Parliamentary Committees

Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012

Report No. 24

Legal Affairs and Community Safety Committee

March 2013

Legal Affairs and Community Safety Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Queensland Police Service and the Queensland Parliamentary Library.

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Abbreviations

2011 Bill	Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2011
ACMC	Australian Confederation of Motor Clubs
Bill	Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012
CARRS-Q	Centre for Accident Research and Road Safety - Queensland
CMC	Crime and Misconduct Commission
Commissioner	Commissioner of Police
Committee	Legal Affairs and Community Safety Committee
CSA	*Corrective Services Act 2006*
MUARC	Monash University Accident Research Centre
NTA	Notice to Appear
Police Minister	The Honourable Jack Dempsey MP, Minister for Police and Community Safety
PPRA	*Police Powers and Responsibilities Act 2000*
QCCL	Queensland Council of Civil Liberties
QLS	Queensland Law Society
QPS	Queensland Police Service
RACQ	Royal Automobile Club of Queensland
TIN	Traffic Infringement Notice
TRICK	Toowoomba Regional Inc. Car Klub

Glossary

Fatal Five	The "Fatal Five" are made up of (1) speeding, (2) drink and drug driving, (3) failure to wear a seatbelt, (4) driving while fatigued and (5) distraction and inattention. See the QPS Fatal Five campaign website for more information.
Public Briefing	The public briefing on the Bill to the Committee held on Wednesday, 13 February 2013.
Type 1 Offence	Type 1 offences are defined in section 69A(1) of the *Police Powers and Responsibilities Act 2000* to include those motor vehicle offences more typically considered "hooning" offences committed in circumstances involving a speed trial, race or burn out involving: • the dangerous operation of a vehicle; • careless driving; • participation in speed trials or races; or • starting or driving a vehicle making unnecessary noise or smoke.
Type 2 Offence	Type 2 offences are defined in section 69A(2) of the *Police Powers and Responsibilities Act 2000* as any of the following: • driving an uninsured or unregistered vehicle; • certain unlicensed or disqualified driving; • driving with a blood alcohol concentration above 0.15%, or failing to provide a specimen of breath etc. and driving under related suspensions; or • driving an illegally modified vehicle.

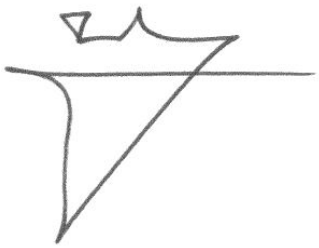
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee Secretariat, the Queensland Police Service and the Queensland Parliamentary Library and Research Service.

I commend this Report to the House.



Mr Ian Berry MP

Chair

March 2013

Recommendations

The Committee recommends that the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012 be passed.

The Committee recommends that the Minister for Police and Community Safety consider delaying the commencement of the amendments to the PPRA for an appropriate period, as determined by the Minister, to allow the QPS to (1) inform its officers of the practicalities involved in rolling out these changes and develop internal policies; and (2) educate the public on effects of the changes.

The Committee recommends that the Minister for Police and Community Safety outline to the House, in his response to this Report, whether he is confident that the Bill is constitutionally valid having regard to the South Australian case of *Bell v Police.*

The Committee recommends that the Minister for Police and Community Safety consider issuing public guidelines on the process adopted to determine compensation under the new section 121A of the *Police Powers and Responsibilities Act 2000*.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012 (Bill) was introduced into the Legislative Assembly by the Minister for Police and Community Safety, the Honourable Jack Dempsey MP (Police Minister) and referred to the Committee on 27 November 2012. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 12 March 2013.

1.2. Inquiry process

On 3 December 2012, the Committee wrote to the Commissioner of Police (Commissioner) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The Committee received written advice from the Queensland Police Service (QPS) and received 27 written submissions (see **Appendix A**).

To assist the Committee in its understanding of the policy objectives of the Bill, the QPS provided the following detailed documents to the Committee:

- a written briefing on the Bill, as an attachment to a letter from the Police Minister dated 13 December 2012; and
- a summary of submissions by issue, as an attachment to a letter from the Police Minister dated 8 February 2013.

Additionally, the Committee held a public briefing on the Bill on Wednesday, 13 February 2013, hearing from representatives from the QPS and the Department of Community Safety (Public Briefing). A copy of the transcript of the Public Briefing is available on the Committee's webpage.

1.3 Policy objectives of the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012

The primary objectives of the Bill are to amend the *Police Powers and Responsibilities Act 2000* (PPRA) and the *Corrective Services Act 2006* (CSA).

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3.1 Police Powers and Responsibilities Act 2000

The proposed amendments to the PPRA intend to:

- meet the Government's commitment to introduce the toughest "anti-hooning" laws in the nation; and
- make additional amendments that address administrative and operational inefficiencies in the type 1 and type 2 vehicle impoundment schemes.

1.3.2 Corrective Services Act 2006

The proposed amendments to the CSA are to:

- provide that remanded prisoners, not sentenced to a term of imprisonment, can only be given a maximum or high security classification; and
- remove the requirement to review remanded prisoners' security classification if they are classified as a high security.

The amendments to the CSA are anticipated to reduce red tape and align with the Department of Community Safety's commitment to redirect resources to front line services.

1.4 Consultation on the Bill

Prior to the introduction of the Bill, consultation occurred with the following government departments and agencies:

- Department of the Premier and Cabinet;
- Department of Transport and Main Roads;
- Queensland Treasury and Trade;
- Department of Justice and the Attorney-General; and
- Department of Communities, Child Safety and Disability Services.

Consultation was also stated to have taken place with major stakeholders in the community interested in the impoundment and forfeiture of motor vehicles.[2] These stakeholders included:

- the Queensland Law Society (QLS);
- the Royal Automobile Club of Queensland (RACQ); and
- the Motor Trade Association of Queensland.

The QPS outlined to the Committee, in its letter of 13 December 2012, the nature of its consultation with the first two of the three stakeholders mentioned above. **Appendix C** to this report sets out the comments made by each of these two stakeholders together with the response from the QPS.

A number of submissions received by the Committee commented on there being insufficient consultation on the Bill prior to its introduction and expressed a desire for a public hearing.[3] The Committee considered the written submissions from interested stakeholders and determined that the submissions sufficiently explained the nature of the concerns surrounding the Bill. Rather than take further oral evidence from stakeholders, the Committee resolved to hold a public briefing on the Bill with the QPS and seek further information on matters raised by submitters directly with the officers who developed the Bill.

While further public consultation with stakeholders prior to the introduction of the Bill may have been desirable, the Committee considers that the issues raised with the Committee were adequately addressed at the public briefing from the QPS.

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2 Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012, *Explanatory Notes*, page 8.

3 Carl Hillman, Submission No. 2; Gary Lambert, Submission No. 16, page 3.

1.5 Previous Government's Proposed Legislation in 2011

The previous Government had introduced a similar bill, namely the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (2011 Bill), into the 53rd Parliament on 15 November 2011. The 2011 Bill lapsed when Parliament was dissolved prior to the March 2012 election.

The 2011 Bill sought, among other things:

- to raise the initial impoundment period from 48 hours to 7 days;
- to allow the police to automatically impound a vehicle for 28 days for certain repeat offences; and
- to introduce high end speeding as a type 2 offence.

The 2011 Bill was the outcome of a QPS evaluation of the impoundment scheme and resulting recommendations designed to improve the scheme. Many, but not all of the proposed changes in the 2011 Bill were taken up in the current Bill.

While the subject Bill under consideration by the Committee is similar to the 2011 Bill, it must be noted that there are significant differences. The Bill not only expands on the impoundment and forfeiture scheme under the 2011 Bill, but it also introduces additional new concepts.

A detailed discussion of the Bill is outlined in Part 2 below.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the Committee to recommend whether or not the Bill should be passed.

After examination of the individual components of the Bill and consideration of the various policy objectives that are being pursued by the Bill, the Committee considers that the Bill ought to be passed. The Committee has made some specific recommendations on the Bill which are set out in Part 2 of this Report.

Recommendation 1

The Committee recommends that the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012 be passed.

2. Examination of the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2012

This Part discusses issues raised during the Committee's examination of the Bill. These issues are set out in the order as they appear in the Bill.

2.1 Amendments to the *Police Powers and Responsibilities Act 2000*

2.1.1 Background to the Bill

Following an LNP State Election promise to the same effect, on 3 July 2012 the Government announced that it would introduce tougher "anti-hooning" provisions into the *Police Powers and Responsibilities Act 2000* (PPRA). In a subsequent media statement issued on 12 October 2012, the Police Minister announced that:

> *Queensland is set to have the toughest anti-hooning legislation in Australia. … [T]he new laws would see offenders have their cars impounded for three months for their first serious hooning offence. A second serious hooning offence within the next five years would see the offender's car forfeited to be sold or crushed. Queenslanders have had enough of hoons receiving a slap on the wrists for their dangerous and irresponsible behaviour. … Hooning is not only annoying for decent people out there, it also puts the lives of innocent people who share the road with these troublemakers at risk. The Newman Government is committed to being tough on crime in order to ensure Queensland is a safe place to live, visit and work – and we're putting the brakes on hoons.*

This Bill amends the PPRA to make the changes foreshadowed by the Police Minister above. In summing up the Bill, the Police Minister stated in his Introduction Speech to Parliament on the Bill made on 27 November 2012 that:

> *This bill sends the strongest message to those hoons who think they can use our roads as a racetrack. If you are a hoon, police will impound your vehicle. Police will clamp your car. If you still don't get the message that hooning on our streets is unacceptable, police will crush your car. The community has had enough and this government will protect Queenslanders by taking hooning vehicles off our roads.*[4]

2.1.2 What is "hooning"?

A fact sheet on "hooning" issued by the Centre for Accident Research and Road Safety – Queensland (CARRS-Q) noted as follows:

> *"Hooning" refers to the act of using a vehicle in an irresponsible and dangerous manner in public places. Street racing and hooning behaviours have attracted growing community concern in Australia, and internationally, over recent years. All Australian states and territories, and New Zealand, have now implemented "anti-hooning" countermeasures, typically involving impounding the vehicles of offenders for increasing periods of time for subsequent offences, ultimately leading to vehicle forfeiture.*[5]

The CARRS-Q fact sheet explains that "hooning" covers a broad range of antisocial driving behaviours which include illegal street racing, burn outs, donuts, drifting, speed trials and unnecessary speed or acceleration. Persons described as "hoons" are most likely to be young males under the age of 25 years.

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4 Introduction Speech by The Honourable Jack Dempsey MP, Minister for Police and Community Safety, Hansard, 27 November 2012, page 2761.

5 Centre for Accident Research and Road Safety, Hooning Fact Sheet, November 2012, page 1.

While it is difficult to quantify, "hooning" is commonly accepted to be "*a crash risk factor for young people and a contributing factor to their over-representation in crashes*".[6]

In light of the increased community concern regarding "hooning" and the related dangers, Queensland amended the PPRA in 2002 to introduce vehicle impoundment legislation targeting "hoon" behaviour. These amendments gave police the power to impound vehicles involved in prescribed "hooning" offences, such as the dangerous operation of a motor vehicle, the careless driving of a motor vehicle, racing and speed trials on roads and driving a vehicle in a way that makes unnecessary noise or smoke.[7] With the introduction of these amendments, Queensland became the first jurisdiction in Australia to implement a vehicle impoundment scheme.[8]

2.1.3 Outline of Current Provisions in Queensland

There are two main types of motor vehicle offences under the PPRA, known as "type 1" and "type 2" motor vehicle related offences.

Type 1 offences are defined in section 69A(1) of the PPRA to include those motor vehicle offences more typically considered "hooning" offences committed in circumstances involving a speed trial,[9] race or burn out involving:

- the dangerous operation of a vehicle;[10]
- careless driving;[11]
- participation in speed trials or races;[12]
- starting or driving a vehicle making unnecessary noise or smoke.[13]

Type 2 offences are defined in section 69A(2) of the PPRA as any of the following:

- driving an uninsured or unregistered vehicle;[14]
- certain unlicensed or disqualified driving;[15]
- driving with a blood alcohol concentration above 0.15%, or failing to provide a specimen of breath etc. and driving under related suspensions;[16]
- driving an illegally modified vehicle.[17]

Under the current law, motor vehicles involved in the above offences are liable to be:

- impounded for 48 hours for a first type 1 offence; or a second type 2 offence within 3 years;
- impounded for up to 3 months for a second type 1 offence; or a third type 2 offence within 3 years; and

6 Centre for Accident Research and Road Safety, Hooning Fact Sheet, November 2012, pages 1-2.
7 *Police Powers and Responsibilities and Another Act Amendment Act 2002*.
8 Scully M, Clark B, Hoareau E, 'Hooning' around: A focus group exploration into the effectiveness of Vehicle Impoundment legislation, Monash University Accident Research Centre, ARSRPE Conference Paper, November 2011.
9 Defined in Schedule 6 (Definitions) to include attempts to establish or break vehicle speed records; or trials of speed; trials to test driver or vehicle skill etc.
10 See Criminal Code, s 328A.
11 See Transport Operations (Road Use Management) Act 1995, s 83.
12 See Transport Operations (Road Use Management) Act 1995, s 85.
13 In a manner that constitutes an offence against the *Transport Operations (Road Use Management) Act 1995*.
14 In a manner that constitutes an offence against the *Transport Operations (Road Use Management) Act 1995*.
15 See Transport Operations (Road Use Management) Act 1995, s 78.
16 See Transport Operations (Road Use Management) Act 1995, ss 79-79A.
17 See Transport Operations (Road Use Management) Act 1995, s 80(5A), s 11 and s 22D.

- forfeited to the State for any subsequent offence within 3 years. The Commissioner may sell the vehicle or dispose of it in an appropriate way.

A flowchart of the "Current Vehicle Impoundment Process" was provided by the QPS and is attached as **Appendix B**.

In relation to the current situation in respect of type 2 offences, the QPS explains as follows:

> *Significantly, the type 2 vehicle impoundment scheme contains a concept of a 'zero offence' or a 'pre-impoundment offence' whereby the first type 2 vehicle related offence ('the pre-impoundment offence') does not immediately result in the impounding of a motor vehicle. Instead the pre-impoundment offence triggers the start of a three year period during which a police officer may impound or forfeit a vehicle if the driver continues to commit similar type 2 vehicle related offences. In effect the 'zero' offence puts the driver on notice that his or her vehicle may be impounded if offending persists.*[18]

2.1.4 Relevant Statistics

Impoundment: The QPS' Annual Statistical Review 2011-2012 indicates that in Queensland there were:

- 624 type 1 motor vehicle impoundments; and
- 7,773 type 2 motor vehicle impoundments.[19]

Type 1 impoundments are for driving offences of a more serious nature and include behaviours such as racing, burn outs or speed trials. Type 2 offences include driving offences such as certain unlicensed/disqualified driving or driving while over a blood alcohol concentration of 0.15%.

Forfeiture: Of the 8,397 vehicles that were impounded in 2011-2012, 184 vehicles were forfeited due to the "hooning" behaviour of their owners.[20]

Evasion of police: The QPS advise that "*[t]he rate of evade police offences has increased every year since 2007*".[21] Additionally, the Crime and Misconduct Commission (CMC) has reported that there have been 19 deaths and 737 injuries as a result of the actions of people evading police interception.[22]

2.1.5 Overview of Proposed Amendments

The Bill proposes to amend Chapter 4 of the PPRA which contains motor vehicle impoundment powers for prescribed offences (commonly known as "hooning" offences) that enable Queensland Police and the court to impound a vehicle depending on the type of offence and number of repeat offences. Chapter 4 of the PPRA provides two schemes for the impoundment and forfeiture of motor vehicles – namely, the type 1 and type 2 vehicle impoundment schemes. The type 1 vehicle impoundment scheme applies to a range of traffic offences commonly associated with "hooning". The type 2 vehicle impoundment scheme applies to offences such as unlicensed and unregistered driving.

The proposed amendments to the "hooning" provisions of the PPRA include:

- *increasing the sanction for the type 1 vehicle impoundment scheme to 90 days impoundment for the first offence and forfeiture for the second offence;*

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18 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 1).

19 Queensland Police Service, *Annual Statistical Review 2011-2012*, page 145.

20 The QPS' *2011-2012 Annual Report*, page 19.

21 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 11).

22 See the Crime and Misconduct Commission report titled "*An alternative to pursuit – A review of the evade police provisions*" (page xi) which was referred to in the letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 11).

- *including "evade police" offences and "high end speeding" (>40 km/hr above the speed limit) as type 1 and type 2 vehicle related offences respectively;*
- *increasing type 2 impoundment sanctions to 7 days for the second type 2 vehicle related offence, 90 days for the third type 2 vehicle related offence and forfeiture for any subsequent type 2 vehicle related offence;*
- *increasing the relevant period for vehicle impoundment offences from 3 to 5 years;*
- *amending the definition of 'burnout';*
- *allowing proceedings to commence, where applicable, by Traffic Infringement Notice (TIN), rather than having to proceed by way of a Notice to Appear or arrest;*
- *amending the impoundment and forfeiture processes to operate automatically rather than through court applications;*
- *removing the requirement that repeat offences under the type 2 vehicle impoundment scheme must be the same type as the 'pre-impoundment offence';*
- *allowing additional methods of impoundment including tow and store, immobilisation, clamping, crushing, removal of registration plates and the use of vehicle production notices;*
- *allowing certain people to apply to the Commissioner for the release of impounded vehicles and to allow these applications to be appealable to a Magistrates Court;*
- *allowing the early return of a vehicle where specific offences that created the impoundment have been remedied (e.g., payment of registration and insurance fees and obtaining a driver's licence); and*
- *other technical and minor drafting amendments.*[23]

The Bill also addresses some "*operational and administrative inefficiencies associated with the current vehicle impoundment regime, effectively reducing red tape*".[24]

A flowchart of the "Proposed Vehicle Impoundment Process" was provided by the QPS and is attached as **Appendix B**.

For the purposes of understanding, in broad terms, the changes to the sanctions for type 1 and type 2 motor vehicle offences proposed under the Bill, the Committee prepared the following simple table to assist it with its review of the Bill.

[23] Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 1-2.

[24] Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 1).

Type 1 Offences		
	Current Law under the PPRA	**Proposed Law under the Bill**
First Offence	48 hours impoundment	Automatic 90 days impoundment
Second Offence	48 hours impoundment + Application to court w/in 48hrs for an additional 3 month impoundment	Automatic vehicle forfeiture
Third or Subsequent Offence	48 hours impoundment + Application to court w/in 48hrs for vehicle forfeiture	Automatic vehicle forfeiture

Type 2 Offences		
	Current Law under the PPRA	**Proposed Law under the Bill**
	• same kind of offence • within 3 years	• need not be same kind • within 5 years
First Offence	No impoundment	No impoundment
Second Offence	48 hours impoundment	Automatic 7 day impoundment
Third Offence	48 hours impoundment + Application to court w/in 48hrs for an additional 3 month impoundment	Automatic 90 day impoundment
Subsequent Offence	48 hours impoundment + Application to court w/in 48hrs for vehicle forfeiture	Automatic vehicle forfeiture

2.1.6 Comparative Review of Similar Legislation in other Australian Jurisdictions

In regard to consistency with legislation of other jurisdictions, the Explanatory Notes provide:

> *Vehicle impoundment schemes vary considerably across Australian jurisdictions. There is no uniform vehicle impoundment scheme in Australia. However, where possible, this Bill has been designed to enhance consistency between Queensland and other jurisdictions. An example is the amendment to the definition of 'burn out' which aligns this definition with that used in most other Australian jurisdictions.*[25]

It is not necessarily a simple process to compare the legislative arrangements for "hooning", vehicle impoundment and forfeiture within Australia as the various jurisdictions tend to differ in their approach. Each jurisdiction approaches this area slightly differently by splitting the types of offences into different categories with different levels of sanctions, as is the case in Queensland. Accordingly, the table below is a

[25] Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 8.

high level summary of the *maximum* vehicle impoundment laws, by jurisdiction, for "hooning" offences in Australia:

	Bill	QLD - Current	NSW[26]	Vic	ACT	Tas	NT	SA	WA
1st Offence	3m	48hrs	3m	30 days[27]	3m	28 days	48 hrs	28 days or forfeit if convicted of forfeiture offence[28]	28 days
2nd Offence	forfeit	3m	forfeit	3m	forfeit	3m	3-6m	forfeit	3m
3rd Offence	forfeit	forfeit	forfeit	forfeit	forfeit	forfeit	forfeit	forfeit	6m/ forfeit
Any further offences	forfeit	forfeit	forfeit	forfeit	forfeit	forfeit	forfeit	forfeit	6m/ forfeit

Source: From the December 2011 "*LNP CANDO Action: Putting the Brakes on Hoons*" brochure (updated as noted below by the Committee based on information from the Queensland Parliamentary Library as at January 2013).

It is important to note that this summary does not detail every exception, qualification or relevant aspect. A more in-depth analysis of the laws relating to "hooning" offences in the various Australian jurisdictions, as at January 2012, was prepared by the Queensland Parliamentary Library for its Research Brief (2012. No. 01, Appendix) on the 2011 Bill.[29]

In its submission, the CMC noted the following points in terms of comparing the proposed amendments with the situation in other jurisdictions.

> *The explanatory notes to the Bill (page 2) cite consistency of the proposed impoundment regime with other Australian jurisdictions as a justification for providing police with the power to immediately impound vehicles used in an evade police offence. That general proposition blurs significant differences in detail of which you should be aware.*
>
> *The Queensland offence captures a particularly wide range of behaviour. In contrast, evade police-type offences captured within the impoundment regimes of other Australian jurisdictions:*
>
> - *are indictable offences*

[26] The NSW legislation was amended on 1 July 2012.

[27] In Victoria, the maximum impounding / clamping period for the first offence was increased from 48 hrs to 3 months by an amendment to the relevant legislation which came into effect on 1 July 2011.

[28] Under the relevant South Australian legislation, it is possible for the Commissioner to apply to the Magistrates Court for an order extending the clamping period to 3 months. Additionally, the motor vehicle is forfeited if the offence is a forfeiture offence.

[29] Please note that the summary in the Queensland Parliamentary Library Research Brief is only current to January 2012 and amendments have been made to a number of the relevant provisions across Australia, particularly in New South Wales and South Australia, since that time. Accordingly, the actual legislation in each jurisdiction should be consulted for specific information on the latest situation.

- *generally must include the elements of dangerous or negligent driving involving a police pursuit.*

The exception to this is the Tasmanian impoundment regime which provides for an automatic 28-day impoundment period for a simple evade police-type offence.

It is also important to note that:

- *No other Australian jurisdiction has a reverse onus provision for an evade police-type offence.*
- *No other Australian jurisdiction provides police with significant additional powers to assist with the investigation of evade police-type offences (e.g. the evasion offence notice).*
- *No other Australian jurisdiction provides for a three-month roadside or automatic impoundment period for an evade police-type offence. Although New South Wales has a similar automatic impoundment period, it relates only to an offence of dangerous or reckless driving knowing police are in pursuit [s.51B Crimes Act 1900 (NSW) known as 'Syke's Law'.] Furthermore, impoundment does not apply when the registered owner of the vehicle was not the offending driver.*[30]

2.1.7 Review of Key Amendments proposed by the Bill

While this Report does not address every aspect of the proposed amendments to Chapter 4 of the PPRA relating to the "anti-hooning" offences contained in the Bill, the Committee highlights the following matters for the attention of the Legislative Assembly to assist Members with their understanding of how the proposed amendments will operate.

Amended definition of "burn out"

Section 69 of the PPRA currently defines "burn out", in relation to a motor vehicle, as follows:

> *… wilfully drive the motor vehicle in a way that causes the tyres or a substance poured onto the road surface, or both, to smoke when the drive wheels lose traction with the road surface.*

Clause 5(2) of the Bill seeks to amend the definition of "burn out" as follows:

> *"**burn out**, for a motor vehicle, means wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one of more of the wheels with the road surface".*

The following examples are also included in the new definition:

> *"Examples –*
>
> - *driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a road surface so that the tyres or a substance poured onto the road surface smokes*
> - *driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a wet or gravelled road surface, regardless of whether or not the tyres smoke because of the loss of traction"*

The reason for this amendment appears to be three-fold:

(a) to cover those instances where there is a loss of a vehicle's traction and no smoke is produced such as when a vehicle is driven on a wet or gravel road;

[30] Crime and Misconduct Commission, Submission No. 21, pages 3-4.

(b) to ensure that a driver who is involved in this type of behaviour will not escape the type 1 vehicle impoundment scheme; and

(c) to make the definition of 'burn out' consistent with the majority of other Australian jurisdictions.[31]

In relation to this change, the QPS advised as follows:

> *The Bill removes the requirement that a 'burn out' can only occur when smoke is produced from a vehicle's tyres or a substance poured onto a road. Instead, a person will be considered to be doing a 'burn out' if the person wilfully drives a motor vehicle in a way that causes the vehicle's wheels to lose sustained traction with the road surface.*[32]

In its submission, the RACQ supported the proposed changes to the definition of 'burn out' in the Bill on the basis that the "*change is appropriate and in line with other jurisdictions*".[33]

On the other hand, a number of submissions received by the Committee were opposed to the proposed amendments to the definition of 'burn out' and stated a preference for the current definition.

The Australian Street Machine Federation Qld Division Inc. submitted:

> *The amendment to the term "Burn Out" without the production of smoke will seriously disadvantage enthusiasts and owners of older vehicles, and those less fortunate that can not afford a vehicle with traction control.*
>
> *Example: A young inexperienced P plate motorists could be at a set of traffic lights facing uphill in the wet in an unladen utility. He is beside a new car with traction control. Both vehicles take off from the traffic lights, however the unladen ute has trouble maintaining traction, whilst the new vehicle has the same loss of traction until the traction control kicks in. A police officer notices both cars, and stops the utility driver and charges him with the Class 1 hooning offence of "Burn out" because his car has a sustained loss of traction without generating smoke. Immediately causing the forfeiture of the vehicle. This scenario could be replayed on any wet or gravel road surface when driving an older vehicle as commonly used by our members.*[34]

Similarly, the QCCL opposed the change to the definition of 'burn out':

> *This is exemplified in the broader definition of burnout. By removing the word "smoke" from the definition of burnout a significantly wider definition will be applied to type 1 vehicle related offences. The removal of the word "smoke" creates a more discretionary definition and subjective test for police officers to apply. Under the Amendment Bill definition, any driver who experiences sustained loss of traction with the road surface will fall within the definition of burnout if the conduct of the driver is considered by the police officer to be wilful.*[35]

In its response to submissions, the QPS recommended there be no change to the Bill in this regard stating:

> *The contention that a police officer could impound a person's vehicle because of difficulty maintaining traction on wet roads is based on a misunderstanding of the current and proposed impoundment laws. Type 1 vehicle related offences are offences that are committed in circumstances that involve a speed trial, a race between motor vehicles or a burn out. A driver*

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31 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 5.

32 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 3).

33 RACQ, Submission No. 27, page 5.

34 Australian Street Machine Federation Qld Division Inc., Submission No 17, page 2.

35 Queensland Council for Civil Liberties, Submission No 15, page 1.

> *who accidently spins their wheels through inadvertence would not fall within the definition of committing a type 1 vehicle related offence.*
>
> *The current definition of 'burn out' requires smoke to be produced from the wheels or road. Purposely driving a vehicle on a wet or gravel road so as to cause the vehicle to undergo a sustained loss of traction would not be considered to be a "burn out" as no smoke is produced from the vehicle or road surface.*
>
> *The definition of 'burn out' in the Bill removes this requirement so that a person will be considered to be doing a 'burn out' if the person wilfully drives a motor vehicle in a way that causes the vehicle's wheels to lose sustained traction with the road surface.*
>
> *This amendment brings the Queensland definition in line with the majority of other States in Australia. The QPS does not propose that this definition should include a specific time on how long the wheels lost traction. A court may determine if the loss of traction was sustained by examining the circumstances that surround each individual matter.*[36]

At the public briefing, the Committee sought further information from the QPS on the use of the word 'sustain' in the new definition of 'burn out'. The QPS responded:

> *What we are trying to do is put distance between the ordinary motorist, for example, who goes around a corner on a wet road and spins the wheel momentarily, or even if there is a chirping noise emerging from the vehicle as it goes around the corner on the one hand, and a person who is driving a motor vehicle applying what we would consider to be hoon-like behaviour—doing burnouts in circles, donut work and all the other expressions that they use.*[37]

Committee Comment

After consideration of the proposed changes to the definition of 'burn out', the various submissions covering this aspect and the responses from the QPS, the Committee is satisfied that this proposed change is appropriate in the circumstances.

The Committee is satisfied that the new definition is drafted in a manner which can be readily enforced by QPS officers without any significant difficulty or any adverse implications and further notes that the new definition brings Queensland into line with the majority of other jurisdictions in Australia.

Amendment of "relevant period" definition from 3 years to 5 years

Clause 5 of the Bill also seeks to increase the "relevant period" for vehicle impoundment offences from three years to five years.

In relation to this change, the QPS advised as follows:

> *It is proposed that this amendment will align Queensland with other Australian jurisdictions, in particular Western Australia, New South Wales and the ACT which have a 5 year relevant period, and South Australia which has a 10 year relevant period.*[38]

In its submission, the Queensland Council for Civil Liberties (QCCL) made the following comments against the proposed increase of "relevant period":

> *The Amendment Bill introduces automatic forfeiture of a vehicle on being found guilty of a second or subsequent type 1 offence. The Amendment Bill increases the relevant period from 3 years to 5 years so that any person who commits a second type 1 vehicle offence within 5*

36 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 7).

37 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 13.

38 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 2).

> *years is subject to the forfeiture. This greatly increases the number of individuals who may fall within the forfeiture category.*[39]

The RACQ did not support the increase in the "relevant period" based on the following research issued by CARRS-Q:

> *Australian research has found that hooning offenders tend to be involved in the scene for only two or three years. This may substantiate the 'maturing-out' effect of hooning in the mid-twenties.*[40]

Additionally, the submission made by the Monash University Accident Research Centre (MUARC) suggested that "[*t]he impact of the offence accumulation expiration period warrants further investigation*".[41]

In response to the various submissions opposing the increase in "relevant period", the QPS stated that "*[a]ny change to the relevant period is a policy matter for consideration by Government*".[42]

Committee Comment

While the Committee initially held certain reservations concerning the impact of the extension of the 'relevant period' to five years, after due consideration, the proposed increase in the length of the 'relevant period' is supported.

The five year period achieves an appropriate balance between ensuring that the provisions are an effective deterrent to repeat offenders and that the provisions don't impinge in an inappropriate manner on a person's civil liberties. Additionally, the Committee considers the new increased period appears to be in line with 'best practice' in a number of other Australian jurisdictions and is also well short of the 10 year relevant period in South Australia.

Expansion of Type 1 and Type 2 vehicle related offences

Clause 6(1) of the Bill expands the definition of type 1 vehicle related offences to include "evade police" offences.[43]

In relation to "evade police" offences, the Explanatory Notes provide that:

> *The Queensland Police Service (QPS) believes a more flexible impoundment regime is required to reduce the rate of this type of offending. Including 'evade police' offences as type 1 vehicle related offences achieves that objective and is consistent with laws in South Australia, Victoria and Tasmania that currently have the capacity to immediately impound vehicles used to evade police.*[44]

Clause 6(2) of the Bill expands the definition of type 2 vehicle related offences to include "high end speeding" where the driver exceeds a speed limit by more than 40 km/h.

In relation to "high end speeding" offences, the Explanatory Notes provide that:

> *High end speeding occurs where a person drives more than 40 km per hour over the speed limit. Speeding has been identified as a leading factor in road crashes both internationally and in Australia despite current speed management strategies. Whilst the prevalence of high end*

39 Queensland Council of Civil Liberties, Submission No. 15, page 3.

40 RACQ, Submission No. 27, page 5 which referred to the Centre for Accident Research and Road Safety, Hooning Fact Sheet, November 2012, page 2.

41 Monash University Accident Research Centre, Submission No. 23, page 4.

42 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 11).

43 See section 754, Police Powers and Responsibilities Act 2000.

44 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 2.

> *speeding offences appears to be small, research suggests that there are a small number of drivers who engage in both the current type 2 vehicle related offences and high end speeding offences.*[45]
>
> *This amendment will incapacitate or deter these drivers from re-committing these offences through the impoundment of their vehicle and its associated costs. Additionally, this approach is consistent with other jurisdictions. South Australia and Tasmania allow for a vehicle to be impounded or clamped for 28 days for the first offence of driving at a speed exceeding the speed limit by 45 kilometres per hour or more. Victoria allows a vehicle to be clamped or impounded for 30 days for the first offence of driving a vehicle at 145 kilometres per hour in a 110 kilometre per hour speed zone or for exceeding the speed limit by 45 kilometres per hour or more.*
>
> *Chapter 22 of the PPRA contains a separate standalone impoundment scheme specifically for this offence. However this scheme applies only after an offender is convicted for the offence and leaves no scope for immediate impoundment. This approach is reliant on police being able to locate the offending vehicle some time after the offence has occurred.*

In regard to these amendments, the Police Minister noted in the Introduction Speech to the Bill that:

> *The nature of these offences warrants inclusion into the vehicle impoundment schemes and highlights this government's commitment to stop inappropriate driving behaviour.*[46]

In relation to the two proposed amendments above, the MUARC made the following comments:

> *Attempts to "evade police" and also "high end speeding" both represent high crash risk driving behaviour, especially when this involves novice drivers who typically represent the majority of hoon offenders. As previously mentioned, almost 50% of hoon offenders were identified as either a probationary, learner or disqualified driver, with the vast majority of these probationary licence holders (Clarke et al., 2010). Speed has been identified as one of the leading crash causes and is involved in over 30% of all fatal crashes in Australia. A driver's risk of being involved in a fatal crash doubles when driving at 65km/h in a 60km/h limit zone. Excessive speed and improper use of a motor vehicle are the two most common offences for which vehicles are impounded, in Victoria. These two offences alone constituted 76% of all Vehicle Impoundment offences in Victoria during 2006-08. Penalty increase amendments were introduced to the Victorian Vehicle Impoundment Legislation in recognition of the frequency of, and crash risks associated with, excessive speeding, which has been classified as a Tier One (more serious) offence. It is appropriate that the high crash risks associated with these driving behaviours are reflected in the adoption of more severe penalties as proposed.*[47]

In the context of the issue of "high end speeding", the Australian Confederation of Motor Clubs (ACMC) suggested that "*[h]igh end speeding to be set at 45km/h to bring in line with other states*".[48]

While the RACQ does support the inclusion of evading police as a type 1 offence, it does not support the proposal to include high-end speeding offences as type 2 offences because *"[h]igh level speeding has much*

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45 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 2.

46 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Introduction Speech* by The Honourable Mr Jack Dempsey MP, Minister for Police and Community Safety, Hansard, 27 November 2012, pages 2760-2761.

47 Monash University Accident Research Centre, Submission No. 23, page 4.

48 Australian Confederation of Motor Clubs, Submission No, 12, page 11.

more severe road safety implications that the largely amenity-based concerns about hooning offences (such as burnouts) and therefore is more deserving of being a type 1 offence than a type 2 offence".[49]

During the public briefing, the Committee queried why "high-end speeding" was categorised as a type 2 offence and not a type 1 offence. The QPS advised:

> *The type 1 offences were always going to be, and always have been, … hooning related offences. Driving at 40 kilometres an hour over the limit could be either a hoon offence or a type 2 offence. It is a straddle. It is dangerous. It is definitely dangerous. Twenty per cent of our road fatalities are made up of speeding drivers so it is definitely dangerous. Did it fit within the pure hoon related offences—street racing et cetera—or did it fit within the other type of offences? It is marginal. My understanding was that this aligned with government policy, which is that high-end speeding needed to be classified as a supportive or ancillary hoon related event.*[50]

Committee Comment

The Committee wholly supports the expansion of the impoundment regime to include the two offences of 'evade police' and 'high end speeding' as outlined above. Inclusion of these provisions is essential to achieve the Government's commitment of stopping inappropriate driving behaviour.

The Committee notes the commentary on the categorisation of high end speeding as either a type 1 or 2 offence and accepts that there are competing arguments for the offence to be placed in either category. As explained by the QPS at the public briefing, high end speeding best fits the underpinning policy of the impoundment scheme as a type 2 offence. The Committee does not consider that categorisation of high end speeding as a type 2 offence in anyway lessens the dangerous nature of the offence. The Committee also accepts that it is best classified as a supportive or ancillary hoon related event.

Repeat Type 2 offences need not be of the same kind

Under the current law, a repeat type 2 offence will trigger the impoundment provisions only if the repeat offence is of the "same kind" as the previous type 2 offence, unlike other jurisdictions in Australia which do not have such a restriction and allow the subsequent commission of any type 2 offence to be targeted.[51]

Clause 7 of the Bill seeks to omit s 70A of the PPRA which will have the effect of removing this restriction and "*bring Queensland in line with all other Australian jurisdictions which do not have a similar restriction on their impoundment schemes*".[52] This means that a driver committing any type 2 offence who has also committed a type 2 offence within the preceding three years will be subject to the impoundment scheme.

The QPS advises:

> *The amendment to section 70[A] of the PPRA will create consistency between:*
>
> - *the operation of the type 1 and 2 vehicle impoundment schemes; and*
> - *other Australian jurisdictions such as Victoria, Western Australia, South Australia and Tasmania which allow for a repeat of any prescribed offence to invoke impoundment sanctions.*[53]

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49 RACQ, Submission No. 27, page 3.

50 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 18.

51 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

52 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

53 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 5).

In its submission, the QLS indicated that it opposed the proposal that repeat type 2 offences need not be of the "same kind":

> *The Society considers that s.70A should not be omitted. This section ensures that persons being penalised for subsequent offences are aware that the specific type of offence is prohibited, which is particularly important in the context of the broad range of type 2 offences which are captured. For example, a person who commits an offence against s.79, Transport Operations (Road Use Management) Act 2005 which involves liquor or other drugs may not necessarily also be aware that a modification offence within the relevant period could be captured.*
>
> *We consider that, because the offences under the type 2 offences regime are so diverse, it would be prudent to retain this section to ensure that the regime does not operate oppressively.*[54]

The QCCL was also concerned in its submission that this proposed change under the Bill would increase the number of persons caught by the provisions:

> *lt is our submission that the removal of the restriction for repeat offences under the type 2 vehicle impoundment scheme to be of the same offence type will increase significantly the number of individuals to whom the scheme will apply. We submit that increasing the number of individuals who will potentially come within the impoundment scheme will not have the deterrent effect intended.*[55]

In response, the QPS made the following comments:

> *One of the objectives of the legislation is to remove access to a vehicle from persons who constantly commit offences that impact on road safety. The current provisions allow a person to engage in a pattern of offending behaviour that poses a danger to the community, but fails to trigger the impoundment provisions simply because the person commits a variety of type 2 vehicle related offences rather than the same type 2 vehicle related offence on multiple occasions.*
>
> *An example where this artificial restriction causes inappropriate outcomes is as follows: A person has committed more than 4 'Under the Influence' offences within the relevant period. Police intercept the person for another UIL offence. Instead of provid[ing] a specimen of breath for analysis the offender fails to supply a specimen of breath. Because failing to supply a specimen of breath is not the same kind of offence as UIL, no impounding sanction would apply.*
>
> *No other jurisdiction imposes an equivalent restriction on the operation of their impoundment legislation.*[56]

Committee Comment

The Committee is satisfied with the QPS's explanation of the intended operation of this proposed amendment and agrees that the impoundment scheme should not be limited in application to repeat offences of the same type only. It is also recognised that the removal of section 70A brings the impoundment scheme into line with other Australian jurisdictions.

54 Queensland Law Society, Submission No. 25, page 2.

55 Queenslanad Council for Civil Liberties, No. 15, pages 3-4.

56 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, pages 9-10).

Commencement of Proceedings by Traffic Infringement Notice

Under current law, a person is taken to be charged with a vehicle related offence for the purposes of the impoundment provisions when a person is served with a notice to appear or is arrested (section 71 of the PPRA).

Clause 8 of the Bill proposes to improve efficiencies in this area by amending section 71 of the PPRA to provide for proceedings to commence by a traffic infringement notice (TIN) for a vehicle related offence rather than a notice to appear or an arrest.

The Explanatory Notes note that:

> *This allows a significant number of offences such as high end speeding, driving an unregistered and uninsured vehicle, certain unlicensed driving and illegally modified vehicle offences to be dealt with by way of a TIN rather than a court appearance. This would achieve savings to both the courts and the QPS through allowing the offender the option of avoiding a court appearance.*[57]

Relevantly, the Explanatory Notes also provide that this amendment is of benefit to an offender as the requirement for the offender to appear in court is removed. Although, it is also noted that this change could also be a detriment to an offender if the offender is not aware of the consequences of committing a pre-impoundment offence. The Explanatory Notes further provide that:

> *[T]he QPS has undertaken to issue offenders with a facts sheet outlining the consequences and effect of committing a pre-impoundment offence when traffic infringement notices for these offences are issued.*[58]

The QPS has advised:

> *Allowing TINs to be issued for all ticketable impoundment offences will result in productivity savings for the courts. Under the current regime, this is limited to pre-impoundment offences only. The amendment also dramatically improves operational efficiency and achieves substantial cost benefits for the QPS and the Courts. For example, there are a total of approximately 28,000 offences committed per year in relation to the type 2 vehicle related offences of unlicensed driving, and driving an unregistered and uninsured vehicle. Prosecution [of] these offences by TIN would represent a 30,000 hour efficiency gain for the QPS and similar if not greater savings for the Courts.*
>
> *A central feature of the Bill is the shift of impoundment sanctions from being a court process to an administrative process. As such, there is no practical difference between a vehicle being impounded upon an offender being charged with a NTA* [Notice to Appear] *or by arrest as compared to a[n offender] being charged through the issue of a TIN. In either case, a court cannot change the impoundment sanction that is to be imposed except upon an appeal to a court following a decision made by the Commissioner about the return of an impounded vehicle.*[59]

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57 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

58 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 7.

59 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 3).

A number of submissions were opposed to this proposal on the basis that the amendments "*ignore a person's right to go to court*".[60] In this context, the ACMC also made the following comments in its submission:

> *The proposal to remove the requirement for Police to apply to the Courts for impoundment or forfeiture and instead hand this function to the Executive of Government to be carried out administratively and "automatically" following the issue of a Traffic Infringement Notice (TIN) hands the Police, and possibly other officers of the relevant regulatory authorities, powers to impose penalties of significant and disproportionate quantum (over and above many of those imposed by the Courts for higher level offences).*
>
> *…*
>
> *With all due respect to the efforts and abilities of our Police and other Officers, we submit that the vast majority do not have an equivalent level of training in, nor the years of experience in the application of the finer points of our laws as do the members of our Judiciary, of whom it is generally accepted are trained and experienced in the proper use of discretion and application of our laws, and in particular application of the laws to the many and varying circumstances of each member of the public, including motorists and vehicle owners.*[61]

The QPS responded to these submissions as follows:

> *Currently a person 'charged' with a vehicle related offence must appear in court in answer to that charge. The Bill allows proceedings for certain vehicle related offences to be commenced by way of a Traffic Infringement Notice (TIN). The obvious benefit of this amendment is that a defendant may elect to pay the fine associated with the TIN and avoid appearing in court. A further benefit will be productivity savings for the QPS and the Courts. The Bill does not affect the right a person has to contest a charge and have the matter heard before a court.*[62]

In conclusion, the QPS recommended that no changes be made to the Bill in relation to this aspect.

Committee Comment

There appears to be some confusion in a number of the submissions as to how the provisions in the Bill are designed to operate and what options are available to an offender on receipt of a TIN.

Under the current regime, an offender must appear in court due to proceedings commencing by either arrest or by a Notice to Appear, even when the offender is prepared to admit guilt. The proposed amendments contained in the Bill do not take away the right of an alleged offender to have the matter heard in court, but merely provide an alternative administrative procedure to assist with streamlining the process.

An alleged offender may elect to pay a fine on receipt of a TIN or the offender may elect to have the matter heard by a court by not paying the fine, completing the "Election for Court Hearing" section of the TIN, and returning the completed notice.

Accordingly, after reviewing the proposed changes, the various submissions and the QPS' explanation, the Committee is satisfied that the right of an alleged offender to have the matter heard in court is preserved and the proposal is, in fact, advantageous to an alleged offender who may wish to resolve the matter by simply paying the fine and not attending court so as to save the alleged offender time and money, for example, by not having to incur solicitor's costs for a court appearance.

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60 Paul Muir, Submission No. 5, page 1. Similar concerns were also raised by Gary Lambert, Submission No. 16, page 1.

61 Australian Confederation of Motor Clubs, No. 12, pages 14-15.

62 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 10).

The proposal also has the advantage of saving time for the QPS and the court system. The discretion still rests with the QPS not to issue a ticket and provide a Notice to Appear in certain circumstances where the officer on the ground considers it is warranted to issue such a notice.

Increase of sanctions for Type 1 vehicle related offences

Clause 14 of the Bill amends section 74 of the PPRA to increase the sanction for committing a type 1 vehicle related offence from impoundment of the vehicle for 48 hours[63] to impoundment of the vehicle for 90 days for the first offence.

In relation to second and subsequent type 1 offences within 5 years, **Clause 15** of the Bill provides that the sanction is forfeiture of the vehicle.

A number of submissions received by the Committee highlighted concerns about the proposed increase of sanctions for type 1 vehicle related offences.

The QLS raised the following concerns in its submission:

> *The Society is concerned with the lengthy prescribed impoundment period for a first type 1 vehicle related offence, which is 90 days. We consider that a decision to impound a person's vehicle for such a substantial amount of time should be made by application to a court. This is particularly important, given that the vehicle is impounded on the basis of a charge, not a conviction.*[64]

Relevantly, under the heading "*The threat of immediate impoundment risks may create perverse incentives",* the CMC commented as follows:

> *In order to decide how to advance this policy initiative, you should be aware that there is a body of research that indicates that mandatory and/or significant penalty increases in this area of law increases the risk of creating perverse incentives that result in unforeseen consequences. In this case, Queensland research shows that some offenders are willing to take more extreme risks to avoid police capture and the immediate and certain loss of their vehicle, despite acknowledging risks to their own safety and that of others. This has the potential to undermine the community safety intent of the evade police provisions.*[65]

Concerns were also raised that the current penalties were already tough enough. In this regard, the Toowoomba Regional Inc. Car Klub (TRICK) stated:

> *The anti-hoon laws have been in force for ten years. The current anti-hoon legislation is already tough enough. There must be other avenues that can be pursued when it comes to decreasing hooning IF it really is the major issue that it is portrayed to be. Under the current anti-hoon legislation, hoons already have the threat of having their vehicle impounded for a significant amount of time or forfeiting their vehicle to the State. Impoundment does not deter hoons now so how will tougher penalties stop them from driving dangerously?*[66]

The lack of parity with what could be considered more significant offences which are referred to as the 'Fatal Five'[67] in the QPS Road Safety Campaign, was noted in the submissions.[68] Similarly, submissions noted a lack

63 See section 74 of the *Police Powers and Responsibilities Act 2000* and the definition of "initial impoundment period" in section 69 of the *Police Powers and Responsibilities Act 2000*.

64 Queensland Law Society, Submission No. 25, page 2.

65 Crime and Misconduct Commission, Submission No. 21, pages 2-3.

66 Toowoomba Regional Inc. Car Klub, Submission No. 12, page 3.

67 The "Fatal Five" are made up of (1) speeding, (2) drink and drug driving, (3) failure to wear a seatbelt, (4) driving while fatigued and (5) distraction and inattention. See the Queensland Police Service's Fatal Five campaign website for more information.

of parity between penalties for other nuisance type offences that could lead to fatalities. However the most common theme in submissions from the car enthusiast community related to the argument that the proposed penalties were too excessive in response to the offences to which they relate.[69]

The RACQ did not, in its submission, support the proposed increase in sanction for type 1 offences for a number of reasons, including the following:

> *RACQ member feedback indicates that there is a general preference that people who break road rules/traffic laws are caught and punished by an increased on-road police patrol presence enforcing the full range of road rules, rather than increased fines/penalties for those who are caught.*[70]

In relation to the issue of increases in penalties, the submission from the MUARC is also instructive:

> *It is important that increases in penalties will result in increased deterrence and thus a decrease in the illegal driving behaviour. Clark et al., (2010) revealed two important findings that relate to this issue. First, many participants claimed that if permanent forfeiture or vehicle crushing was introduced they would purchase a cheaper (disposable) vehicle for their hoon driving to reduce the impact (cost) of being detected. This would have detrimental road safety implications because of the poor safety standards of cheaper vehicles compared with more expensive and safer vehicles that can offer crash avoidance and occupant protection.*
>
> *Second, participants referred to a word of mouth agreement amongst peers that if they were detected hooning when driving an expensive vehicle that they would engage in a police chase to avoid having their vehicle confiscated. Again this raises concerns about the high crash risks this poses for the driver, police and general road users associated with these attempts to evade police (Clark et al., 2010). While it has also been proposed that the penalties associated with evading police should also be increased, it is questionable how effective this penalty threat would be in a spontaneous situation. Clark et al., (2010) found that, for the majority of the focus group participants, their decision to hoon was spontaneous. Although the above comments introduce a dichotomous issue of older vehicle roadworthiness verses newer vehicle police chase risk, they also highlight the importance conducting evidence based exploration into potential outcomes from the introduction of the proposed amendments. Further research is warranted to explore the potential effectiveness of introducing increased penalties across the various hoon driver subgroups.*[71]

Committee Comment

There is no doubt that the sanctions proposed under the Bill are tough, however, there is clearly good reason for this. The underlying objective to be achieved by the Bill is to be tough on crime in order to ensure that Queensland is a safe place to live, visit and work – and to stop hoons. The Government's election commitment was to introduce the toughest anti-hooning legislation in Australia and as such the increase of sanctions for Type 1 vehicle related offences are endorsed by the Committee.

The Committee notes the concerns that there appears to be a significant jump from 48 hours to 90 days for the first offence, however these changes are genuinely proposed as an attempt to address the underlying mischief involved. A sanction of 90 days is comparable with a number of other Australian jurisdictions (see

68 Paul Muir, Submission No. 5, page 1; Toowoomba Regional Inc. Car Klub, Submission No. 13, page 3.

69 Gary Lambert, Submission No. 16, page 3; Darryl Fuller, Submission No. 26, page 3; Michael Cadman, Submission No. 4, page 1; Rob Cuthbert, Submission No. 9, page 1.

70 RACQ, Submission No. 27, page 2.

71 Monash University Accident Research Centre, Submission No. 23, pages 3-4.

table under *Comparative Review of Similar Legislation in other Australian Jurisdictions*) and while it may appear to be a significant increase, the Committee does not consider it to be excessive.

As set out later in this Part, there are a number of circumstances included in the Bill when an impounded car may be released, including provisions relating to hardship. When read together, the Committee considers that the Bill achieves the commitment of getting tough on crime while containing significant additional safeguards to ensure it operates as intended.

Increase of sanctions for Type 2 vehicle related offences

Clause 16 of the Bill also increases the sanction for committing a type 2 vehicle related offence as follows:

- Automatic impoundment of the vehicle used to commit a second type 2 vehicle related offence within 5 years for 7 days (currently, the sanction for a second type 2 offence within 3 years is 48 hours impoundment);
- Automatic impoundment of the vehicle used to commit a third type 2 vehicle related offence within 5 years for 90 days (currently, the standard sanction for a third type 2 offence within 3 years is 48 hours impoundment or, if an application is made to the court by the QPS, then it is a possible to seek an additional 3 month impoundment sanction); and
- Automatic forfeiture of the vehicle used to commit a fourth or subsequent type 2 vehicle related offence within 5 years upon the offender being found guilty of the offence (currently, the standard sanction for a fourth or subsequent type 2 offence within 3 years is 48 hours impoundment or, if an application is made to the court by the QPS, forfeiture is available as a maximum sanction).

In relation to these proposed amendments, the QPS made the following additional comments at the public briefing:

> *Type 2 impoundment related offences include offences that may be considered as associated with hooning type behaviour and that includes illegally modified vehicles and offences that are associated with or part of hooning offences, such as unlicensed driving, driving unregistered vehicles, drink-driving and the like. Currently, an impoundment for type 2 offences greater than 48 hours is only available to police upon applications of the court. These include a 90-day impoundment for a third offence and forfeiture for a fourth or subsequent offence.*[72]

In terms of the maximum sanctions, the main change for type 2 sanctions arises in respect to the first repeat offence, where the offender's vehicle will be impounded for 7 days rather than 48 hours. However, the manner in which sanctions will apply to offenders is quite different under the Bill compared to the current situation under the PPRA. Under the PPRA, upon a second or subsequent repeat type 2 offence, the offender's vehicle may be impounded automatically for 48 hours, but a subsequent application must be made within 48 hours to the court after charging the driver, for an additional 3 months impoundment sanction in the case of a second repeat offence, and for vehicle forfeiture, in the case of a third or subsequent repeat offence.

The automatic operation of these sanctions under the Bill such that court applications will no longer be required for impoundment or forfeiture orders is discussed in detail below under the heading "*Court applications no longer required for impoundment or forfeiture orders*".

Committee Comment

In relation to an increase of sanctions for type 2 vehicle related offences, the Committee notes that there are two main changes. The first change involves an increase in the maximum sanction in relation to the second type 2 offence from impoundment of 48 hours to 7 days. The Committee notes that the maximum sanctions for the third, fourth and subsequent type 2 offences remain unchanged.

[72] See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 2.

The second main change in relation to type 2 offences is that the sanctions that arise in respect of third and subsequent type 2 offences arise automatically under the Bill whereas under the current law an application must be made by the QPS to extend impoundment from 48 hours to the maximum possible allowed under the law, which is for 90 days in the case of the third type 2 offence and forfeiture in the case of the fourth or any subsequent type 2 offence.

For similar reasons outlined above relating to type 1 offences, the Committee is satisfied that these changes are appropriate in the circumstances. The increased penalties are reflective of the Government's election commitment to introduce the toughest anti-hooning legislation in Australia and as such are endorsed by the Committee.

Expansion on methods of vehicle immobilisation

Currently, the only method of impoundment provided under the PPRA is to tow and store an impounded vehicle at a holding yard.[73] The Explanatory Notes highlight that:

> *This restriction causes operational difficulties, particularly in regional areas that may lack the services of a dedicated towing company.*[74]

Accordingly, **Clause 16** of the Bill proposes to insert a new "*Division 1B (Immobilising powers for type 1 and type 2 vehicle related offences*)" which provides for the following additional methods for the immobilisation of a motor vehicle:

- clamping;
- confiscation of number plates; and
- the use of a vehicle production notice.

The additional methods of immobilising a motor vehicle are described in the Explanatory Notes to "*maximis[e] the efficiency of the type 1 and 2 vehicle impoundment schemes generally*".[75]

In the context of wheel clamping, the submission from the ACMC made the following point:

> *It is worth noting that wheel clamping was repealed in NSW 3 May 2012, a trial showed no time saving for police therefore no cost savings.*[76]

Committee Comment

The Committee is satisfied that the proposed amendments to expand on the methods of vehicle immobilisation are an improvement on current arrangements under the PPRA. The Committee believes that they will result in both practical and operational benefits and supports the inclusion of the additional methods in the Bill.

Return of impounded or immobilised motor vehicles

Under the current impoundment regime, an impounded motor vehicle may only be released by a police officer where it has been unlawfully used or stolen, or is a rental vehicle.[77]

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73 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 3.

74 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 3.

75 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 3.

76 Australian Confederation of Motor Clubs, Submission No. 12, page 16.

77 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 5).

The Bill provides for the return of impounded or immobilised motor vehicles so as "*[t]o mitigate concerns about the impact of automatic impoundment and forfeiture*".[78]

Under **Clause 24** of the Bill, an eligible person (the owner or usual driver) may apply to the Commissioner, or his delegate, for the release of an impounded vehicle if:

- the impoundment offence occurred without the consent of the vehicle's owner;
- the impoundment will cause severe financial hardship to the applicant or their family by depriving the applicant of the means to earn a living;
- the impoundment will cause severe physical hardship to the applicant or their family, other than by depriving the applicant of the means to earn a living;
- the impoundment of the vehicle was due to the vehicle being unregistered or the driver being unlicensed and the offence has been remedied; or
- there were no reasonable grounds to impound or immobilise the motor vehicle.

The Bill also provides that the Commissioner has five business days, if reasonably practicable, upon receiving the application and other required documentation to make a decision. The QPS points out that "*[t]he key advantage of this proposal is its timeliness*".[79]

If a person is aggrieved by the Commissioner's decision, then there is an option to appeal the decision to a Magistrates Court.

The Bill "*allows applications to be assessed and determined quickly so that successful applicants may have their vehicles returned as soon as possible*".[80]

The QPS noted:

> *This model has been adopted in South Australia and Western Australia. Victoria and Tasmania have the ability to release vehicles on hardship grounds where it would be reasonable or expeditious to do so.*[81]

As noted above, in **Clause 24** of the Bill, a new section 79E is proposed which allows for the return of an impounded vehicle if the relevant type 2 vehicle related offence involving unlicensed driving or an unregistered vehicle is rectified. However, there is no provision for the return of an impounded vehicle in the event that it has been illegally modified. This issue was raised in the submission from TRICK.[82]

In response to this submission, the QPS advised:

> *The QPS predicts that such an amendment would be practically problematic. To remedy this offence, it would be necessary for an inspection to be conducted by an authorised officer under the Road Use Management Act. This inspection would need to be organised by the eligible person and may not be possible due to the vehicle being impounded or immobilised.*[83]

The QPS made a similar statement when the matter was raised at the public briefing.[84]

78 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

79 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 5).

80 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

81 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 6).

82 Toowoomba Regional Inc. Car Klub, Submission No. 13, page 3.

83 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page13).

84 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, pages 8-9.

Committee Comment

The Committee is satisfied that the amendments concerning the return of impounded or immobilised motor vehicles are an improvement on current arrangements under the PPRA. The Committee notes the natural justice implications which could otherwise result in the absence of new clause 24 and considers that the additional categories allowing release of an impounded vehicle are a welcome addition to the impoundment scheme.

Court applications no longer required for impoundment or forfeiture orders

Under the current law, applications are made to a court by the police for a vehicle to be subject to an impounding or forfeiture order.[85] These applications must be sought by a police officer within 48 hours after charging the person with the initiating impoundment offence.[86]

Under the Bill, this judicial process is to be changed to a more streamlined administrative process where vehicles may be impounded automatically upon an offender being charged.

In this regard, the Explanatory Notes provide:

> *Adoption of automatic impoundment periods or forfeiture creates considerable savings through the:*
>
> - *reduction of time taken by police officers to prepare applications; and*
> - *reduction in court time required to consider applications.*[87]

Accordingly, **Clause 30** of the Bill proposes to delete section 85 (Application for impounding order for type 1 vehicle related offence) and section 85A (Application for impounding order for type 2 vehicle related offence) of the PPRA as they will no longer be required.

The Explanatory Notes provide that "*[t]he Bill increases the efficiency of the type 1 and type 2 vehicle impoundment scheme by changing from a judicial process to a process where vehicles are impounded automatically upon an offender being charged*".[88]

The Bar Association of Queensland raised several concerns about these aspects of the Bill in its submission:

> *Under the current proposal the police may proceed to actual impoundment and forfeiture without any supervision by a court. The justification in the Explanatory Notes is that such a measure is necessary to "increase the efficiency of … the scheme" and to generate "considerable savings through the . . . reduction of time taken by police officers to prepare applications . . . and court time required to consider applications". Then, to "mitigate concerns about the impact of automatic impoundment and forfeiture", an aggrieved person may apply to the Commissioner of Police for the release of the vehicle but only on quite limited grounds. See: Clause 79B. Then, although a right of appeal to the Magistrates Court is provided for, the grounds under which the actions of the police may be undone by a magistrate are restricted in the same way. See: Clause 79O.* [89]

The QLS also highlighted its concerns in its submission:

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85 See section 85 and section 85A of the Police Powers and Responsibilities Act 2000.

86 See section 85(2) and section 85A(2) of the *Police Powers and Responsibilities Act 2000.*

87 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 3.

88 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 3.

89 Bar Association of Queensland, Submission No. 24, page 4.

> *The Society is concerned with the amendments proposed in the Bill which appear to envisage forfeiture of a motor vehicle under ss 74B and 74F. We are concerned with the omission of the requirement for applications for impoundment orders and forfeiture orders to be considered by the court. Instead, it appears that this will be automatically triggered by charges for subsequent type 1 or type 2 offences. The Society advocates for the retention of the requirement for applications to be made to the court in these instances, and for a broad judicial discretion to be maintained in the determination of such matters. Decisions to impound or forfeit a person's private property are extremely intrusive and serious, with the ability to affect issues such as employment, health care, and child care. We consider that the court must maintain its role in deciding applications based on the evidence in each particular case.* [90]
>
> *... The Society is particularly alarmed that forfeiture does not require consideration by a court before a vehicle can be forfeited.*[91]

The ACMC was also critical of these changes:

> *The proposed amendment for transfer of matters that have been and should remain a judicial function, to an administrative function expose the motorist to the real potential of abuse and the imposition of huge, disproportional consequences at the absolute whim and desire of the Officers of the regulatory authorities - Officers who do not have the training and experience of our Judiciary in the finer arts of discretion and the consideration of the merits of each case.*[92]

In responding to these submissions, the QPS made the following comments:

> *The current court application scheme imposes significant burdens on both court time and QPS resources. It is estimated that it takes an experienced police officer approximately 8 hours to complete an impoundment application under the current legislation.*
>
> *The change from a court application process to a process of automatic impoundment is expected to reduce the processing delays currently experienced. It is an approach that is consistent with that taken in other jurisdictions such as NSW and SA. The Bill recognises impoundment of vehicles has significant ramifications for affected parties and allows for the release of an impounded vehicle in appropriate circumstances.*
>
> *These circumstances include:*
>
> - *where the impoundment offence occurred without the owner's consent;*
> - *where the impoundment will cause severe financial or physical hardship to the owner or usual driver;*
> - *where the impoundment offence has been remedied (e.g., payment made to remedy unlicensed driver); or*
> - *where there were no reasonable grounds to impound the motor vehicle.*
>
> *The decision to release or not to release an impounded motor vehicle is appealable to a court. The QPS considers this amendment strikes an appropriate balance by allowing decisions to be made within an appropriate timeframe that may be reviewed by a court.*[93]

90 Queensland Law Society, Submission No. 25, pages 1-2.

91 Queensland Law Society, Submission No. 25, page 8.

92 Australian Confederation of Motor Clubs, Submission No. 12, page 8.

93 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, pages 11-12).

Under the proposed changes, a court will no longer be able to order a driver of a motor vehicle to perform community service in lieu of impoundment or forfeiture of the vehicle.[94]

Committee Comment

The concerns raised in the submissions concerning the automatic nature of the impoundment scheme are noted. However, on balance, after evaluating the various submissions and the QPS' advice on this issue, the Committee is satisfied that these changes are in line with those used in many other Australian states and will assist the QPS to streamline the process and be seen in the community to be actively addressing the underlying mischief involved.

Appropriate circumstances are included in the Bill which allow for the release of an impounded vehicle at the discretion of the Police Commissioner and the decision is able to be appealed to a court. The provisions in the Bill strike an appropriate balance between reducing red tape and maintaining citizens' rights to have their matters appropriately reviewed if they consider that they have not been dealt with appropriately.

It is also noted that in addition to getting tough on crime, the effect of these provisions will ensure that front line police officers are able to remain on the beat for longer periods and will not be tied up with additional paperwork during their shifts.

Introduction of new offences with tough penalties

Clause 54 of the Bill also introduces a number of new offences ("supporting offences") which include:

- failing to comply with a requirement to produce a motor vehicle without a reasonable excuse (proposed new s 105A of the PPRA);
- operating a motor vehicle during a number plate confiscation period without a reasonable excuse (proposed new s 105B of the PPRA);
- removing, tampering or modifying a number plate confiscation notice attached to a motor vehicle without a reasonable excuse (proposed new s 105C of the PPRA); and
- removing, tampering or modifying an immobilising device attached to a motor vehicle without a reasonable excuse (proposed new s 105D of the PPRA); and
- operating a motor vehicle without a reasonable excuse if an immobilising device attached to the motor vehicle has been unlawfully removed, tampered with or modified (proposed new s 105AEof the PPRA); and
- selling, modifying or disposing a motor vehicle that is subject to a vehicle production notice without a reasonable excuse (proposed new s 106A of the PPRA).

It is proposed under the respective sections of the Bill that these new supporting offences will all carry a maximum penalty of 40 penalty units, which is currently $4,400.[95]

In this regard, the Explanatory Notes provide:

> *This penalty is consistent with other offences in the PPRA. Further when compared to other jurisdictions in Australia, these penalties meet the Government's commitment to introduce the toughest anti-hooning laws in the nation.* [96]

Appendix D sets out a table prepared by the Queensland Parliamentary Library that compares the proposals under the Bill concerning these types of "supporting offences" with the situation in New South Wales and

94 Although the option of community service instead of impounding will still be available for motorbikes. See Clauses 47 and 48 of the Bill. See also the letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 4).

95 See section 5 of the *Penalties and Sentences Act 1992* which provides that one penalty unit is $110.

96 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 5.

South Australia, being two jurisdictions with impoundment and forfeiture schemes of comparable severity to the Queensland Bill proposals.

It is noted that the proposed monetary maximum fines for these types of supporting offences under the Bill will be $4,400. This proposed increased level of fine is higher than the maximum fine in New South Wales which is $3,300 and the maximum fine in South Australia which is $2,500. In the case of New South Wales, however, these types of offences also attract other consequences such as registration suspension, number plate confiscation and vehicle forfeiture. In the case of South Australia, in addition to monetary fines of up to $2,500, these types of "supporting" offences may attract an imprisonment term of up to six months.

It is understood by the Committee that when the Government is referring to the "toughest anti-hooning laws in the nation", it is also referring to these proposed new "supporting offences" provisions which attract the highest maximum monetary fines in Australia.

Committee Comment

The Committee is satisfied that these amendments are an improvement on current arrangements under the PPRA. The supporting offences and accompanying penalties are necessary to meet the Government's commitment of introducing the toughest 'anti-hooning' laws in Australia.

Retrospective nature of provisions

In relation to the timing of the commencement of the operation of the proposed new provisions, the Explanatory Notes provide:

> *The new type 1 and 2 schemes will not apply retrospectively to persons charged with a type 1 vehicle related offence or a type 2 vehicle related offence of a 'different kind' committed before the commencement of a the Bill.*
>
> *However, the new scheme will apply retrospectively to a type 2 vehicle related offence of the 'same kind' that has been committed up to 3 years prior to the commencement of the Bill. For example, if a person had committed three type 2 vehicle related offences in the 3 years prior to the commencement of the Bill and the person commits another type 2 vehicle related offence of the 'same kind' after the commencement of the Bill, the vehicle may be impounded and, if the driver is found guilty of the last offence, the vehicle will be forfeited.*[97]

It is noted that the retrospective nature of these provisions in the Bill are not addressed in the Explanatory Notes under the heading "Consistency with fundamental legislative principles" (see also discussion below at section 3).

In this regard, the QPS advises:

> *During the lead up to the commencement of the amendments the QPS will undertake extensive public awareness to ensure that community members are fully aware of the implications associated with continuing to commit offences classed as vehicle impoundment offences.*[98]

The QLS submission included the following commentary on the "retrospectivity" issue:

> *The Society is concerned that provisions relating to impoundment and forfeiture apply to offences committed before the commencement of the Act. We refer to the fundamental legislative principle outlined in s 4(3)(g), Legislative Standards Act 1992, which states that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Retrospective application of this transitional provision is inconsistent with*

97 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 5.

98 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 7).

> *principles of natural justice. An accused person should be dealt with according to the law that applies at the time the offence is alleged to have been committed.*[99]

While the QPS did not appear to address these concerns in its response to the Committee on the submissions, the following comments were made by the QPS on the issue of retrospectivity at the public briefing:

> *Moving to the implementation of the bill and the counting of previous offences, the transition to the new arrangements fairly well maintains the policy intent. It is intended that type 1 offences committed prior to the commencement of the amendment bill are not counted retrospectively. The proposed 90-day impoundment period, which is the first impoundment period, is considered to be a suitable deterrent in and of itself. This will mean that for the first offence that occurs after the commencement, impoundment for 90 days could occur. On the second offence after commencement, forfeiture could occur. Type 2 offences committed prior to the commencement of the bill will be counted during the three-year period prior to the commencement date only if the impoundment offence is the same kind of impoundment offence as the one detected after the commencement and the previous offence was dealt with by way of notice to appear and the offender found guilty or awaiting trial. So effectively, up to the date of commencement the same process would be used to count and progress to subsequent impoundment offences. In other words, we are not retrospectively changing it on anybody.*[100]

In relation to the roll-out of the provisions contemplated by the Bill, the QPS commented as follows at the public briefing:

> *We have asked that a six-month period be provided to us from the time of assent through to the time of the commencement of this act. That gives us six months to make sure that our officers are up to speed with the relevant changes, that the relevant processes, local policies et cetera are developed and circulated. There will need to be some operational decisions made around when to tow and when not to tow, when to use numberplate removal as an option and when to use an impoundment immobilisation as an option. There is a range of policy and process that we will need to get right.*
>
> *The other thing that the Queensland Police Service will need to turn its mind to is public education—letting people know what the proposed changes are and what the impact is likely to be. The intervening period that we have asked for—and we have not received a response yet about that—is really to get everyone familiar with these changes. As I say, the amount of ground that we have covered here looks like there is an enormous change. The reality is that we are changing the vehicle impoundment scheme by adding one offence only to each of the existing types. We are only adding one offence to a type 1 and one offence to a type 2. That is the first bit. The second bit, though, which is really important, is the officers making that decision on impoundment with the public assurance in the background that that decision can be reviewed if the person wants to. That is the second big chunk of change and that is the sort of thing that we need to be certain our officers are up to speed on, aware of and able to implement in practice.*[101]

<u>Committee Comment</u>

The Committee is concerned about the retrospective nature of the relatively significant changes being proposed under the Bill involving the impoundment and forfeiture of an individual's vehicle. Accordingly, in

99 Queensland Law Society, Submission No. 15, pages 9-10.

100 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, pages 4-5.

101 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 7.

light of comments made by the QPS at the public briefing, the Committee proposes that after passage of the Bill, the commencement of the provisions are delayed for a period time to be determined by the Minister to allow the QPS to (1) inform its police officers on the practicalities involved in rolling out these changes and develop appropriate internal policies; and (2) educate the public on the effects of the changes.

Recommendation 2

The Committee recommends that the Minister for Police and Community Safety consider delaying the commencement of the amendments to the PPRA for an appropriate period, as determined by the Minister, to allow the QPS to (1) inform its officers of the practicalities involved in rolling out these changes and develop internal policies; and (2) educate the public on effects of the changes.

Additional Issues Raised in Submissions

Discrimination issue

A number of submissions received by the Committee on the Bill commented on the perceived discriminatory operation of the Bill. We set out the following extract by way of example of the types of concerns raised in this regard.

TRICK commenced its submission with the following statement in its introductory paragraph:

> *We are making this submission because we believe that the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 will be discriminatory towards car enthusiasts because hoons and car enthusiasts are deemed to be the same thing.*[102]

In response to concerns concerning the alleged discriminatory aspects of the Bill, the QPS responded as follows:

> *Modified vehicles may only be impounded through the vehicle being driven on a road while it is subject to a defect notice requiring it to be inspected by an authorised officer. Impoundment only applies if another type 2 offence has taken place within the relevant period. The Bill does not change this nor target all classic or modified vehicles.*
>
> *The number of modified vehicles being impounded is insignificant compared to vehicles impounded because of other offences. In 2011, the QPS impounded 9116 vehicles. Only 19 vehicles were impounded due to being illegally modified. Expressed differently, only 0.2% of all vehicles impounded in 2011 were due to a vehicle being illegally modified.*
>
> *The QPS contends that a vehicle owner who modifies a vehicle in compliance with the law will not be subject to this Bill. This Bill applies to every person in Queensland and does not discriminate against a person on the basis of the vehicle they lawfully own or drive.*[103]

Committee Comment

The Committee is satisfied that the question of discrimination is not a significant issue in respect of the Bill. Although, there may be a perception to the contrary by car enthusiasts, there is no evidence that the Bill promotes prejudicial or distinguishing treatment of any individual based on their membership of a certain group, nor is the Bill couched in discriminatory language.

102 Toowoomba Regional Inc. Car Klub, Submission No. 13, page 1.

103 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 4).

Unconstitutional nature of Bill

The constitutionality of the Bill was also queried in a number of submissions.

It is relevant to note in the context of the Bill, that a recent South Australian Supreme Court has ruled that certain aspects of South Australia's anti-hooning legislation are unconstitutional. In a decision handed down on 17 October 2012, the South Australian Supreme Court held that the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* (SA) (the Forfeiture Act) "*is invalid because it requires the courts to exercise powers which are incompatible with, and repugnant to, judicial power under the* [Australian] *Constitution*".[104] This decision is known as *Bell* v *Police* (see Case Note in box below for details).

Case Note: *Bell v Police* [2012] SASC 188

Facts: Mr Graeme Bell appealed an order made by the Magistrates Court in South Australia for him to forfeit his car after he had been convicted and sentenced for a third drink-driving offence in 10 years.

Judgement: There were two grounds of appeal:

The first ground relates to whether it was legal for the Forfeiture Act to operate retrospectively to capture the relevant offences. This ground of appeal was rejected on the basis that it was expressly provided in the Forfeiture Act that it applies retrospectively.

The second ground related to whether the Forfeiture Act was unconstitutional as it required the Court to impose a substantial additional criminal penalty (forfeiture) after final sentencing orders have been made. The Act was held to be "*inconsistent with the judicial integrity implication*"[105] principle and the order of forfeiture was set aside on the basis that the relevant provision was unconstitutional.

Section 12(1)(a)(iii) of the Forfeiture Act provided that the Magistrates Court must order that the convicted person's motor vehicle be forfeited, upon an application by the prosecution to do so, if the convicted person has been found guilty or at least two other prescribed offences within 10 years.

The Court (Kourakis CJ) concluded that:

> *The Forfeiture Act requires the courts of this State, on an application made by the prosecution, to impose, as a substantial additional criminal penalty, forfeiture of the motor vehicle specified in the prosecution's application after they have finally sentenced a defendant convicted of a confiscation offence. The forfeiture order substantially increases the effective penalty above that fixed by the Court for the confiscation offence in the exercise of its sentencing discretion … In imposing that additional penalty the Court act ministerially, in the sense that it acts as an instrument of the executive government, to make an order which is dictated by the very terms of the prosecution's application. … The forfeiture jurisdiction conferred on the courts of this State is incompatible with their constitutional status as courts which must be fit for investiture with federal judicial power*.

The South Australian Premier, the Honourable Mr Jay Weatherill MP, confirmed on 22 October 2012 that the matter of *Bell v Police* would be appealed to the Full Court of the Supreme Court.[106]

Upon the handing down of this South Australian decision it was reported that *"State governments across the country are scrambling to assess and redraft hoon laws"*.[107] It was further reported that:

> *The decision will influence how Queensland drafts what it says are the toughest anti-hoon laws in the country. State Police Minister Jack Dempsey's spokesman said the laws were being drafted with a close eye on the developments in SA.*

104 *Bell* v *Police* [2012] SASC 188, at page 1, per Kourakis CJ.

105 *Bell* v *Police* [2012] SASC 188, at page 2, per Kourakis CJ.

106 Challenge begins on anti-hoon law ruling, *The Sydney Morning Herald*, 22 October 2012, online.

107 Owen M, Ruling confounds hoon laws, *The Australian*, 19 October 2012, page 5.

The QLS also questioned in its submission on the Bill to the Committee whether it was appropriate to advance the Bill given that the constitutional concerns arising from the South Australian case of *Bell v Police* had not yet been settled on appeal:[108]

> *The Society is aware of a recent decision of the Supreme Court of South Australia, Bell v Police [2012] SASC 188, in which a forfeiture order under the South Australian Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 was successfully appealed. Whilst we have not been able to conduct a thorough review of the decision, in light of the fact that constitutional arguments were relied upon, we consider that detailed consideration should be given to these issues before the Bill is debated in the House.*[109]

In response to these concerns concerning the Bill being unconstitutional, the QPS responded as follows:

> *Impoundment legislation is not new. The type 1 impoundment scheme was introduced to Queensland in 2002. The type 2 impoundment scheme was introduced in 2007. No constitutional issues or challenge have arisen in relation to the Queensland schemes during its existence.*
>
> *The QPS has reviewed the South Australian decision of Bell v Police and does not consider that it has any impact on the Bill.*[110]

The QPS made a similar statement at the public briefing.[111]

Committee Comment

The Committee notes the concerns raised by submitters regarding the potential unconstitutionality of the Bill in the light of the South Australian decision of *Bell v Police* or any subsequent appeal, together with the advice from the QPS. These issues will not be resolved until any pending appeal is finalised.

The Committee has determined to take an approach similar to that of the former Scrutiny of Legislation Committee, outlined in its report on Scrutiny of Bills for Constitutional Validity.[112] The general approach of past and present committees to the issue of constitutional validity has been not to conduct a detailed examination of that aspect of bills, but to consider and report on it only where it is readily apparent such an issue exists. Where the Committee does report on an issue about the constitutional validity of a bill, its approach has almost always been to query the sponsoring Minister as to whether he or she is confident that the bill is constitutionally valid.

Accordingly, the Committee invites the Minister to outline to the House why he is confident that the Bill is constitutionally valid.

Recommendation 3

The Committee recommends that the Minister for Police and Community Safety outline to the House, in his response to this Report, whether he is confident that the Bill is constitutionally valid having regard to the South Australian case of *Bell v Police.*

108 Queensland Law Society, Submission No. 25, page 2.

109 Queensland Law Society, Submission No. 2, page 2.

110 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 5).

111 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 10.

112 Scrutiny of Legislation Committee, Report No. 26, December 2002.

Broad Discretion afforded to Police

The relevant sections empowering police to impound motor vehicles in the event that the driver is charged with having committed a type 1 or a type 2 vehicle related offence incorporate a discretion in that the police officer "*may*" impound the motor vehicle in each case.[113]

In this regard, the QCCL raises a concern about a discrepancy between the language used in the Explanatory Notes and the actual draft of the Bill. More particularly, the QCCL submitted:

> *The explanatory memorandum characterises the impounding of a motor vehicle as following automatically from an offender being charged. However, the legislation makes use of the word "may". This implies discretion in the police officer. If it was intended to follow automatically then the Parliament would use the word "must".*[114]

The QCCL commented further:

> *We submit that the discretionary employment by a police officer of the provisions enabling the automatic impoundment period to run amount to an over-empowering provision.*[115]

The CMC made the following relevant comments in its submission under the heading *"Significant police discretion for a broad range of behaviour could lead to inconsistent penalties that are not readily reviewable"*:

> *Actions that constitute an evade police offence range from simple non-compliance with a police direction to stop to driving behaviour that significantly endangers community safety. There is a risk that providing police with the discretion to determine at what point the driving behaviour was serious enough to warrant immediate impoundment could lead to inconsistencies in penalty outcomes that are not readily reviewable.*[116]

In response to this point, the QPS made the following comment:

> *The QPS considers it necessary to allow a police officer to determine when it is appropriate to impound a motor vehicle. For example, a police officer may decide not to impound a motor vehicle immediately and alternatively issue a vehicle production notice so that the driver is not left stranded in an isolated location.*[117]

<u>Committee Comment</u>

The Bill clearly provides for police officers to exercise a level of discretion in using the impoundment options available to them under the amended PPRA. The Committee is satisfied it is the intention of the Bill to use 'may' rather than 'must' to ensure such a discretion exists. The reference in the Explanatory Notes to 'automatic impoundment' relates to the removal of the requirement for an officer to apply to a court for an impoundment order and once a police officer is satisfied a vehicle should be subject to the impoundment process, it is automatically impounded (*i.e.,* after a discretion to impound has been exercised).

The Committee is satisfied that the explanatory notes are consistent with the provisions in the Bill in this regard, and more importantly, that it is appropriate to give a police officer discretion in this context as it is possible to envisage situations where a mandatory provision could be unworkable or indeed unsafe on occasion.

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113 See proposed new sections 74, 74A, 74C, 74D and 74E set out in Clauses 14-16 of the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012.

114 Queensland Council of Civil Liberties, Submission No. 15, page 2.

115 Queensland Council of Civil Liberties, Submission No. 15, page 2

116 Crime and Misconduct Commission, Submission No. 21, page 3.

117 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 11).

Interference with Personal Property Rights

Concerns were also raised in a number of submissions regarding the potential infringement of property rights of third parties in relation to a motor vehicle in the context of its forfeiture. In particular, reference is made to the proposed new section 74B(2)(b) and section 74F(2)(b). The Explanatory Notes describes the operation of these two provisions as follows:

> *Further, any right of a person to enforce a security interest under the Personal Property Securities Act 2009 (Cth) is extinguished unless the secured interest is against the State.*[118]

In this regard, the Bar Association of Queensland noted:

> *The measures together comprise a considerable interference with private property rights. There is, in the view of the Association real doubt as to whether the evidence justifies the extent of the interference. The Association urges the Committee critically to consider whether the evidence available as to the likely effectiveness of the proposed measures justifies the infringement of property rights.*[119]

In the context of the issue surrounding automatic forfeiture, the QCCL made the following point:

> *If the private property is subject to the Personal Property Securities Act 2009 then any claim by a secured party pursuant to that Act is extinguished. The Amendment Bill appears to only make provision for compensation for the expropriation where the driver is found not guilty and the motor vehicle has been disposed of. This expropriation of a motor vehicle without compensation which is undertaken in addition to any other penalty imposed constitutes a gross imbalance particularly where the forfeiture itself is not determined by a Court but by automatic operation of a legislative instrument on the commission of a second offence.*

The RACQ also made the following comments in its submission:

> *For a second offence within five years, the proposed penalty allows for the government to seize possession of the vehicle and to effectively become the owner of the vehicle and to take away the rights of anyone other than the state to that vehicle. This includes taking away the rights of any person to enforce a security interest under the Personal Property Securities Act. This could have significant ramifications that the government may not have sufficiently considered, in addition to serious adverse implications for innocent third parties who may be reliant on the vehicle for their livelihood.*
>
> *The proposed change would take away the right of a third party to enforce a security interest such as one recorded on the Personal Property Securities Register, and also has significant other ramifications that should be considered. For example, from a consumer perspective, someone could buy a used car privately, having done all the checks on the PPSR. If the interest of the government is not noted on the PPSR or it comes to light after the buyer has paid for and taken possession of the vehicle, the buyer will lose their purchase money and also ownership of the vehicle and may not, under the proposed legislation, be able to do anything about it.*
>
> *The potential buyer of the vehicle could be young and buying their first car, or a pensioner on a limited income. For those types of people to lose possession of their vehicle through no fault of their own, and to be financially disadvantaged as a result, could have very negative public perception outcomes.*

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118 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 11 and 12, respectively.

119 Bar Association of Queensland, Submission No. 24, page 1.

> *If the legislation shifts the decision-making from Magistrates to the Commissioner, it could also remove the opportunity for the background circumstances to the offence to be impartially reviewed.*
>
> *The legislation requires the Commissioner to make a decision about the application within five days of receiving it. Although this would have a positive effect on a timely turnover of the review of such applications, there is the serious and very real prospect of the application review process being rushed and not comprehensively considered.*[120]

The QLS proposed the following solution to the problems that it raised above:

> *lt is expected that financiers will have significant concerns with the proposed provisions and will require clarification on all of these issues. To avoid adverse consequences on motor vehicle financing it is suggested that some additional express protections should be included for financiers whose ordinary business includes motor vehicle financing and leasing.*[121]

Similar concerns were raised by the Committee in the Public Briefing. In response to a question regarding who gets the money in relation to a motor vehicle that is sold where a finance company is involved, the QPS advised:

> *I can tell you there is a regime set up under the act. I think it is the same as it has been; I do not think we have made any changes to it. Basically there is a hierarchy of where those funds are distributed to. So if the vehicle is forfeited and sold, the first bite of the cherry goes to the expenses associated with the sale—so effectively the auctioneer, I would say, gets paid. The next person who gets paid is the tow truck operator and then the storage fees. That is the next person to get paid. This is all current legislation and we have not changed that. If money is owed to a financial institution, the next bite of the cherry goes to that institution. If there is any money left over, then it goes to the owner—no. Our final one here is that when the vehicle is sold the payment goes into the consolidated fund. Effectively everybody who has an interest in it, if you like, gets paid and then whatever is left over at the end of the day goes to consolidated revenue.*[122]

The Committee notes that section 121 of the PPRA is the relevant provision dealing with the application of the proceeds of sale in the event that the Commissioner decides to sell the motor vehicle. In particular, section 121(2) provides:

> *The proceeds of the sale are to be applied in the following order—*
>
> *(a) in payment of the expenses of the sale;*
>
> *(b) in payment of the costs of removing and keeping the motor vehicle and for searching registers for giving notice of the motor vehicle's impounding;*
>
> *(c) if there is an amount owing to a person under a security interest registered for the motor vehicle under the Personal Property Securities Act 2009 (Cwlth)—in payment of the amount owing to the holder of the security interest;*
>
> *(d) if the motor vehicle is sold under section 118—in payment of any balance to the owner;*
>
> *(e) if the motor vehicle is sold under section 120—in payment to the consolidated fund.*

120 RACQ, Submission No. 27, page 6.

121 Queensland Law Society, Submission No. 25, page 5.

122 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 14.

Section 123 of the PPRA is also relevant. This provision deals with third party protections from forfeiture orders. Under the current section 123(1) of the PPRA, a person, who has an interest in a motor vehicle the subject of a forfeiture order, may within six months apply to the court (the applicant) for an order to either transfer the motor vehicle to the applicant or to pay to the applicant the value of the applicant's interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interested under section 121(2)(c) (see above).

Clause 75 of the Bill proposes to amend section 123 by extending "*the third party protections certain persons have in forfeited motor vehicles*".[123] In relation to this change, the Explanatory Notes provide:

> *Persons who may rely on this section are extended to include persons who have an interest in a motor vehicle forfeited under the type 1 or 2 vehicle impoundment scheme other than the defendant. These persons may apply to a court which may order the State [to]:*
>
> - *transfer the motor vehicle to the applicant if the motor vehicle is still vested in the State; or*
> - *pay the applicant the value of their interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest if the motor vehicle is no longer vested in the State.*
>
> *This application must be made before the end of 6 months starting on the day the motor vehicle became the property of the State unless the determining court gives leave.*[124]

The "extension" of section 123 amends the section to include those persons with an interest in the motor vehicle which is automatically forfeited under the new provisions as distinct from the situation where the motor vehicle is forfeited under a court order.

Committee Comment

While the concerns of submitters appear, at first blush, to raise significant issues with the impoundment scheme, the Committee notes that the provisions in the Bill dealing with the disposal of a motor vehicle after impoundment or forfeiture are not new, but have simply been amended to cater for the situations that arise under the amended scheme.

Section 121 of the PPRA remains relatively unchanged by the Bill and specifically provides for persons who have amounts owing to them under a security registered for the motor vehicle under the *Personal Property Securities Act 2009* (Cwlth) to receive payment of an amount owing to them. The relevant sections in the PPRA have been appropriately amended to allow the situations that arise under the amended impoundment scheme to dovetail into the existing scheme. The Committee is satisfied that the rights of third parties will be adequately protected under the Bill as they currently are in the existing scheme.

An additional provision has been added to the scheme to cater for the situation where the disposal or sale of a motor vehicle occurs prior to a driver being found not guilty of the offence or the proceeding for the offence is discontinued (section 121A). While the Committee is hopeful that this provision would not be used too often, it is considered to be a welcome addition to the scheme as it allows for compensation to be paid to an owner (in an amount determined by the Minister) on the occasion that the vehicle is prematurely sold or disposed of.

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123 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 23.

124 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 23.

Unintended Consequences – Increase in Evasion of Police

One of the unintended consequences foreshadowed in a number of submissions is the possibility of drivers attempting to evade police to prevent their cars being impounded or forfeited. This aspect was highlighted in the CMC's submission under the heading "*The threat of immediate impoundment risks may create perverse incentives*" referred to above.

Similarly, TRICK noted in its submission:

> *There may be more high speed chases if people feel the Police will have all the power – people may take the risk of trying to escape if they feel they do not have a **reasonable opportunity** to prove their innocence.*[125]

By way of a further example, Glen Adams made the following related points in his submission:

> *Many enthusiasts put significant cash into their cars ($50,000 to $150,000 or more is not uncommon). Most of these vehicles are only very rarely driven.*
>
> *I believe that the new anti-hoon legislation if adopted, will result in more high speed chases as the belief will be that there is nothing to lose as the QPS is going to take the car anyway.*
>
> *Incorrect logic I know, but if logic were part of a hoons thought processes, they wouldn't be hooning in the first place. I also believe that crushing a 'hoons' car (that is usually worth next to nothing) will not deter 'hoons' from dangerous driving. From observation it is apparent that these vehicles are usually cheap, readily available older model cars.*[126]

Todd Holdsworth also pointed out in his submission as follows:

> *Over the years I have learned there is a very small minority of people who will do whatever they want, whenever they want despite the law. I know this is no different for the motor vehicle enthusiast scene, and if this Bill is passed, there will be people who will try to outrun the Police for fear they will have their car confiscated or crushed, which again will make our roads more of a danger. These types of instances will end up in heartache and will headline the media.*[127]

Additionally, the ACMC, made the following point:

> *It could also be argued that the impending threat of confiscation and destruction of an individual's vehicle may lead to an increase in police evasion (particularly in youth) [as] a possible, unintended but unacceptable consequence. We therefore propose that the proposed legislation focus on plate seizure or immobilisation rather than impoundment or destruction. Not only does this approach reduce impoundment burden whilst delivering the same outcome and delivers enhanced efficiencies, but we would suggest, significantly reduces the possibility of disproportionate reactions.*[128]

In response to these concerns, the QPS advised:

> *The QPS Safe Driving policy encourages police to consider alternatives to the initiation of a pursuit. Strategies such as subsequent investigation and follow up will continue to be employed as an alternative to pursuit where policy or community safety considerations mean that the pursuit of a vehicle is not an appropriate option. QPS pursuit policy does not permit the pursuit of vehicles for traffic offences or for the offence of evade police.*

125 Toowoomba Regional Inc. Car Klub, Submission No. 13, page 2.

126 Glen Adams, Submission No. 10, page 2.

127 Todd Holdsworth, Submission No. 14, page 2.

128 Australian Confederation of Motor Clubs, Submission No. 12, page 4.

> *The QPS is not aware of any data from other jurisdictions that indicates that an increase in impoundment periods has resulted in an increased incidence of high speed pursuits.*
>
> *Chapter 22 of the PPRA already makes provision for the impoundment and forfeiture of a motor vehicle used in an evade police offence on an application to a court. The periods that apply are currently 3 months for a first offence, and forfeiture for a subsequent offence.*
>
> *Therefore, the proposed amendments do not alter the severity of the impoundment or forfeiture periods that are currently in place. The only practical change to the existing impoundment and forfeiture of vehicles involved in an evade offence, is the provision for immediate roadside impoundment.*
>
> *The CMC contends that immediate impoundment for evade offences could create 'perverse incentives' for offenders to flee police and take more risks in doing so.*
>
> *The inclusion of evade police in the Chapter 4 regime ensures that vehicles involved in such offences are subject to the same impoundment and forfeiture processes as other, arguably less serious, type 1 and 2 offences. A failure to ensure such consistency, may itself, lead to the creation of perverse incentives. For example, a drink driver may choose to evade police to avoid detection for a drink driving offence knowing that if they are later proceeded against for the evade offence, impoundment would neither be immediate, nor a certainty.*[129]

Committee Comment

The potential for the legislation to lead to an increased incentive for drivers to "evade police" to escape impoundment or forfeiture of their motor vehicle is concerning. It is anticipated, however, that any increased desire to evade police will be kept in check by including "evade police" as a type 1 offence. Additionally, it is the Committee's understanding that with the advent of different technologies and additional strategies invoked by the police, there is now a greater incidence of subsequent capture of vehicles which have been involved in an "evade police" episode.

As knowledge of police capabilities in this area becomes more widespread, it is anticipated that drivers contemplating evading police will be more likely to view it as a futile exercise and refrain from engaging in such behaviour.

Further, it is hoped that once the QPS is able to educate the public on the new laws, it will be understood that the Bill is not all about crushing expensive cars as purported in some of the submissions, but about improving road safety across the board for all Queensland drivers and passengers on Queensland roads.

Unintended Consequences – Catching Late Registration Payers

As the failure to pay one's car registration or renew one's license are classified as type 2 offences, it is possible that many people, not ordinarily considered to be 'hoons', might find their vehicles impounded should they be late with payment more than once in a five year period, or even have their cars forfeited if they were to be late with payment more than twice over a five year period.

These issues are discussed at length by Gary Lambert in his submission to the Committee. Mr Lambert concluded:

> *Many of your constituents who would never consider themselves 'hoons' are likely to face automatic confiscation of their vehicle for a second offence in a 5 year period. With these offences having a limited nexus with road fatalities surely this cannot be your intention.*[130]

129 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, pages 8-9).

130 Gary Lambert, Submission No. 16, page 2.

Committee Comment

The Committee notes the new mitigation provisions set out in clause 24 of the Bill which specifically allow the Commissioner or his delegate to release an impounded vehicle if the impoundment is due to the vehicle being unregistered or the driver being unlicensed and the offence has subsequently been remedied.

These new provisions would operate to mitigate the hardship caused to individuals whose cars might be impounded due to the late payment of registration fees or late renewal of their driver's license.

The Committee encourages the QPS to work with the Department of Transport and any other relevant governmental department or body to ensure that adequate public education is conducted to ensure that all drivers are aware of the consequences of being late with the payment of car registration or the renewal of their driver's licence.

Effectiveness of Impoundment schemes

A number of submissions queried the effectiveness of impoundment schemes. Notably, the Bar Association of Queensland made the following statements in its submission:

> *The Association submits that the available evidence is insufficient to draw any conclusions about the effectiveness of impoundment schemes. Indeed, what does emerge is that other forms of policing - such as increased police presence - may be significantly more effective as a deterrent.*
>
> *Given these matters, the Association is concerned that the legislative scheme is insufficiently evidence based. On the other hand it involves a significant interference with property rights.*[131]

As pointed out in the submission by the ACMC, it was less than a year ago that the Queensland Parliament was deliberating a similar Bill, being the Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011. The 2011 Bill lapsed on 19 February 2012 due to the impending election, however comments from the Explanatory Notes from the 2011 Bill are instructive:

> *The Queensland Police Service (QPS) conducted an evaluation of the type 2 vehicle impoundment scheme. As a result of this evaluation, recommendations were developed that were designed to improve this scheme. The QPS has identified other initiatives that have been included into these amendments to further improve both type 1 and 2 vehicle impoundment schemes. These amendments will improve the efficiency of these schemes and enhance consistency with other Australian jurisdictions.*[132]

Under the 2011 Bill, the initial impoundment period was recommended to be increased from 48 hours to seven days for type 1 and type 2 offences. As the ACMC pointed out:

> *No evaluation by QPS has been referenced in the recent months after the 2011 Bill was tabled, that 90 day initial impoundment will be more effective than the 7 days initial impoundment proposed in the 2011 Bill.*[133]

Furthermore, the ACMC refers to research by CARRS–Q that concluded that increasing impoundment periods to three months "*could perhaps make the problem worse*".[134] The following additional quote from the CAARS-Q paper noted in the submission from the ACMC is instructive:

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131 Bar Association of Queensland, Submission No. 24, page 3.

132 Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011, *Explanatory Notes*, page 1.

133 Australian Confederation of Motor Clubs, Submission No. 12, page 12.

134 See Australian Confederation of Motor Clubs, Submission No. 12, page 12 which quotes from Leal, Nerida L. and Watson, Barry C and Armstrong, Kerry A. (2010), Managing illegal street racing and associated risky driving

> *While it makes intuitive sense to increase the penalty for hooning in attempt to reduce this behaviour, it is important that policy makers and the general public are aware that this approach is not supported by empirical evidence. The results of this study and some previous applications of deterrence principles to road safety issues highlight the need to look beyond legal solutions to dealing with the hooning problem in Australia. Although thorough exploration of these "other" factors associated with hooning behaviour was beyond the scope of this study, future research into these issues is required to identify other targets for intervention that may be more beneficial than increasing the length of vehicle impoundment periods, despite the popularity of this response among the general public and politicians.*[135]

The ACMC concludes as follows on this issue:

> *Deterrence and punishment can be effective tools in addressing anti-social driving practises, but we consider them to be but one approach to what is a societal problem. We need to understand the causation of the problem; we need to accept that driver attitude requires a psychological approach, which incorporates both incentive and deterrence particularly directed towards our younger drivers.*[136]

In response to the contention that there is little research to indicate the effectiveness of vehicle impoundment as a deterrent, the QPS advised:

> *National and international research and evaluation provides further support for vehicle impoundment offences. In New Zealand 25,000 vehicles were impounded for disqualified/unlicensed driving offences between May 1999 and May 2001. Over the same period, New Zealand achieved a reduction of unlicensed drivers involved in fatalities (1998 - 10% to 2000 - 6.9 %) and a further one third reduction of casualties attributed to unlicensed drivers. Further, there was a one third drop in the number of unlicensed driving offences detected. Saskatchewan, Canada impounded 2,500 vehicles a year for between 30 and 60 days. Early in the Saskatchewan program they found a 50% reduction in disqualified driving. Fourteen states within America have impoundment laws and there is evidence to suggest that the impoundment legislation has resulted in a decrease of unlicensed drivers and driving under the influence of alcohol. An evaluation of Californian impoundment legislation indicated that impoundment legislation decreased drink driving and unlicensed driving by about 20 % and also reduced crashes involving these offences by about 24%. It was also found that impoundment had a greater impact on repeat offenders.*[137]

During the Public Briefing, the QPS referred to research undertaken by the MUARC concerning the effectiveness of vehicle impoundment legislation.[138] This research was conducted in Victoria where, at the time, vehicles were impounded for 48 hours for the first offence and 90 days for the second offence committed within a three year period followed by forfeiture for the third conviction within that period. The resulting report noted that relatively few evaluations have been conducted concerning the effectiveness of

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behaviour: An Australian perspective, Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario, page 13.

135 See Australian Confederation of Motor Clubs, Submission No. 12, page 12 which quotes from Leal, Nerida L. and Watson, Barry C and Armstrong, Kerry A. (2010), Managing illegal street racing and associated risky driving behaviour: An Australian perspective, Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario, pages 13 -14.

136 Australian Confederation of Motor Clubs, Submission No. 12, page 12.

137 Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, page 14).

138 See Transcript of Proceedings of the Public Briefing on the Bill, Wednesday, 13 February 2012, page 6.

vehicle impoundment, with those that had been conducted being undertaken in the US.[139] The MUARC report is cautious about drawing conclusions from these US studies as noted below:

> *While these US evaluations indicate support for vehicle impoundment sanctions, caution should be taken in generalising these outcomes to the Australian legislation due to the different driving populations governed by this legislation. Vehicle Impoundment Legislation in the US has typically been introduced to target drink drivers or unlicensed drivers, as compared to Australian legislation targeting hoon driving.*[140]

In its conclusion to its report on the effectiveness of vehicle impoundment legislation, MUARC cautions as follows:

> *Vehicle impoundment legislation has been implemented Australia-wide to address the antisocial driving behaviour commonly known as hooning. Since its introduction many states have modified their original legislation. These modifications range from expanding the types of offences incorporated under the legislation, to increasing the impoundment time, and introducing more severe penalties such as crushing of vehicles. While these sanction increases are a reflection of the importance placed on dealing with hoon drivers, by legislators and the public, they commonly occur in reaction to highly publicised hooning incidents rather than from empirically based research recommendations. Further research is needed to explore both the road safety risks posed by hoon drivers and effective deterrence mechanisms.*[141]

Committee Comment

The experts appear to be divided as to the effectiveness of impoundment schemes. On balance, the Committee is satisfied that impoundment schemes *per se* are an effective measure to deter 'hooning' and other types of offences and the improvements contained in the Bill will enhance Queensland's impoundment scheme and increase its effectiveness.

Alternative Proposals

In relation to a number of the issues raised above, certain of the submissions highlighted alternative proposals. For example, the ACMC outlined a number of alternative proposals as follows:

Confiscation of Registration Plates for Type 1 offences:

> *A proposal which would allow the immediate confiscation of registration plates for Type 1 offences with a court appearance within 7 days, would ensure that an individual's rights and liberties would not be significantly impinged, would prevent continued breach, negate constitutional challenges, similar to Bell v Police in South Australia recently and would continue to meet the understood intent of the current proposed legislation. An individual's rights and liberties would be protected by due judicial process and oversight. Separation of powers is the*

139 Scully M, Clark B, Hoareau E, 'Hooning' around: A focus group exploration into the effectiveness of Vehicle Impoundment legislation, Monash University Accident Research Centre, ARSRPE Conference Paper, November 2011, page 2.

140 Scully M, Clark B, Hoareau E, 'Hooning' around: A focus group exploration into the effectiveness of Vehicle Impoundment legislation, Monash University Accident Research Centre, ARSRPE Conference Paper, November 2011, page 3.

141 Scully M, Clark B, Hoareau E, 'Hooning' around: A focus group exploration into the effectiveness of Vehicle Impoundment legislation, Monash University Accident Research Centre, ARSRPE Conference Paper, November 2011, page 11.

cornerstone of our political and judicial system and need not be undermined to achieve worthy legislative goals.[142]

Carve out of Type 2

We find that the inclusion of Type 2 offences are inconsistent with the research papers cited as justification for enhanced legislation targeting 'hoon' behaviour. As offences they comprise 92% of vehicle seizures but undermine the impact and importance that Type 1 offenses have on road safety. We therefore propose that whilst the government should proceed with clamping down on actions which directly constitute 'hoon' behaviour (Type 1 offences, extended to include the rest of the 'Fatal Five') that the remaining Type 2 offences should be excluded from the current proposed legislation, pending a review by a Ministerial workgroup into the broader issues of vehicle safety and the societal problem of anti-social driving practices.[143]

Focus on the "Fatal Five"

A number of submissions referred to the "Fatal Five" (being the five issues most likely to result in a road fatality) as being the appropriate starting point for legislation of this nature.

For example, Gary Lambert noted in his submission that:

In order to find the solution I believe the government needs to move away from the current narrow focus of responding to perceptions of 'hooning' and instead take a more broad approach by restructuring the laws to properly address the most deadly road-safety offences.

- *Including all of the 'Fatal Five', including mobile phone use, as impoundment offences makes sense.*
- *As does removing all of the minor type, and nuisance type offences such as unlicensed driving, driving an unregistered vehicle, and 'burnouts' from the impoundment scheme.*
- *The automatic impoundment provisions are unfair and oppressive and should be removed. A well thought out system will gain efficiencies elsewhere.*[144]

The ACMC suggested that the "Fatal Five" be considered type 1 offences as follows:

To maximise the important message being sent by the government, we argue that, the proposed legislation should focus exclusively on actions identifiable as 'hoon' behaviour and that significantly impact on road safety and fatalities. To that end we propose that 'high-range drink-driving' and 'high end speeding" be regarded as Type 1 Offenses. We would go further to say that all of "Fatal 5" including 'Inattentive driving' (mobile phone use) should be included as Type 1 Offences. Queensland has the opportunity to be the first state in Australia to get serious about tackling the five leading causes of road fatalities and align these severe penalties with "the Fatal Five".[145]

Committee comment

The Committee commends the various individuals and organisations that took time to not only point out issues in the Bill but also made suggestions on how to improve the legislation further in their submissions. The Committee realises that while some of the suggested alternative proposals might not necessarily be

142 Australian Confederation of Motor Clubs, Submission No. 12, page 13.
143 Australian Confederation of Motor Clubs, Submission No. 12, page 3.
144 Gary Lambert, Submission No. 16, page 3.
145 Australian Confederation of Motor Clubs, Submission No. 12, page 2.

appropriate or timely in relation to the current Bill, the Committee anticipates that these suggestions and others outlined in the submissions might be useful to the QPS in the context of future changes to the PPRA.

2.2 Amendments to the *Corrective Services Act 2006*

2.2.1 Overview

In relation to the amendments to the *Corrective Services Act 2006* (CSA) proposed by the Bill, the Explanatory Notes provide:

> *Additionally, the Bill amends the CSA to provide that remanded prisoners, not sentenced to a term of imprisonment, can only be given a maximum or high security classification and remove the requirement to review remanded prisoners' security classification if they are classified as a high security.*
>
> *The proposed amendments of the CSA will reduce red tape and aligns with the Department of Community Safety's commitment to redirect resources to front line services.*[146]

2.2.2 What is a "remanded prisoner"?

The term "remand" is used generally to describe pre-trial detention, in other words, detention prior to a trial, conviction or sentencing. If a suspect is not released on bail then that suspect is remanded in custody ahead of trial, usually in the interests of "public safety". Accordingly, a "remanded prisoner" is a prisoner who is in jail but whose case has not yet been finalised in the court system or who is awaiting sentencing.

Current Situation

Under **section 12(1)** of the CSA (Prisoner security classification), when a prisoner is admitted to a corrective services facility for detention, the chief executive must classify the prisoner into one of the following security classifications:

(a) maximum;

(b) high; or

(c) low.

Section 12(2) of the CSA provides that the chief executive must have regard to each of the following when deciding a prisoner's security classification:

(a) the nature of the offence;

(b) the risk of the prisoner escaping;

(c) the risk of the prisoner committing a further offence and the impact that would have on the community; and

(d) the risk that the prisoner poses to himself or herself, and other prisoners, staff members and the security of the corrective services facility.

Under **section 13(1)** of the CSA, the chief executive must review a prisoner's security classification:

(a) at intervals of not longer than 6 months for a prisoner with a maximum security classification; and

(b) at intervals of not longer than 1 year for a prisoner with a high security classification; and

146 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 2.

(c) when the court orders the change in respect of a prisoner whose term of imprisonment is changed by a court order.

In the case of a prisoner with a low security classification, the chief executive may review the security classification under **section 13(2)** of the CSA, for example, if the prisoner's behaviour deteriorates.

Changes proposed by the Bill

Clause 82 of the Bill amends section 12 of the CSA. In relation to section 12, under the Bill, a **new sub-section (1A)** is proposed to be introduced which provides that when a prisoner is admitted to a corrective services facility for detention on remand for an offence and that prisoner is not serving a term of imprisonment for another offence, the person must only be classified into two not three security classifications, being:

(a) high; or

(b) if the chief executive decides – maximum.[147]

Clause 83 of the Bill amends section 13 of the CSA. In relation to section 13, under the Bill, a **new sub-section (1A)** is proposed to be introduced which provides that the chief executive need not review the security classification of a prisoner with a high security classification if the prisoner:

(a) is being detained on remand for an offence; and

(b) is not serving a term of imprisonment for another offence.[148]

2.2.3 Submissions

The Committee received one submission on this aspect of the Bill from the Commission for Children and Young People and Child Guardian.

In the conclusion to its submission, the Commission for Children and Young People and Child Guardian recommended as follows:

> *1. The proposed amendments to the* Corrective Services Act 2006 *to remove the ability to classify prisoners on remand as low security and to remove the requirement to review the high security classification of prisoners on remand should not apply to 17 year olds on remand.*
>
> *2. The Commission is also concerned about potential other negative consequences which may flow from the inability of a 17 year old on remand to be classified as low security and further information should be considered by the Committee to this end before applying the proposed changes to 17 year olds on remand in adult correctional facilities.*[149]

The QPS in its response to this submission made the following comments:

> *The concern raised by the Acting Commissioner for Children and Young People and Child Guardian appears to be premised on two incorrect assumptions, that a) 17-year old prisoners on remand are currently placed at low security correctional centres and b) secure prisons are not located in regional areas.*

147 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, Clause 82.

148 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, Clause 83.

149 Commission for Children and Young People and Child Guardian, Submission No. 19, page 2.

The amendments to the Corrective Services Act 2006 *will not change the practical management within the correctional system of 17-year old prisoners on remand or any other prisoner cohort.*

In practice, no prisoners on remand, including 17-year olds prisoners on remand, are classified as low security. Queensland Corrective Services classifies remanded prisoners as at least high security due to the risk they present given their alleged offences have not been determined and their future is uncertain. All high classification prisoners, whether sentenced or on remand, are accommodated in secure facilities with a perimeter designed to prevent escape.

The proposed requirement for remand prisoners to be classified as high (or maximum if considered necessary), will not prevent 17-year old prisoners, or any other prisoner cohort, from being accommodated within reasonable distance of their place of origin. Queensland Corrective Services operates and contracts secure prisons for men in the larger regional centres, including Cairns (Mareeba), Townsville, Rockhampton and Maryborough. These prisons accommodate both remand and sentenced prisoners, including 17-year olds on occasion. The Townsville Correctional Complex also includes a separate secure facility for remand and sentenced women prisoners.

In the south-east corner, Arthur Gorrie Correctional Centre is the primary remand centre for male prisoners. All high security women prisoners in southern Queensland, including remand prisoners and 17-year old female prisoners, are accommodated at the Brisbane Women's Correctional Centre. Male 17-year old prisoners are accommodated in the youthful offenders unit at Brisbane Correctional Centre. This unit was established to accommodate the larger number youthful prisoners in the south-east corner.

All 17-year old prisoners are managed according to Queensland Corrective Services' youthful offender procedures. A separate youthful prisoners procedure exists for Brisbane Correctional Centre to take into account the dedicated youthful offenders unit at that centre.

Applying the hypothetical example provided by the Commission for Children and Young People and Child Guardian, a male 17-year old prisoner from Townsville would in usual circumstances be accommodated on remand at the secure Townsville Correctional Centre. It is highly unlikely there would be an operational requirement for the prisoner to be accommodated at Brisbane Correctional Centre (or any other prison) unless such a change in placement would be in the prisoner's best interest and requested by the prisoner.[150]

Committee Comment

It appears from the Explanatory Notes that the main objective of these changes is to reduce red-tape and to re-direct resources to front line services. The Committee observes that the main purpose is to reduce the prisoner security classification for remanded prisoners from three to two options, being (a) high, or (b) maximum. It is proposed under the Bill that the third option of a "low" security classification is to be no longer available for prisoners on remand. This procedural change appears to be consistent with what the Committee anticipates must happen in practice, in the sense, that most, if not all, prisoners who are detained on remand are likely to be detained in the interests of "public safety" or other similar reason. Accordingly, such prisoners are likely to be classifiable as either "high" or "maximum" security prisoners.

Accordingly, after examination of the proposed amendments to the CSA set out in the Bill and consideration of the various policy objectives that are being pursued by these amendments, the Committee is satisfied that these amendments ought to be passed.

[150] Letter from the Minister for Police and Community Safety, 8 February 2013, (Attachment, pages 15-16).

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

A number of proposed amendments contained in the Bill will impact on the rights and liberties of individuals by simply expanding the category of offending driver '*hooning*' behavior and increasing the penalties associated with such offences. As a consequence it is anticipated that a greater number of drivers will fall foul of the '*hooning'* provisions by the very nature of the amendments and be subject to more significant sanctions than was previously the situation under the current scheme.

Relevant amendments include:

- Increasing sanctions for type 1 vehicle related offences to vehicle impoundment for 90 days on a first offence (section 74(3)) and vehicle forfeiture for a subsequent offence committed within 5 years of the first (section 74B);
- Increasing sanctions for type 2 vehicle related offences to impoundment for 7 days on a second offence (section 74C(3)), 90 days for a third type 2 offence (section 74D(3)) and vehicle forfeiture for any subsequent type 2 vehicle related offence (section 74F(2));
- Expanding the category of people who will be caught by the impoundment scheme for second and subsequent type 2 related vehicle offences by removing the requirement that repeat type 2 offences must be the same kind of type 2 offence as the previous type 2 offence (see clause 7 omitting s.70A of the PPRA and see also transitional provisions -sections 873 and 874);
- Amending the category of type 1 offences to include "evade police" offences (s.754 of the PPRA) and the category of type 2 offences to include offences of exceeding a speed limit by more than 40km/h ("high end speeding");
- Increasing the relevant period for calculating impoundment offences from 3 years to 5 years (subject to the transitional provisions in new chapter 24 part 13 (sections 871-876) of the PPRA); and
- Amending the impoundment and forfeiture schemes to operate automatically on issue of a TIN (see new section 71(5)) rather than by arrest/issue of a Notice to Appear and authorities making a forfeiture application to the Court.

As a more detailed example, **Clause 7** omits section 70A of the PPRA *(see also transitional provisions sections 873 and 874)* thereby expanding the category of people who will be caught by the impoundment scheme for second and subsequent type 2 related vehicle offences by removing the requirement that repeat type 2 offences must be the same kind of type 2 offence as the previous type 2 offence.

It is relevant to note the diversity of offending behavior captured as 'type 2 offences' and that it is possible that many of the 'type 2' offenders may not necessarily realise that any subsequent type 2 offence within the relevant period will render them liable to impoundment, even offences of a more

administrative nature (e.g., driving on an expired licence, or driving an unregistered and uninsured vehicle).

All of these changes will impact on the rights and liberties of individuals who are caught by the operation of these provisions and have their vehicle immobilised, impounded or forfeited as a result. In many instances the vehicle owner who is at risk of losing use or possession of their vehicle may not have been the person responsible for the offending behavior (see below regarding avenues of review for such persons). In any event, the vehicle owner will be liable to pay costs of the impounding, including towing and storage costs for the duration of the impoundment period.

Justice requires that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied. This principle was recognised by Chief Justice Mason of the High Court, in *Nationwide News Pty Ltd v. Wills*[151] who stated:

> *[I]n determining whether that requirement of reasonable proportionality is satisfied, it is material to ascertain whether, and to what extent, the law goes beyond what is reasonably necessary or conceivably desirable for the achievement of the legitimate object sought to be attained and, in so doing, causes adverse consequences unrelated to the achievement of that object. In particular, it is material to ascertain whether those adverse consequences result in any infringement of fundamental values traditionally protected by the common law...*

Committee Comment

In furtherance of fundamental legislative principles, provisions designed to give effect to policy should be reasonable, appropriate and proportional. This means, therefore, that a key issue for the Committee in its consideration of this Bill is whether it believes the proposed operation of the impoundment scheme under these amendment provisions is a proportionate response to the 'mischief' the scheme is trying to address. The Committee is satisfied that, for the reasons set out in Section 2 of this Report, the proposals contained in the Bill are a proportionate response.

3.1.1 Administrative Power

Section 4(3)(a) of the *Legislative Standards Act 1992,* relates to whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, among other things, the legislation - makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Traffic Infringement Notices

As highlighted in Part 2 of this Report, **Clause 8** of the Bill seeks to amend section 71 of the PPRA to deem that proceedings commence automatically when an offender is issued with a TIN for a vehicle related offence, rather than requiring they be arrested or served with a Notice to Appear. Where a TIN is issued and the defendant opts to pay the fine imposed they may avoid having to have the charge heard before the court. Currently the PPRA provides that a person is taken to be charged with a vehicle related offence for the purposes of the impoundment provisions when they are arrested or served with a Notice to Appear and the person charged with a vehicle related offence must appear before a Magistrate to answer the charge.

Committee Comment

As set out in Part 2 of this Report, the Committee considers there is a benefit to an offender in not requiring them to front the Court on every occasion, should they wish to pay the fine. However,

[151] 1991–1992.177 Commonwealth Law Reports

should a person wish to contest an offence, the ability exists to complete the required paperwork and elect to have the matter heard by a Magistrate. The ability to elect to have the matter heard by a court is clearly an appropriate review mechanism maintained in the Bill.

Impoundment Notices

After charging an owner/driver with an impounding offence the police currently have 48 hours to apply to the Magistrates Court to have the vehicle become the subject of an impounding or forfeiture order (section 85, 85A of the PPRA). On the hearing of that application, the aggrieved parties have a right to be heard and to have the issues determined by the Court.

Clause 30 of the Bill seeks to delete sections 85 and 85A (the application for impounding order provisions) for redundancy, because under the proposed scheme vehicles will be impounded or forfeited automatically upon an offender being charged. Other sections relevant to making applications to the courts have also been omitted (see sections 87, 87A, 90, 90A, 92, 92A, 96, 96A, 99A and 99B). This effectively shifts the impoundment regime from being part of a court process to an administrative process as the police may proceed to actual impoundment and forfeiture without any supervision by a court. In a corollary to this a court will no longer be able (except in the case of motorbikes -see cl. 48 amending section 102) to order an offending driver perform community service in lieu of impoundment or forfeiture of the vehicle used in the commission of the offences.

Clause 24 (new section 79B) provides for the release and return of impounded or immobilised motor vehicles upon successful application to the Commissioner of Police (or his delegate) by an eligible person (the owner or usual driver). Grounds for release are:

- The impoundment offence occurred without the vehicle owner's consent;
- The impoundment will cause severe financial hardship to the applicant or their family by depriving the applicant of the means to earn a living;
- The impoundment will cause severe physical hardship to the applicant or their family, other than by depriving the applicant of the means to earn a living (eg. where the owner/usual driver lives in an isolated/remote area not serviced by public transport and has no other means of transport to town centres);
- The vehicle was impounded because it was unregistered or the driver unlicensed and the offence has been remedied (section 79E); or
- There were no reasonable grounds to impound or immobilise the motor vehicle.

The Commissioner or his delegate has five business days where practicable to make a decision on the application so that successful applicants have their vehicles returned expeditiously. Unsuccessful applicants may appeal the Commissioner's decision to the Magistrates Court (section 79J).

Committee Comment

Again, as set out in Part 2 of the Report, the Committee considers these that avenues of review afford an appropriate opportunity to review the administrative power vested in the police officers exercising the administrative discretion to impound a vehicle.

3.1.2 Issues of Natural Justice

Arguably, the automatic imposition of immobilising, impounding or forfeiture sanctions remove a motorist's right to the presumption of innocence by imposing a penalty on them before they are given an opportunity to challenge the charge before the courts. In addition, the relevant impounding sections (74A and 74C-74E) afford police a discretion in that the officer *may* impound the vehicle where relevant offences are alleged to have been committed.

Where the imposition of punitive sanctions is at the discretion of the officer it is possible that there could be inconsistencies in how alleged offenders are dealt with by officers with consequential inconsistent penalties being imposed.

Committee comment

Whilst some discretion is welcome in that it would, for example, be inappropriate for officers to impound an offender's vehicle if that seizure would leave the person stranded in a remote setting late at night, whenever discretion is employed it is almost inevitable that there will be inconsistencies in approach and in sanctions imposed by different officers in different situations.

It is hopeful that the QPS will be able to develop appropriate internal policies to assist its members in the operation of the new provisions to avoid inconsistencies from occurring and ensuring all officers are on the same page when enforcing these provisions.

3.1.3 Onus of Proof

Generally, legislation should not reverse the onus of proof in criminal proceedings without adequate justification (*Legislative Standards Act 1992,* section 4(3)(d)). This means that legislation should not, without adequate justification, make it the responsibility of an alleged offender to prove their innocence, for example, by disproving a fact the prosecution would otherwise be obliged to prove. Generally, for a reversal of onus to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and a situation where the defendant would be particularly well positioned to disprove their guilt.

The former Scrutiny of Legislation Committee had noted that reverse onus provisions are a natural extension of the basic common law principle that the burden of proving or negativing a state of affairs should rest on the person who has superior or peculiar knowledge of the essential facts.[152] Justification for the reversal is therefore sometimes found in situations where the matter the defendant is being asked to prove is peculiarly within the defendant's knowledge and would be extremely difficult, or very expensive, for the State to prove.[153]

There are obviously significant 'rights' implications for vehicle owners who were not the offending drivers when their vehicle becomes subject to immobilisation, impounding or forfeiture, through no fault of their own.

Clause 24 recognises this aspect of the impoundment regime and inserts a new section 79C into the PRRA which allows for a vehicle owner to apply to the Commissioner for the release of an impounded or immobilised motor vehicle on the ground that the prescribed offence happened without the vehicle owner's consent. Similarly, **clause 57** replaces the current section 107[154] of the PPRA to provide that it in a proceeding for an impounding order or forfeiture order in relation to a motorbike noise order offence, it is a defence for an owner of the motorbike to prove that the offence happened without their knowledge and consent.

A vehicle owner relying on section 79C or section 107 therefore has the onus of establishing they neither had knowledge of, nor consented to, the offending behavior that involved their vehicle.

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152 *Alert Digest* No.6 of 2002, pp. 21-22.

153 *Alert Digest* No.3 of 2005, pp. 6–7; *Alert Digest* No.1 of 2005, p.10 & p.14; *Alert Digest* No.7 of 2004, pp. 7-8; *Alert Digest* No.7 of 2003, pp.44-45; *Alert Digest* No.6 of 2002, pp. 21-22; *Alert Digest* No.2 of 1997, p.11.

154 The current s.107 provides for essentially the same defence as the proposed s.107 except the current s.107 relates to motor vehicles and the proposed new s.107 to motor bike noise offences only.

In relation to an earlier provision (section 59M which was renumbered to become the current section 107), the former Scrutiny of Legislation Committee concluded that:

> *The bill appears to embody an assumption that, unless section 59M is successfully invoked, an impounding or forfeiture order may be made without regard to whether the person in control of the vehicle was also the owner. In the opinion of the Committee, the bill effectively incorporates a reversal of onus of proof.*[155]

In its consideration of that 2002 provision, the former Scrutiny of Legislation Committee went on to concede that:

> *Reversals of onus of proof, of varying degrees of severity, are often employed in legislation regulating traffic and motor vehicles. For example, an infringing vehicle detected by a speed camera is taken to have been driven by the registered owner unless the person claims otherwise. In the present case the penalty suffered by an owner who is unable to establish the section 59M defence could be very significant.*

The former Scrutiny of Legislation Committee concluded that proposed section 59M effectively reversed the onus of proof in relation to the issue of whether the use of the vehicle to commit a prescribed offence happened without the owner's knowledge and consent. Noting that it did not, as a general rule, approve of provisions which reverse the onus of proof, the former Scrutiny of Legislation Committee recognised that such provisions are often employed in traffic-related legislation and referred to Parliament, without express objection, the question whether the reversal of onus effected by section 59M [now section 107] had sufficient regard to the rights of owners of relevant motor vehicles.

In the reversal of onus situations under this Bill, the onus of proof is arguably reversed to accommodate situations where the requisite information being deposed is largely within the exclusive knowledge of the owner. The owner of the vehicle in these instances is better placed to depose to what they did or didn't have knowledge of, or what they did or didn't consent to, than the Crown is to prove the converse.

In some instances there will be tangible evidence that could be relied upon by the owner to prove that the vehicle was used without their knowledge or consent (e.g., if the vehicle has been reported as stolen at the relevant time), in other instances the facts surrounding the use of the vehicle and whether it was done with the knowledge and consent of the owner are facts often exclusively within the knowledge of the owner). Thus, setting up what is effectively a rebuttable presumption that a vehicle's owner allowed it to be used with both their knowledge and consent, and allowing that presumption to be rebutted/displaced by the owner proving to the contrary, is a more pragmatic approach than placing the entire onus of establishing the facts surrounding the commission of the offence on the Crown.

Committee Comment

The Committee notes the implications of the reversal of the onus of proof but also understands that such reversals are common, if not essential in practice, for traffic-related legislation. In light of this, the Committee is satisfied that the reversal of the onus of proof is appropriate in the context referred to above.

[155] Alert Digest No.5 of 2002, Scrutiny of Legislation Committee, consideration of the Police Powers and Responsibilities and Another Act Amendment Bill 2002 at p.17

3.1.4 Retrospectivity

One of the most commonly understood aspects of the rule of law in a democratic society is that laws should only impose liability prospectively. Accordingly it is a fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively without strong justification.[156]

Of the provisions inserted into the PPRA by **clause 78** of the Bill, the proposed transitional provision section 874(2) declares that provisions of the post-amended Act about the impoundment and forfeiture of a motor vehicle apply in relation to type 2 offences (see criteria for operation of section 874 in section 874(1)) whether committed before or after the commencement.

In relation to the timing of the commencement of the operation of the proposed new provisions, the Explanatory Notes provide:

> *The new type 1 and 2 schemes will not apply retrospectively to persons charged with a type 1 vehicle related offence or a type 2 vehicle related offence of a 'different kind' committed before the commencement of a the Bill.*
>
> *However, the new scheme will apply retrospectively to a type 2 vehicle related offence of the 'same kind' that has been committed up to 3 years prior to the commencement of the Bill. For example, if a person had committed three type 2 vehicle related offences in the 3 years prior to the commencement of the Bill and the person commits another type 2 vehicle related offence of the 'same kind' after the commencement of the Bill, the vehicle may be impounded and, if the driver is found guilty of the last offence, the vehicle will be forfeited.*[157]

The provisions relating to impoundment and forfeiture therefore apply to offences committed before the commencement of the Act when the circumstances envisaged by section 874 are realized. In that respect the transitional provision, section 874, operates retrospectively.

The Committee brings the retrospective nature of certain amendments outlined in the Bill to the attention of the Legislative Assembly as strong argument is required to justify a retrospective adverse effect on rights and liberties or imposition of obligations.

In this regard, the QPS advised that:

> *[d]uring the lead up to the commencement of the amendments the QPS will undertake extensive public awareness to ensure that community members are fully aware of the implications associated with continuing to commit offences classed as vehicle impoundment offences.*[158]

Committee Comment

The Committee reiterates its earlier comments on the issue of the retrospective nature of the provisions from Part 2 of this Report. Prior to its commencement, it will be important for the QPS to undertake meaningful steps to raise public awareness as to the consequences of the new impoundment regime contained in the Bill and how the retrospective nature of specific provisions will operate.

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156 *Legislative Standards Act 1992*, s. 4(3)(g)

157 Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 5.

158 Letter from the Minister for Police and Community Safety, 13 December 2012, (Attachment, page 7).

3.1.5 Immunity from proceedings

Clause 74 amends section 122(1) of the PPRA to provide that 'a police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle, including the motor vehicle's number plates, during the impounding or immobilisation of the motor vehicle'.

Under the current section 122(2) (unamended by this Bill), if subsection 122(1) prevents liability attaching to a police officer, liability instead attaches to the State. Such a shifting of liability is very common and preserves an avenue of redress for a person who suffers damage due to the actions of a statutory officer (in this case a police officer).

The previous section 122(1) did not specify that damage to a vehicle's number plates was excluded from liability, although presumably they would have been covered under the general section 122(1) proviso that covered a motor vehicle as they would have been attached to, and part of, the vehicle. This additional immunity (specified to cover number plates) is presumably included because under new section 74H a vehicle's number plates may be confiscated by police when the vehicle is immobilised and this clause would cover any loss or damage to those plates.

The previous section 122(3) did not provide a specific exculpation from liability for damage caused during or from the immobilisation of the vehicle, which is proposed under clause 74. The proposed clause 74 amendments to section 122(3) will extend the State's immunity to make it not liable for any damage, loss or depreciation caused to a motor vehicle while it is towed, impounded or as a consequence of the Bill, immobilised at a place.

Committee Comment

These proposed changes to the immunity of police officers and the State appear to be uncontroversial and fit within the protective intention of the current section 122.

3.1.6 Compulsory acquisition of property

Under section 4(3)(i) *Legislative Standards Act 1992,* the issue arises whether the bill provides for the compulsory acquisition of property only with fair compensation.

Clause 73 of the Bill inserts a new section 121A into the *PPRA* to provide that where a driver is found not guilty of a prescribed offence or the proceeding for the offence is discontinued, and prior to either of those happenings the Commissioner has sold or otherwise disposed of the vehicle, compensation is payable by the State to the person whose motor vehicle is sold or otherwise disposed of (section 121A(2)).

The Minister determines the amount of compensation (121A(3)) and any person who is dissatisfied with the Minister's decision has 28 days to make an application to a court to ask the court to decide the amount of compensation (121A(4)-(5)).

Monetary compensation may be of little comfort to the former owner of the disposed vehicle where that vehicle had sentimental value or was of such a vintage or rarity that it is difficult or impossible to replace. There is no express requirement in the provision that the Minister give 'fair' compensation or 'market value' for the vehicle.

Committee comment

As set out in Part 2 of this Report, the new section 121A is welcomed in that it provides compensation to an owner of a vehicle, if it is sold or disposed of, and the driver is later found not guilty of an offence or the offence is discontinued. Further, it is noted that appeal rights to a court are available if a person is not satisfied with the Minister's decision on the amount of compensation payable.

While it is not considered that the Bill requires any amendment to this section, to ensure that there is consistency in the Minister's decision making process, the Committee considers it would be helpful if guidelines were published, setting out how the Minister determines what compensation is payable. This may reduce the number of decisions appealed to a court and aid with the intent of the Bill in reducing the number of matters which are brought before a court.

Recommendation 4

The Committee recommends that the Minister for Police and Community Safety consider issuing public guidelines on the process adopted to determine compensation under the new section 121A of the *Police Powers and Responsibilities Act 2000*.

When liability to forfeit a vehicle arises as a result of the alleged offender having committed the requisite number of offences in the relevant period, the rights of any third parties with a registered security interest in the vehicle must also be considered, especially when that vehicle may become subject to disposal.

The Committee has dealt with "Interference with personal property rights" in detail in Part 2 of this Report.

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information that an Explanatory Note should contain.

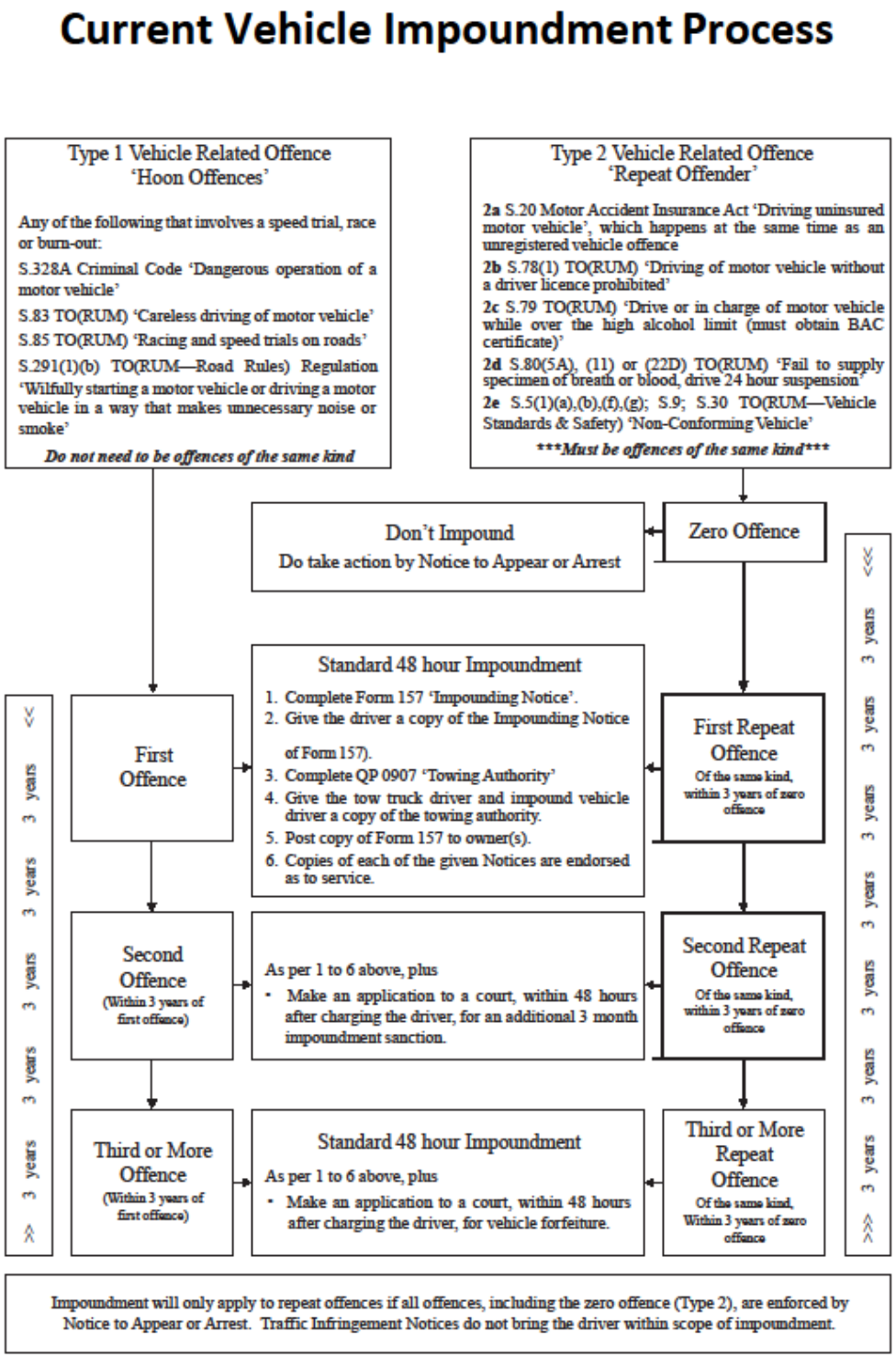
Explanatory Notes were tabled with the introduction of the Bill. The Explanatory Notes relating to the Bill are easy to understand, contain the information required by Part 4, and include a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins**.** The Explanatory Notes failed, however, to consider the retrospective operation of some provisions in their consideration of the fundamental legislative principles.

The Committee has addressed and commented on the issue of the retrospective nature of the provisions earlier in this Report.

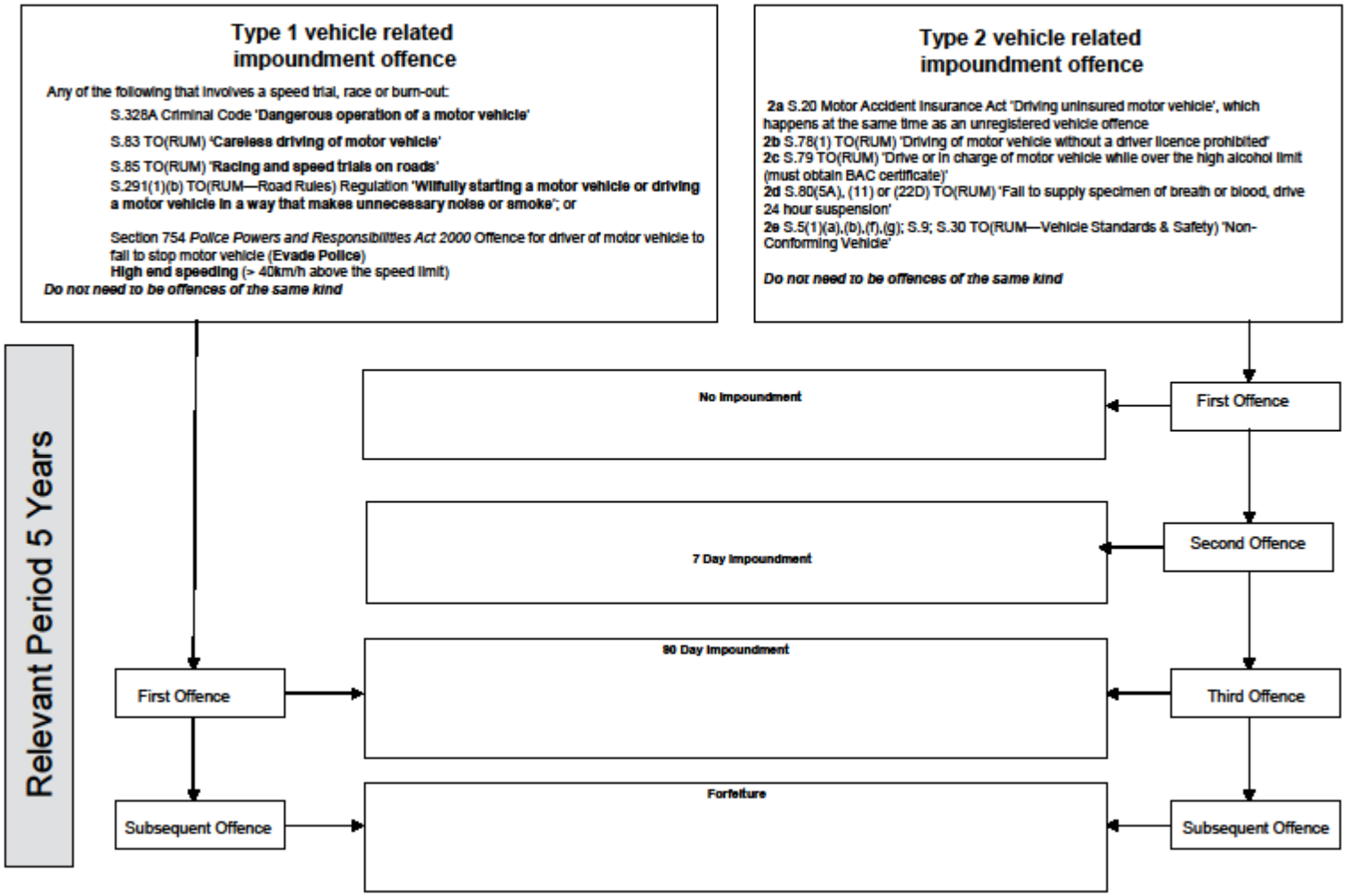
Appendix A – List of Submissions

Sub #	Submitter
001	Russel Soper
002	Carl Hillman
003	Matthew Van De Ven
004	Michael Cadman
005	Paul Muir
006	Matthew Parker
007	Tim Katthagen
008	Richard Young
009	Robert Cuthbert
010	Glen Adams
011	Daniel Murcott
012	Australian Confederation of Motor Clubs
013	Toowoomba Regional Inc. Car Klub
014	Todd Holdsworth
015	Queensland Council for Civil Liberties
016	Gary Lambert
017	Australian Street Machine Federation Qld Division Inc.
018	Richard Wheeldon
019	Commission for Children and Young People and Child Guardian
020	Motor Trades Association of Queensland
021	Crime and Misconduct Commission
022	Queensland Motorised Sports Council Inc.
023	Monash University Accident Research Centre
024	Bar Association of Queensland
025	Queensland Law Society
026	Darryl Fuller
027	Royal Automobile Club of Queensland

Appendix B – Summary of Current and Proposed Vehicle Impoundment Scheme provided by QPS



Proposed Vehicle Impoundment Process



Appendix C – Outcome of QPS Consultation with RACQ and QLS

Stakeholder Comment	QPS Response
RACQ	
• *The RACQ contends that the focus should be on ensuring a greater patrol presence and increased certainty of detection and the more consistent enforcement of existing impoundment provisions rather than on increasing sanctions.*	Under the current scheme, it has been estimated that an impoundment application takes an experienced police officer approximately 8 hours to complete. The amendments are expected to deliver significant time savings to police and will result in an increased capacity to provide a patrol presence and certainty of detection. These amendments operate to simplify the procedure associated with enforcing the impoundment regime.
• *The RACQ suggests that, given the significant consequences associated with the impoundment of vehicles, the decision to impound should be a discretionary matter for a magistrate, rather than an automatic penalty imposed by a police officer.*	The current court application scheme imposes significant burdens on both court time and QPS resources. It is estimated that it takes an experienced police officer approximately 8 hours to complete an impoundment application under the current legislation. The change from a court application process to a process of automatic impoundment is expected to significantly mitigate the issues experienced under the current regime. It is an approach that is consistent with that taken in other jurisdictions such as NSW and SA. The Bill recognises that the impoundment of a vehicle has significant ramifications for an affected party. Consequently, the Bill makes provision for a person to apply to the Commissioner for the release of the vehicle and also provides an appeal mechanism where such an application is refused.
• *The RACQ quotes statistics that suggest while a significant number of vehicles are currently impounded for a first offence, significantly fewer vehicles are impounded for subsequent offences and even fewer are forfeited. The RACQ contends that the decreased impoundment rate for second and third offences under the existing regime might be indicative that the current regime successfully provides the desired deterrent effect.*	The QPS acknowledges the drop off in impoundment rates for subsequent offences. However, this is reflective of the administrative burden associated with making of a subsequent application under the current provisions, rather than a decrease in the offences being committed.

Stakeholder Comment	QPS Response
• *The amendments could potentially result in an increase in police pursuits.*	In most circumstances, a driver evading police to avoid enforcement in relation to an impoundment offence would fall within the ambit of the current pursuits policy, and as a consequence, no pursuit would be commenced. The QPS pursuits policy encourages police to consider alternatives to the initiation of a pursuit. Strategies such as subsequent investigation and follow up will continue to be employed as an alternative to pursuit where policy or community safety considerations mean that the pursuit of a vehicle is not an appropriate option. Offenders located subsequent to an evade police would still be liable to the application of the proposed legislation.
• *The 5 days provided by the legislation for the Commissioner to make a decision on an application for the release of a vehicle may result in insufficient consideration being given to an application.*	Given the potential for delays to adversely impact on an application to release a vehicle, it is appropriate to legislatively impose a time within which applications must be determined. The Bill provides that the Commissioner need only consider the application after receiving all necessary information that is relevant to the application. Where a person has not provided all of the relevant information, consideration of the application will be made based solely on the information provided.
QLS	
• *The QLS is critical of the move towards automatic impoundment and asserts that, given the impact on the rights of individuals, courts should retain its role in deciding applications.*	The current court application scheme imposes significant burdens on both court time and QPS resources. It is estimated that it takes an experienced police officer approximately 8 hours to complete an impoundment application under the current legislation. The change from a court application process to a process of automatic impoundment is expected to reduce the processing delays currently experienced. It is an approach that is consistent with that taken in other jurisdictions such as NSW and SA. The Bill recognises that the impoundment of a vehicle has significant ramifications for an affected party. Consequently, the Bill makes provision for a person to apply to the Commissioner for the release of the vehicle and also provides an appeal mechanism where such an application is refused.
• *The QLS makes reference to the decision of the South Australian Supreme Court in Bell v Police [2012] SASC 188 that raised constitutional concerns regarding the impoundment legislation in that jurisdiction. The QLS contends that consideration should be given to that decision prior to the further advancement of the Bill.*	While the model proposed in the Bill is significantly different to the South Australian model, the QPS is currently seeking advice from Crown Law on the impact of this decision on the proposed legislation to ensure there are no potential impediments regarding the implementation of the proposed impoundment mode.

Stakeholder Comment	QPS Response
• *The QLS suggests that the drafting of s 74B(2) of the Bill is ambiguous.*	The drafting for this clause is a replication of a provision that exists in the current Act and reflects the current drafting style. The QPS has not been advised of any problems in the interpretation of the current provisions.
• *The QLS believes that the Bill should require that the Minister must provide fair compensation under the terms of s 121A of the Act.*	The amendments require the state to pay compensation to a person whose motor vehicle is disposed of in circumstances where the driver is subsequently found not guilty of the offence. Consistent with the existing provisions of s 804 of the PPRA, the amendments provide that the Minister is to determine the amount of compensation payable for the disposal of a vehicle, where a person found not guilty by a court of a vehicle disposal offence. The Bill also provides that a person who is dissatisfied with the amount determined by the Minister can appeal this decision to a Magistrates court. The Magistrates court has the power to decide the amount where such an application is made. The inclusion of a mechanism for a person to apply to a court provides a safeguard that will ensure fair compensation is received.
• *Under the current provisions, subsequent type 2 offences are only counted for the purposes of the impoundment regime if they are the same kind of offence. The QLS submits that s 70A of the Act should not be omitted by the Bill and that type 2 offences should only be counted where the subsequent offences are of the same type.*	Section 70A of the Act imposes an artificial restriction on the application of the impoundment and forfeiture regime. The current provisions allow a person to engage in a pattern of offending behaviour that poses a danger to the community, but fails to trigger the impoundment provisions simply because the person commits a variety of offences rather than the same offence on multiple occasions. No other jurisdiction imposes an equivalent restriction on the operation of their impoundment legislation.

Appendix D - 'Supporting' Offence Provisions and Penalties

Clause 54 of the Bill seeks to introduce a number of offence provisions to support the type 1 and type 2 motor vehicle impoundment scheme. These proposed offences for Queensland are shown in the Table below along with similar provisions in other jurisdictions which have impoundment and forfeiture schemes of comparable severity.

Queensland Proposals	New South Wales	South Australia
Failing to comply with requirement to produce motor vehicle without a reasonable excuse – fine of up to $4,400 (40 penalty units)	Failing to comply with requirement to produce motor vehicle without a reasonable excuse – fine of up to $3,300 (30 penalty units)[159] and liable to registration suspension (s 218E)	Failing to comply with requirement to produce motor vehicle without a reasonable excuse (proof of which lies on the person) – fine of up to $2,500 or imprisonment for 6 months (s 15)
Operating a motor vehicle during a number plate confiscation period without a reasonable excuse – fine of up to $4,400	Operating a motor vehicle during a number plate confiscation period without a reasonable excuse – fine of up to $3,300 and vehicle liable to be forfeited (s 218F)	No equivalent There is, however, an offence of hindering or obstructing a relevant authority exercising its powers - fine of up to $2,500 or imprisonment for 6 months (s 18(1))
Removing, tampering with, or modifying a number plate confiscation notice attached to a vehicle without a reasonable excuse – fine of up to $4,400	Removing, tampering with, or modifying a number plate confiscation notice attached to a vehicle without a reasonable excuse – fine of up to $3,300 and vehicle liable to be forfeited (s 218F, s 219)	No equivalent
Removing, tampering with, or	Not applicable. Commencing in July 2012, the NSW	A person (other than a relevant authority) must not

[159] Pursuant to the *Crimes (Sentencing Procedure) Act 1999* (NSW), s 17, 1 penalty unit = $110.

Queensland Proposals	New South Wales	South Australia
modifying an immobilising device attached to a vehicle without a reasonable excuse – fine of up to $4,400	Parliament amended its 'hooning laws' to make some changes to its vehicle sanctions scheme. Among the changes was the removal of wheel clamping from the scheme as an alternative to impoundment and, instead, enabling number plate confiscation as an alternative to impoundment	interfere with any wheel clamps affixed to a motor vehicle in accordance with this Act – fine of up to $2,500 or imprisonment for 6 months (s 18(2))
Operating a motor vehicle without reasonable excuse if an immobilising device attached to the vehicle has been unlawfully removed, tampered with or modified – fine of up to $4,400	Not applicable. See previous row.	A person (other than a relevant authority acting) must not interfere with an impounded motor vehicle, or any item or equipment in or on an impounded motor vehicle, while the motor vehicle remains in the custody of a relevant authority in accordance with this Act - fine of up to $2,500 or imprisonment for 6 months (s 18(3))
Selling, modifying or deposing of a motor vehicle subject to a vehicle production notice without reasonable excuse - fine of up to $4,400	Does not appear to be an equivalent.	Selling, disposing of, damaging or altering a motor vehicle contrary to a notice prohibiting these actions – fine of up to $2,500 or imprisonment for 6 months (s 14)
Proposed by the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 (Qld), cl 54	Road Transport (General) Act 2005 (NSW) (Part 5.5, Div 2)	Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 (SA)

The **Australian Capital Territory** has impoundment and forfeiture provisions under the Road Transport (Safety and Traffic Management) Act 1999 (ACT) (Part 2) which are fairly equivalent to the Queensland proposals (i.e. initial impoundment for up to 3 months then subject to forfeiture for second or subsequent offences within 5 years) although the types of 'hooning' offences attracting the penalties are more restricted (road racing, speed trials etc.; burnouts; menacing driving). However, the ACT legislation does not appear to contain any 'supporting' or 'secondary' offences provisions concerning particular behaviour during periods of impoundment or when the vehicle is undergoing alternative measures such as immobilisation or number plate confiscation.

Indeed, the ACT legislation does not appear to provide alternatives to impoundment (e.g. immobilisation/number plate confiscation). Further, impoundment of vehicles does not seem to occur by way of a production notice but under s 10C is carried out by a police officer seizing the vehicle (or another person doing so under the police officer's direction).

Source: Table prepared by Queensland Parliamentary Library and Research Service (December 2012)