

## Economics and Governance Committee

### Response to submissions about the Police Service Administration and Other Legislation Amendment Bill 2021

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**TITLE OF BILL:** Police Service Administration and Other Legislation Amendment Bill 2021

**REPORT OF:** Queensland Police Service

**DATE:** 21 January 2022

#### INTRODUCTION AND SUMMARY

On 16 November 2021, the Minister for Police and Corrective Services and Minister for Fire and Emergency Services introduced the Police Service Administration and Other Legislation Amendment Bill 2021 (the Bill) into the Queensland Parliament. The Bill was referred to the Economics and Governance Committee (the Committee) for consideration.

The Bill is designed to achieve two distinct objectives. The primary objective of the Bill is to modernise the legislation underpinning Protective Services. Protective Services is tasked with providing security services for the Queensland Government and operates as an administrative unit within the Queensland Police Service (QPS).

The other objective of the Bill is to increase efficiencies in the administration of identity cards the support the operations of the Queensland Parks and Wildlife Service. These identity cards are issued pursuant to Department of Environment and Science legislation namely the *Forestry Act 1959*, the *Marine Parks Act 2004*, the *Nature Conservation Act 1992* and the *Recreation Areas Management Act 2006*.

The Committee sought public submissions on the Bill and requested the QPS provide a written response to these submissions by 21 January 2022.

The following submissions have been received by the Committee:

Submission Number	Submitter Name
1	Crime and Corruption Commission Queensland
2	Queensland Law Society

The QPS response to these submissions is as follows:

#### **Submission 1 – Crime and Corruption Commission Queensland (CCC)**

The CCC supports amendments within the Bill that:

- include protective services officers (PSOs) within the QPS alcohol and drug testing regime; and
- authorise the use of body-worn cameras by PSOs.

Further, the CCC considers the use of force powers for PSOs outlined in the Bill to be appropriate.

Finally, the CCC notes that the Bill will not affect the CCC's jurisdiction to deal with complaints involving corruption by a PSO nor does it affect the QPS' obligations under section 38 of the *Crime and Corruption Act 2001* to raise a reasonable suspicion of corrupt conduct against a PSO to the CCC.

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#### **QPS response:**

The QPS notes the support that the CCC provides to aspects of this Bill.

#### **Recommendation:**

No Change.

#### **Submission 2 – Queensland Law Society (QLS)**

The Queensland Law Society (QLS) have raised a number of issues. For brevity, the QPS response will immediately follow the comments made by the QLS.

#### ***Amalgamating protective security officers and senior protective security officers into one group called ‘PSOs’***

The QLS has commented:

Clause 36 inserts a new 5.23 into the PSAA, ‘Functions of protective services officer’ which states:

- (1) The primary function of protective services officers is to carry into effect the systems formulated for the security of state buildings, including, for example, the systems for the entry of vehicles into state buildings and the parking of vehicles.
- (2) Also, the functions of protective services officers include-
  - (a) providing services, on a commercial basis, for a building (other than a state building) under a contract entered into by the State; and
  - (b) exercising a power given to protective services officers under this Act or another Act; and
  - (c) another function given to protective services officers under this Act or another Act.

QLS holds reservations about how the proposed amalgamation will work in practice, particularly in circumstances where less senior PSOs will be able access powers which are currently only available to senior PSOs. For example, a protective security officer is not authorised to seize any ‘proscribed matter’ that they may find and cannot demand the entrant provide their personal details or the reason why they wish to enter into a state building. If the entrant declines to be screened or allow their property to be searched, the protective security officer cannot direct the person to leave the state building or remove them.

We note that currently, senior PSOs undertake a further two weeks training directed towards understanding and use of legislative functions and powers that are conferred pursuant to Part 3, Division 1 and 2 of the SBPSA (Functions of security officers and Powers of senior protective security officers).

We do not support the proposal unless equivalent training is provided prior to any authorisation of current PSOs to exercise existing senior PSO powers. We are particularly concerned about the wider circumstances under which a PSO may operate under the Bill which include providing services, on a commercial basis, for a building (other than a state building). We note this is a new addition proposed by the Bill. . .

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#### **QPS response:**

In briefing the Committee about the Bill, Assistant Commissioner Debbie Platz, Security and Counter-Terrorism Command has addressed the training that would be given to QPS staff to implement the Bill. Assistant Commissioner Platz stated:

In implementing this bill, the QPS has recognised that current serving security officers have already been trained in the use of security powers that may be exercised in state government buildings. Consequently, the QPS considers that an additional one-week training period would be sufficient to ensure the existing cohort of security officers will be able to act proficiently as a PSO. I can report to the committee that we have also considered proposed training program methods for the delivery of this training such as what we can deliver via computer based training.

New applicants wishing to become a PSO will be required to successfully complete a five-week training program, as opposed to the current four-week program that they undergo at the Queensland Police Service Academy. This program covers communication skills, operational skills, tactics training, security legislation, and organisational policies and procedures. This five-week program is the equivalent to the training currently provided to senior protective security officers prior to their appointment in the QPS.

The QPS is satisfied that appropriate training will be provided to ensure that PSOs will be proficient in their duties.

Comments by the QLS ‘about the wider circumstances under which a PSO may operate under the Bill which include providing services, on a commercial basis, for a building (other than a state building)’ are mistaken. The proposed functions of PSOs outlined in the Bill are not new, but are a restatement of the functions of security officers outlined in section 18 of the *State Buildings Protective Security Act 1983*. Similarly, the Bill does not expand the powers that may be exercised in relation to state buildings to localities unrelated to these areas.

#### **Recommendation:**

No Change.

#### ***Power for PSOs to direct a person to leave a protected place if the person is trespassing or is disorderly in that place***

The QLS has commented:

Our concerns with respect to training are heightened by the proposed increased powers for PSOs. Proposed s 554 of the Bill ‘Direction to leave state building’ seeks to clarify that a direction can be given by a police officer or PSO to a person who ‘is or has been disorderly, indecent, offensive or threatening to someone else entering, at or leaving’ a state building and the officer reasonably suspects the direction is necessary to maintain the security of the building.

The Bill also creates offences (under s 791B) that will apply to a person who does not comply with a direction given in accordance with s 554. These offences will carry a maximum penalty of 20 penalty units for contravening a direction given by a PSO.

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QLS holds significant reservations about the exercise of police powers by persons who have not received police training particularly in circumstances where the pool of persons who will be able to use these powers, will be expanded (i.e. to include senior PSOs and PSOs). In our view, such measures risk having a disproportionate impact on vulnerable persons (including young people) when they are accessing public places and/or services.

#### **QPS response:**

Currently, senior protective security officers and police officers may use force to remove from a state building a person who has no good and lawful reason for being there. Although a police officer or senior protective security officer may rely on move-on powers under the PPRA to give directions to a person who is in a public area of a state building if the person is disorderly or disruptive, **there is no current express power to direct a trespasser to leave.**

The Bill will authorise a direction to be given to trespassers or to a person who is acting inappropriately in a state building to leave. The QPS considers that the exercise of a power to direct a person to leave a state building if the person is disorderly etc, is less intrusive or confrontational than relying on the use of force to remove that person.

The QPS is satisfied that sufficient training will be provided to ensure that this power will be exercised appropriately and notes that legislative safeguards are introduced by the Bill to ensure the accountability of an officer who exercises this power. For example, the exercise of this power would be considered to be an enforcement act requiring relevant information to be recorded in the register of enforcement acts.

Finally, this proposed power is 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. 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, particularly in Court precincts.

#### **Recommendation:**

No Change.

#### **Screening powers for PSOs**

The QLS has stated:

The proposed amendments mean that PSOs must, *if practicable*, warn the person failing to comply with the direction that it is an offence to fail to comply with the direction unless the person has a reasonable excuse and give the person a reasonable opportunity to comply with the direction. We recommend that the clause be amended to ensure that an entrant must be warned that failing to comply with the oral direction or requirement of a PSO is an offence.

#### **QPS response:**

The QPS notes that the safeguard as drafted in the Bill is consistent with the safeguard given by police officers when giving oral directions in accordance with the PPRA. Currently, section 633 of the PPRA provides in part:

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- (1) This section applies if a police officer gives someone an oral direction or makes an oral requirement under this Act.
- (2) If the person fails to comply with the direction or requirement a police officer must, **if practical**, warn the person-
  - (a) it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse. . . (emphasis added)

The Bill will impose a similar safeguard to PSOs. Clause 11 of the Bill provides:

#### **633A Safeguards for oral directions or requirements—protective services officers**

- (1) This section applies if a protective services officer gives someone an oral direction or makes an oral requirement under chapter 19, part 1, division 2.
- (2) If the person fails to comply with the direction or requirement, a protective services officer must, **if practicable**, warn the person it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse. . . (emphasis added)

It is the QPS view that, as police officers and PSOs will be able to give directions in state buildings about identical matters, having consistent safeguards for these officers is the appropriate and preferred option.

#### **Recommendation:**

No Change.

#### ***Allowing police officers to demand the name and address of a person in or entering a state building***

The QLS comments:

To ensure that the power is exercised appropriately and adequately reflects an individual's right to privacy, we submit that where an entrant to a state building has not complied with the requirement under 550, they should simply be refused entry to the state building and, where they fail to leave the building, then be directed to leave the building. We do not support the inclusion of an offence for failing to comply with a demand to supply the name and address in the circumstances proposed.

Whilst we note that senior PSOs currently have this power [to require an entrant to a state building to state the person's name, address and reason for being present] under the existing provisions, we do not support the power being extended to PSOs and police officers as proposed under the Bill.

#### **QPS response:**

As previously indicated in the QPS Brief on this Bill to the Committee, state buildings have a particular significance in our society due to the range of services provided at these locations and as the interface between the government and the community. These areas face particular security risks. Australian security agencies have assessed the National Terrorism Threat Level as 'probable' meaning that individuals or groups continue to possess the intent and capability to conduct a terrorist attack in Australia. This threat is elevated for governments, in particular military, police and security agencies, as appeals for symbolic attacks have been made against these agencies.

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When briefing the Committee about the Bill, Assistant Commissioner Debbie Platz, Security and Counter-Terrorism Command emphasised the importance of protecting state buildings. Assistant Commissioner Platz stated:

The significance of the security services that Protective Services provides cannot be underestimated. Their services go beyond simply protecting bricks and mortar. Importantly, the role of this group extends to protecting the Government employees who use these buildings and the visitors who frequent them. Government buildings must be maintained as a safe environment. Without this, the business of government may be compromised, adversely affecting our community and way of life.

Across Australia, various jurisdictions have acknowledged government buildings as important locations requiring specific security measures. One security measure universally adopted for specific government buildings is the power to require a person within these areas to state the person's name and address.

The QPS considers that adequate levels of security for state buildings can only be provided if police officers and PSOs are empowered to require entrants to these areas to provide their name and address details. Examples where the security of a state building may be compromised may include:

- Intelligence may be received that a person who presents a security risk will be attending at a state building. Information from QPRIME may be available, including photographs and information on risk factors such as the person of interest being predisposed to violence, a history of carrying weapons etc. Without a power to demand an entrant's name, police at a state building may locate a person who matches the person of interest's general description but be unable to verify the person is the person of interest; or
- It may be difficult to determine if a person is in breach of a direction to leave a state building if the person later returns and their particulars are not known and the police officer who issued the direction is not present.

The QPS considers that the Bill introduces important safeguards to ensure that the power to require a person to state their name and address is exercised appropriately. A person may only be required to provide their name and address if the officer reasonably suspects it is necessary to do so to maintain the security of a state building. This is consistent with directions given by police officers at other locations. For example, at major airports such as at Brisbane, Cairns and the Gold Coast, a police officer may require a person to provide their name and address if the officer considers it necessary to give the direction to safeguard the public order and safe operation of that, or another, major airport.

#### **Recommendation:**

No Change.

#### ***Authorising PSOs to seize contraband located in the performance of their duties***

The QLS states:

QLS holds reservations about the expansion of contraband which might be seized in the context of existing police powers in the PPRA. In relation to PSOs, we are also concerned about the responsibilities of PSOs who seize or come into possession of these items in circumstances where the item may become evidence and they are not sufficiently trained

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to ensure that the integrity of the evidence is preserved. These issues are compounded where the scope of the items is proposed to be expanded and where there may be a dispute as to whether the items were unlawful and/or possessed unlawfully

#### **QPS response:**

The Bill outlines a number of measures to ensure that contraband seized by a PSO will be dealt with appropriately through the institution of a number of legislative requirements. The PSO must issue a receipt for seized property that must be given to the person who had been in possession of the thing and record the seizure in the register of enforcement acts. Further, a PSO seizing a relevant thing must ensure it is given to an appropriate property officer or a police officer. The QPS is satisfied that because the Bill introduces a legislative framework, underpinned by Service policy, property will be appropriately handled by PSOs.

Additionally, the QLS has commented that the power to inspect an entrant's belongings are very broad. Specifically, the QLS comments "Inspect" includes 'handle the article, open it and examine its contents'. We do not support the provision of these powers to a PSO. At a minimum the provision should be amended so that a person may be able to refuse the inspection request and be directed to leave the state building'.

The QPS notes that the Bill clearly outlines that a PSO or police officer may ask an entrant to participate in the screening process and allow their belongings to be inspected. If the entrant refuses to participate in these security measures, the person may be directed by a PSO or police officer to leave the state building. This direction must not be made by a PSO if the entrant tells the PSO that the person does not want to be subject to screening or inspection and the person immediately leaves the state building. The QPS considers that this approach accords with the QLS's preferred outcome.

#### **Recommendation:**

No Change.

#### ***Clarifying the use of force by PSOs***

The QLS states:

We have significant reservations about the expansion of the circumstances under which force may be used by PSOs and consider that the threshold under which force may be applied is too low, particularly in circumstances where there may have been little or no training as to an appropriate use of force provided to these officers.

We reiterate our concerns about the exercise of police powers by persons who have not received police training and strongly recommend that these provisions be revisited.

#### **QPS response:**

The QPS is satisfied that adequate training will be provided to PSOs about the appropriate use of force in the performance of their duties.

#### **Recommendation:**

No Change.

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#### *Protective services officer must produce identity card unless in uniform*

The QLS states:

Section 559 relates to PSOs needing to produce their identity card where they exercise a power while not in uniform. However, subsection (4) provides that the failure of a PSO to comply with the section does not make the exercise of a power under that part unlawful. This appears to widen the powers provided to PSOs (who, under s 10B of the SBPSA, cannot currently exercise a power while not in uniform). Section 10B of the SBPSA also does not include an equivalent protection as the new s 559(4) of the Bill for PSOs who fail to comply with the requirements as to providing identity cards while not in uniform.

QLS holds reservations about the implications of this provision in practice particularly in the context of the significant powers which are being proposed under the Bill.

#### **QPS response:**

It is unclear how the Bill, by requiring PSOs to identify themselves, based on analogous obligations imposed on senior protective security officers under the *State Buildings Protective Security Act 1983*, will result in a widening of powers.

The current section 10B ‘Security officers to be in uniform except in limited circumstances’ of the *State Buildings Protective Security Act* provides:

- (1) A security officer (other than a senior protective security officer), who is not wearing the uniform decided for the officer under a regulation, may not exercise a power under part 3, divisions 1 and 2, in relation to a person.
- (2) A senior protective security officer, who is not wearing the uniform decided for the officer under a regulation, may exercise a power in relation to a person only if the officer first produces the officer’s identity card for inspection by the person.
- (3) If, for any reason, it is not practicable to comply with subsection (2) before exercising the power, the senior protective security officer must comply with the subsection at the first reasonable opportunity.

The Bill applies a contemporaneous obligation upon PSOs, consistent with how other public officials are obliged to identify themselves when exercising statutory powers. Clause 4 of the Bill introduces the new section 559 ‘Protective services officer must produce identity card unless in uniform’ of the PPRA which provides in part:

- (1) This section applies if a protective services officer, other than a protective services officer who is in uniform, exercises a power under this part in relation to an entrant or group of entrants.
- (2) The protective services officer must—
  - (a) produce the officer’s identity card for inspection by the entrant or entrants before exercising the power; or
  - (b) display the officer’s identity card so it is clearly visible to the entrant or entrants when exercising the power.
- (3) However, if it is not reasonably practicable to comply with subsection (2), the protective services officer must produce the identity card for inspection by the entrant or entrants at the first reasonable opportunity.



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- (4) The failure of a protective services officer to comply with subsection (2) or (3) does not make the exercise of a power under this part unlawful.

The proposed section 559(4) of the PPRA does not widen powers afforded to a PSO but simply declares that a failure to comply with subsection (2) or (3) [dealing with the production or display of identity cards] does not make the exercise of a power under this part unlawful. The utility of this provision is obvious and may be demonstrated through the following example –

A PSO, who is not in uniform, witnesses an offender violently assaulting an entrant to a state building. The PSO intervenes and relies on the proposed section 557 ‘Refusal of entry to and removal from state building’ outlined in the Bill to physically remove the offender from the state building. Before the PSO has the opportunity to produce his identity card, the offender decamps. The proposed section 559(4) operates to clarify that the PSO’s exercise of the power to remove the offender from the state building is not made unlawful simply because the PSO was not in uniform and did not have the opportunity to produce an identity card for inspection.

#### **Recommendation:**

No Change.

#### ***Authorising PSOs to use body-worn cameras***

The QLS states:

The Bill will clarify that it is lawful for a PSO to use a body-worn camera. The Bill also provides PSOs with an exemption to the general prohibition on recording private conversations under s 43(2)(d) of the *Invasion of Privacy Act 1971* (Qld).

We have reservations about PSOs being afforded the same authorisation to use body-worn cameras as police officers.

Such cameras may be used in circumstances where persons are lawfully accessing state buildings and public spaces. We suggest that further clarification is needed as to the circumstances in which the camera will be turned on, who has access to the recordings and for what purpose, to ensure that privacy safeguards are appropriate.

In our view, the use of body-worn cameras by PSOs should be subject to further consideration particularly around the limitations of their use in this context

#### **QPS response:**

In the statement of compatibility associated with the Bill, it was noted that Parliament has already authorised a range of public officials to use body-worn cameras. The public officials authorised to use body-worn cameras include:

- Authorised officers and inspectors under the *Animal Care and Protection Act 2001*;
- Authorised officers under the *Biosecurity Act 2014*;
- Inspectors under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;
- Inspectors under the *Drugs Misuse Act 1986*;
- Inspectors under the *Exhibited Animals Act 2015*;

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- Inspectors under the *Fisheries Act 1994*; and
- Detention centre employee under the *Youth Justice Act 1992*.

The statement of compatibility also noted that the use of body-worn cameras is becoming more prevalent in private industry and the widespread support in the community of the use of body-worn cameras as a legitimate means of recording events that may occur around the user.

As outlined in the statement of compatibility and highlighted in the public briefing about the Bill, the use of body-worn cameras by PSOs would take place within state buildings where in many instances CCTV is already employed to record the environment.

It is the QPS view that the advantages of the use of body-worn cameras greatly outweigh concerns about their deployment. For example, as outlined in the explanatory notes accompanying the Bill, body-worn cameras are an excellent method of accurately recording interactions and events which may be used to collect evidence of offences; and to assist in resolving complaints made by the public about the conduct of officials.

Service policy will be developed to provide guidance to PSOs about the use of body-worn cameras. This policy will be similar to the existing comprehensive procedures already in place for police officers about body-worn cameras. This policy addresses important issues associated with the use of body-worn cameras including the allocation, carriage and storage of body-worn cameras, when to use body-worn cameras, when not to use body-worn cameras and how recordings of body-worn cameras may be stored. This policy is detailed within section 4.4 'Body worn cameras' of the Digital Electronic Recording of Interviews and Evidence Manual and is publicly available. This policy may be perused through accessing website: <https://www.police.qld.gov.au/sites/default/files/2019-08/DERIESection4.pdf>.

#### **Recommendation:**

No Change.

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#### *Specific drafting concerns*

The QLS has raised specific drafting concerns about the Bill. For conciseness, these concerns are reproduced in association with QPS commentary.

Clause No.	Clause Description	Reason for Issue / Concern	QPS comments
552(2)(b)	Police or PSO may ask entrant to remove '1 or more outer garments'	A definition and/or examples of 'outer garments' should be provided so as to preserve a person's dignity and not unnecessarily expose them to 'strip searches at the entrance to a state building. 552(2)(b) Police or PSO may ask entrant to remove '1 or more outer garments' Examples of outer garments may include: cardigan, scarf, shawl, jacket, coat. We note the 'dignity of the entrant' is contemplated in clause 553.	Schedule 6 'Dictionary' of the PPRA already defines an outer garment to include a cloak, coat, shirt and garment.  This definition will apply to amendments made by the Bill.  <b>Recommendation:</b>  No Change.
26(2)	Definition of 'security'	In addition to the 'safety' of things, (b) should include the 'preservation' of things, that is, 'the safety and preservation of things in, or about to be brought into, the building'.	The Bill provides the definition of security of a state building to include 'the safety of things in, or about to be brought into, the building.'  The QPS considers an expansion of this definition to read 'the safety <b>and preservation</b> of things in, or about to be brought into, the building' would be surplusage as a thing that is not preserved would never be considered to be safe.  <b>Recommendation:</b>  No Change.

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Clause No.	Clause Description	Reason for Issue / Concern	QPS comments
53C(a)	When the entrant was prevented from entering	We suggest that further information should be recorded in the register of enforcement acts and that the information should include 'The date and time on which the entrant was prevented from entering'.	<p>The new section 53C of the <i>Police Responsibilities Code 2012</i> outlines the information that must be recorded in the register of enforcement acts by a police officer or a PSO who has prevented a person from entering a state building. This information includes when the entrant was prevented from entering.</p> <p>It is the view of the QPS that to comply with the requirement to include in the register of enforcement acts information about when a person was prevented from entering a stated building it is inherently necessary to indicate the time and date that this occurred.</p> <p>This is reflected in existing register of enforcement act entries made in relation to similar matters.</p> <p>Additionally, the QPS considers that this amendment has been drafted in accordance with the prevailing drafting style for this part of the <i>Police Responsibilities Code</i>.</p> <p>If it was to be accepted that references in provisions in this part to 'when' an event has occurred should be replaced with 'the time and date' an event occurred amendments would also be needed to sections 44-46 and 47A-54 of the <i>Police Responsibilities Code</i> for consistency. Consideration would also</p>

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Clause No.	Clause Description	Reason for Issue / Concern	QPS comments
			<p>need to be given to making similar amendments to sections 3, 7-11, 11B-12, 14, 16, 18 and 33.</p> <p><b>Recommendation:</b> No Change.</p>
53D	Detention of entrant	(b) requires the time to be recorded, but not the date. The date should be recorded.	<p>The proposed section 53D of the <i>Police Responsibilities Code</i> outlines the information that must be recorded in the register of enforcement acts by a PSO who detains a person in accordance with section 558 of the PPRA.</p> <p>It is the view of the QPS that to comply with the requirement to include in the register of enforcement acts the time that a person was detained it is inherently necessary to indicate the date on which this occurred.</p> <p>The QPS considers that the new section 53D of the <i>Police Responsibilities Code</i> has been drafted to be consistent with the drafting style employed in the existing section 47 ‘Arrests and detentions-Act, s 679(1)’ of the <i>Police Responsibilities Code</i> which makes similar reference to the time and not to the date.</p> <p><b>Recommendation:</b> No Change.</p>