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Parliament of NSW
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Dear Dr Groves

Thank you for providing a proof copy of the transcript of the evidence given to the inquiry into Driver Licence Disqualification Reform on Friday, 30 August 2013. Following a review of the transcript, further information is provided as detailed below.

At the top of page 42, the Chair asked the following question:

CHAIR: If we were to make the changes and they were to be enacted tomorrow, should it be retrospective? How do we handle that?

Mr Ramsay provided the following response.

Mr RAMSAY: I do not think it is necessary to be retrospective. When I say that, the habitual offenders scheme, any new penalty regime would be prospective; it is the habitual offender element that one could think, is there retrospective application? That might not be the best way to go because if a magistrate three years ago decided to make an order that a person should be declared an habitual offender or the statute made the person declared, that the court ordered a five-year or seven-year period of disqualification to apply, I do not think the magistrate would like the statute undoing their decision that they made seven years ago. It might have been based on good grounds that the person did have a horrific traffic record and a seven year order as an habitual offender period of disqualification was quite valid. I think that the Government's submission talks in terms of appeals to a court and largely we believe it is best that the court determine whether a previous court's decision should be quashed as such. So retrospectivity could have some difficulties if it was implemented that way. It is not necessary. It could be but I think there might be concerns with the magistracy in that respect.

To qualify Mr Ramsay's response, he has advised that he interpreted the Chair's question to be asking whether there should be an automatic quashing of any unserved disqualification periods, as soon as any changes are enacted, if the person has satisfied an agreed minimum offence free period.

On further reading of the written question, if the Chair was instead asking whether there should be recognition of offence free periods already served as soon as any changes are enacted, Mr Ramsay's has advised that his response is yes. This is logical and just as it immediately recognises the person's demonstrated actions in complying with a previous court's order not to drive.

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.

On page 42, the Chair asked the following question:

CHAIR: How many people are there who are declared habitual offenders? Do you have a number?

The following response is attributed to Mr Hartley as follows:

Mr HARTLEY: There are about 17,000 habitual offenders at the moment, individuals who have been declared habitual offenders. At any time about 40,000 people are disqualified. So 17,000 form part of the 40,000. Of the 17,000, there could be one declaration. There could be multiple declarations. That is where we have a person who might have an additional five years from one declaration but if they have been declared three, four or five times they are suddenly getting 30 years disqualification on top of the substantive driving offence disqualifications. Yes, about 40,000 total disqualified at any time and there are about 17,000 declared as habitual offenders.

This response was provided by Mr Ramsay rather than Mr Hartley. Mr Ramsay has spoken to Mr Hartley and he agrees the response should be assigned to Mr Ramsay. Jessica Falvey, Research Officer Law and Safety Committee, also raised this issue with Mr Ramsay by email on 11 September and Mr Ramsay has confirmed by return email on the same date that the response should be assigned to him.

A response to some additional questions asked by the Committee is also provided in attachment A.

I thank the Committee for the opportunity to provide this contribution to its Inquiry.

Yours sincerely



Tim Reardon
Deputy Director General Policy & Regulation

Turning now to the additional questions, I provide the following:

1. Could you please explain how automatic and minimum disqualification periods currently work for other road traffic offences?

Section 204 of the *Road Transport Act 2013* (the Act) provides that the court may impose a licence disqualification on convicting a person of an offence under road transport law. However, certain serious offences under road transport law carry automatic periods of disqualification on conviction but if the court chooses, it can order a different period.

The serious offences that carry automatic periods of disqualification are defined as 'major offences' and are found in the definitions in sec 4 of the Act. Examples include drink or drug driving, driving in a manner or at a speed dangerous or negligent driving causing death or grievous bodily harm. These offences are found in various sections of the Act. Certain offences under the *Crimes Act 1900* are also included as 'major offences'.

For a 'major offence', if the court convicts the person, the automatic period of disqualification applies. If the court considers a different period of disqualification is appropriate, it must make an order. The provisions generally have a minimum period and the court may order a period down to that minimum period but not below it. The court can alternatively, order any longer period than the automatic period. With the exception of the lower blood alcohol range of offences, there is generally no maximum upper limit set in the law.

For major offences, the disqualification period commences from the date of conviction. The Road Transport Amendment (Licence Disqualification on Conviction) Bill 2013, when it commences, will provide that the disqualification will continue to commence from the date of conviction, unless there is a period of imprisonment ordered by the court in which case the disqualification period will start at the end of the period of imprisonment.

To illustrate the application of automatic and minimum disqualification periods, I will use the offence of 'drive with middle range concentration of alcohol' as an example. 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 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.

This type of penalty regime allows the court some latitude to apply a period of disqualification that it sees as appropriate in the circumstances.

By contrast, the disqualification periods for the unauthorised driving offences operate differently. In these cases, there is no automatic and minimum period. Instead, there is a mandatory period that applies on conviction and there is no latitude given to the court to vary this, even if the court sees there is justification in doing so.

For unauthorised driving offences, the disqualification period commences at the end of any other disqualification period already on the person's record.

- 2. The Committee understands that a report prepared for RTA (now RMS) found that more than half the licence holders surveyed in Aboriginal communities had their licence suspended or cancelled for unpaid fines or demerit points. The report found that forty two percent (42%) had outstanding debt to the State Debt Recovery Office. Could you please tell us more about this and what other mechanisms are currently in place to deal with this particular issue?**

The report referred to is titled 'An Investigation of Aboriginal Driver Licensing Issues'. It can be viewed or downloaded from the Roads and Maritime Services (RMS) website at the following link:

http://www.rms.nsw.gov.au/publicationsstatisticsforms/downloads/aboriginal_licensing_report171208.pdf

In responding to this question there are two elements worthy of mention. The first is the opportunities that are now available for fine defaulters to clear their debt by means other than fine payment. Opportunities include Work and Development Orders and the Dept of Attorney General and Justice will be elaborating on this matter in its response to Question 4.

The second element is entry or re-entry into the licensing scheme once the outstanding debt has been cleared with the State Debt Recovery Office. These processes rest with RMS. Licensing initiatives that have been implemented since the Report include:

Whole of Government approach

RMS led a round table discussion with key stakeholder agencies to establish a whole of government approach to driver licensing for Aboriginal people. A key action arising from this discussion was to review the Habitual Traffic Offender Scheme.

Data collection

RMS has introduced the capacity to collect the Aboriginal status of customers through driver licence application and renewal processes. This data allows RMS to identify Aboriginal drivers involved in fatalities and to monitor the effectiveness of driver education programs and service delivery.

Aboriginal communication resources

A culturally appropriate handbook and audio CD (Learn and Listen) has been developed and distributed. It contains Driver Knowledge Test (DKT) questions and answers presented in audio and visual medium, using Aboriginal talent for the audio.

A dedicated Aboriginal webpage within the RMS website has been introduced. The webpage provides Aboriginal people, in particular community advocates, with critical information to achieve outcomes of the Aboriginal Action Plan.

Research

Research has been conducted into driver licensing issues amongst Aboriginal people. The research found that there is widespread unlicensed driving within Aboriginal communities, with over one third of the Aboriginal community never holding a driver licence. This report provides the evidence basis to develop and implement policies and programs to improve driver licensing outcomes for Aboriginal people.

Aboriginal driver education program

Research has identified that low levels of literacy amongst Aboriginal people is a significant barrier for driver licensing outcomes. An Aboriginal driver education program has been developed which

supports Aboriginal people obtain a learner licence through access to qualified literacy teachers and culturally appropriate resources to understand the RMS Road Users' Handbook. The program focuses on improving literacy, numeracy skills, computer literacy and increasing the knowledge of road law and road safety amongst Aboriginal people. The program was funded and piloted by RMS in conjunction with TAFE. The program is now delivered by TAFE. Attachment B shows information supplied by TAFE on courses run since 2011.

Aboriginal Driving Instructor Grants Program

The program provides Aboriginal community based organisations with a grant to purchase professional driving instruction services and secure a driving mentor for Aboriginal community members. The program outcomes include improved road safety outcomes for novice drivers, improved accessibility to professional driving instruction for Aboriginal people and increased Aboriginal cultural awareness for the driving instruction industry.

- 3. The Committee understands that where an unauthorised driving offence has been dismissed under section 10 of the Crimes (Sentencing Procedure) Act 1999, the offence could still count towards being declared a Habitual Traffic Offender. Have you come across any situations where this has occurred?**

RMS has provided information about the number of unauthorised driving offences that have contributed to a declaration as a habitual offender. That information reveals that in 2011, there were 17,781 relevant offences committed that resulted in 5,927 habitual offender declarations being made for that year. Of the total 17,781 relevant offences, 992 were unauthorised driving offences that were dealt with by way of section 10.

In 2012, there were 15,819 relevant offences committed that resulted in 5,273 habitual offender declarations being made for that year. Of the total 15,819 relevant offences, 866 were unauthorised driving offences that were dealt with by way of section 10.

- 4. Could you please provide additional details on the success of the Work and Development Order Scheme?**

Maureen Tangney has advised that the response to this question will be provided by the Dept of Attorney General and Justice.

TAFE Courses – Get Licensed 2011 – 2013

Attachment B

Location (Northern Area)	Year of Enrolment	Number of Student Enrolled	Number of Students Successfully Completing 'L's
Armidale	2012	19	Current
Gunnedah	2012	13	Current
Inverell	2012	10	Current
Tingha	2012	16	Current
Tamworth	2012	9	Current with 3 completed L
Armidale	2011	14	6
Gunnedah	2011	12	9
Inverell	2011	13	7
Tingha	2011	16	15
Tamworth	2011	14	2 passed course no successful completion of 'L's
Quirindi	2011	11	

Location Western Area	Year of Enrolment	Number of Students Enrolled	Number of Student Successfully Completing 'L's
Boggabilla	2012	13	Current
Moree	2012	6	Current
Narrabri	2012	6	Current
Moree	2011	15	9

Location Sydney Area	Year of Enrolment	Number of Students Enrolled	Number of Student Successfully Completing 'L's
Mt Druitt	March 2012	13	11
Mt Druitt	August 2012	15	7
Campbelltown	October 2012	5	9
Campbelltown	November	8	9
Mt Druitt	May 2013	12	14
Mt Druitt	July 2013	13	11

Location South West Area	Year of Enrolment	Number of Students Enrolled	Number of Student Successfully Completing 'L's
Tumut/Brungle	January 2012	10	10
Balranald	March 2012	9	9
Griffith	?	?	8