Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

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Our ref: LP:CrLC

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email: egc@parliament.qld.gov.au

Dear Committee Secretary

Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Thank you for the opportunity to provide feedback on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 (**the Bill**).

This response has been compiled with input from the QLS Criminal Law Committee, whose members have expertise in this area.

Inappropriate timeframe for meaningful consultation

At the outset, we are concerned with continually short timeframes to respond to important legislation, particularly consultation over the end of year break. The Bill was introduced on Wednesday, 30 November 2022 and responses are requested to the Committee by 5 January 2023, in the middle of the traditional business closure period of 24 December 2022 to 9 January 2023. Almost all of our volunteer legal policy committee members are away during this period.

The reforms proposed in the Bill are significant and will have wide-ranging implications for Queenslanders. This is an inappropriate time of year to conduct significant consultation and the timeframe provided is inadequate. It is in all our best interests to ensure proposed laws work as effectively and efficiently as possible, and this requires meaningful and robust consultation with stakeholders. Short consultations held during the Christmas and New Year shut down period will not yield the best legislation for the people of Queensland.

In light of the short timeframes, and with the assistance of available expert volunteer committee members, we have prepared a response focusing on the key issues.

There are likely a wide range of other issues which we have not had the time nor opportunity to consider in detail. If we have not commented on other aspects of the Bill, it should not be taken as assent or support.

Recommendations

We raise the following concerns with the Bill as currently drafted:

- 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 expansion of relevant offences for controlled operations under schedule 2 of the *Police Powers and Responsibilities Act 2000* (Qld) should be narrowed.
- The proposed new offences in the *Summary Offences Act 2005* (Qld) 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.
- We suggest consideration of other measures and improved evaluation of the effectiveness of existing programs and recent legislative measures directed towards deterring hooning offences.
- We recommend the new offence in cl 37(1) (under the *Transport Operations (Rod Use Management) Act 1995* (Qld) be redrafted to include a fault element of specific intent to cause a sustained loss of traction.

Amendments to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPO Act)

Reportable offender reporting periods

The Bill increases the length of reporting periods a reportable offender (other than a post *Dangerous Prisoners (Sexual Offenders) Act 2003* (**DPSOA**) reportable offender), may be obligated to report under the CPOROPO Act from 5 years, 10 years and life to 10 years, 20 years and life.

Under cl 14 of the Bill:

- a 10 year reporting period will apply where the offender commits a reportable offence and has never been given a notice of reporting obligations;
- a 20 year reporting period will apply if an offender is convicted of a single prescribed offence[1] after an offender has been given a notice of reporting obligations; and
- the reporting period will be life in circumstances where the offender is convicted of more than one prescribed offence after being given a notice of reporting obligations.

The amendments reverse changes made in 2014 which shortened reporting periods for reportable offenders. We understand this was based on evidence at that time 'that sex offenders present the highest risk of re-offending within the first three to five years of their release into the community'.[2]

[1] CPOROPA Act, sch 1.
[2] Legal Affairs and Community Safety Committee, Child Protection (Offender

However, the justification for the extension of reporting periods is now said to be due to 'the inherent difficulties associated with the rehabilitation of child sex offenders and risk factors resulting from recidivism'.[3]

The Statement of Compatibility refers to research from the United Kingdom which suggests that:

> *…the likelihood of a sex offender offending will vary over time depending on his mental state, social circumstances and general well-being: many benefit from knowing there are explicit social controls around them. There will therefore need to be ongoing risk assessment, visible monitoring and appropriate intervention at times of increased risk. Those involved in managing sex offenders will need to know how to evaluate risk and how to intervene to reduce it.* [4]

QLS acknowledges the important policy intent of the proposal which seeks to reduce the risk of recidivism by offenders who commit sexual or other serious offences against children.

We note there are already provisions within the CPOROPO Act which enable police to apply to the court for an offender prohibition order where they become aware of concerning conduct by reportable offenders, including in circumstances where the conduct may otherwise be lawful. This allows the police to appropriately respond to particular offenders on a case by case basis. This includes persons whose reporting period has ended.

The proposed amendments merely enlarge the duration of the period an offender is reportable on a categorical basis, without any consideration of the individual circumstances of the particular case. This approach is, in our submission, unfocused and too broad. It is likely to result in a large subset of offenders, whose risk of recidivism is objectively very low, being the subject of a reporting obligation that spans a decade. Many of these offenders are likely to be socially disadvantaged, by virtue of their age, background, level of education and/or mental health status. The consequence will be yet further social isolation and exposure to the spectre of unwarranted overview and prosecution by law enforcement. In this respect, we note the acknowledged incidence of prosecutions for contraventions of reporting obligations where the breaches are a function of the personal circumstances of the reportable offender (i.e. technical breaches) and do not evince any recidivism risk per se.[5]

The Society supports laws which are evidenced-based and not reactionary. Any amendments, including increased reporting periods for reportable offenders, should be proportionate and based on cogent evidence with respect to an identified subset of offenders who are objectively determined to represent an increased risk of recidivism.

In this regard, we note the Crime and Corruption Commission (**CCC**) is currently undertaking a statutory review of the CPOROPO Act to consider how it protects children and manages or

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Reporting) and Other Legislation Amendment Bill 2014, (Report No. 66, May 2014), <https://documents.parliament.qld.gov.au/committees/LACSC/2014/ChildProtection2014/rpt-066-26May2014.pdf> 6.

[3] Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, Explanatory Notes, <https://documents.parliament.qld.gov.au/tp/2022/5722T2004-0AF9.pdf> 10.

[4] Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, Statement of Compatibility, <https://documents.parliament.qld.gov.au/tp/2022/5722T2005-EAEC.pdf> at p 6.

[5] Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, Explanatory Notes, <https://documents.parliament.qld.gov.au/tp/2022/5722T2004-0AF9.pdf> 3-4.

mitigates the risks posed by offenders.[6] We suggest amendments to the offender monitoring periods should be reserved pending the outcome of any related recommendations which may arise from the CCC's review.

Amendments to the Police Powers and Responsibilities Act 2000 (PPRA)

Expand the list of relevant offences for controlled operations under schedule 2 of the *Police Powers and Responsibilities Act* 2002 (Qld) (**PPRA**)

The following amendments under the Bill will expand the list of 'relevant offences' for the purposes of controlled operations and surveillance warrants.

Inclusion of additional CPOROPO Act offences for controlled operations and surveillance device warrants

Clause 30 amends schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA to include the following offences under the CPOROPOA Act –

- s 50 (Failure to comply with reporting obligations);
- s 51 (False or misleading information); and
- s 51A (Failing to comply with offender prohibition order).

The amendments provide police with the ability to apply for a surveillance device warrant or a controlled operation when intelligence reveals a reportable offender is not complying with their obligations under the CPOROPO Act.

Inclusion of cybercrime offences for controlled operations and surveillance device warrants

In addition, cl 30 amends schedule 2 to include the following offences under the *Criminal Code Act 1899* (**the Code**)

- s 223 (Distributing intimate images (revenge porn offences))
- s 408C (Fraud)
- s 408D (Obtaining or dealing with identity information); and
- s 408E (Computer hacking and misuse)

QLS considers any expansion to controlled operations and surveillance device warrants should be approached with caution. As currently drafted, we are concerned the proposed additions are broad and have the potential for controlled operations and surveillance warrants to go beyond what is reasonably justified and proportionate.

Firstly, in relation to the inclusion of additional CPOROPO Act offences, the Explanatory Notes state that some reportable offenders present a high risk of reoffending as a result of their status as a DPSOA offender or where they are subject to an Offender Prohibition Order (**OPO**).[7]

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[6] Crime and Corruption Commission Queensland, *Protecting the lives of children and their sexual safety; Review of the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)* (October 2022) <https://www.ccc.qld.gov.au/sites/default/files/Docs/Legislative-Review/CPOROPO-review-Protecting-the-lives-of-children-and-their-sexual-safety-call-for-submissions.pdf> 3.

[7] Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, Explanatory Notes, <https://documents.parliament.qld.gov.au/tp/2022/5722T2004-0AF9.pdf> 3.

However, the amendments under the Bill will apply to *all* reportable offenders where a 'relevant offence' has been, is being, or is likely to be committed.[8] Under the Bill, this will encompass failures to comply with reporting obligations (for example, where an offender is homeless and unable to provide a known locality) as well as more serious contraventions or suspected contraventions of an OPO. In our view, the addition of these offences should be narrowed so that police can only carry out a controlled operation or apply for a surveillance device warrant where a relevant offence has been committed and an offender is objectively determined to be at high risk of reoffending.

Secondly, in relation to the inclusion of cybercrime offences, we note this is to 'allow police to use controlled operations and surveillance devices as an investigation strategy to combat cybercrime offending and increase the likelihood of identifying an offender'.[9] The amendments have the potential to impact a wide range of people who may not have any connection to an offence.

In our view, highly intrusive policing powers of this nature are only appropriate in connection to the investigation of serious offences. Additional protections should be considered within the legislation to ensure:

- the use of evidence against a person that is gathered during covert police operations is limited to prosecution of the relevant offence; and

- greater transparency surrounding the information which is accessed through a digital device/computer and protection of unrelated data and device information.

Amendments to the Summary Offences Act 2005 **(SOA)**

Clause 34 inserts a new part 2, division 4A into the SOA to create new offences and a circumstance of aggravation to target 'hooning' or street-racing connected with the commission of type 1 vehicle related offences.

The proposed amendments are intended to deter hooning behaviours by directly impacting on individuals who commit these offences and those persons who encourage, support or promote hooning behaviour.

The Explanatory Notes refer to research in Australia, the United States and Finland which suggests that persons involved in street racing and hooning predominantly fall within the demographic of 'young male aged between 16 and 25 years'. The Explanatory Notes states further, that it is 'unclear if these offenders are part of the mainstream car enthusiast culture or form a specific criminal subset or are a mixture of both groups'.[10]

In the absence of data or information as to the effectiveness (or otherwise) of existing and recent legislative responses to deter hooning behaviour (such as fines or the chapter 4 provisions of

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[8] Section 244 (1)(a) PPRA.
[9] Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, Explanatory Notes, available at < https://documents.parliament.qld.gov.au/tp/2022/5722T2004-0AF9.pdf> at p 3.
[10] Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, Explanatory Notes, available at < https://documents.parliament.qld.gov.au/tp/2022/5722T2004-0AF9.pdf> at p 4.

the PPRA which authorise police officers to impound or immobilise motor vehicles used to commit specific offences), we consider that the evidentiary basis for the new offences has not been established.

We note for example that the Youth Justice Reforms Review released in March 2022 examined the 2021 amendments to the PPRA which sought to address hooning behaviours and observed:

> *The data examined show there was a decrease in type one offences between 2020 and 2021. While that is a positive outcome, it was not possible to determine whether this legislation has made drivers of vehicles involved in hooning, more accountable for unsafe and disruptive driving behaviour. An appropriate metric to assess future impact may be desirable.*[11]

QLS considers that existing legislative measures should be evaluated alongside community programs directed towards reducing hooning behaviours. Extensive public education (including for young people), should also be considered in consultation with key stakeholder groups, particularly with respect to filming unsafe driving behaviour.

Our comments on the specific drafting of the offences are as follows.

New Section 19A Object of division

New section 19A states that the object of the division is to discourage the commission of racing, burn out and other hooning offences by prohibiting (a) conduct that promotes or encourages the commission of these offences; and (b) the possession of things being, *to be or having been used* to commit those offences.

Racing, burn out or other hooning offence is defined in section 19B to mean a type 1 vehicle related offence under s 69A(1) of the PPRA.

19C Unlawful conduct associated with commission of racing, burn out or other hooning offence

New section 19C creates an offence for unlawful conduct associated with the commission of a racing, burn out or other hooning offence. The offence provision applies in circumstances where a person:

- willingly participates in a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence; or
- organises, promotes or encourages 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
- for the purpose of organising, promoting or encouraging another person to participate in, or view, a group activity involving a motor vehicle, photographs or films, or publishes a photograph or film of, a motor vehicle being used to commit a racing, burn out or other hooning offence.

A maximum penalty of 40 penalty units or 1 year's imprisonment applies for this offence.

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[11] March 2022, *Youth Justice Reforms Review Final Report, <* https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/reviews-inquiries/youth-justice-reforms-review-march-2022.pdf*> at* p 122.

19D Possession of things used in commission of racing, burn out or other hooning offence

New section 19D makes it an offence to possess a thing – other than a motor vehicle – that is being, *is to be* or has been used to commit a racing, burn out or other hooning offence. A maximum penalty of 40 penalty units or 1 year's imprisonment applies with respect to this offence.

QLS considers the drafting of these new offences lack sufficient clarity.

Racing, burn out or other hooning offence is defined to mean a type 1 vehicle related offence under s 69A(1) of the PPRA) and therefore encompasses a range of antisocial, unsafe and dangerous driving practices.

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 s 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.

QLS considers the scope of unlawful conduct associated with the commission of a hooning offence is extremely broad and would potentially capture a wide range of persons with various levels of offending behaviour, not all of which would be considered sufficiently egregious such as to warrant criminal sanction. The offences should be unambiguous and drafted in a clear and precise way to ensure they are properly targeted at offending behaviour, prosecuted consistently and do not disproportionately impact vulnerable groups.

As noted above, we suggest consideration of other measures and improved evaluation of the effectiveness of existing programs and recent legislative measures directed towards deterring hooning offences.

***Amendment to the Transport Operations (Road Use Management) Act* 1995 (TORUM Act)**

The Bill also creates a new offence in the TORUM Act to prohibit a person from wilfully operating a motor vehicle in a manner that causes the vehicle to undergo a sustained loss of traction.

The purpose of this new offence is to address a purported gap within the existing road rules framework (section 291 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009)* to address:

- 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.

Clause 37(1) as currently drafted provides it is an offence for a person to 'wilfully drive a motor vehicle on a road or in a public place in a way that causes a sustained loss of traction…' We consider this offence requires a fault element of specific intent to cause a sustained loss of traction in order for it to be sufficiently targeted at the mischief it seeks to address.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on [redacted].

Yours faithfully

[redacted]

Kara Thomson
President