



MONASH University

Accident Research Centre

A centre within the Monash University Injury Research Institute

Police Powers (Motor Vehicle
Impoundment) & Other
Legislation Bill 2012
Submission 023

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

MUARC, an internationally renowned key multi-disciplinary centre within the Monash Injury Research Institute (MIRI), is a world leader in the field of injury prevention and safety science and has been operating for around 25 years. MUARC prides itself on undertaking high quality scientific research relevant to transport accident and injury reduction and is successful in seeing much of its research implemented into effective road safety programs. Its sponsors include federal, state and local governments (health and transport), insurance agencies, occupational health and safety groups, automobile clubs and the automotive industry.

Many of the comments in this submission are based on current research literature, published in scientific journals, or in MUARC's own research findings. The responses only address the specific amendments for which we considered we could offer additional expertise and insight. While the opportunity to comment on the Bill was available to all MUARC staff it is important to acknowledge that the views expressed are the views of the author listed and are not necessarily those of MUARC or Monash University as institutions:

- Ms Belinda Clark, Research Fellow

We are happy to elaborate further. Please direct any enquiries to Ms Belinda Clark

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Yours sincerely

Responses to specific amendments

Amendments

- increasing the sanction for the type 1 vehicle impoundment scheme to 90 days impoundment for the first offence and forfeiture for the second offence;
- increasing type 2 impoundment sanctions to 7 days for the second type 2 vehicle related offence, 90 days for the third type 2 vehicle related offence and forfeiture for any subsequent type 2 vehicle related offence;

Response:

While the above amendments suggest an increase in penalty severity for both type 1 and 2 vehicle impoundment schemes, the harsher penalties apply to the range of offences commonly associated with hooning.

Since its introduction in 2006, the Victorian Vehicle Impoundment Legislation (“hoon” legislation) has undergone several amendments to improve its effectiveness in deterring this anti-social and often high risk driving behavior referred to as hoon driving. The most recent of these amendments was in August 2012 with the introduction of mandatory attendance at a Safe Driving Program for drivers convicted of specific hoon offences; these specific offences are comparable to those identified under the Type 1 scheme in Qld.

The amendments considered most relevant to these proposed Qld amendments occurred in Victorian legislation in 2011 with the introduction of a two tier offence categorization and penalty regime.

First, it is important to clarify that the numbering of the Victorian Vehicle Impoundment offence “tiers” appear to be the reverse of the Qld offence “types” with the Tier One offences more closely corresponding to what are Type 2 offences in the Qld legislation, incorporating behaviours such as repeat unlicensed, drink and/or drug driving, excessive speeding. With the Tier Two offences corresponding to what are Type 1 offences in the Qld legislation incorporating a range of offences commonly associated with hooning (e.g. burnouts, drifting, loss of tyre traction).

In Victorian Vehicle Impoundment Legislation the penalties associated with each offence tier were justified as being a reflection of the severity (degree of crash risk) associated with the driving behaviours categorized under each tier. For example, a first Tier Two (typical hoon driving) offence results in 30 days vehicle impoundment, a first Tier One (repeat unlicensed, drink/drug driving) offence is escalated to result in the same penalty as that of a second Tier Two offence (an additional 45 days - 3 months impoundment).

The elevated crash risks associated with Tier One offences such as repeat drink and drug driving are well documented. While a crash risk trend has been identified in relation to Tier Two offences (behaviors typically associated with hooning) and public disapproval of these anti-social driving behaviors is high, these offences are currently difficult to identify in crash databases and thus their relationship with crash risk remains speculative and requires further research (Clark, Hoareau, Whelan & Newstead, 2010; Palk, Freeman, Gee Kee, Steinhardt & Davey, 2010). Within the road safety field

it is assumed that the crash risks are high as the majority of hoon drivers are young males in the novice driver age range, almost half of detected hoon offenders had either a probationary, learner or disqualified licence, with the vast majority of these being probationary licence holders (Clark et al., 2010).

These above two proposed amendments for the Qld legislation appear to reflect the opposite penalty relationship, with the harsher penalties (90 days for 1st offence, forfeiture second offence) applying to the anti-social driving behavior Type 1 offences and more lenient penalties (7 day impoundment for 1st offence etc.) proposed for documented higher risk behavior categories as Type 2 offences. Further research is needed to quantify the crash risks associated with the Type 1 driving behaviors and penalty regimes should accurately reflect the road safety risks associated with the driving offences categorized under each of the two vehicle impoundment scheme groups.

A drivers' perception regarding the credibility (i.e. fairness) of a sanction has been found to play an important role in a drivers' adherence to a sanction and thus its overall effectiveness. In 2008 MUARC conducted an evaluation of the Vehicle Impoundment Legislation for Victoria Police. This research involved analysis of the Victoria Police impoundment data obtained during the initial two years following the introduction of the legislation and a focus group study with participants who had their vehicles impounded under the legislation (Clark et al., 2010). A common sentiment amongst the focus group participants was that of being a victim, a perception of being targeted, and belief that punishments were too severe for the associated offences. Overall participants did not categorize hooning as a high risk driving behaviour, compared with other behaviours such as drink driving. These perceptions of being unfairly targeted were then used to justify engaging in the behaviour and to diminish taking responsibility for their illegal driving behavior. As suggested above, it is important that penalty severity is seen to reflect the road safety risks associated with offences and that this equity is conveyed to the target high risk groups. Any increases in penalty severity should be accompanied by public education campaigns focused on promoting the fairness and equity of the penalties in relation to road safety risk.

It is important that increases in penalties will result in increased deterrence and thus a decrease in the illegal driving behaviour. Clark et al., (2010) revealed two important findings that relate to this issue. First, many participants claimed that if permanent forfeiture or vehicle crushing was introduced they would purchase a cheaper (disposable) vehicle for their hoon driving to reduce the impact (cost) of being detected. This would have detrimental road safety implications because of the poor safety standards of cheaper vehicles compared with more expensive and safer vehicles that can offer crash avoidance and occupant protection.

Second, participants referred to a word of mouth agreement amongst peers that if they were detected hooning when driving an expensive vehicle that they would engage in a police chase to avoid having their vehicle confiscated. Again this raises concerns about the high crash risks this poses for the driver, police and general road users associated with these attempts to evade police (Clark et al., 2010). While it has also been proposed that the penalties associated with evading police should also be increased, it is questionable how effective this penalty threat would be in a

spontaneous situation. Clark et al., (2010) found that, for the majority of the focus group participants, their decision to hoon was spontaneous. Although the above comments introduce a dichotomous issue of older vehicle roadworthiness verses newer vehicle police chase risk, they also highlight the importance conducting evidence based exploration into potential outcomes from the introduction of the proposed amendments. Further research is warranted to explore the potential effectiveness of introducing increased penalties across the various hoon driver subgroups.

Amendment

- including "evade police" offences and "high end speeding" (>40 km/hr above the speed limit) as type 1 and type 2 vehicle related offences respectively;

Response:

Attempts to “evade police” and also “high end speeding” both represent high crash risk driving behaviour, especially when this involves novice drivers who typically represent the majority of hoon offenders. As previously mentioned, almost 50% of hoon offenders were identified as either a probationary, learner or disqualified driver, with the vast majority of these probationary licence holders (Clark et al., 2010). Speed has been identified as one of the leading crash causes and is involved in over 30% of all fatal crashes in Australia. A driver’s risk of being involved in a fatal crash doubles when driving at 65km/h in a 60km/h limit zone. Excessive speed and improper use of a motor vehicle are the two most common offences for which vehicles are impounded, in Victoria. These two offences alone constituted 76% of all Vehicle Impoundment offences in Victoria during 2006-08. Penalty increase amendments were introduced to the Victorian Vehicle Impoundment Legislation in recognition of the frequency of, and crash risks associated with, excessive speeding, which has been classified as a Tier One (more serious) offence. It is appropriate that the high crash risks associated with these driving behaviours are reflected in the adoption of more severe penalties as proposed.

Amendment:

- increasing the relevant period for vehicle impoundment offences from 3 to 5 years;

Response:

The impact of the offence accumulation expiration period warrants further investigation, and this investigation should take into account the heterogeneity of the population and any associated variations in effect due to population variance.

An example of research exploring variations in the impact of the recidivism period timeframe can be found in research conducted by Chandler (2012) which explored “The impact of deterrence on road safety due to the demerit point system”. While Chandler identified that the threat of losing one’s license for the accumulation of excessive demerit points (above the legally permissible limit of 15 points) reduced a driver’s probability of committing a subsequent offence by 50-80%, this reduction was only apparent for drivers who were close to exceeding their demerit point limitation (9-14 points). Positive driving behaviour change related to increases in their demerit point accumulation was not apparent for drivers with less than 9 demerit points. This finding was attributed to a reduced perceived threat of license loss for drivers the further they were from the permissible 15 point limit.

Again, due to a lack of strong evidence, the effectiveness of this amendment is uncertain. Based on the Chandler (2012) research, the proposed increase in the offence expiration period may be effective for specific groups, such as drivers who are facing a third offence of vehicle forfeiture, but perhaps not for other sub-groups. As hooning is typically an immature driver behavior (Folkman, 2005) it is expected that the majority of offenders will “grow out” of this type of behavior without intervention, however, there will always be recidivist drivers who continue to engage in high-risk driving behaviours and who are generally resistant to many road safety initiatives. It is worth reflecting on the appropriateness of extending this period across several potential hoon offender scenarios. One such scenario could be to explore what benefits would be achieved through applying the proposed recidivist penalties to a driver who had avoided re-offending for over 4 years. Alternatively, reward has also been found to be an effective strategy in encouraging positive driving behavior change and its appropriateness in deterring recidivist hooning warrants further investigation.

References

- Chandler, V (2012). *Assessing the Impact of Deterrence on Road Safety due to the Demerit Point System*. Kingston: Queens University
- Clark, B., Hoareau, E., Whelan, M., & Newstead, S. (2010). *Victoria Police Vehicle Impoundment Program evaluation*. Melbourne: Monash University Accident Research Centre.
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- Palk, Gavan R., Freeman, James E., Gee Kee, Alita, Steinhardt, Dale A., & Davey, Jeremy D. (2010) The prevalence and characteristics of self-reported dangerous driving behaviours among a young cohort. *Transportation Research Part F : Traffic Psychology and Behaviour*.