

LAW COURTS AND STATE BUILDINGS PROTECTIVE SECURITY AMENDMENT BILL 1997

EXPLANATORY NOTES

SHORT TITLE

*Law Courts and State Buildings Protective Security Amendment Bill
1997*

GENERAL OUTLINE

Objectives of the Legislation

The objective of the legislation is to amend the *Law Courts and State Buildings Protective Security Act 1983* to:

- (a) expand and enhance the provision of security by the State Government Protective Security Service to all State Government owned or occupied buildings including State schools, and in limited circumstance, to buildings occupied by statutory authorities and non-State Government entities;
- (b) permit the engagement of licensed security providers under the supervision of the State Government Protective Security Service; and
- (c) enhance the enforcement powers under the Act.

Reasons for the Bill

Since the commencement of the *Law Courts and State Buildings Protective Security Act 1983* (the Act), the State Government Protective Security Service (the Security Service) has provided security to declared State buildings, and law courts in Brisbane. The role of the Security Service has expanded to provide security to a wide range of State Government

buildings including State schools. The Security Service provides services on a commercial basis within the scope of commercial activities as defined in the *Acts Interpretation Act 1954*.

Amendment to the Act is required to recognise and facilitate the expanded functions of the Security Service. Also, amendments are required to the search powers contained within the Act to provide more complete protection to law courts and State buildings and their occupants, and to ensure that these powers are consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

Achievement of Policy Objectives

The Bill contains provisions to enable the Security Service to provide security to all State buildings, including State schools, without the need to seek specific declaration of each building under the Act. Senior Protective Security Officers will be able to exercise enforcement powers in any State building without the need to be specifically appointed to that building, as is presently required. This will promote greater flexibility in the operations of the Security Service and lessen the administrative burden to Government.

The current Act restricts the operations of the Security Service to buildings owned or occupied by the State and statutory authorities representing the State. The amendments enable the Security Service to provide its services on a commercial basis to non-State Government buildings where delegated by the responsible Minister.

Alterations to the search powers under the Act are proposed, to enable the Security Service to more effectively ensure security is maintained in State buildings.

The Bill contains provisions to enable the Security Service to engage private security providers to undertake security services (without enforcement powers). This will enable the Security Service to be more responsive to client demand and flexible in its administration and operations.

Amendments to the *Criminal Law (Rehabilitation of Offenders) Act 1986* will enable a search for any criminal history of applicants for positions in the Security Service. This will better ensure the integrity of security officers given the extent of their responsibilities.

Assessment of Administrative Costs to Government

The Security Service operates on a cost recovery basis within the context of a commercialised Government business unit. The cost of the operations of the Security Service is met by its clients, who are principally government departments.

It is not expected that there will be any increase to the administrative costs of government as a result of the proposals. Indeed, it is expected that the administrative burden may be lessened, as there will be a reduced requirement for regulations declaring buildings for the purposes of the Act.

Consistency with Fundamental Legislative Principles

The search powers under the Act have been altered so as to ensure that these powers are consistent with fundamental legislative principles.

The provisions of the Act will permit a series of steps in the search process to ensure sufficient regard to the rights and liberties of individuals. These include:

- clear identification of the authority of the security officer by reference to their uniform and/or identity card.
- a requirement that officers inform the person being searched of their rights prior to the exercise of any power. This includes the right of a person being searched or about to be searched, to advise the officer conducting the search that they are prepared to leave the building. The officer is required to comply with this request.
- provision for search to be conducted by officers of the same sex as the person being searched.
- requirement that officers must give prior warning to entrants that failure to comply with a demand or direction is an offence under the Act.
- provision that where a personal search is to be carried out, the person to be searched may request that the examination be carried out in a place out of the view of the general public.
- limitations on powers of officers to examine and touch garments worn by the person being searched.

- entitlement to claim compensation from the State for damage to property in the exercise or purported exercise of search powers.

Extent of Consultation

There has been consultation with the Department of the Premier and Cabinet, the Queensland Police Service, the Department of Justice, Queensland Treasury and Education Queensland.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short Title

Clause 1 provides the short title for the legislation.

Commencement

Clause 2 provides for the amending Act to commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF LAW COURTS AND STATE BUILDINGS PROTECTIVE SECURITY ACT 1983

Clause 3 provides that the principal Act to be amended is the *Law Courts and State Buildings Protective Security Act 1983*.

Clause 4 amends the title of the Act to provide for the general application of the Act to State buildings and other buildings.

Clause 5 amends the short title of the Act to remove specific reference to law courts, as the Act is now to have more general application.

Clause 6 amends the definition section (section 4) of the Act and renumbers it as section 3. It inserts a definition of a “noxious or offensive substance” which may be seized and detained under section 22 of the Act. It introduces a definition of “proscribed matter”, which includes all matter which may be seized and detained under the Act. Clause 6 also includes a number of definitions to ensure the clarity and effectiveness of the substantive amendments.

Clause 7 inserts a definition of “state building” in section 4, in order to clarify the buildings which are covered by the Act. The definition includes buildings occupied by the State (including departments) and non-commercial authorities of the State, and buildings which are owned by those entities but are not occupied. The definition is not intended to include parts of State buildings occupied by businesses or organisations unconnected with the State. In a mixed use situation, the precincts of a State building will also include the common areas of the building.

A building or part thereof may be declared by regulation to be a “state building” for the purposes of the Act. For this to occur, the building must be used for an activity in which the State has a direct concern, and the regulation must provide for a time limit after which the regulation will expire.

“Non-commercial authority of the State” will mean an authority of the State that is constituted by only one person and is not a trading or financial corporation. This applies the definition found in the *Trade Practices Act 1974*.

Clause 8 inserts a provision setting out the primary purpose of the Security Service as being the provision of services for the security of state buildings.

Clause 9 omits sections 10(2) to (4) of the Act which relate to the appointment of Senior Protective Security Officers. The sections are replaced with new sections 10A to 10D.

Clause 10 makes provision for the insertion of section 10A to 10D.

Proposed section 10A provides for an identity card to be issued to security officers. The card must contain a photograph of the security officer, be signed by the officer and identify the officer’s designation. Penalties are applied if an identity card is not returned to the Security Service Administrator as soon as practicable (in the absence of reasonable

excuse) upon a person ceasing to be a security officer.

Proposed section 10B provides that security officers may only exercise their powers whilst in uniform. A Senior Protective Security Officer will not need to comply with this requirement if the officer first produces the officer's identity card for inspection by the person in relation to whom the officer is exercising a power. If it is not reasonably practicable to first produce the identity card, the officer must produce the card to the person at the first reasonable opportunity.

Proposed section 10C provides for the circumstances in which a security officer, while exercising a power of search, damages a person's clothing or possessions. The officer is required to immediately give written notice to the person or leave a conspicuous notice on the damaged clothing or possession in a reasonably secure way.

If such an incident occurs, proposed section 10D provides that the person, whose clothing or possessions are damaged, may claim compensation for any loss or expense caused by the exercise or purported exercise of the power. A court having jurisdiction in the matter may order compensation, but only where it is just to do so having regard to the circumstances of the matter.

Clause 11 redefines the functions of security officers. These functions are to carry into effect the system formulated for the security of State buildings and the system formulated for the parking or entry of vehicles in or into State buildings. Section 18 clarifies that the functions may include the provision of security services on a commercial basis for buildings other than State buildings where these services are contracted for by the State. Subsection (3) provides that if such services are being provided for buildings other than State buildings, that officers are unable to exercise powers conferred in the part. Subsection (4) provides that security officers may be given functions or delegated powers under another Act.

Section 18A confirms that the powers of search and seizure in the Act may only be exercised by Senior Protective Security Officers, unless the provision expressly provides otherwise.

Clause 12 clarifies that the powers of Senior Protective Security Officers may be exercised in relation to any State building. It removes the requirement that officers must be appointed to, and may only exercise powers in, particular buildings.

Clause 13 replaces the current provision in Section 21 empowering

Senior Protective Security Officers to search persons and their possessions and inserts new Section 21A to 21J.

Section 21 applies where security in a State building includes the use of electronic screening devices. A security officer (which includes Protective Security Officers, Senior Protective Security Officers in training and Senior Protective Security Officers) may request an entrant to a building to

- walk through a walk-through detector;
- allow the officer to pass a hand-held scanner close to the person or the person's possessions; or
- pass the entrant's possession through an X-ray machine.

If the entrant will not comply, a Senior Protective Security Officer (but not other security officers) may direct the entrant to undergo electronic screening, if there are reasonable grounds for the direction.

Section 21A allows a security officer to ask an entrant for inspection of an entrant's possession or to deposit any of the entrant's belongings in a place specified by the officer. This power may only be exercised if the officer reasonably considers it necessary to make such a request. If the entrant will not comply, a Senior Protective Security Officer (but no other security officers) may direct the entrant to comply, if there are reasonable grounds for the direction.

Section 21B applies if a Senior Protective Security Officer (not other security officers) has given a direction to an entrant under section 21A to undergo a search. If such a direction has been given, the officer may examine the entrant's outer garment; touch the garments to detect any articles carried by the entrant; or remove and inspect any detected article. Inspection includes opening an article and examining its contents.

Section 21C provides that a Senior Protective Security Officer may only exercise powers to examine or touch garments if the entrant is of the same sex as the officer. If the Senior Protective Security Officer is of the opposite sex to the entrant, the officer may arrange for another security officer of the same sex to exercise the power. If a security officer of the same sex is not available, an adult person of the same sex may exercise the power at the direction of the Senior Protective Security Officer.

Section 21D provides that a Senior Protective Security Officer may direct a person to leave a State building immediately for failure to comply with a

demand under Section 20, or a direction under Section 21(3) or 21(A)(3), or to permit the officer to exercise a power under Section 21B. The direction may only be given if the officer is reasonably satisfied that making such a direction is necessary. The entrant need not comply with the direction if the entrant has a reasonable excuse for not complying. Failure to comply attracts a penalty.

Section 21E provides for the return of an entrant's belongings given up to an officer. If an entrant asks for return of a belonging, the officer may only return it to the entrant if the officer is reasonably satisfied that the entrant is about to leave the building.

Section 21F provides that entrants must be informed of their rights prior to the exercise of any power by a Senior Protective Security Officer. The entrant has the right to tell the officer that the entrant does not want the power exercised and is prepared to leave the state building immediately. If the officer has already commenced exercising the power, the entrant may tell the officer that the entrant does not want the power exercised any further and is prepared to leave the building immediately.

Section 21G provides that if an entrant has asked an officer to cease exercising a power and has informed the officer that the entrant is prepared to leave the building immediately with the entrant's belongings, the officer must comply with that request.

Section 21H establishes limitations on the ability of a Senior Protective Security Officer to direct an entrant to remove an outer garment. The officer must consider on reasonable grounds a proper examination of the entrant and garment is not possible unless the outer garment is removed. The officer must also inform the entrant that the entrant is entitled to ask for the examination of the outer garment to be carried out in a place in the building out of the view of the general public. The officer must also inform the entrant that, even if the entrant removes the outer garment to allow examination, the entrant may be examined further.

Section 21I provides that a Senior Protective Security Officer may only touch an entrant's garments if the officer advises the entrant of the entrant's rights to request that the examination be carried out, if practicable, in a place in the building that is out of the view of the general public and offers adequate personal privacy. The officer is obliged to take the entrant to such a place if the entrant makes the request. The Senior Protective Security Officer is required to preserve the entrant's dignity to the greatest extent

possible when touching the entrant's garments.

Section 21J provides that if a Senior Protective Security Officer wishes to make a demand or direction to an entrant, the officer must first warn the entrant that it is an offence against the Act to fail to comply with the demand or direction.

Clause 14 empowers a Senior Protective Security Officer to seize and detain any proscribed matter found in an entrant's possession unless the entrant is lawfully in possession of the matter in the course of the entrant's trade, business or calling. The matter may be disposed of under section 154 of the *Weapons Act 1990*. Section 3 will now define a proscribed matter as including a noxious or offensive substance.

Clause 15 makes a number of administrative amendments to the Act to reflect the change from declaring particular buildings to which the Act applies. The Act will apply to all state buildings as defined in section 4 of the Act.

Clause 16 makes a number of administrative amendments to the Act to reflect the empowering of Senior Protective Security Officers to carry out their functions in any State building as defined in section 4 of the Act.

Clause 17 amends and updates the provision in section 25 giving police officers the powers of search, seizure etc exercisable by Senior Protective Security Officers to reflect the change from declaring particular buildings to which the Act applies.

Clause 18 clarifies the current provision relating to the offence of assaulting or resisting a security officer.

Clause 19 inserts a new section 29A of the Act to remove any doubt that the State may enter into a contract for the supply of security services with a security firm licensed under the *Security Providers Act 1993*. The section provides that the employees of a security firm contracted to perform the services may not exercise the powers of search, seizure and etc conferred on security officers under the Act.

Clause 20 provides for transitional provisions with respect to references to this Act in other Acts, reappointment and re-swearing of Senior Protective Security Officers, and issue of identity cards to security officers.

**PART 3—AMENDMENT OF CRIMINAL LAW
(REHABILITATION OF OFFENDERS) ACT 1986**

Clause 21 provides for an amendment to the *Criminal Law (Rehabilitation of Offenders) Act 1986* to enable investigation of any previous contravention of the law by a person, whether in Queensland or elsewhere, prior to their appointment as a security officer. This will facilitate the assessment of a person's fitness and propriety for appointment as set out in section 9 of the Act.

SCHEDULE

The *Schedule* makes a number of minor and consequential amendments to the Act which reflect a change from the requirement that buildings are to be declared under the Act, and that officers are only able to exercise powers in relation to buildings declared under the Act and to which they are specifically appointed. The amendments reflect that the Act is to apply to all State buildings, and that officers are not required to be specifically appointed to particular buildings.