

State Buildings Protective Security Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Ryan, Minister for Police and Minister for Corrective Services, provide this human rights certificate with respect to the *State Buildings Protective Security Amendment Regulation 2020* made under the *State Buildings Protective Security Act 1983*.

In my opinion, the *State Buildings Protective Security Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *State Buildings Protective Security Act 1983* (the SBPS Act) prescribes certain places to be state buildings to allow an appropriate level of security to be provided for these areas by Protective Services security officers and police officers. This Act defines a state building to mean a building or a part of a building that is owned or occupied by the State or a non-commercial authority of the State. The SBPS Act also provides that a building may be declared under a regulation to be a state building provided that the declaration expires at a stated time.

Sections 3 and 3A of the *State Buildings Protective Security Regulation 2008* (the SBPS Regulation) declares the Queensland Cultural Centre and Legal Aid Queensland offices located at 44 Herschel Street, Brisbane and at 179 North Quay, Brisbane as state buildings and provides that these sections of the SBPS Regulation will expire on 31 August 2020.

Legal Aid Queensland also occupy levels 2, 4 and 12 of 420 George Street, Brisbane. Protective Services in the Queensland Police Service currently provide security services for the Queensland Cultural Centre and all Legal Aid Queensland offices in the Brisbane Central Business District (CBD). There is no intention to change these existing security arrangements.

The *State Buildings Protective Security Amendment Regulation 2020* (the Amendment Regulation) amends the SBPS Regulation by declaring Legal Aid Queensland offices located at 420 George Street, Brisbane as state buildings and by providing that the Queensland Cultural Centre and all Legal Aid Queensland offices in the Brisbane CBD are state buildings until 31 August 2021.

The SBPS Act provides for the security of state buildings through the appointment of security officers who are authorised specific powers within state buildings. The Act appoints security officers as either protective security officers, senior protective security officers (in training) or senior protective security officers.

Powers of protective security officers in state buildings

If the systems for the security of a state building involve the presence of a security officer and the use of an electronic screening devices, the SPBS Act provides that the security officer may

ask an entrant to the building to walk through a walk-through detector, pass their belongings through an x-ray scanner and allow an officer to pass a hand held scanner in close proximity to the person or their belongings.

A security officer may also ask an entrant to a state building to:

- allow the officer to inspect the entrant's belongings;
- remove outer garments as specified;
- remove articles from the entrant's pockets;
- open an article for inspection;
- to park their vehicle in a place specified by the officer;
- open a vehicle for inspection;
- remove an article from the vehicle as specified; and
- deposit their belongings at a certain place if the security officer reasonably believes it is capable of concealing proscribed matter.

However, a request may only be made if the security officer considers it reasonably necessary to make the request and the officer tells the entrant about the grounds for making the request. A request may be made regardless of whether the entrant or the entrant's belongings have been subjected to electronic screening.

Powers of senior protective security officers in state buildings

The SBPS Act invests in a senior protective security officer performing his or her duty in a state building all the powers of a protective security officer and a police officer (except for the power of arrest). Further, a senior protective security officer may demand of a person in or about to enter a state building:

- their name and address;
- evidence of the person's name and address; and
- their reason for being in or attempting to enter the state building.

The SBPS Act also provides that a senior protective security officer may direct an entrant who has been asked to be electronically screened to be subject to this screening if the senior protective security officer is reasonably satisfied that the entrant has failed to comply with the request.

An entrant to a state building who has been asked to remove outer garments etc. may be subject to a direction to remove these garments if the senior protective security officer is reasonably satisfied that the entrant has failed to comply with the request. If a direction is made to an entrant to remove outer garments, the senior protective security officer may:

- examine an outer garment removed by the entrant;
- touch garments worn by the entrant to detect any articles;
- remove and inspect a detected article;
- inspect a vehicle or part of it;
- inspect an article in a vehicle; and
- remove an article from a vehicle and inspect it.

The SBPS Act also authorises a senior protective services officer to direct an entrant to a state building to immediately leave and to take their belongings with them if the entrant:

- fails to comply with a demand for information;
- fails to comply with a direction given by a senior protective security officer; or
- fails to permit a senior protective security officer to examine the entrant's outer garments.

Further, the SBPS Act provides that a senior protective security officer may remove a person from a state building or prevent their entry where the person has failed to:

- provide information about their name and address;
- allow examination/inspection of garments etc.; or
- provide good and lawful reason to be in the building.

If a senior protective security officer reasonably suspects a person has committed an offence in a state building against the SBPS Act or has committed an offence through having done anything or having had anything in the person's possession in a state building, the SBPS Act authorises the senior protective security officer to use reasonably necessary force to detain the person until the person can be surrendered to a police officer for investigation of the offence.

Finally, the SBPS Act authorises a senior protective security officer to seize and detain proscribed matter possessed by a person except if it is lawfully in the person's possession in the course of their trade business or calling. The SBPS Act defines proscribed matter to mean:

- an explosive substance;
- a firearm;
- a noxious or offensive substance; or
- an offensive weapon.

Powers of police officers in state buildings

Part 1 'Directions in state buildings' of chapter 19 'Other powers' of the *Police Powers and Responsibilities Act 2000* (PPRA) outlines the specific powers that a police officer may exercise in a state building.

This chapter provides that a police officer may demand a person state their reason for being in or attempting to enter a state building and if systems for the security of a state building involve the use of electronic screening devices, a police officer may ask an entrant of the building to:

- walk through a walk-through detector;
- pass their belongings through an X-ray scanner; and
- allow an officer to pass a hand held scanner in close proximity to the person or their belongings.

Regardless of whether the entrant or their belongings has been subject to electronic screening and if the police officer tells the entrant about the grounds for making the request, the PPRA provides that the police officer may ask the entrant to:

- allow the officer to inspect the entrant's belongings;
- remove outer garments as specified and allow them to be inspected;
- remove articles from the entrant's pockets and allow them to be inspected;
- open an article for inspection;
- open a vehicle for inspection; and
- remove an article from the vehicle as specified and allow them to be inspected.

If an entrant to a state building fails to:

- state the person's reason for being in or about to enter the building; or
- allow a police officer to exercise a power mentioned above,

the PPRA authorises the police officer to direct an entrant to leave a state building immediately and to take their belongings with them.

Where the entrant to a state building has failed to:

- allow examination/inspection of garments etc.
- comply with a direction; or
- provide a good and lawful reason to be in the building,

the PPRA authorises a police officer to remove a person from a state building or prevent the person's entry.

Finally, the PPRA authorises a police officer to seize proscribed matter possessed by a person in a state building except if it is lawfully in the person's possession in the course of their trade, business or calling.

Human Rights Issues

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

Privacy and Reputation

Section 25 of the *Human Rights Act 2019* (the HRA) provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with.

The Amendment Regulation has the potential to limit this human right as senior protective security officers will be authorised to require entrants into the Queensland Cultural Centre or Legal Aid Queensland offices in the Brisbane CBD to state their name and address and to provide reasons for entering or attempting to enter these areas. Similarly, police officers will be authorised to require entrants into the Queensland Cultural Centre or Legal Aid Queensland offices in the Brisbane CBD to provide reasons for entering or attempting to enter these places. An entrant who refuses or fails to supply the information required may become liable to an offence.

Additionally, the right of privacy extends to a person's bodily integrity. The Amendment Regulation would allow a security officer or a police officer to ask an entrant to the Queensland Cultural Centre or Legal Aid Queensland offices in the Brisbane CBD to walk through a walk-through detector, pass their belongings through an X-ray scanner and allow an officer to pass a hand held scanner in close proximity to the entrant or their belongings.

Further, the entrant may be asked to allow their belonging to be inspected including any articles worn, carried or pushed by the entrant and any vehicle driven or towed by the entrant. The entrant may be asked to remove outer garments and to remove all articles in the entrant's clothing. A senior protective security officer or a police officer may examine and touch outer garments worn by an entrant and inspect articles including vehicles.

Property rights

Section 24 of the HRA provides that a person must not be arbitrarily deprived of the person's property. The Amendment Regulation has the potential to limit this human right as a senior protective security officer or a police officer will be authorised to seize proscribed matter found on a person in the Queensland Cultural Centre or Legal Aid Queensland offices in the Brisbane CBD unless the person is in lawful possession of the property for the person's trade, business or calling.

Freedom of movement

Section 19 of the HRA provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

The Amendment Regulation has the potential to limit this right in two ways.

Firstly, a senior protective security officer or a police officer will be authorised, under certain circumstances, to direct an entrant to the Queensland Cultural Centre or Legal Aid Queensland offices in the Brisbane CBD to immediately leave and to take his or her belongings out of the building. Failure to comply with this direction is an offence carrying a maximum penalty of 20 penalty units or 40 penalty units, if the direction is made by a police officer.

Secondly, the Amendment Regulation would permit, under certain circumstances, a police officer or a senior protective security officer to physically remove a person from the Queensland Cultural Centre or Legal Aid Queensland offices located in the Brisbane CBD.

Right to liberty and security of person

Section 29 of the HRA provides that a person must not be subjected to arbitrary arrest or detention. The Amendment Regulation may be considered to limit this right through authorising a senior protective security officer to detain a person who:

- is reasonably suspected of committing an offence in the Queensland Cultural Centre or in Legal Aid Queensland offices located in the Brisbane CBD; or
- has committed an offence through having done anything or having had anything in his or her possession in the Queensland Cultural Centre or in Legal Aid Queensland offices located in the Brisbane CBD,

until the person can be surrendered to a police officer for investigation of the offence.

Consideration of reasonable limitations on human rights (section 13 HRA)

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. In determining if it is justifiable for the Amendment Regulation to limit a human right, consideration may be given to the human rights that are promoted through this Regulation and if an appropriate balance with any limitation of human rights is achieved.

Section 29 of the HRA provides that every person has the right to liberty and security. The Amendment Regulation promotes this right by ensuring that appropriate security measures are applied in the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD. It is in the public interest that all persons such as employees, visitors and the public are provided with a safe environment in these areas. The right of the public to safely enjoy these areas must be weighed against any limitation upon a right experienced by an individual.

Privacy and reputation

(a) the nature of the right

The right to privacy is broad but is internally limited to the right not to have the person's privacy unlawfully or arbitrarily interfered with. Arbitrary interference extends to interferences that may be lawful, but are unreasonable, unnecessary and disproportionate.

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

The purpose of the Amendment Regulation is to ensure that appropriate security measures are applied to the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD. This is achieved in part through authorising a senior protective security officer to require an entrant to the Queensland Cultural Centre and Legal Aid Queensland offices in the Brisbane CBD to provide the person's name and address. The Amendment Regulation also authorises these officers and police officers to demand from an entrant their reason for being in or entering these areas. This power is required to ensure that entrants into state buildings may be identified and are at this location for a lawful purpose. This is a security measure that has been universally adopted for state buildings by all Australian jurisdictions.

The impact of the exercise of this power on the right to privacy is minimal as the only information sought is the entrant's name and address details and the reason why the person is at a specific location. The amount of information sought is not overly intrusive and is the minimum needed to identify a person and to determine that the person has a legitimate reason for being present.

Concerns about the exercise of this power is further reduced through safeguards found in the SBPS Act and the PPRA. It is an offence for an entrant to a state building to refuse to comply with a requirement to provide their name and address or reason for being present in a state building. Both the SBPS Act and the PPRA require a senior protective security officer and police officer to remind an entrant that failing to comply with the requirement is an offence.

Additionally, a senior protective security officer must be in uniform when exercising this power unless that is impractical. In those circumstances, the senior protective security officer must produce his or her identity card at the first reasonable opportunity. This safeguard provides assurance to the entrant that the officer making the requirement has the authority to do so.

The Amendment Regulation also affects a person's right to privacy by permitting inspections of the entrant's belongings and outer garments. The purpose of these inspections is to detect proscribed matter. These inspections are designed to be sufficient for this purpose while not being excessively intrusive.

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

The limitation is needed to help achieve the purpose of the Amendment Regulation.

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

There are no other less restrictive and reasonably available ways to achieve the purpose of the Amendment Regulation.

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

When balancing a person's right to privacy with the need to provide security for places, it is necessary to recognise the potential danger associated with proscribed matter. These items

include explosives and firearms that could easily be used to cause damage to property and loss of life. Adopting security measures to avoid that outcome is appropriate and outweighs any concern about a person's privacy. The Amendment Regulation's impact upon a person's right to privacy is further reduced by existing safeguards in the PPRA and SBPS Act. These safeguards include:

- requiring a senior protective security officer to inform an entrant that if they do not want to be subject to a direction to allow their belongings to be inspected, they may leave with their belongings;
- allowing the garment to be touched by a police officer or a senior protective security officers of the same sex;
- requiring a senior protective security officer to tell the entrant that they have the right to ask for the examination of the outer garment to be carried out in an area or place in the building that is, if practicable, out of view of the general public; and
- requiring a senior protective security officer to touch garments worn by an entrant in a way that preserve's the person's dignity to the greatest extent practicable.

(f) any other relevant factors

There are no other relevant factors.

Freedom of movement

(a) the nature of the right

The human right of freedom of movement provides in part that every person lawfully within Queensland has the right to move freely within Queensland.

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

The Amendment Regulation allows a senior protective security officer to control the movement of persons attempting to enter or in the Queensland Cultural Centre or Legal Aid Queensland offices located in the Brisbane CBD by allowing these officers to remove a person using such force as is reasonably necessary. However, this power may only be exercised if the person fails to comply with a direction such as a requirement to allow their belongings to be inspected or fails to satisfy a senior protective security officer or police officer that they have a lawful reason for being in the area.

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

The limitation is needed to help achieve the purpose of the Amendment Regulation.

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

There are no other less restrictive and reasonably available ways to achieve the purpose of the Amendment Regulation.

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

This power is appropriate and necessary as it allows the senior protective security officer or police officer to resolve a potential risk to the security and safety of the area and no other reasonable security measures would be effective.

(f) any other relevant factors

There are no other relevant factors.

Right to liberty and security of person

(a) the nature of the right

Although the human right to liberty and security focuses on personal liberty, it does not prohibit deprivation of liberty generally. This right restricts its protections to deprivation of liberties that are arbitrary and unlawful.

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

The Amendment Regulation does not authorise a senior protective security officer to arbitrarily detain persons. The power to detain a person is conditional. A senior protective security officer may detain a person only if the person is reasonably suspected of committing an offence or has committed an offence in the Queensland Cultural Centre or Legal Aid Queensland offices located in the Brisbane CBD. It is similar to the general power of arrest outlined in section 546 ‘Arrest without warrant generally’ of the Criminal Code that every citizen may rely upon.

The right to liberty and security of persons also provides that a person detained on a criminal charge must be promptly brought before a court. This requirement is similar to the obligations imposed upon a person arresting another under the Criminal Code. Section 552 ‘Duty of person arresting’ of the Criminal Code outlines that it is the duty of a person arresting another for an offence to take that person to a justice to be dealt with according to law. However, this section provides that this duty will be met if the person immediately delivers the arrested person into the custody of a police officer. The Amendment Regulation mirrors this obligation by requiring a senior protective security officer to deliver the detained person to a police officer for investigation of the offence.

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

The limitation is needed to help achieve the purpose of the Amendment Regulation.

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

There are no other less restrictive and reasonably available ways to achieve the purpose of the Amendment Regulation.

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

The power to detain a person under the circumstances outlined in the Amendment Regulation is an appropriate security measure that provides due process while ensuring good order can be maintained within the Queensland Cultural Centre and all Legal Aid Queensland offices located in the Brisbane CBD.

(f) any other relevant factors

There are no other relevant factors.

Property rights

(a) the nature of the right

The human right outlining a person's right to property is conditional as the protection against being deprived of property applies to the arbitrary deprivation of property.

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

The power afforded by the Amendment Regulation to senior protective security officers and police officers to seize property is not arbitrary but considered and limited in scope. The power to seize property is limited in the following ways:

- the power may only apply to areas within the boundaries of the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD;
- the power does not apply to persons lawfully possessing items in the course of their trade, business or calling; and
- the power to seize property only applies to property that falls within the definition of proscribed matter.

The power to seize property is considered as it is, by design, focused on the types of property that would present a security threat to a place. Proscribed matter is defined to mean an explosive substance, a firearm, a noxious or offensive substance or an offensive weapon. The power to seize property is an essential security measure to ensure that these items are not inappropriately used to threaten life or damage property in the Queensland Cultural Centre or Legal Aid Queensland offices in the Brisbane CBD.

The power to seize property under the SBPS Act and PPRA is balanced by safeguards that protect a person's property rights. If the proscribed matter is not required to be retained (e.g. for court purposes), any proscribed matter seized by a senior protective security officer may be disposed of under section 714 'Disposal of weapons' of the PPRA as if the item was a weapon or other thing held by or in the custody of a police officer. This section may also be used by a police officer, if the officer considered the proscribed matter to be a weapon under the *Weapons Act 1990*. Section 714 of the PPRA allows a police officer to return proscribed matter to the owner or a person nominated by the owner if the police officer is reasonably satisfied that the person is complying with the *Weapons Act 1990* and is lawfully entitled to possess the item.

Additionally, section 692 'Application by owner etc. for return of relevant thing' of the PPRA allows the commissioner of police to return proscribed matter to a person who has a legal or equitable interest in the property provided that:

- the proscribed matter has been in the possession of the police service for at least 30 days;

- the proscribed matter is not the subject of an application to a court order under section 693 ‘Application by owner etc. for court order for return of relevant thing’ of the PPRA;
- the proscribed matter is not described in a notice given under section 719(4) of the PPRA; and
- the commissioner is satisfied:
 - that the applicant may possess the thing; and
 - it is appropriate that the thing be delivered to the person.

Further, under section 693 ‘Application by owner etc. for court order for return of relevant thing’ of the PPRA, a person with a legal or equitable interest in proscribed matter may apply to a magistrate for its return provided that:

- the proscribed matter has been in the possession of the police service for at least 30 days;
- the proscribed matter has not been returned under section 692 ‘Application by owner etc. for return of relevant thing’ of the PPRA;
- the proscribed matter is not described in a notice given under section 719(4) of the PPRA; and
- the magistrate is satisfied:
 - that the applicant may possess the thing; and
 - it is appropriate that the thing be delivered to the person.

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

The limitation is needed to help achieve the purpose of the Amendment Regulation.

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

There are no other less restrictive and reasonably available ways to achieve the purpose of the Amendment Regulation.

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

The power to seize proscribed matter is justified given the paramount importance of ensuring the safety of visitors and employees at the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD. Concerns about this power’s impact upon a person’s property rights are mitigated through the restriction of this power to a clearly defined area, the limitation of the application of this power to property that is inherently dangerous if inappropriately used and the existence of an avenue for the return of seized property.

- (f) any other relevant factors

There are no other relevant factors.

On balance, it is considered that the significant public interest in ensuring appropriate security is provided to the Queensland Cultural Centre and the Legal Aid Queensland offices located in the Brisbane CBD through the making of the Amendment Regulation outweighs any impact on human rights that it may present.

Conclusion

I consider that the *State Buildings Protective Security Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does not limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Mark Ryan
Minister for Police and
Minister for Corrective Services

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