

TITLE OF BILL: Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

REPORT OF: Queensland Police Service

DATE: 12 January 2023

INTRODUCTION AND SUMMARY

On 30 November 2022, the Minister for Police and Corrective Services and Minister for Fire and Emergency Services introduced the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 (the Bill) into the Queensland Parliament. The Bill was referred to the Economics and Governance Committee (the Committee) for consideration.

The Bill amends a range of legislation to enhance the capacity of the Queensland Police Service (QPS) to monitor reportable offenders, investigate organised crime, including cybercrime, and to address the dangers to Queensland road-users and the disruption caused to public amenity by hooning. The Bill achieves this by:

- strengthening child protection laws by increasing the period of time a reportable offender under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* is required to report;
- enhancing investigations into cybercrime and offences committed by reportable offenders by expanding the range of offences that may be investigated through a controlled operation or surveillance device warrant;
- improving organised crime investigations by allowing civilian participants to be used in controlled activities in limited circumstances; and
- strengthening laws that deter hooning behaviour by creating additional offences and increasing the penalty for an existing offence under the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021*.

The Committee sought public submissions about the Bill and requested the QPS provide a written response to these submissions by 12 January 2023.

The following submissions have been received by the Committee:

Submission Number	Submitter Name
1	Youseff Youseff
2	Shane Cuthbert
3	Queensland Law Society
4	Queensland Family and Child Commission
5	Office of the Health Ombudsman
6	Crime and Corruption Commission Queensland (CCC)
7	Justice Reform Initiative

The QPS response to the submissions is as follows:

Submission 1 – Youseff Youseff

Mr Youseff emphasises the importance of properly trained police and raises a concern that there is insufficient funding allocated to appropriately train police officers in the use of force.

QPS response:

The QPS notes the submission does not address any particular aspect of the Bill. However, Mr Youseff may be assured that Queensland Police are properly trained in the use of force from recruitment and throughout their careers. Such training is underpinned by extensive operational polices and guidance in Chapter 14 of the QPS Operational Procedures Manual, which is publicly available on the QPS website.

Recommendation:

No Change.

Submission 2 – Shane Cuthbert

In a detailed submission, Mr Cuthbert outlines support for amendments within the Bill that:

- increase the reporting periods of reportable offenders under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*;
- expand the range of relevant offences listed in schedule 2 of the *Police Powers and Responsibilities Act 2000* (PPRA) so that controlled operations and surveillance devices may be used as an investigation strategy into cybercrime and reportable offenders not complying with their reporting obligations;
- address hooning behaviour through:
 - new offences that:
 - prohibit the willing participation in a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence (new section 19C(a) of the *Summary Offences Act 2005*);
 - prohibit the organising, promoting or encouraging of another person to participate in or view a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence (new section 19C(b) of the *Summary Offences Act 2005*);
 - prohibit the possessing of a thing being, is to be or has been used to commit a racing, burn out or other hooning offence (new section 19D of the *Summary Offences Act 2005*);
 - prohibit the wilful driving of a motor vehicle on a road or in a public place in a way that causes a sustained loss of traction of 1 or more wheels of the motor vehicle (new section 85A of the *Transport Operations (Road Use Management) Act 1995*); and
 - increase the penalty for misusing number plates on a vehicle used in the commission of a type 1 vehicle related offence.

However, Mr Cuthbert raises concerns about the risks associated with individuals participating in controlled activities as proposed in the Bill.

Further, Mr Cuthbert also raises concerns about an amendment in the Bill that will address hooning behaviour by prohibiting a person from filming, photographing or publishing a film

or photograph of a motor vehicle being used for a hooning offence for the purpose of organising, promoting or encouraging a group activity involving a motor vehicle being used to commit a hooning offence. Mr Cuthbert comments:

I agree with the first two limbs of this offence however, it is the third limb which concerns me for the reasons discussed below. What about innocent bystanders who are not involved with the activity? Walking by?

The Police arrive and automatically assume the individual is complicit in the prohibited act because they have their phone out and are filming? There are many individuals who may be attracted to such an incident for different reasons, concern over the noise or smoke for example. People like to film things and that is part of human nature. I do not want to see those walking by minding their own business charged with a criminal offence because they have stopped to film or share something like this on social media.

People film all sorts of things these days from motor vehicle accidents, bushfires, assaults and a range of other things that happen around or near them. When a man is abusing an elderly lady on a bus, it is sadly more likely someone will take their phone out to film it than they are to intervene and stop the verbal abuse. Again, it is human nature and the degree to which we should be penalised for this should be considered.

What about personal liberties and property rights? What if an individual refuses to hand over their phone to police or show the police what they are filming? How do police officers enforce this third limb? Is it enough to see someone standing on the side of the road with their phone out? What if the individual is on FaceTime or Facebook Live streaming? Doing something other than filming?

QPS response:

The QPS notes that Mr Cuthbert's submission generally supports the majority of the amendments proposed in the Bill.

In relation to Mr Cuthbert's concerns about civilians participating in controlled activities, the QPS notes that the PPRA provides a legislative framework for controlled operations (under chapter 11) and controlled activities (under chapter 10). As a generalisation, investigations using controlled operations are more complex, more protracted and targeted towards more serious offences than investigations involving controlled activities. It should be noted that the PPRA already makes provision for civilians to participate in controlled operations as explained by the explanatory notes accompanying the Bill at page 4:

Controlled operations pursuant to Chapter 11 of the PPRA – are directed at more protracted and involved investigations. All other Australian jurisdictions permit a civilian to participate in controlled operations including Queensland. None of these jurisdictions have controlled activity provisions. However, Victoria has a 'local minor controlled operation' in its Crimes (Controlled Operations) Act 2004. This is similar in nature to Queensland's controlled activity provisions in that it applies only within the Victorian jurisdiction and applies to offences on a lower scale than controlled operations thresholds. Additionally, the duration of a minor operation is seven days, which is the same as the maximum time for a controlled activity in Queensland. Victorian legislation permits a civilian to participate in a local minor controlled operation.

The explanatory notes accompanying the Bill also highlight an inherent issue limiting police investigations involving controlled activities by stating at page 4:

Controlled activity authorisations provide police with an invaluable tool to infiltrate operations involved in the production and supply of dangerous drugs, and other organised criminal activity. However, given the maximum duration of a controlled activity is seven

days it is often difficult for police to make inroads into these illegal operations without the assistance of a civilian participant.

The QPS is satisfied that the legislative safeguards proposed by the Bill will minimise risks to a civilian participant. These safeguards are outlined at page 8 of the explanatory notes accompanying the Bill and include:

- the civilian will only be able to participate in ancillary conduct; that is, conduct that amounts to aiding or enabling a police officer to engage in the controlled activity, or, conspiring with a police officer for the police officer to engage in the controlled activity;
- a senior police officer of at least the rank of superintendent is required to authorise a civilian to engage in ancillary conduct for a controlled activity;
- a police officer considers it reasonably necessary for a civilian to participate in and be authorised to engage in ancillary conduct;
- the police officer may authorise the civilian participant to engage in the ancillary conduct only if, having regard to the nature and extent of the controlled activity to be authorised under section 224, authorising the ancillary conduct is appropriate in the particular circumstances; and
- the authority must be written and state (a) the controlled activity a police officer is authorised to engage in under section 224; and (b) details of the ancillary conduct for the controlled activity authorised under section 224 that the civilian participant is authorised to engage in; and (c) the period, of not more than 7 days, for which the authority is in force.

In relation to Mr Cuthbert's concerns about the proposed hooning offence, the QPS notes that the proposed 19C 'Unlawful conduct associated with commission of racing, burn out or other hooning offence' of the *Summary Offences Act 2005* provides:

A person must not—

- (a) willingly participate in a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence; or
- (b) organise, promote or encourage another person to participate in, or view, a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence; or
- (c) **for a purpose mentioned in paragraph (b)**, photograph or film, or publish a photograph or film of, a motor vehicle being used to commit a racing, burn out or other hooning offence. (emphasis added)

Maximum penalty—40 penalty units or 1 year's imprisonment.

To substantiate an offence, the onus rests on the prosecution to prove each element of the offence beyond all reasonable doubt. For the proposed offence under section 19C(c) of the *Summary Offences Act 2005* to be proven, it is necessary for the prosecution to establish that **not only** was the person photographing, filming or publishing a photograph or a film of a motor vehicle being used to commit a type 1 vehicle related offence **but also that** the person was doing so for the purposes of organising, promoting or encouraging another person to participate in, or view, a group activity involving a motor vehicle being used to commit a type 1 vehicle related offence.

This is highlighted in the explanatory notes accompanying the Bill which state on page 6:

The third limb of this new offence [section 19C of the Summary Offences Act 2005] will not capture a person who films hooning activity for the purpose of making a complaint to police or who films/photographs as part of a lawful event, for example, drag racing

events that are held at Willowbank Raceway. The offence will be applicable to persons who photograph or film a motor vehicle being operated to commit a type 1 vehicle offence for the purpose of encouraging, organising or promoting the participation of persons in any such group activity.

This offence is not applicable for the circumstances outlined in Mr Cuthbert's submission as all elements of the offence are not made out. The QPS considers that the proposed offence under section 19C(c) of the *Summary Offences Act 2005* is inherently limited in scope to those persons who should be liable to penalty. This view is supported through an examination of an analogous provision under section 116 'Conduct associated with road and drag racing and other activities' of the *Road Transport Act 2013* (NSW) which is similar in its construction.

Recommendation:

No Change.

Submission 3 – Queensland Law Society (QLS)

In its submission, the QLS neither indicates support or opposition to the Bill. Instead, the QLS has raised a number of concerns. For brevity, commentary from the QPS will immediately follow the concerns raised by the QLS.

QPS response:

The QLS has commented:

- *Amendments to the offender monitoring periods should be reserved pending the outcome of any related recommendations which may arise from the CCC's review.*

The QPS has assisted the CCC in its review of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* and will continue to collaborate with the CCC in its review of this Act.

The QPS believes the safety of children is of paramount importance and will consider the outcome of the CCC review into the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* when it becomes available in the future with a view of implementing any appropriate improvements to this Act.

Notwithstanding this, it is the QPS view that the amendments in the Bill will improve child safety through establishing a more stringent reporting scheme for reportable offenders and allowing investigation strategies involving controlled operations and surveillance device warrants to be used in relation to reportable offenders suspected of not complying with their reporting obligations.

The QPS does not consider it appropriate for the benefits that would arise from these amendments to be delayed by awaiting an outcome of the CCC review, particularly as there is no indication that the review will definitively discover better strategies to minimise offences against children than the amendments proposed in the Bill.

The QLS has also commented:

- *The expansion of relevant offences for controlled operations under schedule 2 of the Police Powers and Responsibilities Act 2000 (Old) should be narrowed.*

The QPS notes that the relevant amendment in the Bill will expand schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA through the inclusion of the following offences under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*:

- section 50 (Failure to comply with reporting obligations);

- section 67FA (Failing to comply with offender prohibition order);
- section 67FD (False or misleading information); and

the following offences under the Criminal Code:

- section 223 (Distributing intimate images);
- section 408C (Fraud);
- section 408D (Obtaining or dealing with identification information);
- section 408E (Computer hacking and misuse).

The QPS considers these offences to be the minimum necessary to allow police to investigate cybercrime and reportable offenders not complying with their reporting obligations through the use of controlled operations or surveillance device warrants.

The QLS has commented:

- *The proposed new offences in the Summary Offences Act 2005 (Old) should be unambiguous and drafted in a clear and precise way to ensure they are properly targeted at offending behaviour, prosecuted fairly and do not disproportionately impact vulnerable groups.*

The QPS does not share QLS' concern about the drafting of the Bill. The Bill was drafted by the Office of the Queensland Parliamentary Counsel which is statutorily obliged to ensure the Queensland statute book is of the highest standard¹. The QPS believes that the Office of the Queensland Parliamentary Counsel has met this obligation.

An example of the concern raised by the QLS rests in section 19D 'Possession of things used in commission of racing, burn out or other hooning offence' of the *Summary Offences Act 2005*. Section 19D 'Possession of things used in commission of racing, burn out or other hooning offence' of the *Summary Offences Act 2005* provides in part:

- (1) A person must not possess a thing that is being, is to be, or has been used to commit a racing, burn out or other hooning offence.

Maximum penalty—40 penalty units or 1 year's imprisonment.

The QLS has stated in relation to this section:²

Further, the definition of things 'being, to be or having been used' to commit a racing, burn out or other hooning offence is similarly broad. Under new 19D this could include number plates, hydraulic jacks and racing tyres. We are concerned the drafting has the effect that a person potentially commits an offence for possessing a thing which may be used (but has not yet been used) to commit a racing, burn out or other hooning offence.

The QPS considers that this section has been drafted precisely to indicate that a person is prohibited from possessing a thing that **is being, is to be, or has been used** to commit a racing, burn out or other hooning offence.

To successfully prosecute an offence, it is necessary for the prosecution to prove to the requisite standard each element of the offence. Any prosecution attempting to secure a conviction on the basis that the offender is in possession of a thing that **may** be used to commit a racing, burn out or other hooning offence would fail, as to be successful, the prosecution would be required to prove that the thing **is to be used** to commit a racing, burn out or other hooning offence.

¹ Section 7 'Functions of office' of the *Legislative Standards Act 1992*.

² Page 7 of the Queensland Law Society submission to the Committee dated 21 December 2022.

The QLS has commented:

- *We suggest consideration of other measures and improved evaluation of the effectiveness of existing programs and recent legislative measures directed towards deterring hooning offences.*

The QPS acknowledges that there are a number of strategies to address hooning behaviour. Nonetheless, the QPS considers the offences outlined in the Bill are necessary and warranted to address hooning behaviour on Queensland roads.

Finally, the QLS has commented:

- *We recommend the new offence in cl 37(1) (under the Transport Operations (Road Use Management) Act 1995 (Qld) be redrafted to include a fault element of specific intent to cause a sustained loss of traction.*

The new offence of section 85A ‘Wilfully causing motor vehicle to lose traction with road’ of the *Transport Operations (Road Use Management) Act 1995* provides in part:

- (1) A person must not wilfully drive a motor vehicle on a road or in a public place in a way that causes a sustained loss of traction of 1 or more of the wheels of the motor vehicle and the road or other surface.

Maximum penalty—20 penalty units.

The QPS notes that this section provides that the offender must not ‘**wilfully** drive a motor vehicle on a road or in a public place **in a way** that causes a sustained loss of traction . . .’. This may be interpreted to mean that the driver intended to cause a sustained loss of traction when driving the motor vehicle.

This form of drafting is consistent with other analogous offence provisions where the intent of the offender is an element of the offence. For example, section 291 ‘Making unnecessary noise or smoke’ of the *Transport Operations (Road Use Management-Road Rules)* provides in part:

- (1) A person must not— . . .
 - (b) wilfully start a vehicle, or drive a vehicle, in a way that makes unnecessary noise or smoke.

Maximum penalty—20 penalty units.

Recommendation:

No Change.

Submission 4 – Queensland Family & Child Commission (QFCC)

The QFCC has stated:

The Bill seeks to increase the periods for which relevant offenders are required to report under the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (the Act). It also seeks to make certain offences, including sexual offences, relevant for controlled operations and surveillance device warrants, along with provisions to investigate organised crime and deter hooning.

The QFCC welcomes additional safeguards for children. As the online environment presents new challenges, it is important to make sure we have strong provisions in place so that children maintain the right to grow and develop safely.

Legislation should allow and support police to exercise discretion where children are producing intimate images in the context of their own relationships, to ensure responses

and reporting periods are appropriate and proportionate to a child's actions and situation.

QPS response:

The QPS acknowledges the QFCC support for the Bill and that the QFCC advocates for the exercise of discretion where children are producing intimate images in the context of their own relationships. The QPS notes that these comments fall outside of the scope of the amendment in the Bill which in relation to *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* focus on increasing the period of time a reportable offender is required to report and enhancing investigations offences committed by reportable offenders by expanding the range of offences that may be investigated through a controlled operation or surveillance device warrant.

Recommendation:

No Change.

Submission 5 – Office of the Health Ombudsman (OHO)

The OHO acknowledges the objectives of the Bill and is in support of measures designed to promote safer communities across Queensland, as outlined in the Bill.

QPS response:

The QPS notes OHO's support for the Bill.

Recommendation:

No Change.

Submission 6 – Crime and Corruption Commission Queensland (CCC)

The CCC notes that amendments in the Bill will extend reporting periods for reportable offenders and indicates that the CCC is currently conducting a review of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*. This review is to consider the overall effectiveness of the reporting and prohibition schemes provided under this Act. The CCC expects to report on its review in June 2023.

The CCC indicates that the evidentiary basis for the proposed amendments to the offender reporting scheme, and the police powers available to monitor compliance is unclear. Further, the CCC raises that there may be an impact on the resourcing required to ensure reportable offenders comply with their reportable obligations. The CCC contends that its review may be helpful in determining whether the amendments in the Bill or other strategies would be the most appropriate to achieve the objects of the Act. As such, the CCC suggests that the proposed amendments may be premature.

QPS response:

The QPS notes that the CCC does not specifically object to the amendments in the Bill. The QPS is aware of the CCC review of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* and has provided assistance to and will continue to collaborate with the CCC in its review of this Act. Further, the QPS notes that this review is general in nature with one component of that review being a consideration of the length of reporting time that should be imposed on a reportable offender.

In relation to the evidence basis supporting these amendments, the QPS has responded to a Question Taken on Notice in relation to that issue. In that response, it is stated:³

While some research indicates re-offending for child sexual offenders is lower than other offending, this may be attributed, in part, to lower reporting (approximately 14%) and conviction rates. Furthermore, re-offending rates are often linked to re-conviction rather than actual offending behaviour.

Two studies, cited by the Australian Institute of Criminology in 2018, by Prescott and Rockoff (2011) and Agan and Prescott (2014) found that non-public registration schemes in US states were shown to significantly decrease the overall number of sex offences, primarily where the victims were known to the offender. The later study also found benefits to law enforcement by providing information about known sex offenders. In terms of managing risk, Dr Caron Ronken (BA (Psych) Masters Applied Sociology (Social Research) (2013/17)) stated in response to Queensland's Dangerous Prisoner (Sexual Offender) Act 2003 that all sex offenders constitute a real risk to children and that this risk can be lifelong. Furthermore, Dr Don Grubin, professor of forensic psychiatry at Newcastle University, UK has reported that the likelihood of offending will vary over time depending on mental state, social circumstances and general well-being: many benefit from knowing there are explicit social controls around them.

The research from Dr Ronken and Dr Grubin, cited above, indicates that due to the inherent difficulties in rehabilitating child sex offenders and risk factors resulting in recidivism, the best practice is to lengthen the time an offender is monitored by requiring them to report under a child protection reporting regime.

Approximately 30% of Queensland reportable offenders have relocated from other Australian jurisdictions. While there is no research to indicate why this is occurring, longer reporting periods may act as a deterrent for this cohort. Additionally, there are inherent difficulties in the rehabilitation of some child sex offenders and risk factors resulting in recidivism. Based on these circumstances and available research, lengthening the time an offender is monitored under a child protection reporting regime provides ongoing oversight of an offender's activities and behaviours while provide an additional layer of protection for children in the community.

Additionally, the QPS has considered the resourcing implications for the Child Protection Offender Registry. Relevantly, the lengthening of reporting periods will not be retrospective, meaning the current cohort of reportable offenders will not be affected by the proposed change. This means that no impact on current resources is expected for at least five years, providing the QPS with time to further model the expected growth of reportable offenders and strategically stage any necessary uplift in Registry staff resources.

The QPS considers the safety of children to be of paramount importance and will consider the outcome of the CCC review into the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* when it becomes available in the future. The QPS notes that although the CCC intends to report on its review in June 2023, this is an expectation and not a firm commitment.

It is the QPS view that the amendments in the Bill will improve child safety through establishing a more stringent reporting scheme for reportable offenders and allowing investigation strategies involving controlled operations and surveillance device warrants to be used in relation to reportable offenders suspected of not complying with their reporting obligations.

³ Response to Questions Taken on Notice at the public briefing on 13 December 2022.

The QPS does not consider it is appropriate for the benefits that would arise from these amendments to be delayed interminably awaiting an outcome of a review, particularly as there is no indication that the review will definitively discover strategies that will minimise the prevalence of offences against children that are superior to the amendments proposed in the Bill.

Recommendation:

No Change.

Submission 7 – Justice Reform Initiative (JRI)

The JRI's position is that creating new offences and increasing maximum penalties will not solve the problem of hooning behaviour.

The JRI recommends:

That the Queensland Government reorients its approach to expanding legislative responses that will draw more people into the justice system, and instead reviews existing responses that aim to address the reasons for 'hooning' behaviour. Priority should be given to further investment in responses that support and educate Queensland drivers, increase road safety, and reduce occurrences of 'hooning' behaviours.

Government responses should be targeted specifically at supporting young men to become safe drivers. Programs that support young men to become safer drivers should be more readily available, strongly promoted and externally evaluated to ensure positive outcomes for Queensland.

The Government should run a public education campaign, specifically targeted at young males, about the potential consequences of 'hooning' behaviour and addressing issues around masculinity.

QPS response:

The QPS notes that the cost of road trauma in Queensland is significant. The Queensland Road Safety Strategy estimates that the economic cost of road trauma in 2020 was \$6 billion dollars and accounts for almost 15% of hospital admissions.

This monetary figure does not capture the personal costs to individuals who are directly affected by the tragedy of a death or by life changing disability caused by injuries on our roads. The emotional and psychological costs of such events, are of course, immeasurable. In Queensland in 2022, there were 277 road fatalities, a significant increase against the previous five-year average for the same period.

Although Queensland has some of the toughest measures in Australia to regulate anti-social driving behaviour such as hooning including the impoundment or forfeiture of motor vehicles, hooning remains a persistent problem requiring the adoption of innovative methods to address it.

Concerningly, over the past five years in South East Queensland and in particular the Brisbane South, Ipswich, Logan and Gold Coast Police Districts has seen the emergence of highly organised hoon groups.

These groups have progressed to organising and conducting mass hoon gatherings involving many hundreds of cars and spectators. Police have responded by conducting operations targeting organised hooning. The statistics from one such operation is illustrative of the problems associated with hooning. From one operation (Operation Elderberry):

- 59 vehicles were impounded;

- In excess of 2,000 traffic infringements were issued;
- 219 drivers were detected driving without a licence;
- 92 positive drug drivers were detected;
- 72 drivers were found to be over the legal blood alcohol concentration limit; and
- 182 vehicle defects notices were issued.

Police have also observed, either directly or through social media, drivers participating in a range of anti-social and dangerous behaviour including drivers on public street who did a burnout on a public until the vehicle's engine caught fire or who replaced the vehicle's steering wheel with a computer gaming steering wheel.

The QPS acknowledges the importance of road safety campaigns including educational programs designed to reduce bad driving behaviour. However, the QPS considers these measures to be one of many strategies available to address hooning behaviour. Other measures also employed by police include vehicle impoundment, vehicle forfeiture, number plate confiscation and the prosecution of hooning offences. The QPS considers the offences outlined in the Bill are necessary and warranted to address hooning behaviour on Queensland roads.

Recommendation:

No Change.
