

**REPORT OF PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON LAW AND SAFETY**

**INQUIRY INTO DRIVER LICENCE DISQUALIFICATION  
REFORM**

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**At Sydney on Friday 30 August 2013**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

Mr G. D. Barilaro (Chair)

Mr G. K. Edwards

Mr N. Lulich

Mr G. Zangari

**CHAIR:** I declare the hearing open. Thank you for attending the Law and Safety Committee's public hearing for the Inquiry into Driver Licence Disqualification Reform. This inquiry is examining whether it is appropriate to reform the laws relating to unauthorised offences. The Committee is considering a range of possible forms, including whether courts should be provided with discretion when imposing disqualification periods for unauthorised driving offences and whether the maximum penalties for these offences should be revised. I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment. If phones are on silent, please switch them off completely. For the benefit of the gallery, the Committee has resolved to authorise the media to broadcast sound and video excerpts of these public proceedings. Copies of the guidelines governing coverage of proceedings are available. I welcome Mr Brett Thomas and Mr Greg Elks, representatives from the Law Society of New South Wales Criminal Law Committee. Thank you for appearing before the Committee to give evidence today.

**BRETT THOMAS**, Deputy Chair, Criminal Law Committee, Law Society of New South Wales, and

**GREG ELKS**, Member, Criminal Law Committee, Law Society of New South Wales, sworn and examined:

**CHAIR:** In what capacity are you appearing before the Committee?

**Mr THOMAS:** I am appearing today as the Deputy Chair of the Criminal Law Committee of the Law Society of New South Wales.

**Mr ELKS:** I am a member of the Law Society's Criminal Law Committee.

**CHAIR:** Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr ELKS:** No.

**Mr THOMAS:** No, not at all.

**CHAIR:** Before we proceed to questions, would you like to make a brief opening statement?

**Mr THOMAS:** Thank you. I will. I first thank the Committee for inviting us to appear this morning and to answer any questions and also speak to our submission. One of the reasons I do that is, as I think our submission points out, some issues this Committee has been tasked with looking at are issues that we at the Law Society, particularly the Criminal Law Committee, have been seeking to have government address for a number of years, particularly issues in relation to the habitual traffic offender scheme and penalties generally as it relates to what I think the Committee refers to as unauthorised driving offences. That is a process and a campaign, I suppose you could call it, that we have been waging for a number of years at a political and bureaucratic level with, without being critical of ourselves, a minimal degree of success for various reasons. So we are very thankful that the Government has asked your Committee to look at these particular issues.

I have taken the opportunity to look at the other submissions that have been made to the Committee. I do not profess to have read all of them, but I have read most of them. I firstly commend or highlight to you as far as our submission is concerned the table we have proposed in relation to penalties. The reason I do that is that I do not think any other person who made a submission, whilst they addressed, obviously, the terms of reference, sought to bring everything together by way of a table. We sought to do that through the Criminal Law Committee because we thought that was an appropriate way not only for other witnesses but you and the public generally to understand what the penalties are at the moment and what was proposed. Obviously, we would ask the Committee to look at that. I suggest to the Committee that what is in that is not necessarily inconsistent with what a lot of the other submissions have said but, as I said, we have actually provided for that within that table.

Another thing I would do is particularly make mention of the habitual traffic offender scheme. My reading of most of the submissions seems to indicate that most people who have chosen to make a submission to the Committee put forward the view that the habitual traffic offender scheme should be abolished. That is and always has been our position for the reasons we have given. Other submissions also highlight reasons why that should be the case. The third thing I wanted to raise in my opening comments was an issue that we did not raise in our submission but I think others have and is one we have always raised. I note that it is specifically raised in the submission that was made by Magistrate Clare Farnan. She deals with it in paragraph 4 of her submission. It is a very specific issue and relates to what is an automatic three-year disqualification period imposed on people who are convicted of a second—basically never-licensed—driving offence. That is an automatic period.

If a person comes before the court for being unlicensed, or never being licensed, and they are convicted and then within five years of that conviction they come back before the court for a similar offence and are convicted again, that section, which is section 25 (3) in the old Road Transport (Driver Licensing) Act 1998—you would be aware that the new Act has come into play—is now section 53 (4) in the new Road Transport Act 2013 and carries an automatic three-year disqualification. The reason I highlight that—I think other people who have made submissions highlight it as well—is that to us that is a classic example of an automatic disqualification period that is, for want of a better expression, excessive. Mr Elks and I were talking about this outside when we were waiting; it is one of the provisions we know from practical experience and from talking to colleagues who practice in the area that the court deals with perhaps not on a daily basis but on a regular basis.

What I mean is that the courts have difficulty with the idea of having to automatically disqualify somebody for three years simply because they are before the court for a second unlicensed offence. One of the submissions—it might even be from the Chief Magistrate—compares that three-year period to the automatic three-year period, sorry, the mandatory three-year period can be reduced, but the mandatory three-year period that applies for high-range drink driving—and simply makes the comparison that you have a system whereby somebody can come before the court for high-range drink driving and look at losing their licence for three years. Somebody can come before the court admittedly a second time within five years for never being licensed and can face the same period off the road. To us, that has never made a lot of sense. I am glad that Magistrate Farnan highlighted that in her submission because we did not, and that is something—I think it comes under the terms of reference—that we would urge the Committee to look at.

**CHAIR:** Mr Elks?

**Mr ELKS:** I simply endorse Mr Thomas's comments.

**Mr GUY ZANGARI:** The Committee has heard from participants that the current penalties for unauthorised driving offences particularly impact on certain sectors of the community, such as Aboriginal people, young people, those living in regional and rural areas and other vulnerable groups. Which groups do you consider to be the most affected by the current arrangements and what are the main impacts for those groups?

**Mr ELKS:** I think the people most impacted by this are those at the low socioeconomic spectrum of our society, and in some respects that is exactly the people you have highlighted, the Aboriginal people. 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. In my practice I assist Legal Aid quite significantly, and it is not uncommon to get someone who is disqualified up until 2040, 2050 because of the accumulation of court-ordered disqualifications but then the habitual traffic offender declarations are perhaps not quashed but later administratively imposed. So those people and rural people in particular where public transport is not available to get to things that could be urgent for them, such as medical attention and the like, they live at the far reaches of a community. They then make the decision, "Well, I'm going to drive because I have to." That is the difficulty we are in with these situations. It tends to be at that lower economic scale, plus also the geographic location, I suppose, and it is important that we try to address that. This Committee is clearly trying to do that.

**Mr THOMAS:** The difficulty of dealing with what ends up being those lengthy periods of disqualification clearly is as a result of the habitual traffic offenders scheme. Without that additional five years—it is important to remember that with the habitual, we like to use the vernacular, you must have three offences within five years but it is any combination of three offences. You may or may not be surprised but some people out there end up with more than three offences within five years. What Roads and Maritime Services does—and it is appropriate because it is provided for in the legislation, and that is why you end up with multiple lots of five years. The removal of that would make a huge difference to those lengthy periods of disqualification for the people who, as Mr Elks said, see no light at the end of the tunnel. I think the submission from the Chief Magistrate highlights this. From a deterrent effect, it has no effect because the offender simply says, "I need to drive."

Mr Elks and I both practise in the city and we see it with people who live in the city, as well as obviously in the country and what have you. So I think it applies across the board. But the idea of the penalties that are imposed on persons for what they have done acting as a deterrent does not have that effect because they simply say, "I cannot simply wait around until 2025 or 2040." Luckily at the moment the only advantage, if there is an advantage, is that there is a system whereby the court can quash it, and I think some of the submissions, as ours does, highlight that fact. I think one of the submissions even provides some statistics in terms of how often they are quashed. A lot of them are quashed at the time; the court looks at it and says, "Clearly you've got three years. If I don't do something about this now you will get an additional five years." And some courts will quash it then.

I think it is fair to say that—again to use the vernacular—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. A lot of people do not necessarily go back to court to seek to have it done. So we would say—and again I think other submissions have said the same thing—that if habitual was gone you would still have some lengthy periods of disqualification but they would be nowhere near the sorts of periods that some people have got.

**Mr NICK LALICH:** If the offender does not appeal against the severity of the sentence—I read somewhere that it is minimal that people do—is that because it is expensive to appeal or is it just that they do not bother because they feel they will not get out of it anyway?

**Mr THOMAS:** Can I clarify one thing? There is a provision that says that there is no appeal in relation to habitual. There is a general right of appeal in relation to penalty itself. I think my view would be that most people do not appeal because they—if I can put it this way—do not need to because the penalty that they have been given at, normally in these sorts of cases, the Local Court level is seen as being appropriate. That is because one would hope they have had some legal advice from a lawyer who says, "This is what you are looking at. This is what the range is." Then following on from that, when the matter is then dealt with by the court the bench also has a fair idea as to what the appropriate penalty is as well. That is not to say that people do not appeal. It is a question then of what the District Court does. So I do not think it is necessarily people cannot afford it. Generally I think with the discretion that they have, the Local Court gets it right.

**Mr NICK LALICH:** So they just cop it sweet, if you want to put it that way.

**Mr THOMAS:** Yes. That is not to say that people do not—I say this to clients, "You can appeal if you want and not be disqualified for 12 months." They might think it is appropriate. They think about appealing, they do not appeal. I say, "If you want to appeal you need to appeal now. Don't come back to me in six months time and say 12 months is too long, you want to try to get it reduced", because they are too late to appeal. Some people will do that. Some people will just go through the motions of making sure they have used up all their options but most people do not.

**Mr ELKS:** Many of the people who appear who do not have representation are not eligible for legal aid in a number of these matters. So the point you make about not appealing, at the time they 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—again I go back to those people in the lower socioeconomic levels—they cannot afford the lawyer; therefore, they end up wearing the habitual where their more wealthy counterparts can afford to go and be properly legally represented. The argument is made and then they have it quashed. So there is that aspect to it. Sometimes it is the expense.

**Mr NICK LALICH:** It is probably in all fields of law.

**Mr ELKS:** Indeed.

**Mr NICK LALICH:** Someone looks at the expense and says, "I'm not going to fight this. I'll cop it and move on."

**Mr ELKS:** Indeed.

**Mr NICK LALICH:** Do you think reducing or removing the penalties would pose an additional risk to community safety?

**Mr ELKS:** I do not. I say that for this reason: Many of the people who come before the courts on disqualified driving charges, cancelled or suspended were merely picked up because of random breath testing or some other issue that is not related to driving. It is completely different from being stopped for the purposes of a drink-driving matter where they are erratic on the road, or excessive speed, or a speed dangerous, or a manner dangerous. Many of these people pose no risk on the road, except that they should not be there. They are not doing anything or have not been involved in an accident. They then get a penalty, which, in some instances, because of the mandatory nature of the drive whilst disqualified, drive whilst cancelled, drive whilst suspended, they can end up with a greater time off the road because of the mandatory 12 months initially than had they been that danger on the road for a mid-range, low-range prescribed concentration of alcohol [PCA], or exceed speed by 45 or over 30. In a lot of instances they are not a danger on the road, but I do accept that they are not supposed to be there.

**Mr THOMAS:** Adding to that, going back to our table—and our submission does this—we seek to highlight what we see and what we think is recognised by the courts as well as the different level of seriousness

between drive whilst disqualified, drive whilst suspended and drive whilst cancelled. At the moment they are all bundled into one. The reality, in practice, is that in the courts driving whilst disqualified is viewed as more serious because you have been to court, you have been told not to drive and you drive anyway, so you are in direct contravention of a court order. And, dare I say it, a lot of magistrates take it personally when they tell somebody not to drive and they drive anyway: they do not like it. Whereas the drive whilst suspended and the drive whilst cancelled, whilst it is an administrative period, it is for a certain reason. It can be for fine default, and there is recognition of the fact that that is not as serious, which is why it carries lesser penalties, but we think one of the ways of dealing with that would be to recognise the fact that there is a different level of seriousness and provide a different level of penalty.

The problem we have at the moment is that because they are bundled up into one, when the court goes to deal with the offender, they look at it and go, "You have been done for driving whilst cancelled", which is not as serious as the person who had been done for driving whilst disqualified who was disqualified for drink-driving, so the reasons for the disqualification come into it as well, but the penalties are the same. That is why the statistics would show that, in a lot of cases, the court tends to be a bit more innovative in terms of how they deal with them. For example, if you ask for the research to be done, and it would be available from the Bureau of Crime Statistics, the figures that show the number of cases for driving whilst suspended and driving whilst cancelled, where people are dealt with by way of section 10, which has the effect of no conviction being recorded to avoid those automatic periods of disqualification, I would not say it would be greatly used, but it would be clearly used more often than driving whilst disqualified, because you would not normally get a section 10 penalty for driving whilst disqualified, and that is because the court recognises there is a different level of seriousness.

**Mr GARRY EDWARDS:** Mr Thomas, will you repeat the reference to section 10?

**Mr THOMAS:** Yes. If you looked at the statistics—and we did not have the opportunity to include them in our submission—for how often section 10 is used for when somebody comes before the court for driving whilst cancelled, driving whilst suspended and driving whilst disqualified, you will find it is used greater for driving whilst cancelled and driving whilst suspended because the court representative says, "This is not as serious as driving whilst disqualified. If I convict you, I have to give you the automatic period"—which, in some cases, can be 12 months. "That is too long, and the way in which I do not have to do that is by dealing with the matter under section 10." That would be reflected in the statistics. Whereas driving whilst disqualified, you would find the statistics are that there would be some section 10s, but I would have thought they would be very minimal. You would see the clear distinction. To me, the difference in the statistics clearly demonstrates the fact that the court looks at the matters differently.

**Mr GARRY EDWARDS:** Thank you, gentlemen. In your experience, have you come across many clients who have committed unauthorised driving offences as well as more serious traffic offences that endanger the community?

**Mr THOMAS:** You mean at the same time?

**Mr GARRY EDWARDS:** Yes.

**Mr THOMAS:** I know from my experience over 20 years that you will get somebody who will be done for mid-range or high-range drink-driving and their licence will be suspended, and, in between that time and when they are due to come to court, not only will they drive whilst suspended—which they are not allowed to do—but they will get done again for drink-driving. You get people who get done for drink-driving, get their licence suspended and then go and collect their car and get done a second time the same night. Your colleague shakes his head, as we do. Yes, there are people out there like that.

**CHAIR:** That would be a very small number.

**Mr THOMAS:** Very small number, but the good thing is that is the reason the penalties and the way the court approaches the matters—it goes back to the point that Greg was making about the unauthorised driving offences. If it is simply the unauthorised driving and nothing else, there is no aggravation, no drink-driving, no speeding. What makes it worse and, therefore, means that the penalties are going to be greater is when you have somebody who is disqualified—it is bad enough that they drive while disqualified because the courts told them not to drive, but if at the same time they are drink-driving, especially if that is what they were disqualified for in the first place, that takes it up to the next level and that will ultimately be reflected in the penalty. It happens, but

it is fairly minimal. I imagine that the statistics would show that the vast majority of those—and I know there are some statistics about how often drive whilst suspended and drive whilst disqualified comes before the court; I think they are both in the top 10 of the offences dealt with by the local court—are simply drive whilst disqualified or drive whilst suspended on their own, without those added aggravated offences. Do you agree with that, Greg?

**Mr ELKS:** Yes, I do agree with that. What you have indicated does happen from time to time. The magistrates generally, if I can use the vernacular again, do not miss them on penalty because of the aggravating circumstances.

**CHAIR:** Do you have any examples of arrangements dealing with unauthorised driving offences from other jurisdictions that we can use in New South Wales?

**Mr THOMAS:** We do not and we did not seek to address that. I do note that one of the submissions talked about the arrangements that are in place in other States for that idea of being able to go back to the court to have extended periods of disqualification reviewed, and we support that proposal in our submission, as others do. I note the Chief Magistrate does not because he was concerned about suggesting that it might give people—the expression he uses is a second bite of the cherry. We do not necessarily see that as inconsistent. We imagine, from what we have read and the basis of our suspicion, as I think other submissions did, if the Government was to look at introducing something like that, it would not be—again to use the vernacular—a free-for-all for everybody, it would only be in certain circumstances; it would only be after two or three years of offence-free driving, so it would be limited.

Two examples that one of the submissions raises is the fact that you can do it in Western Australia and Queensland, so it obviously can be done. Therefore, I could not see any reason that we could not have a similar system. What we are very strong on is it should be dealt with by a court rather than, as others suggest, being done administratively by the Roads and Maritime Services. There was a suggestion it could be an administrative decision. We would be very strongly of the view that if that power is to be given, it is the power that is appropriate for the court. They are in the best position to look at all of the material. Again, you would not make it a free-for-all. You would make a specific provision whereby the person would have to demonstrate—they would not get a start until they had the offence-free period. Then they would have to present further evidence in respect of what their personal circumstances were, whether it be related to work or sick children, all those sorts of things. You have a whole range of factors the court could look at, and that would be appropriate in our view.

**Mr ELKS:** It should be the court that looks at it because that type of material would be evidential in nature and therefore would need a judicial judgement on the question of fact as to whether they have been able to establish to the requisite standard that their circumstances have changed.

**Mr NICK LALICH:** I have heard stories from young men and women who say they have mental problems and have had a hard life. Dad bashed them all the way through their life. Is that a common excuse in court? Is that a just a defence they use? Should a person with mental problems be on the road? I know there are different levels of mental problems.

**Mr ELKS:** Indeed, there are so many different types of mental illness that it is difficult to just pigeonhole them and say, "Anyone with a mental illness can't drive" because certain mental illnesses are capable of being treated by medication. There are different degrees, as we know, because some people are kept involuntarily in mental facilities and others are not. It is an interesting topic. I would think there are certain instances where people have a mental illness that would prevent them from driving. But with young people, no it is not just something that is given lip-service to in courts. It is often the case that some of these children, through no fault of their own—I am sure Ms Sanders from Shopfront Youth Legal Centre who is appearing later today will advocate strongly on this basis—are not the makers of their own destiny in some respects.

Some mental illnesses may prevent them from driving but most would not. It is just such a difficult area. The problem with kids is that they are at a stage in their life when they are not yet necessarily fully mature, particularly the ones with developmental disabilities. They make poor choices which can result in being disqualified for a very long period of time, but as they mature and get older their circumstances change and they can then demonstrate that they should be entrusted with a licence. But at the moment that is a very difficult thing to do, whereas the proposals of two or three years of being able to demonstrate that they are on the straight and narrow would then allow them to address that. Mental illness is not just something that is given lip-service.

**Mr NICK LALICH:** When one young lady was a young person she was in a lot of trouble. Now she is about 23 years old, she has had a child and that little baby will be able to get a licence before she can get her licence after being disqualified.

**Mr ELKS:** It is extraordinary. That is not an isolated case.

**Mr THOMAS:** In relation to mental illness, not only about young people but across the board, I think there is a recognition in the Local Court—whilst obviously there are a lot of people who deal with all sorts of mental health issues and that might be hugely relevant to other criminal behaviour that presents itself in the form of violence or shoplifting, et cetera—it is very wary of the extent to which defendants can rely on mental illness when it comes to driving offences. That is not to say that it is ignored. The reason for that is they recognise that disqualifying people for serious offences that come before the court have huge issues of public safety in terms of people having to be off the road.

**Mr NICK LALICH:** And you hope they grow out of their stupidity, if I can call it that?

**Mr THOMAS:** Yes, exactly in a lot of cases.

**Mr GARRY EDWARDS:** In your experience can you convert that to a percentage figure? Is it one in 10 or two in 10 of your clients who suffer developmental issues?

**Mr THOMAS:** In young people?

**Mr GARRY EDWARDS:** Yes.

**Mr THOMAS:** Or across the board?

**Mr GARRY EDWARDS:** Young people and then across the board.

**Mr THOMAS:** I would be reluctant because I would only be guessing. I do not know whether it would necessarily be that high because again not only is there recognition by the court of being able to rely on it, but I think there is also a recognition by the legal profession in particular that you cannot rely on it. In other words, you might speak to somebody and they might explain to you the situation in relation to their mental illness, whether they are young or old, and it might be hugely relevant if there has been an incident of dishonesty, shoplifting, for example, and that would be a factor, but I think there would be a recognition by most lawyers that it is less of a factor when it comes to a driving-type offence. I would be reluctant to put percentages on it. And I do not even know whether those statistics would be available. The difficulty is that each case is different, and I do not know if statistics even record the circumstances, the background and the reasons why a person might have committed a particular offence. The statistics do not show that.

**Mr GARRY EDWARDS:** I was just calling on your own experience.

**Mr THOMAS:** We see it and it would be like a lot of things, it would vary greatly. We probably do not see it much in the area where we practise in southern Sydney as you would perhaps in parts of the Western Suburbs, or the inner city and particular areas of country New South Wales or regional New South Wales. It would be a bit all over the place, I would have thought.

**Mr GUY ZANGARI:** The Committee understands that it is possible for a person who has had their licence suspended or cancelled because they defaulted on a fine to end up in prison if they continued to drive. Will you advise of your experiences of clients in that situation?

**Mr THOMAS:** It eventually gets there, if I can put it that way. I think the best way I can explain it is that—and again it is using the vernacular but we see it in practise every day and it is used in court every day—we as lawyers and the magistrates in court talk about getting on the merry-go-round. What they talk about is that it starts off with the non-payment of fines because they cannot afford to pay them, which is in the vast majority of cases. Some people out there know and do not care and just do not pay anyway, but for most people it is because they cannot afford to pay. The start of the problem is not being able to afford to pay the fines. That leads ultimately to the suspension of their licence. They still cannot pay the fine so they drive. They come to court and the first thing I say to them, if I am going to be acting for them, is "We have to clear up the fines and pay them to get your licence back."



They can then go to court and say, "The problem that caused the problem in the first place has now been solved", but not everybody can do that. What happens is that is where they end up on the merry-go-round and then they get disqualified, it then happens a second time, and it continues to happen. Whilst the disqualifications will not necessarily get any longer, it will just be two years, two years, two years. 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.

**Mr ELKS:** I currently have a client who is disqualified until 2025. He completed a jail sentence last year for exactly the situation that you have raised. His initial problem was fine default. He then became a disqualified driver. He then drove whilst disqualified on five separate occasions. On the fifth occasion he was sentenced to jail. In none of those instances was his driving a problem yet he spent, off the top of my head, I think it was three months as a fixed term on the basis that his original offences were driving whilst suspended. It is abhorrent that someone would be jailed for that type of situation. As I have indicated, he is disqualified until 2025. His court order disqualifications finish next year and I will be making an application to have his habitual declarations quashed. As Mr Thomas indicated before, it is often the case that we need to demonstrate to the court that we have completed the court-ordered disqualifications before they will then allow that circumstance to change.

If I can balance that up with another example: Two weeks ago I had a matter in court where my client was stopped for driving while suspended. He was suspended because of a fine default because he had not completed his jury service—nothing to do with his driving. He was stopped for a random breath test. They found that he was suspended as a result of non-payment of the fine for not completing his jury service. Fortunately the magistrate, when I appeared on that matter two weeks ago, was able to see that his driving was not a problem and she dealt with him by way of a section 10, without conviction, so he is able to conduct his business and continue on. It was probably lucky that he was 50 years of age as opposed to the young fellow who was in his early twenties. We now have to try to sort that out, but in my view he should never have been jailed for that.

**Mr GUY ZANGARI:** I ask you about a high-profile case some years ago. I think the gentleman's name is Jamie Partlic. Do you remember that?

**Mr ELKS:** I remember that. I was the court constable in that matter.

**Mr THOMAS:** I used to work at the firm that acted for him.

**Mr GUY ZANGARI:** From memory—and you will be able to correct me on this—this was as a result of Jamie not paying fines?

**Mr ELKS:** Correct.

**Mr GUY ZANGARI:** He ended up in prison and subsequently was assaulted?

**Mr THOMAS:** That is right.

**Mr ELKS:** Yes.

**Mr GUY ZANGARI:** He was quite significantly assaulted?

**Mr ELKS:** Yes.

**Mr THOMAS:** But that was in circumstances where when the court imposed fines, the penalty, if I can put it that way, for not paying the fines was that you would be arrested on the warrant and have to serve the time in jail and it used to be—

**Mr ELKS:** Commitment warrants.

**Mr THOMAS:**—what we call commitment warrants and it was a certain amount per day.

**Mr ELKS:** Yes.

**Mr THOMAS:** That system has gone.

**Mr ELKS:** As a result of that.

**Mr THOMAS:** As a result of that. In the early nineties I think it was. That system has gone. The way it works now is that where you end up with people not paying being able to pay their fines and serving time in jail it is as a result of getting on the merry-go-round that leads to the suspension of their licence, driving while suspended, then being disqualified, driving whilst disqualified.

**Mr GUY ZANGARI:** That was a clear example of the merry-go-round that you are talking about back then with that particular case?

**Mr THOMAS:** I would not even call it a merry-go-round because that simply went from non-payment of fines straight to jail whereas with the merry-go-round that you have to get on now you have to go through a process first before you ultimately get to the jail so I suppose the difference is that it probably takes a little bit longer but ultimately it can still happen.

**Mr NICK LALICH:** You have probably answered this question but there may be other sectors of the community that this could relate to. Do you think licence suspension or cancellation is an appropriate penalty for fine default particularly in relation to more vulnerable sections of the community, such as the Aboriginal community or people in rural communities?

**Mr ELKS:** Again we come back to the Aboriginal situation or people in rural Australia where you just cannot get around without your licence because there just is not public transport. There are doctors appointments and any number of legitimate reasons you need to be able to get from A to B that with fine default suspensions you cannot. I do not think any of us have addressed this but work licences were taken away many, many moons ago. I do not know how we address some way of recognising that people in those far-flung regions are somehow given that ability to get around. I have not really thought it through beyond your question just now but I know that one of the reasons they took away conditional licences such as work licences was because of the ease with which people could abuse them and say they were on their way to work when they truly were not and things like that. I think that would have been the mid-eighties if not earlier that they got rid of conditional licences but it certainly creates a problem in the bush for Aboriginal people and things like that.

**Mr THOMAS:** My answer to the question would be that it is a better system than what we had in the early nineties that resulted in Mr Partlic being assaulted in the way that he was.

**Mr ELKS:** Yes.

**Mr THOMAS:** If you did not pay your fines you went straight to jail—you do not go straight to jail but you end up going to jail. I think again the statistics would probably show that even in the vast majority of cases people do not want their licence to be suspended because they have not paid a fine so they will pay the fine in order to ensure that does not happen. That means they prevent themselves from being suspended or cancelled and dare I say the Government gets the money because the fines get paid. That is an improvement. The difficulty that arises, as the submissions have highlighted, is when you are dealing with people who are not in a financial position to simply do that. There are a lot of people who can do that. That is good because they then pay the fine, the Government gets the money and they continue to drive. The difficulty is for those who cannot afford it.

**Mr NICK LALICH:** When we talk about the three levels of losing a licence, do you feel that we should make separate laws for each one, then separate penalties for each one and separate remedies for each one? You were saying they were altogether in one sort of basket at the moment. The problem I have in my mind is that you have heard the shock jocks talk about people with bad driving records. They do not say, "This poor buggler lives out the back of Bourke." They just say, "Who were the fools who did that? Who was the stupid magistrate?" and we get hammered again through these guys. You understand the situation we are in. We change the law and they come back and say, "Stupid so-and-so did this."

**Mr THOMAS:** We do understand that but I think that if it was done in such a way that there was recognition of the driving whilst disqualified. Remember that at the moment there is already a distinction for

fine default in that it carries only a three-month period of disqualification. It jumps up to the similar periods for the other things once it is a second offence and there is an argument that says that is appropriate but our table suggests differently. We are not suggesting that you just lower the penalties generally. All we are simply saying is to embody in the legislation what we say, from a practical point of view now, in a lot of cases is recognised by the court in that distinction between driving whilst disqualified, driving whilst cancelled and driving while suspended.

**Mr GARRY EDWARDS:** I apologise. I am going to have to skip ahead to question 12. Your submission says that you oppose the use of vehicle sanctions for unauthorised driving offences. Would you support the use of vehicle sanctions if there were parameters around their use?

**CHAIR:** In your submission you also mention that it may be reserved for the worst offenders. I would like to know who you would class as "worst offenders".

**Mr THOMAS:** I think the example we give, Mr Chair, is the person who has been convicted of three driving whilst disqualified offences within five years, which at the moment would attract a habitual disqualification of five years. In other words there needs to be an element of repetition and it needs to be within obviously a certain period of time. The example we give is in relation to driving whilst disqualified as opposed to driving whilst cancelled or driving whilst suspended, again because the driving whilst disqualified is seen as being the most serious. I suppose there is an argument—I am not necessary advocating this—that says if you drive whilst disqualified three times within five years and you simply have not got the message, well then maybe ultimately the sanction that needs to be looked at is the taking away of that vehicle.

If they were my client, I would have advised them to get rid of the vehicle anyway because that would be part of the argument when they go to court. But if they are silly enough to keep it despite the temptation that remains then that would be the ultimate sanction. 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.

**Mr ELKS:** I think we have to remember that currently vehicles are often seized as a result of racing, and usually in the worst circumstances. I think generally the police do use it as a last resort. It is not uncommon that the offenders are young males and they are driving mum and dad's car. Of course, mum and dad have no idea what they are doing with the car. The car is then seized and an application has to be made before the court to get the car back, and that is not always easy. As I say, it is generally mum and dad's car; it is not a twin turbine Skyline or something that the offender is driving around in. So it does create difficulties for mum and dad. I think we also have to remember that a car generally represents the second biggest investment in anyone's life, and I do not think you should take that away easily. I really do think it has to be reserved for the worst type of offence, and that has to be demonstrated over a period of time—it is not just an isolated incident—before you take the car. To give an example, it might be an incident involving driving at a speed which is dangerous or over 45 kilometres an hour above the speed limit and where there might be effects of alcohol or something of that nature following on from other offences—

**Mr THOMAS:** A combination.

**Mr ELKS:** Yes, it might involve a combination of aggravating features which says, "You do not deserve anything before we take that very serious step."

**CHAIR:** I am mindful of the time so I thank you for your submission and for attending today. The Committee definitely has a few more questions that it would like to send to you to get some responses in writing. Those replies will form part of the evidence and will be made public, if you are okay with that.

**Mr THOMAS:** Yes, certainly. The Criminal Law Committee of the Law Society will meet again next week, so if there is any chance the Committee could get those to us sooner rather than later then we would be in a better position to address those as soon as possible. I know that you are on a tight time frame as well.

**(The witnesses withdrew)**

**(Short adjournment)**



**JUDITH LEVITAN**, Project Manager, NSW Legal Assistance Forum sworn and examined:

**JANE SANDERS**, Principal Solicitor, the Shopfront Youth Legal Centre,

**JENNY LOVRIC**, Cooperative Legal Service Delivery Manager, Legal Aid NSW, and

**FELICITY GRAHAM**, Solicitor, Aboriginal Legal Service (NSW/ACT) Limited, affirmed and examined:

**CHAIR:** Thank you for appearing before the Committee today. Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearings?

**Ms GRAHAM:** No.

**Ms SANDERS:** No.

**Ms LOVRIC:** No.

**Ms LEVITAN:** No.

**CHAIR:** The Committee has a series of questions to ask, but before that would you like to make an opening statement?

**Ms LEVITAN:** On behalf of the New South Wales Legal Assistance Forum [NLAF], I thank you for the opportunity to appear before the inquiry. NLAF is an inter-agency group that brings together legal service providers from across the government, non-government and private sectors. It aims to facilitate access to justice for socially and economically disadvantaged people by improving the way services are designed and delivered, to promote cooperative relationships and collaboration between organisations within the justice sector, and to promote the development of innovative ways of servicing marginalised groups in the community based on relevant research and identified gaps in existing legal services.

NLAF comprises the chief executive officer or delegate of a variety of organisations in the justice sector, including the Aboriginal Legal Service, Community Legal Centres NSW, Legal Aid, the Law and Justice Foundation, the Bar Association, the Law Society, Law Access, the Department of Attorney General and Justice, the Legal Information Access Centre at the State Library, the Public Interest Advocacy Centre and the Public Interest Law Clearing House. From time to time the NLAF convenes working groups to address specific issues relating to access to justice. NLAF has identified certain trends in relation to unauthorised driving offences. It has been found that unauthorised driving offences constitute a high proportion of offences prosecuted in local courts, that the trend in court disqualifications has increased dramatically over the past decade, and that a significant number of people who are charged with these offences come from socially and economically disadvantaged groups, in particular, Aboriginal people living in remote communities, young people and newly arrived migrants and refugees.

The other issue that we have noticed is that fine debt and outstanding debts are two of the most common reasons for licence suspension and then cancellation. A significant number of people charged with unauthorised driving offences are then being incarcerated. While there is no outright incarceration for fine default, it happens de facto when people have their licence suspended for fine default and then have a series of disqualifications and end up being incarcerated. In light of these trends and concerns, NLAF established a fine and traffic law working group with the aim of reducing the number of people who experience legal problems associated with fines, licence suspensions and disqualification, particularly young people and Aboriginal people, who are disproportionately disadvantaged by a lack of alternative transport. Working group members have particular expertise in providing legal services to people who are socially and economically disadvantaged and have problems with fines and licensing. My colleagues from Shopfront Youth Legal Centre, Legal Aid NSW and the Aboriginal Legal Service are here today and will specifically address those concerns for their constituent groups.

Reform to the laws relating to authorised driving offences is necessary and appropriate. A driver licence is a vital tool for social inclusion for people with limited access to public transport; it is necessary in order to access education, health services, employment and goods and services. Some communities face significant barriers to obtaining and maintaining licences and consequently drive unlicensed. These barriers do

not necessarily relate to unsafe driving practises but to economic disadvantage and poverty. Current licence sanctions for unauthorised driving do not take into account the particular circumstances of disadvantage and the particular impact that disqualification will have on these people. If the disqualification periods are cumulative and occur in places where people have no alternative but to drive, they are a weak deterrent to reoffending.

My colleagues will talk about the impact of the laws on young people, Aboriginal people and people living in rural, regional and remote [RRR] areas. At the outset I raise the issue of the negative impact of disqualification laws on newly arrived migrants and refugees. Newly arrived immigrants and refugees and international students are often unaware that they must obtain a New South Wales driver licence within three months of taking up residency and often they first hear of this requirement when they are fined—that raises some equity issues. The final reason for law reform that we put forward is a rather practical one—namely, the costs of this system for the Government and the broader community. The costs are disproportionate to any claimed benefit in relation to safety and rehabilitation of unlicensed or disqualified drivers. Over the past 10 years about 9,000 people have been incarcerated for unauthorised driving offences. It is estimated by NSW Legal Assistance Forum [NLAF] members that the current cost of incarceration is about \$280 a day.

The costs associated with this system are incurred by police, prosecution of the offences through the courts, legal centres, Corrective Services and Roads and Maritime Services. There are also the costs for individuals—the lost opportunity costs when they are excluded from participating in society and being able to find employment because of not having a licence. So rather than contributing to the pool of money and tax revenue that can be accumulated, they require government assistance because they cannot drive or get a job. There are also the consequential costs. Many people will not be able to drive as much to access health services. If they have health problems, those problems can then be exacerbated and this will lead to further costs in that area. Limited access to educational opportunities will mean fewer options to facilitate access to employment. Also, if people do not have a licence and cannot drive they are often socially isolated. The inability to access social support services can also mean that mental health and social issues are not addressed and problems can spiral, become bigger, more significant and erupt into crisis. For those reasons we believe reform of the current system is appropriate and necessary. Thank you.

**CHAIR:** Thank you for your very comprehensive opening summary.

**Ms LOVRIC:** I am sorry to interrupt. I would also like to make an opening statement.

**CHAIR:** Do you all want to make an opening statement?

**Ms LOVRIC:** I cannot resist the opportunity. My name is Jenny Lovric from Legal Aid NSW. I am a solicitor and manager of the Cooperative Legal Service Delivery and Regional Outreach Clinic Program at Legal Aid NSW. These programs focus on enhancing legal services in rural, regional and remote areas—otherwise known as RRR New South Wales. As such my testimony will focus on how these laws disproportionately affect people in regional and remote New South Wales.

Laws are meant to have general application and effect across communities; however, we are aware that in fact this is not the case with traffic matters. This is often the case because of the well-known poor public transport infrastructure and the related inability to access employment, schooling and other education, shopping and medical needs—these are basic human rights—coupled with the comparatively high cost of running a car in RRR areas, the relative lack of access to driver training, the inability to work up the necessary 120 hours of driving experience, the high proportion of licence cancellations in regional areas often due to fine default, and the lack of access to registered, insured cars and a shortage of licensed drivers. The traffic laws, the subject of this inquiry, can accumulate and have a dramatic impact on regional communities—in particular in some remote Aboriginal communities.

In many cases the offences being discussed here are for matters with no nexus whatsoever to driving—for example, failure to vote, failure to pay a fishing licence or failure to wear a helmet—and many of the offences occurred when citizens were immature. Most of these offences do not involve a risk to public safety and must be distinguished from other more serious offences, such as drink- and drug-driving, reckless driving, speeding et cetera, offences that may entail a risk to public safety and from which the public should rightly be protected. The current non-discretionary and mandatory regimes mean that this important distinction is missed, that anomalies and sanctions are apparent.

The effect 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. A driver licence is like a passport to participate in society. The effects of these laws have a direct impact on jobs, access to education, access to opportunities and, as mentioned earlier, in many cases access to the basic right to get medical attention. It has a cost impact on the criminal justice system in terms of regulation, administration of government departments, policing, prosecuting and defending matters and court time, not to mention incarceration costs. Habitual traffic offender [HTO] declarations are a special case of their own and we strongly support their abolition. However, it is the long-term disqualifications that are really causing the most grief and impacting on social disadvantage and, in the long term, on the economy.

The disadvantage and social exclusion caused by fines and disqualifications is already well documented in other reports. It is this disadvantage that has informed the development of a number of programs aimed at assisting disadvantaged people to get out of trouble and manage crippling fine debts, as well as programs targeting young Aboriginal drivers. Regrettably the good work that these programs aspire to achieve is undermined by the punitive disqualification regimes. We receive calls from workers from various programs, including Driving Change, people involved with the new P1 restricted licence program, Yulang—an organisation that works in vocational and educational training in Aboriginal communities—as well as workers and our partners in the Work and Development Order [WDO] scheme.

We are working hard to assist drivers and fine defaulters, particularly young drivers, to step up and out of debt. In relation to the WDO scheme in particular, the prospect of having driving restrictions lifted while at the same time getting vocational skills or medical checks is a huge incentive. Not-for-profits, NGOs, and clients participate in these programs in good faith. However, we are finding the promises of being safely licensed or re-licensed are stymied if a person has a HTO or lengthy disqualification. In many cases these disqualifications go back to unpaid fines and matters entirely unrelated to driving or for offences that took place when a person was going through a bad period due to immaturity or whatnot.

Another issue I want to raise, which I think is vital in this mosaic that leads to the denial of social inclusion, is the lack of easy access to birth certificates—a necessary document for obtaining a driver licence and possibly one of the reasons behind the high incidence of drive never licensed offences. This is most clear in Aboriginal communities in remote New South Wales. Statistics indicate a very high number of drive never licensed offences in communities with high Aboriginal populations, including Walgett, Brewarrina and Bourke. On a recent legal outreach to Bourke and Brewarrina this year the team from Births, Deaths and Marriages took applications for almost 280 free birth certificates in less than eight hours. We actually ran out of allocated funds for those birth certificates—we could have gone on for days.

Births, Deaths and Marriages is a government cost centre, which is funded almost entirely from the revenue it receives from processing these kinds of certificates. For us to get Births, Deaths and Marriages to participate in this event we had to find funds externally, which we did through the Department of Premier and Cabinet, through some discretionary funds of the Law Society. We ran out. We actually made a phone call to the Indigenous Coordination Centre and they luckily coughed up some money so we could complete some of the birth certificate applications that people were queuing for that day. Applying for a birth certificate is a two-stage process: Births, Deaths and Marriages works by locating registration documents of a person's birth—usually from hospitals—and then the certificate. That cost is now \$51 dollars per certificate, and this in itself can be a prohibition. A further prohibition is literacy issues and access to necessary documentation, getting copies, getting acceptable certifications.

A further complication is finding out where the child is born. In the cases of some Aboriginal people this may not be straightforward for reasons including kinship issues, cross-border issues and the use of different family names. The cost of changing a name on a certificate is a prohibitive \$174. We hear that many people just give up trying as it is too difficult, too time consuming, too costly and often traumatic. As mentioned, while we cannot comprehensibly prove the link we suspect there is a link between driving never licensed and the lack of birth certificates. Certainly the statistics show this. I just wanted to raise those issues. I thank the Committee for the opportunity to present to you today.

**Ms GRAHAM:** Perhaps I should not assume, but I would ask Committee members to consider their own situations if they have a driver licence and how that affects their lives. Do you use it every day? Do you use it for family commitments? Do you use it for your employment? Consider also the factors that led to you, if you do have a driver licence, being able to obtain it. Could you read at the time? Did you have someone who could do the lessons with you? Could you pay for lessons?



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 about a licence to drive; we are really talking about a licence to live. A common frustration of magistrates and judges is that people continue to drive when they have been told by a court not to, and even when they have been told that they will be facing imprisonment if they continue to drive. But the risk that people take in doing so is really the price of living.

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. Because there is a higher concentration of Aboriginal people in regional and remote New South Wales, the effects of this regime are even more disproportionately felt when it comes to Aboriginal people. The chance of compliance with the regime is also affected because of the lack of public transport. On top of that, the chance of detection of this type of offending is drastically increased in regional and remote areas, particularly in Aboriginal communities such as Bourke, Wilcannia and Dareton where there are very high rates of policing compared to the towns' relatively small populations.

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 multiplication of issues which only exacerbate 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. The system itself is creating crime, creating offenders, creating a problem.

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. I ask the Committee to consider what is serious about these types of offences and what is inherently dangerous about these types of offences. When you strip it back, driving in a car is a task that many of us round this table do regularly without it being a violent action or inherently dangerous to public safety or interfering with other people's property rights. The action of someone driving a car in itself is not something that is damaging to the social fabric. Certainly there is the component of breaching a court order and breaching other banning notices, but what is serious about the actual action when we strip it back? Does it mean that it warrants the harsh punishment that is the reality?

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. That is to be distinguished from other offences that do go to a danger to public safety such as drink-driving or dangerous driving. We are talking about 9 to 12 per cent of all jail terms in our Local Courts being imposed for driver licence offences. When we come to look at the picture for Aboriginal people we see that the statistics reveal these kinds of punishments and this regime is affecting Aboriginal people disproportionately and very severely. In 2010 a total of 21 per cent of the people charged with driving without a licence were Aboriginal.

The concerns that the Aboriginal Legal Service has had in this area caused us to conduct our own statistical study based at the Dubbo office. We looked at our data from between 2006 and 2012. That data revealed that in the Dubbo region 50 per cent of our clients were sentenced to a term of imprisonment in the Local Court for the offence of drive whilst disqualified. We compared the data with the statewide Judicial Commission statistics for drive whilst disqualified and for a range of other offences. When you consider that the offence of drive whilst disqualified has a maximum penalty of 18 months or two years depending on the number of offences, that rate of 50 per cent was far and away higher than the statewide jailing rate for other offences such as causing grievous bodily harm in company, predatory driving, dangerous driving causing grievous bodily harm, aggravated assault and possessing child pornography. All of those offences of course carry much higher maximum penalties of up to 14 years imprisonment.

I would like to finish my opening address with a story from one of my clients. He is a man from Condobolin. He never held a licence. As a result of being convicted for driving without a licence on the second and third occasions he became disqualified for the automatic six-year cumulative period. He was then charged with driving whilst disqualified. For his very first offence he received a jail term of six months, albeit suspended. But he received a jail term of six months for his first ever offence of drive whilst disqualified.

Some years later he attended the Local Court registry to inquire about the expiry of his disqualification period, thinking that it had perhaps come to an end and he could go to the Roads and Traffic Authority [RTA] and apply for a licence. He was given information at the Local Court suggesting that the disqualification may have expired, but he was told to go to the RTA to check. He then went to the RTA and was informed that his disqualification period had expired and he was issued with a licence.

He was, however, prosecuted for a second offence of driving whilst disqualified. That happened because he identified himself by his mother's name—that is quite common in the Aboriginal community—but was also known by his father's name on some official records. Those official records revealed that he was still disqualified. He was sentenced to 12 months jail for that second offence of driving whilst disqualified that was committed in those circumstances. He spent 1½ months in Wellington jail awaiting his sentence appeal, which eventually was successful and resulted in a non-conviction bond.

This man is essentially illiterate. He started learning to read for the first time in jail pending his appeal. He is 27 years of age. He has a partner who also does not have a licence. He has a 15-month-old son, and he lives with his partner and his son together with his grandfather, whom he has responsibilities for in that family unit. I spoke to him just this morning to see how he was going. He said to me—I will leave you with his words—"I want to get off the dole. I cannot get a job." That is the reality of this draconian system which sees someone like this man disqualified until some time in 2021—an entirely prohibitive regime.

**Mr GUY ZANGARI:** I am the member for Fairfield but also the shadow Minister for citizenship and communities. So what you are saying regarding refugees, migrant communities and our First Peoples—the Indigenous community—resonates in the area that I represent. The question that I wanted to direct to Judith—if I may call you Judith—relates to migrants. You said that migrants and refugees find out later on about the licensing requirements, once they have received an infringement. What can be done initially in educating our new arrivals regarding New South Wales licensing requirements so that they do not fall into a spiralling trend? I can speak from experience. Any infringement received by a member of the migrant community where I live causes them to feel shame. They feel that they bring shame upon the family. They do not have the coping mechanisms to accept an infringement where they have not known—it is no fault of their own. Judith, what could we do regarding licensing requirements?

**Ms LEVITAN:** There are some community legal education initiatives that are in place. The solution would be about expanding those, I guess, and providing extra resources for them. There are a few videos around. I think Fairfield Council produced a video called *Under the Law*, which dealt with some African communities, about laws around driving and licensing. I guess we need to commit resources to creating public awareness of those issues and to providing that information in community languages. That information needs to be not just in written form but in interactive and engaging formats.

**Ms SANDERS:** I would like to add something on that theme. Many of the young people that I have talked about in my submission come from migrant or refugee backgrounds. An issue which seems to pop up again and again is that young people—I am talking about people aged 16, 17 and 18 up to maybe 21—often have the primary responsibility for the family. Their parents may not be fluent in English but the kids are. The kids are often the ones going out to work or possibly taking mum and dad to shopping and medical appointments, being the translators and the real points of contact with the wider world for their parents. Many of my young clients do not have licences for one reason or another, including that they have different names or details on their citizenship certificates or their official documentation. The documents have different spellings of their names. Names—particularly those that have been transliterated from languages like Arabic—often end up spelt differently on every different document. The bureaucracy of Roads and Maritime Services is sometimes difficult.

Time and time again I hear from these young people: "I know I do not have a licence but my mum needed me to take her to a medical appointment," or "My dad told me I had to do this." I think young people from certain cultural backgrounds are much less likely to be able to tell their parents, "No, sorry, I am not doing that," than perhaps somebody from my cultural background. That is a real issue. So I think it may be in order to have some education for the parents, if they can be reached, about the very harsh consequences of unlicensed driving that their kids could face.

**Mr NICK LALICH:** I have a lot of sympathy and empathy with the Aboriginal people and people living in those far regional areas because, with the tyranny of distance, they need vehicles to get around. You

feel sorry for them for that and for what we have done to them over the last 220-something years. When I came into this Committee I thought we were just looking at either removing the disqualification or reducing the penalties or whatever. But there is a lot more to it. Some of these Aboriginal people do not have birth certificates so how can they go and get a licence, unless they wait until their faces look old enough to be believed old enough? But even then you have to be able to get the 100 points, or whatever it is, to get the licence. Then there is the cost of the licence and the cost of the driving lessons and tests. They just cannot afford all these things.

I just find it hard to think about. I can understand reducing the cost for outlying areas and for vulnerable communities, but how do you weigh that up? Even in those communities you still have some ratbags who will just keep doing this over and over again, even though they may have the ability to pay for all these things but just do not want to. How do you keep a safeguard on the community? We could say, "Let us reduce the cost of licences and everything else for them out there by half or three-quarters or whatever," but how do you then make sure that there is still safety in the community? It may be a question that you cannot answer.

**Ms LOVRIC:** I think it is important to draw a distinction. We hear a lot about law and the safety issues. These offences do not involve safety issues. These are offences—a fine default or whatnot—and then further suspension, cancellation and disqualification.

**Mr NICK LALICH:** I see that a lot of the offences do not relate to driving.

**Ms LOVRIC:** Absolutely, they do not.

**Mr NICK LALICH:** It has happened for other reasons. So that is why I am asking: how do you impose that on the wider community and not on people in the regional areas? How do you justify that? We have to have some way to make these people learn. That could be through a monetary penalty. A lot of times people learn very quickly if they are hit in the back pocket.

**Ms LEVITAN:** But if people do not have the money to pay then the lesson is not learnt.

**Ms SANDERS:** I do not know if this is a good analogy or not but this comes up a lot in my practice. We may look at the issue of people who abuse drugs, for example. Some people say, "People have got to be deterred from using drugs—with harsh penalties, fines, court proceedings, imprisonment et cetera. If they are told about the negative consequences of using drugs—whether they be health consequences or legal consequences—they will eventually stop." That may work for some people, but for the people who have complex mental health issues, a history of abuse et cetera, and for people who have addictions which they just cannot break, no amount of deterrence is going to stop them.

So what do we have now? We have a drug court and the MERIT program which runs in Local Courts—and that has been enormously successful. So rather than just saying, "Go and get off the drugs, or else," people are assisted where they really need it. They are given assistance to deal with their drug habits. And that has all sorts of positive public health benefits and public safety benefits in terms of crime rates and court costs and costs downstream—costs of imprisonment. Similarly, in terms of helping people to get licences, we need to have a licensing system so that there are objective standards for which people can be tested, so that we can make sure that people meet minimum driving standards before we let them loose on the road, but we need to assist people who do not have the capacity to go and get their licence or do not have parents who can teach them or send them off to driving lessons.

For too long I think a licence has been seen as a privilege. Maybe that once was the case. Now it is really an essential, as Felicity has very articulately and dramatically presented to you; it is really an essential for modern life, particularly if you are in the regions or even in the suburbs or in any kind of employment which involves a trade or something which does not involve sitting in an office. I think we have got to get away from that idea that it is a privilege; it is an essential vocational and life skill. Help kids at school, run courses at TAFE where people can be assisted with learning the road rules and going for their "Ls"; they can also have some practical tuition so that they can get the driving hours up as well. That does not solve the problem with the birth certificates, but, again, the initiatives that Jenny has been talking about with perhaps Aboriginal outreach programs to try to cut through some of that bureaucracy. We have also seen how the State Debt Recovery Office [SDRO] has come along in leaps and bounds in the last 15 years in the way they deal with disadvantaged people.

Initially, with the SDRO I think there was some trepidation on their part about "how do we distinguish really disadvantaged people who cannot pay their fines from bludgers who just do not want to pay their fines?" They found that it is not really that hard to distinguish the people who are in genuine hardship, and the SDRO has been relying a lot on community workers, people out there who are actually working with disadvantaged people. We have now got a fantastic Work and Development Order [WDO] scheme, which means that there are some ways in which disadvantaged people can work off their fines rather than having to pay them. So that is real progress and it has perhaps to some extent dealt with the problem of people who are suspended because of fine defaults. It does not solve all of our problems, but they are examples of areas in which where there is a will there is a way of identifying the truly disadvantaged people and assisting them to meet their basic legal obligations rather than just shutting them out. It can be done.

**Ms LOVRIC:** Just following on from what Jane is saying, schemes like the WDO scheme and, indeed, schemes like Driving Change, which is a program being run in regional New South Wales where young Aboriginal driving champions are assisting young people to get licensed. These are having great success because the community is owning those projects. So there is something about actually working with those communities specifically and people who participate in those programs have a great deal of pride in getting a licence.

The programs themselves are not just simply about getting a licence; there are also literacy programs as well which assist people to get their licence, to get their birth certificate. It is not just looking at driving; it is looking at what are the reasons behind people not having a licence in the first place. There is that sense of getting communities involved with that, and I think some of the success is because they are working very locally. As Jane said, we are working in field offices and in the case of WDOs we have Aboriginal field officers working with us in the Aboriginal Legal Service; there is a great deal of success in involving the community in solving those problems and there is a great deal of pride in people who participate in those programs because they have done it; it is a hand up. I think there is something to be said for investigating those programs further and perhaps resourcing them further.

**Mr GARRY EDWARDS:** I find that you have pretty much covered some of these questions in your opening addresses and comments thus far so I will be a bit naughty and jump ahead here. I will go to question 6. Do you have any examples of arrangements for dealing with unauthorised driving offences from other jurisdictions which may work well in New South Wales?

**Mr NICK LALICH:** From other States, other countries? Do you have any examples? We probably should have given you these questions earlier.

**Ms LOVRIC:** You should have. My understanding is that there are some programs in Western Australia. I think the New South Wales Government submission may have referred to those but I am not quite sure what they are.

**Ms LEVITAN:** Is it possible to take that question on notice?

**CHAIR:** Yes, definitely.

**Mr NICK LALICH:** The Chair will be sending you some questions that we have not asked so you will have the opportunity to put the answers in writing for us. You will have a chance to answer the questions anyway.

**CHAIR:** In the society we live in today where the Government changes the penalties and laws around law and order, and I know we touched on that earlier, we are scrutinised sometimes. The shock jocks are out there saying that we are dumbing down the penalties. Do you think reducing the penalties would pose an additional risk to the community?

**Ms SANDERS:** I do not think we are looking at just reducing penalties across the board. I think we are all agreed that we are not proposing tinkering with penalties for offences which pose a real element of danger—speeding, drink-driving, dangerous driving—although I think we maybe would like to see magistrates given a bit more discretion about disqualification. But we do not want to reduce penalties for those real safety-related offences. What we want is to have a sensible approach to people who drive while they are suspended or disqualified so that we are not creating offences and offenders.

At the moment a lot of the people that we are working with and that we talk about in our submissions are people who are offenders solely by virtue of their unlicensed status, and because we have a system of cumulative disqualifications. Those cumulative disqualifications do not apply to offences like drink-driving or speeding or whatever; they only apply to offences of driving whilst suspended, cancelled or disqualified. One of my clients is referred to in my submission as Vicki. She is 26 now and she is disqualified until she is well into her fifties. I have another client who is a young woman who is disqualified until she is well into her seventies. It is absurd.

Vicki, in particular, has only once committed an offence involving dangerous driving, and that was when she was about to be pulled over by the police. She knew she did not have a licence and she sped off to take off from the police—not a smart thing to do, and it was not a smart thing to drive while she was disqualified of course. But this was a very immature young woman with behavioural, mental health problems, she was homeless, she had a lot of dysfunction in her family—a very immature young woman who in the last three years has become a mum; she has got a daughter who is nearly four. She has attained a great deal of maturity and she is now talking to us about making an application for remission of her disqualifications.

That is an example of someone who is an offender because she was immature in her youth, she had all these unpaid fines, did not or could not deal with them, and was impulsive enough to keep getting behind the wheel and then went on this path of no return. So if we could get rid of these cumulative disqualifications or have some kind of discretion or some kind of upper limit on the number of years that they can accumulate, then I do not think we are being soft on safety; we are having a sensible approach. Rather than people just giving up hope, rather than having a completely unregulated community of drivers out there, we have got more chance of bringing people within the licensing system and more chance of achieving the end goal, which is safety.

**Mr NICK LALICH:** Vicki is the lady who has got the little baby and the baby will be able to get a licence before she can get her licence?

**Ms SANDERS:** Exactly.

**Ms LEVITAN:** Can I just say that in terms of the claim that you would reduce penalties, and addressing the issue that the shock jocks might raise, if you reform the systems, if you give magistrates a discretion—at the moment it is mandatory, there is no discretion in the system to deal with particular circumstances and particular disadvantage—if you reform the system so that those magistrates can take into account those circumstances of disadvantage, I think that produces a fairer outcome and that demonstrates a system that is fair and just rather than saying that it is necessarily soft on crime or soft on people who are reckless in their driving.

**Ms SANDERS:** To be fair, there is a discretion, but the discretion is section 10—that is no conviction, no disqualification. It is very all-or-nothing. It is no disqualification, no penalty at all or you get a penalty and you have this mandatory disqualification. Often magistrates are criticised—we perhaps are talking about the shock jocks—for handing out too many section 10s and being too lenient. This is why, if they are handing out a disproportionate number of section 10s for licence-related offences, the only way in which they can show some discretion and some sort of understanding of a person's circumstances is to take that very lenient option. If there was some middle ground—

**Mr NICK LALICH:** You spoke about cumulative penalties. What if we were to leave them in place—people have to have some sort of fear once they keep reoffending—but also have a mechanism that every three or four years the person has the ability to go back to court and ask for it to be reduced or completely wiped out? At the moment it is compulsory and there is no ability to ask for a reduction. If every three years after their licence is suspended or taken off them they could go back to court and say, "I haven't done anything wrong in the last three or four years, can I get that removed or reduced?" perhaps that could remove 50 years worth of fines in the next 10 years.

**Ms SANDERS:** I think that would help, but three years is probably too long.

**Mr NICK LALICH:** I just suggested that.

**Ms SANDERS:** Part of the terms of reference is our views about a relicensing scheme. If people continue to be disqualified for long periods, I certainly would support a scheme like that.

**Mr NICK LALICH:** You think three years is too much. As a lawyer, what time limit would you suggest to be fair to the community and the person?

**Ms LOVRIC:** Once again you have to bring in that proportionality element. What is the offence in the first place? We have to keep reminding ourselves of that. We are talking about people effectively for whom the end line is being imprisoned for what is an administrative offence; there is no danger. That is what we need to hand back to the magistrates to determine the specifics of the case. The mandatory disqualification is causing the mischief here.

**Ms GRAHAM:** 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. There needs to be a real distinction. The answer to the shock jocks is that we are protecting public safety when public safety is at risk.

**CHAIR:** I cannot disagree with you.

**Ms LEVITAN:** Can I address the issue of deterrence and cumulative penalties? There has actually been research by the New South Wales Bureau of Crime Statistics on the deterrent effects of fines and recidivism. It found that longer licence disqualifications did not have very much deterrent effect.

**Mr NICK LALICH:** If they were told, "You can come back" every 18 months, two years or three years "and ask for a reduction or removal" they may behave themselves. If there is no possibility of getting their licence back, they think, "I've got 50 years, well who cares. I'm just going to keep breaking the law." But they might think, "Hang on, in 18 months I can come back. I'm going to behave myself for that 18 months to try to get it back."

**Ms SANDERS:** If there is a light at the end of the tunnel, certainly.

**Mr NICK LALICH:** That is what I mean. You have to have the light at the end of the tunnel.

**Ms SANDERS:** But how far away is that light? If it was three years away, it is probably too long, particularly for younger people. One of the things that may come up in questions, but certainly one we have addressed in the Shopfront submission and I would like the opportunity to address further, is that we cannot just be treating kids like adults. There is this kind of bizarre idea—I find it bizarre—that if you are old enough to have a licence, you are old enough to be treated as an adult. That philosophy does not apply in any other area. If you are old enough to have a job and you are 16 and you are charged with embezzlement from your employer, for example, you still go to the Children's Court. You are dealt with as the immature young person you are. Again, this gets back to this idea that a licence should be a privilege. I think in our society it is not a privilege anymore.

We need also to look carefully at how we deal with young people, particularly under 18s. I am firmly of the view that there should not be any mandatory disqualifications attaching to under 18s at all. It should be completely discretionary. Young people should be dealt with in a way that is appropriate to their maturity or immaturity, and that is not to say that young people should be allowed to run amok on the roads. There have been some very sensible measures adopted in recent years, such as the restriction on high-performance vehicles, passenger limits, increasing the number of hours a learner driver has to do in their log book, et cetera. They are all important and they are evidence-based measures aimed at achieving greater safety and competency for young drivers. But the issue is how are these laws enforced? What kind of sanctions are we going to impose on young people? I think particularly for younger people, that big-stick deterrent approach is not going to work.

I have come to this in a roundabout way, but the point you were making, Mr Lalich, is to see some sort of light at the end of the tunnel. For a young person who is 17 or whatever, 18 months away is a long time. The Shopfront submission has a couple of case studies, particularly Daniel and Marko. These two young men, by the time they turned 18, were disqualified until they were 23 for Marko and 24 for Daniel. They were disqualified for at least five or six years into the future. Clearly, there was no light at the end of the tunnel for these two boys. I would suggest that more than 12 or 18 months for a young person is too far off.

**Ms LOVRIC:** I would say not only for young people but people in regional and remote areas where there is in fact no alternative but driving. That is where I think the discretion has to be handed back to the courts

to make sensible decisions based on the case. That is not being light on crime; it is actually just looking at the circumstances.

**Ms GRAHAM:** I would like to respond to your suggestion from the point of view of the resources of the Local Court. I wonder whether giving the discretion back to magistrates at the first instance, when they first impose a sanction, is perhaps a better way to use the resources rather than requiring basically a two-step process of a secondary application some years down the track, having demonstrated long good behaviour. 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.

**Mr GARRY EDWARDS:** This question definitely is without notice. You have given examples of young people who, through fine default, disqualification or never having had a licence, now may be in their late teens or early twenties and cannot apply for a licence until they are in their sixties and in one case even in their seventies. If the law of mandatory sentences was softened—was changed—do you see a role for retrospectivity for people such as the clients you have mentioned? If so, what would be the mechanics of that retrospectivity within that particular part of the law?

**Ms SANDERS:** I definitely do. If I could get Vicki back her licence or the other young woman, it would be just fantastic for them and, in the case of Vicki, for her daughter. How you would achieve that, I do not know. I would have to give it a bit more thought. Certainly, if the law was to be reformed, perhaps there could be some kind of amnesty where the Attorney General perhaps would remit disqualifications. It would be like people who were convicted of offences, for example, those child sex offences before the age of consent was equalised. They would receive a pardon or have their convictions quashed or spent or something like that. So for people who have these ridiculous disqualifications, I think probably the easiest way would be to have some kind of application for review or remission.

**Ms LOVRIC:** Accepting that will put some kind of resource implications somewhere or other—probably on Roads and Maritime Services [RMS] but it may be a good investment.

**Mr GUY ZANGARI:** The question I want to ask is about imprisonment. In your submissions you have a certain view on that. Obviously regarding the fact that licences are suspended or cancelled and people are being caught and they end up in prison, your submission states that imprisonment should not be an option in these circumstances. From your experiences, what can you tell the Committee about clients in this situation?

**Ms GRAHAM:** Clients being jailed?

**Mr GUY ZANGARI:** Yes.

**Ms GRAHAM:** I can tell you a lot about that. I gave the earlier example of the man from Condobolin who received a 12 months jail term but I can tell you about another man from Nyngan. He was sentenced mid last year; he received a term of 28 months imprisonment for two offences of drive while disqualified. The non-parole period was 23 months. The jail terms were imposed for his sixth and seventh offences of drive while disqualified. But what needs to be analysed is his traffic history and his history because it reveals that he first became disqualified for driving without a licence—that key common trend that comes up—and he was not a chronic offender in relation to drink-driving, dangerous driving. He had one prior conviction for mid-range drink-driving and one offence of driving recklessly or in a manner dangerous. The two drive while disqualified offences that he committed were unremarkable. They did not involve erratic driving, dangerous driving or an attempt to flee the police, anything like that. He was essentially driving in the small remote town of Nyngan.

It is unsurprising that there is a resort to the use of personal motor cars in those regional and remote parts of our State where the public transport options are limited or non-existent. The sentences were imposed by two separate magistrates and they were imposed in a way that meant they were entirely accumulated upon each other. So an initial sentence of 16 months was then stacked on top of a second sentence of 20 months. This gentleman sold his car after these offences. The sentences were reduced on appeal but still a serious term of imprisonment was eventually handed down—18 months with a non-parole period of 11 months. This gentleman is disqualified until some time after 2031. Sadly, however, that disqualification period is now irrelevant because

this gentleman died in custody before completing his sentences. These kinds of sentences are not uncommon in my experience in the west of the State—sentences of imprisonment being imposed for the second or third offence of drive while disqualified, big sentences, sentences that are 80 per cent of the maximum penalty.

That kind of ratio to the maximum penalty is almost unheard of when you consider other types of offences in our criminal system in terms of the component of the maximum penalty that is regularly being imposed. It seems that the harsh imposition of jail terms for an offence that does not go to the heart of public safety only serves to exacerbate problems in the community. The consequences of a jail term for an individual, for their family, for their children are ongoing. Particularly in the Aboriginal community, we see that the consequence for a child to have a parent imprisoned is so determinative that 61 per cent of our Aboriginal children that are locked up in juvenile centres in New South Wales have experienced parental incarceration. So the flow-on intergenerational effect of imprisonment is horrendous and one that is felt keenly in the Aboriginal communities.

**Ms LOVRIC:** I think once again it goes back to this issue about mandatory disqualifications and also the penalties that go with them. They do not allow the court to look behind the reasons why. Perhaps if we allowed magistrates to look behind the reasons why, and looked at programs to support people—in many ways we could say some of these are poverty crimes. When we have the MERIT program we look at the person's issue and we have a purpose-built court to address that issue. This is a difficult thing to suggest and it is probably not well aligned with your law and order or shock jock barometer, but we need to look at the reasons behind why people are offending as such. The birth certificate is perhaps one, looking behind the reasons why people are never licensed or are unlicensed.

Looking at the circumstances of the case, people are offending in regional areas because there is no other way of getting around, getting to medical treatment, getting someone to school, getting to a job that is necessary. We need to have some facility to look at this in terms of the discretion allowed to the court but also what we are doing as a society in addressing some of those issues that bring this on in the first place.

**Mr NICK LALICH:** There has been a suggestion that a good behaviour licence category may overcome a lot of this. What do you think about that?

**Ms SANDERS:** I think that is a possibility. For drink-drivers, we have the alcohol interlock licence. Hardly any of my clients are drink-drivers and I do not have much practical experience of it, but it means that after serving a minimum period of disqualification you then must have the alcohol interlock device and as long as you comply with that you are able to drive. We could have something similar where a person has perhaps a relatively short period off the road and then the rest of the disqualification period is—I do not want to use the word suspended because that is confusing but you know what I mean—imposed in the form of a good behaviour bond. So rather than be disqualified and then be able to apply for your licence back, make it the other way. Perhaps have a short disqualification period, so it is like parole, if you like. The disqualification period could be served as a non-parole period, where you are definitely off the road, plus a period of good behaviour where you can drive but if you commit any further traffic offence or incur more than two points or something like that you lose your licence.

Obviously those good behaviour licences are familiar to us for unrestricted licence holders who incur too many demerit points and instead of doing a suspension you can opt to go on a good behaviour licence for 12 months. If you incur two or more demerit points during that period you are suspended for twice as long as you would have been before. I think we have experience of good behaviour licences. The RMS is obviously used to administering them. So I can see some sort of good behaviour licence option as an alternative to lengthy disqualification periods as something worth exploring. We also touched on work licences, or maybe that was the previous people giving evidence from the Law Society. I think those work licences were rejected as being too difficult to enforce. I think now with the sort of access to technology that our police have, with the ability to easily do checks on people's licences and registrations, the ability to call up things on the computer, those kinds of conditional licences are probably a lot easier to police and to enforce than they would have been back in the 1980s or 1990s.

Ms Graham and I particularly have experience of clients being on bail conditions not for driving offences necessarily but bail conditions for all sorts of offences which involve curfews, place restrictions—not to be within two kilometres of Town Hall railway station unless for the purpose or employment or appointment with legal representative or whatever. The police seem to be able to enforce those kinds of conditions. I think



that where there is a will there is a way. I think it is probably time to look again at those kinds of work licences or restricted or conditional licences and how that can be policed.

**Ms LOVRIC:** In fact, we also have the new regime of the P1 restricted licences in regional New South Wales. It is a new regime where people do not have to get the 120 hours up; they can get 50 hours up. This targets remote Aboriginal locations such as Brewarrina, Bourke, Hay, Balranald and Wilcannia. These licences restrict people in what they do. They are allowed to go to work, medical treatment and whatnot. That is a relatively new initiative from Transport for NSW. We have precedence, so they do exist.

**Ms GRAHAM:** The other benefit of a scheme to do with good behaviour licences is that it can be rolled out across the whole State. Programs such as the interlock device do not apply uniformly around New South Wales. They are just not available everywhere. A scheme that involves good behaviour licences can try to achieve an equitable situation for all New South Wales.

**Mr NICK LALICH:** Fall back to a P licence. You could not have a G licence, because there would be a stigma attached: he needs good behaviour.

**Ms SANDERS:** That is another option—put people back on their Ps. If you are like most of my clients, you are still on your Ps, so you could sit on your Ps longer before you progress to your full licence. There are options.

**CHAIR:** I want to move on to another point. All submissions supported the abolition of the habitual traffic offender scheme. What are your views or comments on that?

**Ms LOVRIC:** Get rid of it.

**Ms GRAHAM:** Wholeheartedly.

**Ms LEVITAN:** We support them.

**Ms SANDERS:** The disqualifications that are currently imposed automatically are well and truly long enough. Perhaps if there were to be a radical reform of the disqualification periods, more discretion, shorter disqualification periods; perhaps there still is a role for some kind of habitual offender declaration, but it should be on the application of the police or Roads and Maritime Services. I do not think it should be automatically imposed and up to the offender to apply for it to be quashed. I think there could be some kind of limited mechanism for Roads and Maritime Services or police to apply for such an order if there are genuine concerns about the person's safety on the road.

The thing is that Roads and Maritime Services already has that power. If it is of the view that a person is no longer a fit and proper person to have a licence, they can cancel the licence. That can be sometimes on medical grounds or safety grounds. Now, how often they actually exercise that power I do not know. I know they often do in respect of older drivers, elderly people who are failing their eyesight tests and the like. I have been in court and it is heartbreaking to see people in their eighties coming back to court, begging the court for another chance to keep their licence. I do think Roads and Maritime Services has adequate powers, and those powers are reviewable so that the exercise of the power is not too arbitrary. So why do we need it? That is the ultimate question—apart from looking good. In a way, perhaps the existence of an habitual traffic offender declaration is a way of mollifying the shock jocks and saying, "Look, we have this really harsh sanction." Unless it has some meaning—

**CHAIR:** It is not about the shock jocks. We are politicians and we cop it every day. In relation to the vehicle sanctions, we spoke earlier about a licence nowadays no longer being a privilege; it is a licence to live in rural and regional communities. Do you have the same thoughts about vehicle sanctions when we are taking vehicles off people?

**Ms LOVRIC:** If you are looking at RRR of New South Wales, taking a vehicle off the road in some small communities where there may only be one car and one licence in that community will further disadvantage that community and the family. I think it is a retrospective punitive approach. Can I tell you a story about regional New South Wales in relation to limited licences and limited cars in a town, which shall remain nameless? There was a flood approaching this small remote town. Police and the emergency services came to the town and said, "There is flood approaching. Within 24 hours this place is likely to be swamped. We suggest

you move on." No-one moved on. The police came back about six hours later and said, "No-one has moved on. What is going on?" Members of the community piped up and said, "Actually, there are no valid licences in this town and there is no car that is registered. We cannot risk moving because the chances are one of us will go to prison if this happens." These are the kinds of stories—so a compromise was reached. The police drove on, did not look back. The town was evacuated and no-one was hurt by the floods. We are talking about situations where, in these towns, there are limited cars, limited licences and limited transport options. Removing a car in small communities is very damaging.

**Ms LEVITAN:** Also, a distinction needs to be made. Vehicle sanctions are imposed where there is a community safety risk. When we are talking about unauthorised driving offences, as we said, there is no inherent community safety risk, so that imposition of that sanction does not really balance with the risk. The point needs to be made that putting on a sanction and taking a vehicle away is an imposition. You want to look at who is imposing that vehicle sanction. If it is police discretion as it is for the current offences, we would not agree with that. If you were to put vehicle sanctions in place, you need to have checks and balances in place. It would be something done by the court after the court had heard the circumstances of the case and the court should have discretion as well.

**Ms GRAHAM:** Can I comment on one of the aspects of the habitual traffic offender declaration? 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. Like the man in Condobolin who thinks time is coming up to when he can go and apply for a licence again, it 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.

**Ms LOVRIC:** It does get in the way of some good programs at the moment—the driving courses through Birrang. I see that you are hearing from the George Institute later about their Driving Change program. We get calls from those people, saying, "We have people signed up to this program. It is great, but, oh, we just found out they have an HTO." The good work and the incentive of being involved in those programs are being stymied by the legislation and those administrative actions.

**Mr NICK LALICH:** What do you think about a person getting a section 10 but it can still be counted towards him or her being declared a habitual problem driver? Is that unfair?

**Ms GRAHAM:** Yes, I think it is. 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.

**Ms SANDERS:** It is also out of step with the approach now with section 10s and 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.

**Mr GARRY EDWARDS:** I am going to jump to the very last question. Are there any other reforms that are not specifically listed in the terms of reference for this inquiry that you consider would be beneficial for dealing with unauthorised driving offences?

**Ms SANDERS:** I think winding back to the very beginning, we have talked about fine default suspensions and how that is often the start of the slippery slope. So it is not reform to traffic law but it is reform to the Fines Act, severing the link between non-traffic fines and licence sanctions, I think is really important. You should not have your licence suspended for travelling on the train without a ticket. I speak to people from other jurisdictions and they say, "What? Are you kidding? Are you serious? How does that have any kind of logical or morally defensible connection?" I think severing the link certainly between non-traffic fines and licence sanctions.

My other big ticket item is dealing with children as children, taking juvenile traffic offences out of the Local Court and putting them back in the Children's Court. That does not mean we will have a whole generation of young hoons driving around dealt with leniently; what we will have is kids dealt with in a manner proportionate to their circumstances. They are probably more likely to get some support. They probably may be sent off to Juvenile Justice where they will be given some support to perhaps get their licence or literacy up to a level where they can get a licence.

In the adult court invariably kids will be dealt with as if they were adults. They will be given a fine. They will be disqualified for the mandatory period. They may or may not understand the implications of that. Most people on traffic offences in Local Courts are unrepresented, including kids, which is of grave concern. Bring kids back into the kids' court: that is my number one big ticket reform.

**Ms LOVRIC:** There are some anomalies in the legislation which you are probably aware of, I suppose, in terms of weighing up of proportionality. 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. What is going on there? There are a few of those. I think they are outlined in the submission of Magistrate Claire Farnan.

I would advise the Committee to look at it, although clearly it is not within the Committee's terms of reference but it is certainly related to some of the things we are seeing in relation to possible imprisonment. I would also suggest the Committee take the opportunity once again to look at those issues about the certificates and driving never licensed. I think there is possibly a link there. Certainly we know the State Debt Recovery Office has data on the kinds of fines that people are accruing for certain kinds of penalties, and it might be useful to inquire into those. We certainly have some idea that where there is a very high penalty there is also a high rate of driving never licensed offences. That would be a very useful thing in terms of making any work the Committee might do to be a bit more evidence based.

**Ms GRAHAM:** I want to add a proposal—it is not a reform—for some more research to be done and an inquiry. The study that I mentioned in the Dubbo region looked just at Aboriginal clients. We were looking at our data, comparing it to statewide statistics. We did not have the data to be able to look at what was happening for non-Aboriginal people in that region compared to what is happening in the regions and the cities. I think some in-depth inquiry is needed at the State level into sentencing outcomes across the State looking at the different regions, comparing them to the city, and looking at how Aboriginal and non-Aboriginal people are treated by the system to better understand the problem.

**Ms SANDERS:** Do we need to ask formally for our submissions to be adopted as part of our evidence?

**CHAIR:** No, this Committee has already adopted them.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**MAUREEN MARY TANGNEY**, Assistant Director General, Justice Policy and Legal, Department of Attorney General, affirmed and examined, and

**JOHN DOUGLAS HARTLEY**, Assistant Commissioner, Traffic and Highway Patrol Command, NSW Police,

**PETER JOHN WELLS**, Director, Customer and Compliance, NSW Roads and Maritime Services,

**TIM PETER REARDON**, Deputy Director General, Policy and Regulation, Transport for NSW, and

**EDWARD ANTHONY RAMSAY**, Manager Driver Sanctions, Policy and Regulation Division, Transport for NSW, sworn and examined:

**CHAIR:** I welcome Mr Peter Wells, representing Roads and Maritime Services, Tim Reardon and Ed Ramsay, representing Transport for NSW, Maureen Tangney, representing the Department of Attorney General and Justice and Assistant Commissioner John Hartley, representing the NSW Police Force. Thank you for attending today's hearing. In what capacity do you appear?

**Mr WELLS:** I am here to represent the agency in terms of the interests and administration of the legislation.

**Ms TANGNEY:** I am here to present on the Government's submission to this inquiry.

**Mr REARDON:** I am charged with policy, law and regulation for the transport cluster.

**Mr RAMSAY:** I am here to assist also with any questions about the Government submission.

**CHAIR:** Do any of you have questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Ms TANGNEY:** No.

**CHAIR:** Before we commence with questions would anyone like to start with an opening statement?

**Ms TANGNEY:** If it would assist the Committee, I could provide an overview of the main points that the Government submission has put to the Committee.

**CHAIR:** That is fantastic.

**Ms TANGNEY:** The first point that the submission wished to make was that it is evident that there are two types of disqualified or unauthorised driver. Some will be people who have been disqualified from driving because they have committed road safety offences. Another group will be represented in the unauthorised driver cohort who may have ended up in that space largely because of unpaid fines. We felt that that was an important distinction to be made for the purpose of this inquiry.

The other thing we thought would be useful for this Committee would be to understand some of the context in relation to unauthorised driving. From a justice point of view one of the most significant aspects of this problem is its prevalence. We have found, for instance, that in 2012 the third most common offence before the Local Court was unauthorised driving. For at least a decade now between 22 and 26 per cent of unauthorised driving offences represent the workload for the Local Court and they consistently appear in the top three offences charged before the Local Court and the top three reasons why people go to prison.

It is more common for someone to go to prison for an unauthorised driving offence than it is, for example, a drink-driving offence. Why is it so prevalent? That was the next question. We thought: What is going on here? We had a look at Roads and Maritime Services [RMS] statistics in relation to people who have lost their licences and that disclosed something fairly interesting as well. The first point was that only about 5 per cent of those who are unauthorised to drive have in fact been disqualified by the court, 16 per cent will have lost their licences for demerit points but 52 per cent will have lost their licences because of unpaid fines. Those fines may have been for driving-related behaviour. It could be, for example, a speeding offence or a

parking offence but it might also be for behaviour not associated with driving conduct. You can get a penalty notice for not paying for a fishing licence.

Why was default featuring so highly? That was our next question. What was going on here? When we unpacked that issue it became clear that one of the reasons was the law was changed quite some time ago that meant that people could no longer go to prison to cut out fines if they could not afford to pay them. Personally I was a bit astonished to understand that until that change in the law took place 50 per cent of admissions to prison were for the purpose of cutting out fines. Quite sensibly that stopped after a young man was very seriously injured in prison but it was replaced with nothing for people who had issues where they were unable or unwilling to pay their fines, but in many cases there was an inability.

Licence sanctions were then imposed on people who were not paying their fines and if they continued to drive they could quickly escalate their involvement with the criminal justice system from driving while licence suspended through to disqualified and ultimately to a prison sentence. From the justice perspective we have tried to address some of that problem in collaboration with RMS and the State Debt Recovery Office and we have introduced some measures to try to stem that tide.

One was the Work and Development Order scheme. Another significant but very basic reform was the introduction of Centrepay to allow people to pay off their fines in a more manageable way. We are already seeing some results from those reforms where the numbers of unauthorised driving offences are starting to decline for the first time. That provided some of the context. In addition to the issue of fines, three other factors seem to be playing into this space. One was that for unauthorised driving offences the disqualification period is mandatory. There is no discretion for the court but that is not the same as some other types of driving offences, for example, drink-driving. With a drink-driving offence, if a court makes no decision in relation to a disqualification period, you will get an automatic period or it may elect to go to a statutory minimum or in the other direction it can elect to have a higher disqualification period, but for unauthorised driving offences it is one size fits all.

In addition, the disqualification periods for these offences are cumulative and not concurrent. Again, that differs from drink-driving and speeding offences where they are not fully cumulative. The third factor at play seems to be the habitual traffic offender scheme, which was adding on further periods of disqualification. Our submission then goes to what is the impact of these types of developments? One that was quite astonishing really was the differential impact this was having on people who live in regional New South Wales where we could see that there was a much higher relative proportion of disqualified drivers in regional areas. If you reflect on that, it makes a fair bit of sense.

People who have been suspended are going to be more visible in their communities. They can be picked up more easily than if you are living in a very large city like Sydney. Driving is a fundamental necessity. There are not that many other transport options so people will yield to the temptation of continuing to drive. Also we know that there are some fairly significant pockets of disadvantage in regional New South Wales and that is where fine debt can play a big role in pushing people out of the licensing system. That is certainly the case in Aboriginal communities and I am sure you would have heard evidence to that effect already today.

The issue for Aboriginal communities is pretty acute, and we have heard lots of anecdotal stories about how in some communities there is barely a licensed adult left. That has an intergenerational effect because the young people need to have an accompanying licensed driver to get their hours up as a learner driver. I think what has not been fully appreciated is the fact that no licence can mean no job, and this is the connection to the problem of closing the gap. 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. We find that a quarter of all appearances by Indigenous people before the courts are for traffic- and vehicle-related offences. Some 30 per cent of people who received a full-time custodial term for unauthorised driving were Indigenous. So it is clear that there is a very significant link there.

I would add that some people in these communities see this, quite squarely, as a matter of life and death. When somebody has got to a point where they have perhaps 10 or 15 years worth of licence disqualifications then there is a level of despair and hopelessness that starts to take hold of people. I remember a police officer from Tabulam saying to me once, "If we do not fix this problem, I will be cutting these men down. That is the way they feel about the problem." I have mentioned a little the impact on the criminal justice system

of the workload coming into the courts in the number of offences. It is also generating appeals in the District Court because people are trying to get out of the disqualification period, and 38 per cent of appeal cases in the District Court involve traffic and vehicle regulatory offences. I mentioned the issue of custody. In 2010 the offence of driving while disqualified had the highest custodial rate of the top 20 offences dealt with in the Local Court. Again that is higher than for high- and mid-range prescribed concentration of alcohol [PCA] offences and other types of offences. There are costs to police, prosecutors, defence lawyers, legal centres, courts, Corrective Services, and of course Roads and Maritime Services.

The submission mentions briefly that there are very few options available to people who have already accrued extensive disqualification periods to do anything about it other than sit it out. The submission goes on to refer to the terms of reference of the Committee. We talk about how in the jurisdictions of Queensland, Western Australia and the United Kingdom provided you sit out a minimum period—for example, in Queensland it is two years—you may make an application to the court to have the remainder of the disqualification period removed. In making that decision, the court will take into account your character, your history, your recent behaviour and whether you have committed any further offences, and any other relevant circumstances. So it is pretty open-ended. As I said, similar schemes operate in WA and the United Kingdom.

I would like to talk a bit about how giving people an exit strategy for getting out of a situation they see as hopeless can actually have quite a strong rehabilitative effect. We saw this with the Work and Development Order scheme. It is a bit analogous. People had accrued large debts—and, when I say large, it could be \$1,000 or \$5,000 dollars; but if you are on a fixed income then that is an unthinkable amount of money to pay. In that situation of having a very large and unpayable debt, a sense of despair seemed to settle on people. An outlaw mentality would emerge—which was, "I could not afford the first \$200 fine; what makes you think I can afford the next one?" It was feeding into an attitude of, "I do not care anymore. What is the point?" What we found with the Work and Development Order was that, once you gave people a way out, their behaviour in fact changed. The evaluation showed that once they were able to say, "I now have a way to clear my fine and become free of that debt", their behaviour started to change—and a lot of caseworkers reported that to us. For example, young people started to buy train tickets. People were at pains not to breach the law anymore because they did not want to get back to that terrible place they had been in before.

Despair can be counter-rehabilitative, but giving people hope and a way forward can actually be a very positive motivator and have an impact on behaviour. The submission talks about the abolition of the habitual traffic offenders scheme. We note that no other Australian jurisdiction has such a scheme. It has never been evaluated and certainly there is no evidence to suggest it has been hugely successful. The NSW Sentencing Council reviewed it some time ago and recommended that it be abolished because it did seem to be fairly counter-productive—creating crushing periods of disqualification and having a disproportionate effect on some communities. There is a bit in the submission about the operation of the mandatory versus the automatic disqualification periods. Another issue is that of commencement dates and whether they should be cumulative or concurrent. Summing up, if we had automatic rather than mandatory disqualification periods for these types of offences then that would give the court more flexibility to either drop a disqualification period down in an appropriate circumstance or, conversely, make it longer with no upper limit so that it fits the objective seriousness of the offending behaviour in that situation.

There is another section in our submission where we talk about the penalties that are currently prescribed for unauthorised driving offences. We talk about the principle under criminal law that punishment should be proportionate to the level of objective criminality involved, taking into account the actual harm or risk of harm. We draw attention to the fact that the maximum prison sentence for a second offence of driving while disqualified is the same as for a high range PCA—and in the former case it may not necessarily have been behaviour that was dangerous to the community; it may have just simply been the act of driving rather than putting other lives at risk. Finally in the submission we make some comments in relation to the vehicle sanctions. We note there, as I just mentioned, that we have started to see a decline in unauthorised driving offences, which is very welcome.

In relation to vehicle sanctions, we note in our submission that there are basically two options which could be imposed at the roadside by police or as part of a court sentence. When considering which party would be most appropriate, we note the separation of powers in our system of justice—the role of police is normally to detect and investigate breaches whereas the role of the courts is to assess the evidence, determine guilt and decide the sanction. We do note that an exception has been made with respect to three particular serious road safety offences—namely, "Skye's law" offences, speeding by more than 45 kilometres above the speed limit and drag racing. We also explain in the submission the potential consequences for other people if vehicle sanctions

are imposed, and in particular the potential consequences for Indigenous families. In a nutshell, that is what our submission says. We are happy to take questions.

**CHAIR:** We do have a series of questions to work through and we will start with the member for Fairfield.

**Mr GUY ZANGARI:** The Committee has heard that current penalties for unauthorised driving offences particularly impact on certain sectors of the community—such as Aboriginal people, young people, migrants, refugees, those living in rural and regional areas, and other vulnerable groups. Is this consistent with your experience?

**Ms TANGNEY:** Yes, from a justice perspective that is what we have observed.

**Mr HARTLEY:** Yes, I have been involved in a committee on licensing with Roads and Maritime Services and other organisations to look at driving in Aboriginal communities and trying to open up the licensing scheme. I have been exposed to these issues—for example, not having a licence does mean people have no job; and it affects their self-esteem and the committing of offences. So I would agree with that.

**Mr REARDON:** My broader comment is that the New South Wales Road Safety Strategy includes a response on safer driving for learner drivers. As part of that we are piloting a trial west of the Newell Highway for rural and remote communities, including Aboriginal communities, which is about trying to get processes in place to bring people into the licensing system. It is not necessarily related to unauthorised drivers but it is trying to give young people a pathway into the licensing system.

**Mr WELLS:** I would like to add two points. I think everyone is familiar with this, but the habitual offenders scheme has an over-representation of young males in particular. It might be the car culture or they may be a little out of step with society's values with regard to appropriate driving behaviour. Tim Reardon mentioned Aboriginal communities. A number of attempts have been made to get Aboriginal people licensed. I think Maureen Tangney touched on this. In a community or small town there might be only one or two or no Aboriginal people with a licence, but they are likely to want to drive anyway. While they have been small scale, we have had promising results in training Aboriginal people to get a licence. That gives them a sense of pride and they go back to their community being able to drive and they encourage other members to do the same thing.

**Mr NICK LALICH:** It was stated that Queensland and the United Kingdom have a two-year waiting time to appeal against cumulative sentences or penalties. The witnesses from the New South Wales Legal Assistance Forum said that in some instances that is too long. They also said that people under 18 years of age should be dealt with in a juvenile court. All driving offences are dealt with in an adult court. They said juveniles should be separated and the period should be 12 or 18 months and no more for young people. What is your opinion?

**Mr RAMSAY:** A lot of work has been done with young drivers because of their over-representation in the crash and death statistics. That work is a mixture of conditions placed on novice drivers—learner and provisional licence holders. Those conditions are slowly relaxed as the driver gains more experience and moves through the graduated licence scheme. There is a balance between managing young people new to the road system and having a penalty that deters serious, risky driving behaviour and recognising that a young person is different from an adult. We need a balance between the two. The work done so far has been successful in driving down the crash and death rates of young licensed drivers so far.

**Mr NICK LALICH:** Do you believe that a two-year or 18-month appeal period would increase the problem?

**Mr RAMSAY:** I think any proposal to allow a two-year layout of the system could apply equally to all drivers. It is an equal deterrent whether it is a new driver or a long-term or existing driver. It is a case of whether the community would accept young people being treated differently. They are entering the system for the first time. Are they going down the dark side and starting to commit serious offences early? We need to balance those things. One option would be to consider an offence-free two-year period. It would be a qualification before seeking some sort of appeal to a court. Two years could be appropriate for certain offences or it could be longer for other offences before a person could seek relief from the court. That is an option.

**Ms TANGNEY:** The main problem we have been concerned to address is that we could have someone who has behaved relatively poorly as a young person and has grown out of it. The current system works cruelly for that person. For example, we came across a fellow who is now 31, but when he was 23 and an apprentice he was caught four times driving a small motor scooter. As a result, he was disqualified from driving until 2021 and was imprisoned for eight months. His current disqualification runs until 2039. He is a small businessman with a young family and he has no way out. If he had to sit out for two years before he could make an application I am sure he would welcome it. It is a lot sooner than 2039. He has obviously grown up and matured and his circumstances have changed radically, but he is being held back significantly.

**Mr NICK LALICH:** As you indicated, Aboriginal communities are involved in these problems far more than anyone else. This occurs more in regional and rural areas. Do you feel that there should be a different rule for far outback areas because probably only one person in a community has a licence and he might have been disqualified 20 times? We heard earlier about two ladies who have been disqualified from driving, one until she is 55 and the other until she is 71. That is ridiculous. As you said, a person matures and should be able to get some relief. Should there be a different arrangement for people in remote areas?

**Ms TANGNEY:** There could be a differential approach and we could lessen the period people must sit out because of location, or it could be standard across the board regardless of where you live. If we had a one-year or a two-year period, if a person had been able to maintain a clean record, and if we were able to support people in remote regional communities to make application to the court to get their licence, a number of people with valid licences would be in the community and would start to build up the capacity. That might be another aspect of it. Assisting people to make applications that are likely to succeed could be very important.

**Mr NICK LALICH:** Not having a licence in those areas leads to depression and poverty. As someone said earlier, eventually someone will be cutting that person down the next time he goes to jail. Hopefully we can come to some conclusion that will advantage the community. I know these people have broken the law, but the current system is ridiculous given this cumulative effect. However, the Committee wants to hear from you. If you think what I am saying is wrong, please say so.

**Mr HARTLEY:** The concept of having another chance is fine. I do not disagree. However, road safety has to be the number one choice. As long as it is road safety based you can do what you want. We have deterrents for disqualified drivers and 90 per cent of drivers do the right thing. It is the 10 per cent we need to address. As you said, we can provide some support in communities to help them through those two years. We could run some workshops during that period to teach them about the licensing scheme and the new processes and encourage them to be penalty free before they are eligible to get assistance. The same man wrote to me many years ago pleading to get his licence back because he had changed his life. I felt so sorry for him, but I could not do anything.

**Mr REARDON:** There must be consistency in the law. The example I used about specific programs targeted at certain areas could assist running parallel with the law. I will leave it to the Committee to consider what that minimum period might be. However, there should be a consistent approach to the law. We could run education programs in parallel with that and targeted at certain areas. I again refer to the case of learner drivers west of the Newell Highway. We are trying to assist them to move from a learner driver licence to a provisional P1 licence with 50 hours of driving. We are assisting them to take that step. Again, it is not an unauthorised driver issue; it is a safer driver program to bring people into the licensing system. It is the same approach that I think you are suggesting. However, there must be a period and in drafting road transport law we must maintain some level of consistency and run programs in parallel if that assists.

**Mr GARRY EDWARDS:** Could you please explain your agency's role and involvement with respect to the current arrangements for dealing with unauthorised driving offences, including the habitual traffic offender scheme?

**Mr REARDON:** I will start from a transport cluster perspective. Transport for NSW and Roads and Maritime Services work very closely setting laws, setting policy and then delivering that policy through Roads and Maritime Services in its compliance and enforcement activities working very closely with NSW Police Force. Under goal 10 of NSW 2021 we are to improve road safety. Our response to achieve the targets for road safety is to put out a road safety strategy over the next 10 years, which we have done. Within that there are a range of programs around safer people, safer vehicles and safer roads under a safer systems approach. Within that there is a targeting of repeat offenders and within that the habitual traffic offender scheme is one, amongst many others, that we look at. That is what we are doing in terms of regime in responses—we are looking at this



area amongst many other areas. I will hand over to Peter Wells to talk about the habitual traffic offender scheme in a little more detail.

**Mr WELLS:** Our core role is to manage the licence records and database accurately. We will receive submissions in relation to a particular licence. That might be from court in relation to a suspension or demerit-based or from the State Debt Recovery Office [SDRO]. We make sure that that is accurately recorded—that the right party has the right record. Some people seek to alter the records improperly—they might claim they were not driving or that it was someone else. Those decisions are very carefully monitored and recorded. I do not want to take any of John's content, but I point out that generally speaking our camera system—speed cameras, red lights and so on—will often have offences that carry demerit points which can lead to suspension of licences. In relation to detecting individual people who are driving unlicensed, generally speaking we will only detect that through our heavy vehicle inspectors at checking stations if someone happens to be their unlicensed, or through our inspectors who look after taxis, buses and hire cars but with a relatively small role in that regard.

**Mr HARTLEY:** I probably provide the customers for the program, which is probably not a good thing for us. In the last two financial years around 69,000 unauthorised drivers have been detected by New South Wales police—"detection" means they have been stopped for an offence. It will not just be the driving offence; it will be something else. When you do a check on their licence you find they are disqualified, suspended, unlicensed or whatever category it may be. We do not proactively go out and target unauthorised driving offences; they actually get caught up in a whole mix of road safety. That was 69,000 over the last two financial years and in that period 13,661 disqualified drivers were caught by New South Wales police. That is a worry, considering in the last two years there have been 23 fatal crashes involving disqualified drivers in New South Wales. So they are represented in crash rates and our job is to deter them.

**Mr GARRY EDWARDS:** Did you say the last 12 months?

**Mr HARTLEY:** In the last two years there were 23 fatal crashes involving disqualified drivers.

**Ms TANGNEY:** The Department of Attorney General and Justice administers the courts and corrections—obviously John sends a lot of work our way. So volumes of work are coming into the system. We are interested in reducing recidivism and reoffending and we have a number of crime prevention programs that are directed to that end. That is why we went into an analysis of what was driving these volumes of work into the system and were there better ways of responding to the issue. We asked the Bureau of Crime Statistics and Research [BOSCAR] about the percentage of unauthorised drivers who were also charged with other offences—for about 56 per cent of those brought before the court that was their only offence; the rest had other matters as well. Primarily our concern is: Why are these people coming into the system? Are there better ways of responding or discouraging this behaviour?

**CHAIR:** What is the current process for someone who could possibly be disqualified but keeps driving? What are the steps before they actually get disqualified? What are the offences they commit?

**Mr HARTLEY:** Disqualification is given by a court. They have to have an offence that goes to court and it depends on the level—it could be a speeding offence or any other sort of offence for which the court could impose a penalty. It could be for a low-level speeding offence, but not normally. Again, a lot are repeat disqualified drivers. You are disqualified for drink-driving naturally, manner dangerous—

**CHAIR:** I accept those but in relation to fine defaults?

**Ms TANGNEY:** If you have not paid your fine the SDRO will encourage you to pay it and explain that if you do not hurry up and do something about it, you will be subject to restrictions on dealing with Roads and Maritime Services. That means you might have your licence suspended or you may be unable to register your vehicle. Once they become affected if you have not paid your fine then you may be caught for driving while licence suspended for fine default. That distinction was only made in the law a few years ago. We think there was quite a hidden epidemic happening where people were driving while licence suspended but it was not recognised that the underlying cause was non-payment of a fine rather than, say, a drink-driving offence or a speeding offence.

**CHAIR:** That could be a fine because you have not paid your railway ticket?

**Ms TANGNEY:** Or you have not voted in the election. You would have no idea what that was about. If you then continue to drive while licence suspended you can attract a disqualification period—this is what happens—and people continue to drive. Sometimes it is out of wilfulness but sometimes it is out of necessity, particularly if you are in a regional area. I remember coming across an elder in an Aboriginal community who explained that his daughter was in prison for driving while licence disqualified. She had continued to drive her children to school—your children must attend school by law and she felt she was in a bit of a bind. How was she going to get her kids to school in this particular area without a car? That can be part of the problem.

As was explained before, they are mandatory disqualification periods, not discretionary, so the court has no choice. If you continue that behaviour the court will say, "Sorry, there is 18 months" or whatever the case may be depending on what number you are up to, and they are fully cumulative. So if you drove three times in six months you will quickly accrue quite a significant disqualification period and there are very few avenues out. You can appeal if you have the means, but it is quite an expensive process to go to the District Court. You can apply for a prerogative of mercy, but on the statistics that I have seen we are not very merciful. You basically have to be dying before you get one of those.

**CHAIR:** So you could lose your driver licence for nothing to do with road safety or driving habit—

**Ms TANGNEY:** That is possible.

**Mr HARTLEY:** I just need to clarify one point. There is no infringement notice for drive whilst suspended. If you are caught driving whilst suspended you are put before the court. There is a process where you put a field court attendance notice [CAN], a sent to court, at a later date—like a summons—but there is no infringement because you are committing the offence of driving whilst suspended. You do not have a licence to get an infringement so you go to court.

**Mr WELLS:** I might just explain the third category. Maureen ran through the fine default or the court imposed; there are also the demerit-triggered suspensions. All of us start with no demerits but they can accumulate with offences. There are 12 demerits or 13 for professional drivers. As you approach those higher numbers we will essentially send an information and warning letter out to tell you that you are in the higher number of demerits. We sort of politely say, "Please drive within the road rules otherwise inevitably at this rate you risk losing your licence."

We do that to seek to persuade people to change their behaviour, because they are headed for trouble with their licence. If they keep going and get beyond those limits, the higher they go above—whether it be 15, 16 or 19 points—the longer the period of suspension will be. They are offered a period whereby they could have a limited licence for a year. From memory, I think they are allowed two demerit points. If they are clear within that period they return to a normal licence, but if they offend further in that period that would trigger a suspension

**Mr GUY ZANGARI:** When dealing with culturally and linguistically diverse communities, Indigenous communities and communities where literacy and numeracy are not high on the agenda what is the department doing in regard to warning letters so that people are given enough time and warning so that they do not have their licence cancelled and get caught up in the spiral?

**Mr WELLS:** That is an excellent point. If people flag to us that they may not be literate or that they have trouble with English language when they go through the licensing system we will assist with either a translator or someone to help them with the language. There are quite a few people who might have very limited literacy but are still able to gain a licence. They still have to demonstrate that they can comply safely with the road rules and interpret signs appropriately. As long as they can demonstrate that they can still be eligible for a licence, subject to other things.

Our website and our staff very much try to steer people to translators or someone to help people with literacy. When we are sending correspondence out, unless we have flagged that there are literacy problems, it is harder to detect. If we are aware of that from any forum we will certainly try to tailor our response to help them understand the information.

**Mr HARTLEY:** If a driver is detected by a police officer on the roadside as a suspended driver and they say that they do not know we do not take action. We notify the driver then that they are suspended. We fill out a form and put it on our policing system saying that the person has been notified personally by an officer

that they are now suspended. Normally, getting caught for suspended driving is probably your second offence. For the first offence if you say you did not receive the letter we do not take action.

**Mr NICK LALICH:** Have you come across any particular challenges in administering the current arrangement? You are at the coalface. Do you see any problems, difficulties or anything that you think you could change?

**Mr HARTLEY:** It sounds like an easy question, but it is probably not so easy to answer it.

**Mr NICK LALICH:** You can take the question on notice.

**Mr WELLS:** My plea would be for administrative simplicity. The typical person who has hit the habitual offender scheme is often fairly emotional and unhappy. The tenor of the correspondence or the phone calls or representations at a motor registry that we receive are typically fairly strongly worded. Essentially, we are reaching the point where we are seeking to change the person's attitude and behaviour and there is resistance or unhappiness. I think the work that motor registries and Mr Hartley's highway patrol officers seek to do is to really change the behaviour if at all possible. We want to talk them into change even if it comes with a penalty.

The difficulties we face are that the rules are complex as they stand today. We will get correspondence in which some people might claim that they misunderstood and kept driving. I would assume some of those are honourable and correct; some might just be claiming that. But there is certainly a degree of confusion. We have done a lot of work with the courts to help clarify the situation for judicial officers and magistrates and our motor registry staff so that the rules are clear. But if someone with a long history comes into a motor registry and asks when they can apply for a licence it is not a straightforward question to answer. We will usually do it in writing to make absolutely sure that we have responded properly, but, however this lands in terms of the various provisions, I would plead that we make it very clear for all parties.

If we seek to give people hope or some opportunity to gain a licence back they should be clear straightaway about what the opportunity is and when. Any officers, whether they be highway patrol or our inspectors or court officers, should be similarly clear so that the advice they give to defendants and legal representatives is also clear up-front. Some of the confusion is unfortunate. People might have a wrong assumption or they may have difficulty with English and so on. That makes it harder to get the message out to try to reduce recidivist behaviour. People are harder to reach and it is harder to cut to the point of saying that you have to stop doing this or you will get into trouble.

**Ms TANGNEY:** From our department's point of view, we are interested in promoting a safe but just society. On the safety side we recognise that there will be unauthorised drivers who are serial and wilful offenders who are disobeying the law because they have no respect for it or who commit serious offences and really need to be sent a strong message that they cannot commit offences that put the safety of the community at risk repeatedly and expect to be given some generous consideration. But we are also interested in a just society. I think we have to question the justice when we have got an offence like unauthorised driving where the offence itself does not necessarily involve any unsafe behaviour and yet it has the highest custodial rate. We have to ask ourselves is it an appropriate response to be imprisoning or giving custodial sentences to people who commit these offences.

**CHAIR:** We could fix that by giving discretion back to the courts instead of having the mandatory penalties.

**Ms TANGNEY:** That is why those considerations have been put to the Committee. There are a number of options that could further the aim of justice.

**Mr REARDON:** We want programs that reduce the number of fatalities and serious injuries on our roads. It is as simple as that. There are many programs that are aimed at achieving that. Where we have a program in which those who are unauthorised and disqualified continue to drive and place others at risk we need to look at that. That is from a policy setting. On the operation side, I fully support what Peter Wells said about simplicity for the person who is seeking the information on when they can actually get their licence back and re-enter the system. I also support what he said about giving the information to Roads and Maritime Staff and managing the scheme going forward

**Mr NICK LALICH:** As the commissioner said earlier, community safety is of paramount importance and everything after that becomes secondary in a way.

**Mr REARDON:** That is correct. The NSW Road Safety Strategy is based on that premise.

**CHAIR:** If we go down the path of just reducing penalties that will not put safety first. We need to have programs in place to stop the offences in the first place. I cannot accept that people lose their licence because they have not voted. I struggle with that. It seems to be a merry-go-round; once you are on that treadmill you are in serious trouble. Normally, we are talking about people at the bottom end of socio-economic demographics and people in rural and regional areas. I am struggling with that part of it. The point is that the action of reducing penalties on its own cannot be good for community safety.

**Mr REARDON:** As I say, community safety and road safety are our primary targets. I concur with your point.

**Ms TANGNEY:** In terms of penalties, the point the submission was making was about having a level of proportionality; not just reducing for reduction's sake. If we are looking at greater discretion that discretion must be guided so that it is not whatever you feel like. It is a matter of outlining the relevant considerations to take into account such as safety, the person's behaviour since they lost their licence, their objective circumstances and the community they are living in.

**Mr WELLS:** We deal with insurers quite regularly, whether they give comprehensive insurance to vehicles or compulsory third party. If we were able through a range of measures to reduce the pool of people driving who are not holding a current valid licence that would certainly be a positive for the administration of the insurance scheme. Once someone has an accident of whatever form and they are not insured there are waivers in most if not all policies in relation to their coverage. Insurers will often honour part or all of the policy, but they may not. There is a long tale of argument in court for that sector and the person and the owner of the vehicle in relation to crashes that come out of unlicensed driving.

**Mr GARRY EDWARDS:** Can I seek clarification on a point that was made earlier?

**CHAIR:** Definitely.

**Mr GARRY EDWARDS:** In relation to motor vehicle registration I think Maureen mentioned earlier that one of the devices is to prevent renewal. I hope that the answer to my question is a one-word answer and that the answer is no. Is there provision for somebody to have their motor vehicle registration cancelled—half-way through, let us say?

**Mr RAMSAY:** There is. The Fines Act allows the State Debt Recovery Office to direct Roads and Maritime Services to take action against either a licence or a vehicle registration. It is in the form of a suspension. Typically, an individual will have both—a licence and a registration. The licence is firstly identified for suspension. A company, of course, will not hold a licence so any enforcement action is directed at a registration. On some occasions the defaulter has neither. They could be a disqualified driver. So a business restriction is placed against the customer by Roads and Maritime Services. That means that if a person even attempts to renew a registration or apply for registration or conduct certain transactions—such as applying for a licence—they would be denied until that debt is cleared.

**Mr GARRY EDWARDS:** Say you registered your car: is there provision for that registration to be terminated six months through—to be cancelled?

**Mr RAMSAY:** At this stage Roads and Maritime Services moves to suspension, not cancellation. But if the vehicle is suspended beyond six months it will run over the expiry date of the registration anyway.

**Mr GARRY EDWARDS:** Let us use, as an example, the six months which is halfway through the registration period. If the registration is terminated or cancelled after six months and that vehicle is involved in a motor vehicle accident within the second six months, where does that put the driver? He may not be aware.

**Mr RAMSAY:** Insurance is consistent with an active registration. I understand that any claim will be against the nominal defendant rather than the insurer of the vehicle.

**Mr GARRY EDWARDS:** That presents a whole new set of circumstances. I think I have opened a Pandora's Box; we might let that one rest for another day.

**Mr NICK LALICH:** The other implication of Garry's question is that the vehicle could be mum's or dad's. It could be a brother's or a mate's vehicle. It could be a company car. If you impound that or deregister it, it is really not causing the offender any problems. So, there is a little bit of a problem there.

**Mr RAMSAY:** Well the owner of the vehicle, or the registered operator of the vehicle, if they are the defaulter, would have their vehicle deregistered. Admittedly, other people could be driving it and have a legal right to use it. They would be impacted if there is no registration on the vehicle—it is denied use; there is no question there.

**CHAIR:** How did we end up here? How did we end up where we decided that, in relation to fines, we were going to disqualify or suspend licences, registration or have demerit points? What was the reasoning or argument behind that, originally?

**Mr RAMSAY:** It is an efficient fine collection method, more than anything. As Maureen mentioned, fines two decades ago could be cut out by the offender going to jail. The process changed whereby vehicle and licence registration was seen as a simple but effective way of encouraging people to pay their fines.

**CHAIR:** Has it been effective?

**Ms TANGNEY:** Yes.

**Mr RAMSAY:** My understanding is that 80-odd per cent of people pay and avoid licence or registration suspension. Keep in mind that a penalty notice is initially issued by police or by a parking officer. That allows 21 days or so to pay. There is probably a week's delay and, if there is no payment, another reminder notice goes out giving a similar period of time. Beyond that—we are looking at almost two months since the offence date—the penalty notice can be enforced. And when it is enforced and the person has defaulted on paying the State Debt Recovery Office directs Roads and Maritime Services to suspend a registration or licence. Roads and Maritime Services cannot object to that; it is directed to do so under the Fines Act. That is the process. Should a licence be suspended because of non-payment that is the system. The risk then is that, if the person continues to drive for whatever reason—they see it as a need—and they are detected, the offence of driving whilst suspended goes to court and attracts a penalty of disqualification. That is the second big hit. It only needs one more occasion of driving and another disqualification kicks in on top of that, plus the habitual offender scheme starts to take effect, because there have been three relevant offences within a five-year period.

**CHAIR:** It almost sounds like a double penalty when the habitual offender scheme kicks in. You are penalised again for the previous offences.

**Ms TANGNEY:** And that can be over and above a prison sentence that you may have served as well. Licence sanctions and registration sanctions, as Ed has mentioned, have been quite effective in encouraging people to pay their fines. And it certainly apparently motivates quite a lot of people to take it very seriously at that point.

**CHAIR:** Are there different levels of effectiveness with different demographics?

**Ms TANGNEY:** Exactly. So if you have a problem about capacity to pay or if you have limited language skills or no knowledge of your various options—the Centrepay option has only been in use for a few years—and if you have no knowledge of the Work and Development Order scheme or it is not available in your area, people can take a defeatist attitude and ignore it and hope it goes away. Unfortunately it compounds. The other thing I would mention is that fines can be imposed on young people who have no income. Young people may attract fines for riding on the trains without tickets. They can attract penalties when they have no capacity to pay and they should technically be at school. The worst case we saw—this was the catalyst for the development of the Work and Development Order scheme—was a young Indigenous boy in western New South Wales who had accumulated, I think, around \$15,000 of fines for not wearing his bicycle helmet. Even if it was not \$15,000—if it was \$1,500—it would be unpayable for a young person in those circumstances. But that then acts as a barrier. It means that they cannot get a licence. If you cannot get a licence you have no ability to get a job. And if you cannot get a job you cannot pay the fine which created the problem in the first place. It is that cycle of hopelessness that is the most damaging.

I referred to that case when I was talking to a group of Aboriginal drug and alcohol workers. One of them said to me, "I know that young man." He said, "It probably will not surprise you that he is now in his twenties. He is angry and he has spent several periods in prison." I said, "If you ever meet him again can you please tell him that we understand his story and we have tried to do something about it." The problem for young people is that a fine debt can be a real barrier to entering the licensing system in the first place.

**CHAIR:** I want to touch on the point that you were mentioning about the suspended or cancelled drivers and defaulting regarding prison. We have these young males or females in prison. Obviously the system goes that way but are we really failing them by incarcerating them when there could be other options for these individuals rather than compounding the issue where they end up incarcerated and there is no way out?

**Ms TANGNEY:** That has been a significant issue, and I think the problem has been put to me that it has normalised that behaviour, that it is just considered inevitable that of course you will go to prison, you will continue to drive, because there is no way out; that is just the way your life runs, and yes, you will see your cousins and your relatives in that prison. So it is troubling. Because people see there is no other way, it is just accepted as the normal part of life that mum or dad is in prison, that cousin or brother or uncle is in prison, and that lawlessness and outlaw mentality takes hold. We would be really interested if we could take steps to change that.

**Mr GUY ZANGARI:** Particularly with your experience, Maureen, with communities that are obviously socioeconomically disadvantaged?

**Ms TANGNEY:** Very important, I think. It is about breaking that cycle.

**Mr NICK LALICH:** Do you find that people who commit unauthorised driving offences are more likely to do other sorts of crimes as well, or would it not be correct to say that?

**Mr HARTLEY:** I could not tell you that. I do not know. I know that for other driving offences, yes they normally are detected for another driving offence and then stopped. But I would not know about criminal association with other activities.

**Mr NICK LALICH:** I am just trying to see if there could be a ratbag element out there that could not care less and they just do whatever they want.

**Mr HARTLEY:** There is in everything.

**Ms TANGNEY:** It is interesting that the research in this area has made a couple of observations. One is that people who have been disqualified or are not authorised by law anymore to drive, they suspect that it is somewhere between 25 to 75 per cent of people continue to drive either because they do not think they are going to be caught or they feel they have no choice. Certainly when we did the Work and Development Order evaluation, a number of people commented how "Yes I would use the back streets. I would drive down to the shops" or what have you, "and try and avoid detection". So we do know that it is quite prevalent that people continue to drive.

A study in Western Australia drew on this and they said if you look at the accident correlation with unauthorised drivers, the studies to date have not made any distinction between those that have been disqualified for behaviour that was dangerous, like drink-driving and speeding, and those that have been disqualified for fine debt. In every Australian jurisdiction they have moved to this system of cancelling licences for fine debt, but the research is not very clear in that space. I should also mention a third study, which was by the Bureau of Crime Statistics and Research, which observed that longer disqualification periods just do not exercise a deterrent effect on this behaviour anyway; it becomes quite meaningless.

**Mr NICK LALICH:** Have any of you or your departments looked at overseas with this issue? Is there any better way that already exists so we do not have to reinvent the wheel and we can look at that—Sweden, the UK, America?

**Ms TANGNEY:** We did a fair amount of research in looking at the different options that were available and it seemed the application to the court was a significant component. We noted with the habitual

traffic offenders scheme that New South Wales is the only jurisdiction in the world, as far as I can see, that has it.

**Mr RAMSAY:** It has sort of a double-whammy effect elsewhere.

**Ms TANGNEY:** These issues are quite complex and I think a lot of jurisdictions have tried to come to sensible ways of dealing with it.

**Mr NICK LALICH:** We had the view put this morning that a few of the habitual driving offences should be wiped out. They felt that it was just a waste of time and that it was causing a lot of problems, a lot of difficulties, a lot of angst out there.

**Ms TANGNEY:** When I saw the UK model, which was similar to the Queensland model where you sit out a minimum of two years and you can apply to the court, I thought that England is a very small country and they do not have the challenge of the vast distances that we have in New South Wales where if you are in a regional or remote area it can be hundreds of kilometres to the next town and there will not be a bus or a train to get you there. I thought it was interesting that a country much more closely settled had a scheme that we do not have available to us to get around these problems.

**CHAIR:** You mentioned the Work and Development Order scheme. I do not know much about that. Do you have any information on that? Was it in your submission?

**Ms TANGNEY:** It is outlined a little in the submission. It basically allows people to do voluntary work, undertake drug or alcohol treatment, mental health treatment, educational courses, as a means of cutting out their fines. We make the point in the submission that it would not be suitable to deal with the problem of a disqualification because a disqualification is a court order whereas a WDO is more of an administrative order. The other aspect of WDOs is that we are dependent on a large number of non-government organisations to administer that scheme and they are really strong supporters of it because they see the benefits for their clients and they see the behavioural changes in their clients. But they said if it was turned into a court-mandated scheme they would walk away from it because they said it would interfere with their therapeutic relationship with their clients; they did not want to become an enforcer, they felt that was inconsistent with the scheme and the intent of it.

**Mr WELLS:** Just in listening to the discussion I thought I might paint a little bit more of a person's experience once they hit the habitual offender scheme, just to give a bit of colour to how you might think about reforms and the practicality. 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—we 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. Also, if there is a new scheme in place, the maths to calculate the demerits, the period of time of suspension and so on against the licence, we have to do that very carefully and accurately. There is also the cohort of people that are in the scheme now.

So it is just with a view to being thoughtful about the appropriate transition arrangements. Between Tim Reardon's team, Maureen's and mine, we would be happy to assist—if you develop a scheme that you believe is an appropriate policy setting, we could give you advice on how to transition that into not creating a rush on motor registries or unusual outcomes for particular categories of people.

**Mr GARRY EDWARDS:** Do you think that reducing penalties would pose additional risk to the community?

**Mr HARTLEY:** I do. Certainly as soon as you see a reduction in penalties people will take a risk. So I think you need to have one deterrent. I was speaking before about the carrot: 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." 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.

**Mr RAMSAY:** I might add too that, as John mentioned, some people can be detected driving and the only offence is that they should not be driving; others will be detected for other reasons initially—alcohol, speed—and the police will identify that they are also unauthorised to drive. So there are two offences. Even if the penalties for unauthorised driving were to be reduced under any reform, there is no proposal to change the penalty for that other substantive driving offence, such as speed or alcohol, so the other offence would carry a higher penalty and reduce the penalty for unauthorised driving. So I guess at the end of the day if police only detect a person driving when they should not be, they are only facing one offence. If they are committing another offence they will get a suitable penalty that currently applies and will continue to apply to that other offence. So any reduction in an unauthorised driving penalty, to some degree, is self-managing. For those less at risk—I am not saying they should not be having a higher penalty or disqualification period applied—but if they are a mum driving the kids to school and that is all she is doing when she should not be, there is flexibility in a lower penalty for a court to recognise that.

**Mr REARDON:** Any reform the Committee might look at is the same as others: any carrot also has to have some stick in any regime. The circumstances of individuals who are in the habitual traffic offender scheme where, for example, they have not paid public transport fares, clearly the road safety risk—I will come back to that objective—is very different to where you have a repeat offender for, for example, drink-driving or other offences. Both need to be looked at. Potentially, that means you may need to consider those two groups somewhat differently. But if there was any contemplation of change for more incentive to get back into the system, some sanction has to go with it as well. I would support John's comments that there is always a risk where you lower penalties that will bring certain people back in. Therefore, there needs to be check and balance on that.

**Mr HARTLEY:** I would like to clarify that there is some room to change and sometimes make it more, I suppose, a deterrent on one hand for, as Tim said, the actual driving offenders rather than the fine default offenders, and also make sure the penalties reflect the crime, so to speak. How we manage the penalty I suppose is more what I was getting to because the front page has "Penalty is reduced" rather than a better system for getting disqualified drivers back into the safe driving regime or something similar. That is how we need to manage that from a road safety point of view.

**Ms TANGNEY:** From a Justice perspective, it is more the question of proportionality. We are not talking at all about reductions for those offences like drink-driving and speeding. It is about the relative proportion of the penalties when compared to unauthorised driving. If you are doing both at the same time, you will always definitely get a disqualification—a significant disqualification if you are drink-driving, and you could potentially go to prison for the rest—but those same penalties can be applied for just simply unauthorised driving. It is more a question of proportionality, noting that those other offences will always carry those serious penalties.

**Mr GUY ZANGARI:** From your experience, would vehicle sanctions be a useful tool for dealing with unauthorised driving offences? Are you aware of any jurisdictions that have successfully used vehicle sanctions for these offences?

**Ms TANGNEY:** I am not aware that other jurisdictions have used vehicle sanctions for these types of offences.

**Mr HARTLEY:** There have been some different studies. I think New Zealand has used them in some cases. But in the main it probably creates the other social problem 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.

**Mr RAMSAY:** I understand New Zealand has a scheme to take the vehicle off the roadside. I cannot recall whether it is for unauthorised driving or for fine defaulters. It certainly is a scheme that operates in New Zealand.



**Mr GARRY EDWARDS:** Say, for instance, a kid takes mum and dad's car out and gets caught drink driving, speeding, whatever. If that child or minor—once they are 18 they are not a minor, so there would not be too many of them anyway—that young person was detected doing a similar thing, is there a provision to impose a sanction against mum and dad?

**Mr HARTLEY:** That exists already with the over 45 speed. Actually, if it is not the owner of the vehicle driving, the owner is given a letter from RMS saying, "Someone has been detected. If it happens again, we can confiscate your vehicle." So that is in one scheme already. So you get another option.

**Ms TANGNEY:** It applies to hooning offences, I think they are referred to.

**Mr HARTLEY:** It is over 45, Skye's law, plus the hooning offences.

**Ms TANGNEY:** Speed and drag racing.

**Mr REARDON:** On the hooning offences, in terms of using that as a vehicle sanction, we are not the only jurisdiction that applies that. I think South Australia and Victoria also do so.

**Mr HARTLEY:** And Western Australia.

**Mr NICK LALICH:** The Committee understands there are some barriers to members of Aboriginal communities obtaining licences, and this can lead to them driving unlicensed and, therefore, accumulating unauthorised driving offences. Has this been your experience? Are you involved in or aware of any program to address this issue?

**Mr HARTLEY:** It is my experience, and our experience I suppose, that a lot of programs in New South Wales have been running for many years with local police officers, local Rotary or local PCYC, but more formal programs are being run through Transport for NSW as well trying to develop a driving package for young Aboriginal people.

**Mr RAMSAY:** My understanding also is that funding is available to assist Aboriginal community members to enter into a licence scheme—that is with literacy skills, making vehicles available for the communities in which the hours can be gained by a supervising driver. In addition, the remote area provisional licence that Tim mentioned west of the Newell Highway marries in quite well with that existing scheme to assist young Aboriginals to enter the licence scheme. Once they get the 50 hours up rather than the 120, they can then have an attempt at the driving test. If they pass—the knowledge and driving tests still have to be passed—a licence is issued but it is restricted to and from employment, education and health services. Enabling a licence to be issued at that point allows not just Aboriginal communities but those west of the Newell Highway to get access to health services, education and employment.

**Mr HARTLEY:** I think our big issue there is having the licensed drivers and the registered vehicles to accommodate the young persons learning. That is a fact of life. Until we get over that, I think we have big issues. In the Northern Territory there is a scheme run in one remote location by the Federal Government actually providing cars and drivers into that remote community. But it is very expensive. I think it is \$1 million for the first trial they are conducting. So it is very expensive. It probably works out to \$50,000 per driver, but that is the hard part. The reality is that unless you can get the registered cars and licensed drivers into those communities who can help younger people to learn to drive a car, we will go and chase our tail.

**Mr WELLS:** Only very briefly, I have a couple of things. The Auditor-General is looking at this as well in terms of Aboriginal licensing. They have done quite some work with all of our agencies in trying to garner some wisdom on what has been successful and what less so. We were fairly candid with them in that we certainly would want a much higher proportion of the Aboriginal community to be licensed and driving registered vehicles and how might we assist them to get there. We are sort of reflecting that some schemes have been quite successful in driver training. We have small but successful schemes. We also had one with training Aboriginal community members to be driver trainers themselves. That was less successful, to our disappointment. But we really flagged that it probably needs a bit of courage and opportunity to experiment and work with the community noting that some things will be more successful than others. It is a tough space and I think all of our agencies would be keen to advance on this, but it is not straightforward.

**Ms TANGNEY:** Building on what John said, no doubt getting past those barriers of making sure there are registered vehicles and licensed drivers in Aboriginal communities might initially be expensive, but it is important to bear in mind the long-term impact of not making that investment, which means that those communities continue to operate in the way they do now where we do not have licensed drivers and they do not have access to education and employment opportunities. It is that entrenchment of disadvantage that I think on a longer term is much more costly right across the sectors, whether it be in the health sector or in the justice sector. There are significant costs associated with not assisting people to move out of that situation.

**Mr REARDON:** The New South Wales Road Safety Strategy targets this very issue and research is being undertaken at the moment. I will not repeat the same matters that have been raised, but it is about getting access to cars in those communities to assist.

**Mr NICK LALICH:** Do you think good behaviour licences would help with this issue to let them get back into driving?

**Mr HARTLEY:** History probably tells me no. There were employment licences many years ago I think for someone who has been smacked a lot of times and then needs a car to drive to and from work. But I think with the solutions being discussed here today about reducing that 20-year disqualification to something reasonable and being a road safety benefit at the same time, there are better options for us in a licence because if they are caught again what happens then? Are they a danger on the road or not? If they are a danger they should not be driving to start with and should be in a program to make them better drivers.

**Mr RAMSAY:** Just to add to that, I guess we are talking about the same thing, whether we call it a good behaviour licence or a licence with no restriction. It is about getting the person back on the road. If there is evidence that they have complied with offence-free periods and so forth, whatever that period might be, if we talk about a good behaviour licence it would typically come with some type of restriction and that can be difficult to manage. There are fundamental issues about: Is the person disqualified even though we are giving them a good behaviour licence? That does not sit well within the current legislation. It is probably an option but it is not the most desirable way to go in terms of the way the legislation can be set up and subsequent reoffending and penalties. I think at the end of the day we are talking about the same thing. The person is issued a licence and it is a question of whether it is necessary to limit it or not.

**Mr NICK LALICH:** We have a problem. We have it probably as legislators as you have it as administrators—shock jocks. You loosen this down to make it more equitable for people and of course something happens, you have the shock jocks saying, "These idiots up there in Macquarie Street", RMS, whoever else you want to throw a word to and off they go. Of course, you have no way of getting back at them; you just have to let it go, they give you a serve for about a week and you cop it sweet and move on. That is our problem with changing legislation.

**Mr HARTLEY:** The front page does not want to be "reduced penalties". It wants to be "a better road safety scheme". We are talking about road safety, not recidivists. It is road safety and here is a better package for us because they are killing this many people.

**Mr NICK LALICH:** We do not have control of the front page as shock jocks do. I wish we did.

**Mr REARDON:** It is about road safety and it is about programs that work for road safety. If there are programs that are still struggling to pinpoint those who are causing fatalities and serious injury on our roads, we need to look at those programs basically. Your point about any perceived reduction, it needs to be balanced. As I said before, there need to be checks and balances. There will need to be some sanction in any regime. This one is largely individual traffic offenders back to front. If there is any contemplation by the Committee of changing that as per your terms of reference, some sanction will need to be contemplated. We put something in our submission but your point is taken.

**Mr RAMSAY:** I think it is important to note that the Government submission and the suggested measures, if they are all implemented tomorrow the same penalty could be applied by a court tomorrow as it was yesterday. There is no restriction placed on the court. So, if you like, an argument about reducing penalties cannot be sustained because the courts have exactly the same, only under discretion, power to apply exactly the same or a tougher penalty.

**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:** 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.

**Mr HARTLEY:** I interpret it differently. I think that we have X number of disqualified drivers out there. I do not know what the number is at the moment, but there needs to be some carrot out there for them. Whether it be a longer period, I do not know but there has to be a way around saying that everybody involved in this scheme has been disqualified. There is a chance, depending upon road safety, attitude to driving. Some might never get past the first hurdle but there has to be a hurdle and everyone needs a chance to put their hand up.

**Mr GARRY EDWARDS:** Two ladies here earlier each had a client—I think the clients were in their mid 20s or late 20s. One of those ladies could not apply for a drivers licence until she was in her 60s, another one in her 70s. I understand that both of those individuals jumped on this roller coaster by way of fine defaults. When we are talking about retrospectivity I think maybe we should look at a form of retrospectivity for individuals such as those today.

**Mr HARTLEY:** It will be a new scheme. If you have been disqualified you can put your hand up and apply to be considered again before a magistrate to ask and plead your case. I do not know.

**Mr NICK LALICH:** Each case on its merits, I suppose.

**Ms TANGNEY:** Each case on its merits, I think, because the other difficulty we have is that the issue about fines was hidden. I could say yes, I was disqualified and it was a fine and it was in 2002. But how would you know without going back and interrogating my record, because it will not be obvious if you just produce my sheet or RMS produce my history. It will not be obvious on the face of it. You would actually have to go back to establish whether I was telling the truth or not. That is why there would be some difficulties. A case by case basis, the concept of an appeal to the court saying "an application to the court" rather than "appeal". It is an application saying, "These are my circumstances. This is my history", and being required to give some evidence of that is potentially a better way forward because it allows the court to consider what happened in that particular case. But there are many cases where it became a treadmill. Once people had that unpaid fine it inevitably just put them on a treadmill that got them deeper and deeper into the system.

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

**Ms TANGNEY:** Habitual offenders is a smaller—

**Mr Ramsay:** 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.

**Ms TANGNEY:** On a cumulative basis, I think I found in RMS statistics in 2012 that more than a quarter of a million licences were cancelled one way or another. It was 286,185 to be precise. That is not for the

whole year but for varying periods. Of those, as I mentioned before, 52 per cent or 147,592 were fine default related, 16 per cent were demerit points, that is 45,328, and 5 per cent had been disqualified by the court, and that is 15,553. So over a period it can be quite a substantial number of people.

**Mr GARRY EDWARDS:** Do you have a statistic for the people in regional and remote areas?

**Ms TANGNEY:** I did at one point. I did some work a while back trying to break it down because I think RMS produces data by postcode.

**Mr RAMSAY:** That is right. Certainly there is a higher proportion of disqualified drivers in regional New South Wales than metropolitan, and for the reasons mentioned earlier. Police tend to know a local driver who should not be driving so they can more easily be detected driving when they should not. The temptation to drive is greater in regional New South Wales because there may not be available transport. Yes, figures show there are higher proportions of disqualified drivers in regional New South Wales than metropolitan.

**CHAIR:** Thank you for attending today's committee hearing. We may write to you with some further questions, if that is okay. That will form part of the evidence for the hearing and be made public. Hopefully we will work through this.

**(The witnesses withdrew)**

**THOMAS CARSON SPOHR**, Vice-President, NSW Young Lawyers, and

**ANDREW TIEDT**, Vice-Chair, NSW Young Lawyers Criminal Law Committee, sworn and examined:

**CHAIR:** I welcome Thomas Spohr and Andrew Tiedt, representing NSW Young Lawyers. Thank you for appearing today in front of the Law and Safety Committee. My name is John Barilaro, member for Monaro, Chair of the Law and Safety Committee; Mr Guy Zangari, member for Fairfield; Mr Garry Edwards, member for Swansea; and Mr Nick Lalich, member for Cabramatta, and one member is away today. Before we proceed, do you have any questions concerning the procedure in relation to being witnesses and the hearing process today?

**Mr TIEDT:** I do not.

**Mr SPOHR:** No.

**CHAIR:** We have a series of questions but, before that, would you like to start with an opening statement?

**Mr SPOHR:** Very briefly. The two or three items that we wanted to draw the Committee's attention to as overarching points are these: One, driver disqualification or unauthorised driving offences are disproportionately dealt with by unrepresented people in court, the consequence of which leads into the second point, which is that this area of traffic law, generally, is heinously complicated to begin with, and I do not think it is at all controversial to say it leads to it being very difficult for magistrates and solicitors who work in the area regularly. That means that to the extent that people are unrepresented and the law remains complicated, it would be better if this Committee could take a course of action that simplifies rather than complicates it.

Our general view in respect of the issues into which the Committee is required to inquire and report is set out in our submission, but, as a general rule, the points that we wanted to make are that the disqualifications for unauthorised driving ought to become discretionary in respect of their commencement dates and not automatically or mandatorily cumulative. Generally speaking, disqualification does not act as a terribly effective deterrent. In other words, imposing further periods of disqualification upon people is not a terribly effective way of preventing them or deterring them from committing further unauthorised driving offences.

**CHAIR:** Thank you. We will start with some questions.

**Mr GUY ZANGARI:** Thank you for coming this afternoon and giving evidence. The Committee has heard that the current penalties for unauthorised driving offences particularly impact on certain sectors of the community such as Aboriginal people, young people living in rural and regional areas, and vulnerable groups, as well as migrant communities and refugee communities. Which groups do you consider to be the most affected by the current arrangements and what are the main impacts for those groups?

**Mr TIEDT:** The first answer I would give is that we find that particularly people who rightly or wrongly form a view that they just have to drive, for example, people who have no other alternative at least in their eyes—I am thinking of people in country areas where their mailbox is 10 kilometres away, let alone your work or your family commitments—will decide wrongly, but nonetheless will decide, "I simply have to keep driving. I must have a licence." Many other people have very pressing work needs for a licence, not just to get to and from work—I am thinking of tradesmen in particular who have to get in their ute and get their tools to where they have to be. Many people in those positions really feel they have to keep driving and that notwithstanding what a court or Roads and Maritime Services may have done or said, they simply have no alternative.

In those circumstances, and touching on what Thomas said earlier, where the period accumulates with each offence, it is especially those people who often do not finally stop driving until they receive some form of custody as a penalty and by then usually they have 10, 15 or even more years off the road pending. Then no matter what they may do subsequent to that, no matter how they may mature, no matter what steps they may take or improvements they make to their life, they are still stuck with those 10, 15, 20 and sometimes more years off the road. Those are the people who in my practice at least I come across very frequently. They say to me, "What can be done?" and the answer almost invariably is nothing.

**Mr SPOHR:** I think that is right with respect to Andrew. Rural and regional people are—I do not want to necessarily say disproportionately affected because I am not sure whether that is supported by statistics simply because I do not know what the statistics are, but it is fair to say that a person who lives a long way from court who has to drive while disqualified to get to court for a hearing on their drive-disqualified offence is likely to be the kind of person who will be disproportionately affected by this. If you give a further disqualification to a person in this room there is obviously a degree of social stigma and so on that attached to that. For those people who are from low socioeconomic backgrounds, sometimes with pre-existing criminal records, a disqualification for them—I do not want to say it is neither here nor there—is not really the deterrent that it is for anyone in this room, for example.

**Mr TIEDT:** If I may add to that, for a large number of people who commit these offences, this is their only interaction with the criminal justice system. Whilst it is true that many people who have very serious criminal records also have traffic offences, by and large people committing traffic-related offences, including the kind of offences we are looking at today, do not have a criminal record. They do not have other criminal issues. What that means is that criminal penalties imposed, in my experience, often have a far greater effect upon them than it might on someone who comes from a very long history of committing criminal offences. In that way it may well be the case, and I am not sure there is research either way on this, that those people are more likely to take note of and be deterred by the criminal offences rather than simply tacking on further periods of time off the road.

**CHAIR:** The Committee has heard statistics today that show the numbers are greater in regional communities because of the lack of options like public transport and the tyranny of distance.

**Mr NICK LALICH:** Would reducing the penalties that are imposed on these crimes, if I can call them that, add additional risks to community safety?

**Mr SPOHR:** I will take a technical point about that. They are crimes. Unauthorised driving offences generally do not have necessarily a public safety element built into them. That is not the same as saying that if you reduce the penalties and therefore there were more disqualified drivers on the road it would not impact adversely on public safety because let us not forget inevitably the reason people are disqualified is that they have committed some other offence. It is not the same as saying that if you reduce penalties it would not have a safety impact. But I think it is a nuance. It is a really difficult question to answer, with respect.

The other small point I wanted to draw from that is that it would be apparent from what both Andrew and I have said already that we think a distinction needs to be drawn between what you might call the criminal penalties and the disqualification periods. The criminal penalties and the disqualification periods act, if you like, in different ways on different people, although as Andrew has pointed out, for people who do not have a significant criminal record any kind of criminal sanction is likely to be sufficient. I have not directly answered the question because I do not know how to answer it without statistics. I do not know if Andrew has a more direct answer.

**Mr TIEDT:** In relation to penalties for disqualification periods generally, there is no doubt they are important. People who are disqualified need to be punished, in some way, if they drive because if we do not punish people who drive while disqualified the whole system falls apart. I do not think anyone would disagree that we should be disqualifying people who drive drunk, dangerously and menacingly. They are a danger to themselves and others and that is a very different question to what we are addressing today. My point is that drive whilst disqualified, suspended, or cancelled penalties certainly underpin that system. What we are trying to suggest is that a different approach or different perspective be taken in relation to those offences that relate only to the state of your licence, or lack of licence, to those where you are being penalised for an objectively dangerous act.

**Mr SPOHR:** I have just remembered one other thing—I am sorry to layer our answers. The other point is that it is also true that a person who drives unauthorised is therefore necessarily uninsured and to that extent there are consequences in terms of the safety of the community insofar as if they have an accident, if they hit somebody, that person may not necessarily be able to recover anything from insurance and they may not be able to recover anything at all because of the circumstances surrounding the offence, as I say, from being unauthorised.

**Mr NICK LALICH:** Do you find the people who are involved in dangerous driving, menacing driving and those sorts of things are more likely to be involved in other crimes?

**Mr TIEDT:** As compared to Joe Average on the streets?

**Mr NICK LALICH:** Yes?

**Mr TIEDT:** I do not know off the top of my head. I would not be surprised if that was true, as certainly with people who commit, say high-range drink-drive, for example, there is a certain lack of respect for the law and a certain lack of care for consequences. If there was research saying that they are far more likely to be criminals in another sense of that word in terms of violence or any other number of criminal ways, it would not surprise me. I do not know that for a fact but I certainly would have thought so. The one thing I would say about that is often people who commit these offences do have various social problems, whether it is alcohol addiction, whether it is some sort of attention deficit disorder, attention deficit hyperactivity disorder or some sort of impulsivity they cannot control. There certainly would be an interplay in some way, but by the same token I would certainly emphasise that people who commit these offences overwhelmingly their only interaction with the system is through driving-related offences—not exclusively but overwhelmingly.

**Mr GARRY EDWARDS:** In your experience have you come across many clients who have committed both unauthorised driving offences as well as more serious traffic offences that endanger the community?

**Mr SPOHR:** Yes, I think Mr Tiedt has partially answered that. There is probably an extent to which it also needs to be recognised that a person who drives whilst unauthorised would disproportionately be getting picked up for another offence. Maybe I will start at the beginning. The reason they got picked up in the first place for driving whilst unauthorised is often because they were committing some other offence in the first place. In other words, a person who is speeding and then gets picked up and turns out to be disqualified—that is somewhat less so recently because now the police obviously have licence plate scanning technology and a few other technologies but it is often the case that a person who is picked up for driving unauthorised is also picked up for some other offence at the same time.

People who are picked up for unauthorised driving offences though are not necessarily committing other offences that endanger the community because they could also be regulatory offences. For example, it would not be uncommon for them to be picked up and for that other offence to be fail to display "P" plates, something along those lines, or having too many people in the car—and I am thinking particularly of young people.

**Mr NICK LALICH:** Unregistered vehicles?

**Mr SPOHR:** Unregistered vehicles. That other offence might not necessarily have an impact on safety but I think Mr Tiedt's point from earlier that people who commit these sorts of offences necessarily have a particular attitude to compliance with traffic law means that the answer is probably yes.

**CHAIR:** We heard this morning examples of people who have had their licence suspended and cancelled because they have defaulted on a fine. By the end of the treadmill they have ended up in prison. Have you had clients who have gone through that scenario and do you think imprisonment is an appropriate penalty for those who have had their licence suspended or cancelled due to fine default?

**Mr TIEDT:** I am not sure that I have had someone end up in jail. I have certainly had people get trapped into a cycle of criminal offending that they never would have had they had the \$50 to pay the fine four years ago. It certainly is very true that people do get trapped in the system; of people who have a small infringement and it becomes a medium infringement and then a large infringement and before you know it they are looking at terms of custody. That is a very, very common story. There certainly is a very reasonable argument about the consequences that taking licences from people because of the non-payment of fines because they have committed a graffiti offence, that those sorts of things do have a cumulative effect a lot of the time and do roll over into far more serious offending. That does raise very reasonable questions about the extent to which we want to trap people in that system or even give them the entry into the system. Of course, if they commit offences they do, in some sense, make their own bed but we need to take account of the fact that people do often not make rational decisions and do things that have very poor effects for themselves. To answer your second question about terms of custody, I certainly would not wish to be seen to be saying that people should

not be punished for driving whilst disqualified. As I alluded to earlier, the system of licensing, disqualification and suspension rests upon there being consequences for doing the wrong thing and for driving when you are not supposed to.

**CHAIR:** The penalty should be proportionate to the offence?

**Mr TIEDT:** Yes.

**CHAIR:** For someone to be going to jail for 23 months because for instance they did not vote next Saturday at the elections—many people do not want to vote next week. If they do not have the money to pay the fine, that becomes an issue, they drive whilst disqualified and by the end of the treadmill we have heard stories that people end up in prison for 23 months.

**Mr SPOHR:** The question about whether or not prison is an appropriate sentence for unauthorised driving where the original reason the person is unauthorised is a fine default—the other starting point is that there are a number of reasons why a person might not realise they are suspended for fine default. For example, they may have moved, so there is a really difficult question about how you sentence for those sorts of offences because at one end of the scale there might be somebody who fine defaulted on something that is significant and then committed some other offence like speeding and got picked up suspended. I think, with respect, the summary that it needs to be proportionate means that there will be cases in which it might be—it is a little bit hard to picture one—but for a person who is a fine defaulter to be facing prison is a pretty significant penalty given, as you say, it may have originally been a \$50 fine. The treadmill argument is a slightly different one and it is a running theme through the submissions that have been made to this Committee.

**Mr GUY ZANGARI:** I want to touch on the vulnerable sectors of the community, particularly isolated communities, and get your feelings on licence suspension and cancellation. Is that an appropriate penalty for fine default for these communities in particular?

**Mr TIEDT:** Are you asking whether the licence should be taken away for fine defaults?

**Mr GUY ZANGARI:** Yes. Basically the question is: do you think licence suspension or cancellation is an appropriate penalty for fine default particularly in relation to the more vulnerable sectors of the community?

**Mr TIEDT:** I think it causes a lot of problems and the problem is that it is a fairly blunt tool for a very specific issue. If someone has not paid a fine or if they have not kept up to date with some sort of payment schedule, taking their licence away, I have no doubt, is a strong motivator to get them to pay their fines. The problem is that when someone relies upon their licence for anything from their job to their everyday life, caring for children, caring for sick relatives, whatever it might be, it is often the case that people form the view that, "Well, notwithstanding the fact I have had my licence taken away, I 'have' to drive. I have no other option." Again, that is what you often hear, which means that inevitably they enter the criminal justice system, they are disqualified further and before you know it they have got 20 years off the road so it certainly creates a great deal of problems. I am 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.

**CHAIR:** I think the best line we heard this morning was that a driver's licence is no longer just a licence to drive; it is actually a licence to live, because you need your car licence.

**Mr NICK LALICH:** Yes, it is a case of no licence, no livelihood.

**Mr SPOHR:** That is particularly the case in those communities, and I think that really is the qualification on this. As I said earlier, for the people in this room—for educated, employed people—the loss of a licence has a particular connotation but for people in a rural or regional area it has different consequences on their livelihood and their ability to work. It also has different consequences in terms of the person's fear that that will be used—in other words, whether or not it is a useful deterrent depends on the person's particular circumstances. So the real question, if you like, is: how do you roll licence disqualification into a fine default scheme? Because, unlike going to court where a magistrate or a judge is required to take into account all of a person's circumstances, at the moment the system is essentially set up such that almost automatically—or



certainly as a matter of administration—the licence goes when the fine is not paid regardless of the particular circumstances of that person. To that extent, I do not know the answer to the question of how you structure a system that takes into account everybody's circumstances. I am aware that legislation has recently come in to enable people to work off those fines, which is a step in the right direction. But that is not necessarily a full answer, I would say.

**Mr NICK LALICH:** You may have already partially answered this, but do you have any examples of arrangements for dealing with unauthorised driving offences from other jurisdictions that could work well in New South Wales? Those examples might be from other States or from other countries that you have had experience with or know of.

**Mr SPOHR:** I cannot think of any. For unauthorised driving I am not sure what other schemes would necessarily be able to be integrated into New South Wales. I say that for this reason: I am conscious that this Committee's terms of reference deal with unauthorised driving. If you want a different scheme then potentially a different scheme would need to be implemented for all driver disqualification for all of the different offences in all of what is now the Road Transport Act. So it may not be easy to simply import a section just for unauthorised driving.

**Mr TIEDT:** I have heard of two examples. I know that in Queensland at one point recently, and I am not sure of what the present status is, there was a rule where there was, at the very least, a custodial term as a mandatory penalty for a second drive while disqualified offence—and I am not sure whether it was a full-time jail sentence. As I understand it, that caused untold chaos. People who committed two offences in a very short period of time—even in circumstances where the court could see it was an inappropriate option—were in a situation where they were going to jail. That was poorly received. I am not sure that further restricting the already restricted discretion of magistrates would be an appropriate way forward in that respect.

The other issue is work licences, which I am asked about on an almost daily basis. I am certainly very cognisant of the fact that it may well be the case that they cause more problems than they solve—as everyone proceeds to drive exactly when they want to and then pretends it was for work. I am frequently asked about that and always have to say that it cannot be done. That is something I believe was previously done in other States—and perhaps even here many, many years ago. I understand that it caused so many problems that it was done away with, and I cannot say I am surprised by that.

**CHAIR:** We heard from the Assistant Commissioner of the NSW Police Force earlier that it did not work well.

**Mr TIEDT:** I am not surprised by that.

**Mr NICK LALICH:** There are three levels involved here: disqualification, suspension and cancellation. They are all bunched together. One suggestion was to separate them and have different legislation on each one of them. What do you think of that suggestion?

**Mr SPOHR:** There is a point I made earlier that I want to come back to—that is, it is going to become more complicated as soon as one does that. I am aware that the Law Society of NSW position is that it is appropriate to "stratify"—in other words, to have one different penalty for each. That does have the consequence that it will be more complicated. It has a significant basis in logic—do not get me wrong, I am not suggesting that it is wrong; I am just saying that it may not be very simple to implement.

Because disqualifications can only be imposed by courts it is logical that that should have the most serious penalty. It is logical that, at the other end, a person who is suspended because they have defaulted on a fine should have the lowest penalty. The question though is whether stratifying the maximum automatic or minimum penalties, or whatever you want to call them, is really going to make much difference given that a magistrate or judge looking at it will inherently know that one is more serious at one end and the other is less serious at the other. If it was going to have some effect then there would be a great deal of logic in it; but the question is, as I say, if every time one of these matters comes up and the person is unrepresented and the magistrate and police prosecutor inevitably have to reach for the legislation and mistakes get made then the logic somewhat falls apart.

**Mr TIEDT:** I have one thing to add to that. I certainly echo and strongly endorse to you Mr Spohr's comments about the complex nature of the legislation. I deal with this legislation every day of the week and it is

eye-wateringly complicated. We have tables to find things in the legislation and to track things through it. It is incredibly difficult to apply this legislation, and very busy magistrates with very heavy workloads find it difficult because it is so complicated. So, as Mr Spohr said, mistakes do happen—and that is deeply regrettable for very obvious reasons. The one thing I would add to what Mr Spohr says is that if you look at the four categories as being: disqualified, suspended, cancelled and unlicensed then you will see that they are fundamentally different offences.

Disqualified is when a court has said that you are not allowed to drive. Suspended is typically where Roads and Maritime Services, police on the side of the road or the State Debt Recovery Office [SDRO], for the most part, have said that you are not allowed to drive. Unlicensed of course means not holding a licence at all. Cancelled is different again—meaning where you have been disqualified, the disqualification period has finished and you are eligible to apply for a licence but have not done so. To my mind, that is an offence that is obviously different from the other ones. I think the comments made earlier are correct—that magistrates are cognisant of that and do adjust their approach to the matters accordingly. There is merit in considering that they are different offences. I certainly strongly support any suggestion that we simplify things—even just for my own sanity at least.

**Mr NICK LALICH:** To follow on from that, what do you think about removing mandatory sentencing and giving that discretion back to the courts and magistrates?

**Mr SPOHR:** NSW Young Lawyers strongly supports the removal of mandatory sentencing. There are a number of problems that arise out of that—many of which are already mentioned in the submission and will no doubt have been recited to you today; so, unless somebody asks me to, I will not go into all of those reasons. Mandatory cumulative sentences do not necessarily, for the reasons I set out earlier, 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. That is the only reason you would do it, and you would only do that in circumstances where you do not have confidence that the court would do that itself.

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 deterring offenders from committing the offences—that is why they have so many of them. Obviously at some point the criminal penalties have to kick in, and that is why I drew that distinction earlier. The criminal penalties—the threat of going to jail or having to do community service—at that point have some role to play. However, mandatory sentences have not necessarily achieved what they set out to achieve. Our view is that now is the time to get rid of them.

**Mr TIEDT:** Speaking practically, the two main areas for reform on that front are the habitual traffic offender declaration program, which I am sure members have heard a great deal about today. I have read the submissions from other parties and it is apparent that there is a general view in that respect. I commend those submissions. The other issue is the commencement of the disqualification periods and the way they accumulate very quickly, especially when combined with the habitual traffic offender declaration system. Seven years for each offence becomes 28, 35 and 42 years very quickly. 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.

**Mr GARRY EDWARDS:** Your submission states, among other things, that you are broadly in favour of establishing a right of appeal and to have any disqualification periods removed for those who complete a minimum offence-free period. How do you see that working?

**Mr SPOHR:** We have debated at some length about how it would be put into effect. We have seen some suggestions about things like maximum total periods of disqualification. We see some problems with that because that might mean, for example, that if someone has a maximum period of disqualification for five years, for argument's sake, and they are disqualified today for five years and commit another offence in a month, the longest disqualification that could be applied for the additional offence is one month. That is a problem and it is

why we have suggested offence-free periods. There is some logic in suggesting that an offence-free period should be long enough so that circumstances have changed, but short enough so that it is within a normal person's expectations.

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 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." There is a great deal of logic in doing it that way. As I said, there is some arbitrariness in how long it is. However, it would have to be a comparatively short period because otherwise it defeats the purpose. It needs to be short enough that the person can realistically believe it is within their grasp.

**Mr GARRY EDWARDS:** Does the three-year figure keep popping up in your debates?

**Mr SPOHR:** I said five years. To be fair, having originally said five, I think three has a lot to commend it. It is commonly accepted that three years is a reasonable period. It is a reasonably lengthy period and we are not saying that after that period a person is suddenly entitled to drive. The argument would be that after three or five years, or however long, the person is entitled to make an application and convince a court that their circumstances have changed and have it reduced.

**Mr TIEDT:** At the moment there is an opportunity to make an application for clemency to the Governor to remit disqualification periods. In fact, I take it that there are so many that the Department of Attorney General and Justice has a page on its website explaining how to apply and to whom and providing the general criteria. The website says it is only for truly extraordinary circumstances. While there is an option, I understand from anecdotal experience that it is very rarely exercised. When people are told it is a very long shot they tend to lose interest. It is for people who typically have truly extraordinary circumstances crop up in their lives. We suggest that this would be a somewhat lower bar.

**Mr GARRY EDWARDS:** Have you used it?

**Mr TIEDT:** I have tried.

**Mr GARRY EDWARDS:** And?

**Mr TIEDT:** Without success. The circumstances need to be extraordinary and the website says as much. Just because you have some family issue or need a licence to get to work is not normally sufficient. The Governor, quite properly I would suggest, is slow to exercise those very broad powers. We are suggesting that there should be a somewhat looser discretion provided to the Local Courts to enable them to consider whether it would be appropriate to allow people back onto the road having served that period of time.

**Mr GARRY EDWARDS:** Are you aware of any colleagues who have been successful in obtaining clemency from the Governor?

**Mr TIEDT:** No.

**Mr SPOHR:** I have heard of one case. I confess that I do not know the circumstances. I remember it because it is so extraordinarily rare. When they said they made an application I cut them off and said, "I assume it was unsuccessful." When they said it was not I was very surprised.

**Mr TIEDT:** Until now I have never heard of it happening.

**Mr NICK LALICH:** I draw your attention to cumulative disqualifications. Queensland has a two-year waiting period before people can ask for an examination of their situation. This morning witnesses said they thought that for young people under 18 years of age two years was too long—it seems like a lifetime to an 18-year-old. They said that 12 months or 18 months would be more appropriate. They also said that youth offenders should be dealt with in the Children's Court, not in an adult court, where all driving offences are dealt with. What is your opinion?

**Mr SPOHR:** A shorter period makes a great deal of sense. The question about which court should deal with them is a can of worms. We have not discussed this issue, so it is difficult to express a view on behalf of NSW Young Lawyers. If the question is about making that change only in respect of unauthorised driving, that might be problematic. In other words, if all you do is remove driving unauthorised offences to the Children's Court, there might be a problem. Speaking off the top of my head, if you were going to do it for one thing, you would have to do it for everything. However, there is a great deal of logic in doing that. I have seen magistrates in my practice who have regularly said to young people, "Go away and get a licence and when you come back I will finish sentencing you." The problem is not that they are dangerous but that they keep driving without a licence while they are suspended. It makes sense for those people that the period be shorter and so forth. The other question is harder.

**Mr TIEDT:** The thing I have observed about shorter periods for younger people is that it inevitably becomes arbitrary at some point when you draw the line at 21, 25 or 30. I suspect that that would cause some consternation because someone who is 29 and 300 days old and commits an offence is treated differently from a person who is 30 and one day old. The issue comes back to the mandatory nature of the time off the road. If magistrates had more discretion I fancy they would be able to take note of the difference between an 18-year-old and a 45-year-old, who should know a lot better. The question touches quite neatly on the difficulties that arise when sentencing is mandatory. In that case magistrates and judges cannot do what they are very good at; that is, taking into account the differing circumstances of each person. My submission would be that the better way to fix that would be to give magistrates discretion to do it themselves rather than arbitrarily deciding how long people should spend off the road based only on their age.

**Mr GUY ZANGARI:** The Committee understands that unauthorised driving offences were being dismissed under section 10 of the Crimes (Sentencing Procedure) Act 1999 but the offence would still count towards being declared a habitual traffic offender. Have you come across any situations where this has occurred?

**Mr TIEDT:** On many occasions, yes. It is not uncommon at all.

**Mr SPOHR:** It is worth saying though, having just raised that issue about section 10s, that that is one of the problems with mandatory sentencing as well—where a magistrate is faced with imposing the mandatory sentence or imposing no sentence at all. If the consequences of disqualifying them for a lengthy period of time are quite significant, as they are for people who drive for a living, they may be left with no other option than to impose a section 10. In other words, the person essentially—I do not want to say they escape punishment entirely because they still had to go to court and they still have to pay court fees—escapes criminal punishment and conviction because the mandatory sentence leaves the magistrate with no other choice—they cannot impose three months or some other period.

It is certainly the case that section 10s are taken into account for habitual offender declarations. If I might take a guess, my guess would be that 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.

**Mr TIEDT:** I think that touches on the point made earlier about people who commit these offences being by and large unrepresented, meaning that they would not even know to ask.

**CHAIR:** Thank you for appearing before the Committee today. We may send you some additional questions in writing. Your answers to those questions will form part of the evidence you have given today and will be made public. Are you happy with that?

**Mr SPOHR:** We would be more than happy to do that.

**(The witnesses withdrew)**

**REBECCA IVERS**, Professor of Public Health and Director, Injury Division, The George Institute for Global Health, University of Sydney, and

**WILLIAM JACOB BYRNE**, Indigenous Project Officer, Injury Division, The George Institute for Global Health, University of Sydney, affirmed and examined:

**TERESA SENSERRICK**, Associate Professor, Transport and Road Safety Research, University of New South Wales, before the Committee via teleconference.

**CHAIR:** I welcome Professor Ivers and Mr Byrne who are appearing before the Committee in person and Associate Professor Senserrick who is joining the hearing via teleconference. For the benefit of Associate Professor Senserrick I will introduce the Committee members. I am Mr John Barilaro, the member for Monaro and chair of the Committee on Law and Safety. I am accompanied by Mr Guy Zangari, the member for Fairfield; Mr Garry Edwards, the member for Swansea; and Mr Nick Lalich, the member for Cabramatta. Mr Jai Rowell, the member for Wollondilly and deputy chair, is not present at the hearing today. Associate Professor Senserrick will not be asked to take an oath or make an affirmation because she is outside of the State of New South Wales today, but I remind her of the seriousness of these proceedings. Before we commence, do you have any questions about the procedural information that was sent to you?

**Ms IVERS:** No, we do not.

**CHAIR:** Would anyone like to make an opening statement?

**Ms IVERS:** I will give a brief statement. I have given you a presentation. As we did not make a submission I will quickly run through that as my opening statement. This is just to give you a sense of where we are and the context in which we work. Jake and I have worked with Professor Senserrick for a long period of time. She is familiar with our work and is also involved in a lot of it. The George Institute for Global Health is a medical research institute. I am a public health researcher. I have been working in the field of injury epidemiology, particularly road safety and injury, for about the last 20 years. I have a substantial program of research in Aboriginal health but also in road safety and injury prevention in general. We do have a focus on high risk and disadvantaged populations.

At the moment we are running two large studies looking at driver licensing in Aboriginal populations. In one of the studies, funded by the Australian Research Council, we have done background work to that, pilot work in the Bourke Aboriginal Medical Service. I have done work for the Northern Territory Government over a long period of time, again focusing on driver licensing and road safety. A lot of this research has really highlighted the fact that licensing is a significant issue for young Aboriginal people. We know that it extends to other people of low social status and disadvantaged populations as well. We know also, particularly for young Aboriginal people, that although licensing is an important entree into the road safety system for people, it is also an important driver of health and education. If you do not drive it is very difficult to participate in society.

I think in our understanding of licensing we are moving away from regarding it as a privilege. Particularly for people who might have problems with literacy and barriers to education and access to employment, licensing can be an absolutely essential part of life. If you cannot have a licence you cannot access employment and education and so on. I know that you are well aware of the impact that licensing and regulatory driving offences have on the high incarceration rates for young Aboriginal people.

There are substantial issues around data. As you will be familiar, New South Wales has only started collecting measures of Indigenous status in licensing data in recent years. We are really at an early stage of understanding the status of licensing amongst the Aboriginal population in New South Wales and we certainly do not know what it is in other States that do not collect that data. But the research that has happened to date is really community research. Again, it has not necessarily been accessing representative samples of Aboriginal people in the population, because we do not have access to routinely collected data. But unlicensed driving for Aboriginal people has been very difficult. Unlicensed driving is considered the norm and it is a necessity.

Previous research done by the Roads and Traffic Authority [RTA] had shown that only approximately 50 per cent of people included in those studies held a licence, and a lot of people who had held a licence had had it suspended or cancelled at some point in time. Our study, which involved recruiting a representative sample of Aboriginal people attending Aboriginal medical services, has found very similar results. I am not in a position to

talk to you about those results because they have not been released to the communities yet. I cannot talk about them publicly, but I can say in general that they are in line with those results. There will certainly be some very rich data coming through in the next 12 months from that work.

The barriers to licensing emerging from the research that has been done to date have been issues around access to identification documents, such as birth certificates and so on, and poor access to licensing services. That can be geographic access and also access to services because people do not feel comfortable walking into motor vehicle registries. People also have fear of engaging with police. Others barriers are the cost of training and annual renewal. They are the financial barriers. Then, of course, literacy is an issue. People need to be literate enough to fill in forms and understand the road rules and go in and do written tests. Another barrier is that when people are on their learner licences they have limited access to cars and supervising drivers. That is one range of issues.

The second range of issues is also outstanding debt, which may or may not be in fact related to road safety. That can be debt coming from fines that have been incurred from non-road safety related issues that leads to suspension or disqualification. It has huge implications. You will see on page 6 there is a slide from Ilona Kickbusch that shows the importance of driving licensing in life. I wanted to again reflect on the principles of enforcement. One of the key drivers in New South Wales particularly is the link between the State Debt Recovery Office and driver licensing, which is a significant issue. I know it was not in the terms of reference but I think it is important to reflect on that because that 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.

If we come back to the principles of enforcement, this comes from the Australasian College of Road Safety home page on its website but it reflects general knowledge in road safety. We know that enforcement is a critical component of maintaining order and ensuring road safety for all road users, but the basic principle is that penalties need to be timely, act as a deterrent and be related to the offence. Theoretically, suspension of driver licences should be reserved for road safety related offences but, as we know, we have got a link between debt through the State Debt Recovery Office and driver licensing and vehicle registration. It is not actually linked to driving behaviour or other road safety related offences in a number of cases. That potentially weakens the impact of licence removal as a genuine road safety measure. It is worth keeping that in mind.

The second issue is of course that we know that driving while disqualified or suspended is seen as a very serious offence, but again we have to separate out the serious road safety offences as opposed to people who are driving while suspended or disqualified due to other reasons. That could be due to barriers of access to the system or because of debt and may be unrelated to road safety offences. It is also arguable that the penalties and lengthy mandatory periods particularly for habitual offenders are disproportionate to the offence. A number of submissions have reflected on that. In fact, there is some evidence that suggests that very lengthy periods of disqualification do not actually have any road safety benefits.

I do not want to just talk about Aboriginal people in this context because it is also an issue for disadvantaged populations or people with low income. For young people and for older people the impact of not having a driver licence has a significant impact on the rest of your life. Someone might receive a 10-year disqualification period and they might live in an area of south-western Sydney that is not well serviced by public transport, who does not have great literacy skills, is not educated and does not have a white collar job that they can get the bus and the train to. Perhaps they are a skilled labourer who needs to be able to get to a worksite. If they do not have a driver licence there is no feasible option for them to show any behavioural change, get back into the system and contribute to society. It is absolutely arguable that that is a penalty that is absolutely disproportionate to the offence they may have incurred, which may have just been driving without having a licence because they were unable to pay their debt and they have a number of barriers to the system. That is worth considering.

We have a number of recommendations. I will ask Mr Byrne to briefly talk through one of the driver licensing programs that we are running at the moment and to talk about the barriers. But I will quickly outline our recommendations. They include that magistrates have discretion in setting periods of disqualification rather than mandated minimum periods. Magistrates have a lot of experience and being able to take into consideration all of the particular aspects of the offender's circumstances is incredibly important. 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.

We also recommend removing the habitual traffic offender scheme, and make a very strong recommendation to remove the linkage between the State Debt Recovery Office and licence sanctions. That is incredibly important, because that is one of the reasons why we end up with so many people in this situation in the first place. Another recommendation is ensuring that resources are available to support populations experiencing licensing barriers, including management of debt. 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. I will invite Mr Byrne to talk a little bit about the importance of driving licensing programs and the impact our program has had on people.

**Mr BYRNE:** The program that we are running at the moment called Driving Change is a licensing support program and by this time next year it will be running in 12 communities across New South Wales. The idea is to place in the community a driver licensing champion, who will be a local Aboriginal person from that community. The George Institute will work in conjunction with our State level stakeholders--including the State Debt Recovery Office, the Department of Attorney General and Justice and everyone else who I am sure you have received submissions from—to train and support this person in their local community to be a holder of knowledge that young people are comfortable to access. We try to find them an organisation in the community as well that people are comfortable to access. The program is about reducing the barriers not only of accessing services but also just having things done in an appropriate manner and implementing a way of sharing knowledge that works within the Aboriginal community.

It is a part-time position. It will be three days a week in each of the communities. We are already learning from the three communities we have up and running now and the ones that we are in consultation with that three days is not nearly enough, but that is all we can do at the moment. 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.

I will talk a bit more about the program activities. We can help people with all their licensing matters such as getting their identification documents, which is sometimes quite hard for people. Sometimes it is hard for people to even obtain a birth certificate, depending on their access to the Registry of Births, Deaths and Marriages. We can also help people to prepare for their Ls test and their Ps test and so on. We are looking to subsidise the cost of that through means testing. The big barrier at the moment is the 150 hours that people have to get up—

**Ms IVERS:** It is 120 hours.

**Mr BYRNE:** Sorry. It would feel like 150 hours for a lot of people I am sure. Those are some of the problems we are seeing in the community. The 120 hours is probably the biggest mountain for a lot of people to climb, once they are in the system. What is probably most relevant to today's proceedings is that in every community I have been into so far, I am asked, "What can you do about people who are suspended and disqualified?" The answer at the moment from where we sit is, "Not a lot." That is really disheartening. There is a lot of enthusiasm and positivity around our initial consultations and all of the other work that we are doing—and that is great—but then there is a bit of a dampener on things when people realise that we cannot do much for those people who are living with such a heavy burden.

I can tell you a bit about the real human cost of this and the stories from the community. I will not name anyone specifically, but the scenario is not all that different across communities. It is pretty similar. You have people driving just for the necessities of life—taking their kids to school or getting to football training. If they are the only sober driver who can operate a car there is great pressure put on them from family and others to drive. They are just doing regular things. They are not doing anything silly like speeding or drink-driving. If they are pulled over they admit to the police officers, "I do not have a licence but this is the situation that I was in." There may be two or three instances of that. Then I have heard of people being told by magistrates, "If I see you again then bring your toothbrush because you will not be going home."

I see in some of my own family members the heavy costs of not being employable and feeling less than everyone else in the community and not being able to provide for families. Particularly for a lot of young men that contributes to a decline in mental health and self-worth. I do not want to come in here and tell you sob

stories but that is the fact of the matter. It also puts strain on other family members who do have licences and it causes that strain to flare up into other things. The other day we had a young man trying to deal with Roads and Maritime Services. He was going for his P-plate test, finally. He was not aware that he needed to have a car organised for him to take the test. He could not get a vehicle there himself, obviously. When they had to change the date of his test, Roads and Maritime Services kept his money and so he is going to have to put his hand in his pocket again. He walked straight out of that office and went and picked up a packet of cigarettes, although he had quit smoking only recently. That is one of those acute examples of how issues with driver licensing can form barriers to social inclusion and participation in society. It can trigger negative effects in other parts of people's lives.

**CHAIR:** Professor Senserrick, did you have an opening statement to make or are you happy for us to start with questions?

**Ms SENSERRICK:** I have prepared an opening statement. I will read it for you. I thank you for this opportunity to present to the Committee. By way of personal background, I began focusing on road safety research in 1999. With a developmental psychology background I was particularly interested in addressing some stereotypes about young drivers being wilfully reckless and the lack of understanding of developmental and inexperience issues that contribute to their high rate of crashes and offences. This led to my interest in better ways to approach driver licensing to manage these issues. I went from there to an interest in other groups disadvantaged by the driver licensing systems, including Aboriginal and remote communities. I understand that the Committee has a copy of my recent presentation at the University of New South Wales on the latter, and that you will accept that as part of my evidence today.

Regarding the terms of reference, I would just like to emphasise two points. Firstly, I would like to record my support of courts being allowed to have more discretion in relation to the duration of disqualified licence periods but also in relation to the specific sanctions. In particular, I support approaches such as those in Queensland and Western Australia that allow for extraordinary licences or restricted licences that allow these drivers to drive for work purposes only during what would otherwise be a fully suspended licence period. There is limited research on this issue but a key study from Queensland in the late 1990s, with a cohort of over 1,700 drink-drivers, found that even among this seemingly high-risk driver group those allowed to drive on such restricted licences appeared to have a lower rate of recidivism—or at least a rate not statistically different from those who were not disqualified.

Secondly, I would like to emphasise the undue burden which, as you have heard, that linking of non-driving or non-moving violation-related offences tied to driver licensing has on disadvantaged groups, with fine default a particular factor in the over-representation of Aboriginal people in custody. Again, there is limited research on this issue but studies in the United States show that drivers suspended for such offences have a low traffic risk, much the same as validly licensed drivers in term of offences and crashes, including casualty crashes, with the exception of those who failed to pay their liability insurance. Therefore, without evidence to show that there is a negative road safety outcome associated with either restricted work licences or persons disqualified for non-driving-related purposes the Committee can see the value in allowing courts discretion to allow individuals such as Aboriginal people in remote communities—people with limited other ways to access employment or to access basic necessities and health services for themselves and, sometimes, their wider community—to return to driving as soon as possible, possibly without the full suspended licence period but rather with a restricted licence period.

**Mr GUY ZANGARI:** Thank you very much, Professor, for addressing us this afternoon and being a part of the inquiry today. I understand that you have received a copy of the terms of reference for this inquiry. What is your view of the specific reforms that the Committee is considering?

**Ms SENSERRICK:** I am not as familiar with all the reforms that were specified by this Committee as Rebecca Ivers, but we have worked together and I am very happy to support her recommendations. I have opted to say that I agree to allow a court discretion but I also support her recommendations to remove the linkage of some of things such as the State Debt Recovery Office scheme and the habitual traffic offender scheme to licensing.

**Mr BYRNE:** I support that in terms of the linking of the State Debt Recovery Office to licensing. We have heard, particularly in rural and remote communities, stories of young people riding a bicycle without a helmet or jumping on a train without a ticket. They end up going to Roads and Maritime Services when they are 16 to get their licence but they are knocked back immediately because they have not paid any of these fines. I do



not know how they are expected to pay hundreds of dollars of fines before they are 16 but they are already on the back foot. I use the example of going to football training. If you are not able to get to those sorts of social events in the smaller towns you are really out of the loop. Social isolation is a great motivator to get into a car, which you feel you are able to operate safely, and participate in these things.

**Ms IVERS:** There is a clear difference between licence suspensions due to unpaid debt and due to reckless driving or serious road safety offences. I think that is why we should give magistrates discretion. The habitual offender scheme has had an undue impact on the lives of young people. It has an impact on older people as well. Barriers for licensing for Aboriginal communities extend across the life course. We have people in their sixties coming in and looking for assistance in licensing. There is no real evidence that there are any road safety implications around taking away the Habitual Offenders Act, particularly for people who are losing their licence for non-road safety related offences.

**Mr NICK LALICH:** Do you have an example of arrangements for dealing with unauthorised driving offences from other jurisdictions either in Australia or overseas that may work well in New South Wales?

**Ms IVERS:** I think Professor Senserrick commented on that, about the extraordinary licences giving people work licences, and I think Queensland and Western Australia are effective in allowing people to go about their normal business.

**Ms SENSERRICK:** My understanding is that it was more widespread across the country. Many years ago it dropped out but remained in Western Australia, Queensland and the ACT for a long time. There were concerns in more recent years to look at this issue and each time they look at this issue they find that there is no justification to remove it and therefore it has remained.

**Mr GARRY EDWARDS:** Would there be a risk to community safety if penalties and disqualification periods for unauthorised driving offences were reduced?

**Ms IVERS:** There is no evidence that that would be the case, particularly for non-road safety related offences. Even for people who have serious road safety related offences, very long periods of disqualification do not necessarily have the effect of being efficient deterrents for people. Again there is limited research on effectiveness, but I think there are significant opportunities for putting in place alternatives and evaluating them as we go to look at it, because certainly we know that keeping people out of the system does not improve road safety because those people still need to get around, and if there are not alternatives to them driving—and we know what the state of public transport is even in urban areas, let alone regional and remote areas, and particularly when there are significant barriers to driver licensing for others in the community.

**CHAIR:** I know we do not want to concentrate on the Aboriginal community, but of those Aboriginal people who do obtain licences what, in your research or in your opinion, is the main reason that would contribute to them losing their licences?

**Ms IVERS:** Again it is difficult to be very specific about it but we certainly know that debt is a major issue. There are a few issues. We know that there are significant barriers to people getting a licence in the first place and there are a significant number of people driving around who have never been licensed. Of the people who get a licence and then lose their licence, there are a reasonable proportion of people that have low-range road safety, speeding and other fines. Rather than having very significant road safety related offences, such as reckless driving or high-range drink-driving, they tend to be the less serious offences. But then they accrue debt which they are then unable to pay.

Certainly in Driving Change a lot of the work that we are doing is putting people on Work and Development Orders and putting them on a time-to-pay plan so that they can get back into the system. The people who lose their licence due to fine defaults for other non-road safety related reasons, I could not tell you the exact proportion.

**Ms SENSERRICK:** Can I just add to that? I think there was one category that was missed—vehicles. Some unregistered or unroadworthy vehicles can be an issue particularly in remote areas where there are not a lot of other vehicles available. There is also a significant proportion in, for example, the Northern Territory and other examples where we have seen that data, and I am sure that would apply in New South Wales as well.

**Mr BYRNE:** One of the things that does contribute—and I could not estimate how large it is—is often we hear about people getting on a time-to-pay. They have already got their licence, they have accrued debt or wherever the suspension may have come from, they are on time-to-pay because of accrued debt but they are out of work and they are getting direct debits from Centrelink. They become employed, continue to drive because they have got their licence back but have not realised that the direct debit has stopped and they have to pick up payments for that. So a lot of the time people might be reoffending but thinking they have done the right thing and are continuing to do the right thing. It is one of those process things.

**Ms IVERS:** There seem to be a lot of breakdowns in communication. Certainly one of our clients recently had that problem, which is that they had believed that the debt had been lifted when in fact it had not, and people get picked up again. Communication between systems can be a significant issue with different government agencies about when suspension has been lifted, when it is safe to drive.

**CHAIR:** Professor, after I asked the question I touched on the fact that there are many who are driving who have never had a licence. What are the obstacles there? Why is that happening in Aboriginal communities?

**Ms IVERS:** There is a whole range. There are significant barriers. When you are going to get a driver licence you need to prove who you are, so you need a birth certificate. If you do not already have one you need to know what your full name is and what your date of birth is and what your parents' names are and date of birth. That is not always possible—and you need to be able to pay for it.

**Mr BYRNE:** And access to the service.

**Ms IVERS:** And access to the service. So straightaway you have got a few barriers there. You have got to be literate enough to read the road rules and do your written test. You need to be comfortable enough with the system to be able to walk into a motor registry. If you are not really all that comfortable with reading or writing there are barriers to that.

**Mr BYRNE:** If you have not done well in school then approaching these sorts of government agencies with their forms and testing—not many people like going into a test but if you are going to go into a public place and attempt a test that you are not confident at achieving, that is a significant sort of barrier in itself.

**CHAIR:** It is about understanding the process, such as your example earlier of the gentleman who turned up to the RMS and did not realise he had to bring his own car. So they do not even understand the process at times.

**Mr BYRNE:** And you can see how they would say, "Well, I have paid for the test and they are the Roads and Maritime Services, they will have this to test me." You could see how that could be a common misconception.

**Ms IVERS:** Then of course there are all the other barriers about licensing—having to get your 120 hours of supervised driving practice, which means you need access to a car, you need access to a driver. A supervising driver is a significant issue. You need to have a few professional driving lessons most likely. Again, all of those things are barriers. There is cost, it depends on where people are living, it depends on whether there is a car available—you need a roadworthy car to do your test. We have heard that when you go in to do your test for your provisional driver licence you need a roadworthy car, which means you need to have everything working on that car; you cannot have indicators not working. Again, everywhere along the line there are barriers. They are not all significant barriers but they accumulate.

**Mr BYRNE:** And with the licensing rates being significantly lower in Aboriginal communities you have significantly less mentors and licensed drivers to sit in the car with you, and those people, as we have already discussed, they are under strain and pressure from that many people in their families and communities.

**CHAIR:** And that is what your program is trying to do—you are training more champions in the community?

**Mr BYRNE:** Yes, definitely.

**Mr GUY ZANGARI:** We understand that Transport for NSW is piloting a new learner drivers program whereby the hours to learn to drive will be significantly reduced by attending a course. Could you tell

the Committee about this program and whether you consider that this will assist the Aboriginal community in particular?

**Ms SENSERRICK:** I am happy to address that issue. I was on the advisory group to the board that was formed to develop the program. First of all, that program is one which will allow people to drop their hours by up to 20 hours. This involves some education group-based discussions and also some in-vehicle training. We have tried to advise the Government on best practice within those restrictions. But in relation to that also, because this must be available to everyone and they cannot roll it out to all areas immediately, they are also trialling a type of P1 work licence in three areas west of the Newell Highway where those drivers who otherwise meet all the requirements but only have 50 hours still have to meet the minimum requirements, minimum age, et cetera, but could still be licensed with 50 hours, but for the first six months they can only drive for work-type purposes.

That commenced as of 1 July and they had a built-in evaluation that they are going to commission a group to evaluate that program to be sure that there are no negative road safety outcomes and then it could be rolled out wider while they continue to get the safe drivers course developed.

**Mr NICK LALICH:** Professor Senserrick, your research echoes a number of submissions which have indicated that without a driver licence many Aboriginal people are cut off from their community, cut off from their job opportunities, isolated and unable to attend important community events such as funerals. Could you detail to the Committee specific examples of your experience where you have either witnessed this or have been told about Aboriginal people who have experienced this?

**Ms SENSERRICK:** I am sorry, the line just dropped out. Could you please detail it again?

**Mr NICK LALICH:** I will re-read it quickly. Can you hear me?

**Ms SENSERRICK:** Yes.

**Mr NICK LALICH:** Your research echoes a number of submissions that have indicated that without a driver's licence many Aboriginal people are cut off from their communities, cut off from job opportunities, isolated and unable to attend important community events, such as funerals. Could you please detail to the Committee specific examples of your experience where you have either witnessed or been told about Aboriginal people who have experienced this problem?

**Ms SENSERRICK:** I can give you direct experience. It is from Western Australia. I work with a remote community in Bidyadanga, which is a couple of hundred kilometres south of Broome. There was a bus service that was run once a week between Perth and Broome that they stopped. This has caused a problem for people having any chance to get any public transport up to Broome. They have a community shop and a nursing service there, but they also have situations where they can become isolated, cut off for other reasons and need to be able to drive four-wheel drive vehicles when the wet season comes in to be able to get in and out of the community because there is not enough access for them to walk through flooded roads into communities. I have seen that. The community people would be cut out if they have no access to a four-wheel drive vehicle to be able to get out of that community and up on to the highway and then to proceed on to Broome.

**Ms IVERS:** Jake probably has some experience around that as well.

**Mr BYRNE:** Yes. I suppose trying to narrow it down to specific instances is the tough part. There are so many instances where people without their licence or having rego suspended or something like that have not been able to do things. In the lead-up to the program there was a gentleman who we spoke with worked in Redfern, lives just in South Sydney. He could not just do the regular things like go to the gym or hang out with his friends. He was always relying on his partner to be taking him to do things and it was causing fights between them. And that is right in the heart of the city. He could not just duck off to the gym for an hour because it would take him three hours on public transport. Again, that is South Sydney to Redfern; should be a short trip no matter how you slice it. I have personal experiences from my own family. The big thing is social isolation. Thinking about this scenario, I equated it a little bit to jail, if someone missed a funeral. I hear a lot about brothers missing family members' funerals because they are in jail. But if you could not drive and if you cannot pile them into a car, there is no-one else that can pile into a car for you. Missing those sorts of things would be quite devastating. As I say, it is hard for me to narrow down just one scenario and be specific when so many come to mind.

**Mr GARRY EDWARDS:** Professor Senserrick, would the Aboriginal community benefit from a scheme whereby a group of Aboriginal people were taught to drive by someone outside their community and then those who learnt to drive became community leaders to teach the next group of people within their community to drive?

**Ms IVERS:** There is a range of ways in which people learn to drive in communities. I am sorry to jump in, but from a community perspective, what the expectations on the community are and what will and will not happen in a community depends on that community. There are a number of schemes going around. There is an Austroads-funded scheme that is being piloted at the moment in remote Queensland and South Australia that involves trying to mentor people within the community. The experience has been from a variety of schemes across the country. 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. People are very stretched. Capable people in communities often are very much overburdened; it is not a reasonable expectation to think that people can take on something and then generate something within the community without actually being supported to do that. So you need to have funded coordinators.

If you look at Victoria, they have invested \$9 million I think over five years, which is to support a learner-driver mentor program across the community, again to help people get through the licensing system. They have recognised that you need to pay someone to coordinate the program within the community because you need to train mentors, you need someone to process and do all the administrative duties around that. There are things that need to be done to support that and being really mindful that with all the good will and intentions, things do not actually happen once you have structures, governance and some funding behind it. But certainly the idea behind our program is that you build up a pool of people within the communities where you are also doing social marketing and education to actually promote the idea of licensing. Jake has enrolled in a master's degree to develop and implement this social marketing campaign and evaluate that. Partly, that is also about raising awareness in the community about the importance of licensing and encouraging people to be mentors and building that capacity. It needs to have a comprehensive approach to it. We do not really know the most effective way, which is why we have evaluation built in around these kinds of programs.

**Ms SENSERRICK:** I would like to add, particularly in a remote community scenario, training one person to go back and train others in the community is not always effective because Aboriginal people tell us that they do not go and get their driver's licence because they do not want to become the taxi driver for the community. It puts a lot of pressure on the people who are licensed to drive everyone else. So in some circumstances we really need to look at training up a group of people at the same time to share that burden, otherwise the balance of burden on a single individual could be too much as well.

**Mr BYRNE:** To answer the question in a different way, I think that is the idea behind the Driving Change program that we have now; to build up a whole cohort of young people and get them to kick a goal.

**Ms SENSERRICK:** Yes.

**Mr BYRNE:** Get them successful through the whole process. Hopefully, then eventually we will reach levels of parity with the rest of the community. I think a big part of it is not seeing anyone else or many people in your community actually go through the successes and be able to tell you, "Oh, no, it's easy to go to the RTA." "Oh, no, I went down there and I spoke to so and so" or "This is how you fill in this form." A lot of the rest of the community actually have those people readily available to them who can just I suppose share that knowledge and transfer those skills. That is what we are building up in these licensing champions, someone with all these skills and we are paying them to deliver or to be there and be the ear for the rest of the community. The whole idea of it is to reach that sort of faith.

**Mr GARRY EDWARDS:** Under your Driving Change program the first dot point says you are supporting a driver licensing champion within the community.

**Ms IVERS:** Yes.

**Mr GARRY EDWARDS:** What is the difference between doing that and having, say, three or four individuals from within the community? Would that not spread the burden more?

**Ms IVERS:** It would, if you have funding. It is paid coordination. The person is responsible. It is not just a person. We fund this youth worker who we call this sort of champion. They have a local stakeholder committee around them as well, local people in the community who are supporting them. It is like a reference group for that person. We pay that person to basically case manage clients but also to build awareness in the communities. They have a broader role than just the delivery of services to the community. There is not a significant difference, but the fundamental difference is that that person actually is funded. I would love to fund three or four, but the difference is that we are paying someone and that is their job to do that. We have to start somewhere. Eventually, I would hope that we build it up so that that kind of person is no longer needed in five or 10 years. But at the moment we are starting from quite a low base in terms of licensing. So it is actually putting in place some capacity in the community to start with and then it would go up. I agree, having three or four people doing that in the community would be fantastic, but no-one has the capacity to do that on top of all their other normal jobs, opportunities and things like that.

**Mr BYRNE:** Often when we go in and start the conversation they say so and so has been doing this little bit or they have a spare computer at this organisation every so often and they bring the kids in. But it is no-one's core business and it is putting extra strain on everybody else. Sometimes the computer is available; sometimes it is not. Sometimes this person is running around looking after their family or they are neglecting their family to look after the kids. Whereas with this dedicated position, it is a constant, which I think is the important thing. It is not just dribs and drabs; this person is supported and resourced and it is a focused approach to things.

**Ms IVERS:** Quite a lot of research that reviews Aboriginal entry programs shows that there is a very piecemeal approach. Professor Kathleen Clapham did a review for the Commonwealth about 10 years ago of programs and the situation really has not changed now. But there is a real history of having small grassroots programs that come up from the community where someone started up a program and they have got small grants, they have delivered a service and then the money runs out or the person burns out and the whole thing falls down.

I think driver licensing falls very clearly into that kind of category. Again, I think is why we have had so much support both from government and from community and other stakeholders for Driving Change, which is that we recognise that we need sustained—I mean, ideally we would have five years worth of funding for this program. You would put in place block funding to build capacity. That is certainly something, I mean, I can make a strong recommendation about that; the need for long-term sustained funding to allow capacity to be built.

In the end, if we put in place 10 years of funding to support people through the licensing system, remove the habitual offender scheme and help people through the system you would probably find you could actually pull the level of funding back in 10 years time because there would be enough people in the community who have licensing; licensing then becomes the norm. But you have to invest the money in the first place. It is the justice reinvestment really. You keep people licensed, you keep them out of jail and eventually we get into a cycle of people having an expectation that that is what you do and having enough drivers in the community to be able to support that without the extra positions.

**Mr GARRY EDWARDS:** This question is not to do with your issue per se. Have you seen a list of the invitees, the people we had along today?

**Ms IVERS:** Yes.

**Mr GARRY EDWARDS:** In your opinion is there anyone who was not on that list who maybe should have been represented?

**Ms IVERS:** Actually I did not see the invitees today. I saw the submissions that had been made but I did not see who was on the list for presenting today. I presume it is the same as the people who made the submissions.

**Mr GARRY EDWARDS:** Yes.

**CHAIR:** Not all of them.

**Ms IVERS:** Not all of them. No, you did not see everyone who made a submission, no.

**Mr GARRY EDWARDS:** I do not want to leave any gaping holes as regards people we might interview.

**CHAIR:** You will see that most of them were from the Law Society or an attorney of some sort.

**Ms IVERS:** Yes.

**Ms SENSERRICK:** Are there names from the Centre for Road Safety and Transport for NSW?

**Ms IVERS:** Yes, there are Tim Reardon, Ed Ramsay, Maureen Tangney from Attorney General and Peter Wells from RMS. I would think that covers most of them. The main issue, I think for both Ms Senserrick and myself, is emphasising that we do not believe that there are significant road safety implications for taking away the habitual offenders Act. I think we are in a position and, I mean, coming from a road safety, as a road safety researcher I have come very much from a road safety focusing on injury prevention and working in this space over the past sort of five to seven years and recognising now that a lot of the things we think about road safety cannot be applied, should not be applied, and that in fact we have to look at things with a different lens particularly when we are looking at Aboriginal communities and thinking about the impact.

We have strong licensing laws. We have strict enforcement and that is aimed at keeping people safe. But if the side effect is that we are then pushing people so far out of the system that they have no hope of interacting in society, we have gone way too far down that track. So we need to have supportive programs to make sure that people are able to function. I think there are significant advantages, both for costs of imprisonment, so if you look, and I think we have heard this over and over again from the conversations that we have had with people on the ground when we are out in communities talking to people, over and over again people saying this is what happens. People basically started, 18 or 19 or 22 or 23, they get that first offence, they get picked up by the police again, they immediately develop a bad relationship with the police and the community, they immediately have fear instilled in them about the system and how it works and how they are pushed out of the system.

There are barriers everywhere. So many examples we have had where people have told their stories, well this happened and then this happened and then that happened. Before you know it people are in jail. Then when they are in jail and they have these sentences that are concurrent and they come out of jail and they still have another five-year period or they have serious alcohol addiction problems and they do not have access to serious rehabilitation and there is no hope. What do you do when you have no hope? You just keep offending because why would you do anything else? There is no reason for you to get back into the system.

**Ms SENSERRICK:** That is correct and there is research evidence that shows that licences are now revoked and therefore cancelled with not really any hope of going back to a licence at any time in the near future. Those on those licences versus on licences for suspended periods have a higher rate of reoffending. So if there is a sanction and there is a period of offence at least there is an expectation that they can regain licensing and that adds to that sense of hopelessness, that if you give up, and, as we said, at the same time if there is a suspension, if a licence disqualifies people who are not actually posing a road safety risk, then we have to ask whether it is even worth suspending in those cases.

**Mr BYRNE:** I can tell you the conversations I have had, and they are numerous, with people who are either disqualified or on the habitual offenders list, they simply see no way out. They see no light at the end of the tunnel because it is just too long. If you have five, seven, 10 or more years than that, you just do not see a way out.

**CHAIR:** There is no light at the end of the tunnel, is there?

**Mr BYRNE:** There is not. These are people who I have spoken to who have already done two or three years and they are like, "I've still got another five and I've been good this long. I'm going to break soon."

**CHAIR:** That is a fair point, thank you. I am mindful of the time. I thank everyone for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of the evidence and be made public. Would you be happy to provide a written reply to any further questions?

**Ms SENSERRICK:** Yes.

**Mr BYRNE:** Yes.

**(The witnesses withdrew)**

**(The Committee adjourned at 4.57 p.m.)**

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