RNT:dgr

Police Powers (Motor Vehicle Impoundment) & Other Legislation Bill 2012
Submission 024

1 February 2013

The Hon Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Mr Berry

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

Thank you for the invitation to make submissions regarding the Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012.

The Explanatory Notes describe the principal objectives of the Bill to "introduce the toughest anti-hooning laws in the nation" and to "address administrative and operational inefficiencies in the type 1 and 2 vehicle impoundment schemes". To do so, various amendments are proposed to the *Police Powers and Responsibilities Act* 2000 ("PPRA"). Among them are proposals to increase the sanctions for both schemes, to considerably broaden the categories of offences that are the subject of those schemes, to introduce a range of new offences, to substantially increase the impoundment periods and to change the current impoundment and forfeiture processes to give them automatic operation (as opposed to a Court supervised operation). Moreover, the Bill includes provisions that, if passed into law, will have retrospective operation with respect to all type 2 related offences of the "same kind" that have been committed up to three years prior to the commencement of the legislation. As the Explanatory Notes say, the Bill "fundamentally changes the vehicle impoundment process in Queensland".

The measures together comprise a considerable interference with private property rights. There is, in the view of the Association real doubt as to whether the evidence justifies the extent of the interference. The Association urges the Committee critically to consider whether the evidence available as to the likely effectiveness of the proposed measures justifies the infringement of property rights.

The absence of evidence that schemes such as this act as an effective deterrent was noted in the Research Brief prepared by the Queensland Parliamentary Library with

BAR ASSOCIATION OF QUEENSLAND
ABN 78 009 717 739
Level 5
Inns of Court
107 North Quay
Brisbane Qld 4000
Tel: 07 3238 5100
Fax: 07 3236 1180
DX: 905
chiefexec@qldbar.asn.au
Constituent Member of the Australian Bar Association

respect to the 2011 Bill (Nicolee Dixon and Maggie Lilith, Research Brief 2012/No. 1, January 2012). There, the following appears:

> "11. There has been little research and few evaluations on the effectiveness of impoundment and forfeiture laws as a deterrent to hoon behaviour. However, a 2010 thesis for CARRS- Q (discussed in section 7 of this Research Brief) sought to examine hooning risks, the characteristics of offenders, and the effectiveness of current impoundment and forfeiture schemes. The results need to be viewed in light of acknowledged limitations in the studies and the fact they cover only traditional hooning type behaviour (e.g. street racing, burnouts) not other high risk driving offences (e.g. drink driving) now covered by Queensland's type 2 offence provisions.
>
> 12. Essentially, the results suggest that drivers, mainly male, who engage in hooning represent a significant road safety concern over and above the general young male driver problem (sections 7.1-7.2). Overall, the results indicated that there was a small but significant decrease in hooning offences and other traffic infringements by offenders whose cars were impounded compared with the comparison group. However, more research was needed to determine if impoundment was itself a deterrent or whether the decrease in offending was due to factors such as the offenders not having access to a vehicle post-impoundment because of licence suspension or the owner not permitting access, or because offenders changed the location of their hooning behaviour to avoid detection (section 7.4)."

Later, in Section 7 of the Research Brief, a more detailed consideration of the thesis referred to in the extract above appears. The Association commends that analysis to the Committee. It may be summarised as follows:

1. The evidence (on which the thesis was based) suggests that drivers likely to engage in "hooning" are young males who are also a known at-risk group involved in road crashes. This makes it difficult to determine whether any risks associated with "hooning" are due to the behaviours *per se* or the drivers engaging in them;

2. Legislation such as is now proposed is "unlikely to deter a complex group of people motivated by many different legal, social and psychological factors (e.g. thrill seeking, admiration from peers) from engaging in a variable range of hooning behaviours";

3. The studies underlying the thesis concluded that the road safety risks of "hooning" behaviours are low, with only a small proportion of the hooning offences studied in **Study 2** resulting in a crash and with around 20% of drivers in **Study 1** reported being involved in a hooning related crash in the previous 3 years (which is comparable to general crash involvement among Queensland drivers generally). As against that, there are reasons to believe that the true involvement of "hooning" in crashes is underestimated but, if that is so, the absence of reliable evidence on the issue is underscored;

4. Although the author of the thesis noted growing evidence in the USA and Canada that impoundment is an effective deterrent to recidivism among drink drivers and drivers who drive while suspended or disqualified, it was "unclear if impoundment is effective in the Australian context or for hooning offenders". Specifically, this was said:

> "**Study 3,** an observational examination of official data to determine the effectiveness of impoundment on post-impoundment driver behaviour, found that there was a small but significant decrease in hooning offences and other general traffic infringements (pp 219-220) and an increase in the time between hooning infringements.
>
> While the reduction could be attributed to impoundment being a specific deterrent to hooning, it is also possible that it could be due, instead, to offenders becoming better at avoiding detection. There was also a possibility that offenders may have been denied access to a vehicle post-impoundment (e.g. due to a licence sanction or the owner not allowing the offender to drive the vehicle). As the study was observational, it was not possible to control for such extraneous variables. It was suggested that, due to this limitation and the small effect sizes, further research was needed (pp 221, 232) to determine the deterrent effect of impoundment.
>
> ...
>
> The author believed that evaluations were needed of the costs of impoundment and forfeiture laws compared to road safety benefits (with the available limited data suggesting low crash risks involved with hooning) to ensure that policing resources were appropriately allocated and that such severe sanctions were warranted. It was suggested that it might be more appropriate for such laws to be applied to drivers who indicate a pattern of persistent risky driving behaviour (demonstrated though large numbers of traffic infringements and licence sanctions etc.) rather than to drivers who commit a particular offence such as hooning."

5. The "major issue, identified by other CARRS-Q research, is that more police presence in problem areas may be needed so offenders know that they risk detection and punishment (because at) present, there may well be a feeling among hoon drivers that they will not be caught."

The Association submits that the available evidence is insufficient to draw any conclusions about the effectiveness of impoundment schemes. Indeed, what does emerge is that other forms of policing - such as increased police presence - may be significantly more effective as a deterrent.

Given these matters, the Association is concerned that the legislative scheme is insufficiently evidence based. On the other hand it involves a significant interference with property rights.

There is a particular aspect of the Bill to which we wish to direct the Committee's attention.

Under the current legislation, a vehicle may only become subject to impounding or forfeiture by order of the Magistrates Court. How that occurs is that an application must be made within 48 hours after charging the owner (or driver) with an impoundment offence. On the hearing of that application, the aggrieved person or persons have a right to be heard and a right to a proper adjudication by a judicial officer.

Under the current proposal the police may proceed to actual impoundment and forfeiture without any supervision by a court. The justification in the Explanatory Notes is that such a measure is necessary to "increase the efficiency of ... the scheme" and to generate "considerable savings through the ... reduction of time taken by police officers to prepare applications ... and court time required to consider applications". Then, to "mitigate concerns about the impact of automatic impoundment and forfeiture", an aggrieved person may apply to the Commissioner of Police for the release of the vehicle but only on quite limited grounds. See: Clause 79B. Then, although a right of appeal to the Magistrates Court is provided for, the grounds under which the actions of the police may be undone by a magistrate are restricted in the same way. See: Clause 79O.

This proposed removal of court supervision in all but closely circumscribed group of cases is likely to lead to injustice. For example, severe financial hardship appears among the limited grounds proposed under the Bill for an application to the Commissioner for release of an impounded vehicle, but there is an important qualifier – the relevant hardship must be such as to deprive the "applicant of applicant's means of earning a living". See: Clause 79B(3)(a). Thus, it would be necessary (in addition to establishing severe financial hardship) to persuade the Commissioner that the impounded vehicle is required in order for that person to perform his or her employment. What then is the position of a person who is unemployed, but looking for work or that of a person who is relied on by a family member as a means of transport to and from the family member's place of work? Neither will have any ground on which to seek the release of their vehicle – whether on application to the Commissioner or on appeal to the Magistrates Court.

The Association submits that the powers of the Magistrate Court on appeal should be unfettered by any ground other than the justice of the individual case. It is one thing to reverse the current scheme to remove court supervision at the impoundment stage; it is quite another to tie the Court's hands on its review of that action.

Yours faithfully

Roger N Traves S.C.
President