



26 February 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Committee Secretary

Re: Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018

Thank you, on behalf of the Bar Association of Queensland ('the Association'), for the invitation to make a submission in relation to the Legal Affairs and Community Safety Committee ('the Committee') to inform the Committee's consideration of the *Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018* ('the Bill').

The deadline for the provision of submissions is 08:00, Monday 26 February 2018.

Objectives of the Bill

The objectives of the Bill are to:

- provide a legislative framework to facilitate Queensland's participation in the Identity Matching Services ("IMS");
- remove the requirement to obtain an access approval order for Queensland Police to access Queensland driver licence digital images for non-transport related offences;
- remove the requirement for the Department of Transport and Main Roads to report annually to Parliament via the Minister on access to Queensland's driver licence digital images;
- overcome the current limitations in the *Criminal Code* in adequately addressing the threat of homemade explosives; and
- provide for extended liquor trading arrangements for the 2018 Commonwealth Games.

Submissions

The Association has had regard to the Bill, the First Reading Speech and the Explanatory Notes.

The following concerns regarding the Bill are raised for the Committee's consideration.

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Amendments to Legislation

The Bill amends existing legislation in order to achieve its objectives.

With respect to the amendments to the *Criminal Code* and the *Liquor Act 1992* the Association has no submissions. It is understood that the changes to the *Liquor Act 1992* are limited in time and related to the upcoming Commonwealth Games. It is concerning that there is no avenue appeal to QCAT notwithstanding the scope for judicial review. The former is far more accessible to citizens.

With respect to the amendments to the *Transport Planning and Coordination Act 1994* and the *Transport Operations (Road Use) Management Act 1995*, the Association submits as follows:

- There is insufficient information contained in the Explanatory Notes regarding the identity of the hosting entity. There are considerations of adequate security protections of the proposed disclosure of identity information and related data.
- Use, collection and further disclosure of identity information by the hosting entity is authorised as required for the operation of the IMS. The Association is concerned that such operational requirements should be articulated (at least in an anticipated way) prior to the Bill being passed.
- The entities that will receive the disclosed identity information are said to be those with whom the State has an agreement as part of the IMS. However, the Commonwealth is authorised to collect, use and share the information with other entities to “facilitate the operation of the IMS.” It appears that the authority of the Commonwealth may include entities with whom the State does not have an agreement.
- Transport and Main Roads (TMR) is authorised to collect and use data from the hosting entity and other entities. There is no current explanation of how the collected data will be used or for what purpose.
- The Association is concerned that the current requirement that annual reports of access to digital photographs are prepared for the Minister and tabled in Parliament is to be removed. Such transparent reporting obligations provide the opportunity for public scrutiny and departmental accountability. The Association considers that annual reporting requirements of access to identity information (including digital photographs) ought to continue to be prepared for the Minister and tabled in Parliament.
- The Association submits that the risk of inappropriate use of the system is not adequately managed if, as proposed, QPS is able to access the driver licence images for non-transport law enforcement purposes without either judicial oversight or rigorous reporting obligations.
- The outputs from the IMS are not to be used for evidentiary purposes. The Association is concerned that this may be an attempt to limit judicial discretion in relation to disclosure orders and defence options at trial. Where such information has been accessed in the course of QPS investigations, the Association submits that all investigative strategies and information systems ought to be subject to the usual disclosure and testing by cross-examination in relevant proceedings.

Individual Privacy considerations

The Explanatory Notes include ways by which individual privacy is said to be protected.

The Association submits as follows:

- Permitted purposes are defined in the Bill at clauses 17 and 24. There is a new offence provision for collection, use or disclosure other than for a permitted purpose. Without reporting of access to the information including by whom and for what purpose, it is difficult to see how any such misuse is to be detected.
- QPS access to TMR images has been discussed above.

Consultation

The Association notes that the Queensland Privacy Commissioner has been consulted and has raised concerns regarding:

- gaps in Australian legislative regimes;
- a participation agreement and data access policies have not been developed;
- an independent privacy impact assessment to identify privacy impacts is required.

The Association supports and echoes these concerns. It is anticipated that other States and Territories will enact “significantly similar” legislation. The precise wording of that legislation is not yet known. What is known is that the ACT will only allow access to its data for national security and community safety reasons and will not participate in the one person one licence service (“OPOLS”).

In these circumstances, it is of concern that such wide-ranging changes have been proposed in haste. That is especially so when the Queensland Privacy Commissioner has indicated a number of concerns that have not yet been addressed.

The Association urges that the amendments to the liquor trading arrangements for the Commonwealth Games proceed as a separate Bill and that the IMS changes, in particular, be delayed to allow proper time for community consultation and proper engagement with the recommendations of the Privacy Commissioner.

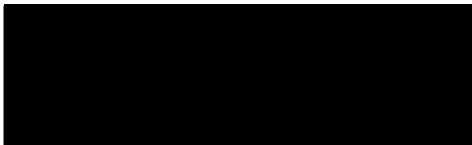
The Association, for one, would appreciate and respond to an opportunity to provide further comments on the IMS legislation if a more reasonable time period for such comments were provided.

Conclusion

Thank you again for the opportunity to provide submissions in relation to the *Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018*.

The Association would be pleased to provide further feedback or answer any queries you may have on this matter.

Yours faithfully,



G A Thompson QC

President