

Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services

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 amendments moved during consideration in detail (ACiDs) of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the ACiDs are compatible with the human rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the amendments

The ACiDs include amendments to the *Police Service Administration Act 1990* (PSAA).

The main objective of these amendments is to support frontline policing functions and the operational capability of the Queensland Police Service (QPS) through the establishment of a police reserves workforce which will consist of people with former policing experience who can be employed at short notice.

Currently, section 5.9 of the PSAA provides for the employment of noncommissioned officers and constables only on a part-time or full-time basis. The PSAA also provides for other aspects of a police officer's employment including provisions that govern an officer's appointment, resignation, retirement, any disciplinary sanctions and a right to review a decision about the appointment, transfer, suspension or standing down of an officer.

The employment of police reservists will be a new category of special constables who will hold the same powers, duties and responsibilities as police officers employed on a part-time or full-time basis. They will also be subject to the same disciplinary laws and procedures that apply to these police officers. However, the employment terms and conditions of a police reservist will be different from those employed on a part-time or full-time basis. Such terms include being paid on an hourly basis with no fixed pattern of work and the hours worked will not be more than the ordinary hours worked by an equivalent full-time employee each fortnight. As these special constables will be employed on a casual and ad hoc basis, there will be no commitment to ongoing work and subsequently no right to review the decision to not continue the casual employment arrangement.

The policy objective will be achieved by amending the PSAA to expand the concept of ‘special constable’ so that it can facilitate the employment of former police officers on specific terms. Other minor amendments to the PSAA will also be necessary to facilitate this approach.

Human Rights Issues

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

In my opinion, the human right relevant to the ACiDs is:

- section 31 ‘Fair hearing’ of the *Human Rights Act 2019* (HR Act).

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 HR Act)

Fair hearing – section 31 of the HR Act

(a) the nature of the right

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.

The proposed amendments expressly exclude a right for a review of a decision to appoint or not appoint a person as a special constable and a decision to revoke or vary a person’s appointment as a special constable. These decisions could impact upon the casual employment arrangements of a police reservist. Whilst internal QPS employment decisions, including a decision not to continue a casual employment arrangement does not constitute civil proceedings in 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. The principles of supporting a fair hearing in this 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 being informed of the charge, the allocation of time and facilities to prepare a defence and a trial without undue delay etc. In the context of administrative proceedings, the nature of the right to fair hearing and procedural fairness involves flexible obligations to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case and promote natural justice.

Whether the amendments could potentially limit the right to a fair hearing must be considered against the rights afforded to casual employees and any casual employment arrangements. The *Industrial Relations Act 2016* (Qld) and the *Fair Work Act 2009* (Cth) provide limited rights for a casual employee, particularly when it comes to dismissal or terminations. A casual employee does not have the same unfair dismissal rights as a permanent employee and therefore cannot make an unfair dismissal claim to the Fair Work Commission.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the Bill is to support the frontline policing functions and the operational capability of the QPS through the establishment of police reserves which will consist of people with former policing experience who can be employed at short notice.

The effect of the proposed amendments will allow a new category of special constables who will hold the same powers, duties and responsibilities as police officers employed on a part-time or full-time basis. They will also be subject to the same disciplinary laws and procedures that apply to these permanently employed police officers. The amendments do not impede on an individual's statutory right to seek a review of a disciplinary decision under Part 9 of the PSAA.

However, the employment terms and conditions of a police reservist will be different from those employed on a part-time or full-time basis and any decision to not continue their casual employment arrangement will be expressly excluded as a reviewable decision. This resembles employment conditions of casual employees in other sectors, noting under this arrangement the offer of employment is not a commitment to an agreed pattern of work and the employee is aware of these conditions upon accepting the offer of employment.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The expressed exclusion on the review of a decision to discontinue the casual employment arrangement does not limit the current rights afforded to casual employments under the *Industrial Relations Act 2016* (Qld) and the *Fair Work Act 2009* (Cth). Instead, the proposed amendments are designed to meet the policy objective of supporting frontline policing functions and the operational capability of the QPS through the establishment of police reserves who can be employed at short notice.

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

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

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed amendments do not limit the rights generally afforded to casual employees and must be balanced against the importance of being able to employ and manage police reservists efficiently. As such, on balance it is considered that the benefits of the amendments outweigh any perceived limitation.

- (f) any other relevant factors

There are no other relevant factors.

Conclusion

In my opinion, the ACiDs of the Bill are 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

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