Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

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Inquiry into Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Introduction

The primary objective of the Bill is to strengthen child protection laws by increasing the periods for which an offender is required to report under *the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*[1] and improving the ability of the Queensland Police Service to investigate cybercrimes and offences committed by these types of offenders through the provision of controlled operations and surveillance device warrants available to officers investigating perpetrators of certain criminal offences.

This bill also seeks to enhance the capacity of the Queensland Police Service to investigate organised crime groups by facilitating the use of civilian participants in 'controlled activities' and, strengthen the laws deterring 'hooning' behaviours by creating additional offences under the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021*[2].

As a future legal practitioner, an advocate for human rights and an individual with lived experience, I have both professional and personal responsibilities to protect the rule of law, the integrity of the legal system and the rights of others. To do this, I engage regularly with law reviews and encourage law reform.

Changes to Reportable Offender Reporting Periods

The *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*[3] (CPOROPO Act) is based on a national model in operation across all states of Australia with information about reportable offenders, including their reporting periods, held on the National child protection register.

In 2014, Queensland reduced the reporting periods for reportable offenders from 8 years, 15 years and life based on the number and classes of offences committed, to 5 years, 10 years and life based on re-offending after a notice of reporting obligations had been given to a reportable offender. As a result, Queensland now has the shortest reporting periods in Australia.

The amendments in the Bill adjust the reporting periods for reportable offenders, other than a reportable offender who is a post *Dangerous Prisoners (Sexual Offenders) Act 2003*[4] (DPSOA) reportable offender (post-DPSOA reportable offenders), to 10 years, 20 years and life. A Post-DPSOA reportable offender is currently subject to life reporting obligations and the Bill makes no change to their existing reporting obligations.

The additional reporting periods aim to ensure that offenders who commit sexual or other serious offences against children continue to be monitored by police to reduce the likelihood that they will reoffend.

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[1] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld)
[2] *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021* (Qld)
[3] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld)
[4] *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld)

I have no objections to these proposed changes and support the recommendations.

Amendment of schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the Police Powers and Responsibilities Act – Additional Offences

The bill proposes to expand the list of relevant offences for controlled operations under schedule 2 of the *Police Powers and Responsibilities Act*[5] to include sections 223 Distributing intimate images[6], 408C Fraud[7], 408D Obtaining or dealing with identification information[8], and 408E Computer hacking and misuse[9] which will allow police to use controlled operations and surveillance devices as an investigation tool.

Cybercrime is increasing and is having a significant impact on the Australian community and perhaps more significantly the Queensland community, which accounts for the highest rate of cybercrime of all Australian jurisdictions. Cybercrime has a lower risk of detection and his harder for police to prosecute.

The Australian Government's National Plan to Combat Cybercrime 2022, acknowledged that illicit transactions are facilitated by anonymising technologies and cryptocurrencies, requiring specialised cybercrime investigation capabilities.

I have no objections to these proposed changes and support the recommendations.

Amendment of schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the Police Powers and Responsibilities Act – Addition of Child Protection Act Offences

The bill also proposes to strengthen child protection through the enhancement of police monitoring and management of reportable offenders by amending the *Police Powers and Responsibilities Act*[10] to include (*Child Protection Offender Reporting and Offender Prohibition Order) Act* offences of Failure to comply with reporting obligations,[11] False or misleading information[12] and failing to comply with prohibition[13].

The explanatory notes propose that the number of reportable offenders requiring monitoring and management by the Queensland Police Service is increasing by approximately 150-200 each year and while reporting requirements under (*Child Protection Offender Reporting and Offender Prohibition Order) Act*[14] are stringent, some reportable offenders manipulate conditions of the orders, making it harder for police to reliably know where the offender is residing, working and spending most of their time.

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[5] *Police Powers and Responsibilities Act 2000* (Qld)
[6] *Police Powers and Responsibilities Act 2000* (Qld) s223 Distributing Intimate Images
[7] *ibid* s408 (c) Fraud
[8] *ibid* s408 (d) Obtaining or Dealing with Identification Information
[9] *ibid* s408 (e) Computer Hacking and Misuse
[10] *Police Powers and Responsibilities Act 2000* (Qld)
[11] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld) s50
[12] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld) s51
[13] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld) s51A
[14] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld)

The notes provide the following example; the offender may be living in car or homeless, only providing police with a locality they can be found in. Some of these reportable offenders also present a high risk of reoffending confirmed by virtue of their status as a *Dangerous Prisoners (Sexual Offenders) Act* [15] offender or the issue of an Offender Prohibition Order against the reportable offender. The detection and investigation of these offences through conventional means is resource intensive. The capacity to use covert methodologies to investigate the specified offences committed by this high-risk cohort is considered justified, given the risk that such offenders pose to children.

Police receive information and intelligence about reportable offenders not complying with conditions or prohibitions. The ability for police to apply for a surveillance device warrant to a magistrate or judge when intelligence reveals an offender is not complying with their obligations will assist in community safety and in fulfilling the purposes of the *Child Protection Offender Reporting and Offender Prohibition Order Act*. [16]

The proposed insertion of *Child Protection Offender Reporting and Offender Prohibition Order Act*[17] offences into schedule 2 of the *Police Powers and Responsibilities Act*[18] means the amendments will apply to all reportable offenders and maintains the current 'relevant offence'.

I have no objections to these proposed changes and support the recommendations.

Authorisation for a civilian to take part in a controlled activity (ancillary conduct only)

The existing controlled activity provisions in Chapter 10 of the PPRA, provide a legislative framework to authorise a police officer to engage in controlled activity. Controlled activities involve a police officer communicating with a person, deliberately concealing the purpose of that communication, or engaging in conduct that, but for the protections afforded by section 225 of the PPRA would be unlawful. For example, this could involve a covert police officer communicating with a drug dealer for the purpose of gathering evidence to support a prosecution for the offence of supplying or trafficking dangerous drugs or, could involve an officer engaging in an online chat room seeking out sex offenders and paedophiles.

The offence or communication could be considered supply, trafficking, fraud and/or using a false identity. These provisions seem to be a way for police to circumvent and navigate well established legal principals around entrapment and instead, seem to allow civilians to engage in this process. The civilian may avoid civil and criminal liability but, in my view, that is the least concerning element.

In 2016, I was taken into custody for what would be the second of four visits, my first in Queensland. On this occasion I entered a guilty plea to 11 offences and sentenced to six months imprisonment. Offences included Breach of Bail, Trespassing, Evade Police, Drink Driving, Wilful Damage and for the most part, these offences were misdemeanours and on

[15] *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld)
[16] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld)
[17] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld)
[18] *Police Powers and Responsibilities Act 2000* (Qld)

their own, did not amount to anything very serious but my life was spiralling out of control and the offending behaviour was increasing.

When I entered prison, I was extremely vulnerable. I had received very negative media attention which included very serious allegations although I was not charged by police. I was also suicidal and walking with the aid of crutches because I had a broken leg. I was placed immediately into protection as a high-profile prisoner.

I was violently assaulted multiple times requiring a wheelchair, raped, tortured, bullied and experienced much verbal abuse from staff and other inmates. I was sent from prison to prison during the six-month period as each prison manager identified that they were no longer able to ensure my protection within their facility. I spent more than four of the six months in solitary confinement detention cells.

I spent another six months remanded in custody in 2017 for offences not proceeded with by the police prosecution. Six months in prison for offences I did not commit and offences for which the prosecution ultimately offered no evidence. During this time, I was taken under the wing of violent criminals, became friends with them and became associated with their major organised crime groups.

It was identified during this time that as i was not a drug user and had no drug history, I may become an asset to major organised crime groups and outlaw motorcycle gangs. I was intelligent and risk adverse and felt like I owed a debt to them after all, they were responsible for protecting me and keeping me safe which is something I value greatly.

As you can imagine, there is not a great deal that I can say about my associations other than that I have seen and heard many things that allow me to approach certain things from a different perspective, one I don't think has been considered appropriately.

I agree that the 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, this need and/or desire must be balanced with a primary consideration for the safety of the individual.

Using civilians in these types of activities places the individual at great risk and I would like to discuss this issue further.

Safeguards

Controlled activities are used by police to obtain evidence of the commission of a relevant offence without the police officer themselves being liable for committing the offence. A controlled activity is smaller in scope than a controlled operation. For example, a controlled activity may target a small group of persons suppling or trafficking drugs within Queensland whereas a controlled operation may target an organised crime group throughout several Australian jurisdictions. The current process for applying to undertake controlled activities incorporates many safeguards including:

- a senior police officer of at least the rank of Inspector is required to authorise a controlled activity.

the authority must be written and state the controlled activity the police officer is authorised to engage in;

the authority may last no longer than seven days;

the senior police officer may authorise a police officer to engage in a controlled activity only if, having regard to the nature or extent of the relevant controlled activity offence, authorising a controlled activity is appropriate in the circumstances; and

a police officer authorised to engage in the controlled activity must comply with any relevant policy or procedure of the police service.

In facilitating the limited involvement of civilian participants, the Bill includes the following further safeguards to ensure the use of the civilian is warranted and to mitigate any potential breaches of fundamental legislative principles:

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 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 considering circumstances where civilians shall be required to engage in activities and/or operations that involve an element of illegality, the Committee should consider the following case.

R v Ridgeway

R v Ridgeway[19] considered entrapment by the Police and is considered one of the leading cases regarding entrapment, as a defence in Australia. The offender was charged with a

[19] *R v Ridgeway* (1995) 184 CLR 19

breach of section 233B(1)(c) of the *Customs Act 1901* (Cth) for the importation of 140.4 grams of heroin. The charge was a result of a 'controlled' operation between the Australian Federal Police (AFP) and Malaysian Federal Police (MFP).

The offender contacted an old friend, Lee, who he had met whilst serving a jail term in a South Australian prison for drug related offences. Upon release, Lee was deported to Malaysia and subsequently became an informant for the MFP. Once the offender was released, he contacted Lee to arrange to purchase heroin to import into Australia. Lee and a Malaysian police officer, acting with the knowledge and co-operation of the AFP, were given visas by the Australian High Commission in Malaysia, and imported a quantity of heroin into Australia. The heroin was cleared through Customs as arranged by the AFP and Australian Customs Service and upon delivery of the heroin the offender was apprehended.

In this case the importation was supported by and encouraged by the AFP who arranged for the informant to travel with the heroin, and knowingly allowed the heroin into the country clearing the heroin through customs. The AFP in doing this, were committing various trafficking offences themselves and so the offender in this case argued that he was 'entrapped'.

The High Court of Australia held in the Ridgeway case that there was no practical defence of entrapment. Although, the court did recognise that as a matter of public policy, courts must exercise a discretion to exclude any evidence of any offence that was brought about by unlawful conduct of law enforcement officers. The purpose of this discretion is to discourage such unlawful conduct by Police. It was further held that this discretion extends to circumstances where a criminal offence has been induced by improper conduct, not just unlawful conduct, by law enforcement.

For Ridgeway, the High Court ultimately held that the evidence which proved that the heroin supplied to the appellant had been illegally imported and should be rejected. Their Honours drew attention to the 'calculated' and 'grave' actions of the AFP, especially that:

- their actions constituted an offence in that the AFP allowed the drugs to be imported
- the police officers involved had not been prosecuted though they, too, had committed an offence
- there was no evidence of any official disapproval or retribution, and
- the objective of the AFP's criminal conduct would have been achieved if the evidence were admitted.

The court weighed these factors against the public interest in Ridgeway's conviction. They determined that the public interest could be satisfied in this case by the availability of a variety of offences that could be applied against the offender which did not involve illegally importing heroin.

It is an important consideration for this is the possible type of scenario a civilian could be caught up in and again, this is where the safeguards must be considered adequate to ensure not only civil and criminal protections, but protections regarding the civilians physical and emotional health and well-being.

Further, the following cases are relevant as they highlight circumstances where individuals complied with police because they thought they were under arrest. The Committee should consider again, the safeguards implemented to ensure that the civilians being relied upon to assist police are doing so of their own accord, there are no deals, inducements, rewards and, that the individual is aware of the risks involved when engaging in these activities. These cases highlight the importance of verbal and physical communication with offenders however, the same principals should be applied when police engage with any member of the public.

R v Inwood

One of the most important aspects of arresting an individual is indicating to the individual that they are under arrest. In *R v Inwood*[20] the Court heard that Inwood attended a police station voluntarily, to answer questions regarding a theft. At the conclusion of the questioning, an officer informed Inwood that he would be charged with theft and began to take his fingerprints without informing him that he was being placed under arrest.

Inwood then attempted to leave the police station and assaulted several police officers in the process. On appeal against his conviction, the Court considered whether there was in fact a lawful arrest prior to, Inwood's attempts to leave the police station. The Court of Appeal ultimately held, that it was not clearly communicated to Inwood that he was under arrest.

In this case, the Court established that there is no magical formula resolving the issue of whether an arrest has occurred, all circumstances must be considered and specifically, the Court must consider whether the individual was able to exercise their right to leave.

The Judge stated;

> *"It all depends on the circumstances of any particular case whether in fact it has been shown that a man has been arrested, and the court considers it unwise to say that there should be any particular formula followed. No formula will suit every case and it may well be that different procedures might have to be followed with different persons depending on their age, ethnic origin, knowledge of English, intellectual qualities, physical or mental disabilities. There is no magic formula; only the obligation to make it plain to the suspect by what is said and done that he is no longer a free man.[21]"*

Alderson v Booth

This *Alderson v Booth*[22] case considered an appeal by prosecution of an earlier judgment of a Court, that determined Mr Booth was not under arrest when providing a blood sample to the police and that the blood sample given whilst not under arrest, could not be relied upon as evidence of a drink driving offence.

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[20] *R v Inwood* (1973) 1 WLR 647
[21] *R v Inwood* (1973) 1 WLR 647 at 649
[22] *Alderson v Booth* (1969) 2 QB 216 at 220

Mr Booth was the driver of a vehicle involved in a motor vehicle accident with another vehicle and was questioned by officer Alderson, who required Booth to provide a specimen of breath. Booth complied with the direction and the test returned a positive reading. The constable informed the defendant of the result of the test and said: "I shall have to ask you to come to the police station for further tests."

The defendant voluntarily accompanied the constable to a police station where he was given an opportunity to provide another specimen of breath returning a positive reading. The officer then required the defendant to provide a blood sample and the defendant agreed. Upon analysis, the sample of blood provided contained an amount of alcohol that exceeded the prescribed limit.

The justices were of opinion that when the defendant accompanied the constable to the police station, it was not made clear to him either physically or by word of mouth that he was under compulsion. They considered that compulsion was a necessary element of arrest, and they therefore did not regard the defendant as a person who had been arrested. Therefore, they dismissed the appeal.

Harris Case

The *Harris*[23] case considered whether a fear of police should be considered when determining whether the individual was under arrest. The Court held that fear of police was not to be considered and all that mattered, was whether the police indicated the individual was under arrest.

O'Donoghue Case

O'Donoghue[24] considered circumstances where an individual thought they were under arrest and for that reason, followed an officer's requests.

Polyukhovich v Commonwealth

In 1990, Ivan Polyukhovich, then seventy-three years old and residing in Adelaide became the first and only person arrested and charged under *Australia's War Crimes Act*[25]. Polyukhovich was accused of helping the Nazis, massacre nine hundred men, women and children in Ukraine.

Polyukhovich claimed that he did not have a choice which established what is now referred to as '*the Polyukovich test*[26]'. the test is to consider, 'would a reasonable person think, they no longer have a choice? and would a reasonable person make that decision? confirming that all the circumstances apply.

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[23] *Harris* (1995) 64 SASR 85
[24] *O'Donaghue (*1988) 34 Crim R 397
[25] *War Crimes Act* (1945) (Cth)
[26] *Polyukhovich v Commonwealth* (No 3) (1993) 170 LSJS 300

After a nine-week trial, a jury found Ivan Polyukhovich not guilty.

Trotter, Sutherland Jordan Case

Another case, that of *Trotter, Sutherland Jordan* [27]considered whether the entering of a house by several officers indicated that an individual was under arrest. The Court held that in the circumstances it was reasonable to assume the individual was no longer free and that they were under arrest.

Byczho Case

The *Byczho*[28] case considered whether the words 'you must come with us' indicated an individual was under arrest and no longer at liberty. The police officers in this case did not clearly indicate the individual was under arrest and did not say words to that effect however, the Court held that the words that were spoken by police were a direction.

Hatzinikolaou v Snape

This *case*[29] again considers what constitutes an arrest. The Court considered whether the placing of a police officer's hand on an individual's shoulder followed by the words 'would you mind coming with us', would indicate to a reasonable person, that they were under arrest.

In conclusion, I do not believe enough information has been provided to approve this amendment. This amendment has the potential to endanger the health, wellbeing and safety of civilians and approves small acts or crimes to be committed/permitted without any legal recourse. The safeguards provided/proposed do not seem adequate.

There has been very little consideration as to the physical and emotional safety of the civilian being prioritised and only reference to civil and criminal liability. As an individual with lived experience as an associate of major organised crime gangs, criminal organisations, outlaw motorcycle clubs and a friend of many, currently or previously involved in major organised crime, I am in a unique position to be able to make submissions in relation to this proposed amendment.

Very serious consequences such as assault, destruction of property, deprivation of liberty and death can occur when individual are caught providing information to police or assisting police in their operations.

'Hooning' Behaviour

Despite the strong measures legislated by Queensland Governments, including vehicle impoundment and confiscation, 'hooning' is a persistent problem in many areas. There is no single 'hooning' offence under Queensland law. The type of anti-social driving behaviours

[27] *Trotter, Sutherland Jordan* (1992) 60 A Crim R 1 at 13
[28] *Byczho* (1981) 7 A Crim R 263
[29] *Hatzinikolaou v Snape* (1989) 41 A Crim R 389

collectively recognised as 'hooning', are defined as type 1 vehicle related offences in Chapter 4 'Motor vehicle impounding and immobilising powers for prescribed offences and motorbike noise direction offences' of the *Police Powers and Responsibilities Act*[30].

Type 1 vehicle related offences include any of the following offences committed in circumstances that involve a speed trial, a race between motor vehicles, or a burn out:

> an offence against the *Criminal Code*[31], section 328A 'Dangerous operation of a vehicle' committed on a road or in a public place;
>
> an offence against the *Transport Operations (Road Use Management) Act*[32], section 83 'Careless driving';
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> an offence against the *Transport Operations (Road Use Management) Act*[33], section 85, 'Racing and speed trials on roads';
>
> an offence against the *Transport Operations (Road Use Management) Act* [34]involving wilfully starting a motor vehicle, or driving a motor vehicle, in a way that makes unnecessary noise or smoke; and
>
> an evasion offence under section 754 of the *Police Powers and Responsibilities Act*[35].

If a person is caught committing a type 1 vehicle related offence, their vehicle may be impounded for 90 days and in the past year 186 vehicles were impounded for 90 days. If a person is caught committing a subsequent type 1 vehicle related offence within five years of committing their first type 1 vehicle related offence their vehicle may be forfeited to the State and destroyed.

Introduction of Additional Summary Offences

The Bill amends the *Summary Offences Act*[36] to create a new offence provision that prohibits a person from:

> willingly participating in a group activity involving a motor vehicle being used to commit a racing, speed trial, burn out or other hooning offence;
>
> organising, promoting or encouraging another person to participate in, or view, a group activity involving a motor vehicle being used to commit a hooning offence; or
>
> 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.

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[30] *Police Powers and Responsibilities Act 2000* (Qld)
[31] *Criminal Code* (Qld) s328A
[32] *Transport Operations (Road Use Management) Act 1995* (Qld) s83
[33] *Transport Operations (Road Use Management) Act 1995* (Qld) s85
[34] *Transport Operations (Road Use Management) Act 1995* (Qld)
[35] *Police Powers and Responsibilities Act 2000* (Qld) s754
[36] *Summary Offences Act 2005* (Qld)

The third limb of this new offence which has been proposed 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.

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 wat 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?

What Is Reasonable Suspicion and Belief?

Some arrests and almost all searches conducted by police will rely on the establishment of a 'reasonable suspicion' or 'belief'. An individual's personal liberty must be carefully balanced with the rights of the Police to arrest or search an individual over 'suspicions and/or beliefs.

Durward SC DCJ in *R v Varga*[37] defined reasonable suspicion, "The suspicion must be reasonable, as opposed to arbitrary, irrational or prejudiced. If a young man is driving a smart car with some panel damage it is not sufficient to give rise to a reasonable suspicion."

George v Rockett

The Court in *George v Rocket*[38], the leading authority when determining the difference between mere belief and reasonable suspicion, the High Court described clearly, that where a reasonable suspicion must exist to establish a right or to allow an act, there must be an

[37] *R v Varga* (2015) QDC 82
[38] *George v Rocket* (1990) HCA 26 - 170 CLR

objective test applied whereby, the court considers what would be in the mind of an ordinary person when presented with all the facts.

Michael Daniel Rockett, from the office of the Special Prosecutor asserted in an application for a search warrant that, he had 'reasonable grounds' for suspecting some documents were in the possession of solicitor Q. D George. The documents were said to be written by Sir Terence Lewis. (The Former Police Commissioner who was later charged with criminal offences following the Fitzgerald Inquiry).

Rockett believed the documents would prove Sir Lewis had committed perjury in the Court allowing for his prosecution. The Magistrate allowed the search warrant however, the High Court later considered an appeal made by Q. D George and concluded that, the warrant was invalid in the absence of any information in the sworn complaint that may have satisfied the Magistrate of the 'reasonable grounds' for Rockett's belief. Ultimately, the High Court held that Rockett's 'belief' presented in his application was not enough and that he had not demonstrated a 'suspicion on any reasonable grounds'.

What this case highlights are the importance of and differences between a 'belief' and 'reasonable suspicion'. Police cannot act on a belief or a mere hunch, there is an objective test which must first be applied. The Police must be asked 'why did you think this way?' and 'what evidence do you currently have that this is the case?' This prevents Police from being able to stop, search and arrest almost anybody, anywhere, anytime for anything.

In summary, it is important for the Committee to consider the way in which this offence will be policed and how those not intending to commit an offence or others not associated with a 'hooning' event will be dealt with under any proposed amendments. With the increasing popularity of social platforms such as TikTok and Snapchat, I can see how a group of kids walking by could stop and film such incidents and share them with friends.

I accept the explanation given by Police in that, it is the sharing of this material that sometimes fuels the 'hooning' behaviour however, I have witnessed 'hooning' behaviour that was not filmed. Some individuals probably do get a kick out of the attention but many others just like driving fast cars.

I do not agree that individuals caught filming or sharing this content should be held criminally responsible for it. Many illegal acts are caught on camera and shared on social media these days and criminalising the sharing of this material would be difficult to police, straining the Police service. What if for example, a video was shared and went 'viral' with thousands of others also sharing that video, should these thousands of people also be held criminally responsible and charged?

I believe the Committee should consider this proposed amendment carefully.

Transport Operations (Road Use Management) Act 1995 **(TORUM Act) amendment**

Section 291 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Road Rules)[39] ('Making unnecessary noise or smoke') is the offence applied when individuals do 'burn outs'. The Queensland Police have identified gaps in this existing offence provision. The existing offence provision does not capture:

> behaviour where someone intentionally engages in a sustained loss of traction in circumstances where noise and smoke are not generated (this usually occurs in the context of a substance being placed on the road to reduce friction); and
>
> circumstances where the conduct occurs in an area such as a public park which is not a road or road related area.

The Bill seeks to create a new offence to address these gaps prohibiting a person from wilfully operating a motor vehicle in a manner that causes the vehicle to undergo a sustained loss of traction.

I agree with the addition of this offence. The offence will not capture accidents and will still allow permissions for events and locations such as speedways through permits.

***Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021* (TORUM-VR Regulation) amendments**

This bill proposes that the penalty for using fake number plates and/or fixing number plates to a vehicle that do not match the correct vehicle be increased where it is done in connection with a type 1 offence. For example, if an individual attempts to evade police, which is a type 1 offence and is also found to be using the incorrect plates, the maximum penalty for the offence will double from 20 to 40 penalty units for the circumstances of aggravation.

I agree with this proposed amendment. If an individual is caught committing an offence whilst using false plates, it shows an intent to get away with the original offence and shows a degree of pre-meditation and planning.

Conclusion

I am supportive of the proposed changes to the Child Protection (*Offender Reporting and Offender Prohibition Order) Act 2004,*[40] increasing the reporting periods for offenders.

I also support the proposed amendments to the *Police Powers and Responsibilities Act*[41] to include the (*Child Protection Offender Reporting and Offender Prohibition Order) Act* offences of Failure to comply with reporting obligations,[42] False or misleading information[43] and Failing to comply with prohibition.[44]

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[39] *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Road Rules) ('Making unnecessary noise or smoke') s291
[40] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld)
[41] *Police Powers and Responsibilities Act 2000* (Qld)
[42] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld) s50
[43] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld) s51
[44] *Child Protection Offender Reporting and Offender Prohibition Order Act 2004* (Qld) s51A

I also support expanding the list of relevant offences for controlled operations under schedule 2 of the *Police Powers and Responsibilities Act*[45] to include sections 223 Distributing intimate images[46], 408C Fraud[47], 408D Obtaining or dealing with identification information[48], and 408E Computer hacking and misuse[49]

I believe strongly that, more consideration must be given regarding the proposed amendments allowing for civilians to engage in controlled activities. This amendment has the potential to endanger the health, wellbeing and safety of civilians there has been very little consideration given by the police within safeguards to the physical and emotional safety of the civilian as a priority.

Again, As an individual with lived experience as an associate of major organised crime gangs, criminal organisations, outlaw motorcycle clubs and a friend of many, currently or previously involved in major organised crime, I am in a unique position to be able to make submissions in relation to this proposed amendment.

Very serious consequences such as assault, destruction of property, deprivation of liberty and death can occur when individual are caught providing information to police or assisting police in their operations.

In regards to the proposed changes to 'hooning' laws, I support some of them but not all for the reasons provided within my submission. I do not condone and/or support 'hooning' behaviour and remain sympathetic to the communities experiencing instances of 'hooning' and share with the Queensland Police Service, the frustrations associated with this issue.

What is clear is that the implementation of stricter laws, tighter conditions and penalties is not working. The 'hooning' culture does not seem to be going away despite the best efforts of the Queensland Police and the problem is not unique to Queensland. Anti-hooning laws giving police the power to impound, immobilise or confiscate vehicles were first introduced in Victoria in 2006, yet despite having some of the toughest anti-hoon legislation in the country the Victoria Government has announced the establishment of a Hooning Community Reference Group after an increase in reckless driving behaviour during the coronavirus pandemic. If the toughest laws in the country are not making any difference, we must ask ourselves, why introduce more?

This issue must be considered through an alternative lens, one that may not include law enforcement. As mentioned, Victoria has introduced a 'hooning community reference group' and this is something the Queensland government should be considering also.

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[45] *Police Powers and Responsibilities Act 2000* (Qld)
[46] *Police Powers and Responsibilities Act 2000* (Qld) s223 Distributing Intimate Images
[47] *ibid* s408 (c) Fraud
[48] *ibid* s408 (d) Obtaining or Dealing with Identification Information
[49] *ibid* s408 (e) Computer Hacking and Misuse