



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

The Secretary
Transport and Public Works Committee
Parliament House
tpwc@parliament.qld.gov.au

Dear Madam,

Heavy Vehicle National Law and Other Legislation Amendment Bill 2018

Kindly accept this submission in relation to the above Bill.

The QCCL is a voluntary organisation which has for over 50 years, sought to protect the individual rights and liberties of Queenslanders.

As the explanatory Memorandum notes, the Council was consulted by the Department prior to the introduction of this legislation. Can I note for the record, that in my time as President of the Council the Department of Transport has consistently undertaken the most thorough and satisfactory consultations with the Council of all the Departments of the State government.

The Department sought our views on four issues:

- Single officer drug driving testing
- Increasing the period of retention of the photographs and signatures of learners' permit holders
- The notification of registered owners of traffic offences committed in their vehicles
- Increased penalties for driving offences resulting in death or grievous bodily harm

Whilst the Department has accurately summarised our views in the Explanatory Memorandum, we do wish to take the opportunity to expand upon our position, in the light of the actual Bill.

1. **Single Officer drug driving testing procedure** - we have no objection to this proposal.
2. **Increase digital photograph and signature retention period.**- this proposal is to increase the digital photograph and signature retention period in order to introduce online learning and assessment programs to replace the current written road rules test for cars (class C) for applicants seeking to obtain a learner license. This is currently being trialed in six schools across Queensland. The current enrolment period for the online course is 12 months. However, where an applicant for a license fails, the photograph and signature must be deleted after 6 months. The extension of the time period is consistent with the time period allowed for the completion of the online assessment. The object of the proposal is to avoid the necessity to have to provide the data again, if the course is not

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GPO Box 2281, Brisbane QLD 4001 forum.qccl@gmail.com Enquiries: 0409 574 318

Media Enquiries: Michael Cope, President [7 154](https://www.facebook.com/LibertyQLD)



completed within six months. As we noted in our submission to the Department, we are not sure why this objective cannot be achieved by legislating to allow the individual person to consent to the data being retained for a further six months. However, we took no objection to the proposal so long as the current regime by which data is deleted at the end of the 12 month period remains in place. The legislation does not reflect that position. Proposed section 28E1(1) (b) allows for regulations which apply the provision to circumstances where the signature and photograph have been provided for other purposes. Whilst proposed subsection 2 allows for the period of retention to be extended by regulation. Particularly in the light of the recent disturbing decision to handover driver's license photographic data to the Commonwealth with less privacy protection than previously existed, we oppose giving the executive power to extend this section by regulation. The matter should be dealt with in the Parliament.

3. **Notifying registered operators of traffic offences in their vehicles-** In our submission to the Department, we accepted that the owners of vehicles have an interest in knowing whether the vehicles are being driven safely. However we also submitted that the subject of the disclosure also has rights. We remain of that view. Our view is that when information is released to the registered operator, the person whose information is released should be notified contemporaneously that the information has been released. This will need specific legislative amendment, as it will not happen as a result of the *Information Privacy Act*. We also take the view that in the case of employers, they should be required when opting into the program to notify their employees that they have done so. Once again, this Parliament will have to legislate for this or it will have to be done by regulation. Our preference is that it be included in the legislation. We are concerned about the release of information to those who should not receive it, particularly in the case of domestic violence. We take it from the Department's information that arrangements are already in place to notify the victims of domestic violence that they can prevent the release of their information. We submit that the Department needs to take steps to ensure that those providing services to the victims of domestic violence are made aware of this change and their rights
4. **Increased penalties for driving offences resulting in death or grievous bodily harm -** The Department reports that the Council has taken no objection to this measure. That is true, except in the case of the mandatory license cancellation measures. However that does not mean we endorse them. As we understand it the vast majority of offences discussed here are ones of momentary inattention and the like. But in any event these are offences of negligence and not intent. The first category of offences of course, involve a low level of culpability. Even those cases of negligence involving something more than inattention involve a lower level of culpability than offences involving deliberate decisions. Under our law and as a matter of morality the focus of punishment should be on moral culpability. In the circumstances, increasing the level of penalty would seem unjustified. Furthermore, in cases involving momentary inattention deterrence is hardly a factor. Nor in these cases, is there usually any question of the need for rehabilitation. As a consequence, it must be the position that harsher penalties are unlikely to have an impact on the road toll. Having said that, we recognise the community disquiet about these types of offences and are not opposing these increases.

However, we would repeat our long-standing opposition to any form of mandatory punishment including the proposal for mandatory licence cancellation. Imposing mandatory sentences prevents the Court from exercising their judicial discretion and does not allow them to tailor the sentence according to the individual facts and circumstances of each case.¹ It is well known that mandatory sentencing is ineffective, unjust and has 'been repeatedly and categorically demonstrated not to have the desired deterrent effect.'² Relatively recent attempts to use mandatory sentencing in Western Australia and the Northern Territory both produced 'arbitrary' and severely unjust sentences.³ As Neil Morgan notes this results in a black and white approach to sentencing where there is 'no proper gradation of penalties to reflect the seriousness of the offence.'⁴

¹ Law Society of South Australia, 'Mandatory Sentencing,' 35 (2013) *Bulletin*, 14.

² Trotter and Hobbs "The Great Leap Backward: Criminal Law Reform with the Hon Jarrod Ble jie 1" [2014] *SydLawRw* 1, at 3, 12; Neil Morgan, 'Mandatory Sentences in Australia: Where have we been and Where are We Going?' 24 (2000) *Criminal Law Journal*, 172.

³ Trotter and Hobbs, *above*, 13.

⁴ Morgan, *above n* 30, 176.

We would also suggest that the fact that a person is unlicensed is of limited relevance to punishment these situations. It is no doubt based on the proposition that the unlicensed person should never have been on the road. However the operative cause of the injury is the driver's inattention or negligence. This distinction is well recognised in civil negligence claims: *Verheyen v Gerbecks* [1960] VR 92 and *Leask Timber & Hardware Pty Ltd v Thorne* (1961) 106 CLR 33.

We trust this of assistance to you in your deliberations.

Yours faithfully



Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
26 March 2018