

SUMMARY

Reducing police pursuits — the rationale for introducing the evade police provisions

Although police pursuits are relatively infrequent events, the negative consequences associated with them can be very severe. During the period from 1 January 2000 to 30 April 2011, police pursuits were associated with the death of 19 people and the injury of an additional 737.

Public scrutiny of police pursuits gained momentum in the early 2000s with recommendations from the Crime and Misconduct Commission (CMC) and the State Coroner that the Queensland Police Service (QPS) implement a more restrictive pursuit policy by limiting the types of offences for which police are permitted to pursue. In 2005, the QPS commenced a major review of its pursuit policy and by 2006 had commenced a trial of a restrictive pursuit policy in two police districts. This policy was extended statewide in January 2008.

During this period, the Queensland Government moved to support the restrictive pursuit policy, introducing legislation in 2006 designed to reduce the need for police to commence a vehicle pursuit. These provisions, the first of their kind in Australia, were known as the ‘evade police provisions’ and came into effect on 21 July 2006.

About the evade police provisions

Contained within Chapter 22 of the *Police Powers and Responsibilities Act 2000* (PPRA), the evade police provisions:

- established a simple offence called an evasion offence (the term ‘evade police’ offence is used in this report)
- gave police tools to help them investigate evade police offences, primarily requiring the owner of the vehicle to provide the name of the driver at the time of the offence or risk prosecution for the offence themselves (the ‘owner onus’ provision)
- provided the court with the ability to impose a significant statutory penalty (\$20 000 or three years imprisonment) and the power to order the impoundment or forfeiture of the motor vehicle in addition to this penalty.

The evade police provisions can apply in any situation where a police officer in a vehicle directs the driver of another vehicle to stop and that driver fails to do so — whether or not the offence may permit a pursuit under the restrictive policy. That is, police can use the evade police provisions instead of a pursuit, after a pursuit, or when pursuit is not permitted — to help them identify the driver at a later stage. In allowing the driver to flee, the police do not contribute to the inherent danger of a pursuit situation.

Scope of the review

The legislation required that the CMC review the use by police officers of the evade police provisions and prepare a report on the review. However, to adequately answer the central policy question of whether the evade police provisions have reduced the number of police pursuits, the CMC broadened the review to answer the following questions:

- How are the evade police provisions being used by police?
- How are evade police offences being dealt with by the courts?

- What impact have the evade police provisions had on the number of police pursuits?
- Are the evade police provisions a useful operational tool for investigating and prosecuting offenders?

Key findings

1. The rate of police pursuits has declined by 56 per cent over the past 11 years. Pursuit-related injuries and property damage have also declined, and the number of police pursuits that have been abandoned has consistently increased.

The evade police provisions and restrictive pursuit policy were among a range of factors that reduced pursuits. Other factors include:

- a series of coronial inquests into deaths associated with police pursuits and the associated media attention
- police union advice to members not to pursue under any circumstances because of potential civil liability for negative pursuit outcomes
- increasing oversight by the QPS, including the overview of all reported pursuits by regional Significant Event Review Panels and detailed investigation of pursuits as standard practice in some police regions.

2. The evade police provisions are not effective for dealing with some types of incidents where offenders flee police. Because the provisions rely on police being able to serve an evasion offence notice on the registered owner of the vehicle in the first instance, they have limited application where the offender is driving a stolen or unregistered vehicle or where the vehicle has false or stolen registration plates.

In the context of evade police offences, these circumstances are not unusual. As in prior research, this review found that people who evade police in Queensland tend to be young, male and not to hold a current licence. They also tend to have a criminal history and an extensive traffic offence history.

3. Nevertheless, the evade police provisions are contributing to positive outcomes in a range of situations. Since their introduction, the number of abandoned pursuits has steadily increased, and the proportion of abandoned pursuits where the driver is later identified increased from 40 per cent in 2006 to 69 per cent in 2010. Further, 91 per cent of evade police matters which proceed to court result in a guilty outcome. These data show that the evade police provisions can be a useful investigative and prosecution tool, particularly where offences involve vehicles that are not stolen or do not have false plates.
4. Although evade police offences recorded by police have increased since 2006, police are generally not using the evade police provisions as a genuine alternative to pursuit. Currently, in most cases (74%) police choose to commence a pursuit when permitted to by the policy. The evade police provisions are primarily used for matters that do not permit a pursuit under the restrictive policy, or after police have abandoned a pursuit. While the use of the provisions in these circumstances is appropriate, it will not help reduce pursuits. For any further reduction, police must use the evade police provisions instead of a pursuit even if the policy permits one.
5. A number of factors contributing to under-use of the provisions include legislative weaknesses (discussed below) and the fact that police do not believe that court penalties reflect the dangerousness of the offending behaviour, the risk to the community or the intent of Parliament. For example, in instances where evading police was the only offence, the most common penalty was a \$300 fine.

6. The legislative policy and training deficiencies identified include:
- weaknesses in the evasion offence notice and owner onus provisions which limit the ability of police to identify offending drivers and enable offending drivers to avoid prosecution
 - a failure of the QPS pursuit policy to provide specific guidance on alternatives to pursuit (such as the evade police provisions), despite the philosophical shift away from pursuits to other means of apprehending offenders
 - failure of the policy to require police to consider using the evade provisions *before* they decide whether to commence a pursuit
 - provision of very little specific police training on the provisions, and virtually none on using the investigative powers provided.

Based on the above findings, we make 13 recommendations that aim to address the identified deficiencies in the hope that the evade police provisions can meet their stated intention of:

- improving community safety by reducing the need for police to pursue fleeing drivers
- providing police with appropriate tools to identify and prosecute fleeing drivers.

At the State Coroner’s request, we also considered the merits of mandatory licence disqualification and more flexible vehicle impoundment arrangements for evade police offenders. After carefully weighing the arguments and available evidence for each, we have not made a recommendation regarding either proposal. The reasons for this are outlined at the end of Chapter 5.

Recommendations

Recommendation 1

That the explanatory clause for the evade police provisions (s. 746 of the PPRA) be amended to describe:

- the aim of the evade police provisions to improve community safety by reducing the need for police to pursue fleeing drivers
- how the evade police provisions aim to assist police to investigate evade police offences.

Recommendation 2

That the QPS, in conjunction with relevant agencies, explore the feasibility of changing the short title of the evade police offence provision (s. 754 PPRA) from ‘Fail to stop motor vehicle’ to better reflect the offending behaviour and avoid confusion with the similar s. 60 PPRA offence.

Recommendation 3

That the QPS improve the representation of the evade police provisions within policy by:

- ensuring the pursuit policy clearly explains the rationale for using the evade police provisions as an alternative to pursuit
- ensuring the pursuit policy requires police to consider using the provisions before deciding whether or not to commence a pursuit
- effectively linking the policies that guide police decision making about when and how to use the evade police provisions.

Recommendation 4

That the QPS ensure that:

- all training materials on pursuits make clear that the evade police provisions are an alternative that must be considered before commencing a pursuit
- training on pursuits covers the use of the evade police investigative powers
- training on the use of the evade police provisions is provided as part of QPS recruit training.

Recommendation 5

That the QPS:

- provide an annual monitoring report on police pursuits and evade police offences to the CMC including an analysis of:
 - the number of police pursuits by category of pursuit
 - the number of reported pursuits for ‘non-pursuit’ matters
 - the proportion of pursuits that were subsequently abandoned
 - the proportion of pursuits that were subsequently solved (an alleged offender identified)
 - the number of deaths and injuries associated with pursuits (including both during the attempt to intercept and after a pursuit has been abandoned)
 - an analysis of a random sample of evade police offences to determine:
 - the reason for the attempted intercept (classified as a ‘pursuit’ v. non-pursuit matter)
 - the number of evade police offences that involved a pursuit
 - the number of pursuits that were not reported by way of a significant event message.
- report the number of police pursuits (in total and by category of pursuit) each year in the QPS Annual Statistical Review.

Recommendation 6

That s. 747 of the PPRA be amended to include the following additional requirements for the declaration in response to an evasion offence notice — that the owner provide to the police:

- the names of all people with access to the vehicle used in the offence
- information about how frequently, and for how long, those persons use the vehicle
- whether the vehicle is used by those persons for business or private purposes
- any other information within the owner’s knowledge, or that police believe is relevant, to the investigation of an evade police offence.

Recommendation 7

That s. 756(4) of the PPRA be amended to preclude the owner (or nominated person) from relying on the rebuttal provision to claim they were not the driver, unless they are able to demonstrate to the court that they could not reasonably have provided police with information to assist them to identify the actual driver within 14 days of the receipt of an evasion offence notice.

Recommendation 8

To support Recommendations 6 and 7, that s. 755 of the PPRA be amended to allow an owner or nominated person 14 days to provide a declaration in response to an evasion offence notice.

Recommendation 9

That sections 755 and 756 of the PPRA be amended to provide editorial notes, for the benefit of police and vehicle owners, about the application of other relevant offences when:

- the declaration provided by an owner does not comply with the expanded requirements
- the owner does not provide a declaration in response to an evasion offence notice, but cannot be charged under the deeming provision because it is evident to police that the owner could not have been the offending driver.

Recommendation 10

That Chapter 22 of the PPRA be amended to clarify that an evade police offence includes situations when the driver initially complies with a lawful police direction to stop, but then flees before the interaction with police is finalised.

Recommendation 11

That Chapter 22 of the PPRA be amended to:

- provide police with the authority to seize or move an abandoned vehicle that is suspected to have been used in an evade police offence to assist in the investigation of the offence
- include an accompanying provision clarifying who would be responsible for the associated seizing and moving expenses.

Recommendation 12

That s. 747 of the PPRA be amended to allow police to serve an evasion offence notice on any registered owner of the vehicle, rather than just the first registered owner.

Recommendation 13

That Chapter 22 of the PPRA be amended to include a provision to make the following details evidentiary in their own right:

- the formal details about the service of the evasion offence notice
- the formal details of the receipt of the declaration.