



Michael Cadman,
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To whom it may concern

I am writing to express my concern with the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012* currently under committee referral.

I have several serious reservations with the proposed amendments to current legislation and wish to have my views heard in the hope they will be taken into consideration during public consultation. These include the severity of prescribed punishments being far greater than the committed crime, the removal of a person's right to a court hearing and thus their presumption of innocence regarding any alleged crime, the provision for police to use their 'discretion' when making allegations of committed crimes and the amendment to the definition of a 'burn out'.

I will start by addressing the severity of amended punishments not fitting alleged crimes. The major causes of fatal crashes on Australian roads are speeding (34%), drunk driving (30%), fatigue (20-30%) and non-use or a restraint (20%) Source http://www.bitre.gov.au/publications/2012/files/RDA_Summary_2011.pdf. Since excessive speeding (greater than 40 km/h over) is included in this amendment I will jump to drunk driving. The maximum penalty for a first drink driving of .15% or higher is a maximum fine of \$2100 and/or 9 months imprisonment and a mandatory disqualification of 6 months. The proposed punishment for a first type 1 'hooning' offence is 6 months impoundment with estimated impoundment costs of \$5800. A second drink driving offence, within the same level, carries the same penalty. A third offence within 5 years carries a mandatory imprisonment penalty. A second type 1 'hooning' offence committed within 5 years will result in confiscation of the car used to commit the offence. The level of punishment for a 'hooning' offence does not correlate with the severity of risk to public safety caused by said offence. Also taking into consideration that minor offences will be included in the type 1 and type 2 categories the punishment becomes excessive and, arguments can be made, against the Australian Constitution and Australian Common Law. A more measured approach would see fines and/or licence disqualification applied to 'hooning' offences, much the same as speeding offences, and possible imprisonment for highly dangerous offences i.e. street racing.

My next concern is the removal of a person's right to a court hearing and thus their presumption of innocence. The Australian judicial system, based on the United Kingdom judicial system, operates under a presumption of innocence. The proposal to remove the provision for a person to have their alleged offence by a judge is tantamount to assuming guilt of a particular offence. This will set a dangerous precedent as currently both speeding and drink driving require evidence to charge and convict a person of. Speeding tickets have to option of a court hearing if the accused wishes and drink driving has compulsory court hearings. The reason given for this proposed section of the

amendment is to speed up case handling times and free up courts but the cost of these supposed benefits seriously impinges on citizen's rights to a presumption of innocence and a trial by their peers.

The next point is the proposal for police to apply 'discretion' when making allegations of committed crimes. Police perform a vital role in the community and the work they do should be highly respected, but police officers are still human and as such are prone to human failings. Giving a police officer the power to convict drivers on the spot for a crime that they deem has been committed is too much power for any one person to have. There is no safety net to catch the unfair or biased claims an officer may make due to external influences. Pre-conceived stereotypes, stressful working conditions, personal problems, personal vendettas and public/political pressure can all cause an officer to make an incorrect judgment of a perceived crime, with possibly severe repercussions for the person being alleged of said crime. The removal of a person's right to have any allegation judged in a court removes the currently existing safety net against these situations. The other issue is the vagueness of current legislation around some 'hoon' crimes that rely in police 'discretion' to prosecute; 'unnecessary acceleration' is one example. 'Hoon' crimes need to be very specifically prescribed in legislation as to avoid any officer abusing their powers and charging drivers based on pre-conceived notions they may have or personal problems they may be having.

My last point is the proposal to amend the definition of a burnout. I feel that the current definition is more than adequate to cover issue. The current legislated definition reads:

for a motor vehicle, means wilfully drive the motor vehicle in a way that causes the tyres or a substance poured onto the road surface, or both, to smoke when the drive wheels lose traction with the road surface. The proposed definition reads:

for a motor vehicle, means wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one or more of the wheels with the road surface. The proposed definition is far too broad and open to interpretation. There needs to be a specific time placed on how long the wheel/s must lose traction i.e. 5 seconds. As the definition reads a police officer could impound a person's car because they have difficulty starting during a heavy rain storm. Giving officers sole discretion on how long a loss of traction needs to last to be 'sustained' gives rise to officers abusing this power and causing severe hardship so affected persons.

In closing, I feel that this proposed legislation is poorly thought out and a politically motivated move to gain popularity. This proposed legislation does nothing to either improve road safety or reduce public nuisance, it only serves to provide extraordinarily tough penalties to minor crimes and further cloud the already cloudy definitions of 'hooning'.

Sincerely
Michael Cadman

