
Submission to Legal
Affairs and Community
Safety Committee –
*Police Powers and
Responsibilities (Motor
Vehicle Impoundment)
and Other Legislation
Amendment Bill 2012*

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Date February 2013



Introduction

The purpose of this submission is to provide RACQ's comments on the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012* ('the Bill'), which has been referred to the Queensland Parliamentary Legal Affairs and Community Safety Committee ('the Committee'). A number of key changes are proposed in the Bill, and these are highlighted in the *Explanatory Notes* (p1-2) and listed below:

Key changes proposed in the Bill

1. Type 1 offence sanctions to be increased to 90 days impoundment for the first offence, and forfeiture of the vehicle on the second offence;
2. Evading police included as a type 1 offence;
3. High-end speeding offences (more than 40km/h over the speed limit) included as a type 2 offence;
4. Type 2 offence sanctions to be increased to seven days impoundment for the second type 2 vehicle-related offence, 90 days for the third offence, and forfeiture for the fourth or subsequent type 2 offence;
5. Increasing the 'relevant period' from three to five years for repeat offences;
6. Amending the definition of 'burnout';
7. Allowing proceedings to commence by Traffic Infringement Notice (TIN) where applicable, rather than having to proceed by way of a Notice to Appear in court or an arrest;
8. Amending the impoundment and forfeiture processes to operate automatically rather than through court applications, and introducing a Commissioner application process for vehicles to be released from impoundment;
9. Removing the requirement that repeat offences under the type 2 vehicle impoundment scheme must be the same type as the 'pre-impoundment' offence; and
10. Allowing additional methods of impoundment and allowing early return of a vehicle where specific offences have been remedied.

RACQ comments on key changes

1. ***Type 1 offence sanction increases (90 days first offence, forfeiture second offence)***

RACQ does not support the proposed change.

RACQ member feedback indicates that there is a general preference that people who break road rules/traffic laws are caught and punished by an increased on-road police patrol presence enforcing the full range of road rules, rather than increased fines/penalties for those who are caught.

In line with this, RACQ believes that increased enforcement of existing laws and penalties, as opposed to just an increase in penalties for offences related to hooning, is necessary. In other words, it is important to increase the surety that hoons will be caught and subjected to penalties, rather than simply increasing the penalties for those who are caught.



As stated by the Centre for Accident Research and Road Safety Queensland (CARRS-Q) in their *Hooning Fact Sheet* (http://www.carrsq.qut.edu.au/publications/corporate/hooning_fs.pdf):

“Current anti-hoon legislation may need to be enforced at higher levels in order to achieve higher perceptions of punishment likelihood. Simply enacting anti-hoon legislation may not be sufficient to deter hooning if individuals do not perceive the certainty of punishment as being sufficient to alter future willingness to take part in the behaviour” (CARRS-Q 2011, p3).

In addition to this, RACQ notes that between 2002 and 2009 a total of 5,288 vehicles were impounded for hooning offences for a first offence; 208 were impounded for a second offence; and 19 were forfeited to the state (CARRS-Q 2011, p3-4).

This indicates that under current laws and penalties, relatively few drivers are being caught for second or third offences or, for some reason, the courts are not applying the full impoundment/forfeiture penalties for these offences. If the former, this could be due to current fines and penalties being sufficient to deter repeat offences, resulting in behaviour change after the first offence. Or it may be due to a lack of enforcement targeting high-risk times and locations for repeat offences.

Recommendation – Retain current type 1 offence penalties and increase the visible on-road police patrol presence to ensure more type 1 offenders are caught and penalised, also increasing the deterrent effect of enforcement.

In addition to this, RACQ is concerned that CARRS-Q research (2011, p4) has identified that there is already a *“possibility that some drivers may flee in order to avoid being caught by police for a third hooning offence and losing their vehicles permanently. As a police pursuit situation could be more dangerous than the hooning offence, it may be wise for police to follow up repeat offenders at a later stage to seize the driver’s vehicle.”*

Under the proposed changes detailed in the Bill, there is potential for this to occur more frequently if the first or second offence penalties are made more severe. An increase in police pursuits may therefore be an outcome of these changes and should be considered, as crashes associated with police pursuits are a major road safety risk.

2. Include evading police as a type 1 offence

RACQ supports the proposed change.

3. Include high-end speeding offences (more than 40km/h over the limit) as type 2 offences

RACQ does not support the proposed change.

High level speeding has much more severe road safety implications than the largely amenity-based concerns about hooning offences (such as burnouts) and therefore is more deserving of being a type 1 offence than a type 2 offence. RACQ members also support this, with an RACQ survey in December 2008 (Market and Communications Research) showing that 89% of RACQ members believed that offenders convicted of a high-range speeding offence should face vehicle impoundment for that offence. While there was not a high level of agreement among members in relation to what constituted 'high-level'



speeding, the majority of responses were in the 30-50km/h over the speed limit range and therefore 40km/h+ is a good compromise.

Recommendation – Include high-end speeding offences (more than 40km/h over the limit) as a type 1 offence.

4. Increase type 2 offence sanctions to seven days impoundment for the second type 2 vehicle-related offence, 90 days for the third offence, and forfeiture for the fourth or subsequent type 2 offence;

RACQ does not support the proposed change.

RACQ agrees with the intention of the proposed change on the basis that it makes the penalties more severe for repeat type 2 offenders. However, it should be noted that the RACQ also questions whether it is appropriate that type 2 offenders, in general, have lesser penalties for their first offences than type 1 offenders (even if the RACQ's recommendation that the proposed change to the Bill in relation to Impoundment periods for type 1 offences be discarded).

The Club understands that type 2 offences include:

- Driving an unregistered and uninsured vehicle;
- Unlicensed driving;
- High-range drink driving;
- Failing to provide a specimen as required; and
- Driving a defective vehicle when ordered to present the vehicle for inspection or comply with a defect notice.

It could be argued that these type 2 offences have more road crash risk associated with them than a 'burnout' offence (a type 1 offence), and so deserve an equal or more severe penalty. As is noted by CARRS-Q: *"It may be argued that only illegal street racing or speed trial offences pose a road safety risk, due to the speeds attained by involved vehicles, while hooning offences involving unnecessary noise or smoke are better considered a public amenity issue.* (http://www.carrsq.qut.edu.au/publications/corporate/hooning_fs.pdf, p2).

RACQ notes, however, that CARRS-Q also states that: *"However, concurrent hooning offences are common. There are considerable potential risks to the hooning driver, passengers, bystanders, and property depending on the context or location of unnecessary noise or smoke offences, as these offences involve a vehicle that has lost traction with the road surface and is essentially out of the driver's control."* (p2).

It is the RACQ's view that type 1 and type 2 offences should have equal penalties (at the current type 1 level) rather than requiring a repeat offence to trigger an impoundment period.

Having greater impoundment periods for first hooning offences than repeat high-range drink driving offences does not seem 'balanced' in terms of the enforceability of the offences – hooning is not as 'measurable' as a BAC limit, and is debateable in terms of driver impairment/crash risk when compared to the effects of alcohol impairment on drivers. Drink driving is an undeniable road safety issue, while hooning is related to road safety and also to public amenity.

Recommendation – Include type 2 offences as type 1 offences due to their road safety implications, and remove the requirement that high-level drink driving offences, unlicensed driving offences or unregistered vehicle offences be a repeat offence before vehicle



impoundment is imposed. As per the discussion at point 1, the Club recommends that current type 1 offence penalties be retained and that the visible on-road police patrol presence be increased in Queensland.

5. Increase the 'relevant period' from three to five years for repeat offences.

RACQ does not support the proposed change.

CARRS-Q has commented that: "Australian research has found that hooning offenders tend to be involved in the scene for only two or three years. This may substantiate the 'maturing-out' effect of hooning in the mid-twenties."

RACQ suggests keeping the 'relevant period' as three years on the basis that it is supported by the above research.

6. Amending the definition of 'burnout'.

RACQ supports the proposed change.

Currently the definition of 'burnout' in section 69 is to: "...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 ...".

The proposed amendment to the definition results in the definition reading: "burnout, for a motor vehicle, means wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one or more wheels with the road surface.

Examples –

- driving a motor vehicle in a way that causes sustained loss of traction of one or more of the drive wheels with a road surface so that the tyres or a substance poured onto the road surface smokes
- driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a wet or gravelled road surface, regardless of whether or not the tyres smoke because of the loss of traction."

This change is appropriate and in line with other jurisdictions.

- 7. Allowing proceedings to commence by Traffic Infringement Notice (TIN) where applicable, rather than having to proceed by way of a Notice to Appear in court or an arrest; and**
- 8. Amending the impoundment and forfeiture processes to operate automatically rather than through court applications; and introducing a Commissioner application process for vehicles to be released from impoundment.**

RACQ does not support the proposed changes.

RACQ believes that due to the severity of the penalties and the potential impact that they have financially (on an ongoing basis) for offenders, hooning matters must continue to be heard in court, with decisions about whether an offence occurred and penalties decided by Magistrates based on the circumstances of the case, rather than an 'automatic' penalty issued by police.



In previous correspondence with the Queensland Police Service in relation to this draft Bill, the RACQ's Legal Advisory Service made a number of comments and raised a number of concerns in relation to these changes.

RACQ's Legal Advisory Service noted that it is proposed the penalties for a first offence would allow for the driver's vehicle to be impounded for 90 days. This could affect employment, particularly for young people, and could also have an impact on people driving vehicles belonging to relatives.

RACQ Legal Advisory also noted that:

- The draft legislation does allow for an application by an eligible person for the release of an impounded or immobilised vehicle on the basis of severe hardship, regardless of whether the vehicle may be liable to forfeiture. The definition of "eligible person" is the owner or the usual driver of that vehicle; and
- The legislation requires the Commissioner to only grant the application if they are satisfied that a refusal would cause severe financial hardship to the applicant or their family by depriving them of the means to earn a living, or cause severe physical hardship to the applicant or the applicant's family.

RACQ Legal Advisory previously raised the following comments/scenarios for consideration:

- For a second offence within five years, the proposed penalty allows for the government to seize possession of the vehicle and to effectively become the owner of the vehicle and to take away the rights of anyone other than the state to that vehicle. This includes taking away the rights of any person to enforce a security interest under the Personal Property Securities Act. This could have significant ramifications that the government may not have sufficiently considered, in addition to serious adverse implications for innocent third parties who may be reliant on the vehicle for their livelihood.
- The proposed change would take away the right of a third party to enforce a security interest such as one recorded on the Personal Property Securities Register, and also has significant other ramifications that should be considered. For example, from a consumer perspective, someone could buy a used car privately, having done all the checks on the PPSR. If the interest of the government is not noted on the PPSR or it comes to light after the buyer has paid for and taken possession of the vehicle, the buyer will lose their purchase money and also ownership of the vehicle and may not, under the proposed legislation, be able to do anything about it.
- The potential buyer of the vehicle could be young and buying their first car, or a pensioner on a limited income. For those types of people to lose possession of their vehicle through no fault of their own, and to be financially disadvantaged as a result, could have very negative public perception outcomes.
- If the legislation shifts the decision-making from Magistrates to the Commissioner, it could also remove the opportunity for the background circumstances to the offence to be impartially reviewed.
- The legislation requires the Commissioner to make a decision about the application within five days of receiving it. Although this would have a positive effect on a timely turnover of the review of such applications, there is the serious and very real prospect of the application review process being rushed and not comprehensively considered.



As such, crucial documentation forming part of the evidence to an application could be overlooked.

- The Bill contains provisions for applications for the release of impounded vehicles on the basis that the offence occurred without the owner's consent. While this is laudable, again the Commissioner only has five days to decide the application. The application review process could be rushed, denying an applicant a fair review. In addition, it should be noted that the Commissioner, under section 84 E (3), can only grant the application if they are satisfied that the offence happened without the consent of the owner. Again, in many instances, the vehicle could be owned by a parent or older sibling, allowing potential for the Commissioner to argue that the offence occurred in circumstances where consent was implied.
- The requirement that applications be reviewed within five days could invite not only rushed decisions but also unnecessary appeals.

If the alleged offences continue to go to court in the first instance, these issues could be avoided.

Recommendation – Hooning matters must continue to be heard in court, with decisions about whether an offence occurred and penalties made by Magistrates based on the circumstances of the case, rather than an 'automatic' penalty issued by police.

9. *Removing the requirement that repeat offences under the type 2 vehicle impoundment scheme must be the same type as the 'pre-impoundment' offence.*

RACQ supports the proposed change.

However, the Club only agrees with this change if our recommendation that type 2 vehicle impoundment offences be included as type 1 offences is *not* adopted by Government.

As previously mentioned, a number of type 2 offences have arguably more road crash risk associated with them than type 1 offences, and as such are deserving of the same penalty. If this is not adopted, the Club agrees that, like type 1 offences, subsequent type 2 offences do not have to be the same offence for the impoundment scheme to take effect.

10. *Allowing additional methods of impoundment and allowing early return of a vehicle where specific offences have been remedied.*

RACQ supports the proposed change.

RACQ supports additional methods of impoundment/immobilisation of vehicles, including removal of registration/number plates and clamping of vehicles, as these may help reduce storage costs.

The Club also supports early return of vehicles in instances where specific offences, for example, payment of registration/insurance fees or obtaining a licence, have been remedied.



Additional RACQ recommendations

RACQ also recommends:

- Increasing the on-road police patrol presence all year round to better deter and detect type 1 and 2 offences.
- Checking all impounded vehicles for roadworthy requirements prior to release, or requiring vehicle owners to obtain a safety certificate for the vehicle within a set period of time after the vehicle is released.

References:

Centre for Accident Research and Road Safety Queensland (CARRS-Q) November 2011, *State of the Road: Hooning Fact Sheet*, web document, accessed 27/12/12:
http://www.carrsq.qut.edu.au/publications/corporate/hooning_fs.pdf

Market and Communications Research December 2008, RACQ Safety Policy. Survey: Quantitative Research Report, Market and Communications Research, Spring Hill, Queensland, Australia.

Queensland Parliamentary Legal Affairs and Community Safety Committee 2012, *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012* and *Explanatory Notes*, web documents, accessed 27/12/12:
<http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/PPRMVI>