

26 February 2018

Our ref: BDS-CrLC

Mr Peter Russo MP
Member for Toohey
Chair, Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Chair

Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018

Thank you for your letter dated 21 February 2018 and the opportunity to provide a submission on the amendments to the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018 (the Bill).

QLS is the peak professional body for the State's legal practitioners. We represent and promote nearly 13 000 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. Consultation timeframe

The Society is pleased that the government has referred the Bill to the Legal Affairs and Community Safety Committee and permitted public consultation on the Bill.

However, we are disappointed in the length of the consultation period, which in our view, should be at least six (6) weeks. The Bill was introduced on 15 February 2018. Several days then passed before the Bill was made available on the Legal Affairs and Community Safety Committee home page. The Society was only made aware of the short timeframe for submissions by virtue of a letter dated 21 February 2018. This letter advised that submissions were due at 8.00am on 26 February 2018. We consider that this is an insufficient consultation period to consider any piece of new, substantive or amending piece of legislation.

In line with our comments above, there has been only a very brief opportunity to review the amendment to the Bill, an in-depth analysis 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 request that the government extend the period by which to provide feedback and also extend the reporting date of the Committee, so that the Committee has a reasonable opportunity to consider the draft legislation and provide more useful and in-depth feedback which will hopefully assist in improving the quality of the legislation being passed.

2. Omnibus Bills

We note that this is an omnibus Bill that makes significant amendments to several pieces of legislation. In this regard, we highlight comments made by the Legal Affairs and Community Safety Committee in relation to the inappropriate nature of omnibus bills. In particular we note the Legal Affairs and Community Safety Committee's remarks in its consideration of the *Youth Justice (Boot Camp Orders) Other Legislation Amendment Bill 2012*. Here, the Committee noted that omnibus bills,

Arguably may breach the fundamental legislative principle in section 4(2)(b) of the *Legislative Standards Act 1992* because they fail to have sufficient regard to Parliament, forcing Members to vote to support or oppose a bill in its entirety when that (omnibus) bill may contain a number of significant unrelated amendments to existing Acts that would more appropriately have been presented in topic-specific stand-alone bills.¹

In providing this submission, we would like to acknowledge the work of the Society's Criminal Law Committee.

With respect to the proposed amendments, we make the following comments on specific clauses in the Bill.

3. Clause 5 - Replacement of s 470A (Unlawful deposition of explosive or noxious substances)

Clause 5 proposes to omit section 470A of the *Criminal Code Act 1899* (Qld) (Criminal Code) and insert a new replacement provision. The new provision reads:

470A Unlawful dealing with explosive or noxious substances

A person who, in circumstances that may cause injury to a person or damage to property, wilfully and unlawfully—

- (a) throws, leaves down, or otherwise deposits an explosive or noxious substance; or
 - (b) makes, or has possession of, an explosive or noxious substance; commits a crime.
- Maximum penalty—7 years imprisonment.

The Bill changes the offence of depositing explosives to include mere possession of explosives. Potentially, this will make possession of an expired marine safety flare, a firework or a shotgun cartridge a crime punishable by up to seven (7) years imprisonment. One effect

¹¹ *Youth Justice (Boot Camp Orders) Other Legislation Amendment Bill 2012*, Report No. 18, Legal Affairs and Community Safety Committee, November 2012, Legal Affairs and Community Safety Committee, page 5.

of the amendment is that an offender becomes liable to citizen's arrest by virtue of section 546 of the Criminal Code.

Another effect is that increasing the maximum penalty changes the charge of the offence from one that must be heard summarily (section 552BA(4)(b)(a)) to one that must be determined upon indictment. Since the offence applies to circumstances both trivial and extremely serious, there ought to be a mechanism for the less serious instances to be determined summarily.

4. Clause 6 - Amendment of s 540 (Preparation to commit crimes with dangerous things)

Section 540 of the Criminal Code has been uncertain in its scope since 2008 when it was extended from explosives to the possession of any "dangerous thing". There is no definition of dangerous thing in the legislation.

Clause 6 of the Bill increases the maximum penalty from three (3) to seven (7) years. This may have unintended consequences.

For example, in relation to section 69 of the Criminal Code which deals with "going armed so as to cause fear". Section 69(1) states that, 'any person who goes armed in public without lawful occasion in such a manner as to cause fear to any person is guilty of a misdemeanour, and is liable to imprisonment for 2 years.' The effect of clause 6 is that a police officer could charge an individual with the more serious offence in section 540 of the Criminal Code. Section 540 deals with, 'preparation to commit crimes with dangerous things' which carries a maximum penalty of seven (7) years and is a crime.

Another effect of the proposed increase to the maximum penalty means that the section 540 offence goes from being one that must usually be heard summarily (section 552BA(4)(b)(a)) to one that must be heard on indictment. As the offence applies to circumstances both trivial and extremely serious, there ought to be a mechanism for the less serious instances to be determined summarily.

The Explanatory Notes make no reference to the existing offences in the *Explosives Act 1999* (Qld), which will overlap with the amended Criminal Code provisions above.

5. Clause 9 - Insertion of new pt 10A

Clause 9 seeks to insert a new Part 10A. Proposed section 235I states

235I No QCAT review

Despite section 21, a decision by the liquor commissioner under section 235H is not reviewable by the tribunal.

The Society is concerned about this provision and the denial of natural justice by the inability to have decisions of the liquor commissioner reviewed by QCAT.

6. Clause 12 (Part 4 Amendment of *Police Powers and Responsibilities Act 2000*)

Clause 12 of the Bill proposes the insertion of section 197E - accessing information stored electronically on smartcard transport authorities. Proposed section 197E

(1) A police officer may, without the consent of the holder of a smartcard transport authority, access information stored electronically on the document for exercising a power—

- (a) under a prescribed transport Act; or
- (b) in relation to the Criminal Code, section 328A.

Note— The Criminal Code, section 328A creates offences for the dangerous operation of a vehicle.

The Society is concerned about the privacy implications of this provision and consider that police officers should be required to obtain the consent of the holder of a smartcard transport authority. In our view, there appears to be no reason why, in the course of investigation for a criminal offence, police cannot rely on the usual search warrant mechanisms for obtaining this sort of information, which provides protection for privacy and individual's rights.

7. Clause 13 - Amendment of sch 6 (Dictionary)

One of the stated objectives of the Bill is to, 'remove the requirement to obtain an order for Queensland Police to access Queensland driver licence digital images for non-transport related offences.' The Society is concerned by the broad reach of these powers and the potential privacy implications. As detailed in our response to clause 12, we consider that police officers can rely on the usual search warrant mechanisms for obtaining this information.

8. Clause 17 - Insertion of new pt 10, div 1AA

Clause 17 of the Bill seeks to insert a new part 10 (after division 1) into the *Police Service Administration Act 1990*. Proposed new division 1AA deals with national identity matching services and permits Commonwealth and States agencies to access face matching services, identity documents, identity information and identity matching services. The Society is concerned that this provision does not require that a police officer has a reasonable suspicion that a crime has been committed in order to exercise the powers under clause 17. In our view, a police officer must be required to demonstrate that he or she had a reasonable suspicion for exercising the power under this provision. In our view, clause 17 should be amended to include a reasonable suspicion test.

Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018

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 b.desaram@qls.com.au or (07) 3842 5895.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ken Taylor', with a long horizontal flourish extending to the right.

Ken Taylor
President