

12 January 2021

Our ref: [KS-MC]

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [REDACTED]

Dear Committee Secretary

Police Service Administration and Other Legislation Amendment Bill 2021

Thank you for the opportunity to provide feedback on the Police Service Administration and Other Legislation Amendment Bill 2021 (**Bill**).

This response has been compiled with the assistance of the QLS Occupational Discipline Law Committee whose members have substantial expertise in this area.

Our comments are limited to the proposed amendments to the *State Buildings Protective Security Act 1983 (SBPSA)*, the *State Buildings Protective Security Regulation 2008 (SBPSR)*, the *Police Powers and Responsibilities Act 2000 (PPRA)* and the *Police Service Administration Act 1990 (PSAA)*. In particular, we note the Bill seeks to repeal the SBPSA and the SBPSR and relocate the appropriate provisions into the PPRA and the PSAA.

Amalgamating protective security officers and senior protective security officers into one group called 'PSOs'

The Bill proposes to amalgamate protective security officers and senior protective security officers into a new category of officer, namely a protective services officer (**PSO**). We note from the material that Protective Services are currently responsible for the management of security services for more than 80 government buildings, 400 educational facilities and the provision of static security at 38 courts. Protective Services also monitor over 2,500 alarms within Queensland and northern NSW, over 5,500 duress alarms in Queensland and they conduct mobile patrols of state buildings within Brisbane, Logan and the Moreton Bay regions.

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

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

We note from the Explanatory Notes that currently, a PSO may only function effectively in the presence of a senior protective security officer who can exercise the full range of powers under the SBPSA.¹

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

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

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

Powers for PSOs

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

¹ Explanatory Notes, Police Service Administration and Other Legislation Amendment Bill 2021 (Qld) 5.

² [Work for Us \(protectiveservices.qld.gov.au\)](http://workforus.protectiveservices.qld.gov.au).

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

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

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

Screening powers for PSOs

The Bill will authorise PSOs to exercise security powers that mirror those currently afforded to police officers to secure state buildings. The Bill provides that a PSO or police officer may ask a person to participate in the screening process and allow their belongings to be searched. If the person refuses to participate in these security measures, the person may be immediately directed by a PSO or police officer to leave the state building.

Under the SBPSA, only a senior PSO may direct an entrant of whom a request has been made to undertake an electronic screening process if the senior PSO is satisfied that the entrant failed to comply with the request. We note that before directing an entrant to leave a state building for failing to comply with a direction, the senior PSO must warn the entrant it is an offence against the SBPSA to fail to comply with the direction.

The proposed amendments mean that PSOs must, *if practicable*, warn the person failing to comply with the direction that it is an offence to fail to comply with the direction unless the person has a reasonable excuse and give the person a reasonable opportunity to comply with the direction.³ We recommend that the clause be amended to ensure that an entrant must be warned that failing to comply with the oral direction or requirement of a PSO is an offence.

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

Currently in Queensland, only senior protective security officers have the power to demand from a person in, or about to enter, a state building the person's name and address, evidence of the person's name and address and their reason for being in, or why they are about to enter, the state building. We understand from the Explanatory Notes that the power to demand a person state their name and address does not extend to police officers.⁴

³ Police Service Administration and Other Legislation Amendment Bill 2021 (Qld) s 633A(2).

⁴ Explanatory Notes, Police Service Administration and Other Legislation Amendment Bill 2021 (Qld) 6.

The Bill proposes to amend the PPRA to authorise police officers to demand personal details of persons entering state buildings. Failure to comply with the demand to provide name and address details may be an offence under s 791 'Offence to contravene direction or requirement of police officer' of the PPRA. The Bill also proposes new section 791B which prohibits a person from contravening a direction or requirement given by a PSO unless the person has a reasonable excuse. This offence will also carry a maximum penalty of 20 penalty units.

As 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'. We note for example that the power to require name, address or age in s 40 of the PPRA relates to prescribed circumstances.

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

Whilst we note that senior PSOs currently have this power under the existing provisions, we do not support the power being extended to PSOs and police officers as proposed under the Bill.

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

Senior protective security officers and police officers are currently authorised to seize proscribed matter found in the possession of a person in a state building. Proscribed matter is defined by the SBPSA to mean an explosive substance, a firearm, a noxious or offensive substance, or an offensive weapon. Additionally, these officers may seize any item that is reasonably suspected of being evidence of an offence.

Pursuant to s 556, the Bill seeks to ensure that all items that may be a security concern to a state building will be covered by expanding the definition of proscribed matter. The definition will be expanded to include replicas of explosives and weapons, and intends to clarify that an offensive weapon or instrument extends to items that, although they may have another use, may be used to cause injury. We consider that definition requires further refinement to ensure that these powers are appropriately targeted to dangerous items. For example, it is unclear what items might be considered an 'offensive instrument'.

Additionally, the definition of proscribed thing will be expanded to allow the seizure of property that a person is not lawfully entitled to possess. The Explanatory Notes state these powers are mitigated as the seizure of the property will involve property that inherently threatens the safety and security of a state building or is property that is being possessed unlawfully.⁵

⁵ Explanatory Notes, Police Service Administration and Other Legislation Amendment Bill 2021 (Qld) 13.

QLS holds reservations about the expansion of contraband which might be seized in the context of existing police powers in the PPRA. In relation to PSOs, we are also concerned about the responsibilities of PSOs who seize or come into possession of these items in circumstances where the item may become evidence and they are not sufficiently trained to ensure that the integrity of the evidence is preserved. These issues are compounded where the scope of the items is proposed to be expanded and where there may be a dispute as to whether the items were unlawful and/or possessed unlawfully.

Further, 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.

Clarifying the use of force by PSOs

The Bill will authorise a PSO to use the force that is reasonably necessary in the performance of their duty. 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.

Proposed 615A of the Bill inserts a new provision which states that:

- (1) *It is lawful for a protective services officer exercising or attempting to exercise a power under chapter 19, part 1 or any other Act against an individual, and anyone helping the officer, to use reasonably necessary force to exercise the power.*

Example— A protective services officer may use reasonable force to prevent an entrant to a state building evading detention under section 558.

- (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.*

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.

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.

Protective services officer must produce identity card unless in uniform

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

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

Authorising PSOs to use body-worn cameras

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

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

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

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

Specific drafting concerns

Finally, we make the following comments with respect to the drafting in the Bill

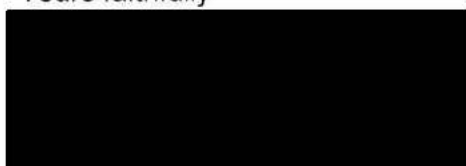
Clause No.	Clause Description	Reason for Issue / Concern
552(2)(b)	Police or PSO may ask entrant to remove '1 or more outer garments'	<p>A definition and/or examples of 'outer garments' should be provided so as to preserve a person's dignity and not unnecessarily expose them to 'strip searches at the entrance to a state building.</p> <p>Examples of outer garments may include: cardigan, scarf, shawl, jacket, coat.</p> <p>We note the 'dignity of the entrant' is contemplated in clause 553.</p>

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26(2)	Definition of 'security'	In addition to the 'safety' of things, (b) should include the 'preservation' of things, that is, 'the safety and preservation of things in, or about to be brought into, the building'.
53C(a)	When the entrant was prevented from entering	We suggest that further information should be recorded in the register of enforcement acts and that the information should include 'The date and time on which the entrant was prevented from entering'.
53D	Detention of entrant	(b) requires the time to be recorded, but not the date. The date should be recorded.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson
President