26 February 2018

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

Dear Committee Secretary

Tow Truck and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide comments on the Tow Truck and Other Legislation Amendment Bill 2018 (the Bill).

The Queensland Law Society (QLS) appreciates being consulted on this important legislation. QLS notes that the Bill is substantially the same as the previous version of the Bill, introduced in 2017.

Please find enclosed the submission made by the QLS in relation to the previous bill. QLS repeats and relies on our earlier submission, and requests that the Committee consider the concerns raised therein during the current inquiry.

If you have any further enquiries or would like to discuss the content of our submission, please do not hesitate to contact Senior Policy Solicitor, Kate Brodnik, on (07) 3842 5851 or by email K.Brodnik@qls.com.au.

Yours faithfully

Ken Taylor
President

Our ref: (KB-C&C)
7 September 2017

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

By post and by email: PWUC@parliament.qld.gov.au

Dear Committee Secretary

Tow Truck and Other Legislation Amendment Bill 2017

Thank you for the opportunity to provide comments on the Tow Truck and Other Legislation Amendment Bill (the Bill).

The Queensland Law Society (the Society) 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 Society also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Amendment of the Tow Truck Act 1973

The Society has previously advocated for sensible legislative reform of the two truck industry.

The Bill makes it a condition of the tow truck licence that the licence holder must not tow a private vehicle from private property without the occupier of the private property’s consent. The Bill creates the ability for a licence holder and private property occupier to enter into a ‘towing consent’. However, the legal status of the towing consent is unclear, as the Bill states that a towing consent ‘does not constitute legal authority for the towing of a motor vehicle from private property’ (which seems to leave the towing consent with no work to do). The Society suggests that the purpose and effect of the towing consent be clarified.

The Bill also creates a reverse onus of proof for allegations in a complaint of a number of matters. The allegations include:

- that a person is or is not an owner of a vehicle or a licence holder relating to a tow truck;
- that any thing is a vehicle of a particular kind or description;
- that any place is a road or private property, as the case may be; or
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- that a person was an occupier of private property or another place.

The purpose of the reverse onus seems to be to make it easier for the public to make complaints against licence holders. Most elements seem procedural and place the onus on licence holders to ensure they keep sufficient records of these elements when towing a vehicle in order to refute an allegation should the need arise. However, it does open the possibility that spurious or baseless allegations against licence holders may be more expensive to defend, and thereby requiring licence holders to spend time and money to refute these allegations.

Clause 10 of the Bill introduces additional conditions on a tow truck licence (and other related documents). The Society generally supports the introduction of these conditions In addition, we believe there should also be an obligation placed on tow truck drivers not to tow a car from a “relevant car park” unless the required signage is present at the time the car is towed.

We note that proposed section 12(2)(v) provides that a licence holder must take reasonable steps to locate a driver of a vehicle parked on private property. This is a vague requirement as it is not clear exactly such reasonable steps would entail, and whether positive action is actually required (e.g. as opposed to simply waiting for a period of time before towing a vehicle). The Society suggests that guidance be given regarding the steps that should be taken by a licence holder to comply with this requirement. Such a requirement is also found in clause 57 and should similarly be amended.

We do not consider that the restrictions imposed in proposed section 13(2) of the bill are reasonable. It is not reasonable to prescribe where someone can travel providing it is not in an area otherwise restricted by law and that they do not take any actions which are contrary to law whilst they are travelling. This amendment should be removed from the bill.

The Society is also concerned by the broad powers of entry contained within clause 14 of the Bill. The requirement that the “place” simply has to be “open for the conduct of business” is too broad, in our view, for entry to be authorised. There is the potential for this power to be abused by investigating officers. Further, this power is far broader than police powers of entry under the Police Powers and Responsibilities Act 2000 without evidence of the overriding privacy concerns and an individual’s right to privately enjoy premises. In circumstances other than where the occupier has not given their consent, a warrant should be obtained to allow an authorised officer to enter a premises.

As clause 16 of the bill, and the introduction of penalties into the act generally, we say that these penalties need to be just and commensurate with similar acts and omissions penalised in this, and other legislation. The imposition of monetary penalties needs to be balanced in all of the circumstances. In respect of clause 16, no reasonable time has been allowed to produce the required documents and there are no “excuse” provisions. The penalties in clauses such as 16, 19 and 53 are also comparatively high, again without justification as to why.

Amendment of the Tow Truck Regulation 2009

The proposed new sections 20 and 21 of the Regulation seek to prevent unscrupulous behaviour by those holding a licence (and related approvals) by creating of new offences. The
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Society agrees that this behaviour should be prohibited but we are concerned by the wording of these sections.

Propose section 21 creates offences to prevent a licence holder from, on private property, abusing, insulting, intimidating or harassing a person or causing or threatening wilful damage to a person's property. Where these acts or omissions are already covered in other statutes, such as the Criminal Code, we do not consider that a new offence is warranted.

For those acts which fall outside existing laws, such as where a licence holder insults a person, we are concerned that the wording used, including for example the word "insult", is vague. These terms are not defined in the amendments and this is particularly concerning when the license holder can indirectly do or say something to breach this section. Accordingly, this section requires amendment to ensure that any offence is well understood by those who may be subject to it. This amendment should also address the severity of the penalty listed under this clause of the bill.

Once the appropriate balance is struck, we consider that these prohibitions should not be limited to instances surrounding private property motor vehicles as this behaviour occur throughout the sector.

In respect of clause 57 of the bill, we repeat our comments in respect of what steps will constitute "reasonable steps" to find the owner of a vehicle. This will need to be clarified.

Finally, the Society supports a cap on the fees a tow truck driver can impose on the owner of a vehicle. We also support clause 58 of the bill.

Amendment of the State Penalties Enforcement Act 1999 and the Youth Justice Act 1992

The Society considers that children should not be treated adults before the law. Whilst we acknowledge that a 17 year old can be holder of a driver licence and thus is capable of breaching conditions, being fined or disqualified, we caution against this redress being achieved using the same procedures as are applied to adults.

Amendment of the Transport Infrastructure Act 1994

The Society does not make specific comments about the amendments to this act, save to say that we are concerned with the penalty provisions that have been included. On this issue, we repeat out comment made above.
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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to K.Brodnik@qls.com.au.

Yours faithfully

[Signature]

Christina Smyth
President