

9 May 2014

Our ref 339/30

Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: thlhc@parliament.qld.gov.au

Dear Research Director

Transport and Other Legislation Amendment Bill 2014

Thank you for the opportunity to comment on the Transport and Other Legislation Amendment Bill 2014 (the Bill).

Please note that it has not been possible to conduct an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended consequences or fundamental legislative principles which we have not identified. We limit our comments to some of the criminal law aspects contained in the Bill.

1. Amendment of s92 - reporting traffic crashes to police

The amendment to s92 of the *Transport Operations (Road Use Management) Act 1995* will:

*remove the requirement to report crashes to police where property damage exceeds an amount fixed by regulation (currently \$2 500 which is specified in section 287 of the Queensland Road Rules).*¹

We note in cases where no one else is present (neither a police officer nor the owner of the property), it may be important for a requirement to report property damage to police. We suggest that the Committee may wish to consider retaining some form of reporting requirement in such circumstances, for example, see s61(1)(f) of the Victorian *Road Safety Act 1986* which states:

¹ Explanatory notes, page 57

(1) *If owing to the presence of a motor vehicle an accident occurs whereby any person is injured or any property (including any animal) is damaged or destroyed, the driver of the motor vehicle—*

...

(f) *if any property is damaged or destroyed and neither the owner of the property nor any person representing the owner nor any member of the police force is present at the scene of the accident, must as soon as possible report in person full particulars of the accident at the police station that is most accessible from the scene of the accident if that station is open and, if it is not open, at the next most accessible station.*

2. Proposed s36H, Transport Planning and Coordination Act 1994 - service of notices to postal addresses

Proposed s36H states:

36H Service of document by post

(1) *This section applies if a transport Act requires or permits a document to be served on a person.*

(2) *The Acts Interpretation Act 1954, section 39 applies as if the reference to a person's address included a reference to the postal address that the person last notified to the department.*

(3) *In this section—*

person's address means the address of the place of residence or business of the person, or the head office, a registered office or a principal office of the body corporate.

The Society is concerned that an increase in the amount of notices sent to postal addresses will result in an increase in “non-notifications”.

A number of “non-notifications” are already caused by persons not updating their address with Queensland Transport. On the majority of occasions this is the result of mere inadvertence. Although it is an offence not to update your residential address within fourteen (14) days of the change, the Society is unaware of any person ever having been prosecuted for this offence. It would seem disproportionate to impose penalties such as a mandatory disqualification on a person where they have failed to receive the notice on this basis. The person may be liable to a penalty such as a fine, but to add an extra penalty of a disqualification on a mandatory basis is unreasonable. There are also occasions on which a person does in fact have their correct address with Queensland Transport, but they simply do not receive the notification. There may be any number of circumstances in which the notification is not received including, for example; the notification goes missing in the mail, is delivered to the incorrect address, is stolen or the offender simply does not – for whatever reason – receive the notification.

If the government is still minded to pursue this initiative, we suggest the following amendments:

- it be clearly stated in the legislation that there is a rebuttable presumption as to whether service was properly effected by post, with a clear legislative mechanism in place to allow such cases to be re-opened and the original decision set aside if appropriate;
- flexibility in the penalties be considered where a person does not have knowledge of the notice; and
- the period to update addresses should be extended from 14 days to 30 days.

3. Amendment of s78- Increasing the penalty for unlicensed driving where a person has never held a driver licence

The Explanatory Notes state:

The Bill amends section 78 of the Transport Operations (Road Use Management) Act 1995 to remove the option for an infringement notice fine to be issued where a person has never held a driver licence and instead requires a court to impose a three month driver licence disqualification period. Imposing a three month disqualification is commensurate with the penalty for a class C learner licence holder who is convicted of driving without an appropriate supervisor. Amendments were made in 2012 that effectively impose a three month licence suspension on these drivers (because the offence attracts 4 demerit points and class C learner drivers do not have the option of a good driving behaviour period).²

The Society does not support the imposition of mandatory sentencing regimes. We consider that the appropriate mechanism is flexibility for the judicial officer to decide the appropriate penalty applicable to the specific circumstances of the offence in question. Allowing the judicial officer to retain the option to issue an infringement notice, as well as to make a determination of whether a disqualification period would be suitable, should be retained.

We understand the government is considering an electronic plea of guilty online service. We request clarification whether this would be an offence included in the scheme, noting the mandatory nature and severity of the penalty applied.

4. Amendment of s80 - Streamlining laboratory testing of blood and saliva for drink and drug driving purposes

The Society notes the importance of ensuring that the streamlined use of the evidentiary certificates is rebuttable rather than conclusive. This means that there must be procedures in place to ensure that in any given case, issues of continuity and quality assurance can still be determined by a court on the basis of proper evidentiary standards.

5. Various sections - Mandatory driver licence disqualifications

The Bill proposes to amend a number of offence provisions:

² Explanatory Notes, page 26

These provisions currently use wording to the effect of ‘the court, in addition to imposing a penalty, must disqualify the person from holding or obtaining a Queensland driver licence...’. In a number of recent cases in the Magistrates Court and District Court, some Magistrates and judges have decided that this wording left open the possibility that where no other penalty had been imposed, it was not mandatory to disqualify the person from holding a licence.³

The amendments change the wording of the offence provisions to reflect:

the court, whether or not any other sentence is imposed, must disqualify the person from holding or obtaining a Queensland driver licence...⁴

It is our view that the status quo in relation to disqualification decisions should be maintained. The cases of *Kirby*,⁵ and *Van Kuik*,⁶ demonstrate the exercise of the discretion of the court not to impose a suspension period. These decisions demonstrate the importance of maintaining judicial discretion. We reiterate our views as expressed above in item 3 of this submission that we do not support the imposition of mandatory sentencing regimes.

Alternatively, we suggest that the provisions should at least allow the magistrate to exercise discretion in “exceptional circumstances”. Under the current proposal, this would not be possible.

6. New s84A- Driving of motor vehicles carrying placard loads in tunnels

The Bill:

inserts a new offence into the Transport Operations (Road Use Management) Act 1995 prohibiting the carriage of a placard load of dangerous goods through tunnels.⁷

The offence provision states:

84A Driving of motor vehicles carrying placard loads in tunnels

(1) A person must not drive a motor vehicle carrying a placard load in a tunnel that has a sign (a placard load prohibited sign) complying with subsection (2) at or before the entrance to the tunnel.

Maximum penalty—

(a) if the contravention results in harm to a person, property or the environment—200 penalty units or 1 year’s imprisonment; or

(b) otherwise—100 penalty units.

Of concern is that the onus of proof is reversed in proposed s84A(3):

(3) In the absence of proof to the contrary—

³ Explanatory Notes, page 14

⁴ For example, see clause 20

⁵ *Commissioner of Police -v- Kirby [2010] QDC 110.*

⁶ *Van Kuik v Zuanetti [2012] QDC 116.*

⁷ Explanatory Notes, page 23

- (a) a motor vehicle is proved to be carrying a placard load if there is evidence of a placard placed on the vehicle or on a thing carried by the vehicle; and
- (b) a placard load prohibited sign at or before the entrance to a tunnel is taken to be clearly visible to a person entering the tunnel.

The reasons for this reversal is stated to be that:

It is very difficult for enforcement patrols to be effective in tunnel environments where there are high volumes of traffic and no physical space to stop vehicles. As such, it is considered that camera-detection of these offences, based on the presence of a dangerous goods placard, is the most effective method.⁸

Further, the Explanatory Notes state:

The matter to be proved (whether a vehicle is carrying dangerous goods) is peculiarly within the defendant's knowledge, as the driver of a vehicle is in the best position to know whether their vehicle is or is not carrying dangerous goods.

Given the nature of dangerous goods, it is very difficult for enforcement officers on the roadside to test whether a vehicle is carrying dangerous goods. Even if a vehicle is suspected of carrying dangerous goods, it would often require technical or forensic experts to be able to determine whether the goods being carried are dangerous goods and the engagement of these experts would incur considerable expense.

A defendant is able to produce evidence during the enforcement or prosecution phase to prove that they were not carrying dangerous goods (including transport documentation showing that the goods had already been delivered). An infringement notice would not be issued or a prosecution would not proceed if the evidence supported the defendant's assertions.⁹

The Society is concerned with the reversal of the onus in criminal law legislation, noting it appears to be an ineffective process by which all potential defendants are notified, and then would need to show that they did not fall foul of the legislation at the time. We consider that stating it would be difficult to enforce within tunnels (noting that such measures can equally be taken at the exit points of tunnels), or expensive for the state to prove its case is not sufficient justification for reversing the onus. This proposal appears to be a way of relying on cameras together with a reverse onus to replace traditional policing enforcement methods, but at the expense of traditional rights as they should apply in criminal matters.

Thank you for the opportunity to provide these comments. Please contact our policy solicitors for further inquiries.

Yours faithfully



Ian Brown
President

⁸ Explanatory notes, page 36

⁹ Explanatory notes, page 36