



PRESIDENT
Jessie E Taylor

SENIOR VICE-PRESIDENT
Michael Stanton

VICE-PRESIDENTS
Jamie Gardiner
Thomas Kane

IMMEDIATE PAST PRESIDENT
George Georgiou SC

PATRON
The Hon. Michael Kirby AC CMG

libertyvictoria.org.au

5 June 2017

Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017

1. Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty Victoria is actively involved in the development and revision of Australia's laws and systems of government.
2. The members and office holders of Liberty Victoria include persons from all walks of life, including legal practitioners who appear in criminal proceedings for the prosecution and the defence. More information on our organisation and activities can be found at: <https://libertyvictoria.org.au/>.
3. For the reasons that follow, Liberty Victoria is opposed to the proposed expansion of the powers of Protection Services Officers (**PSOs**) through the measures set out in the *Justice Legislation Amendment (Protective Services Officers and Other Matters) Bill 2017 (PSO Bill)*.

Current status and existing powers of PSOs

4. PSOs are sworn officers of Victoria Police who have undergone 12 weeks of training at the Victoria Police Academy upon recruitment. They are granted a limited range of police powers when on duty in 'designated places'— essentially metropolitan and major regional railway stations and associated areas. They have been deployed in Victoria since 2011. Their primary function (as described by Minister for Police Lisa Neville MP in the Second Reading Speech for the PSO Bill) is to provide a 'visible presence... in the community – and notably on public transport – to improve feelings of safety and to prevent and detect crime'. The Victorian Auditor-General's Office has acknowledged there is insufficient data to assess the impact, if any, that PSOs have on crime rates.

5. PSOs already have a range of powers associated with their function, including certain powers of arrest and search, to obtain personal information as well as the power to issue fines for public order and public transport offences.

Proposed expansion of PSOs powers

6. The PSO Bill seeks to substantially expand those powers, including by granting PSOs powers to:
 - 6.1. search people and their vehicles if PSOs suspect the presence of drugs of dependence or psychoactive substances;
 - 6.2. in certain circumstances (i.e. where an area has been temporarily declared a 'designated area' by the Chief Commissioner of Police, owing to violence or disorder in that area) randomly search people for weapons;
 - 6.3. apprehend children in respect of whom the Children's Court has issued a search warrant for the purpose of having the child placed in emergency care;
 - 6.4. arrest people whose parole has been breached or cancelled;
 - 6.5. request the names and addresses of people suspected to be witnesses to the commission of indictable offences; and
 - 6.6. issue infringement notices for the supply of alcohol to minors.
7. This Bill would also create the offence of obstructing or hindering a PSO in carrying out the weapons searches referred to above.

PSOs as *de facto* Police Officers

8. In Liberty Victoria's view, the PSO Bill seeks to grant PSOs powers which do not reflect the confined role they have been given. For example, conducting a warrantless search on an individual or their vehicle because of a suspicion of drug possession may or may not, but does not necessarily, relate to ensuring the security of members of the public using public transport. In effect, by this and other measures the PSO Bill seeks to make PSOs *de facto* police officers.
9. In the accompanying Second Reading Speech, the provision of new powers is justified by the need to 'return sworn police to the front line'. However, the point at which law enforcement officials engage with members of the public is the front line. Moreover, powers to arrest, search and use reasonable force against individuals at that point—who will inevitably include children and people with a range of vulnerabilities, including cognitive and mental health disabilities—are exceptional. Their exercise represents a significant incursion into ordinary rights to privacy and safety, freedom of movement and the presumption of innocence. So much is acknowledged by Minister Neville in a statement addressing the compatibility of the PSO Bill with the Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter), in which Minister Neville acknowledges that the powers of arbitrary weapons search proposed under the Bill 'are incompatible with the rights... to privacy, and... to protection of the best interests of

children', and that the view is open that they are further incompatible with the right to freedom of movement and the presumption of innocence under the Charter.

10. Powers which impinge the fundamental rights of individuals must be given, and used, sparingly and judiciously. This is why we have entrusted Victoria Police officers, to the exclusion of others, with such powers.
11. However, PSOs are not ordinary police officers. They serve a specified and attenuated role and, notably, do not receive the same amount of training as ordinary police officers. They also do not have the benefit of working, as closely as ordinary police officers do, with senior and experienced members of Victoria Police.

Existing concerns: IBAC Report, December 2016

12. Further, serious concerns have been raised about PSOs' use of existing powers. A December 2016 IBAC [report](#), *Transit Protective Services Officers: An exploration of corruption and misconduct risks*, identified 233 complaints against PSOs, comprising 440 allegations of misconduct between 12 February 2012 and 31 December 2015. This included 182 allegations of assault and excessive force, 76 allegations of predatory behaviour (defined as the misuse of authority to pursue an intimate relationship with an individual encountered while on duty, or to sexually assault, harass or groom that individual) and 18 allegations of unauthorised access to or disclosure of information. The report recommended that Victoria Police consider ways to improve public understanding of PSOs and their function, and consider reviewing PSO training on effective communication and conflict resolution skills, and professional and ethical standards.

Conclusions

13. It is not suggested that PSOs should be indiscriminately maligned. Nonetheless, the IBAC report highlights the risk involved in giving police powers to a workforce other than police officers. In light of such serious and recent concerns, giving PSOs substantial new powers is in Liberty Victoria's view unnecessary, inappropriate and potentially harmful. This is particularly so where there is little evidence as to the effectiveness of PSOs in fulfilling their functions and insufficient data to assess whether or not they have any impact at all upon crime rates.
14. A further concern is raised by the creation of a new offence for obstructing or hindering a PSO. As with the equivalent offence in relation to police officers, this offence places an evidential burden on the accused to offer a 'reasonable excuse' for their actions. To this extent it reverses the onus of proof (which would ordinarily fall exclusively on the prosecution). This makes it easier to prosecute and more difficult to defend charges of this offence. Liberty Victoria opposes the introduction of an offence in such terms.
15. If you have any questions regarding this submission, please do not hesitate to contact Liberty Victoria President Jessie Taylor or the Liberty office on 9670 6422 or info@libertyvictoria.org.au.