



# **Police Service Administration and Other Legislation Amendment Bill 2021**

**Report No. 21, 57th Parliament  
Economics and Governance Committee  
February 2022**

## **Economics and Governance Committee**

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All web address references were current at the time of publishing.

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## Abbreviations

Bill	Police Service Administration and Other Legislation Amendment Bill 2021
committee	Economics and Governance Committee
CCC	Crime and Corruption Commission
DES	Department of Environment and Science
FLP	fundamental legislative principles
HRA	<i>Human Rights Act 2019</i>
IP Act	<i>Invasion of Privacy Act 1971</i>
LSA	<i>Legislative Standards Act 1992</i>
Minister	Hon Mark Ryan MP, Member for Police and Corrective Services and Minister for Fire and Emergency Services
NSW	New South Wales
OQPC	Office of the Queensland Parliamentary Counsel
POQA	<i>Parliament of Queensland Act 2001</i>
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
PPRR	Police Powers and Responsibilities Regulation 2012
Protective Services	State Government Protective Security Service
PSAA	<i>Police Service Administration Act 1990</i>
PSO	Protective Services Officer
QLS	Queensland Law Society
QPS	Queensland Police Service
Queensland Parks and Wildlife Service Legislation	<i>Forestry Act 1959, Marine Parks Act 2004, Nature Conservation Act 1992 and the Recreation Areas Management Act 2006</i>
SBPSA	<i>State Buildings Protective Security Act 1983</i>
SBPSR	State Buildings Protective Security Regulation 2008
Standing Orders	Standing Rules and Orders of the Legislative Assembly (Queensland)

All Acts are Queensland Acts unless otherwise specified.

## Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Police Service Administration and Other Legislation Amendment Bill 2021 (Bill).

The committee's task was to examine the proposals set out in the Bill and determine whether to recommend the Bill be passed, including by receiving advice and technical assistance from departmental officials, welcoming input from stakeholders and the broader public through submissions, and considering other available information to support the committee in its deliberations.

In discharging these responsibilities, the committee also examined the Bill for compatibility with human rights, in accordance with the *Human Rights Act 2019*, and considered the application of fundamental legislative principles – that is, whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank the officers of the Queensland Police Service and the Department of the Environment and Science for their assistance with the committee's inquiry. I also thank our Parliamentary Service staff. I commend this report to the House.



Linus Power MP

Chair

## Recommendation

### Recommendation 1

2

The committee recommends the Police Service Administration and Other Legislation Amendment Bill 2021 be passed.



## 1 Introduction

### 1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly (Standing Orders).<sup>1</sup>

The committee's primary areas of responsibility are:

- Premier and Cabinet and Olympic and Paralympic Games
- Treasury, Trade and Investment
- Tourism, Innovation and Sport.<sup>2</sup>

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation, the application of fundamental legislative principles (FLPs), and the compatibility of the legislation with the *Human Rights Act 2019* (HRA).<sup>3</sup>

### 1.2 Inquiry process

On 16 November 2021, the Police Service Administration and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly by the Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services (Minister).<sup>4</sup> On 18 November 2021, the Bill was referred to the committee for examination.<sup>5</sup> The committee was required to report to the Assembly on the Bill by 11 February 2022.<sup>6</sup>

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers, and received 2 submissions<sup>7</sup> (a list of submitters is at Appendix A)
- received a written briefing on the Bill from the Queensland Police Service (QPS), prior to a briefing from officials from the QPS and from the Department of Environment and Science (DES) on 29 November 2021 (a list of the officials who appeared at the briefing is at Appendix B)
- requested and received written advice from the QPS on issues raised in submissions.

The submissions, correspondence from the QPS, and transcript of the briefing are available on the committee's inquiry webpage.<sup>8</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001* (POQA), section 88; Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

<sup>2</sup> Standing Orders, schedule 6.

<sup>3</sup> POQA, section 93; *Human Rights Act 2019* (HRA), section 39.

<sup>4</sup> Queensland Parliament, Record of Proceedings, 16 November 2021, pp 3483-3485.

<sup>5</sup> Queensland Parliament, Record of Proceedings, 18 November 2021, p 3743.

<sup>6</sup> Standings Orders, SO 132(1).

<sup>7</sup> The committee issued its call for submissions on 23 November 2021 and required submissions to be provided by 5pm, 12 January 2022. To publicise the inquiry and call for submissions, the committee contacted over 1,100 email subscribers and approximately 65 identified stakeholder organisations and individuals, as well as publishing inquiry information on its webpage and issuing a media release and social media posts.

<sup>8</sup> <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=167&id=4133>

### 1.3 Policy objectives of the Bill

The main objectives of the Bill are to:

- modernise the legislative framework underpinning Protective Services, which manages the security of Queensland Government buildings
- increase efficiencies for police officers acting as public officials under the *Forestry Act 1959*, the *Marine Parks Act 2004*, the *Nature Conservation Act 1992* and the *Recreation Areas Management Act 2006* (Queensland Parks and Wildlife Service Legislation), and in identity card administration for these Acts.<sup>9</sup>

### 1.4 Government consultation on the Bill

The explanatory notes advise that a consultation draft of the Bill was circulated to the following key stakeholders, whose feedback 'was taken into account in finalising the Bill':

- the Bar Association of Queensland
- the Chief Justice of the Supreme Court of Queensland
- the Chief Judge of the District Court of Queensland
- the Chief Magistrate of the Magistrates Court of Queensland
- the Queensland Human Rights Commission
- the Queensland Law Society (QLS)
- the Queensland Police Commissioned Officers' Union of Employees
- the Queensland Police Union of Employees
- the Together Union.<sup>10</sup>

The QPS was unable to comment on the specifics of the feedback provided by stakeholders due to those communications being subject to Cabinet-in-confidence. However, the committee was advised that 'as a generalisation, the stakeholders were very supportive of the bill that was going to be made'.<sup>11</sup>

### 1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Police Service Administration and Other Legislation Amendment Bill 2021 be passed.

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<sup>9</sup> Explanatory notes, p 1.

<sup>10</sup> Explanatory notes, p 14.

<sup>11</sup> Senior Sergeant John Henderson, Legislation Branch, Queensland Police Service (QPS), public briefing transcript, Brisbane, 29 November 2021, p 5.

## 2 Background

On 30 July 1984, the *State Buildings Protective Security Act 1983* (SBPSA) established the State Government Protective Security Service (Protective Services) as a dedicated statutory unit. Protective Services is tasked with providing security services for Queensland Government buildings.<sup>12</sup>

Protective Services has over 400 staff providing static and mobile security services for over 80 state government buildings and 400 educational facilities, including:

- engaging building service coordinators who manage security procedures in 47 government owned or leased buildings
- delivering on-site security at 38 court precincts
- providing mobile patrols of schools within the Brisbane, Logan and Moreton Bay regions and on Palm Island.<sup>13</sup>

Protective Services also manages identity card production for state government agencies, as well as delivering an alarm monitoring and response service through its operations centre. This service monitors:

- over 2,500 alarms within Queensland and northern New South Wales (NSW) and over 5,500 duress alarms across Queensland
- approximately 700 fire detection devices and facilities alarms (eg power, air conditioning) for critical government buildings such as the Queensland Radioactive Waste Store and Queensland State Archives.<sup>14</sup>

Protective Services also provides security advice to agencies on a consultancy basis.<sup>15</sup>

The SBPSA authorises security officers to exercise a range of security related powers in relation to persons in, or about to enter, state government buildings. These powers include:

- screening a person entering or in the protected area by either electronic screening and/or inspection
- inspecting a vehicle, and its contents, entering or in the protected area
- demanding name and address details of an entrant and their reason for entry
- seizing contraband
- directing a person to leave the protected area if the person does not comply with security arrangements
- removing a person who has failed to comply with directions from the protected area.<sup>16</sup>

*Senior protective security officers* also have powers of detention and other powers equivalent to those of police officers. The SBPSA provides that these senior officers 'shall have and may exercise in relation to a state building all the powers and authorities of a police officer, except the power of arrest'.<sup>17</sup>

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<sup>12</sup> Explanatory notes, p 1; QPS, correspondence, 26 November 2021, p 2.

<sup>13</sup> Assistant Commissioner Debbie Platz, Executive Officer, Security and Counter-Terrorism Command, QPS, public briefing transcript, Brisbane, 29 November 2021, p 2; explanatory notes, p 1; QPS, correspondence, 26 November 2021, p 2.

<sup>14</sup> Explanatory notes, p 1.

<sup>15</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 2.

<sup>16</sup> Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services (Minister), Queensland Parliament, 16 November 2021, p 3482.

<sup>17</sup> SBPSA, section 19.

Protective Services has operated within a number of administrative settings. In 2016, it was integrated into the QPS, in response to a recommendation made during a Review of the Public Safety Business Agency.<sup>18</sup> The stated reasons for the recommendation included:

- the inherent value of QPS maintaining overall responsibility for public safety in Queensland, and the ability to easily coordinate response and deployment in times of emergency
- the ability to use [Protective Services] as part of the QPS employee life-cycle, including as a platform for interested recruits who do not yet meet the entrance requirements for QPS, and providing a broader range of options to transition sworn officers
- the ability to access improved training and support for [Protective Services] officers, as the QPS already delivers these services to staff.<sup>19</sup>

The QPS advised that these arguments for integration have been borne out by the merger process, submitting that ‘aligning Protective Services within the QPS is, and was, a logical and practical arrangement as both agencies are dedicated to providing safety and security across our communities’.<sup>20</sup> Assistant Commissioner Debbie Platz reported that, in respect of the QPS’ ability to use Protective Services as part of the QPS employee life-cycle:

On average, 10 [Protective Services] staff members transition each month to other duties within the Queensland Police Service. Some commence training as police recruits on their way to becoming sworn officers, while other members work in other Queensland Police Service commands. I consider this testament to how well the Protective Services Group has already integrated into the Queensland Police Service.<sup>21</sup>

In addition, Assistant Commissioner Platz advised:

From the outset, when Protective Services merged with the Queensland Police Service, an undertaking was made to ensure that protective services officers were appropriately trained and equipped to perform their duties.... I can indicate to the committee that the Queensland Police Service has honoured this commitment. Officer training facilities have been upgraded, curriculum reviews are ongoing and skills maintenance training has been enhanced.<sup>22</sup>

During the course of the integration process, the QPS reviewed the underpinning legislation, the SBPSA and State Building Protective Security Regulation 2008 (SBPSR) – ‘to ensure this legislative framework meets the contemporary needs of this group and the communities they are protecting’.<sup>23</sup> The QPS identified a number of legislative changes which it considers will:

... increase the efficiency of Protective Services, while simultaneously promoting the integration of Protective Services into the QPS and ensuring the Government meets its obligation as an employer to provide for the safety and security of people in government buildings.<sup>24</sup>

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<sup>18</sup> Public Service Commission, *Review of the Public Safety Business Agency*, February 2016.

<sup>19</sup> Public Service Commission, *Review of the Public Safety Business Agency*, February 2016, p 57.

<sup>20</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 2.

<sup>21</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 2.

<sup>22</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 2.

<sup>23</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 2.

<sup>24</sup> QPS, correspondence, 26 November 2021, p 4.

The Bill aims to give effect to these changes by:

- repealing the SBPSA and incorporating the legislative framework for Protective Services into the state's police legislation to promote the integration process and deliver a 'single point of truth' for the exercise of security powers by officers of Protective Services and the QPS in state buildings<sup>25</sup>
- simplifying and streamlining the powers of Protective Services officers, including by removing the distinction between protective security officers and senior protective security officers, to provide a consistent set of powers for all officers
- consolidating and rationalising the powers of Protective Services officers and the police officers operating alongside them in state buildings
- clarifying and expanding offence provisions
- authorising Protective Services officers to use body-worn cameras
- applying the QPS alcohol and drug testing regime to Protective Services officers.<sup>26</sup>

The Bill also contains amendments to simplify or clarify identification requirements for police officers and other government employees, including addressing existing duplication in identity card arrangements for:

- police officers appointed as public officials under Queensland Parks and Wildlife Service Legislation, who are currently issued identification under both this legislation and under police legislation, each with accompanying administrative requirements
- other government department employees appointed as public officials under Queensland Parks and Wildlife Service Legislation, who are similarly provided both with identification issued under this legislation and identification issued separately by their respective agencies or departments (under associated legal frameworks).<sup>27</sup>

The Minister advised that while the two key objectives of the Bill (in respect of Protective Services and identification requirements) may 'seem divergent', 'they have a commonality'. The commonality is seeking to deliver efficiencies and provide improvements in administration for officers engaged in public safety and enforcement duties.<sup>28</sup>

The QPS has undertaken a financial analysis to evaluate costs that may arise as a result of the implementation of the Bill, including through training for officers of Protective Services in respect of amended powers, offences and other measures. Assistant Commissioner Platz advised:

Protective Services receives no appropriation from government and relies on a cost-recovery model to meet all operating costs. Protective Services does not intend to change its fee for the services it provides as a consequence of these proposed amendments. Costs incurred through the implementation of the proposed changes will be met through the existing budget of Protective Services.<sup>29</sup>

Superintendent Keiryn Dermody, Commander of the QPS Protective Services Group, further explained that additional training costs were expected to be offset by savings from the Bill's establishment of a single class of officers with consistent powers and reduced administrative costs.<sup>30</sup>

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<sup>25</sup> Minister, Queensland Parliament, Record of Proceedings, 16 November 2021, p 3483.

<sup>26</sup> Explanatory notes, p 4.

<sup>27</sup> Explanatory notes, pp 3-4.

<sup>28</sup> Minister, Queensland Parliament, Record of Proceedings, 16 November 2021, p 3483.

<sup>29</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 4.

<sup>30</sup> Public briefing transcript, Brisbane, 29 November 2021, pp 5 - 6.

### 3 Examination of the Bill

The Bill proposes to achieve its objectives by:

- repealing the SBPSA and SBPSR and relocating the relevant provisions to the *Police Service Administration Act 1990* (PSAA) and *Police Powers and Responsibilities Act 2000* (PPRA)
- amalgamating protective security officers and senior protective security officers into one group called protective services officers (PSOs)
- consolidating and rationalising the security powers that may be exercised by PSOs and police officers in state buildings
- authorising PSOs to seize contraband located in the performance of their duties
- extending the statutory protections available to police officers who are required to use force in the performance of their duties to PSOs
- introducing a new offence provision prohibiting the impersonation of a PSO
- clarifying that the offence to assault or resist a PSO includes obstructing a PSO
- expanding the QPS alcohol and drug testing regime to apply to PSOs
- authorising the use of body-worn cameras.<sup>31</sup>

The Bill also amends Queensland Parks and Wildlife Legislation by:

- removing the need for the issuing of a separate identity card under this legislation, in addition to officers' police identity cards
- making associated amendments to provisions governing the production or display of this identification by police officers exercising powers.<sup>32</sup>

The Bill also proposes to:

- amend equivalent identification provisions for other state government employees appointed as public officials under Queensland Parks and Wildlife Legislation, and clarify the application of those provisions
- clarify identification requirements for PSOs exercising a security power in a state building.<sup>33</sup>

The proposed amendments are examined in detail in the chapters that follow.

#### 3.1 Relocating the legislative framework

The legislative framework underpinning the operation of Protective Services is currently contained within the SBPSA and SBPSR. The Bill proposes to repeal this legislation<sup>34</sup> and relocate the appropriate provisions to the PSAA and PPRA.<sup>35</sup>

The explanatory notes state that consolidating Protective Services legislation within the PPRA and the PSAA has the following advantages:

- it reflects the Review of the PSBA's recommendation that Protective Services (then known as State Government Security Services) should be integrated into the QPS

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<sup>31</sup> Explanatory notes, p 4.

<sup>32</sup> Explanatory notes, p 10; QPS, correspondence, 26 November 2021, p 8.

<sup>33</sup> Explanatory notes, p 10.

<sup>34</sup> Police Service Administration and Other Legislation Amendment Bill 2021 (Bill), clause 68.

<sup>35</sup> Explanatory notes, p 5.

- it will streamline legislation through eliminating duplicate provisions in multiple Acts and allow the PPRA to be considered the ‘single source of truth’ for the exercise of security powers in state buildings
- it promotes efficiencies, as policy and training may be developed about security powers in state buildings for both police officers and PSOs.<sup>36</sup>

The Minister highlighted the benefits of moving away from ‘the current state where multiple Acts provide security powers for a variety of officers’, emphasising that consolidating these security powers within the PPRA would serve to ‘eliminate any concerns about inconsistencies arising through housing powers in different Acts’.<sup>37</sup>

### **3.2 Establishing protective services officers with uniform powers**

In transferring the powers of Protective Services officers from the SBPSA to the PPRA, the Bill also proposes to establish a single, consistent set of powers for Protective Services staff who provide security services in state government buildings.<sup>38</sup>

#### **3.2.1 Amalgamating protective security officers and senior protective security officers into one group**

Queensland is the only Australian jurisdiction that differentiates between protective security officers and senior protective security officers according to the powers that each group may exercise.<sup>39</sup>

Currently, protective security officers are able to engage only some of the powers available to senior protective officers, who under the SBPSA hold all the powers of a police officer within state buildings, except for the power of arrest.<sup>40</sup>

Protective security officers may only ask a person entering a state building if they will participate in electronic screening and allow their belongings (including their vehicle) to be searched. They may not require a person in, or entering, a state building to comply with these requests, nor are they authorised to:

- require the person to provide their name, address and reason for being in the building
- seize any contraband possessed by the person
- direct a person to leave the building or remove the person from the building
- detain a person suspected of committing an offence against the SBPSA or an offence against any other law by having done anything or having had anything in their possession.<sup>41</sup>

These powers may be exercised only by a senior protective security officer.<sup>42</sup> The QPS advised that, as a result, protective security officers ‘may only function effectively in the presence of a senior protective security officer’ who is able to engage ‘the full range of powers under the SBPSA’.<sup>43</sup>

The QPS stated that this had led to most Protective Services clients requesting the presence of a senior protective security officer, with the mix of officers skewed to reflect this demand.<sup>44</sup>

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<sup>36</sup> Explanatory notes, p 5.

<sup>37</sup> Minister, Queensland Parliament, Record of Proceedings, 16 November 2021, p 3483.

<sup>38</sup> QPS, correspondence, 26 November 2021, attachment 1; explanatory notes, pp 5-6.

<sup>39</sup> QPS, correspondence, 26 November 2021, p 4.

<sup>40</sup> Minister, Queensland Parliament, Record of Proceedings, 16 November 2021, p 3483. See also SBPSA, part 3.

<sup>41</sup> QPS, correspondence, 26 November 2021, attachment 1, pp 1-2; explanatory notes, p 5. See also SBPSA, part 3, division 2-3.

<sup>42</sup> QPS, correspondence, 26 November 2021, p 5; explanatory notes, p 5.

<sup>43</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>44</sup> QPS, correspondence, 26 November 2021, p 5.

Assistant Commissioner Platz reported that, as at 23 November 2021, the Protective Services Group employed 232 senior protective security officers and 190 protective security officers.<sup>45</sup>

The QPS has identified that the ongoing differences between the powers of these 2 categories of officers potentially compromises community safety and may lead to unnecessary risks for protective security officers.<sup>46</sup> The Minister noted that:

Some state buildings precincts are large and as protective security officers may need to rely on a senior protective security officer to exercise their powers to resolve an incident, adverse situations could arise as there may be some delay before this assistance may be provided.<sup>47</sup>

The QPS reported that the disparity in powers poses staff allocation challenges, adding complexity to rostering arrangements as 'it is necessary to ensure appropriately empowered officers are detailed to specific locations'.<sup>48</sup> This administrative burden has a financial impact, and Assistant Commissioner Platz emphasised:

Further costs arise when a senior protective security officer becomes unavailable due to sickness, leave or training as an equivalent officer has to be located and deployed to that site. This may result in an increasing overtime pay to ensure appropriate security services are provided.<sup>49</sup>

The Bill proposes to resolve these issues, and 'promote consistency with other jurisdictions', by amalgamating protective security officers and senior protective security officers into one group of officers called protective services officers (PSOs). PSOs would be 'authorised with the powers currently afforded to senior protective security officers'.<sup>50</sup>

This is to be achieved by replacing all references to the 2 different types of officers with references to PSOs and streamlining the provisions where distinctions are made between those officers.

The Bill would not preclude the organisational recognition of the seniority or expertise of particular officers. The QPS advised that:

The proposed rank structure will include the rank of protective services officer and, to recognise seniority and/or expertise, the rank of senior protective services officer. However, regardless of rank, these officers will be able to exercise the same powers in a state building.<sup>51</sup>

The Bill provides that the functions of PSOs are to be outlined in a new section of the PSAA. The new section is generally consistent with the current equivalent provisions in the SBPSA.<sup>52</sup> The proposed new section recognises that the primary function of PSOs 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 the vehicles'.<sup>53</sup>

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<sup>45</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>46</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3. See also Minister, Queensland Parliament, Record of Proceedings, 16 November 2021, p 3483.

<sup>47</sup> Minister, Queensland Parliament, Record of Proceedings, 16 November 2021, p 3483.

<sup>48</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>49</sup> QPS, correspondence, 26 November 2021, p 5.

<sup>50</sup> QPS, correspondence, 26 November 2021, p 5. See also explanatory notes, p 5.

<sup>51</sup> QPS, correspondence, 26 November 2021, p 5.

<sup>52</sup> SBPSA, section 18; Bill, clause 36 (inserts new section 5.23 of the *Police Service Administration Act 1990* (PSAA)).

<sup>53</sup> Bill, clause 36 (inserts new section 5.23(1) of the PSAA).

The Bill defines the security of a state building as including the safety of entrants to the building and the safety of things in or about to be brought into the building, as per the current definition in the SBPSA,<sup>54</sup> and in addition, ‘the good order, or safe operation, of the building’.<sup>55</sup>

Other functions of PSOs provided for in the Bill include:

- providing services, on a commercial basis, for a building (other than a state building) under a contract entered into by the state
- exercising a power given to PSOs under the PSAA or another Act, or exercising a function given to PSOs under the PSAA or another Act.<sup>56</sup>

The QPS affirmed that despite the recognition of the commercial function of PSOs (which is also currently recognised in the equivalent section of the SBPSA),<sup>57</sup> these officers would not be able to access the Bill’s updated regime of security powers in buildings other than state buildings (and their precincts), though may engage security powers granted by another Act in such settings.<sup>58</sup>

### 3.2.2 Streamlined powers for protective services officers

The Bill provides PSOs with a uniform set of powers applicable irrespective of officers’ rank.<sup>59</sup> This would mean that all PSOs, including those currently engaged as protective security officers, would be authorised to discharge powers currently reserved for senior protective officers.<sup>60</sup> This includes the power to:

- require an entrant to provide their name, address and reason for being in the state building<sup>61</sup>
- seize a proscribed thing (eg an offensive weapon or noxious or offensive substance) located during security screening<sup>62</sup>
- remove a person from, or prevent a person from entering, a state building (if the person fails to provide information about their name and address or a good and lawful reason for being in the building, or to submit to security screening as deemed appropriate)<sup>63</sup>
- detain a person suspected of committing an offence against the SBPSA, or any other law, by having done anything or by having had anything in the person’s possession in a state building, until that person can be surrendered to a police officer for investigation of the offence.<sup>64</sup>

It is important to note that PSOs, unlike senior protective security officers, would not have all the powers of a police officer in a state building. For example, a PSO would not be able to require, or give a lawfully issued direction, to:

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<sup>54</sup> SBPSA, section 3 (definition ‘security of a state building’).

<sup>55</sup> Bill, clause 26(2) (inserts definitions into schedule 6 of the PSAA).

<sup>56</sup> Bill, clause 36 (inserts new section 5.23(2) of the PSAA).

<sup>57</sup> SBPSA, section 18(2), which states: ‘Also, the functions may include providing services, on a commercial basis, for a building (other than a state building) under a contract the State has entered into for providing the service’.

<sup>58</sup> Public briefing transcript, Brisbane, 29 November 2021, p 4. As an example, it was noted that some protective security officers were engaged in COVID hotels, with the QPS advising that: ‘The protective security officers who are assisting frontline police at COVID quarantine hotels are actually authorised as emergency officers general under the Public Health Act and they exercise the powers under that act’. See also p 7.

<sup>59</sup> QPS, correspondence, 26 November 2021, p 5; explanatory notes, p 5.

<sup>60</sup> Explanatory notes, pp 7-8.

<sup>61</sup> Bill, clause 4 (inserts new section 550 of the *Police Powers and Responsibilities Act 2000* (PPRA)). See also SBPSA, section 20.

<sup>62</sup> Bill, clause 4 (inserts new section 556 of the PPRA). See also SBPSA, section 22.

<sup>63</sup> Bill, clause 4 (inserts new section 557 of the PPRA). See also SBPSA, section 23.

<sup>64</sup> Bill, clause 4 (inserts new section 558 of the PPRA). See also SBPSA, section 24.

- allow the officer to inspect the entrant’s belongings
- remove outer garments
- remove articles from the entrant’s pockets
- open an article for inspection
- open a vehicle for inspection
- remove an article from the vehicle
- require an entrant:
  - to park their vehicle in a place specified by the officer, and
  - deposit their belongings at a certain place if it capable of concealing a proscribed item.<sup>65</sup>

A PSO would be empowered to ask an entrant to undertake, or submit to, all of these actions, but not to require them to comply (as senior protective security officers currently can). If the entrant declines to comply, the PSO would be able to direct the entrant to leave the building (or not to enter the building).<sup>66</sup>

The QPS advised that the Bill provides ‘the specific powers that a PSO needs to provide an appropriate level of security at a state building’.<sup>67</sup>

The QPS advised of the proposed uniform powers for PSOs:

The current security environment in Australia is complex, with both ideologically and religiously motivated groups, along with protest activity surrounding lockdowns and vaccinations, causing concern. According to Australia’s intelligence agency, the general terrorism threat remains at probable—that is ‘credible intelligence, assessed to represent a plausible scenario, indicates an intention and capability to conduct a terrorist attack in Australia’. Further, protest activity has increased and at times, as we have all seen, can become violent very quickly. Government buildings, along with police personnel, have also been listed as potential targets. This current security environment has generated a community expectation that people entering into secured areas, such as government buildings or courts, may be subjected to screening and having their belongings searched. Further, it is common understanding that if a person refuses to comply with these security measures they may be denied entry. Consequently, this proposal provides that all PSOs within state government buildings will have security powers to ensure the security of the buildings.<sup>68</sup>

### 3.2.3 Submitter comments and departmental response

The Queensland Law Society (QLS) expressed reservations about how the proposed amalgamation would work in practice. In particular, the QLS raised concerns about current protective security officers accessing powers currently available only to senior protective security officers.<sup>69</sup> The QLS also raised concerns in light of the ‘wider circumstances under which a PSO may operate ... which include providing services, on a commercial basis, for a building (other than a state building)’.<sup>70</sup>

The QLS noted that senior protective security officers currently undertake a further two weeks’ training in the use of the powers reserved to this position.<sup>71</sup> The QLS stated that it could not support the proposals unless additional training was provided prior to any authorisation of current protective

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<sup>65</sup> QPS, correspondence, 29 November 2021, attachment 1, p 4.

<sup>66</sup> Bill, clause 4 (inserts new section 554(1)(c) of the PPRA).

<sup>67</sup> QPS, correspondence, 29 November 2021, attachment 1, p 4.

<sup>68</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>69</sup> Submission 2, p 2.

<sup>70</sup> Submission 2, p 2.

<sup>71</sup> Submission 2, p 2.

security officers to exercise those expanded powers. The QLS considered that this training should be equivalent to that provided to senior protective security officers.<sup>72</sup>

In respect of the Bill's proposed definition of the security of a state building, the QLS submitted that the reference to the safety of things in or about to be brought into the building should be expanded to 'include the 'preservation' of things, that is, 'the safety and preservation of things in, or about to be brought into, the building''.<sup>73</sup>

The Crime and Corruption Commission (CCC) noted that '[a]s was the case with protective security officers and senior protective security officers, PSOs will be subject to the CCC's oversight'.<sup>74</sup> The CCC confirmed in this respect that:

The Bill does 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.<sup>75</sup>

In response to the QLS' concerns about adequate training, the QPS advised that it was satisfied that appropriate training would be provided to ensure that PSOs will be proficient in their duties. The QPS advised that it intends to provide an additional week of training 'to ensure the existing cohort of security officers will be able to act proficiently as a PSO'.<sup>76</sup> This is considered by the QPS to be sufficient as current serving officers 'have already been trained in the use of security powers that may be exercised in state government buildings'.<sup>77</sup> Assistant Commissioner Platz advised:

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.<sup>78</sup>

Assistant Commissioner Platz also stated that the QPS has 'considered proposed training program methods for the delivery of this training such as what we can deliver via computer based training'.<sup>79</sup>

Superintendent Dermody affirmed that Protective Services would be able to absorb an additional training costs without increasing the fees charged under its user-pays model.<sup>80</sup>

The QPS stated that the QLS's comments about a PSO providing services on a commercial basis for buildings other than a state building were 'mistaken'. The QPS advised that:

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.<sup>81</sup>

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<sup>72</sup> Submission 2, p 2.

<sup>73</sup> Submission 2, p 7.

<sup>74</sup> Submission 1, p 2.

<sup>75</sup> Submission 1, p 2.

<sup>76</sup> QPS, correspondence, 21 January 2022, p 3.

<sup>77</sup> QPS, correspondence, 21 January 2022, p 3.

<sup>78</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>79</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>80</sup> Superintendent Dermody, QPS, Public briefing transcript, Brisbane, 29 November 2021, p 6.

<sup>81</sup> QPS, correspondence, 21 January 2022, p 3.

In relation to the QLS' recommendation to expand the definition of security of a state building to the preservation of things, the QPS considered that the explanation of the definition would be surplusage, as a thing that is not preserved would never be considered to be safe.<sup>82</sup>

### **3.3 Consolidating and rationalising security powers of police officers and protective services officers**

The Bill proposes to streamline differences between the powers of PSOs and police officers in state buildings, as well as making certain amendments to consolidate and clarify those provisions.<sup>83</sup> The QPS advised that these changes would help to establish a standardised security screening practice for PSOs and police officers,<sup>84</sup> as well as further modernising the legislative framework to reflect the current security environment.<sup>85</sup>

#### **3.3.1 Allowing police officers to require the name and address from an entrant to a state building**

Currently, the power to require an entrant to a state building provide their name and address (and evidence of these particulars) does not extend to protective security officers.<sup>86</sup> As noted in section 3.2 of this report, the Bill would make this power available to all PSOs, including those currently categorised as protective security officers.<sup>87</sup>

The Bill would also extend the same power to police officers, who under the PPRA are presently only empowered to demand an entrant state their reason for being in, or entering, a state building.<sup>88</sup>

The QPS stated that the expanded police power is warranted as areas such as state buildings or other buildings of significance that require greater security coverage (including major airports or parliamentary precincts) have specific security requirements. The QPS stated that '... Simply put, a building cannot be secured if it is unknown who is in it'.<sup>89</sup>

For police officers and PSOs alike, the power to require a person to state their name and address would be qualified. A person may only be required to provide these details, if the PSO or police officer reasonably suspects it is necessary to do so to maintain the security of a state building.<sup>90</sup>

A failure to comply with a demand to provide name and address details (including the provision of false details) would be an offence under section 791 of the PPRA.<sup>91</sup> It would also be an offence to contravene a direction of a PSO to provide this information, with a maximum penalty of 20 penalty units (\$2,757).<sup>92</sup> This is consistent with the current offence for non-compliance with such a direction from a senior protective security officer.<sup>93</sup>

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<sup>82</sup> QPS, correspondence, 21 January 2022, p 11.

<sup>83</sup> QPS, correspondence, 26 November 2021, pp 5-6, attachment 1, pp 1-4; explanatory notes, pp 6-8.

<sup>84</sup> QPS, correspondence, 26 November 2021, attachment 1, pp 3.

<sup>85</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 3.

<sup>86</sup> Explanatory notes, p 6.

<sup>87</sup> Bill, clause 4 (inserts new section 550 of the PPRA).

<sup>88</sup> Explanatory notes, p 6. See PPRA, section 549.

<sup>89</sup> QPS, correspondence, 26 November 2021, pp 5-6.

<sup>90</sup> Explanatory notes, p 7. See also Bill, clause 4 (inserts new section 550 of the PPRA).

<sup>91</sup> Explanatory notes, p 7.

<sup>92</sup> Bill, clause 20 (inserts new section 791B of the PPRA).

<sup>93</sup> SBPSA, section 20(2).

*3.3.1.1 Submitter comments and departmental response*

The QLS did not support the proposal to extend the power to demand the name and address of an entrant to a state building to PSOs and police officers.<sup>94</sup> The QLS noted that '[a]s currently drafted, the only qualifier to the exercise of this power is that the police officer or PSO reasonably suspects that making the requirement is 'necessary for the security of the state building''.<sup>95</sup>

The QLS observed that under section 40 of the PPRA, police can ordinarily require the name, address or age of a person only in prescribed circumstances.<sup>96</sup>

The QLS submitted that to 'ensure that the power is exercised appropriately and adequately reflects an individual's right to privacy', where an entrant has not complied with a requirement to provide their name and address and reason for being at the building, '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'. The QLS did not support the inclusion of an offence for failing to comply with a demand to supply the name and address in the circumstances proposed.<sup>97</sup>

In response, the QPS advised that 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. The QPS noted that these areas face particular security risks. The QPS stated that the 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.<sup>98</sup>

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.<sup>99</sup>

The QPS highlighted that various Australian jurisdictions have acknowledged that government buildings are important locations which require specific security measures. The QPS advised that one measure which has been universally adopted is the power to require a person within government buildings to state their name and address.

The QPS stated 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 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 require 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

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<sup>94</sup> Submission 2, p 4.

<sup>95</sup> Submission 2, p 4.

<sup>96</sup> Submission 2, p 4.

<sup>97</sup> Submission 2, p 4.

<sup>98</sup> QPS, correspondence, 21 January 2022, p 5.

<sup>99</sup> QPS, public briefing transcript, Brisbane, 29 November 2021, p 2.

- 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 absent.<sup>100</sup>

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. The Bill provides that 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. The QPS advised that 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.<sup>101</sup>

### **3.3.2 Standardising security screening process**

The Bill proposes to establish consistent requirements and safeguards for the use of security powers to support the application of a standardised security screening process.<sup>102</sup>

The Bill provides that on a person's entry to a state building, a PSO or police officer may ask the person to participate in an electronic screening process and may ask the person to allow their belongings to be inspected.<sup>103</sup>

If the person refuses to participate, the person may be immediately directed by the PSO or police officer to leave the state building. However, consistent with the existing safeguards applicable to senior protective security officers, a PSO is not to give this direction, if the entrant tells the PSO:

- the entrant does not want to be screened or their belongings inspected and they are prepared to leave the state building immediately with their belongings, and the entrant leaves the building immediately with their belongings, or
- if the PSO has started to screen the entrant or inspect belongings, the entrant does not want the screening or inspection to continue and is prepared to leave the state building immediately with their belongings; and the entrant leaves the state building immediately with their belongings.<sup>104</sup>

In respect of the inspection of belongings by a PSO or police officer, this may include the officer asking the entrant to do one or more of the following:

- allow the officer to inspect the entrant's belongings
- remove one or more garments worn by the entrant as specified by the officer and allow the officer to inspect the garments
- remove all articles from the entrant's clothing and allow the officer to inspect them
- open an article for inspection and allow the officer to inspect it
- allow the officer, or another adult assisting the officer, to touch a garment the entrant is wearing for the purpose of the officer inspecting the entrant's belongings (only if the police officer or PSO or other officer assisting them is of the same sex as the entrant)
- open a vehicle or a part of it for inspection and allow the officer to inspect it
- remove an article from a vehicle as specified by the officer and allow the officer to inspect it
- move a vehicle to, and park it in, a place specified by the officer

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<sup>100</sup> QPS, correspondence, 21 January 2022, p 6.

<sup>101</sup> QPS, correspondence, 21 January 2022, p 6.

<sup>102</sup> Explanatory notes, pp 5-6.

<sup>103</sup> Bill, clause 4 (inserts new sections 551 and 552 of the PPRA).

<sup>104</sup> Explanatory notes, p 6.

- if the officer reasonably believes a belonging of the entrant is capable of concealing a proscribed thing—deposit the belonging in a place specified by the officer.<sup>105</sup>

If the officer locates an item in the possession of the entrant which is a proscribed thing (eg a weapon, explosive device, or offensive item – see also section 3.3.4 of this report), the PSO or police officer may seize the proscribed thing, unless the entrant has a reasonable excuse for possessing the proscribed thing in the state building (eg including if the item is used in the course of the person’s trade or business).<sup>106</sup>

The Bill incorporates and expands on existing safeguards in the SBPSA which apply in relation to the inspection of belongings, and powers of removal and detention. The SBPSA provides that a senior protective security officer:

- may touch garments worn by the entrant only if the entrant is the same sex as the officer (or may arrange for another officer who is of the same sex as the entrant to exercise the power)<sup>107</sup>
- may direct an entrant to remove a specific outer garment only if:
  - the officer considers on reasonable grounds that a proper examination of the entrant and outer garment cannot be carried out unless the outer garment is removed
  - the officer tells the entrant that they have a right to ask for the examination of the outer garment to be carried out in an area of the building that is, if practicable, out of view of members of the public, and takes the entrant to that place if requested
  - the officer tells the entrant that even if they remove the outer garment and allow the officer to examine the outer garment, the entrant may be examined further<sup>108</sup>
- must touch garments while they are worn by the entrant in a way that preserves the entrant’s dignity to the greatest extent practicable.<sup>109</sup>

The Bill would replicate and expand on these provisions,<sup>110</sup> including providing that in addition to taking ‘reasonable care to protect the dignity of the entrant’ in undertaking the inspection,<sup>111</sup> the PSO must ‘ensure, as far as reasonably practicable, the way the inspection is conducted causes minimal embarrassment to the entrant’.<sup>112</sup>

In relation to a direction to an entrant to not enter or leave a building, consistent with current safeguards applicable under the SBPSA, the Bill provides that a PSO or police officer must not give such a direction unless:

- they reasonably suspect the direction is necessary to maintain the security of the state building<sup>113</sup>
- before giving the direction, they have verbally warned the entrant that it is an offence to fail to comply with the demand or direction unless the entrant has a reasonable excuse.<sup>114</sup>

<sup>105</sup> Bill, clause 4 (inserts new section 552(2) of the PPRA).

<sup>106</sup> Bill, clause 4, (inserts new section 556 of the PPRA).

<sup>107</sup> SBPSA, section 21C.

<sup>108</sup> SBPSA, section 21H.

<sup>109</sup> SBPSA, section 21(2).

<sup>110</sup> Bill, clause 4, (inserts new sections 550, 551, 552 and 553 of the PPRA).

<sup>111</sup> Bill, clause 4 (inserts new section 553(1)(b) of the PPRA).

<sup>112</sup> Bill, clause 4 (inserts new section 553(1)(a) of the PPRA).

<sup>113</sup> Bill, clause 4 (inserts new section 554(2) of the PPRA). See also SBPSA, section 21D(2).

<sup>114</sup> Bill, clause 11 (inserts new section 633A(2) of the PPRA), to accompany existing section 633(2) which applies only to police officers. See also SBPSA, section 21J.

However, the Bill additionally clarifies that:

- the PSO or police officer must also give the person a reasonable opportunity to comply with the direction after issuing any such warning<sup>115</sup>
- a PSO or police officer must not give a direction to an entrant to not enter or to leave a building if it interferes with a person's right of peaceful assembly unless the direction is reasonably necessary in the interests of—
  - public safety; or
  - public order; or
  - the protection of the rights and freedoms of other persons.

The Bill includes the following examples of rights and freedoms:

- the rights and freedoms of the public to enjoy the place
- the rights of persons to carry on lawful business in or in association with the place.<sup>116</sup>

The giving of a direction not to enter or to leave a building would be an enforcement act under the PPRA, requiring the PSO to record this direction in a register, as is currently required of police officers. The explanatory notes state that '[t]his measure promotes accountability and allows monitoring of the use of this power'.<sup>117</sup>

The seizure of property, removal of a person from a state building (involving the use of force), or detention of a person also constitute enforcement acts for which the PSO must add relevant information to the register of enforcement acts.<sup>118</sup> The relevant information includes:

- when the enforcement act was taken
- the location of the entrant at that time
- the name of the entrant, if known
- the reason or purpose for engaging in the enforcement act
- for a direction to leave or not to enter or the removal or detention of a person, the apparent demographic category of the entrant
- in respect of the seizure of property, a description about the seized item and information about the return, destruction or disposal of anything seized.<sup>119</sup>

Finally, in relation to property seized by a PSO, the QPS advised that a PSO:

- will be authorised to return property
- must complete a property receipt if seizing property
- must give a notice if they cause damage in the exercise of a power
- will be required to be responsible for the safe keeping of the thing.<sup>120</sup>

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<sup>115</sup> Bill, clause 11 (inserts new section 633A(3) of the PPRA).

<sup>116</sup> Bill, clause 4 (inserts new section 554(5) of the PPRA).

<sup>117</sup> Explanatory notes, p 6.

<sup>118</sup> QPS, correspondence, 26 November 2021, attachment 1, p 6.

<sup>119</sup> Bill, clause 14 (amends section 679 of the PPRA, as it interacts with the existing definition of 'enforcement act' in schedule 6 of the PPRA and requirements for the recording of seized items in the register of enforcement acts in section 51 of the Police Powers and Responsibilities Regulation (PPRR)); and clause 30 (inserts new sections 53A, 53B, 53C and 53D of the PPRR).

<sup>120</sup> QPS, correspondence, 26 November 2021, attachment 1, p 6.

### 3.3.2.1 *Submitter comments and departmental response*

The QLS expressed concerns about the proposed amendments to the powers and requirements underpinning security screening in state buildings. In relation to the inspection of belongings in particular, the QLS submitted:

... the power to *inspect* an entrant's belongings in s 552 which may be exercised by a police officer or a PSO appears to be very broad. It may be exercised where the officer considers it necessary for the security of a state building and the officer tells the entrant the reasons for making the request, whether or not the entrant or belongings have been subjected to electronic screening. '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.<sup>121</sup>

The QPS responded 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 meets with the QLS's preferred outcome.<sup>122</sup>

In relation to a PSO or police officer's power to ask an entrant to remove an outer garment, the QLS suggested that a definition and/or examples of 'outer garment' should be included in the Bill, 'so as to preserve a person's dignity and not unnecessarily expose them to strip searches'.<sup>123</sup> Such examples, the QLS submitted, might include a cardigan, scarf, shawl, jacket or coat.<sup>124</sup>

The QPS has advised that schedule 6 of the PPRA, which will apply to the Bill, defines outer garment to include a cloak, coat, shirt and garment.<sup>125</sup>

Regarding the Bill's insertion of a requirement for warnings to be issued with directions, the QLS noted that the Bill provides that a PSO who exercises a power of direction or makes an oral requirement must, 'if practicable', warn the person that it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse.<sup>126</sup> The QLS recommended that 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'.<sup>127</sup>

The QPS responded 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:

- (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)<sup>128</sup>

<sup>121</sup> Submission 2, p 4.

<sup>122</sup> QPS, correspondence, p 7.

<sup>123</sup> Submission 2, p 6.

<sup>124</sup> Submission 2, p 6.

<sup>125</sup> QPS, correspondence, 21 January 2022, p 11.

<sup>126</sup> Submission 2, p 3.

<sup>127</sup> Submission 2, p 3.

<sup>128</sup> QPS, correspondence, 21 January 2022, p 5.

The QPS considers 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.<sup>129</sup>

In relation to the register of enforcement acts, the QLS called for the following information to be recorded in the register in respect of the exercise of a direction to not enter or the detention of an entrant:

- while proposed section 53C of the Police Powers and Responsibilities Regulation 2012 (PPRR) requires the recording of 'when the entrant was prevented from entering', the QLS instead proposed the inclusion of 'the date and time on which the entrant was prevented from entering'
- while proposed section 53D(b) requires the recording of the time the entrant was detained, the QLS suggested the section require that both the time and date be recorded.<sup>130</sup>

The QPS made the following comments in response to QLS's recommendation that further information should be recorded in the register of enforcement acts.

The new section 53C of the *Police Responsibilities Code 2012* 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. The QPS advised that this information includes when the entrant was prevented from entering.

The QPS stated that to comply with the requirement to record when the power was discharged it is inherently necessary to indicate the time and date this occurred. The QPS stated that 'This is reflected in existing register of enforcement act entries made in relation to similar matters'.<sup>131</sup>

Additionally, the QPS considers that the amendment in the Bill has been drafted in accordance with the prevailing drafting style for this part of the *Police Responsibilities Code*. The QPS stated that:

If it was 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 *Police Responsibilities Code* for consistency. Consideration would also need to be given to making similar amendments to sections 3, 7-11, 11B-12, 14, 16, 18 and 33.<sup>132</sup>

In relation to the QLS' comments that both the time and date the entrant was detained be recorded, the QPS stated that the proposed section 53D of the *Police Responsibilities Code* 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. The QPS stated that to comply with the requirement to record the time a person was detained it is inherently necessary to indicate the date on which this occurred. The QPS considers that:

... the new section 53D of the *Police Responsibilities Code* 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 *Police Responsibilities Code* which makes similar reference to the time and not to the date.<sup>133</sup>

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<sup>129</sup> QPS, correspondence, 21 January 2022, p 5.

<sup>130</sup> Submission 2, p 7.

<sup>131</sup> QPS, correspondence, 21 January 2022, p 12.

<sup>132</sup> QPS, correspondence, 21 January 2022, p 12.

<sup>133</sup> QPS, correspondence, 21 January 2022, p 13.

### 3.3.3 Expanding powers for protective services officers and police officers to include a power to give a direction to a person who is trespassing or is disorderly

Senior protective security officers and police officers may direct a person to leave a state building if that person has no good and lawful reason for being there, or if they fail to comply with a direction to provide information, participate in electronic screening, or remove an outer garment for inspection.<sup>134</sup>

However, the explanatory notes advise that although senior protective security officers could arguably utilise these ‘move on’ powers to direct a person who is in a public area of a state building to leave that area if the person is disorderly or disruptive, ‘there is no current express power to direct a trespasser to leave’.<sup>135</sup>

The Bill proposes to establish such a power, accessible to PSOs and police officers to enable them to direct a person whose behaviour has been ‘disorderly indecent, offensive or threatening to a person entering, at or leaving’ a state building, to leave that place. This would be achieved by recognising such entrant behaviour as a ground on which the direction to leave power may be engaged.<sup>136</sup>

#### 3.3.3.1 *Submitter comments and departmental response*

The QLS had 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 QLS’ view, such measures risk having a disproportionate impact on vulnerable persons (including young people) when they are accessing public places and/or services.<sup>137</sup>

In response, the QPS advised that it considers that the power to direct a person to leave a state building if the person is disorderly, is less intrusive or confrontational than relying on the use of force to remove that person.<sup>138</sup>

The QPS stated that it is satisfied that sufficient training will be provided to ensure that the power to give a direction 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.<sup>139</sup>

The QPS noted that the 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. NSW, Victoria, South Australia and Western Australia also make provision for directions to be given to people behaving inappropriately in certain government buildings, particularly in court precincts.<sup>140</sup>

### 3.3.4 Clarifying the definition of proscribed matter

As noted in section 3.3.2 of this report, the Bill proposes to provide PSOs with the power to seize proscribed matter found in the possession of a person in a state building. These officers may also seize any item that is reasonably suspected of being evidence of an offence.<sup>141</sup>

<sup>134</sup> SBPSA, section 23 and PPRA, section 555.

<sup>135</sup> Explanatory notes, p 7.

<sup>136</sup> Bill, clause 4 (inserts new section 554(1)(a) of the PPRA). See also explanatory notes, p 7.

<sup>137</sup> Submission 2, p 3.

<sup>138</sup> QPS, correspondence, 21 January 2022, p 4.

<sup>139</sup> QPS, correspondence, 21 January 2022, p 4.

<sup>140</sup> QPS, correspondence, 21 January 2022, p 4.

<sup>141</sup> Explanatory notes, p 8.

The SBPSA provides that proscribed matter means an explosive substance, a firearm, a noxious or offensive substance, or an offensive weapon, including anything 'made or adapted for use for causing injury to or incapacitating a person or intended by the person in possession of it for such use'.<sup>142</sup>

The Bill proposes to expand on this definition to further clarify the items that constitute a 'proscribed thing' in these circumstances.<sup>143</sup> Specifically, the Bill extends the current reference to an offensive weapon to an 'offensive weapon or instrument' and clarifies that this would include an 'antique firearm, explosive tool, captive bolt humane killer, spear gun, longbow, sword or knife', or a replica of any of these items or other weapons, together with a 'slingshot or shanghai' or 'laser pointer'.<sup>144</sup> As per the current definition, the Bill would also recognise as an offensive weapon or instrument items that may have another use, but may be adapted or used to cause injury.<sup>145</sup> The explanatory notes provide the example of 'a baseball bat brandished by a person threatening to assault another etc'.<sup>146</sup>

In addition, the explanatory notes advise:

.... the definition of proscribed matter will be expanded to allow the seizure of property that a person is not lawfully entitled to possess. Such items may, depending on the circumstances, include dangerous drugs or associated drug paraphernalia.<sup>147</sup>

The explanatory notes state that the expansion and clarification of the definition 'will ensure that all items that may be a security concern to a state building will be covered'.<sup>148</sup>

#### 3.3.4.1 Submitter comments and departmental response

The QLS expressed concerns about the expanded definition, submitting that it is unclear what items might be considered an offensive instrument, such that 'further refinement' is required to ensure seizure powers 'are appropriately targeted to dangerous items'.<sup>149</sup> The QLS submitted that the scope and clarity of the definition compound its concerns about the appropriateness of enabling protective security officers to seize, or come into possession, of these items, particularly 'where there may be a dispute as to whether the items were unlawful and/or possessed unlawfully'.<sup>150</sup>

The QPS advised that 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 a QPS policy, property will be appropriately handled by PSOs.<sup>151</sup>

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<sup>142</sup> SBPSA, section 3 (Definitions).

<sup>143</sup> Bill, clause 26 (inserts definitions of 'proscribed thing', 'offensive weapon or instrument', 'noxious or offensive substance' in Schedule 6 of the PPRA).

<sup>144</sup> Bill, clause 26 (inserts a definition of 'offensive weapon or instrument' in Schedule 6 of the PPRA).

<sup>145</sup> Bill, clause 26 (inserting a definition of 'offensive weapon or instrument' in Schedule 6 of the PPRA – see (h)).

<sup>146</sup> Explanatory notes, p 8.

<sup>147</sup> Explanatory notes, p 8.

<sup>148</sup> Explanatory notes, p 8.

<sup>149</sup> QLS, submission 2, p 4.

<sup>150</sup> QLS, submission 2, p 4.

<sup>151</sup> QPS, correspondence, 21 January 2022, p 7.

### 3.4 Clarifying the use of force by a protective services officer

Currently, the SBPSA provides that it is lawful for:

- a senior protective security officer who is removing a person from a state building or preventing a person from entering a state building, and all persons acting in the aid of that officer, to use such force as is necessary for that purpose<sup>152</sup>
- a senior protective security officer who is detaining a person, and any other security officer acting in the aid of that officer, to use ‘such force as is reasonably necessary for the purpose, until the person can be surrendered to a police officer for investigation of the offence according to law’.<sup>153</sup>

The Bill would extend these powers to all PSOs, with the effect that a person currently engaged as protective security officer would be able to use reasonably necessary force to exercise a power in their own right, rather than only as required to assist a senior protective security officer in exercising the power.<sup>154</sup> This statutory protection in respect of the use of force by PSOs in the performance of their duties would also be extended to apply for the purposes of exercising any of the security powers under the PPRA<sup>155</sup> or another Act, as opposed to only for the removal, prevention of entry or detention of a person.<sup>156</sup>

The Bill also clarifies the circumstances covered by the proposed new section, including inserting as an example, a PSO using ‘reasonable force to prevent an entrant to a state building evading detention’ where the PSO is seeking to detain the person until such time as they are able to give the person into the custody of a police officer.<sup>157</sup> Additionally, consistent with equivalent authorisations for police officers in respect of their use of force on individuals other than in certain critical incidents,<sup>158</sup> the Bill would insert the following qualifier regarding the application of the section:

(2) The force a protective services officer may use under this section does not include force likely to cause grievous bodily harm to an individual or the individual’s death.<sup>159</sup>

#### 3.4.1 Submitter comments and departmental response

The QLS expressed concerns about the extended statutory protection regarding the use of force by PSOs.<sup>160</sup> The QLS submitted:

We understand the purpose of these changes is to ensure that PSOs will not be considered to have assaulted another person simply through inadvertently touching a person whilst screening them in the performance of their duties...

The use of force will include circumstances under which a PSO has detained an entrant suspected of committing an offence at, or in connection with, the building (under new s 558).

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.

<sup>152</sup> SBPSA, section 23.

<sup>153</sup> SBPSA, section 24.

<sup>154</sup> Bill, clause 8 (inserts new section 615A of the PPRA).

<sup>155</sup> As listed under chapter 19, part 1. See Bill, clause 8 (inserts new section 615A(1) of the PPRA).

<sup>156</sup> Bill, clause 8 (inserts new section 615A(2) of the PPRA).

<sup>157</sup> Bill, clause 8 (inserts new section 615A of the PPRA).

<sup>158</sup> PPRA, section 614-615.

<sup>159</sup> Bill, clause 8 (inserts new section 615A(2) of the PPRA).

<sup>160</sup> Submission 2, p 5.

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.<sup>161</sup>

The CCC also noted on ‘the widening of the force powers availability to senior protective services’, which ‘due to their potential to cause injury to a person, can present a potential corruption risk and must therefore be exercised in accordance with appropriate legislative safeguards, training, and be closely monitored by the QPS’. However, the CCC submitted that it ‘considers the limit on the exercise of force powers in clause 8 to be appropriate’.<sup>162</sup>

The QPS stated that it is satisfied that adequate training will be provided to PSOs in relation to the appropriate use of force in the performance of their duties.<sup>163</sup>

### **3.5 Clarifying and strengthening offence provisions**

The SBPSA establishes offences which apply to certain conduct in relation to a security officer, including:

- a failure to comply with a senior protective security officer’s demand for the person’s name and address, evidence of those details or the reason for being in or about to enter the building – maximum penalty of 10 penalty units (\$1,378.50)<sup>164</sup>
- a failure to comply with a senior protective security officer’s direction to a person to leave a state building – maximum penalty of 20 penalty units (\$2,757)<sup>165</sup>
- assaulting or resisting a security officer in the course of the officer performing the officer’s duties under – maximum penalty of 10 penalty units (\$1,378.50) or 6 months imprisonment.<sup>166</sup>

The Bill proposes to consolidate the first of these 2 offences into a single PPRA offence of contravening a direction or requirement of a PSO, applicable to all directions given or requirements imposed by PSOs in state buildings, with a maximum penalty of 20 penalty units (\$2,757).<sup>167</sup>

In addition, the Bill would:

- clarify the application of the offence of assaulting or resisting a security officer, and increase its maximum penalty<sup>168</sup>
- establish a new offence of impersonating a PSO.<sup>169</sup>

#### **3.5.1 Assaulting or obstructing a protective services officer**

As noted above, under the SBPSA, the offence of assaulting or resisting a Protective Services officer in the course of the officer performing their duties carries a penalty of 10 penalty units (\$1,378.50) or 6 months imprisonment.<sup>170</sup>

The Bill proposes to amend this offence provision, to be relocated as proposed new section 791A of the PPRA, to clarify that the offence ‘to assault or obstruct’ a PSO includes assaulting or obstructing a PSO

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<sup>161</sup> Submission 2, p 5.

<sup>162</sup> CCC, submission 1, pp 1-2.

<sup>163</sup> QPS, correspondence, 21 January 2022, p 7.

<sup>164</sup> SBPSA, section 20. The offence applies where a person refuses or fails to supply part or all of the information sought, refuses or fails to supply evidence sought (unless they have a reasonable excuse), or supplies false information or evidence. See SBPSA, section 20(2).

<sup>165</sup> SBPSA, section 21D. Section 21D(3) provides that the entrant must comply with the direction unless the entrant has a reasonable excuse for not complying it.

<sup>166</sup> SBPSA, section 29.

<sup>167</sup> Bill, clause 20 (inserts new section 791B of the PPRA).

<sup>168</sup> Bill, clause 20 (inserts new section 791A of the PPRA).

<sup>169</sup> Bill, clause 40 (inserts new section 10.22 of the PSAA).

<sup>170</sup> SBPSA, section 29.

who is acting in the performance of their duties ‘at, or in connection with, a state building’.<sup>171</sup> The proposed new section also clarifies that ‘assault’ has the meaning given by section 245 of the Criminal Code,<sup>172</sup> and that ‘obstruct’ includes ‘hinder, resist and attempt to obstruct’.<sup>173</sup>

To ‘more appropriately reflect the seriousness of this offence’, the Bill proposes to increase the maximum penalty for the offence of assaulting or obstructing a PSO, to 40 penalty units (currently \$5,514) or 6 months imprisonment.<sup>174</sup>

### 3.5.2 Impersonating a protective services officer

The Bill proposes to amend the PSA Act to introduce a new offence to deter persons from impersonating a PSO.<sup>175</sup>

The explanatory notes state that the new offence provision ‘is necessary to ensure that the public may trust in the authority of [PSOs] and not be misled into thinking that a person is a PSO when this is not the case’.<sup>176</sup> Further, the QPS considered the proposed amendment ‘necessary in the current security environment to ensure that an appropriate level of security is provided to state buildings and to reflect the unique position that security officers hold in our society’.<sup>177</sup> The QPS advised that the proposed provision would be in line with current provisions under the PSA Act that deal with impersonating police officers.<sup>178</sup>

The Minister stated:

Protective services officers hold a unique position in our society as they are part of a small group of public officials that are authorised to use force in the performance of their duties. Members of the public should be able to trust that any protective services officer using force when exercising his or her powers is entitled to do so.<sup>179</sup>

Given that PSOs ‘are authorised to apply force to another’, the QPS stated that ‘[o]ffenders abusing the trust that the public places with these officers have a great opportunity for offending behaviour’.<sup>180</sup>

The QPS provided the following examples of potential behaviour by an offender impersonating a PSO:

... an offender may assault another while ‘purporting’ to screen a person entering a state building. Alternatively, an offender may manipulate the ‘air of authority’ the position of security officer holds to facilitate the commission of offences.<sup>181</sup>

<sup>171</sup> QPS, correspondence, 26 November 2021, p 4; Bill, clause 20 (inserts new section 791A of the PPRA).

<sup>172</sup> Bill, clause 20 (inserts new section 791A of the PSAA). Criminal Code, section 245, Definition of assault: (1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person’s consent, or with the other person’s consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person’s consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person’s purpose, is said to assault that other person, and the act is called an assault. (2) In this section—applies force includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

<sup>173</sup> Bill, clause 20 (inserts new section 791A of the PPRA).

<sup>174</sup> Explanatory notes, p 9; Bill, clause 20 (inserts new section 791A(1) of the PPRA).

<sup>175</sup> Explanatory notes, p 8. Bill, clause 40.

<sup>176</sup> Explanatory notes, p 8.

<sup>177</sup> QPS, correspondence, 26 November 2021, p 7.

<sup>178</sup> QPS, public briefing transcript, Brisbane, 29 November 2021, p 5; PSAA, s 10.19(c)-(e).

<sup>179</sup> Queensland Parliament, Record of Proceedings, 16 November 2021, p 3485.

<sup>180</sup> QPS, correspondence, 26 November 2021, p 7.

<sup>181</sup> QPS, correspondence, 26 November 2021, p 7.

The QPS explained that the continual assessment of the current security environment ‘involves considering potential strategies an offender may use to defeat security measures’.<sup>182</sup> Given PSOs may access restricted areas in state buildings when conducting patrols, ‘[o]ne strategy an offender may use to gain access to restricted areas would be to disguise themselves as a PSO’.<sup>183</sup> Accordingly, the new offence provision aims to ‘deter an offender from disguising themselves as a PSO to defeat security measures in place in state buildings’.<sup>184</sup>

The proposed offence would be dealt with summarily, which the QPS advised is ‘consistent with the approach taken for impersonating public officials in Queensland’.<sup>185</sup> The QPS provided a list of 85 other summary offences that ‘prohibit the impersonation of a wide range of public officials in Queensland’.<sup>186</sup>

The Bill proposes that the offence would carry a maximum penalty of 100 penalty units (\$13,785), which the QPS advised is ‘mid-range compared to other similar offences’.<sup>187</sup>

The explanatory notes advise the maximum penalty ‘is consistent with the maximum penalty imposed by similar offences in Queensland including the offence of impersonating a police officer under the [PSA Act] or a security officer under the *Hospital and Health Boards Act 2011*’.<sup>188</sup> Similar offences exist in other Australian jurisdictions, including the Commonwealth, NSW and South Australia, with ‘maximum penalties ranging from \$2,500 or 6 months imprisonment to 12 months imprisonment’.<sup>189</sup>

### 3.6 Permitting the use of body-worn cameras

The Bill proposes to amend existing provisions in the PPRA which authorise the use of body-worn cameras by police officers to extend their application to PSOs.<sup>190</sup> For practical purposes, these provisions include authorisation for usage that is inadvertent or unexpected, or is incidental to use while acting in the performance of the officer’s duties.<sup>191</sup>

As body-worn cameras may record sounds, the provisions in question also recognise that cameras may fall within the ambit of a ‘listening device’ under the *Invasion of Privacy Act 1971* (IP Act), which prohibits the use of such devices to record private conversations.<sup>192</sup> The IP Act provides a number of exemptions from this offence, including:

- where the person recording the conversation is a party to the conversation or where the person is authorised to use the listening device under the provisions of an Act
- in relation to the use of a listening device by a police officer or another person authorised under an Act to use advice.<sup>193</sup>

While in most instances where PSOs are having private conversations with members of the public, the PSO would be a party to the conversation, and could therefore rely on the first of these exemptions, the amended provisions of the authorising section of the PPRA would also affirm that the provision ‘is a

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<sup>182</sup> QPS, correspondence, 26 November 2021, p 6.

<sup>183</sup> QPS, correspondence, 26 November 2021, p 6.

<sup>184</sup> Explanatory notes, p 8.

<sup>185</sup> QPS, correspondence, 26 November 2021, p 6.

<sup>186</sup> QPS, correspondence, 26 November 2021, attachment 3.

<sup>187</sup> QPS, public briefing transcript, Brisbane, 29 November 2021, p 6; QPS, correspondence, 26 November 2021, attachment 3.

<sup>188</sup> Explanatory notes, p 8.

<sup>189</sup> QPS, correspondence, 26 November 2021, p 7.

<sup>190</sup> A body-worn camera is defined as a device worn on clothing or otherwise secured on person and which is designed to be used to record images or record images and sounds. See section 609A(5) of the PPRA.

<sup>191</sup> Bill, clause 5 (amends section 609A(2) of the PPRA).

<sup>192</sup> *Invasion of Privacy Act 1971* (IP Act), section 43.

<sup>193</sup> IP Act, section 43(2)(a) and (d).

provision authorising the use by a police officer or protective services officer of a listening device, for the purposes of the *Invasion of Privacy Act 1971*, section 43(2)(d).<sup>194</sup>

In addressing the Bill's provision for the lawful use of body-worn cameras by PSOs, the QPS stated that the use of the devices 'increases accountability, integrity and public scrutiny'.<sup>195</sup> The explanatory notes outline the potential benefits of device recordings for collecting evidence of offences or assisting in resolving complaints made by the public about the conduct of officials.<sup>196</sup>

### 3.6.1 Submitter comments and departmental response

The CCC welcomed the Bill's provision for the use of body-worn cameras by PSOs, acknowledging 'the forensic value of body-worn camera footage as evidence in investigations'.<sup>197</sup>

The QLS expressed reservations QLS about PSOs being afforded the same authorisation to use body-worn cameras as police officers. The QLS stated that:

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.<sup>198</sup>

In the QLS' view, the use of body-worn cameras by PSOs should be subject to further consideration particularly around the limitations of their use.<sup>199</sup>

The QPS responded that the Parliament has already authorised a range of public officials (authorised officers and inspectors) to use body-worn cameras, including under the following legislation:

- *Animal Care and Protection Act 2001*
- *Biosecurity Act 2014*
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- *Drugs Misuse Act 1986*
- *Exhibited Animals Act 2015*
- *Fisheries Act 1994*
- *Youth Justice Act 1992*.<sup>200</sup>

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, the use of body-worn cameras by PSOs would take place within state buildings where in many instances closed-circuit television (CCTV) is already employed to record the environment.<sup>201</sup>

The QPS considered that the advantages of the use of body-worn cameras greatly outweigh concerns about their deployment. The explanatory notes state that body-worn cameras are an excellent method

<sup>194</sup> Bill, clause 5, (amends section 609A of the PPRA).

<sup>195</sup> Superintendent Keiryn Dermody, Commander, QPS, public briefing transcript, Brisbane, 29 November 2021, p 7.

<sup>196</sup> Explanatory notes, p 9.

<sup>197</sup> Submission 1, p 1.

<sup>198</sup> Submission 2, p 6.

<sup>199</sup> Submission 2, p 6.

<sup>200</sup> QPS, correspondence, 21 January 2022, p 9.

<sup>201</sup> Statement of compatibility, p 14.

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.<sup>202</sup>

The QPS advised that policy would be developed to provide guidance to PSOs about the use of body-worn cameras. The QPS stated that the policy would be similar to the existing comprehensive procedures 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.<sup>203</sup>

### 3.7 Drug and alcohol testing regime

Currently, the PSAA provides a legislative framework for the random alcohol testing and targeted alcohol and drug testing of 'relevant persons', including police officers, watch-house officers and staff who work in a critical area as defined by the PSAA.<sup>204</sup> Under the existing provisions, those relevant persons 'may be tested in various circumstances including if they are involved in a critical incident'.<sup>205</sup>

The PSAA defines a 'critical incident' as meaning:

- a) an incident in which it was necessary for an officer on duty to discharge a firearm in circumstances that caused or could have caused injury to a person; or
- b) a death of a person in custody;
- c) either of the following in which a person dies or because of which a person is admitted to hospital for treatment of injuries—
  - (i) a vehicle pursuit;
  - (ii) a workplace incident at a police station or police establishment.<sup>206</sup>

The Bill proposes to expand the QPS drug and alcohol testing regime to also apply to PSOs, by including them in the list of relevant persons who are subject to the regime's provisions.<sup>207</sup> The Minister stated: 'As protective services officers are authorised, in certain circumstances, to apply force to another, it is appropriate that they are similarly subject to the Queensland Police Service alcohol and drug testing regime'.<sup>208</sup>

#### 3.7.1 Submitter comments

The CCC advised that it was supportive of the Bill's identification of PSOs as persons to whom the QPS alcohol and drug testing regime applies. The CCC submitted:

The ability of the QPS to test relevant persons for alcohol and drugs is particularly important following critical incidents, and it is therefore appropriate to expand the regime to include PSOs in circumstances where they are, in certain circumstances, authorised to use force when exercising their powers.<sup>209</sup>

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<sup>202</sup> QPS, correspondence, 21 January 2022, p 10.

<sup>203</sup> QPS, correspondence, 21 January 2022, p 10.

<sup>204</sup> Explanatory notes, p 9. The section 5A.2 of the PSAA defines 'critical area' as: a communications centre, a driver trainer facility, a facility used for storing drugs under the PPRA, a magazine used for storing explosives, a police armoury or weapons collection facility, a property point as defined under the PPRA, a watch-house, a weapons training facility, the police air wing unit, a place prescribed under a regulation as a critical area.

<sup>205</sup> Explanatory notes, p 9.

<sup>206</sup> PSAA, section 5A.2.

<sup>207</sup> QPS, correspondence, 26 November 2021, p 4. See Bill, clause 37 (amends section 5A.3 of the PSAA).

<sup>208</sup> Queensland Parliament, Record of Proceedings, 16 November 2021, p 3485.

<sup>209</sup> Submission 1, p 1.

### 3.8 Amending identification provisions

#### 3.8.1 Identity card requirements for Queensland police officers appointed as public officials under Queensland Parks and Wildlife Legislation

The second key objective of the Bill is to ‘increase efficiencies for police officers acting as public officials under ... Queensland Parks and Wildlife Legislation’, and in the administration of identity cards under that legislation.<sup>210</sup>

Pursuant to s 13 of the PPRA, subject to the Police Commissioner’s approval, Queensland police officers may be trained and appointed as public officials under Queensland Parks and Wildlife Legislation.<sup>211</sup>

Since 2018, ‘over 120 police officers have been appointed as a public officials under Queensland Parks and Wildlife Service Legislation’.<sup>212</sup> The QPS advised of this arrangement:

This collaboration between DES and the QPS continues to yield clear benefits in respect to protecting public safety and the natural, cultural and marine resources in protected areas, State forests and declared recreation areas, as well as better empowering police to assist with the disruption of wildlife poaching and trafficking across Queensland, some of which constitutes organised crime.<sup>213</sup>

Currently, the chief executive or the administering Minister is required to issue appointed police officers with identity cards, which they must produce when exercising relevant powers under Queensland Parks and Wildlife Legislation.<sup>214</sup> The Minister explained that ‘[s]uch a requirement is superfluous as uniformed officers are readily identifiable and plain-clothes police officers are already required under police legislation to show their police identification when exercising powers as a public official’.<sup>215</sup>

The Bill proposes to amend the Queensland Parks and Wildlife Service Legislation by:

- removing the requirement for the administering Minister or chief executive to issue an identity card to a police officer under the *Forestry Act 1959*, the *Marine Parks Act 2004* and the *Recreation Areas Management Act 2006* (the exemption already applies in the *Nature Conservation Act 1992*)
- removing the requirement for police officers to produce those identity cards when exercising powers under Queensland Parks and Wildlife Service Legislation
- making technical amendments to clarify that officers who cease their appointment as a public official under Queensland Parks and Wildlife Service Legislation are not subject to the obligation to return identity cards in circumstances where those cards have not been issued to those officers.<sup>216</sup>

The QPS explained that the requirement to issue identity cards to police officers under the Queensland Parks and Wildlife Service Legislation is an ‘administrative burden for DES and QPS’, because ‘the relevant police officers must provide DES with a current photograph and signature specimen for the cards to be subsequently printed’.<sup>217</sup> In addition, the QPS advised, ‘[t]his burden is compounded due to

<sup>210</sup> Explanatory notes, p 1.

<sup>211</sup> QPS, correspondence, 26 November 2021, p 7.

<sup>212</sup> Explanatory notes, p 3.

<sup>213</sup> QPS, correspondence, 26 November 2021, p 8.

<sup>214</sup> Explanatory notes, p 3. Section 130 of the *Nature Conservation Act 1992* already removes the requirement for issuing cards to police in recognition that police officers have their own identity card requirements that apply when exercising powers as a public official under section 637(1)(i) of the PPRA.

<sup>215</sup> Queensland Parliament, Record of Proceedings, 16 November 2021, p 3482.

<sup>216</sup> Explanatory notes, p 10.

<sup>217</sup> QPS, correspondence, 26 November 2021, p 8.

police being dispersed across Queensland making it difficult to coordinate the issuing of identity cards in a batch post-training, particularly if training is delivered remotely'.<sup>218</sup>

The Minister affirmed that the proposed amendment would 'improve efficiencies through eliminating the administrative burden caused through issuing multiple identity cards to police officers and organising for the return of these cards once police officers cease to act as a public official under this legislation'.<sup>219</sup>

### **3.8.2 Identity card requirements for other Queensland Government employees appointed as public officials under Queensland Parks and Wildlife Legislation**

The Bill also proposes to streamline identity card requirements for state government employees of departments who are appointed as public officials under Queensland Parks and Wildlife Legislation, 'by allowing a single identity card to list the appointments the person has under Department of Environment and Science administered legislation'.<sup>220</sup> The QPS advised [t]his would similarly 'improve efficiencies' by 'ensuring that multiple identity cards do not need to be issued to a person who has a number of appointments under different Acts'.<sup>221</sup>

### **3.8.3 Production of identification by public officials appointed under Queensland Parks and Wildlife Legislation**

The Bill also proposes to amend requirements for the production of identification for inspection when a public official is exercising a power under the Queensland Parks and Wildlife Legislation.

For police officers, the Bill would remove the need for the officer to produce both police identification and identification issued under Queensland Parks and Wildlife Legislation when the officer is not in uniform and is exercising a power as a public official under that legislation. Police officers would only be required to produce their police identification, as already required under the PPRA.<sup>222</sup> The Bill would, however, reaffirm the application of this PPRA identification requirement for such officers appointed as public officials under each of the relevant Acts.<sup>223</sup>

In relation to forest officers appointed under the *Forestry Act 1959* (Forestry Act), the Bill clarifies the manner in which a forest officer must identify themselves in certain circumstances. The Bill provides the following examples of how a forest officer may clearly identify themselves when giving a direction:

- by wearing an item of uniform issued by the department
- by displaying a departmentally issued metal badge
- by activating magenta lights on a vehicle displaying a logo of the department.<sup>224</sup>

Finally, under the *Nature Conservation Act 1992* (Nature Conservation Act), conservation officers must show or display their identity card when exercising their powers under that Act, unless they are in uniform.<sup>225</sup> Under the Bill's proposed amendments, all conservation officers would be required to

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<sup>218</sup> QPS, correspondence, 26 November 2021, p 8.

<sup>219</sup> Queensland Parliament, Record of Proceedings, 16 November 2021, p 3482.

<sup>220</sup> Queensland Parliament, Record of Proceedings, 16 November 2021, p 3482; Explanatory notes, pp 3-4, Bill, clauses 51, 57, 59, 62 and 64.

<sup>221</sup> QPS, correspondence, 26 November 2021, p 8.

<sup>222</sup> Assistant Commissioner Debbie Platz, QPS, public briefing transcript, Brisbane, 29 November 2021, p 4.PPRA,

<sup>223</sup> Bill, clauses 52 (inserts new section 17D(3) and (4) of the *Forestry Act 1959*); 54 (inserts new section 84E(10) and (11) of the *Forestry Act 1959*); clause 57 (inserts new section 55(4) and (5) of the *Marine Parks Act 2004*); clause 62 (inserts new section 131(4) and (5) of the *Nature Conservation Act 1992*); clause 65 (inserts new section 146(4) and (5) of the *Recreation Areas Management Act 2006*).

<sup>224</sup> Bill, clause 54; explanatory notes, p 31.

<sup>225</sup> *Nature Conservation Act*, section 131.

produce their identity card when exercising powers under that Act, 'regardless of whether the conservation officer is in uniform'.<sup>226</sup>

### 3.8.4 Production of identification by protective services officers

Under the SBPSA:

- a protective security officer who is not in uniform is unable to exercise any security powers<sup>227</sup>
- a senior protective security officer who is not in uniform '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' or, if it is not practicable to do so before exercising the power, 'at the first reasonable opportunity'.<sup>228</sup>

The Bill would establish identification provisions for PSOs equivalent to those currently applicable to senior protective security officers, with proposed new section 559 of the PPRA providing that:

- a PSO who is not in uniform must clearly display their identity card or produce their identity card for inspection before exercising a power in relation to an entrant or entrants in a state building<sup>229</sup>
- if it is not reasonably practicable to comply with this requirement, 'the protective services officer must produce the identity card for inspection by the entrant or entrants at the first reasonable opportunity'.<sup>230</sup>

The explanatory notes provide the following example of the application of this proposed section:

... an entrant to a state building may unexpectedly become unduly violent making it unreasonable to expect a PSO to produce their identity card prior to exercising a power to resolve this disturbance. In such an instance, the PSO may present their identity card when reasonably practicable to do so.<sup>231</sup>

Proposed new section 559(4) also clarifies that failure by a PSO to clearly display or produce their police identity in a state building would not make the exercise of a power in a state building unlawful.<sup>232</sup>

#### 3.8.4.1 *Stakeholder comments and departmental response*

The QLS expressed concerns about proposed new section 559 of the PPRA, which it observed as serving to widen the application of the powers of those currently engaged as protective security officers, 'who... cannot currently exercise a power while not in uniform'.<sup>233</sup>

The QLS also noted that the SBPSA currently does not include an equivalent protection to that proposed by new section 559(4) for PSOs who fail to comply with requirements for producing or displaying identity cards while not in uniform.<sup>234</sup>

The QLS had reservations about the implications of the provision in practice, 'particularly in the context of the significant powers which are being proposed under the Bill'.<sup>235</sup>

In response, the QPS stated It is unclear how the Bill, by requiring PSOs to identify themselves, based on analogous obligations imposed on senior protective security officers under the SBPSA will result in a widening of powers.

<sup>226</sup> Explanatory notes, p 10; Bill, clause 62 (amends section 131 of the *Nature Conservation Act 1992*).

<sup>227</sup> SBPSA, section 10B(1).

<sup>228</sup> SBPSA, section 10B(2) and (3).

<sup>229</sup> Bill, clause 4 (inserts new section 559(2) of the PPRA); explanatory notes, p 19.

<sup>230</sup> Bill, clause 4 (inserts new section 559(3) of the PPRA).

<sup>231</sup> Explanatory notes, p 19.

<sup>232</sup> Bill, clause 4 (inserts new section 559(3) of the PPRA).

<sup>233</sup> Submission 2, p 6.

<sup>234</sup> Submission 2, p 6.

<sup>235</sup> Submission 2, p 6.

The QPS noted that the SBPSA currently provides that:

- 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
- 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
- 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.<sup>236</sup>

The QPS advised that the Bill applies a contemporaneous obligation upon PSOs, consistent with how other public officials are obliged to identify themselves when exercising statutory powers.

The QPS stated that 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) does not make the exercise of a power under this part unlawful. The QPS stated that 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.<sup>237</sup>

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<sup>236</sup> SBPSA, section 10B.

<sup>237</sup> QPS, correspondence, 21 January 2022, p 9.

## 4 Compliance with the *Legislative Standards Act 1992*

### 4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee considers that the Bill raises several potential issues of FLP with respect to the rights and liberties of individuals. The committee’s consideration of these issues is outlined below.

### 4.2 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals. The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.<sup>238</sup>

As outlined in sections 3.2, 3.3 and 3.4 of this report, the Bill combines protective security officers and senior protective security officers into one class of security officers named Protective Services Officers (PSOs). The Bill also sets out the security powers that may be exercised by PSOs and police officers in a state building. The committee notes that most of these powers are currently held by police officers or senior protective security officers.

The Bill makes clear which powers can be exercised by the newly formed category of PSOs and police officers.<sup>239</sup>

The conferral of these powers raises FLP issues regarding the rights and liberties of individuals in relation to liberty, freedom of movement and privacy.<sup>240</sup>

#### 4.2.1 Clause 4 – power to detain and use reasonably necessary force - right to personal Liberty

The right to personal liberty has been described as ‘the most elementary and important of all common law rights’.<sup>241</sup>

The proposed power of a PSO to detain a person and use reasonably necessary force to detain the person until the person can be surrendered to a police officer for investigation of the offence, impacts upon an individual’s liberty.<sup>242</sup>

The committee notes that the explanatory notes do not address the right to liberty specifically, but state generally in relation to individual rights that ‘concerns about the impingement of these rights are outweighed by the need to provide appropriate security measures in state buildings so that the persons who use these areas may do so in safety.’<sup>243</sup>

<sup>238</sup> *Legislative Standards Act 1992* (LSA), section 4(2)(a).

<sup>239</sup> Explanatory notes, pp 5-8.

<sup>240</sup> LSA, section 4(2)(a).

<sup>241</sup> *Trowbridge v Hardy* (1955) 94 CLR 147 at 152.

<sup>242</sup> Bill, clause 4, (inserts new section 558 of the PPRA); clause 8 (inserts new section 615A of the PPRA).

<sup>243</sup> Explanatory notes, p 12.

The statement of compatibility adds some further context:

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

...

Deciding whether the limitation on the right to liberty and security [of persons] has been inappropriately curtailed requires balancing this right against the importance of a person to safely attend state buildings. The proposed power does not authorise an arbitrary detention of any individual. Subject persons may only be detained if they are reasonably suspected of committing an offence. As the safety of a person or property in these areas is a paramount concern, it is appropriate for suspects to be detained under these circumstances so that police officers may conduct investigations.<sup>244</sup>

The Bill provides that a PSO must release a person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was detained.<sup>245</sup> Further, the exercise of this power will be considered an enforcement act under the PPRA, requiring the relevant information to be recorded in a register.<sup>246</sup>

#### Committee comment

The committee considers that the provision has sufficient regard to the liberties of individuals, having regard to the purposes of the Bill to promote the security of state buildings and ensure the safety of persons and property at state buildings.

The committee notes that the provision does not authorise arbitrary detention, as the subject person may only be detained if they are reasonable suspected of committing a criminal offence. The committee also considers that the Bill contains sufficient safeguards to ensure the appropriate and transparent use of these powers, including relevant information to be included in an enforcement register.

#### **4.2.2 Clause 4 – power to direct a person to leave or remove a person from a state building - freedom of movement**

The common law right to freedom of movement is associated with the right to liberty and security of the person, to freedom of peaceful assembly and procession, and to a democratic society respecting the rule of law.<sup>247</sup>

The power of a PSO, or police officer, to direct a person who is trespassing or acting disorderly, indecently, threateningly or offensively in a state building to leave that place may impact upon an individual's right to freedom of movement.<sup>248</sup>

The power of PSO to remove a person from, or prevent a person from entering into a state building, if the person fails to provide information about the person's name and address, fails to participate in screening or an inspection of the person's belongings or fails to provide good and lawful reason to be in the building, may also impact on that person's right to freedom of movement.<sup>249</sup>

The committee notes that this FLP issue often arises when considering powers to exclude a person from a public place, to require a person to stay out of a place, or to require a person to move on from a place.<sup>250</sup>

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<sup>244</sup> Statement of compatibility, p 13.

<sup>245</sup> Bill, clause 4 (insert new section 558(3) of the PPRA).

<sup>246</sup> Bill, clause 30 (inserts new section 53D of the PPRR); explanatory notes, p 8.

<sup>247</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 99.

<sup>248</sup> Bill, clause 4 (inserts new section 554 of the PPRA).

<sup>249</sup> Bill, clause 4 (inserts new section 557 of the PPRA).

<sup>250</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 100.

The Office of the Queensland Parliamentary Counsel (OQPC) has previously addressed the use of 'exclusion powers' in relation to public places, stating:

The Scrutiny Committee has commented that the power to exclude a person from a public place may be justified on the basis that the restriction protects the rights of the majority of users by ensuring that they are free to use the place without fear of assault or intimidation. The exclusion powers arguably promote the common law rights of the majority.<sup>251</sup>

The committee note that similar arguments are put forward in the explanatory notes in relation to these powers. The explanatory notes state concerns about individual rights 'are outweighed by the need to provide appropriate security measures in state buildings so that the persons who use these areas may do so in safety.'<sup>252</sup> The statement of compatibility adds:

The proposed amendment provides for a power that is qualified. It does not authorise the removal of any person within a state building. This power may only be exercised in circumstances where the subject person has not complied with appropriate security measures (such as the person refusing to be screened or failing to provide reasons as to why they are present) or in circumstances where the person is acting inappropriately. As such, these powers may only apply to those individuals who, through their actions, have demonstrated that they are a security risk to the area.<sup>253</sup>

In regard to the power to direct a person to leave a state building, the explanatory notes state:

Although it may be considered that the giving of a direction of this nature infringes on an individual's rights, this infringement is outweighed by the rights of the community and government employees to safely use and enjoy government buildings.

Concerns about the impact of this amendment upon the rights of an individual are mitigated as this amendment may only apply to a restricted cohort of persons (namely persons who have not complied with appropriate security measures or are otherwise acting inappropriately) and officers giving relevant directions are obliged to comply with legislative safeguards.<sup>254</sup>

Further, the explanatory notes highlight that the power to direct a person to leave a state building is consistent with security powers already used in Queensland and other 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, in particular Court precincts.<sup>255</sup>

Under the Bill, the power of a police officer or PSO to give a direction to leave a state building cannot interfere with that person's right of peaceful assembly (unless a direction is necessary in the interests of public safety, public order or the protection of rights and freedoms of other persons).<sup>256</sup>

Additionally, giving a person a direction to leave a state building, or removing a person from, or preventing a person from entering, a state building will be enforcement acts under the PPRA, requiring the police officer or PSO to record the relevant information in a register.<sup>257</sup>

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<sup>251</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 101. See also Scrutiny of Legislation Committee, *Alert Digest 1 of 1996*, p 15.

<sup>252</sup> Explanatory notes, p 12.

<sup>253</sup> Statement of compatibility, p 10.

<sup>254</sup> Explanatory notes, p 12.

<sup>255</sup> Explanatory notes, p 7.

<sup>256</sup> Bill, clause 4 (inserts new section 554(5) of the PPRA).

<sup>257</sup> Bill, cl 30 (inserts new section 53A, 53B and 53C of the PPRR); explanatory notes, p 6.

Committee comment

The committee is satisfied that these provisions have sufficient regard for an individual's right to freedom of movement, having regard to the need to balance that right against the right of the community to use public buildings safely and securely.

The committee notes that the proposed powers are qualified and apply only to a restricted cohort of persons. The committee also notes the requirement to record relevant information about the use of these powers in an enforcement register.

**4.2.3 Clauses 4, 5 and 37 – Right to privacy**

The right to privacy is relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.<sup>258</sup>

A number of the Bill's provisions impact on a person's the right to privacy, for example:

- the power of a PSO or police officer to demand the personal details of a person entering into or at a state building and the correctness of those details<sup>259</sup>
- the power of a PSO or police officer to ask a person to participate in the screening process and allow their belongings to be inspected (or seized)<sup>260</sup>
- the authorisation for PSOs to use body-worn cameras<sup>261</sup>
- the application of the QPS alcohol and drug testing scheme to PSOs.<sup>262</sup>

**4.2.3.1 Power to demand name and address**

The explanatory notes outline that the power to demand an entrant's name and address, and the entrant's reason for being at or entering the building, is required in order to effectively secure a state building.<sup>263</sup>

Whilst acknowledging that this power may infringe upon a person's right to privacy, the explanatory notes consider the 'power is a standard security measure customarily used in all jurisdictions in Australia and this amendment will ensure that security powers may be consistently applied in state buildings by PSOs and police officers.'<sup>264</sup>

The Bill also provides that a person can only be asked for this information if the police officer or PSO reasonably suspects the information to be necessary for the security of the building.<sup>265</sup> The explanatory notes state:

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 safeguard the public order and safe operation of that, or another, major airport.<sup>266</sup>

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<sup>258</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 95.

<sup>259</sup> Bill, clause 4 (inserts new section 550 of the PPRA); explanatory notes, pp 6-7.

<sup>260</sup> Bill, clause 4 (inserts new sections 551-552, 556 of the PPRA).

<sup>261</sup> Bill, clause 5 (amends section 609A of the PPRA).

<sup>262</sup> Bill, clause 37 (amends section 5A.3 of the PSAA); explanatory notes, p 9.

<sup>263</sup> Explanatory notes, p 11.

<sup>264</sup> Explanatory notes, p 12.

<sup>265</sup> Bill, clause 4 (inserts new section 550(2) of the PPRA); explanatory notes, p 12.

<sup>266</sup> Explanatory notes, p 12.

#### 4.2.3.2 Screening process

The explanatory notes do not address the potential impacts that the screening process may have on an individual's right to privacy.

Whilst screening processes already exist for entry into state buildings, the Bill amends the legislative framework to authorise PSOs to exercise security powers in relation to screening that mirror those used by police officers in securing state buildings.<sup>267</sup> Essentially, if a person refuses to participate in a screening process, the person may be directed by a PSO or police officer to leave the state building.<sup>268</sup>

The screening process itself involves the use of electronic screening devices by PSOs and police officers to scan an entrant to a state building, together with their belongings. This could include a police officer or PSO asking an entrant to allow the officer to touch a garment the entrant is wearing for the purpose of the officer inspecting the entrant's belongings<sup>269</sup> or removing one or more outer garments to allow the officer to inspect the garments.<sup>270</sup>

Whilst the explanatory notes do not address the issue of privacy in this regard, the statement of compatibility considered this issue in the context of the human rights. The statement of compatibility offers the following justification for these provisions and sets out the safeguards provided in the Bill:

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

- only allowing a garment worn by the entrant to be touched by a police officer, a PSO or an adult assisting a PSO or police officer of the same sex;
- requiring a PSO and a police officer to touch garments worn by an entrant in a way that preserves the person's dignity to the greatest extent practicable; and
- allowing a PSO or a police officer to, if appropriate, move a person to a location that is out of view of the general public for the inspection of an outer garment.<sup>271</sup>

Further, the Bill provides if an entrant does not wish an electronic screening device used in relation to their belongings or does not want their belongings inspected, they can immediately leave the building with their belongings.<sup>272</sup>

#### 4.2.3.3 Use of body-worn cameras

The use of body-worn camera by PSOs may impact on a person's right to privacy by recording a person's image and any conversations held at the time the camera is recording.

The explanatory notes do not directly address the potential privacy impacts arising from the use of body-worn camera by PSOs.

The statement of compatibility addresses privacy issues in the context of human rights and highlights the purpose of this provision as being to promote the security of state buildings, which 'is enhanced through authorising the use of body-worn camera in these places'.<sup>273</sup> The statement of compatibility also stated that:

<sup>267</sup> Explanatory notes, p 6.

<sup>268</sup> Bill, clause 4 (inserts new section 554 of the PPRA); explanatory notes, p 6.

<sup>269</sup> Bill, clause 4 (inserts new section 552(2)(e) of the PPRA).

<sup>270</sup> Bill, clause 4 (inserts new section 552(2)(b) of the PPRA).

<sup>271</sup> Statement of compatibility, p 6. See also Bill, clause 4 (inserts new section 553 of the PPRA).

<sup>272</sup> Bill, clause 4 (inserts new section 554(3) of the PPRA).

<sup>273</sup> Statement of compatibility, p 14.

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

...

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

...

Over recent years, Parliament has authorised a range of public officials to use body-worn cameras. For example, public officials under the *Biosecurity Act 2014*, the *Drugs Misuse Act 1986*, the *Exhibited Animals Act 2015*, the *Fisheries Act 1994* and the *Youth Justice Act 1992* are all authorised to use body-worn cameras.<sup>274</sup>

#### 4.2.3.4 Drug and alcohol testing scheme

The Bill expands the QPS drug and alcohol testing regime to apply to PSOs in prescribed circumstances.<sup>275</sup> The QPS drug and alcohol testing regime allows for random alcohol testing and targeted testing for alcohol and dangerous drugs, which could impact on a PSO's right to privacy.

Whilst the explanatory notes do not address this issue in the context of privacy, the notes justify the provision on the basis that PSOs will be authorised to use force (such as when removing persons from state buildings or when detaining persons), and therefore it is appropriate that they be subject to the QPS alcohol and drug testing regime.<sup>276</sup>

The statement of compatibility adds that the provision is required because PSOs are entrusted to protect others and it is necessary to ensure the integrity of any critical incident investigations PSOs may be involved in.<sup>277</sup>

#### Committee comment

The committee considers that, on balance, the provisions outlined above have sufficient regard to an individual's right to privacy, having regard to the overall objective of the Bill to promote the safety and security of state buildings.

#### **4.2.4 Clauses 20 and 40 – penalties should be reasonable and proportionate**

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.<sup>278</sup>

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<sup>274</sup> Statement of compatibility, p 14.

<sup>275</sup> Bill, clause 37 (amends section 5A.3 of the PSAA).

<sup>276</sup> Explanatory notes, p 9.

<sup>277</sup> Statement of compatibility, p 15.

<sup>278</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

The Bill contains three offence provisions:

- a person must not impersonate a PSO - maximum penalty 100 penalty units (\$13,785)<sup>279</sup>
- a person must not assault a PSO in the performance of the officer's duties at, or in connection with, a state building; or obstruct a PSO in the performance of the officer's duties at, or in connection with, a state building - maximum penalty is 40 penalty units (\$5,514) or 6 months imprisonment<sup>280</sup>
- a person who is given a requirement or direction under chapter 19, part 1 (directions in state buildings) by a PSO must not contravene the requirement or direction without reasonable excuse - maximum penalty is 20 penalty units (\$2,757).<sup>281</sup>

In relation to the offence of impersonating a PSO, the explanatory notes state:

... this proposed offence is designed to simultaneously promote the public's trust in PSOs while enhancing the security of state buildings by deterring offenders from pretending to be PSOs. The benefits of these objectives greatly outweigh any detriment caused to an individual through the introduction of this new offence.<sup>282</sup>

Further, in relation to the penalty for this offence:

This maximum penalty is consistent with the maximum penalty imposed by similar offences in Queensland including the offence of impersonating a police officer under the PSAA or impersonating a security officer under the *Hospital and Health Boards Act 2011*.<sup>283</sup>

In relation to the other offences, the explanatory notes state that the penalty for the offence of assaulting or obstructing a PSO in their duties is proposed to increase under the Bill from 10 penalty units (being the penalty for the current offence) to 40 penalty units, to 'more appropriately reflect the seriousness of the offence.'<sup>284</sup>

Whilst the offence of not complying with a direction from a PSO is not addressed in the explanatory notes in the context of penalties, it can be seen that the penalty for this offence (20 penalty units) is less than the current equivalent offence for not complying with a direction from a police officer (40 penalty units).<sup>285</sup>

#### Committee comment

The committee considers that, on balance, the penalties are appropriate and proportionate to the offences to which they relate and are generally consistent with the broader legislative framework. Accordingly, the committee considers that the provisions have sufficient regard to the rights and liberties of individuals.

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<sup>279</sup> Bill, clause 40 (inserts new section 10.22 of the PSAA).

<sup>280</sup> Bill, clause 20 (inserts new section 791A of the PPRA). Note the current version of this offence is located in section 29 of the SBPSA, which applies only to a person who assaults or resists a security officer in the course of the officer performing their duties. See explanatory notes, p 9.

<sup>281</sup> Bill, clause 20 (inserts new section 791B of the PPRA). Note there is already an offence contained in section 791 of the PPRA if a person contravenes a direction or requirement of a police officer – maximum penalty is 40 penalty units (\$5,514).

<sup>282</sup> Explanatory notes, p 13.

<sup>283</sup> Explanatory notes, p 8.

<sup>284</sup> Explanatory notes, p 9.

<sup>285</sup> Bill, clause 20 (inserts new section 791B of the PPRA); See also PPRA, section 791.

#### 4.2.5 Clause 20 – immunity from proceedings

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification. The OQPC states that:

A person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence ... and if liability is removed it is usually shifted to the State.<sup>286</sup>

One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding that, the conferral of immunity is appropriate in certain situations.<sup>287</sup>

The Bill provides PSOs with an exemption to the general prohibition on recording private conversations under section 43(2)(d) of the *Invasion of Privacy Act 1971* to lawfully provide for the use of body-worn cameras.<sup>288</sup>

The explanatory notes state:

... this amendment is justified as the use of body-worn cameras is recognised as an important method of documenting events. Body-worn cameras may provide incontrovertible evidence that may be used in investigating offences or in resolving discipline matters. Use of this technology has been adopted by a range of government officials and in private industry.

In the vast majority of private conversations recorded by a body-worn camera the PSO will be a party to the conversation and therefore have the right to record the conversation under the *Invasion of Privacy Act 1971*. Notwithstanding this, it cannot be excluded that a PSO's body worn camera may inadvertently or unexpectedly record a conversation to which the officer is not a party at that time. It is reasonable, in these circumstances, that a PSO should be protected from liability arising from using a body-worn camera in accordance with the amendments in the Bill.<sup>289</sup>

#### Committee comment

The committee notes that immunity clauses such as the above are quite common in legislation. The committee notes that police officers are currently exempted from liability under section 43(2)(d) of the *Invasion of Privacy Act 1971*, if the police officer records a private conversation whilst using a body-worn camera in the performance of their duties.<sup>290</sup> Similar exemptions also exist for authorised officers under the *Biosecurity Act 2014*,<sup>291</sup> *Drugs Misuse Act 1986*,<sup>292</sup> *Exhibited Animals Act 2015*,<sup>293</sup> *Fisheries Act 1994*<sup>294</sup> and the *Youth Justice Act 1992*.<sup>295</sup>

The committee considers that, on balance, the provisions regarding immunity from proceedings are justified in the circumstances.

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<sup>286</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

<sup>287</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64; Scrutiny of Legislation Committee, *Alert Digest 1 of 1998*, p 5, para 1.25.

<sup>288</sup> Bill, clause 5 (amends section 609A of the PPRA).

<sup>289</sup> Explanatory notes, p 13.

<sup>290</sup> PPRA, section 609A(4).

<sup>291</sup> *Biosecurity Act 2014*, section 337A(4).

<sup>292</sup> *Drugs Misuse Act 1986*, section 101A(4).

<sup>293</sup> *Exhibited Animals Act 2015*, section 222A(4).

<sup>294</sup> *Fisheries Act 1994*, section 181A(4).

<sup>295</sup> *Youth Justice Act 1992*, section 263A(7).

### **4.3 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. Generally, the notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee notes, however, that the explanatory notes do not comprehensively address all of the FLPs relevant to the Bill. Furthermore, the explanatory notes do not refer to specific clause numbers in considering FLP issues.

Bearing in mind the desirable outcome of better informing the community about proposed legislation, the committee considers that best practice is for explanatory notes to:

- clearly identify each specific issue of fundamental legislative principle that arises and the specific clause giving rise to the issue
- set out the reasons for any inconsistency with the fundamental legislative principles
- provide any justification for that inconsistency.

The committee considers that the explanatory notes otherwise comply with part 4 of the LSA.

## 5 Compatibility with the *Human Rights Act 2019*

The portfolio committee responsible for examining a bill must consider and report to the Legislative Assembly about whether the bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the bill.<sup>296</sup>

A bill is compatible with human rights if the bill:

- does not limit a human right, or
- limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.<sup>297</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>298</sup> Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Having considered the explanations provided in the statement of compatibility and examined the clauses of the Bill, the committee is satisfied that the Bill is compatible with human rights and the identified limitations on human rights are reasonable and justified in a democratic society, and there are adequate measures and safeguards in place to prevent the powers from being used inappropriately.

A summary of the committee's consideration of these matters is set out below.

### 5.1 Human rights compatibility

In the statement of compatibility accompanying the Bill, the Minister acknowledges a number of potential limitations on the rights protected under the HRA, including:

- freedom of movement (section 19 of the HRA)
- freedom of thought, conscience, religion and belief (section 20 of the HRA)
- taking part in public life (section 23 of the HRA)
- property rights (section 24 of the HRA)
- privacy and reputation (section 25 of the HRA)
- right to liberty and security of the person (section 29 of the HRA).<sup>299</sup>

#### 5.1.1 Right to privacy – power to require name, address and reason for entry to state building

As outlined at sections 3.2 and 3.3 of this report, the Bill authorises a PSO or police officer to require a person in, or about to enter, a state building to provide the following information:

- the person's name and address
- evidence of the person's name and address
- their reason for being in, or attempting to enter the state building.<sup>300</sup>

These provisions impact on a person's right to privacy. Section 25 of the HRA provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

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<sup>296</sup> HRA, section 39.

<sup>297</sup> HRA, section 8.

<sup>298</sup> The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

<sup>299</sup> Statement of Compatibility, p 2.

<sup>300</sup> Bill, clause 4 (inserts new section 550 of the PPRA).

Committee comment

The committee considers that requiring a name, address and reason for entering a state building is reasonably necessary for the security of those in the building, and is not an arbitrary or anonymous invasion of privacy.

In reaching this view, the committee noted the safeguards in the Bill requiring the officer who requests the information to:

- display identification
- inform the person they might be removed if they do not comply
- have a reasonable suspicion that it is necessary for security to ask for the information.

In addition, the committee notes that the authority to require the information only applies to government buildings, not generally (eg in the street).

The committee considers that, on balance, the provisions' impact on individual's right to privacy are reasonable and justified.

**5.1.2 Right to privacy – power to screen entrants to state buildings**

The Bill provides that a PSO or police officer may ask a person to participate in a screening process and allow their belongings to be inspected.

As outlined above, section 25 of the HRA provides that a person has a right to privacy. The committee notes that this right extends to a person's bodily integrity. Permitting persons and their belongings to be screened and/or inspected impacts on a person's right to privacy.<sup>301</sup>

Committee comment

The committee notes that a person's right to privacy is qualified and may be balanced against other rights and interests such as the right to liberty and security of other persons.

The committee considers that the impact on a person's privacy is minimised during screening and searching by having the activity be conducted by persons of the same sex and in a way that preserves the person's dignity. The committee notes that the Bill also provides that searches can be done in private.

The committee considers that, on balance, the impact on an individual's right to privacy are reasonable and justified in the circumstance. The committee also considers that the provisions are consistent with the purpose of the Bill, to provide security of state buildings.

**5.1.3 Right to property and freedom of thought, conscience religion and belief – power to seize contraband**

As outlined in section 3.3 of this report, the Bill amends the current definition of proscribed matters which police officers and senior protective security officers may seize from a person in a state building.<sup>302</sup>

The Bill amends the definition to include all weapons under the *Weapons Act 1990* (including replicas of weapons), explosives and replicas of explosives, and anything the person is not lawfully entitled to possess (eg dangerous drugs).

These provisions impact on a person's right not to be arbitrarily deprived of their property (section 24 of the HRA) and the freedom to demonstrate their religion or belief through observance, practice and teaching, in public or in private (section 20 of the HRA). For example, if an article of faith was seized from the person.

<sup>301</sup> Bill, clause 4 (inserts new section 554 of the PPRA).

<sup>302</sup> Bill, clause 26 (amends schedule 6 of the PPRA).

Committee comment

The committee considers that the impact on human rights is reasonable and justified in the circumstances. In reaching this view, the committee notes that the seizure of property only applies to property the person has no reasonable excuse to possess and which falls within the definition of proscribed matter. The committee also notes that the power to seize property is limited to areas within the boundaries of the state building.

**5.1.4 Right to movement – removal of persons from a state building**

The Bill authorises a PSO or a police officer to direct an entrant to leave a state building immediately and to take their belongings, if the entrant:

- fails to provide their name and address or reason for being in, or about to enter, the building
- fails to participate in screening or inspection
- is in or about to enter a state building and the person is disorderly, indecent, offensive or threatening to someone entering, at or leaving the state building
- has no good and lawful reasons for entering or being in a state building.<sup>303</sup>

These powers impact on a person's right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live (section 19 of the HRA).

Committee comment

The committee considers that the impact on human rights is reasonable and justified in the circumstances. In reaching this view, the committee notes that the removal of a person from a state building only applies where there has been a failure to comply with a lawful instruction or to provide reasonably required information. The person is also given the option to leave voluntarily (that is, they are not arrested unless a criminal offence has been committed). Accordingly, the committee notes that any detention is conditional, not arbitrary.

**5.1.5 Right to privacy – use of body-worn cameras**

The Bill confirms that the use of a body-worn camera by a PSO is lawful. The use of a body-worn camera may impact on a person's right to privacy, under section 25 of the HRA, by recording a person's image and any conversation held at the time the camera was recording.<sup>304</sup>

Committee comment

The committee considers that the impact on a person's right to privacy is reasonable and justified, and is consistent with the objective of promoting the security of state buildings. The committee also considers that the use of body-worn cameras assists in ensuring the accountability, professionalism and integrity of PSOs, as they record all events by all persons during any incident.

**5.1.6 Right to privacy and right to movement – drug and alcohol testing regime**

As outlined in section 3.7 of this report, the Bill proposes to extend the QPS drug and alcohol testing regime to PSOs in prescribed circumstances.<sup>305</sup> In this way, the Bill impacts on a person's right to privacy (section 25 of the HRA) and right to movement (section 19 of the HRA).

Committee comment

The committee notes that the QPS drug and alcohol testing regimes already applies to police officers, watch house officers and staff who work in critical areas. The committee considers that the proposals do not constitute the introduction of a new requirement, but rather an extension of existing rules and

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<sup>303</sup> Bill, clause 4 (inserts new section 554(1) of the PPRA).

<sup>304</sup> Bill, clause 5 (amends section 609A of the PPRA).

<sup>305</sup> Bill, clause 37 (amends section 5A.3 of the PSAA).

processes. Accordingly, the committee considers that impacts on the human rights are reasoned and justified in the circumstances.

## **5.2 Statement of compatibility**

Section 38 of the HRA provides that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights. The committee is required to consider the tabled statement of compatibility and report to the Legislative Assembly about the statement.<sup>306</sup>

### *Committee comment*

A statement of compatibility was tabled on the introduction of the Bill as required by section 38 of the HRA. The statement contains a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

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<sup>306</sup> HRA, section 38.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Crime and Corruption Commission
002	Queensland Law Society

## **Appendix B – Officials at public departmental briefing**

### **Department of Environment and Science**

- Mr Mike Devery, Manager, Compliance Optimisation Unit
- Mr Todd Kelly, Manager, Parks and Forest Policy Unit

### **Queensland Police Service**

- Assistant Commissioner Debbie Platz, Executive Officer, Security and Counter-Terrorism Command
- Superintendent Keiryn Dermody, Commander, Protective Services Group
- Senior Sergeant John Henderson, Legislation Branch