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*Submission to
LAPCSESC – Police
Powers and
Responsibilities
(Motor Vehicle
Impoundment)
Amendment Bill 2011*

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- *RACQ member advocacy*

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Introduction

The purpose of this submission is to address the issues raised in the Queensland Parliamentary Legal Affairs, Police, Corrective Services and Emergency Services Committee's *Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011* (herein referred to as the *Draft Bill*). The RACQ was contacted by the Chair of the Committee on 21 December 2011 and invited to make a written submission about the *Draft Bill* and the proposed amendments.

Summary of recommendations

RACQ agrees with:

- *Commencing the impoundment proceedings with a traffic infringement notice, but continuing to provide alleged offenders with appropriate access to courts to challenge the traffic infringement notices.*
- *Issuing information notices about the consequences and effect of committing pre-impoundment offences.*
- *Removing the requirement that repeat type 2 offences have to be of the same kind as the preceding type 2 offence.*
- *Extending the time for police to make court applications for forfeiture or impoundment from 48 hours to 7 days.*
- *Introducing automatic impoundment periods of 28 days for certain repeat offences, provided that the alleged offender has the option to contest the offence in court.*
- *Allowing police to apply for a court order to impound vehicles for up to 3 months for certain repeat offences, provided that the alleged offender also has the option to appeal.*
- *Allowing the usual driver or owner to make an application to the Commissioner of Police to release an impounded motor vehicle where the owner can prove that the offence occurred without their consent and knowledge or on the grounds that continued impoundment would cause severe financial or physical hardship, with an appeal right to the Magistrates' Court.*
- *Allowing a court to impose community service on non-owner drivers where the owner has successfully raised a defence to the impoundment or forfeiture of the motor vehicle.*
- *Using the proposed revised wording for the definition of 'burn out' to reflect the wilful driving of a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with the road surface, whether it causes the tyres to smoke or not and including when this occurs on gravelled or wet road surfaces.*
- *Introducing a high end speeding offence where a person drives more than 40km/h over the speed limit.*

RACQ does not agree with:

- *Increasing the initial impoundment period from 48 hours to 7 days. The RACQ recommends conducting further research into how to best improve the deterrent effect of the initial impoundment period.*

RACQ also recommends:

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



Discussion

Commence impoundment proceedings with a traffic infringement notice

RACQ notes that at present, proceedings are commenced with a *Notice to Appear* or arrest, with the Queensland Police Service (QPS) involved in both scenarios.

The RACQ acknowledges that commencing impoundment proceedings with a traffic infringement notice provides the alleged offender with the option of avoiding court (and the associated cost benefit to QPS and courts).

The Club views this as being similar to the procedure for other traffic infringement notices for other offences, e.g., speeding, where the infringement notice is issued and the penalty applied, unless the alleged offender wishes to challenge the issuing of the infringement notice in court.

As the loss of access to a vehicle through vehicle impoundment is a significant penalty however, the RACQ believes that it may be appropriate to expect a number of alleged offenders to challenge the traffic infringement notice. It will therefore be necessary for alleged offenders to still have appropriate access to courts to defend themselves or challenge the infringement notice.

The RACQ agrees that it would be appropriate for the QPS to issue people with 'information notices' about the consequences and effect of committing pre-impoundment offences.

Recommendations:

- *Commence the impoundment proceedings with a traffic infringement notice, but continue to provide alleged offenders with appropriate access to courts to challenge the traffic infringement notices.*
- *Issue information notices about the consequences and effect of committing pre-impoundment offences.*

Remove the requirement that repeat type 2 offences have to be of the same kind as the preceding type 2 offence

Currently, the type 2 vehicle impoundment scheme applies if the offender repeatedly commits the same offence as the initial 'pre-impoundment'/'zero' offence in a three year period. Multiple type 2 offences that differ from the initial offence do not therefore currently count towards vehicle impoundment.

Type 2 offences include:

- driving a vehicle that is both unregistered and uninsured;
- driving while unlicensed or disqualified;
- driving with a BAC of 0.15 or higher;
- failing to supply a specimen of breath or blood;
- driving while under a 24 hour suspension; and
- driving an illegally modified or non-compliant vehicle.

The RACQ believes that committing a combination of these offences in a three year period should be sufficient to trigger the type 2 scheme, rather than the current requirement for the same offence to be repeated twice in that timeframe.



The RACQ recommends that the requirement for type 2 offences to be of the same kind as the preceding type 2 offence be removed in Queensland, to make the type 2 scheme similar to the type 1 scheme, and to make Queensland more consistent with other Australian jurisdictions.

Recommendation:

- *Remove the requirement that repeat type 2 offences have to be of the same kind as the preceding type 2 offence.*

Increase the initial impoundment period from 48 hours to 7 days

The current initial impoundment period for type 1 and second repeat/subsequent type 2 offences (in a three year period) is 48 hours, applied immediately.

The RACQ notes the proposal to increase this immediate initial impoundment from 48 hours to 7 days is proposed in the *Explanatory Notes* based on the belief that the associated increased storage fees will strengthen the deterrent effect of the scheme.

The RACQ notes the reference in the *Explanatory Notes* to a 2009 study by Leal et al. and the argument that the study found that the initial impoundment period was not a sufficient deterrent. The authors also noted, however, that: "While the results of a study with a small sample size of 22 are not generalisable [sic] to the population of drivers who engage in hooning behaviours, the qualitative approach elicited rich information that can inform larger scale research studies" (Leal et al. 2009, p8).

The Club notes that the QPS has advocated for the initial impoundment period to be a deterrent in itself, rather than a threshold that is crossed to become eligible for more serious offences. While we agree that an increased, 7 day initial impoundment period could serve as more of a deterrent for some drivers (through their inability to use the vehicle and increased impoundment costs), the other penalties associated with the offence and their deterrent effect should also be taken into consideration. As such, this may be an area for further research, to determine if this will have the desired effect, or how increased deterrence effect can be achieved.

Recommendation:

- *Conduct further research into how to best improve the deterrent effect of the initial impoundment period.*

Extend the time for police to make court applications for forfeiture or impoundment from 48 hours to 7 days

It is the RACQ's understanding that at present the application has to be completed within 48 hours of an individual being charged with the initial impoundment offence, and that both the QPS and courts had problems with the 48 hour timeline.

The Club does not have any objection to this change.

Recommendation:

- *Extend the time for police to make court applications for forfeiture or impoundment from 48 hours to 7 days.*



Remove requirement for police to notify registered security interest holders of impoundment of the motor vehicle for the initial impoundment period

The RACQ notes from the *Explanatory Notes* that the QPS holds the view that the information needs of registered security interest holders will be met through police officers continuing to notify an owner of a vehicle, including a registered security interest holder, of a proposed sale or disposal of a motor vehicle that has not been recovered within 30 days after a period of impoundment ends.

We also note that the QPS has committed to developing administrative arrangements across Queensland to help allow for prompt notification of registered security interest holders when the impoundment period ends.

Recommendation:

- *The RACQ has no recommendation with regard to this proposed change.*

Introduce automatic impoundment periods of 28 days for certain repeat offences

It is proposed that this would apply to second repeat offences and subsequent offences for the type 2 scheme, and a first repeat offence and subsequent offences under the type 1 scheme, without the need for an application to be made to a court.

This would replace the current 48-hour immediate impoundment that occurs for these offences, and the RACQ does not expect that it would interfere with the 3 month impoundment, which may be imposed by a court for these offences (type 1 or 2, as described below).

The offender should have the option to go to court, to contest the offence if they wish.

Recommendation:

- *Introduce automatic impoundment periods of 28 days for certain repeat offences, provided that the alleged offender has the option to contest the offence in court.*

Allow police to apply for a court order to impound vehicles for up to 3 months for certain repeat offences where a police officer does not consider the 28 automatic impoundment period sufficient

Considering that the aforementioned offences to which the 28 days automatic impoundment would apply would generally be eligible for a 3 month impoundment awarded by a court at present, the RACQ agrees with this initiative, provided that the alleged offender also has the option to appeal the application/offence.

Recommendation:

- *Allow police to apply for a court order to impound vehicles for up to 3 months for certain repeat offences, provided that the alleged offender also has the option to appeal.*

Allow the usual driver or the owner to make an application to the Commissioner of Police to release an impounded motor vehicle where the owner can prove that the offence occurred without their consent and knowledge or on the grounds that continued impoundment would cause severe financial or physical hardship, with an appeal right to the Magistrates' Court

The RACQ supports this change.



Recommendation:

- *Allow the usual driver or owner to make an application to the Commissioner of Police to release an impounded motor vehicle where the owner can prove that the offence occurred without their consent and knowledge or on the grounds that continued impoundment would cause severe financial or physical hardship, with an appeal right to the Magistrates' Court.*

Allow a court to impose community service on non-owner drivers where the owner has successfully raised a defence to the impoundment or forfeiture of the motor vehicle

This is seen as making it fair for owner drivers and non-owner drivers who offend. The RACQ agrees with this change.

Recommendation:

- *Allow a court to impose community service on non-owner drivers where the owner has successfully raised a defence to the impoundment or forfeiture of the motor vehicle.*

Amend the definition of 'burn out' to remove the requirements for smoke to be produced or for a substance to be poured onto the road surface so that it includes a driver who wilfully causes a loss of traction on one or more of the drive wheels on a wet or gravel road

It is believed that at present the definition does not cover loss of traction with no smoke, e.g., on a wet or gravel road.

In changing the definition, the intention is for Queensland's legislation to become more consistent with other jurisdictions, and to better reflect the risky driving behaviours that can occur on Queensland roads.

The actual wording proposed is; "Burn out, for a motor vehicle, means wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with the road surface. Examples – driving a motor vehicle in a way that causes a 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, or both, smoke; and – 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."

The RACQ agrees with this change, and believes it should have the desired effect.

Recommendation:

- *Use the proposed revised wording for the definition of 'burn out' to reflect the wilful driving of a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with the road surface, whether it causes the tyres to smoke or not and including when this occurs on gravelled or wet road surfaces.*

Introduce a high end speeding offence where a person drives more than 40km/h over the speed limit

The RACQ notes that, as mentioned in the explanatory notes:



- South Australia and Tasmania impound/clamp vehicles for 28 days for a first offence of driving at 45km/h or more over the limit; and
- Victoria clamps/impounds vehicles for 30 days for the first offence of driving at 145km/h in a 110km/h zone or exceeding the limit by 45km/h or more.

RACQ member research (December 2008) found 89% of members agreed that serious speeding offences should result in impoundment, but there was not agreement on what 'serious speeding' was.

The Club recommended, in the 2009 Second Edition of *Road Safety Priorities* however, that impoundment be introduced for speeding offences of 40km/h over the limit, or higher.

Recommendation:

- *Introduce a high end speeding offence where a person drives more than 40km/h over the speed limit.*

Other comments/recommendations

Based on the importance of vehicle safety and the fact that vehicles involved in hooning could be modified, the RACQ believes that consideration should be given to having all impounded vehicles checked for 'roadworthy' requirements prior to release from impoundment, or requiring the owners to present evidence of the vehicles being submitted for and obtaining a safety certificate within a certain period of time (e.g., 14 days) after release from impoundment.

Recommendation:

- *Check all impounded vehicles for roadworthy requirements prior to release from impoundment or require owners of vehicles to obtain a safety certificate for the vehicle within a period of time after the vehicle is released from impoundment.*

Also, an increased on-road police patrol presence on Queensland's roads all year round could assist in helping to detect type 1 and 2 offences, and should be considered.

Recommendation:

- *Increase the on-road police patrol presence all year round to better deter and detect type 1 and 2 offences.*

References

Leal, Nerida, Watson, Barry, Armstrong, Kerry and King, Mark 2009, "There's no way in hell I would pull up": Deterrent and other effects of vehicle impoundment laws for hooning, *Proceedings of the 2009 Australasian Road Safety Research, Policing and Education Conference and the 2009 Intelligence Speed Adaptation (ISA) Conference*, 10-12 November 2009, Sydney Convention and Exhibition Centre, Sydney.

Queensland Parliamentary Legal Affairs, Police, Corrective Services and Emergency Services Committee 2011, *Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011* and *Explanatory Notes*, Queensland Parliament, Brisbane.