Queensland Government Response to the Crime and Misconduct Commission’s report entitled An Alternative to Pursuit: A review of the evade police provisions

PREFACE

It is acknowledged that pursuits are one of the most challenging areas of policing. The need to balance law enforcement with the risks associated with driving in pursuit conditions is one of the most difficult faced by police officers.

The Queensland Government is committed to ensuring the safety of all road users. In doing so, the Government believes it is imperative the Queensland Police Service (QPS) is provided with the best possible legislative tools and operational procedures policy to equip its members to efficiently and safely perform their enforcement functions.

The Queensland Government will introduce changes to the current evade police provisions that will bring greater clarity and strength to the legislation while providing a simpler policy framework from which police can be guided in investigating and dealing with offenders who choose to evade police and jeopardise public safety.

BACKGROUND

Between June 2005 and July 2008, 10 people died in Queensland while police were attempting to intercept a vehicle or directly engaged in a pursuit, or soon after a pursuit was abandoned.

On 1 January 2008 the QPS introduced a trial restrictive pursuit policy. The members of the QPS have shown great professionalism in adapting to the significant operational and cultural changes brought about by its introduction.

Over the trial period for the current policy (2008 – present), the average number of pursuits has decreased 48 percent when compared to the previous seven-year average (2000 – 2007).

In 2010 there were 309 police pursuits in Queensland. The average number of pursuits for the three and a half year period January 2008 to June 2011 is 314 whereas the average number of pursuits for the preceding seven year period was 612. The QPS believes this has been due to officers recognising the risks associated with pursuits and subsequently abandoning them in the interests of public safety.

Additionally, in March 2010 the State Coroner reviewed the QPS pursuit policy and made 13 recommendations for change. In December 2010 the Commissioner of Police released a public document outlining the Service’s support for all 13 recommendations. Simultaneous to the CMC’s review of the evade police provisions, the QPS independently reviewed its existing trial policy with a view to identifying further improvements while also incorporating the Coroner’s recommendations.
As a result of the Coroner’s recommendations and the QPS pursuit policy review, further significant changes are planned for implementation on 19 December 2011 that will see an even more restrictive QPS Safe Driving Policy applied throughout the State.

The evade police provisions, contained within Chapter 22 of the *Police Powers and Responsibilities Act 2000* (PPRA) were the first of their kind in Australia. They aim to support the restrictive pursuit policy by providing police with the option of allowing a fleeing vehicle to ‘escape’, knowing that they have the power and necessary investigative tools to assist them to identify the offending driver at a later stage. In allowing the offender to flee, the police do not contribute to the inherent danger of the situation.  

Section 789 of the PPRA requires the CMC to review the use by police officers of powers under this chapter and prepare a report on the review. In June 2011, the CMC tabled its report entitled *An Alternative to Pursuit: A review of the evade police provisions*. The report contained 13 recommendations. Of the 13 recommendations, 10 are directed at amending the existing provisions contained within the PPRA, while the remaining three deal with QPS policy issues, training and reporting.

**GOVERNMENT RESPONSE**

The Queensland Government supports the CMC’s recommendations for both legislative and QPS policy and procedural changes. These recommendations deal with QPS policy, training and reporting (*Recommendations 3, 4 & 5;* amend legislation to simplify interpretation (*Recommendations 1, 2 & 9*); enhance court procedure (*Recommendation 13*); improve equity (*Recommendation 8*); or strengthen the legislation where appropriate (*Recommendations 6, 7, 10, 11 & 12*).

The Queensland Government supports Recommendation 6 of the CMC Report, however, with amendment to expand the specific requirements of a declaration beyond that recommended by the CMC. It is the Government’s view that the requirements should be specifically defined to assist vehicle owner’s in fulfilling their obligations. The expanded requirements will not apply to those registered owners who have genuinely sold the subject vehicle or where it has been genuinely stolen.

**IMPLEMENTATION**

The Queensland Government will introduce legislative amendments to the *Police Powers and Responsibilities Act 2000*. In addition, the QPS will institute significant changes to its Safe Driving Policy on 19 December 2011. Ongoing training, beyond the current rigorous program that is presently being delivered to support the revised policy’s impending release, will be developed for officers to maintain operational skills and awareness of pursuit policy.

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2 *Police Powers and Responsibilities Act 2000, s.789 (1)*
including the application of the evade police provisions. QPS will report
pursuit information including evade police incidents to the CMC beginning in
2012 and will provide relevant information in the QPS Annual Report 2011-
2012.

While some recommendations can be implemented relatively quickly, it is
expected that the implementation of any legislative change will be finalised by
2013.
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<th>Report Recommendations</th>
<th>Government Response</th>
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<tr>
<td><strong>RECOMMENDATION 1</strong>: (p.38)</td>
<td>Supported</td>
<td>Early 2013</td>
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<td>That the explanatory clause for the evade police provisions (s.746 PPRA) be amended to describe:</td>
<td>The Government will seek an amendment to the <em>Police Powers and Responsibilities Act 2000</em> (PPRA) to expand the explanatory clause within s.746 by providing the aim of the legislation and how it is to be applied as an alternative to conducting pursuits in the interests of public safety.</td>
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<td>• the aim of the evade police provisions to improve community safety by reducing the need for police to pursue fleeing drivers</td>
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<td>• how the evade police provisions aim to assist police to investigate evade police offences.</td>
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<td><strong>RECOMMENDATION 2</strong>: (p.39)</td>
<td>Supported</td>
<td>Early 2013</td>
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<td>That the QPS, in conjunction with relevant agencies, explore the feasibility of changing the short title of the evade police offence provision (s.754 PPRA) from 'Fail to stop motor vehicle' to better reflect the offending behaviour and avoid confusion with the similar s.60 PPRA offence.</td>
<td>The Government will consult with relevant agencies and, dependent upon gaining agreement, will seek an amendment to the short title of s.754 of the PPRA to facilitate clearer understanding and better reflect the differences between offending behaviours associated with s.754 and s.60.</td>
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<td><strong>RECOMMENDATION 3</strong>: (p.40)</td>
<td>Supported</td>
<td>19 December 2011</td>
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<td>That the QPS improve the representation of the evade police provisions within policy by:</td>
<td>The QPS has independently reached similar conclusions to the CMC finding and had initiated the changes identified in this recommendation prior to the CMC tabling its review.</td>
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<td>• ensuring the pursuit policy clearly explains the rationale for using the evade police provisions as an alternative to pursuit</td>
<td>The newly revised, more restrictive policy is due for implementation on 19 December 2011.</td>
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<td>• ensuring the pursuit policy requires police to consider</td>
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using the provisions before deciding whether or not to commence a pursuit
- effectively linking the policies that guide police decision making about when and how to use the evade police provisions.

**RECOMMENDATION 4: (p.40)**

That the QPS ensure that:
- all training materials on pursuits make clear that the evade police provisions are an alternative that must be considered before commencing a pursuit
- training on pursuits covers the use of the evade police investigative powers
- training on the use of the evade police provisions is provided as part of QPS recruit training.

**Supported**

The QPS has independently reached similar conclusions to the CMC finding and had initiated the changes identified in this recommendation prior to the CMC tabling its review.

A comprehensive training program has been prepared and is currently being delivered in anticipation of the revised policy's release on 19 December 2011.

A review of all QPS ongoing training programs related to vehicle mounted enforcement will be undertaken and the use of the evade police provisions will be included where appropriate.

**RECOMMENDATION 5: (p.41)**

That the QPS:
- provide an annual monitoring report on police pursuits and evade police offences to the CMC including an analysis of:
  - the number of police pursuits by category of pursuit
  - the number of reported pursuits for ‘non-pursuit’

**Supported**

The QPS will provide an annual monitoring report to the CMC that will include all the details identified in this recommendation with the exception of pursuit categories which will become redundant on implementation of the revised policy on 19 December 2011.

The QPS will present relevant pursuit data in the QPS Annual Report (November 2012)
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<th>Matters</th>
<th>Annual Statistical Review.</th>
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<td>o the proportion of pursuits that were subsequently abandoned</td>
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<td>o the proportion of pursuits that were subsequently solved (an alleged offender identified)</td>
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<td>o the number of deaths and injuries associated with pursuits (including both during the attempt to intercept and after a pursuit has been abandoned)</td>
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<td>o an analysis of a random sample of evade police offences to determine:</td>
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<td>▪ the reason for the attempted intercept (classified as a 'pursuit' v. non-pursuit matter)</td>
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<td>▪ the number of evade police offences that involved a pursuit</td>
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<td>▪ the number of pursuits that were not reported by way of a significant event message</td>
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<td>• report the number of police pursuits (in total and by category of pursuit) each year in the QPS Annual Statistical Review.</td>
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**RECOMMENDATION 6: (p.43)**

That s.747 of the PPRA be amended to include the following additional requirements for the declaration in response to an evasion offence notice — that the owner provide to the police:

- the names of all people with access to the vehicle used in the offence
- information about how frequently, and for how long, those persons use the vehicle
- whether the vehicle is used by those persons for

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**Supported with amendment**

The Government will seek an amendment to the PPRA to provide that a declaration in response to an evade police offence notice must include a statement addressing each of the following:

a. Whether the owner is aware of the identity of the driver of the vehicle at the time of the offence, and if so, the full name of that person; and

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business or private purposes
- any other information within the owner's knowledge, or that police believe is relevant, to the investigation of an evade police offence.

b. If the name of the driver of the motor vehicle at the time of the offence is not known to the owner, the owner of the motor vehicle is to provide a response to all of the following:

- An account of the location of the registered owner at the time of the offence;
- An account of the common location of the vehicle when it is not in use;
- The full names and residential addresses of all people with access to the vehicle at the time of the offence and how they are known to access the vehicle (eg. they possess a set of keys or have access to communal keys);
- Information about how frequently, and for how long, those persons commonly use the vehicle;
- Whether the vehicle is used by those persons for business or private purposes; and
- Whether the vehicle was being illegally used at the time (eg. the vehicle was being used without permission).

The Government will ensure that the above requirements will not be applicable to those registered vehicle owners who have genuinely sold the vehicle or it has been stolen.

The Government will also seek an amendment to provide
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<th>RECOMMENDATION 7: (p.44)</th>
<th>That for a declaration to satisfy the requirements of the owner onus provisions, the declaration must fully comply with the above requirements.</th>
<th>Supported</th>
<th>The Government will seek an amendment to s.756(4) of the PPRA to preclude the owner (or nominated person) from relying on the rebuttal provision to claim they were not the driver, unless they are able to demonstrate to the court that they could not reasonably have provided police with information to assist them to identify the actual driver within 14 days of the receipt of an evasion offence notice.</th>
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<td>RECOMMENDATION 8: (p.44)</td>
<td>To support Recommendations 6 and 7, that s.755 of the PPRA be amended to allow an owner or nominated person 14 days to provide a declaration in response to an evasion offence notice.</td>
<td>Supported</td>
<td>The Government will seek an amendment to s.755 of the PPRA in the interests of equity and to provide sufficient time for a vehicle owner or nominated person to make necessary inquiries to satisfy the expanded requirements of the amended s.747 of the PPRA in accordance with recommendation 6.</td>
<td>Early 2013</td>
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<td>RECOMMENDATION 9: (p.45)</td>
<td>That sections 755 and 756 of the PPRA be amended to provide editorial notes, for the benefit of police and vehicle owners, about the application of other relevant instances where alternate offences, such as s.791 (Offence to contravene direction or requirement of police officer) of</td>
<td>Supported</td>
<td>The Government will seek an amendment to clarify the PPRA to provide that a vehicle owner or nominated person, when attempting to rely on the rebuttal provision, will be required to demonstrate to the Court that they could not reasonably have provided police with the necessary information.</td>
<td>Early 2013</td>
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offences when:
- the declaration provided by an owner does not comply with the expanded requirements
- the owner does not provide a declaration in response to an evasion offence notice, but cannot be charged under the deeming provision because it is evident to police that the owner could not have been the offending driver.

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<th>RECOMMENDATION 10: (p.46)</th>
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<td>That Chapter 22 of the PPRA be amended to clarify that an evade police offence includes situations when the driver initially complies with a lawful police direction to stop, but then flees before the interaction with police is finalised.</td>
<td>The Government will seek an amendment to clarify that the evade police provisions will apply to situations where the driver initially complies with a lawful police direction to stop, but flees before the interaction with police is finalised.</td>
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<th>RECOMMENDATION 11: (p.46)</th>
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| That Chapter 22 of the PPRA be amended to:  
- provide police with the authority to seize or move an abandoned vehicle that is suspected to have been used in an evade police offence to assist in the investigation of the offence  
- include an accompanying provision clarifying who would be responsible for the associated seizing and moving expenses. | The Government will seek an amendment to clarify the application of sections 124, 124A and 125 of the PPRA to deal with abandoned vehicles used in an evade police offence. | Early 2013 |

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<th>RECOMMENDATION 12: (p.47)</th>
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That s.747 of the PPRA be amended to allow police to serve an evasion offence notice on any registered owner of the vehicle, rather than just the first registered owner.

The Government will seek an amendment to s.747 to allow the serving of an evasion offence notice on a second or subsequent owner of a motor vehicle in those instances where the first registered owner cannot be located.

**RECOMMENDATION 13: (p.47)**

That Chapter 22 of the PPRA be amended to include a provision to make the following details evidentiary in their own right:
- the formal details about the service of the evasion offence notice
- the formal details of the receipt of the declaration.

**Supported**

The Government will seek an amendment to Chapter 22 of the PPRA to include the details listed in the recommendation. This will streamline the process for the prosecution of an evasion offence under Chapter 22 of the PPRA by reducing the number of witnesses required.

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