RFS) uniform, displaying the RFS logo, by their actions or speech or by a combination of these. This may be viewed as impacting on a person's human rights by limiting their freedom of expression through dress, speech and conduct.

Right to liberty and security of person - section 29 of the HR Act

Section 29 of the HR Act protects a person's right to liberty and security. This includes that a person must not be subjected to arbitrary arrest or detention and must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law.

The amendment means that a person who pretends to be a member of an RFB will be subject to a penalty, including a term of imprisonment in certain circumstances.

(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 QFES Commissioner may register a group of persons as a brigade (section 79). Because RFB members regularly interact with the community, including children, they are required to hold a blue card under the *Working with Children (Risk Management and Screening) Act 2000*, demonstrating their eligibility to work with children based on known police information.

Members perform the RFB functions of firefighting and prevention and other functions directed by the QFES Commissioner (section 82 of the FES Act). First officers of a brigade also have powers of an authorised fire officer when the brigade is in charge of operations for controlling and extinguishing a fire and may also direct another person to exercise these powers (section 83 of the FES Act).

Where legislation confers specific functions or powers on persons, it is essential that only properly trained persons carry out these functions. RFB volunteers, along with other QFES staff and volunteers, are well respected and trusted by the community for their work to keep Queensland communities safe. The wearing of uniforms identifies persons as RFB members

³ *Magee v Delaney* (2012) 39 VR 50; [2012] VSC 407 [61]

⁴ *R v Keegstra* [1990] 3 SCR 697

and allows the public to easily identify them as authorised and trained to exercise powers effectively and safely.

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

(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 offence of pretending to be a member of an RFB will prevent a person who is not a member from conveying information to others that they are a member of an RFB and therefore occupy a position of trust and respect in the community. It will ensure that a non-member cannot mislead the community, including in times of a state of fire emergency or when a brigade is in charge of operations for controlling and extinguishing a fire when members may be authorised to exercise the extensive powers of authorised fire officers for the purpose of protecting persons, property and the environment.

The imposition of a penalty, including a term of imprisonment, for impersonating a member of an RFB will provide a deterrent to support the maintenance of the trust, confidence and respect in which RFB members are held by the community. Any penalty, including potential imprisonment, will not be applied arbitrarily but will be in accordance with the law.

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

A less restrictive way to achieve the intent of this amendment would be to provide that no term of imprisonment applies for pretending to be a member of the RFB. However, this would not provide a sufficient deterrent from committing the offence during the heightened risk of a state of fire emergency when members of the public may be more vulnerable to exploitation by a person pretending to occupy a position of trust in the community.

(e) the balance between the importance of the purpose of the Bill, 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 benefits gained by fulfilling the purpose of the amendment outweigh the harm caused to the human right through limitations on freedom of expression by speech, conduct and dress or by potential imprisonment. The limitations on dress are minor as wearing elements of a uniform or displaying a logo may not, of themselves, constitute the offence of pretending to be an RFB member.

There are potentially serious risks to safety and to public confidence in the services provided by QFES in fire and emergency situations of a person pretending to be an RFB member. A person who is not screened for a blue card may present a danger to children by pretending to occupy a position of trust in the community. Additionally, a person could use this position of trust to gain access to property for unlawful purposes or attempt to exercise powers for which they are not qualified and trained.

(f) Any other relevant factors

Nil.

Disclosure of information to Queensland Police Service

The Deputy State Coroner, in the findings of inquest into the death of Mr John Edward Drane recommended that the QPS, QFES and Workplace Health and Safety Queensland identify the most practical and efficient means for ensuring that when agencies are concurrently investigating a death or serious injury involving a fire, that the roles and responsibilities of each agency, to inform each other's recommendations and to properly advise and put all relevant evidence before the investigating coroner, are clearly defined and appropriately carried out. As QFES also undertakes investigations into hazardous materials emergencies, the amendment will also deal with information relating to these investigations.

Section 153A of the FES Act provides that information obtained by a person while exercising a power or performing a function under the Act or because of an opportunity provided by the performance of a function or exercise of a power may only be disclosed, used, or recorded in the circumstances outlined in the section.

The amendment will provide clear authority for information acquired by QFES in investigating a fire or hazardous materials emergency involving death or serious injury to be disclosed to the QPS to assist in a concurrent investigation into the death or serious injury.

(a) the nature of the right

Privacy and reputation – section 25 of the HR Act

Section 25 of the HR Act provides that every person has the right to privacy in their family, home and correspondence and that privacy must not be unlawfully or arbitrarily interfered with. The right to privacy is very broad and includes privacy in the sense of personal information, data collection and correspondence. A person also has the right not to have their reputation unlawfully attacked.

The right to privacy under the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. The concept of arbitrariness carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.⁵

The amendment may limit a person's right to privacy by authorising the disclosure of information, including personal information, to QPS under specific circumstances.

⁵ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 [114]

(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 limitation is to support the administration of justice by ensuring that concurrent investigations can be carried out effectively and efficiently and to properly advise and put all relevant evidence before the coroner.

Where information is not shared efficiently and effectively between investigating agencies, this may result in delays in finalising investigations or incorrect conclusions being reached. As noted in the Drane coronial findings, the delay in sharing information misdirected the coronial investigation and compounded the grief of Mr Drane's family.

The proper investigation of fires, hazardous materials emergencies, deaths and serious injuries and the timely provision of comprehensive evidence to the Coroner enhances community safety and is consistent with a free and democratic society based on human dignity, equality and freedom.

(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 limitation on an individual's right to privacy and reputation will achieve the purpose by allowing all relevant information, including personal information, to be disclosed to a police officer or QPS staff member for the purpose of a concurrent QPS investigation into a fire or hazardous materials emergency-related death or injury. Personal information may be essential to an investigation and should therefore be available to QPS officers for the purpose of their investigation.

Police officers have a duty under section 794 of the PPRA to help coroners in the performance of a function or exercise of a power under the *Coroners Act 2003* including the investigation of deaths and conduct of inquests.

The amendment provides a lawful and reasonable limitation on the right to privacy to ensure the proper conduct of police investigations and coronial inquiries.

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

There is not a less restrictive way to achieve the intent of this amendment. Clear legislative authority is required to ensure that fire investigation information can be disclosed in the specified circumstances to give effect to the Coronial recommendation. As QFES also undertakes investigations to ascertain the cause of hazardous materials emergencies, it is appropriate that the amendment also deal with information acquired in relation to this type of investigation, where there is a death or serious injury involved.

This amendment provides safeguards by restricting the disclosure of information to police officers and staff members to circumstances in which the disclosure of that information relates to an investigation into a death or serious injury involving a fire or hazardous materials emergency. The department will provide all officers with guidance and training to ensure that personal information is not shared outside of the circumstances provided for in this provision.

Further safeguards are in place in other legislation. The offence in section 10.1 of the PSAA (as amended by the Bill) prohibits the unauthorised use of confidential information by a member of the QPS or another person engaged to perform functions under or relating to the administration of the PSAA. A maximum penalty of 100 penalty units or 2 years imprisonment will apply to this offence. This offence would apply to the unauthorised use of confidential information by police officers or QPS staff members who have received the information from QFES officers under section 153A of the FES Act.

In addition, the Information Privacy Principles in the IP Act will apply to the disclosure of any personal information by QFES officers and to the storage, use and further disclosure of the personal information once received by a police officer or staff member.

(e) the balance between the importance of the purpose of the Bill, 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 benefits gained by fulfilling the purpose of the amendment, which may impose a limitation on human rights, outweigh the harm caused to the human right.

In carrying out an investigation of a fire or hazardous materials emergency involving a death or serious injury, a QFES officer may acquire information that if disclosed could assist QPS in the investigation of the death or serious injury. Therefore, it is considered that the limitation on a person's right to privacy and reputation is proportionate and strikes a fair balance to the administration of justice.

(f) Any other relevant factors

Nil.

Conclusion

In my opinion, the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 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 MP
MINISTER FOR POLICE AND CORRECTIVE SERVICES AND
MINISTER FOR FIRE AND EMERGENCY SERVICES