

Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, make this statement of compatibility with respect to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPO Act), the *Police Powers and Responsibilities Act 2000* (PPRA), *Transport Operations (Road Use Management) Act 1995* (TORUM Act), *Summary Offences Act 2005* (SOA), *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021* (TORUM-VR Regulation). Collectively, these amendments are directed at enhancing the capacity of the Queensland Police Service (QPS) to monitor reportable offenders, investigate organised crime, including cybercrime and address the dangers to Queensland road users caused by hooning.

The Bill also contains consequential amendments to the *Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2015*.

The objectives of the Bill are to:

- strengthen child protection laws by increasing the periods for which an offender is required to report under the CPOROPO Act;
- improve the ability of the QPS to investigate cybercrime and offences committed by reportable offenders by making certain offences against the Criminal Code and the CPOROPO Act relevant offences for controlled operations and surveillance device warrants in Schedule 2 of PPRA;
- enhance the capacity of the QPS to investigate organised crime by facilitating the use of civilian participants in controlled activities in certain limited circumstances; and,
- strengthen laws to deter hooning behaviour by creating additional offences under the TORUM Act and the SOA and increasing the penalties that apply for an offence under s 211 TORUM-VR Regulation.

Amendments to the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (CPOROPO Act)

The amendments in the Bill aim to re-adjust the reporting periods for reportable offenders, other than a reportable offender who is a post *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) reportable offender (post-DPSOA reportable offenders), to 10 years, 20 year and life. Post-DPSOA reportable offender is currently subject to life reporting obligations and the Bill makes no change to their existing reporting obligations.

The additional reporting periods aim to ensure that offenders who commit sexual or other serious offences against children continue to be monitored by police to reduce the likelihood that they will reoffend.

Amendments to the Police Powers and Responsibilities Act 2000 (PPRA)

Amendment of schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA – cybercrime offences

The Bill proposes to expand the list of relevant offences for controlled operations under schedule 2 to include sections 223 Distributing intimate images, 408C Fraud, 408D Obtaining or dealing with identification information, and 408E Computer hacking and misuse which will allow police to use controlled operations and surveillance devices as an investigation strategy to combat cybercrime offending and increase the likelihood of identifying an offender.

Amendment of schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA – CPOROPO Act offences

The proposed amendment of schedule 2 of the PPRA to include the three CPOROPO Act offences of section 50 Failure to comply with reporting obligations, section 51 False or misleading information and section 51A Failing to comply with prohibition order is to monitor and manage reportable offenders. These three offences are indictable and punishable by a maximum penalty of 300 penalty units or 5 years imprisonment.

Authorisation for a civilian to take part in a controlled activity (ancillary conduct only)

The existing controlled activity provisions in Chapter 10 of the PPRA, provide a legislative framework to authorise a police officer to engage in controlled activity. Controlled activity involves the police officer communicating with a person, deliberately concealing the purpose of that communication, or engaging in conduct that, but for the protections afforded by section 225 of the PPRA would be unlawful. For example, this could involve a covert police officer communicating with a drug dealer for the purpose of gathering evidence to support a prosecution for the offence of supplying or trafficking dangerous drugs.

The Bill amends Chapter 10 of the PPRA to facilitate a civilian participant being involved in a limited way in controlled activity engaged in by a police officer. The involvement of a civilian in this context is limited by the Bill to conduct that is ancillary to the controlled activity of the police officer. That is, conspiring with, enabling, or aiding a police officer to engage in controlled activity.

Amendments to address ‘hooning’ behaviour

Despite the strong measures legislated by Queensland Governments, including vehicle impoundment and confiscation, hooning is a persistent problem in many areas. There is no singular ‘hooning’ offence under Queensland law. The type of anti-social driving behaviours collectively recognised as hooning, are defined as type 1 vehicle related offences in Chapter 4 ‘Motor vehicle impounding and immobilising powers for prescribed offences and motorbike noise direction offences’ of the PPRA. Type 1 vehicle related offences include any of the

following offences committed in circumstances that involve a speed trial, a race between motor vehicles, or a burn out:

- an offence against the Criminal Code, section 328A ‘Dangerous operation of a vehicle’ committed on a road or in a public place;
- an offence against the TORUM Act, section 83 ‘Careless driving’;
- an offence against the TORUM Act, section 85, ‘Racing and speed trials on roads’;
- an offence against the TORUM Act involving wilfully starting a motor vehicle, or driving a motor vehicle, in a way that makes unnecessary noise or smoke; and
- an evasion offence under section 754 of the PPRA.

Summary Offences Act 2005 (SOA) amendments

The Bill amends the SOA to create a new offence provision that prohibits a person from:

- willingly participating in a group activity involving a motor vehicle being used to commit a racing, speed trial, burn out or other hooning offence;
- organising, promoting or encouraging another person to participate in, or view, a group activity involving a motor vehicle being used to commit a hooning offence; or,
- filming, photographing or publishing a film or photograph of a motor vehicle being used for a hooning offence for the purpose of organising, promoting or encouraging a group activity involving a motor vehicle being used to commit a hooning offence.

The encouragement and complicity in hooning offences, is further deterred by the creation of a new offence which prohibits the possession of items for the purpose of committing a type 1 offence, for example number plates, spare wheels and hydraulic jacks.

Transport Operations (Road Use Management) Act 1995 (TORUM Act) amendments

Section 291 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Road Rules) (‘Making unnecessary noise or smoke’) is the offence currently used to address people doing ‘burn outs’. Two enforcement gaps have been identified in this existing offence provision. The existing offence provision does not capture:

- behaviour where someone intentionally engages in a sustained loss of traction in circumstances where noise and smoke are not generated (this usually occurs in the context of a substance being placed on the road to reduce friction); and
- circumstances where the conduct occurs in an area such as a public park which is not a road or road related area.

The Bill creates a new offence in the TORUM Act to address these gaps by prohibiting a person from wilfully operating a motor vehicle in a manner that causes the vehicle to undergo a sustained loss of traction. The offence will apply in a public place as well as on a road.

Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021 (TORUM-VR Regulation) amendments

A common tactic to avoid detection when committing hooning offences is to obscure or remove the number plates of the vehicle used to commit the offence. A common method used to avoid detection is to affix number plates that do not belong to the vehicle being used. Although, section 211 of the TORUM-VR Regulation comprehensively outlines the various ways number plates can be inappropriately used, this offence provision does not appropriately penalise

offenders who commit this offence when hooning. Thus, the Bill increases the maximum penalty from 20 penalty units to 40 penalty units where the circumstance of aggravation of a type 1 vehicle offence is involved.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- Right to life – (section 16 of the *Human Rights Act 2019* (HRA));
- Protection from torture and cruel and inhuman or degrading treatment – (section 17 of the HRA);
- Freedom of movement – (section 19 of the HRA);
- Freedom of expression – (section 21(2) of the HRA);
- Peaceful assembly and freedom of association – (section 22(2) of the HRA);
- Privacy and reputation – (section 25(b) of the HRA); and
- Protection of families and children – (section 26 of the HRA).

The amendments to the CPOROPO Act that increase the period of reporting for reportable offenders promote: the right to life (section 16), the right to be protected from torture and cruel, inhuman and degrading treatment (section 17); and the right to protection of children and families (section 26), as they are directed at preventing further offending against children that may restrict those rights.

The amendments to the PPRA, SOA and TORUM Act relating to hooning promote the right to life (section 16) to the extent that they are effective at mitigating the harm caused – including significant loss of life – by dangerous driving behaviour.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Amendments to the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (CPOROPO Act)

The amendments to reportable offender reporting periods under the CPOROPOA may limit a person's human right to privacy and reputation (section 25(b) of the HRA).

(a) the nature of the right

The right to privacy and reputation protects a person's right not to have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad. Protection against a person's privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to lawful interferences, which are also unreasonable, unnecessary, or disproportionate.

The concept of lawfulness in the context of the right to privacy means that no interference can occur except in cases envisaged by the law. Interference authorised by states can only take place based on law, and the law must be adequately accessible and precise so a person can regulate their conduct.

A reportable offender is required to report their personal details and changes to those details as set out in schedule 2 of the CPOROPO Act. Therefore, a lengthening of reporting periods will increase the time a reportable offender is obliged to comply with this requirement.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation in re-adjusting the reporting periods for reportable offenders, other than post DPSOA reportable offenders, to 10 years, 20 years and life ensure that offenders who commit sexual or other serious offences against children continue to be monitored by police to reduce the likelihood of reoffending. The changes are not retrospective and will only apply to offenders convicted of a prescribed offence or have an offender reporting order made concerning their offending after the commencement of the amendments.

The CPOROPO Act is based on national model laws. These laws, with some local variances, operate across all states of Australia with information about reportable offenders, including their reporting periods, held on the National Child Protection Register.

In 2014, Queensland reduced the reporting periods for reportable offenders from 8 years, 15 years and life based on the number and classes of offences committed to 5 years, 10 years and life based on reoffending after a notice of reporting obligations had been given to a reportable offender. Consequently, Queensland now has the shortest reporting periods in Australia.

In 2018, the Queensland Family and Child Commission stated:

The rights of children to feel safe and be safe from violence and sexual abuse is paramount on both an economic and social level. Child abuse and neglect costs Queensland approximately \$1 billion annually. This cost does not include the ongoing social costs which arise from abuse. For example, substance abuse, suicide, interaction with the criminal justice system etc.

The purpose of CPOROPO Act is to provide for the protection of the lives of children and their sexual safety and to require offenders who commit sexual or other serious offences against children to keep police informed of the offender's whereabouts and other personal details for a period after the offender's release into the community—

- (i) to reduce the likelihood that the offender will reoffend; and
- (ii) to facilitate the investigation and prosecution of future offences the offender may commit.

The requirement to keep police informed of personal details for longer, when weighed against protecting the lives of children and their sexual safety, is a reasonable limitation on the offender's right to privacy and reputation and is consistent with the values of a free and democratic society.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments achieve the policy objectives by increasing the reporting time frames in relation to the conviction of a prescribed offence or the making of an offender reporting order. Reportable offender reporting periods range from five years to life. The purpose of reporting is to reduce the likelihood of reoffending and to facilitate the investigation of any future offences against children. The ongoing risk management includes monitoring by the QPS to disrupt and prevent reoffending against children through face-to-face engagement with a reportable offender and empirically validated static and dynamic risk assessment tools to monitor risk behaviours.

The amendments only reflect a change in the length of the reporting period for offending that occurs after the commencement of the Amendment Bill. Accordingly, how the reporting period is calculated has not changed.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive reasonably available ways have been identified to achieve the purpose. Other Australian jurisdictions have reporting periods incrementing from eight years to 15 years and then life. The proposed reporting periods for Queensland add two years and five years, respectively, to the first and second reporting periods.

Carol Ronken (BA (Psych) Masters Applied Sociology (Social Research) (2013/17)) stated the following in her response to Queensland's DPSOA legislation:

The most accurate and telling measurement of risk remains the offender's past behaviour. However, by their actions, recidivists demonstrate that they will always pose a high risk. The Woods Royal Commission represented the most exhaustive and comprehensive study incorporating research available from around the globe on this subject. It concluded that all sex offenders constitute a real risk to children and that this risk can be lifelong.

Further, Dr Don Grubin, professor of forensic psychiatry at Newcastle University, UK, commented on the 1998 report for the UK Home Office that the likelihood of a sex offender offending will vary over time depending on his mental state, social circumstances and general well-being: many benefit from knowing there are explicit social controls around them. There will therefore need to be ongoing risk assessment, visible monitoring and appropriate intervention at times of increased risk. Those involved in managing sex offenders will need to know how to evaluate risk and how to intervene to reduce it. Based on this research, the slight increase in reporting periods compared to other Australian jurisdictions is considered necessary to protect children's lives and their sexual safety.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Offending of the kind that the CPOROPO Act is directed at preventing, impacts the human rights of a child who is a victim of that offending. The right to life, the right to protection of children and families, the right to be protected from torture and cruel, inhuman and degrading treatment, are potentially limited by the commission of such offences. The purpose of the amendments is to provide greater protection to children by ensuring reportable offenders are monitored for a longer period than is currently the case.

On balance, the importance of the purpose of the amendment outweighs any limitation on rights that may occur as a result. Furthermore, the proposal will not act retrospectively and will not limit the rights of reportable offenders who must report for the current legislated periods.

(f) any other relevant factors

The research cited above indicates that due to the inherent difficulties in rehabilitating child sex offenders and risk factors resulting in recidivism, the best practice is to lengthen the time an offender is monitored by requiring them to report under a child protection reporting regime. Other bodies of research suggest that reoffending by child sex offenders decreases over time. However, this research has limitations; for instance, sexual abuse is notoriously underreported. Despite underreporting, the Australian Institute of Health and Welfare's Sexual Assault in Australia paper published in August 2020 found that in 2018 the rate of police recorded sexual

assaults against children aged 0-14 (167.6 per 100,000) was nearly twice that of people aged 15 and over (90.2 per 100,000).

Amendments to the Police Powers and Responsibilities Act 2000 (PPRA) – COPOROPO Act offences

The amendment of schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA to include the following offences under the CPOROPO Act -

- section 50 (Failure to comply with reporting obligations);
- section 51[#] (False or misleading information); and
- section 51A[#] (Failing to comply with offender prohibition order).

[#]Note: As a result of this Bill s 51 and s51A will be renumbered as s 67FA and s 67FE respectively.

The above amendments may limit a person's human right of Privacy and reputation – (section 25 of the HRA).

(a) the nature of the right

The right to privacy and reputation protects a person's right not to have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad. Protection against a person's privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to lawful interferences, which are also unreasonable, unnecessary, or disproportionate.

The concept of lawfulness in the context of the right to privacy means that no interference can occur except in cases envisaged by the law. Interference authorised by states can only take place based on law, and the law must be adequately accessible and precise so a person can regulate their conduct. These are concepts that are consistent with the rule of law principles. The idea of arbitrariness in the context of the right to privacy carries a human right meaning of capriciousness, unpredictability, injustice and unreasonableness in the sense of not being proportionate to the legitimate aim sought.

This right may be limited by allowing police to make an application for a surveillance device warrant for offences against the CPOROPOA.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment of Schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA to include the three CPOROPO Act offences is to monitor and manage reportable offenders. The number of reportable offenders requiring monitoring and management by the Queensland Police Service (QPS) is increasing by approximately 150-200 each year. In addition, recent legislative amendments mean that post *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) offenders can become reportable offenders under the CPOROPO Act for life. While this group of reportable offenders currently numbers 27, 65% of the 220 offenders on DPSOA orders are expected to become reportable offenders in the coming years.

Police receive information and intelligence about reportable offenders not complying with conditions or prohibitions. However, the QPS does not have the resources to monitor reportable offenders around the clock to detect breaches physically. The ability for police to apply for a surveillance device warrant to a magistrate or judge when intelligence reveals an offender is

not complying with their obligations will assist in community safety and in fulfilling the purposes of the CPOROPOA. Therefore, any limitation on a reportable offender's human right to privacy and reputation is reasonable and demonstrably justifiable.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments expanding relevant offences in schedule 2 of the PPRA to include CPOROPOA offences achieve the purpose by providing police with the ability to apply for a surveillance device warrant or a controlled operation when intelligence reveals an offender is not complying with their obligations, assisting in keeping the community safe in providing for the protection of the lives of children and their sexual safety.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The alternatives to applying for a surveillance device warrant to monitor a reportable offender deemed as high-risk were explored. A smaller cohort of reportable offenders is considered to present a high or very high risk of reoffending, as confirmed by their status as post DPSOA reportable offenders or the issue of an offender prohibition order (OPO) against a relevant sexual offender.

It was considered that where persons in this cohort were assessed at an elevated risk due to intelligence or a threat assessment tool, an application could be made to monitor that person with a surveillance device. Monitoring an offender through surveillance who is deemed high risk after applying threat assessment tools would provide police with an opportunity to intervene before a reportable offender commits an offence. However, this would permit the issue of a surveillance device based on a combination of risk assessment and status as a post-DPSOA offender or offender subject to an OPO rather than the threshold of a 'relevant offence' currently applied to surveillance device warrants in chapter 13. This may be seen as more restrictive and lowering the threshold required for a surveillance device warrant.

The insertion of CPOROPO Act offences into schedule 2 means the amendments will apply to all reportable offenders and maintain the current 'relevant offence' threshold for the issue of a surveillance device warrant, where a Supreme Court judge or magistrate is satisfied there are reasonable grounds for the belief founding the application of the warrant.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the importance of protecting the lives of children and their sexual safety outweighs any limitations on rights that may occur. The QPS is cognisant of the rights and liberties of reportable offenders and operates to disrupt and prevent further offending. Several safeguards sit within the PPRA to ensure the proper use of surveillance devices.

(f) any other relevant factors

Not Applicable.

Amendments to the Police Powers and Responsibilities Act 2000 (PPRA) – Sch 2 cybercrime offences

The amendment of schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA to include the following offences under the *Criminal Code Act 1899* (the Code): s 223 Distributing intimate images (revenge porn offences), s 408C Fraud, s

408D Obtaining or dealing with identity information and s 408E Computer hacking and misuse may limit a person's human right to privacy and reputation - (section 25 of the HRA).

(a) the nature of the right

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The amendments will engage section 25, privacy and reputation of the HRA, by allowing police to make an application for a controlled operation or surveillance device warrant for the Code offences of computer hacking, fraud, dealing with identity information and distribution of intimate images.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to assist police in combating rapidly increasing cybercrime offending that is causing significant economic and social harm to the Queensland community. The Australian Government's National Plan to Combat Cybercrime 2022 acknowledged that illicit transactions are facilitated by anonymising technologies and cryptocurrencies, requiring specialised cybercrime investigation capabilities.

Online engagement as an investigation technique, which can only be conducted under a controlled operation, has proven to be reliable for identifying offenders. Therefore, the amendment of Schedule 2 (Relevant offences for controlled operations and surveillance device warrants) of the PPRA to include sections 223 Distributing intimate images, 408C Fraud, 408D Obtaining or dealing with identification information, and 408E Computer hacking and misuse will allow police to use controlled operations as an investigation strategy to combat cybercrime offending.

The amendment is a proper purpose when considering a person's protection under section 25 privacy, and reputation of the HRA is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations. Police will lawfully apply for a controlled operation to combat the significant economic and social impact of cybercrime offending on the Queensland community. Therefore, any limitation on human rights is reasonable and demonstrably justifiable.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

During 2020-21, the Australian Cyber Security Centre observed over 67,500 cybercrime reports, an increase of nearly 13% from the previous financial year, and self-reported losses from cybercrime totalling more than \$33 billion. The top reported cybercrime types were fraud, online shopping, and online banking scams. In addition, there was an increase in the severity and impact of reported cybersecurity incidents, with nearly half categorised as substantial. The offence of fraud accounted for 23% of cybercrime, identity theft was 7%, and 2% of offending is attributed to the sharing of images. A breakdown of cybercrime incidents by jurisdiction for the same financial year highlights that 30% occurred in Queensland, the highest incidence of all Australian jurisdictions.

The purpose of authorising police to conduct a controlled operation or apply for a surveillance device warrant for computer hacking, fraud, dealing with identity information and distribution of intimate images is to use the most effective tool to investigate offenders. Cybercrime offending is diverse; for example, the primary way identity theft presents itself in organised

crime is through the sale of entire identities and identity documents through Darknet marketplaces. These marketplaces present a unique challenge for police. The offenders can hide behind the relative anonymity afforded by Tor (free and open-source software for enabling anonymous communication) whilst conducting business trading identity documents.

The most effective tool the QPS has for investigating those marketplaces is online engagement which requires controlled operations. Online engagement is an investigation technique that can only be conducted under a controlled operation and is a proven reliable method to identify offenders. Traditional policing techniques such as internet protocol address resolution routinely fail due to the prevalence and use of virtual private networks, proxies, and other obfuscation techniques. Accordingly, the amendments will help to enhance the effectiveness of investigations of cybercrime offences. There is a direct relationship between any limitation on human rights and the purpose of the amendment.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no less restrictive way to achieve the purpose of these amendments in the Bill. Cybercrime has a lower risk of identification and prosecution coupled with the ability to act globally and produce large profits, which makes it an attractive option that criminals will continue to use.

There are several safeguards within the PPRA to alleviate the impact of the limitation of human rights. For instance, the amendments do not change the procedure under section 239 Application for authority to conduct controlled operation of the PPRA; instead, they will expand the list of relevant offences for controlled operations under schedule 2. This will provide police with the opportunity to target more cybercrime offences and increase the likelihood of identifying an offender.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The incidence of cybercrime is increasing and having a significant social and economic effect on the Queensland community. On balance, the purpose of enhancing the capacity of police to increase the chances of effectively detecting and prosecuting this offending outweighs any limitation on a person's right to privacy and reputation under the HRA.

(f) any other relevant factors

Not applicable.

Amendments to Transport Operations (Road Use Management) Act 1995, Summary Offences Act 2005 (SOA) and Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021 (TORUM – VR).

The amendments and creation of new offences may limit the following human rights for participants and drivers involved in the commission of type 1 vehicle related offences:

- Freedom of movement (section 19 of the HRA);
- Freedom of expression (section 21 of the HRA);
- Peaceful assembly and freedom of association (section 22 of the HRA).

(a) the nature of the right

Freedom of movement (section 19 of the HRA)

The right to freedom of movement protects a person's right to move freely within Queensland, enter and leave it, and choose where to live if they are lawfully within Queensland.

This right may be limited for any person who wishes to congregate in an area where hooning occurs.

Freedom of expression (section 21 of the HRA)

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This is the freedom to seek, receive and impart information and ideas of all kinds, within or outside Queensland. The forms of protected expression are broad, including oral, written, print, art or any other medium. However, while the concept of freedom of expression is very broad, how people exercise it can be limited.

This right may be limited if a person photographs, films or publishes a hooning event occurring or promotes a hooning event taking place.

Peaceful assembly and freedom of association (section 22 of the HRA)

Every person has the right to freedom of association with others, including the right to form and join trade unions. The right to peaceful assembly and freedom of association can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

This right may be limited if a person wishes to attend a hooning event with others.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Between 1 January 2022 and 27 November 2022 there have been 270 fatal traffic crashes in Queensland. This is 10 fatalities (3.8%) greater than the same period for 2021 and 40 fatalities (17.2%) greater than the previous five year average for the same period. Hooning activity is inherently dangerous driving behaviour. It places the participants and road users at significant risk.

Hooning continues to be an issue of significant community concern. A legislative response outlined in Chapter 4 'Motor vehicle impounding and immobilising powers for prescribed offence and motorbike noise direction offences' of the PPRA has been developed to address this behaviour. Notwithstanding this, reports about hooning activity indicate that acts of hooning remain prevalent. The QPS receives reports about hooning through a variety of means including via the telephone or online. In 2021, 7,111 phone reports and 24,357 digital forms were received.

Additionally, a gap in existing offence provisions is being exploited by hoons. That gap is the wording of the offence of 'Making unnecessary noise or smoke' under section 291 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009*. As a result of this gap, hoons are placing substances on the road, such as fuel or oil, to reduce the friction between the vehicle and the road, which results in loss of traction and reckless driving of a vehicle without necessarily causing noise or smoke and endangering the community.

The purpose of the amendments is to protect the community from dangerous activities by creating and expanding on type 1 vehicle offences to capture participants, persons and drivers who:

- (i) willingly participate in the photographing, filming or publishing of a photograph or film of a motor vehicle being used to commit a hooning related offence or to organise or promote the participation of persons in a hooning related offence; or
- (ii) participate in any group activity involving a vehicle used to commit a hooning offence. This offence provision includes placing a liquid such as diesel fuel or oil on a roadway so that tyres would suffer a loss of traction; or
- (iii) persons who encourage others to commit hooning offences; or
- (iv) have possession of items connected to the commission of a type 1 vehicle offence;
- (v) operate a motor vehicle on a road in such a manner as to cause the vehicle to undergo sustained loss of traction by one or more of the driving wheels (or, in the case of a motorcycle, the driving wheel) of the vehicle; or
- (vi) attach false or altered number plates on vehicles involved in type 1 vehicle related offences to avoid detection.

Any limitation of a person's human right to freedom of movement, freedom of expression or freedom of association is directly related to the purpose of the amendments.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The creation of new offences that prohibit the encouragement of hooning activities, participation in any group activity involving a vehicle being used to commit a hooning offence or placing a liquid such as diesel fuel or oil on a roadway so that tyres would suffer a loss of traction deter persons who encourage others to commit hooning offences, and the photographing, filming or the publishing of a photograph or film of a motor vehicle being used to commit a hooning related offence to organise or promote the participation of persons in a hooning related offence.

The new offences and amendments target the participants and the individuals responsible for operating vehicles in an anti-social manner. The mass gatherings at night attract hooners at industrial estates, shopping centre car parks, and other public car parks, making it unsafe for the community. At these locations, individuals commit hoon offences encouraged by spectators. Organised groups record and promote this offending behaviour by uploading these recordings and images on social media.

The offence will not capture a person who films a hooning activity to make a complaint to the police or who films/photographs as part of a lawful event, for example, drag racing events that are held at Willowbank Raceway. However, the offence will apply to persons who photograph or film a motor vehicle being operated to commit a type 1 vehicle offence to organise or promote persons' participation in any such group activity.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Despite current laws that can result in the impoundment and forfeiture of vehicles for type 1 vehicle related offences, complaints of hooning and street racing from the Queensland community remain high. To avoid detection for these offences, offenders are attaching false plates to their vehicles or altering/concealing their vehicle number plates. The continuation of

this offending is also encouraged by the number of spectators who gather in public places to participate in hooning events or promote the events by placing footage on social media.

There are no less restrictive, reasonably available ways to achieve the purpose that have been identified. The provisions that allow for the immediate forfeiture of a vehicle to the State upon the commission of a second type 1 vehicle related offence were examined, containing a mechanism for a person to contest the immediate forfeiture within 21 days. However, this is more restrictive than these amendments.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, fulfilling the purpose of the limitation outweighs the harm caused to human rights. Type 1 related vehicle offences connected to hooning and street racing pose a danger to the drivers, spectators and community. The disruption to the peaceable enjoyment of the community is to the point of distress for many community members. The presence of an audience at hooning events is a major influencing factor on participants, and measures that discourage drivers and participants alike strike a fair balance upon the above identified human rights.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Mark Ryan MP
Minister for Police and Corrective Services and
Minister for Fire and Emergency Services

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