



Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

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Economics and Governance Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Bill seeks to enhance the capacity of the Queensland Police Service to monitor reportable offenders, investigate organised crime and cybercrime, and address the danger and disruption caused by hooning. The safety of all Queenslanders is paramount to the committee, and it supports strategies which aim to assist police in keeping our community safe.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Queensland Police Service.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1	1
The committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 be passed.	1

Executive Summary

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 (the Bill) amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, the *Police Powers and Responsibilities Act 2000*, the *Summary Offences Act 2005*, the *Transport Operations (Road Use Management) Act 1995* and the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021*.

Collectively, the amendments are proposed to enhance the capability of the Queensland Police Service to:

- monitor reportable offenders by lengthening the time for which an offender must report
- investigate cybercrime, and offences committed by reportable offenders, by making certain offences relevant for controlled operations and surveillance device warrants
- investigate organised crime by authorising the use of civilian participants in controlled activities in certain limited circumstances
- address the danger and disruption caused by 'hooning' by creating additional offences and increasing penalties for certain offences.¹

While there was broad support for the Bill's intent, stakeholder response to the proposed amendments was mixed.

Key issues raised by submitters included:

- introduction of the Bill, which proposes to extend monitoring periods for reportable offenders, before the Crime and Corruption Commission finalises its review into the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*
- concern amendments relating to expanding relevant offences for controlled operations and surveillance device warrants may be too broad
- the drafting of the Bill with respect to proposed new hooning offences and suggestion to consider alternative strategies to address hooning behaviour.

The committee considered issues of fundamental legislative principle and was satisfied that the Bill has sufficient regard to the rights and liberties of individuals and that the Bill is compatible with human rights in accordance with the *Human Rights Act 2019*.

The committee recommends that the Bill be passed.

¹ Explanatory notes, p 1.

1 Introduction

1.1 Policy objectives of the Bill

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 *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPO Act)
- improve the ability of the Queensland Police Service (QPS) to investigate cybercrime and offences committed by reportable offenders by making certain offences against the *Criminal Code Act 1899* (Criminal Code) and the CPOROPO Act relevant offences for controlled operations and surveillance device warrants in Schedule 2 of the *Police Powers and Responsibilities Act 2000* (PPRA)
- enhance the capacity of the QPS to investigate organised crime by using civilian participants in controlled activities in certain limited circumstances
- strengthen laws to deter hooning behaviour by creating additional offences under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) and the *Summary Offences Act 2005* (SOA) and increasing the penalties that apply for an offence the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021 (TORUM-VR Regulation).²

1.2 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

We recommend the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

Our deliberations included assessing whether or not the Bill complies with the parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA). Issues related to fundamental legislative principles and our assessment of the Bill's compliance with the LSA are discussed in section 2.5. Our assessment of the Bill's compatibility with the HRA is included in section 2.6.

2.1 *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*

2.1.1 Reportable offender reporting periods

The CPOROPO Act is based on national model laws which operate across all Australian jurisdictions with information about reportable offenders, including their reporting periods, held on the Australian National Child Offender Registry.³

² Explanatory notes, p 1.

³ Explanatory notes, p 11.

The CPOROPO Act requires particular offenders who commit sexual, or particular other serious, offences against children to keep police informed of their whereabouts and other personal details for a period of time, to reduce the likelihood that they will re-offend, and to facilitate the investigation and prosecution of any future offences that they may commit.⁴

This includes information about their aliases, address and employment details, car registration details and affiliations with clubs with child membership or child participation.⁵

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 re-offending after a notice of reporting obligations had been given to a reportable offenders. As a result, Queensland now has the shortest reporting periods in Australia.⁶

The Bill proposes to lengthen reporting periods 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.⁷

The proposed amendments lengthen the reporting periods for reportable offenders under the CPOROPO Act, other than a reportable offender who is a post *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) reportable offender, to 10 years, 20 years and life. A post-DPSOA reportable offender is currently subject to life reporting obligations. The Bill does not change this.⁸

The proposed changes are not retrospective. They will only apply to offenders who are convicted of a prescribed offence or have an offender reporting order made in relation to their offence.⁹

The Bill also proposes:

- consistent with reporting for children in other Australian jurisdictions, reportable offenders who are children will be required to report for 2.5 years if they are first-time or existing reportable offenders, 4 years where they commit a further single offence and 7.5 years where they commit more than one single offence after being given a notice of reporting obligations¹⁰
- increasing the minimum period for an offender to comply with the life reporting obligations from 15 years to 25 years before the offender may apply to the Supreme Court for an order suspending the reporting obligations.¹¹

In response to questions about how extended reporting periods reduce recidivism, QPS cited research undertaken in the United Kingdom, Australia and the United States of America which found that lengthening the time an offender is monitored under a reporting regime manages the risk of reoffending and provides an additional layer of protection for children in the community.¹²

⁴ *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPO Act), p 9.

⁵ Queensland Government, 'Managing sex offenders in the community', <https://www.qld.gov.au/law/crime-and-police/crime-prevention-and-statistics/managing-sex-offenders-in-the-community#:~:text=The%20Australian%20National%20Child%20Offender%20Register%20keeps%20details,with%20clubs%20with%20child%20membership%20or%20child%20participation.>

⁶ Explanatory notes, p 11.

⁷ Explanatory notes, p 2.

⁸ Explanatory notes, p 2.

⁹ Explanatory notes, p 2.

¹⁰ Explanatory notes, p 2.

¹¹ Bill, cl 15 (CPOROPO Act, amended s 41).

¹² QPS, correspondence dated 16 December 2022, attachment, p 1.

2.1.2 Submitter comments

The Queensland Family and Child Commission (QFCC) stated it welcomes additional safeguards for children.¹³

The Crime and Corruption Commission Queensland (CCC) and the Queensland Law Society (QLS) each stated concerns about the timing of the Bill in relation to the CCC's review of the CPOROPO Act. The CCC argued that progression of the Bill should follow the CCC's report of its review, while the QLS proposed that amendments to offender monitoring periods should be reserved, pending the outcome of the CCC's review.¹⁴

In response, the QPS:

- noted that the CCC does not specifically object to the amendments in the Bill¹⁵
- advised it will continue to collaborate with the CCC in its review, but that the review is general in nature with one component of that review being a consideration of the length of reporting time that should be imposed on a reportable offender¹⁶
- stated it is not appropriate to await an outcome of a review, 'particularly as there is no indication that the review will definitively discover strategies that will minimise the prevalence of offences against children that are superior to the amendments proposed in the Bill'.¹⁷

While the CCC intends to report on its review in June 2023, the QPS argued this is not a firm commitment. The QPS also advised it considers the safety of children to be of paramount importance and will consider the outcome of the CCC review when it becomes available.¹⁸

Committee comment

We consider the Bill, accompanied by appropriate police resourcing, will support police efforts to manage reportable offenders and that, by strengthening child protection laws under the CPOROPO Act, it will better protect some of the most vulnerable in the Queensland community, our children.

Further, the committee notes the CCC has stated its intention to report on its review by June 2023.

2.2 Police Powers and Responsibilities Act 2000

There are some circumstances in which conventional policing strategies may be challenged:

- 'Darknet marketplaces' present unique challenges to police officers as offenders hide behind software that enables anonymous communication. Anonymising technologies and cryptocurrencies also make it difficult for police to detect and prosecute cyber offences using overt policing methods.¹⁹
- Police receive information and intelligence about reportable offenders not complying with conditions or prohibitions. The detection and investigation of these offences through conventional means is resource intensive.²⁰

¹³ Submission 4, p 1.

¹⁴ Submission 6, pp 1-2; submission 3, p 2.

¹⁵ QPS, correspondence dated 12 January 2023, attachment, p 8.

¹⁶ QPS, correspondence dated 12 January 2023, attachment, p 8.

¹⁷ QPS, correspondence dated 12 January 2023, attachment, p 10.

¹⁸ QPS, correspondence dated 12 January 2023, attachment, p 9.

¹⁹ Explanatory notes, p 3.

²⁰ Explanatory notes, p 3.

The Bill proposes to amend Schedule 2 of the PPRA (Relevant offences for controlled operations and surveillance device warrants), by adding offences against the Criminal Code and the CPOROPO Act to provide the QPS greater capacity to apply for a surveillance device warrant or for a controlled operation authorisation in certain circumstances.²¹ A controlled operation allows QPS officers and others to engage in specific activities that would otherwise be unlawful.²²

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

The Bill proposes that Schedule 2 include the following sections from the Criminal Code:

- 223 (Distributing intimate images)
- 408C (Fraud)
- 408D (Obtaining or dealing with identification information)
- 408E (Computer hacking and misuse)²³

These amendments ‘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’.²⁴

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

Schedule 2 of the PPRA is proposed to be amended to include the following CPOROPO Act offences:

- Section 50 (Failure to comply with reporting obligations)
- Section 51 (False or misleading information)
- Section 51A (Failing to comply with prohibition).

These 3 indictable offences are punishable by a maximum of 300 penalty points (\$43,125.00 as of 1 July 2022, the value of 1 penalty unit is \$143.75) or 5 years imprisonment.²⁵

The proposed amendments will provide the QPS with the ability to apply for a surveillance device warrant or a controlled operation when intelligence reveals an offender is not complying with their reporting obligations.²⁶ It is argued that this will fulfil the purpose of the CPOROPO Act to assist community safety.²⁷

2.2.3 Submitter comments

The QFCC welcomed amendments providing additional safeguards for children, and stated ‘As the online environment presents new challenges, it is important to make sure we have strong provisions in place so that children maintain the right to grow and develop safely.’²⁸

The QLS considered the expansion of relevant offences for controlled operations under Schedule 2 of the PPRA should be narrowed. The proposed amendments are considered by the QLS to be broad and

²¹ Explanatory notes, p 3.

²² Explanatory notes, p 4.

²³ Explanatory notes, p 3.

²⁴ Explanatory notes, p 3.

²⁵ Explanatory notes, p 3.

²⁶ Explanatory notes, p 4.

²⁷ Explanatory notes, p 3.

²⁸ Submission 4, p 1.

have the potential for controlled operations and surveillance warrants to go beyond what is reasonably justified and proportionate.²⁹

In response, the QPS advised it considers these offences to be the minimum necessary to allow police to investigate cybercrime and reportable offenders not complying with their reporting obligations through the use of controlled operations or surveillance device warrants.³⁰

Committee comment

We believe it is critical that police have strategies available to them that may assist in circumstances where conventional policing may be challenged, such as in the prevention of cyber crime, and reducing recidivism by reportable offenders.

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

Civilians are not currently permitted to participate in controlled activities, but are allowed to participate in controlled operations (more protracted and involved operations).³¹ A 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’.³²

The Bill proposes to authorise civilian involvement in a controlled activity in limited circumstances to assist a police officer in a covert operation.³³ Civilian involvement would be limited to ‘ancillary conduct’, such as conspiring with, enabling, or aiding a police officer to engage in controlled activity.³⁴

These provisions afford protection from criminal liability to the extent that the individual was acting under that authorisation and in accordance with the instructions of the police officer.³⁵

To safeguard civilians, the following will apply:

- civilian participation is to be authorised by a superintendent
- participation is to be limited to ancillary conduct
- participation will only be authorised in circumstances where the authorising officer — having regard to the nature and extent of the authorised controlled activity — believes that authorising the ancillary conduct is appropriate in the circumstances.³⁶

In addition, the existing provisions and the amended provisions will explicitly require a controlled activity to be authorised and exercised in accordance with the policies and procedures established by the Commissioner of Police.³⁷

²⁹ Submission 3, p 4.

³⁰ QPS, correspondence dated 12 January 2023 attachment, p 6.

³¹ QPS, correspondence dated 8 December 2022, p 2.

³² Explanatory notes, p 4; for example, 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.

³³ Explanatory notes, p 4.

³⁴ Explanatory notes, p 4

³⁵ Explanatory notes, p 4

³⁶ Explanatory notes, p 4

³⁷ QPS, correspondence dated 8 December 2022, p 3; explanatory notes, p 19.

2.2.5 Submitter comments

One submitter raised concerns that enabling a civilian to be involved in a controlled activity places that individual at great risk and referenced several common law cases where this had occurred.³⁸

In response, the QPS advised that it is satisfied the following legislative safeguards included in the Bill will minimise risks to a civilian participant due to the following requirements:

- the civilian will only be able to participate in ancillary conduct; that is, conduct that amounts to aiding or enabling a police officer to engage in the controlled activity, or, conspiring with a police officer for the police officer to engage in the controlled activity
- a senior police officer of at least the rank of superintendent is required to authorise a civilian to engage in ancillary conduct for a controlled activity
- a police officer considers it reasonably necessary for a civilian to participate in and be authorised to engage in ancillary conduct
- the police officer may authorise the civilian participant to engage in the ancillary conduct only if, having regard to the nature and extent of the controlled activity to be authorised under section 224, authorising the ancillary conduct is appropriate in the particular circumstances
- the authority must be written and state (a) the controlled activity a police officer is authorised to engage in under section 224; and (b) details of the ancillary conduct for the controlled activity authorised under section 224 that the civilian participant is authorised to engage in; and (c) the period, of not more than 7 days, for which the authority is in force.³⁹

At the committee's public hearing, the QLS advised that the proposed amendment provides an incentive for private citizens to engage in this kind of activity given it provides protection from criminal liability at the outset:

The way that it works at the moment is you do that in the expectation that you would get an indemnity following the action from criminal prosecution for the assisting of the criminal activity of the undercover operative, but this provides more certainty in that it provides the protection up-front rather than relying on the protection at the end.⁴⁰

Committee comment

We acknowledge that in situations where conventional policing methods might be challenged, police investigations may benefit from the limited participation of a civilian in a controlled activity. We support the proposal in the Bill, and are satisfied that the proposed safeguards will minimise any potential risks to a civilian participant (see also section 2.5.1.3 of this report).

2.3 Amendments to address 'hooning' behaviour

'Hooning' encompasses a range of dangerous driving behaviours such as speed trials, races and burnouts, evading police and wilfully driving a vehicle to make unnecessary noise or smoke. The QPS reports hooning events pose significant enforcement challenges.

Despite strong measures legislated by Queensland Governments, including vehicle impoundment and confiscation, hooning is a persistent problem in many areas. The Bill proposes to create new offences

³⁸ Mr Shane Cuthbert, submission 2, pp 3-9.

³⁹ Explanatory notes, p 8.

⁴⁰ Ms Julia Jasper, Member of the Criminal Law Committee, Queensland Law Society, public hearing transcript, Brisbane, 30 January 2023, p 6.

designed to improve the capacity of police to target these hooning events and to mitigate the harm that results from them.⁴¹

The type of anti-social driving behaviours collectively recognised as hooning are defined as type 1 vehicle related offences in the PPRA.⁴² These offences include any of the following committed in circumstances that involve a speed trial, a race between motor vehicles, or a burn out:

- dangerous operation of a vehicle committed on a road or in a public place⁴³
- careless driving⁴⁴
- racing and speed trials on roads⁴⁵
- wilfully starting a motor vehicle, or driving a motor vehicle, in a way that makes unnecessary noise or smoke⁴⁶
- an evasion offence.⁴⁷

Hooning is characterised by mass gatherings at night, in public places such as industrial estates and public car parks. At these places, individuals are encouraged in their hooning activity by spectators, who may upload recordings and images on social media to promote this behaviour.⁴⁸

To avoid police detection of a vehicle used at such events, offenders may remove or alter the vehicle's number plates or attach number plates that are stolen or do not belong to the vehicle. Individuals may also possess vehicle registration plates that do not match any vehicles that are present, potentially with the intention to later fix the plates to vehicles intended to be used to commit type 1 vehicle related offences.⁴⁹

2.3.1 Summary Offences Act 2005

To strengthen the current hooning offence provisions, the Bill amends the SOA to create a new offence that prohibits a person from:

- willingly participating in a group activity involving a motor vehicle being used to commit a speed trial, racing, 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
- 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.⁵⁰

⁴¹ Explanatory notes, p 5.

⁴² Chapter 4 'Motor vehicle impounding and immobilising powers for prescribed offences and motorbike noise direction offences'.

⁴³ Criminal Code, section 328A.

⁴⁴ TORUM Act, section 83.

⁴⁵ TORUM Act, section 85.

⁴⁶ Transport Operations (Road Use Management – Road Rules) Regulation 2009, Regulation 291.

⁴⁷ PPRA, section 754.

⁴⁸ Explanatory notes, p 5.

⁴⁹ Explanatory notes, p 5.

⁵⁰ Explanatory notes, p 6; QPS, correspondence, 8 December 2022, p 4.

A further offence under the SOA is created to prohibit a person from possessing a thing that is being, is to be, or has been used to commit a racing, burn out or other hooning (type 1) offence, such as number plates, spare wheels and hydraulic jacks.⁵¹

These offence provisions will carry a maximum penalty of 40 penalty units (\$5,750.00) or 12 months' imprisonment.⁵²

2.3.2 Submitter comments

The QLS submitted that it considered the proposed offences in the SOA to be ambiguous and could lead to negative impacts for vulnerable groups in the community. The QLS raised concerns that the breadth of the legislation could capture spectators who may not be aware that taking a photograph and posting it on social media could lead to criminal sanctions and urged caution:

This is a very new idea—that is, criminalising spectator behaviour and social media posting like this—and I think that is why caution is being urged. Again, social media is such a new phenomenon and the legal system has never had to cope with it before. It has never had to cope with the self-promoting criminal activity that we see.⁵³

The QLS also suggested consideration should be given to other measures, such as education, and evaluating the effectiveness of existing programs and legislation aimed at deterring hooning offences.⁵⁴

In response to these issues, QPS advised:

- that Bill was drafted by the Office of the Queensland Parliamentary Counsel which is statutorily obliged to ensure the Queensland statute book is of the highest standard, and the QPS believes this obligation has been met⁵⁵
- while there are several strategies to address hooning behaviour, the offences outlined in the Bill are necessary and warranted to address hooning behaviour on Queensland roads.⁵⁶

A submitter raised concerns about prohibiting a person from 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. He referred to people who may film the event for reasons other than complaining about or promoting the event, the potential infringement on personal liberties and rights, and the issue of police establishing a reasonable suspicion and belief.⁵⁷

The QPS stated:

- the proposed new offence is not applicable to the circumstances outlined in the submission as all elements of the offence are not made out⁵⁸
- the offence is inherently limited in scope to those persons who should be liable to penalty, supported by an analogous provision under section 116 'Conduct associated with road and

⁵¹ Explanatory notes, p 6; QPS, correspondence, 8 December 2022, p 5.

⁵² Explanatory notes, p 6.

⁵³ Ms Julia Jasper, Member of the Criminal Law Committee, Queensland Law Society, public hearing transcript, Brisbane, 30 January 2023, p 5.

⁵⁴ Submission 3, p 2.

⁵⁵ Section 7 'Functions of office' of the LSA.

⁵⁶ QPS, correspondence dated 12 January 2023 attachment, pp 6-7.

⁵⁷ Mr Shane Cuthbert, submission 2, p 12.

⁵⁸ QPS, correspondence dated 12 January 2023, attachment, p 5.

drag racing and other activities' of the *Road Transport Act 2013* (NSW) which is similar in its construction.⁵⁹

2.3.3 Transport Operations (Road Use Management) Act 1995

The Bill also amends the TORUM Act to address the following 2 enforcement gaps in the offence currently used to address people doing 'burn outs'.⁶⁰

- 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)
- 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 that prohibits 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. In support of this, the Bill amends the PPRA to capture the new offence as a type 1 vehicle related offence.⁶¹

2.3.4 Submitter comments

The QLS recommended this new offence in clause 37(1), whereby a person must not 'wilfully drive a motor vehicle on a road or in a public place in a way that causes a sustained loss of traction...', be redrafted to include a fault element of specific intent to cause a sustained loss of traction.⁶² Elaborating on this, the QLS advised:

Having a specific intent focus means that you are not going to capture people who are wilfully driving on a road but are losing traction due to other factors such as road conditions such as a gravel road or water on the road. It specifically targets where the aim of the driving is the loss of traction.⁶³

The QPS advised it considered the proposed form of drafting is consistent with other analogous offence provisions where the intent of the offender is an element of the offence. For example, section 291 'Making unnecessary noise or smoke' of the Transport Operations (Road Use Management-Road Rules) provides in part:

(1) A person must not— . . .

(b) wilfully start a vehicle, or drive a vehicle, in a way that makes unnecessary noise or smoke.

Maximum penalty—20 penalty units.⁶⁴

2.3.5 Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021

Finally, the Bill amends the TORUM-VR Regulation to increase the maximum penalty from 20 penalty (\$2,875.00) units to 40 penalty units (\$5,750.00) for obscuring or removing number plates or affixing number plates that do not belong to the vehicle, where the circumstance of aggravation of a type 1

⁵⁹ QPS, correspondence dated 12 January 2023, attachment, p 5.

⁶⁰ Section 291 of the Transport Operations (Road Use Management – Road Rules) Regulation 2009 (Road Rules) ('Making unnecessary noise or smoke').

⁶¹ Explanatory notes, pp 6-7.

⁶² Submission 3, p 2.

⁶³ Ms Julia Jasper, Member of the Criminal Law Committee, Queensland Law Society, public hearing transcript, Brisbane, 30 January 2023, p 3.

⁶⁴ QPS, correspondence dated 12 January 2023 attachment, p 7.

vehicle offence is involved.⁶⁵ QPS advise that the current offence provision ‘does not appropriately penalise offenders who commit this offence when hooning’.⁶⁶

2.3.6 Submitter comments

The Justice Reform Initiative submitted that consideration be given to the Queensland Government running a public education campaign, specifically targeted at young men, about the potential consequences of hooning behaviour and undertaking alternative programs outside of the criminal justice system, instead of creating new offences and increasing maximum penalties.⁶⁷

In response, the QPS noted:

- that the cost of road trauma in Queensland is significant, and the emotional and psychological costs are immeasurable. The *Queensland Road Safety Strategy* estimates that the economic cost of road trauma in 2020 was \$6 billion dollars and accounted for almost 15 per cent of hospital admissions
- although Queensland has some of the toughest measures in Australia to regulate anti-social driving behaviour, hooning remains a persistent problem requiring innovative methods to address it
- over the past 5 years, the Brisbane South, Ipswich, Logan and Gold Coast Police Districts have seen the emergence of highly organised hoon groups
- while road safety campaigns including educational programs are important, the offences outlined in the Bill are necessary and warranted to address hooning behaviour on Queensland roads.⁶⁸

Committee comment

The safety of all Queenslanders remains paramount to the committee, and we support the new measures proposed in the Bill to enhance the capacity for the QPS to deter hooning behaviour.

2.4 Fundamental legislative principles

‘Fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.⁶⁹ The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

We bring the following to the attention of the Legislative Assembly.

2.4.1 Rights and liberties of individuals

Legislation should have sufficient regard to the rights and liberties of individuals.

⁶⁵ Explanatory notes, p 7.

⁶⁶ QPS, correspondence, 8 December 2022, p 6.

⁶⁷ Submission 7, pp 2-3.

⁶⁸ QPS, correspondence dated 12 January 2023 attachment, pp 10-11.

⁶⁹ LSA, s 4.

2.4.1.1 *Penalties*

The creation of new offences and penalties can affect the rights and liberties of individuals. A penalty should be proportionate to the offence and penalties within legislation should be consistent with each other.⁷⁰

To address hooning, the Bill proposes to introduce new offences into the SOA and the TORUM Act. The Bill also proposes to increase a maximum penalty in the TORUM-VR Regulation.

The Bill would introduce new offences in the SOA to discourage the commission of racing, burn out and other hooning offences. It would prohibit:

- conduct that promotes or encourages the commission of these offences (e.g. willingly participating in a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence)
- the possession of things being, to be or having been used to commit those offences (e.g. number plates that are not related to a motor vehicle being used to commit a racing, burn out or other hooning offence).⁷¹

At present, the maximum penalty for an offence against section 211 (Using, or permitting use of, vehicle for which registration certificate, number plate or permit altered etc) of the TORUM-VR Regulation is 20 penalty units (\$2,875.00). The Bill would increase the maximum penalty to 40 penalty units (\$5,750.00) if the vehicle is used in the commission of a type 1 vehicle related offence.⁷²

The proposed new offence in the TORUM Act prohibiting wilfully causing a motor vehicle to lose traction with the road or other surface will attract a maximum penalty of 20 penalty units (\$2875.00).⁷³

It is expected the proposed amendments would:

- deter hooning behaviour by directly impacting on individuals who commit these offences and those persons who encourage, support or promote hooning behaviour
- remove the encouragement and support for committing offences through denying the offender an audience to their offending behaviour.⁷⁴

Offences in the SOA range from very low (2 penalty units (\$287.50)), to 100 penalty units (\$14,375.00) or 12 months imprisonment, and 420 penalty units (\$60,375.00).

The TORUM-VR Regulation similarly has a wide range of penalties. The range of penalties in the TORUM-VR Regulation is less than in the Acts, but there are penalties both higher and lower than the 40 penalty units proposed in the Bill.⁷⁵

Committee comment

⁷⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook* (Notebook), 2008, p 120.

⁷¹ Bill, cl 34 (Summary Offences Act, new pt 2, div 4A). Note: a reference to a thing does not include a motor vehicle: Bill, cl 34 (Summary Offences Act, new s 19D(2)).

⁷² Bill, cl 43 (TORUM-VR Regulation, amended s 211). 'Type 1 vehicle related offence' is defined in section 69A of the PPRA. Clause 20 would amend section 69A of the PPRA to include an offence against section 85A of the PPRA as a type 1 vehicle related offence.

⁷³ Bill, cl 37 (TORUM Act, new s 85A).

⁷⁴ Explanatory notes, p 11.

⁷⁵ Committees have generally held the view that the maximum penalties in subordinate legislation should be limited, generally to 20 penalty units (\$2,875.00), because of concerns about having sufficient regard for the institution of Parliament. This is not an issue in this instance because it is the Parliament that is proposing to amend the TORUM-VR Regulation.

We note the objectives of the new offences and consider the penalties appear proportionate and in line with those for similar offences. We are satisfied that the new offences and penalties have sufficient regard to the rights and liberties of individuals.

2.4.1.2 Right to privacy — Reportable offender reporting periods

The right to privacy, and the disclosure of private or confidential information, is relevant to a consideration of whether legislation has sufficient regard to individuals' rights and liberties.⁷⁶

The proposed amendments to increase the reporting periods for reportable offenders could be considered inconsistent with the rights and liberties of individuals as it will result in an increase in the time offenders are required to report their personal details under the CPOROPO Act.

Reportable offenders must make periodic reports of their personal details to the police until their reporting period ends.⁷⁷ The personal details that must be provided include details of any club or organisation of which the reportable offender is a member that has certain connections with children, and details of any social networking site that they participate in, including passwords.⁷⁸

The Bill would introduce a new 4-year reporting period for child reportable offenders, but would not otherwise change how the reporting period is calculated.⁷⁹ The explanatory notes provide further information about child reportable offenders:

Reportable offenders who are children or were convicted of their offending as a child will be required to report for two and a half years if they are existing reportable offenders or have never been given a notice of reporting obligations, four years where they commit a further single offence after the commencement of the amendments and seven and a half years where they commit more than one single offence after being given a notice of reporting obligations. This is consistent with reporting for children in other Australian jurisdictions. Children who do not pose a risk to the lives or sexual safety of children may be suspended from their reporting obligations during the reporting period.⁸⁰

The explanatory notes provide that the lengthened 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'.⁸¹

The explanatory notes acknowledge that the increased reporting periods could breach the FLP that legislation has sufficient regard to the rights and liberties of individuals, but provides the view that:

... given the inherent difficulties associated with the rehabilitation of child sex offenders and risk factors resulting from recidivism, lengthening the time an offender is monitored by requiring them to report under a child protection reporting regime, is considered justified.⁸²

Committee comment

Weighing up the purpose of the amendments, to provide greater protection to children, against the rights of reportable offenders, particularly the impact on their right to privacy, we consider the legislation has sufficient regard to the rights and liberties of individuals.

⁷⁶ OQPC, Notebook, p 113.

⁷⁷ CPOROPO Act, s 18. 'Reportable offender' is defined in section 5 of the CPOROPO Act. Clause 5 of the Bill amends section 5 but the explanatory notes (p 13) state there are no policy changes associated with the amendments.

⁷⁸ CPOROPO Act, sch 2.

⁷⁹ Explanatory notes, p 17.

⁸⁰ Explanatory notes, p 2.

⁸¹ Explanatory notes, p 2.

⁸² Explanatory notes, p 10.

2.4.1.3 Right to privacy — Controlled operations and surveillance device warrants

The Bill proposes to add further offences to the list of relevant offences for controlled operations and surveillance device warrants in Schedule 2 of the PPRA.⁸³

If an offence is in Schedule 2, it enables the police to apply for a surveillance device warrant or a controlled operation in relation to that offence. This has the potential to impact on the rights of individuals, particularly the right to privacy.

The following CPOROPO Act offences would be added to Schedule 2 to ‘enhance police monitoring and management of reportable offenders’:⁸⁴

- section 50 (Failure to comply with reporting obligations)
- section 51 (False or misleading information)
- section 51A (Failing to comply with prohibition).⁸⁵

Certain Criminal Code offences relating to cybercrime would also be added to Schedule 2 to ‘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’.⁸⁶

- section 223 (Distributing intimate images)
- section 408C (Fraud)
- section 408D (Obtaining or dealing with identification information)
- section 408E (Computer hacking and misuse).⁸⁷

Controlled operations ‘are used by police to obtain evidence of the commission of a relevant offence without the police officer themselves being liable for committing the offence’.⁸⁸ The explanatory notes advise ‘[t]he general threshold of offence that can be investigated in Queensland as part of a controlled operation is higher than any other Australian jurisdiction’⁸⁹ and that the process for applying to undertake a controlled operation is ‘extensive’.⁹⁰

A surveillance device is a data surveillance device, a listening device, an optical surveillance device, a tracking device, or a device combining one or more of these devices.⁹¹ For a surveillance device warrant to be issued, a Supreme Court judge or magistrate must be satisfied there are reasonable grounds for the belief founding the application of the warrant.⁹²

By its nature, a surveillance device impacts on a person’s right to privacy. A surveillance device may, for example, be used to observe a person’s actions, listen to their conversations or track them.

Addition of offences relating to reportable offenders

The explanatory notes provide the rationale for the inclusion of the CPOROPO Act offences in Schedule 2:

⁸³ Bill, cl 30.

⁸⁴ Explanatory notes, p 3.

⁸⁵ Bill, cl 30.

⁸⁶ Explanatory notes, p 3.

⁸⁷ Bill, cl 30.

⁸⁸ Explanatory notes, p 9.

⁸⁹ Explanatory notes, p 9.

⁹⁰ Explanatory notes, p 9.

⁹¹ PPRA, s 322.

⁹² Statement of compatibility, p 8.

While reporting requirements under CPOROPO Act are stringent, some reportable offenders will manipulate the conditions making it hard for police to reliably know where the offender is residing. For example, the offender may be living in car or homeless, only providing police with a locality they can be found in. Some of these reportable offenders also present a high risk of reoffending confirmed by virtue of their status as a [*Dangerous Prisoners (Sexual Offenders) Act 2003*] offender or the issue of an Offender Prohibition Order against the reportable offender. The detection and investigation of these offences through conventional means is resource intensive. The capacity to use covert methodologies to investigate the specified offences committed by this high-risk cohort is considered justified, given the risk that such offenders pose to children.⁹³

The statement of compatibility provides further information:

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 [CPOROPO Act].⁹⁴

Addition of offences relating to cybercrime

Cybercrime has a significant social and economic impact on Queenslanders.⁹⁵ The purpose of the inclusion of the offences relating to cybercrime in Schedule 2 of the PPRA is to assist police in tackling cybercrime.⁹⁶

The statement of compatibility advises that controlled operations are very useful in investigating cybercrime:

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.⁹⁷

Committee comment

We note the safeguards in place regarding the issuing of surveillance device warrants and authorisations to conduct controlled operations and that the addition of the CPOROPO Act offences into Schedule 2 is intended to enhance police monitoring and management of reportable offenders to better protect children. The committee is satisfied that any inconsistency with fundamental legislative principles is justified.

Also noting the safeguards in place regarding the issuing of surveillance device warrants and authorisations to conduct controlled operations, we are satisfied the inclusion of the Criminal Code offences into Schedule 2 is justified, despite the inconsistency with fundamental legislative principles, because it will assist police to detect and prosecute cybercriminals.

2.4.1.4 Immunity from proceeding or prosecution

Legislation should not confer immunity from proceeding or prosecution without adequate justification.⁹⁸

⁹³ Explanatory notes, p 3.

⁹⁴ Statement of compatibility, pp 7-8.

⁹⁵ Explanatory notes, p 2.

⁹⁶ Statement of compatibility, p 9.

⁹⁷ Statement of compatibility, p 10.

⁹⁸ LSA, s 4(3)(h); OQPC, Notebook, p 64.

The Bill proposes to provide immunity to a civilian who acts within authority in an authorised controlled activity, and the police officer who authorises the participation of the civilian. Regarding authorisation:

- only a senior police officer (i.e. a police officer of at least the rank of superintendent) may authorise the participation of a civilian in a controlled activity
- that officer may give the authorisation only if, having regard to the nature and extent of the authorised controlled activity, authorising the ancillary conduct is appropriate in the particular circumstances
- the authority must be in writing and state: the authorised controlled activity, details of the authorised ancillary conduct, and the period (not more than 7 days) of the authority.⁹⁹

Under the Bill, a civilian is protected from civil or criminal liability for an act done, or omission made, in the honest belief that it was done or omitted to be done:

- under an authority given for ancillary conduct for a controlled activity; and
- if a police officer gives a lawful instruction to the participant — in accordance with the instruction.¹⁰⁰

If civil liability is prevented from attaching to a civilian participant or a police officer, it attaches instead to the State.¹⁰¹

The explanatory notes address the Bill's proposal to allow the authorisation of a civilian to participate in controlled activities with respect to the rights and liberties of individuals generally, but not specifically with respect to the conferral of immunity and its impact on whether the legislation has sufficient regard to rights and liberties of individuals. Nevertheless, the explanatory notes relevantly state: 'The proposal is intended to improve the effectiveness of controlled activities, which may result in the arrest and incarceration of those who commit serious offences, including the supply of dangerous drugs'.¹⁰²

The explanatory notes state the reason for the amendments to the controlled activity provisions is to:

... ensure that where a police officer acting under a controlled activity authorisation is assisted by a civilian participant authorised to undertake the role, the civilian participant will be afforded protection from criminal liability to the extent that the individual was acting under that authorisation and in accordance with the instructions of the police officer.¹⁰³

Committee comment

Given the benefits that could be attained from civilian involvement in controlled activities, and that there are limits on the circumstances in which immunity would be conferred on police officers and these civilians, we are satisfied that the Bill has sufficient regard to the rights and liberties of individuals.

2.4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

⁹⁹ Bill, cl 25.

¹⁰⁰ Bill, cl 27.

¹⁰¹ Bill, cl 27; PPRA, s 225.

¹⁰² Explanatory notes, p 7.

¹⁰³ Explanatory notes, p 4.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Committee comment

We consider the explanatory notes comply with part 4 of the LSA.

2.5 *Human Rights Act 2019*

Our assessments of the Bill's compatibility with the HRA included consideration of the following rights:

- Right to life (section 16 of the 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)
- Protection of families and children (section 26 of the HRA).

Committee comment

We found the Bill's balancing of limitation and the preservation of human rights is adequate and proportional, and we did not identify any incompatibilities. We find the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Youssef Youssef
002	Shane Cuthbert
003	Queensland Law Society
004	Queensland Family and Child Commission
005	Office of the Health Ombudsman
006	Crime and Corruption Commission Queensland
007	Justice Reform Initiative

Appendix B – Officials at public departmental briefing

Queensland Police Service

- Mr Anthony Brown, Director, Legislation Branch, Policy and Performance Division
- Mr Colin Briggs, Detective Acting Chief Superintendent, Intelligence, Crime & Intelligence Command
- Mr Christopher Stream, Acting Chief Superintendent, Road Policing & Regional Support Command
- Mr Andrew Wilson, Detective Senior Sergeant, Legislation Branch, Policy and Performance Division

Appendix C – Witnesses at public hearing

Queensland Law Society

- Ms Chloe Kopilovic, President of the QLS
- Ms Julia Jasper, Member of the QLS Criminal Committee

Appendix D – Abbreviations

CCC	Crime and Corruption Commission Queensland
CPOROPO Act	<i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i>
Criminal Code	<i>Criminal Code Act 1899</i>
DPSOA offender	<i>Dangerous Prisoners (Sexual Offenders) Act 2003</i>
FLP	Fundamental legislative principle
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
OQPC	Office of the Queensland Parliamentary Counsel
Penalty unit	As at 1 July 2022 1 penalty unit = \$143.75
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
QFCC	Queensland Family & Child Commission
QLS	Queensland Law Society
QPS	Queensland Police Service
SOA	<i>Summary Offences Act 2005</i>
TORUM Act	<i>Transport Operations (Road Use Management) Act 1995</i>
TORUM-VR Regulation	Transport Operations (Road Use Management – Vehicle Registration) Regulation