

Your Ref: Ms Julie Copley

Our Ref: Criminal Law Section: 21000339/115

30 May 2011

Ms Julie Copley
Research Director
Scrutiny of Legislation Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email: Julie.Copley@parliament.qld.gov.au

Dear Research Director

TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL 2011

We write in relation to the *Transport and Other Legislation Amendment Bill 2011* (the Bill) which proposes amendment to the *Transport Operations (Road Use Management) Act 1995* (the Act).

Whilst we commend the Government's policy rationale for the Bill and are supportive of initiatives and strategies to reduce the incidence of road accidents in Queensland, we are concerned that the reforms proposed in the Bill are not adequately supported by scientific or empirical evidence and in some instances do not accord to the fundamental legislative principles as defined in the *Legislative Standards Act 1992*. We consider that any legislative amendments should be supported by strong and cogent data in order to achieve the Department's policy objectives.

Our concerns are as follows.

1. Clause 102

Clause 102 of the Bill amends section 79B of the Act which deals with immediate suspension or disqualification of drivers licences. The Explanatory Notes to the Bill state that clause 102 of the Bill provides that this section applies if a person is charged with the middle alcohol limit offence in section 79(1F) in relation to a motor vehicle. Therefore, this clause will allow police officers to immediately suspend drivers with a blood alcohol limit of 0.10% (the middle alcohol limit), down from the current limit of 0.15%. The Society does not support this proposal.

It is the view of the Society that the reduction of the blood alcohol limit from 0.15% to 0.10% does not have sufficient regard to the rights and liberties of individuals. More specifically, we consider that this blood alcohol limit reduction is contrary to section 4(3)(g) of the *Legislative Standards Act 1992* as it adversely affects the rights and liberties of individuals.

The concern of the Society is that clause 102 breaches fundamental legislative principles by imposing an immediate suspension of a person's driver license who may, for example rely on their driver licence for employment purposes or be a single parent and rely on their licence to carry out their duties of parenthood. These problems may be exacerbated in some rural, regional and remote communities where there is no public transport. This means that if an individual has their license suspended under this legislation they will most likely lose their employment. This would cause significant financial hardship for not only the individual who has their licence disqualified, but also the family relying on that person as a source of income. We consider that this outcome is unacceptable in the absence of scientific or empirical data to support the proposition that the 0.05 reduction in the blood alcohol limit will correlate to a significant decrease in road incidents caused by drunk drivers.

2. Clause 105

2.1. *Arresting/detaining officer carrying out breath analysis*

The Explanatory Notes to the Bill state that clauses 105(8), (9) and (10) amend section 80(8J) of the Act to remove the requirement that the police officer operating a breath analysing instrument must not be the police officer who arrested or detained the person. This allows the arresting or detaining officer to perform an evidentiary breath analysis without the presence of a second officer, as is currently required. The Society does not support this proposal.

It is the view of the Society that the removal of this requirement does not have sufficient regard to the rights and liberties of individuals. More specifically, we consider that this runs contrary to section 4(3)(g) of the *Legislative Standards Act 1992* as it adversely affects the rights and liberties of individuals.

The prohibition that denies arresting/detaining officers from operating a breath analysis instrument is an appropriate safeguard and one that should not be substituted for the sake of convenience. Involving a second officer in the breath analysis process provides a degree of protection to both the detainee and the arresting/detaining officer. It not only eliminates the potential for bias but, in situations where a complaint is made as to the nature of the detention, officer officiousness, rudeness etcetera, the presence of a second officer is beneficial in providing a sense of detachment from the arrest process, as well as verifying the circumstances of the detention. Claims that the breath testing machinery is essentially error-free do not address these concerns. Even if breath testing machinery is error-free, this does not address concerns about circumstances giving rise to charges such as "failing to provide", which usually involve a very subjective approach from the officer attempting to take the breath sample. If that judgement were exercised by an officer with whom the driver is in serious dispute as a result of the roadside events, the potential for dispute and allegations of misconduct increase enormously.

Therefore we suggest that there be no removal of the requirement that the police officer operating a breath analysing instrument must not be the police officer who arrested or detained the person. This will ensure:

- That breath testing instruments are used correctly;
- That a second police officer is available to provide corroborative evidence; and
- That the rights and liberties of individuals are upheld and respected.

2.2. Extension of time to obtain breath/blood specimen

Clause 105 of the Bill extends the maximum time allowed to obtain a blood or saliva test for drink driving offences from two hours to three hours. The Society does not support this proposal.

It is the view of the Society that the extension of this time period in the Bill does not have sufficient regard to the rights and liberties of individuals. More specifically, we consider that this extension is contrary to section 4(3)(g) of the *Legislative Standards Act 1992* as it adversely affects the rights and liberties of detainees.

The concern of the Society is that clause 105 breaches fundamental legislative principles as an increase in statutory maximum will mean that individuals are subjected to a further hour of detainment. This unsatisfactory consequence is exacerbated by the lack of empirical evidence to suggest that such an increase in statutory maximum is necessary and in this sense, the suggested increase is purely arbitrary. There is no cogent data to illustrate the practical benefits to be attained by increasing the statutory maximum or to support the Honourable Annastacia Palaszczuk MP's claim that this extension of time is necessary to enable police officers in regional areas more time in which to perform tests. We therefore consider that an extension of the maximum time allowed to obtain a blood or saliva test for drink driving offences from two hours to three hours adversely affects the rights and liberties of detainees and should be re-evaluated.

If you have any questions regarding the contents of this letter, please do not hesitate to contact Ms Binny De Saram, a Policy Solicitor with our office on (07) 3842 5885 or b.desaram@qls.com.au.

Thank you for the opportunity to comment on the Bill and we look forward to your comments on the draft legislation

Yours faithfully

Bruce Doyle
President