



Police Powers (Motor Vehicle
Impoundment) & Other
Legislation Bill 2012
Submission 012

30th January 2013

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

fac@parliament.qld.gov.au

To the Chairman & Research Director,

RE: Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012

On 27 November 2012, the Minister for Police and Community Safety, Hon Jack Dempsey MP, introduced the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 into the Queensland Parliament.

In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the Legal Affairs and Community Safety Committee (the Committee) for detailed consideration.

As an umbrella organization that represents the unified concerns of all Motor Enthusiast disciplines and leading Motor Enthusiast community associations, please find attached our submission to the aforementioned hearing pertaining to the "Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012".

Given the importance and impact the proposed legislative amendment will have on the community we represent; we would also formally and respectfully request to present our submission in person to the Committee.

Please consider our organization to be at your service.

Regards,
Alan Hay -
Patron of the Australian Confederation of Motor Clubs
Sharyn Littler -
Australian Confederation of Motor Clubs, Queensland Representative
Aldo Tummarello –
Australian Confederation of Motor Clubs, Queensland Representative

Submission
To
Legal Affairs and Community Safety
Committee Inquiry



Police Powers and Responsibilities
(Motor Vehicle Impoundment) and Other
Legislation Amendment Bill 2012

30 January 2013

ACMC Inc. Australian Confederation of Motor Clubs

<http://www.confederationofmotorclubs.org.au/>

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Australian Confederation of Motor Clubs

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Introduction

Road Safety is a key focus of the Motor Enthusiast Community and through the Australian Confederation of Motor Clubs, which is a unifying body for all disciplines that comprise the Motor Enthusiast Lifestyle, we represent the views of thousands of enthusiasts throughout Queensland and Australia.

We share the government's sentiments on matters pertaining to anti-social driving practices, not only because they have an impact on road safety but through populist media, political and bureaucratic maligning; the term 'hoon' and Motor Enthusiast have become unjustly intertwined. Although the term 'hoon' is ill-defined and abhorrent to us; it must be clearly understood and accepted that many 'hoons' may be Motor Enthusiasts; but the vast majority of enthusiasts are not 'hoons'!

As a prescribed secondary objective of the legislation; improvement in efficiencies have been used to justify expediting the procedure as an administrative process rather than judicial, which we are vehemently opposed to and deem inadvisable. By concentrating on Type 1 offenses which have maximum impact on road safety but comprise only 8% of seizures the desired efficiencies are achievable.

The inclusion of lesser offences, which many would regard as not being 'hoon' behaviour, we argue, denigrates the intent of the legislation. That being, to meet the government's pre-election commitment and subsequent mandate to introduce the toughest 'anti-hoon' laws in Australia.

As previously stated we are also extremely concerned that the premise of vehicle seizure without judicial process is inconsistent with the Fundamental Legislative Principles (FLPs) as outlined in the Legislative Standards Act 1992, Section 4(2). We contend that the right of appeal processes proposed are insufficient to mitigate an erosion of an individual's rights and liberties.

To maximise the important message being sent by the government, we argue that, the proposed legislation should focus exclusively on actions identifiable as 'hoon' behaviour and that significantly impact on road safety and fatalities. To that end we propose that 'high-range drink-driving' and 'high end speeding' be regarded as Type 1 Offenses. We would go further to say that all of "Fatal 5" including 'Inattentive driving' (mobile phone use) should be included as Type 1 Offences. Queensland has the opportunity to be the first state in Australia to get serious about tackling the five leading causes of road fatalities and align these severe penalties with "the Fatal Five".

We also agree that the police services require additional powers to prevent the continued use of the vehicle used in breach of acceptable driving practices. However as previously outlined we do not hold with the assertion that removing the judicial process is somehow advantageous to the subject. Insufficient consultation with the community negates the justification of this assertion.

A proposal which would allow the immediate confiscation of registration plates for Type 1 offences with a court appearance within 7 days would ensure that an individual's rights and liberties would not be significantly impinged, would prevent continued breach, negate constitutional challenge and would continue to meet the understood intent of the current proposed legislation. An individual's rights and liberties would be protected by due judicial process and oversight. Separation of powers is the cornerstone of our political and judicial system and need not be undermined to achieve worthy legislative goals.

We find that the inclusion of Type 2 offences are inconsistent with the research papers cited as justification for enhanced legislation targeting 'hoon' behaviour. As offences they comprise 92% of vehicle seizures but undermine the impact and importance that Type 1 offenses have on road safety. We therefore propose that whilst the government should proceed with clamping down on actions which directly constitute 'hoon' behaviour (Type 1 offences, extended to include the rest of the 'Fatal Five') that the remaining Type 2 offences should be excluded from the current proposed legislation, pending a review by a Ministerial workgroup into the broader issues of vehicle safety and the societal problem of anti-social driving practices.

Deterrence and punishment can be effective tools in addressing anti-social driving practises, but we consider them to be but one approach to what is a societal problem. We need to understand the causation of the problem; we need to accept that driver attitude requires a psychological approach, which incorporates both incentive and deterrence particularly directed towards our younger drivers. We require additional driver training that focuses on attitude not just skill, we need to harness the positive peer direction available through our extensive Motor Enthusiast Club structures and we need to provide individuals a safe, affordable, appropriate environment to experience their vehicles. We contend that deterrence alone, particularly amongst our youth has proved to be ineffective, as penalties already exist.

The results of the study by Leal, Nerida L. and Watson, Barry C and Armstrong Kerry a (2010) * suggested that we need to look beyond legal solutions in dealing with the hooning problem in Australia.

It could also be argued that the impending threat of confiscation and destruction of an individual's vehicle may lead to an increase in police evasion (particularly in youth) a possible, unintended but unacceptable consequence. We therefore propose that the proposed legislation focus on plate seizure or immobilisation rather than impoundment or destruction. Not only does this approach reduce impoundment burden whilst delivering the same outcome and delivers enhanced efficiencies, but we would suggest, significantly reduces the possibility of disproportionate reactions.

The Motor Enthusiast Community is a family friendly lifestyle; comprised of individuals from all walks of life. Across Australia, we number in our thousands, raising money for charities at weekly events, bringing much needed financial stimulus to the remotest of communities and supporting an aftermarket industry of \$11billion and 30,000 employees. Our sensitivity to the proposed legislation is heightened through a lack of consultation, continued maligning of our lifestyle in the populist media and the inclusion of Type 2 offenses such as vehicle modification, subjective aggravated burn-out definition and the erosion of judicial oversight. As the title of the legislation implies; it could be argued that this is impoundment legislation enveloped in a populist political discourse of 'anti-hoon' legislation as justification.

In the Queensland Parliamentary Library Research Brief – the preface to the paper explains that the Act is 'primarily aimed at clamping down on loutish behaviour involving motor vehicles on public roads. They go on to say – “the intention is to grant greater powers to police to deal with deliberate driving behaviours that is annoying and perhaps dangerous to other road user and/or nearby residents.”*

The proposed legislation although commendable in intent is flawed in that it champions asserted administrative efficiencies at the cost of undermining the rights and liberties of the individual whilst only focusing on one aspect (ie deterrence) of what will have to be a broader approach (ie incentive, education, psychology). We contend that only through a holistic consultative approach will desired outcomes be achieved. We are therefore in opposition to the legislative amendment to the Police Powers and Responsibilities (Vehicles Impoundment) and other Legislation Amendment Bill 2012 as presented.

ACMC

Australian Confederation of Motor Clubs QLD

We have pleasure in introducing the ACMC Inc. (Australian Confederation of Motor Clubs), whose main purpose is to assist the individual motoring enthusiast to continue the enjoyment of our long standing pastime / Lifestyle. As advocates for the Motor Enthusiast Community comprising the unification of all key disciplines; our role is to bring together representatives of the various motoring enthusiast groups, to share experience and consult with the goal of being an integral part of all working parties in relation to our members and to impart a positive influence. We are here to assist in the development of safe and workable guidelines relating to our Lifestyle. To achieve this, our goal is to represent a meaningful number of enthusiasts in order to consult and operate in partnership with government, industry and other motoring organizations.

We have been asked by our members to forward a Submission to the Legal Affairs and Community Safety Committee Inquiry, regarding the new Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 (the Bill) or otherwise known as "Anti Hooning Laws". Our Submission contributors are from a wide, cross-section of the community whom, through research and discussions, have made us aware of their concerns to the proposed new amendments to the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012, which are regarded as disproportionate and inconsistent with the objective of curtailing 'hoon' behaviour.

Driving in a dangerous manner on Australian roads is not condoned by ACMC or our members. We have, and continue to be actively involved in initiatives to foster and develop a safe driving culture amongst our members and other car enthusiasts. We are justifiably angered when a Queensland driver is using their car on public roads for dangerous operation of a vehicle, careless driving, participation in speed trials or races, starting or driving a vehicle making unnecessary, noise or smoke. Road safety is paramount to the ACMC; safety of our enthusiasts and safety of others.

Our achievements include providing the representation of all enthusiast disciplines on the NSW Government Vehicle Standards Work Group; working with RMS and Transport for NSW to assist in formulation of standards and testing procedures. Facilitating a new era of cooperation and consultation between motor enthusiasts and the authorities and harnessing the wealth of experience embodied in the enthusiast community. A member of the ACMC also represents Motor Enthusiasts on the Ministerial Safety Advisory Council NSW.

Submission summary

This submission seeks to demonstrate:

- We are in opposition to the legislative amendment to the Police Powers and Responsibilities (Vehicles Impoundment) and other Legislation Amendment Bill 2012 as presented. That only through a holistic consultative approach will desired outcomes be achieved.
- We propose that the proposed legislation should focus exclusively on actions widely identifiable as a “*menace*”¹ on our roads and that significantly impact on road safety and fatalities, therefore include the “*Fatal 5*”²
- That the remaining Type 2 offences should be excluded from the current proposed legislation, pending a review by a Ministerial workgroup into the broader issues of vehicle safety and the societal problem of anti-social driving practices.
- We are vehemently opposed to and deem inadvisable the erosion of an adequate level of judicial oversight to achieve an “improvement in efficiencies” which has been used to justify expediting the procedure as an administrative process rather than judicial.
- That car enthusiasts as a group have been targeted and threatened with vehicle impoundment laws and unfairly grouped as “Hoons”, and continue to be unfairly singled out by authorities for no real reasons other than that the activities involved in their legitimate interests involve the driving, restoration and/or modification of motor vehicles.

The Hoon

“The hoon is a classic folk devil in the sense introduced in Stanley Cohen’s (2002) moral panic theory. Cohen argues that a moral panic is not so much about what the folk devil is actually doing, but the fears and anxieties that a folk devil represents. The folk devil of the hoon represents a complex intersection of fears about the risks of automobility (“the use of automobiles as the major means of transportation” (Mirriam Webster 2007)) and general fears about young people and the ways they use public space.”³

The APMC is concerned that more often than not, the word ‘hoon’ is wrongly associated with car enthusiasts, especially if they legally modify their vehicle, to personalise, restore or improve performance and safety characteristics. We are often unfairly targeted by police even on the way to organized events and increasingly outside the front doors.⁴ As Car Enthusiasts we are part of an 11 billion dollar Australian automotive aftermarket industry that employs 30,000⁵ and a ‘family friendly’ lifestyle. Australian car enthusiasts are world renowned for their innovations in styling, technology and safety.

The Car Enthusiast

The driving, restoring and modifying motor vehicles is a legitimate and lawful pastime. The industry employs large numbers of your constituents. Many an enthusiasts affections for motor vehicles commenced with an avid interest in organized and professional motor sports. Motor sports which have been funded and sanctioned by successive Government’s over the years. Being a car enthusiast is no less legitimate a pastime than being involved in or playing for your local sporting team. The various enthusiast’s clubs and groups have considerable involvement in the community, through the organization of public events and charity. The overwhelming majority of car enthusiasts are not supportive of driving in an unsafe vehicle or manner. Despite the legitimacy and lawfulness of their chosen lifestyle or interest, car enthusiasts are constantly and frequently singled out for unfair harassment by the relevant regulatory authorities and threatened with vehicle impoundment.

Our primary concerns are that aside from being inconsistent with empirical evidence, the changes proposed in the Bill not only introduce penalties that go beyond those issued for many serious criminal offences, but also remove the motorist’s right to the presumption of innocence by the imposition of penalties prior to being given any opportunity for a proper hearing of the full circumstances by the judiciary. The proposed amendment for transfer of matters that have been and should remain a judicial function, to an administrative function expose the motorist to the real potential of abuse and the imposition of huge, disproportional consequences at the absolute whim and desire of the Officers of the regulatory authorities - Officers who do not have the training and experience of our Judiciary in the finer arts of discretion and the consideration of the merits of each case.

Our concerns for discussion:

- 1. Government's reasons for the Bill.**
- 2. The need for tougher vehicle impounding laws for current offences.**
- 3. The reasons for the increase in penalties when less than one year ago QPS evaluations recommended a small increase to 7 day impoundment.**
- 4. Transfer of Judicial decision-making functions to an Administrative function. Allowing proceedings for impoundment to commence by issue of Traffic Infringement Notice (TIN).**
- 5. The Burnout definition and the inclusion of driving a modified car in the Bill has scope for intentional/unintentional abuse.**
- 6. Suitability of wheel clamping and number plate removal as an alternative to impoundment.**
- 7. Recommendations.**
- 8. Conclusion.**

Our concerns

1 Government's reasons for the Bill

The reasons for the amendments are given as being.
"...to meet the Government's commitment to introduce the toughest anti-hooning laws in the nation." We do not accept that a want by the Government to have the *"toughest anti-hooning laws in the nation"* is a legitimate reason. Particularly where this reason, is not accompanied by any real data or research indicating that tougher penalties are warranted or will be effective against current type 1 impoundment offences. ; And *"address administrative and operational inefficiencies in the Type 1 and 2 vehicle impoundment schemes..."*⁶ And *"In 2010, 55 people died on Queensland roads as a result of accidents involving excessive speed."*⁷

- The quoted road tolls in the explanatory notes are for excessive speeding related offences only. One of the Fatal Five.
- Dr Melissa Bull a senior lecturer in the School of Criminology and Criminal Justice, Griffith University, comments on the history of various Australian states vehicle impoundment legislation and points out that anti social driving, being a nuisance and being noisy, is the behaviour that is the *"important dimension"*⁸, that guides governments towards increasingly tougher vehicle impoundment legislation.

*" Since legislation to regulate this type of behaviour was introduced in 1996, there as been an escalating law and order auction with all Australian states and territories introducing increasingly harsh penalties for this type of offending behaviour as they seemingly work to out do each others provisions."*⁹

- Dr Michael Henderson a past Director of Traffic Safety in New South Wales and past Chairman of the Australian Government's Advisory Committee on Road Trauma, an expert in road and motor racing safety and pioneer in the use of seatbelts in racing. In a Staysafe inquiry in NSW in 1997 commented.

"As a road safety person, I cannot accept the validity of using this type of Draconian penalty for an offence which overtly does not have a very dangerous effect. Clearly there is a hazard, but so has jet skiing and hang gliding and a whole host of other things. But clearly it has a high nuisance effect.

*If we want to put aside the option of using these kinds of Draconian penalties for persons who are a serious threat to mankind, such a recidivist drink drivers, I think we lose something by using this type of penalty for essentially what is a nuisance activity."*¹⁰

- Centre for Accident Research & Road Safety – Queensland (CARRS-Q) questions the lack of evidence for tougher impoundment periods for current type 1 impoundment offences.

“When vehicle impoundment laws for hooning were first implemented, the penalty periods used in each state were fairly consistent, as states would model their legislative approaches on other states. In recent years, some jurisdictions have strengthened their hooning laws, and thus have initial impoundment periods of greater than 48 hours. These changes have occurred in the absence of objective evidence of the risk associated with hooning behaviours, or the relative effectiveness of different impoundment periods”¹¹

- We recommend wider community consultation, through a Ministerial working group to explore what other more effective sanctions and methods are available to control the level of type 2 nuisance or road safety incidents that drivers and cars bring to the community.
- A key focus needs to be maintained on the ‘Fatal Five’ To that end we propose that ‘high-range drink-driving’ and ‘inattentive driving’ (mobile phone use) be regarded as Type 1 offenses, together with the high end speeding currently proposed
- The inclusion of the lesser type 2 offences, which many would regard as not being ‘hoon’ behaviour, we argue, denigrates the intent of the legislation. That being, to meet the government’s pre-election commitment and subsequent mandate to introduce the toughest ‘anti-hoon’ laws in Australia.
- High end speeding to be set at 45km/h to bring in line with other states, and to that point consideration given to the finer points of the definition of the offence, for example the recently passed NSW vehicle sanction Bill.

*“**high range speed offence** means an offence (not being a camera recorded offence) of driving a vehicle at a speed more than 45 kilometres per hour over the designated speed limit applying to the driver for the length of road at the time the offence is committed.”¹²*

2 Is there a real need for tougher vehicle impounding laws for current offences?

Data from the *QPS 2010 - 2011 Annual Statistical Review*¹³ and *2011 - 2012 Annual Statistical Review*¹⁴ show that: there has been a drop in convictions over the last few years, with figures quoted are not showing a prevalence or an increase of impoundment incidents, especially for current type 1 offences to really warrant a call for tougher Impoundment laws, based on the quoted QPS figures alone.

- Type 1 vehicle impoundments went from 721 in 2009/10 to 624 in 2011/12 representing a 13.5% drop in offences
- Type 2 offences went from 7963 in 2009/10 to 7773 2011/12 representing a 2.3% drop in offences
- The above figures also show that 92% of vehicle impounding offences are type 2 offences leaving 8% of total vehicle impounding offences being type 1 or “Hoon” offence, We find that the inclusion of Type 2 offences are inconsistent with the research papers cited as justification for enhanced legislation targeting ‘hoon’ behaviour. As offences they comprise 92% of vehicle seizures but undermine the impact and importance that Type 1 offences have on road safety.

The current *Police Powers and Responsibilities Act 2000* Vehicle Impoundment laws, for type 1 offences, feature 48 hours impoundment for first offence and 30 days for second offence and forfeiture for third offence

- 48 hours vehicle impoundment has shown to be effective as a deterrent to recidivist drivers. QPS called it a “success”¹⁵ in 2006.
- *From November 2002. To December 2005 a total of 2383 vehicles have been confiscated for hooning type offences. 51 (2.14%) offenders have been detected committing such offences on a second occasion, 5 (0.2%) offenders to date have committed three or more offences of this nature.*¹⁶

And,
:

- *Since the introduction of legislation in November 2002 and until the end of 2009, 5,470 vehicles have been impounded for hooning offences. Of these, 5,288 were held for a period of 48 hours for a first offence. A small proportion of impoundments (n = 208, 3.8%) were held for up to 3 months for a second offence, while 19 vehicles were forfeited to the state for a third (n = 17, 0.30%) or fourth (n= 2, 0.04%) offences.*¹⁷

3 Reasons for the increase in penalties

Less than one year ago Queensland Parliament was deliberating the *Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011*

“The Queensland Police Service (QPS) conducted an evaluation of the type 2 vehicle impoundment scheme. As a result of this evaluation, recommendations were developed that were designed to improve this scheme. The QPS has identified other initiatives that have been included into these amendments to further improve both type 1 and 2 vehicle impoundment schemes. These amendments will improve the efficiency of these schemes and enhance consistency with other Australian jurisdictions.”¹⁸

- Recommendations to parliament were to increase the initial impoundment period of 48 hours to 7 days
- There are no 5 year sanctions time frames for type 1 and 2 impoundments necessary in 2011 and in 2012 there are. This represents a significant increase in the timeframe by two-thirds.
- No evaluation by QPS has been referenced in the recent months after the 2011 Bill was tabled, that 90 day initial impoundment will be more effective than the 7 days initial impoundment proposed in the 2011 Bill.
- This paper by CAARS Q highlights in their study that increasing impoundment periods to 3 months, ‘*could perhaps make the problem worse*¹⁹ and ‘*it may not be appropriate to use (limited) traffic policing resources on a public nuisance issue.*²⁰

“While it makes intuitive sense to increase the penalty for hooning in attempt to reduce this behaviour, it is important that policy makers and the general public are aware that this approach is not supported by empirical evidence. The results of this study and some previous applications of deterrence principles to road safety issues highlight the need to look beyond legal solutions to dealing with the hooning problem in Australia. Although thorough exploration of these “other” factors associated with hooning behaviour was beyond the scope of this study, future research into these issues is required to identify other targets for intervention that may be more beneficial than increasing the length of vehicle impoundment periods, despite the popularity of this response among the general public and politicians.”²¹

Deterrence and punishment can be effective tools in addressing anti-social driving practises, but we consider them to be but one approach to what is a societal problem. We need to understand the causation of the problem; we need to accept that driver attitude requires a psychological approach, which incorporates both incentive and deterrence particularly directed towards our younger drivers

4 Transfer of Judicial decision-making functions to an Administrative function. Allowing proceedings for impoundment to commence by issue of Traffic Infringement Notice (TIN).

- A proposal which would allow the immediate confiscation of registration plates for Type 1 offences with a court appearance within 7 days, would ensure that an individual's rights and liberties would not be significantly impinged, would prevent continued breach, negate constitutional challenges, similar to *Bell v Police*²² in South Australia recently and would continue to meet the understood intent of the current proposed legislation. An individual's rights and liberties would be protected by due judicial process and oversight. Separation of powers is the cornerstone of our political and judicial system and need not be undermined to achieve worthy legislative goals.
- The proposal to remove the requirement for Police to apply to the Courts for impoundment or forfeiture and instead hand this function to the Executive of Government to be carried out administratively and "*automatically*" following the issue of a Traffic Infringement Notice (TIN) hands the Police, and possibly other officers of the relevant regulatory authorities, powers to impose penalties of significant and disproportionate quantum (over and above many of those imposed by the Courts for higher level offences).
- We are also extremely concerned that the premise of vehicle seizure without judicial process is inconsistent with the Fundamental Legislative Principles (FLPs) as outlined in the Legislative Standards Act 1992, Section 4(2). We contend that the right of appeal processes proposed are insufficient to mitigate an erosion of an individual's rights and liberties.
- The proposed legislation although commendable in intent is flawed in that it champions asserted administrative efficiencies at the cost of undermining the rights and liberties of the individual whilst only focusing on one aspect (i.e. deterrence) of what will have to be a broader approach (i.e. incentive, education, psychology).
- It must be recognized that the introduction of 'automatic impoundment' will take the total quantum of the penalty to be imposed in relation to any single infringement totally out of the control of the officer issuing the TIN. Once the TIN is issued the proposed legislation if approved in its current form will arbitrarily make the decision on impoundment or forfeiture, with the total quantum of penalty left nearly entirely to chance. This is due to the differing nature and circumstances of each motorist, the level of reliance they or their family have on the motor vehicle, and the differing values of the vehicles that they drive. The loss of a person's vehicle can have huge repercussions for them and their families. Repercussions that

go way beyond the imposition of a fine or simple loss of vehicle use for a period of time. Without good and proper consideration of individual circumstances there is a real potential for the motorist/vehicle owner to suffer unnecessary job and career loss, severe financial hardship or worse.

- We also agree that the police services require more effective powers to prevent the continued use of the vehicle used in breach of acceptable driving practices. However as previously outlined we do not hold with the assertion that removing the judicial process is somehow advantageous to the subject. Insufficient consultation with the community negates the justification of this assertion.
- With all due respect to the efforts and abilities of our Police and other Officers, we submit that the vast majority do not have an equivalent level of training in, nor the years of experience in the application of the finer points of our laws as do the members of our Judiciary, of whom it is generally accepted are trained and experienced in the proper use of discretion and application of our laws, and in particular application of the laws to the many and varying circumstances of each member of the public, including motorists and vehicle owners.

5 The Burnout definition and the inclusion of driving a modified car in the Bill has scope for intentional/unintentional abuse

- The definitions have a potential for inconsistent application and should be coupled with further guidelines and training for police officers on relevant considerations to ensure the definitions are fairly applied.

6 The Bill expands the methods that may be used to immobilise a motor vehicle to include number plate removal and wheel clamping

- Removal of registration plates offers the most cost effective and practical way for QPS to administer immediate sanctions for Type 1 offences with a court appearance within 7 days.
- It is worth noting that wheel clamping was repealed in NSW²³ 3 may 2012, a trial showed no time saving for police therefore no cost savings

As read by NSW Minister for Police and Emergency Services, the Hon. Michael Gallacher "In practice, wheel clamping raised a number of unanticipated practical issues for police and clamping agents, including the need to rely on third-party contractors. The lack of availability of clamping agents, particularly in rural and remote areas, seriously impeded this initiative. Additionally, where wheel clamping was used it resulted in no time saving for police as they had to attend the address of the offender to ascertain whether the site would be suitable for accommodating a clamped vehicle. The trial showed that clamping was not an effective sanction. Accordingly, the bill makes the necessary amendments to remove wheel clamping from the vehicle sanctions regime."²⁴

- The location for the clamped vehicle at a private property would also require specialised training to ensure the immobile vehicle does not itself become a health and safety issue by restricting access to property by emergency services, the clearing of debris and flammable vegetation in bushfire season and that it doesn't impede the general lawful use of a residence.
- Wheel clamping is viewed by our members as the modern equivalent of tar and feather, a feudal Europe punishment with no place in the twenty first century. The clamping of vehicles on private property with brightly coloured wheel clamps would embarrass and punish the family of the offender and therefore become innocent victims of the law.

7 Our Proposal

Type 2 offences to be excluded

Type 2 offenses to be excluded but reviewed under a Ministerial workgroup to consider the broader aspects of anti-social driving practises and vehicle safety.

For example, the increasing deployment of ANPR technology coupled with highly visible, marked police vehicles, *“appears to offer considerable potential to detect and, possibly, deter a wide range of illegal behaviours, including traffic offences”*²⁵ Most notably offences of driving unregistered / uninsured..

Type 1 offences to include:

High range speeding (to be set at 45km/h see page 10)
High Range Drink Driving
Evading Police
Menacing, Tailgating
Inattentive driving, (mobile phone use)
Aggravated Burnouts
Street Racing

Tougher police powers for Type 1 offences

First offence

- Immediate registration plate confiscation with court appearance within 7 days
- Up to 3 month plate confiscation penalty at Courts discretion
- Up to \$3000 penalty at Courts discretion

Second offence

- Immediate registration plate confiscation with court appearance within 7 days
- Between 3 months to 9months plate confiscation penalty at Courts discretion
- Up to \$5000 penalty at Courts discretion

Third offence

- Immediate registration plate confiscation with court appearance within 7 days
- 9 months to permanent plate confiscation penalty at Courts discretion
- Up to \$10,000 penalty at Courts discretion

Time period for offences

- The relevant period for vehicle impoundment offences to remain 3 years not 5.²⁶

8 Conclusion

Our sensitivity to the proposed legislation is heightened through a lack of consultation, continued maligning of our lifestyle in the populist media and the inclusion of Type 2 offences such as vehicle modification, the burnout definition and the erosion of judicial oversight. As the title of the legislation implies, it could be argued that this is impoundment legislation enveloped in a populist political discourse of 'anti-hoon' legislation as justification.

- In the Queensland Parliamentary Library Research Brief – the preface to the paper explains that the Act is *'primarily aimed at clamping down on loutish behaviour involving motor vehicles on public roads'*. They go on to say – *"the intention is to grant greater powers to police to deal with deliberate driving behaviours that is annoying and perhaps dangerous to other road user and/or nearby residents."*²⁷
- The results of the study by Leal, Nerida L. and Watson, Barry C and Armstrong, Kerry A, (2010) ²⁸ suggested that we need to look beyond legal solutions in dealing with the hooning problem in Australia.
- We contend that deterrence alone, particularly amongst our youth has proved to be ineffective, as penalties already exist.
- It could also be argued that the impending threat of confiscation and destruction of an individual's vehicle may lead to an increase in police evasion (particularly in youth), a possible, unintended but unacceptable consequence. We therefore propose that the proposed legislation focus on plate seizure or immobilisation rather than impoundment or destruction. Not only does this approach reduce impoundment burden whilst delivering the same outcome and delivers enhanced efficiencies, but we would suggest, significantly reduces the possibility of disproportionate reaction
- We require additional driver training that focuses on attitude not just skill, we need to harness the positive peer direction available through our extensive Motor Enthusiast Club structures and we need to provide individuals a safe, affordable, appropriate environment to experience their vehicles.
- The creation of a Ministerial workgroup, emphasizing consultation with wider variety of community groups, before a final bill is drafted, would be a great outcome from this inquiry.

Notes

¹ Hon. JM DEMPSEY (Bundaberg—LNP) The Hansard transcript of the Explanatory Speech for the Bill (Minister for Police and Community Safety) (3.03 pm) 27 Nov 2012, Page 2760

² Media Statements. Minister for Police and Community Safety. The Honourable Jack Dempsey Tuesday, December 11, 2012. <http://statements.qld.gov.au/Statement/2012/12/11/road-safety-is-everyones-business>

³ The Hoon, Controlling the streets? , Glen Fuller

⁴ Page5, Sunshine Coast Daily Police cop it on death show 14-January 2013

⁵ 15 August 2012 - AAAA calls on Gillard Government to support manufacturers
<http://www.aaaa.com.au/news.asp?id=145>

⁶ Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 Explanatory Notes

⁷ Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 Explanatory Notes

⁸ Cultural Studies Review volume 18 number 3 December 2012
<http://epress.lib.uts.edu.au/journals/index.php/csrf/index>
pp. 194–213 Melissa Bull 2012 The Acoustics of Crime, New Ways of Ensuring Young People Are Not Seen and Not Heard

⁹ Cultural Studies Review volume 18 number 3 December 2012
<http://epress.lib.uts.edu.au/journals/index.php/csrf/index>
pp. 194–213 Melissa Bull 2012 The Acoustics of Crime, New Ways of Ensuring Young People Are Not Seen and Not Heard

¹⁰ STAYSAFE 35 (1997). The Traffic Amendment (Street and Illegal Drag Racing) Act 1996—A report relating to the sunset provision. Eighth report from the Joint Standing Committee on Road Safety of the 51st Parliament. Sydney, NEW SOUTH WALES: Parliament of New South Wales.

¹¹ Leal, Nerida L. and Watson, Barry C. and Armstrong, Kerry A. (2010) Managing illegal street racing and associated risky driving behaviour : An Australian perspective. In: Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario.

¹² NSW Road Transport (General) Amendment (Vehicle Sanctions) Act 2012

¹³ QPS 2010 - 2011 Annual Statistical Review -Traffic

¹⁴ QPS 2011 - 2012 Annual Statistical Review –Traffic

¹⁵ Page38 Submission by the Queensland police service to the parliamentary Travelsafe Committee inquiry into VEHICLE IMPOUNDMENT FOR DRINK DRIVERS FEBRUARY 2006

¹⁶ Submission by the Queensland police service to the parliamentary Travelsafe Committee inquiry into VEHICLE IMPOUNDMENT FOR DRINK DRIVERS FEBRUARY 2006

¹⁷ CARRS Q State of The Road Hooping fact sheet

¹⁸ Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 Explanatory Notes

¹⁹ Page13 Leal, Nerida L. and Watson, Barry C. and Armstrong, Kerry A. (2010) Managing illegal street racing and associated risky driving behaviour : An Australian perspective. In: Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario.

²⁰ Page13 Leal, Nerida L. and Watson, Barry C. and Armstrong, Kerry A. (2010) Managing illegal street racing and associated risky driving behaviour : An Australian perspective. In: Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario.

²¹ Leal, Nerida L. and Watson, Barry C. and Armstrong, Kerry A. (2010) Managing illegal street racing and associated risky driving behaviour : An Australian perspective. In: Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario.

²² BELL v POLICE [2012] SASC 188 (17 October 2012)
<http://www.austlii.edu.au/au/cases/sa/SASC/2012/188.html>

²³ NSW Road Transport (General) Amendment (Vehicle Sanctions) Act 2012

²⁴ NSW Road Transport (General) Amendment (Vehicle Sanctions) Bill 2012 second reading

²⁵ The Road Safety Implications of Automatic Number Plate Recognition Technology (ANPR)
Barry Watson, Karen Walsh, February 2008

²⁶ Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 Explanatory Notes, Page 1

²⁷ Queensland Parliamentary Library
Police Powers and Responsibilities and Another Act Amendment Bill 2002:
Confronting bad and nuisance road behaviour Wayne Jarred Research Brief No 2002/18

²⁸ Leal, Nerida L. and Watson, Barry C. and Armstrong, Kerry A. (2010) Managing illegal street racing and associated risky driving behaviour : An Australian perspective. In: Proceedings of the 20th Canadian Multidisciplinary Road Safety Conference, 6-9 June 2010, Niagara Falls, Ontario.