ECONOMICS AND GOVERNANCE COMMITTEE

Members present:
Mr LP Power MP—Chair
Mr MJ Crandon MP (virtual)
Mrs MF McMahon MP
Mr DG Purdie MP
Mr A Tantari MP (virtual)

Staff present:
Ms A Beem— Acting Committee Secretary
Ms M Salisbury—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 30 JANUARY 2023

Brisbane

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The committee met at 10.30 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022. I would like to respectfully acknowledge the Jagara speaking people, the traditional custodians of the land on which we meet today, and pay our respects to elders past and present. We are extremely fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share.

My name is Linus Power; I am the member for Logan and chair of the committee. The other members of the committee are: Mr Ray Stevens, the deputy chair and member for Mermaid Beach, who is an apology today; Mrs Melissa McMahon, the member for Macalister; and Mr Dan Purdie, the member for Ninderry. Joining us via teleconference today are Mr Michael Crandon, the member for Coomera and Mr Adrian Tantari, the member for Hervey Bay.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and chair's direction at all times. Anyone in the room may be filmed or photographed during the proceedings and images may appear on the parliament's website or social media pages. I remind participants, including those on the committee, to please turn your mobile phones to silent mode.

JASPER, Ms Julia, Member of the Criminal Law Committee, Queensland Law Society

KOPILOVIC, Ms Chloe, President, Queensland Law Society

CHAIR: I welcome witnesses from the Queensland Law Society. Would you like to make an opening statement before we begin our questions?

Ms Kopilovic: Thank you for inviting the Queensland Law Society to appear this morning at this public hearing in relation to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022. We also would like to acknowledge and recognise the traditional owners and custodians of the land on which this meeting is taking place, Meanjin—Brisbane—and recognise country both north and south of the Brisbane River as the home of the Turrbal and Jagara nations and pay deep respects to eldest past, present and future.

The Queensland Law Society is a peak professional body for the state's legal practitioners. We represent over 14,000 members and offer education and support. We are an independent, apolitical representative body upon which government and parliament can rely to provide advice which promotes good, evidence-based policy.

Our submissions today in relation to the bill are as follows: firstly, amendments to the offender monitoring period should be reserved pending the outcome of any related recommendations which may arise as a result of the CCC's statutory review. We understand the CCC's observation in their submission to this inquiry that the evidentiary basis for these proposed amendments to the offender reporting scheme and the police powers available to monitor complaints are unclear.

Secondly, the addition of relevant offences for controlled operations and surveillance device warrants under section 2 of the Police Powers and Responsibilities Act should be narrowed. As they are currently drafted, we have concerns that the proposed additions are broad and have the potential for controlled operations and surveillance warrants to go beyond what is reasonably justified and proportionate. In our view, any expansion to controlled operations and surveillance device warrants should be approached with caution.

Thirdly, with respect to the new hooning offences we strongly recommend consideration of other measures and the improved evaluation of existing programs as well as recent legislative measures which have been directed towards deterring hooning offences and unsafe driving behaviours.

Finally, our submission outlines concerns with the drafting of the new offences and recommends that a new offence in clause 37(1) of the Transport Operations (Road Use Management) Act 1995 include a fault element of specific intent to cause a sustained loss of traction to ensure that the prosecution of the offence is appropriately targeted. Today I am joined by subject matter expert Julia Jasper. We welcome any questions the committee may have.

Mr PURDIE: Thank you for your presentation. This question is probably best for you, Ms Jasper. In relation to The Child Protection Offender Reporting amendments—the CPOR amendments—you have raised concerns that the increase in the reporting period for reportable offenders is unfocused and too broad. Does the QLS have a view on whether the current provisions that enable police to seek an offender prohibition order where they become aware of concerning conduct is sufficient to prevent further offending?

Ms Jasper: Certainly the legislation around prohibition orders is very different from the broader reporting obligations, which are applied in a blanket fashion. If you commit an offence which triggers the reporting conditions, the same obligations apply to every offender. They are not targeted at a particular offender's areas of risk. A prohibition order enables an application to be made in a court to consider what steps need to be put in place or what prohibitions or conditions need to be put in place to minimise the offending risk of a particular offender. They are certainly more targeted, and anything that is more targeted is likely to be more effective for that particular offender.

I am sure the effectiveness of prohibition orders is one of the things the CCC will be evaluating when they conduct their overall evaluation of that legislation. It is certainly something that unquestionably has a more targeted and more focused effect on particular offenders than broader reporting obligations, but I think that can address the more specific concerns. I understand that the number of people currently reporting who have been identified as high risk is a relatively small proportion of the overall number. Those are the people who obviously require greater police attention and greater restriction, and those prohibition order conditions enable that to occur already.

Mr PURDIE: I noticed in your written submission that one of the recommendations the QLS supports or recommends is that we wait for the result of the CCC review into this legislation. Can you elaborate on that a little bit more?

Ms Jasper: One of the important functions of the CCC is to review the effectiveness of legislation in Queensland. This is a process that started some months ago. I understand it will be a broad inquiry about whether or not the current measures in the legislation achieve their legislative goals, which is obviously community safety and the prevention of recidivism. I think the CCC is best placed to make recommendations following that review. The QLS is always in support, as Chloe has said, of legislation and policy based on evidence. I understand that these provisions are different. The length of reporting conditions in Queensland is less than other jurisdictions, but I do not think that it necessarily follows that they are less effective. I think the CCC should be allowed to conduct the review and advise.

CHAIR: In response, the department talked about evidence they have worked on and cited studies that were cited by the Australian Institute of Criminology in 2018, Prescott and Rockoff (2011) and Agan and Prescott (2014), which found that registration schemes in US states resulted in a significant decrease in the overall number of sex offences. Is not that evidence which we, who want to keep children safe, should be acting on?

Ms Jasper: A reporting regime is absolutely essential for community safety and to enable police to properly target repeat offenders and gather necessary intelligence to provide protection to the community. I do not think there is any argument—certainly not from QLS's perspective—that a reporting regime is not appropriate. It is only that we are interested in seeing the outcome of the CCC's review about what would be the most effective approach when balancing the increased resources that will be necessitated to be devoted to the scheme if the reporting conditions are significantly lengthened versus the expected policy outcome, so what additional safety would be provided by extending the reporting conditions. I note this is an area where there is a lot of research into factors that trigger reoffending by sexual offenders. There is certainly no argument from QLS that a reporting regime is not appropriate.

CHAIR: Turning to those on the phone, Adrian or Michael, do you have any questions?

Mr CRANDON: Nothing from me, thanks, Chair.

Mr TANTARI: With regard to the new hooning offences, I am just interested in the QLS's suggestion that we consider other measures we should be undertaking. Are you aware of what those other measures may be with regard to being a better deterrent to hooning than what is being proposed in this bill?

Ms Jasper: The suggestion by QLS in relation to that is that there are certainly other programs undertaken at the moment in Queensland which are aimed at investigating, understanding and preventing the underlying reasons why hooning behaviour occurs. We understand that the principal offenders in these hooning provisions—and certainly the offenders that the amended legislation seeks to target—are young men essentially between the ages of 16 to 25. I know there are already education programs targeted at young drivers to educate them in terms of the risks associated with dangerous driving behaviours, including the personal risks, the societal risks and the legal risks associated with that behaviour. We believe that, in addition to looking at broadening the legislative provisions that cover this behaviour, we should look at whether or not resources should be put in to broadening these education schemes or looking at research about the underlying causes for hooning behaviours to prevent it from happening in the first place rather than seeking just to introduce a wider range of people into the criminal justice system. There certainly can be lifelong negative consequences for young people who are convicted of criminal offences. The QLS urges caution when it comes to broadening offending legislation that would primarily be targeted at young and vulnerable offenders and recommends looking at additional educational responses.

Mrs McMAHON: One of the comments in the submission relates to the introduction of a fault element in relation to clause 37(1). Currently it is drafted using the term 'wilfully.' What is the benefit of including an element of intent, and how will that vastly differ from the current element of wilfully being a willed, deliberate act?

Ms Jasper: The concern is about the way the provision is currently drafted. The willed act at the moment is the driving, so it requires the loss of traction, but the willed act is the driving. We are asking for specific intent so that the underlying behaviour that it is seeking to get at is where someone is driving with the aim of losing traction. Having a specific intent focus means that you are not going to capture people who are wilfully driving on a road but are losing traction due to other factors such as road conditions such as a gravel road or water on the road. It specifically targets where the aim of the driving is the loss of traction.

Mrs McMAHON: It is currently drafted as 'wilfully drive a motor vehicle … in a way that causes a sustained loss of traction'.

Ms Jasper: That is right.

Mrs McMAHON: And that would not capture it?

Ms Jasper: It would but I think the concern is that it could capture people who are wilfully driving in a way that is not to the conditions, for example, that causes the loss of traction. Where that is an offence, if there is an offence, it is more likely to be careless driving or something like that, rather than an actual hooning behaviour. I understand that it is designed to capture instances where the driving would not be captured by the undue smoke and noise offence that is already there.

Mrs McMAHON: That is a section that uses 'wilfully'.

Ms Jasper: Yes.

Mrs McMAHON: It is wilfully drive in a way that causes undue noise and smoke. Are we aware of any particular cases where that has unintentionally captured people? We are using that already for the smoke and noise and all we are doing is increasing it to the loss of traction. If there is any evidence of people who have been captured by the wilfully make smoke and noise, then we might have reason to believe that this would capture people who lose traction for some other reason. I am just trying to compare these two.

Ms Jasper: I understand. I think it is more difficult to fall foul of the undue smoke and noise provisions than it would be to fall foul of this loss of traction, because undue smoke and noise and the kind of behaviour we understand about burnouts and those sorts of things is much less likely to happen in the ordinary course of driving.

Mrs McMAHON: I note that one of the reasons why someone would lose traction and not have smoke and noise is that there has specifically been something put on the road, which would very much lead to the wilful aspect of it I believe.

Ms Jasper: Yes.

Mrs McMAHON: That is it for me at the moment.

CHAIR: I have to point out that I was doorknocking on the weekend at a significant hoon hotspot in my area, and those people I doorknocked would be mystified by the QLS's approach here. One example is your suggestion seems to be that someone would wilfully lose traction on a dirt road or a wet road and you said that we need to show more understanding of underlying behaviour. Do you understand that whenever it rains in Logan hoons come out because they know they can lose traction?

Ms Jasper: Yes.

CHAIR: They will not necessarily cause undue noise, yet they are even more dangerous because they are not driving to conditions.

Ms Jasper: Certainly.

CHAIR: Isn't this law going to be something where we can target this extraordinarily dangerous activity in our suburbs?

Ms Jasper: That behaviour would be captured with the amendment that QLS is suggesting because in those examples you are providing the loss of traction is the point of the driving.

CHAIR: The wilful loss of traction.

Ms Jasper: Yes. That is the specific intent of their manner of driving.

CHAIR: That is right. So where they are wilfully driving unsafely—and we see this where people drive on dirt roads and fishtail through it—they are not causing smoke or—

Ms Jasper: The QLS is certainly agreeing that there is a gap in the legislation when it comes to that driving behaviour. The suggestion is simply to narrow the focus of the offence provision to make sure that it only captures people where the specific aim and intent of their driving is this behaviour that we are seeking to outlaw.

CHAIR: And the QLS's position is that we should narrow it to make it more difficult to prosecute those who are wilfully driving unsafely in rain, dirt and other things where they have lost traction?

Ms Jasper: No. Our suggestion is that it should just be targeting that illegal behaviour.

CHAIR: With respect, narrowing it means that we would not capture some people who have proved to the courts that they were wilfully driving for a loss of traction. Your example was when it rains—if they are not driving to conditions and not causing smoke because the ground is wet, we should allow those people off?

Ms Jasper: That is not what we are suggesting at all. Again, it is a question of if the evidence supports that the point of the driving was the loss of traction—

CHAIR: Wilful.

Ms Jasper: Absolutely—then that would be covered by the provision.

CHAIR: Are there any other questions?

Mr PURDIE: My next question is not about hooning, if you want to exhaust this topic first.

CHAIR: I could keep going for a long time on this. This is something I am red hot angry about.

Mrs McMAHON: If we go back to the hooning. We identified this young male cohort aged between 16 and 25. I think we can all say that from time immemorial that age group has had high risk-taking behaviours. When we combine that with the new phenomenon of social media and the notoriety that comes with social media, we are getting a perfect storm with this group. They are not all obviously like that, but there is a small cohort. What is proposed in terms of education where we actually address high risk-taking behaviour? My understanding is various road safety programs have been trying to target young male drivers. Whether it is hooning or drink driving, they exceed in categories in all sorts of risk-taking behaviours. I have been at hooning events on a Thursday night in a uniform policing capacity, and I can tell you that none of them were very interested in listening to me or anyone educate them on the dangers they were knowingly engaging in. That is the whole reason they are doing it.

CHAIR: They know it is dangerous.

Mrs McMAHON: They know it is dangerous and now we have this added phenomenon where everyone gets to see them engage in that dangerous behaviour. I am wondering about a proposal to educate young people when so far this risk-taking behaviour seems to be increasing despite education programs that have been proposed and are funded. How is that looking to help when we have not really seen a decrease in that risk-taking behaviour?

Ms Jasper: The QLS's position is that education is not the only thing that should be considered. Obviously, there are gaps in the legislation as it stands in Queensland to address this developing phenomenon. Our position is as always that legislation and policy should be evidence based and that all options should be on the table and considered, especially as I said earlier that the consequences for a young person of contact with the criminal justice system at an early stage can be very significant in terms of career prospects and things like that. It is to make sure that any changes to legislation are specifically targeted at the behaviour and do not have unintended consequences of capturing other persons who are not directly involved in the activity.

Mrs McMAHON: My understanding in relation to the Summary Offences Act is that none of the offences result in imprisonment?

Ms Jasper: There are sentences. I understand that some of the proposed changes for the hooning legislation carry sentences of a maximum of a year I believe.

Mrs McMAHON: Finally, you have made reference to vulnerable people being unintentionally captured in this legislation. Could you expand on who you consider are vulnerable people engaging in hooning when it comes to this age group?

Ms Jasper: Obviously, young people are all vulnerable in a way in that they are certainly not fully formed adults yet and they make poor decisions and those poor decisions can have very long lasting consequences. With the way the legislation is currently drafted—especially in relation to the social media aspect of it—it does not just target the people engaged in the dangerous driving; it also targets people around them who are involved in the event and taking photographs and posting.

Mrs McMAHON: Spectators.

Ms Jasper: Exactly. I think that is certainly more likely to have the unintended negative consequences that I speak of when you are dealing with people who are not, if you like, the principal offenders, the people behind the wheel. Given the huge negative social impact and the terrible impact on communities of this behaviour, I understand the desire to stamp out the promotion or the perceived promotion of these events via social media, but the QLS is concerned about the breadth of the legislation capturing people who are spectators who may not even be aware that taking a photograph and posting it on social media could lead to criminal sanctions.

CHAIR: Does the QLS have an awareness that in some circumstances through social media up to 100 or 200 people can gather together, physically blocking the driveways of those who are in the local area, preventing them from getting out and stopping the activities that are terrorising the neighbourhood?

Ms Jasper: Yes.

CHAIR: Their entire intention is to film these activities and to clap and cheer them, and that we should be powerless then to act on those circumstances?

Ms Jasper: I am not suggesting that. This is a very new idea—that is, criminalising spectator behaviour and social media posting like this—and I think that is why caution is being urged. Again, social media is such a new phenomenon and the legal system has never had to cope with it before. It has never had to cope with the self-promoting criminal activity that we see. I think we are urging caution and making sure the legislation is as targeted as it can be.

Mrs McMAHON: We have often had presentations from the Law Society in relation to the drafting of legislation where we have been criticised for being too specific and too prescriptive, but in this case we are asked to be more prescriptive. It is very hard to find a balance that meets the needs of the Law Society. We have sat on previous committees where we have been quite prescriptive and you have said, 'No, you need the law to work through its processes,' and we hear about case law and all these things. However, now in this specific case, you want us to be more prescriptive, almost hamstringing interpretation of—

Ms Jasper: The QLS's position is not to attempt to hamstring the legislative process. Amongst the amendments that we are here to discuss today, there are some really great things that have identified some holes in the police powers in particular. No-one is trying to hamstring anybody when it comes to positive changes especially to the criminal justice system when there are these critical issues that are having such a negative impact on people.

The role of the QLS is always to take an objective view and to try to think of what unintended consequences could flow from the way this particular legislation is drafted. There is not criticism coming from QLS—certainly not in relation to these amendments—about the underlying aim of them. The expansion of police powers in relation to covert operations I would say is a great thing—certainly in relation to things like cybercrime and issues that are of a huge growing concern in the community.

There is certainly no resistance from QLS that hooning behaviour also is something that needs to be addressed. Our position is not to hamstring you or to criticise but to urge that these changes be evaluated from all angles. That is all we are seeking to do.

Ms Kopilovic: In addition, every piece of legislation is different and every proposal is different, so of course the analysis is always going to be different and the response is always going to vary depending on what is being proposed.

Mr PURDIE: If I can get back to some of the amendments in this bill and move on from hooning. I was taking notes during your opening submission, and I know you did touch on the civilians being used in controlled activities. I do not know if it is in your submission but it has been raised in this committee that there is some concern that that might put those civilians at greater risk. Can you elaborate on that?

Ms Jasper: I practise as a criminal defence lawyer in Queensland so this is something that does come up in my everyday practice. I know that the concerns by QLS always are about balancing competing risks. Of course there would be concern that private citizens engaged in police operations could expose themselves to risk—certainly when the vast majority of these types of covert activities are aimed at organised crime and drug type criminal activities. It is trite to say that that kind of activity would be dangerous. These are dangerous people they could be dealing with.

There is an incentive though for private citizens to engage in this kind of activity. There is a provision in section 13B of the Penalties and Sentences Act where a person who is being sentenced for a criminal offence receives a significant discount or a mitigation on their penalty in recognition of cooperation with law enforcement. I know that the police have their own internal processes for managing risk and they have their own processes for ensuring that persons who are engaged in this sort of activity are fully informed of the risks, but there are reasons why people do this. The law enforcement outcomes that can come from this kind of activity can be amazing. We saw in the Daniel Morcombe investigation how powerful covert inquiries can be of a wide variety of subject areas, if you like—drugs, organised crime, firearms, serious offences, murder and the like. While there is a risk involved, the risk is offset by the benefits of the risks taken and also there can be a personal benefit to the people involved.

Mr PURDIE: This amendment, by including a civilian to participate in a controlled activity, would essentially protect them criminally, wouldn't it?

Ms Jasper: It does.

Mr PURDIE: There may be a bit of a benefit there.

Ms Jasper: There is. It changes the way that it happens now in terms of the person taking the risk and committing associated criminal acts. It is considering the actions of the private individuals who they are assisting in the lawful criminal activity of the undercover police officer. The way that it works at the moment is you do that in the expectation that you would get an indemnity following the action from criminal prosecution for the assisting of the criminal activity of the undercover operative, but this provides more certainty in that it provides the protection up-front rather than relying on the protection at the end.

Mr PURDIE: Thank you. In a lot of your answers, you have spoken about the QLS being supportive of legislation if it is based on evidence. We had police provide us with a briefing in relation to those CPOR amendments. They were questioned as to whether there was any evidence they could present to the committee that offenders had come off the register and had committed offences. I think in your submission you talk about when the reporting periods were reduced back in 2015 to 2017 that that was based on evidence. When we asked them at the time for evidence that supported these amendments, they did not know any but they have since come up with it in a reply to a question on notice.

You also said that some of the offenders on this register are awfully high risk—and you mentioned Daniel Morcombe—but a lot of them are not. A lot of them have committed unlawful carnal knowledge offences as juveniles and they carry that for the whole time they are on the register. Have you seen any local evidence, apart from what the chair has mentioned today, that would support extending? In your experience on the bar, have you seen offenders coming off the register after 15 or 20 years and regularly committing further offences?

Ms Jasper: No, I have not. I think with the system that we have in place in Queensland to deal with particularly dangerous sex offenders—we had the dangerous prisoner legislation, for example—there is already really powerful controls.

Mr PURDIE: And the prohibition orders, as you spoke of earlier.

Ms Jasper: There are already powerful controls in place that can be used for recidivist offenders who have been identified as being high risk. I am not aware of any. I am not sure that there has been any longitudinal research done in Queensland in relation to the impact of the length of the reporting period on whether or not people commit offences. The reasons why people reoffend in this area are really complex and can be very unique. I know that a number of different evaluation tools are used to assess risk and they look at the various factors that might increase a particular person's risk of reoffending—their socioeconomic position, whether they are working, their stable family life, if they have substance abuse issues or other things like that. I do not know, but I think it is such an important policy issue that there should be research done to make sure we have the most effective program possible.

Mr PURDIE: And potentially not too broad or too focused, which I think was your wording.

Ms Jasper: It is a really difficult balancing act because you are talking about individual liberties. The sex offender register covers such a huge variety of offending behaviour, and with that comes a huge variety of different risk factors from people who will never offend again—where there was a particular combination of factors that led to an offence that was a truly one-off and they are fully rehabilitated and their risk of reoffending is very, very low—right through to the highest level sex offenders. Blanket reporting conditions are an imprecise measure. By 'imprecise', I am not suggesting that it is not good; it is imprecise which is why it has to be supplemented with these other more specific targeted measures that have much more high levels of restriction on them, so that when people with a high risk of reoffending are identified the law has the power to control them in a way that makes the risk as minimal as it can be. It is such a difficult area.

Mr PURDIE: I agree.

CHAIR: I have been involved in designing some social research projects and there was a suggestion there that we should do research in Queensland on different lengths of reporting. The difficulty is that you have set a very high bar for the evidence needed, in that we only make this change now and we would have to do research going forward and then have a relatively limited sample. That makes the design of that sort of research almost impossible.

Ms Jasper: I am not an expert at research of these types but I know that the reporting time periods have changed over the years in Queensland so they have not always been what they are. They were cut relatively recently, as we have talked about. I understand the department of justice keeps very detailed statistics in relation to offences, and obviously the courts have these records and the police have records in relation to who commits offences and what offences they commit. I would assume that the evidence would be there.

CHAIR: The QPS is putting forward that they are making those changes because they feel there is greater confidence in this reporting. You also spoke about how if there is a change in the circumstance of a previous offender—loss of job, the break-up of a relationship, another traumatic incident—reporting periods give us some opportunity to have an understanding of that with the individual.

Ms Jasper: That is true.

CHAIR: Wouldn't that be of greater value, even if those traumatic things happened at a greater time period from the offence?

Ms Jasper: Absolutely. There is no doubt that it is one way of identifying who is at a higher risk. There is no doubt at all that that is the case.

CHAIR: There being no further questions, we thank you very much for your participation here today. I note that there were no questions taken on notice. Thank you to our fantastic Hansard reporters. They work so hard that a transcript of these proceedings will be available on the committee's webpage quite soon. With that, I declare the public hearing closed.

The committee adjourned at 11.08 am.