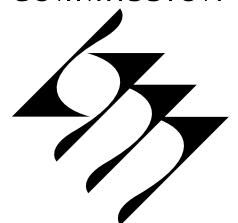


AN ALTERNATIVE TO PURSUIT

A review of the evade police provisions

June 2011

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

CMC vision:

That the CMC make a unique contribution to protecting Queenslanders from major crime, and promote a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

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ISBN 978-1-876986-71-1

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Dear Sirs

In accordance with section 789 of the *Police Powers and Responsibilities Act 2000*, the Crime and Misconduct Commission hereby furnishes to you its report *An alternative to pursuit: a review of the evade police provisions*.

The Commission has adopted the report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Martin Moynihan'.

Martin Moynihan AO QC
Chairperson

FOREWORD

Although police pursuits are relatively infrequent events, they are one of the most high-risk aspects of policing. Earlier work in this area by both the CMC and the State Coroner has shown that pursuits can create situations far more dangerous to the public than the original offence. Sadly, over the past decade, 19 people were killed as a result of police pursuits, including three community members who were not involved in the pursuits.

In general, drivers fleeing from police are highly impulsive risk-takers, making them a difficult group to deter. Because of this, the government, in an effort to reduce the number of pursuits, has focused on implementing legislation and policy that focus on the actions of police rather than those of offenders.

Most significantly, in 2006 the Queensland Police Service (QPS) changed its pursuit policy to more closely link police pursuits to community safety, limit the circumstances in which police can pursue drivers who flee, and shift the focus from pursuit to other methods of apprehension.

Also in 2006, the evade police provisions were introduced to support the restrictive pursuit policy, with the specific aim of reducing the need for police to commence a pursuit, even when a pursuit is permitted by policy. The provisions provide police with powers to identify and prosecute the driver after the fact, and in doing so, avoid a potentially dangerous pursuit. These powers were the first of their kind in Australia.

The rate of police pursuits has substantially decreased since 2006, as have injuries and property damage resulting from pursuits. These are positive outcomes. The evade police provisions and the restrictive pursuit policy were among a range of factors that contributed to these outcomes — along with other factors such as coronial inquests, police union advice to members not to pursue, and increasing QPS oversight of pursuits.

Our review also found that police are not currently using the provisions as a genuine alternative to pursuit. There are several reasons for this. For example, the powers have limited utility in a proportion of cases, particularly those involving stolen vehicles and vehicles with false plates where the owner cannot be identified. In addition, police appear to have lost confidence in the provisions because of deficiencies in some areas and a perception that court outcomes are not reflecting the dangerousness of the offending behaviour and the risk to the community.

While we recognise that these evade police provisions are not the solution for all matters, we believe that the provisions, and the QPS framework that guides their use, can be improved to make them a more effective policing tool. The majority of our recommendations address legislative weaknesses that have undermined the effective use of the powers. We have also made a number of recommendations that more clearly establish the evade police provisions as an alternative to pursuit in QPS policy and training.

In December 2011, the QPS will implement further restrictions to the pursuit policy. We believe that these further restrictions, together with our recommendations in relation to the evade police provisions, will deliver even better outcomes for the Queensland community.

Martin Moynihan AO QC
Chairperson

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ACKNOWLEDGMENTS

The Crime and Misconduct Commission (CMC) would like to acknowledge the valuable assistance provided to the review by the Queensland Police Service (QPS). We are particularly grateful to the members of the QPS Pursuits Project Team within Ethical Standards Command, and officers from the Brisbane Police Prosecutions Corps, who provided significant assistance to the project team throughout the course of our review. We are also grateful to the members of the QPS reference group for their time and expert advice. Some members travelled significant distances to attend meetings and we thank them for their commitment.

We also thank members of the QPS State Traffic Support Branch and Statistical Services section for providing us with a range of data and associated advice. We are also grateful to the QPS officers who participated in the focus groups and interviews for taking the time to contribute to our review. We wish to acknowledge the contribution of the late Sergeant Dan Stiller, from Oxley District Traffic Branch, who met with the project team on several occasions and provided valuable operational advice and assistance.

We thank the Statistical Analysis Unit and State Penalties Enforcement Register at the Department of Justice and Attorney-General, and the Data Analysis Unit at the Department of Transport and Main Roads, for providing us with data and advice. We also thank the Centre for Accident Research and Road Safety — Queensland for their involvement in the QPS focus groups and reference group, which was in addition to their contracted work.

Louise Norman was the project manager for the review. The report was written by Vivien Chan, Dr Rebecca Denning, Patricia Ferguson and Louise Norman from the CMC's Research Unit. Additional support was provided by Dennis Budz, Wendy Harris, Neelam Kumar and Jane Olsen. The research staff would also like to acknowledge the assistance provided by the CMC's Intelligence Support Unit.

The report was prepared for publication by the CMC's Communications Unit.

LIST OF ABBREVIATIONS

ACF	autocorrelation function
ANOVA	analysis of variance
AR	autoregressive
ARIMA	autoregressive, integrated, moving average
CAP	Competency Acquisition Program
CARRS-Q	Centre for Accident Research and Road Safety — Queensland
CDP	Constable Development Program
CJC	Criminal Justice Commission (in 2001 the CJC and the Queensland Crime Commission merged to become the CMC)
CMC	Crime and Misconduct Commission
DJAG	Department of Justice and Attorney-General
IDRO	intensive drug rehabilitation order
MA	moving average
OLP	Online Learning Product
OPM	Operational Procedures Manual (of the Queensland Police Service)
OST	Operational Skills and Tactics
PACF	partial autocorrelation function
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
PROVE	Police Recruit Operational Vocational Education program
SERP	Significant Event Review Panel
SPER	State Penalties Enforcement Registry
QLA	Queensland Legislative Assembly
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
QUT	Queensland University of Technology
QWIC	Queensland-wide Interlinked Courts database
TORUM	<i>Transport Operations (Road Use Management) Act 1995</i>

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.

POLICE PURSUITS, THE EVADE POLICE PROVISIONS AND COMMUNITY SAFETY

This chapter describes the impetus for the introduction of the evade police provisions in Queensland in 2006. It describes how the provisions are intended to reduce the need for police to commence a pursuit and assist them in the other policing contexts where the provisions can be used. The chapter also outlines the scope of the review and the methodologies used.

Background to the evade police provisions

Police pursuits are one of the most high-risk aspects of policing — presenting a risk to the police officers involved, the occupants of the fleeing vehicle, and all the other road users and bystanders who unwittingly find themselves in the path of the pursuit.

Fortunately, police pursuits are relatively infrequent events. In Queensland approximately 1 in 10 000 attempted vehicle intercepts results in the driver fleeing (QPS 2009). In 2010, this rate equated to a total of 309 police pursuits, or less than one per day across the state.

Nevertheless, the negative consequences associated with police pursuits can be very severe. During the period from 1 January 2000 to 30 April 2011:

- eleven people were killed during a police pursuit
- another eight people were killed in the period before a pursuit had actually commenced or after police had abandoned one
- an additional 737 people were injured during a pursuit, 94 of them seriously enough to require hospitalisation.

Three of those killed were community members who were in no way involved in the pursuit.

Given the severity of these consequences, it is disconcerting that, according to the literature across a range of jurisdictions, most police pursuits occur because of relatively minor matters (Dunham et al. 1998; Independent Police Conduct Authority 2009). Queensland Police Service (QPS) data bear this out, indicating that, in the eight years before the implementation of a restrictive pursuit policy statewide in 2008, the vast majority of pursuits were for traffic-related offences, or concerned a suspected stolen vehicle.¹

For these reasons and following a detailed review of pursuits, the Crime and Misconduct Commission (CMC) (2003, p. 3) concluded that ‘pursuits can create situations far more dangerous to the public than the original offence’, and recommended that the QPS adopt a more restrictive pursuit policy by, at a minimum, prohibiting pursuits for traffic offences. Similarly, the State Coroner in 2004 recommended that the QPS, in conjunction with the CMC, implement and evaluate a trial of a more restrictive pursuit policy prohibiting pursuits for ‘minor offences’ (Office of the State Coroner 2004, p. 29).

1 The data were extracted directly from the QPS pursuits database for the period 1 January 2000 to 31 December 2007.

In response, the QPS commenced a major review of its pursuit policy (see Appendix 1 for a timeline of developments), leading to the implementation of a restrictive pursuit policy, beginning in 2006. Though police pursuit remained an option in certain circumstances, the policy emphasised the need 'to shift the manner of apprehension of people who fail to be intercepted from pursuits into other strategies'. The restrictive policy was implemented on a trial basis in two QPS districts in 2006 and then extended statewide in January 2008.

Also in 2006, the Queensland Government further focused on improving community safety by introducing the evade police provisions, which specifically aimed to '[reduce] high speed pursuits that might result in injury to persons or damage to property' (QLA (Spence) 2006, p. 1364):

A failure to stop a motor vehicle is the pre-cursor to a police pursuit, which often results in the deaths of uninvolved persons, police and suspects. The policy ... is premised upon the notion that the danger is inherent not only in a fleeing offender's vehicle but in the pursuing police vehicle, and sets in place a legislative scheme to assist investigations and prosecutions of persons who fail to stop.²

The evade police provisions, contained within Chapter 22 of the *Police Powers and Responsibilities Act 2000* (PPRA), were the first of their kind in Australia. They aim to support the restrictive pursuit policy by providing police with the option of allowing a fleeing vehicle to 'escape', knowing that they have the power and necessary investigative tools to assist them to identify the offending driver at a later stage. In allowing the driver to flee, the police do not contribute to the inherent danger of the situation.

Impetus for even greater restrictions on pursuits came from the State Coroner in 2010. After a number of inquests into the deaths of 10 people during or following a police pursuit between 2005 and 2008, the State Coroner found that:

- none of the pursuits were precipitated by the driver of the pursued vehicle driving dangerously or otherwise placing members of the community in jeopardy of physical harm
- none of the drivers had been involved in an offence of violence
- all but one of the drivers were under 30 years of age, and all but one were male
- all but two of the drivers were in the company of other young friends
- five of the nine drivers were affected by alcohol and/or drugs (Office of the State Coroner 2010, pp. 3, 5).

In each case the driver sped off when police attempted to intercept them, and 'a death or deaths occurred as a result of the manner in which the pursued vehicle was driven' (Office of the State Coroner 2010, p. 4). Consistent with a broader body of research (Hoffmann & Mazerolle 2005; Independent Police Conduct Authority 2009), the Coroner found that typically fleeing drivers are 'highly impulsive and prone to risk taking' (Office of the State Coroner 2010, p. 5). Concluding that police were far more likely than the fleeing drivers to be responsive to reforms to reduce the number of pursuit-related deaths and injuries, the Coroner recommended further restrictions to the QPS pursuit policy. In December 2010 the government announced that in December 2011 the QPS would implement the Coroner's recommendations.

How do the evade police provisions decrease police pursuits?

Longstanding powers under the PPRA entitle police officers, where lawful, to intercept a vehicle.³ As shown in Figure 1.1, the evade police provisions come into effect as soon as the driver fails to stop. While the evade police provisions were designed to reduce the need for police to commence a pursuit, in reality police officers can apply the provisions in a number of contexts:

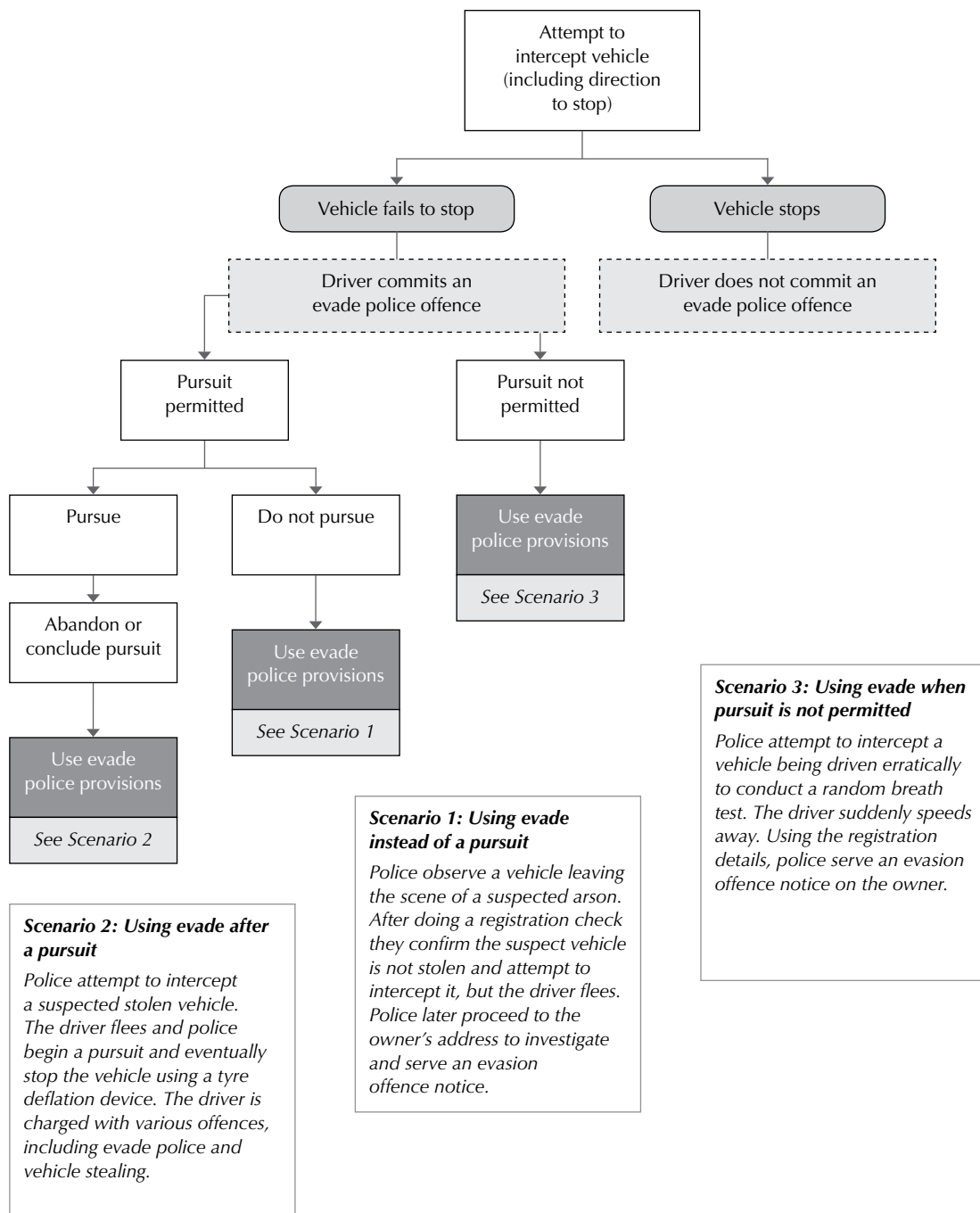
2 Explanatory notes to the Police Powers and Responsibilities Act and other Acts Amendment Bill 2006.

3 Refer to s. 29: 'Searching vehicles without a warrant' and s. 60: 'Stopping vehicles for prescribed purposes'.

- **Using the evade police provisions instead of a pursuit:** The optimum application of the evade police provisions occurs when the provisions are used instead of a police pursuit, in those circumstances when pursuit may be permitted by the policy (Scenario 1).
- **Using the evade police provisions after a pursuit:** Police can apply the evade police provisions as an additional offence subsequent to a police pursuit (Scenario 2).
- **Using the evade police provisions when pursuit is not permitted:** Police can apply the evade police provisions when a pursuit is not permitted and the police officer does not pursue the vehicle (Scenario 3).

In terms of the restrictive QPS pursuit policy, the first two scenarios relate to matters that may permit a police pursuit ('pursuit matters'). The third scenario relates to 'non-pursuit matters'. These are explained in more detail in Chapter 2.

Figure 1.1: The different policing contexts where the evade police provisions can be used



Although this review addresses all three applications of the evade police provisions, it focuses more on the primary intention of the legislation to reduce the need for police pursuits. The next section outlines our approach to the review.

Scope of the review

We established the parameters of our review through a range of information sources.

These included:

- the second reading speech and associated parliamentary debate
- the explanatory notes to the bill that introduced the provisions
- relevant coronial reports and recommendations, including the evidence presented at the two-day inquest into the QPS pursuit policy on 30 November and 1 December 2009
- the interim review of the trial QPS pursuit policy conducted by the QPS.

At the State Coroner's request, the CMC also considered whether to recommend 'mandatory licence disqualification upon conviction [for an evade police offence] and more flexible vehicle impounding arrangements to bolster the deterrence effect of the offence' (Office of the State Coroner 2010, p. 31).

It is important to note that this review is not a review of the QPS pursuit policy or of police pursuits. As already mentioned, the State Coroner examined the QPS pursuit policy in detail in late 2009 and in 2010 recommended further restrictions.

Nevertheless, police pursuits necessarily remain an essential element of the review because:

1. we need to examine pursuits to determine whether the purpose of the provisions to reduce pursuits has been realised
2. any modifications to the QPS pursuit policy will directly affect the circumstances in which the provisions are used (where they are used instead of or subsequent to a police pursuit)
3. the provisions are embedded within a broader policy and training framework that focuses on police pursuits (discussed in Chapter 2).

The 'restrictive pursuit policy' examined in the present review was that implemented in two police districts in October 2006 and statewide in January 2008.⁴

However, throughout this review the CMC has had ongoing discussion with the QPS about its findings and concerns with the policy, particularly those relating to the use of the evade police provisions — to inform their response to the State Coroner's findings.

Key questions

This review aimed to answer the following questions:

1. How are the evade police provisions being used by police?
2. How are evade police offences being dealt with by the courts?
3. What impact have the evade police provisions had on the number of police pursuits?
4. Are the evade police provisions a useful operational tool for investigating and prosecuting offenders?

⁴ The QPS deferred finalisation of this draft policy, in order to consider the incorporation of further restrictive measures arising from the coronial recommendations and Queensland Government announcement of 2010.

Methods used to answer key questions

We analysed the legislation, relevant literature and a range of data to answer the research questions. Data sources included:

- police, courts, penalties enforcement and transport data
- focus groups and interviews with operational police
- a QPS reference group established to provide expert advice on the operation of the provisions and the QPS pursuit policy
- submissions from stakeholders.

More information on the research methods is provided in Appendixes 2 to 4.

Structure of this report

Chapter 1 outlines the impetus for the introduction of the evade police provisions, explains how they aim to reduce police pursuits and describes the scope of this review.

Chapter 2 describes the evade police legal framework, including the features of an evade police offence and the police powers for investigating offences and prosecuting offenders. It explains the current QPS restrictive pursuit policy, how the evade police provisions relate to the policy, and the training provided to police for using them.

Chapter 3 describes the drivers who typically evade police and why they do so. It examines how police are using the evade police provisions and their views on how effective the provisions are, and considers court outcomes for evade police offences.

Chapter 4 describes trends in police pursuits in Queensland over the past decade and examines whether the introduction of the evade police provisions has contributed to the observed decline in pursuits and associated injuries and property damage. It also examines the extent to which police are using the evade police provisions as an alternative to pursuit, and explores factors limiting the success of the provisions.

Chapter 5 draws together the key findings of the review and presents the recommendations. We also consider two matters referred to the CMC by the State Coroner in his 2010 findings on the QPS pursuit policy — mandatory licence disqualification and more flexible vehicle impoundment arrangements in relation to evade police offenders.

The **Conclusion** sums up the report findings and their significance for community safety in Queensland.

There are four **appendixes**. Appendix 1 provides a timeline of key events in the development of the QPS pursuit policy. The remaining three appendixes outline the research methods for our review, including the data types and sources, specific research instruments, and the statistical methods used to analyse the impact of the evade police provisions and QPS pursuit policy on the trends in pursuits, injuries and property damage.

For the convenience of readers, key findings are outlined at the beginning of each chapter.

LEGAL, POLICY AND TRAINING FRAMEWORK

Before examining the use or impact of the evade police provisions, one must first understand the legal, policy and training framework that the Queensland Police Service (QPS) put in place to guide the use of these powers. Chapter 2 outlines this framework.

Key findings

- While the evade police provisions were introduced to support the restrictive pursuit policy, they are not sufficiently emphasised in the policy and training framework.
- The policy framework is fragmented, with the rationale for the provisions embedded in the pursuit policy (located within the Safe Driving Policy) and guidance on using them detailed in the QPS Traffic Manual.
- The QPS pursuit policy does not currently require police to consider using the evade police provisions before they decide whether to commence a pursuit.
- There is very little training relating to the evade police provisions, and virtually none on using the related investigative powers provided in Chapter 22 of the PPRA — the training offered primarily focuses on police pursuits.

Key features of the evade police provisions

The evade police provisions are located within Chapter 22 of the *Police Powers and Responsibilities Act 2000* (PPRA) and came into force on 21 July 2006. Specifically, Chapter 22 of the PPRA:

- established a simple offence called an evasion offence
- gave police tools to help them investigate evasion offences — primarily by allowing them to serve an evasion offence notice on the registered owner of the vehicle involved in the offence, and providing a limited ‘reverse onus’ provision
- provided the court with a significant statutory penalty and the power to order the impoundment or forfeiture of the motor vehicle in addition to this penalty.

Each of these key features is briefly discussed.

Simple offence — definition

A simple offence, also known as a summary offence, is one that can be heard and dealt with by a magistrate without a trial. This is in contrast to an indictable offence, which may be tried before a judge and jury.

Simple offences are generally considered less serious and include driving offences, creating a public nuisance, trespassing and minor drug offences.

What is an evade police offence?

In the course of performing their duties, police officers can attempt to intercept other motor vehicles. The evade police provisions can be applied when a police officer in a motorised police vehicle gives a direction to stop to another driver. If the driver of the other vehicle fails to stop as soon as practicable, they have committed an evasion offence. Police do not have to be able to identify the driver at this point.

The legislation specifies that the offence is called an ‘evasion’ offence (sections 746 and 754). We have elected to use the term ‘evade police offence’ in our report because it is consistent with the title of the PPRA chapter and we think it more accurately describes the offending behaviour.

Actions by the driver which indicate they are attempting to avoid interception — for example, increasing speed or weaving between lanes of traffic to travel at a higher speed than surrounding traffic — are sufficient evidence of an evade police offence.

Features of an evade police offence

Vehicle to vehicle

Motorised police vehicles include marked police cars, unmarked police cars and police motorcycles but exclude, for example, police bicycles and police officers in private vehicles.

The direction to stop

A direction to stop can be given by:

- a physical signal — such as a hand signal
- an audible signal
- a warning light — flashing blue or red and blue lights; or another flashing light such as alternately flashing headlights or tail-lights
- a warning light and an alarm — a horn, siren or other audible warning device.

Powers to assist in investigating an evade police offence

When police allow the vehicle to flee, and in so doing avoid a pursuit, they may not know the identity of the driver. Consequently, the evade police provisions include a number of powers that assist police officers to identify the driver of the fleeing vehicle after the fact.

These include the power to serve an evasion offence notice (see below) and an ‘owner onus’ provision. In this context, the registered vehicle owner is deemed to have been the driver of the vehicle involved in the evade police offence even though the actual offender may have been someone else. This ‘reverse onus’ provision has the effect of obliging the owner to nominate the driver of the vehicle at the time of the evade police offence.

Reverse onus provisions are generally contentious because they shift the burden of proof from the State to the defendant to disprove an element of the offence. Similar reverse onus provisions already exist for other vehicle-related offences, such as traffic offences detected by speed and red light cameras under the *Transport Operations (Road Use Management) Act 1995* (TORUM).

What is an evasion offence notice?

Evasion offence notice

Section 755 of the PPRA enables police officers to serve an evasion offence notice on the registered owner of the vehicle if it may assist them in investigating the evade police offence. The notice requires the registered owner to respond within four business days by providing a statutory declaration stating any of the following:

- the name of the person the owner believes was driving the vehicle at the time of the offence
- that the vehicle was being used illegally at the time of the offence (e.g. the vehicle was stolen)
- that the owner did not know who was driving the vehicle at the time of the offence
- the nature of any inquiries made to find out who had been driving the vehicle at the time of the offence
- that the vehicle had been sold before the evasion offence happened, including when and to whom it was sold.

Sanctions in relation to the vehicle and the offender

The evade police provisions provide for sanctions in relation to both the offender and the vehicle involved in the offence:

- In relation to the offender, the statutory maximum penalty the court can hand down is 200 penalty units (\$20 000) or three years imprisonment.
- In relation to the vehicle involved in the offence, police may seek an order that this vehicle be impounded for up to three months. The court can only grant an order after the person is convicted of an evade police offence. If the convicted person is a repeat offender, the police may seek that the vehicle be permanently forfeited, not just impounded.

Sanctions for an evade police offence

Statutory maximum penalty

Section 754 specifies that the statutory maximum penalty for an evasion offence is 200 penalty units (\$20 000) or three years imprisonment.

Impounding order

Section 758 specifies that where a person has been found guilty of an evade police offence, an officer may apply to the relevant court for an order that the motor vehicle involved in the offence be impounded and held at a holding yard for a period of not more than three months.

Forfeiture order

Section 759 specifies that, where a person has been found guilty of an evade police offence within the past three years, a police officer may apply to the relevant court for an order that the motor vehicle involved in the offence be forfeited to the State.

The QPS policy and practice framework

This section provides a brief overview of the policy and practice framework that the QPS set in place to operationalise the evade police provisions, and identifies some concerns.

The QPS policy and practice framework in relation to the evade police provisions is outlined in two separate policy documents:

1. the QPS Safe Driving Policy, which is located within the Operational Procedures Manual (OPM) and contains the pursuit policy
2. the QPS Traffic Manual.

QPS Safe Driving Policy

Police pursuits are covered by the QPS Safe Driving Policy,⁵ which is contained in a Commissioner's Circular (Number 24/2007).⁶ The policy specifies a number of important elements:

- the overall *principles* underpinning the QPS's approach to pursuits
- *categories of pursuit*, including non-pursuit matters
- the *decision-making framework* that guides the officer in deciding whether or not to pursue

5 The Safe Driving Policy outlines QPS policy in relation to the driving of Service vehicles generally, and urgent duty driving and pursuits in particular. The policy is situated in sections 14.30–14.37 of the Operational Procedures Manual.

6 The OPM is updated twice a year. Significant amendments to QPS policy between these periodic updates are communicated to police in a Commissioner's Circular. Although the revised Safe Driving Policy has not yet officially been incorporated into the OPM, police access the policy electronically from the OPM using a hyperlink to the circular. The reason the policy has not yet been incorporated into the OPM is that it has officially remained in trial status while the QPS considered its response to the State Coroner's 2010 recommendations for further restrictions to the pursuit policy.

- *procedures* around the commencement, continuation and conclusion of a pursuit
- *procedures* that police must complete after a pursuit has been concluded, particularly in relation to subsequent investigations and the recording of data.

In addition to the pursuit policy principles (discussed in the next section), an officer's decision making about pursuits is guided by two key aspects of the policy:

- the **pursuit categories** specify the offences which may permit a pursuit
- a **risk assessment** process, which requires the officer to assess whether the circumstances justify the risk of pursuit.

Pursuit categories — to answer the question 'Can I pursue?'

The new policy established that simple offences, including traffic offences, do not permit a pursuit. It also introduced three categories of matters that may permit a pursuit:

- **Category 1:** is reasonably believed to present an imminent threat to the life of a person, or has killed or attempted to kill a person.
- **Category 2:** is known to have committed an indictable offence or an unlawful use of a vehicle offence based on facts or circumstances that are known at the time (that is, not based on an officer's instinct alone and without supporting evidence).
- **Category 3:** is reasonably suspected to have committed an indictable offence or an unlawful use of a vehicle offence based on facts or circumstances that are known at the time (that is, not based on an officer's instinct alone and without supporting evidence).

Risk assessment — to answer the question 'Should I pursue?'

When a matter falls within pursuit category one, two or three (that is, it may permit a pursuit), the restrictive policy requires the police officer to assess — prior to commencing a pursuit — whether the circumstances justify the risk. In making this assessment, officers are asked to consider 12 factors covering:

- overall safety and potential consequences
- operational considerations such as the type of police vehicle
- factors associated with the pursued vehicle, including the type and mechanical conditions of the vehicle
- factors associated with the pursued driver, such as the age of the driver and whether the driver has been or is likely to be able to be identified
- other environmental factors, including whether the geographical area is known by the pursuing police officer, visibility and lighting, and road, weather and traffic conditions.

The risk must be assessed before commencing a pursuit and officers must continually re-assess risk over the course of the pursuit. The policy also states that officers can tolerate more risk in a category one situation than they can in a category two or three situation.

QPS Traffic Manual

Section 11.16 of the QPS Traffic Manual outlines the QPS position on using the evade police provisions and provides specific operational guidance on applying the powers provided. In particular, the policy requires police to:

- investigate any suspected evade police offences, using the evade police powers where required (the evasion offence notice and reverse onus provisions where appropriate)
- consider applying for an impoundment or forfeiture order when they commence a prosecution for an evade police offence, once they have interviewed the owner and, if applicable, the usual driver of the vehicle involved.

How well has the QPS operationalised the evade police provisions in policy?

We have a number of concerns about the way in which the QPS has operationalised the evade police provisions within the pursuit policy:

1. The policy framework is fragmented.
2. The philosophical shift stated in the pursuit principles, to move away from pursuit to other methods of apprehending offenders, is not supported by guidance on alternative strategies.
3. The decision-making framework in the policy does not require police to consider using the evade police provisions *before* deciding whether to pursue.
4. As a factor in the risk assessment, the ability to identify the driver is potentially confusing.

The policy framework is fragmented

The rationale for using the evade police provisions is appropriately embedded within the pursuit policy, which is located in the Safe Driving Policy in the OPM. The policy also requires that, at the conclusion of a pursuit, the senior officer involved in the pursuit must ensure that an investigation is commenced for the evade police offence, and for any other offences detected (including the original offence that led to the pursuit). However, the Safe Driving Policy does not detail how an officer would investigate an evade police offence. To access this information, the officer must refer to the QPS Traffic Manual.

This means that officers need to navigate between two different policy documents in order to understand how the QPS wants them to use the evade police provisions. Although hyperlinks simplify navigation between the electronic policy manuals, there are currently no hyperlinks between the relevant sections of the pursuit policy in the OPM and the evade police provisions in the Traffic Manual.

Furthermore, the policy approach to driving and vehicle-related offences appears inconsistent. Most of the evade police policy and procedures in the Traffic Manual concern the impoundment and forfeiture provisions, rather than aspects of an evade investigation. However, similar policies guiding the use of similar impoundment and forfeiture provisions in Chapter 4 of the PPRA (which relate to hooning and other driving and vehicle-related offences) are located within the OPM (s. 13.35).

The shift to other methods of apprehension is not supported by guidance on alternative strategies

The restrictive pursuit policy introduced five underlying principles (see text box p. 12). The fifth principle shifts the focus of the policy from pursuit to alternative enforcement strategies and methods of apprehension. However, at this point, the policy does not link this philosophical shift to any concrete strategies, such as the evade police provisions. Consequently, police have no clear guidance on what these other strategies are and when it may be appropriate to use them. Given that the QPS has stated that the evade police provisions are a critical support for the restrictive pursuit policy (QPS 2010b) this seems a significant oversight.

Principles of the QPS pursuit policy

1. Pursuit driving is inherently dangerous. In most cases the risk of pursuit will outweigh the benefits.
2. Pursuits should only be commenced or continued where the benefit to the community of apprehending the offender outweighs the risks.
3. If in doubt about commencing or continuing a pursuit, don't.
4. Officers who choose not to commence or continue a pursuit will be supported by the management and senior officers of the QPS.
5. Despite having a restrictive pursuit policy, the Service will treat a pursuit as a serious matter and make every effort to identify and apprehend the offender(s). The revised pursuit policy seeks to shift the manner of apprehension of people who fail to be intercepted from pursuits into other strategies. The Service will continue to apprehend offenders who fail to be intercepted but pursuits will not be the principal means of effecting apprehension.

The policy does not require police to consider using the evade police provisions before deciding to pursue

As it currently stands, the policy does not clearly state that officers, in making their initial assessment whether to commence a pursuit or not, should consider whether the evade police provisions could be used as an alternative. The pursuit decision-making framework refers to 'use evade police offence' *after* police either decide not to pursue or after a pursuit has concluded. Furthermore, any explicit references to the evade police provisions within the pursuit policy refer to procedures to be followed after an attempted interception or after a pursuit has been abandoned. Given the purpose of the provisions as an alternative to pursuit, the CMC considers this is also a significant oversight.

As a risk assessment factor, the ability to identify the driver is potentially confusing

Only one aspect of the 12 risk assessment factors is related to the evade police provisions:

Whether the driver and occupant(s) of the pursued vehicle have been identified or are likely to be able to be identified ... (QPS 2007a, Section 14.34(1)(g))

The reference to the identity of the suspect is potentially confusing and contradictory. Prior to the introduction of the evade police provisions, drawing an officer's attention to the likelihood of being able to identify the suspect appears reasonable. In the absence of information that might reveal the identity of the suspect driver, an officer might well decide that pursuit is justified in order to effect an apprehension. However, since the evade police provisions provide police with tools to help them identify an offending driver at a later stage, the likelihood of being able to apprehend the driver should be less important. Having said this, we do recognise that in some cases the evade police provisions will not be effective in revealing the fleeing driver and we discuss this further throughout the report.

We make recommendations to address some of the issues identified in this section in Chapter 5.

To what extent is the policy supported by training?

Like the policy framework, the training for the evade police provisions is embedded in the police pursuits training. This is not unexpected, nor illogical. However, the CMC takes the view that the QPS has not provided sufficient training to officers on the appropriate and effective use of the evade police provisions.

The QPS provides a number of training initiatives that deal with police pursuits and the evade police provisions, including:

- an 'Urgent duty driving, interceptions and pursuits' Competency Acquisition Program (CAP) booklet
- a 'Police Pursuits' Online Learning Product (OLP)

- an elective 'Traffic Investigations' module in the Constable Development Program (CDP)
- an annual refresher within an Operational Skills and Tactics (OST) block
- the First Response Handbook.

Our review identified the following training deficiencies:

- a heavy focus on police pursuits, with little focused attention on the evade police provisions
- an over-reliance on simply reproducing the legislation in training resources, without further explanation and guidance
- an absence of practical training on the evade police provisions
- no training on the use of the evade police investigative powers, or strategies to improve the success of investigations
- a declining focus on the evade police provisions over time
- an absence of training at the police recruit level.

We comment on this further and make a recommendation which aims to address these deficiencies in Chapter 5.

EVADe POLICE OFFENDERS, OFFENCE TRENDS AND COURT OUTCOMES

Drawing on a range of information sources, this chapter examines the characteristics of evade police offenders and offending behaviour, including the reasons why drivers choose to flee. The chapter also examines the trends in evade police offences across Queensland and how offences are being dealt with by the courts. Finally, we highlight a number of factors that may have influenced these trends.

Key findings

- People who evade police in Queensland are similar to those in other jurisdictions:
 - evade police offenders tend to be young males, have extensive traffic and criminal histories, and not hold a current licence
 - 10 per cent of drivers who evade police are repeat offenders and are responsible for 23 per cent of all evade police offences.
- Most evade police offenders come to police attention for relatively minor offences — in over one half of cases for a traffic-related matter. Only one third of reported evade police incidents were precipitated by more serious offences (such as a stolen vehicle, dangerous driving or another indictable offence).
- After an initial strong increase in the year after the provisions commenced, the rate of reported evade police offences has levelled off. There also may be significant under-reporting.
- Since 2006, the proportion of evade police offences that police have solved has declined by 11 percentage points.
- Some of the above trends may be explained by:
 - the inability of some offences to be effectively investigated
 - deficiencies with the evasion offence notice and owner onus provisions which make it difficult to identify and charge the actual driver with the offence
 - police dissatisfaction with court penalties for evade police offences
 - police uncertainty about the features that distinguish the evade police offence from the ‘fail to stop’ offence.
- Penalties issued by the courts tend to be well below the statutory maximum penalties provided for in the legislation:
 - the most common court-ordered penalty for adult offenders was a fine
 - although the statutory maximum penalty is \$20 000, in instances where evading police was the only offence the most common fine was \$300
 - additional penalties such as vehicle impoundment were rarely applied
 - police do not believe court outcomes for evade police offences reflect the dangerousness of the offending behaviour, the intention of Parliament or community expectations.
- Although repeat offenders generally attracted a more serious penalty on conviction, they were no more likely than first-time offenders to lose their licence.

Characteristics of evade police offenders

Who are the drivers who evade police?

There is very little previous Australian research on the characteristics of drivers who choose to flee from police. To better understand the offending population we were dealing with, we examined basic demographic data about identified evade police offenders and more detailed traffic and criminal histories for a random sample of offenders. We also looked at what proportion of offenders are detected evading police on multiple occasions. Finally, we were interested in the licence status of evade police offenders because of the State Coroner's request that we consider recommending mandatory licence disqualification as a penalty.

Previous research on drivers involved in pursuits

In 2010, the State Coroner found that fleeing drivers are 'highly impulsive and prone to risk taking' (Office of the State Coroner 2010, p. 5). From a broader body of research, we also understand that:

- the average driver who evades police capture is a young male who is not licensed at the time of the offence (Independent Police Conduct Authority 2009)
- drivers who evade police tend to have extensive traffic and criminal histories and be under the influence of drugs and alcohol at the time of the offence (Brewer & McGrath 1991; Hoffmann & Mazerolle 2005; Homel 1990)
- previous engagement in pursuits and being intoxicated lead to more extreme risk taking during a pursuit (Dunham et al. 1998)
- offenders with a history of criminal or traffic offending tend to be more difficult to deter from further offending than drivers with no offence history (Sentencing Advisory Council 2009).

Our results outlined below support these findings.

Demographics of evade offenders

The QPS data obtained provided offender information about the 2490 people who committed evade police offences between 21 July 2006 and 30 June 2010. The analyses found that the majority of people who flee police were male (92%, $n = 2290$) and a large proportion were aged between 17 and 24 years (47%, $n = 1180$). An additional 41 per cent ($n = 1027$) were aged 25 or over and the remaining 11 per cent ($n = 283$) were under 17 at the time of the offence. Of those who self-reported their Indigenous status ($n = 2058$), 18 per cent ($n = 369$) identified as Indigenous Australians.

Traffic or criminal histories

Our review confirmed that drivers who evade police typically have a criminal history and an extensive traffic history. In a random sample of offenders ($n = 177$), every person had committed at least one other traffic or criminal offence (median = 28). In fact, just over one third (34%, $n = 61$) of evade police offenders had between 51 and over 300 offences on their traffic and criminal histories. The data snapshot in the text box on p.17, drawn from our random sample, provides a picture of the type, seriousness and extent of criminal offending by people who evade police.

Repeat offenders

'Repeat offenders' are those who are charged with two or more separate evade police offences. Using the unique offender code in QPS data, we identified 260 individuals who had fled police more than once in the study period. We found that this 10 per cent of the evade police offender population ($n = 260$) were responsible for 23 per cent of the evade police offences ($n = 665$).

Traffic and criminal histories of evade offenders

Driving-related offences	– 33% committed disqualified driving ($n = 59$)
	– 61% committed unlicensed driving ($n = 108$)
	– 53% committed dangerous operation of a vehicle ($n = 94$)
Property offences	– 69% committed at least one property offence ($n = 123$)
	– 40% committed unlawful use of motor vehicle ($n = 71$)
Offences against the person	– 42% committed at least one offence against the person ($n = 74$)
	– 25% committed a serious assault ($n = 45$)
	– 15% committed a robbery ($n = 27$)
Drug offences	– 45% committed consume/possess drug offences ($n = 80$)

Are drivers licensed at the time of the offence?

We obtained data for a random sample of evade police offenders ($n = 213$) to explore the licence status of drivers at the time of their offence. One in every 12 people (9%, $n = 18$)⁷ was under the age of 16, and so was too young to hold a Queensland driver licence. Only about one third (36%, $n = 70$) of evade police offenders who were eligible for a licence ($n = 193$) had a current driver licence at the time of the offence. The most common status was 'disqualified or suspended licence' (43%, $n = 83$). An additional 21 per cent ($n = 40$) had an expired licence or no licence.

Why do drivers evade police?

As noted in Chapter 1, existing research shows that most pursuits occur because of comparatively minor matters. Drivers attempt to evade police for five main reasons:

- the vehicle is stolen
- the driver is under the influence of alcohol and/or drugs
- the driver does not have a current licence
- to escape arrest for an unrelated offence
- to experience the excitement of a police pursuit (California Highway Patrol 1983; Dunham et al. 1998; Independent Police Conduct Authority 2009).

Previous research indicates that the risk of being caught by police does not appear to deter offenders. That is, punishment or potential consequences of the pursuit are not part of driver decision making; rather, drivers focus on how to successfully escape police capture (Halsey 2008). Importantly, other research shows that when drivers do consider punishment, they see it as an incentive to take more extreme risks to elude police rather than as a deterrent (Dunham et al. 1998).

Why do drivers come to police attention?

We examined a random sample ($n = 275$) of evade police offences that occurred between January 2008 and June 2010 to determine why drivers initially came to police attention.⁸ Our analysis lends support to the findings of previous research that most are relatively minor offences.

7 The licence status was not available for two individuals in the random sample.

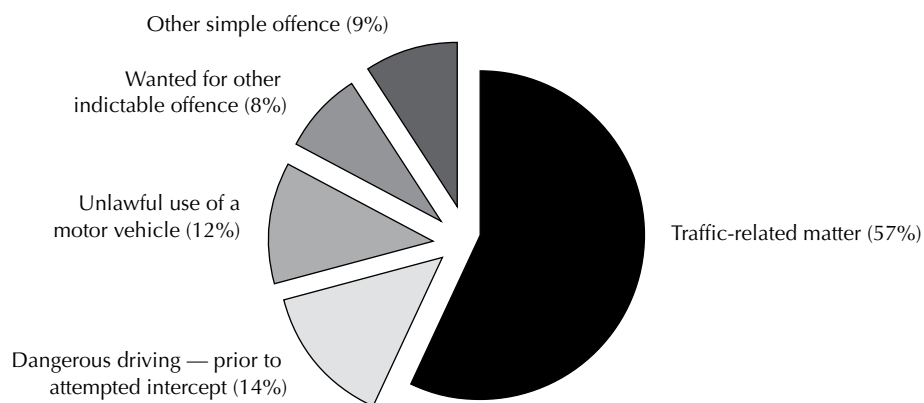
8 We excluded 25 cases because the reason for the attempted intercept was not specified in the police report.

In most cases (65%, $n = 180$) police were attempting to intercept the vehicle for a traffic-related matter (including random breath testing) or another simple offence.⁹

In one third of cases (35%, $n = 95$) police suspected that the driver had committed an unlawful use of a vehicle or another type of indictable offence:

- the driver committed a dangerous operation of a vehicle offence before the attempted intercept (14% of evade police offences) ($n = 38$)
- police knew the driver had committed an ‘unlawful use of a motor vehicle’ offence (12%, $n = 34$)
- the driver was wanted for another indictable offence (8%, $n = 23$).

Figure 3.1: Reasons drivers came to police attention



What other offending is associated with an evade police incident?

We examined the evade police incidents ($n = 4303$) that occurred between 21 July 2006 and 30 June 2010 to see if the nature of any ‘accompanying’ offences provided clues about the reasons offenders may choose to flee.

In about one half of cases, the evade police offence was the only offence listed on the crime report (48%, $n = 2060$); these can be considered ‘evade only’ incidents. In some cases, these would be unsolved offences, so would not include other offences that related to the incident. An almost equal proportion of crime reports listed either one (35%, $n = 1503$) or two (12%, $n = 511$) accompanying offences.

Of all the accompanying offences listed on an evade police crime report ($n = 3309$), almost half were for dangerous operation of a vehicle (46%, $n = 1524$). This is not surprising, as in their attempt to escape police interception, it is not uncommon that a fleeing driver would drive in a dangerous manner. In this particular dataset, however, we were unable to distinguish between dangerous driving that led to the attempted police intercept, and dangerous driving that occurred after police gave the driver a direction to stop (possibly in an attempt to ‘escape’).

9 Due to rounding, the percentages for the two segments of offence types which we later describe as ‘non-pursuit’ matters sum to 66 per cent — traffic related matters (57%, $n = 156$) and other simple offences (9%, $n = 24$). However, when calculated using the combined figure for ‘non-pursuit’ matters ($n = 180$), the correct proportion overall is 65 per cent. Similarly, the percentages for the three segments of ‘pursuit matters’ sum to 34 per cent, although the correct proportion overall is 35 per cent ($n = 95$). It is these combined proportions — 65 per cent for ‘non-pursuit’ matters and 35 per cent for ‘pursuit’ matters that we refer to here and in several places later in the report.

The other common accompanying offences are also consistent with previous research:

- drink driving (18%, $n = 586$)
- driving while disqualified or restricted (12%, $n = 412$)
- resist arrest, incite, hinder or obstruct police (12%, $n = 389$)¹⁰
- drug offences (3%, $n = 108$).

Trends in evade police offences in Queensland

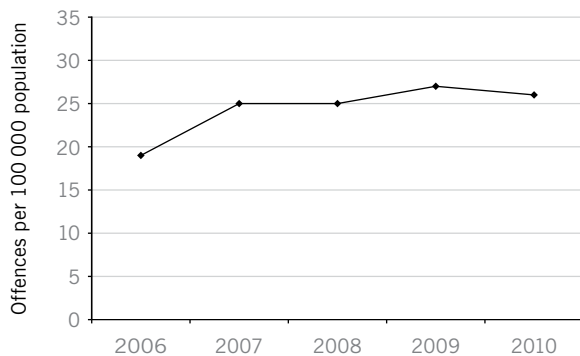
Reported evade police offences increased between 2006 and 2010

In the four-year period spanning July 2006 to June 2010 police recorded 4280 evade police offences. Over this time, the annual rate of reported offending increased from 19 to 26 offences per 100 000 residents (see Figure 3.2). However, most of this increase took place in the first year following the introduction of the offence, suggesting a strong uptake of the provisions by police. While the rate of reported offences continued in an upward direction, the gradient levelled off after 2007. In the first six months of 2010, an average of 24 evade police offences were recorded every week across Queensland.

Evade police statistics

- Controlling for population, evade police offences are most common in remote and rural Queensland and least common in more populated metropolitan areas.
- Consistent with the trend in police pursuits, evade police offences are most likely to occur in warmer months (particularly December and January), on weekends and between 11 pm and 1 am.

Figure 3.2: Rate of reported evade police offences in Queensland, 2006–10



Source: QPS QPRIME data.

The evade police offence is under-reported

Although the number of reported evade police offences has increased since 2006, we believe that the offence is actually under-reported. Operational police told us they sometimes don't report evade police offences when they occur, despite the fact that QPS policy requires them to. As explained later in the chapter, police may not report offences if they do not feel they can be productively investigated. Although we were unable to determine the extent of under-reporting, our consultations with police indicated that it is likely to be significant. This makes it difficult to assess the actual level of offending in the community.

¹⁰ The incidents of 'Resist arrest, incite, hinder or obstruct police' are most likely associated with those cases where police eventually intercepted the offending driver (possibly after a pursuit)

The offence appears to be used primarily for non-pursuit matters

As noted earlier in this chapter, drivers who flee generally came to police attention for traffic-related (57%, $n = 156$) or other simple offences (9%, $n = 24$). This indicates that the evade police provisions are most commonly used for matters that would not permit a pursuit under the QPS policy. This is an important use of the provisions as a support for a restrictive police pursuit policy. However, the use of the provisions in these cases would not be associated with a decrease in pursuits (as discussed further in Chapter 4).

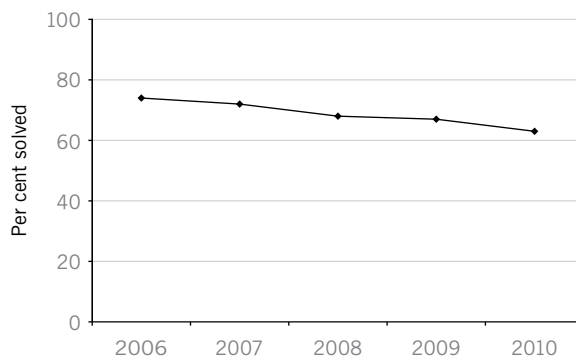
Only around one third of evade police offences related to offence types that may permit a pursuit, such as unlawful use of a motor vehicle, dangerous driving or another type of indictable offence.

The proportion of solved evade police offences is declining

While the rate of reported offences has increased over time, the proportion of evade police offences that have been solved has declined from 74 per cent in 2006 to 63 per cent in 2010 (see Figure 3.3). (Solved offences are those where police have taken action against an alleged offender.)

The observed decline in solved evade police offences may be attributed to a range of factors, such as increased police reporting of offences or diversion of resources from one area of focus to another. However, in this instance, we believe that more specific factors relating to police attitudes towards the effectiveness of the provisions are likely to have contributed to the decline in the rate of solved offences. This is discussed later in the chapter.

Figure 3.3: Proportion of reported evade police offences in Queensland which are solved, 2006–10



Source: QPS QPRIME data.

We explored the possibility that the declining rate of solved evade police offences may have been driven in part by an increase in vehicle-related offences that are difficult to solve, particularly stolen vehicles. In this instance, we would expect an increase in offences relating to stolen vehicles. However, QPS data indicated that the offences 'stealing from vehicles/enter vehicle with intent' and 'unlawful use of motor vehicle' actually declined over the observation period.

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

Matters appearing before the court

Over the period from 21 July 2006 to 30 June 2010, Queensland courts data showed that 2418 evade police charges proceeded to court in 2207 different matters. These matters involved 2094 unique defendants. This represents 83 per cent of all evade police offences where a driver was identified.

The vast majority of evade police charges (90%, $n = 2181$) were brought against adults. Nonetheless, our analysis of the courts data showed that the court outcomes for adults were comparable with those of juveniles (who constituted 10 per cent of all evade police offenders, $n = 202$). The majority of evade police offences committed by adults (95%, $n = 2066$) were heard alongside another type of charge, which can affect the penalty handed down by the court. Consequently, where necessary our results distinguish between 'evade police only' and 'evade police plus other' matters.

Penalties being given by the courts

This section presents the penalties given by the courts. We were also specifically interested in how often the courts are disqualifying an offender's driver licence and/or ordering that their vehicle be impounded, because the State Coroner asked us to consider these issues. Of the 2181 adult charges that proceeded to court, 91 per cent ($n = 1989$) resulted in a guilty finding, and so were subject to penalties.

It is important to note that court outcomes reflect the offending history of the accused and the circumstances of the specific offence — which range from simple non-compliance with a police direction to stop, to deliberate attempts to escape police that endanger other members of the community. We did not examine the specific circumstances associated with each penalty outcome, and consequently are somewhat limited in the conclusions we can draw about court penalties.

Release without penalty and the recording of a conviction

Of the 1989 evade police charges that resulted in a guilty finding, 17 per cent of defendants ($n = 346$) were released without penalty. Where we could establish whether a conviction was recorded ($n = 1976$), the data showed that 12 per cent of defendants ($n = 243$) did not have a conviction recorded.

Repeat offenders

The courts data enabled us to identify 202¹¹ adults who were charged with more than one evade police offence between 21 July 2006 and 30 June 2010. Our analyses showed that repeat offenders are given significantly more serious penalties compared with first-time evade police offenders.¹² However, as the majority of repeat offenders (97%, $n = 196$) were penalised for all of their offences on the same court date, we were unable to examine whether penalties became more serious for subsequent evade police offences.

Fines

The most common court-ordered penalty for evading police is a fine (55%, $n = 1095$). Fines ranged from \$50 to \$4000, but 'evade police only' charges resulted in significantly lower fines than 'evade police plus other' charges (see Table 3.1).¹³ The most common fine for 'evade police only' offenders was \$300, compared with \$1000 for those offenders who committed offences in addition to the evade police offence. It is possible that 'evade police only' charges tend to be at the simple non-compliance end of the offending spectrum.

11 Unique individuals were identified based on their surnames, given names and date of birth. Because of inaccuracies in the entering or spelling of names and dates, we are likely to be underestimating the number of repeat offenders.

12 $t(314) = 4.086, p < .001$

13 $t(133) = 7.446, p < .001, \eta^2 = .05$

Table 3.1: Monetary value of court-ordered fines

	Evade police only	Evade police plus other
Range of fines	\$50–1500	\$50–4000
Average fine (standard deviation)	\$527 (\$314)	\$829 (\$629)
Median fine	\$500	\$650
Most common fine	\$300	\$1000

Source: Courts data

The value of the most common fine for evade police only is well below the statutory maximum penalty of \$20 000 and half the fine for a similar offence, ‘Fail to stop for prescribed purposes’ (s. 60 of the PPRA). Based on the value of the most common fine for evade police only, the offence can be construed as less serious than speeding between 20 and 40 kilometres per hour over the limit, and just as serious as using a mobile phone when driving or committing an offensive or threatening a public nuisance offence (see Table 3.2).

Table 3.2: Comparing the evade police fine with those relating to other behaviours

Offence	Fine
Failing to stop for a prescribed purpose	\$600
Speeding between 30 and 40 km/h over the limit	\$466
Speeding between 20 and 30 km/h over the limit	\$333
Evade police only (most common fine)	\$300
Public nuisance — disorderly, offensive, threatening or violent behaviour	\$300
Talking on a mobile phone	\$300
Failure to obey traffic lights	\$300
Failure to wear a seatbelt	\$300

Source: Courts data and QPS list of traffic infringement codes and penalties (QPS 2010a).

From 21 July 2006 to 30 June 2010, 1095 fines were imposed in relation to adult offenders. Offenders who do not pay their fine on time are referred to Queensland’s State Penalties Enforcement Registry (SPER). Our analysis of the data shows that:

- only 13 per cent ($n = 140$) of those defendants who were fined for an evade police offence paid the fine in the time allocated by the courts; the remaining fines were referred to SPER
- the majority of fines sent to SPER were paid, or were in compliance with the current payment scheme (60%, $n = 652$), despite being non-compliant with the court-ordered timeframe
- the remaining 28 per cent ($n = 303$) of fines were not paid within the time allocated by court, and were not in compliance with SPER.¹⁴

Driver licence disqualification

Driver licences were disqualified at court in approximately one in every five evade police matters (19%, $n = 381$). This did not differ substantially for ‘evade only’ matters (22%, $n = 19$) and ‘evade plus other’ matters (19%, $n = 362$). Similarly, whether the defendant was a repeat offender or not had no bearing on whether a magistrate decided to disqualify a defendant’s licence.

¹⁴ Accurate as at the data retrieval date of 14 August 2010.

Vehicle impoundment

From November 2006 to August 2010, the QPS lodged 357 vehicle impoundment applications at court. About one in every three (35%, $n = 126$) resulted in an impoundment order. We were not able to obtain data on the number of impoundment orders subsequently converted to a community service order under s. 767(2) of the PPRA.

As impoundment can be ordered only after a court finds a defendant guilty of evading police, we examined the number of impoundment orders as a proportion of guilty court outcomes ($n = 1989$). Only one in every 16 drivers (6%, $n = 126$) found guilty of an evade police offence was subject to a vehicle impoundment order.

Custodial or community corrections orders

To examine custodial or community corrections orders, we identified adult charges where the defendant was found guilty ($n = 1989$) and analysed the penalties for 'evade only' offenders ($n = 88$) and 'evade police plus other offences' ($n = 1885$) separately.¹⁵

The courts are unlikely to sentence offenders who appear for 'evade police only' offences to a custodial or community corrections order.¹⁶ In fact, our analysis only identified three such cases; one charge resulted in an imprisonment order of 14 days, and two resulted in suspended imprisonment orders of three and four months respectively. No 'evade police only' defendants were ordered to perform community service.

Those people appearing for 'evade police plus other offences' were more likely to receive a custodial or community corrections order. Overall, about one third of the 1885 offenders were sentenced to some type of custodial or community correction order:

- 12 per cent ($n = 230$) were sentenced to imprisonment (of these 72% were imprisoned for between one day and four months)
- 5 per cent ($n = 88$) were ordered to undertake community service, most commonly ranging from 41 to 100 hours
- the remainder were ordered to undertake probation (9%, $n = 169$), an intensive drug rehabilitation order (1%, $n = 28$), an intensive corrections order (1%, $n = 17$) or had a term of suspended imprisonment (3%, $n = 51$).

Factors influencing trends in evade police offences

The last two sections have identified a number of trends in how police are using the evade police provisions and in how they are being dealt with by the courts. In summary, these are:

- after a strong uptake of the provisions by police in the first year, the rate of reported offences has levelled off
- there may be significant under-reporting of the offence
- the provisions are being used primarily for minor offences (non-pursuit matters)
- the proportion of solved offences has declined over the last four years.

Factors that may be influencing these trends and contributing to a degree of under-use of the provisions by police, identified by our research, include the following:

- Not all evade police offences can be productively investigated.
- Weaknesses in the evasion offence notice and owner onus provisions mean that in some circumstances offending drivers can avoid prosecution.
- Police are often dissatisfied with court outcomes.
- Some police are issuing a 'fail to stop' ticket instead of using the evade police provisions.

15 We excluded 16 cases from this analysis where there was a data entry error in the penalties ascribed to the charge.

16 Custodial or community corrections orders includes imprisonment, suspended imprisonment, intensive correction orders, intensive drug rehabilitation orders (IDRO), probation orders and community service orders.

Not all evade police offences can be productively investigated

The evade police investigative powers provided by the legislation, particularly the evasion offence notice and owner onus provisions, were intended to decrease the need to identify the driver at the time of the incident. However, in interviews and other consultations, police stated that these tools are largely rendered useless when:

- the vehicle cannot be followed up because it is identified as stolen, the registration number is not visible, or it has missing or false plates
- the vehicle is unregistered
- the registered owner of a vehicle cannot be traced to their current address.

This is because the investigative powers rely on police being able to serve an evasion offence notice on the registered owner of the vehicle in the first instance. Therefore, if the owner cannot be identified or located or, in the case of a stolen vehicle, cannot help with police inquiries, these powers are not available to police. This means that these types of offences are only likely to be successfully prosecuted when the vehicle (and driver) are located shortly after the offence is committed and there is little dispute about the driver's culpability.

Discussions with police indicate that they may not always record an offence when they believe it cannot be productively investigated. This is most likely to occur when police cannot positively identify the driver, either at the time of the incident or, as seen in the next section, when using the investigation tools provided by the legislation.

Weaknesses in the evasion offence notice and owner onus provisions

When an evasion offence notice is served, the provisions place an onus on the registered owner (or subsequent nominated person) to provide police with information in the form of a declaration to aid the investigation. If the owner fails to provide this declaration, they risk facing prosecution. This reversal of onus, whereby the individual is required to demonstrate innocence as opposed to the State proving guilt, is a significant departure from fundamental legal principles. In an attempt to compensate for this departure, the evade police provisions provide a number of defences which are outlined on the evasion offence notice.

In practice, this process has significant drawbacks. The QPS states in its submission:

... non-response to an evasion offence notice may allow the actual offender to go unpunished should the owner or nominated person be able to prove on the balance of probabilities that they were not, themselves, the driver. This provides an avenue for owners or nominated persons, who were demonstrably not the driver at the relevant time, to assist the actual driver to avoid prosecution should they wish by simply refusing to provide a declaration. (QPS 2010b, p. 2)

Our interviews with operational police produced similar comments, for example:

- Owners or nominated drivers commonly rely on one of the three defences outlined on the evasion offence notice, the most common being that the owner did not know who was driving the vehicle at the time of the offence.
- While there is a requirement to make a declaration, there is no explicit requirement for the owner to provide useful or credible information that may assist the police investigation. This is particularly a problem when the owner claims they were not driving the vehicle at the time of the offence, yet provides no information to assist police to identify the actual driver.
- Even though an owner was not driving at the time of the offence, some owners prefer to accept that they are legally presumed to be the driver rather than nominate the actual driver.

Police are often dissatisfied with court outcomes

Police officers consistently expressed a high level of dissatisfaction with the penalties ordered by the courts for convicted evade offenders, believing they do not reflect the intention of Parliament or community expectations. For example:

- Police believe that the substantive penalties being given by the courts for the offence are too low and do not reflect the seriousness of the offence, particularly as it relates to community safety.
- Vehicle impoundment is rarely ordered *in addition* to the substantive penalty, despite the provisions specifically providing for this (s. 751 PPRA).

The penalties drivers are receiving are not effective and an evade is not seen as an overly serious offence. (*QPS Officer*)

... [police officers] may be reluctant to look at those evade police offences because of those punishments and sentences handed down. They may have a feeling that it might not be worth it and it doesn't matter because the sentences handed down don't really have a bearing anyway. (*QPS Officer*)

In our discussions police indicated that, over time, dissatisfaction with court outcomes may lead them to:

1. *Stop using the evade police offence provisions* — The QPS data do not support this hypothesis at this stage, though the number of recorded offences has levelled off since 2007.
2. *Report the evade police offence but fail to conduct the follow-up investigations (that is, fail to 'solve' the offence)* — As noted earlier in this chapter, QPS data show a 11-point decline in the proportion of evade police offences that have been solved over the period 2006–10.
3. *Use alternative mechanisms to achieve a 'better' outcome* — Some police officers reported using a 'fail to stop' (s. 60 PPRA) ticket instead of the evade police offence either because they believe that using the 'fail to stop' offence will deliver better 'outcomes', or because they are unclear about the features that differentiate the two offences.

Officers who believed that the 'fail to stop' offence achieves a better outcome than the evade police offence noted that:

- the 'fail to stop' offence is a ticketable offence, which takes considerably less time to process than creating a report in QPRIME (which is necessary for evade police offences)
- drivers are less likely to dispute a ticket
- the penalty is more certain (a \$600 fine) and tends to be higher than the court-ordered fine for an evade police offence
- the penalty is more immediate for a 'fail to stop' offence, while penalties for evade police offences are ordered after the driver is convicted by the court.

Despite this anecdotal evidence, the QPS data did not show an increasing trend in the number of 'fail to stop' tickets alongside a decline in the number of evade police offences. This suggests that, if the practice is occurring, it is not widespread at this stage.

Some police are confused about the respective uses of the evade police and the 'fail to stop' offences

While it is unlikely that police are commonly issuing 'fail to stop' tickets instead of using the evade police provisions, it is clear that some officers are confused about the elements that differentiate the two offences and which offence is more appropriate in some circumstances.

A random sample of evade police offenders through to the court outcome showed that in at least 10 per cent of cases the reported evade police offence proceeded to court as a s. 60 'fail to stop' offence. Although the reason for this was not always clear, in some cases it was apparent that the elements of an evade police offence had not been met (for example, some cases occurred in stationary intercept situations when there was no vehicle-to-vehicle direction to stop). Another 4 per cent of the sample had to be excluded because the circumstances of the offence would not have supported prosecution for evade police (there was no vehicle-to-vehicle direction to stop, which means they could only have been dealt with as a 'fail to stop' offence).

The confusion regarding the respective uses of the 'evade police' and 'fail to stop' offences suggests that further guidance may be appropriate in QPS training resources and possibly within the pursuit and evade police policy framework.

THE IMPACT OF THE EVADE POLICE PROVISIONS ON POLICE PURSUITS

This chapter describes the trends in police pursuits in Queensland and examines whether the introduction of the evade police provisions had an impact on pursuit numbers. It also identifies factors that influenced this outcome.

Key findings

- The rate of police pursuits has declined 56 per cent over the past 11 years; pursuit-related injuries and property damage have also declined. The proportion of 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.
- The proportion of abandoned pursuits where the driver was later identified has increased considerably — from around 40 per cent in 2006 to 69 per cent in 2010. This indicates that the provisions help police to identify drivers.
- Police are generally not using the evade police provisions as a genuine alternative to pursuit.
 - When the policy permits police to pursue, they choose to do so in three out of four cases.
 - Officers generally consider using the evade police offence provisions when the restrictive policy does not permit a pursuit, when the conditions make a pursuit too risky, or when the officer is directed not to pursue or to abandon a pursuit.
- The evade police provisions are most often used in relation to minor (mostly traffic-related) matters (65%). When they are used for more serious matters (35%), such as unlawful use of a motor vehicle, dangerous driving or another type of indictable offence, they are typically applied after a pursuit.
- A number of legislative, policy and training deficiencies are limiting the effectiveness of the provisions.

Trends in pursuits in Queensland

Pursuits in Queensland have declined

Long-term trends in police pursuits are important because they identify patterns in pursuits that existed before legislative and policy change. Our analysis of QPS data shows a 56 per cent decline in the rate of pursuits, from 557 in 2000 (16 per 100 000 people) to 314 in 2010 (7 per 100 000 people). As Figure 4.1 shows, most of the decline occurred after 2006.

There is some evidence that the official QPS data underestimate the actual number of pursuits that occur each year by at least 12 per cent. When we examined a random sample of evade police offences ($n = 300$) that occurred between 1 January 2008 and 30 June 2010,¹⁷ we found that a pursuit occurred in 36 per cent ($n = 107$) of cases, and that some of these pursuits ($n = 13$, 12%) had not been officially reported.¹⁸ We classified an additional 12 cases as a ‘technical’ pursuit, confirming that the transition from failed intercept to pursuit is a difficult area of the

¹⁷ Evade police offences pre-January 2008 were excluded as a different pursuit policy was in practice.

¹⁸ The QPS Pursuits Project Team was consulted about the CMC coding framework and confirmed our assessment of the unreported pursuits.

policy for police.¹⁹ It also suggests that the level of under-reporting of pursuits could be higher than our estimate.

Pursuit statistics

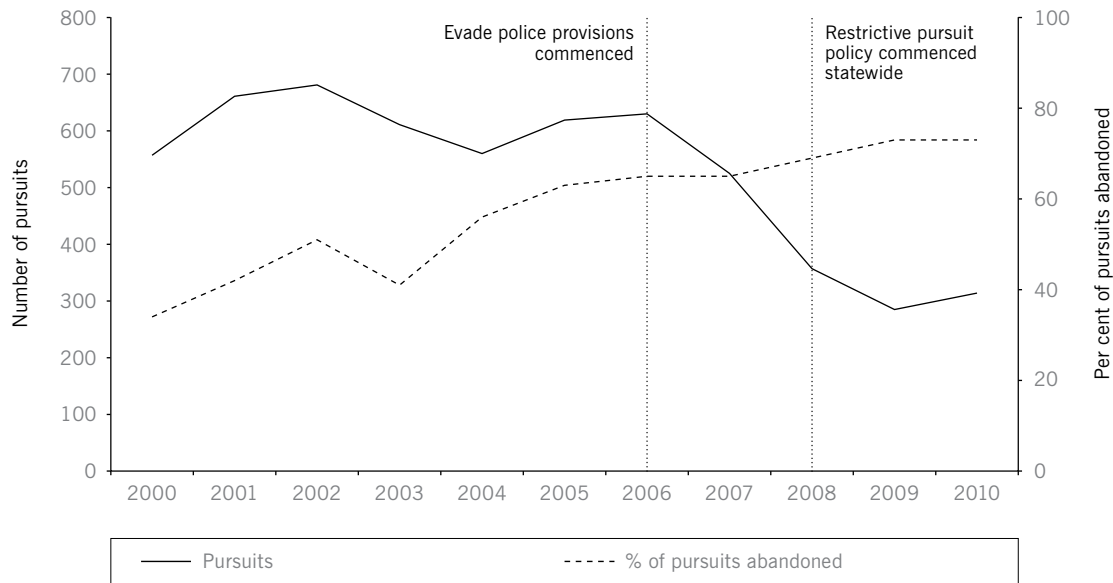
Over the period 2000–10:

- the number of pursuits per year declined from 557 (16 per 100 000 people) to 314 (7 per 100 000 people)
- most pursuits (58%, *n* = 2880) last for three minutes or less
- eleven people were killed during a pursuit
- another eight people were killed in the period before a pursuit had actually commenced or after police had abandoned one
- injuries as a result of a pursuit declined from 118 to 96 per 1000 pursuits
- property damage as a result of a pursuit declined from 124 to 57 per 1000 pursuits
- the proportion of abandoned pursuits was at its lowest point (23%) in November 2000 and at its highest point (92%) in May 2009.

Abandoned pursuits have increased

As shown in Figure 4.1, the proportion of pursuits that are abandoned has been steadily increasing,²⁰ from an average of 34 per cent in 2000 to 73 per cent in 2010. This trend was in place well before the evade police provisions commenced in 2006. It shows that QPS officers and pursuit controllers are increasingly likely to direct that officers abandon pursuits, which undoubtedly has had a positive effect on road safety.

Figure 4.1: Pursuits and abandoned pursuits in Queensland, 2006–10



Source: QPS pursuits database.

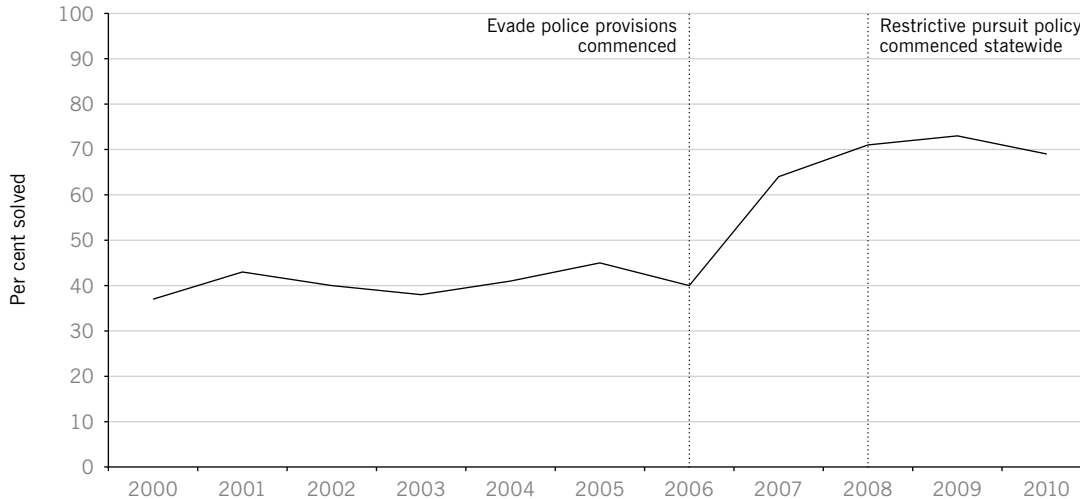
19 We classified a matter as a ‘technical’ pursuit when it was clear from the description that police continued to follow the vehicle for some time after they reasonably believed that the driver was attempting to evade interception. Under a strict interpretation of the policy, this means the attempted intercept has transitioned to a pursuit. However, the transition from failed intercept to pursuit is a grey area of the policy and in some of these cases the officers would not have considered themselves to be in pursuit.

20 An ‘abandoned pursuit’ occurs when police commence a pursuit, but stop following the fleeing vehicle before it stops. QPS policy requires that, when a pursuit is abandoned, police pull over to the side of the road and conduct a safety check of their vehicle.

Abandoned pursuits where the driver was later identified have increased

In addition to the substantial increase in abandoned pursuits, the QPS pursuits database shows that the proportion of abandoned pursuits where the alleged driver was later identified increased considerably after the evade police provisions commenced in 2006 (from around 40% in 2006 to 69% in 2010 — see Figure 4.2).

Figure 4.2: Proportion of abandoned pursuits that are solved, 2000–10



Source: QPS pursuits database.

This indicates that the evasion offence notice is an important tool in identifying drivers in situations where QPS officers are permitted to pursue, but abandon the pursuit without apprehending the driver.

Trends in deaths, injuries and property damage from pursuits

We also examined the negative consequences of a police pursuit, namely deaths and injury or property damage. From 2000 to 2010, 11 deaths resulting from 11 pursuits were recorded by the QPS; eight of these deaths were of occupants in the fleeing vehicle and three were of community members not involved in the pursuit. No police officers were killed in pursuits over the period.

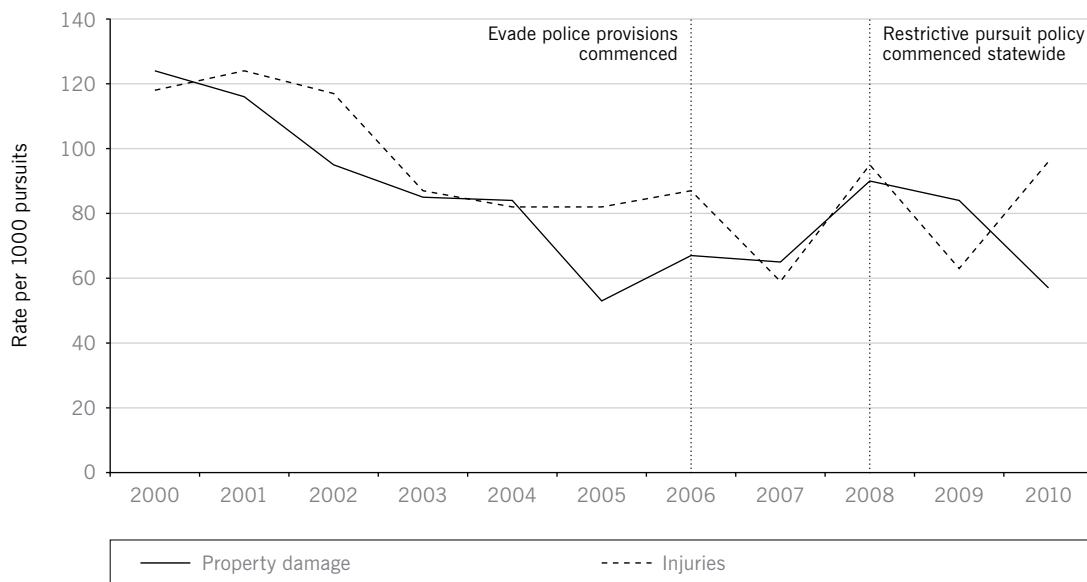
It is important to note that these figures refer only to deaths that occurred during an official pursuit incident. Consequently, the data exclude eight deaths resulting from a crash that occurred before an attempted intercept transitioned into an official pursuit, or after police had abandoned a pursuit. Because of the relatively small number of pursuits that resulted in a death, we were unable to detect any trend.

Pursuits that involved an injury or property damage declined over the study period (see Figure 4.3),²¹ indicating that pursuits are now less likely to result in injury or property damage than in 2000. This decline, however, was evident in the early 2000s, before the introduction of the evade police provisions or the restrictive QPS pursuit policy.

²¹ Created as a rate per 1000 pursuits.

While the decline has been sustained, Figure 4.3 shows that the rate of injuries and property damage has fluctuated from 2007 onwards. Because of this variability, it is too early to detect whether there is a clear trend in the rate of pursuit-related injuries and property damage after 2006. This graph should also be interpreted with some caution because we have used a rate per 1000 pursuits to track the trend in injuries and property damage. Although a rate enables meaningful comparisons over time, it also means that small changes can appear to be more substantial than they actually are.²²

Figure 4.3: Injuries and property damage (per 1000 pursuits) in Queensland, 2006–10



Source: QPS pursuits database.

Have the provisions or the policy contributed to the decline?

We used statistical methods described in Appendix 4 to analyse whether the introduction of the evade police provisions was associated with a significant decline in:

- pursuits
- pursuit-related injuries and property damage.

We also tested the impact of the statewide implementation of the restrictive pursuit policy on these outcomes because of its importance for officers' decision making about pursuits. We did not test the impact of the initial trial of the restrictive policy which commenced in October 2006, because it was not possible to determine the extent to which officers outside the two trial districts were also using the trial policy to guide their decisions about pursuits (explained further in Appendix 4).

²² For example, there were 31 pursuits that involved an injury in 2007 and 34 in 2008. This is an increase from an average of 2.6 pursuit related injuries per month in 2007, to 2.8 per month in 2008. However, because there was a decrease in the number of pursuits from 2007 to 2008, when these figures are converted to a rate (an increase from 59 to 95 per 1000 pursuits), the difference appears considerable.

The evade police provisions and restrictive policy were among a range of factors that reduced pursuits

Statistically, the evade police provisions had only a very minor immediate effect on the number of pursuits in Queensland.²³ Further, the statewide introduction of the QPS restrictive pursuit policy in 2008 had no immediate impact on pursuit numbers.²⁴ Nevertheless, Figure 4.4 shows there was a downward trend in pursuits following the introduction of the evade police provisions. This trend continued downwards, albeit at a slightly slower rate, after the restrictive pursuit policy commenced statewide.

Figure 4.4: Model fit trend line of pursuits, with interventions, 2000–10



Evade police offence: ($b = -0.998$, $SE = 0.385$, $t = -2.589$, $p < .05$).

Restrictive pursuit policy: ($b = 0.531$, $SE = 0.517$, $t = 1.026$, $p = .307$).

$R^2 = .26$, $RMSE = 7.98$.

Importantly, the statistical analysis showed that a considerable amount of variation (74%) in pursuit numbers cannot be explained by the introduction of the evade police provisions or the restrictive pursuit policy alone. This means that other factors that were not tested have played a substantial role in driving the downward trend in pursuits shown in Figure 4.4.

From our conversations with police, we know that a number of other factors occurring during this period probably helped to drive the reduction, including:

- a series of coronial inquests into deaths associated with police pursuits and the related media attention
- police union advice to members not to pursue under any circumstances because of potential civil liability for 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.

²³ $b = -0.998$; $p < .05$

²⁴ $b = 0.531$; $p = .307$

In light of the number of factors that have placed downward pressure on police pursuits, it is difficult to accurately measure the individual contribution of the evade police provisions or the restrictive pursuit policy. In reality, the evade police provisions or the restrictive pursuit policy would need to have had a large effect to be detected by our statistical analysis — an effect which is not evident. We therefore conclude that, while the evade police provisions and restrictive pursuit policy did not cause this reduction in and of themselves, they were two of a range of factors that caused the substantial and sustained reduction in pursuits between 2006 and 2010.

Neither the evade police provisions nor the restrictive policy had a clear effect on injuries and property damage

Statistically, neither the evade police provisions nor the restrictive pursuit policy helped to explain the decline in pursuit-related injuries and property damage from 2000 to 2010 (see Appendix 4 for a more detailed explanation of the analysis).²⁵ While it is possible that the evade police provisions or the policy had an effect on injuries and property damage, any effect (if it existed) was minor, and so was not detected by our analysis.

Police do not use the evade police provisions as an alternative to pursuit

The evade police provisions were intended to be used in two circumstances:

- as an alternative to pursuit, even when the pursuit policy permits police to pursue the driver (that is, for pursuit matters)
- when the pursuit policy does not permit them to pursue the driver (that is, for non-pursuit matters).²⁶

While both circumstances are important uses of the evade police provisions, the central aim of the provisions is to reduce the number of police pursuits. Therefore, the key question is whether police are using the provisions instead of commencing a pursuit when the policy permits a pursuit.

To examine this we analysed the circumstances of a random sample of evade police offences ($n = 300$) — in particular, the reason for the attempted police intercept, whether they were pursuit or non-pursuit matters, and whether or not a pursuit occurred.

Importantly, we found that 74 per cent of ‘pursuit matters’ involved a pursuit — that is, when the policy permitted police to pursue a driver ($n = 97$), police generally chose to pursue ($n = 72$). In other words, when the evade police provisions are used for pursuit matters they are typically applied *after* a pursuit. This finding conflicts with the general view in the QPS that there is now a non-pursuit culture. In addition, this strongly indicates that police are not currently using the evade provisions as a genuine alternative to pursuit.

Data from our interviews of police confirmed this. When asked about the situations in which they use the evade police provisions, the officers distinguished between pursuit and non-pursuit matters. If the offence committed was a pursuit matter, most stated that they did not consider the evade police offence as an alternative to pursuit.

I’m not saying I wouldn’t use the provisions, I’m just saying the use of them wouldn’t necessarily be at the forefront of making a decision on pursuing. (QPS officer)

25 Injuries: $F(2,16) = 0.805$, $p = .464$; Property damage: $F(2,16) = 1.489$, $p = .255$.

26 Scenarios 1 and 2 in Figure 1.1 (page 3) show how the provisions can be used as an alternative when the policy permits pursuit. Scenario 3 shows how the provisions can be used when the policy does not permit pursuit.

Similarly, when police were asked about a hypothetical scenario that may permit a pursuit under the policy, none of the officers interviewed indicated that they would rely on the evade police provisions instead of commencing a pursuit (see Appendixes 2 and 3).

Police told us that the provisions only become a factor in decision making about pursuits when:

- the policy does not permit a pursuit (for example, a traffic offence or another simple offence)
- the risk of pursuit is assessed to be too high, even though pursuit may be permitted
- the officer is directed not to pursue or to abandon a pursuit.

In summary, police most commonly use the evade police provisions in the context of non-pursuit matters (65%). When the provisions are used for pursuit matters (35%) — those more serious matters such as unlawful use of a motor vehicle, dangerous driving or another type of indictable offence — they are typically applied *after* a pursuit.

In Chapter 5 we draw together the key findings of our review, including the factors that are contributing to the under-use of the evade police provisions by police.

KEY FINDINGS AND IMPLICATIONS FOR POLICY

This final chapter draws together the key findings of our review of police use of the 2006 evade police provisions and makes recommendations that aim to address the legislative, policy and training deficiencies identified.

This chapter also considers two matters referred to the CMC by the State Coroner in his 2010 findings on the QPS pursuit policy — the merits of mandatory licence disqualification and more flexible vehicle impoundment arrangements for the vehicles of evade police offenders.

Summary of key findings

1. *There has been a substantial decrease in the rate of police pursuits since 2006.*

The period since the evade police provisions were introduced in 2006 has seen a substantial and sustained decline in the rate of police pursuits, which has reduced the associated risks and improved community safety. It is likely that these provisions and the associated QPS restrictive pursuit policy were important contributors to this decrease, along with other concurrent factors including:

- 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 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 contributing to a range of positive outcomes in relation to evade police offenders.*

Since the introduction of the provisions:

- the proportion of pursuits that were abandoned increased
- the proportion of abandoned pursuits that were later solved increased from 40 per cent to 69 per cent
- over 80 per cent of evade police offences that were solved proceeded to court
- over 90 per cent of matters that proceeded to court resulted in a guilty outcome (the defendant pleaded or was found guilty).

These findings indicate that the evade police powers are an important tool in apprehending and successfully prosecuting drivers who evade police.

3. *The evade police provisions have limited application in some circumstances.*

Despite these positive outcomes, it is important to acknowledge that the evade police provisions cannot be applied in situations where the car is stolen, is unregistered or has false or stolen registration plates. This is 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. When the registered owner cannot be identified, or is genuinely unable to assist police inquiries, police must rely on traditional investigation strategies to identify the offending driver.

In these circumstances, the evade police reverse onus (or deeming) provisions — which place the onus on the owner to prove the identity of the driver — are not available to police and the prosecution must prove the identity of the driver beyond a reasonable doubt. Consequently, police are very unlikely to be able to successfully prosecute these types of cases.

While we do not have figures of the actual proportion of offences in this category (as they largely go unreported), it is likely that the proportion is not insignificant.

4. *Police are not using the provisions as a genuine alternative to pursuit.*

The evade police provisions are primarily used for matters that do not permit a pursuit under the policy, or when police have abandoned a pursuit. This is a legitimate use of the provisions as a support for a restrictive pursuit policy. However, use of the provisions in these circumstances will not bring about a further reduction in pursuits.

If pursuits are to be further reduced, police must use the provisions instead of a pursuit, even if a pursuit is permitted by the policy. Currently, in most cases (74%) police choose to commence a pursuit when permitted to by the policy. This is despite a general view within the QPS that there is now a non-pursuit culture. Furthermore, operational police specifically indicated that the provisions are not a key factor in their decision whether or not to commence a pursuit but are rather an afterthought.

We believe that a number of related factors are contributing to this under-use of the provisions by police:

- a number of legislative weaknesses that limit the effectiveness of the provisions as an investigation and prosecution tool
- inadequate guidance on the intended role of the evade police provisions in reducing pursuits in the PPRA and QPS policy, coupled with a lack of police training in using the investigative powers provided
- police dissatisfaction with court outcomes.

As a result of these factors, police appear to be losing confidence in the provisions.

a. A number of legislative weaknesses limit the effectiveness of the provisions as an investigation and prosecution tool for police

We identified a number of legislative limitations, particularly in relation to the evasion offence notice and owner onus provisions, which limit the effectiveness of the evade police powers as a police investigation and prosecution tool. Currently, the legislation allows vehicle owners to claim they were not the driver at the time of the offence — either by way of a declaration or in court — without providing any information that may assist police inquiries to identify the actual driver. This substantially weakens the onus on the vehicle owner and undermines the intent of the legislation to assist police to identify offending drivers. It also means that, in some cases, offending drivers can easily avoid prosecution.

The CMC believes that through addressing these legislative deficiencies, where possible, police will be better able to identify and prosecute offending drivers. We are confident that these legislative changes will not infringe on citizens' rights.

b. The role of the evade police provisions in reducing pursuits is not clearly articulated or supported in the PPRA or in QPS policy and training

We believe that the QPS has not sufficiently emphasised in its policy and training the intended role of the evade police provisions as a critical support for the restrictive pursuit policy. Furthermore, there is virtually no training for police in using the evade police investigative powers. This will have limited the understanding of police about when and how the provisions should be used. In response, we make a number of recommendations that aim to improve the representation of the evade police provisions in the policy and training frameworks, including requiring police to consider use of the evade police provisions in their initial decision making about pursuits.

There is also an absence of guidance within the provisions themselves about how they aim to improve community safety by reducing the need for police to pursue. We believe that articulating the link between the evade police provisions, police pursuits and community safety would particularly be of benefit to magistrates.

c. *Police are dissatisfied with court outcomes*

Police strongly believe that court penalties for evade police offences do not reflect the dangerousness of the offending behaviour, the risk to the community, or the intent of the legislation. In essence, some police do not believe that the potential outcomes justify the time and effort required to investigate and prosecute an evade police offence. As a result, they may not always follow up on offences. This would help to explain the consistent decline in the rate of solved evade police offences observed since the provisions were first introduced.

Penalties are rightfully a matter for the courts. Under the current legislative regime, the courts do use the options available to them, including licence disqualification, vehicle impoundment, fines and imprisonment. In addition, as noted in Chapter 3, evade police offending ranges from simple non-compliance with a police direction to stop, to deliberate attempts to outrun police which endanger other community members. In light of the significant penalties available to the courts and the range of behaviour that constitutes an evade police offence, we suggest it is the responsibility of the prosecutors to make the connection between the evade police offence, police pursuits and threats to community safety in presenting their case to the court. An appeal should be considered where an individual penalty is seen as inadequate.

Recommendations

While we recognise that the evade police provisions are not a solution for all matters, they can be an effective alternative to pursuit in a range of situations.

Our recommendations support the intent of Parliament to reduce pursuits by providing police with tools to assist them to identify offending drivers without pursuing them, thereby protecting community safety. We make a series of recommendations that focus on two broad areas:

- improving the representation of the evade police provisions as an alternative to pursuit in the PPRA and in QPS policy and training
- improving the evade police provisions as a tool for investigating evade police offences and prosecuting offending drivers.

1. Improving the representation of the evade police provisions as an alternative to pursuit in the PPRA and in QPS policy and training

Clarify the purpose of evade within the legislation

Legislation sometimes includes explanatory clauses to provide direction, purpose and clarity to specific provisions. Section 746 within Chapter 22 of the PPRA explains why police may issue a direction for drivers to stop. It also outlines the three central aspects of the evade police legislation:

- provides for an evade police offence
- provides police with tools to investigate offences
- enables the court to order the impoundment or forfeiture of a vehicle after the court finds the driver guilty of an evade police offence.

However, at present, section 746 fails to explain the central aim of the evade police provisions — to reduce police pursuits. While the explanatory notes to the enacting bill clearly articulated the link between the provisions, pursuits and community safety, this explanation did not form part of the Act.²⁷

Amending the explanatory clause to clarify the rationale for the evade police provisions would provide some guidance to the courts. At the very least the section should include an explanation of:

- the aim of the provisions to improve community safety by reducing the need for police to pursue
- why police need to rely on non-traditional investigative powers, such as the evasion offence notice and reverse onus provisions, when they allow a fleeing vehicle to ‘escape’ and therefore cannot positively identify the driver at the time of the incident.

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.**

Consider changing the short title of the offence provision

As noted in Chapter 3, we found evidence of confusion among some police between the evade police offence and the similar s. 60 PPRA ticketable offence ‘Fail to stop for prescribed purposes’. Specifically, there is confusion about:

- the different elements of the offences
- the circumstances in which it may be appropriate to use each offence.

The similarity in the short title of the different offence provisions contributes to the confusion:

Section 60 — Fail to stop for prescribed purposes

Section 754 — Fail to stop motor vehicle (the evade police offence).

We suggest changing the short title of the evade police offence provision [s. 754] as one of a number of strategies to reduce this confusion (see also the discussion on training below). Preferably the short title would be more consistent with the title of Chapter 22 (Provisions about evading police officers) and therefore better reflect the actual offending behaviour.

Any proposed change would require careful consideration in case it affected the interpretation of the offence provision itself [s. 756(2)]. Therefore, we propose that the QPS, in conjunction with other relevant agencies, explore the feasibility of changing the short title of the offence provision. Those agencies may include the Department of the Premier and Cabinet, the Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.

²⁷ The enacting bill was the Police Powers and Responsibilities Act and Other Acts Amendment Bill 2006.

Difference between offences

Fail to stop for prescribed purposes (s. 60, PPRA)

- No specific manner for the direction to stop — it can be from a vehicle or by an officer on foot (possibly in a stationary position on the road or roadside).
- Can only be applied for specific prescribed purposes — primarily the enforcement of driving or vehicle-related offences (including drink driving).

Fail to stop motor vehicle (s. 754 PPRA) (evade police offence)

- Must be a vehicle-to-vehicle direction to stop.
- Applies to the exercise by police of a power under any Act.

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.

Improve the representation of the evade police provisions in QPS policy

As explained in Chapter 2, the CMC has a number of concerns about the way in which the QPS has operationalised the evade police provisions within policy. In particular:

- the philosophical shift from pursuits to other methods of apprehension is not supported by guidance on alternative strategies
- the pursuit policy does not require police to consider whether the evade police provisions can be used before they decide whether to pursue
- the policy framework is fragmented, with the rationale for the provisions embedded in the pursuit policy in the Operational Procedures Manual (OPM) and guidance on using them detailed in the Traffic Manual.

From the CMC's perspective the critical issue is that the QPS policy framework should adequately guide police decision making about pursuits by:

- explaining the rationale for the evade police provisions early within the pursuit policy
- clearly identifying the range of alternative strategies for apprehending offenders, including the evade police provisions²⁸
- requiring police to consider whether the evade police provisions can be used before they decide whether or not to commence a pursuit
- more effectively referring officers to policies and procedures for using the evade police provisions where appropriate.

The QPS is revising existing pursuit training products to ensure that training supports the further restrictions to the pursuit policy scheduled to be implemented in December 2011.

28 Other options include using the s. 60 PPRA 'fail to stop' ticketable 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.**

Improve training on using the evade police provisions

Training on the provisions is embedded in the police pursuits training, but as noted in Chapter 2, very little specific training in them at a corporate level and virtually none on using the investigative powers provided. In addition, none of the training materials provide guidance for police on the different elements of a *fail to stop* and *evade police* offence and when it may be appropriate to use one or the other. This is despite the evidence, as noted in Chapter 3, of confusion about the differences between the offences.

There was a lot of discussion among police in our focus groups about what investigation strategies they found successful or unsuccessful in particular situations. We don't underestimate the importance of this kind of informal information sharing as a valuable education tool. However, we believe there should be better formal educational resources to emphasise the evade police provisions as an option to consider before commencing a pursuit, and to highlight strategies to assist investigations into evade police offences.

The QPS is revising the current suite of training products on pursuits to support the implementation of the more restrictive pursuit policy later in 2011. We understand that the Service is examining the issues we have raised in this context.

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.**

Establish ongoing external monitoring of police pursuits

Although they are relatively infrequent events, pursuits remain a very high-risk area of policing. Despite a substantial reduction in pursuits over the last decade and a general view within the QPS that there is now a non-pursuit culture, we found that police generally choose to pursue when the policy permits them to do so. As noted earlier in this chapter, if pursuits are to be further reduced, police must make greater use of the evade police provisions *instead* of a pursuit even when pursuit is permitted by the policy. We also found evidence that official QPS data underestimate the actual number of pursuits that occur each year. These factors suggest that continued external monitoring of police pursuits is warranted.

Consistent with this, we recommend that the QPS (a) provide an annual report on police pursuits to the CMC and (b) publicly report on the number of police pursuits conducted each year in the QPS Annual Statistical Review.

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.**

2. Improving the evade police provisions as a tool for investigating evade police offences and prosecuting offending drivers

Improve the ability of police to identify offending drivers

Because the provisions encourage police to allow a fleeing vehicle to ‘escape’ to avoid further endangering community safety, Parliament put the onus on the owner of that vehicle to provide police with information (by way of statutory declaration) to help in their investigation (s. 755). This was based on the assumption that the owner is best placed to know who has access to their vehicle and when and how it is used. If the owner (or subsequent nominated person) refuses or neglects to provide a declaration in response to an evasion offence notice, s. 756(2) provides that they are deemed to be the driver for the offence. As a safeguard for reversing the burden of proof, s. 756(4) gives the defendant an opportunity to rebut the deeming provision by proving, to the civil standard, but that they could not have been the driver at the time of the offence.

Deeming and rebuttal provisions

The **deeming** (or owner onus) provision — Section 756(2) — provides that the owner or nominated person is taken (or deemed) to be the driver even though the actual offender may have been someone else. As we explained in Chapter 2, this is a reverse onus provision.

The **rebuttal** provision — Section 756(4) — provides a defence for a person charged under the deeming provision to prove, on the balance of probabilities, that they were not the driver of the vehicle at the time the offence happened.

Under s. 755 an owner or nominated person is only required to submit a declaration in response to an evasion offence notice. The 'owner onus' provision is triggered only if they fail to provide a declaration. Consequently, there is no requirement, and arguably little incentive, for an owner to provide *useful or credible* information to help police identify an offending driver. Furthermore, an owner (or nominated person) who is prosecuted for an offence under the deeming provision can rebut it, to the civil standard of proof, even if they haven't previously given police any help to identify the driver. In our view this substantially weakens the onus on the vehicle owner and undermines the intent of the legislation to assist police to identify offending drivers.

However, in seeking to strengthen this element of the legislation, caution must be exercised to avoid unduly infringing the legal rights of vehicle owners and subsequent nominated persons. We therefore recommend amendments to two key aspects of the legislation:

- being more prescriptive about the types of information an owner is required to provide to police if they claim that they were not driving the vehicle at the time of the evade incident (the declaration — s. 747)
- preventing an owner charged with an offence under the deeming provision from using the rebuttal provision (s. 756(4)) to claim they could not have been the driver, unless they have made a reasonable effort to assist police inquiries to identify the driver.

Tighten the requirements of a declaration

Section 755 allows police to serve an evasion offence notice on the registered owner of the vehicle (in the first instance) if it may help in the investigation of an evade police offence. The registered owner (or subsequent nominated person) is required to respond to the notice, by way of a statutory declaration, within four business days or risk facing prosecution for the offence themselves. The requirements of a declaration are specified in s. 747 of the Act. Essentially, as noted in Chapter 2, the owner can inform police:

- a. of the name of the person they believe committed the offence (the nominated person)
- b. that the vehicle was being illegally used when the offence happened
- c. that they do not know who was driving the vehicle at the time of the offence, and the nature of any inquiries they have made to identify the driver
- d. that the vehicle was sold before the offence, and when and to whom it was sold.

Being more specific about the nature of the information that must be provided in a declaration may improve compliance by some owners and therefore assist police investigations. In particular, owners who claim not to know who was driving the vehicle at the time of the offence (s. 747, subsections b and c) should be required to provide police with information about:

- who has access to the vehicle
- their frequency of use
- whether the vehicle is used for business or private purposes.

This is basic information that is within the knowledge of every responsible vehicle owner. It is also essential information to assist a police investigation to identify an offending driver.

The nature of this additional information is consistent with the *Transport Operations (Road Use Management) Act 1995* (TORUM) provisions for camera-detected traffic offences.²⁹ However, the TORUM places an onus on the vehicle owner to make proper inquiries to ascertain the name and address of the person in charge of the vehicle at the time of the traffic infringement (essentially to *investigate* an offence). As one submission to our review noted, it would not be appropriate to place similar obligations on the owner of a vehicle involved in an evade police offence because of the more serious potential sanction for the evade police offence (Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd 2010). Rather, the obligation should be to provide

29 Section 114 of the TORUM.

information that owners would reasonably be expected to know to enable police to properly investigate an offence. This is also consistent with the intent of the legislation in providing investigative tools for police.

The proposed amendments to the definition of a declaration will not necessarily improve the quality or credibility of the information provided. If police believe a declaration lacks credibility, they have the option of conducting further investigations to negate the declarant's claims. If, after further investigation, there is evidence that the information in the declaration is not correct, police have several options:

- If there is sufficient evidence, charge the declarant with the evade police offence and allow the court to assess the credibility of the information in the declaration by weighing the available evidence. Of course, the prosecution would not be able to rely on the deeming provision in these cases and the burden would shift back to the prosecution to prove the identity of the driver beyond a reasonable doubt. Therefore, we accept this often will not be a realistic option for police.
- Consider charging the declarant with contravening a police direction under s. 791 of the PPRA (40 penalty units or \$4000). This will be an option if the definition of a declaration is amended to state that a declaration 'must contain' particular information and the resulting declaration does not contain the information required.
- Consider charging the declarant with obstructing police under s. 790 of the PPRA (40 penalty units — \$4000 or six months imprisonment).
- Consider charging the declarant with a false declaration under s. 194 of the Criminal Code (three years imprisonment).

It would be appropriate to provide guidance to police, and vehicle owners, about the potential liability for these offences in an editorial note within s. 755 of the PPRA (see Recommendation 9).

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.**

Limit the use of the rebuttal provision

A second method of strengthening the obligation of an owner (or nominated person) is to preclude them from using the s. 756(4) rebuttal provision unless they can demonstrate they have made a reasonable effort to provide information to assist a police investigation to identify the actual offending driver. In other words, a defendant would not be entitled to claim they could not have been the driver without having tried to assist police inquiries to reveal the actual driver. Furthermore, to prevent defendants from wasting court time and resources, the onus would be on the owner to provide the required assistance within the 14-day period we propose to allow for providing a declaration (see Recommendation 8).

We believe that limiting the use of the rebuttal provision will strengthen the onus on vehicle owners and limit the opportunity for defendants to waste prosecution and court time and resources. This recommendation appropriately balances reasonable law enforcement efforts with the rights of the accused.

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.

Extend the time allowed to provide a declaration

An owner or nominated person currently has four business days to provide a declaration in response to an evasion offence notice. Supporting Recommendations 6 and 7, we believe this period should be extended to 14 calendar days to ensure that people have adequate time to respond to the expanded declaration requirements and, if necessary, access to appropriate legal advice, including:

- the possible consequences of failing to provide a declaration
- the fact that they will not be entitled to rely on the s. 756(4) rebuttal provision unless they have tried to assist the police investigation into an offence.

We do not expect that this extension of time will interfere significantly with an evade police investigation.

Recommendation 8

To support Recommendation 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.

Provide editorial notes about other relevant offences

Police provided examples of cases where they were not able to proceed with a prosecution using the owner onus provision, even when the owner refused to provide a declaration as required (see case study opposite). This is most likely to be the case when it is evident to police that the owner could not have been the actual driver.

Although limiting the use of the rebuttal provision would technically allow police to prosecute an owner who failed to provide information to assist the police investigation but clearly could not have been the driver, this is contrary to the interests of justice. Indeed, police may actually breach guidelines concerning the decision to prosecute if they were to proceed with an evade police case in these circumstances (Office of the Director of Public Prosecutions 2011; QPS 2011, ss. 3.4.2–3).

A more appropriate option in this situation would be to charge the owner with one of two other PPRA offences for failing to provide a declaration — either contravening a police direction (s. 791) or obstructing police (s. 790). We think there is benefit in providing this type of guidance to police, and to support the provision of legal advice to vehicle owners, in an editorial note within s. 756 of the PPRA.

Finally, some police thought there should be a separate offence within Chapter 22 for failing to provide a declaration, for use in these situations. We don't agree. The existing 'contravene a police direction' and 'obstruct police' offences are available and appropriate in such situations.

Case study on the decision to prosecute

Police briefly observed a well-built male in his mid-20s with a bald head driving a vehicle which was speeding. Police attempted to intercept the vehicle, but it substantially increased speed and fled. Police were able to obtain the registration number, but did not pursue the vehicle, because the QPS policy does not permit pursuit for traffic offences. Police then attended the home of the registered owner of the vehicle and questioned her about the offence. The owner's son matched the description of the suspect, but police could not positively identify him as the driver as they were unable to get close enough to the vehicle at the time of the offence.

The owner told police that although she knew who had been driving the vehicle she would not identify the driver. She informally advised a police officer who knew her that she would not implicate her son in the offence. Police served the owner with an evasion offence notice which she failed to respond to. Police could not charge her with the evade police offence under the owner onus provisions as it was clear that she could not have been the driver. However, police charged the owner with contravening a police direction (s. 791 PPRA).

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.**

Clarify the numerous scenarios that constitute an evade police offence

When reviewing police records we identified a number of evade police offences that may not strictly meet the elements of the offence, but clearly fall within the intended scope of the legislation. They concern situations when a driver initially complies with the direction to stop, but before police can deal with them (or while police are dealing with them) the driver pulls back onto the road and flees, for example:

- Scenario 1 — Police have successfully intercepted a vehicle and interacted with the driver (for example, police have conducted an RBT or are conducting a registration and licence check). However, in the midst of the interaction the driver suddenly pulls back onto the road and speeds away.
- Scenario 2 — Police give a vehicle-to-vehicle direction to a driver to stop. The driver pulls over to the side of the road. The police officer exits the police vehicle and starts approaching the driver to talk to him. But, before the police officer reaches the vehicle, the driver pulls back onto the road and speeds away.

In both cases it is clear that the driver is seeking to evade police interception. Indeed, the second scenario could be interpreted as a deliberate strategy to wrong-foot police and create an opportunity to escape.

It is contrary to the intent of the legislation for police to be required to locate the vehicle again and issue a second vehicle-to-vehicle direction (which is then disobeyed) before police can use the evade police provisions. However, because of the current ambiguity in the legislation there is unlikely to be a consistent approach to these cases by magistrates.

The evade police provisions were designed to enable police to avoid or abandon a pursuit before the safety of any person is placed at risk. The driver in each of these scenarios sought to evade police interception and thereby placed the police officers in the position of having to decide whether or not to 'chase and locate' the fleeing vehicle in order to issue another direction to stop. We believe that both scenarios are consistent with the intent of Parliament in enacting the evade police provisions and should therefore, in the interests of community safety, be captured by the provisions.

We recommend that the legislation be clarified to remove any ambiguity. It may be possible to achieve this by inserting some clarifying examples in the offence section (s. 754), but it may also require amendment to the wording of the offence (s. 754(2)). The Office of the Queensland Parliamentary Counsel, with advice from the QPS, the Department of Justice and Attorney-General and the Department of the Premier and Cabinet, is best placed to advise on the most appropriate legislative remedy.

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 flees before the interaction with police is finalised.

Provide police with the power to seize or move a vehicle abandoned after being used in an evade police offence

When a vehicle is abandoned after the commission of an evade police offence, there is no specific provision in Chapter 22 of the PPRA to authorise a police officer to seize the vehicle to conduct further investigations. It is unclear whether s. 124 of the PPRA, which allows police to seize and move a vehicle for safe keeping for specific prescribed purposes, would extend to a police officer's authority to seize a vehicle for the purposes of investigating an evade police offence.

Our review of a sample of evade police offences confirmed that sometimes offending drivers abandon a vehicle, particularly a stolen vehicle, after fleeing from police. Consistent with the intent of Parliament to provide police with appropriate investigative tools, we recommend that the PPRA be amended to authorise a police officer to seize an abandoned vehicle to assist in the investigation of an evade police offence. The police officer would be required to:

- have a reasonable belief that the driver has committed an evade police offence, and
- reasonably suspect that the driver has abandoned the vehicle.

A provision clarifying who would be responsible for the associated towing and holding costs would also be required. Section 125A of the PPRA provides a reasonable model for dealing with this issue. It specifies that the Commissioner of Police may recover as a debt the moving expenses for a vehicle seized under s. 124 of the PPRA from:

- the person who was in control of the vehicle immediately before it was seized or moved, or
- if that person is unknown, the registered owner of the vehicle, provided the vehicle was not being used without the owner's consent.

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.**

Clarify the definition of a vehicle owner

Where there is more than one owner of a vehicle, the first person on a certificate of registration is deemed to be the owner, but the definition of a vehicle owner contains no specific reference to joint or subsequent named owners (s. 747). Because an evade police investigation relies on police being able to serve an evasion offence notice on the registered owner of the vehicle in the first instance, this may be a problem. This means that, if the first named owner is not available to accept service of an evasion offence notice because, for example, the person is overseas or incapacitated, the police investigation cannot proceed any further.

Therefore, we believe legislative amendment is required to clarify this situation to ensure that police investigations are not hampered because the first named vehicle owner is unavailable at the time an evasion offence notice is served.

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.

Establish an evidentiary provision to streamline prosecutions

Prosecuting an evade police offence requires a significant number of witnesses, particularly compared with some other offence types, such as a dangerous operation of a vehicle or drink driving offence. At the very least the following police witnesses are required to provide evidence in a court proceeding:

- the officer involved in the attempted intercept who issued the direction to stop
- the officer who served the evasion offence notice on the defendant
- the officer at the police station who received a statutory declaration in response to a notice
- the officer who interviewed the defendant, if an interview took place.

In some cases the same officer (the investigating officer) will have issued the direction to stop, served the evasion offence notice and, if required, interviewed the defendant. However, this will not always be the case. The registered owner of the vehicle may not live in the same police location where the evade incident occurred. The police rostering system and operational duties also mean it is unlikely that the officer who issued the evasion offence notice will be at the police station when an owner (or nominated person) presents, which means that another officer will need to take receipt of the declaration.

The fact of service of an evasion offence notice and the receipt of a resulting declaration are matters that, depending on the issues before the court, are required to be proved. However, these types of matters are generally not open to contest and are often the subject of a statutory provision that facilitates their proof in legal proceedings. A similar provision is found in s. 757(1) PPRA that makes a statement of vehicle ownership, by way of certificate of the Commissioner of Police, evidence of that matter.

We believe that a similar provision should be introduced to recognise the formal details of the fact of service of the evasion offence notice and the receipt of the declaration as evidentiary in their own right. This would reduce the number of police witnesses required and associated court time and inconvenience, without any significant detriment to the accused's rights.

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.**

Matters referred by the State Coroner

When the State Coroner delivered his findings on the QPS pursuit policy in March 2010, he referred two matters to the CMC to consider in this review of the evade police provisions:

- the merits of mandatory licence disqualification for evade police offenders
- the merits of more flexible vehicle impoundment arrangements.

The context for the coroner's recommendations was the QPS's concern about the adequacy of actual penalties for the evade police offence. As noted in Chapter 3, the most common penalty is a \$300 fine. The Coroner commented:

Of course every case must be judged on its unique circumstances and police have the right to appeal if they consider a sentence does not adequately reflect the seriousness of the offence. Nevertheless, when one considers the great danger created by motorists who fail to obey police directions to stop; the significant number of procedural changes police have undertaken to reduce the number of pursuits; and the public interest in there being an effective alternative to pursuits, it is easy to understand their frustration. (Office of the State Coroner 2010, p. 30)

The two issues referred by the State Coroner are complex. There are valid arguments both for and against mandatory licence disqualification and more flexible vehicle impoundment arrangements for evade police offenders. To inform our decision, we drew on data collected for our review, the perspectives of key stakeholders and previous research. After carefully weighing the arguments and the available evidence we have not made recommendations regarding mandatory licence disqualification or vehicle impoundment.

Mandatory licence disqualification

The QPS, Department of Transport and Main Roads and Queensland Police Union of Employees support the notion of mandatory licence disqualification in relation to evade police offenders on the basis of the following arguments:

- Evade police offenders put other road users at risk of unacceptable harm, rendering the offence similar to dangerous operation of vehicle (s. 328A of the Criminal Code), which has mandatory licence disqualification as a sanction.
- Evade police offending is arguably more serious than driving while disqualified, which attracts a mandatory licence disqualification period of between two and five years. On this basis, the sanction for the evade police offence should be at least equivalent to the sanction for driving while disqualified.
- Research indicates that mandatory licence disqualification can be an effective deterrent for some drivers and reduces the risk to other road users during the period of disqualification. This is particularly the case for drink drivers (Department of Transport and Main Roads 2010; Watson et al. 2010).

On the other hand, Legal Aid, the Aboriginal and Torres Strait Islander Legal Service and the Chief Magistrate were opposed to mandatory licence disqualification. Based on their submissions and other data we identified a range of factors that indicate that mandatory licence disqualification is unlikely to be an effective sanction for evade police offenders and may have other adverse consequences. These arguments are explained below.

- Most evade police offenders are already unlicensed or driving under a licence suspension or disqualification. Only one third of our random sample of evade police offenders has a valid driver licence at the time of the offence(s). This indicates that:
 - the majority of these offenders may already face sanctions for driving without a current licence
 - Licence disqualification for an evade police offence is unlikely to prevent this group of offenders from continuing to drive.

- Driving under a licence disqualification is likely to provide an additional incentive for convicted evade offenders to flee if threatened with police interception again. Given that research shows that offenders who have previously been involved in pursuits are willing to take more extreme risks to avoid capture, these drivers would present a high risk to community safety during a subsequent police attempt to intercept them. This would clearly be contrary to the intent of the provisions to improve community safety.
- Research indicates that licence disqualification is most effective for drivers without a criminal record, first-time offenders, women and non-Indigenous drivers (Ferrante 2003). This is not consistent with the evade police offending profile (as outlined in Chapter 3) and indicates that licence disqualification is not likely to have a powerful deterrent effect on the type of drivers who evade police.
- There is considerable variation in the actions that constitute an evade police offence. In some cases, drivers simply fail to comply with the direction as soon as reasonably practicable (simple non-compliance). In other cases, drivers deliberately flee from police, often at high speed, thereby endangering the safety of other community members. We consider that, for actions of simple non-compliance with a police direction to stop, licence disqualification is a disproportionately severe penalty.
- The court already has the discretion to disqualify an offender from holding or obtaining a driver licence for vehicle or driving-related offences.³⁰ Analysis of courts data indicate that magistrates are already ordering licence disqualification for evade police offenders in around 20 per cent of cases.
- Mandatory licence disqualification would have a net-widening effect by exposing offenders to further sanctions for disqualified driving.

On balance, there is no compelling evidence that licence disqualification would be effective either as a deterrent or an incapacitation strategy for evade police offenders. More importantly, there is a risk that a mandatory penalty may act as an incentive for offending drivers to take more extreme risks to avoid police interception and, as a result, further endanger community safety. Consequently, we do not believe it would be effective or appropriate to fetter the court's sentencing discretion in this regard.

More flexible vehicle impoundment arrangements

The State Coroner also asked us to consider the merits of 'more flexible vehicle impoundment arrangements [for evade police offenders] to bolster the deterrence effect of the offence' (Office of the State Coroner 2010, p. 31). We interpreted 'more flexible' to mean arrangements more consistent with Chapter 4 of the PPRA, particularly the option to immediately impound a vehicle involved in an evade police offence for 48 hours. Chapter 4 of the PPRA deals with vehicle impoundment and forfeiture for 'hooning offences', a range of repeat driving and vehicle-related (Type 2) offences, and excessive motorbike noise provisions.³¹ The impoundment and forfeiture provisions for evade police offences are located in Chapter 22 alongside the evade police investigation and prosecution powers.

There are two key differences between the vehicle impoundment and forfeiture regimes in Chapters 4 and 22 of the PPRA:

- Chapter 4 (Type 2 offences and hooning) provides police with the power to seize a vehicle involved in a relevant offence for an immediate 48-hour period and then to apply to the court for an order to impound the vehicle for another three months.

30 Section 187 of the *Penalties and Sentences Act 1992*.

31 The Type 2 vehicle impoundment and forfeiture regime relates to the following repeat driving and vehicle-related offences: drink driving (0.15% and above) or failing to supply a specimen of breath or blood; unlicensed or disqualified driving, or driving under a 24-hour suspension; and driving an unregistered and uninsured vehicle, or an illegally modified vehicle.

- The evade police impoundment and forfeiture regime is post-conviction only, presumably because the identity of the driver may be in question. That is, police do not currently have the flexibility to impound a vehicle involved in an evade police offence for an initial 48-hour period after an evade police offence has been committed. This led the State Coroner to note that the evade police impoundment provisions are 'less timely'.

A practical effect of the different regimes is that police can immediately impound a vehicle used in a relevant Chapter 4 offence regardless of who the driver was. However, when the court considers an application for a three-month impoundment order (under in Chapter 4 and Chapter 22), it is a defence for the vehicle owner to prove that the offence happened without their knowledge and consent.

The QPS and the Aboriginal and Torres Strait Islander Legal Service indicated their in-principle support for 'more flexible and consistent' vehicle impoundment arrangements, and the Queensland Police Union of Employees supports mandatory vehicle impoundment after an evade police offence. They provided the following arguments:

- The evade police offence endangers community members just as much as offences for which immediate vehicle impoundment is possible, such as disqualified driving or high level drink driving.
- Evading police is arguably more serious than some hooning offences for which immediate vehicle impoundment is possible (for instance, 'operating their vehicle in a way that creates unnecessary smoke and noise'). On this basis, the sanction for the evade police offence should be at least equivalent to the sanction for some types of hooning offences.

However, the review identified persuasive arguments against providing police with the discretion to apply a 48-hour period of impoundment for vehicles involved in evade police offences:

- Police we interviewed reported that a substantial number of evade police offences are committed in a stolen vehicle. While under-reporting makes it impossible to determine how many evade police offences involve a stolen vehicle, we know that 40 per cent of evade police offenders have been convicted of stealing or unlawfully using a vehicle at some point in their life. Impounding a vehicle used unlawfully to commit an evade police offence would not serve to punish, deter, incapacitate or inconvenience the offending driver.
- About half the drivers who evade police have committed other offences. If the driver is evading police to escape detection and punishment for an offence that carries a more significant penalty, we doubt that impoundment for the evade police offence would have a substantial deterrent effect.
- Research suggests that the threat of immediate impoundment could be an incentive to take more risks to avoid police capture (which could further endanger other road users), rather than act as a deterrent to further offending. This would be contrary to the intent of the evade police provisions.
- There is a range of practical difficulties with applying a 48-hour period of impoundment for evading police in a fair and effective manner because of the nature of the offence.

In particular:

- The penalty would be applied primarily to drivers who eventually stop for police after initially failing to stop or when police successfully intercept the vehicle at a later stage. Consequently, immediate 48-hour impoundment may serve to punish more quickly and severely drivers who take fewer risks or who later stop for police, while drivers who 'successfully' evade police would avoid impoundment.
- Actions that constitute an evade police offence range from simple non-compliance with a police direction to stop to those that significantly endanger community safety. Providing police with the discretion to determine at what point the driving behaviour was serious enough to warrant immediate impoundment would lead to inconsistencies in how the penalty is applied.

Some evade police offenders are also charged with unlicensed or disqualified driving and other Type 2 offences as part of an evade incident. As a result, these offenders are already captured by the Chapter 4 impoundment regime. This means that police can impound the vehicle for an immediate 48-hour period and apply to the court for a further three-month impoundment order for these other driving and vehicle-related offences.

On balance, we consider that providing police with the discretion to impound a vehicle used in an evade police offence for an initial 48-hour period would not significantly bolster the deterrent effect of the offence. Any marginal positive effect might be outweighed by negative impacts. In particular, there is a risk of further endangering community safety by giving offenders an additional incentive to flee. Therefore, we do not recommend more flexible vehicle impoundment arrangements for these offenders.

CONCLUSION

The introduction of the evade police provisions by the Queensland Government in 2006 was an important part of a sustained effort by the government and the QPS over the last five years to reduce police pursuit numbers and the associated risks to community safety in Queensland.

This review of the evade police provisions by the CMC, undertaken in response to a requirement in the legislation, has found that the provisions and the associated QPS restrictive pursuit policy have contributed to a substantial and sustained decline in police pursuit numbers since 2006. This is a good outcome for community safety.

While we recognise that the provisions are not a solution in all circumstances, they can be an effective alternative to police pursuit in a range of situations. This is evidenced by several factors identified in the review — that the number of pursuits that are abandoned has increased, that police are more likely to identify an offending driver after a pursuit has been abandoned, and that there is a relatively high rate of successful prosecutions for matters that proceed to court.

Nevertheless, the review also identified that police are not using the provisions as a genuine alternative to pursuit — that is, when the QPS policy permits police to pursue, they generally choose to do so. Factors contributing to this under-use of the provisions include police dissatisfaction with court outcomes, limitations of the QPS policy and training framework, and legislative weaknesses that are currently limiting the effectiveness of the provisions as an investigation and prosecution tool.

In the CMC's view, the recommendations that have been developed in response to these findings will make the evade police provisions a more effective investigation and prosecution tool in those situations where they can be applied. Coupled with improvements to the police policy and training framework, this will go some way to ensuring that the provisions are more often used instead of pursuits, as intended by Parliament.

The CMC is confident that the recommended improvements to the provisions and the further restrictions to the QPS pursuit policy scheduled for December 2011 will continue to reduce the number of police pursuits in Queensland and, as a result, improve community safety.

APPENDIX 1: Timeline of key events

April 1998	The CJC publishes an analysis of all pursuits resulting in a death or serious injury over five years from 1992–93 to 1996–97: <i>Police pursuits in Queensland resulting in death or injury</i> . The CJC recommends that the QPS review and tighten the criteria for initiating and terminating a pursuit and improve the recording and monitoring of police pursuits.
January 2000	The QPS introduces a requirement for all police pursuits to be reported by significant event message (Commissioner’s Circular no. 14/99). Previously only high-speed pursuits or those resulting in injury or death to any person or damage to property needed to be officially reported.
November 2003	The CMC publishes <i>Police pursuits: a law enforcement and public safety issue for Queensland</i> . The report recommends that the QPS adopt a more restrictive pursuit policy, at a minimum by prohibiting pursuits for traffic offences.
October 2004	The State Coroner in <i>Findings of the inquest into the deaths of Alan Paul Toohey and Andrew Tasman Hill (Coen inquest)</i> recommends that the QPS, in conjunction with the CMC, implement and evaluate a trial of a more restrictive pursuit policy prohibiting pursuits for ‘minor offences’.
Mid-2005	The QPS commences a major review of its pursuit policy.
May 2006	The QPS Senior Executive Conference endorses the new restrictive policy approach (three categories of pursuit matters and a separate category of non-pursuit matters).
21 July 2006	Evade police provisions commence.
1 October 2006	The QPS commences an initial trial of the restrictive pursuit policy in two QPS districts.
30 September 2007	The QPS concludes the initial trial of the restrictive pursuit policy.
1 January 2008	QPS commences a 12-month statewide trial of the restrictive pursuit policy after an evaluation of the initial trial.
28 July 2008	The State Coroner begins the first of nine inquests into 10 pursuit-related deaths that occurred between June 2005 and July 2008.
December 2008	The QPS extends the statewide trial of the restrictive policy pending the outcome of a series of inquests into pursuit-related deaths and the QPS pursuit policy.
30 November 2009	‘Resumption’ inquest into the QPS pursuit policy commences.
March 2010	The State Coroner, in his findings arising from the resumption inquest into police pursuits, recommends further restrictions to the QPS pursuit policy.
December 2010	The Queensland Government announces that the QPS will further restrict the pursuit policy from December 2011.

APPENDIX 2: Notes on the types, sources and limitations of data used

Data types and sources

Our review drew on 12 data sources to answer the four research questions:

- focus groups with police officers
- interviews with police officers
- data on reported evade police offences
- data on police pursuits
- data on 'fail to stop' (PPRA, s. 60) traffic infringement notices
- data on traffic and criminal histories of evade police offenders
- data on licence level and status of offenders for each evade police offence
- data on court outcomes of evade police offences
- courts data on vehicles impounded as a result of a conviction for an evade police offence
- State Penalties Enforcement Register (SPER) data on outstanding fines
- consultations with stakeholders
- submissions from stakeholders

Table A2.1 indicates how we used our various data sources to answer each of our four research questions.

Table A2.1: Research questions and data sources

<i>How are the evade police provisions being used by police?</i>	<ul style="list-style-type: none"> • Evade police offences and offender information • Traffic and criminal histories of evade police offenders • Licence level and status of evade police offenders • Police interviews and focus groups
<i>How are evade police offences being dealt with by the courts?</i>	<ul style="list-style-type: none"> • Evade police offence court outcomes • Police interviews and focus groups • Stakeholder consultations and submissions
<i>What impact have the evade police provisions had on the number of police pursuits?</i>	<ul style="list-style-type: none"> • Evade police offences • Details of police pursuits (QPS) • Stakeholder consultations and submissions
<i>Are the evade police provisions a useful operational tool for investigating and prosecuting offenders?</i>	<ul style="list-style-type: none"> • Police interviews and focus groups • Legal analysis • Stakeholder consultations and submissions

Focus groups with police officers

The CMC facilitated five focus groups between 15 September and 20 October 2010. Overall, 54 police officers participated in focus groups. Personnel from the Centre for Accident Research and Road Safety — Queensland (CARRS-Q) and the QPS Pursuits Project Team were also present.

The focus groups involved operational police from the Traffic Branch and general duties officers as well as personnel from Brisbane's Police Communications Centre (who act as 'pursuit controllers'). The operational police and pursuit controllers participated in separate focus groups.

- Traffic Branch officers** Participated because of their familiarity with traffic and road safety matters and their high exposure to pursuits while patrolling.
- General duties officers** Participated because of their high exposure to pursuits while patrolling.
- Pursuit controllers** Participated because of their role in pursuits from another perspective.

The operational police focus groups comprised a combination of Traffic Branch officers and general duties officers, and a focus group was conducted in each of four regions — Metropolitan North Region, Metropolitan South Region, Southern Region and South Eastern Region. These regions were selected as they are the most populous regions, and so have the highest frequency of pursuits in the state. We believed that officers from these regions would therefore have the most frequent and varied experience of pursuits.

The officers from the Brisbane Police Communications Centre provided a different perspective on pursuits because of their role as pursuit controllers. Once advised of a pursuit, a senior officer in the relevant Police Communications Centre takes over from the primary pursuit crew as the pursuit controller. The detached role of the pursuit controller is a key aspect of the pursuit risk management framework. The pursuit controller is responsible, among other things, for:

- deciding whether the pursuit is permitted (pursuit categories) and whether it should continue (risk assessment)
- identifying and assigning other available resources to assist in the pursuit if appropriate
- directing the abandonment of the pursuit where appropriate.

Purpose of the focus groups

Focus groups were conducted as a precursor to interviews, and so were exploratory in nature. This exercise provided a better understanding of the police decision making relating to pursuits, police experiences and perceptions of pursuits, and police perceptions of the evade police offence. The information obtained in focus groups assisted our review in four ways:

- it helped us to develop the interview questions
- it helped us to focus on issues of specific concern to officers
- it provided us with some hypotheses to test in our data analysis
- it provided us with some context for the results we obtained.

Recruitment method

The QPS Pursuits Project Team organised the focus groups on our behalf. The team liaised with a regional representative for each group, generally the Regional Traffic Coordinator, who was responsible for selecting the officers involved. The regional representative was requested to ensure that there was a mix of Traffic Branch and general duties officers in the group — officers with a range of experience — and that the group included at least some officers with specific experience in the conduct of pursuits.

The session with the Brisbane Police Communications Centre was conducted as part of a quarterly management meeting and therefore included most officers from the centre.

Data collection method

The focus groups were semi-structured so as to cover a range of issues but also allow other themes to emerge from the focus groups. Overall, 11 themes were covered:

- attempting to intercept a vehicle
- assessing that the driver intends to avoid interception
- the decision about whether or not to commence a pursuit
- the transition to a pursuit and the pursuit itself
- what happens if you decide not to pursue
- investigation of drivers who fail to stop when lawfully directed
- court processes
- impoundment
- training in the evade police provisions
- effectiveness of the evade police provisions
- reporting obligations — hypothetical scenario.

The focus groups were held at the following locations:

- Police Headquarters, Brisbane
- Metropolitan South Region Headquarters, Brisbane
- Metropolitan North Region Headquarters, Brisbane
- Toowoomba Police Station (Southern Region)
- Coomera District Headquarters (South Eastern Region).

Notes about the focus group discussions were taken by CMC research officers and a CARRS-Q research officer and later combined.

Analytic approach

The themes and perspectives were listed, but very little analysis was conducted on focus group responses. No in-depth analysis was necessary for these responses, as the data were used to guide our understanding, or were used to confirm or add detail to interview findings.

Interviews with police officers

Fourteen general duties and traffic officers of the QPS were interviewed for our review. The Centre for Accident Research and Road Safety — Queensland (CARRS-Q) at the Queensland University of Technology was contracted to carry out the interviews, which were conducted by telephone between 9 November and 25 November 2010.

The CMC and CARRS-Q obtained ethics clearance for interviewing officers from both the Queensland University of Technology and the QPS Research Committee.

Purpose of the interviews

The interviews gathered participants' thoughts, experiences and recommendations relating to five themes:

- factors involved in the decision-making processes in relation to the evade police offence provisions and pursuits
- how useful the provisions are for investigating an evade police offence
- experiences when prosecuting
- suggestions for change — to improve the ability of police to investigate and prosecute evade police offences
- training issues.

Officers' responses contributed to our review in three ways. First, officers provided information that secondary data could not provide — for instance:

- Why aren't police using evade as an alternative to pursuit?
- How does police decision-making work in a hypothetical scenario of a pursuit matter where the attempt to intercept fails?
- In what circumstances is the evade police offence inappropriate, not suitable, or difficult to apply?
- In what circumstances might police fail to report an evade police offence?

Second, the responses provide some hypotheses to test in our data analysis and, finally, they provide some context for the results we obtained.

Recruitment method

We used a purposive sampling strategy for the interviews as we wanted to examine factors influencing an officer's decision-making process regarding pursuits as well as practical and procedural issues associated with different aspects of the evade police provisions. We selected a sample of eligible 'cases' based on six primary selection criteria relating to an event type (see below). We also considered factors such as an officer's experience with pursuits and the spread of cases across the QPS regions and between metropolitan and regional areas. There were two primary event types — pursuits, and attempted intercepts that did not transition into a pursuit. Within those broad categories, there were other more specific event types:

Pursuit events

1. Pursuit — offender identified/caught and charged with various offences, but not an evade police offence
2. Pursuit — offender identified/caught and issued with a 'fail to stop' infringement notice, where an evade police offence may have been appropriate
3. Pursuit — offender not immediately identified — evade police offence reported on QPRIME but not solved
4. Pursuit — offender identified — evade police offence reported on QPRIME and solved

Attempted intercepts that did not transition into a pursuit event

5. Attempted intercept but no pursuit — offender identified and charged with evade police offence which has been solved
6. Attempted intercept but no pursuit — evade police offence reported, but remains unsolved on QPRIME.

The sampling frame excludes an important event type — attempted intercepts that did not transition into a pursuit but where police did not officially report an evade police offence on QPRIME. However, it was not possible to identify cases matching this criterion to include in the sample.

Because of time constraints, we limited the sample to two time periods selected to control for any seasonal variability and review by the QPS Significant Event Review Panels (SERPs):

- 1 July to 30 September 2009
- 1 January to 31 March 2010

We did not want to include pursuit events that had not been reviewed by the QPS SERPs. Therefore, we elected not to include more recent pursuits in the sampling frame.

Because of their more detailed knowledge of pursuits, we asked the QPS Pursuits Project Team to identify eligible cases for the pursuit event types, using significant event messages. CMC staff identified eligible cases for the attempted intercepts that did not transition to a pursuit using the data file of all reported evade police offences provided by the QPS Statistical Services section and by accessing specific crime report details on the QPRIME system. In each case we identified the reporting officer of the pursuit or the evade police offence for inclusion in the sample. We selected 150 eligible cases for the pursuit events and 20 eligible cases for the attempted intercept events to recruit interview candidates from.

The QPS Pursuits Project Team sent an initial email to the QPS reporting officer for each eligible case to inform them of the study and determine if they were interested in undertaking a fully structured interview (see Appendix 3: 'Research instruments and supporting material'). A member of the team made follow-up phone calls to complete the recruitment process, although it was not possible to successfully contact the officer for all eligible cases because of rostering systems and some officers being on leave.

Eighteen QPS officers agreed to participate in the interviews. Fourteen interviews were conducted (four potential participants were unable to be interviewed because of time constraints, lack of availability or other unforeseen circumstances).

Participants were assured of anonymity and confidentiality. Although the QPS Pursuits Project Team managed the recruitment process, neither the QPS team nor the CMC team were involved in the interviews, had access to the interview transcripts or were able to identify officers from the information provided by CARRS-Q.

Data collection method

The interviews were structured so as to obtain a defined set of information from all participants. All interviews were conducted by telephone by CARRS-Q staff, and were audiotaped and later transcribed for analysis.

Analytic approach

CARRS-Q staff used thematic analysis to examine officers' interview responses. Thematic analysis, a common approach in qualitative social science research, first explores the data in-depth to identify the themes in officer responses. Themes may be considered 'topics' or 'ideas', and were identified based on their frequency, the proportion of participants who mentioned the theme, and the intensity of participant responses around a given theme. Second, researchers organised the data around the identified themes.

Despite the modest sample size ($n = 14$), very few new responses were obtained after a small number of interviews. This point, known as 'saturation', indicated that any additional interviews would result in little additional benefit to the review.

A copy of the final report by CARRS-Q was provided to both the CMC and the QPS.

Evade police offence data

The QPS Statistical Services section provided us with a data file of all evade police offences recorded by the QPS that occurred between 21 July 2006 (the date the offence commenced) and 30 June 2010. For our review, we used the following variables:

- offence date
- offence status — whether the offence is 'solved' or 'unsolved' (note that an offence is considered solved once a person has been identified as an alleged offender and police have taken action against that person; a solved offence does not indicate the outcome of the police action)
- offender details — gender, age at the time of the offence, the offender's self-reported Indigenous status.

We were able to identify repeat offenders using the QPRIME unique offender identification number. We also used a combination of the offender's name and date of birth to verify the sample identified using the identification number.

Details of other offences occurring at the same time as an evade police offence were obtained in a separate data file. For all evade police offence occurrences between 21 July 2006 and 30 June 2010, we obtained all offences that were listed on the same occurrence.

Creating rates of offending

QPS Statistical Services provided population data, mapped to QPS region and district, to create rates of offending per 100 000 residents. Population estimates were provided for each year from 2000 to 2010.

Random sample

We used a 10 per cent random sample ($n = 300$) of evade police offences that occurred between 1 January 2008 and 30 June 2010 to examine the circumstances in which the evade police provisions are generally used and to what extent they are being used as an alternative to pursuit. We stratified the sample by year and police region and limited it to evade police offences that occurred after the statewide implementation of the restrictive pursuit policy in January 2008.

We used the narratives in the modus operandi and general and supplementary report fields in the QPRIME reports to code the sample of offences for four variables:

- the reason for the initial police attempt to intercept the vehicle (see 'Why do drivers come to police attention?' in Chapter 3)
- whether or not that reason would permit a pursuit under the restrictive policy — the pursuit categories and non-pursuit matters (see 'Police do not use the provisions as an alternative to pursuit' in Chapter 4)
- whether a pursuit occurred after the attempted intercept failed (see 'Police do not use the provisions as an alternative to pursuit' in Chapter 4)
- if a pursuit did occur, whether it was officially reported — was there a corresponding significant event message and entry in the QPS pursuits database? (see 'Trends in pursuits in Queensland' in Chapter 4).

There are some limitations in using the QPRIME records for evade police offences to examine pursuits. This is primarily because the QPRIME record is not the tool police use to report a pursuit. When a pursuit occurs, police are required to submit an electronic 'significant event message' that includes a series of pre-formatted fields to report the circumstances and outcomes. By contrast, the QPRIME record provides information about the circumstances of the evade police offence and the police actions in investigating an offence. We used several strategies to mitigate this limitation:

- We cross-referenced the evade police offence with the significant event messages reporting a pursuit that were provided to us by the QPS.
- We asked the QPS Pursuits Project Team to confirm whether or not they agreed with our assessment that a pursuit had occurred for those cases where there was not a corresponding significant event message. The QPS did not agree with our initial assessment in 13 cases (5 cases we initially classified as a pursuit and 8 cases we initially classified as a technical pursuit). When this occurred, and after further review, we opted to defer to the QPS judgment for the sake of consistency and because the Pursuits Project Team have more experience in assessing pursuits.
- We excluded eight cases from the analysis because there was not enough information in the QPRIME report to make an informed assessment.

Pursuits data

The QPS provided us with a copy of their pursuits database from 1 January 2000 to 30 June 2010. The pursuits database contains a considerable number of variables. From this database, we used the following information for our review:

- pursuit date
- whether the pursuit was abandoned
- deaths that occurred during the pursuit
- the extent of injuries that occurred during the pursuit
- the nature and extent of property damage that occurred during the pursuit.

'Fail to stop' offence data

Preliminary discussions with the QPS Pursuits Project Team, the State Traffic Support Branch and the Regional Traffic Coordinators indicated that some police may be issuing a *Fail to stop* traffic infringement notice in cases where an evade police offence may have been appropriate. As a result, we used Department of Transport and Main Roads (DTMR) data to examine the number of *Fail to stop for prescribed purposes* tickets issued between 1 January 2003 and 30 June 2010.

The only available identifying information about the person who received the ticket was their DTMR customer reference number, gender and date of birth.

Traffic and criminal histories of evade police offenders

The QPS provided the CMC with the criminal histories and traffic offence histories³² of a random sample of evade police offenders (7%) stratified by gender, age group and whether they are a repeat offender ($n = 177$). The information came from three separate sources:

- Queensland person history with outstanding court results — this includes a list of all charges preferred against a person within Queensland regardless of whether the charges proceeded to court or the court outcome itself
- CrimTrac national person history — this includes the official criminal histories of offences heard anywhere in Australia
- Queensland traffic record — this comes directly from the DTMR Transport, Registration and Integrated Licensing System (TRAILS) and includes any infringement or offence committed by the person (generally, but not exclusively, under the TORUM legislation).

All recorded charges were obtained, regardless of whether they occurred before or after an offender's first evade police offence. We took this approach because we sought to understand the offenders' general charge histories. Nonetheless, we found that the majority had been charged with an offence both before and after their first evade police offence.

- The evade police offence was the first offence for 10 offenders in the random sample.
- The evade police offence was the last offence for 21 offenders in the random sample.
- No offenders in the random sample had no charges other than the evade police offence.

Licence level and status at each evade police offence

The DTMR provided data on the licence level and status of a random (7%) sample of evade police offenders at the time of each of their offences ($n = 213$). Although this is the same sample as was used for the traffic and criminal histories, the unit of analysis here is *offences* rather than *offenders*. This number is therefore higher because of the repeat offences.

32 As the DTMR owns these data, it authorised the QPS to release the traffic history to the CMC.

A random sample was suitable as the DTMR had to manually search the licence level and status in the person's history for the level and status at the time of each evade police offence.

Licence level refers to the type of licence the person has, if any — for example, an open licence, a provisional licence, a learner's licence or a non-Queensland licence. Licence status refers to the status of the person's licence at the time of the evade police offence(s) — for example, current, disqualified, or suspended.

Court outcomes of evade police offences

We obtained court outcomes from the Queensland-wide Interlinked Courts (QWIC) database that related to evade police offences heard in any court between 21 July 2006 and 30 June 2010 ($n = 2207$). Because of the different variables in the QPS and QWIC datasets, we could not match the specific offence details (held by the QPS) to the relevant court outcomes (held in QWIC).

For our review, we used the following information:

- gender of the defendant
- court the matter was heard in
- whether the offence was heard alongside another offence, or was a matter where only the evade police offence was heard
- court outcome, which includes the nature of the outcome and the length or amount of the sanction, if applicable (for example, fine \$500, imprisonment 14 days, driver licence disqualification).

We were able to identify repeat offenders by matching the surnames, given names and dates of birth. Because of spelling and entering inaccuracies, we are likely to be underestimating the number of repeat offenders in the dataset.

Vehicle impoundment

We obtained vehicle impoundment data from the Department of Justice and Attorney-General for the period November 2006 to November 2010. Although this period does not correspond with that for the evade police offence data (July 2006 to June 2010), it is nonetheless a four-year period, albeit offset by five months.

The data contained all applications for vehicle impoundments and forfeitures relating to evade police offences that were presented at court between 30 November 2006 and 12 November 2010.

Variables obtained for our review included:

- court location
- event date
- the result of proceedings (for example, adjourned, application refused, vehicle impounded).

As this dataset was a result of civil proceedings, the information did not contain the QPS identification number related to the matter. Therefore, it was impossible to link the offence details to the impoundment or forfeiture result.

Outstanding fines

We obtained data from Queensland's State Penalties Enforcement Registry (SPER), from 21 July 2006 to 30 June 2010, for fines ordered to an adult for an evade police offence ($n = 1095$).

Variables we used in our review were:

- number of fines that were in compliance with the SPER-ordered payment scheme
- court location

- statute and section (all evade police offences)
- court order date
- court-ordered amount
- original SPER amount
- current outstanding balance
- enforcement status and sub-status.

Stakeholder consultations

We conducted consultations with:

- representatives from the QPS Prosecutions Corps and key content specialists from State Traffic Support Branch, regional traffic branches and the QPS Pursuits Project Team
- a QPS Reference Group, comprising representatives from the State Traffic Support Branch, Pursuits Project Team, Police Prosecutions, Inspectorate and Evaluation Branch, Regional Traffic Coordinators, District Traffic Branches and CARRS-Q.

Stakeholder submissions

We received written submissions from:

- Queensland Police Service
- Department of the Premier and Cabinet
- Department of Justice and Attorney-General
- Department of Transport and Main Roads
- Chief Magistrate
- Queensland Police Union of Employees
- Legal Aid Queensland
- Aboriginal and Torres Strait Islander Legal Service
- RACQ.

Submissions were invited but not received from:

- State Coroner
- Caxton Legal Centre
- Centre for Accident Research and Road Safety — Queensland.

Limitations of the scope and approach

There are six limitations to our review. Four relate to the quality of data used in our review, and two relate to the effect of the changes to legislation and policy on interpreting the findings of our review.

Data limitations

First, our review uses QPS data on *reported evade police offences* and *reported pursuits*. These data are limited by police reporting of offences and pursuits. Our review identified that both incident types are underreported to an unknown extent. Therefore, our review can only comment on evade police offences and pursuits that are detected and reported by police.

Second, we used courts data to understand the penalties that evade police offenders received for their behaviour. The courts data, however, cannot be linked to the QPS offence data. Therefore, court outcomes can only be considered as an aggregate, and cannot be related to specific circumstances of an evade police offence.

Third, the vehicle impoundment data are similarly limited. The Department of Justice and Attorney-General (DJAG) collects the vehicle impoundment data, and the database is compiled from a range of civil proceedings. The data storage method that the DJAG uses was not suited to our research purposes. Specifically, we cannot link the impoundment data to QPS offence data, so we cannot determine which types of offences are most or least likely to result in vehicle impoundment. Instead, we can only describe the impoundment outcome as an aggregate measure.

Fourth, as our key purpose was to understand how police use the evade police provisions, particularly as an alternative to pursuit and as an investigative tool to identify fleeing drivers, we disproportionately sought the perceptions and experiences of QPS officers in our data collection. It was outside the scope of our paper to obtain the perceptions of drivers who attempt to evade police.

Although we did not seek to interview magistrates about their perceptions, we invited the Chief Magistrate to provide a written submission for our review. Because of the separation in roles between the judiciary (which interprets the laws) and the legislature and executive (which make and enforce the laws), the Chief Magistrate preferred not to comment on policy issues. He did, however, pass on comments on specific issues by two magistrates.

The effect of legislative and policy change

One of the aims of our review was to determine whether the evade police offence reduced the number of police pursuits. Our ability to measure this was limited by numerous policy changes that occurred in a short period of time.

Timeline for policy changes

21 July 2006	Evade police provisions commence
1 October 2006	Initial trial of restrictive policy commences
1 October 2007	Initial trial of restrictive policy ceases
1 January 2008	Statewide trial of restrictive policy commences

The evade police offence was in effect for 10 weeks until the initial trial of the restrictive policy commenced. Although the trial policy was 'officially' confined to two QPS districts (Redcliffe and Toowoomba), the QPS indicated that all police districts were 'encouraged to familiarise themselves with' and were permitted to use, the trial restrictive policy both during the trial period and after the trial policy ceased. Our ability to identify the effects of the evade police provisions on pursuits is therefore limited. We discuss this in more detail under 'Interrupted time series analysis' in Appendix 4.

Finally, the findings of our review must be interpreted with regard to the legislative and policy environment in which this review was written. We are aware that there are a number of impending changes — specifically, changes to the QPS *Safe Driving Policy*, which are expected in November 2011. At the time of publication the QPS was also reviewing Chapter 4 of the PPRA, concerning motor vehicle impoundment for certain driving and vehicle-related offences.

APPENDIX 3: Research instruments and supporting material

In this appendix we reproduce two of the research instruments we used:

- the script used for the interviews with police
- the question guide used for the focus groups with police.

We have also reproduced the email used to recruit police officers for the interviews.

Recruitment email for interviews

Good morning,

The Crime and Misconduct Commission (CMC) is conducting a review of the evade police offence provisions as required under s. 789 of the *Police Powers and Responsibilities Act 2000* (PPRA). The project has the full support of the QPS, and QPS staff are working closely with the CMC project team to assist with the review.

The project team wants to conduct research interviews with police officers about their experience with police pursuits and the use of the evade police offence provisions. Because of your previous experience with *[INSERT APPROPRIATE CATEGORY(IES) — pursuits and/or using the evade police offence]*, the project team would like to speak with you in more detail about your own experiences and views.

The CMC has contracted the Centre for Accident Research and Road Safety — Queensland (CARRS-Q) at the Queensland University of Technology to conduct the research interviews with police. This means that CARRS-Q researchers will conduct the interviews and write a report about the results for the CMC project team.

All your comments and responses will be anonymous and will be treated confidentially. The QPS is managing the process of recruiting officers for the interviews, but will not be involved in the interviews and will not have access to the interview transcripts or notes. The CMC will not know who has participated in the interviews or be able to identify officers from the information provided by CARRS-Q.

Your participation in the research is voluntary. If you agree to participate now, you can withdraw at any time later without comment or penalty. However, information about your experiences as an operational officer with pursuits and using the evade police offence provisions will help the research team to understand:

- what factors influence your decisions about pursuits and using the evade police offence
- when and how police are using the evade police offence provisions
- what has worked well in investigating an evade police offence, and what hasn't — how easy and effective are the provisions to apply
- what may be effective in addressing any of the problems with the offence provisions.

If you agree to be part of the research interviews, we will pass your details on to the CARRS-Q researchers and they will contact you to schedule an interview in early October 2010.

We expect the interviews may take 30–60 minutes. Depending on your availability and location, the interviews may take place face-to-face or over the phone.

I will telephone you in the next few days to check whether or not you are willing to participate in a research interview. I can also provide further information about the interviews or the project should you want it.

Should you have any queries, the contact details of the relevant officers in the QPS, CMC and CARRS-Q are provided below. Further background information about the review is also provided below.

Please do not hesitate to contact me if you have any queries or concerns (ph. 3364 xxxx).

Kind regards,

Member of the QPS Pursuits Project Team

Project background:

In 2005 the QPS commenced a review of the Safe Driving Policy which incorporates the QPS urgent duty driving and pursuit policies. The review led to the development and implementation (on a trial basis) of a more restrictive pursuit policy which was implemented statewide in January 2008.

To support the more restrictive policy the QPS sought a new offence, known as 'evade police', with the aim of:

- deterring drivers from evading police who attempt to intercept them
- providing police with an alternative option when deciding whether or not to engage in a pursuit (choose not to pursue but to investigate and prosecute the driver for 'evade police' where possible).

The offence provisions (located in Chapter 22 of the PPRA) commenced on 21 July 2006. Because the offence was the first of its type in Australia, Cabinet decided that the CMC would evaluate the offence after three years of operation. The CMC is required to produce a public report which will be tabled in Parliament. It expects to release the report in mid-2011.

The CMC review seeks to identify:

- how effective the provisions have been in reducing the number of pursuits
- how useful they are as an alternative option for police to commencing or continuing a pursuit
- how effective they are as a deterrent to drivers not to attempt to evade police when given a lawful direction to stop.

The project team is seeking to conduct research interviews with officers with experience in one or more of the following situations:

Pursuits

1. Pursuit — offender identified/caught and charged with various offences, but not an evade police offence.
2. Pursuit — offender identified/caught and issued with a fail to stop infringement notice but not charged with an evade police offence.
3. Pursuit — offender not immediately identified — evade police offence reported on QPRIME but not solved.
4. Pursuit — offender identified — evade police offence reported on QPRIME and solved.

Attempted intercepts that did not transition into a pursuit

5. Attempted intercept but no pursuit — offender identified and charged with an evade police offence which has been solved.
6. Attempted intercept but no pursuit — evade police offence reported, but remains unsolved on QPRIME.

Telephone interview script

This is a copy of the script used by CARRS-Q researchers to guide the interviews with police.

- a. In what capacity do you currently work: — General duties? Traffic Branch? Other?
 - b. Are you based in a metropolitan area, a country area or remote community?
 - c. How many years of service do you have?
 - d. Have you had much experience with the evade police provisions?
1. OK — the first topic relates to decision-making in relation to the evade police offence provisions and pursuits. As we noted earlier, the evade police offence was introduced to support a more restrictive pursuits policy by providing police with an alternative option to commencing or continuing a pursuit. We're interested in whether or not the option of using an evade police offence influences your decisions about pursuits. I'm going to outline a scenario and then ask you a couple of questions about it:

You're performing afternoon shift — it's around 2.00 pm on a Tuesday. You're on patrol when VKR advise you of a disturbance at a local shopping centre. As you proceed towards the location VKR confirm that there has been an assault and the suspect has left the shopping centre driving a specified vehicle. The nature and extent of injuries to the assaulted person are not known, but QAS have been called to attend.

A BOLO is broadcast for the vehicle concerned which has not been reported stolen. While en route to the shopping centre you sight the suspect vehicle travelling in front of you. You approach the vehicle and activate your lights, giving a quick burst of your siren. At this point the vehicle suddenly accelerates away from you. There's very little traffic around, the weather is fine and the road dry and clear. This is a situation which may justify a pursuit under the QPS pursuit policy.

- a. Assuming that a pursuit is authorised under the current policy, would you pursue this vehicle?
- b. What factors would you consider when deciding whether or not to pursue this vehicle?
- c. Would the option of using the evade police offence provisions be part of your decision-making process about pursuing the vehicle in this situation?
 - i. Side questions to be asked if the issue doesn't arise naturally ... Why? Why not?
- d. If you did decide to use the evade police offence what action would you take?
 - i. Side note: Here we're exploring what strategies the officer would use. Would they go to the home of the registered owner immediately? Would they wait a few hours or a couple of days? What strategies might they use to negate possible defences?
- e. Generally speaking, when do you think using an evade police offence is a good option? When do you think it isn't a good option?
 - i. (Side note: e.g. stolen vehicle).
- f. In situations where you have not pursued, when would you generally report an evade police offence through PAC? When would you consider that it's not worth reporting?
 - i. (Side note: e.g. unable to get registration number, vehicle is stolen; PAC = Police Assistance Centre — police call PAC and an operator will put the crime report into QPRIME).
- g. Would you ever consider issuing a fail to stop traffic infringement notice instead of proceeding with an evade police offence? If YES ... why?
 - i. (Side note: A fail to stop infringement notice can be issued under s. 60(2) of the PPRA — Stopping vehicle for prescribed purposes. The offence carries a \$600 fine for a private vehicle and a \$1200 fine for another vehicle).

2. I'd like to move now to how useful you think the evade police offence provisions are for investigating an evade police offence.
 - a. What particular aspects of the provisions work well to assist you to investigate an evade police offence?
 - b. What particular aspects of the provisions have caused problems with the investigation of an evade police offence?
 - i. Side questions to be asked if the issue doesn't arise naturally ...
The CMC and QPS have conducted some group discussions with general duties and traffic police in several regions about the evade police offence provisions. I'd like to ask if you have experience with any of these issues ...
 - c. Section 755 of the PPRA provides for the issuing of an 'evasion offence notice' if it may help the investigation. What has been your experience with using an evasion offence notice?
 - i. Side note: *The registered owner is required to respond to the evasion notice within four business days. If the owner nominates another driver, an evasion notice may also be served on the nominated person.*
 - ii. Side note: *Here we're exploring issues like how compliant people are with the notice. What would the officer do if the person fails to comply with the requirements of the notice — what's the next step? What defences or excuses do people use?*
 - d. Section 756 of the PPRA places an onus on the registered owner of the vehicle to comply with an evasion offence notice or face prosecution for the offence. What has your experience been with the owner onus provisions?
 - i. Side note: *s. 756(4) provides a defence if the person can prove, on the balance of probabilities, that they were not the driver at the time of the offence.*
3. Let's move now to the prosecution phase. Have you had any evade police offences proceed to court?
 - a. What are your impressions of the court outcomes for the evade police offence?
 - b. What specific issues are you aware of that may present a problem for successfully prosecuting evade police offences?
 - i. Side note: *Here we're after what magistrates may be criticising. What defences are defendants using successfully? What reasons are magistrates giving for accepting a defendant's version of events? What are the reasons magistrates are giving for applying particular penalties?*
 - c. Do you generally include an application for impoundment as part of the material prepared for the prosecutor (s. 758 PPRA)? Why? Why not?
 - d. How are the courts dealing with the applications for impoundment?
4. OK — we've discussed deciding to use, investigating and prosecuting the evade police offence and throughout the discussion you've identified some issues with the offence provisions. If you were to make suggestions for changes to address these issues and therefore improve the ability of police to investigate and prosecute evade police offences, what would be your top three priorities?
 - i. Side question if this information does not come out naturally: *How would these suggestions address the problems you've identified?*
 - ii. *Do you think mandatory licence disqualification for an evade police offence should be considered as an additional penalty? Why? Why not?*
 - iii. *Do you think any changes to the vehicle impoundment process should be considered? Why? Why not?*
5. The final topic involves training issues. What training did you receive about the evade police provisions? How was this training administered? Was it useful? Do you have any suggestions for improvement? What additional training or information would help you to successfully use the evade police provisions?

Focus group questions

This detailed question guide was provided for the benefit of CMC focus group facilitators. As the focus groups were semi-structured, this instrument was used to guide the discussion and to remind the facilitator of the key issues to cover.

A. Attempted intercepts

1. Talk us through how you would generally attempt to intercept a vehicle.
 - How do you signal to the driver that you want them to pull over? (e.g. *positioning the police car to the rear of the vehicle, use of warning lights/siren*)
 - Are there any other means of directing the vehicle to stop — what might you have had to do to get a driver's attention? (e.g. hand signals)
 - How long might it take for a driver to be aware that you want them to pull over?
 - Is it getting more difficult to get a driver's attention? (*mobile phones, stereos, iPods, GPS, other modern gadgets — are drivers generally more distracted and therefore less likely to realise you're directing them to pull over?*)
 - What else is happening while you're signalling the driver to stop — when might you be communicating with VKR?
 - What information would you normally be trying to get on the vehicle? When would you radio in for checks to be done on the vehicle? Always? In certain cases?
 - Would you normally report an attempt to intercept to Comco/VKR? (When would you / wouldn't you?)
2. Let's assume the driver isn't stopping ... how do you assess whether or not they've seen you and realise that you want them to pull over?
 - What are you looking for?
 - What might drivers do?
 - How common are particular reactions by a driver?
3. Assume the driver has sped up and it's clear to you they're going to try to evade interception. What do you do now?
 - What's going through your mind at this point?
 - What factors are you considering?
 - What might you and partner talk about in the car (not over the radio)?
 - At what point do you advise Comco/VKR?
 - What do you tell Comco/VKR?
 - How often do drivers attempt to evade interception?
 - How often in a shift?

B. Transition to pursuit

4. What guides your decision to **start** a pursuit?
5. What's your understanding of when an attempted intercept transitions into a pursuit?
 - Can this be difficult to judge? If so, why/how?
 - How do you generally make that assessment?
6. How many of you have actually been involved in a pursuit?
 - As the primary pursuit crew?
 - As a secondary pursuit crew?

7. Talk us through how a pursuit unfolds from your perspective (some practical hypothetical examples). What happens once a pursuit commences?
 - Who does what in the car when it's a crew of two?
 - How and at what points are you generally communicating with Comco/VKR?
 - What are the key pieces of information going back and forth between you and Comco/VKR — initially and then as the pursuit unfolds?
 - What about secondary crews — if you hear a pursuit over the radio — what would you do? What are the key pieces of information for you?
8. What factors would influence your decision to **continue** a pursuit?
 - How do you assess the risk involved in a pursuit?
 - What factors are you considering?
 - Are there some factors you think are more important than others? If so, what (and why)?
 - Is the option of an evade police offence on your radar when you're in a pursuit? Is it something you actively consider?
9. What guides your decision to abandon a pursuit?
 - Do you have particular rules of thumb you would use?
 - What are the most common reasons you would choose to **abandon** a pursuit?
 - What are some of the more difficult factors that you grapple with when you're in a pursuit? What factors are straightforward?
 - Do you think officers are more likely to abandon a pursuit under the current policy than they would have previously?
10. What about the **pursuit categories** under the policy — when you're on patrol and you have to make a decision about pursuing, do you think about the pursuit categories at the time?
 - Are the pursuit categories something you can remember when you're making a decision in the car?
11. What's your understanding of **non-pursuit matters**?
 - What's a non-pursuit matter under the policy?
 - What happens if you've commenced a pursuit and you realise that the reason for the attempted intercept is a non-pursuit matter under the Safe Driving Policy (e.g. a traffic matter)?
12. What do you think your responsibilities are in the pursuit?
 - How do your responsibilities differ from the pursuit controller? What do you think their responsibilities are?
 - What are the responsibilities of the Regional Duty Officer or the District Duty Officer?
13. **The debrief** — what do you talk about as part of the debriefing process?
 - Are you required to wait for the RDO/DDO to arrive? (this is policy in some areas)
 - What would you talk about with the RDO/DDO?
 - Does the RDO or DDO generally talk to you about an evade police offence if a pursuit has been abandoned?
 - Would there normally be any discussion about whether or not an evade police offence will be reported and investigated?

C. The decision not to pursue

14. The attempt to intercept has failed and the driver is taking off. You decide not to pursue.
If not already covered above — what are the main reasons you would decide not to pursue?
- Is the availability of the evade police offence part of your decision-making?
15. What would generally happen at that point? What do you do?
- Would you normally advise Comco/VKR at this point?
16. Would you think about an evade police offence at this point?
- What's your understanding of the evade police offence?
 - Do you think the evade police offence is an alternative option to a pursuit?
 - When is it a viable option?
 - When isn't it a viable option?
 - Would you and your partner talk about whether or not an evade police offence is a realistic option (not necessarily over the radio — but in the car)?
 - Do you discuss what your options are?
 - How often would you report an evade police offence when there's no pursuit?
 - How often would you be able to charge an offender with an evade police offence when there's no pursuit?
17. What information do you need to determine if an evade police offence may be an option?
- Do you generally have that information available? If not, why not?
 - How often can you identify the driver or the occupants of the vehicle?
- UUMV:
- How often would you know if the vehicle has been reported stolen when you're considering an evade police offence or making a decision about whether or not to pursue?
 - If you know the vehicle has been reported stolen — does it influence your decision about whether or not to pursue? Whether or not an evade police offence might be an option?
 - What if a vehicle hasn't been stolen — are there times you think it may be an unlawful use? How would you judge that? What factors would make you think that?

D. The investigation

The focus of our review is the evade police offence itself and how effective the Chapter 22 provisions are as an operational tool for police. The Chapter 22 provisions are designed to provide police with a framework to assist the investigation and prosecution of drivers who fail to stop when lawfully directed to do so. In terms of investigation, there's a couple of scenarios:

- i) you catch up with the driver after a pursuit
- ii) you decide not to pursue or you abandon a pursuit — and you follow up on an evade police offence at a later stage.

Are there any others?

We're interested in how the provisions work in each of these situations.

18. First — assuming you catch up with the driver during/after a pursuit, what's involved in charging them with an evade police offence?
- What other offences would an offender generally be charged with?
 - Are there times when you would only charge for evade?
 - What forms etc. do you need to complete? (e.g. QP9, Bench charge sheet)
 - Are there follow-up inquiries you need to make? Is further investigation required?
 - What statements need to be taken or provided as part of the brief?
 - What evidence do you need to provide to support an evade charge in these situations?
 - How long would it generally take to complete the investigation (if it is one) and do all the paperwork?
 - How much extra time is involved in dealing with the evade charge?
 - What about an evade charge on its own — how long would that take?
19. What about **investigating** an evade police offence where no pursuit has occurred, or when a pursuit has been abandoned and the driver got away?
- How many of you have experience in following up on an evade police offence in these situations?
 - How often can you generally locate the offender at a later stage?
 - How would you go about investigating an evade police offence? — Talk us through it.
 - How often would you issue an **evasion notice**? — Talk us through that.
 - Can you provide any examples when an evasion notice has worked well?
 - What about when it hasn't worked well? What went wrong?
 - Do you think there are problems with the evasion notice?
 - If so, what might help to fix those problems?
 - What about the **declaration** the registered owner is required to provide? Can you talk us through some examples?
 - Do you think the requirements for a declaration are easy for an owner to understand and comply with? Are there any improvements needed?
 - How do you think the requirements for an evasion notice declaration compare with the speed and red light camera declarations (s. 114 TORUM) — specifically the owner onus provisions?
 - What other problems do you think there are with the investigative provisions?
 - How could they be fixed?
 - **What about s. 756(4) which provides for a defence if a person can prove, on the balance of probabilities, that they weren't the driver? Any experience with this?**
20. Would an officer normally report the offence on QPRIME in these circumstances (no pursuit / pursuit abandoned — don't know who the driver is)?
- When might an officer not report an offence on QPRIME?
 - Why might an officer not report an offence on QPRIME?
 - Do you think a lot of evade police offences would go unreported?
21. Are you aware of situations where an officer might use a **fail to stop infringement notice** rather than charge for an evade police offence?
- Why might an officer choose to do this?
 - When might a fail to stop TIN be more appropriate (even though an evade police offence is an option)?

E. Court processes

22. What experience have you had with an evade police offence going to court?
- What are some of the court outcomes you are aware of?
 - What do you think of the court outcomes?
 - What do you think of the penalties being given?
 - What do you think is an appropriate penalty for an evade police offence?
23. Impoundment and forfeiture provisions — What's your understanding of how the evade police offence impoundment and forfeiture provisions differ from those under Chapter 4 (hooning and Type 2)?
- Would you prepare an impoundment application as part of the brief which goes to Prosecutions?
 - When might an officer not prepare an impoundment application? Why?
 - What's your experience of the outcome of impoundment applications? What generally happens?
 - Are you aware of any vehicle **forfeitures** under the evade police provisions?
 - What do you think of the **impoundment and forfeiture provisions** for an evade police offence?
 - Do you think they're more/less effective than the impoundment and forfeiture provisions for hooning and Type 2 offenders? In what way?
 - How could the evade police impoundment and forfeiture provisions be improved?

F. Training

24. What training have you had in the evade police offence provisions?
- How did you find the training?
 - Do you think there was enough training in the evade police offence provisions?
 - Did you have any reservations about the offence after the training?
 - How could the training be improved?

G. Effectiveness of the evade police offence provisions

25. Why do you think the evade police offence was introduced? What do you think it aims to achieve?
- Depending on the answers here we may need to tell them what the legislative intent of the provisions is — and ask them what they think about it.
The second reading speech indicates that the primary objective of the offence is to reduce high-speed pursuits that may result in injury to persons or damage to property.
It also introduces a legislative scheme (Chapter 22 PPRA) to assist the investigation and prosecution of drivers who fail to stop when lawfully directed to do so by police.
So it aims to:
 - i) *provide police with an alternative operational tool to commencing or continuing a pursuit*
 - ii) *deter drivers from failing to stop when given a lawful direction to do so.*
26. Do you think the evade police offence has reduced the number of pursuits?

27. How important are the following issues in your decision-making and risk assessment about pursuits?
What influences your decisions the most? (RANK)

- the QPS Safe Driving Policy?
- Police Union advice?
- informal advice from colleagues or supervisors?
- experience with the Significant Event Review Panels?
- concern about internal investigations?
- knowledge of inquests regarding police pursuits?
- your ability to identify the driver and the option to follow up with an evade police offence?
- the advice of the pursuit controller?
- the advice of the RDO or DDO?

Why have you ranked them in this order?

28. How effective do you think the evade police provisions are in deterring drivers from fleeing?

- How could the deterrence effect be improved?
- What do you think would work for this group of offenders?

29. How much do you know about the various coronial inquests relating to pursuits?

- Have you followed them in detail?
- Do the coronial recommendations influence your decision-making as a pursuit controller?
- Which recommendations stand out most?

Final prompt: Three top-level research questions:

1. Have the evade police offence provisions contributed to a reduction in police pursuits?
2. How effective are the evade police offence provisions as an alternative operational tool for police to commencing/continuing a pursuit?
3. How effective are the evade police offence provisions as a deterrent to drivers not to flee from police when given a lawful direction to stop?

APPENDIX 4:

Notes on statistical methods

In this appendix we describe the statistical methods we used to analyse the impact of the evade police provisions and the Queensland Police Service pursuit policy on pursuits, injuries and property damage. The results of these analyses are reported in Chapter 4.

Interrupted time series analysis

Interrupted time series analysis denotes a quasi-experimental research design and a method adept at detecting change in level and trend. It is particularly useful for analysing data with a long sequence of regularly spaced observations (for example, monthly data for 10 years). Time series analysis is a suitable substitute for experimental designs or methods (Glass 1997), which are often difficult to conduct.

Justification for interrupted time series analysis

Interrupted time series analysis was selected rather than ordinary least squares regression analysis. This is because ordinary least squares regression has an assumption that the observations (or data points) are independent of each other. That is, each data point must not be related to, or help to shape, any other data point in the same series. In the present case, we have a series of monthly observations spanning 11 years. In such situations, the assumption is likely to be violated, as there may be evidence of seasonality (for example, pursuits are significantly more likely to occur in the summer months) or of autocorrelation (for example, the number of pursuits in the last month or the last two months is significantly correlated with the number of pursuits in the present month). Therefore, when we have a time-ordered data series over a long period of time, this assumption is violated.

As Shardell et al. (2007, p. 905) explain:

time-series analysis estimates regression models while relaxing the independence assumption by estimating the autocorrelation between observations collected at different times ... To estimate autocorrelation, a correlation model is specified along with the regression model, resulting in more accurate SE estimates and improved statistical inference.

Method

Model identification

In order to detect an effect, if an effect exists, the data series must be rendered 'stationary'. That is, any other trends present in the data series must be partialled out by adding other parameters to the model. The autocorrelation function (ACF) and partial autocorrelation function (PACF) distributions indicate whether the data series is stationary or not.

The ACF and PACF distributions of the pursuits data series indicated that the series is not stationary. On the ACF, at least the first 16 lags differed significantly from zero, and the first lag on the PACF differed significantly from zero.

Differencing the data series once produced a ‘white noise’ distribution. That is, a graph of the once-differenced observations varied randomly around the zero point. The ACF and PACF distributions for the once-differenced data series, however, indicated that autoregressive (AR) or moving average (MA) components still appeared to exist. The distribution of the lags is indicative of a first-order MA component.

The ARIMA (0,1,1) (that is, once-differenced, first-order moving average) model was the best fitting model with the smallest number of parameters. The Ljung-Box Q statistic was not significant,¹ indicating that the model has been adequately specified. The first-order moving average component was significant and none of the lags on the ACF and PACF distributions differed significantly from zero.

Treatment of the ‘trial’ policy

In specifying the model, it is important to accurately specify the nature or behaviour of the intervention point. Modelling the introduction of the evade police legislation is straightforward because before 21 July 2006 the legislation had not commenced. At 21 July 2006, however, the legislation came into effect. Therefore this intervention is an abrupt permanent intervention. Expressed as an independent variable in the model, it looks like this:

0	0	0	1	1	1
18 July	19 July	20 July	21 July	22 July	23 July

Modelling the impact of the change in pursuit policy, however, is more difficult. This is because of the different intervention periods:

- **1 Jan 2000 – 30 Sep 2006** Officer judgment pursuit policy in effect
- **1 Oct 2006 – 30 Sep 2007** Trial restrictive policy in effect in two police districts; its use is encouraged but not mandated statewide
- **1 Oct 2007 – 31 Dec 2007** Trial restrictive policy ceases, unclear policy position
- **1 Jan 2008 – 30 Jun 2010** Statewide restrictive policy in effect

Because of the staged approach of implementation, it was unclear whether the intervention was an abrupt permanent effect or a gradual permanent effect. Furthermore, it is unclear whether the effect started at the commencement of the trial restrictive policy (1 October 2006) or the commencement of the statewide restrictive policy (1 January 2008).

In consultation with the QPS Pursuits Project Team, we determined that, during the trial period, the restrictive pursuit policy was trialled to a small extent in few locations around the state, but there was a clear step in the use of the restrictive policy when it was mandated statewide on 1 January 2008. Therefore, we decided that the most accurate representation of the effect of the policy was an *abrupt permanent* intervention.

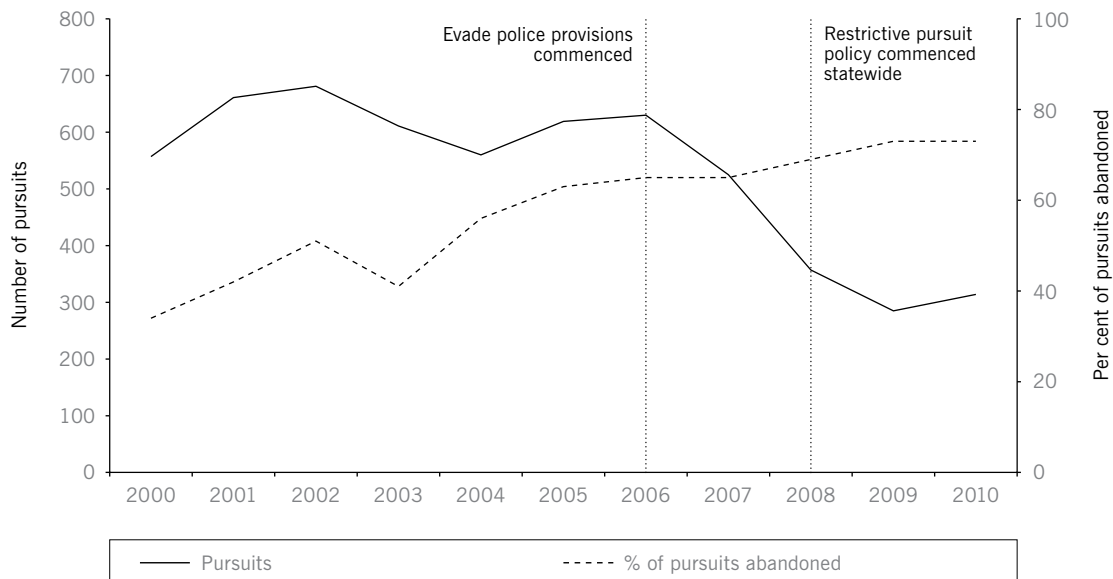
1 $Q(17) = 24.701, p = .101.$

Results

Table A4.1: Time series analysis of pursuits, model parameters and fit statistics

Model: ARIMA (0,1,1)				
		Estimate	SE	t
Difference		1		
Moving average	Lag 1	0.828**	0.053	15.511
Inception of evade police offence	Lag 0	-0.998*	0.385	-2.589
Inception of QPS restrictive policy	Lag 0	0.531	0.517	1.026
Stationary R^2				
		.257		
Root Mean Square Error				
		7.982		
Normalized BIC				
		4.27		
Ljung-Box Q-statistic				
		(17) 24.709, $p = .101$		
** $p < .001$ * $p < .05$				

Figure A4.1: Model fit of pursuits



Repeated measures analyses of variance

The distribution for injuries and property damage was not amenable to model identification in time series analysis. Specifically, while it was clear from the ACF and PACF distributions that the trends were not stationary, no combinations of AR or MA components were significant in the models, and none rendered the trends stationary. An alternative method — repeated measures analysis of variance (ANOVA) — was therefore employed.

Repeated measures ANOVA compares the average number of property damage or injuries for each intervention period. There were three intervention periods in this data series:

- **Period 1** Baseline (1 January 2000 to 20 July 2006)
- **Period 2** Post-evade (21 July 2006 to 31 December 2007)
- **Period 3** Post-restrictive policy (1 January 2008 to 30 June 2010)

In the repeated measures ANOVA for injuries² and for property damage,³ the overall model statistic (*F*) was not statistically significant. This indicates that there was no difference in the rate of injuries or property damage from one period to any other period. Therefore, despite the observed decline in property damage and injuries over the observation period, we found no evidence that, on average, this decline could be attributed to any of the three time periods.

2 $F(2,16) = 0.805, p = .464.$

3 $F(2,16) = 1.489, p = .255.$

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