

22 November 2016

Research Director  
Transportation and Utilities Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
By email [TUC@parliament.qld.gov.au](mailto:TUC@parliament.qld.gov.au)

Dear Research Director

**Transport Operations (Road Use Management) (Offensive Advertising) Amendment Bill 2016 (the Bill).**

Thank you for the opportunity to provide comments on the Transport Operations (Road Use Management) (Offensive Advertising) Amendment Bill 2016 (the Bill).

The Queensland Law Society (the Society), in carrying out its central ethos of advocating for good law and good lawyers, endeavours to be an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader Queensland community.

Please note that it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

The Society is however deeply concerned by proposed section 19N of the Bill which removes the right of the registered operator of the vehicle to seek a review of, or appeal, the decision of the chief executive made under proposed sections 19F(1) and 19H. The Society also opposes the exclusion of part 4 of the *Judicial Review Act 1991* (the JRA) and of the jurisdiction of the Supreme Court and other courts and tribunals, with respect to these decisions.

We note the Bill's Explanatory Notes seek to justify proposed section 19N by arguing that the chief executive will only be making decisions after the Advertising Standards Board's process, including any review, has been finalised and it outlines the rights of review under this process. However, we believe this is insufficient as it does not afford the registered operator any review rights in respect of the subject decision made under this legislation.

Further, it is inappropriate for Parliament to legislate to oust the jurisdiction of the Court or to limit the application of the JRA. Legal authority has warned against it. In *Kirk v Industrial Relations Commission of New South Wales; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1, the High Court held, at 100, "Legislation which would take from a State Supreme Court power to grant relief on account of jurisdictional error is beyond State legislative power." The Australian Law Reform Commission

has considered the broad scope of “jurisdictional error”<sup>1</sup> such that legislation seeking to prohibit or restrict the court’s ability to hear and determine these matters may be found to be invalid.

We are also of the view that excluding the JRA and ousting of the jurisdiction of the Court is contrary to the “Principles of good legislation: OQPC guide to FLPs”, specifically the chapter on “Institutional integrity of courts and judicial independence”. We submit that proposed section 19N be removed from the Bill.

In addition, the Society recommends that decisions made under the proposed sections 19F(1) and 19H be listed in Schedule 3 of the *Transport Operations (Road Use Management) Act* as reviewable decisions that are then subject to Chapter 4 of the Act and thus are capable of internal and external review.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kate Brodnik on 3842 5851 or [k.brodnik@qls.com.au](mailto:k.brodnik@qls.com.au).

Yours faithfully

  
Bill Potts  
**President**

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<sup>1</sup> Australian Law Reform Commissions, “Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Report 129)”, Chapter 15 <https://www.alrc.gov.au/publications/protections-statutory-encroachment-32>