LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

Committee on Law and Safety

REPORT 3/55 – NOVEMBER 2013

DRIVER LICENCE DISQUALIFICATION REFORM

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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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Terms of Reference

1. That the Legislative Assembly Committee on Law and Safety inquire into and report on whether it is appropriate to reform the law related to unauthorised driving offences, in particular to:

a) Establish a right to apply to the court to have any outstanding disqualification periods removed for people who complete a minimum offence free period;

b) Abolish the Habitual Traffic Offenders scheme;

c) Provide courts with discretion when imposing disqualification periods for unauthorised diving offences by:

i) Providing for automatic (and minimum) periods rather than mandatory periods; and

ii) Requiring that disqualification periods run from the date of conviction unless otherwise ordered.

d) Revise the maximum penalties prescribed for unauthorised driving offences; and

e) Introduce vehicle sanctions for offenders who repeatedly drive while disqualified.

2. In carrying out the inquiry the Legislative Assembly Committee on Law and Safety will have particular regard to:

a) Previous reports that have drawn attention to problems associated with driver licence disqualification including, but not limited to, reports by the Legislative Council Standing Committee on Law and Justice, the NSW Sentencing Council, the NSW Ombudsman and the NSW Law Reform Commission;

b) Reforms contained in the Road Transport Amendment (Licence Disqualification on Conviction) Bill 2013;

c) The need to ensure that reforms do not have an undue adverse impact on community safety; and

d) Any related matters.

For the purposes of the terms of reference, "unauthorised driving offences" are the following offences under sections 25 and 25A of the *Road Transport (Driver Licensing) Act 1998* of:

- drive while licence disqualified, cancelled or suspended;
- drive while licence cancelled, suspended – due to fine default; and
- drive while never having been licensed.

Chair's Foreword

Most people in NSW would be surprised to discover that almost 700 drivers in our State were put behind bars last year for unauthorised driving offences. The prosecution and management of these offenders have placed an enormous burden upon the criminal justice system.

The inquiry by the NSW Legislative Assembly Committee on Law and Safety focuses on whether the laws relating to unauthorised driving offences should be reformed.

Somebody who is an unauthorised driver isn't necessarily an unsafe driver. Drink driving generally poses a far greater risk to public safety than drivers who are unauthorised.

Licence disqualification periods are mandatory for unauthorised driving offences, irrespective of the circumstances of the case. The courts have virtually no discretion to impose a shorter licence disqualification period.

Yet drink driving offences, negligent driving occasioning death or grievous bodily harm, driving in a furious or reckless manner or at a dangerous speed do not carry mandatory licence disqualifications. Rather, courts have greater flexibility to impose a disqualification period that is tailored to the circumstances of the case.

On top of hefty fines and imprisonment, some unauthorised drivers find themselves serving lengthy licence disqualification periods, sometimes for more than ten years. This can have a significant impact upon on an individual's life, especially if they live in a regional, rural or remote community. Long disqualification periods do not necessarily act as a deterrent, with statistics showing that some unauthorised drivers continue to re-offend by getting back behind the wheel.

This inquiry has been an opportunity to reassess the appropriateness of the law in these cases. I would like to recognise the Committee for their meticulous and exceptional work on such a complex issue. Thank you to my Committee colleagues Garry Edwards MP, Jai Rowell MP, Nick Lalich MP, Chris Spence MP and Guy Zangari MP. Their counsel and support was invaluable. Committee colleagues and staff, your efforts have helped to ensure that the Law and Safety Committee continues to play an important role in focusing the attention of the Government and the Parliament on the consequences of our State's laws.

I believe our recommendations are a step in the right direction to ensure that offenders receive penalties and disqualifications that are better tailored to the circumstances of their case and better reflect the public's attitudes to their actions.

John Barilaro MP
Chair

Executive Summary

Key issues

This inquiry focused on whether the laws relating to unauthorised driving offences should be reformed. Unauthorised driving offences are:

- drive while never having been licensed
- drive while licence disqualified, cancelled or suspended, and
- drive while licence suspended or cancelled due to fine default.

Some of the key issues raised in this inquiry are highlighted below.

Prevalence of unauthorised driving offences

In 2012, unauthorised driving offences were the third most common principal offences of which offenders were found guilty in the NSW Local Courts, after regulatory driving offences (such as speeding, parking and drink driving) and assault. In that year, 694 individuals were sentenced to full time imprisonment for unauthorised driving offences. Significant costs to the criminal justice system are incurred through the prosecution of these offences and the management of offenders.

Current penalties and licence disqualifications disproportionate to seriousness of offences

The current penalties for unauthorised driving offences include fines and imprisonment. Offenders will also have their licence disqualified for a set period of time. Inquiry participants felt that some of the penalties and disqualification periods for unauthorised driving offences are disproportionate to the seriousness of those offences. Some unauthorised driving offences carry penalties and disqualification periods that are similar to, or greater than, offences such as drink driving and certain dangerous driving offences.

A number of stakeholders noted that unauthorised drivers are not always unsafe drivers and, because of this, unauthorised driving offences generally do not pose the same risk to public safety as offences such as drink driving and dangerous driving.

Limited court discretion to determine licence disqualification periods

Licence disqualification periods are mandatory for unauthorised driving offences. This means that the disqualification period specified for the relevant offence will apply irrespective of the circumstances of the particular case.

The courts have virtually no discretion to impose a shorter licence disqualification period other than to avoid a disqualification entirely through an order dismissing the matter under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. However, stakeholders advised that this would rarely be an appropriate option for repeat offenders.

Not all road traffic offences carry mandatory disqualifications. For example, drink driving offences, negligent driving occasioning death or grievous bodily harm, and driving in a furious or reckless manner or at a dangerous speed do not carry mandatory licence disqualifications.

Instead, the court is given more discretion to impose a suitable disqualification period that is tailored to the circumstances of the case, although, not below the statutory minimum period.

Licence disqualification periods for unauthorised driving offences are also cumulative. If an offender is serving a two year disqualification and is convicted of a subsequent offence which carries a further two year disqualification, the second disqualification period will not commence until after the first period has been served. However, disqualifications for major road transport offences (including murder and manslaughter involving a vehicle and negligent driving where death or grievous bodily harm is occasioned) can generally be served concurrently; they are not cumulative.

Habitual Traffic Offenders Scheme

Unauthorised driving offences are also part of the Habitual Traffic Offenders Scheme. Once an offender has been convicted of three offences that are captured by the scheme within a five year period, they will be declared an Habitual Traffic Offender. They will then have their licence disqualified for a further five years. This is in addition to any disqualification periods that have been imposed for each of the three offences that led to them being declared an Habitual Traffic Offender.

Impact of lengthy licence disqualification periods

Inquiry participants' main concern was that the current arrangements for dealing with unauthorised driving offences can result in some offenders not only receiving fines and or imprisonment but also serving very lengthy licence disqualification periods – sometimes for more than a decade. According to stakeholders, this can have a significant impact on an individual's everyday life and can be disproportionate to the offence.

A number of inquiry participants spoke of the importance of having a driver licence, particularly in regional, rural and remote communities which may have little, or no, access to public transport. Without a driver licence, everyday tasks such as commuting to work, taking children to school, doing the grocery shopping and attending medical and other appointments can become very difficult. This can lead to social isolation, financial problems, further interaction with the criminal justice system and a sense of hopelessness. Aboriginal communities, young people and vulnerable groups are other sectors of the community who are particularly affected by the current laws.

Stakeholders also highlighted that long disqualification periods do not necessarily act as a deterrent to re-offending, with studies demonstrating that a number of unauthorised drivers continue to drive.

Licence suspension and cancellation for fine default

A particular concern raised by a number of stakeholders was licence suspensions and cancellations for fine default. The State Debt Recovery Office can direct Roads and Maritime Services to suspend a driver licence if an individual has outstanding fines. The fines do not necessarily have to be related to traffic offences. They may have been imposed because the individual failed to vote or travelled on a train without a ticket. Fifty two per cent of licences are suspended for non-payment of fines. Those who drive while suspended will have their licence disqualified.

Participants from NSW Government agencies explained that every Australian jurisdiction has moved to a system of licence restrictions for fine default and that this has been an effective mechanism for encouraging people to pay their fines. However, it also contributes to the large number of unauthorised driving offences each year.

Difficulties in obtaining a licence

Inquiry participants explained that some sectors of the community, particularly Aboriginal people, can find it difficult to obtain a licence, which can lead to unauthorised driving becoming more prevalent in those communities. Obstacles that those communities face include limited access to cars and licensed drivers to supervise learners and difficulties in obtaining identity documents such as birth certificates.

Inquiry outcomes

The Committee has a made a number of recommendations to reform the laws relating to unauthorised driving offences to ensure that:

- courts have more discretion to impose appropriate disqualification periods that take into account the circumstances of the offender's case
- penalties and disqualification periods for these offences are proportionate to the crimes
- unauthorised driving offences will no longer be part of the Habitual Traffic Offenders scheme
- vehicle sanctions are available as a possible penalty for those who repeatedly drive while disqualified, and
- offenders who have served a minimum offence-free period will have the opportunity to apply to the court for it to consider whether it is appropriate to remove their outstanding disqualification.

The Committee's recommendations, if implemented, will ensure that offenders receive penalties and disqualification periods that are better tailored to the circumstances of their case. The courts will have the discretion to impose a serious penalty and a lengthy disqualification period where someone is a serial and wilful offender who poses a significant risk to public safety. However, low-level offenders, who are not a risk to public safety and who have reformed their behaviour can receive a penalty and disqualification period that reflects their less serious offence. The reforms will also encourage offenders to be of good behaviour while they are serving their disqualifications.

The Committee considers that these recommendations will assist in minimising the significant number of unauthorised driving offences each year and will address some of the impacts of lengthy disqualifications on the community. The recommendations have also been designed so as not to compromise public safety.

Report structure

Chapter One explains the conduct of this inquiry, including the submissions received by the Committee and the Committee's public hearing.

Chapter Two outlines the current unauthorised driving offences and the arrangements for dealing with these offences, including associated penalties and disqualification periods. It also explains the Habitual Traffic Offenders Scheme.

Chapter Three highlights the prevalence of unauthorised driving offences, considers community safety issues and discusses the impacts of the current arrangements on the community.

Chapter Four examines whether a right should be established for offenders to apply to have their outstanding disqualification periods removed if they have completed a minimum offence-free period.

Chapter Five explores whether the Habitual Traffic Offenders Scheme should be abolished.

Chapter Six considers whether the courts should be given discretion when imposing disqualification periods for unauthorised driving offences.

Chapter Seven assesses whether the maximum penalties for unauthorised driving offences, which include fines and imprisonment terms, should be revised.

Chapter Eight analyses whether vehicle sanctions should be introduced for offenders who repeatedly drive while disqualified.

List of Findings and Recommendations

The Committee recommends that the NSW Government establish a right for those who have been convicted of road traffic offences to apply to have licence disqualification periods removed or reduced after they have completed a minimum offence-free period and that this right be administered by the NSW Courts.

The Committee recommends that the NSW Government, in establishing this right to apply to the court and the relevant offence-free period, balance:

- the possible impacts on court workload
- public safety
- the level of seriousness of different road traffic offence/s, and
- providing an incentive for offenders to be of good behaviour during their licence disqualification period.

The Committee recommends that the NSW Government ensure that, in determining whether a licence disqualification period should be removed or reduced, the courts consider:

- the character of the individual
- the individual's conduct since the original licence disqualification period was imposed
- the nature of the offence
- public safety, and
- any relevant circumstances.

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to remove the unauthorised driving offences referred to in sections 53(3) and 54(1), (3) and (4) of that Act from the Habitual Traffic Offenders Scheme.

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to provide that an Habitual Traffic Offender declaration no longer comes into effect automatically after three relevant offences within five years. Instead, an Habitual Traffic Offender declaration should only be imposed once a court has accepted an application requesting that such a declaration be made.

Chapter One – Introduction

TERMS OF REFERENCE

1.1 On 25 June 2013, the Committee resolved to inquire into and report on whether it is appropriate to reform the law related to unauthorised driving offences. The inquiry was referred to the Committee by the Attorney General and Minister for Justice and the Minister for Roads and Ports. The full terms of reference can be found on page iv.

CONDUCT OF THE INQUIRY

Submissions

1.2 The Committee called for public submissions by advertising in the *Sydney Morning Herald* on 28 June 2013 and by writing to key stakeholders inviting them to make a submission. The closing date for submissions was 22 July 2013.

1.3 The Committee received 25 submissions from individuals as well as from key stakeholders who have a broad range of experience in dealing with driver licence disqualification issues including advocacy groups, NSW lawyers, legal centres and forums, representatives from the courts, government agencies, and the NSW Government. A complete list of submission makers may be found in Appendix One. The submissions that the Committee has published may be found on the Committee's website: http://www.parliament.nsw.gov.au/lawandsafety.

Public Hearing

1.4 The Committee held a public hearing at Parliament House on 30 August 2013. Sixteen witnesses provided evidence to the Committee. These included representatives from legal centres and advocacy bodies, relevant NSW Government agencies, road safety policy experts and academics specialising in road safety research. A full list of the witnesses who appeared before the Committee may be found at Appendix Two.

1.5 The transcript of evidence from the hearing may be found at the Committee's website: http://www.parliament.nsw.gov.au/lawandsafety.

1.6 The Committee wishes to thank all the organisations and individuals who participated in the inquiry.

Chapter Two – Current arrangements for dealing with unauthorised driving offences

2.1 This chapter explains the unauthorised driving offences that are the subject of this inquiry, including the penalties and disqualification periods that apply to these offences and associated appeal rights.

2.2 It also provides some examples of the circumstances in which an individual can have their licence cancelled, suspended or disqualified in the first place, which can then lead to them committing an unauthorised driving offence if they continue to drive.

2.3 Finally, the chapter provides an overview of the Habitual Traffic Offenders Scheme, which provides additional penalties for those who repeatedly commit unauthorised driving offences and other more serious traffic offences.

UNAUTHORISED DRIVING OFFENCES

2.4 On 25 June 2013, the Committee resolved to conduct this inquiry. At that time, the relevant unauthorised driving offences were contained in sections 25 and 25A of the *Road Transport (Driver Licensing) Act 1998* and were described in the inquiry terms of reference as follows:

(a) drive while licence disqualified, cancelled or suspended

(b) drive while licence cancelled, suspended – due to fine default, and

(c) drive while never having been licensed.

2.5 The *Road Transport (Driver Licensing) Act 1998* was repealed on 1 July 2013. The relevant unauthorised driving offences can now be found in sections 53 and 54 of the *Road Transport Act 2013*, which also commenced on 1 July 2013. The current unauthorised driving offences, penalties and disqualification periods are summarised in the table below.

Offence	Penalty for first offence	Penalty for second or subsequent offence
Driving while never having been licensed	Maximum fine of $2,200.	Maximum fine of $3,300 or imprisonment for 18 months or both. Mandatory disqualification for 3 years.
Driving while disqualified	Maximum fine of $3,300 or imprisonment for 18 months or both. Mandatory disqualification for 12 months (or longer at the discretion of the court).	Maximum fine of $5,500 or imprisonment for 2 years or both. Mandatory disqualification for 2 years (or longer at the discretion of the court).

Offence	Penalty for first offence	Penalty for second or subsequent offence
Driving while licence suspended (other than for non-payment of a fine)	Maximum fine of $3,300 or imprisonment for 18 months or both. Mandatory disqualification for 12 months (or longer at the discretion of the court).	Maximum fine of $5,500 or imprisonment for 2 years or both. Mandatory disqualification for 2 years (or longer at the discretion of the court).
Driving after licence cancelled (other than for non-payment of a fine)	Maximum fine of $3,300 or imprisonment for 18 months or both. Mandatory disqualification for 12 months (or longer at the discretion of the court).	Maximum fine of $5,500 or imprisonment for 2 years or both. Mandatory disqualification for 2 years (or longer at the discretion of the court).
Driving after licence cancelled or suspended for non-payment of fine	Maximum fine of $3,300 or imprisonment for 18 months or both. Mandatory disqualification for 3 months.	Maximum fine of $5,500 or imprisonment for 2 years or both. Mandatory disqualification for 2 years.

2.6 The penalties for unauthorised driving offences include both fines and imprisonment as per the table above. The courts have discretion to determine an appropriate fine and/or term of imprisonment up to the maximum level specified in the legislation by taking into account the circumstances of the case.[1]

2.7 In addition to the fines and terms of imprisonment, an offender will also be disqualified from driving for the relevant disqualification period set out in the legislation. This period ranges from at least three months to three years (or longer at the discretion of the court) depending on the nature of the offence and whether or not it is a subsequent offence.[2]

2.8 Disqualification periods are mandatory, which means that judges do not have the discretion to disregard or reduce them.[3]

2.9 The Chief Magistrate of the Local Court explained that the court does not have any ability to reduce a disqualification period other than to avoid it entirely through making a finding under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.[4]

2.10 Under that provision, a court can find that an individual is technically guilty of an offence, however, because of the circumstances of the case, the court will not convict the individual and will not impose the normal penalties and

[1] Submission 14, The Shopfront Youth Legal Centre, p10.

[2] *Road Transport Act 2013*, sections 53 and 54.

[3] Submission 25, NSW Government, pp2, 4.

[4] Submission 13, The Chief Magistrate of the Local Court, pp4-5.

disqualification periods associated with that offence. The court will instead make any of the following orders:

(a) an order that the charge be dismissed

(b) an order discharging the individual on the condition that they enter into a good behaviour bond (for up to two years), or

(c) an order discharging the individual on the condition that they participate in an intervention program and comply with any plan arising out of the program.[5]

2.11 In some cases, the court can order a longer disqualification period than that set out in the legislation.[6]

2.12 Disqualification periods for unauthorised driving offences are cumulative so that where someone has accumulated more than one disqualification period, they will have to wait until they have served the first disqualification period before they start serving the next one.[7]

2.13 Individuals who have been disqualified from driving by the court have a right to appeal to the District Court. The NSW Government explained that it is possible to apply for an annulment of a conviction but that this is rarely sought or granted. The Government also noted that an offender can make an application to the Attorney General for the exercise of the Royal Prerogative of Mercy but these applications are rarely successful with only 26 applications granted between 1999 and 2010.[8]

WHEN LICENCES MAY BE SUSPENDED, CANCELLED OR DISQUALIFIED

2.14 Licences can be suspended, cancelled or disqualified for a range of different reasons. For example, licences can be suspended for accumulating too many demerit points.[9] They can be suspended or cancelled for failing to pay a fine or penalty[10] or if it would be dangerous for an individual to drive because of illness or other incapacity. [11]

2.15 Licences can be disqualified for committing certain major road traffic offences such as manslaughter involving a vehicle, negligent driving causing death or grievous bodily harm, certain speeding offences or offences involving driving while under the influence of drugs or alcohol.[12] Licences can also be disqualified

[5] *Crimes (Sentencing Procedure) Act 1999*, section 10.
[6] *Road Transport Act 2013*, section 54(8).
[7] *Road Transport Act 2013*, section 54(8).
[8] Submission 25, NSW Government, p7.
[9] *Road Transport Act 2013*, section 33.
[10] *Fines Act 1996*, section 66.
[11] *Road Transport (Driver Licensing) Regulation 2008*, clause 55.
[12] *Road Transport Act 2013*, section 205.

for committing the unauthorised driving offences which are the subject of this inquiry.[13]

2.16 Licence suspensions, cancellations and disqualifications usually arise because of issues related driving or driver licences. However, licences can also be suspended or cancelled because an individual has not paid a fine that may be completely unrelated to their driving and driver licence.

2.17 Inquiry participants provided examples of offences for which licences may be suspended for defaulting on a fine, including failing to vote, not paying for a fishing licence, failing to wear a helmet, or travelling on a train without a ticket.[14]

2.18 The State Debt Recovery Office (SDRO) can direct Roads and Maritime Service to suspend a driver licence for the balance of the licence period where an individual has not paid a fine.[15]

2.19 Where RMS suspends a licence for fine default, and where the fine remains unpaid for at least six months, the SDRO can direct RMS to cancel the licence.[16] RMS is required to remove the licence suspension if the SDRO directs it to do so.[17]

2.20 Once an individual's licence is suspended or cancelled for fine default, if they continue to drive, they would be committing an offence against section 54(5) of the *Road Transport Act 2013* for driving after licence cancelled or suspended for non-payment of fine.

HABITUAL TRAFFIC OFFENDERS SCHEME

2.21 Although those who commit unauthorised driving offences will receive a fine and/or imprisonment as well as having their licence disqualified for each individual offence that they commit, the Habitual Traffic Offenders Scheme provides additional penalties for those who repeatedly commit these and other more serious traffic offences.[18]

2.22 The Habitual Traffic Offenders Scheme captures the offences of driving while never having been licensed and driving with a disqualified, cancelled or suspended licence. However, the offence of driving after licence cancelled or suspended for non-payment of fine is not included in the scheme.[19]

2.23 The scheme also covers more serious offences that pose a risk to community safety such as murder and manslaughter involving a vehicle, negligent driving

[13] *Road Transport Act 2013*, section 54.

[14] See for example, Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, Transcript of evidence, 30 August 2013, p14; Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, 30 August 2013, p25.

[15] *Fines Act 1996*, sections 65(1), 65(2), 66(1).

[16] *Fines Act 1996*, section 66(2).

[17] *Fines Act 1996*, section 66(3).

[18] Roads and Maritime Services, <http://www.rta.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 15 July 2013.

[19] *Road Transport Act 2013*, section 216; Roads and Maritime Services, <http://www.rta.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 15 July 2013.

where death or grievous bodily harm is occasioned, driving recklessly, certain driving offences involving alcohol and drugs and exceeding the speed limit by more than 45km/hr.[20]

2.24 If someone has been convicted of three offences that are captured by the Habitual Traffic Offenders Scheme within a five year period, they will automatically be declared an Habitual Traffic Offender (without a specific court order).[21] Unauthorised driving offences that are dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999* can also count towards being declared an Habitual Traffic Offender.[22]

2.25 An Habitual Traffic Offender will have their licence disqualified for five years. This is in addition to any penalty and disqualification period that was imposed for each offence that led to the Habitual Traffic Offender declaration. The court can order a shorter disqualification period if it is appropriate in the circumstances, but not less than two years. On the other hand, the court can also order a longer disqualification period, including disqualification for life.[23]

2.26 The offender must serve any existing periods of licence disqualification, suspension or cancellation before serving the licence disqualification period imposed on them as a result of being declared an Habitual Traffic Offender.[24]

2.27 Habitual Traffic Offender declarations lapse once the licence disqualification period has been served.[25]

2.28 While there is no right of appeal against an Habitual Traffic Offender declaration, a declaration can be quashed if the court determines that the disqualification imposed is disproportionate and unjust, having regard to the individual's driving record and any special circumstances in the case.[26] The NSW Government noted that the courts quashed 3,344 Habitual Traffic Offender declarations in 2012.[27] In that same year, 5,237 Habitual Traffic Offender declarations were made.[28]

2.29 In the next chapter, the Committee discusses some of the impacts of the current arrangements for dealing with unauthorised driving offences on the community.

[20] *Road Transport Act 2013*, section 216; Roads and Maritime Services, <http://www.rta.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 15 July 2013.
[21] *Road Transport Act 2013*, section 217; Roads and Maritime Services, <http://www.rta.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 15 July 2013.
[22] Submission 25, NSW Government, p12.
[23] *Road Transport Act 2013*, section 219(1)-(4); Roads and Maritime Services, <http://www.rta.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 15 July 2013.
[24] *Road Transport Act 2013*, section 219(6).
[25] *Road Transport Act 2013*, section 219(5).
[26] *Road Transport Act 2013*, section 220.
[27] Submission 25, NSW Government, p12.
[28] Transport for NSW and Roads and Maritime Services, Answers to supplementary questions, 18 September 2013, p5.

Chapter Three – Impacts of current arrangements on the community

3.1 This chapter discusses the prevalence of unauthorised driving offences, including the impacts that this has on the local courts and the cost to the criminal justice system. It also considers the extent to which unauthorised drivers are a risk to community safety.

3.2 The chapter goes on to describe the disproportionate impacts that the current penalties and disqualification periods can have on a range of community groups, including vulnerable groups, those living in regional, rural and remote areas, Aboriginal communities and young people. It also outlines stakeholder concerns about the particular impacts on the community of licence sanctions for fine default.

3.3 Finally, the chapter highlights examples of current initiatives aimed at addressing some of the problems described in this section.

PREVALENCE OF UNAUTHORISED DRIVING OFFENCES

3.4 The Local Courts regularly deal with unauthorised driving offences.[29] After regulatory driving offences (such as speeding, parking and drink driving) and assault, unauthorised driving offences were the third most common principal offences of which people were found guilty in the Local Court in 2012.[30]

3.5 The Chief Magistrate of the Local Court highlighted the severity of the problem, stating that the 'court presently sits in more than 135 locations across the State and in every region a significant proportion of its workload comprises proceedings for unauthorised driving offences.'[31]

3.6 In a recent report, the Judicial Commission of NSW cited five unauthorised driving offences as among the top twenty most common offences in the NSW Local Court in 2010.[32] The Chief Magistrate of the Local Court summarised this research in the following table:[33]

Offence	Rank 2010	Rank 2007	Rank 2002	Number of cases	% of all cases
Drive While Disqualified (s 25A (1), RT(DL) Act)	5	4	4	5,136	5.0

[29] Submission 25, NSW Government, p2.

[30] NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics 2012*, Table 1.7 referred to in Submission 25, NSW Government, p2.

[31] Submission 13, The Chief Magistrate of the Local Court, p1.

[32] Brignell, G, Baghizadeh Z, Poletti P, 'Common offences in the New South Wales Local Court: 2010', *Sentencing Trends & Issues* (No 40, May 2012), p7 referred to in submission 13, The Chief Magistrate of the Local Court, p1.

[33] Submission 13, The Chief Magistrate of the Local Court, p1.

Offence	Rank 2010	Rank 2007	Rank 2002	Number of cases	% of all cases
Drive while suspended (s25A(2), RT(DL) Act)	7	7	10	3,839	3.7
Drive while never having been licensed (s25(2), RT(DL) Act)	12	9	-	3,444	3.3
Drive without being licensed (s25(1), RT(DL) Act)	15	12	12	2,101	2.0
Drive while licence suspended due to fine default (s 25A(3A)(a), RT(DL) Act)	18	-	-	1,481	1.4
			TOTAL	**16,001**	**15.4**

3.7 A number of offenders receive terms of imprisonment for unauthorised driving offences. For example, in 2010, the offence of driving while disqualified had the highest rate of individuals receiving prison terms of the top twenty offences dealt with in the Local Court. [34] In that year, 712 individuals received a term of imprisonment where drive while disqualified was their principal offence. The average term of imprisonment and the median non parole period was six months.[35] In 2012, 694 people were sentenced to full time imprisonment for driver licence offences.[36]

3.8 Ms Felicity Graham, Solicitor with the Aboriginal Legal Service (NSW/ACT) Limited, discussed these statistics in the context of all imprisonment terms ordered by the Local Courts in NSW:

> When you look at the Local Court sentencing statistics, between 9 and 12 per cent of all terms of imprisonment that were imposed by the Local Courts in New South Wales since 2008 were in relation to a primary offence of driver licence offences such as drive whilst disqualified or driving without a licence.[37]

3.9 The majority of licence suspensions are for the non-payment of fines. A total of 286,185 licences were cancelled or suspended in 2012.[38] According to statistics from the NSW Government, fifty two per cent of licences suspended were as a

[34] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, 30 August 2013, p29.
[35] Submission 25, NSW Government, p7.
[36] Submission 25, NSW Government, p7.
[37] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p16.
[38] Submission 25, NSW Government, p3.

result of fine default/non-payment of fines (147,592), 16 per cent for demerit points (45,328), and 5 per cent for driving while disqualified by a court (15,553). [39]

3.10 Substantial costs to the criminal justice system are incurred by the prosecution of these offences and the management of offenders. Costs are incurred by the police, who may also appear as witnesses in court proceedings, prosecutors and defence teams, legal centres, courts, Corrective Services NSW, and Roads and Maritime Services (RMS).[40]

3.11 Convictions for unauthorised driving offences also generate a significant number of appeals to the District Court. In 2010, 38 per cent of appeal cases (2859 appeals) in the District Court concerned traffic and vehicle regulatory offences.[41] Forty eight per cent of this group were in relation to unauthorised driving offences.[42]

COMMUNITY SAFETY

3.12 Several inquiry participants explained that unauthorised drivers are not necessarily a risk to community safety.[43] For example, the NSW Government noted that some unauthorised drivers are a risk to community safety, whereas others are not:

> In some cases, the original offence that led to a loss of licence may be a series of traffic violations, and some disqualified drivers are not safe on the roads, such as those who have been disqualified for dangerous high speed pursuits…
>
> However, unauthorised driving offences do not necessarily involve poor driving behaviour. While some unauthorised drivers who have lost their licences may have engaged in unsafe road behaviour, others may have had their licences administratively suspended for the non-payment of fines.[44]

3.13 Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, agreed that most unauthorised driving offences should be distinguished from offences that entail a risk to public safety such as drink driving, reckless driving and speeding.[45]

3.14 Inquiry participants also felt that the current penalties and disqualification periods are disproportionate to the level of seriousness of unauthorised driving offences when compared with other road traffic offences. For example, according to the Chief Magistrate of the Local Court, the offence of driving while never having been licensed is particularly anomalous as it carries a penalty equal to or higher than some other driving offences that by their nature involve a risk to

[39] Submission 25, NSW Government, p3.

[40] Submission 25, NSW Government, p7.

[41] Submission 25, NSW Government, p7.

[42] Submission 25, NSW Government, p7.

[43] See for example, Mr Greg Elks, Members, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, p4; Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p16; Submission 13, The Chief Magistrate of the Local Court, p3.

[44] Submission 25, NSW Government, p1.

[45] Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, Transcript of evidence, 30 August 2013, p14.

public safety, such as mid-range prescribed concentration of alcohol (PCA) and negligent driving occasioning grievous bodily harm.[46]

3.15 This issue is also discussed in more detail in Chapters Six and Seven, in relation to whether penalties and disqualification periods should be revised.

3.16 Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General, acknowledged that while there are some unauthorised drivers who are serial and wilful offenders disobeying the law who do put the safety of the community at risk, unauthorised driving offences have the highest custodial rate and yet the offence itself does not necessarily involve any unsafe behaviour.[47]

3.17 However, other participants were concerned that those who drive while disqualified have no compulsory third party insurance protection, which can cause problems for accident victims who are trying to make claims.[48]

3.18 A large proportion of unauthorised and disqualified drivers also continue to drive. Studies suggest a range from 25 per cent to 75 per cent, but a figure in the fifty percentile range may be more accurate.[49] Over the last two financial years around 69,000 unauthorised drivers have been detected by NSW Police.[50] During that period, 13,661 disqualified drivers were caught by New South Wales Police, which, according to Assistant Commissioner John Hartley, is concerning, given there have been 23 fatal crashes involving disqualified drivers in NSW over the last two years.[51]

IMPACTS ON PARTICULAR SECTIONS OF THE COMMUNITY

3.19 The Committee received considerable evidence outlining the impacts of the current arrangements for dealing with unauthorised driving offences on particular sections of the community including:

- vulnerable groups;
- those living in regional, rural and remote areas;
- Aboriginal communities; and
- young people.

[46] Submission 13, The Chief Magistrate of the Local Court, p6.

[47] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General, Transcript of evidence, 30 August 2013, p34.

[48] Submission 9, Victims of Crime Assistance League Inc NSW, p1; Mr Thomas Spohr, Vice-President, NSW Young Lawyers, Transcript of evidence, 30 August 2013, p45.

[49] Crime Research Centre, University of Western Sydney, *The disqualified driver study*, September 2003, pp v and 7 referred to in Submission 25, NSW Government, p2.

[50] Assistant Commissioner John Hartley, Traffic and Highway Patrol Command, NSW Police, Transcript of evidence, 30 August 2013, p32.

[51] Assistant Commissioner John Hartley, Traffic and Highway Patrol Command, NSW Police, Transcript of evidence, 30 August 2013, p32.

3.20 The following sections of this chapter detail how the current arrangements impact on these sections of the community.

Vulnerable groups

3.21 At the Committee's public hearing, several participants stressed that those most impacted by the current penalties are economically and socially disadvantaged sectors of the community.[52]

3.22 The NSW Legal Assistance Forum submitted that socially and economically disadvantaged people in NSW face significant barriers to obtaining and maintaining driver licences, and consequently drive unlicensed.[53] Current licence sanctions, which are cumulative, do not take into account the particular circumstances of these individuals, and equally, do not provide opportunities for relicensing and social inclusion.[54]

3.23 According to the NSW Law Reform Commission, current driver licence sanctions 'can cause severe problems, especially for people who live in areas not well served by public transport and who require a driver licence to work or to access essential services.'[55]

3.24 The disqualification of a driver licence for people who are not serviced by adequate public transport and who rely on a driver licence for employment or to access essential services can lead to difficulties in maintaining a job, and can prevent someone from finding work altogether. In addition, disqualification of a licence can aggravate other hardships (such as caring for disabled or elderly dependents), increase the likelihood of an individual having contact with the criminal justice system (through secondary offending), and lead to imprisonment.[56]

3.25 Mr Thomas Elks, Member, Criminal Law Committee, Law Society of NSW, spoke about the sense of hopelessness that offenders can feel:

> We get to a situation where disqualifications are imposed and they have a cascading effect that ultimately leads to no light at the end of the tunnel.[57]

3.26 The NSW Legal Assistance Forum also provided the Committee with a case study on 'Marco', which highlights the difficulties faced by vulnerable groups. The case study is extracted in full below.[58]

[52] See for example, Mr Thomas Elks, Member, Criminal Law Committee, Law Society of New South Wales, Transcript of evidence, 30 August 2013, p3.

[53] Submission 5, NSW Legal Assistance Forum, p2.

[54] Submission 5, NSW Legal Assistance Forum, p2.

[55] NSW Law Reform Commission, *Penalty Notices,* report 132, February 2012, pxxi.

[56] Submission 5, NSW Legal Assistance Forum, p7.

[57] Mr Thomas Elks, Member, Criminal Law Committee, Law Society of New South Wales, Transcript of evidence, 30 August 2013, p3.

[58] Submission 5, NSW Legal Assistance Forum, p8.

Case Study: 'Marco'

3.27 "Marco grew up in a household where he witnessed and was subject to serious domestic violence. He missed large parts of his schooling, and at age 17 he moved out of the family home to live with his foster grandmother.

3.28 Marco was initially unable to get a driver's licence because he did not have the right identification. By the time he organised the necessary ID, he was already disqualified from driving.

3.29 Marco committed his first two offences of driving while unlicensed when he was under 18. By the time he reached the age of 18, Marco was already disqualified from driving until he turned 27 in 2011.

3.30 Marco committed his most recent traffic offence in December 2002. He has shown good behaviour and maturity since that time. In 2008 he sent a petition to the Governor of New South Wales seeking a pardon for his licence disqualifications. Marco highlighted the obstacles he faces as an apprentice mechanic, his trouble getting to and from work, as well as other mitigating facts about his original offences. The process was time consuming and ultimately unsuccessful."[59]

Individuals living in regional, rural and remote areas

3.31 According to the NSW Government the relative proportion of disqualified drivers (relative to licence suspensions) is much higher in regional NSW than in metropolitan areas.[60] In regional areas, court disqualifications made up 20.5 per cent of licence suspensions and disqualifications, whereas in metropolitan areas, court disqualifications made up only 6.3 per cent of all licence suspensions and disqualifications.[61]

3.32 High rates of court disqualification in regional areas are in part due to the higher chance of detection in smaller communities, and also due to the necessity of being able to drive in rural areas, thereby leading to a potentially higher rate of 'secondary offending'.[62]

3.33 Secondary offending, which contributes to long-term disqualification, has a particularly adverse effect in rural, regional and remote parts of NSW. Secondary offending occurs where individuals continue to drive despite their licence having been suspended or cancelled, and as such they become disqualified from driving.

3.34 Often, and particularly, in regional and remote parts of NSW, individuals continue to drive unlicensed to work or to access essential services. If caught, they then acquire subsequent convictions for unauthorised driving offences, following which they may, in some cases, be imprisoned for these secondary offences. [63]

[59] Case study extracted from submission 5, NSW Legal Assistance Forum, p8.
[60] Submission 25, NSW Government, p4.
[61] Submission 25, NSW Government, pp4-5.
[62] Submission 25, NSW Government, p5.
[63] Submission 5, NSW Legal Assistance Forum, p10.

3.35 Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, outlined the disproportionate effects of unauthorised driving sanctions in regional and remote parts of NSW:

> In the regions and remote areas the extreme regulation of the drive whilst disqualified regime and the effects of punishments handed down are exponential because of the lack of public transport. The regions are affected by this extreme regulation disproportionately.[64]

3.36 As previously mentioned in this chapter, not having a driver licence impacts on the ability to continue in employment, exacerbates social exclusion and isolation, and can have negative health consequences.[65] Ms Graham spoke about the importance of having a driver licence in many communities:

> A licence is so vital to being able to obtain and maintain employment and to participate in community life. Even if people are not working, a licence is vital for other responsibilities to family, day-to-day tasks like shopping and other commitments to ensure your own and others health and wellbeing. Those kinds of tasks are almost impossible without a licence. Particularly in the regions we are not talking a licence to drive: we are really talking about a licence to live.[66]

3.37 Submissions and evidence given at the Committee's public hearing have echoed the statement above. In regional areas, public transport options may be limited, expensive or inconvenient. Long distances, without being able to drive, can make it impossible to get to work, school, university, difficult to buy food for the family, take children to school, see a doctor, or visit family and friends.[67] Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, spoke of the impact that this can have on individuals who do not live in urban areas:

> The effects of long-term licence disqualification in rural, regional and remote New South Wales communities can be devastating and have a crushing impact on large portions of a community's ability to participate in civic society.[68]

Aboriginal communities

3.38 The disproportionate effects of unauthorised driving sanctions in regional parts of NSW are particularly acute for Aboriginal communities.

3.39 The Aboriginal Legal Service (NSW/ACT) Limited detailed that in 2010, 10,790 people were charged with driving while licence disqualified or suspended, 12 per cent of whom were Aboriginal.[69] In the same year, 6,151 people were charged with driving without a licence, 21 per cent of whom were Aboriginal.[70]

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[64] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p16.

[65] See for example, Submission 3, Northern Rivers Social Development Council, p1.

[66] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p16.

[67] Submission 5, NSW Legal Assistance Forum, p5.

[68] Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, Transcript of evidence, 30 August 2013, p15.

[69] Submission 20, Aboriginal Legal Service (NSW/ACT) Limited, pp2-3.

[70] Submission 20, Aboriginal Legal Service (NSW/ACT) Limited, pp2-3.

3.40 According to the 2011 NSW Criminal Court Statistics, driver licensing offences and regulatory driving offences accounted for 20 per cent (2740) of guilty findings in finalised Local Court matters involving Aboriginal people.[71] The NSW Legal Assistance Forum estimates that 10 – 17 per cent of Aboriginal prisoners are imprisoned for unauthorised driving offences.[72]

3.41 Ms Graham described how the current arrangements for dealing with unauthorised driving offences impact on the Aboriginal community:

> When it comes to court, the lack of sentencing options in the bush exponentially increases the chance of jail terms being imposed for these types of offences when they would not be imposed in the city. The result is an insidious, unfair manipulation of issues which only exacerbates disadvantage. The inequity based on geography and the effects of the regime to either lock up or lock out Aboriginal people from mainstream society is resulting in a racially defined criminalised underclass.[73]

3.42 Evidence provided to the Committee has underscored this argument. According to the NSW Legal Assistance Forum's submission, during 2007, Aboriginal people living in NSW were 21 times more likely to be imprisoned for unauthorised/unlicensed driving offences than the general population.[74]

3.43 Inquiry participants also spoke about the wide-ranging barriers that Aboriginal communities face when trying to obtain and maintain driver licences. These barriers include literacy problems and difficulties passing the driver knowledge test, limited access to licensed drivers to supervise learner drivers and costs associated with obtaining a licence, and owning and maintaining a car.[75]

3.44 An additional barrier with which Aboriginal communities are confronted concerns the number of learner hours for young drivers (currently 120 hours) and the lack of birth certificates, a document necessary for obtaining a driver licence. Aboriginal people living in remote areas of NSW may encounter numerous hurdles when trying to apply for a birth certificate.[76]

3.45 These hurdles include the cost associated with registering their birth and obtaining the birth certificate and the long distance between remote communities and the nearest registry office or government access centre. The process of registering and applying for a birth certificate itself can also be overwhelming or overly complex for those who may have low literacy levels and who are unfamiliar with government procedures.[77] The Commonwealth Parliament's Standing Committee on Aboriginal and Torres Strait Islander Affairs

[71] Submission 5, NSW Legal Assistance Forum, p11.

[72] Submission 5, NSW Legal Assistance Forum, p11.

[73] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p16.

[74] Unpublished data from NSW Bureau of Crime Statistics and Research (2007); RMS Discussion Paper (2007) *Improving outcomes for Aboriginal Drivers: Discussion Paper,* referred to in Submission 5, NSW Legal Assistance Forum, p11.

[75] Submission 5, NSW Legal Assistance Forum, p5.

[76] Submission 5, NSW Legal Assistance Forum, p5.

[77] Submission 5, NSW Legal Assistance Forum, p5.

and the NSW Ombudsman also previously highlighted the obstacles Aboriginal people face in obtaining and maintaining a driver licence. [78]

3.46 Such barriers contribute to the prevalence of unlicensed driving in some Aboriginal communities. In particular, the Roads and Traffic Authority NSW (now RMS) found that 29 per cent of Aboriginal respondents who had never held a licence had driven on a NSW road in the previous year.[79]

3.47 Ms Tangney detailed the significant problems that arise for Aboriginal people when very few adults in their communities can drive:

> A driver licence will be a prerequisite for a job in many cases; and having a job is the way out of disadvantage. So if we lock people out of the licensing system then we are effectively locking them into poverty. That is a very significant issue, and it is reflected in the interaction of some of these communities with the criminal justice system.[80]

3.48 The NSW Ombudsman said that given the prevalence of unlicensed driving in Aboriginal communities, any reform to the law will potentially significantly impact upon Aboriginal communities.[81]

Young people

3.49 The Committee received evidence outlining the impacts of licence disqualification on young people. The Shopfront Youth Legal Centre maintains that young people often abandon hope of ever getting a licence when they are faced with long disqualification periods. The Centre claims that they frequently drive for employment or family reasons, which will often result in a cycle leading to imprisonment.[82]

3.50 This was echoed by Ms Jane Sanders, Principal Solicitor, the Shopfront Youth Legal Centre, who spoke of migrant children or young people with refugee backgrounds. Ms Sanders spoke of young migrants or refugees between 16 and 21 who often have family responsibilities, work, speak English fluently (while their parents may not), take their parents shopping and to appointments, and in general, are the 'real points of contact with the wider world for their parents'.[83] Equally, young people from some cultural backgrounds may find it more difficult to refuse to drive their parents even if they do not have a licence.[84]

3.51 Some young individuals can also face difficulties with the identity documents required to obtain a licence. For example, if a young person's name is translated

[78] NSW Ombudsman, *Review of the impact of criminal infringement notices on Aboriginal communities*, August 2009, p124; Parliament of Australia Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time – time for doing; Indigenous youth in the criminal justice system*, June 2011, pp181-186.

[79] RTA Research Report, *An investigation of Aboriginal driver licensing issues,* December 2008, referred to in Submission 5, NSW Legal Assistance Forum, p6.

[80] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, p28.

[81] Submission 22, NSW Ombudsman, p3.

[82] Submission 14, The Shopfront Youth Legal Centre, p2.

[83] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, p17.

[84] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, p17.

from Arabic to English, sometimes the name can be spelt differently on every identity document. This creates additional difficulties for them when dealing with RMS.[85]

3.52 The Shopfront Youth Legal Centre submitted that mandatory disqualification should not apply to children, whether dealt with by the Children's Court or the Local Court.[86] They maintain that courts should retain the power to disqualify children in appropriate cases, and should have discretion over the disqualification period.[87]

3.53 The Centre also strongly argued for the Children's Court to be given the jurisdiction to deal with all traffic offences committed by young people, which are presently within the jurisdiction of the Local Court. Ms Jane Sanders, Principal Solicitor for the Centre, said that this would allow children to be dealt with in a manner which is proportionate to their circumstances.[88]

3.54 The Shopfront Youth Legal Centre also provided a case study, which demonstrates how young disadvantaged individuals can start on the cycle of accumulating unauthorised driving offences. The case study is extracted in full below.[89]

Case study: 'Daniel'

3.55 "Daniel, now aged 24, had a tumultuous upbringing. His adolescence and early adulthood were characterised by instability, dysfunctional familial relationships and homelessness.

3.56 For two years from the age of 11, Daniel was involved with the Department of Community Services. At the age of 13 he left home, and was exposed to drug-using and offending peers. He was expelled from various schools for behavioural problems. He spent much of this time homeless because of his unstable relationship with his family. Between the ages of 15 and 18, he was in and out of juvenile detention centres and was not in regular contact with his family.

3.57 The majority of Daniel's traffic offences were committed when he was only 17 years of age, and mainly involved driving whilst suspended or disqualified. These offences led to cumulative disqualifications that ran until April 2013, as well as habitual traffic offender declarations.

3.58 He committed two further 'drive while disqualified' offences when he was 18 and 19 years of age respectively, at a time when he was struggling to maintain employment. These offences led to further periods of disqualification and additional habitual traffic offender declarations.

[85] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, p17.

[86] Submission 14, The Shopfront Youth Legal Centre, p13.

[87] Submission 14, The Shopfront Youth Legal Centre, p13.

[88] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, p26; Submission 14, The Shopfront Youth Legal Centre, p12.

[89] Submission 14, The Shopfront Youth Legal Centre, p3.

3.59 Within the last five years, Daniel has made significant changes in many areas of his life. He is married, is expecting his first child and is completing a trade certificate at TAFE NSW. However, an integral part of being a tradesman involves being able to drive to and from various work sites. As a result, Daniel has struggled to obtain regular employment due to the restriction on his driving. Without stable employment, he will not be able to support his family.

3.60 Although he has demonstrated good behaviour and rehabilitation over the last five years, his rehabilitation – and his ability to assist and support his family at this crucial time when expecting his first child – has been hampered by his inability to obtain a driver licence.

3.61 The Shopfront Youth Legal Centre assisted Daniel to have his habitual traffic offender declarations quashed. However, he still had some disqualification left to serve, and we have assisted him with an application for remission of the remaining period of disqualification."[90]

LICENCE SANCTIONS FOR FINE DEFAULT

3.62 Licence sanctions for fine default can have a significant impact on certain sectors of the community. Most licence suspensions also occur because of non-payment of fines. As stated earlier in this chapter, in 2012, 52 per cent of licences suspended were as a result of fine default/non-payment of fines (147,592). In that same year, 16 per cent of people whose principal offence was drive while licence disqualified or suspended had been suspended for fine default.[91]

3.63 Chapter Two of this report highlighted that licences can be suspended for unpaid fines that relate to driving conduct, for example, a speeding offence or a parking offence. However, unpaid fines may also relate to behaviour which is not associated with driving, for example, a penalty notice for not paying for a fishing licence.[92]

3.64 Witnesses from NSW government agencies explained that every Australian jurisdiction has now moved to a system of licence restrictions for fine default as it has been an effective mechanism for encouraging people to pay their fines. Mr Edward Ramsay, Manager Driver Sanctions, Policy and Regulation Division, Transport for NSW, estimated that, in NSW, around 80 per cent of people pay their fine to avoid suspension of their licence or registration.[93]

3.65 However, the Legislative Council Standing Committee on Law and Justice has previously noted that 'the relationship between fine default, licence cancellation and charges under the roads and traffic legislation is complex'.[94]

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[90] Case study extracted from submission 14, The Shopfront Youth Legal Centre, pp3-4.

[91] Submission 25, NSW Government, p3.

[92] Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, 30 August 2013, pp27-28.

[93] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, 30 August 2013, pp36-37; Mr Edward Ramsay, Manager Driver Sanctions, Policy and Regulation Division, Transport for NSW, Transcript of evidence, 30 August 2013, p36.

[94] NSW Parliament Legislative Council Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006, p268.

3.66 Professor Rebecca Ivers told the Committee that licence sanctions for fine default have 'huge implications' and that this sanction is a 'significant contributor to why we have such high rates of people with suspensions and disqualifications who have not necessarily committed serious road safety related offences.'[95] Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, made similar comments:

> I'm alive to the fact that the community wants to see fines paid and wants to see people deal with their responsibilities – and on some level it is the responsibility of every person to have account of their own situation and deal with the penalties they may have. The problem with taking licences away as a motivator is that often it does more than motivate; it actually causes far bigger problems down the track.[96]

3.67 Licence sanctions arising from fine default are a particular issue for Aboriginal communities. In its submission, the NSW Government referred to a report produced by the former Roads and Traffic Authority NSW (now RMS) on Aboriginal driver licensing issues. The report found that more than half the licence holders surveyed had their licence suspended or cancelled for unpaid fines or demerit points, 42 per cent had outstanding debt to the State Debt Recovery Office (SDRO), and many young people had accrued debts of $5,000 or more.[97]

3.68 The NSW Ombudsman has also noted that '[d]ata obtained from the NSW Police Force and SDRO demonstrates that Aboriginal people are far less likely than non-Aboriginal people to pay their fines by the due date and there is a high likelihood that they will remain in the fines enforcement system for up to several years after they have committed the offence(s) for which one or more penalty notices were issued.'[98]

3.69 The NSW Legal Assistance Forum also highlighted RMS data demonstrating that areas with some of the highest rates of licence suspensions due to fines include areas with high Aboriginal populations such as Bourke, Brewarrina and Walgett.[99]

3.70 Licence sanctions arising from fine default also disproportionately affect regional and remote parts of NSW. The NSW Legal Assistance Forum stated that it is not uncommon for Forum Members to assist clients with fine debt exceeding $10,000 - $15,000.[100]

[95] Professor Rebecca Ivers, Professor of Public Health and Director, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p53.
[96] Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 30 August 2013, p47.
[97] RTA Research Report, *An investigation of Aboriginal driver licensing issues,* December 2008, referred to in Submission 25, NSW Government, pp5-6.
[98] NSW Ombudsman, *Review of the impact of criminal infringement notices on Aboriginal communities*, August 2009, p125.
[99] Submission 5, NSW Legal Assistance Forum, p11.
[100] Submission 5, NSW Legal Assistance Forum, p11.

3.71 The NSW Ombudsman also provided an example of an Aboriginal man who had $25,000 of fines which would have taken him 30 years to pay off on his time-to-pay plan.[101]

3.72 Some inquiry participants suggested that licences should not be suspended for defaulting on fines, particularly fines that are unrelated to traffic offences.[102]

3.73 Previous reports of the Legislative Council Standing Committee on Law and Justice, the NSW Sentencing Council, the NSW Ombudsman and the NSW Law Reform Commission have also highlighted concerns about the impact of licence sanctions for fine default on particular sectors of the community.[103]

INITIATIVES TO HELP PEOPLE GET A LICENCE AND ADDRESS OUTSTANDING FINES

3.74 While the Committee's inquiry is primarily focused on assessing whether the laws relating to unauthorised driving offences should be reformed, the Committee also received evidence about initiatives and programs aimed at alleviating some of the impacts of unauthorised driving offences on the community. The following section highlights some of the programs that have been developed to assist:

(a) particular sectors of the community to obtain a licence, and

(b) people suffering from financial disadvantage to address their unpaid fines.

Programs to assist people to obtain a licence

3.75 There are various programs currently in place to assist disadvantaged people to obtain their licences. Two of these programs, Driving Change and the NSW Government pilot program for young drivers, are highlighted below.

Driving Change

3.76 Driving Change is a driver licensing support pilot program for Aboriginal communities established by the George Institute in partnership with Transport for NSW and AstraZeneca Young Health Programme.

3.77 The program is currently running in six urban and regional communities, including Redfern, Shellharbour and Griffith, and anticipates that it will be running in an additional six areas across NSW by August 2014. The program offers support with:

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[101] Submission 22, NSW Ombudsman, p8.

[102] See for example, Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, 30 August 2013, p25; Submission 11, Mr Graeme Smith, p4; Professor Rebecca Ivers, Professor of Public Health and Director, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p54.

[103] See for example, NSW Parliament Legislative Council Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006, p261-269; NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court-imposed fines and penalty notices: interim report*, October 2006, pp139-172; NSW Ombudsman, *Review of the impact of criminal infringement notices on Aboriginal communities*, August 2009, pp122-128; NSW Law Reform Commission, *Penalty notices*, report 132, February 2012, pp230-236.

- obtaining birth certificates to prove identity at the Motor Vehicle Registry;
- booking and preparing for the Driver Knowledge (L plate) Test;
- accessing lessons with professional driving instructors;
- log hours with mentor drivers;
- helping to build parents' confidence and skills to ride with Learner Drivers;
- booking Practical Driving Test (Red P plate);
- booking and preparing for the Hazard Perception Test (Green P plate); and
- fine payment options.

3.78 The objective of the scheme is to provide Aboriginal communities with a Driver Licensing Champion who is an Aboriginal person from that particular community, working in the role three days a week.[104]

3.79 The program is supported by State-level stakeholders, including the SDRO, and the Department of Attorney General and Justice, who will help develop strategies to strengthen the service and role of the Driver Licensing Champion.[105]

3.80 The Committee received evidence stating that when an Aboriginal person in a rural and remote area can drive, often they are over-burdened with requests to drive members of their community. As a result, some Aboriginal people do not want to learn to drive if they are the sole member of their community with a licence.[106]

3.81 Driver Licencing Champion mentors are therefore paid to increase the number of licensed drivers in the community, as highlighted by Professor Ivers:

> One of the reasons we have paid mentors in the Driving Change program is that the evidence has been that unless you are actually paying someone in the community to develop those skills, you are not going to build the local capacity.[107]

3.82 Mr Jake Byrne, Indigenous Project Officer at The George Institute for Global Health, told the Committee about the demand for the Driving Change program:

[104] Mr William Byrne, Indigenous Project Officer, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p54.
[105] Mr William Byrne, Indigenous Project Officer, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p54.
[106] Associate Professor Teresa Senserrick, Transport and Road Safety Research, University of New South Wales, Transcript of evidence, 30 August 2013, p59.
[107] Professor Rebecca Ivers, Professor of Public Health and Director, Injury Divisions, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p59.

> There is a massive influx and a massive groundswell of enthusiasm every time we enter a community. There are always people beating a path to the doors of our workers because the number of issues that they are facing with their licensing is wide and varied.[108]

NSW Government pilot program for young people

3.83 Mr Tim Reardon, Deputy Director General, Policy and Regulation, Transport for NSW, also spoke about a pilot program launched by Transport for NSW in July 2013.[109] The program targets young learner drivers and also addresses the number of learner hours required to obtain a P1 licence (currently 120 hours) and the difficulties this poses in rural areas.

3.84 Learners who take part in the program can enrol in a new Safer Drivers Course as well as have professional lessons. This would reduce compulsory supervised driving hours from 120 to 80.

3.85 On its website, Transport for NSW states that the board involved in preparing this course also identified 'options to help young drivers from remote, lower socio-economic and Aboriginal communities meet the requirements to qualify for their P-plates'.[110]

3.86 Learner drivers in certain remote areas of NSW who are under 25 will be able to apply for a restricted provisional licence solely for the purposes of driving to work, education and medical appointments. To be eligible for this restricted licence, learner drivers need to have passed the driving test and to have completed at least 50 supervised driving hours.[111]

Programs to assist people with addressing their fines

3.87 The Committee heard about two programs, Work and development orders and Centrepay, which assist financially disadvantaged sectors of the community to address their unpaid fines. These programs are highlighted below.

Work and development orders

3.88 Work and development orders (WDOs) are established under the *Fines Act 1996.* The scheme was designed primarily to assist disadvantaged groups who had accumulated fines, but were unable to pay them. The scheme allows members of disadvantaged groups to address their fine or penalty notice debt through non-financial means.[112]

3.89 A WDO is an order requiring someone to do one or more of the following:

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[108] Mr Jake Byrne, Indigenous Project Officer, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p54.

[109] Mr Tim Reardon, Deputy Director General, Policy and Regulation, Transport for NSW, Transcript of evidence, 30 August 2013, pp30-31.

[110] Transport for NSW, http://www.transport.nsw.gov.au/media-releases/less-more-new-course-young-drivers, viewed 10 October 2013.

[111] Transport for NSW, http://www.transport.nsw.gov.au/media-releases/less-more-new-course-young-drivers, viewed 10 October 2013.

[112] NSW Law Reform Commission, *Penalty Notices,* report 132*,* February 2012, p260.

- undertake unpaid work for, or on behalf of, an approved organisation (with the agreement of that organisation);
- undergo medical or mental health treatment in accordance with a health practitioner's treatment plan;
- undertake an educational, vocational or life skills course;
- undergo financial or other counselling;
- undergo drug or alcohol treatment; and
- if the individual is under 25 years of age, undertake a mentoring program.[113]

3.90 Upon entering into a WDO, the SDRO can direct RMS to lift a licence sanction that was applied because of unpaid fines, however, a WDO cannot remove or reduce an existing licence disqualification that has been imposed by a court.[114]

3.91 The Department of Attorney General and Justice highlighted that an evaluation of the WDO pilot scheme in 2011 concluded that it was a 'significant success'.[115] In particular, the review found that the Scheme had:

- reduced re-offending and secondary offending
- increased engagement in services and/or treatment
- improved mental health outcomes
- built job skills and opened up employment opportunities, and
- reduced costs to government and non-government agencies.[116]

3.92 However, the NSW Government noted that the WDO scheme should not be extended to licence disqualifications that have been imposed by a court, since a WDO is an administrative order and cannot override an order made by the court. Secondly, the scheme depends on the participation of non-government organisations (NGOs) which provide services to disadvantaged people. During the development of the scheme, NGOs stated they would not wish to participate in a court-mandated scheme.[117]

Centrepay

3.93 Since 2008, Centrepay has been an option for financially disadvantaged communities to address their unpaid fines. Centrepay works by deducting regular amounts from Centrelink payments in order to pay off the outstanding fine amount.

[113] *Fines Act 1996,* section 99A.
[114] Submission 25, NSW Government, p3.
[115] Department of Attorney General and Justice, Answers to supplementary questions, 17 September 2013, p4.
[116] Department of Attorney General and Justice, Answers to supplementary questions, 17 September 2013, p4.
[117] Submission 25, NSW Government, p10.

3.94 There are approximately 85,000 users of this service, which represents about 48 per cent of the total number of those with 'time to pay arrangements'. A time to pay arrangement means that the SDRO has allowed someone further time to pay their fine because of the circumstances of the matter.

3.95 The Department of Attorney General and Justice said that clients using Centrepay are up to 70 per cent less likely to be in arrears or default on their payment arrangements than other clients with time to pay arrangements.[118]

Committee Comment

3.96 The Committee notes that the current arrangements for dealing with unauthorised driving offences can have significant impacts on specific community groups, particularly vulnerable groups, those living in regional, rural and remote areas, Aboriginal people and young people. In addition, licence sanctions for fine default can exacerbate any social or economic exclusion that such communities already suffer.

3.97 The Committee has also heard that unauthorised drivers are not necessarily unsafe drivers and therefore do not always pose a risk to public safety, yet some of the penalties for unauthorised driving offences are the same as, or higher than, the penalties for offences such as drink driving and negligent driving causing grievous bodily harm.

3.98 In the chapters to follow, the Committee makes a number of recommendations to reform the laws relating to unauthorised driving offences to address some of the issues that have been highlighted in this inquiry.

3.99 However, the Committee also maintains that the current laws surrounding driver licence disqualification are but part of the problems faced by certain community groups, and that many people struggle with trying to obtain a licence in the first instance.

3.100 The Committee acknowledges that the NSW Government has implemented a range of schemes and initiatives to assist individuals to obtain a licence, such as the Driving Change program and the Pilot program for young people. The Committee strongly encourages the NSW Government to continue to develop and expand initiatives of this nature. The Committee considers that this will complement the law reforms recommended in this report and assist in reducing the number of unauthorised driving offences in NSW.

3.101 In addition, while the Committee has not been able to consider the issue of licence sanctions for fine default in significant detail in this inquiry, the Committee notes that a large number of licences are suspended or cancelled each year for fine default and that this contributes to the large number of unauthorised drivers in NSW.

3.102 The Committee notes that the NSW Government has also introduced mechanisms to assist disadvantaged communities to address their fines, such as the Work and Development Order scheme and Centrepay. The Committee

[118] Department of Attorney General and Justice, Answers to supplementary questions, 17 September 2013, p1.

strongly encourages the NSW Government to continue to expand on existing programs of this nature and to identify and develop any new alternatives for financially disadvantaged individuals to address their unpaid fines through mechanisms other than licence sanctions.

Chapter Four – Removing disqualification periods for good behaviour

4.1 This chapter considers whether a right should be established for offenders to apply to have their outstanding disqualification periods removed if they have completed a minimum-offence free period.

4.2 The chapter discusses the views of inquiry participants on whether establishing such a right would be effective and how that right might be administered and pursued. It also includes case studies to illustrate those who may benefit from this reform and provides examples of other Australian jurisdictions that have already established a similar system.

4.3 Finally, the chapter highlights alternative reform options such as good behaviour licences and work licences.

PARTICIPANTS' VIEWS

4.4 The Committee received support from most inquiry participants for establishing a right for offenders to apply to have their outstanding disqualification periods removed if they have completed a minimum offence free period.[119]

4.5 Similar rights already exist in other Australian jurisdictions such as Queensland and Western Australia.[120] The Committee has included further information about how these rights operate in those jurisdictions later in this chapter.

4.6 Several stakeholders told the Committee that establishing such a right would give offenders the motivation to comply with their existing disqualification periods.[121] In particular, the NSW Government highlighted the success of incentives to comply with the law in other contexts, such as the Work and Development Order scheme, which has also been discussed in Chapter Three of this report.[122]

4.7 Assistant Commissioner John Hartley, Traffic and Highway Patrol Command, NSW Police, is of the view that establishing such a right would be useful for NSW Police as officers could advise offenders of this incentive to comply with the law at the time of imposing a penalty:

> If we are going to change the scheme and give them a chance to come back into a driving system you need to say, "Here is your penalty but in two years time you can re-apply if you do not drive your car, if you do this program and are involved in this."

[119] See for example, Submission 5, NSW Legal Assistance Forum, p7; Submission 4, Hume Riverina Community Legal Service, p1; Submission 7, Name suppressed, pp4-5; Submission 10, NSW Young Lawyers Criminal Law Committee, p4; Submission 12, Kingsford Legal Centre, p1; Submission 14, The Shopfront Youth Legal Centre, p3; Submission 15, Name suppressed, p1; Submission 17, Mid North Coast Community Legal Centre, p3; Submission 19, Law Society of NSW Criminal Law Committee, p2; Submission 23, Legal Aid NSW, p2.

[120] Submission 25, NSW Government, pp9-10.

[121] See for example, Submission 5, NSW Legal Assistance Forum, p7; Submission 10, NSW Young Lawyers Criminal Law Committee, p4; Submission 25, NSW Government, pp9-10.

[122] Submission 25, NSW Government, p10.

> That would be a pretty important thing for me to say to them. The carrot has got to be there at the time of penalty though.[123]

4.8 Magistrate Clare Farnan also made similar comments to the 2006 inquiry by the Legislative Council Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*:

> If I were able to say to someone who was disqualified to 2026, "If you could get through a three or five-year period crime free, you might have some hope of getting your licence back", it would be a significant improvement on the current situation.[124]

4.9 Establishing such a mechanism was also considered by some participants to be important for reducing the impacts of long disqualification periods on offenders and their families, in circumstances where offenders have rectified their behaviour and turned their lives around.[125] The Committee has already highlighted these impacts in Chapter Three but they can include social isolation, difficulties in maintaining employment and in carrying out everyday activities such as taking children to school, attending medical appointment and going to the grocery store.

4.10 Several stakeholders also referred to research by the NSW Bureau of Crime Statistics and Research (BOCSAR) which found that disqualification periods are a weak deterrent. BOCSAR was unable to find evidence of longer disqualification periods reducing the likelihood of an offender appearing before the courts.[126] The Chief Magistrate of the Local Court said that this appears to be consistent with the court's experience:

> …[A]n observation that appears to be borne out by the Court's daily experience of individuals with a history of repeated unauthorised driving offences in spite of lengthy disqualification periods…[127]

4.11 The NSW Young Lawyers Criminal Law Committee referred to research by the Victoria Advisory Sentencing Council and the Crime Research Centre of the University of Western Australia that the threat of disqualification has little impact on re-offending and that a significant number of disqualified drivers drive while disqualified.[128]

4.12 Magistrate Clare Farnan suggested that a scheme which would allow offenders to get their licence back could have a number of benefits including reducing re-offending and increasing road safety:

> People grow up. They mature. They gain insight, they have children, their parents grow old and get sick, their life circumstances change. Allowing repeat offenders

[123] Assistant Commissioner John Hartley, Traffic and Highway Patrol Command, NSW Police, Transcript of evidence, 30 August 2013, p39.

[124] NSW Parliament Legislative Council Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006, p268.

[125] Submission 5, NSW Legal Assistance Forum, p7; Submission 4, Hume Riverina Community Legal Service, p1.

[126] See for example, Submission 6, Marrickville Legal Centre, p2; Submission 13, The Chief Magistrate of the Local Court, p4; Submission 25, NSW Government, p10.

[127] Submission 13, The Chief Magistrate of the Local Court, p4.

[128] Submission 10, NSW Young Lawyers Criminal Law Committee, p4.

> some hope of getting a driver's licence back would recognise that these changes also affect how people drive, and their need to drive. Such a scheme has the potential to reduce re-offending, and imprisonment rates. It also has the potential to increase safety on the roads.[129]

4.13 The Chief Magistrate of the Local Court, Judge Graeme Henson, noted that public safety will often be less of a concern with unauthorised driving offences compared to some other road traffic offences:

> A distinguishing factor of unauthorised driving offences from other offences under the road transport legislation is that the contravention lies in the act of driving, rather than the manner of driving. This is not to downplay the seriousness of such offences, noting in particular that the offence of driving while disqualified often occurs in circumstances of contempt of a previous court-ordered disqualification, but simply to observe that concerns as to public safety will often be less prominent.[130]

4.14 Judge Henson said that if stakeholders were concerned that capping the maximum cumulative disqualification period could sanction repeat offending, the penalty provisions for unauthorised driving offences would still allow the courts to ensure that the purposes of sentencing, including deterrence, can be pursued.[131]

4.15 Kingsford Legal Centre provided a case study of a client who the Centre considers could benefit from being able to apply to have her disqualifications removed. The case study is extracted in full below.

Case study: Female

4.16 "Our client was sexually assaulted on a train and started using drugs and alcohol to escape the memory of the assault. Our client was caught driving with high range PCA [Prescribed Concentration of Alcohol] and was disqualified from driving and sentenced to a term of imprisonment.

4.17 While in custody our client completed programs to help her deal with her drug and alcohol addiction. Shortly before she was due to be released she sought advice from us regarding whether she could have her outstanding licence disqualification period removed because she wanted to do some training to improve her employment prospects, but could not use public transport because it provoked memories of the assault, which brought on panic attacks. We advised her that she could not apply to have the remaining licence disqualification period revoked.

4.18 We submit that had our client had the right to seek to have her remaining disqualification period revoked, it would have been easier for her to reintegrate into and start contributing to and actively participating in the community post-release."[132]

[129] Submission 21, Ms Clare Farnan, p3.

[130] Submission 13, The Chief Magistrate of the Local Court, p3.

[131] Submission 13, The Chief Magistrate of the Local Court, p4.

[132] Submission 12, Kingsford Legal Centre, p2.

Who should administer the applications?

4.19 Participants held different views about who should administer the applications – the courts or a government body such as Roads and Maritime Services.

4.20 Some inquiry participants considered that applications should be dealt with by the courts as they are in the best position to consider all of the relevant material.[133]

4.21 However, the Chief Magistrate of the Local Court told the Committee that if a disqualification period has arisen administratively, through means other than the court, then a review system could operate administratively assuming there were consistent guidelines for the conduct of review. His Honour had concerns about allowing a court-imposed disqualification to be removed or reviewed:

> This would effectively set up a system whereby a court decision is reviewable well after the fact and notwithstanding that other avenues of appeal could previously have been exercised. If a person chooses not to exercise an appeal right or if an appeal is unsuccessful, this would have the effect of enabling a 'second bite at the cherry' (or potentially a third, if the court's decision on the review is also appealable).[134]

4.22 Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, also acknowledged that it may be better to provide the courts with more discretion at the outset, when they first impose a disqualification period, rather than establishing a right for the courts to reconsider this issue further down the track:

> That is really causing the Local Court to consider the same issue twice. We all know how busy our Local Courts are, particularly in the regions and remote areas where they do not come very often, and often it is difficult to access appeal procedures and so on. I wonder whether an approach that sets a realistic outcome and an outcome that protects public safety at the first instance is a better approach. I certainly support some program for re-entry for drivers being able to have a licence after being disqualified. But I think taking away the discretion at the first instance of sentencing is only making more work for the system down the track.[135]

What should the minimum-offence free period be?

4.23 Inquiry participants had different ideas about what a minimum-offence free period should be, although several participants suggested that two or three years would be an appropriate timeframe[136], with Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, suggesting that the timeframe should not be too long:

> There is no use making it 10 years because no-one will realistically feel that that is within reach. For that reason, there is a good argument for making the period three

[133] Submission 10, NSW Young Lawyers Criminal Law Committee, p4; Mr Brett Thomas, Deputy Chair, Law Society of NSW Criminal Law Committee, Transcript of evidence, 30 August 2013, p6.

[134] Submission 13, The Chief Magistrate of the Local Court, p3.

[135] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p22.

[136] See for example, Submission 15, Name suppressed, p1; Submission 10, NSW Young Lawyers Criminal Law Committee, p4; Submission 19, Law Society of NSW Criminal Law Committee, p2.

> years. That number is a little arbitrary, but a person could say, "Three years from now, if I don't commit any further offences, I can apply to a court and demonstrate that whatever it was that caused it to impose a lengthy disqualification period has been fixed. I have changed my circumstances and I am now in a better position to be back on the roads."[137]

4.24 One participant spoke of their experience accumulating twelve years' worth of licence disqualifications. He told the Committee that his wife does not drive and that he has a child with an extreme intellectual disability and severe autism. He said that being able to drive his daughter to and from various specialist appointments would make a huge difference to his family. He suggested that a period of three years without any further offences is time enough to show that someone has learned their lesson and reformed.[138]

4.25 Some participants suggested that there could be different minimum offence-free periods for different offenders. For example, Legal Aid NSW suggested that the period should be referable to whether or not the underlying offences involve a risk to public safety:

> The sanction of withdrawal of driving privileges should be less severe for driving which is simply unauthorised than for driving which endangers public safety.
>
> Where the offence(s) for which the outstanding disqualification period(s) were imposed involved unauthorised driving which was otherwise safe, minimum offence free period should be two years.
>
> Where an offence for which any outstanding disqualification period was imposed involved dangerous driving the minimum offence free period should be a longer period, say 4 years from that dangerous driving offence.[139]

4.26 The Shopfront Youth Legal Centre suggested a standard offence-free period of two years but a lesser period of 12 months if the outstanding disqualifications arose from offences that the individual committed when they were under eighteen.[140] Ms Jane Sanders, Principal Solicitor of The Shopfront Youth Legal Centre, considered that three years is too long, particularly for younger people.[141]

What factors should be considered before removing disqualification periods?

4.27 The Committee heard from several participants that courts should be empowered to consider the offender's circumstances in determining whether or not a disqualification period should be removed.[142]

4.28 Kingsford Legal Centre provided some examples of the kinds of circumstances that would be relevant:

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[137] Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 30 August 2013, p50.

[138] Submission 15, Name suppressed, p1.

[139] Submission 23, Legal Aid NSW, p2; see also Submission 25, NSW Government, pp9-10.

[140] Submission 14, The Shopfront Youth Legal Centre, p3.

[141] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, 30 August 2013, p21.

[142] See for example, Submission 21, Magistrate Clare Farnan, p3; Submission 23, Legal Aid NSW, p3; NSW Young Lawyers Criminal Law Committee, Answers to supplementary questions, 17 September 2013, p4.

> Giving offenders the right to have their disqualification period reviewed by the court would also give courts the power to consider offenders' unique circumstances, such as, the impact a lengthy disqualification is having on their employment and employment prospects, family and carers' responsibilities and the availability of public transportation where they live.[143]

4.29 The Law Society of NSW Criminal Law Committee suggested other relevant circumstances would include health, education, financial circumstances and place of residence.[144]

4.30 Marrickville Legal Centre and Legal Aid NSW both proposed that courts should consider any change in circumstances since the offence.[145]

4.31 Another participant provided an example of someone who was disqualified for three years who may be a good candidate for this kind of reform:

> The person's traffic record was not the worst that I had heard of and the matter that had them disqualified was a one off. This person retained employment and lifestyle despite being disqualified by organising lifts, informing their employer of their licence status and using public transport and remained out of the driver's seat – the whole point of the disqualification. In this case where there were no further driving offences and the person complied with the sentence given to them. This, in my opinion, would be the situation that would have made them a candidate for a reduction or removal of a period of disqualification.[146]

4.32 The NSW Legal Assistance Forum also provided a case study on 'John', which they consider illustrates the type of situation where this kind of reform could be beneficial. The case study is extracted in full below.

Case study: 'John', 33 years old

4.33 "Ten years ago, John was homeless, struggling with drug addiction, and had been convicted of several minor criminal offences. Today John is a successful technical analyst in a multinational company.

4.34 Seven years ago, when he was homeless, John was disqualified from driving. His main offences were driving whilst suspended and disqualified, plus some demerit point offences. He has not committed any further offences since February 2006, but is banned from driving till May 2019.

4.35 While staying in a refuge several years ago, John became involved with a Salvation Army program. With the Salvos' [Salvation Army's] help, he was able to turn his life around.

4.36 He has been awarded a $5000 scholarship for outstanding work, and has been promoted to a position of responsibility in his job.

[143] Submission 12, Kingsford Legal Centre, p1.

[144] Submission 19, Law Society of NSW Criminal Law Committee, p2.

[145] Submission 6, Marrickville Legal Centre, p3; Submission 23, Legal Aid NSW, p3.

[146] Submission 7, Name suppressed, p5.

4.37 Not having a driver's licence makes John's life very difficult. He lives on the Central Coast and travels to the Sydney CBD every day using public transport.

4.38 John is a very different person compared to when he committed his driving offences. He has developed a real sense of personal responsibility. The Salvos' [Salvation Army] believe if John were given a second chance, he would be a good driver."[147]

Other considerations

4.39 Transport for NSW noted that if such a mechanism were established then individuals who have already served the offence-free period should be able to make an application to the court:

> Offence free periods can be determined from reviewing the person's driving record held by RMS. These persons, on enquiry to RMS, can be advised of whether they have met the minimum offence free period and can be advised to attend a court to make the relevant application.[148]

4.40 Legal Aid NSW also suggested to the Committee that if a court refuses to remove an outstanding disqualification period, the individual should have a right to make a further application to remove any disqualification periods after twelve months.[149]

AUSTRALIAN JURISDICTIONS WITH SIMILAR RIGHTS

4.41 The NSW Government referred to some other jurisdictions that have already established a similar right including Queensland and Western Australia.[150] This section explains how those jurisdictions deal with this issue.

Queensland

4.42 In Queensland, the disqualification periods for unauthorised driving offences are different to those in New South Wales, for example:

(a) driving while disqualified by a court order attracts a mandatory disqualification period of at least two years but not more than five years

(b) driving while licence suspended due to fine default attracts a mandatory disqualification period of at least one month but not more than six months.[151]

4.43 In Queensland, individuals who have committed unauthorised driving offences can serve their disqualification periods concurrently. They are not cumulative as in New South Wales.[152]

[147] Submission 5, NSW Legal Assistance Forum, p8.

[148] Transport for NSW, Correspondence to the Committee with further evidence, 18 September 2013, p2.

[149] Submission 23, Legal Aid NSW, p3.

[150] Submission 25, NSW Government, p9.

[151] *Transport Operations (Road Use Management) Act 1995* (Qld), section 78(3).

4.44 However, Queensland has established a right for those who have been disqualified to apply to the court to have the disqualification removed.[153]

4.45 Only those with a disqualification of more than two years can make an application to have their disqualification removed and only after more than two years have passed since the time when their disqualification period commenced.[154]

4.46 If the original disqualification was imposed by an order of the Supreme Court or the District Court then the application must be made to those same courts. If the disqualification was not ordered by either of those courts then the application is made to the Magistrates Court.[155]

4.47 In considering an application, the court may have regard to the following:

(a) the character of the person

(b) the person's conduct since the original order

(c) the nature of the offence

(d) any other circumstances of the case.[156]

4.48 If the court refuses the application then the applicant must wait for a year before they can make a further application. However, the individual can appeal the court's decision.[157]

Western Australia

4.49 The disqualification periods for unauthorised driving offences are also different in Western Australia. For example:

(a) for the offence of driving without being authorised to do so, where there are no other aggravating factors, the court has the discretion to order that the offender be disqualified for up to three years

(b) for the offence of driving while suspended, the court must disqualify the offender for at least nine months up to three years. [158]

4.50 Disqualification periods for unauthorised driving offences in Western Australia are cumulative, as is the case in New South Wales.[159]

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[152] Queensland Transport and Main Roads, <http://www.support.transport.qld.gov.au/qt/formsdat.nsf/forms/S4855/$file/S4855_ES.pdf>, viewed 23 September 2013.

[153] *Transport Operations (Road Use Management) Act 1995* (Qld), section 131(2).

[154] *Transport Operations (Road Use Management) Act 1995* (Qld), section 131(2).

[155] *Transport Operations (Road Use Management) Act 1995* (Qld), section 131(2AA).

[156] *Transport Operations (Road Use Management) Act 1995* (Qld), section 131(2C).

[157] *Transport Operations (Road Use Management) Act 1995* (Qld), section 131(2D), (3).

[158] *Road Traffic Act 1974* (WA), section 49(1).

[159] *Road Traffic Act 1974* (WA), section 49(8).

4.51 In Western Australia, those who have a disqualification from a court for more than three years can apply to have that disqualification removed.[160]

4.52 Western Australia has a system whereby the amount of time that someone has to wait before they can exercise this right depends on the length of their disqualification period. The relevant timeframes are as follows:

(a) if the disqualification is up to six years, the offender will have to wait for three years

(b) if the disqualification is more than six years but not more than twenty years, the offender will have to wait for one half of the disqualification period

(c) if the disqualification is for more than twenty years, the offender will have to wait for ten years.[161]

4.53 If the disqualification was imposed by the Supreme Court then the application will need to be made to that court. If the disqualification was not imposed by that court then the District Court will deal with the application.[162]

4.54 In deciding the application, the court can have regard to the same factors as in Queensland, as well as to public safety.[163]

4.55 As in Queensland, if the court refuses the application, then the offender will have to wait one year before they can make a further application.[164]

SOME ALTERNATIVE OPTIONS

4.56 Some participants suggested alternative options to introducing a right to apply to have disqualification periods removed. For example, Kingsford Legal Centre suggested, as an alternative, introducing good behaviour licences similar to those available to full licence holders who have accumulated more than twelve demerit points in a three year period. The Centre suggested that this could be an option once the offender has completed a minimum offence free period. [165] Other stakeholders also suggested this as a possible option. [166]

4.57 Douglass and Ford Criminal Law recommended introducing work licences or licences for a specific time of day, particularly for those who live in the country and rely more heavily on having a licence.[167]

4.58 However, some other stakeholders were less supportive of these kinds of options. [168] For example, Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers

[160] *Road Traffic Act 1974* (WA), section 78(1).

[161] *Road Traffic Act 1974* (WA), section 78(3).

[162] *Road Traffic Act 1974* (WA), section 78(2).

[163] *Road Traffic Act 1974* (WA), section 78(5).

[164] *Road Traffic Act 1974* (WA), section 78(6).

[165] Submission 12, Kingsford Legal Centre, p2.

[166] See for example, Submission 8, Douglass and Ford Criminal Law, p2; Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, 30 August 2013, p23.

[167] Submission 8, Douglass and Ford Criminal Law, p2.

Criminal Law Committee, said that work licences sometimes cause more problems than they solve as some people drive whenever they want to and pretend that it is for work.[169]

Committee Comment

4.59 The Committee has heard numerous stories of people who are serving lengthy disqualification periods but who are not serial and wilful offenders, have reformed their lives, have not re-offended and are not a risk to public safety. This inquiry has heard that:

(a) lengthy disqualification periods do not necessarily act as a deterrent and can make it difficult for individuals to go about their everyday activities such as going to work, dropping children at school, attending medical appointments and doing the groceries

(b) providing an incentive for offenders to change their behaviour may result in them being more motivated to comply during the minimum offence-free period, potentially reducing re-offending

(c) disqualifications are only part of the punishment that offenders receive for unauthorised driving offences, penalties also include fines and imprisonment

(d) other jurisdictions have already established rights to apply to have disqualification periods removed.

4.60 For these reasons, the Committee is of the view that the NSW Government should establish a right for offenders to apply to have their licence disqualification periods removed or reduced after they have served a minimum offence-free period. The Committee considers that when such a right is established, those who have already served the minimum offence-free period should be entitled to make an application.

4.61 In the Committee's view, this right should be administered by the NSW courts, as the courts are best placed to deal with these issues.

4.62 In establishing the right and determining the minimum offence-free period, the Committee recommends that the NSW Government balance the potential impacts on court workloads, public safety, the level of seriousness of different road traffic offences, and providing an incentive for offenders to be of good behaviour during their licence disqualification period.

4.63 The Committee considers that, in deciding whether a disqualification period should be removed or reduced, the courts should consider:

(a) the character of the individual

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[168] See for example, Assistant Commissioner John Hartley, Traffic and Highway Patrol Command, NSW Police, Transcript of evidence, 30 August 2013, p41; Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 30 August 2013, p48.

[169] Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 30 August 2013, p48.

(b) the individual's conduct since the original disqualification period was imposed

(c) the nature of the offence

(d) public safety, and

(e) any relevant circumstances.

4.64 In the Committee's view, 'any relevant circumstances' may include matters such as family responsibilities, employment, health, education, finances, place of residence, availability of alternative transport and any carers' responsibilities.

RECOMMENDATION 1

The Committee recommends that the NSW Government establish a right for those who have been convicted of road traffic offences to apply to have licence disqualification periods removed or reduced after they have completed a minimum offence-free period and that this right be administered by the NSW Courts.

RECOMMENDATION 2

The Committee recommends that the NSW Government, in establishing this right to apply to the court and the relevant offence-free period, balance:

- **the possible impacts on court workload**
- **public safety**
- **the level of seriousness of different road traffic offence/s, and**
- **providing an incentive for offenders to be of good behaviour during their licence disqualification period.**

RECOMMENDATION 3

The Committee recommends that the NSW Government ensure that, in determining whether a licence disqualification period should be removed or reduced, the courts consider:

- **the character of the individual**
- **the individual's conduct since the original licence disqualification period was imposed**
- **the nature of the offence**
- **public safety, and**
- **any relevant circumstances.**

Chapter Five – Habitual Traffic Offenders Scheme

5.1 This chapter discusses the Habitual Traffic Offenders (HTO) Scheme and considers inquiry participants' views on whether the Scheme should be abolished. It outlines the main features of the Scheme, including the practice of quashing HTO declarations and the relationship between 'section 10' offences and the HTO Scheme. The chapter highlights previous reports on the HTO Scheme and then examines the main criticisms of the Scheme raised by submitters and witnesses. Community and road safety concerns are also addressed.

FEATURES OF THE HABITUAL TRAFFIC OFFENDERS (HTO) SCHEME

5.2 As outlined in Chapter Two, an individual can be declared an Habitual Traffic Offender under the HTO Scheme if they have been convicted of three 'serious offences' that are captured by the Scheme within a five year period.[170]

5.3 Offences such as driving while never having been licensed and driving with a disqualified, cancelled or suspended licence are captured under the Scheme. More serious offences that pose a risk to community safety also count under the HTO Scheme. These include offences such as murder and manslaughter involving a vehicle, negligent driving where death or grievous bodily harm is occasioned, and driving recklessly.[171]

5.4 Drivers who are declared HTOs are disqualified from driving for a further five years unless a court rules that a shorter disqualification period (minimum of two years) is warranted. The court can also order a longer disqualification period under the HTO Scheme, including disqualification for life.[172]

5.5 The HTO disqualification period is 'fully cumulative', meaning that it does not commence until any other disqualification period has expired (such as the disqualification period imposed for the third offence).[173]

5.6 There are about 17,000 people (out of the 40,000 who are disqualified from driving) who are currently declared habitual traffic offenders. Individuals may have a single HTO declaration, or multiple declarations.[174]

5.7 No other Australian jurisdiction has an HTO Scheme.[175] The Department of Attorney General and Justice said that NSW may be the only place in the world with such a scheme.[176]

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[170] 'Habitual Offenders', Roads and Maritime Services, <http://www.rms.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 4 October 2013.

[171] 'Habitual Offenders', Roads and Maritime Services, <http://www.rms.nsw.gov.au/usingroads/penalties/habitualoffenders.html>, viewed 4 October 2013.

[172] Submission 25, NSW Government, p10.

[173] Submission 25, NSW Government, pp10–11.

[174] Mr Edward Ramsay, Manager, Driver Sanctions, Policy and Regulation Division, Transport for NSW, Transcript of evidence, 30 August 2013, p42.

Quashing of HTO declarations

5.8 While there is no right of appeal against an HTO declaration, a court may quash the declaration if it determines that the disqualification imposed is disproportionate and unjust, having regard to the offender's total driving record or special circumstances of the case. Quashing of the declaration may occur at the time of conviction or at a later date.[177]

5.9 There has been an increase in recent years in magistrates quashing HTO declarations. In 2012, the courts quashed 3,344 HTO declarations (these included declarations made in previous years).[178] From 1 July 2010 to 1 July 2011, approximately 3,000 HTO declarations were quashed.[179]

5.10 The Shopfront Youth Legal Centre observed that its clients' applications for quashing of HTO declarations are usually successful because magistrates generally see the additional five year disqualification as a 'disproportionate and unjust consequence' of the offending, particularly for young people.[180]

Inquiry participants' views on quashing HTO declarations

5.11 The Committee heard that those who incur HTO declarations are often not aware that they could be quashed by the court. Other inquiry participants said that it unnecessarily consumes court and legal resources.

5.12 The Law Society of NSW Criminal Law Committee commented that many people with HTO declarations are not aware that they can apply to the court for the declaration to be quashed at a later date:

> … with really bad offenders the court might say, "Let's not quash it now. Let's wait and see how you go", and if they demonstrate that they can comply with court orders it is usually able to be quashed further down the track. So it is good that there is that ability to do that, but a lot of people are not aware of that.[181]

> … [A]t the time [the offender] often will not ask for the habitual declaration to be quashed, then go away, do not know that they could have ever asked for that, do not know because they cannot afford a lawyer, so they do not get the advice that they could go back to the court and have this fixed. Even if they got the advice they are then confronted with the expense of a private lawyer because … they cannot afford the lawyer; therefore, they end up wearing the [HTO declaration] where their more wealthy counterparts can afford to go and be properly legally represented.[182]

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[175] Submission 25, NSW Government, p11.

[176] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, 30 August 2013, pp37–38.

[177] Submission 25, NSW Government, p11.

[178] Submission 25, NSW Government, p12.

[179] Submission 13, Chief Magistrate of the Local Court, p4.

[180] Submission 14, The Shopfront Youth Legal Centre, p5.

[181] Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of New South Wales, Transcript of evidence, 30 August 2013, p3.

[182] Mr Greg Elks, Member, Criminal Law Committee, Law Society of New South Wales, Transcript of evidence, 30 August 2013, p4.

5.13 The Marrickville Legal Centre argued that the HTO Scheme 'ties up free legal and court resources in advising on and hearing appeals of these orders'.[183] The NSW Young Lawyers Criminal Law Committee also noted that making applications to the court to quash declarations 'unnecessarily burdens an already crowded court system'.[184] Both participants preferred that the HTO Scheme be abolished altogether.

Dismissal of charges and conditional discharge

5.14 Under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a court can find someone guilty of an offence but not proceed to a conviction. Instead, the court will either dismiss the charge or make an order discharging the individual on the condition that they either enter into a good behaviour bond or participate in an intervention program. Chapter Two contains further information relating to section 10 of that Act.

5.15 However, even if an offence has been dealt with under section 10, it may still count towards an HTO declaration. According to Roads and Maritime Services (RMS), in 2011, there were 17,781 relevant offences committed that resulted in 5,927 HTO declarations. Nine hundred and ninety two of the 17,781 relevant offences were dealt with by way of section 10. In 2012, there were 15,819 relevant offences committed that resulted in 5,273 HTO declarations. Eight hundred and sixty six of the 15,819 relevant offences were dealt with by way of section 10.[185]

Inquiry participants' views on section 10 and the HTO Scheme

5.16 Inquiry participants raised concerns about fairness and consistency in relation to section 10 and the HTO Scheme.[186] The NSW Young Lawyers Criminal Law Committee suggested that the automatic imposition of the HTO declaration may not be properly recognised, by either the court or the offender, at the time a section 10 is imposed:

> … where a magistrate imposes a section 10 the next question should be whether or not a habitual offender declaration should be quashed. Where they have just imposed a section 10 probably nobody wants to hang around and think too much about the impact of habitual offender declarations. I suspect in those circumstances it is disproportionately common that nobody turns their mind to whether they should quash the habitual offender declaration, with the consequence that a five-year automatic declaration gets piled on top.[187]

5.17 Ms Felicity Graham, Solicitor for the Aboriginal Legal Service (NSW/ACT) Limited, considers it unfair for an offence dealt with by way of section 10 to count towards an HTO declaration:

[183] Submission 6, Marrickville Legal Centre, p3.

[184] Submission 10, NSW Young Lawyers Criminal Law Committee, p5.

[185] Mr Tim Reardon, Deputy Director, General Policy and Regulation, Transport for NSW, Answers to supplementary questions, 18 September 2013, p5.

[186] Submission 25, NSW Government, p12.

[187] Mr Thomas Spohr, Vice President, NSW Young Lawyers, Transcript of evidence, 30 August 2013, p51.

> If the court has decided in its exercise of discretion it is appropriate to give a non-conviction order because of the particular circumstances that they know about and that they have determined is an appropriate case for that discretion, it should not then be used by another government agency against them in a way where it has not been considered in the way that the court did.[188]

5.18 Ms Jane Sanders, Principal Solicitor for the Shopfront Youth Legal Centre, argued that it was inconsistent for matters dealt with under section 10 to contribute towards HTO declarations, given that they do not count towards losing licence demerit points:

> Until 2011, if you were dealt with under section 10 for a demerit point offence, you still incurred the demerit points and possibly then a suspension. Following amendments to the legislation, now if you are dealt with under section 10 the points do not accrue. That recognises that there may well be special extenuating circumstances associated with the offence. It seems a bit out of step that section 10s still contribute to habitual traffic offender declarations.[189]

PREVIOUS REPORTS ON THE HTO SCHEME

5.19 The NSW Government noted that there has been no evaluation of the HTO Scheme's effectiveness. However, its submission cited studies from the NSW Bureau of Crime Statistics and Research (BOCSAR) and the NSW Sentencing Council suggesting that the additional disqualification periods mandated by the HTO Scheme were ineffective.[190]

5.20 A 2007 BOCSAR study suggested that longer licence disqualification periods have little to no deterrent effect, and in some cases, may increase the risk of reoffending.[191]

5.21 The NSW Sentencing Council reviewed the HTO Scheme as part of its 2006 examination of the effectiveness of fines as a sentencing option.[192] Most of the submissions it received opposed the Scheme for a range of reasons, including:

(a) the Scheme can create 'crushing' periods of disqualification, severely limiting employment prospects;

(b) the Scheme has a disproportionate impact on certain marginalised groups in the community, particularly on young people who need licences to obtain employment;

(c) sanctions become meaningless when people are disqualified for very lengthy periods of time; and

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[188] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p25.

[189] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, 30 August 2013, p25.

[190] Submission 25, NSW Government, p11.

[191] Moffatt, S and Poynton, S, 'The deterrent effect of higher fines on recidivism: Driving offences', *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, Number 106, March 2007, p10.

[192] NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court imposed-fines and penalty notices*, October 2006, pp165–166.

(d) a declaration constitutes a double penalty, as an offender has also been punished for the offences giving rise to the declaration.[193]

5.22 The Sentencing Council recommended that the Government dispense with the automatic imposition of HTO declarations, and instead require that an application be made to a court requesting that such a declaration be imposed. Another recommendation was to remove the offence of driving with a cancelled licence due to fine default from the HTO Scheme, where an individual can show that an HTO declaration would result in particular hardship.[194]

CRITICISMS OF THE HTO SCHEME

5.23 Inquiry participants were highly critical of the current HTO Scheme and were largely in favour of abolishing it. The main criticisms were that the HTO automatic disqualification period is an unfair and excessive penalty; that the Scheme is not effective as a deterrent; that there is no room for court discretion or flexibility in determining an appropriate disqualification period with regard to an individual's circumstances; and that the HTO Scheme is complex to administer and creates confusion.

An unfair and disproportionate penalty

5.24 A common criticism that emerged during the inquiry was that the additional lengthy disqualification period imposed by an HTO declaration is an excessive, disproportionate and unjust penalty.

5.25 The Chief Magistrate of the Local Court argued that the HTO Scheme should be abolished and that this is a view shared by many magistrates.[195] He explained that the Scheme's automatic five-year period of licence disqualification after conviction for a relevant offence that already entails licence disqualification 'appears tantamount to a form of double jeopardy'.[196]

5.26 A 2007 survey of NSW magistrates found that 86 per cent of respondents believe that HTO declarations were 'never' or 'only sometimes' an appropriate penalty. Some commented that 'horrendous penalties are imposed with huge repercussions' and that sanctions become 'meaningless' when offenders are disqualified well into the next decade, or in excess of thirty years.[197]

5.27 The Law Society of NSW Criminal Law Committee described the HTO Scheme's additional periods of disqualification as 'antithetical to sentencing principles of rehabilitation' because they are cumulative and do not commence until a previous disqualification period has expired.[198]

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[193] NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court imposed-fines and penalty notices*, October 2006, p171.

[194] NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court imposed-fines and penalty notices*, October 2006, p171.

[195] Submission 13, Chief Magistrate of the Local Court, p4.

[196] Submission 13, Chief Magistrate of the Local Court, p4.

[197] Submission 12, Kingsford Legal Centre, p3.

[198] Submission 19, The Law Society of NSW Criminal Law Committee, p2.

No deterrent to reoffending

5.28 The Committee also heard evidence that the HTO Scheme is ineffective as a deterrent to reoffending.

5.29 A number of community legal centres argued that the HTO Scheme has little or no deterrent value. Marrickville Legal Centre submitted that the Scheme is arbitrary, not taking into account individual circumstances. It argued that the Scheme's 'additional punishment could potentially reduce the offender's motivation to turn their life around'.[199]

5.30 Kingsford Legal Centre stated that the HTO Scheme has 'little impact on recidivism'[200], while the Shopfront Youth Legal Centre argued that HTO declarations 'serve no useful purpose and are at odds with the evidence which suggests that, beyond a certain point, disqualifications have little or no deterrent value'.[201] The Mid North Coast Community Legal Centre submitted that the HTO Scheme is 'unjust and oppressive', failing to achieve deterrence or rehabilitation.[202]

Impact on the community

5.31 It was also argued that HTO declarations entrench disadvantage among vulnerable people in the community:

> [H]abitual offender declarations can have the effect of entrenching systemic disadvantage, particularly for young people, the unemployed, people living in rural, regional and remote areas and people leaving correctional centres, by severely limiting their ability to gain employment, care for their families and more broadly contribute to and participate in our communities.[203]

5.32 Some community legal centres cited the difficulties of their clients who have been declared HTOs and noted that the Scheme has not deterred them from driving while disqualified.

5.33 For example, the Hume Riverina Community Legal Service described two recent clients with extremely long licence disqualification periods and argued that the HTO declarations continued to penalise them and their families to an unreasonable extent:

> The offences took place many years ago, but despite them turning their lives around, they have not been able to have their license reinstated.
>
> They both wanted their licenses to assist with the care of their children; taking them to activities and medical appointments and the other, to be able to spend time with their child after separation. In both these examples, if any outstanding disqualification periods [were] removed when they had completed a minimum

[199] Submission 6, Marrickville Legal Centre, p3.

[200] Submission 12, Kingsford Legal Centre, p2.

[201] Submission 14, The Shopfront Youth Legal Centre, p5.

[202] Submission 17, Mid North Coast Community Legal Centre, p3.

[203] Submission 12, Kingsford Legal Centre, p3.

> offence free period [this] would enable them to build on their successes instead of continuing to penalise them and their families for years after the offences.[204]

5.34 Kingsford Legal Centre provided a case study of one of their clients who has been declared an Habitual Traffic Offender. The Centre said that despite the client having an HTO declaration, he has not been deterred from driving because of his family responsibility and is likely to be exposed to further interaction with the criminal justice system. This case study is extracted in full below.[205]

Case study: Kingsford Legal Centre's client

5.35 "In 1992 our client was disqualified from driving for 2 years after he was caught driving with a mid-range PCA [Prescribed Concentration of Alcohol]. Our client continued to drive while disqualified because he had to care for his grandparents and needed to drive his brother to the hospital to get dialysis three times a week.

5.36 He was convicted of driving while disqualified on a number of occasions subsequently and was eventually declared as a Habitual Traffic Offender in 2007 and will be disqualified from driving until 2018. Our client still has family and carers responsibilities which require him to drive."[206]

No room for court discretion or flexibility

5.37 Inquiry participants criticised the HTO Scheme for not allowing court discretion or flexibility to apply appropriate disqualification periods.

5.38 The NSW Young Lawyers Criminal Law Committee argued that magistrates are capable of applying appropriate periods of disqualification and that the automatic imposition of a five-year disqualification period was unnecessary.[207] It was argued that an offender was 'unlikely to receive a great deal of leniency from a court' because people who reach the HTO Scheme are multiple offenders.[208]

5.39 Mr Thomas Spohr, Vice President of NSW Young Lawyers, discussed the HTO Scheme with the Committee, referring to it as a form of 'mandatory sentencing':

> Mandatory cumulative sentences do not necessarily … achieve very much other than causing a person to be disqualified for an enormous amount of time—without any real benefits necessarily to the community. The only reason one would impose a mandatory sentence is if it genuinely deterred people.
>
> … If the court has the discretion and has all the information before it then in theory it should be imposing the right sentence to begin with. So our general view is that mandatory sentences, first of all, have consequences that are not consistent with the idea that the court has the best information before it and, second of all, lead to consequences that are often completely disproportionate to what actually occurred. No doubt you have heard examples of people being disqualified for 25 or 30 years and so forth. It really has to be questioned then what is being achieved. You are not

[204] Submission 4, Hume Riverina Community Legal Service, p1.
[205] Submission 12, Kingsford Legal Centre, p2.
[206] Case study extracted from submission 12, Kingsford Legal Centre, p2.
[207] Submission 10, NSW Young Lawyers Criminal Law Committee, p4.
[208] Submission 10, NSW Young Lawyers Criminal Law Committee, pp4–5.

> deterring offenders from committing the offences—that is why they have so many of them.[209]

5.40 Ms Jane Sanders, Principal Solicitor from The Shopfront Youth Legal Centre, suggested that the existence of the HTO Scheme was 'a way of mollifying the shock jocks and saying, "Look, we have this really harsh sanction".' She told the Committee that if the HTO Scheme was to be retained, it should be modified so that instead of an automatic imposition, with the onus on the offender to apply for it to be quashed, the police or RMS should be required to apply for an HTO declaration, particularly if there are genuine concerns about road safety.[210]

5.41 In 2006, the NSW Sentencing Council recommended that if the HTO Scheme was to remain in existence, it would be appropriate to 'remove its use as an automatic default option and require that a separate application be brought before the court requesting that such a declaration be imposed'.[211]

Administrative complexity and confusion

5.42 RMS explained that it faces challenges in administering the HTO Scheme. RMS maintains driving records of offenders, with each record bringing into one register all relevant court decisions. It is the responsibility of RMS to record all court events chronologically and then determine the sequencing and application of related disqualification periods. RMS advised that HTO declarations 'present administrative challenges due to the often complex nature of cases'. Many manual adjustments of RMS records are usually required to maintain records of offences, court hearings, judgements and sanctions.[212]

5.43 Because the HTO Scheme is difficult to administer, RMS observed that this results in confusion and uncertainty about when someone can drive again:

> The current provisions have also proven to cause considerable confusion for the convicted person, legal representatives, court frontline staff and RMS frontline staff as to when the convicted person can lawfully obtain a driver licence. This complexity means most courts refer convicted persons to RMS to interpret the effect and commencement dates of the disqualification period or for advice as to when the person is eligible to obtain a driver licence.
>
> In 2012, RMS had to write to NSW courts on 384 occasions seeking clarification as to the disqualification orders made by courts for either unauthorised driving offences or HTO declarations.[213]

5.44 Mr Peter Wells, Director of Customer and Compliance at RMS, explained that RMS strives to provide clear advice to people with HTO declarations. However, given the long periods of disqualification and previous interactions with RMS and

[209] Mr Thomas Spohr, Vice President, NSW Young Lawyers, Transcript of evidence, 30 August 2013, p49.

[210] Ms Jane Sanders, Principal Solicitor, The Shopfront Youth Legal Centre, Transcript of evidence, 30 August 2013, p24. See also Submission 14, The Shopfront Youth Legal Centre, p5.

[211] NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court imposed-fines and penalty notices*, October 2006, p166.

[212] Submission 25, NSW Government, p11.

[213] Submission 25, NSW Government, p11–12.

the court system, people with HTO declarations are often confused about when they can lawfully obtain their licence:

> Typically now, the person has the experience of whatever blend of court, demerit, police action and they will have some suspension period on their licence as an habitual offender. Because of unhappiness in the past in relation to what people say—they felt they had the wrong advice or they did not understand how long they were suspended for—[RMS] are very clear in saying, "Please come in to a motor registry and we will determine the date and give it to you properly", the idea being we want to respect the court's decision and make sure any offences in the mix that are awaiting court, or whatever it might be, are factored in, to give them good, clear advice.
>
> Once you fast forward, imagine if someone is suspended for five years. We might have tried to tell them, "Come in to a motor registry and we will determine the date you can apply for a licence." Over the years some people will recall that as, "I am going in to the motor registry to get my licence." So there is often some unhappiness there: "I was going to get it today and now you are still telling me there are two more years to serve", or that sort of discussion.[214]

5.45 Mr Wells argued for 'administrative simplicity', observing that '[t]he typical person who has hit the habitual offender scheme is often fairly emotional and unhappy'.[215]

5.46 Ms Felicity Graham, Solicitor for the Aboriginal Legal Service (NSW/ACT) Limited, commented that HTO declarations do not accord with the concept of a 'just system' because their automatic application can prove confusing for people, particularly those with poor literacy or comprehension skills:

> One really important component of a just system is that people know about the orders that affect them. So when someone who perhaps has poor literacy skills or poor skills in terms of comprehending even what a court is telling them turns up and is told, "You are disqualified for two years", and then the automatic order is made behind closed doors of the extra five years, that adds an extra component of possible confusion and complexity when it comes to the point that the person wants to then re-engage the system … [I]t adds that extra complexity, particularly for people who have poor literacy or comprehension skills. For instance, they cannot read the letters from Roads and Maritime Services, and cannot understand the orders that are affecting them.[216]

COMMUNITY AND ROAD SAFETY CONCERNS

5.47 The Committee heard that abolishing the HTO Scheme would not have an impact on community and road safety concerns.

5.48 Ms Rebecca Ivers, Professor of Public Health and Director, Injury Division, of The George Institute for Global Health, argued that there is a clear difference

[214] Mr Peter Wells, Director, Customer and Compliance, NSW Roads and Maritime Services, Transcript of evidence, 30 August 2013, p38.
[215] Mr Peter Wells, Director, Customer and Compliance, NSW Roads and Maritime Services, Transcript of evidence, 30 August 2013, p34.
[216] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p25.

between disqualifications due to unpaid debt and those due to reckless driving offences. She was of the view that removing the HTO Scheme would not have significant road safety implications.[217]

5.49 The NSW Young Lawyers Criminal Law Committee submitted that it was difficult to understand the purpose of further disqualification through an HTO declaration if the offender is 'no more or less a danger than before the unauthorised driving offence (as opposed to if, for example, a drink driving offence had been committed)'.[218]

Committee comment

5.50 The Committee heard a number of criticisms of the HTO Scheme. Witnesses and submitters condemned the automatic imposition of a long disqualification period as unfair and called for greater court discretion to determine appropriate disqualification periods for people who commit multiple traffic offences. HTO declarations were also seen as administratively complex for Roads and Maritime Services (RMS) and often confusing for the individual offender.

5.51 The Committee accepts that an HTO declaration does not appear to be an effective deterrent to committing future driving offences and that the length of the HTO disqualification period may reduce motivation to reform behaviour, particularly when cumulative disqualification periods run up to a decade or more.

5.52 Apart from capturing some unauthorised driving offences, the HTO Scheme also covers other offences such as murder or manslaughter involving a vehicle, reckless driving and driving offences involving drugs and alcohol. The Committee notes that these other offences, in general, pose a greater risk to community safety than unauthorised driving offences. The Committee has not considered these more serious offences in detail as part of this inquiry but notes calls from inquiry participants for the HTO Scheme to be abolished altogether.

5.53 For the reasons outlined above, the Committee recommends that the unauthorised driving offences that are the subject of this inquiry be removed from the HTO Scheme. The Committee notes that reforms outlined in Chapter Six of this report will ensure that magistrates will have the discretion to still impose lengthy disqualification periods in appropriate cases.

5.54 The Committee also considers that HTO declarations should not be automatically imposed. Instead, once the third offence is committed and if there are serious road safety concerns in relation to a particular offender, there should be scope for an application be made to a court requesting that an HTO declaration be imposed. This would allow the police or RMS to make an application for an HTO declaration where there are particular concerns about risks to community and road safety posed by an individual offender.

5.55 The Committee has concerns about offences dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999* and their interaction with the HTO

[217] Ms Rebecca Ivers, Professor of Public Health and Director, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p56.

[218] Submission 10, NSW Young Lawyers Criminal Law Committee, p5.

Scheme. If a court has decided to exercise its discretion not to convict an offender based on particular circumstances, it appears unfair for that offence to count towards the imposition of an automatic disqualification period through an HTO declaration. The Committee's view is that offences dealt with under section 10 of that Act should not count towards an HTO declaration.

5.56 The Committee also recommends that the NSW Government review the HTO Scheme as it applies to the remaining 'relevant offences' in section 216 of the *Road Transport Act 2013* to determine whether or not the Scheme should be abolished altogether.

RECOMMENDATION 4

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to remove the unauthorised driving offences referred to in sections 53(3) and 54(1), (3) and (4) of that Act from the Habitual Traffic Offenders Scheme.

RECOMMENDATION 5

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to provide that an Habitual Traffic Offender declaration no longer comes into effect automatically after three relevant offences within five years. Instead, an Habitual Traffic Offender declaration should only be imposed once a court has accepted an application requesting that such a declaration be made.

RECOMMENDATION 6

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to specify that offences dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999* do not count towards an Habitual Traffic Offender declaration.

RECOMMENDATION 7

The Committee recommends that the NSW Government review the Habitual Traffic Offenders Scheme as it applies to the remaining 'relevant offences' in section 216 of the *Road Transport 2013* to determine whether or not the Scheme should be abolished.

Chapter Six – Giving the courts discretion in relation to disqualification periods

6.1 This chapter considers whether the courts should be given discretion when imposing disqualification periods for unauthorised driving offences by:

(a) providing for automatic and minimum disqualification periods rather than mandatory periods, and

(b) requiring that disqualification periods run from the date of conviction unless otherwise ordered.

LIMITED COURT DISCRETION AT PRESENT

6.2 In Chapter Two of this report, the Committee highlighted that when dealing with unauthorised driving offences, courts have discretion to determine an appropriate penalty (fines and imprisonment) according to the circumstances of the case. However, courts have very little discretion when it comes to disqualification periods.

6.3 The Chief Magistrate of the Local Court and other stakeholders have noted that the disqualification periods for unauthorised driving offences are mandatory and cannot be reduced. The courts only have limited discretion to either:

(a) impose an additional period of disqualification for certain unauthorised driving offences, or

(b) avoid a disqualification entirely through making an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.[219]

6.4 Under that provision, a court can find that someone is technically guilty of an offence, however, because of the circumstances of the case, the court will not convict the individual and will not impose the normal penalties and disqualification periods associated with that offence. The court will instead make any of the following orders:

(a) an order that the charge be dismissed

(b) an order discharging the offender on the condition that they enter into a good behaviour bond (for up to two years), or

(c) an order discharging the individual on the condition that they participate in an intervention program and comply with any plan arising out of the program.[220]

[219] See for example, Submission 13, The Chief Magistrate of the Local Court, p4; Submission 21, Magistrate Clare Farnan, p2; Submission 25, NSW Government, p4.

[220] *Crimes (Sentencing Procedure) Act 1999*, section 10.

6.5 However, Magistrate Clare Farnan noted that, where the court is dealing with a repeat offender, it would usually be inappropriate for a magistrate to avoid a disqualification period through an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.[221]

6.6 The Shopfront Youth Legal Centre also said that in its experience, matters are usually only dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999* when the offender is legally represented or articulate enough to address the court about their relevant circumstances. The Centre explained the difficulties that courts experience with the current situation:

> …the court is faced with an "all-or-nothing" choice, rather than being able to adopt some sensible middle ground and impose a modest disqualification and penalty.[222]

SUPPORT FOR MORE COURT DISCRETION

6.7 There was support from a number of inquiry participants for the courts to be given greater discretion to determine appropriate disqualification periods for unauthorised driving offences so that disqualification periods can be tailored to each individual situation.[223]

6.8 Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, outlined the benefits of giving judges more discretion when imposing disqualification periods for unauthorised driving offences:

> If magistrates had the discretion to use their ability and do their job in terms of deciding when the period should start to properly deter, denounce and punish the various people the system would be greatly improved. We would not have people disqualified for such long periods. We would prefer magistrates to use their abilities, skills and knowledge to properly adjudicate what the appropriate period of time off the road would be and thereby avoid the problems we are seeking to address today.[224]

6.9 The Victims of Crime Assistance League Inc NSW was also supportive of giving the courts more discretion when imposing disqualification periods because, in their view, offenders who participate in rehabilitation programs such as the Traffic Offenders Intervention Program are disadvantaged by the mandatory disqualification system compared to those who do not make the effort to reform their behaviour.[225]

6.10 In Chapter Three of this report, the Committee outlined the impacts of the current arrangements for dealing with unauthorised driving offences on the community in detail. Legal Aid NSW summarised the impacts on the community of a sentencing regime that lacks appropriate judicial discretion:

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[221] Submission 21, Ms Clare Farnan, p2.

[222] Submission 14, The Shopfront Youth Legal Centre, p6.

[223] See for example, Submission 8, Douglass and Ford Criminal Law, p1; Submission 10, NSW Young Lawyers Criminal Law Committee, p5; Submission 12, Kingsford Legal Centre, p3; Submission 13, The Chief Magistrate of the Local Court, p4; Submission 14, The Shopfront Youth Legal Centre, pp5-6; Submission 22, NSW Ombudsman, p3.

[224] Mr Andrew Tiedt, Vice-Chair, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 30 August 2013, p49.

[225] Submission 9, Victims of Crime Assistance League Inc NSW, p2.

> A penalty regime that imposes mandatory periods of disqualification lacks the ability to tailor a penalty to the specific facts and circumstances of the offence and the offender, resulting in disproportionate and oppressive effects of licence sanctions on vulnerable and marginalised people, including Aboriginal people, young people, prisoners and people living in areas with limited access to public transport, as well as their families and communities.[226]

6.11 On a similar note, Professor Rebecca Ivers emphasised that the current system of mandatory disqualification does not give people the opportunity to move forward with their lives:

> We need to give people the opportunity to actually live lives and function in society. By giving people very long periods during which there is no ability to get back into the system we are not giving people opportunities to move forward.[227]

6.12 The Shopfront Youth Legal Centre provided the Committee with a case study of their client, 'Vicky'. This case study illustrates the impact of cumulative disqualification periods and highlights that some offenders eventually end up with a prison sentence if they have committed a series of unauthorised driving offences. This case study is extracted in full below.[228]

Case study: 'Vicky'

6.13 "Vicky is now in her mid-20s and is a single mum with a 3-year-old daughter.

6.14 She grew up in a dysfunctional family environment and was in the care of the Department of Community Services during her teens. Vicky was homeless for some years but with the help of an after-care service, was able to obtain Department of Housing accommodation.

6.15 As a young adolescent Vicky was diagnosed with various mental and developmental disorders, which continued into her early adulthood and made her prone to impulsive behaviour.

6.16 While homeless during her teens, Vicky incurred a large number of fines, mainly for travelling on trains without a valid ticket. These fines were referred to the SDRO [State Debt Recovery Office], and then to the RTA [now Roads and Maritime Services], which imposed a "customer business restriction". She was told that she would not be able to apply for a licence until her fines were paid in full.

6.17 Like many young people in her situation (with or without mental health problems) Vicky felt that she would never be able to pay off her fines, and would never be able to get her licence. She took the risk of driving without a licence, and not surprisingly was soon picked up by police and charged with driving unlicensed.

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[226] Submission 23, Legal Aid NSW, p4.

[227] Professor Rebecca Ivers, Professor of Public Health and Director, Injury Division, The George Institute for Global Health, University of Sydney, Transcript of evidence, 30 August 2013, p53.

[228] Submission 14, The Shopfront Youth Legal Centre, pp8-9.

6.18 On her first conviction for driving when never licensed, Vicky received a fine and no disqualification. When charged for the second time, at the age of 19, the magistrate adjourned the case in order to give Vicky the opportunity to sort out her fines and apply for a licence.

6.19 The Shopfront Youth Legal Centre assisted Vicky in making annulment applications for some of her fines, and to make a time-to-pay arrangement for the others. Unfortunately, due to her poverty, mental health problems, and chaotic lifestyle, Vicky missed a couple of payments. The fine default licence sanctions, which had been lifted, were re-imposed. She also committed another unlicensed driving offence during the adjournment period, which disentitled her to any leniency the magistrate might have contemplated.

6.20 When the matter came back to court, Vicky received a conviction and, with it, the mandatory 3-year disqualification. Since then, Vicky has been charged several times with driving while disqualified.

6.21 Just before she turned 21, Vicky was charged with another instance of driving while disqualified. She had driven off to try to avoid the police, and so was also charged with dangerous driving. It is worth noting that this is the only time Vicky has ever been charged with an offence involving dangerous driving; to date, she has never been charged with a drink-driving offence, and has incurred only minor speeding infringements.

6.22 Vicky was refused bail and spent almost 2 months in custody before being sentenced. She was sentenced to a 9-month prison term with immediate release on parole. This immediate release was granted only because Vicky was lucky enough to strike a very compassionate magistrate, who recognised that keeping Vicky in prison would cause her to lose her housing and jeopardise any potential for rehabilitation.

6.23 Vicky spent the next 7 months on parole, and managed to do so without re-offending. However, she has since been charged with further offences of driving while disqualified. The most recent of these occurred in April 2010, while fleeing a violent domestic situation. She was placed on a suspended sentence and has not committed any further traffic offences.

6.24 Even without taking into account habitual traffic offender declarations, Vicky has now been disqualified from driving until she is well into her forties. Her inability to drive is affecting her employment prospects and her ability to take her daughter to child-care, appointments and outings. Unless Vicky's disqualifications can be remitted, or a relicensing scheme is introduced, it is likely that her 3-year-old daughter will be able to get a driving licence before Vicky can." [229]

AUTOMATIC AND MINIMUM DISQUALIFICATION PERIODS

6.25 This section considers whether mandatory disqualification periods should be removed for unauthorised driving offences and replaced with automatic and minimum disqualification periods.

[229] Case study extracted from submission 14, The Shopfront Youth Legal Centre, pp8-9.

It explains how automatic and minimum disqualification periods work in practice and provides examples of offences where this mechanism is already used. It also discusses stakeholder views on whether or not this would be an effective solution.

How do they work?

6.26 Some offences already carry automatic and minimum disqualification periods, rather than mandatory periods. Examples include low, mid and high range drink driving offences, negligent driving occasioning death or grievous bodily harm, or driving in a furious or reckless manner or at a dangerous speed.[230]

6.27 Automatic and minimum disqualification periods involve:

- a minimum disqualification period
- a default disqualification period that would apply unless the court selected a different period of time
- no maximum period.[231]

6.28 If the court does not make a particular order then the default (automatic) disqualification period would apply. However, the court would have the discretion to reduce the disqualification period to the minimum timeframe set out in the legislation or increase the period – there is no ceiling on what the maximum period could be.[232]

6.29 The NSW Government explained that automatic and minimum disqualification periods would enable the courts to determine an appropriate disqualification period depending on the seriousness of the offence:

> This would allow courts to let the automatic/default penalty apply where appropriate, but also to impose a higher penalty where the seriousness of the offending warrants it, or a lower penalty where appropriate (but not below a specified statutory minimum). For those drivers with a record of dangerous driving, this would allow courts to impose a longer disqualification period where appropriate. For those drivers who have lost their licence because they have not paid fines but nevertheless, for example, drive their children to school, the courts would be able to impose a penalty proportionate to the seriousness of the offence (although not below the statutory minimum).[233]

6.30 Transport for NSW and Roads and Maritime Services provided the Committee with a case study of how automatic and minimum penalties operate for the offence of driving with middle range concentration of alcohol (a drink driving offence):

> This offence carries an automatic disqualification period of 12 months and has a minimum disqualification period of six months. If the court simply convicts the

[230] Submission 25, NSW Government, pp4, 12.
[231] Submission 25, NSW Government, pp12-13.
[232] Submission 25, NSW Government, pp12-13.
[233] Submission 25, NSW Government, p13.

> person and makes no order, the 12 month period applies. If the court thinks that a reduced disqualification period is appropriate, it can order a period as low as six months (the minimum allowed under the law). Alternatively, the court can order any longer period, including disqualification for life.[234]

Stakeholder support for automatic and minimum disqualification periods

6.31 There was support from a number of inquiry participants for mandatory disqualification periods associated with unauthorised driving offences to be replaced with automatic and minimum disqualification periods.[235]

6.32 The Mid North Coast Community Legal Centre described the current regime of mandatory disqualification periods as 'oppressive'[236] and Kingsford Legal Centre referred to the NSW Sentencing Council's 2007 survey of NSW magistrates which found that 93 per cent of respondents believed that mandatory disqualification was never or rarely appropriate.[237]

6.33 Legal Aid NSW spoke of the potential benefits of implementing a new system of automatic and minimum disqualification periods:

> Providing for automatic (and minimum) periods rather than mandatory periods would give the court the opportunity to formulate a sentence that appropriately reflects the objective seriousness of the offence, as well as the offender's prior traffic history, while also taking into account other factors such as the offender's work and family commitments and the availability of transport.[238]

6.34 The NSW Young Lawyers Criminal Law Committee made similar comments but noted that the difference between the available penalties would need to be large enough to provide magistrates with appropriate discretion in individual cases.[239]

Proportionality in sentencing

6.35 A number of inquiry participants raised concerns that the length of the current mandatory disqualification periods for unauthorised driving offences are disproportionate to the seriousness of these offences.

6.36 Several stakeholders highlighted that the disqualification period for those caught driving while disqualified for a second time is the same as the disqualification period for a second high range drink driving offence (also known as high range

[234] Transport for NSW and Roads and Maritime Services, Answers to supplementary questions, 18 September 2013, p3.

[235] See for example, Submission 17, Mid North Coast Community Legal Centre, p1; Submission 10, NSW Young Lawyers Criminal Law Committee, p5; Submission 19, The Law Society of NSW Criminal Law Committee, p3; The Chief Magistrate of the Local Court, p5; Submission 14, The Shopfront Youth Legal Centre, p7; Submission 23, Legal Aid NSW, p 4.

[236] Submission 17, Mid North Coast Community Legal Centre, p1.

[237] See NSW Sentencing Council, *Judicial perceptions of fines as a sentencing option – A survey of NSW magistrates,* 2007, p49, referred to in Submission 12, Kingsford Legal Centre, p3.

[238] Submission 23, Legal Aid NSW, p4.

[239] Submission 10, NSW Young Lawyers Criminal Law Committee, p5.

PCA (prescribed concentration of alcohol)).[240] The NSW Government explained this inconsistency to the Committee:

> The current penalties for the unauthorised driving offences can produce anomalous results. A person who is caught driving while disqualified for the second time will have a further mandatory two year disqualification imposed. This is the same period as can be imposed for a second high range PCA offence, and it is greater than the minimum period for a second mid range PCA offence. Unlike PCA and speeding offences, unauthorised driving offences do not involve an inherent risk to public safety.[241]

6.37 Similarly, Magistrate Clare Farnan also argued that the automatic three year disqualification for those convicted of a second offence of driving while never having held a licence is disproportionate to the seriousness of the offence:

> These offences are frequently committed by people who are very young. Offenders can be dealt with in the Local Court for this offence from age 16. A 3 year disqualification at a young age, for an offender who was usually not driving drunk, or dangerously, has the appearance of disproportionality with disqualification penalties for those offences. Three years is a very long time for an 18 year old. By contrast, an offence of dangerous driving also has an automatic disqualification of three years, but that can be reduced by a court to one year. No discretion exists for the second "never licensed" offence.[242]

6.38 The Law Society of NSW Criminal Law Committee noted that giving courts discretion when imposing disqualification periods for unauthorised driving offences would bring the penalties more in line with what applies presently to disqualification periods for other offences such as drink driving matters.[243]

6.39 Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, suggested that there should be a distinction between disqualification periods based on whether or not an offence poses a risk to community safety:

> There needs to be a real distinction between someone who becomes disqualified for committing a public safety offence, such as drink-driving, and someone who becomes disqualified because they have never been able to obtain a licence or because they drove when their licence was suspended because of fine default.[244]

6.40 Several other stakeholders echoed Ms Graham's comments.[245] In particular, the NSW Legal Assistance Forum explained that proportionality in sentencing requires that the severity of the sanction matches the harm caused by the offence. The Forum agreed with other stakeholders who suggested that

[240] Submission 10, NSW Young Lawyers Criminal Law Committee, p5; Submission 5, NSW Legal Assistance Forum, p10; Submission 25, NSW Government, p12.

[241] Submission 25, NSW Government, p12.

[242] Submission 21, Ms Clare Farnan, pp1-2.

[243] Submission 19, Law Society of NSW Criminal Law Committee, p3.

[244] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p21.

[245] See for example, Submission 8, Douglass and Ford Criminal Law, p1.

unauthorised driving offences should not be treated as harshly as high range drink driving offences.[246]

6.41 The Law Society of NSW Criminal Law Committee also noted that there are discrepancies within the unauthorised driving offences themselves and the disqualification periods imposed for each of these offences. That Committee suggested that driving while disqualified should be treated more seriously than driving while cancelled and driving while suspended.[247] Mr Brett Thomas, Deputy Chair, The Law Society of NSW, explained that driving while disqualified is more serious because offenders are in direct contravention of a court order.[248]

6.42 The Law Society of NSW Criminal Law Committee provided a table detailing what it considers would be appropriate disqualification periods for unauthorised driving offences. A copy of this table can be found in Appendix Four of this report.

Some alternative options

6.43 Several stakeholders suggested alternatives to introducing automatic and minimum disqualification periods for unauthorised driving offences.

6.44 For example, the submission from Douglass and Ford Criminal Law suggested that disqualification periods should be included as part of the penalty for the offence, rather than focusing on automatic periods of disqualification.[249]

6.45 The Chief Magistrate of the Local Court also suggested the following alternatives:

(a) including unauthorised driving offences within the existing general provision conferring the discretion to disqualify

(b) introducing good behaviour licences, or

(c) making the basis for any disqualification period dependent on the offender's risk to public safety.[250]

Committee comment

6.46 The Committee considers that courts should be given more discretion to determine appropriate disqualification periods, having regard to the offender's individual circumstances and public safety.

6.47 In the Committee's view, mandatory disqualification periods do not achieve this. Mandatory disqualification periods result in a 'one-size-fits-all' approach to sentencing which does not appropriately differentiate between low level offenders and offenders who should receive a longer disqualification period

[246] Submission 5, NSW Legal Assistance Forum, p10.
[247] Submission 19, The Law Society of NSW Criminal Law Committee, p3.
[248] Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, p5.
[249] Submission 8, Douglass and Ford Criminal Law, p1.
[250] Submission 13, The Chief Magistrate of the Local Court, p5.

because they may have committed other, more serious offences and may pose a risk to community safety.

6.48 The Committee notes that other road traffic offences, such as certain drink driving and speeding offences, already have automatic and minimum disqualification periods. The Committee considers that mandatory disqualification periods should be removed for unauthorised driving offences and replaced with automatic and minimum disqualification periods. In the Committee's view, this reform will ensure that offenders are given disqualification periods that are better tailored to their circumstances while balancing any risks to public safety.

6.49 The Committee also notes stakeholder concerns that the existing mandatory disqualification periods for unauthorised driving offences are disproportionate when compared with the disqualification periods for some other offences that pose a higher risk to community safety, such as high range drink driving offences.

6.50 The Committee considers that driving while disqualified should be treated as more serious than driving while licence suspended or cancelled (whether or not for fine default) and driving while never having been licensed, because the offender will have contravened a court order.

RECOMMENDATION 8

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to remove the mandatory licence disqualification periods for unauthorised driving offences and replace them with automatic and minimum licence disqualification periods which include:

- **a minimum disqualification period**
- **a default disqualification period that would apply unless the court selected another period of time, and**
- **no maximum period.**

RECOMMENDATION 9

The Committee recommends that the NSW Government ensure that, when prescribing minimum and default (automatic) disqualification periods, driving while disqualified is treated as more serious than driving while licence suspended or cancelled (whether or not for fine default), and driving while never having been licensed.

DISQUALIFICATION PERIODS COMMENCING FROM THE DATE OF CONVICTION

6.51 In Chapter Two, the Committee explained that disqualification periods for unauthorised driving offences are cumulative and cannot be served concurrently.

This means that an offender needs to serve any existing disqualification periods before the next disqualification period commences.[251]

6.52 The NSW Government explained that disqualification periods for some other offences are treated differently. The Government said that court-imposed disqualifications for major road transport offences run from the date of conviction and are not cumulative; they can be served concurrently.[252] Examples of major road transport offences include murder and manslaughter involving a vehicle, negligent driving where death or grievous bodily harm is occasioned, driving recklessly and certain driving offences involving alcohol and drugs.[253]

6.53 Although major road transport offences ordinarily run from the date of conviction, the *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013*, which has not yet commenced, proposes an exception to this default position.

6.54 That Act will amend the *Road Transport Act 2013* so that an offender who has been convicted of certain serious road transport offence (such as the major road transport offences referred to earlier in this section) and who has received a term of imprisonment and a licence disqualification will not be able to serve their sentences concurrently. [254] The offender will serve their prison sentence first. The licence disqualification period will be extended so that the offender will serve it after they are released from prison. However, the court will have the discretion to order that the disqualification period not be extended, if it is appropriate to do so in the particular circumstances of the case.[255]

6.55 The Committee received support from stakeholders for disqualification periods for unauthorised driving offences to run from the date of conviction.[256]

6.56 For example, the NSW Young Lawyers Criminal Law Committee supports allowing disqualification period for unauthorised driving offences to commence on the date of conviction. However, they raised concerns that permitting the court to make an alternative order would require a substantial re-working of the law around disqualification periods generally.[257]

6.57 Kingsford Legal Centre also considers that licence disqualification periods should run from the date of conviction. They said that requiring people to serve their licence disqualification period after finishing a custodial sentence severely inhibits their ability to reintegrate into the community and increases their risk of re-offending and having further interaction with the criminal justice system.[258]

[251] Submission 25, NSW Government, p13.

[252] Submission 25, NSW Government, p13.

[253] *Road Transport Act 2013*, section 4.

[254] See *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013*.

[255] See *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013*.

[256] See for example Submission 17, Mid North Coast Community Legal Centre, pp1-2; Submission 10, NSW Young Lawyers Criminal Law Committee, pp5-6; Submission 19, The Law Society of NSW Criminal Law Committee, p4; Submission 23, Legal Aid NSW, p4; Submission 12, Kingsford Legal Centre, pp3-4.

[257] Submission 10, NSW Young Lawyers Criminal Law Committee, p6.

[258] Submission 12, Kingsford Legal Centre, pp3-4.

6.58 However, other stakeholders, including The Law Society of NSW Criminal Law Committee, said that there needs to be scope for the court to make a different order in certain circumstances:

> There may need to be some recognition of the fact that Driving Whilst Disqualified is in direct contravention of a Court Order and in certain circumstances the disqualification period imposed should be cumulative on the disqualification that created the offence.[259]

6.59 Legal Aid NSW also considered that requiring disqualification periods to run from the date of conviction unless otherwise ordered is fairer and would provide more certainty for offenders:

> Legal Aid NSW supports disqualification periods running from the date of conviction unless otherwise ordered by the Court. This would not only create more certainty in relation to the length of disqualification periods, but would allow the Court to consider the totality of the offender's conduct and the punishments imposed, ensuring that the disqualification period is proportionate, just and appropriate in all of the circumstances of the case.[260]

Committee comment

6.60 The Committee notes that court-imposed disqualification periods for major road traffic offences generally run from the date of conviction and can be served concurrently. The Committee considers that disqualification periods for unauthorised driving offences should commence from the date of conviction as the default position.

6.61 In Chapter Three of this report, the Committee highlighted some of the impacts of long disqualification periods on offenders and their families. In the Committee's view, allowing disqualification periods to run from the date of conviction will ensure that offenders do not receive crippling disqualification periods that severely impact on their lives for lengthy periods of time.

6.62 In the Committee's view, unauthorised driving offences should not be included in the reforms proposed by the *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013*, which provide that offenders who have received a term of imprisonment for certain road traffic offences will serve their disqualification after serving their prison term. The Committee prefers that the courts have the discretion to make such an order, if the circumstances warrant this, for example, if someone is a serial offender who has committed a number of serious road traffic offences.

RECOMMENDATION 10

The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to provide that licence disqualification periods for unauthorised driving offences run from the date of conviction unless otherwise ordered by the court.

[259] Submission 19, The Law Society of NSW Criminal Law Committee, p4.

[260] Submission 23, Legal Aid NSW, p4.

Chapter Seven – Revising the maximum penalties

7.1 In Chapter Six of this report, the Committee recommended that the NSW Government remove mandatory disqualification periods for unauthorised driving offences and replace them with automatic and minimum disqualification periods.

7.2 In addition to disqualification periods, unauthorised driving offences also attract penalties of fines and/or imprisonment. This chapter considers whether these penalties should also be revised.

STAKEHOLDER CONCERNS ABOUT CURRENT PENALTIES

7.3 Chapter Two of this report details the current maximum fines and imprisonment terms for each of the unauthorised driving offences. There was support from various stakeholders for the NSW Government to revise the maximum penalties for these offences.[261]

7.4 The main concerns raised by stakeholders were that the penalties are not proportionate to the seriousness of the offences and that imprisonment may not be an appropriate penalty for these offences. Some inquiry participants were particularly concerned about individuals who have received licence sanctions for fine default and who continue to commit unauthorised driving offences until they reach a point where the court imposes a prison sentence. Stakeholder views on these issues are discussed in further detail below.

Proportionality

7.5 Several inquiry participants raised concerns that the current maximum fines and imprisonment terms for unauthorised driving offences are disproportionate to the seriousness of these offences.[262]

7.6 The Chief Magistrate of the Local Court supports revising the maximum penalties and explained that the offence of driving while never having been licensed has higher penalties than certain offences that involve an inherent risk to community safety, including drink driving and negligent driving offences such as:

> The offence of driving while never having been licensed is especially anomalous. It presently carries a maximum penalty of $2,200 for a first offence, or $3,300 or imprisonment for a period of 18 months (or both) for a second or subsequent offence. This is equal to or higher than some other driving offences that by their nature involve a risk to public safety or the causing of injury to another person, such as:

[261] See for example, Submission 5, NSW Legal Assistance Forum, p13; Submission 13, The Chief Magistrate of the Local Court, p6; Submission 14, The Shopfront Youth Legal Centre, p10; Submission 19, Law Society of NSW Criminal Law Committee, pp4-5; Submission 23, Legal Aid NSW, p4.

[262] See for example, Submission 14, The Shopfront Youth Legal Centre, p10; Submission 19, Law Society of NSW Criminal Law Committee, pp4-5.

- Driving with a mid-range PCA [prescribed concentration of alcohol]
- Negligent driving occasioning grievous bodily harm
- Driving furiously, recklessly or in a manner dangerous to the public.

> These offences each carry maximum penalties of $2,200 or imprisonment for 9 months (or both) for a first offence and $3,300 or imprisonment for 12 months (or both) for a second or subsequent offence. In the case of a second or subsequent offence, the maximum sentence of imprisonment of 12 months is less than the 18 months available in the case of a second or subsequent offence of driving while never having been licensed.[263]

7.7 Other participants, including Legal Aid NSW and the NSW Government, raised similar concerns.[264] In particular, Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, provided another example of the anomalies between the maximum prison terms for unauthorised driving offences and drink driving offences:

> For example, driving whilst disqualified, suspended or cancelled for the first offence can accrue an 18 month sentence, and the maximum sentence for driving whilst disqualified, suspended or cancelled for the second or subsequent offence is two years. That is the same maximum sentence for a high-range prescribed concentration of alcohol. So you have got this kind of issue of proportionality. This could be quite a nice opportunity to have a look at some of the maximum sentences and look at where is the culpability.[265]

7.8 The NSW Law Reform Commission, in its recent report, *Sentencing,* also noted that the current penalties for unauthorised driving offences can have a disproportionate impact on certain sectors of the community:

> For a number of people repeat offending, and in particular offending that involves driving while disqualified or unlicensed, will result in a term of imprisonment that may be disproportionate to the objective criminality involved. On the other hand, serious driving offences particularly those that are alcohol and drug related, or that involve dangerous driving, driving at excessive speeds, or engaging in high risk activities such as police pursuits or drag races (particularly where death or bodily injury is occasioned to others), deserve significant sanctions that may properly include imprisonment and driver licence disqualification.[266]

7.9 The Law Society of NSW Criminal Law Committee's submission to this inquiry contains a table with proposed maximum fines and terms of imprisonment for unauthorised driving offences. A copy of this table can be found in Appendix Four of this report. The Law Society of NSW Criminal Law Committee suggested that driving while disqualified should be treated more seriously than driving while

[263] Submission 13, The Chief Magistrate of the Local Court, p6.

[264] See for example, Submission 23, Legal Aid NSW, p4; Submission 25, NSW Government, pp14-15.

[265] Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW, Transcript of evidence, 30 August 2013, p26.

[266] NSW Law Reform Commission, *Sentencing*, report 139, July 2013, p412.

suspended or cancelled, because offenders who drive while disqualified are in breach of a court order.[267]

7.10 The NSW Government highlighted that where an unauthorised driver also engages in dangerous driving behaviour, such as drink driving, the imprisonment penalties for those dangerous driving offences will also apply in the circumstances.[268]

Imprisonment for unauthorised driving offences

7.11 Several inquiry participants were concerned about unauthorised driving offences attracting a penalty of imprisonment. The Shopfront Youth Legal Centre is particularly concerned about the number of people, particularly Aboriginal people, sentenced to terms of imprisonment for driving while disqualified:

> Although the *Crimes (Sentencing Procedure) Act* already contains a provision to the effect that imprisonment must be a last resort, far too many people continue to be imprisoned for unauthorised driving offences.
>
> We submit that the penalties of imprisonment should still be available for substantive driving offences (such as mid- and high-range drink driving, driving in a manner dangerous to the public, or driving dangerously while avoiding a police pursuit). However, we are of the view that imprisonment is generally unwarranted for offences relating to licence status.[269]

7.12 Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, explained that data held by the Service indicated that in the Dubbo region, 50 per cent of their clients were sentenced to a term of imprisonment for driving while disqualified:

> In the experience of our lawyers, Aboriginal people are generally receiving a term of imprisonment on their second to fourth offence for drive whilst disqualified. The Aboriginal Legal Service [ALS] is very concerned about the role that the traffic regime plays in the over-representation of Aboriginal people in our jails and in our juvenile detention centres.[270]

7.13 Similar concerns about the number of Aboriginal people being imprisoned for unauthorised driving offences were raised by the NSW Sentencing Council in its 2006 report, *The effectiveness of fines as a sentencing option: court-imposed fines and penalty notices: interim report*.[271]

[267] Submission 19, Law Society of NSW Criminal Law Committee, p3; Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, p5.
[268] Submission 25, NSW Government, p14.
[269] Submission 14, The Shopfront Youth Legal Centre, p10.
[270] Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, Transcript of evidence, 30 August 2013, p16.
[271] NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court-imposed fines and penalty notices: interim report*, October 2006, p155.

7.14 Of the top twenty offences dealt with in the Local Courts in 2010, the offence of driving while disqualified had the highest rate of offenders receiving a term of imprisonment as part of their sentence. [272]

Imprisonment for unauthorised driving offences stemming from fine default

7.15 At the public hearing for this inquiry, witnesses from NSW government agencies explained that every Australian jurisdiction has now moved to a system of licence restrictions for fine default as it has been an effective mechanism for encouraging people to pay their fines. Mr Edward Ramsay, Manager Driver Sanctions, Policy and Regulation Division, Transport for NSW, estimated that, in NSW, around 80 per cent of people pay their fine to avoid suspension of their licence or registration.[273]

7.16 However, several inquiry participants, including Ms Judith Levitan, Project Manager, NSW Legal Assistance Forum, raised concerns about individuals who have received licence sanctions for fine default and who continue to commit unauthorised driving offences until they are eventually sentenced to imprisonment[274]:

> While there is no outright incarceration for fine default, it happens de facto when people are suspended for fine defaulting and then have a series of disqualifications and end up being incarcerated.[275]

7.17 This issue has also been noted by the NSW Sentencing Council and the NSW Law Reform Commission.[276] In particular, the NSW Law Reform Commission raised concerns over the number of people who are imprisoned as a result of secondary offending arising from licence suspension or cancellation due to fine default.[277] The Commission explained how individuals end up in the cycle of offending:

> Stakeholders pointed out that although we no longer imprison people in NSW for non-payment of fines, the application of licence sanctions has the effect that some fine defaulters are incarcerated for secondary offending. People who rely on being able to drive in order to work or to access essential services may drive unlicensed. If they are apprehended they may be disqualified. If they then drive while disqualified and are apprehended they may be imprisoned, especially if they offend more than once. This process was referred to in consultations as the 'slippery slope'. People

[272] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, 30 August 2013, p29.

[273] Ms Maureen Tangney, Assistant Director General, Justice Policy and Legal, Department of Attorney General and Justice, Transcript of evidence, 30 August 2013, pp36-37; Mr Edward Ramsay, Manager Driver Sanctions, Policy and Regulation Division, Transport for NSW, Transcript of evidence, 30 August 2013, p36.

[274] See for example, Submission 5, NSW Legal Assistance Forum, p10; Submission 8, Douglass and Ford Criminal Law, p2; Mr Greg Elks, Member, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, p8; Ms Judith Levitan, Project Manager, NSW Legal Assistance Forum, Transcript of evidence, 30 August 2013, p13.

[275] Ms Judith Levitan, Project Manager, NSW Legal Assistance Forum, Transcript of evidence, 30 August 2013, p13.

[276] NSW Sentencing Council, *The effectiveness of fines as a sentencing option: court-imposed fines and penalty notices: interim report*, October 2006, p154; NSW Law Reform Commission, *Penalty notices*, report 132, February 2012, p232.

[277] NSW Law Reform Commission, *Penalty notices*, report 132, February 2012, p235.

> who commit relatively trivial penalty notice offences for which they do not pay the penalty may thus be ultimately incarcerated.[278]

7.18 Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW, explained that, at some point, once someone has been on the 'merry-go-round' of offending for long enough, magistrates will look to imprisonment as a punishment:

> Eventually for repeat offenders it would get to a point where a magistrate – not every magistrate – will simply say, "We have tried everything else. It is now at the point where I have got to send you to jail." That will not take six months, it will probably take longer than that, but ultimately that is what will happen.[279]

7.19 Mr Greg Elks, Member, Criminal Law Committee, Law Society of NSW, also spoke about his client who is disqualified until 2025 as a result of disqualifications stemming from fine default. Mr Elks' client drove while disqualified on five occasions and, on the last occasion, was sentenced to imprisonment for three months.[280]

7.20 Mr Graeme Smith also expressed the view that the consequences of licence suspension for fine default are not proportionate to the seriousness of the offence.[281]

7.21 The NSW Legal Assistance Forum provided the Committee with a case study of their client, 'BM'. This case study illustrates someone who has had their licence suspended or cancelled for fine default but has continued to commit unauthorised driving offences, eventually leading to a prison sentence. This case study is extracted in full below.[282]

Case study: 'BM'

7.22 "BM is a client of the HPLS [Homeless Persons' Legal Service] who lives in a bus situated on a property (not belonging to him) in Sydney's southern suburbs. BM has been homeless for a number of years.

7.23 BM commenced driving over 30 years ago and had obtained a licence in the late 1970s. In 1981, he lost his licence because of non-payment of fines, which were considerable and which he was unable to pay. He subsequently drove whilst his licence was cancelled and was disqualified. From that point, the client's situation snowballed with further traffic offending resulting in bonds, community service orders and eventually prison.

7.24 BM approached the HPLS Solicitor Advocate after having been charged with drive whilst disqualified. BM had a poor traffic record and the drive whilst disqualified charge for which the HPLS provided representation was his ninth drive whilst

[278] NSW Law Reform Commission, *Penalty notices,* report 132, February 2012, p232.

[279] Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, pp7-8.

[280] Mr Greg Elks, Member, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, p8.

[281] Submission 11, Mr Graeme Smith, p4.

[282] Submission 5, NSW Legal Assistance Forum, p11.

disqualified charge. At the time of the offence, BM was under a habitual traffic offender declaration. This was imposed on top of a two-year period of disqualification ordered in the District Court of NSW following a severity appeal from a sentence of imprisonment and disqualification at Newtown Local Court for a charge of drive whilst disqualified.

7.25 The genesis of the problem for BM was a result of his initial inability to pay fines for which his licence was cancelled."[283]

SUPPORT FOR KEEPING CURRENT PENALTIES

7.26 While a number of stakeholders raised concerns about the current penalties for unauthorised driving offences, other stakeholders suggested that the current penalties should remain.

7.27 For example, one participant explained that, in their experience, the maximum penalties are rarely imposed, only for serial offenders:

> I have yet to see 20 penalty units given to an offending driver for any offence other than one disqualified driver and only then was it after multiple disqualified driving offences. Even then, the number of times it is given are few and far between. The terms of imprisonment, in my experience, are also rarely given. They are not never given but rarely and in circumstances where the offender has had multiple disqualified driving offences and who continues to drive.[284]

7.28 The NSW Young Lawyers Criminal Law Committee also said that it did not support any amendment to the maximum penalties for unauthorised driving offences:

> Any implementation of an automatic and minimum scheme should observe the present disqualification periods (and terms of imprisonment) as the ceiling of condign punishment. The Committee concedes that pecuniary penalties should be adjusted with inflation, but that is accounted for by the usual inflationary adjustment of penalty units.[285]

Committee comment

7.29 Stakeholders have emphasised that certain offences which pose a high risk to community safety, such as drink driving and negligent driving, have the same, or lower, penalties than some unauthorised driving offences.

7.30 The Committee also notes that driving while disqualified currently carries the same penalties as driving while licence suspended or cancelled. However, in the Committee's view, driving while disqualified should be treated as more serious, as the offender will be in breach of a court order.

7.31 The Committee recommends that the penalties for unauthorised driving offences be reviewed and that driving while disqualified should be treated as more serious than driving while licence suspended or cancelled (whether or not for fine default), and driving while never having been licensed.

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[283] Case study extracted from submission 5, NSW Legal Assistance Forum, p11.

[284] Submission 7, Name suppressed, p6.

[285] Submission 10, NSW Young Lawyers Criminal Law Committee, p6.

7.32 The Committee notes concerns from inquiry participants about imprisonment as a penalty for unauthorised driving offences. While the Committee considers that the penalties for unauthorised driving offences should be reviewed, the Committee does not consider that imprisonment should be entirely removed as a possible penalty for these offences at this point in time.

RECOMMENDATION 11

The Committee recommends that the NSW Government review the maximum penalties (fines and terms of imprisonment) for unauthorised driving offences.

RECOMMENDATION 12

The Committee recommends that the NSW Government ensure that, when reviewing the maximum penalties, driving while disqualified is treated as more serious than driving while licence suspended or cancelled (whether or not for fine default) and driving while never having been licensed.

Chapter Eight – Vehicle sanctions

8.1 This chapter will provide details of the current framework for using vehicle sanctions in NSW, their purpose, and how they are administered. It will also consider stakeholders' views on whether vehicle sanctions should be introduced for offenders who repeatedly drive while disqualified and the circumstances in which they could be used.

CURRENT USE OF VEHICLE SANCTIONS IN NSW

8.2 Vehicle sanctions currently used in NSW include the confiscation of number plates or the confiscation of vehicles themselves. Vehicle sanctions can be imposed in two ways:

- sanctions imposed immediately at the roadside by police; and
- sanctions imposed as part of a court sentence.[286]

8.3 At present, Police can seize number plates or confiscate the cars of people who commit the following offences:

- police pursuits under section 51B of the *Crimes Act 1900*;
- a high range speeding offences (which section 237 of the *Road Transport Act 2013* defines as speeding by more than 45kmph); and
- speed and drag racing (hoon offences) under sections 115 and 116(2) of the *Road Transport Act 2013*.[287]

8.4 Vehicle sanctions cannot be imposed for drink driving offences, or for speeding offences of less than 45kmph over the speed limit.[288]

8.5 Number plates and cars may be confiscated for three months. After five days, an application may be made to the court for plates or cars to be returned.[289] Under section 249(3)(b) of the *Road Transport Act 2013,* the Local Court may consider any 'extreme hardship' a third party may be suffering as a consequence of the vehicle sanction.[290] This does not apply to the alleged offender.

8.6 While the Act does not define 'extreme hardship', according to the NSW Government, the term may include hardship suffered by family members who depend on having access to the vehicle and who may experience significant

[286] Submission 25, NSW Government, p15.
[287] *Road Transport Act* 2013, sections 237 and 238.
[288] Submission 25, NSW Government, p15.
[289] Submission 25, NSW Government, p15.
[290] *Road Transport Act 2013*, section 249(3)(b).

difficulties such as maintaining their access to employment and education, particularly those who may be living in regional and remote communities.[291]

8.7 Additional action can be taken if someone is later found guilty of a second dangerous offence as specified above. That is, an offender's car may be forfeited by order of the court. As when confiscating number plates or cars for a fixed three month period, an individual may avoid forfeiture only if they are able to demonstrate that forfeiture would create 'extreme hardship'.[292] 'Extreme hardship' may be experienced by the offender or a third party.

8.8 In this circumstance, 'extreme hardship' in the forfeiture provisions in the *Road Transport Act 2013* excludes 'financial loss or difficulty in carrying out employment (whether paid or unpaid) or travelling to a place of employment or business or to any place for the purposes of education, training, or study.'[293]

8.9 Confiscation of number plates or the car will not take place if the offender was not the owner of the car. Rather, RMS may suspend the registration of the vehicle on a second offence, after sending the owner a warning notice for a first offence. [294]

8.10 Registration may be suspended for three months if RMS is satisfied on the balance of probabilities that the owner has failed to prevent repeated offences. The owner is given the opportunity to argue why registration should not be suspended and may appeal a decision to suspend to the court.[295]

STAKEHOLDER CONCERNS ABOUT VEHICLE SANCTIONS

8.11 The Committee received evidence from a number of stakeholders outlining the reservations they may have about using vehicle sanctions for unauthorised driving offences.[296]

8.12 As previously mentioned, unauthorised drivers do not always carry a risk to public safety. Currently, the discretion by Police to issue an immediate sanction is justified on the grounds that the offending behaviour (that of engaging in police pursuits, speeding by more than 45kmph and hoon offences) constitutes a threat to public safety as it is inherently dangerous. Stakeholders have voiced their reservations about implementing vehicle sanctions for unauthorised driving on the basis that imposing such a sanction cannot be justified on the grounds of public safety. For example, the NSW Legal Assistance Forum advocated this position:

> ...the state should not be able to impose punitive measures, such as vehicle sanctions, without a court finding of guilt if there is no inherent risk to public safety

[291] Submission 25, NSW Government, p15.
[292] Submission 25, NSW Government, p15.
[293] *Road Transport Act 2013*, section 246(2).
[294] Submission 25, NSW Government, p16.
[295] Submission 25, NSW Government, p16.
[296] See for example, Submission 5, NSW Legal Assistance Forum, p13; Submission 13, The Chief Magistrate of the Local Court, p6; Submission 14, The Shopfront Youth Legal Centre, p11; Submission 19, Law Society of NSW Criminal Law Committee, p5.

> (especially where there is potential for the sanctions to have significant damaging consequences on an individual, their family and community).[297]

8.13 The Chief Magistrate of the Local Court reiterated this position particularly strongly:

> This reform is not supported. I have some concern as to the suitability of vehicle sanctions for unauthorised driving offences insofar as they are presently only directed at repeat offending in respect of a limited number of offences where the issue of risk to public safety features strongly, such a police pursuits, so called 'car hoon' offences, and exceeding the speed limit by more than 45kmh.[298]

8.14 Particular concerns, which are discussed further below, included the impacts on people living in rural, regional and remote areas of NSW and third parties who own the vehicle, use the vehicle or otherwise rely on it. If vehicle sanctions are introduced for unauthorised driving offences, stakeholders also preferred that they be imposed at the discretion of the courts, not the police.

Regional, rural and remote areas of NSW

8.15 Several participants voiced their concerns regarding the impact any vehicle sanctions for unauthorised driving offences would have on disadvantaged people in regional, rural and remote areas of NSW, particularly remote Aboriginal communities.[299]

8.16 For example, the NSW Legal Assistance Forum argued that vehicle sanctions would only further exacerbate the disadvantage experienced through the current operation of the driver licence regime.[300] According to the Forum, imposing vehicle sanctions on disadvantaged people living in remote areas would further exclude them from participating in society, rather than empowering them to participate in a lawful way.[301]

8.17 As Chapter Three of this report has demonstrated, the Committee heard from a number of participants on the difficulties those from disadvantaged communities in regional areas have in obtaining their licence in the first instance. In relation to vehicle sanctions for unauthorised driving offences, it has also been argued that it would become even more difficult for drivers to obtain their licence as vehicle sanctions would disproportionately affect communities in rural, regional and remote areas where there are a high proportion of disqualified drivers.[302]

8.18 Furthermore, evidence has suggested that Aboriginal communities would be particularly affected by any imposition of vehicle sanctions as unlicensed driving is prevalent in Aboriginal communities in regional areas of NSW. As a result, there are often only a few members of these communities who own a car or are

[297] Submission 5, NSW Legal Assistance Forum, p13.

[298] Submission 13, The Chief Magistrate of the Local Court, p6.

[299] See for example, Submission 25, NSW Government, p16; NSW Legal Assistance Forum, Responses to supplementary questions, 24 September 2013, p1; Associate Professor Teresa Senserrick, Responses to supplementary questions, 16 September 2013, p2.

[300] NSW Legal Assistance Forum, Responses to supplementary questions, 24 September 2013, p1.

[301] NSW Legal Assistance Forum, Responses to supplementary questions, 24 September 2013, p1.

[302] Submission 5, NSW Legal Assistance Forum, p14.

licensed to drive. Consequently, these people often shoulder the responsibility for transport needs for the community. In these communities, vehicle sanctions would have a punitive effect not only on the driver of a vehicle, but also on their family, friends and associates who use the vehicle or rely on it.[303]

8.19 In response to the Committee's supplementary question about whether Associate Professor Senserrick would support the use of vehicle sanctions if there were parameters around their use, she spoke of the potential impact on disadvantaged communities and third parties:

> In remote communities especially, a single vehicle might service multiple extended family or community members and confiscation could limit access to employment or basic needs such as food outlets and health services. Therefore, the ability of those accessing a shared vehicle to other transport options, not just the offender, also needs consideration.[304]

8.20 The possible impact of vehicle sanctions on third parties referred to by Associate Professor Senserrick is discussed in greater detail in the section to follow.

The effect of vehicle sanctions on third parties

8.21 In addition to the negative impacts vehicle sanctions may have on disadvantaged communities in regional areas, the Committee also received evidence regarding the impact on third parties. For example, the Shopfront Youth Legal Centre considers that imposing vehicle sanctions for unauthorised driving offences would produce an unjustifiable hardship on third parties.[305] That is, while the confiscation of a vehicle may be appropriate for those who repeatedly drive while disqualified, it may pose exceptional difficulties for others who have an interest in that vehicle.[306]

8.22 This argument was also supported by Legal Aid NSW, and by Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW, who said:

> As I think other submissions have highlighted, our concern about that sort of vehicle sanction – and my understanding of why it has never really been brought in – is that, while it is all well and good to talk about people who have committed serious driving offences having their car taken off them, the consequences for others can be huge. The vehicle driven by the offender might not even be their own, because in a lot of cases they do not own their own vehicle. That is why we think that if this measure were to be implemented then it would have to be tempered in some way.[307]

8.23 In discussing the options for introducing vehicle sanctions for unauthorised driving offences, Assistant Commissioner John Hartley, Traffic and Highway Patrol Commander, NSW Police, also commented on the impact on third parties:

[303] Submission 5, NSW Legal Assistance Forum, p14.

[304] Associate Professor Teresa Senserrick, Responses to supplementary questions, 16 September 2013, p2.

[305] Submission 14, The Shopfront Youth Legal Centre, p11.

[306] Submission 19, The Law Society of NSW Criminal Law Committee, p5.

[307] Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW, Transcript of evidence, 30 August 2013, p10.

> …But in the main it probably creates the other social problems again. If it is the owner's car or the driver's car, that may have a deterrent effect, but if it is not then we have the whole issue again about who loses out. [308]

Role of the courts

8.24 A number of inquiry participants argued that if vehicle sanctions are introduced for unauthorised driving offences, they should be imposed at the discretion of the courts, not by police officers. For example the Public Interest Advocacy Centre raised concerns about a higher risk of offenders not receiving procedural fairness if the police could issue roadside vehicle sanctions for these offences.[309]

8.25 Should any reform in this area take place, the Centre argues for the courts to be provided with any additional power as they are better equipped to take into account the relevant circumstances of the case when imposing sanctions.[310]

8.26 Professor Rebecca Ivers also argued against mandatory vehicle sanctions, particularly due to the impacts that such a regime may have on Aboriginal communities:

> We also recommend when looking particularly at Aboriginal communities not introducing mandatory vehicle sanctions for repeat offenders because of the consequences, or at least making sure that magistrates have discretion around those things. Not having mandatory minimum punishments in that context I think is important, particularly for Aboriginal communities or communities where people have very limited access to private cars. If there are mandatory vehicle sanctions you may in fact end up disadvantaging many more people than you would expect.[311]

8.27 While the NSW Legal Assistance Forum was generally not supportive of imposing vehicle sanctions for unauthorised driving offences, the Forum acknowledged that there may be a limited role for court-imposed vehicle sanctions in appropriate cases and that vehicle sanctions may be more appropriate than mandatory licence disqualification.[312] Legal Aid NSW also acknowledged that there may be a limited role for court imposed vehicle sanctions for offenders who repeatedly drive while disqualified.[313]

8.28 The NSW Legal Assistance Forum said that if the court were empowered to impose vehicle sanctions, then the court should have to take into account the following factors before imposing the sanction:

- Whether the offence was one that posed a serious risk to public safety;
- The availability of alternative transport (including public transport or social support networks that can provide alternate transport);

[308] Assistant Commissioner John Hartley, Traffic and Highway Patrol Command, NSW Police, Transcript of evidence, 30 August 2013, p39.

[309] Submission 16, Public Interest Advocacy Centre, p1.

[310] Submission 16, Public Interest Advocacy Centre, p1.

[311] Professor Rebecca Ivers, Professor of Public Health and Director, Injury Division, The George Institute for Public Health, University of Sydney, Transcript of evidence, 30 August 2013, p54.

[312] Submission 5, NSW Legal Assistance Forum, pp13-14.

[313] Submission 23, Legal Aid NSW, p5.

- The geographic location of the driver and whether s/he resides in a RRR [regional, remote or rural] area;
- Any social or economic disadvantage experienced by the driver;
- Hardship to third parties if vehicle sanctions were imposed (for example, hardship arising for dependants who rely on the driver to transport them to school, medical services or employment or for other daily living responsibilities and tasks; or more broadly, the economic hardship that will be experienced by dependants if the vehicle is impounded and the driver is not able to work);
- The driver's need to use to vehicle, (for example to attend medical appointments, education, employment or for other daily living responsibilities and tasks); and
- Whether or not the vehicle sanction is likely to assist in preventing the driver from re-offending.[314]

8.29 The Forum considers that it would not be appropriate to impose a vehicle sanction as a purely punitive measure or on socially and economically disadvantaged people living in remote regions of NSW, such as Aboriginal people.[315] Professor Rebecca Ivers suggested that courts should take into account the circumstances of the community and their access to vehicles before imposing this kind of sanction.[316]

8.30 Associate Professor Teresa Senserrick made similar suggestions:

> Factors that a court should have to take into account before imposing vehicle sanctions include whether the offender has prior offences, the severity of the offence, circumstances contributing to the offence, feasibility of implementing the sanction and the potential for undue negative impacts should the sanction be actioned.[317]

8.31 Several stakeholders suggested that if vehicle sanctions were introduced, they should only be used in restricted circumstances. For example, the NSW Young Lawyers Criminal Law Committee said that sanctions should only be applied in 'limited, appropriate circumstances'.[318]

8.32 The Law Society of NSW Criminal Law Committee argued that if vehicle sanctions were to be implemented for these offences, they should be reserved for the worst offenders. The Law Society of NSW Criminal Law Committee gave an example of someone who has been convicted of three driving while disqualified offences within a period of five years. That Committee was of the

[314] NSW Legal Assistance Forum, Responses to supplementary questions, 24 September 2013, p1.
[315] NSW Legal Assistance Forum, Responses to supplementary questions, 24 September 2013, p1.
[316] Professor Rebecca Ivers, Responses to supplementary questions, 17 September 2013, pp1-2.
[317] Associate Professor Teresa Senserrick, Responses to supplementary questions, 16 September 2013, pp1-2.
[318] NSW Young Lawyers Criminal Law Committee, Responses to supplementary questions, 17 September 2013, p4.

view that vehicle sanctions should not apply to the offences of drive while cancelled or drive while suspended.[319]

8.33 The NSW Legal Assistance Forum agreed that imposing a vehicle sanction for unauthorised driving would only be appropriate in limited circumstances such as where driving while licence disqualified, suspended or cancelled is accompanied by other driving offences that pose a serious risk to public safety, such as high range drink driving or offences relating to driving at a dangerous speed or in a dangerous manner.[320]

8.34 In response to the Committee's supplementary questions, the Law Society of NSW Criminal Law Committee said that if vehicle sanctions were introduced, there should be parameters around their use.[321]

8.35 Both the NSW Young Lawyers Criminal Law Committee and the Law Society of NSW Criminal Law Committee suggested that offenders who have a vehicle sanction imposed should have a right to appeal to the Local Court.[322]

EFFECTIVENESS OF VEHICLE SANCTIONS

8.36 Some stakeholders submitted that vehicle sanctions for unauthorised driving offences may be useful in certain circumstances. For example, the Mid North Coast Community Legal Centre argued that introducing vehicle sanctions for unauthorised driving offences would provide an effective mechanism in regulating the behaviour of repeat traffic offenders.[323]

8.37 The Victims of Crime Assistance League Inc NSW was also supportive of extending vehicle sanctions to unauthorised driving offences:

> Continuing to extend periods of disqualification for constant recalcitrance clearly is not working and we would support the impounding of vehicles for a first offence of three months. For a subsequent offence, disposal of the vehicle should occur.[324]

8.38 Research by the Bureau of Crime Statistics and Research in 2007 supports the view that longer licence disqualification periods had little to no deterrent effect, and in some cases, may increase the risk of reoffending.[325]

8.39 *Developing measures to reduce unlicensed driving,* by Austroads argued that vehicle impoundment or immobilisation is 'the most promising sanction' for dealing with unlicensed driving. The report suggests that vehicle sanctions should only be used for serious offences, such as driving while never having been licensed, driving while disqualified and driving with a suspended or cancelled

[319] Submission 19, Law Society of NSW Criminal Law Committee, p5.

[320] NSW Legal Assistance Forum, Responses to supplementary questions, 24 September 2013, p1.

[321] Law Society of NSW Criminal Law Committee, Responses to supplementary questions, 4 October 2013, p3.

[322] Submission 19, Law Society of NSW Criminal Law Committee, p5; Submission 10, NSW Young Lawyers Criminal Law Committee, p6.

[323] Submission 17, Mid North Coast Community Legal Centre, pp3-4.

[324] Submission 9, Victims of Crime Assistance League Inc NSW, p2.

[325] Moffatt, S and Poynton, S, 'The deterrent effect of higher fines on recidivism: Driving offences', *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, Number 106, March 2007, p10.

licence (though not for licences suspended due to non-payment of fines).[326] Austroads' report is based on a review of Australian and international literature, with an emphasis on articles that are most relevant to Australia. Austroads also consulted with key stakeholders.[327]

8.40 Austroads is of the view that vehicle impoundment or immobilisation should apply for a first offence for driving while disqualified and for second or subsequent offences for driving with a suspended or cancelled licence and driving without ever having been licensed.[328]

8.41 However, Austroads maintained that hardship provisions should be included in any vehicle impoundment/immobilisation legislation:

> If the impoundment or immobilisation of a vehicle denies a remote community one of its few roadworthy vehicles, then the negative effects on that community need to be weighed against the positive effects of applying a sanction to the vehicle being used in the commission of the offence. Other forms of hardship may also warrant consideration.[329]

8.42 Research on the use of vehicle impoundment in California for unlicensed drivers and those who have had their licences suspended or revoked found an association between the use of vehicle sanctions and reductions in re-offending and road accidents. In particular, the research evaluated the impact of vehicle impoundment on the one-year subsequent driving behaviour of drivers in these categories. The results showed that drivers with no prior convictions for driving while unlicensed or while their licence was suspended or revoked and whose vehicles were impounded had (relative to similar drivers whose vehicles were not impounded):

- 23.8 per cent fewer convictions for driving while unlicensed or while their licence is suspended or revoked
- 18.1 per cent fewer traffic convictions, and
- 24.7 per cent fewer crashes.

8.43 Repeat offenders whose vehicles were impounded were found to have 34.2 per cent fewer convictions for driving while unlicensed or while their licence was suspended or revoked, 22.3 per cent fewer traffic convictions and 37.6 per cent fewer crashes.[330]

8.44 In response to the Committee's supplementary questions about whether there would be a role for court imposed vehicle sanctions in NSW, Associate Professor Teresa Senserrick acknowledged the role of vehicle impoundment or immobilisation in reducing recidivism and accidents:

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[326] Austroads, *Developing measures to reduce unlicensed driving,* June 2013, pp4, 10.

[327] Austroads, *Developing measures to reduce unlicensed driving,* June 2013, p1.

[328] Austroads, *Developing measures to reduce unlicensed driving,* June 2013, p10.

[329] Austroads, *Developing measures to reduce unlicensed driving*, June 2013, p11.

[330] D Deyoung, DJ, 'An evaluation of the specific deterrent effects of vehicle impoundment on suspended, revoked, and unlicensed drivers in California', *Accident Analysis and Prevention*, 31, 1999, p45.

> Vehicle impoundment or immobilisation has also been extensively evaluated and shows reductions in recidivism and crashes both during and 2-3 years following sanction periods.[331]

8.45 However, Associate Professor Senserrick also noted that, while there may be a role for court imposed vehicle sanctions for short term gains, 'additional measures are needed for sustained impacts on recidivism'.[332]

8.46 Professor Rebecca Ivers explained that New Zealand introduced a vehicle impoundment scheme in 1999. Although Professor Ivers was unable to find any published reports on the effectiveness of the scheme, she obtained information from the Ministry of Transport in NZ about this issue:

> It appears that participation of disqualified and unlicensed drivers in crashes decreased after the introduction of vehicle impoundment, photo driver licences and mandatory licence carriage in NZ in 1999. It also appears that the rate of people convicted for driving while unlicensed also dropped from around the same time. However, it is not necessarily possible to identify whether the decrease in both scenarios was due to vehicle impoundment, or photo driver licences and mandatory licence carriage. It is also not possible to determine the long term effects, either positive or negative, from the available data.[333]

8.47 The effectiveness of vehicle immobilisation laws for intoxicated drivers in Ohio in the United States was also evaluated in research published in 2000. In September 1993, Ohio strengthened its immobilisation laws so that vehicles could be immobilised for up to 90 days for a second driving under the influence offence and 180 days for a third driving under the influence offence. Vehicles were immobilised with either a club device or by impounding the vehicle. The findings included the following:

> In Franklin Country, the driving records of more than 2,700 offenders eligible to receive a combination of vehicle impoundment and immobilization between September 1993 and August 1995 were analysed. Offenders whose vehicles were sanctioned had 58 percent fewer DUIs [Driving Under the Influence offences] as compared to comparable offenders who did not have their vehicles sanctioned.
>
> …
>
> Similar findings were noted in Hamilton County, where only vehicle impoundment was used and the driving records of nearly 3,600 drivers were analyzed. DUI offenses were 60 percent lower among the offenders whose vehicles were impounded during the sanctioning period and 56 percent lower after the sanctioning period as contrasted with offenders whose vehicles were not impounded.[334]

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[331] Associate Professor Teresa Senserrick, Responses to supplementary questions, 16 September 2013, pp1-2.

[332] Associate Professor Teresa Senserrick, Responses to supplementary questions, 16 September 2013, pp1-2.

[333] Professor Rebecca Ivers, Responses to supplementary questions, 17 September 2013, pp1-2.

[334] National Highway Traffic Safety Administration, 'Effectiveness of administrative license suspensions and vehicle sanction laws in Ohio', *Technology Transfer Series*, No 214, Washington DC, February 2000, <http://www.nhtsa.gov/About+NHTSA/Traffic+Techs/current/Effectiveness+Of+Administrative+License+Suspension+And+Vehicle+Sanction+Laws+In+Ohio>, viewed 28 October 2013.

Committee comment

8.48 The Committee considers that vehicle sanctions should be available as a penalty for a limited number of offenders who repeatedly drive while disqualified and who also put the community at risk. In particular, the Committee notes the evidence from BOCSAR that longer licence disqualification periods have little to no deterrent effect.

8.49 The Committee acknowledges research showing an association between the use of vehicle sanctions and reductions in recidivism and crashes and Austroads' report which argued that vehicle impoundment or immobilisation is 'the most promising sanction' for dealing with unlicensed driving. Given the large number of unauthorised driving offences each year, the Committee considers that there is merit in trialling solutions that may reduce the number of disqualified drivers on the road.

8.50 However, the Committee agrees with stakeholders who have argued that there need to be parameters around the use of vehicle sanctions for these offences. Stakeholders have noted that unauthorised driving offences do not pose the same inherent risk to community safety as the offences for which the police are currently empowered to impose vehicle sanctions.

8.51 The Committee recommends that the NSW Government introduce vehicle sanctions for those who repeatedly drive while disqualified. The Committee considers that the NSW Government should carry out further research to determine whether vehicle sanctions should be imposed by the Police, the courts or both.

8.52 In the Committee's view, when establishing vehicle sanctions for those who repeatedly drive while disqualified, the NSW Government should take the following into account:

- whether vehicle sanctions may cause undue hardship to particular offenders
- the extent to which offenders pose a serious risk to community safety
- any impacts on third parties who may own the vehicle, have an interest in it, or rely on it
- ensuring that offenders are afforded procedural fairness and an opportunity to appeal against a vehicle sanction
- any other relevant matters.

8.53 Because driving while disqualified generally does not pose the same risk to community safety as the offences for which vehicle sanctions can currently be imposed in NSW, the Committee considers that any vehicle sanctions should be limited to confiscation of number plates or vehicles for up to three months but not vehicle forfeiture.

RECOMMENDATION 13

The Committee recommends that the NSW Government introduce vehicle sanctions for those who repeatedly drive while disqualified.

RECOMMENDATION 14

The Committee recommends that the NSW Government carry out further research to determine whether vehicle sanctions should be imposed by the Police, the courts, or both.

RECOMMENDATION 15

The Committee recommends that the NSW Government take into account the following factors when establishing vehicle sanctions for those who repeatedly drive while disqualified:

- **whether vehicle sanctions may cause undue hardship to particular offenders**
- **the extent to which offenders pose a serious risk to community safety**
- **any impacts on third parties who may own the vehicle, have an interest in it, or rely on it**
- **ensuring that offenders are afforded procedural fairness and an opportunity to appeal against a vehicle sanction**
- **any other relevant matters.**

RECOMMENDATION 16

The Committee recommends that vehicle sanctions for repeatedly driving while disqualified include possible confiscation of number plates or vehicles for up to three months, but not vehicle forfeiture.

Appendix One – List of Submissions

1	Name suppressed
2	Mr Colin Hamilton
3	Northern Rivers Social Development Council
4	Hume Riverina Community Legal Service
5	NSW Legal Assistance Forum
6	Marrickville Legal Centre
7	Name suppressed
8	Douglass and Ford Criminal Law
9	Victims of Crime Assistance League Inc NSW
10	NSW Young Lawyers Criminal Law Committee
11	Mr Graeme Smith
12	Kingsford Legal Centre
13	The Chief Magistrate of the Local Court
14	The Shopfront Youth Legal Centre
15	Name suppressed
16	Public Interest Advocacy Centre
17	Mid North Coast Community Legal Centre
18	Confidential
19	The Law Society of NSW Criminal Law Committee
20	Aboriginal Legal Service (NSW/ACT) Limited
21	Ms Clare Farnan
22	NSW Ombudsman
23	Legal Aid NSW
24	Name suppressed
25	NSW Government

Appendix Two – List of Witnesses

30 August 2013, Macquarie Room, Parliament House

Witness	Position and Organisation
Mr Brett Thomas Mr Greg Elks	Deputy Chair Member *Law Society of NSW Criminal Law Committee*
Ms Judith Levitan	Project Manager *NSW Legal Assistance Forum*
Ms Jane Sanders	Principal Solicitor *The Shopfront Youth Legal Centre*
Ms Jenny Lovric	Cooperative Legal Service Delivery Manager *Legal Aid NSW*
Ms Felicity Graham	Solicitor *Aboriginal Legal Service (NSW/ACT) Limited*
Ms Maureen Tangney	Assistant Director General, Justice Policy and Legal *Department of Attorney General and Justice*
Assistant Commissioner John Hartley	Traffic and Highway Patrol Command *NSW Police*
Mr Peter Wells	Director, Customer and Compliance *NSW Roads and Maritime Services*
Mr Tim Reardon Mr Edward Ramsay	Deputy Director General, Policy and Regulation Manager Driver Sanctions, Policy and Regulation Division *Transport for NSW*
Mr Thomas Spohr Mr Andrew Tiedt	Vice-President Vice-Chair of the Criminal Law Committee *NSW Young Lawyers*

Witness	Position and Organisation
Professor Rebecca Ivers	Professor of Public Health and Director, Injury Division
Mr William Byrne	Indigenous Project Officer, Injury Division *The George Institute for Global Health, University of Sydney*
Associate Professor Teresa Senserrick	Transport and Road Safety Research *University of NSW*

Appendix Three – Extracts from Minutes

Minutes of Proceedings of the Legislative Assembly Committee on Law and Safety (no. 19)

12:07pm, Tuesday 25 June 2013
Room 1153, Parliament House

1. Members Present

Mr Barilaro (Chair), Mr Edwards and Mr Rowell; and
via teleconference: Mr Lalich and Mr Zangari.

Officers in attendance: Ms Helen Minnican, Dr Abi Groves, Ms Clara Hawker, Ms Jessica Falvey, Ms Jenny Whight

2. Confirmation of minutes

Resolved, on the motion of Mr Edwards, seconded by Mr Rowell: That the minutes of the deliberative meeting of 6 May 2013 be confirmed.

3. Inquiry referral

Resolved, on the motion of Mr Rowell, seconded by Mr Edwards: That Committee adopt terms of reference for an Inquiry into Licence Disqualification Reform as proposed in the correspondence from the Attorney General and the Minister for Roads and Ports, dated 20 June 2013.

Resolved, on the motion of Mr Rowell, seconded by Mr Edwards: That the Committee advertise the Inquiry on its website, and write to stakeholders inviting them to make a submission by 20 July 2013.

Resolved, on the motion of Mr Rowell, seconded by Mr Edwards: That the Committee write to the Attorney General and the Minister for Roads and Ports to discuss the timeframe for this Inquiry.

***

The Committee adjourned at 1:03pm until a date and time to be determined.

Minutes of Proceedings of the Legislative Assembly Committee on Law and Safety (no. 20)

12:37 pm, Tuesday 13 August 2013
Room 1153, Parliament House

Members Present

Mr Barilaro, Chair, Mr Edwards, Mr Lalich and Mr Zangari.

Officers in attendance: Dr Abi Groves, Ms Clara Hawker, Ms Jessica Falvey.

1. Confirmation of minutes

Resolved, on the motion of Mr Lalich, seconded by Mr Zangari: That the minutes of the deliberative meeting of 25 June 2013 be confirmed.

2. Inquiry into driver licence disqualification reform

(a) *Correspondence received*

The Committee noted the following items of correspondence received:

- 25 June 2013 – from Ms Maureen Tangney, Department of Attorney General and Justice to Committee Research Officer regarding previous reports relevant to the inquiry terms of reference
- 8 July 2013 – from Mr Laurie Glanfield, Department of Attorney General and Justice to Director, Legislative Assembly Committees regarding assistance with inquiry into driver licence disqualification reform
- 9 July 2013 - from Mr Murray Kidnie, Austroads to Committee Research Officer regarding assistance with inquiry into driver licence disqualification reform
- 19 July 2013 – from Mr James Wood, NSW Law Reform Commission to Chair regarding sentencing reference
- 9 August 2013 – from Ms Maureen Tangney, Department of Attorney General and Justice to Committee Research Officer regarding information relevant to the inquiry – seminar and academics.

(b) *Submissions – consideration of and approval for publication*

The Chair opened discussion on the submissions received. Discussion ensued.

Resolved, on the motion of Mr Zangari, seconded by Mr Lalich:

That the Committee authorise the publication of the following submissions:
3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 25.

That the Committee authorise the partial publication of the following submissions by suppressing the names of the submission authors:
1, 7.

That the Committee authorise the partial publication of the following submissions by suppressing the attachments:
2, 24.

That the Committee authorise the partial publication of submission 15 by suppressing the name of the submission author and the attachments.

That submission 18 be kept confidential to the Committee and not published on the Committee's website.

(c) *Forward planning – possible public hearing for inquiry*

The Chair opened discussion on the possibility of holding a public hearing for the inquiry. Discussion ensued.

Resolved, on the motion of Mr Zangari, seconded by Mr Lalich: That the Committee hold a public hearing on Monday 26 August 2013 or Friday 30 August 2013 subject to Member and witness availability and that the following individuals and organisations be invited to appear as witnesses:

- Department of Attorney General and Justice
- Transport for NSW (including the NSW Centre for Road Safety and Roads and Maritime Services)
- NSW Police
- Judge Graeme Henson
- NSW Legal Assistance Forum
- Law Society of NSW
- Associate Professor Teresa Senserrick, Transport and Road Safety Research, University of NSW
- Professor Rebecca Ivers, Director, Injury Division, Medicine, The George Institute for Global Health, University of Sydney.

The Committee adjourned at 12:45pm *sine die*.

Minutes of Proceedings of the Legislative Assembly Committee on Law and Safety (no. 21)

9.55am, Friday 30 August 2013
Macquarie Room, Parliament House

Members Present

Mr Barilaro, Mr Edwards, Mr Lalich and Mr Zangari.

Officers in attendance: Dr Abigail Groves, Ms Sasha Shevtsova.

1. Confirmation of minutes

Resolved, on the motion of Mr Lalich, seconded by Mr Edwards: That the minutes of meeting no 20 of 13 August 2013 be confirmed.

Inquiry into driver licence disqualification reform

2.1 Media orders

Resolved, on the motion of Mr Zangari, seconded by Mr Lalich: That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 30 August 2013 in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary Committees.

2.2 Answers to questions taken on notice during public hearing

Resolved, on the motion of Mr Edwards, seconded by Mr Lalich: That witnesses be requested to return answers to questions taken on notice during the hearing and supplementary questions within two weeks of the date on which the questions are forwarded to the witness.

2.3 Public hearing

The Chair opened the public hearing at 10.02am. Witnesses and the public were admitted.

The following witnesses were sworn and examined:

- Mr Brett Thomas, Deputy Chair, Criminal Law Committee, Law Society of NSW
- Mr Greg Elks, Member, Criminal Law Committee, Law Society of NSW.

Evidence concluded, the witnesses withdrew.

The following witness was sworn and examined:

- Ms Judith Levitan, Project Manager, NSW Legal Assistance Forum.

The following witnesses were affirmed and examined:

- Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre
- Ms Jenny Lovric, Cooperative Legal Service Delivery Manager, Legal Aid NSW
- Ms Felicity Graham, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited.

Evidence concluded, the witnesses withdrew.

The Committee adjourned at 12.24pm. Witnesses and the public withdrew.

The Committee resumed at 1.30pm. Witnesses and the public were admitted.

The following witnesses were sworn and examined:

- Mr Peter Wells, Director, Customer and Compliance, Roads and Maritime Services
- Mr Tim Reardon, Deputy Director General, Transport for NSW
- Mr Ed Ramsay, Manager – Driver Sanctions, Transport for NSW
- Assistant Commissioner John Hartley, NSW Police Force.

The following witness was affirmed and examined:

- Ms Maureen Tangney, Assistant Director General, Department of Attorney General and Justice.

Evidence concluded, the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Tiedt, Vice Chair, NSW Young Lawyers Criminal Law Committee

- Mr Thomas Spohr, Vice President, NSW Young Lawyers

Evidence concluded, the witnesses withdrew.

The following witnesses were affirmed and examined:

- Professor Rebecca Ivers, Director, Injury Division, The George Institute for Global Health, University of Sydney
- Mr William Jake Byrne, Indigenous Project Officer, Injury Division, The George Institute for Global Health, University of Sydney.

Associate Professor Teresa Senserrick, Transport and Road Safety Research, University of New South Wales, attended and gave evidence by teleconference.

Evidence concluded, the witnesses withdrew.

The Chair closed the hearing at 5.00pm. Witnesses and the public withdrew.

2.4 Transcript of public hearing

Resolved, on the motion of Mr Lalich, seconded by Mr Edwards: That the Committee authorise the publication of the corrected transcript of the evidence given at the public hearing and the transcript be posted on the Committee's website.

2.5 Documents tabled

Resolved, on the motion of Mr Zangari, seconded by Mr Lalich: That the Committee authorise publication of the document forwarded by Associate Professor Senserrick.

3. Adjournment

The Committee adjourned at 5.05pm *sine die*.

Minutes of Proceedings of the Legislative Assembly Committee on Law and Safety (no. 22)

1.35pm, Tuesday 15 October 2013
Room 1254, Parliament House

Members Present

Mr Barilaro, Mr Edwards, Mr Lalich, Mr Spence and Mr Zangari

Officers in attendance: Ms Helen Minnican, Dr Abigail Groves, Ms Clara Hawker, Ms Jenny Whight

1. ***
2. ***

3. Confirmation of minutes

Resolved, on the motion of Mr Lalich, seconded by Mr Zangari: That the minutes of the deliberative meeting of 30 August 2013 be confirmed.

4. Inquiry into driver licence disqualification reform

Resolved, on the motion of Mr Edwards, seconded Mr Lalich: That the Committee authorise the publication of the answers to questions taken on notice, the answers to supplementary questions and further evidence received from:

1 Professor Rebecca Ivers

2 Associate Professor Teresa Senserrick

3 Maureen Tangney, Department of Attorney General and Justice

4 The NSW Young Lawyers Criminal Law Committee

5 Tim Reardon, Transport for NSW

6 The NSW Legal Assistance Forum

7 The Law Society of NSW Criminal Law Committee,

and that the answers and evidence be posted on the Committee's website.

5. ***

6. Adjournment

The Committee adjourned at 1.45pm *sine die*.

Minutes of Proceedings of the Legislative Assembly Committee on Law and Safety (no. 23)

4:20pm, Tuesday, 19 November 2013
Room 1153, Parliament House

Members Present

Mr Barilaro, Mr Lalich, Mr Spence and Mr Zangari

Officers in attendance: Dr Abigail Groves, Ms Jessica Falvey, Ms Sasha Shevtsova

1. Apology

An apology was received from Mr Edwards.

2. Confirmation of minutes

Resolved, on the motion of Mr Lalich, seconded by Mr Zangari: That the minutes of meeting no 22 on 15 October 2013 be confirmed.

3. Inquiry into driver licence disqualification reform – consideration of Chair's draft report

The Chair spoke to the draft report, tabled at the meeting.

The Committee agreed to consider the report chapter by chapter.

Executive summary, read and agreed to.

Chapter one, read and agreed to.

Chapter two, read and agreed to.

Chapter three, read and agreed to.

Chapter four, read and agreed to.

Chapter five, read and agreed to.

Chapter six, read and agreed to.

Chapter seven, read and agreed to.

Chapter eight, read and agreed to.

Appendices one, two, three and four, read and agreed to.

Resolved, on the motion of Mr Lalich, seconded by Mr Zangari: That the draft report be the report of the Committee and that it be signed by the Chair and presented to the House.

Resolved, on the motion of Mr Spence, seconded by Mr Zangari: That the Chair and secretariat be permitted to correct stylistic, typographical and grammatical errors.

Resolved, on the motion of Mr Spence, seconded by Mr Zangari: That, once tabled, the report be posted on the Committee's website.

4. ***

5. Adjournment

The Committee adjourned at 4.28pm *sine die*.

Appendix Four – Extract from Law Society of NSW Criminal Law Committee submission

The Law Society of NSW Criminal Law Committee's submission included a table with proposed disqualification periods and penalties for unauthorised driving offences. [335] The table is copied below and is referred to in several chapters of this report.

Offence	First offence	Second or subsequent offence within 5 years
Drive while disqualified *(current penalty)*	Maximum fine of $3,300.00 A maximum jail term of 18 months Unlimited maximum disqualification period A mandatory disqualification period of 12 months	Maximum fine of $5,500.00 A maximum jail term of 2 years Unlimited maximum disqualification period A mandatory disqualification period of 2 years
(proposed changes)	Maximum fine of $3,300.00 A maximum jail term of 18 months Automatic period of disqualification of 12 months. Court has discretion to reduce to a minimum of 9 months	Maximum fine of $4,400.00 A maximum jail term of 2 years Automatic period of disqualification of 2 years. Court has discretion to reduce to a minimum of 18 months
Drive while suspended *(current penalty)*	Maximum fine of $3,300.00 A maximum jail term of 18 months Unlimited maximum disqualification period A mandatory disqualification period of 12 months or a mandatory disqualification period of 3 months if you have been suspended for non-payment of a fine	Maximum fine of $5,500.00 A maximum jail term of 2 years Unlimited maximum disqualification period A mandatory disqualification period of 2 years
(proposed changes)	Maximum fine of $2,200.00 A maximum jail term of 12 months Automatic period of disqualification of 9 months.	Maximum fine of $3,300.00 A maximum jail term of 18 months Automatic period of disqualification of 18

[335] Submission 19, Law Society of NSW Criminal Law Committee, pp4-5.

Offence	First offence	Second or subsequent offence within 5 years
	Court has discretion to reduce to a minimum period of 6 months.	months. Court has discretion to reduce to a minimum of 12 months
Drive while cancelled *(current penalty)*	Maximum fine of $3,300.00 A maximum jail term of 18 months Unlimited maximum disqualification period Mandatory disqualification period of 12 months	Maximum fine of $5,500.00 A maximum jail term of 2 years Unlimited maximum disqualification period Mandatory disqualification period of 2 years
(proposed changes)	Maximum fine of $1,100.00 A maximum jail term of 6 months Automatic period of disqualification of 6 months. Court has discretion to reduce to a minimum period of 3 months.	Maximum fine of $2,200.00 A maximum jail term of 12 months Automatic period of disqualification of 12 months. Court has discretion to reduce to a minimum period of 6 months.