

11 March 2019

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

Our ref: (BDS:DK:CrLC)

By email [REDACTED]

Dear Committee Secretary

Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019

Thank you for the opportunity to provide comments on the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019 (the **Bill**). The Queensland Law Society (QLS) appreciates being consulted on this importance piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 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. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the proposed amendments. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles, which we have not identified.

We have limited our comments to specific aspects of the Bill. By omitting to comment on the full scope of provisions in the Bill, QLS does not express its endorsement of these.

This response has been compiled with the assistance of the Criminal Law Committee who have substantial expertise in this area.

We provide comments on the following proposed amendments to the *Transport Operations (Road Use Management) Act 1995*:

1. Clause 35 – Amendment of s 80 (Breath and saliva tests, and analysis and laboratory tests);
2. Clause 40 – Insertion of new s 124AA;
3. Clause 41 – Amendment of s 127 (Effect of disqualification);

Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019

4. Clause 54 – Amendment of s 124 (Grounds for amending, suspending or cancelling licences); and
5. Clauses 90 to 101 – Amendment of Chapter 5, Part 3B (Alcohol ignition interlocks).

1. Amendment of s 80 (Breath and saliva tests, and analysis and laboratory tests)

Clause 35 seeks to amend section 80 to allow the alcohol and drug testing provisions to be applied to persons suspected of, or arrested for, interfering with the operation of a motor vehicle dangerously under section 328A of the *Criminal Code*. It also seeks amend section 80(16L) to ensure a court can sentence a person who pleads guilty for driving while a relevant drug is present in blood or saliva, even if the results of the person's laboratory test are not known.

The Society supports these amendments with the inclusion of an appropriate safeguard. Such a safeguard should specify that the defendant should not be disadvantaged if they insist on the proper test (because the initial test is only indicative) - either in terms of credit for an early plea or costs.

2. Insertion of new s 124AA

Clause 40 of the Bill seeks to introduce a new section 124AA to provide for new evidentiary certificates for use in court proceedings:

124AA Inspection certificates

(1) This section applies to a document purporting to be—

- (a) a print-out of an inspection certificate issued electronically under a vehicle standards and safety regulation; or
- (b) an inspection certificate issued manually under a vehicle standards and safety regulation.

(2) For a proceeding for an offence against a transport Act, the document—

- (a) is taken to be an inspection certificate—
 - (i) issued under the vehicle standards and safety regulation; and
 - (ii) of the type it purports to be; and
- (b) is admissible in a proceeding for an offence against a transport Act as evidence of a matter stated in the document.

(3) In this section—

issued electronically means issued using an electronic method.

issued manually means issued other than by using an electronic method.

vehicle standards and safety regulation means a regulation made under section 148.

The intention of this proposed new section appears to allow the admissibility of inspection certificates without allowing for any avenue for this evidence to be rebutted. If this is the case, the Society would not support this amendment as it abrogates from the defendant's right to fair

Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019

trial under the Act. It is essential that a defendant be given the right to rebut the assessment and challenge evidence which may be crucial to matters relating to the offence itself.

3. Amendment of s 127 (Effect of disqualification)

Clause 41 seeks to amend section 127 to allow for the automatic cancellation of a Queensland driver licence if the holder has been disqualified by any Australian court. The clause also allows a person disqualified in another jurisdiction to obtain a Queensland licence subject to an interlock condition, after they have finished the court ordered period of disqualification.

The proposed wording of new subsections (3A), (7A) and (13A) states:

(3A) If, under a law of another State, a person is disqualified absolutely or for a specified period from holding or obtaining a driver licence in the other State, each subsisting Queensland driver licence held by the person is, by virtue of the disqualification, cancelled on and from the date the person became disqualified.

...

(7A) Also, subsection (6) does not apply to a person subject to a non-Queensland interlock requirement who, under this Act, applies for or obtains a Queensland driver licence subject to an interlock condition under section 91K.

...

(13A) Also, subsection (12) does not apply to a person subject to a non-Queensland interlock requirement who, under this Act, applies for or obtains a Queensland driver licence subject to an interlock condition under section 91K.

The Society requires clarification of the intention of this amendment. Clause 41 attempts to remedy a situation where persons from Queensland are intercepted in NSW and charged with drink driving related offences. In NSW, the mandatory periods of disqualification are significantly higher than in Queensland. However, the NSW legislation provides that if a person takes part in the interlock program (which can be done during the disqualification period) they can obtain a licence within a significantly shorter period.

While many persons voluntarily accept the conditions, they soon find that NSW will not recognise the Queensland interlock course/program, nor can they take part in the NSW program. Therefore, the persons must serve the five-year disqualification period based solely on the fact that they resided in Queensland.

However, the drafting of Clause 41 does not allow a person to obtain a Queensland driver licence subject to an interlock condition, until after they have finished the court ordered period of disqualification. This means that the Queensland driver will still be disqualified for five years. If so, this will not solve the problem described in the preceding paragraphs.

Further, the Society notes that with respect to existing Queensland licence disqualifications, which are either absolute disqualifications or disqualifications in excess of a two-year period, an applicant in Queensland has the right to lift the balance of this disqualification period under section 131(2). The Society would suggest that provision be made for applicants who are subject to like interstate disqualification to be given the same avenue in line with Queensland legislation to allow the interstate disqualification to be lifted.

4. Amendment of s 124 (Grounds for amending, suspending or cancelling licences)

Clause 54 is consequential to the above amendment made to section 127, and seeks to amend section 124 to ensure that it will no longer be necessary for the chief executive to invite the holder of the licence to demonstrate why their Queensland driver licence should not be cancelled.

Clause 54 proposes to remove 'another State' from subsection 124(d), effectively removing interstate disqualification from grounds to 'show cause'. The current show cause arrangements will continue to apply to disqualifications in another country.

The Society agrees that the show cause procedure is redundant and should be removed. However, it is the view of the Society that the driver should be provided with some notice so that they know (a) they are not licensed to drive in Queensland and (b) that their continued possession of the licence is an offence.

5. Amendment of Chapter 5, Part 3B (Alcohol ignition interlocks)

Clauses 90 to 101 seek to 'enhance the Interlock Program' by increasing the current two-year interlock period to five years, and expanding the eligibility of offenders to require mid-range drink driving offenders to participate in the program.

The explanatory note suggests that the basis for extending the program is to discourage drink drivers from 'sitting out' the Interlock Program. In the Society's view, the current two-year regime, which is not readily able to be "sat out" by an offender, is already a significant additional penalty for many people who commit relevant offences.

While the Society is supportive of efforts to reduce drink driving in our community, the experience of our Criminal Law Committee members is that extending the interlock period will not deter habitual drink driving offenders from committing offences. Therefore, the program should not be extended to mid-range drink driving offenders. Further, there is no data or statistical basis to support the presumption that a two-year period is inadequate. Therefore, the program should not be extended from two to five years.

a) Implications for low-income earners

The proposed amendments will have significant and disproportionate impacts on low-income earners. The Interlock Program is a significant cost to the defendant. We understand that the installation of the interlock device can cost in excess of \$2,000 per fitting, excluding additional associated costs. The high fees associated with the fitting of interlock devices are not readily payable by many low-income earners who would not otherwise have access to the financial assistance scheme (or who otherwise would not adequately benefit from its support).

The financial assistance scheme with respect to interlock fittings does not go far enough in supporting low-income earners in enabling the devices to be fitted. The eligibility requirements for such programs are quite stringent and does not cover the full fee in most situations.

b) Implications for self-represented defendants

In most Queensland locations, Legal Aid Queensland and ATSILS are not funded to offer duty lawyer services for transport offences. This means that while some Police Prosecutors and

Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019

Magistrates explain some aspects of the Interlock Program to self-represented defendants, the Interlock Program is not explained to the vast majority of defendants by anyone during the court process. It is not until the person approaches the Department of Transport seeking to apply for their licence back, that the Interlock Program will be explained to the person. It is considered that the Magistrate should be required to explain the specifics and the costs involved with the Interlock Program at the time of sentencing, as well as a written document which sets out the material for the defendant's information.

c) Implications for defendants in rural, regional and remote areas

The Interlock Program poses several issues for defendants in rural, regional and remote areas. Firstly, accessibility to providers of interlock fittings is an issue. The Regulation provides for an exemption if the defendant is more than 150 kilometres away from the nearest interlock provider. However, how can a defendant, who is 100 kilometres away from the nearest provider, have their car fitted while unlicensed?

Secondly, access to employment is an issue. Defendants in rural, regional and remote areas are often entirely dependent on their driver licences to perform their work. Without their licences, they are likely to suffer adverse consequences in their access to employment and suffer social and economic hardship. The existing exemptions present a high bar for defendants to meet and often involves a complex process that is usually navigated without legal aid assistance. The 'severe hardship' provision also does not extend to hardship in getting themselves or a family member to/from work or study.

In short, the Interlock Program is already a regime that disadvantages defendants by imposing an additional two-year period of disqualification due to their inability to meet the requirements of the Interlock Program. The extension of the program to five years, and to mid-range drink drivers, creates significant and disproportionate disadvantages to low-income earners, and is not based on evidence or data to support the deterrent effect of the program. The Society therefore does not support the proposed amendment to the program.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Deborah Kim by phone on [REDACTED] or by email to [REDACTED]

Yours faithfully

Bill Potts
President