

# Vehicle Powers, Questions and Answers

Report under s.16 of the *Police Powers (Vehicles) Act*

**August 2000**

Researched and written by Emma Koorey, with support from Anika Dell (research assistance), Brendan Delahunty, Stephen Murray, Kimber Swan and Jo Flanagan.  
Front cover photo: Nairn Scott

NSW Ombudsman  
Level 24, 580 George Street  
Sydney NSW 2000

General enquiries: (02) 9286 1000

Toll free (outside Sydney Metro Area): 1800 451 524

Facsimile: (02) 9283 2911

Telephone typewriter: (02) 9264 8050

E-mail: [nswombo@nswombudsman.nsw.gov.au](mailto:nswombo@nswombudsman.nsw.gov.au)

Website: <http://www.nswombudsman.nsw.gov.au>

NSW Government Publication

ISBN 0 7313 12651

© NSW Ombudsman, August 2000

# Contents

---

<b>1. Introduction .....</b>	<b>7</b>
<b>2. Background .....</b>	<b>11</b>
Structure of the Police Service .....	13
Role of the Ombudsman .....	13
Police Powers (Vehicles) Act .....	14
<b>3. Methodology .....</b>	<b>19</b>
Computerised operational policing system .....	21
Information about offences, penalties and judicial interpretation of the Act .....	23
Demographic data .....	23
Surveys of police .....	24
Interviews with police .....	24
Submissions .....	24
Use of the Ombudsman's investigatory powers .....	25
Complaints to the Ombudsman and Police Service .....	25
<b>4. Driver and passenger identification .....</b>	<b>27</b>
Legislative survey .....	29
Recorded use of the driver and passenger identification powers .....	33
Circumstances in which the identification powers have been used .....	37
Discussion .....	38
<b>5. Stopping and searching vehicles .....</b>	<b>63</b>
Legislative survey .....	65
Recorded use of the vehicle search powers .....	70
How were the vehicle search powers used? .....	74
Discussion .....	82
<b>6. Education and training .....</b>	<b>109</b>

<b>Summary of recommendations .....</b>	<b>115</b>
<b>Select bibliography .....</b>	<b>119</b>
<b>Appendices .....</b>	<b>123</b>
<b>Appendix A .....</b>	<b>125</b>
Relevant questions from the 1999 survey of local area commanders.....	125
<b>Appendix B: .....</b>	<b>127</b>
Police Powers (Vehicles) Act survey: A.....	127
Police Powers (Vehicles) Act survey: B .....	129
Police Powers (Vehicles) Act survey: C .....	130
Survey responses .....	132
<b>Appendix C .....</b>	<b>135</b>
Definitions of owner .....	135
<b>Appendix D .....</b>	<b>137</b>
Vehicle search powers authorisation .....	137

## ***List of tables and graphs***

---

<b>Table 1: Recorded uses of the driver and passenger identification powers.....</b>	<b>33</b>
<b>Graph 1: Recorded use of driver and passenger identification powers by month .....</b>	<b>33</b>
<b>Graph 2: Police assessment of driver and passenger identification records .....</b>	<b>34</b>
<b>Table 2: Driver and passenger identification charge information .....</b>	<b>36</b>
<b>Graph 3: Driver and passenger identification — age of persons of interest.....</b>	<b>37</b>
<b>Table 3: Recorded use of the vehicle search powers .....</b>	<b>70</b>
<b>Graph 4: Recorded use of the vehicle search powers by month .....</b>	<b>71</b>
<b>Graph 5: Accuracy of recording of vehicle search powers .....</b>	<b>71</b>
<b>Table 4: Selected road block characteristics .....</b>	<b>75</b>

## Introduction

# 1. Introduction

---

- 1.1 The *Police Powers (Vehicles) Act 1998* (the 'Vehicles Act') commenced on 1 January 1999.
- 1.2 The Vehicles Act confers on police powers to obtain identification information about the drivers of and passengers in any vehicle involved in an indictable offence.<sup>1</sup> It also provides senior police officers with the power to authorise the use of 'vehicle search powers' which include powers to stop and search a vehicle or a class of vehicles and to establish road blocks in certain situations.<sup>2</sup>
- 1.3 The Vehicles Act provides for the Ombudsman to monitor the implementation of the powers over the first 12 months of the Act's operation, and to report to the Minister for Police and the Commissioner of Police at the conclusion of that period.
- 1.4 This report under the Vehicles Act, is divided into six chapters:
  1. Introduction
  2. Background
  3. Methodology
  4. Driver and passenger identification
  5. Stopping and searching vehicles, and
  6. Education and training.
- 1.5 Chapters four and five summarise the new powers, provide examples of similar legislative provisions in NSW and other jurisdictions present some statistical information about the use of the provisions and discuss the major issues which arose during the review period.
- 1.6 Where appropriate, recommendations have been made following the relevant discussion in each chapter. A summary of recommendations is also presented at the end of the report.

---

<sup>1</sup> Vehicles Act, Part 2, passenger and driver identification.

<sup>2</sup> Vehicles Act, Part 3, stopping and searching vehicles.

## Background

## 2. Background

---

- 2.1 This chapter outlines the background to the introduction of the Vehicles Act and notes some of the key issues relevant to the review of the Act.

### Structure of the Police Service

- 2.2 The NSW Police Service (Police Service) consists of 11 regions made up of local area commands and specialist commands. A total of 80 local area commands fall within these regional boundaries. Local area commands are the primary management units of the Police Service.
- 2.3 Specialised commands and committees of the Police Service relevant to this review include:
- 2.4 Traffic Services: A branch of Specialist Operations, Traffic Services is responsible for the administration and policy aspects of traffic enforcement and manages the Police Service's strategy to reduce road trauma.
- 2.5 STAMP (School of Traffic and Mobile Policing): STAMP is part of Education Services which provides education, training and professional development functions for the Police Service. STAMP conducts training, oversees the *Safe Driving Policy* and monitors aspects of police pursuits in NSW.
- 2.6 Pursuits Management Committee: Monitors aspects of police pursuits in NSW.
- 2.7 Communications Group: A branch of Specialist Operations, the Communications Group delivers communication services to police from five communications centres<sup>3</sup> in the State.
- 2.8 Audit and Evaluation Services: A branch of Management Services, Audit and Evaluation Services monitors and advises the Police Service about work practices, efficiency, effectiveness, ethics and equity.
- 2.9 Legal Services : A branch of Management Services, Legal Services provide criminal advocacy and expert legal advice.

### Role of the Ombudsman

- 2.10 The Ombudsman is responsible for handling complaints about public authorities in New South Wales. The Ombudsman receives a large number of complaints and telephone enquiries regarding the Police Service each year.

---

<sup>3</sup> Communication centres are located at Sydney, Newcastle, Warilla, Tamworth and Wagga Wagga.

## BACKGROUND

- 2.11 The Vehicles Act provided for the Ombudsman to monitor the first 12 months of the operation of the Act.<sup>4</sup>

### **Police Powers (Vehicles) Act**

- 2.12 On 12 November 1998, the Police Powers (Vehicles) Bill was first introduced to the Legislative Assembly. The Bill was read a second time and considered by the Legislative Assembly on 17 November 1998. The Legislative Council first heard the Bill on 17 November and debated it in detail on the 27th of that month.

#### ***The shooting incident at Lakemba police station***

- 2.13 The Police Powers (Vehicles) Bill came after the 'drive-by' shooting at Lakemba police station which took place in the early morning of 1 November 1998. Approximately 16 shots were fired into the Lakemba police station and nearby police vehicles. One police officer was injured. Soon after the incident the (then) leader of the NSW Opposition, Mr Collins, called on the Government to give police the power to set up road blocks in the area.<sup>5</sup>

- 2.14 Debate in the Legislative Council linked the shooting incident to police 'crackdowns' on gang activity in south western Sydney. The Bill was said to 'further equip police to deal with members of more serious criminal gangs'.<sup>6</sup> The Government's second reading speech stated:

In particular [the Bill] means police have the powers they need to deal with individuals and gangs in relation to their use of vehicles. As the Lakemba shooting illustrated, cars and other vehicles can be a weapon or tool to commit serious crimes.<sup>7</sup>

- 2.15 Some members of parliament expressed concern about the introduction of the new powers. The Hon. I. Cohen stated,

The Greens consider that the bill is a knee-jerk reaction to the recent drive-by shooting on the Lakemba police station...<sup>8</sup>

- 2.16 Whether the legislation would have been useful in the context of the investigation of the Lakemba police station shooting is uncertain. One car was burnt out and the owner, traced by police, was not connected with the incident.<sup>9</sup> Police did search the area for the other vehicle but it was not located.

---

<sup>4</sup> Vehicles Act, s.16.

<sup>5</sup> Reported in *Sydney Morning Herald*, 3 Nov. 1998.

<sup>6</sup> Second reading speech incorporated into Hansard by the Hon. J.W. Shaw MLC, New South Wales Parliamentary Debates (NSWPD), 27 Nov. 1998, p.10833.

<sup>7</sup> *ibid.*

<sup>8</sup> The Hon. I. Cohen, NSWPD, 27 Nov. 1998, p.10835.

<sup>9</sup> Source: COPS event for Lakemba shooting.

### *Origins of the driver and passenger identification provisions*

2.17 The role of a Sergeant Lagats was acknowledged in the Legislative Assembly in regard to the provisions for the identification of drivers and passengers. The sergeant had written to the Government in 1996 outlining a suggestion for legislative change. An extract from this letter is set out below:

What do police investigators do where a vehicle has been used in a commission of an offence, and the description of offenders is not forthcoming or at the best scant? It is on these instances and for assisting police investigations in general, that I propose the implementation of an offence worded similarly to that of the Motor Traffic Act 5 of 1909, "Fail to supply name and place and abode of driver", whereby the owner of a motor vehicle will be compelled, under the direction of a police officer to supply that information where the vehicle **has been** or is **suspected** of being used in an indictable offence.

I suggest to give this proposal some added "muscle" a reasonably heavy penalty for failing to comply with the direction, accompany the legislation.<sup>10</sup>

### *Objectives of the legislation*

2.18 The Government's objectives for the legislation can be discerned from the second reading speech, and included to:<sup>11</sup>

- 'overcome gaps in the law which relate specifically to the use of vehicles in crimes',
- enable 'investigating police to demand that the owner of a vehicle identify who was driving it at the time a serious offence was committed',
- 'give police the powers they need to assist to break through the wall of silence about serious crime',
- 'give police the powers they need to deal with serious crime incidents and major threats to public safety',
- allow police to properly investigate offences in which the victim can identify the vehicle used in the offence, and thus 'tilt the balance back in the victim's favour',
- 'give the police the power to stop and search vehicles' including a power to establish a road block, and
- 'enable police to act more effectively to protect the community'.

2.19 The Government also foreshadowed that the Bill represented the second stage of a three stage process, ending in the consolidation of police powers into a 'single, coherent piece of legislation'<sup>12</sup>.

---

<sup>10</sup> NSWPD, 17 Nov. 1998, p.10028.

<sup>11</sup> Second reading speech incorporated into Hansard by the Hon. JW Shaw MLC, NSWPD, 27 Nov. 1998, pp.10833, 10834.

<sup>12</sup> Mr Whelan, MP, Member for Ashfield, Minister for Police, NSWPD, 12 Nov. 1998, p.9902.

## BACKGROUND

### *Parliamentary debate and amendments*

2.20 A number of concerns were raised in both houses about the new police powers in the bill, including:

- that the power to search every vehicle in a class of vehicles was too broad,<sup>13</sup>
- concern about the use of information obtained through use of the passenger and driver identification powers in conjunction with the vehicle search powers,<sup>14</sup>
- concern that the lack of limitation on time extensions of vehicle search power authorisations could mean that authorisations were in force indefinitely,<sup>15</sup>
- concern that the extended police powers might be at the expense of civil liberties and individual freedom,<sup>16</sup>
- concern that 'disadvantaged' people might find it difficult to understand police questions and might therefore fail to provide the information required,<sup>17</sup>
- concern that the vehicle search powers should not be exercised with respect to a 'class' of vehicles unless this occurs at a road block,<sup>18</sup>
- concern that failure to record an authorisation should not invalidate it,<sup>19</sup>
- concern that verbal authorisations allow 'something to be made up on the spot',<sup>20</sup>
- concerns about the danger involved in setting up road blocks and questions as to the safety measures put in place to ensure there is no danger to the community.<sup>21</sup>

2.21 Most amendments to the legislation were not accepted including amendments to:

- distinguish 'road block powers' from 'vehicle search powers' such that only the road block powers (to form a road block or otherwise stop vehicles) could be utilised in respect of a class of vehicles whereas the vehicle search powers (to search, give directions and confiscate objects) could only be used in respect of a specified vehicle,<sup>22</sup>
- to define class of vehicles by reference to the make, model or colour of a vehicle,<sup>23</sup>
- to remove 'duty officer' from definition of 'senior officer',<sup>24</sup>

---

<sup>13</sup> The Hon. I. Cohen MLC, NSWPD, 27 Nov. 1998, p.10848 and the Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10854.

<sup>14</sup> The Hon. I. Cohen MLC, NSWPD, 27 Nov. 1998, p.10848 and the Hon. Helen Sham-Ho, NSWPD, 27 Nov. 1998 p. 10853.

<sup>15</sup> The Hon. Dr A. Chesterfield – Evans MLC, NSWPD, 27 Nov. 1998, p.10850.

<sup>16</sup> The Hon. Helen Sham Ho MLC, NSWPD, 27 Nov. 1998, p.10851.

<sup>17</sup> The Hon. Helen Sham-Ho MLC, NSWPD, 27 Nov. 1998, p.10851 and the Hon. R.S.L. Jones MLC, NSWPD 27 Nov. 1998, p.10853.

<sup>18</sup> The Hon. Helen Sham-Ho MLC, NSWPD, 27 Nov. 1998, p.10851.

<sup>19</sup> The Hon. Helen Sham-Ho MLC, NSWPD, 27 Nov. 1998, p.10853 and the Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10854.

<sup>20</sup> The Hon. Helen Sham-Ho MLC, NSWPD, 27 Nov. 1998, p.10853.

<sup>21</sup> *ibid.*

<sup>22</sup> The Hon. I. Cohen MLC, NSWPD, 27 Nov. 1998, p.10849.

<sup>23</sup> The Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10859.

<sup>24</sup> *ibid.*

- reduce the length of an authorisation to four hours instead of six and the maximum period for an authorisation to eight hours,<sup>25</sup>
- to ensure a record of an authorisation occurs within 24 hours of its approval instead of 'as soon as reasonably practicable',<sup>26</sup>
- to remove the section stating that failure to record an authorisation will not invalidate a use of the search powers,<sup>27</sup>
- to table in Parliament the Minister's review of the legislation, within 21 months of the assent to the legislation, rather than 24 months.<sup>28</sup>

2.22 Two amendments were passed. The purpose of the amendments was to:

- ensure that the Ombudsman's review of the legislation commence at the date of assent to the Vehicles Act, and
- ensure that the Minister's review take into account the Ombudsman's findings.

---

<sup>25</sup> The Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10859.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> *ibid.*

## **Methodology**

## 3. Methodology

---

- 3.1 The research approach adopted during this review emphasised the collection of qualitative information about individual incidents in which the Vehicles Act was utilised by police. The small number of recorded uses of the powers in the act meant that it was a manageable task to examine each incident in some detail.
- 3.2 Much of the research and analysis contained in this report is derived from police records, interviews with police and examination of court decisions and transcripts. Case studies are used to highlight issues that were identified during the review.
- 3.3 The small number of persons who came into contact with police using the new powers meant that input into this review from community and other organisations and members of the public was limited.

### Computerised operational policing system

- 3.4 Information from the police service's computerised operational policing system (COPS) was central to the monitoring of the use of the Vehicles Act. The COPS database provides a structure for police to record event details such as date, location, offence, local area command, offender details and many other factors. COPS also contains a 'narrative' field which allows officers to describe an event in their own words and to record important features of the incident which may not fit under other category headings. Extracts from COPS narratives are quoted throughout this report. These extracts have not been corrected for spelling, grammatical or other like errors.
- 3.5 Police were instructed to record any use of the name and address powers in COPS.<sup>29</sup> In the case of the vehicle search powers, authorising officers were instructed to create a COPS event when an authorisation was requested. This meant that all authorisation requests, whether they were refused or granted, were to be recorded on COPS.<sup>30</sup>
- 3.6 Arrangements were made with the Police Service to advise the Ombudsman of all COPS events that documented a use of the Vehicles Act. There were a total of 103 COPS events recording the use of the Vehicles Act in 1999.<sup>31</sup> The modest level of recorded usage of the legislation allowed us to individually examine each COPS event.
- 3.7 Each COPS event forwarded to the Ombudsman was allocated an identifying record number (event number).<sup>32</sup> These record numbers are referred to throughout this report.

---

<sup>29</sup> *Information Package, Police Powers (Vehicles) Act*, No. 166, Mar. 1999, Centre for Curriculum and Continuing Education, NSW Police Service, 1998, p.21. See also *NSW Police Service Handbook* at V-1.

<sup>30</sup> *ibid*, pp.22, 23. See also *Police Service Handbook* at V-2.

<sup>31</sup> We are also aware of two occasions in 1999 in which the Vehicles Act powers were used but not recorded.

<sup>32</sup> Numbers allocated by the Ombudsman bear no relationship to event numbers used on the COPS system.

## METHODOLOGY

### *Recording errors*

- 3.8 Preliminary examination of the COPS events provided by the Police Service indicated that many recorded uses of the legislation appeared to reflect errors by the police officers who entered information into the COPS system. An assessment of event narratives indicated that only one-third of events examined appeared to relate to the use of the Vehicles Act.
- 3.9 The *Police Service Handbook* advised police to make a record on COPS each time they utilised the powers in the Vehicles Act.<sup>33</sup>
- 3.10 In some cases the event narrative did not contain sufficient information to properly assess whether a recording error had occurred. This was acknowledged by a number of local area commands. One duty officer commented:
- ...there is no mention in the narrative of how this POI [Person of Interest] came under notice, or why the Incident "POLICE POWERS (VEHICLE) ACT" was utilised. This incident may have been used incorrectly, however from the narrative, it is not possible to say.<sup>34</sup>
- 3.11 As a result of the large number of recording errors, on 25 October 1999, the Deputy Commissioner (Field Operations) placed a notice in the *Police Service Weekly* reminding officers to **only** record actual uses of the legislation in COPS.<sup>35</sup>
- 3.12 In order to be able to report more accurately on the number of times the legislation was used during the review period, it was decided to ask local area commands to check whether their events had been recorded accurately.<sup>36</sup> Unfortunately, because of delays in the forwarding of information to us, this checking process was only conducted for a little over three-quarters of the events recorded for 1999.<sup>37</sup> That is, 81 out of the total 103 events reported in 1999 were assessed.<sup>38</sup>
- 3.13 A total of 45 commands checked their events and 28 indicated that one or more of their events were incorrectly recorded. Almost 60 per cent of all events assessed were recording errors. Most of the errors were apparent in the recording of vehicle searches. A total of 58 vehicle search events were assessed by commands and 46 of these were found to be recording errors. Few errors were detected among the records for the driver and passenger identification powers. Twenty-four records were assessed, three of which were found to be recording errors.

---

<sup>33</sup> *Police Service Handbook*, V-1.

<sup>34</sup> Correspondence from local area command to the Ombudsman, 6 Mar. 2000.

<sup>35</sup> *Police Service Weekly*, Vol. 11, No. 42, 25 Oct. 1999, p.25.

<sup>36</sup> Our original assessment of events was reasonably consistent with that of local commands. Assessments were the same for almost 90 per cent of events.

<sup>37</sup> At the time of the event checking process, only 81 of the total 103 recorded events had been forwarded by the Police Service to the Ombudsman.

<sup>38</sup> One event documented use of both the driver and passenger identification powers and the vehicle search powers.

- 3.14 The process of contacting commands and discussing the events with them not only clarified incidents which had been incorrectly recorded but also provided an opportunity to discuss the legislation with a range of police officers, to identify events where offences were committed under the legislation and to follow up matters that proceeded through court.

### **Information about offences, penalties and judicial interpretation of the Vehicles Act**

- 3.15 In February 2000, we directed the Police Service to provide advice about all charges laid under the Vehicles Act in 1999.
- 3.16 In response to this request the Police Service provided charge information for the period 1 July 1999 to 31 December 1999.<sup>39</sup> This information detailed the local area command and region connected to the charge and the type of charge. They also provided 'a list of persons against whom action for an offence has been taken'.<sup>40</sup> This entailed a list of ten persons with a COPS event number, incident date, charge date and charge location.
- 3.17 In addition, where the COPS events suggested that a person may have been charged, we sought information directly from local commands about charges and court processes. Where possible, court transcripts and tapes were obtained from court registries.

### **Demographic data**

- 3.18 In order to be able to describe the characteristics of persons coming into contact with police using the legislation, we requested<sup>41</sup> information from the Police Service about the racial characteristics, age and gender of relevant persons of interest. The Police Service provided a list of seven persons, with racial characteristics noted for five of these persons, age for six and sex for all seven.
- 3.19 Because the information provided by the Police Service represented such a small sample of all persons of interest dealt with by police utilising the legislation, we examined all COPS event entries supplied by the Police Service for relevant demographic details. Unfortunately, not all COPS events provided by the service included the relevant fields detailing these characteristics. In addition, in many events in which the relevant fields were provided the demographic information had not been recorded.
- 3.20 Racial characteristics were only available for 29 of the 132 persons of interest identified in the COPS records. Because of the small size of this sample racial characteristics of persons of interest are not documented in this report.<sup>42</sup>

---

<sup>39</sup> The Police Service has advised that charge information for the first half of 1999 was not available because 'law part codes' were not assigned to the offences until the beginning of July 1999.

<sup>40</sup> Correspondence from Inspector Steve Chalmers to the Assistant Ombudsman (Police), 15 Feb. 2000.

<sup>41</sup> Correspondence from Assistant Ombudsman (Police) to Commander Scott (the Police Service 'sponsor' for the Vehicles Act), 1 Feb. 2000.

<sup>42</sup> There may be more than one person of interest for each COPS event.

### Surveys of police

- 3.21 In July and August of 1999, we surveyed a sample of local area commanders. The survey was primarily designed to obtain information from commanders in regard to their use of the powers conferred by the *Crimes Legislation Amendment (Police and Public Safety) Act 1998* (Police and Public Safety Act).<sup>43</sup> However, the survey also included three questions about the Vehicles Act.<sup>44</sup>
- 3.22 In October 1999, the Police Service's audit and evaluation services conducted a telephone survey of police officers to provide some information about the level of awareness of the Vehicles Act. A total of 33 officers were surveyed from 22 different local area commands.<sup>45</sup>

### Interviews with police

- 3.23 We interviewed a number of operational and specialist police officers in the course of the review to better understand how the legislation was being implemented 'on the ground'.
- 3.24 The number of road blocks examined during the review period was relatively small. This meant that it was possible to investigate each road block in some detail. Many of the officers who were involved in the use of these powers agreed to be interviewed as part of the review of the legislation. These interviews provided information about the practical implementation of the road block powers and the related Police Service operating procedures.
- 3.25 A total of 29 officers from four Police Service regions in NSW were interviewed face-to-face. An additional six officers were interviewed over the telephone. Face-to-face interviews were tape recorded with the permission of the officers and on the basis that individual officers and commands would not be identified.<sup>46</sup>

### Submissions

- 3.26 We contacted a number of organisations likely to have an interest in this review and invited them to comment on the legislation and its implementation. The following organisations responded:
- Attorney General's Department (NSW) (Attorney General),
  - Police Association of New South Wales (Police Association),
  - Privacy NSW, and
  - NRMA (an association that represents motorists in NSW).

---

<sup>43</sup> This survey was conducted as part of the review by the Ombudsman of the Police and Public Safety Act. For a more detailed discussion of this survey see *Policing Public Safety, Report under s.6 of the Police and Public Safety Act*, NSW Ombudsman, Nov. 1999, at paras. 3.92–3.94.

<sup>44</sup> A copy of these questions can be found at Appendix A.

<sup>45</sup> A copy of each survey can be found at Appendix B.

<sup>46</sup> The telephone interviews were not tape recorded.

- 3.27 These submissions provided a range of perspectives on and analysis of various aspects of the legislation.

### **Use of the Ombudsman's investigatory powers**

- 3.28 An 'own motion' investigation was commenced to investigate the administration of the powers conferred upon police by the Vehicles Act.<sup>47</sup> This supplemented our powers to require information from the Police Service.

### **Complaints to the Ombudsman and Police Service**

- 3.29 Both the Police Service and the Ombudsman receive a range of complaints and inquiries from members of the public and police officers in relation to police conduct.
- 3.30 Three complaints relating to the use of the powers were identified as a result of our inquiries during the review period. This small number of complaints is not surprising given the low level of usage of the powers.
- 3.31 As a result of our inquiries into one road block, two complaints from members of the public came to our attention. These complaints related to alleged police conduct at the scene of the road block. One of these complaints was later withdrawn by the complainant. The other was not fully investigated because the complainant left the country for a prolonged period.
- 3.32 The third complaint was identified during a consultation with a senior police investigator. This complaint involved an allegation of a threat being made during the questioning of a suspect. The questioning included a demand according to the Part 2 driver and passenger identification powers in the Vehicles Act. The police investigation of the complaint found insufficient evidence upon which to base any action. No further action was taken by us in relation to the matter.
- 3.33 An internal police investigation into a road block and related police pursuit was also examined following during the review.

---

<sup>47</sup> Own motion investigation. The relevant legislation enables us to initiate our own direct investigations.

# **Driver and passenger identification**

## 4. *Driver and passenger identification*

---

### Legislative survey

4.1 This section briefly explains the provisions contained in Part 2 of the Vehicles Act, ‘driver and passenger identification’, summarises the existing legislative powers in NSW which are similar to the Part 2 powers, and describes a selection of similar powers in other Australian jurisdictions.

### *Driver and passenger identification — a summary of the new powers*

4.2 Section 6 of Part 2 of the Vehicles Act creates a new police power to request identification details from drivers and owners of vehicles.

4.3 Section 6(1) provides:

A police officer who reasonably suspects that a vehicle was or may have been used in the commission of an indictable offence may request:

- a) the driver of the vehicle to disclose his or her identity and the identity of any passenger in or on the vehicle at or about the time the offence was or may have been committed, or
  - b) any owner of the vehicle (who was not the driver) to disclose the identity of the driver of, and any passenger in or on, the vehicle at or about the time the offence was or may have been committed,
- or both.

4.4 There is no power in the legislation to request a passenger to provide identification details.

4.5 Prior to making a request under the Vehicles Act, the police officer must:

- provide evidence that he or she is a police officer,<sup>48</sup>
- give his or her name and place of duty,
- give the reason for the request for identification, and
- warn that a failure to comply with the request may be an offence.<sup>49</sup>

4.6 The driver or owner must comply with the request unless he or she has a reasonable excuse not to do so.<sup>50</sup>

4.7 If the driver does not know the full and correct identity of any passengers, he or she must disclose such information as is known to them.<sup>51</sup>

---

<sup>48</sup> If the officer is in uniform, this will be taken as sufficient to establish that he or she is a police officer.

<sup>49</sup> Vehicles Act, s.6(2).

<sup>50</sup> *ibid.*, s.7.

<sup>51</sup> *ibid.*, s.7(2).

## DRIVER AND PASSENGER IDENTIFICATION

- 4.8 The owner must disclose the identity of any person the owner knows or has reason to suspect was the driver of or passenger in the vehicle.<sup>52</sup> The owner must also disclose the identity of persons they have reason to suspect had access to the vehicle.<sup>53</sup> If the owner does not know the full and correct identity of the driver or passenger, he or she must disclose such information as is known to him or her.<sup>54</sup>
- 4.9 It is an offence under the legislation to give a false name or an address other than the full and correct address, without a reasonable excuse.<sup>55</sup>
- 4.10 The maximum penalty for any offence under Part 2 of the Vehicles Act is \$5500<sup>56</sup> or 12 months imprisonment.<sup>57</sup>

### Amendments affecting Part 2 of the legislation

- 4.11 The Vehicles Act originally defined 'owner' as follows:

"owner" of a vehicle means an owner within the meaning of section 18A of the Traffic Act 1909 and includes:

- (a) a person who is not such an owner but who usually has the care, control and custody of the vehicle, and
- (b) any other person prescribed by the regulations for the purposes of this definition.  
(emphasis added)

- 4.12 The *Traffic Act 1909* was repealed at the end of 1999.<sup>58</sup> In July 1999, the *Road Transport Legislation Amendment Act 1999* commenced and amended the definition of owner in the Vehicles Act. The current definition of owner reads:

"owner" of a vehicle means the responsible person for the vehicle within the meaning of the Road Transport (General) Act 1999 and includes:

- (a) a person who is not such an owner but who usually has the care, control and custody of the vehicle, and
- (b) any other person prescribed by the regulations for the purposes of this definition.  
(emphasis added)

- 4.13 The definition of 'responsible person' in the *Road Transport (General) Act 1999* is different to, and more comprehensive than, the old *Traffic Act 1909* definition in a number of respects. The two definitions are set out in full in Appendix C.
- 4.14 Significantly, the current definition applies in relation to both registered and unregistered vehicles. It thus addresses a concern expressed by the Police Association in its submission to this review, that the original definition of owner did not apply to owners of unregistered or unregistrable vehicles.<sup>59</sup>

---

<sup>52</sup> Vehicles Act, s.8(1).

<sup>53</sup> *ibid*, s.8(3).

<sup>54</sup> *ibid*, s.8(1)(b).

<sup>55</sup> *ibid*, s.9.

<sup>56</sup> The current equivalent of 50 penalty units.

<sup>57</sup> Vehicles Act, ss.7, 8 and 9.

<sup>58</sup> The *Traffic Act* was repealed on 1 Dec. 1999.

<sup>59</sup> Submission from Police Association, 29 Feb. 2000, p.2.

### *What other powers operate in New South Wales?*

- 4.15 Although there are a number of legislative provisions which allow police to require a person to provide their name and address, two legislative provisions in NSW are particularly relevant to the Part 2 driver and passenger identification powers. These provisions are summarised below:<sup>60</sup>

#### **Crimes Act 1900**

Section 563: A police officer may request the name and address of a person if the officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence because the person was at or near the place around the time that the offence was committed.

#### **Road Transport (General) Act 1999**

Section 21(1): If the driver of a vehicle is alleged to have committed an offence under the road transport legislation:

- (a) the responsible person for the vehicle, or the person with custody of the vehicle, must give the name and address of the driver to an authorised officer, when required to do so.
- (b) any other person must give to an authorised person if required, any information they have that may lead to the identification of the driver.

It is a defence to an offence under sub-section 1(a) if the defendant proves to the satisfaction of the court that they did not know and could not find out with reasonable diligence the driver's name and address.

- 4.16 Section 563 of the *Crimes Act* is of interest because prior to requiring a person to provide identification details, a police officer must state his or her name and station, provide evidence that he or she is a police officer, give a reason for the request and warn that failure to comply may constitute an offence.<sup>61</sup> These procedural requirements are identical to those in sub-section 6(2) of the *Vehicles Act*.<sup>62</sup> Both the *Crimes Act 1900* and the *Vehicles Act* provisions only permit demands in relation to suspected indictable offences.
- 4.17 Section 21(1) of the *Road Transport (General) Act* is of interest because it confers a power on police to demand that vehicle owners and other persons identify drivers of vehicles. This section only allows police to make such a demand in relation to alleged offences under road transport legislation .

---

<sup>60</sup> The provisions have been summarised and may not reflect the exact wording of the legislation.

<sup>61</sup> *Crimes Act*, s.563(2).

<sup>62</sup> See para. 4.5.

## DRIVER AND PASSENGER IDENTIFICATION

### *What similar powers exist in other states?*

4.18 Selected powers have been summarised below.

#### Queensland

4.19 Police powers in Queensland have been consolidated into a single Act, the *Police Powers and Responsibilities Act 2000*. The Queensland legislation is of interest because it has been the subject of recent consultation and review.

4.20 Section 33 of the *Police Powers and Responsibilities Act* sets out the circumstances in which a police officer may require a person to state his or her name and address. The prescribed circumstances include situations where:

- a police officer finds a person committing an offence or reasonably suspects the person has committed an offence,
- a police officer reasonably suspects the person may be able to help in the investigation of a relevant motor vehicle incident,
- a police officer reasonably suspects the person may be able to help in the investigation of an alleged indictable offence because the person was near the place where the alleged offence happened before, when, or soon after it happened,
- the person is in control of a stationary vehicle on a road or a vehicle that has been lawfully stopped.

#### South Australia

4.21 During the parliamentary debate of the Police Powers (Vehicles) Bill, the Member for Eastwood, Mr Tink, noted the breadth of the South Australian powers to identify drivers in contrast to the new powers proposed in NSW.<sup>63</sup> Section 38 of the *Road Traffic Act 1961 (S.A.)* provides:

A person must truly answer any question put by a member of the police force or an inspector for the purpose of obtaining information which may lead to the identification of the person who was driving, or who was the owner of, a vehicle on any occasion.

#### Tasmania

4.22 At the time of writing, the Tasmanian Parliament is considering the introduction of the Police Powers (Vehicle Interception) Bill (2000). The Bill includes a power to request that a person in a vehicle stopped at a road block<sup>64</sup> identify him or herself, any other person in the vehicle at the time of a certain type of offence, and the owner of the vehicle.<sup>65</sup> The owner of the vehicle may also be requested to identify persons in the vehicle at the time the offence was committed.<sup>66</sup>

---

<sup>63</sup> Mr A. Tink, MP, NSWPD, 17 Nov. 1998, p.10028.

<sup>64</sup> The provisions also apply to persons in a vehicle stopped by a vehicle immobilising device.

<sup>65</sup> Police Powers (Vehicle Interception) Bill, s.8(1).

<sup>66</sup> *ibid*, s.8(2).

**Recorded use of the driver and passenger identification powers**

4.23 In 1999 there were 36 recorded uses of the driver and passenger identification powers.

4.24 Table 1 shows the number of events recorded as uses of the Part 2 driver and passenger identification powers in each region of the Police Service in 1999.

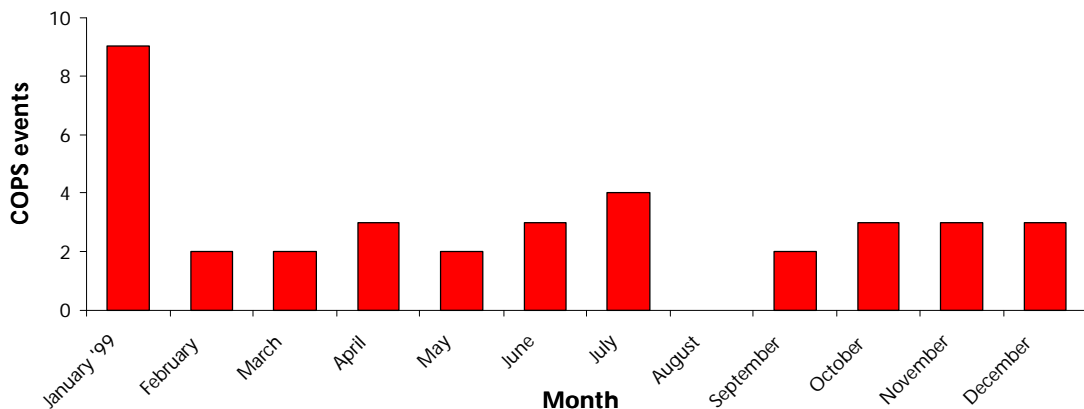
**Table 1: Recorded uses of the driver and passenger identification powers**

Region	Number of COPS Events
Western	3
Georges River	6
Southern Rivers	1
Endeavour	7
Macquarie	3
City East	4
South Eastern	2
Greater Hume	5
North Metropolitan	1
Hunter	1
Northern	3
TOTAL	36

Source: COPS data provided by Police Service, 1 Jan. 1999 to 31 Dec. 1999.

4.25 The following graph shows a monthly breakdown of recorded uses of the driver and passenger identification powers.

**Graph 1: Recorded use of driver and passenger identification powers by month**



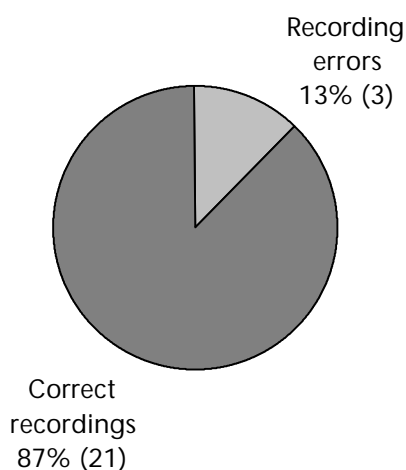
Source: 1999 COPS events provided by NSW Police Service.

## DRIVER AND PASSENGER IDENTIFICATION

### *Recording accuracy*

4.26 A total of 45 local area commands were contacted about the recording of the use of the powers contained in the Vehicles Act.<sup>67</sup>

**Graph 2: Police assessment of driver and passenger identification records**



Source: 1999 COPS events assessed by local commands between Feb. and Apr. 2000.

4.27 The following sets out the circumstances of the three events which were identified by commands as incorrect recordings:

#### **Incorrect recording A**

4.28 This event involved a bag snatch where a witness noted the number plate of the vehicle in which the offender escaped.<sup>68</sup> The vehicle was identified by police, stopped and searched, and the offender was charged. The local command advised that this event was incorrectly recorded as a use of the passenger/driver identification powers. The event actually involved use of stop, search and detain powers under s.357E of the *Crimes Act*.<sup>69</sup> Driver and passenger identification did not appear to be an issue.

4.29 Interestingly, the first examination of this event by the duty officer concluded that the powers had been 'utilised in the appropriate manner'.<sup>70</sup> However, the Acting Superintendent at the command identified the error and informed us. While the failure to identify the error by a senior officer tends to compound concerns about the level of misunderstanding of the legislation, the fact that this was quickly rectified by a superior officer is encouraging. It is also pleasing that this command chose to disclose to us such a full account of their processes of review.

<sup>67</sup> Only a proportion of the total number of driver and passenger identification events for 1999 (24 of 36) were assessed by commands because of COPS data problems.

<sup>68</sup> Record 70.

<sup>69</sup> For a summary of s.357E. See para. 5.8.

<sup>70</sup> Correspondence from local area command to the Ombudsman, 6 Mar. 2000.

**Incorrect recording B**

- 4.30 In this incident, the police received information about a vehicle 'acting suspiciously'.<sup>71</sup> Police then observed the vehicle drive through a red traffic light and stopped the vehicle. The event records the following with respect to identification requests:

Once the vehicle was stopped all occupants were asked their particulars and the driver was spoken to in relation to the traffic offence. None of the occupants of the vehicle had any identification however provided the above names to police.<sup>72</sup>

- 4.31 The police officer who assessed this event as a mis-recording said it was just a standard request for names and address from people and pointed out that they were asked to identify themselves. The Vehicles Act does not provide any power to require that passengers identify themselves.

**Incorrect recording C**

- 4.32 According to the COPS event, in this incident:

The above vehicle was reported by an unknown source to have been doing U turns in [street name, town] earlier in the day. Police came across the vehicle with the above persons on board. The owner [name] was breath tested and spoken to regarding her driving. The details of the other occupants were taken. [Name] gave the officer a false name and address. Police recognised his face and the POI was searched as was the others with no result. [Name] was cautioned regarding her driving and all were allowed to leave. When searched, [name] had approximately \$25 on him. No other items were found.<sup>73</sup>

- 4.33 The officer checking this event believed it to be a vehicle stop and request for name and address under the *Traffic Act*. This officer was questioned as to the possible legislative basis for the search of the person and vehicle and he suggested s.357E of the *Crimes Act*.<sup>74</sup> While the event narrative suggests that the criteria for a search under s.357E may not have been met, it may be that the searches were conducted with the consent of the relevant persons.

**Charge information**

- 4.34 Police Service figures for the period 1 July 1999 to 31 December 1999 indicate that eight offences resulted in a charge or other legal process under the Vehicles Act.

---

<sup>71</sup> Record 49.

<sup>72</sup> Record 49.

<sup>73</sup> Record 12.

<sup>74</sup> Further detail in the COPS event states 'Action title: vehicle & occupants searched – nil find'.

## DRIVER AND PASSENGER IDENTIFICATION

4.35 The following table summarises the information provided by the Police Service for the six month period.

**Table 2: Driver and passenger identification charge information**

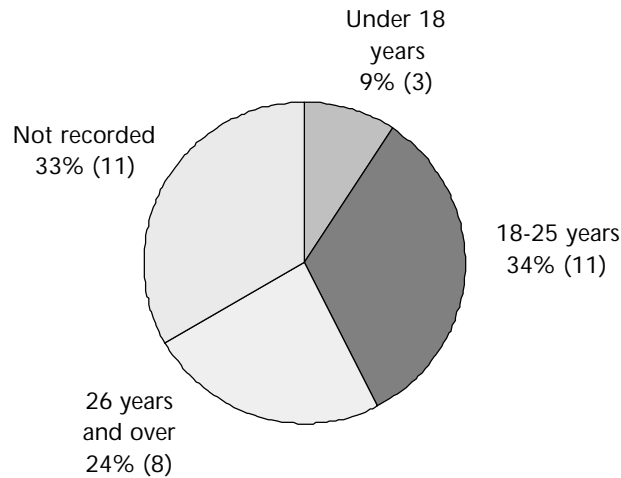
Offence: driver fail to disclose passenger details to police					
Region	Local command	CAN <sup>75</sup>	Summons	Bail Refused	Total
City East	Kings Cross		3		3
Georges River	Flemington	1			1
Greater Hume	Campbelltown			1	1
Total NSW					5
Owner fail to disclose driver/passenger details to police					
Region	Local command	CAN	Summons	Bail Refused	Total
Macquarie	Parramatta		1		1
Georges River	Bankstown	1			1
South Eastern	Far South Coast		1		1
Total NSW					3

Source: Police Service data from 1 July, 1999 to 31 Dec. 1999 (NSW).

### **Demographic characteristics of persons dealt with by police**

- 4.36 We examined all COPS events recorded as a use of the driver and passenger identification powers in 1999 to determine the demographic characteristics of persons dealt with by police using Part 2 of the legislation. These persons may have complied with the demand and were not necessarily charged with any offence.
- 4.37 This analysis excluded three events that were identified by commands as recording errors. One event which was recorded as a use of the driver/passenger identification powers but which was in fact a roadblock was also excluded. The number of persons of interest differs from the number of events because in one event there were two persons of interest.
- 4.38 Details of a total of 33 persons of interest were examined. Age details were available and recorded for 22 persons of interest. The following graph categorises the ages of persons dealt with under Part 2 of the legislation.

<sup>75</sup> Court attendance notice.

**Graph 3: Driver and passenger identification — age of persons of interest**

Source: 1999 COPS events recording use of driver and passenger identification powers.

- 4.39 The gender of persons of interest was recorded for 31 persons. Males accounted for 55 per cent (18) of persons of interest and females 39 per cent (13). Gender was not recorded for two persons.

### **Circumstances in which the identification powers have been used**

- 4.40 Approximately three-quarters of the COPS events recording use of the Part 2 identification powers indicated that police had utilised s.6(1)(b) of the Vehicles Act to make requests of owners to identify drivers or passengers.
- 4.41 Most of the COPS records we examined showed police using the identification powers after a witness to or victim of an offence observed the vehicle registration number of a vehicle involved in that offence. Commonly, the police would then trace the vehicle owner and demand that he or she provide the name of the person driving the vehicle, and sometimes the details of passengers in the vehicle, at the time of the offence.
- 4.42 A number of events described assaults where the offender left the scene in a vehicle. For example, in one event the victim (a 44 year old woman) had her bag snatched:

She gave chase and yelled at the persons to stop. They continued to run and the victim saw the female throw the bag to the defendant. The pair then turned and started to run north on [street name]. The defendant ran past the victim who continued to chase. The victim then noticed a blue vehicle stopped at the kerb with the passenger door open. The female got into the drivers side door and sat in the rear. The victim ran to the vehicle and saw a male person in the driver's seat and a person in the rear seat next to the female. The victim said to the occupants, "give me back my bag, for god's sake, its only five dollars". Someone in the car said "we haven't got it, he's got it up there". The victim turned to her left and saw the defendant emerge from bushes and walk towards the vehicle. The victim said "Give me my bag!" The defendant said "I haven't got it, it's back there" and pointed back towards the bushes. The victim shouted "Get it for me" and the defendant went to the bushes and got the bag threw it on the ground. The victim then shouted "Go and pick it up and get it for me" the defendant picked up the bag and carried it to where the victim was standing near the car and said to the victim "You bitch".<sup>76</sup>

<sup>76</sup> Record 87.

## DRIVER AND PASSENGER IDENTIFICATION

- 4.43 The victim was aggressively threatened by the defendant and eventually the offenders drove away. The victim noted the vehicle registration. Police inquiries with the registered owner of the vehicle identified the defendant as the person involved. The event continues:

At 8am on 19/2/00 police attended the owner's address in [suburb] and using the Police Powers (Vehicles) Act demanded the names of the passengers in vehicle registration [registration number] at 2am on [date] when it was used in the commission of an indictable offence, to wit, stealing. The driver supplied a statement to police and named [name] as the person responsible for the stealing.<sup>77</sup>

- 4.44 The person named by the owner was later charged.

- 4.45 Another common use of the powers occurred when a witness or victim observed the registration of a vehicle which had been used in the commission of a break, enter and steal offence. For example:

On [date] at 2.00pm the victim came home to see a blue vehicle, registration [registration number] parked in the driveway. There was two people in the car. The victim ran into the house after taking down the registration of the vehicle. The victim noticed that the television, microwave and walkman were missing from the house. The victim notified the police.

[Person of interest details recorded]

On the [date] the POI attended [name of police station] and informed police that she was the driver of motor vehicle [registration number] when it was involved in this offence. [Name of POI] maintained that she was giving an unknown male a lift from [suburb] to what she initially believed was his home address to pick up property and only became aware that he had broken into the premises when she went to the front door. The POI however then implicated herself in this offence by admitting that she assisted in carrying the microwave oven from the premises. She further stated that she then reported her car stolen to try and hide her involvement in this offence. The POI was requested by police to disclose the identity of the male POI under the Police Powers and Vehicles Act of 1998. She failed to comply with the request stating that she did not know his identity.<sup>78</sup>

- 4.46 The driver of the vehicle was charged with the break, enter and steal offence and with failing to disclose the identity of the passenger.

## Discussion

- 4.47 During the course of the review a number of pertinent issues were identified through examination of court tapes and transcripts, discussions with police, examination of the legislation, and concerns highlighted in submissions. These issues illustrate potential difficulties with, or advantages of, the legislation, and are discussed below.

---

<sup>76</sup> Record 87.

<sup>77</sup> Record 28.

*Indictable offences***Range of indictable offences**

- 4.48 The driver and passenger identification powers are essentially an investigative tool for police. It is a prerequisite for the use of these powers that a police officer 'reasonably suspects that a vehicle was or may have been used in the commission of an indictable offence'.<sup>79</sup>
- 4.49 In NSW, a range of indictable offences are included in the *Crimes Act* and other statutes. These offences range from less serious matters, such as offences penalising graffiti and minor stealing (e.g. shoplifting), to the most serious crimes such as homicide and attempted homicide.
- 4.50 Almost half (15) the COPS events we examined described break and enter and/or stealing offences. More than a third of the events (12) described assaults.<sup>80</sup> Below is a list describing the range of unlawful activities which attracted the use of the legislation in 1999:<sup>81</sup>
- break and enter,
  - deliberately ramming a vehicle into another vehicle (malicious damage),
  - assault and robbery,
  - assault,
  - stealing, and near hit of a cyclist,
  - fraudulent acquisition of goods,
  - bag snatch (assault and robbery),
  - stealing (incidents including stealing of a bicycle, mobile phones, T-shirts, a grass cutting implement),
  - armed hold up of a post office,
  - threaten a person with a firearm,
  - unarmed robbery of a credit union,
  - road rage – assault,
  - theft from a motor vehicle,
  - stealing from shop and assault,
  - attempted stealing of a car tyre.

---

<sup>79</sup> Vehicles Act, s.6.

<sup>80</sup> A total of 31 events were examined.

<sup>81</sup> Five events were excluded as recording errors.

## DRIVER AND PASSENGER IDENTIFICATION

### What proof of an indictable offence is required?

4.51 In one event we examined, a woman was assaulted and robbed in a public place. A witness saw the offenders leave the scene in a vehicle and noted the registration details. Police located the owner of the vehicle. The matter proceeded to court because the owner refused to disclose the identity of the driver and passenger at the time of the offence. The police had a number of witness statements but fell short of having sufficient information on which to base a charge against any individual.

4.52 The prosecution's argument can be illustrated by the following extract from the court transcript:

Prosecutor: ...An indictable offence did occur, there can be no doubt that a robbery in circumstances of aggravation occurred at that time of day on that date and so the actual offence occurred but no charges were ever laid in relation to that matter. So that's not to suggest – so the answer to your question is, is it essential that –

Bench: Someone is indicted –

Prosecutor: – somebody is charged? No, it's not, the actual offence did occur and so it does comply with the Act.<sup>82</sup>

4.53 The defence case appeared to be that objective proof that an indictable offence occurred, such as a charge or conviction, was required by the legislation:

She has been spoken to about an incident which on its face appears to be an indictable offence but there's no evidence before your Worship that any such indictable offence has been laid on any person or any conviction secured pursuant to any charge of that type.<sup>83</sup>

4.54 The magistrate dismissed the charge on the following basis:

... that prima facie information to police by a civilian and their enquiries is not enough to satisfy me beyond reasonable doubt that an indictable offence has been committed.<sup>84</sup>

4.55 Brief consideration was also given by the bench to the wording of the legislation that 'a vehicle was or may have been used in the commission of an indictable offence'.<sup>85</sup> The magistrate gave a restrictive interpretation of this provision and stated that '... the "may" is about the car...' and not the offence. That is, that the suspicion of the police officer is directed to whether the vehicle was or may have been used in the offence rather than whether the indictable offence occurred.

4.56 It appears that in this instance the magistrate may have failed to correctly interpret the legislation. The legislation states that the officer need only have a reasonable suspicion that a 'vehicle was or may have been used in the commission of an indictable offence'. The reasonable suspicion applies not only to the involvement of the vehicle but also to the commission of the offence. This fact is emphasised in sub-sections 6(1) (a) and (b) which refer to the time 'the offence was or may have been committed'.

---

<sup>82</sup> *Police v Tina Sinsbury*, local court, 14 Jan. 2000 (unreported).

<sup>83</sup> *Police v Tina Sinsbury*, local court, 14 Jan. 2000 (unreported).

<sup>84</sup> *Police v Tina Sinsbury*, local court, 14 Jan. 2000 (unreported).

<sup>85</sup> Vehicles Act, Part 2, s.6(1).

- 4.57 An alternate interpretation of the provisions was adopted in another local court matter. In this matter the prosecution withdrew the charges relating to the indictable offence. However, the magistrate found that, provided that at the time of the investigation the police officer suspected he was investigating an indictable offence, this was sufficient to meet the requirements of the Vehicles Act.<sup>86</sup>
- 4.58 It would seem unduly onerous, and quite contrary to the objectives of the legislation, to require that charges need to have been laid for there to have been sufficient evidence of the existence of an indictable offence. Indeed, the defendant's failure to identify the driver and passengers appear to have been the reason why the police did not have sufficient evidence to lay charges. The legislation appears to be designed to penalise persons who impede police investigations of serious offences by refusing to provide particular information. To make a successful prosecution dependant upon charges having been laid for an indictable offence, would undermine the objectives of the legislation.
- 4.59 While the first magistrate appears to have misinterpreted the legislation, we do not view this aspect of the legislation as unduly complicated or ambiguous. For this reason no recommendation for amendment is suggested.

#### **Involvement of the vehicle in the commission of the indictable offence**

- 4.60 In one event a witness observed and noted the registration of a car she thought was being driven in a suspicious manner.<sup>87</sup> A break and enter offence was committed nearby and the witness gave the vehicle registration number to the police. The owner of the vehicle was located but refused to comply with police demands to identify the driver and passenger of her vehicle.
- 4.61 The matter was heard at local court and was dismissed by the magistrate. In the magistrate's view there was insufficient connection between the vehicle and the indictable offence. The magistrate stated that the key issue in this matter was in relation to the word 'commission'. He raised questions as to the correct interpretation of the word:

What does that mean? Does that mean that the vehicle has to be used physically in carrying out the offence, or does it mean merely that it might be in some way associated with the offence?<sup>88</sup>

---

<sup>86</sup> *Police v Justin John Kuhner*, local court, 28 June 2000.

<sup>87</sup> Record 108.

<sup>88</sup> *Police v Vivienne Mason*, local court, 23 June 2000.

## DRIVER AND PASSENGER IDENTIFICATION

4.62 The magistrate took an adjournment to further consider the matter. He interpreted the legislation in the context of the Attorney General's second reading speech and concluded:

The only link between the vehicle and the break and enter is the fact that it was parked in the vicinity at or about the time of the commission of the offence. And that the driver of the vehicle appeared to act suspiciously. There is no suggestion that the vehicle itself was physically used in relation to the offence ...

It appears to me therefore that this legislation was introduced to enable police to ascertain the driver of a vehicle when that vehicle was itself used in the commission of the crime. Examples would be the driving of motor vehicles at persons or the use of motor vehicles in ram raids. It does not appear to me that the present case is a case that falls within the provisions of the legislation, because the vehicle itself was not used in the commission of the alleged offence. It appears that section 6 is a prerequisite to the making of a request and in those circumstances I am of the opinion that there was no power to put the request to the defendant and the request did not fall within the provisions of the act. The information is therefore dismissed.<sup>89</sup>

4.63 The legislation would apply only in very limited circumstances if the magistrate's interpretation of the phrase 'used in the commission' were correct. On this interpretation, the identification powers might only be invoked when a vehicle is used as a weapon or tool in an offence, rather than simply being a means of transport to or from an offence. The latter is far more common scenario and has been described in many of the events examined as part of this review.

4.64 The wording of the passenger and driver identification powers can be contrasted with that used in powers to stop and search vehicles in Part 3 of the Vehicles Act. Part 3, s.10(1) requires that the police officer suspects on reasonable grounds that the vehicle<sup>90</sup> 'is being, or was or may have been, used in or in connection with the commission of any indictable offence ...'.<sup>91</sup> Use of this broader wording may avoid magistrates adopting a narrow interpretation of the provisions in the passenger and driver identification powers.

---

**RECOMMENDATION 1:** *That Parliament consider amending s.6(1) to insert 'or in connection with' immediately before the words 'the commission of an indictable offence'.*

---

### **Reasonable excuse**

4.65 The Vehicles Act provides that it is an offence not to comply with a demand from a police officer to identify drivers and passengers unless a driver or owner 'has a reasonable excuse for not doing so'.<sup>92</sup>

---

<sup>89</sup> *Police v Vivienne Mason*, local court, 23 June 2000.

<sup>90</sup> Or a vehicle of the specified class of vehicles.

<sup>91</sup> Vehicles Act, s.10(1)(a).

<sup>92</sup> *ibid*, Part 2, s.7(1) and s.8(1).

- 4.66 In March 2000, the Deputy Commissioner recommended that officers use the following form of demand when exercising the powers in relation to drivers:

I am [name, rank and station], [if not in uniform] here is my identification certificate. I am going to request that you supply identification information under section 6 of the Police Powers Vehicles Act 1998 as I reasonably suspect that vehicle [registration number] was or may have been used in the commission of an indictable offence, that being [name of offence]. I warn you that failure to comply with this request may be an offence under the Police Powers (Vehicles) Act 1998.

I now request you as the driver of the vehicle to disclose your name and residential address, and the name and the residential address of any passenger in or on the vehicle at about [time], being the time the offence was or may have been committed.<sup>93</sup>

- 4.67 A more accurate and comprehensive statement of the responsibility of the driver or owner to provide information would result if the phrase ‘unless you have a reasonable excuse not to do so’ were added to the last sentence of the first paragraph of the standard demand.

---

***RECOMMENDATION 2: That the Police Service amend its suggested form of demand to ensure that officers inform persons that they need not comply with a demand if they have a reasonable excuse not to do so.***

---

- 4.68 A number of court cases have involved the consideration of what might fall within the definition of a reasonable excuse under the legislation.
- 4.69 In one event a witness recorded the registration of a vehicle involved in a break, enter and steal offence.<sup>94</sup> Police contacted the vehicle owner and demanded that she identify the driver of the vehicle at the time of the offence. The owner said that she did not recall and thought that her vehicle may have been stolen at the time. There was some question as to whether the vehicle had been reported to the police as being stolen.
- 4.70 The defence lawyer in the local court hearing argued:
- The legislation puts the onus on the person to disclose the identity of the driver or passenger of a motor vehicle, not someone who may have tangentially been involved through some other means like a set of car keys being lost or accidentally left behind somewhere. ... She had no idea what had happened to the car... Anyone could have taken the car.<sup>95</sup>
- 4.71 The magistrate agreed that the defendant’s evidence that the vehicle went missing and was not returned until after the time of the offence, constituted a reasonable excuse under the legislation.

<sup>93</sup> J. T. Jarratt, Deputy Commissioner Field Operations, *Police Service Weekly*, Vol.12, No.9, 6 Mar. 2000, p.19.

<sup>94</sup> Record 20.

<sup>95</sup> *Police v Tracey Cook*, 22 Oct. 1999 (unreported).

### Cautioning and reasonable excuse

4.72 The Police Service's *Custody, Rights, Investigation, Management, Evidence Code of Practice* (CRIME) provides 'a succinct reference to the powers of police when investigating offences'.<sup>96</sup> CRIME provides the following advice to police in regard to cautioning:

Caution someone once you:

- arrest them, or
- believe there is sufficient evidence to establish they have committed the offence which is the subject of the questioning, or
- would not allow them to leave if they wanted to, or
- have given them reasonable grounds to believe they would not be allowed to leave if they wanted.

If you fail to caution at the appropriate time, or if the suspect does not fully understand it, any subsequent conversation or admission might be ruled to be improperly obtained and inadmissible.<sup>97</sup>

4.73 Section 356M of the *Crimes Act* also requires that the custody manager at a police station caution a person who is detained.

4.74 CRIME sets out the caution as follows:

I am going to ask you some questions. You do not have to say or do anything if you do not want to. Do you understand that?

We will record what you say or do. We can use this recording in court. Do you understand that?<sup>98</sup>

4.75 It is worth noting at this point that the CRIME code of practice also states:

You do not have to caution where the law requires people to answer questions put by, or to do things required by, the investigating official e.g. Traffic and Customs Acts.<sup>99</sup>

4.76 The Vehicles Act confers a power on police to demand that a driver or owner answer certain questions unless they have a reasonable excuse not to do so.

4.77 A number of events examined throughout the review demonstrated the need for police to alter their cautioning practices when requiring persons to provide details under this Act.

4.78 In one event where a witness observed persons steal a bicycle and place it in a car, police traced the car owner by using the registration number provided by the witness.<sup>100</sup> Police demanded that the owner identify the driver and passengers at the time of the offence. The owner did not comply with the request and was summonsed.

---

<sup>96</sup> *Custody Rights Investigation Management Evidence Code of Practice*, NSW Police Service, 1997, p.4.

<sup>97</sup> *ibid*, p.24.

<sup>98</sup> It is not necessary for police officers to follow the wording as a formal script.

<sup>99</sup> *Custody Rights Investigation Management Evidence Code of Practice*, NSW Police Service, 1997, p.24.

<sup>100</sup> Record 17.

4.79 The Police Service’s prosecuting services directed the relevant constable to withdraw from the proceedings because they saw ‘no reasonable prospect of conviction’.<sup>101</sup> One of the reasons for the withdrawal was explained by Prosecuting Services in the following terms:

Secondly, I note on the first sentence of paragraph 6 the constable cautioned the defendant that he “did not have to say or do anything if you do not want to”. That caution effectively removes the liability imposed under Section 8 in that the officer has thereby given the defendant a “reasonable excuse for not doing so”.<sup>102</sup>

4.80 Because of a delay in the constable receiving this advice and a communication breakdown within Prosecuting Services, the matter proceeded to the local court, notwithstanding the direction to withdraw.

4.81 The defendant was found guilty in his absence in the first instance, and the matter was then appealed to the district court. It was not until the day of the appeal that the prosecution withdrew its summons, some five months after the recommendation to withdraw was made.

4.82 The outcome of this matter seems to have escaped the attention of the local area command. When we contacted the command about this event, the duty officer’s briefing stated:

[The event] shows the legislation being used and ultimately the suspect being summonsed for the offence of failing to comply with the form of demand in relation to the driver and passengers at the time of the indictable offence. The result being a \$500 dollar fine and \$52 Court Costs for the defendant. I feel that in this instance the legislation has been invaluable in dealing with the person connected with the offence.<sup>103</sup>

4.83 This briefing was also signed off by the local area commander.

4.84 In another event a district court judge considered a situation where an appellant had been cautioned prior to being required to identify passengers in her vehicle.<sup>104</sup> The conviction was quashed. The judge commented:

In respect of the offence of failing to provide details of the passenger, I accept the submission of the appellant that on the one hand, being aware of her right to silence and being told on the other hand that she was obliged to provide details and to provide them truthfully that a situation of confusion may have arisen.<sup>105</sup>

4.85 Another event in which a registered owner of a vehicle was required to identify the driver and passengers, highlights some relevant issues about the interplay between:

- the cautioning of a person and their right to remain silent,
- the privilege against self incrimination, and
- what might constitute a reasonable excuse under the Vehicles Act.

---

<sup>101</sup> Correspondence from Police Service prosecuting services to local area commander, Aug. 1999.

<sup>102</sup> *ibid.*

<sup>103</sup> Correspondence from local area command to the Ombudsman, 14 Apr. 2000.

<sup>104</sup> Record 78.

<sup>105</sup> In the matter of the appeal of Debra Ann Gardner, district court, 24 Mar. 2000 (unreported).

4.86 The details of this event, in so far as they are relevant to this discussion, are as follows:<sup>106</sup>

---

### CASE STUDY

A post office was the subject of an armed robbery by two male offenders: referred to here as 'A' and 'B'. A stolen vehicle was used in the commission of the crime and was found a couple of kilometres from the post office. A confessed to the robbery. A's premises had been under police video surveillance on the day of the robbery. Two hours prior to the robbery the video showed A and B leave the premises in A's girlfriend's vehicle. Twenty minutes after the robbery A's girlfriend's vehicle returned and B ran from the vehicle. About an hour later the girlfriend drove from A's premises with both A and B.

Discussions with police revealed that they believed that A's girlfriend had driven A and B to a place to steal a car that they then used in the robbery. The police believed that she then picked up A and B after they had committed the robbery and dumped the stolen vehicle.

A's girlfriend became the defendant when the matter later proceeded to court. Police spoke to the defendant on a number of occasions. On the final occasion the defendant was arrested and the police officer said to her:

At this stage you are under arrest. You not obliged to say or do anything as anything you say or do may be later used in evidence. Do you understand that?<sup>107</sup>

She was allowed to contact her solicitor and then given the caution a second time. The police officer then formally demanded that she identify the driver and passengers in her vehicle at the time of the offence. The defendant replied:

On legal advice I don't wish to answer any questions.

The defendant was then charged under s.8 of the Police Powers (Vehicles) Act.

---

4.87 The matter was heard before a local court magistrate who found the defendant guilty. The defendant appealed to the district court at which the prosecution offered no evidence and as a result the charge was dismissed. The district court considered an application for costs under s.133R of the *Justices Act 1902*.

4.88 While neither the local court nor the district court decisions ultimately turned on the cautioning issue, relevant discussion occurred in the course of both hearings. In the local court hearing the magistrate commented:

If it was simply as [the defence lawyer] said, I would agree totally with him, because at that stage she was actually told, she was cautioned, "You're not obliged to say anything or do anything." Now in the face of that I think it would have to be accepted that if she is told that she does not have to say anything well that is a reasonable excuse ...

---

<sup>106</sup> These details are taken from the relevant COPS event narrative, the police fact sheet and police statements.

<sup>107</sup> Extract from police statement, 17 June 1999.

4.89 At the district court, the defence lawyer argued:

... [the police have] then given her a warning [i.e. caution]. [Name of appellant<sup>108</sup>] again I want you to understand that you are not obliged to say or do anything as anything you say or do may be used later in evidence. That is the reasonable excuse. She's been given a warning that she doesn't need to speak. She's then been asked further questions by the police officers. She says I don't have to answer any more questions, I don't wish to go any further she said, ...and [they] then told her that she would be charged which is contradictory to what the warning they've just given her and in that way she couldn't avoid, really she was backed into a corner so as not to speak. She's given advice that she didn't have to speak ...

4.90 The judge commented that the police 'really erred in giving the warning, there was no need for them to do so.'<sup>109</sup> In reply the defence lawyer then said 'They did err in giving the warning but also told her that she didn't have to speak.'<sup>110</sup>

4.91 Our examination of materials provided by police and of court tapes and transcripts has shown that the practice of cautioning prior to demanding that a person provide identification details is a common one. We agree with the interpretation expressed in the cases above, that cautioning prior to requiring a response to a demand under the Vehicles Act, would provide a reasonable excuse for not complying with the demand. The Police Service needs to advise officers as to the appropriate way to meet any obligations to caution persons and also effectively utilise their powers under the Vehicles Act.

---

**RECOMMENDATION 3: That the Police Service provide guidance to officers about the giving of cautions in the context of demands made under the passenger and driver identification provisions in the Vehicles Act.**

---

### Self incrimination and reasonable excuse

4.92 *Cross on Evidence* discusses a High Court decision emphasising the reluctance of the courts to restrict the privilege against self incrimination and states that the majority:<sup>111</sup>

... emphasised that such a deeply ingrained privilege as that against self-incrimination will not be abrogated by statute "unless a legislative intent to do so clearly emerges, whether by express words or necessary implication".<sup>112</sup> Necessary implication may be drawn from an examination of the language and character of the provision and that which it is designed to achieve...<sup>113</sup>

4.93 Persons required to comply with identification demands under the Vehicles Act may incriminate themselves by providing the required information to the police. There is a question as to whether the privilege against self incrimination might constitute a reasonable excuse not to comply with a police demand under the Vehicles Act.

<sup>108</sup> In this case the defendant appealed and is therefore referred to as the appellant.

<sup>109</sup> In the matter of the appeal of Debbie Maree Bargallie, district court, 4 Jan. 2000 (unreported).

<sup>110</sup> In the matter of the appeal of Debbie Maree Bargallie, district court, 4 Jan. 2000 (unreported).

<sup>111</sup> (1983) 152 CLR 281 at 309.

<sup>112</sup> *Sorby v Commonwealth* (1983) 152 CLR 281.

<sup>113</sup> *Cross on Evidence*, Butterworths, at para. 25 085.

## DRIVER AND PASSENGER IDENTIFICATION

- 4.94 In the case study [4.86] the issue of self incrimination could arise in two ways:
- by identifying the driver of the vehicle, the defendant may be providing evidence that she was an accessory to the robbery because she was the driver, and
  - by identifying that she knows who the passengers were because she was driving, may have the same consequence.

- 4.95 In considering whether police had adequately investigated whether the defendant had a reasonable excuse for not answering the request under the legislation, the district court judge commented:

It seems to me that without the appellant having advanced in some way, the response that any answers she gave may possibly incriminate her, the basis for raising reasonable excuse would not have been established. In my view it is not sufficient to establish reasonable excuse where the person simply declines to answer on legal advice. There needs to be one further step taken at some stage to indicate that the questions are not being answered on the basis of possible self incrimination.<sup>114</sup>

- 4.96 The judge seems to be suggesting that, if a person were to refuse to answer a question on the specific basis that their answer might incriminate them, that would amount to a reasonable excuse under the legislation.

- 4.97 The issue of the relationship between the right to silence and the power under the Vehicles Act to require drivers and owners to identify certain people, was raised by a member of the Upper House during parliamentary debate:

I suspect that many honourable members might find abhorrent the suggestion that the right to silence be removed in relation to criminal investigations, especially in indictable offences. However, that is a necessary tool that the police certainly need to make their job more effective. At the end of the day the job of the police is to protect us. Over many years of policing I have seen the way in which the right to silence has been overwhelmingly manipulated, not by the uneducated, not by those who cannot get access to legal assistance at one given time, but by those who have access to the best legal advice, by those who are well educated and by those who are involved in serious criminal activity. They understand exactly how to work the system in their favour.<sup>115</sup>

- 4.98 This view suggests that the power under the legislation to require answers was intended to override the right to silence. However, no other members of parliament made specific reference to this point. Whether removing the right to silence and in particular, the privilege against self incrimination, in the context of the specific powers conferred by the legislation was indeed the intention of parliament, is unclear.

---

**RECOMMENDATION 4:** *That Parliament considers whether self incrimination should constitute a reasonable excuse under the Vehicles Act and in this context whether any amendments to the Act are necessary.*

---

---

<sup>114</sup> In the matter of the appeal of Debbie Maree Bargallie, district court, 4 Jan. 2000 (unreported).

<sup>115</sup> The Hon. M.J. Gallacher, NSWPD, 27 Nov. 1998, at p.10835.

*Seeking legal advice prior to compliance with police demand*

4.99 The issue of whether it is reasonable to allow a driver or owner to seek legal advice prior to responding to a police officer's demand under s.6 was canvassed by an officer from one local command during the review period. The issue arose when police required the driver of a vehicle to identify the passengers in the context of an assault and the stealing of a car. The officer involved described the situation as follows:

After placing the form of demand on the driver, he elected to seek legal advice in relation to this matter. I personally spoke with his legal representative by telephone at the time of his client's arrest and the form of demand, however the legal representative was unaware of the new legislation. I advised him of the Act and Section, to which he requested time to advise his client.

Due to the recency of the legislation and the reasonable request made, time was given for the offender to obtain this legal advice. ...

At a later date, the offender informed police of the names of the passengers in the vehicle ...<sup>116</sup>

4.100 The relevant COPS event was reviewed by the duty officer who commented:

The question could be asked whether it was "reasonable" to decline to provide the passenger identification while the driver sought legal advice, in which case it could be anticipated that all offenders will seek sanctuary in that response.<sup>117</sup>

4.101 The police officer involved in the incident responded:

It is my opinion, in the incident outlined, that it was reasonable to allow time to seek legal advice, however each situation should turn on its own merits and reasonable time should be given to supply these details. These sections of the Act, Section 7 and 8 are an excellent tool to identify persons involved in indictable offences.

It is correct to say that all offenders may seek this 'sanctuary' in obtaining legal advice, however, it is only a temporary sanctuary as Sections 7 and 8 of the Act are clear. Giving reasonable time to obtain these details shows fairness to the 'Powers' given by the Act and to the offender in question.<sup>118</sup>

4.102 This issue was also raised in the local court hearing mentioned in the case study at 4.86. On one occasion during the police investigation the defendant was asked by police who was driving her vehicle at the time of the robbery. The defendant replied 'No comment. I'll seek legal advice.' The police officer then said he would let the defendant seek legal advice and made an appointment to see her at the police station at a future date. The magistrate said of this conversation:

Now to complete this offence, in my view, as with other offences under the, certainly under the Traffic Act, as referred to, such as a refusal to comply with a breath analysis, there has got to be a request and a refusal, and I think the same feature must be the case here. There has got to be a request, a specific request, a clear request and then the refusal must be a clear refusal.

---

<sup>116</sup> Correspondence from local area command to the Ombudsman, 3 Mar. 2000.

<sup>117</sup> *ibid*, 3 Mar. 2000.

<sup>118</sup> *ibid*, 3 Mar. 2000.

## DRIVER AND PASSENGER IDENTIFICATION

Now the refusal here is not a clear refusal because it is simply “No comment, I’ll seek legal advice.” Now if it had ended there it would as a matter of fact, be a failure to comply because that’s a refusal to comply with the request. But what happened is the police officer said, “Well I’ll let you get legal advice, I’ll make an appointment to see you on [date], are you happy with that and that’s fine.” So there is no, there is a request, but there is no specific refusal. There is just a “no comment, I’ll seek legal advice.” The police officer then allowed the defendant to seek legal advice. Now in my view at that point the offence is not made out.<sup>119</sup>

- 4.103 We agree with the magistrate’s analysis that declining to answer a demand under s.6 in order to obtain legal advice would constitute a failure to comply under ss.7 or 8 of the Vehicles Act. However, if the officer agrees to the request to obtain advice, it would appear the police officer would need to make the demand again and for the owner or driver to again refuse to provide the information.

---

**RECOMMENDATION 5:** *That the Police Service advise officers of the implications of allowing persons to seek legal advice after being required to comply with a demand under the Police Powers Vehicles Act.*

---

**RECOMMENDATION 6:** *That the Police Service formulate guidelines setting out the circumstances in which it is appropriate for officers to agree to requests for legal advice prior to complying with demands under the Police Powers Vehicles Act.*

---

### Indictable offences occurring prior to the commencement of the Vehicles Act

- 4.104 Two events examined during the review period involved indictable offences which were committed prior to the commencement of the Vehicles Act. The robbery mentioned in 4.86 occurred in 1998 and, in another incident, a road rage assault took place in December 1998.<sup>120</sup>

- 4.105 Police involved in 4.86 sought legal advice from police legal services as to the legal ramifications of the indictable offence occurring prior to the commencement of the legislation. The response stated:

The section provides for police to seek information from persons associated with cars. The relevant time is when the request is made. The legislation facilitates the making of the request. In my view it does not matter that the information sought relates to incidents preceding the legislation, although significant delay may provide a basis for a person to have a reasonable excuse for non compliance.<sup>121</sup> [original emphasis]

- 4.106 The road rage incident was reviewed by a duty officer who found that ‘the provision of the Act was used correctly in the circumstances’.<sup>122</sup>

- 4.107 We are also of the view that the Vehicles Act is available for use in these circumstances.

---

<sup>119</sup> *Police v Debbie Maree Bargallie*, local court, 6 Sep. 1999 (unreported).

<sup>120</sup> Record 77.

<sup>121</sup> Advice provided by Legal Services to the local area command, 7 Apr. 1999, p.2.

<sup>122</sup> Correspondence from local area command to the Ombudsman, 22 Feb. 2000, p.2.

*Definition of 'driver' and 'owner'***Meaning of owner**

4.108 Two local court magistrates considered the definition of owner during the review period. Both decisions involved interpretation and comment about the meaning of sub-section (a) of the definition of owner in the Vehicles Act which states that owner includes:<sup>123</sup>

(a) a person who is not such an owner but who usually has the care control and custody of the vehicle...<sup>124</sup>

4.109 Sub-section (a) extends the operation of the Vehicles Act beyond a person technically defined as a responsible person for the vehicle. This allows police to use the identification provisions in the case of some informal ownership arrangements which would not otherwise be covered by the definition. This might cover, for example a person to whom a vehicle is lent for a significant period while the owner is overseas.

4.110 The first incident was summarised by the duty officer who reviewed the event, as follows:

On [date] a male was observed by a private security operative to enter a [name of courier company] Courier Van parked in [street name] and remove a box. He drove off in a brown volvo and although followed was lost in traffic. Police were called to the scene where shortly after the volvo returned with a different driver. The second driver was subsequently arrested and conveyed to the [name of local area command] where a form of demand in relation to Police Powers (Vehicles) Act 1998 to supply the identity of the first driver who was reasonable suspected of having committed an indictable offence was given to him. The demand was met with a reply of "No comment".<sup>125</sup>

4.111 The principal officer involved in the matter provided the following comment and recommendation:

## COMMENT

Police charged the 2<sup>nd</sup> Driver, [Name of driver] ...under the Police Powers (Vehicles) Bill 1998 Part 2 Driver and passenger identification. This matter was heard before the Downing Centre Local Court on [date]. This matter was dismissed on the grounds police were unable to prove beyond a reasonable doubt that the defendant was the "owner" of the vehicle which was used in the commission of an indictable offence. The magistrate was highly critical of the wording of the legislation in that it was ambiguous as to the definition of the word "owner". Police could not prove ownership through traffic records as the registration had not been transferred into the defendant's name. The magistrate questioned the definition of who is the usual owner, the person that has custody of the vehicle, the person that mostly uses the vehicle, what if the vehicle is shared etc.

## RECOMMENDATION

It is my recommendation that a clear definition to the word, "owner" be given [in] reference to this legislation.<sup>126</sup>

<sup>123</sup> The relevant law at the time of the decision was the unamended definition of owner however, the section subject to interpretation is also contained in the current definition of owner in the Vehicles Act.

<sup>124</sup> Vehicles Act, s.3.

<sup>125</sup> Correspondence from local area command to the Ombudsman, 3 Mar. 2000, p.2.

<sup>126</sup> *ibid*, p.4.

## DRIVER AND PASSENGER IDENTIFICATION

4.112 There was much discussion at the hearing as to the meaning of this part of the definition of owner. The magistrate gave his views on the difficulties with the definition on a number of occasions:

Who usually has the care and control – how the hell are you going to establish that? If you're not the owner, what's the guy going to say? "Oh, I only use it twice a week, I'm not the usual driver, the usual driver drives it twenty times a week".<sup>127</sup>

4.113 He further comments:

...you'd expect the section (a) to refer to the person who has the care, control or custody of the vehicle. But the section says the person who usually has the care, control, or custody of the vehicle. The word 'usual' means - I take it - often, more than a casual user, more than someone who might care to borrow it for a period.... I really don't know how you're going to measure the word usual and what in fact it measures. But it must measure something.<sup>128</sup>

4.114 At one point the magistrate concurred with the prosecution interpretation that 'usual' means 'predominant user'. The magistrate also commented that a statement from a person, 'I am the owner' would not be sufficient to meet the ownership definition in the legislation. The magistrate concluded that the definition in sub-section (a) was largely 'unworkable'.

4.115 As discussed at paragraphs 4.11–4.14, the definition of owner in the Vehicles Act was amended in July 1999 to bring it into line with the new *Road Transport (General) Act*. The decision in the case referred to above, was made using the unamended legislation. It is worth noting, that the current definition would appear to encompass a person in the defendant's circumstances as an owner. The current definition is broader than the original. It refers to the definition of responsible person in the *Road Transport (General) Act*, which includes:

In relation to a registered vehicle – each of the following persons:

i) –

ii) If the vehicle has been disposed of by a previous registered operator – a person who has acquired the vehicle from the operator.<sup>129</sup>

4.116 The definition of owner was raised in a second matter where the vehicle was registered to the defendant's mother who had moved away and left the vehicle with the defendant. The defendant was charged with failing to identify the driver and passengers of her vehicle. The charges arose out of an incident in which witnesses saw two men punch a woman, steal her purse and leave in a vehicle, the registration of which one witness recorded.

---

<sup>127</sup> *Police v Geoffrey Charles Pardey*, local court, 10 Nov. 1999 (unreported).

<sup>128</sup> *Police v Geoffrey Charles Pardey*, local court, 10 Nov. 1999 (unreported).

<sup>129</sup> *Road Transport (General) Act*, Division 3, s.7(1)(a)(ii).

- 4.117 The court considered whether the defendant was an owner as defined in sub-section (a), that is, whether the defendant usually had the care, control and custody of the vehicle. It appears from the discussion before the bench, that the court took the view that the usual care, control and custody required:
- more than mere access to the vehicle, and
  - the right to exclude others from using the vehicle.<sup>130</sup>
- 4.118 In this case the defendant had care, control and custody of the only car key but claimed to have lost the car key at the time of the assault and robbery. The defendant's lawyer argued that the defendant could not be deemed the owner of the vehicle at the relevant time because the key was lost. However, the defendant had stated to police, 'No-one else drives the car but me. Well, I'm the only driver of that car'.<sup>131</sup> The magistrate found that the defendant was the owner for the purposes of the Vehicles Act. It is not clear whether the magistrate rejected the argument on a technical basis — that loss of the key amounted to loss of ownership — or whether the magistrate was not convinced of the evidence that the keys had been lost.
- 4.119 These cases illustrate that there may be some difficulty in the courts in applying and interpreting the phrase 'usually has the care, control and custody of the vehicle'. We propose to make no formal recommendation in this area. However, there would appear to be merit in the Police Service's monitoring cases which concern this issue to ascertain the extent to which legislative clarification may be required.

### Meaning of driver

- 4.120 The Vehicles Act provides the following definition of driver:

Driver includes a person having control over the steering, movement or propulsion of a vehicle and includes a person riding a vehicle.<sup>132</sup>

- 4.121 One magistrate made comments relevant to the meaning of the word driver:

[The legislation] says 'may request the driver of the vehicle', so obviously that envisages the police officer coming up to somebody who is behind the wheel of a car and he is asked a particular question – that's for section 6. So obviously this guy is in a police station, he's not behind any car at the moment, he's in the police station being questioned about other activity. Or – then it goes or (b) or the owner of the vehicle who was not the driver to disclose the identity of the driver. So obviously it's 6(1)(b) you're relying on...<sup>133</sup>

- 4.122 The magistrate seems to interpret the Vehicles Act to mean that the driver must be approached by the officer while actually behind the wheel. This interpretation unnecessarily limits the operation of the act. There does not appear to be any impediment in the legislation to police questioning a driver at a time when the driver is not behind the wheel.

---

<sup>130</sup> *Police v Tina Sinsbury*, local court, 14 Jan. 2000, (unreported).

<sup>131</sup> *Police v Tina Sinsbury*, local court, 14 Jan. 2000, (unreported).

<sup>132</sup> Vehicles Act, Part 1, s.3.

<sup>133</sup> *Police v Geoffrey Charles Pardey*, local court, 10 Nov. 1999 (unreported).

## DRIVER AND PASSENGER IDENTIFICATION

4.123 The Police Association, commented in their submission:

The definition of identity in Part 1 Section 3 states that the 'identity of a driver means the name or residential address of the driver (or both)'. We believe that this wording should be changed to 'name and residential address'. Without this amendment, the situation could arise where a request by a police officer to a driver, or passenger<sup>134</sup> [sic], to disclose his or her identity could result in the driver or passenger [sic] providing only their residential address but not their name, and would still be seen to have complied with the Act.<sup>135</sup>

4.124 No incident of this nature was identified during the review. It appears that such an amendment would appear to reduce the flexibility of the current definition. Under the existing definition a police officer can tailor a request so as to encompass a request for name or address or both. If the definition of identity were amended to name and address a person who knew one but not both details may legitimately refuse to comply with the request on the basis that the identity was unknown.

4.125 The Police Association also points out that there is no definition of 'identity of a passenger' in Part 1 s.3 of the Vehicles Act. To define this term might make the definition section more complete. However, it is unlikely that the omission of a definition poses serious interpretation problems for police or members of the judiciary.

4.126 In addition, the Police Association commented that the legislation contained no definition of the word 'passenger'. However, it can be seen from the discussion above that the use of legislative definitions does not always result in clarification and ease of interpretation. It does not appear that a definition of the word is necessary because it is not a technical term and can be given its ordinary meaning.

### ***Requirements on police to record on tape the request and response***

4.127 One event we examined, involved certain requirements placed on police to record evidence on tape for later use in court proceedings. The event narrative summarises the offence which gave rise to the use of the powers, as follows:

Some time between 12pm and 1.30am the victim's vehicle was parked inside fenced grounds of [name of hall]. At the time there was a large gathering of about 50 to 70 Aboriginals at the hall for a New Years Eve party. About 20 minutes after the victim arrived a white Toyota Landcruiser (at this stage identified only as a partial registration number of \*\*\*) entered the fenced grounds of [name of hall] and collided with the victim's vehicle. The Landcruiser continued pushing the victim's vehicle. Landcruiser has then left the scene. There were a large number of children and teenagers near the vehicle at the time of the incident, who were forced to scramble out of the way to avoid injury.

The offending vehicle is believed to have been POI's vehicle driven by him. His wife had been involved in an earlier incident where person's from the same party had maliciously damaged their vehicle when driving past [name of hall]. Inquiries are continuing in an attempt to positively identify the offending vehicle and driver.

---

<sup>134</sup> The Vehicles Act does not confer any power on police to make demands of passengers to identify themselves.

<sup>135</sup> Submission from the Police Association, 28 Feb. 2000, p.2.

- 4.128 The relevant local area command advised us of apparent problems in relation to the admissibility of admissions obtained as result of the use of the powers under the Vehicles Act:

During the investigation, a Form of Demand, pursuant to the Police Powers (Vehicles) Act was placed on [the defendant] in relation to the identity of the driver of the offending vehicle.

[The defendant] admitted to police that he was in fact the driver of the offending vehicle, however, this admission was not “adopted” by the defendant. The admission was recorded by police in written form in a police notebook and the entry signed by the defendant.

[The defendant] recently appeared at [name of local court] in relation to the charge of “Maliciously Control Article with Intent to Damage Property. (S200 Crimes Act 40/1900).”

Eventually a plea of guilty was entered by the defendant in relation to the less serious charge of Malicious Damage.

The problem related to the “obtaining” of the Form of Demand pursuant to the Police Powers (Vehicles) Act. Under Section 424A of the NSW Crimes Act 40 of 1900, an admission that is not recorded electronically, i.e. tape recorded, is inadmissible in relation to indictable offences, other than those offences [that] can be heard summarily without the consent of the accused (of which section 200 is not).

Therefore in this case, the information gleaned pursuant to the Police Powers (Vehicles) Act was inadmissible at law.<sup>136</sup>

- 4.129 The command also said ‘that suspects are under no obligation to adopt admissions “on tape”’ and went on to recommend that ‘this anomaly should be addressed as a matter [of] urgency’.<sup>137</sup>
- 4.130 The command’s concerns about the admission not being admissible simply because it was not tape recorded are not justified. In this respect, it is important to set out the full provisions of the relevant law at that time.
- 4.131 Section 424A(2) of the *Crimes Act* provided that:<sup>138</sup>

Evidence of an admission is not admissible unless:

- (a) there is available to the court a tape recording made by an investigating official of the interview in the course of which the admission was made, or
- (b) if the prosecution establishes that there was a reasonable excuse as to why a tape recording referred to in paragraph (a) could not be made, there is available to the court a tape recording of an interview with the person who made the admission about the making and terms of the admission in the course of which the person states that he or she made an admission in those terms, or
- (c) the prosecution establishes that there was a reasonable excuse as to why the tape recordings referred to in paragraphs (a) and (b) could not be made .<sup>139</sup>  
[emphasis added]

<sup>136</sup> Correspondence from local area command to the Ombudsman, 31 Mar. 2000, p.1.

<sup>137</sup> *ibid.*

<sup>138</sup> This section was repealed on 1 Jan. 2000 and replaced by s.108 of the *Criminal Procedure Act 1986* which contains similar provisions.

<sup>139</sup> *Crimes Act*, s.424A(2).

## DRIVER AND PASSENGER IDENTIFICATION

4.132 Reasonable excuse is defined by s.424A(4)(b) as:

the refusal of a person being questioned to have the questioning electronically recorded<sup>140</sup>

4.133 CRIME advises police of the reasonable excuse provisions in regard to tape recording admissions.

4.134 The investigating officer's notebook recorded not only the admission but also that the defendant refused to be recorded on the basis of legal advice. The notebook documents the fact that the defendant had been arrested and that cautions were given prior to the demands being made of the defendant under the Vehicles Act.<sup>141</sup> The notebook also documents the interview, and the signing of the pages of the notebook by the defendant.

4.135 The refusal of the defendant to be tape recorded may have constituted a reasonable excuse for not having a tape recording of the admission. However, it is unclear whether the police provided the defendant with the opportunity to be recorded in relation to the matters in s.424A(2)(b). The police notebook entry only states that the defendant 'indicated his advice was not to be recorded as well'. If the defendant were given an opportunity to have the 'making and terms' of the admission recorded, then the police would have been able to establish a reasonable excuse for the absence of a tape recording.

4.136 This case may raise some concern as to whether police are sufficiently aware of the procedures to be followed to ensure that admissions are admissible in court proceedings, especially admissions obtained under the Vehicles Act.

4.137 The provisions relating to the recording and admissibility of admissions are somewhat complex. Police officers conducting interviews where the interviewee refuses to be recorded should have a clear understanding about how to ensure the admissibility of admissions and other information obtained during such interviews.

---

***RECOMMENDATION 7: That the Police Service ensure that police have a proper understanding of the admissibility requirements contained in s.108 of the Criminal Procedure Act, with particular reference to their powers under the Police Powers Vehicles Act.***

---

### ***Procedural requirements***

4.138 The Vehicles Act requires that prior to placing a formal identification demand on a driver or owner, a police officer must :

- provide evidence that he or she is a police officer,
- provide his or her name and place of duty,
- inform the person of the reason for the request, and
- warn the person that failure to comply may be an offence.<sup>142</sup>

---

<sup>140</sup> Crimes Act, s.424A(4).

<sup>141</sup> See discussion earlier in this chapter at 4.72–4.91.

<sup>142</sup> Vehicles Act, s.6(2).

- 4.139 A number of aspects of this requirement were discussed in court proceedings examined during the review.
- 4.140 According to the legislation, police must meet these procedural requirements prior to making the request for identification. In one event the police officer only warned the owner after making the demand. The demand and the warning were presented in one statement:
- [Name of defendant], at this stage Detective Senior Constable [name of officer] and I are making inquires into the driver and the passengers of your vehicle [registration number] at [time, date]. As we reasonably suspect the vehicle to have been used in the commission of an indictable offence. [Name of defendant], we have the power to do this under Section 6 of the Police Powers (Vehicles) Act, 1999 and if you do not comply with this request you may be charged by virtue of Section 8 of the Act.<sup>143</sup>
- 4.141 The Office of the Director of Public Prosecutions was of the opinion that the relevant police officer had not complied with s.6(2)(d) because of his failure to make the request for identification again, after the warning had been given .<sup>144</sup>
- 4.142 The warning provision acts as a safeguard to ensure that prior to making any response a driver or owner is apprised of the legal compulsion to comply with the request, and the ramifications of not complying. A technical reading of the legislation does lead to the conclusion that a request made prior to a warning is not a request that complies with the Vehicles Act. This would seem to be the case even though a warning had been issued prior to the defendant responding to the demand.
- 4.143 In another matter heard at a local court, the defence argued that the failure of the police officer to state place of duty meant that the requirements of Part 2 s.6(2)(b) had not been met and that no prima facie case was therefore established. However, in this matter the police officer and the vehicle owner were both at the police station (the officer's place of duty) when the request was made. The magistrate took the view that failure to state place of duty in these circumstances was not fatal to the prosecution case.
- 4.144 In another event, the police officer who made the identification request of the owner of the vehicle, warned the owner that failure to provide the information could result in being charged with the original indictable offence the police were investigating, the theft of a bicycle:
- You are required to supply me with the name and address of the driver of vehicle registration [registration number] which was seen outside [street number, street name, suburb] and the name and address of passengers in vehicle registration [registration number]. I want you to understand that failure to comply with this request can result in you being charged with the stealing of the above mentioned mountain bike. <sup>145</sup>  
[emphasis added]

---

<sup>143</sup> Police statement, 17 June 1999.

<sup>144</sup> Correspondence from the office of the Director of Public Prosecutions to the Ombudsman, 24 May 2000.

<sup>145</sup> Police statement, 9 Aug. 1999.

## DRIVER AND PASSENGER IDENTIFICATION

4.145 The Police Service prosecuting services determined that this warning did not comply with s.6(2) of the Vehicles Act. The person had been warned that failure to comply would result in being charged with the theft rather than being charged with an offence under the Vehicles Act. This factor, combined with the giving of a caution and the 'reasonable excuse' complications discussed at paragraphs 4.72–4.91, led to prosecuting services directing the withdrawal of proceedings.

---

**RECOMMENDATION 8:** *That the Police Service advise officers of the correct procedures for giving a warning under the Police Powers (Vehicles) Act.*

---

### *Practicalities of coercive legislation*

4.146 During interviews conducted as part of this review, a number of police officers commented on the value of the coercive nature of the legislation. Some police officers indicated that the penalties for non-compliance provided the major motivation for a driver or owner to identify the persons requested.

4.147 One officer described a situation in which he used the driver and passenger identification powers. A woman's bag had been stolen by two girls who fled in a car, the registration of which was noted by the victim. The officer visited the owner of the car and asked her to tell him who was driving at the time of the offence, however, at that stage the officer did not think to use the driver and passenger identification powers. He then returned to the police station and spoke with a detective. The officer said:

We got this [legislation] faxed up from the prosecutor's branch. We went through it. Went back with a tape recorder and put the form of demand and explained to her under [this] legislation that she was required or she could be charged with an offence. And we give her, I believe a day, or 24 hours, in fairness to her, to come forward. And approximately 3 hours later she come in with one of the other persons and made full admissions. And since, three ladies have been charged with that offence. All the property has been recovered, except the money. The victim in the matter is overwhelmed with the police response and I believe most of it was due to having that Act and, with detective [name], a thorough knowledge of that Act, [we] went there prepared. 'Cause I went there that morning... they just told me a few, like, white lies. But once the seriousness of the obligation, in respect if they failed - the lady said "Well, I don't want it on my conscience. I don't want to be charged". And it was silly that she ended up being charged with some more serious offences anyhow, but I believe that that's the legislation that did work.<sup>146</sup>

4.148 However, other police believed that some offenders would view the offence of failing to comply with a police request under the Vehicles Act as a minor matter in comparison with the risk of prosecution resulting from identifying themselves as the driver or passenger involved in the commission of an indictable offence.

---

<sup>146</sup> Interview with senior constable, 14 Apr. 2000.

- 4.149 Another senior investigator described some of the practical difficulties with the use of coercive legislation like the Vehicles Act with more ‘hardened’ offenders:

Legal processes don’t seem to faze a lot of people. The average person it probably would. If police come along and place a demand on somebody a lot of people would tell the truth but obviously a lot of people it doesn’t effect. How you overcome that I don’t know. Even with coercive hearings I know it hasn’t assisted really in a lot of matters from personal experience. People will still, for whatever reason, whether it be fear or just their wanting to protect the involved party, they won’t assist...

When you talk to hardened criminals it doesn’t really cut anyway. They don’t care.<sup>147</sup>

- 4.150 This officer had been involved in the use of the legislation in an event where a man was shot several times in a public park. An eye witness had recorded the registration of a vehicle that was at the scene of the shooting. The officer described the incident as follows:

A fellow who gives us an eye witness account, a statement and writes the number down of the car. An hour prior to the shooting there’s a commodore. He writes down the number – sees the car – a lot of people around – thought it was strange – writes the number down and an hour later the car returns and within a short space of time there’s over thirty shots fired. He’s outside – the same car – anyway, he rings the police – reports the matter to the police – and of course, what better evidence – you’ve got him saying it’s the same car – that’s the registration I wrote down earlier – it’s definitely the same car and you think ‘Well, that’s pretty good’. Anyway they go – two of our fellows go and see the registered owner and from that they find out that the car is registered in the fellow’s sister’s name but actually operated by him. But he’s also in the [same industry as the witness] and he’s Lebanese ... – and that whole area, they all know each other ...<sup>148</sup>

- 4.151 According to the relevant COPS event, the owner of the vehicle was ‘formally asked to provide Police with details of the driver of the vehicle at the time of the shooting but declined to supply police with the details’. He was then charged with ‘failure of owner to disclose identity of driver’ under the Vehicles Act.

It went to [name of court] and of course the first witness we put in the box was the eye witness. He comes along and gives his details and he finished up – he didn’t give the evidence about taking the car number and swayed away from it. He just wouldn’t commit himself to that portion of his evidence.<sup>149</sup>

- 4.152 The witness was declared an unfavourable witness under s.38 of the *Evidence Act 1995* and was able to be cross examined by the prosecution. This failed to reveal any further evidence, however, and the matter was withdrawn by the prosecution. In the opinion of the officer we interviewed during the review, the eye witness had been ‘got at by the other side’. This police officer concluded:

It’s good legislation, but you know its only as strong as the witness you’ve got to come to court and support it.

---

<sup>147</sup> Interview with a senior investigator, 22 Feb. 2000.

<sup>148</sup> Interview with a senior investigator, 22 Feb. 2000.

<sup>149</sup> Interview with a senior investigator, 22 Feb. 2000.

## DRIVER AND PASSENGER IDENTIFICATION

4.153 These comments are of interest in the context of the debate which occurred during the passage of the legislation through parliament. The Attorney General, the Hon. J.W. Shaw, commented on the purpose of the driver and passenger identification provisions:

One gap in the current law is the inability of investigating police to demand that the owner of a vehicle identify who was driving it at the time a serious offence was committed. This gap reinforces a strict code of silence. The Carr Government is determined to give police the powers they need to assist to break through the wall of silence about serious crime.<sup>150</sup>

4.154 The Vehicles Act goes some way to ensuring that police investigations are not hampered by persons who would otherwise resist attempts by police to solicit information. However, fear of self incrimination or fear of reprisal from those incriminated, may outweigh the compulsion to provide information under the act. When we asked the senior investigator involved in the above matter how the problem of witnesses refusing to give evidence could be solved, he commented 'You'll never cure that with legislation'.<sup>151</sup>

4.155 In a couple of events, police chose not to charge a person under the Vehicles Act because of the difficulty of proving that the person was providing false information. In one event<sup>152</sup> a car was identified at the scene of a break, enter and steal offence. The driver of the vehicle was found and requested to identify the passenger. The driver informed police that he did not know the identity of the passenger because he was a hitch hiker who the driver had picked up on the way to the break and enter and had dropped off after the offence was committed. In another event<sup>153</sup> the driver of a vehicle involved in a stealing offence identified a passenger who avoided arrest at the scene, as 'Brad Pitt'. Advice from the relevant local area command was that the driver could not be charged under the Vehicles Act because there was insufficient evidence to prove that he had provided false information.

### **Penalties**

4.156 Both Privacy NSW and the Attorney General's commented on the severity of the penalties under Part 2 of the legislation.<sup>154</sup> In its submission to the review, the Attorney General's stated:

...it is considered that the penalties contained within the Act are severe in comparison to other penalties for similar offences. For example, the offence of failing to provide name and address to an officer under s 563 of the Crimes Act 1900 carries a maximum penalty of 2 penalty units. By comparison, the same offence in the Police Powers (Vehicles) Act is 50 penalty units and/or 12 months imprisonment.<sup>155</sup>

---

<sup>150</sup> The Hon. J.W. Shaw MLC, Attorney General, Minister for Industrial Relations and Minister for Fair Trading, NSWPD, 27 Nov. 1998, p.10833.

<sup>151</sup> Interview with senior investigator, 22 Feb. 2000.

<sup>152</sup> Record 10.

<sup>153</sup> Record 16.

<sup>154</sup> Submission from Privacy NSW, 18 Feb. 2000, p.1. Submission from Attorney General's, 20 Mar. 2000, p.1.

<sup>155</sup> Submission from Attorney General's, 20 Mar. 2000, p.1.

- 4.157 It is true that the identification provisions in s.563 of the *Crimes Act* are of a similar nature and purpose to those in the *Vehicles Act*. The maximum penalty for an offence under Part 2 of the *Vehicles Act* amounts to 12 months imprisonment and a fine of \$5,500. The maximum penalty under the *Crimes Act* for the offences of failing or refusing to provide name and address or providing a false name and/or address amounts to \$220. The maximum penalty for failing to provide information to identify a driver involved in an offence under the road transport legislation, established in the *Road Transport (General) Act* s.21(1), is 20 penalty units or \$2,200.
- 4.158 We located five matters in which persons were convicted under the *Vehicles Act*. The penalties imposed in these matters were:
- \$100 driver failing to identify passenger<sup>156</sup>
  - \$1000 driver failing to identify passenger<sup>157</sup>
  - \$600 owner failing to identify passenger<sup>158</sup>
  - \$200 driver failing to identify passenger<sup>159</sup>
  - \$300 driver failing to identify passenger<sup>160</sup>
- 4.159 In one of these matters the magistrate's comments shed some light on possible reasons for the severity of the penalties in the *Vehicles Act*:
- It's a matter that carries a fine of up to \$5,500 and – sorry, or imprisonment for 12 months, or both. So it's viewed as a very serious offence and in a matter like this it is serious because another offence it seems has been committed and the alleged victims of that offence are deprived of any prosecution of the defendant, or of a defendant, because of this person's, that is this defendant's refusal to make a full disclosure to the police...<sup>161</sup>
- 4.160 It is understood that the range and levels of penalties for criminal offences is being considered in the context of the proposed consolidation of criminal laws.

---

<sup>156</sup> *Police v Justin John Kuhner*, local court, 28 June 2000.

<sup>157</sup> *Police v Ali Alafchal*, local court, 18 May 2000 (unreported).

<sup>158</sup> *Police v David Eid*, local court, 3 July 2000 (unreported).

<sup>159</sup> *Police v Peter Farrugia*, local court, 15 Dec. 1999 (unreported).

<sup>160</sup> *Police v Brad Wilson*, local court, 28 Jan. 2000 (unreported).

<sup>161</sup> *Police v Ali Alafchal*, local court, 18 May 2000 (unreported).

# **Stopping and searching vehicles**

# 5. Stopping and searching vehicles

---

## Legislative survey

### *Stopping and searching vehicles — a summary of the new powers*

5.1 Part 3 of the Vehicles Act confers on police a power to stop and search vehicles in certain circumstances. This power, called a ‘vehicle search power’, is defined as a power to:

- a) establish a road block (consisting of any appropriate form of barrier or obstruction preventing or limiting the passage of vehicles) on any specified road, road related area or other public place, or
- b) stop vehicles (whether at a road block or otherwise), or
- c) search vehicles (whether at a road block or otherwise) for the purpose of seeking evidence of the commission of an indictable offence or lessening the risk to public safety concerned and to give reasonable directions to any person in the vehicles for the purpose of facilitating the search, or
- d) take possession of any object found in the course of such a search that the police officer conducting the search suspects on reasonable grounds constitutes evidence of any indictable offence.<sup>162</sup>

5.2 The vehicle search powers can only be used by police if the use has been authorised by a senior police officer.<sup>163</sup> A senior police officer is defined in the legislation as a local area commander, duty officer or police officer of the rank of inspector or above.<sup>164</sup>

10(1) A senior police officer may authorise another police officer to exercise any or all of the vehicle search powers in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place if the senior police officer suspects on reasonable grounds that:

- (a) the vehicle (or a vehicle of the specified class of vehicles) is being, or was or may have been used in or in connection with the commission of any indictable offence, and<sup>165</sup>
- (b) the exercise of the powers may provide evidence of the commission of the offence.<sup>166</sup>

2) A senior police officer may authorise another police officer to exercise any or all of the vehicle search powers in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place if the senior police officer suspects on reasonable grounds that:

- (a) circumstances exist on or in the vicinity of that road, area or place that are likely to give rise to a serious risk to public safety, and
- (b) the exercise of the powers may lessen the risk.

---

<sup>162</sup> Vehicles Act, s.10(6).

<sup>163</sup> *ibid*, ss.10(1),(2).

<sup>164</sup> *ibid*, Part 1, s.3.

<sup>165</sup> *ibid*, s.10(1)(a).

<sup>166</sup> *ibid*, s.10 (1)(b).

## STOPPING AND SEARCHING VEHICLES

- 5.3 The duration and form of search authorisations is set out in s.11 of the Act.<sup>167</sup>
- 1) A search authorisation may be given either verbally (including by telephone, radio or other communication device) or in writing (including by facsimile).
  - 2) A search authorisation has effect for a period of 6 hours (or such lesser period as may be specified by the senior police officer giving the authorisation).
  - 3) Nothing in this section prevents a senior police officer from giving a further search authorisation in respect of the same vehicle (or class of vehicles) on a road, road related area or other public place.
- 5.4 There are a number of provisions in the legislation relating to the recording of authorisations and these are discussed at paragraphs 5.85–5.87 below. Failure to record an authorisation does not invalidate the authorisation.<sup>168</sup>
- 5.5 Part 3 of the Act also confers on police powers to give reasonable directions to facilitate the use of the vehicle search powers.<sup>169</sup>
- 5.6 There are two offences in Part 3 of the Act:
- s10 (5) A person must (unless the person has a reasonable excuse for not doing so):
- (a) stop a vehicle the person is driving when directed to do so by a police officer under a search authorisation, and
  - (b) comply with any other direction given by a police officer under a search authorisation.
- Maximum penalty: 50 penalty units or 12 months imprisonment or both.

### Amendments affecting Part 3 of the legislation

- 5.7 In July 1999, the *Road Transport Legislation Amendment Act* came into effect and amended the definition of ‘road’ and ‘road related area’ in the Vehicles Act. The amendments ensured that the definitions in Part 1 of the Vehicles Act referred to the new *Road Transport (General) Act* rather than the repealed *Traffic Act*. The content of the definitions did not change other than to include ‘a shoulder of a road’ in the definition of a road related area.<sup>170</sup>

---

<sup>167</sup> Vehicles Act, s.11(1).

<sup>168</sup> *ibid*, s.12(2).

<sup>169</sup> *ibid*, s.10(3). See also s.10(4) for the procedural requirements for use of the power to give reasonable directions.

<sup>170</sup> *Road Transport (General) Act* Part 1 s.3(1).

***What other powers operate in New South Wales?***

5.8 The main powers to stop and/or search vehicles in NSW are summarised below:<sup>171</sup>

**Crimes Act 1900**

Section 357E: A member of the police force may stop, search and detain:

- (a) ...
- (b) any vehicle in which he or she reasonably suspects there is any thing stolen or otherwise unlawfully obtained or any thing used or intended to be used in the commission of an indictable offence.

Section 357: A member of the police force who suspects on reasonable grounds that a dangerous article is being or has been used in certain offences and is in any vehicle, may detain and search the vehicle and seize any dangerous article.

**Drug Misuse and Trafficking Act 1985**

Section 37(4)(b): A member of the police force may stop, search and detain any vehicle in which the member reasonably suspects there is any prohibited plant or prohibited drug which is possessed in contravention of the Act.

**Road Transport (General) Act 1999**

Section 51(1) The Commissioner of Police may authorise the use by police officers of a device (a tyre deflation device) that causes the deflation of the tyres of a vehicle, for use by police to stop or assist in the stopping of a vehicle in connection with the pursuit of the vehicle by police.

**Road Transport (Safety and Traffic Management) Act 1999**

Section 13(4): This section confers a power on police to require a person to undergo a breath test and for this purpose to request or signal the driver of a motor vehicle to stop the vehicle.

Section 64: This section permits a police officer to inspect certain prescribed vehicles, including heavy vehicles for the purpose of checking specified records and determining whether monitoring devices are fitted and operating correctly. In order to do this, a police officer may signal the driver of a prescribed vehicle to stop and park the vehicle.

Section 74(1): A police officer may:

- (a) close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose, and
  - (b) prevent the traffic of any vehicles, persons or animals in or on any road or road related area closed to traffic under paragraph (a) or under authority of any other Act.
- (2) A person must not, without reasonable excuse, fail to comply with any direction of a police officer under this section.

---

<sup>171</sup> In some cases these provisions have been significantly abbreviated and should not be taken to represent a full statement of the relevant power.

## STOPPING AND SEARCHING VEHICLES

### *Was there a power to establish road blocks prior to the Vehicles Act?*

5.9 There has been some debate about whether police had a power to block roads prior to the introduction of the Vehicles Act. In *STAYSAFE 27, Traffic Stops, Police Chases and Police Pursuits of Motor Vehicles, 1994*, STAYSAFE considered the existing state of police powers in relation to road blocks.<sup>172</sup> It noted that ‘the legal standing of the powers of police to establish road blocks has been the subject of debate for some years’.<sup>173</sup> The (then) Senior Assistant Commissioner of Police, Mr Gibson stated in evidence to STAYSAFE:

Police officers have the power to arrest an offender and, in so doing, may use no more force than is reasonably necessary to effect that arrest. The creation of a road block in a particular case may be considered as using no more force than is reasonably necessary.<sup>174</sup>

5.10 More recently this view was espoused in legal opinion by an inspector from the Police Service’s Legal Services,

Turning now to police pursuits, police do not have to rely on the Police Powers (Vehicles) Act to set up a road block. When police are authorised to arrest offenders by virtue of section 352 of the Crimes Act, they are also authorised to use such force as is reasonably necessary to effect the arrest. In my opinion, in appropriate cases, the use of reasonable force could include blocking a road to arrest an offender in a car.<sup>175</sup>

5.11 STAYSAFE noted that other than for the purpose of heavy motor vehicle inspections and random breath testing police ‘do not generally have the power to stop a particular class of motorist, or to stop motorists for a particular type of offence’.<sup>176</sup> STAYSAFE also formed the view that other than in these circumstances, ‘when police set up checkpoints they do so without any real power to support their actions’.<sup>177</sup> We agree with STAYSAFE’s view of police road block powers.

### *What similar powers exist in other states?*

5.12 A range of powers to stop and search vehicles exist in jurisdictions across Australia. For the purposes of this review we have selected only those jurisdictions in which powers to establish road blocks have been conferred on police.

## Queensland

5.13 The *Police Powers and Responsibilities Act* includes a power to establish a road block to apprehend or locate a person in a vehicle who:

- has committed an offence with a penalty of seven year imprisonment offence, or
- may unlawfully be depriving someone else of liberty, or
- is being unlawfully deprived of liberty, or

---

<sup>172</sup> STAYSAFE is the NSW Parliament joint standing committee on road safety.

<sup>173</sup> *STAYSAFE 27, Traffic Stops, Police Chases and Police Pursuits of Motor Vehicles, 1994*, p.74.

<sup>174</sup> *ibid*, p.75.

<sup>175</sup> Advice from inspector, Legal Services, 23 June, 1999.

<sup>176</sup> *STAYSAFE 27, Traffic Stops, Police Chases and Police Pursuits of Motor Vehicles, 1994*, p.76.

<sup>177</sup> *ibid*, p.75.

- has escaped from lawful custody, or
- may be endangering the life or safety of someone else.<sup>178</sup>

5.14 A police officer may stop **all vehicles or any vehicle** at the road block and detain each vehicle to search for the person the police are trying to locate or apprehend.<sup>179</sup>

5.15 The senior police officer present must consider road and public safety, the likelihood of danger if the person is located and any other safety considerations.<sup>180</sup> The senior police officer must also ensure that a record is made of the road block and that a copy of the record is given to the person nominated by the Commissioner of Police for that purpose.<sup>181</sup>

### South Australia

5.16 Although not identical, the South Australian road block provisions are similar to those in the Vehicles Act. A senior police officer must authorise the road block<sup>182</sup> and the road block power is described in similar terms to the vehicle search power in the NSW legislation.<sup>183</sup> The South Australian road block powers also incorporate a power to require any person in the vehicle to state their name and address.<sup>184</sup>

5.17 In South Australia, a senior police officer may authorise the establishment of a road block where it would significantly improve the prospects of apprehending a person:

- suspected of having committed a 'major offence'; or
- who has escaped lawful custody.<sup>185</sup>

5.18 A major offence is defined in the legislation as an offence:

- attracting a penalty with a maximum of life imprisonment or imprisonment for at least seven years, or
- against s.86A(1) of the *Criminal Law Consolidation Act 1935* (this is an offence involving use or interference with a vehicle without the consent of the owner).<sup>186</sup>

5.19 The South Australian legislation also includes a requirement that the Commissioner of Police report quarterly to the Minister specified details about road block authorisations.<sup>187</sup> The Minister must table these reports in Parliament.<sup>188</sup>

---

<sup>178</sup> *Police Powers and Responsibilities Act* s.24(1).

<sup>179</sup> *ibid*, s.24(3).

<sup>180</sup> *ibid*, s.25.

<sup>181</sup> *ibid*, s.26.

<sup>182</sup> *Summary Offences Act 1953* s.74B(2).

<sup>183</sup> *ibid*, s.74B(5).

<sup>184</sup> *ibid*, s.74B(5)(c).

<sup>185</sup> *ibid*, s.74B(2).

<sup>186</sup> *ibid*, s.74B(1).

<sup>187</sup> *ibid*, s.74B(9).

<sup>188</sup> *ibid*, s.74B(10).

## STOPPING AND SEARCHING VEHICLES

### Tasmania

5.20 At the time of writing, the Tasmanian Parliament is considering the introduction of the Police Powers (Vehicle Interception) Bill 2000. The Bill proposes a power to 'establish a roadblock or use a vehicle immobilising device' if a suitably authorised police officer suspects:

- a) establishing the roadblock or using the vehicle immobilising device would significantly improve the prospects of apprehending or locating a person in or on any vehicle who the officer reasonably suspects –
  - (i) has committed an offence punishable upon indictment; or
  - (ii) is or may be endangering the property, life or safety of another person; or
- b) it is necessary to establish the roadblock or use the vehicle immobilising device for the protection of life or property; or
- c) an offence has been, is being or may be committed and that, for the purposes of performing his or her functions under this or any other Act, it is necessary to detain a vehicle, a driver or a passenger in or on a vehicle.<sup>189</sup>

5.21 The proposed authorisation and recording requirements are similar to those in the NSW legislation. Section 7 of the Bill would confer a power to stop and search vehicles 'at or in the vicinity of a road block'. Section 8 would confer powers on police to demand name and address of persons in the vehicle at the road block.

### Recorded use of the vehicle search powers

5.22 In 1999 there were 68 recorded uses of the vehicle search powers.

5.23 Table 3 shows the number of events recorded as uses of the Act in 1999 in each region of the Police Service.

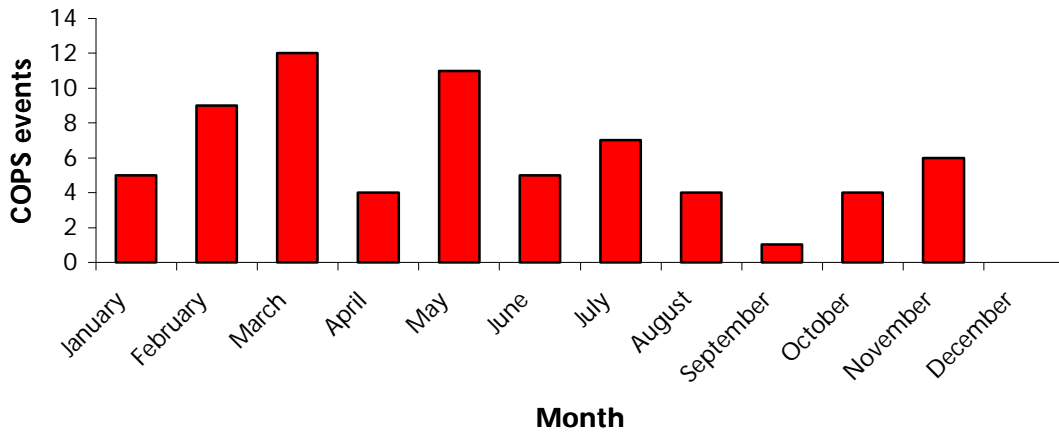
**Table 3: Recorded use of the vehicle search powers**

Region	Number of COPS Events
Western	27
Georges River	5
Southern Rivers	8
Endeavour	8
Macquarie	1
City East	4
South Eastern	1
Greater Hume	1
North Metropolitan	6
Hunter	1
Northern	6
TOTAL	68

<sup>189</sup> Police Powers (Vehicles) Interception Bill, s.5(1).

5.24 The following graph shows a breakdown of recorded uses of the vehicle search powers by month.

**Graph 4: Recorded use of vehicle search powers by month**



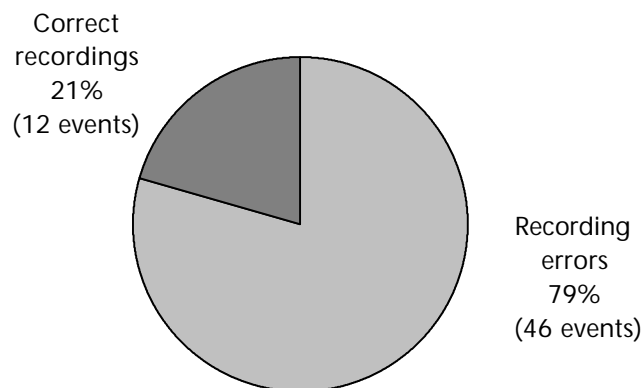
Source: 1999 COPS events provided by Police Service

**Charge information**

5.25 We are not aware of any charges laid in relation to any offence in Part 3 of the legislation.

**Recording accuracy**

**Graph 5: Accuracy of recording of vehicle search powers**



Source: 1999 COPS events checked by local commands between Feb. — Apr. 2000.

5.26 A total of 45 local area commands were contacted about the recording of the use of the powers contained in the Vehicles Act.<sup>190</sup> Commands indicated that more than three-quarters of the events examined were recording errors.

<sup>190</sup> Only a proportion of the total number of vehicle search powers events for 1999 (58 of 68) were checked by commands because of COPS data problems.

## STOPPING AND SEARCHING VEHICLES

- 5.27 In one event, a vehicle was searched for weapons and this was recorded as a use of the vehicle search powers. From an assessment of the event narrative we concluded at the first instance that the event had been incorrectly recorded. The event appeared to be a use of s.357E of the *Crimes Act* and there was no mention of a search authorisation in the event narrative. However, the officer who used the powers informed us that a duty officer was present at the time and an authorisation was given at the scene. This authorisation was not put in writing later. While the use of the legislation in this way may meet the requirements of the Act, other police powers exist which could also cover such a situation. Use of the provisions in this way does not represent any substantial change in police practice and for this reason we have not included this event in our more detailed analysis below.
- 5.28 We asked this officer why he chose to use the Vehicles Act on this occasion. He explained that this was partly because his commander had recently told him, 'You've got this legislation — use it'.<sup>191</sup> The sergeant who had checked this event for the command confirmed, 'Anything new that comes in like that — there is a pressure that's put on the blokes to use it'.<sup>192</sup>

### Why was there such a high rate of recording errors?

- 5.29 The relevant fields for recording the use of the vehicle search powers in the COPS database are as follows:

Incident Type : POLICE POWERS (VEHICLE) ACT  
Further Class. : VEHICLE SEARCH POWERS

- 5.30 One factor in the high rate of recording errors appears to have been caused by the wording of these fields. The classification vehicle search powers on the face of it appears very broad. At least some police appear to have acted on the belief that any vehicle search could be recorded under this incident type. This explanation for the high number of mis-recordings was advanced both by an officer from Audit and Evaluation Services assisting in this review and by a number of officers from local area commands who assessed the COPS events.<sup>193</sup> One crime manager assessing events from a particular command commented that the recording officer had 'just seen the vehicle search heading and [had] recorded it there' even though the search had nothing to do with the Vehicles Act.<sup>194</sup>

---

<sup>191</sup> Telephone conversation with police officer in relation to record 45.

<sup>192</sup> Telephone conversation with sergeant in relation to record 45.

<sup>193</sup> Meeting about monitoring of Vehicles Act, minutes, 24 Aug. 1999.

<sup>194</sup> Comments in relation to record 15.

- 5.31 In some cases incorrectly recorded searches may have been performed under other legislative authority to search vehicles. For example, upon reviewing the event below, the relevant command suggested that the search was conducted under s.37(4) of the *Drug Misuse and Trafficking Act*.

About 3.00pm police received information from an off duty detective that a vehicle [registration number] was scene in a known drug related location in [town]. Police located the vehicle driving east in [street name, town] at about 3.55pm on Sunday 1/8/99. Police followed the vehicle and stopped the vehicle in [street name, town]. Police spoke to the occupants, and the vehicle was subsequently searched with no result. The vehicle however contained 1 part of a cannabis smoking pipe which had a resin build up and smelt of Cannabis. The vehicle also contained a razor blade from a stanley knife which also appeared to have Cannabis resin and ash on it. It also smelt of cannabis. All occupants were not cooperative with police and indicated several times that they were unhappy with being stopped by police.<sup>195</sup>

- 5.32 In the incident below, the relevant command informed us that the event had been incorrectly recorded and was in fact a use of s.357E of the *Crimes Act*.<sup>196</sup>

At 9.30pm on the 17.07.99, police were patrolling the vicinity of [street names, town]. The vehicle [registration number] a red sedan was observed parked in the driveway of the ambulance station and a large number of persons standing in the grounds of the ambulance station. When police approached most of the persons have left leaving 5 POIs [Persons of Interest]. It was ascertained that the POIs were connected to the vehicle. It was then found that the POIs are well known ricidivists in the [township]. These persons and vehicle was then searched with a negative result. The POIs were then allowed to leave.<sup>197</sup>

---

**RECOMMENDATION 9:** *That the Police Service investigate the causes of the high level of recording errors for the use of the vehicle search powers, implement appropriate changes to the COPS system and/or guidelines and procedures, and monitor the effectiveness of these changes.*

---

### Response to recording errors by local commands

- 5.33 It was pleasing to note that many commands in which recording errors were detected, decided to take action to rectify the COPS event and to inform the officers involved of the error. For a number of commands, the checking exercise highlighted the need for additional training in the operation of the legislation and/or the recording requirements. Comments from commands included:

Our Education and Development officer has been appraised of this situation and will ensure that Six – Minute Intensive Training (SMIT) will begin amongst staff about this issue.<sup>198</sup>

---

<sup>195</sup> Record 30.

<sup>196</sup> See 5.8.

<sup>197</sup> Record 39.

<sup>198</sup> Correspondence from local command to the Ombudsman, 7 Mar. 2000.

## STOPPING AND SEARCHING VEHICLES

It is apparent that a mistake has been made. To address this supervisors have been informed to more stringently check COPS events at verification stage to ensure incidents are correctly recorded. A summary of the Police Powers (Vehicles) Act has been distributed to all staff so they are aware of the powers available under the Act.<sup>199</sup>

Obviously, there is still some confusion in the minds of Police at this Command as to the extent of the powers open to them under the subject act of Parliament. In the circumstances a complete copy of this file has been forwarded to the [name of command]'s Education and Development Officer so that a further education package dealing with the Police Powers (Vehicles) Act 1998 can be put before Police at training days and as lectures.<sup>200</sup>

5.34 It is encouraging that the review process had such an immediate and positive effect.

### How were the vehicle search powers used?

5.35 This section has been confined to uses of the vehicle search powers involving road blocks and/or road block authorisations. There was agreement between the relevant command and the Ombudsman that these events documented actual uses of the vehicle search powers.<sup>201</sup>

5.36 COPS records indicated that eight requests for road block authorisations were made in 1999. In addition, we examined one road block authorised in 2000. During the review we were also informed of two road block authorisations that did not lead to the formation of a road block and were not recorded in COPS.

5.37 We are not aware of any uses of the s.10(3) power to give reasonable directions, over the review period.

5.38 While there were only a small number of clear uses of the vehicle search powers, this is in line with the experience in other jurisdictions.<sup>202</sup> The Attorney General commented during the legislation's passage through parliament:

It is envisaged that these powers will not be used frequently.<sup>203</sup>

---

<sup>199</sup> Correspondence from local command to the Ombudsman, 21 Mar. 2000.

<sup>200</sup> Correspondence from local command to the Ombudsman, 6 Mar. 2000.

<sup>201</sup> All but one of the remaining recorded uses of the powers were either recording errors or subject to some ambiguity.

<sup>202</sup> In South Australia, for example, there were two road block authorisations reported to Parliament in the 12 month period from 1 Apr. 1999 to 31 Mar. 2000.

<sup>203</sup> The Hon. J.W. Shaw MLC, NSWPD, 27 Nov. 1998, p.10861.

5.39 The following table summarises some of the characteristics of the road blocks we examined.

**Table 4: Selected road block characteristics**

Road block	Authorised by senior officer <i>prior</i> to any road block	Road block formed	Pursuit involved	Police vehicles used or intended to be used as road block	Offending vehicle stopped at road block	Urban or Country area
A	Yes	No	Yes	N/A	N/A	Country
B	No*	Yes	Yes	Yes	Yes	Country
C	Yes	Yes	No	Yes	Yes	Country
D	Yes	No	Yes	Yes	N/A	Urban
E	Yes	Yes	Yes	Yes	No	Country
F	Yes	Yes	No	Yes	Yes	Country
G	No**	Yes	Yes	Yes	Yes	Country
H	Yes	Yes	Yes***	Yes	No	Country

Source: COPS data and interviews with police officers.

\* Authorisation given by duty officer after road block occurred.

\*\* Authorised by senior sergeant after road block occurred.

\*\*\* Pursuit concluded prior to road block formation.

### **Summary of the events**

5.40 The following section provides a brief description of each of the incidents in which the vehicle search powers were used.

#### **Road block A**

5.41 In this event police observed a vehicle travelling at 'excessive' speed along a major highway. The incident occurred in Southern NSW at approximately 1.30pm. Police pursued a vehicle at speeds of up to 200km per hour. The vehicle proceeded to travel at high speed through a small town. A constable in the police station in the town saw the vehicle speed past and was aware that it was heading back towards the town. According to the COPS event:

About 1.35pm as a result of the stolen Subaru Impreza WRX (veh 1) travelling south through [town] at excessive speed, and the fact the vehicle was again travelling towards [town], Constable [name] of [name of police station] requested permission for a roadblock to be set up in [town] to 'lessen a serious risk to public safety'. Permission was verbally given by the [duty officer].

Constable [name] at this stage had little or no time to adopt the general procedures for the road block. There were no police vehicles available at the police station and no other officer available to assist at the time.<sup>204</sup>

5.42 Upon realising that he did not have access to a vehicle, the constable attempted to clear the main street of the town. The vehicle suddenly appeared while the officer was in the middle of the road directing traffic. He put up his hand and then drew his pistol and the vehicle sped into a side street about 40 metres in front of the officer.

<sup>204</sup> Record 38.

## STOPPING AND SEARCHING VEHICLES

- 5.43 Soon afterwards, the original police pursuit vehicles again came across the offending vehicle. At this stage, according to the police involved, the offending vehicle had slowed substantially. It then suddenly veered in front of one of the police vehicles in an attempt to do a U-turn. The two vehicles collided and both fell into a roadside ditch. It is unclear whether the police vehicle attempted to evade the on coming car or to block it.<sup>205</sup> There was minimal damage to the vehicles.
- 5.44 While a road block was authorised in this incident, all police involved maintain that no road block was actually established.

### Road block B

- 5.45 This incident occurred in Southern NSW at around 2pm. An officer in a police landcruiser noticed two cars parked close together on the road side and a number of persons standing nearby. According to the relevant COPS event, one of the vehicles had been involved in a traffic offence the previous evening.<sup>206</sup> The officer turned his car around to investigate the situation. As the officer approached, the persons in the car that had not been involved in the traffic incident drove away.
- 5.46 The officer pursued the vehicle onto a bush track which led to an Aboriginal mission. He lost sight of the vehicle due to the dust flying from the dirt track. Other police vehicles attended to assist and brought the vehicle to a halt by colliding with the vehicle at low speed. A number of young children were in the vehicle.
- 5.47 The driver was arrested and charged with driving while disqualified.

### Road block C

- 5.48 This incident occurred in Western NSW at approximately 7.15 pm. Police were pursuing a vehicle because the driver had failed to pay for petrol earlier in the evening. The vehicle was travelling along a highway at the speed limit but refused to stop for police.
- 5.49 Following this, according to the COPS narrative:
- A road block was authorised and set up by [the duty officer]. [The duty officer] positioned his marked sedan across both lanes of the [bridge]. The marked car was clearly visible for at least 500 metres both directions and warning beacons and sirens activated.<sup>207</sup>
- 5.50 According to the duty officer, he could see the vehicle coming towards him at high speed.<sup>208</sup> The vehicle then braked and the wheels went into a full lock. The vehicle stopped some four to five feet from the police vehicle. The driver got out of the car and ran. The duty officer chased and tackled her. A search of the car located a rifle, with no magazine or ammunition, a machete and a short wooden club.

---

<sup>205</sup> Interviews with police relate a slightly different version of events to that in other written records.

<sup>206</sup> Record 69.

<sup>207</sup> Record 61.

<sup>208</sup> Interview with duty officer, 10 Apr. 2000.

- 5.51 The driver had stolen the vehicle in Queensland. She was charged with a number of offences including larceny and possession of unauthorised firearms.

#### Road block D

- 5.52 This event involved a planned operation to arrest a young person wanted for stealing and associated offences and with a history of involvement in vehicle pursuits in stolen vehicles. The police had information that the young person would be visiting his mother at her home in an inner city area of Sydney. An operation was planned to conduct surveillance on the home with police cars in position to block off roads and laneways should the young person arrive.

- 5.53 The field commander for the operation described the reasoning behind the use of the powers:

We wanted to stop him and we didn't want to end up in a chase situation ... the idea was to actually just block the laneway if he did come down this laneway we wanted to be able to block the laneway to stop him actually leaving...

This was good because we thought, "Well, finally we can actually put something across the road to stop him from getting out".<sup>209</sup>

- 5.54 The young person did not visit the premises during the operation and no road block was established. However the operation was still successful according to the field commander:

...we actually caught a whole lot of other people frequenting the house which was kind of cool. And a lot of them showed up on warrants and stuff like that, so we ended up getting about nine lock ups but not actually our kid.<sup>210</sup>

#### Roadblock E

- 5.55 This incident occurred in Northern NSW between 9.25am and 10.25am. Police pursued a 'pantehnicon' truck after it had been involved in the stealing of a tractor worth approximately \$54,000. The vehicle refused to stop and continued to travel at about 80 kilometres an hour. At one stage two officers attempted to flag the vehicle down. The driver steered the vehicle towards the police officers and they were forced to run to the side of the road to avoid being knocked down.
- 5.56 A road block was authorised and set up at a bridge before the next town. The police had planned to station a police vehicle at a side road to channel the truck into the road block. However, that police vehicle did not arrive in time and the offending vehicle turned off prior to reaching the road block. The pursuit continued, with up to five police vehicles following the truck, until it was terminated by the police radio supervisor because the truck forced an oncoming vehicle off the road. Police continued to follow the vehicle to a dead end road where the offender ran from the truck into bushland and was arrested.

---

<sup>209</sup> Interview with constable, 1 Mar. 2000.

<sup>210</sup> *ibid.*

## STOPPING AND SEARCHING VEHICLES

- 5.57 The driver was charged with a number of offences including using the vehicle as an offensive weapon to prevent lawful apprehension, stealing the tractor, and dangerous driving.

### Road block F

- 5.58 In this event which occurred in Western NSW, a road block was established to stop a vehicle suspected of carrying a large amount of illegal drugs across a state border. A road block was authorised in writing for a four hour period from 6pm. Operational orders were prepared and briefings conducted with appropriate officers. One officer described the reasoning behind the use of the road block powers as follows:

The main thing that was playing on our mind was ... we knew it was a big American utility with a fair bit of power behind it and the fact they were running a decent amount of drugs supposedly. We thought, 'Well, if we get into a pursuit situation with them, they've got the car and they've got the reason to keep running, so will they stop?' So we eventually made the decision. With the way it is out here, so wide open outside of [the town], we thought, 'Well, it's a hell of a lot easier to stop them out there. We've got no danger to the public – less dangerous'. We basically wanted to dictate where we wanted to stop them and how we were going to stop them rather than let it get into town and we've got a problem.<sup>211</sup>

- 5.59 Two officers were assigned surveillance duties close to the border. Their role was to watch for the vehicle and inform the other officers when it appeared.

- 5.60 The road block was set up on a bridge in an 'open and isolated location'.<sup>212</sup> One officer described his involvement in the road block as follows:

At 6.05pm, after a briefing at the [police station] I attended [the bridge] approximately 6km out of [town] on the [name of road], in company with [the duty officer].

At 6.33pm, I drove the marked Police Station Wagon diagonally onto the roadway. At the same time, Detective Senior Constable [name] positioned an unmarked Police Sedan across the roadway which completely blocked the roadway...A white utility drove towards us. The vehicle was white with fluorescent flashing on the sides. I activated the Police Warning lights on the marked station wagon and I then motioned the approaching vehicle to stop...Once the vehicle had come to a complete stop, I shouted out certain instructions to the two defendants, all of which were complied with. This resulted in both defendants being removed from the vehicle one at a time and then restrained and initially searched.<sup>213</sup>

- 5.61 Upon initially searching the vehicle police found small quantities of drugs. A later, more comprehensive search found a large quantity of 'sudafed' pills secreted in the spare tyre.
- 5.62 The driver and passenger were charged with a number of offences including drug possession and manufacture.

---

<sup>211</sup> Interview with senior constable, 21 Mar. 2000.

<sup>212</sup> Vehicle search powers authorisation, 23 Mar. 1999.

<sup>213</sup> Excerpt from statement of evidence, senior constable, 31 Mar. 1999.

**Road block G**

- 5.63 This event began on a major highway in Northern NSW at approximately 2am when a speeding vehicle pulled over at the direction of a police officer. When the police officer walked over to the vehicle, the driver sped away and a pursuit was initiated.
- 5.64 The driver travelled dangerously and at high speeds and consequently the pursuit was terminated by police radio. The police car continued to follow the vehicle at a slower pace. Three minutes later the police officer requested permission to re-institute the pursuit.<sup>214</sup> This was granted. The offending vehicle continued to drive at high speed and in a dangerous manner, passing through a residential area, then returning to the highway.
- 5.65 Officers from the police station in the next town along the highway could hear the pursuit being called. Two police vehicles from this town, each with two officers, headed out to 'assist with the apprehension of the offending vehicle'.<sup>215</sup>
- 5.66 Permission was sought from the regional police radio centre to set up a road block on the highway.
- 5.67 It appears in this case that the road block was not in fact authorised, although the police officers at the scene believed that an authorisation had been given over the police radio.<sup>216</sup> The road block was formed at a bridge outside the town. Police vehicles were placed in a funnel formation with warning lights activated. One officer explained how the road block was formed:
- ...we parked [police vehicle 1] in the north bound lane with the nose of the vehicle angled facing north and towards the centre line. [Police vehicle 2] was parked in the south bound lane with the nose of the vehicle pointing towards the outside of the road...<sup>217</sup>
- 5.68 The officer described what happened moments later:
- I've gone off the side of the road. You know, stood close to the guard rail on the side of the bridge and they've [the offending vehicle] just kept coming and, you know, I think they might've slowed down a little bit and then he's just ploughed right into the vehicles. And then he's just sitting there revving the engine trying to get through...<sup>218</sup>
- 5.69 Police vehicle 2 sustained minor damage and police vehicle 1 sustained moderate damage. The offending vehicle, which was a stolen vehicle was extensively damaged.

---

<sup>214</sup> Times indicated on completed Police Service police pursuit forms.

<sup>215</sup> Record 106 (a).

<sup>216</sup> This is discussed later in this chapter at 5.163–5.166.

<sup>217</sup> Interview with senior constable, 7 Apr. 2000.

<sup>218</sup> Interview with senior constable, 7 Apr. 2000.

## STOPPING AND SEARCHING VEHICLES

- 5.70 The vehicle occupants were removed from the vehicle and were arrested 'without incident or injury'.<sup>219</sup>

One at a time, we got them out one at a time. They were laid down on the ground. Searched. Handcuffed and put in police vehicles.<sup>220</sup>

For obvious reasons we all drew our guns and I've had two of my mates shot at [town name] so I'm not going to take a chance with you know six maniacs in a car. You don't know why they're running and I've got to think of number one first and that's me.<sup>221</sup>

- 5.71 Five people were in the car, all but the driver being young people. According to the police situation report, charges included 'Steal Motor Vehicle, Drive Manner Dangerous, Unlicensed Driver, [and] Malicious Damage to Police Vehicle'.<sup>222</sup>

### Road block H

- 5.72 This road block occurred outside the review period. We decided to look into the incident because it represented the only documented exercise of police stopping and searching a class of vehicles. In this event a police pursuit and later road block occurred as a result of two prison inmates threatening another inmate with a knife to effect their escape in a prison vehicle. The event occurred in a country area in central western NSW at around midday.

- 5.73 The prison vehicle was located by a police officer who commenced a pursuit. The prison vehicle travelled at speeds of up to 140 km per hour and was driving dangerously, overtaking other vehicles and driving on the wrong side of the road. The pursuit was terminated by police radio and the pursuing police lost sight of the vehicle.

- 5.74 Upon hearing the pursuit on police radio, the local duty officer drove towards the scene. The duty officer had been informed that the vehicle had turned up a no through road. The road was blocked in a 'chicane' formation using two police vehicles on either side of the road with a sizeable gap in between.

While I was setting up a 'road block', my intention was not to stop vehicles travelling on the road, my intention was to make it clear that they should slow down to get through that situation. The police all wore yellow reflective safety vests and for their safety ... they were advised not to step in front of the vehicle for the purpose of stopping it – just to stop it with a hand signal and then to approach it from the side. The gap between the two [police] vehicles was clearly sufficiently large for that 4WD bus type thing... It was never established to stop vehicle movement physically by use of the vehicles. It was there just as a control.<sup>223</sup>

- 5.75 At the road block, 20 to 25 vehicles were stopped and searched. According to the duty officer, this was performed with the consent and goodwill of members of the public.

---

<sup>219</sup> Record 106(a).

<sup>220</sup> Interview with senior constable, 7 Apr. 2000.

<sup>221</sup> Interview with sergeant, 7 Apr. 2000.

<sup>222</sup> *Situation report*, 24 Apr. 2000.

<sup>223</sup> Interview with inspector, 25 May 2000.

- 5.76 After approximately three hours the road block was dismantled. The offenders were not located at that time, although they were located the next day by police in another local command.

### ***Unrecorded authorisations***

- 5.77 During the review we were informed of two road block authorisations which were not recorded in COPS. One of these events occurred in July 1999 and the other occurred in March 2000. Neither of these authorisations resulted in road blocks being established. However, police are advised to record on COPS all authorisations. If the powers are not utilised police are to record on COPS the reasons why.<sup>224</sup>

### **Road block I**

- 5.78 This incident occurred in Western NSW. An authorisation was sought to stop and search a vehicle suspected of containing a large quantity of drugs. The authorisation was granted. However, upon receipt of further information from a specialist police unit, it was decided that a road block was not the most appropriate way to stop the vehicle. The drug offence which was to be the reason for the roadblock was one part of a larger covert police investigation. The police decided that it would be less likely to jeopardise the covert operation if the vehicle stop appeared to be random and the persons of interest were therefore less likely to suspect that they were under surveillance.

- 5.79 According to one officer,

We got authorisation but we didn't end up using it. We just did a random vehicle stop and used the highway patrol, and yeah, the reason we ended up doing that was that the information came from the crime agencies that it was an ongoing thing. Part of a bigger picture. They ended up – they charged the main fella and heaps of other blokes with supply in Sydney. So we didn't want it to be really obvious that they'd been put in for something.<sup>225</sup>

- 5.80 The vehicle was located and directed to pull over by police who informed the driver that they were conducting random breath testing.<sup>226</sup> A substantial quantity of drugs was located in the vehicle.

- 5.81 We asked one officer why the authorisation had not been recorded in COPS and he said,

I've got no idea. Just one of those things. It's a pretty unsatisfactory explanation I suppose but it just never hit the presses that one.<sup>227</sup>

---

<sup>224</sup> *Police Service Handbook, V-2.*

<sup>225</sup> Interview with senior constable, 21 Mar. 2000.

<sup>226</sup> Statement of evidence, senior constable, 22 July 1999.

<sup>227</sup> Interview with senior constable, 21 Mar. 2000.

## STOPPING AND SEARCHING VEHICLES

### Road block J

- 5.82 The March incident involved a vehicle, stolen in Sydney, which was being driven towards a small town in Western NSW. The car, a model of car capable of being driven at very high speed, was occupied by three young people, aged 14, 15 and 17 years respectively.<sup>228</sup>
- 5.83 The local duty officer decided to establish a road block on the road into town at a small low level bridge with swampy surrounds. A police car was parked on either side of the road ready to block the road should the vehicle approach. A local road house had informed police that the car had recently driven past. From this information the police deduced that they had approximately one hour before the car would reach the town. An unmarked police car waited further up the road to inform the police at the road block when to move into position.
- 5.84 The road block did not eventuate because the vehicle was abandoned further up the road and the occupants were picked up by another vehicle heading into town. This vehicle was not stopped by police because it did not match the description of the offending vehicle. The young people were later located in the town by the Aboriginal community liaison officers and were arrested.<sup>229</sup>

## Discussion

### *Authorisations*

#### Procedural requirements

- 5.85 A search authorisation may be given verbally or in writing by a senior police officer.<sup>230</sup> However, the senior police officer must:
- if the authorisation is given verbally – make a record as soon as is reasonably practicable after the giving of the authorisation.<sup>231</sup>
- 5.86 The record of the authorisation must specify:
- time and date of the authorisation,
  - the powers conferred and the indictable offence or risk to public safety,
  - the location in respect of which the authorisation is given,
  - the vehicle or class of vehicles, and
  - the period of the authorisation if less than six hours.<sup>232</sup>

---

<sup>228</sup> *ABC News Online*, 29 Mar. 2000.

<sup>229</sup> Unless otherwise indicated, the information about this incident was obtained in a telephone interview with the local duty officer.

<sup>230</sup> Vehicles Act, s.11(1).

<sup>231</sup> *ibid*, s.12(1)(b).

<sup>232</sup> *ibid*, s.12(1)(a).

5.87 In addition, the *Police Service Handbook* advises the authorising officer to record in COPS:

- the name of the site commander, and
- in the case of a refused authorisation, the reasons why the authorisation was refused.<sup>233</sup>

### Unauthorised road blocks

5.88 Two events which occurred during the review period involved road blocks which were established without any prior authorisation.

5.89 In road block G, an attempt was made to gain permission for the road block. However, poor communication and a lack of knowledge on the part of key police radio operators contributed to the road block proceeding without being authorised.

5.90 At least two officers contacted police radio for approval for a road block in this incident. The most senior officer present at the police station recorded in the COPS narrative:

VKG [police radio] responded and was unsure of the requirements. I was monitoring the broadcast from [the police station] and contacted VKG and requested that the DOI [duty operations inspector] in Sydney be contacted as to the requirements and legality of a roadblock.<sup>234</sup>

5.91 According to the relevant inspector at Sydney police radio:

...Radio contacted me by telephone and inquired as to my knowledge of road blocks in general and the current position.

I briefly read out to him the guidelines of the Police Powers (Vehicles) Act 1998 and informed him that setting up a road block had to be authorised by a senior officer. He informed me that he would get the Duty Officer at [town name] to authorise the road block.

5.92 The inspector in Sydney stated that he had been informed of the pursuit but not in detail and continued,

I emphatically deny authorising such a road block and also point out the correct procedures were not carried out in the setting up of the road block or the authorisation of the road block.

5.93 The inspector recommended that the 'circumstances surrounding this pursuit be thoroughly investigated...'.<sup>235</sup> The subsequent investigation found that the region police radio broadcast two messages to the cars involved in the pursuit:

- 1) "Up to the DOI, making arrangements now."
- 2) "Stand by all vehicles and [particular police vehicle], from DOI Sydney, under the current act its okay to set up that roadblock."<sup>236</sup>

<sup>233</sup> *Police Service Handbook*, V-2.

<sup>234</sup> Record 106(a).

<sup>235</sup> Memorandum from duty operations inspector, 25 Apr. 2000.

<sup>236</sup> Investigation report, 1 June 1999, p.1.

## STOPPING AND SEARCHING VEHICLES

- 5.94 The relevant police investigator commented,
- It would appear that there has been some confusion and that the Police radio operator and vehicles involved in the pursuit have taken the second message as approval to set up the road block.<sup>237</sup>
- 5.95 The investigator also noted that the local duty officer was working at another station and 'only became aware of the situation whilst the chase was in progress. He contacted [the relevant police station] to obtain further details and he heard the transmission over the radio and believed the roadblock had been authorised by the DOI, Sydney'.<sup>238</sup>
- 5.96 The investigator recommended that a memorandum be circulated in the region, reminding police that they must obtain authorisation from a senior officer prior to any road block. Given that the police in this instance believed that they had an authorisation, it is difficult to see how this recommendation addressed the communication problems experienced on the night. No action appeared to be taken in regard to the apparent lack of knowledge about the Vehicles Act at the regional police radio centre.
- 5.97 In road block B, the duty officer was present at the scene of the incident, and authorised the road block after it occurred. In this case the 'road block' consisted of driving a police vehicle, albeit slowly, into a moving car. The duty officer told us:
- I think at that stage that he did the right thing and there was just no time for me to say 'Stop the car and I'll give you an authorisation.' I know under the legislation that you are supposed to have an authorisation but I think that there is some times where you just can't do it...<sup>239</sup>
- 5.98 It appears that the officer who blocked the vehicle was not aware that he was conducting a road block at the time of his actions.
- ... I was aware that we had this power under the Police Powers (Vehicles) Act or whatever ... to set up roadblocks and all that sort of thing but I didn't think that I was setting up a road block.
- ...
- [Interviewer: So when did you first think that it might have anything to do with this Act?]
- When [the duty officer] brought it to my attention.
- I said to [the duty officer] 'Look I had to do that otherwise he was just going to keep going.' And [he] said 'Well its all right because we've got the power to do it'.<sup>240</sup>
- 5.99 Although the senior officer interviewed was adamant that this event constituted a road block, there is a question as to whether this kind of incident falls within the Vehicles Act provisions. The legislation does not specifically prohibit the use of a moving vehicle as a road block. However, this practice is not encouraged by specialist officers within the Police Service. The issues surrounding the use of moving vehicles in this manner is further discussed at paragraphs 5.198–5.205.

---

<sup>237</sup> Investigation report, 1 June 1999, p.1.

<sup>238</sup> *ibid*, p.3.

<sup>239</sup> Interview with inspector, 20 Mar. 2000.

<sup>240</sup> Interview with constable, 20 Mar. 2000.

5.100 We are of the view that the requirement that a road block must be authorised prior to its establishment is an essential safeguard in the legislation. While exceptional circumstances might exist which justify consideration of amendments to other procedural requirements, some form of authorisation should be maintained to promote safe and appropriate use of the powers.

#### Access to senior officers

5.101 According to the Vehicles Act a road block must be authorised by a senior police officer.<sup>241</sup> A senior police officer means a local area commander, duty officer or any other police officer of or above the rank of inspector.<sup>242</sup>

5.102 Many officers we spoke to reported that it was relatively easy to quickly make contact with a senior officer:

... local duty officers, they're pretty good. They'll respond pretty quickly to anything. Like, if they're off the station they'll get into a car and they'll go pretty quickly. Yeah, no they're very accessible...<sup>243</sup>

I would have no problem at all with ringing a duty officer at night. Duty officers would actually probably prefer that.<sup>244</sup>

5.103 At some times a senior officer might not be on duty in a command, especially very late at night in country stations, however there is always a duty officer on call who can be contacted on a mobile phone or at home.

5.104 Some officers reported that on occasion it might be too time consuming to try to find a senior officer:

Duty officers aren't always available and contactable locally. They can be quite often off at stations or away from the phone momentarily. I mean we all need to go to the toilet and do things like that. We are not always in that direct phone contact...<sup>245</sup>

I'm in the middle of the momentum of a car chase worrying about all my staff. I've got to pick a phone up, wake an inspector at 3 o'clock in the morning and say "Hello. How are you? We've got a car chase blah blah blah blah." Fifteen minutes later he says "Ahh, you really think it's worth while?" "No, not now. They're now in Queensland." And hang up. Instead of putting it in place, finishing it and then ringing up and saying, "Boss, you now have to get out of bed. We have got a situation where we've had a roadblock. Worst scenario is someone's been injured. Better scenario is no one's been injured, two cars have been damaged and that's it."<sup>246</sup>

Persons who authorise a road block are specifically nominated in the legislation, if the block is urgent these persons [may] not always be available. Perhaps the legislation should be amended to a road block being allowed to be set up on an interim basis by the most senior person on duty with confirmation from the nominated persons in the legislation as soon as possible. Road blocks are often required urgently.<sup>247</sup>

<sup>241</sup> Vehicles Act, s.10(1), s.10(2).

<sup>242</sup> *ibid*, s.3.

<sup>243</sup> Interview with senior constable, 13 Apr. 2000.

<sup>244</sup> *ibid*.

<sup>245</sup> Interview with sergeant, 7 Apr. 2000.

<sup>246</sup> Interview with senior sergeant, 7 Apr. 2000.

<sup>247</sup> Commander 12, survey of local area commanders, July and Aug. 1999.

## STOPPING AND SEARCHING VEHICLES

5.105 In road block G, police attempted to gain authorisation through police radio for a road block at around 2am. While authorisation does not appear to have been granted, the incident raised issues involved in seeking an authorisation from a senior officer not from the local area.

5.106 Officers we asked about this issue commented:

For someone that doesn't know the area, they can make, unfortunately, mistakes in their authorisation. If someone locally gave that authorisation, they know first hand. Fortunately, with us getting that authorisation it was good in as far as it was a good area to set it up. But there are, taking into account another situation somewhere else, he could've given that authorisation but it might not have been a good area for the police to actually set it up. Whereas a local duty officer, even a sergeant to that effect, could have better local knowledge by far than someone in Sydney.<sup>248</sup>

The handy part about being in country locations is that the duty officers know their area and know what the traffic would be like at that time. It's frustrating when [police radio in another region] call things and they just have no idea what's going on.<sup>249</sup>

5.107 We also spoke to a duty operations inspector from police radio about this issue. He thought it unlikely that he would authorise a road block in another region because:

- the local command should use the local duty officer who would be more aware of the situation, and
- a local person would have a better knowledge of the characteristics of the area, particularly the road block site.<sup>250</sup>

5.108 The most senior officer, a senior sergeant, at the station at the time of road block G expressed his frustration at not being able to authorise the road block himself, since the day before the event he was the acting duty officer:

I suppose I have the benefit of having been the acting inspector here for a fair while so I know a fair bit of how the process runs. [Interviewer: But you weren't acting inspector at the time?] The day before I was but this day I wasn't, so to get the approval I had to then ring. If it had of been the day before, I would've just rung – I would've given the authority no worries. And as it was I had to do the event anyway because they refused to do it.<sup>251</sup>

5.109 In theory, officers in every local area command have telephone or radio access to a duty officer at all times. However in practice this may not always be the case. Gaining access to a senior officer is more likely to be a problem in smaller country areas late at night and in the early hours of the morning. It is also more likely to be difficult in emergency situations requiring fast decisions. Nevertheless, authorisation by a senior officer provides an important safeguard aimed at ensuring that the vehicle search powers are only used when it is safe and otherwise appropriate to do so. We are of the view that the role and rank of senior officers as set out in the legislation is appropriate.

---

<sup>248</sup> Interview with sergeant, 7 Apr. 2000.

<sup>249</sup> Interview with senior constable, 13 Apr. 2000.

<sup>250</sup> Telephone interview with duty operations inspector, 8 May 2000.

<sup>251</sup> Interview with senior sergeant, 7 Apr. 2000.

5.110 There may be exceptional circumstances where a road block is urgently required because of a serious risk to public safety. It may not be possible in such circumstances to meet all the procedural requirements of the legislation. This possibility is discussed at paragraph 5.124.

#### Authorisation given too readily

5.111 In one incident, an authorisation appeared to have been given without sufficient inquiry being made by the relevant duty officer. This incident is described in road block A above. The constable who requested authorisation for the road block described himself as 'stunned' that it was approved so quickly. Talking candidly about the situation, the constable said that he thought the adrenalin of the situation had affected him when he made the request.<sup>252</sup>

5.112 In the constable's words,

I was actually at the station ... I got authority. I thought, "What am I going to do?" I had no car and I thought, "Well I can't really set up a road block." And I just thought, "Well, I'll go and try and do something". And the station's on the southern end of town before the main CBD part, and I thought, "Well I'll just grab the portable [radio]" and went out the front of the station. I just thought, "I'll try and clear the road as best I could if he's going to come back through town at that speed. I'll try and get as much traffic out of the way as I could."<sup>253</sup>

5.113 The COPS narrative continues:

Whilst in the process [of clearing the street] veh 1 entered the [town], still travelling in excess of the 60kph speed limit. Constable [name] at this time was in the middle of the road and signalled to the driver of the WRX to stop. The vehicle did not stop and constable [name] drew his pistol and as he did the WRX braked and turned off into a side street. Constable [name] then returned to the police station and advised police radio of the actions of the vehicle.<sup>254</sup>

5.114 There was clearly potential for this incident to go horribly wrong. The officer was not given advice about his actions after the event and was left with the feeling that he had done the right thing. The event was not reviewed by the safe driving panel or the pursuits management committee because no one was injured and there was not substantial damage to any vehicles.

5.115 A useful feature of the authorisation requirement is that it allows a senior officer, not immediately involved in the situation to assess it with some perspective. This does not appear to have happened in this case.

---

<sup>252</sup> Interview with constable, 17 Mar. 2000.

<sup>253</sup> Interview with constable, 17 Mar. 2000.

<sup>254</sup> Record 38.

## STOPPING AND SEARCHING VEHICLES

5.116 The importance of senior officers exercising these powers with due care and consideration was raised in the submission from the NRMA:

...NRMA's primary concern with the operation of the Act is to ensure that senior police, who are conferred certain powers under it, exercise those powers in a judicious manner and in strict accordance with laid down police practices and procedures.<sup>255</sup>

### Senior officers authorising themselves

5.117 The legislation states that 'a senior police officer may authorise another police officer to exercise any or all of the vehicle search powers...'.<sup>256</sup> The requirement to authorise another officer is particularly important given that most of the road blocks authorised under the legislation involved police pursuits.

5.118 The Police Service's *Safe Driving Policy* recognises the possibility that police involved in a pursuit may not be in the best position to assess whether a pursuit is warranted. An officer removed from the adrenalin of the pursuit may have clearer judgement of the potential costs and benefits of continuing a pursuit:

Police officers can easily feel that the flight of someone they wish to stop constitutes both an insult and a challenge, and an officer who is experiencing the rush of adrenalin that is associated with a pursuit is not necessarily the best judge of what risks are appropriate.<sup>257</sup>

5.119 During our review we were informed of three events in which the senior officer authorised himself to establish a road block.

5.120 In road block C, the duty officer authorised himself to establish the road block and conducted the road block on his own.

5.121 In road block J, the duty officer decided that a road block was needed, authorised the use of the powers and was involved in on-site preparations for the road block. Other officers were also involved in the preparations for the road block which, in the end, was not established.

5.122 In road block H, the duty officer authorised his own road block. He explained that while he had informed police radio of his intention to establish a road block he had not asked them for permission:

No, it was to advise them [police radio] that I had done so, that I had made a decision ... and authorised the establishment of a roadblock and had in fact established one. I wasn't seeking permission from anyone, I just said that I had done so. On that basis it was just a matter of notification.<sup>258</sup>

---

<sup>255</sup> Submission from NRMA, 15 Feb. 2000, p.1.

<sup>256</sup> Vehicles Act, ss.10(1), 10(2).

<sup>257</sup> Kleinig, cited in *Police Pursuits in Queensland Resulting in Death or Injury*, Criminal Justice Commission, Brisbane, 1998, p.29.

<sup>258</sup> Interview with inspector, 25 May 2000.

- 5.123 A road block may only be authorised in a situation of some magnitude: a serious risk to public safety or a suspected indictable offence. There is merit in the notion that officers directly involved in a serious incident may not be in the best position to assess whether a road block is an appropriate response. For example it would not generally be desirable, for any officer, including a senior officer, driving a pursuit vehicle to authorise him or her self to set up a road block.<sup>259</sup> Therefore the requirement to authorise another officer to set up a road block provides a safeguard against hasty or clouded decision making.
- 5.124 On the other hand, it could be argued that exceptional circumstances may arise where it would be appropriate for a senior officer acting alone to give their own authorisation. For example, a quick authorisation may be required to avert a serious risk to public safety. However, at this stage we have not reviewed any situations that suggest that the current requirements of the legislation are unworkable. Nevertheless, it would be useful for the Police Service to monitor the operation of this requirement for the purpose of assessing whether a legislative amendment should be proposed in the future.
- 5.125 In any event, it is important that the Police Service provide accessible and appropriate information to ensure that senior officers appropriately consider all relevant factors when authorising the use of the vehicle search powers to establish a road block.<sup>260</sup>

---

**RECOMMENDATION 10:** *That the Police Service monitor the operation of the authorisation provisions in the Vehicles Act to determine whether to recommend that the Act should be amended to permit non-compliance with the stringent authorisation requirements in exceptional circumstances.*

---

**RECOMMENDATION 11:** *That the Police Service develop a checklist for senior officers for authorising any road block. This list could include matters such as:*

- *the Service's position concerning pursuits,*
  - *risks associated with road blocks involving young people or children,*
  - *an assessment of whether there is adequate time to establish a road block,*
  - *whether sufficient officers and other resources are available to properly establish a road block,*
  - *whether the suspected indictable offence warrants the establishment of a road block,*
  - *whether there is a serious risk to public safety which can be averted by a road block,*
  - *whether the selected site is appropriate for a road block.*
- 

<sup>259</sup> The police radio operator may be in a position to override such a decision.

<sup>260</sup> The advice given to authorising officers in the *Police Service Handbook* includes some of the relevant factors but is not in the form of a readily available checklist.

## STOPPING AND SEARCHING VEHICLES

### Record of authorisation

5.126 The Vehicles Act states that if an authorisation is not initially put in writing by the senior officer, it should be recorded 'as soon as is reasonably practicable' after giving the authorisation.<sup>261</sup> There was much discussion in parliament about s.12(2) of the Act which states that search authorisations are not invalidated by a failure to record:

I would accept [verbal authorisations], however, if I knew that a mandatory written record was made of such an authorisation. To do away with recording the circumstances of the search is absolutely wrong and unacceptable; police would be able to act with impunity. Clause 12(2) makes a mockery of the safeguards, and must be deleted.<sup>262</sup>

5.127 An amendment to delete s.12(2) was not passed.<sup>263</sup> The Attorney General, in response to the amendment, agreed that record keeping was important to ensure that police exercise their powers 'judiciously and with accountability'.<sup>264</sup> However, the amendment was opposed largely because of the potential for miscarriages of justice to result from technical recording failures. The Attorney General also noted,

Other mechanisms are available to deal with police who fail to exercise their authority in accordance with legislation such as this. The police complaints and discipline system is stronger now than ever before and includes the oversight of bodies such as the Police Integrity Commission and the Ombudsman.<sup>265</sup>

5.128 Few COPS records met all the requirements set out in s.12(1) of the legislation. Contrary to the Attorney General's expectation, except in one event, where the lack of authorisation led to a police investigation, there appears to have been no action taken by the Police Service in regard to the failure to properly record search authorisations.

5.129 Attorney General's also expressed concern about this aspect of the legislation:

...the breadth of the powers without adequate safeguards is of concern. The provisions confer on police the power to set up road blocks and to stop and search all vehicles rather than one particular vehicle. Whilst police are required to make records of search authorisation powers, s12(2) of the Act provides that failure to comply with that requirement does not invalidate a search authorisation.<sup>266</sup>

5.130 Privacy NSW commented that the search provisions could be exercised 'without even the minimal level of accountability provided by s.12 being observed' and suggested that the recording requirements of s.12(1) be broadened to require the computerised recording of search authorisations to improve accountability.<sup>267</sup>

---

<sup>261</sup> Vehicles Act, s.12(1)(b).

<sup>262</sup> The Hon. Helen Sham-Ho MLC, NSWPD, 27 Nov. 1998, p.10853.

<sup>263</sup> The Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10859.

<sup>264</sup> The Hon. J.W. Shaw MLC, NSWPD, 27 Nov. 1998, p.10861.

<sup>265</sup> *ibid.*

<sup>266</sup> Submission from Attorney General's, 20 Mar. 2000, p.2.

<sup>267</sup> Submission from Privacy NSW, 18 Feb. 2000.

- 5.131 Another amendment was put to the Legislative Council to ensure that records of verbal authorisations were made within 24 hours of the granting of the authorisation. This amendment was not passed. The Member of Parliament who put the amendment requested that the Ombudsman consider his amendment 'to determine how many reports are made within 24 hours or what the reporting process is like'.<sup>268</sup>
- 5.132 Most authorisations were given verbally in the first instance. One authorisation was given verbally and recorded contemporaneously in the duty officer's note book. One authorisation was put in writing prior to the establishment of the road block. This authorisation met all the legislated and other requirements in a clear and straight forward manner and may provide a useful guide for other commands.<sup>269</sup>
- 5.133 A number of COPS events made reference to the fact that a road block had been authorised, although the COPS record was not always made by the senior officer as is required. While a number of these COPS events were made more than 24 hours after the authorisation was given, it was often unclear whether the COPS event was intended to be the record of the authorisation or whether it was an ordinary COPS narrative. While it may be possible to construe some of these COPS events as a record of an authorisation, monitoring the use of the vehicle search powers would be enhanced by a clear and consistent approach to the recording of this information.

---

**RECOMMENDATION 12:** *That the Police Service formulate a strategy to improve the level of compliance by police officers with the recording requirements in s.12(1).*

---

### Time period of authorisation

- 5.134 A use of the vehicle search powers can be authorised for up to six hours and this may be extended by the giving of further authorisations. There was some concern expressed in parliament about the length of time that authorisations may be in force, given that there is no total time limit in the legislation.<sup>270</sup>
- 5.135 There were few clear recordings of search authorisations and for this reason if any time period was stated this was often not apparent. The time period was clear in two authorisations: the first was for two authorisations each of a six hour duration on different days,<sup>271</sup> and the other was for four hours.<sup>272</sup>
- 5.136 According to the COPS event, the actual use of the road block and stop and search powers in road block H lasted three hours and five minutes. In the other events we examined the road was blocked only for a very short period of between ten minutes to half an hour.

<sup>268</sup> The Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10861.

<sup>269</sup> See Appendix D for a copy of this authorisation, with identifying details removed.

<sup>270</sup> See, for example the Hon. Dr A. Chesterfield-Evans MLC, NSWPD, 27 Nov. 1998, p.10850.

<sup>271</sup> Road block D.

<sup>272</sup> Road block F.

## STOPPING AND SEARCHING VEHICLES

5.137 While recording practices have hampered our assessment of the time periods formally authorised, there is no evidence to suggest that the use of the vehicle search powers has involved excessive amounts of time.

### *Indictable offence and serious risk to public safety*

5.138 Road blocks may only be authorised where there is a serious risk to public safety and/or a vehicle is suspected to have been used in an indictable offence.

5.139 The term 'serious risk to public safety' is not defined in the legislation, but legal officers within the Police Service have advised that it means exposing members of the public to danger, which could include dangers posed by high speed driving.<sup>273</sup>

5.140 Many of the road blocks we examined were established to terminate pursuits. The officers we spoke to often indicated that the risk to public safety posed by the speeding vehicle was either the sole reason or a significant reason in combination with an indictable offence. The following reasons were apparent for the pursuits in the incidents we examined in this review:

- speed of vehicle and failure to stop,
- suspicious behaviour, failure to stop when directed by police,
- several failures to pay for petrol and stolen vehicle,
- stealing \$54,000 tractor,
- speed of vehicle, fleeing on approach of police, (at some point after the pursuit had commenced it was discovered that the vehicle was stolen).

5.141 The remaining road blocks were established to:

- arrest escaped prisoners,
- arrest young persons for stealing a car and failing to pay for petrol,
- arrest persons and seize of a large quantity of prohibited drugs (two events), and
- arrest a young person wanted for stealing and involvement in a number of high speed pursuits.

5.142 Most of the references in the parliamentary debate to the type of offence which might necessitate use of the powers involved very serious offences such as a bomb threat, seizure of ten kilograms of heroin, kidnapping, escape from prison, or robbery. The nature of these offences contrast with some of the reasons for the road blocks we examined.

5.143 Some recognition of the risks of blocking a road and the need for evaluation of the reason for the use of the powers, is apparent in the *Police Service Handbook*. It advises site commanders:

The type of road block should be proportional to the offence or risk. Remember, blocking a road by using vehicles or objects has the potential to create major traffic chaos and can increase the risk of injury through the offender attempting to avoid it or crashing through.<sup>274</sup>

---

<sup>273</sup> Advice from chief inspector, Prosecuting Services North, 24 May 1999.

<sup>274</sup> *Police Service Handbook*, V-2.

5.144 Most officers we spoke to indicated that the situation in which the road block was authorised or established involved serious safety concerns or a serious offence. One officer we interviewed commented:

It [the Act] talks about the commission of a serious indictable offence. Clearly we're talking here about an armed robbery involving two escapees and the theft of a motor vehicle. Whilst the theft of a motor vehicle itself wouldn't be sufficient grounds, the theft of that in association with the escape would start to escalate it – add the armed robbery to it, it certainly would fit the criteria of being a serious indictable offence.<sup>275</sup>

5.145 The legislation itself, however, is not limited in its application to serious indictable offences but applies to any indictable offence.<sup>276</sup> A range of offences including many less serious offences fall within the term indictable offence.

5.146 One member of parliament who supported the legislation, commented on the need for extreme caution and safety in setting up road blocks and the potential dangers for pedestrians and other drivers.<sup>277</sup> The Police Service should provide greater guidance to officers about the situations in which a road block might be appropriate and reflect the view of parliament that the road block powers should only be used in relation to serious matters.

---

**RECOMMENDATION 13:** *That the Police Service advise officers of circumstances which may justify the use of the vehicle search powers and, in this respect, provide case studies exemplifying appropriate and inappropriate use of the powers.*

---

### *The vehicle search power procedures in the Police Service Handbook*

5.147 The *Police Service Handbook* sets out extensive procedures for the establishment of road blocks and the conduct of vehicle stops and searches under the legislation. These procedures provide guidance about the selection of a site, the roles of involved police, and recording and authorisation requirements and procedures.<sup>278</sup> These procedures are largely modelled on the checkpoint procedures set out in the precursor to the *Police Service Handbook, Commissioner's Instructions*.<sup>279</sup>

5.148 The *Police Service Handbook* states that police officers are to follow the guidelines unless they can justify otherwise. Authorising officers are advised:

- to confirm that an indictable offence has been committed and a vehicle used in the offence,
- to consider the time elapsed since the offence,
- to consider the possibility of success,
- to consider the vehicle type and class,

---

<sup>275</sup> Interview with inspector, 25 May 2000.

<sup>276</sup> See 4.49.

<sup>277</sup> Mr Tink, MP, Member for Eastwood, NSWPD, 17 Nov. 1998, p.10028.

<sup>278</sup> *Police Service Handbook*, V1-4.

<sup>279</sup> *Commissioner's Instructions*, Part 1, 'Instruction 37.22 Checkpoint – general procedures', NSW Police Service, 1996, p.37–55.

## STOPPING AND SEARCHING VEHICLES

- consider the threat posed by the vehicle's occupants and the possibility of a road block being needed,
- to consider the safety risks posed by different ways of stopping vehicles,
- to consider the time necessary to set up a road block and as much information about the site as is possible,
- in the case of a road block to reduce a serious risk to public safety, that they may authorise a road block if there is such a risk and the use of the powers will lessen the risk,
- to put the authorisation in writing if time allows.<sup>280</sup>

5.149 Site commanders are provided with a number of procedures including:

- to conduct a debrief after the incident,
- to select a site with reference to specified criteria,
- to use at least six police (a uniformed vehicle control officer, a searching officer, two covering officers, two observation officers for each searching officer),
- to park marked vehicles in prominent positions and illuminate light bars,
- to light the area at night,
- to ensure the practices on the discharge of firearms are strictly observed.<sup>281</sup>

### Concerns about the procedures

5.150 The procedures set out in the *Police Service Handbook* seem suited to a planned operation, such as those described in road blocks D and F above. A fair amount of time and access to at least six officers (as well as a site commander) is recommended. Many officers we spoke to expressed concern about the nature of the procedures. Officers based in country areas in particular, expressed concern about their inability to have access to the number of officers recommended in the handbook:

You may not always be able to get six police there so what do you do? Well unfortunately police are damned if they do and damned if they don't. If they let it through and it goes into town and someone's little boy or little girl gets run over – why didn't you set up a road block? You set up a road block and you haven't run with the guidelines you are going to get into strife for that. So what do you do?<sup>282</sup>

It's fairyland when they talk about six officers. We don't have six officers on duty. That's very rare.<sup>283</sup>

In the metropolitan area you can draw on, and have, the numbers of police needed to do that. Whereas here, with the exception of a larger centre such as [large town], I would suggest that it's just impossible for a place like [small town] to meet those requirements of having six police, a site controller, a site commander ...'cause they're just not there.<sup>284</sup>

---

<sup>280</sup> *Police Service Handbook* V-1 and V-2.

<sup>281</sup> This is a select list. The full duties of site commanders are in the *Police Service Handbook* at V-2 and V-3.

<sup>282</sup> Interview with senior constable, 13 Apr. 2000.

<sup>283</sup> Interview with duty officer, 10 Apr. 2000.

<sup>284</sup> Interview with commander, 17 Mar. 2000.

Only other thing, in the country LACs [local area commands] is the lack of resources. You don't have the luxury of a huge pool of police to draw on in any one shift and if you are going to set up a fairly comprehensive road block – like we were lucky in that situation at [place name] because we were able to draw on police from [a number of commands]. In that circumstance we were fairly lucky that we had enough police to cover the roads fairly well but normally [the] amount of police that might be available in any one shift is pretty limited.<sup>285</sup>

- 5.151 Many officers based in the country held the view that the *Police Service Handbook* was written from a city perspective and did not adequately take into account the needs of country stations:

I don't think they [the handbook procedures] are realistic or workable. Not in country areas. Now there are a lot of cases – in the metropolitan area you got the resources. If you've got a car chase down there, my experience working at [western Sydney suburb] was you've only got to say, 'There's a car chase' or 'There's an officer in trouble' and, honestly, there's thirty cars there. They just come from out of the woodwork. They just leave whatever job they've got and they're there. ... In the country where you might be lucky to have one car with two officers, a supervisor and someone working in the station.<sup>286</sup>

Certainly, like I indicated earlier I only became aware of the Commissioners Instructions some time after this took place – its unworkable, its unworkable in the country. Completely unworkable. It does say it's only a guideline and it won't suit every situation but it's just completely unworkable.<sup>287</sup>

---

**RECOMMENDATION 14:** *That the Police Service review the efficacy of its procedures for use of the vehicle search powers, particularly in terms of those commands of the Police Service with limited resources.*

---

### De-briefings

- 5.152 The *Police Service Handbook* advises site commanders to conduct a 'de-brief' after a use of the vehicle search powers.<sup>288</sup> There was little evidence to suggest that formal de-briefs were conducted in any of the road block events that we examined. Most officers mentioned that there was some informal discussion about the incident but nothing resembling a de-brief.
- 5.153 Given that use of the vehicle search powers is relatively rare and that many of the events we examined were problematic in terms of procedures and safety issues, formal de-briefs are to be encouraged.

---

**RECOMMENDATION 15:** *That the Police Service formulate and implement a strategy to ensure that de-briefings are conducted following the use of the vehicle search powers.*

---

<sup>285</sup> Interview with senior constable, 25 May 2000.

<sup>286</sup> Interview with senior sergeant, 7 Apr. 2000.

<sup>287</sup> Interview with sergeant, 7 Apr. 2000.

<sup>288</sup> *Police Service Handbook*, V-2.

## STOPPING AND SEARCHING VEHICLES

### *Stopping and searching a class of vehicles*

5.154 The Government's second reading speech emphasised that the new vehicle search powers allowed police to stop and search a class of vehicles:

Currently police can only search a vehicle where they suspect that particular vehicle was used in a particular offence. In some cases although police know a serious crime has been committed, they cannot identify a particular vehicle. The new provisions will mean they can stop and search a group or class of vehicles.<sup>289</sup>

5.155 The term 'class of vehicles' is not defined in the legislation and was a source of some discussion in parliament. The Hon. Ian Cohen referred the Legislative Council to the following comment by the NSW Council of Civil Liberties:

Under the proposed measures a road block can be directed towards a class of vehicles, for example, all white sedans. It is then reasonable that every vehicle answering that description can be subject to an intrusive search. We think not.<sup>290</sup>

5.156 The Hon. R.S.L. Jones put forward an amendment to define the term 'class of vehicles' as follows:

Class of vehicles means a class of vehicles identified by reference to the make, model or colour (or any combination of these) of the vehicles.<sup>291</sup>

5.157 The amendment was not successful.

5.158 Two examples of how the road block provisions might be used were provided by the Attorney General in the second reading speech. Both of these examples envisaged a road block in conjunction with the powers to stop and search:

...for example, ...police will be able to set up a road block on a freeway if a senior police officer suspects, on reasonable grounds, that a person who has escaped from prison is likely to be travelling along that freeway. It also means that where police suspect that a bomb is in a car park at a particular location, under these laws police will now be able to search all the vehicles in that car park.<sup>292</sup>

5.159 The discussion in parliament appears to anticipate two ways in which a 'class of vehicle' might be defined. First in relation to the characteristics of the vehicles in the class such as colour or make. Secondly, in relation to the location of the vehicles. Using the Attorney General's examples this might mean all the vehicles travelling along a freeway or in a car park.

---

<sup>289</sup> The Hon. J.W. Shaw MLC, NSWPD, 27 Nov. 1998, p.10833.

<sup>290</sup> The Hon. I. Cohen MLC, NSWPD, 27 Nov. 1998, p.10836.

<sup>291</sup> The Hon. R.S.L. Jones MLC, NSWPD, 27 Nov. 1998, p.10859.

<sup>292</sup> The Hon. J.W. Shaw MLC, NSWPD, 27 Nov. 1998, p.10834.

5.160 Only one example of the use of the stop and search powers in relation to a class of vehicles was recorded during our review. This event is described in road block H above. Although this event was recorded in COPS, there was no clear written authorisation. The relevant part of the COPS event states:

Numerous vehicle leaving the area where the escapees were believed to have driven were stopped and spoken to regarding any sighting of the vehicle driven by the escapees. Their vehicles were also searched in the event the occupants were under duress from an escapee in hiding. The escapees were not located and a thorough search for the vehicle was also unsuccessful and the road block was removed at 3.20pm.<sup>293</sup>

5.161 The authorising officer commented:

We stopped several vehicles coming out of the area, including a tour bus that had come through from the very far end down near the creek. Everyone was only too happy to stop. We asked drivers if we could have a look through the vehicles. They were only too happy to do that. We had a rough description of the two offenders and we anticipated that they would still be in prison greens given the time frame and most people opened boots for us – there was no concern.<sup>294</sup>

5.162 In this instance, using the **features** of the vehicle to describe the class of vehicles effected would not have been appropriate. It was the location of the vehicles at a certain time which defined the class of vehicles. The authorising officer informed us that the police were concerned that the escapees would swap vehicles or steal another vehicle to avoid detection. It would not have been strategic to only stop vehicles matching the description of the escape vehicle.

### *Use of police radio*

5.163 During a police pursuit there is fairly constant communication between the primary pursuit vehicle and police radio. Police radio must give priority to pursuit transmissions.<sup>295</sup> Some officers indicated that there can be difficulties in accessing police radio when a major incident is occurring.

5.164 In road block H, the mountainous terrain meant that radio communication was particularly difficult. The officers in this area need to traverse two regional radio centres. When transmission with one centre is too unclear they switch to another centre. However, not all vehicles have the capacity to switch between centres. This meant that the officers involved in the road block and pursuit could not necessarily listen to each other and sometimes experienced problems being understood by radio operators.

---

<sup>293</sup> Record 140.

<sup>294</sup> Interview with inspector, 25 May 2000.

<sup>295</sup> *Safe Driving Policy*, School of Traffic and Mobile Policing, NSW Police Service, 1999, p.36.

## STOPPING AND SEARCHING VEHICLES

5.165 At one point the pursuit which occurred in road block H was terminated by police radio because, according to the pursuing officer,

I said, 'We're doing 100 in an 80 area', and they've misinterpreted that as 180, and straight away they've terminated me at that point. So I just commenced to follow them and when I've got a clear channel I got through to [the alternate radio centre]. They picked me up very well – I've recommenced the pursuit.<sup>296</sup>

5.166 Road block G also provides an example of how radio communications can be seriously misunderstood. In that case leading to the formation of an unauthorised road block.

### *Young people and road blocks*

5.167 Young people comprised some of the occupants of the pursued vehicle in two of the pursuits. The Queensland Police Service *Operational Procedures Manual* states that a pursuit should be discontinued when 'the pursuing member knows or believes that the pursued vehicle is being driven by a juvenile and the offence is not serious'.<sup>297</sup> There appears to be no stated policy in NSW in regard to the treatment of young people in police pursuits or roadblocks. There may be merit in the Police Service developing guidelines in this regard.

### *Road 'spikes'*

5.168 In 1994, STAYSAFE recommended that the Police Service commence a trial of the use of tyre deflating devices to stop vehicles in police pursuits.<sup>298</sup> In November 1998, the *Traffic Amendment (Tyre Deflation — Police Pursuits) Act 1998* was assented to.<sup>299</sup> The road spikes or 'stop sticks' are 'designed to slowly flatten the tyres of a vehicle being pursued by police'.<sup>300</sup> The spikes are currently being trialed in the South Eastern and Greater Hume regions of the Police Service. Only officers trained by the School of Traffic and Mobile Policing (STAMP) are allowed to deploy the spikes.

5.169 An evaluation of the effectiveness of the tyre deflation legislation is being conducted by a steering committee with representatives of the Roads and Traffic Authority, Police Ministry, Police Service, and Attorney General's. The trials of the road spikes will conclude in December 2000 and a report of the evaluation will then be prepared for parliament. The legislation has a sunset clause and will therefore cease to have effect one year after its commencement unless either parliamentary house resolves that it should continue.<sup>301</sup>

---

<sup>296</sup> Interview with senior constable, 25 May 2000.

<sup>297</sup> Cited in *Police Pursuits in Queensland Resulting in Death or Injury*, Criminal Justice Commission, Brisbane, 1998, p.23.

<sup>298</sup> STAYSAFE 27, Parliament of New South Wales Standing Committee on Road Safety, Nov. 1994, p.82.

<sup>299</sup> This legislation has since been incorporated into the *Road Transport (General) Act*.

<sup>300</sup> *Police Service Weekly*, Vol.11, No.8, Mar. 1999, p.4.

<sup>301</sup> The commencement date is 1 Dec. 1999. This commencement date effectively extended the period of the trial for a further 11 months because the original commencement date of the relevant section in the *Traffic Act* (now repealed) was 1 Feb. 1999.

5.170 The road spikes are specifically designed for pursuit situations. The standard operating procedures for the trial are suited to the circumstances of a pursuit. The fact that the provisions are being trialed in two regions for almost two years and that training by STAMP is required prior to use indicates the cautious and careful manner in which these new powers are being treated. It is unclear why the new road block powers, where police are placing vehicles in front of speeding cars, have not been accorded the same degree of caution. It may be that it was not anticipated that the road block powers would be used in pursuit situations, however, if this is the case, insufficient care has been taken to inform operational police of this.

5.171 Many officers we interviewed commented that the pursuit in which they were involved would have been better or more quickly terminated by use of the spikes.

Now on that night had we had road spikes it would have been – the pursuit would have been over a lot earlier. The only vehicle that may have been damaged – and that would've only been to the tyres – would've been the vehicle that's being pursued ...they do work. We know they work. Everyone knows they work but everyone keeps throwing them in the too hard basket.<sup>302</sup>

The better option would've been - and I can think about it at this stage – were the spike strips. If you put them across there you just could've walked away from it and there's no way they could've avoided the spike strips. They would've seen them. That was the perfect spot for spike strips.<sup>303</sup>

If we had of had the power to use road spikes this may have nipped it in the bud a lot earlier.<sup>304</sup>

5.172 Officers expressed frustration at the lack of information available about the spikes and the time taken for the trial. There also appeared to be a degree of misinformation and rumour in relation to the trials.

The law I am very disappointed in is that ...The School of Traffic and Mobile Policing came up and gave the lecture and a demonstration on the road [spikes] and it was going to be the bees knees and they were going to trial it at Penrith and they were going to trial it at Campbelltown. And to still hear that they are still going to trial it...<sup>305</sup>

You hear rumours but what you hear is that they keep on – that no one wants to make a decision. In the meantime you know we've got to put our own lives in danger and members of the public and even the people in the car - the cars that we pursue we're talking about juveniles ... you know here we are, we're chasing these people around you know. What's better? The use of road spikes to stop the vehicle. To stop it quite effectively or do we pursue people all round the countryside, kill, maim and injure people or do we do something that's more effective. I think that road spikes – number one – should be the first thing we should look at in any pursuit. If they can't be used then the back up of an effective road block.<sup>306</sup>

5.173 This review has not looked into the operation of road spikes. However, it may allay some of the concerns expressed by officers if additional information about the trials, and the road spike review time frame, were provided to police officers.

---

<sup>302</sup> Interview with sergeant, 7 Apr. 2000.

<sup>303</sup> Interview with duty officer, 20 Apr. 2000.

<sup>304</sup> Interview with senior constable, 17 Mar. 2000.

<sup>305</sup> Interview with duty officer, 13 Apr. 2000.

<sup>306</sup> Interview with sergeant, 7 Apr. 2000.

## STOPPING AND SEARCHING VEHICLES

### *Pursuits and road blocks*

5.174 In 1998, the Criminal Justice Commission in Queensland made the following observation about police pursuits and road blocks:

Although different studies have produced varying estimates of the accident, injury and fatality rates of police pursuits, the potential danger remains undisputed. Even at the more conservative estimates, deaths resulting from police pursuits amount to more than what is typically attributed to police use of deadly force.<sup>307</sup>

5.175 In 1994, STAYSAFE noted the dangers of road blocks:

To those inexperienced in pursuit driving, merely setting up a roadblock may seem to be the easy and logical solution. Unfortunately, it is not that simple: a roadblock can be more dangerous than a high-speed chase. Any blocking off of highways being used by the travelling public involves the possibility of endangering innocent people and requires the utmost safeguards to avoid or reduce these dangers.<sup>308</sup>

5.176 In 1998–99 there were 2,091 high speed pursuits in NSW. Traffic offence was listed as the reason for 58.1 per cent of these pursuits.<sup>309</sup>

5.177 While nothing in the Vehicles Act expressly prohibits the formation of a road block to stop a police pursuit, the guidelines in the *Police Service Handbook* referring to the vehicle search powers seem to be directed towards a more planned situation than a pursuit generally allows.<sup>310</sup> However, most of the uses of the road block powers over the review period involved a police pursuit.

5.178 Advice from the Police Service's Legal Services states that ss.352 and 357E of the *Crimes Act* allow the use of reasonable force to arrest an offender or to stop search and detain cars and that this could in appropriate circumstances, include setting up a road block. The advice continues:<sup>311</sup>

This is not to say that the Police Powers (Vehicles) Act could never be used in these situations as there is often no defining line as to when one power can be used as opposed to another. There can often be an overlap, but generally speaking, the Police Powers (Vehicles) Act would not be used in pursuit situations for the purpose of making arrests. ...The difficulty in pursuits is not the lack of power to stop cars by the use of reasonable force, but rather the difficulty of doing so with safety for all involved.<sup>312</sup>

---

<sup>307</sup> *Police Pursuits in Queensland Resulting in Death or Injury*, Criminal Justice Commission, Brisbane, 1998, p.28.

<sup>308</sup> Schultz, D.O. cited in *Traffic Stops, Police Pursuits of Motor Vehicles*, STAYSAFE 27, Parliament of New South Wales Standing Committee on Road Safety, Nov. 1994, p.75.

<sup>309</sup> *NSW Police Service Annual Report 1998/99*, Appendix 26, p.97. Other listed reasons were criminal offence 13.8 per cent, stolen vehicle 19 per cent; no data 4.2 per cent.

<sup>310</sup> 'Pursuit' is defined on p.41 of the Police Service *Safe Driving Policy* as 'An attempt by a police officer in a vehicle to stop and apprehend the occupant(s) of a moving vehicle when the driver of the other vehicle is attempting to avoid apprehension or appears to be ignoring police attempts to stop them. A pursuit commences at the time the police officer decides to pursue the vehicle which has increased speed or ignored the direction to stop.'

<sup>311</sup> We have some concerns about aspects of this advice. See earlier discussion at 5.9–5.11.

<sup>312</sup> Advice from inspector, Legal Services, 23 June 1999.

5.179 A legal advising from another branch of legal services found that s.10(2) of the Vehicles Act, which provides for use of the vehicle search powers where there is a serious risk to public safety, would confer a power to set up a road block in a pursuit situation in 'extremely limited' circumstances.<sup>313</sup> The advising notes that the terminology in this section is 'vague' and that 'there is no guidance in either the legislation, explanatory notes to the Bill or the *Police Service Handbook* as to what type of conduct would come within the scope of the legislation that would warrant the establishment of a road block where the exercise of the powers may lessen the risk to the public'.<sup>314</sup>

5.180 As previously noted, the *STAYSAFE 27* report, did not support the creation of police powers to form road blocks in pursuit situations.

STAYSAFE is satisfied that significant danger can arise to police, the driver and passengers in the motor vehicle being pursued, and to the general public from inappropriate use of road blocks or checkpoints in pursuit situations.<sup>315</sup>

STAYSAFE [in the context of a then forthcoming Australasian Police Ministers Council] recognises that there may well be a need for legislative recognition of the realities of roadblocks but emphasises that the use of roadblocks as a technique in the management of police pursuits of motor vehicles is not appropriate.<sup>316</sup>

5.181 In exploring this issue we spoke with a senior police officer in a specialist traffic division of the Police Service and an experienced officer from STAMP about the use of road blocks in pursuit situations. Both of these specialist officers stated that the powers to establish a road block in the Vehicles Act were not appropriate for use in a pursuit situation. Both officers also referred to the new *Road Transport (General) Act* provisions for use of tyre deflation devices as more appropriate for use in a pursuit situation.

5.182 Many of the officers we interviewed commented on the issues involved in using the legislation in a pursuit situation:

[Interviewer: Do you think the legislation is very well suited to stopping a car in a pursuit situation?] I don't because there's too much planning that's got to go into it and when you are in the pursuit of a vehicle you've got to make split second decisions.<sup>317</sup>

I think it has the potential to work given the fact is you're pursuing a vehicle, the occupants may have been involved in a very serious crime ... I mean you are probably [maximising] public safety by taking that action and down the track you may even be saving their lives as well as your own. So I think it's very powerful and very good legislation.<sup>318</sup>

From my perspective, I certainly wouldn't want a pursuit coming into town if I knew the police had the prospect of stopping it 10km out of town. It's the age old question you know. If you chase people you create a danger to the public and if you don't chase them what do they do? Keep going.<sup>319</sup>

<sup>313</sup> Advice from chief inspector, Prosecuting Services North, 24 May 1999.

<sup>314</sup> Legal advice from chief inspector, Prosecuting Services North, 24 May 1999.

<sup>315</sup> *STAYSAFE 27*, Parliament of New South Wales Standing Committee on Road Safety, Nov. 1994, pp.74–75.

<sup>316</sup> *ibid*, p.77.

<sup>317</sup> Interview with constable, 20 Mar. 2000.

<sup>318</sup> Interview with constable, 20 Mar. 2000.

<sup>319</sup> Interview with senior constable, 21 Mar. 2000.

## STOPPING AND SEARCHING VEHICLES

### Relevant police guidelines

5.183 The *Safe Driving Policy* states:

Police shall consider high-speed urgent duty and pursuit driving as a last resort. It shall only be engaged when the gravity and seriousness of the circumstances require such action and there are no other immediate means of responding.<sup>320</sup>

5.184 The *Safe Driving Policy* sets out extensive guidelines and procedures for police engaged in pursuits. Police radio must be informed of all pursuits and pursuits must be terminated at the request of police radio. These guidelines do not currently deal with the establishment of roadblocks.

5.185 The literature and the incidents we examined during this review indicate that the practice of setting up a road block under the Vehicles Act to terminate a police pursuit is fraught with potential dangers. The current police guidelines in the *Police Service Handbook*, the *Police Service Weekly* and the *Safe Driving Policy* give no practical assistance to officers on this issue.

5.186 As previously noted, the procedures for road blocks contained in the *Police Service Handbook* are judged by police officers in the country to be inappropriate to the conditions of country stations. This lack of suitability is amplified in a pursuit situation where circumstances may change rapidly and decisions are often made quickly.

We're talking about 21 minutes from the time I first called the pursuit to when it was stopped [at the road block] and I was already in pursuit before I called it type of thing so it was probably 23 minutes I suppose – 22 minutes. So we didn't have a lot of time to do all these things either. So that's probably one of the problems that people have got to address.<sup>321</sup>

5.187 After being involved in a road block following a pursuit, one officer read guidelines set out in the *Police Service Weekly*. He was dismayed to find that they appeared unsuitable for use in a pursuit situation.

About a month later it came out in the *Police Service Weekly* and they had these nice little diagrams of how you are meant to do this. And I mean, it was a glorified RBT [Random Breath Testing] site. Like, you know, a car parked here off the road and a car maybe parked here off the road with 16 metres between them and thirty metres to the side and one police officer standing at the edge of the roadway with a "please stop" sign. I mean a glorified RBT site. I was just amazed when I saw those diagrams. I thought, you know, 'My God what have we done?' and 'My God, what's the point of this legislation when its not going to stop a pursuit.' I mean it might give you the justification or the power or whatever...you know, say if something happened up at [place name]. Basically there's one main road in and out and you want - say you are looking for armed offenders from a job at [place name] - my understanding of this legislation and this roadblock stuff is it then gives you the power to stop every vehicle coming out of [place name] with your 'please stop now' sign and find out, you know, basically search the car. So I don't know if it was brought in to beef up the stop search and detain powers, but I mean from what I saw it's certainly not going to stop [untranscribable] a stolen car in a pursuit.<sup>322</sup>

---

<sup>320</sup> *Safe Driving Policy*, School of Traffic and Mobile Policing, NSW Police Service, 1999, p.30.

<sup>321</sup> Interview with senior constable, 7 Apr. 2000.

<sup>322</sup> Interview with senior constable, 7 Apr. 2000.

### Adrenalin rush and pursuits

5.188 A recent article in the *Police Service Weekly* described the action of adrenalin during a police pursuit as follows:

Your body prepares itself for the danger which lies ahead. Your heart starts to pump blood to those areas which require extra supplies of oxygen, while other parts of your body close down in case of trauma. These are the most basic instincts for self preservation. You have little control over these functions.

Other things occur which you do have control over. Your vision restricts itself to maintain a close watch on your prey – you have developed ‘tunnel vision’. Your hearing becomes acute but at the same time, it appears as if it is harder to hear. This is known as the ‘fight or flight syndrome.’<sup>323</sup>

5.189 The article goes on to explain that the driver being pursued will be experiencing similar reactions. It seems extremely unlikely that it would be safe or prudent to place police vehicles in the path of drivers in this state.

### Pace of pursuits

5.190 The pace of decision making and action during a pursuit may lead to mistakes and poor judgement. In road block G for example an officer realised at the last moment that he needed to retrieve something from his car, which formed part of the road block. He explained:

I was still leaning through the drivers door of [the vehicle] telling [police radio] what we are doing and we knew that they were getting very close and you know I’ve just sort of looked ‘round and seen them coming and thought, ‘This isn’t the place to be’. I was standing at the drivers door of [the vehicle] like basically standing in the middle of the road...

And later,

Actually I left the driver’s door open in my haste to run away I left the driver’s door open and that caused most of the damage.<sup>324</sup>

5.191 Furthermore, an authorisation may be granted for a road block but the nature of the pursuit might substantially change after the road block authorisation has been granted.

### The risk to public safety might cease if the pursuit were terminated

5.192 The inclusion of serious risk to public safety as the basis for setting up a road block can mean that the pursuit itself is the reason for the road block. This can be the case even though if the police terminated the pursuit the vehicle may cease to constitute a serious risk to public safety. An officer authorising a road block in these circumstances must do so on the basis that the road block may reduce the risk to public safety. Terminating the pursuit may be a safer and more reliable way to reduce this risk.

<sup>323</sup> ‘Police pursuits: Some points to consider’, *Police Service Weekly*, Vol.11, No.6, 15 Feb. 1999.

<sup>324</sup> Interview with senior constable, 7 Apr. 2000.

## STOPPING AND SEARCHING VEHICLES

### Monitoring road blocks in pursuit situations

- 5.193 Aside from this review, there is no mechanism in place to monitor the actions of officers involved in pursuits where a road block is set up, unless death, injury or significant vehicle damage results. The *Police Service Handbook* advises site commanders to conduct a de-brief after use of the vehicle search powers, however, in none of the road block incidents involving pursuits was this seriously attempted.
- 5.194 Given the potential dangers of road blocks, especially in pursuit situations, there is a need for ongoing, specialist monitoring of the use of these powers. The South Australian legislation, for example, provides for the quarterly tabling in parliament of basic details of all road blocks.<sup>325</sup> It may be that in NSW, existing monitoring bodies within the Police Service are able to incorporate the monitoring of road blocks into their current role.
- 5.195 The Pursuits Management Committee is one body which might take on this monitoring function. The committee currently monitors 'aspects of police pursuits, including reviewing particular incidents and the effectiveness of current policies.'<sup>326</sup> Alternatively, STAMP may be able to monitor use of the new powers. Any existing committee would need to be adequately resourced to carry out this role.
- 5.196 The Operation and Crime Review (OCR) process may also be useful in the monitoring of road block events, at least in the initial teething period of the legislation.<sup>327</sup> Only one officer we interviewed during this review was aware of any road blocks conducted in other areas of the state. This officer had transferred from a command which had conducted a road block. OCR meetings could act as a forum for exchange of information and high level de-briefing of these incidents.
- 5.197 While the Police Service is in the best position to judge which is the most appropriate forum to monitor the use of the new powers, it is our view that this monitoring should not be a purely internal matter. Currently, only basic pursuit data is reported in the annual report of the Police Service.

---

**RECOMMENDATION 16:** *That relevant information about road blocks be published in the Police Service annual report, including:*

- *the number and location of all road blocks,*
  - *the reasons for the road block, including any association with a pursuit,*
  - *the number of collisions occurring at road blocks, and*
  - *the number of injuries or deaths resulting from road blocks.*
- 

---

<sup>325</sup> *Summary Offences Act 1953*, s.74B(9).

<sup>326</sup> *Annual Report 1998/99*, NSW Police Service, p.97.

<sup>327</sup> The operations and crime review is a regular meeting of the police executive, selected local area commanders and observers and occurs approximately fortnightly. The objective of the OCR is to review specific operational policing and crime trends.

---

**RECOMMENDATION 17:** *That the Police Service ensure that there is an effective mechanism for statewide monitoring of the use of the vehicle search powers and that it evaluates the results of its monitoring on a regular basis.*

---



---

**RECOMMENDATION 18:** *That road blocks not be established to terminate pursuits unless the Police Service obtains appropriate and compelling expert advice on the circumstances that might warrant the use of road blocks in pursuit situations.*

---

### **Other methods of stopping vehicles**

#### **Moving vehicles as a road block**

5.198 We are not aware of anything in the Vehicles Act that expressly prohibits a moving vehicle from constituting a road block. Nor do the procedures in the *Police Service Handbook* or *Safe Driving Policy* directly prohibit use of a moving vehicle in this manner. However, it seems that deliberate contact with a moving vehicle is not specifically dealt with anywhere in Police Service policy.

5.199 In 1994, STAYSAFE considered the use of ‘purposive contact between a police vehicle and a motor vehicle being pursued’ and concluded that no new powers should be conferred on police in this regard.<sup>328</sup> STAYSAFE did note that in limited circumstances it may be appropriate for a police car to ‘shoulder’ a suspect vehicle onto the road shoulder. However, the committee remained cautious about the technique and stated:

The use of a police vehicle in this manner should be the focus of careful investigation, both by police internally, and by the Office of the Ombudsman.<sup>329</sup>

5.200 The Queensland Police Service’s *Operational Procedures Manual* prohibits attempts to apprehend persons by:

- attempting to force a pursued vehicle from the roadway by driving the police vehicle alongside it,
- ‘boxing in’ or ‘heading off’ the offender’s vehicle, or
- attempting to slow or stop the pursued vehicle by positioning the police vehicle directly in front of the pursued vehicle,

where the pursued persons are known or suspected to have committed a traffic or other minor offence.<sup>330</sup>

5.201 Four pursuit incidents we examined during the review included accounts of police nudging vehicles, partially blocking the road, standing in the middle of the road indicating that the vehicle should stop, or attempting a ‘rolling stop’. Some of these instances were reported as use of the road block powers and others were not.

---

<sup>328</sup> STAYSAFE 27, Parliament of New South Wales Standing Committee on Road Safety, Nov. 1994.

<sup>329</sup> *ibid*, p.78.

<sup>330</sup> *Operational Procedures Manual*, Queensland Police Service. Cited in *Police Pursuits in Queensland resulting in Death or Injury*, Criminal Justice Commission, Brisbane, 1998, p.23.

## STOPPING AND SEARCHING VEHICLES

5.202 In road block B, the COPS narrative described the road block as follows:

[The two police vehicles] entered bushland from the bitumen off [avenue name]. The VOI [vehicle of interest] was then intercepted approximately 200 metres from the bitumen where a number of young aboriginal children were playing. The VOI then came to a stop 200 metres from the bitumen off [avenue name, town]. At this time is ascertain two small children were in the rear of the vehicle. The POI [Person of Interest] then attempted to [accelerate] again to get away from police and [constable name] then caused the bull bar on the police vehicle to collide with drivers siderear of the vehicle.<sup>331</sup>

5.203 The officer who performed this manoeuvre told us:

At the time that I had driven in to him I had my vehicle stopped and I've only moved it about a metre. So I haven't got speed or anything or anything like that. I've just basically positioned the vehicle into the side of his to let him know that we are going to use force and we are going to stop him from going any further.<sup>332</sup>

5.204 The duty officer further explained:

I suppose under the legislation we look at public risk and it says by any means – stop the vehicle by any means, so, I don't know whether we've interpreted the act differently to what it was. Well, I just assumed that it was sort of any reason, any block. Whether it was a proper road block you know, obviously you couldn't get out and just wave him down he was obviously going to just run straight over the top of people.<sup>333</sup>

5.205 In road block C, pursuing police attempted a 'rolling stop' but the vehicle overtook the police and pulled away. One officer who participated in the rolling stop, described this as 'one [police] car in front and one [police] car behind, and you just squash 'em.'<sup>334</sup> The officer told us that the vehicles were travelling at approximately 100km per hour when this manoeuvre was attempted.

### Use of firearms

5.206 In road block A, where a road block was authorised but reportedly did not occur, a police officer found himself in the middle of a road, with a speeding vehicle approaching.

... as the subaru approached I was standing in the centre of the highway, the vehicle did not appear to be slowing. As a result I raised my right hand to a stop signal, removed my pistol from the holster and at that time the vehicle braked harshly and made a right turn into [street name], about forty metres from where I was standing.<sup>335</sup>

---

<sup>331</sup> Record 69.

<sup>332</sup> Interview with constable, 20 Mar. 2000.

<sup>333</sup> Interview with inspector, 20 Mar. 2000.

<sup>334</sup> Interview with constable, 10 Apr. 2000.

<sup>335</sup> Statement of evidence, 27 July 1999.

5.207 Road block A also raises the issue of the use of firearms to stop a speeding vehicle. The Queensland Police Service *Operational Procedures Manual* states that 'only in extreme circumstances should the use of firearms during motor vehicle pursuits be considered.'<sup>336</sup> This appears to be referring to police firing from a pursuing vehicle. However, many of the safety concerns would also apply in the situation in road block A. These concerns include the possibility of ricochets, the danger of the pursued vehicle going out of control and injuring bystanders, the safety of occupants in the vehicle, and the possibility of a member of the public being injured or killed if struck by a projectile.

5.208 The *NSW Police Service Handbook* provides the following advice to officers in regard to firearms:

Do not fire at moving or stationary motor vehicles unless your life or someone else's life is in real or immediate danger, and there is not other means available to avoid the danger. Consider the implications of the danger an out of control motor vehicle creates.<sup>337</sup>

### Partial road blocking

5.209 In road block G, a 'partial roadblock' was attempted to stop the pursued vehicle. An officer we interviewed described the incident:

All he [an officer in another vehicle] did was that he pulled off into [the lane]. He stopped, facing west with his wheels on the centre line. He didn't go onto the wrong side of the road or anything like that. He was still within the boundaries of his lane but he was right on the centre line with all of his emergency lights going.<sup>338</sup>

5.210 The COPS event described the incident as follows:

The driver refused to stop increasing speed to 180 kph on a 110 rural section of the Highway until he came to the [roundabout exit]. He took this exit losing control as he attempted to slow down causing the vehicle to sway from side to side dramatically almost colliding with a concrete gutter. The driver increased speed to 110 kph in the 80 kph area swaying the vehicle from side to side to prevent the following police vehicle from stopping it. Further police assisted in setting up a partial road block near [a turnoff]. The driver swerved to the left causing the nearside wheels to travel in the dirt shoulder, this caused the rear of the vehicle to fishtail. Once past the Police vehicle the driver increased speed to 140 kph ...<sup>339</sup>

---

<sup>336</sup> Cited in *Police Pursuits in Queensland Resulting in Death or Injury*, Criminal Justice Commission, Brisbane, 1998, p.23.

<sup>337</sup> *Police Service Handbook*, A-20.

<sup>338</sup> Interview with senior constable, 7 Apr. 2000.

<sup>339</sup> Record 106 (b).

## STOPPING AND SEARCHING VEHICLES

5.211 We have examined only a small number of pursuits and road blocks. While we have attempted to examine all road blocks set up during the review period, the proportion of pursuits examined is tiny.<sup>340</sup> However, we have looked into numerous pursuits in the context of our complaints oversight role. Our experience in this area suggests that the practices uncovered during this review are not exceptional. We view the conduct described above with concern. Advice from specialist traffic officers within the Police Service indicates that these manoeuvres are viewed as inappropriate.

---

***RECOMMENDATION 19: That the Police Service develop clear guidelines instructing officers concerning appropriate methods of stopping vehicles.***

---

---

<sup>340</sup> See discussion at 5.176.

## **Education and training**

## 6. Education and training

---

6.1 When new powers are conferred on police, the Police Service has a responsibility to appropriately train its officers to allow them to use the powers responsibly. Without adequate training, police could not hope to keep abreast of the many tools at their disposal to deal with unlawful activity. In its submission to the review, the Police Association commented:

The successful introduction of any piece of new legislation is dependent not only on the nature of the legislation itself but also on the training that accompanies that piece of legislation. This being the case we would encourage the Ombudsman to consider the extent and availability of training for Police Officers in regards to the legislation.<sup>341</sup>

6.2 We attended one training session about the Vehicles Act during the review and we spoke to a number of officers about the training they had received about the vehicle search powers. Audit and Evaluation Services (a section of Management Services in the Police Service) also conducted a small survey to test the knowledge of the new legislation amongst police.

6.3 It is difficult to estimate the level of knowledge about the Vehicles Act within the Police Service. Audit and Evaluation Services conducted a survey of a total 33 police officers, three officers selected from each of the 11 regions of the Police Service. The survey relied on open questions, testing the recollection of officers about various features of the Vehicles Act.

6.4 Different questions were asked of operative officers, supervisors and senior officers because of their different roles and responsibilities under the legislation. The survey sample is too small to use as a basis for generalisation about knowledge across the service. The full set of questions and answers is attached at Appendix B.

6.5 Some police we spoke to indicated that they had received 'paper' or 'classroom' training but had not received practical training about how to set up a road block:

We've had the paper training. That's it. It would be good to have a scenario to say this is where you do set up the road block. This is what you do and get out on the road and have it.<sup>342</sup>

6.6 The Pursuits Management Committee inquired into one road block that was established to bring a high speed pursuit to an end. A number of questions were raised by the committee in relation to the pursuit and the road block, including:

What training [do] police have in setting up a road block with particular reference to 'duty of care'?<sup>343</sup>

---

<sup>341</sup> Submission by Police Association, 28 Feb. 2000, p.2.

<sup>342</sup> Interview with inspector, 20 Mar. 2000.

<sup>343</sup> Memorandum from the Pursuits Management Committee, 7 May 1999.

## EDUCATION AND TRAINING

6.7 The response from the officer investigating the matter was:

Although the Police involved in setting up the roadblock have not received any specific training, the senior officer involved has some 27 years policing experience and took into account the requirements for "duty of care".<sup>344</sup>

6.8 It is unclear to which senior officer the investigator was referring since no senior officer as defined in the legislation, was present at the road block or involved in any authorisation. In any event, while length of service may be a considerable advantage, it cannot be expected to replace training about new police powers and procedures. It is of concern that a road block was formed without authorisation by officers who had not received appropriate training. It is also of concern that some four months after the commencement of the legislation the regional radio centre did not know about the Act.

6.9 We spoke to the officers involved in this road block and most stated that they had not received any training some twelve months after the event. One officer not directly involved in the road block had received classroom training but was unsure of the procedures:

It was still really hazy. Even to this day it's still really hazy. You like, I know we can – I believe that we had permission to set up roadblocks and I still do but umm I'm still hazy on it whether it's legislated that we can or who gives permission for it – that's what I'm hazy about.<sup>345</sup>

6.10 Another officer we interviewed commented that practical demonstrations of how to set up a road block might not be useful because police might limit themselves to using only the method used in the demonstration. He felt that this would be inappropriate because every situation was different.<sup>346</sup>

6.11 Some police indicated that they had not received any training about the new legislation:

...I never received any training in roadblocks. I know a lot of other police haven't and as far as I know no training at all has been given by the Police Department in relation to road blocks. They've said we've got this new beaut legislation, use it and use it effectively, and we don't get told how to do it properly.<sup>347</sup>

6.12 Other police commented that it was simply not possible to keep up with all the legislative changes, especially when they related to police powers that were not regularly in use.

There are so many changes in legislation etc and so many procedures that police have to remember. It's something that doesn't stick with you. And again it's not something that jumps out and you have to use it every ... in the course of your duty every shift.<sup>348</sup>

All this stuff there's information overload. As long as you've got somewhere where you can find the nuts and bolts of it quickly that's all you need. But usually you get – it's like the statute books you know, when you start looking - but if you get a one page nuts and bolts then that's what we've got most of the time, then that's what we use.<sup>349</sup>

---

<sup>344</sup> Memorandum from investigator, 25 May 1999.

<sup>345</sup> Interview with senior constable, 7 Apr. 2000.

<sup>346</sup> Interview with senior constable, 13 Apr. 2000.

<sup>347</sup> Interview with sergeant, 7 Apr. 2000.

<sup>348</sup> Interview with senior constable, 14 Apr. 2000.

<sup>349</sup> Interview with sergeant, 21 Mar. 2000

- 6.13 Most training in the Police Service is conducted at a local level by education and development officers. The style and abilities of these officers varies from command to command. We attended only one training session during the review and clearly it is not possible to generalise across the service from this one session. It is noted however, that this session consisted of overheads and multiple choice questions about the provisions in the legislation. There was no discussion about practical uses of the legislation nor any use of scenarios or examples. This type of training may be useful to impart the technical details of the legislation to police. However, it may also be useful for police to discuss the use of the powers in the context of actual policing experience, particularly in the case of the vehicle search powers.
- 6.14 We asked officers who had used the vehicle search powers whether they were aware of any other occasion when the powers had been used. Almost all the officers were unaware of any other road blocks which had been conducted in NSW. For all of these officers this was their first experience of using the new powers. Police practice in this area would be likely to benefit from a better information flow about the use of the vehicle search powers. In appropriate situations, it may be useful for road block incidents to be described and briefly analysed in terms of strengths and weaknesses in the *Police Service Weekly*. This would allow officers to learn from the experience of others and gain some insight into the practical application of the powers.
- 6.15 Training about the Part 2 driver and passenger identification powers may also be enhanced by components dealing with common errors in the use of the legislation and by highlighting situations in which the power can be particularly valuable. The extent to which this type of training is conducted across the Police Service is not known.
- 6.16 Currently, in relation to the trial of the use of road spikes a four hour training session is conducted at STAMP. Officers are trained in the legislative provisions, the standard operating procedures, background issues and also receive hands-on training in the practical use of the spikes.<sup>350</sup> We spoke to a sergeant involved in this training and asked why there was no similar training in relation to the road block powers. He told us that although he would like to see STAMP train officers in the use of the road block powers, it would be unlikely to occur because of the expense. We asked if there were some officers he would target for training and he suggested that highway patrol officers and police based in country stations because of the greater likelihood that they would use the powers.

---

**RECOMMENDATION 20:** *That the Police Service provide practical training in the use of the vehicle search powers to highway patrol and appropriate police based in country areas.*

---



---

**RECOMMENDATION 21 :** *That the Police Service ensures that appropriate information about the practical application of the vehicle search powers is readily available to all police officers.*

---



---

**RECOMMENDATION 22:** *That education and development officers be encouraged to use (real life) scenarios in their training about the vehicle search powers.*

---

<sup>350</sup> See discussion at 5.168 and 5.173.

# **Summary of recommendations**

# Summary of recommendations

---

The following is a consolidated list of recommendations. Recommendations are also located throughout the report together with the discussion of relevant issues.

## Chapter 4

Recommendation 1: That Parliament consider amending s.6 (1) to insert 'or in connection with' immediately before the words 'the commission of an indictable offence'. [4.64]

Recommendation 2: That the Police Service amend its suggested form of demand to ensure that officers inform persons that they need not comply with a demand if they have a reasonable excuse not to do so. [4.67]

Recommendation 3: That the Police Service provide guidance to officers about the giving of cautions in the context of demands made under the passenger and driver identification provisions in the *Police Powers (Vehicles) Act*. [4.91]

Recommendation 4: That Parliament considers whether self incrimination should constitute a reasonable excuse under the *Police Powers (Vehicles) Act* and in this context whether any amendments to the Act are necessary. [4.98]

Recommendation 5: That the Police Service advise officers of the implications of allowing persons to seek legal advice after being required to comply with a demand under the *Police Powers (Vehicles) Act*. [4.103]

Recommendation 6: That the Police Service formulate guidelines setting out the circumstances in which it is appropriate for officers to agree to requests for legal advice prior to complying with demands under the *Police Powers (Vehicles) Act*. [4.103]

Recommendation 7: That the Police Service ensure that police have a proper understanding of the admissibility requirements contained in s.108 of the *Criminal Procedure Act 1986*, with particular reference to their powers under the *Police Powers (Vehicles) Act*. [4.137]

Recommendation 8: That the Police Service advise officers of the correct procedures for giving a warning under the *Police Powers (Vehicles) Act*. [4.145]

## Chapter 5

Recommendation 9 : That the Police Service investigate the causes of the high level of recording errors for the use of the vehicle search powers, implement appropriate changes to the COPS system and/or guidelines and procedures, and monitor the effectiveness of these changes. [5.32]

Recommendation 10: That the Police Service monitor the operation of the authorisation provisions in the *Police Powers (Vehicles) Act* to determine whether to recommend that the Act should be amended to permit non-compliance with the stringent authorisation requirements in exceptional circumstances. [5.125]

## RECOMMENDATIONS

Recommendation 11: That the Police Service develop a checklist for senior officers for authorising any road block. This list could include matters such as:

- appropriate action in the case of a pursuit,
- risks associated with road blocks involving young people or children,
- an assessment of whether there is adequate time to establish a road block,
- whether sufficient officers and other resources are available to properly establish a road block,
- whether the suspected indictable offence warrants the establishment of a road block,
- whether there is a serious risk to public safety which can be averted by a road block,
- whether the selected site is appropriate for a road block. [5.125]

Recommendation 12: That the Police Service formulate a strategy to improve the level of compliance by police officers with the recording requirements in s.12(1). [5.133]

Recommendation 13: That the Police Service advise officers of circumstances which may justify the use of the vehicle search powers and, in this respect, provide case studies exemplifying appropriate and inappropriate use of the powers. [5.146]

Recommendation 14 : That the Police Service review the efficacy of its procedures for use of the vehicle search powers, particularly in terms of those commands of the Police Service with limited resources. [5.151]

Recommendation 15 : That the Police Service formulate and implement a strategy to ensure that de-briefings are conducted following the use of the vehicle search powers. [5.153]

Recommendation 16: That relevant information about road blocks be published in the Police Service annual report, including:

- the number and location of all road blocks,
- the reasons for the road block, including any association with a pursuit,
- the number of collisions occurring at road blocks, and
- the number of injuries or deaths resulting from road blocks. [5.197]

Recommendation 17: That the Police Service ensure that there is an effective mechanism for statewide monitoring of the use of the vehicle search powers and that it evaluates the results of its monitoring on a regular basis. [5.197]

Recommendation 18: That road blocks not be established to terminate pursuits unless the Police Service obtains appropriate and compelling expert advice on the circumstances that might warrant the use of road blocks in pursuit situations. [5.197]

Recommendation 19: That the Police Service develop clear guidelines instructing officers concerning appropriate methods of stopping vehicles. [5.211]

## Chapter 6

Recommendation 20: That the Police Service provide practical training in the use of the vehicle search powers to highway patrol and appropriate police based in country areas. [6.16]

Recommendation 21 : That the Police Service ensures that appropriate information about the practical application of the vehicle search powers is readily available to all police officers. [6.16]

Recommendation 22: That education and development officers be encouraged to use (real life) scenarios in their training about the vehicle search powers. [6.16]

# **Select bibliography**

# Select Bibliography

---

- Britts, M. *Traffic Law (NSW)*, (5<sup>th</sup> ed) Law Book Company, Sydney, 1995.
- Chalmers, S. and Boyakovsky, C. 'Vehicle search powers', *Policing Issues and Practice Journal*, Vol.7, No.1, 1999, pp.15–20.
- Report on a Review of Police Powers in Queensland: Entry, Search and Seizure*, Vol.2, Criminal Justice Commission, Brisbane, 1993.
- Report on a Review of Police Powers in Queensland: Arrest Without Warrant, Demand Name and Address and Move-On Powers*, Vol.3, Criminal Justice Commission, Brisbane, 1993.
- Police Pursuits in Queensland Resulting in Death or Injury*, Criminal Justice Commission, Brisbane, 1998.
- Fisse, B. *Howard's Criminal Law*, (5<sup>th</sup> ed.), Law Book Company, Sydney, 1990.
- Griffith, G. *The Right to Silence*, Briefing Paper No.11/97, NSW Parliamentary Library Research Service, Sydney, 1997.
- Homel, R. *High Speed Police Pursuits in Perth: A Report to the Police Department of Western Australia*, National Centre for Research into the Prevention of Drug Abuse, Curtin University, Perth, 1990.
- Criminal Procedure. Police Powers of Arrest and Detention*, NSW Law Reform Commission, Sydney, 1987.
- Problem Definition Study: Police Pursuits and Urgent Duty*, NSW Police Service, Marketing Statistics and Evaluation Unit, Sydney, 1990.
- Code of Practice for Custody, Rights, Investigation, Management and Evidence*, NSW Police Service, Field Operations, Sydney, 1997.
- Annual Report 1998/99*, NSW Police Service, Sydney, 1999.
- Information Package: Police Powers (Vehicles) Act 1998*, No.166, NSW Police Service, Centre for Curriculum and Continuing Education, Goulburn, 1999.
- Safe Driving Policy*, NSW Police Service, School of Traffic and Mobile Policing, Goulburn, 1999.
- STAYSAFE 27: Traffic Stops, Police Chases and Police Pursuits of Motor Vehicles*, Parliament of New South Wales Joint Standing Committee on Road Safety, Sydney, 1994.
- STAYSAFE 33: Responses to Recommendations in STAYSAFE Reports of the 50<sup>th</sup> Parliament*, Parliament of New South Wales Joint Standing Committee on Road Safety, Sydney, 1996.

# Appendices

**Appendix A:** Relevant questions from the 1999 survey of local area commanders

**Appendix B:** Police Powers (Vehicles) Act survey

**Appendix C:** Definitions of owner

**Appendix D:** Vehicle search powers authorisation

# ***Appendix A***

---

## **Relevant questions from the 1999 survey of local area commanders**

### *Question 20*

Has this legislation been used to set up a road block in your LAC?

### *Question 21*

Are you using the legislation to demand name and address of passengers/drivers from owners/drivers?

### *Question 22*

In relation to either Police and Public Safety or Police Powers (Vehicles) legislation are there any other comments you would like to make?

# Appendix B

---

## Police Powers (Vehicles) Act survey: A

### *Audience:*

Senior Officers

### *Introduction:*

I am \_\_\_\_\_ from \_\_\_\_\_ and I am conducting a telephone survey relating to police knowledge of the *Police Powers (Vehicles) Act*. This survey is directed to police officers who fit the following criteria: Local Area Commander, Duty Officer, Inspector or above. The information obtained from this survey will not be used in relation to any individual police officer.

### *Question 1:*

Who can authorise the use of vehicle search powers under the *Police Powers (Vehicles) Act*?

### **Answer:**

Local Area Commander, Duty Officer, Inspector or above.

### *Question 2:*

In what two situations can you authorise the use of vehicle search powers?

### **Answer:**

Where the vehicle is being, or was, or may have been used in or in connection with the commission of an indictable offence and the exercise of the powers may provide evidence of the commission of the offence.

Where circumstances exist on or in the vicinity of a road, road related area or other public place that are likely to give rise to a serious risk of public safety and the exercise of the powers may lessen the risk.

## APPENDICES

### Question 3:

As an authorising officer what should you consider before authorising the use of vehicle search powers?

#### Answer:

Vehicle used in commission of indictable offence

Time since the offence

Possibility of success

Vehicle class or type

Threat posed by the occupants and possibility of roadblock being needed

Risk to safety of others from the different ways of stopping vehicle

Time necessary to set up a roadblock and any information about the proposed site

### Question 4:

If you authorise the use of vehicle search powers what must you do?

#### Answer:

Specify the date and time at which it is given

Specify what powers you authorise police to use

Specify the indictable offence or the risk to public safety for which it is given

Specify the road, road related area or other public place in respect to which it is given

Specify the vehicle or class in respect of which it is given

Specify the period the authorisation is given for (if it is less than six hours)

Nominate a site commander for the roadblock site

Create a COPS event using the *Police Powers (Vehicles) Act* incident category and disseminate it to the site commander's work priority

### Question 5:

If you refuse to authorise the use of vehicle search powers what must you do?

#### Answer:

Create a COPS event using the incident category of *Police Powers (Vehicles) Act* and record why you refused authority in the narrative.

## Police Powers (Vehicles) Act survey: B

*Audience:*

Supervisors

*Introduction:*

I am \_\_\_\_\_ from \_\_\_\_\_ and I am conducting a telephone survey relating to police knowledge of the *Police Powers (Vehicles) Act*. This survey is directed to police officers who fit the following criteria: Supervisor. The information obtained from this survey will not be used in relation to any individual police officer.

*Question 1:*

In verifying an event involving the use of vehicle search powers under the *Police Powers (Vehicles) Act* what should you be satisfied of?

**Answer:**

Powers have been authorised by a Local Area Commander, Duty Officer or Inspector or above.  
Reasons and details of the authorisation have been recorded in the narrative  
That the powers were exercised in accordance with the authority given

*Question 2:*

When verifying an event involving the *Police Powers (Vehicles) Act* incident category where police have demanded the identity of the driver or passengers what should you be checking?

**Answer:**

The powers said to be used were in fact powers under the *Police Powers (Vehicles) Act* and not other similar powers (eg: stop, search and detain powers under section 357E of the *Crimes Act*)

The offence/s for which the power was used was an indictable offence

## Police Powers (Vehicles) Act survey: C

*Audience:*

Operatives

*Introduction:*

I am \_\_\_\_\_ from \_\_\_\_\_ and I am conducting a telephone survey relating to police knowledge of the *Police Powers (Vehicles) Act*. This survey is directed to police officers who fit the following criteria: Police officers, supervisor and below. The information obtained from this survey will not be used in relation to any individual police officer.

*Question 1:*

What does the *Police Powers (Vehicles) Act* allow you to do?

**Answer:**

Request from the driver of a vehicle reasonably suspected of being used in or in connection with an indictable offence the driver's identity and the passenger's identity

Request from the owner of a vehicle reasonably suspected of being used in or in connection with an indictable offence the driver's identity and the passenger's identity

Ask a Local Area Commander, Duty Officer, Inspector or above to authorise the use of vehicle search powers

*Question 2:*

If authorised, what do vehicle search powers allow you to do?

**Answer:**

To stop vehicles

To set up a roadblock

To search vehicles for evidence relating to the indictable offence or the serious risk to public safety

To take possession of any object reasonably suspected of being evidence of any indictable offences

*Question 3:*

Where do you record the use of these powers?

**Answer:**

COPS using the incident category *Police Powers (Vehicles) Act* and relevant sub categories

*Question 4:*

Before giving a direction under the *Police Powers (Vehicles) Act* what must you do?

**Answer:**

Provide evidence that you are a police officer (if not in uniform)

Provide officers name and place of duty

Tell the person the reason for the request

Warn the person that failing to comply with the request may be an offence

**Survey Responses**

	<b>Answer given</b>
<i>SURVEY A – Commanders, Duty Officers, Inspectors and above</i>	<i>n=11</i>
<b>Q 1. Who can authorise the use of search powers under the <i>Police Powers (Vehicles) Act</i>?</b>	
Local Area Commander, Duty Officer, Inspector or above	10
<b>Q 2. In what two situations can you authorise the use of vehicle search powers?</b>	
Where the vehicle is being, or was, or may have been used in or in connection with the commission of an indictable offence and the exercise of the powers may provide evidence of the commission of the offence.	10
Where circumstances exist on or in the vicinity of a road, road related area or other public place that are likely to give rise to a serious risk of public safety and the exercise of the powers may lessen the risk.	9
<b>Q 3. As authorising officer, what should you consider before authorising the use of the vehicle search powers?</b>	
Vehicle used in commission of indictable offence	7
Time since the offence	6
Possibility of success	4
Vehicle class or type	3
Threat posed by occupants and possibility of roadblock being needed	7
Risk to safety of others from the different ways of stopping vehicle	8
Time necessary to set up a roadblock and any information about the proposed site	6
<b>Q 4. If you authorise the use of vehicle search powers, what must you do?</b>	
Specify the date and time at which it is given	10
Specify what powers you authorise police to use	5
Specify the indictable offence or the risk to public safety for which it is given	4
Specify the road, road related area or other public place in respect to which it is given	8
Specify the vehicle or class in respect of which it is given	4
Specify the period the authorisation is given for (if less than 6 hours)	7
Nominate a site commander for the roadblock site	6
Create a COPS event using the <i>Police Powers (Vehicles) Act</i> incident category and disseminate it to the site commander’s work priority	9
Disseminate it to site commander’s work priority	4

	Answer given
<i>SURVEY A – Commanders, Duty Officers, Inspectors and above (continued)</i>	<i>n=11</i>
<b>Q 5. If you refuse to authorise the use of vehicle search powers, what must you do?</b>	
Create a COPS event using the incident category of <i>Police Powers (Vehicles) Act</i> and record why you refused authority in the narrative.	10
 <i>SURVEY B – Supervisors</i>	 <i>n=11</i>
<b>Q 1. In verifying an event involving the use of vehicle search powers under the <i>Police Powers (Vehicles) Act</i> what should you be satisfied of?</b>	
Powers have been authorised by a Local Area Commander, Duty Officer or Inspector or above	8
Reasons and details of the authorisation have been recorded in the narrative	8
That the powers were exercised in accordance with authority given	8
<b>Q 2. When verifying an event involving the <i>Police Powers (Vehicles) Act</i> incident category where police have demanded the identity of the driver or passengers what should you be checking?</b>	
The powers said to be used were in fact powers under the <i>Police Powers (Vehicles) Act</i> and not other similar powers (eg: stop, search and detain powers under section 357E of the <i>Crimes Act</i> )	7
The offence/s for which the power was used was an indictable offence	6
 <i>SURVEY C – Operatives</i>	 <i>n=11</i>
<b>Q 1. What does the <i>Police Powers (Vehicles) Act</i> allow you to do?</b>	
Request from the driver of a vehicle reasonably suspected of being used in or in connection with an indictable offence the driver’s identity and the passenger’s identity	9
Request from the owner of a vehicle reasonably suspected of being used in or in connection with an indictable offence the driver’s identity and the passenger’s identity	9
Ask a Local Area Commander, Duty Officer, Inspector or above to authorise the use of vehicle search powers	5

## APPENDICES

	<b>Answer given</b>
<i>SURVEY C – Operatives (continued)</i>	<i>n=11</i>
<b>Q 2. If authorised, what do vehicle search powers allow you to do?</b>	
To stop vehicles	4
To set up a road block	5
To search vehicles for evidence relating to the indictable offence or the serious risk to public safety	10
To take possession of any object reasonably suspected of being evidence of any indictable offences	10
<b>Q 3. Where do you record the use of these powers?</b>	
COPS using the incident category <i>Police Powers (Vehicles) Act</i> and relevant sub categories	10
<b>Q 4. Before giving a direction under the <i>Police Powers (Vehicles) Act</i>, what must you do?</b>	
Provide evidence that you are a police officer (if not in uniform)	10
Provide officer's name and place of duty	10
Tell the person the reason for the request	10
Warn the person that failing to comply may be an offence	8

# Appendix C

---

## Definitions of owner

*Road Transport (General) Act 1999*

### Division 3 – Responsible persons for vehicles under road transport legislation

#### 7. Who is a responsible person for a vehicle

- (1) In the road transport legislation, the ‘responsible person’ for a vehicle is:
  - (a) in relation to a registered vehicle each of the following persons:
    - (i) a registered operator of the vehicle, except where the vehicle has been disposed of by the operator,
    - (ii) if the vehicle has been disposed of by a previous registered operator a person who has acquired the vehicle from the operator,
    - (iii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
  - (b) in relation to an unregistered vehicle to which a trader’s plate is affixed each of the following persons:
    - (i) the person to whom the trader’s plate is issued under the *Road Transport (Vehicle Registration) Act 1997*,
    - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
  - (c) in relation to an unregistered vehicle to which no trader’s plate is affixed each of the following persons:
    - (i) a person who was last recorded as a registered operator of the vehicle,
    - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
  - (d) any other person (or class of persons) prescribed by the regulations for the purposes of this definition.
- (2) For the purposes of subsection (1) (d), the regulations may prescribe different persons for different provisions of the road transport legislation.

**8. Rights, liabilities and obligations of multiple responsible persons**

- (1) Subject to any regulations made under subsection (2), if more than one person is the responsible person for a vehicle at any one time, a reference in any relevant legislation to the responsible person for a vehicle within the meaning of this Act or any other road transport legislation is taken to include a reference to each person who is a responsible person for such a vehicle.
- (2) The regulations may provide for the determination of the respective rights, liabilities and obligations of each responsible person for a vehicle under any relevant legislation, but only with the concurrence of the Minister administering the relevant legislation.
- (3) In this section:  
‘relevant legislation’ means:
  - (a) a provision of the road transport legislation, or
  - (b) a provision of any other Act (or a provision of a regulation made under any such Act) concerned with the responsible person for a vehicle within the meaning of this Act or any other road transport legislation.

*Traffic Act 1909 (repealed)*

S.18A (5)

...

‘Owner’ in relation to a motor vehicle or trailer includes:

- (a) every person who is the owner or joint owner or part owner of the vehicle and any person who has the use of the vehicle under a hire-purchase agreement but not the lessor under any such agreement,
- (b) the person in whose name the vehicle is registered except where such person has sold or otherwise disposed of the vehicle and has complied with the provisions of the regulations applicable to him or her in regard to such sale or disposal,
- (c) in the case of a vehicle to which a trader’s plate is affixed, the person to whom such trader’s plate is in issue, or
- (d) a person who, pursuant to a regulation under section 3 (1) (q11) or (q12), is to be treated as being, for the purposes of this section, the owner of the vehicle.

...

# Appendix D

---

## Vehicle search powers authorisation

██████████ POLICE STATION

Facsimile: ██████████

EagleFax: ██████████



DUTY OFFICERS OFFICE

Telephone: ██████████

Eaglenet: ██████████

### MEMORANDUM

TO: P.C. CONSTABLE ██████████

TIME/DATE: ██████████ March, 1999.

SUBJECT: VEHICLE SEARCH POWERS - UTILISATION OF

---

You are authorised to utilise all the Vehicle Search Powers under the Police Powers (Vehicles) Act, 1998 in regard to the following:

Reliable information has been relayed by ██████████ Police which indicates that a vehicle about to enter New South Wales is carrying a large quantity of illegal drugs. This vehicle is being observed by a ██████████ Police Vehicle. It is not known whether the occupant/s are armed, but the nature of the offence suggests that they could be.

The vehicle is a large style, late model American utility, white in colour without vehicle plates

The use of a road block to stop the vehicle at the ██████████ Bridge (6km west of ██████████) is authorised, as this presents the best open and isolated location to conduct the stop.

The time frame to conduct the vehicle stop is 4 hours from 6pm this date.

The site commander at the road block is P.C. Constable ██████████.

The logistics in carrying out the stop and search will encompass sufficient vehicles and operatives to block the road, pursuit vehicle readiness, search personnel and crime scene.

Sergeant ██████████  
Acting Duty Officer  
██████████ Police Station  
██████████ March, 1999