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Office of the President

26 September 2018

Committee Secretary
State Development, Natural Resources and Agricultural
Industry Development Committee
Parliament House
George Street
Brisbane 4000

Our ref: (Gen)

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

Dear Committee Secretary

Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018

Thank you for the opportunity to provide comments on the Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018 (**the Bill**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Due to the short consultation period, we have restricted our review of the Bill and comments to the powers of inspectors and investigation contained in Part 2, Division 2 of the Bill. By omitting to comment on the full scope of provisions in the bill, QLS does not express its endorsement of these provisions.

Recent history of legislation containing increased powers of inspectors and investigation

QLS has previously made submissions about the powers of entry, compulsion and seizure of information which have been placed in bills introduced by the Government, contending that these provisions breach fundamental legislative principles and the *Legislative Standards Act 1992* (Qld) (**LSA**). For example, section 4(3) of that act provides that legislation should generally confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

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Despite this clear law and guidance, the following bills were introduced and passed which contain provisions allowing for entry onto to land and business, in certain circumstances, without a warrant or consent:

1. Labour Hire Licensing Bill 2017;
2. Police Powers and Responsibilities (Commonwealth Games) Amendment Bill 2017;
3. Building and Construction Legislation (Non-conforming Building Products – Chain of responsibility and Other Matters) Amendment Bill 2017;
4. Tow Truck (Towing from Private Property) Amendment Bill 2017;
5. Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018;
6. Land, Explosives and Other Legislation Amendment Bill 2018.

Each of these bills was referred to a parliamentary committee and during these inquiries, QLS made submissions highlighting these concerning provisions. However, the legislation passed with little or no amendment to these provisions.

Earlier this year, the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 was introduced with provisions that dealt with powers of entry; however, there was some notable improvement in the drafting. In our submission on this bill we commended the drafters for modifying the provisions which gave powers to investigators to the extent that they did not allow entry to a place that is not a public place without consent or a warrant, and further, they did not seek to abrogate the right to claim privilege against self-incrimination in respect of a person cooperating with a request by an investigator.

The QLS makes these submissions on this legislation as powers of entry must be carefully drafted so as not to amount to an unjustifiable intrusion on a person's rights. The strong preference of QLS is that entry to places should generally only be exercised with a valid warrant, the consent of an occupier or following an appropriate notice period.

Current Bill

The drafting of the current bill does appear to be an improvement on the aforementioned legislation.

In addition, we have previously submitted that the explanatory notes which accompany this type of legislation are inadequate and either do not identify all of the breaches of fundamental legislative principles or do not explain why a breach is necessary and appropriate. The explanatory notes that accompany this bill are more detailed, in this respect, than in previous instances, containing more comprehensive material on adherence to fundamental legislative principles.

However, there are several clauses in this Bill which we are concerned with and which we submit should be carefully considered by this Committee.

Clause 8 proposes to insert section 145A in the *Fisheries Act 1994* which relates to an inspector's power of entry onto premises used for trade or commerce. Subsection 2 of this section provides that, "*Before entering premises under subsection (1), the inspector must give the occupier of the premises at least 20 days notice of the entry unless the giving of notice would defeat the purpose of the entry.*"

QLS considers the exception to providing a notice under this section being, "*unless the giving of the notice would defeat the purpose of the entry*" is unduly broad and potentially a

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contravention of section 4(3)(e) of the LSA. QLS is concerned that there is no limitation or threshold placed on this provision and no circumstances provided within the Bill or explanatory notes that denote when this is appropriate.

If the entry onto premises is based on the latter part of this subsection, that is, if notice has not been provided, then we are concerned that subsection 1 does not give adequate protection to the rights of an owner/occupier. In our view, it is inappropriate for an inspector to enter a premises without the consent of the owner/occupier, or at least without informing that person at the time of entry of the presence and intention, even if the premises is simply 'otherwise open for entry' (s145A(b)(iii)). The owner or business operator should be entitled to know that an inspector has entered the premises to carry out an investigatory function under the act. Even proposed section 145A(1)(b)(i) is deficient in this regard as it does not explicitly state that the occupier needs to be informed of the inspector's entry onto the premises.

Of further concern are the proposed powers under clause 9 of the Bill which provide that an inspector may board a boat or enter a vehicle to find out whether the Act is being complied with (s146(1)(c)). Again, this is unjustifiably broad. If an inspector believes that an offence is being committed or has been committed, then the inspector should undertake proper investigative processes including obtaining a warrant and/or making a request to enter or for the provision of information.

In addition, the proposed section provides that "an inspector may board an unattended boat or enter an unattended vehicle only if, before boarding the boat or entering the vehicle, the inspector takes reasonable steps to advise the owner or person in control of the boat or vehicle" (s146A). QLS considers the words 'reasonable steps' are vague and open to the interpretation of inspectors. Guidelines as to the meaning of "reasonable steps" should be provided. There must also be a justifiable reason as to why the inspector needs to board the boat or vehicle.

Other concerns

We submit that subsection 2 in proposed section 150B should be replicated in proposed section 150C so that it is expressed in that section that it is a "reasonable excuse" for a person not to take action in relation to a boat or vehicle if doing so might tend to incriminate the person.

QLS is also concerned about the proposed power of the chief executive to obtain a criminal history report of a person who may be present at a place, boat or vehicle when the inspector enters the place, boat or vehicle under clause 19. This raises significant privacy concerns which do not appear to be justified. Obtaining a person's criminal history will not necessarily address the safety concerns of an inspector when entering a place without consent. If there are concerns, it would be more beneficial and appropriate to follow the due process of obtaining a warrant and seeking the assistance of the police to enter the place.

Finally, we have some concern with the introduction of proposed section 216A which grants immunity to inspectors. In our view, it is appropriate for there to be an effective and appropriate counterbalance against possible abuses of power. This could be achieved by allowing for prosecution of inspectors if the circumstances of their conduct warrant this.

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Recommendation

We submit that the Committee recommend that the above proposed sections be redrafted to confirm that entry to a place, including boat or vehicle, occur only when a warrant or consent has been obtained, or appropriate notice has been given.

We submit that the provisions relating to obtaining a person's criminal history be reconsidered.

We urge drafters of these types of provisions in future legislation to accord with the LSA and fundamental legislative principles.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Principal Policy Solicitor, Wendy Devine by phone on [REDACTED] or by email to [REDACTED] or Senior Policy Solicitor, Kate Brodnik on [REDACTED] or by email [REDACTED]

Yours faithfully



Ken Taylor
President