

CRIME AND MISCONDUCT COMMISSION

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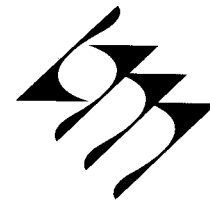
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QUEENSLAND

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1 February 2013

**Police Powers (Motor Vehicle
Impoundment) & Other
Legislation Bill 2012
Submission 021**

Mr B Hastie
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Legal Affairs and Community Safety Committee
Parliament House
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BRISBANE QLD 4000

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Dear Mr Hastie

**RE: CALLS FOR SUBMISSIONS ON THE POLICE POWERS AND
RESPONSIBILITIES (MOTOR VEHICLE IMPOUNDMENT) AND
OTHER LEGISLATION AMENDMENT BILL 2012**

Thank you for the opportunity to provide a submission on the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012 ('the Bill').

The Crime and Misconduct Commission (CMC) has considered the Bill, specifically in relation to the potential impact of the proposed changes to the vehicle impoundment provisions on the operation of the evade police offence. The evade police provisions are located in Chapter 22 of the *Police Powers and Responsibilities Act 2000* (PPRA). Our submission outlines the rationale for and key features of the evade police offence, presents key findings from our 2011 review of the evade police provisions and makes a number of comments on the proposed changes to the evade police vehicle impoundment provisions.

The rationale for and key features of the evade police offence

The evade police provisions were introduced in 2006 as part of a suite of measures to reduce the number of police pursuits and associated risks to community safety. They were designed to give police the option to allow a fleeing vehicle to 'escape' by providing police with the powers and investigative tools to assist them to identify the offending driver at a later stage. In allowing the driver to flee, the police do not contribute to the inherent danger of a pursuit situation.

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The evade police provisions incorporate a number of features that support a restrictive police pursuit policy. The provisions provide police with powers to assist them to identify the driver of the fleeing vehicle after the fact — the power to serve an evasion offence notice (s.755 PPRA) on the registered owner of the vehicle and a reverse 'owner onus' provision (s.756).

Given the clear intention for the evade police provisions to support a restrictive police pursuit policy and improve public safety, it is important that subsequent legislative change reinforce these goals.

The car impoundment provisions represent an increase in the adverse consequences to drivers who evade police – in essence, as stiffening of the penalty. For such legislative initiatives to achieve their desired effect, however, not only must the penalty be stiffened but the path to conviction should not be unnecessarily hampered. In order for legislation generally like this to achieve its desired effect of encouraging police to choose options other than high speed pursuit, officers must be confident that convictions will result from any alternative action they take. There are reasons to think that there are imperfections in the legislation that are not addressed in the proposed amendments that undermine that.

Key findings from the CMC's 2011 review of the evade police provisions

The CMC published a review of the evade police provisions in June 2011, making 13 recommendations for change to legislation and Queensland Police Service (QPS) policy, training and monitoring of police pursuits. The CMC's report was titled *An alternative to pursuit: a review of the evade police provisions* and is available on the CMC website. The QPS supported the CMC's recommendations, however, the necessary legislative change has not yet occurred.

Our review identified a number of legislative weaknesses in the evade police investigation and prosecution provisions that are undermining police confidence in, and subsequent use of, the provisions as an effective alternative to pursuit.

Because the provisions rely on police being able to serve an evasion offence notice on the registered owner of the vehicle involved in an offence, they have limited utility for those offences committed in stolen vehicles, unregistered vehicles and vehicles with false or missing registration plates. The QPS reports that a high proportion of evade police offences are committed in a stolen vehicle.

We also found that there is currently no requirement, and arguably little incentive, for a vehicle owner who claims not to have been the driver at the time of the offence to provide useful or credible information to help police to identify the offending driver. We recommended that the requirements of a declaration in response to an evasion offence notice be tightened and that limits be placed on the use of the s.756(4) rebuttal provision. The recommendations aimed to strengthen the obligation of vehicle owners to make reasonable efforts to assist police to identify and prosecute offending drivers.

Advice from the QPS indicates that the rate of solved evade police offences has continued to decline since the CMC review. Rectifying the identified legislative weaknesses is essential to make the provisions a more effective investigation and prosecution tool in those situations where they can be applied. Until remedied, it is likely that police resistance to using the evade police provisions as a genuine and effective alternative to pursuit will continue.

Comments on the proposed changes to the evade police vehicle impoundment provisions

The threat of immediate impoundment risks may create perverse incentives

In order to decide how to advance this policy initiative, you should be aware that there is a body of research that indicates that mandatory and/or significant penalty increases in this area of law increases the risk of creating perverse incentives that result in unforeseen consequences. In this case, Queensland research shows that some offenders are willing to take more extreme risks to avoid police

capture and the immediate and certain loss of their vehicle, despite acknowledging risks to their own safety and that of others.¹ This has the potential to undermine the community safety intent of the evade police provisions.

Further, given our previous review finding that police officers were unsatisfied with evade police court outcomes, impoundment penalties may provide police officers with the incentive to pursue vehicles to elicit an immediate and certain penalty.

Significant police discretion for a broad range of behaviour could lead to inconsistent penalties that are not readily reviewable

Actions that constitute an evade police offence range from simple non-compliance with a police direction to stop to driving behaviour that significantly endangers community safety. There is a risk that providing police with the discretion to determine at what point the driving behaviour was serious enough to warrant immediate impoundment could lead to inconsistencies in penalty outcomes that are not readily reviewable.

Vehicle impoundment is unlikely to act as a deterrent in a substantial proportion of evade police offences

As previously mentioned, a substantial proportion of evade police offences are committed in a stolen vehicle. Consequently, it is reasonable to contend that vehicle impoundment would not be appropriate or an effective deterrent in a substantial proportion of evade police offences.

A comparison of the impoundment penalties for evade police-type offences across Australian jurisdictions requires consideration of the different features of the Queensland offence

The explanatory notes to the Bill (page 2) cite consistency of the proposed impoundment regime with other Australian jurisdictions as a justification for providing police with the power to immediately impound vehicles used in an evade police offence. That general proposition blurs significant differences in detail of which you should be aware.

The Queensland offence captures a particularly wide range of behaviour. In contrast, evade police-type offences captured within the impoundment regimes of other Australian jurisdictions:

- are indictable offences
- generally must include the elements of dangerous or negligent driving involving a police pursuit.

The exception to this is the Tasmanian impoundment regime which provides for an automatic 28-day impoundment period for a simple evade police-type offence.

It is also important to note that:

- No other Australian jurisdiction has a reverse onus provision for an evade police-type offence.
- No other Australian jurisdiction provides police with significant additional powers to assist with the investigation of evade police-type offences (e.g. the evasion offence notice).
- No other Australian jurisdiction provides for a three-month roadside or automatic impoundment period for an evade police-type offence. Although New South Wales has a

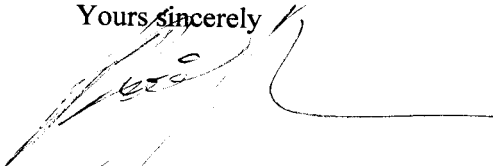
¹ For example, Leal N, Watson, B, Armstrong, K and King, M 2009, “‘There’s no way in hell I would pull up’”: Deterrent and other effects of vehicle impoundment laws for hooning’, in *Proceedings of the 2009 Australasian Road Safety Research, Policing and Education Conference and the 2009 Intelligence Speed Adaption (ISA) Conference*, 10–12 November 2009, Sydney Convention and Exhibition Centre, Sydney.

similar automatic impoundment period, it relates only to an offence of dangerous or reckless driving knowing police are in pursuit [s.51B *Crimes Act* 1900 (NSW) known as 'Skye's Law']. Furthermore, impoundment does not apply when the registered owner of the vehicle was not the offending driver.

Should you wish to clarify any of the matters raised in the CMC's submission, please contact Mr Rob Hutchings, General Counsel on [REDACTED] or by email [REDACTED].

Thank you for the opportunity to comment on this Bill.

Yours sincerely



ROSS MARTIN SC
Chairperson