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Office of the President

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Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary

Heavy Vehicle National Law and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide comments on the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 (the Bill). The Society commends the government for permitting public consultation on the proposed Bill. As there has been only a very brief opportunity to review the proposed amendments, an in-depth analysis of the Bill has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We note that the comments made in this submission are not exhaustive and we reserve the right to make further comment on these proposals. We urge the government to extend the period in which to provide comments and also extend the reporting date of the Committee, so that the Committee has a reasonable opportunity to consider the draft legislation before it.

QLS is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 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.

1. Clause 38 – Cooperating with participating jurisdictions and Commonwealth

The committee is urged to ensure these provisions accord with relevant privacy principles.

2. Clause 47 - Insertion of new s 77AAA

Clause 47 of the bill seeks to add a new provision after section 77 of the *Transport Operations (Road Use Management) Act 1995*. This new clause would allow the chief executive to notify a registered operator of traffic offences committed in the registered operator's vehicle.

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The Society expresses concerns over the registered owner of a vehicle being notified with details of the driver in circumstances. This is a basic invasion of an individual's privacy and could have employment ramifications causing people to otherwise defend matters. We do not see a justifiable basis to advise others of a, for instance, criminal conviction. In this regard, we note that the proposed notifiable offences may be quite serious and offences which actually require individuals to appear in court. Such a scenario would seem to fly in the face of the idea of a non-recorded conviction and the impact or otherwise it would have on a person. Therefore, in the Society's view, we do not consider that this intrusion on individual privacy is warranted in the circumstances.

Furthermore, this provision may be inconsistent with the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

3. Clause 48 - Amendment of s 80 (Breath and saliva tests, and analysis and laboratory tests)

Clause 48 of the bill seeks to remove section 80(8J) of the *Transport Operations (Road Use Management) Act 1995*.

Section 80(8J) of the *Transport Operations (Road Use Management) Act 1995* currently states

(8J) Operator of saliva analysing instrument must not be arresting officer or officer who requires specimen

The authorised police officer operating or who is to operate a saliva analysing instrument in any particular case must not be the police officer—

- (a) *who has arrested the person concerned for an offence referred to in subsection (8); or*
- (b) *who requires the person to provide the specimen of saliva for a saliva test or saliva analysis.*

The Society does not oppose the proposal to having a single officer conduct drug driving test procedures. Having a single officer conduct drug driving test procedures is acceptable as long as due process, rules and safeguards are strictly enforced. This would include a police officer electronically recording the whole procedures and sealing samples in the presence of the defendant. We also recommend that separate reference samples should be lodged at court. We consider that these safeguards are must be preserved and should not be dispensed with due to mere convenience.

4. Clause 49 - Amendment of s 83 (Careless driving of motor vehicles)

Clause 49 of the bill seeks to replace section 83 of the *Transport Operations (Road Use Management) Act 1995*.

The current section 83 of the *Transport Operations (Road Use Management) Act 1995* reads as follows

83 Careless driving of motor vehicles

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Any person who drives a motor vehicle on a road or elsewhere without due care and attention or without reasonable consideration for other persons using the road or place is guilty of an offence.

Maximum penalty—40 penalty units or 6 months imprisonment.

The new section 83 set out in clause 49 of the bill introduces a tiered sentencing regime for careless driving, increases maximum penalty units and terms of imprisonment and proposes a mandatory driver licence disqualification scheme.

a) Introductory remarks regarding increased penalties for driving offences resulting in death or grievous bodily harm

The Society notes the material presented in the Explanatory Notes concerning the injuries sustained on Queensland roads. We sympathise with the individuals and families that have been affected by these tragic accidents.

However, the Society's fundamental concern is that the rationale behind the proposed changes is reactionary to a couple of particular cases, which are very sad on their own facts. However, it is clear that there was not thought to be criminal code criminality of the defendant in some of these cases. As such, the Society is concerned that the proposed legislative reforms will not be successful in achieving the objective of reducing the numbers of death and injuries sustained by Queensland road accidents.

We acknowledge that some community members, including those of aggrieved families, consider that certain sentences are inadequate. However, we do not consider that the community has been provided with all the relevant information required to make informed decisions about the adequacy of existing legislation to deal with driving offences causing death or bodily harm. The education of the public in relation to these matters lies properly within the bailiwick of the Queensland Sentencing Advisory Council.

The Society maintains that the creation of new offences and increases to current maximum penalties should be grounded in cogent evidence based research and data. Laws should respect the principles of proportionality, necessity and legality and be appropriately adapted to achieve their stated legitimate aims. In this regard, it is difficult to see how the proposed changes will have an impact on improving road safety.

5. Clause 50 - Amendment of s 86 (Disqualification of drivers of motor vehicles for certain offences)

Clause proposes the introduction of a mandatory driver licence disqualification regime.

a) Mandatory sentencing – general remarks

The Society has maintained a consistently strong stance against any form of mandatory sentencing. These views are detailed in our mandatory sentencing policy paper, which can be accessed at the following link -

http://www.qls.com.au/Knowledge_centre/Areas_of_law/Criminal_law/Mandatory_sentencing_policy_paper.

QLS supports the fundamental principles of Australia's legal system, including principles of procedural fairness, judicial precedent, the rule of law, and the separation of powers. We promote these concepts as central to the protection of a citizen's right to justice and equality

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before the law. In our view, mandatory sentencing laws are arbitrary, unfair and unworkable and run contrary to these fundamental tenets.

As discussed, our view is that sentencing decisions should rest with highly trained judicial officers. These judicial officers are in the best position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission. In this regard, we note that mandatory sentencing regimes undermine sentencing guidelines as set out in section 9 of the *Penalties and Sentences Act 1992*. The Act states that sentences may be imposed on an offender to an extent or in a way that is just in all the circumstances.

b) Driver licence disqualification

In line with our comments in relation to mandatory sentencing, the Society does not support the introduction of mandatory driver licence disqualifications. While we appreciate that there are mandatory driver licence disqualification provisions in the *Criminal Code Act 1899*, we do not consider that these need to be extended in to the offence of driving without due care ('careless driving') in circumstances of aggravation in section 83 of the *Transport Operations (Road Use Management Act) 1995*.

In our view, a lengthy driver licence disqualification can have a significant impact on all aspects of an individual's life, including negative impacts on their employment and family life. The recent Court of Appeal case of *R v Gazzara [2017] QCA 168* has considered the impact of disqualification of a driver licence. We recommend that due consideration be given to the Court's reasoning in this matter.

This position applies in relation to the criminal offence of dangerous operation of a motor vehicle causing grievous bodily harm or death in part. It is not unheard of for a defendant, in particular circumstances, to receive a wholly suspended jail sentence or immediate parole order for such an offence. This is due to the sentencing judge assessing the criminality, which might include 'momentary inattention' of a defendant who otherwise might have 20-30 years of exemplary driving. A licence disqualification of no less than 12 months can fundamentally affect prospects of rehabilitation as it can lead to unemployment and isolation from family and support mechanisms such as counselling.

We submit that it is essential that a discretion be maintained as to driver licence disqualification. Case law has long established that an increase of maximum penalties signals to the Court an intention by Parliament for a matter to be treated more seriously, but, discretion should remain with respect of the range of applicable penalties (as seen in the case law in relation to serious assaults on police).

In our view, a more worthwhile initiative is a mandatory provision for driver education to be completed at an approved institution while the individual is disqualified from driving.

c) Increases to current maximum penalty units and imprisonment terms

In the absence of cogent and persuasive empirical evidence that the proposed increases to the current maximum penalty units and imprisonment terms will have a real impact in improving road safety, we do not support these increases.

d) Careless driving with circumstances of aggravation

The Society does not support the introduction of a tiered sentencing regime for careless driving with circumstances of aggravation. We consider that it is important to note that there is

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a reason for making a distinction between 'careless' and 'dangerous' in driving cases. That is, it properly reflects degrees of culpability that happen in real life. It is our firm view that the current law is adequate to encompass the appropriate range of culpability and there are no current gaps in the law. In addition, another factor that might be considered is whether charges are being appropriately characterised by the Queensland Police Service.

Furthermore, we note that there are also appropriate appeal mechanisms at the State's disposal to deal with perceived inadequate sentences.

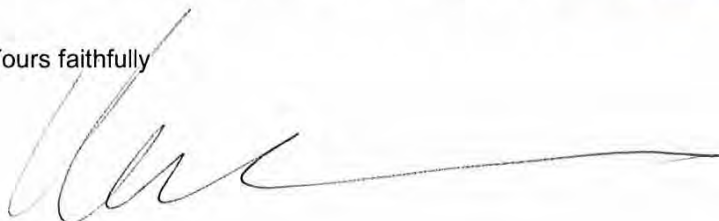
6. Clause 51 - Amendment of section 92 (Duties and liabilities of drivers involved in road incidents)

Section 92 of the *Transport Operations (Road Use Management) Act 1995* details the duties and liabilities of drivers involved in road incidents. We consider that the current penalty is adequate and the proposed amendment is unnecessary. In the experience of our members, most failure to stop offences are accompanied by the commission of another offence, which would attract significant imprisonment terms.

We also note that there may be multiple reasons to explain why an individual may flee the scene of an accident. In our member practitioners' experience, individuals may leave a scene of an accident because they may actually be unaware that they have been involved in an accident or that they were in shock following an accident. We are very concerned about the proposed mandatory consequences that will be imposed for an omission offence and respectfully request that this provision be reconsidered.

If you have any queries regarding the contents of this letter, please do not hesitate to contact Acting Advocacy Manager, Ms Binny De Saram on [REDACTED] [REDACTED] or Kate Brodrik, Senior Policy Solicitor on [REDACTED]

Yours faithfully



Ken Taylor
President