REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO ROAD TRANSPORT LEGISLATION AMENDMENT (PENALTIES AND OTHER SANCTIONS) BILL 2018

CORRECTED

At Jubilee Room, Parliament House, Sydney, on Monday 24 September 2018

The Committee met at 11:00

PRESENT

The Hon. Natalie Ward (Chair)

The Hon. Trevor Khan
The Hon. Daniel Mookhey
Mr David Shoebridge

CORRECTED

The CHAIR: Welcome everybody. Thank you for coming to the inquiry into the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018. I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today is the only hearing we plan to hold for this inquiry. We will hear from legal representatives, Mr Eric Howard from the Strategic Road Safety Advisory Consultancy, Whiting Moyne, officers from the Centre for Road Safety and the Department of Justice.

Today's hearing is open to the public and is being broadcast live via the Parliament website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, so I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence as such comments will not be protected by parliamentary privilege if another person decided to take an action for defamation. I think there are enough lawyers in the room to understand that concept. The guidelines for the broadcast of proceedings are available from the secretariat.

Due to the short time frame of the inquiry no questions will be taken on notice today. I appreciate the witnesses will appreciate that a fast turnaround time has necessitated that the Committee take all evidence today. Witnesses are advised that any tendered documents should be delivered to Committee members through Committee staff. To aid the audibility of this hearing, may I remind both Committee members and witnesses to speak into the microphones. In addition, several seats have been reserved near the loud speakers for persons in the public gallery who have hearing difficulties. Finally, can everyone please turn their mobile phones to silent for the duration of the hearing? I welcome our first witnesses of the legal panel.

JOHN SUTTON, Managing Partner, Armstrong Legal, affirmed and examined

STEPHEN LASKER, Solicitor in Charge Parramatta Office, Legal Aid New South Wales, affirmed and examined

DOUG HUMPHREYS, OAM, President, Law Society of New South Wales, sworn and examined

THOMAS SPOHR, Law Society Criminal Law Committee, Law Society of New South Wales, sworn and examined

RICHARD WILSON, Deputy Senior Public Defender, member of the Criminal Law Committee, the New South Wales Bar Association, sworn and examined

NADINE MILES, Principal Legal Officer, Aboriginal Legal Service, Australian Capital Territory, affirmed and examined

The CHAIR: Thank you to those who have provided written submissions. The Committee is appreciative of you taking the time to turn them around so quickly. Do any of you have an opening statement that you would like to make to the Committee before we commence with questions?

Mr LASKER: I have a short opening.

The CHAIR: Mr Lasker, thank you.

Mr LASKER: There are a number of aspects of the reform that are of concern on the part of Legal Aid New South Wales and the particular concern is the disproportionate impact these reforms will have on vulnerable and disadvantaged people, including Aboriginal people. As a legal practitioner and a person who has appeared in the Local Courts in a prosecution and defence role for 20 years, I share those concerns. I draw particular attention to the expansion of the mandatory interlock scheme to include first time mid-range prescribed concentration of alcohol [PCA] offenders. Presently, on conviction, such an offender would face a minimum period of disqualification of six months and an automatic period of 12 months. With these reforms and the interlock provisions, the minimum disqualification period will be three months and an interlock period of 12 months.

The concern arises from the mandatory interlock five-year disqualification that awaits any person who does not get either an exemption or an interlock device fitted to the vehicle. A person in this position currently faces a disqualification which is 10 times longer than the minimum disqualification. Under the new provisions that are proposed, they would face a five-year disqualification which is 20 times longer than the minimum period that would be available under the interlock provisions. In my experience, by far the most common reason that people do not fit an interlock device to their vehicle is the cost, which is about $2,200 per year for the device. It is simply not sustainable for many vulnerable people in the community. Even if the 35 per cent discount for concession cardholders was distributed evenly across the year it comes down to about $1,450 for the 12 months, which is 10 per cent of the weekly payment for a person on Newstart with no dependents. It is still somewhat out of reach for people on Newstart and disadvantaged people in the community.

The severe financial hardship assistance scheme can provide up to 100 per cent assistance, but for three months at a time, and the application process will disadvantage people from poor English backgrounds, disadvantaged backgrounds and those who have difficulty navigating the legal system. The mandatory interlock disqualification of five years unintentionally creates a two-tier penalty system-one for those who can afford the interlock device and one for those who cannot. As I indicated briefly in my address, those who cannot afford it will face periods off the road that are 10 to 20 times longer. Since the commencement of the interlock scheme in February 2015, in total 6,900 interlock licences have been issued, which represents about 160 interlock licences per month.

Each year there are around 6,000 first time mid-range PCA offenders. That represents an additional 480 people per month coming into the interlock provision and under the interlock scheme, so it is a tripling of the take-up rate of interlock devices. Rather than take up any more time of the opening address, I seek to table a document that sets out the numbers of matters where the interlock provisions have been enlivened, and the number of interlock licences that have been issued to demonstrate the extent of the issue so far as the rate of people who have a mandatory interlock order. It will show that over half of those people do not get the interlock licence. So more than half the people that face these mandatory interlock orders will serve the entire five years.

Document tabled.

The CHAIR: I appreciate you providing that to the Committee.

Mr SUTTON: I apologise. I passed before but may I just say a few words?

The CHAIR: Certainly, we would love to hear from you. I am conscious we have half an hour—

The Hon. TREVOR KHAN: Forty minutes.

The CHAIR: If you have an additional documents you would like to hand up, we are happy to take those also.

Mr SUTTON: I previously submitted a written submission. My interest is purely focused—as I am sure everybody's is in general—on the recidivism rate that occurs with infringement notices. I hold a very strong view that infringement notices do nothing whatsoever to change driver's attitude on the roads. Going back about 20-odd years when I was police prosecutor, a three- to four-page traffic record was a big record. Now it is nothing to see a record of about 12 to 15 pages quite easily. My concern is that by effectively decriminalising and reducing the penalty by the invocation of infringement notices we are sending a message to road users of New South Wales that really we do not care about road safety.

I say that on objective grounds because the Victorians have had an infringement notice system for some time and its recidivism rate is currently running at 29 per cent—so one in three reoffenders—whereas in New South Wales it is less than one in 10. That is the point I really, extremely and seriously wish to make because it is all about road safety and an infringement notice takes away the effect of going to courts.

The CHAIR: Thank you. You have referred to those studies in your written submission.

Mr SUTTON: I have.

The CHAIR: We will have some questions about that.

Mr HUMPHREYS: I first hand up a document from the Judicial Information Research System, which my colleague, Mr Spohr, has printed out. It shows the penalty type, principal offences only, for low-range PCA. It shows that during the period April 2014 to March 2018 there were some 21,754 matters, of which 10,702 received either a bond and an additional 1,021 received an absolute dismissal.

The Hon. TREVOR KHAN: So that is 10 (1) (b) and 10 (1) (a)?

Mr HUMPHREYS: It says 10 (1) (b) and 10 (1) (c), and then 10 (1) (a). What we are saying is roughly around about 55 per cent are being dealt with by the courts. The fact is, can I say, in relation to penalty it is important to understand that a court is required to take into account the offender's capacity to pay—and about half get fines. That is not something that is apparent in this system; it is an automatic penalty. The other issue for me is that it is suggested that this, in fact, will free up the courts when dealing with minor matters. With respect, I do not regard drink-driving, nor does I think the community, as being a minor matter. Furthermore, I think, in fact, the opposite is likely to occur.

Those people who have the capacity to do so will, first of all, make an application to the court to have their licence given back to them. There is provision that you can go to the court to do that. Second of all, they will then go back to court and have the matter dealt with to finality. There may be two appearances involved in that. If it is suggested that this is an appropriate way to turn out and relieve pressure on the courts, in my respectful view, it is not. What is the appropriate way is to actually properly resource the courts to actually deal with the matters that are coming before them. That is something which, I have to say, has been a particular difficulty that the Law Society has been advocating for over some considerable period of time.

The CHAIR: Does anybody else have an opening statement?

Mr WILSON: I have a very quick one. This is not an area of our general expertise, the traffic laws. I think we are in the higher courts most of the time but we do have three concerns with the legislation. First is with the broadening of the definition of "drug" whereas at the moment one can look up in regulations and see exactly what is meant by a "drug". The second point is the driver education notices from the authority where the authority can tell someone they have to do a course and the suspension or disqualification continues unless and until they have completed the course that they have been told to do

Experience shows in other areas that often courses are not always available in certain areas—or at all—or you are on a waiting list and this could see a lot of people getting their licence suspension and disqualification periods extended through no fault of their own. It also seems to be contrary to the new sentencing regime which has just come in today where magistrates have a lot of power to impose conditions and require people to do things under the conditional release orders and the community correction orders and they are in a better position. Community corrections are in a good position to supervise and magistrates are in a good position to undertake

action for breaches of that. We submit that that is the appropriate forum for making people do traffic offender programs as part of the sentencing.

The final one is the on-the-spot suspension for low-range PCAs. That is a significant extension of the current procedure. Normally there is only on-the-spot suspension for moderately serious matters with a high level of moral culpability. Low-range PCAs often involves poor judgement rather than contempt for the law or recklessness. We would see that as a very serious extension of the current power and it should be up to the courts whether somebody has their licence suspended or not.

The CHAIR: Ms Miles, do you have an opening statement?

Ms MILES: Yes, I do have a couple of comments to make, if I may. The Aboriginal Legal Service is hugely concerned about some of the aspects of this proposed legislation. The royal commission into over-representation made several recommendations which I feel should be brought to the attention of the Committee. The commission made recommendations that mandatory sentencing should be wound back or, indeed, gotten rid of across jurisdictions in Australia and, of course, what we have here with driving laws in New South Wales is a form of mandatory legislation. Mr Lasker has already spoken about ways in which there will be increases, particularly in the interlock scheme, that will see penalties and/or effects on people increase significantly.

We are concerned about the fact also that there will be an increase in relation to penalty notices. If one looks back to the Law Reform Commission's work in relation to penalty notices—the report numbered 132, I believe, introduced in 2010—you will see that what occurs with Aboriginal people in relation to penalty notices is that around 8.5 per cent of people engaged with their penalty notices before the State Debt Recovery Office kicks into action. That is against non-Indigenous people, who deal with penalty notices around 50 per cent before the State Recovery Office kicks into actions. The idea that there will be an increase in the ability of penalty notices given to people is a significant impact that ultimately will flow for Aboriginal people across New South Wales.

This is an example, with respect, that I think the idea of justice impact statements should be considered. How this legislation will be far reaching and impact on Aboriginal people across New South Wales we say is significant. If I can lastly draw your attention—and I am sure you are aware of the fact—that with the 34-odd per cent of women in custody the top reason why there is such a large amount of Aboriginal women in custody is traffic and regulatory offences. The top third offence for men in custody, which population hovers around 24 per cent, is traffic and regulatory offences. There are ways in which this legislation, and the regime in which it is addressing, will ultimately, I say, have an impact on driving up those figures and will do nothing to reduce them.

There are complex ways in which that will be achieved but clearly taking away the ability of the court to engage with an offender and to set an appropriate penalty, based on a person's subjective features and the reasons as to why they have offended, is a significant matter and one which I would urge the Parliament to reconsider.

Mr HUMPHREYS: Can I add to that? The impact, Madam, on regional and remote New South Wales—people that live in the country, those that might live on properties—will be significant because it is absolutely necessary. We have talked about this before and, in fact, there have been amendments brought in specifically to deal with disqualification and the role in disqualification. This is, in fact, entirely counter to that. I am saying that the impact on regional and rural New South Wales will be far more significant than it will be in the city, where there is at least access to public transport. There is not in the country in most cases.

The CHAIR: I understand. Thank you. We have 20 minutes left so I will invite questions from Committee members.

The Hon. TREVOR KHAN: Mr Humphreys, seeing how you have raised regional and rural—you know that I am from there and have got some sympathy with all of the arguments that are put forward—let us start from that basis, notwithstanding that this is being recorded. Are you aware that 71 per cent of deaths in alcohol-related crashes occur in rural and regional areas?

Mr HUMPHREYS: I am aware of that. There is a greater proportion of serious deaths in the country but that is simply a result of people driving more. It is driving significant periods of time, driving long distances. It is all a necessary part of our country life.

The Hon. TREVOR KHAN: I understand that because I travel probably more kilometres than most, but 71 per cent of deaths, when we represent in country areas about a third of the population of New South Wales, has to be a troubling statistic for you as much as anything else, is it not?

Mr HUMPHREYS: It is, but also have a look at the roads that people are travelling on.

The Hon. TREVOR KHAN: Is that your answer?

Mr HUMPHREYS: There ain't kangaroos jumping across the roads in Sydney where I live. There are not a lot of B-doubles on the roads that I am travelling on.

The Hon. TREVOR KHAN: You must not travel along Pennant Hills Road, I suspect.

Mr HUMPHREYS: I try and stay clear of it. I am simply saying to you: That is a fact of life. I do not know how this reform is going to impact on that; I do not think it will.

Mr SPOHR: I am sorry to interrupt. Is not the answer to that question that. by removing the deterrent value of a person going to court, there will be more deaths on the roads, by your own argument?

The Hon. TREVOR KHAN: I am interested in the argument and I heard what Mr Sutton said earlier. I read his submission and I think it was referred to in the Law Society submission. I do not believe you are privy to the Government submission, as it is so described, in regard to it.

Mr DAVID SHOEBRIDGE: Have we not published that?

The Hon. TREVOR KHAN: We might have, but it could only have been—was it published on Friday afternoon? I suppose I should ask: Have you have had a look at that?

Mr LASKER: No.

Mr SUTTON: No.

Mr HUMPHREYS: No.

Mr WILSON: No.

Mr SPOHR: No.

The Hon. TREVOR KHAN: It does not surprise me at all. It hit my email address at about four o'clock, whilst I was sitting at an airport.

Mr DAVID SHOEBRIDGE: I think I had digested it this morning.

The Hon. TREVOR KHAN: As did I. The problem that I have in terms of the statistics that are quoted is this: For a start, in April 2018 there was essentially an automatic period of disqualification introduced in Victoria. Prior to that, it was 10 penalty points that applied for a low-range PCA. Were you aware of that? Mr Sutton?

Mr SUTTON: As I sit here now, I say I cannot remember. I used to prosecute in Victoria on behalf of the Director of Public Prosecutions down there.

Mr DAVID SHOEBRIDGE: But what the Government submission—

The Hon. TREVOR KHAN: Mr Shoebridge, you are going to get your chance.

The CHAIR: I am sorry. I am giving us 10 minutes each because we are so tight for time.

Mr SUTTON: As I sit here now, I honestly do not remember back. But it is almost irrespective, in my respectful submission, because reducing infringement notices does not have an effect on change of behaviour. You have got a recidivism rate in Victoria of 29 per cent—one in three effectively. In New South Wales, it is less than one in 10. If we reduce—

The Hon. TREVOR KHAN: Can I break that down a little bit? Are you are you aware that the 29 per cent figure is based upon a recidivism within a 10-year period?

Mr SUTTON: I am, yes, but—

The Hon. TREVOR KHAN: And that the Bureau of Crime Statistics and Research [BOCSAR] figures—

Mr SUTTON: Can I answer that first part?

The Hon. TREVOR KHAN: The BOCSAR figures are based upon a recidivism rate of five years. Those are the New South Wales figures. Are you aware of that?

Mr SUTTON: Yes.

The Hon. TREVOR KHAN: Before we look at anything else, what we have got is a comparison—

Mr SUTTON: Sorry, can I correct you, because in fact I have a got yearly—

The Hon. TREVOR KHAN: —of apples with oranges. We have a different period of determination of recidivism rates and we have a different penalty regime that applies in Victoria compared to New South Wales.

Mr SUTTON: The fact of the matter then is—let me tell you this—year on year, in New South Wales the recidivism rate from 2011 was 8.4, 9.2, 8.6, 9.5 and 8.1. None of those figures are getting anywhere near the Victorian rate.

The Hon. TREVOR KHAN: That is the BOCSAR figures that you are referring to?

Mr SUTTON: That is the BOCSAR figures, yes.

The Hon. TREVOR KHAN: All right.

Mr SUTTON: I cannot sit here because maths is not a strong point—I am a lawyer; not an accountant. But the rate in Victoria is far higher than it is in New South Wales.

The Hon. TREVOR KHAN: Yes. In regard to that, I had to absorb these figures, as did Mr Shoebridge, this morning. But I am told that:

> NSW Bureau of Crime Statistics and Research (BOCSAR) advise that the 8.1% figure quoted refers to the number of persons found guilty of a low range drink driving offence as their principal offence in the Local Court who had another proven offence (on any type) within 12 months of their initial conviction.

Again, what we have got is apples and oranges in terms of your 8.1 compared to 29.

Mr HUMPHREYS: Not necessarily. I do not accept that.

The Hon. TREVOR KHAN: Really? All right.

Mr SUTTON: Is that a negligent driving offence? Is it some other offence?

The Hon. TREVOR KHAN: It could be break in or steal.

Mr WILSON: We can certainly give, at the table here, on behalf of our various organisations, hundreds of years of qualitative experience of the impact of going to court.

The Hon. DANIEL MOOKHEY: Mr Wilson, can you bring the microphone forward to you?

Mr WILSON: Sorry, I will take my hands out of the way. We can give hundreds of years of collective experience, qualitative experience, of people being made to go to court and get the references from their family and employers, stand up and plead guilty in a public court of law. Shame is a huge factor. It is particularly effective for what I would call otherwise functional and law-abiding people, but it is also significant for people in difficulties who may see simply getting a fine and a ticket as a much less serious outcome.

The Hon. TREVOR KHAN: Mr Wilson, having done it for a bit over 20 years, you might have me half there. But my concern is that if statistics are used that are unhelpful then—

Mr DAVID SHOEBRIDGE: Mr Khan, can I go back to the issue of recidivism? I read it and I read it the other way as you. The Government submission says:

> Note: The NSW Bureau of Crime Statistics and Research (BOCSAR) advise that the 8.1% figure quoted refers to the number of persons found guilty of a low range drink driving offence as their principal offence in the Local Court who had another proven offence (on any type) within 12 months of their initial conviction. This is not a count of drink drinking recidivism.

As I read that, that is going to overstate the rate of recidivism in New South Wales; not understate it. So it goes again the Government's argument that the likely disparity is likely to be greater.

The CHAIR: We might deal with this in the deliberative afterwards, gentlemen. I would like to hear from the witnesses.

Mr DAVID SHOEBRIDGE: But in fairness, that is how I see that. I think it is actually overstating the recidivism rate.

The Hon. TREVOR KHAN: We will have to do it, but I have got a problem with the statistics.

Mr HUMPHREYS: Madam Chair, can I—

Mr WILSON: I was submitting on the qualitative—

The CHAIR: Order! I ask everyone to settle down. We are tight for time. I am going to be strict about being fair. We can deal with these issues afterwards. Thank you.

Mr HUMPHREYS: Madam Chair, I will simply say that if this is of concern to the Committee, if you specifically ask BOCSAR to turn and do a slice-and-dice so that you can compare apples and apples, they will do it for you very quickly.

The CHAIR: Thank you, Mr Humphreys. Did you have anything to add, Mr Wilson?

Mr WILSON: Only that, in what I was saying, I was not relying on statistics. Merely; it was hundreds of years of experience that we have here of the actual impact, case by case.

The Hon. TREVOR KHAN: As I said, I have some sympathy.

The CHAIR: Thank you. In our one minute left, I would like to ask: It has been said in a number of submissions that a court attendance is an effective deterrent and the trepidation that goes with the court hearing for those who are not used to it is something that has some value, I am sure, but are any of you aware of any research that underpins that view, or is that just a view that us lawyers share?

Mr SUTTON: I cannot offer any research at all but, anecdotally, I would refer to the experience in the early 1990s as a prosecutor, and seeing the growth of traffic records from reoffending where people do not change—it is a qualitative-type statement—whereas when people get close to actually losing their licence and they have to appear in court, that is when you see a genuine change.

Mr SPOHR: The related proposition is that recidivism rates do not necessarily tell you everything that you want to know either. Low-range PCA is almost the definition of an offence that may be committed by a person who will never have any other contact with the criminal justice system. It is disproportionately, as far as criminal offences are concerned, committed by upper middle class people who, as I say, would otherwise have no other contact with the criminal justice system. When I say "disproportionately" it is the sort of offence they will commit but they would not otherwise see a criminal justice system.

Recidivism rates are important in this process but it is important not to, if I could respectfully suggest, get bogged down in the recidivism rates if that is going to ultimately be the determining factor when our ultimate concerns, if I could summarise, are that the deterrence factor is certainly relevant but the bogging down into these numbers, with respect, is not going to ultimately be the questions here—the injustices, kicking the can along the road where there will be injustices to Indigenous and rural members of the community. The question about the deterrence factor is certainly a very relevant one but the statistics are, if I can respectfully suggest, not an area of detail that needs to be bogged down in.

The CHAIR: That is a matter for the Committee. With respect, it is for you to make a submission on the questions.

Mr SPOHR: As I said, I am only suggesting—

The CHAIR: Thank you, if I can finish what I was saying. I am interested in statistics and while the Committee will take into consideration all of the submissions, it is important that we take an evidence-based approach if some has been postulated. I have one other very quick question about the low PCA range. The Government's submission notes that a driver with a blood alcohol concentration in the low PCA range, from 0.05 to 0.79, is two to four times as likely to be involved in a casualty crash compared to a sober driver. These drivers pose a series risk to themselves and to everyone else on the road. Can you comment on that because the concentration of some of these submissions has been on the lower end, if I can put it this way, not being quite as bad.

Mr SUTTON: My understanding is that we arrived at 0.05 because of research I think out of Florida that found at 0.05 you are twice as likely to have a collision. By the time you get to 0.08, which is obviously just above the 0.79, it is seven or eight times more likely, and when you get to 1.5 you are something like 21 or 22 times more likely. It does concentrate on the low range but it is just as dangerous for the road users in New South Wales to have people twice as likely to cause a collision and on upwards. It needs to be looked at by the court, rather than just a broad sweeping brush.

The Hon. TREVOR KHAN: Then we have about half or more dealt with by way of a section 10?

Mr SUTTON: Yes, but that is a punishment that objectively I say works. These are the people who come before the court, they face the humiliation, they face the embarrassment, they face the shame, they face the fear of a criminal record and they do not reoffend. From what I hear it is a criticism of a punishment that actually

works, which, to me, I do not understand. Just because you get a section 10 the idea needs to be people do not reoffend and it is that process of going through the court, which I have already outlined, that is really the salutary—

The CHAIR: But we are not aware of any statistics to underpin that.

Mr DAVID SHOEBRIDGE: But one would have thought one would before you get to legislation such as this.

The CHAIR: Perhaps.

Mr DAVID SHOEBRIDGE: We have so little time, can I quickly ask about mandatory interlock devices for mid-range PCA. What is the cost and availability and, in particular, the impact on Aboriginal drivers?

Mr LASKER: The stated or estimated cost of an interlock device fitted to a vehicle is in the order of $2,200 to $2,400 per year but with the 35 per cent discount available to concession card holders that brings it down to about $1,450 or thereabouts per year. As I indicated in my opening address, that is still about 10 per cent of the maximum Newstart weekly payment available to a person with no dependents and it is simply not sustainable on such a low amount of income coming into a person's household to be able to afford, even with that 35 per cent discount. The effect of that is: The device is not fitted and they serve a five-year disqualification period.

Mr DAVID SHOEBRIDGE: If they are caught driving without an interlock device?

Mr LASKER: If they do not get the interlock device fitted, whether or not they drive, they then face the mandatory five-year disqualification period and the document I handed up shows that more than half of the people who get a mandatory interlock order do not get the exemption, do not get the device fitted and will serve the entire five years.

The Hon. TREVOR KHAN: Or get done for driving whilst disqualified?

Mr LASKER: If they drive, but they are disqualified for five years.

Mr DAVID SHOEBRIDGE: But simply owning the car, having a registered car and not fitting the interlock device, has the penalty happened?

Ms MILES: That is my understanding, yes.

Mr DAVID SHOEBRIDGE: So 50 per cent of people are already copping the five-year disqualification.

Mr LASKER: Yes. With the footnotes to the table and the qualifications on that so far as the figures take slightly into account some matters before interlock commenced, but the figures indicate that more than half served the five years. So you are having people serve disqualifications that far exceed the gravity of the offence for which they have been convicted.

Mr DAVID SHOEBRIDGE: Is the effect of it that 50 per cent of mid-range PCA cases where there is an interlock end up becoming a five-year disqualification?

Mr LASKER: Whatever offence enlivens the interlock legislation if they do not get the exemption or they do not get a device fitted they automatically serve five years.

Mr DAVID SHOEBRIDGE: Ms Miles, from your experience, what is the effect going to be on Aboriginal drivers?

Ms MILES: Unfortunately, I am not able to give you definite statistics or figures. Anecdotally speaking, in our experience our communities rarely engage in making sure that they are able to take the benefits of these kinds of schemes. Aboriginal people more likely will step back and wear the five-year period. That is the position and these are the kinds of reasons why I said that this scheme will ultimately have a detrimental and disproportionate affect upon Aboriginal communities.

Mr SUTTON: Can I just follow up?

Mr DAVID SHOEBRIDGE: Yes, but we do have other matters to address.

Mr SUTTON: It is just on that point. It is access to a vehicle in the family, not necessarily a registered car. It is very, very difficult to get an exemption. So if someone else in your family or your household has a car then you will be stuck.

Ms MILES: I was just hoping I maybe able to draw the Committee's attention to one other matter before we run out of time?

Mr DAVID SHOEBRIDGE: Go ahead.

Ms MILES: It is in relation to the idea that there will an increased ability to issue infringement notices. Again anecdotally what we tend to find in our communities is that if there is not a rigorous consideration of identity it is not unusual for community members to find well down the track that offences have been recorded in their name but by other people in community, whether they be family members or not. Given that this legislation will increase the amount of penalty notices, this will have a significant impact as a second or subsequent offence moving forward—increased penalty amounts, increased disqualification periods—we are concerned that there will be a number of people caught up in second or subsequent offences who never realised that offence was recorded against their name and a penalty notice issued.

The Hon. TREVOR KHAN: It interested me that if you proceed by way of a penalty notice essentially on the side of the road, the fingerprint record check is going to be less robust than it is now because you are going to be relying on the traffic record as opposed to the fingerprint record check. Mr Wilson, do you have a view on that?

Mr WILSON: I worked in the Aboriginal Legal Service in the country and the city for about eight years and I totally second what Ms Miles has said—that often people have on their criminal records, other than the fingerprinted ones, offences they did not commit but somebody else committed using their name. As Ms Miles said, it is very difficult to get someone from a dysfunctional background with not much money to go through the hoops of getting that record corrected. I think I probably have done it once in 20 something years.

Mr DAVID SHOEBRIDGE: Can we lock on the practicality of the current proposal? The Government's proposal is that you get an automatic disqualification but then you can appeal to the court, and if you get it before the court you may, in exception circumstances, get a suspension of the disqualification. Do any of you have any idea of what the time frames are likely to be for that?

Mr SPOHR: It depends where you are. If you are unlucky enough, in a postcode sense, to be in a rural or remote area where there is a local court that does not sit—Balranald, Lightning Ridge courts sit once a month—the answer to your question is that it could take up to a month to have the licence appeal get on. That is subject to—

The Hon. TREVOR KHAN: Subject to time.

Mr SPOHR: Subject to the court being available, subject to you having a way to get to the court because you are, of course, immediately suspended so you may have to get there by some other means, and then, assuming you get through the exceptional circumstances test, you have got to go through it all again when you get sentenced.

Ms MILES: There are courts that sit every two months, Peak Hill being one of them.

Mr DAVID SHOEBRIDGE: So it could be in regional areas one month, two months—

The Hon. TREVOR KHAN: No, that is not regional areas. It is in rural and remote.

Mr DAVID SHOEBRIDGE: What about, say, in the city—Campbelltown, Burwood—do you know what the kind of time frame would be to get your matter on?

Mr SUTTON: Four to six weeks.

Mr DAVID SHOEBRIDGE: Four to six weeks?

Mr SUTTON: It can be. It depends how busy the lists are. You get a busy Campbelltown court, the registry is not going to do you any favours; it is going to be at least four weeks.

Mr LASKER: Most of the metropolitan courts will have a designated day of the week to have licence appeal matters. Once the slots for that day are filled—

Mr DAVID SHOEBRIDGE: You just get on the next available.

Mr LASKER: —then an application will go to the next one for the next one.

Mr DAVID SHOEBRIDGE: Do people basically agree with the concept that it is probably four to six weeks, even for the urgent application?

Mr SPOHR: Yes.

Mr SUTTON: Yes, and exceptional circumstances does not include work.

The Hon. DANIEL MOOKHEY: In its submission the New South Wales Government says that it is 44 days right now before your matter can be—

Mr SUTTON: That is the standard listing time for someone who is arrested.

The Hon. DANIEL MOOKHEY: But your view is that it is roughly likely to be the same period for a person who wishes to simply have that avoided?

Mr SUTTON: Yes.

The Hon. DANIEL MOOKHEY: It is just reversing who essentially carries the consequence of that time?

Mr SUTTON: Yes. That period you have quoted is just the broad standard brush approach for anyone who is arrested for any offence who is not bail refused that it takes them to get on the list for the first time.

Mr DAVID SHOEBRIDGE: Interestingly, from a sort of jurisprudential point of view, one of the Government's arguments is that they are quite happy to see people automatically suspended because they assume that when they get caught once they are likely to have drunk driven on a series of occasions before.

The Hon. TREVOR KHAN: That is not jurisprudential; that is the opinion that is submitted by the—

Mr DAVID SHOEBRIDGE: That is what it says. Page 12 of the Government's submissions says, "Survey research commissioned by Transport for NSW and involving over 1,700 drivers suggests that in NSW approximately 146,000 people per month drove whilst potentially over the legal limit. NSW Police detect a proportion of offenders—typically ranging from 1,600 to 1,800 drink driving offences per month. This suggests, consistent with international research, that if an offender is caught drink driving in NSW at any level it is likely they have taken the risk many times before." What do you think about the argument that it is okay to punish people at a higher rate based upon a statistical likelihood that they are a repeat offender?

Mr HUMPHREYS: I think it is rubbish.

Mr SUTTON: Welcome to Orwell.

The Hon. TREVOR KHAN: What concerns me is the alternative to something like this is that section 10 is not available on traffic offences, which I would have thought would be an horrendous result. Do you have a view?

Mr SPOHR: As of today—I think Mr Wilson opened on this fact—the sentencing regime has changed. Non-conviction bonds under the new community release orders are significantly more punitive than they were previously able to be and they can include significantly more punitive penalties. The idea of removing a section 10 in circumstances where a little under 22,000 people courts looked at those matters and decided that no conviction should be recorded is, with respect, not a proposition that finds an enormous amount of support unless one is willing to accept that 55 per cent of the time magistrates have gotten it wrong.

The Hon. DANIEL MOOKHEY: I am going to return very quickly to a couple of general propositions first before we go into the specific legislation. Everyone here would agree that the objective of reducing offending, both drug and alcohol on our roads, is a welcome one and should be supported by all parties in this Parliament and all groups in the community. You would agree with all that?

Mr SUTTON: Yes.

Mr LASKER: Yes.

Mr HUMPHREYS: Yes.

Mr SPOHR: Yes.

Mr WILSON: Yes.

Ms MILES: Yes.

The Hon. DANIEL MOOKHEY: The argument the Government is advancing is that that should be obtained by the use of a deterrent strategy. You would agree that deterrent has its place in this?

Mr SUTTON: Yes.

Mr LASKER: Yes.

Mr HUMPHREYS: Yes.

Mr SPOHR: Yes.

Mr WILSON: Yes.

Ms MILES: Yes.

The Hon. DANIEL MOOKHEY: If I understand your argument correctly, your argument is that a court appearance has a far more deterrent effect than a penalty infringement notice.

Mr SUTTON: Yes.

Mr LASKER: Yes.

Mr HUMPHREYS: Yes.

Mr SPOHR: Yes.

Mr WILSON: Yes.

Ms MILES: Yes.

The Hon. DANIEL MOOKHEY: Your view is that that essentially involves both the use of social shame as opposed to, say, privately receiving a notice from a police officer. Is that correct?

Mr SUTTON: Yes.

Mr LASKER: Yes.

Mr HUMPHREYS: Yes.

Mr SPOHR: Yes.

Mr WILSON: Yes.

Ms MILES: Yes.

The Hon. DANIEL MOOKHEY: And your view is that by having to assemble yourself for court, having to explain it to your employer, having to explain it to your family, you are far more internalising the offence that you have committed against the community than otherwise you would if simply a police officer hands you a penalty infringement notice. Is that correct?

Mr SUTTON: Yes.

The Hon. DANIEL MOOKHEY: And your view is that the evidence suggests that New South Wales leans more towards that approach than other States and that means we seem to have a lot of recidivism rates notwithstanding the debate that we have just had.

Mr SUTTON: Victoria is the only one with an infringement notice. Queensland and Western Australia, you still have to go to court. The ACT you still have to go to court.

The Hon. DANIEL MOOKHEY: Would you agree with me—this might be excessively provocative—effectively, by using infringement notices as opposed to court appearances we are lessening the penalty on people who do the wrong thing in our community?

Mr SUTTON: Absolutely.

Mr HUMPHREYS: It could be argued—

The Hon. DANIEL MOOKHEY: We are going soft.

Mr HUMPHREYS: —it is taking it from a criminal offence into a regulatory offence.

The Hon. DANIEL MOOKHEY: Moving on now to a second proposition as to who precisely is this likely to affect and the consequences of the effect. Firstly, Ms Miles, this is to you: Am I wrong in saying that all the research that has been recently undertaken into the mass incarcerations of First Nation people shows that often the pathway to incarceration commences with traffic offences?

Ms MILES: Traffic offences play a significant factor with the over-representation and the current figures in New South Wales continue to bear that out. As I said, with women in custody, the number one reason why women are in custody is ultimately due to traffic and regulatory offences; the third highest reason for the men, traffic and regulatory offences.

The Hon. DANIEL MOOKHEY: So if the State is to seriously want to reduce the incarceration of Indigenous peoples in our State we are going to have to address the nexus between the traffic enforcement system and the criminal justice system. Would you agree with that?

Ms MILES: That is correct.

The Hon. DANIEL MOOKHEY: Does this proposal make that easier or harder?

Ms MILES: Harder.

The Hon. DANIEL MOOKHEY: In what respect?

Ms MILES: Particularly in light of what my colleagues have now just spoken to, and I tried to speak to, in relation to the need for the courts to be trusted to give a balanced and fair penalty by having the offender placed before them and being able to impose a penalty that takes into account the whole subjective case of a person, together with the reasons as to why offences occurred. Again, if penalty notices are not engaged in a way which the penalty notice can be potentially paid or dealt with or appealed—if people do not engage with their penalty notices in a way that you would expect—what can flow from that is the fact that they place themselves in more jeopardy moving forward, particularly with the fines that are not paid, if, for instance, interlock things are not taken up, longer periods of disqualification, if people do not even know that a penalty notice has been made out in their name until two years later when they are before the court in relation to a driving offence which is a second or subsequent, it is too late to appeal that.

So Aboriginal people do not rush out and embrace all of the structures and processes that could potentially put them in a better position. It is not uncommon for our communities to sit back and just allow things to wash around and over them. I am saying that with the greatest respect to our First Nation people.

The Hon. DANIEL MOOKHEY: I understand your point. I want to quickly explore the nexus between the loss of licence and the loss of employment. In your view, is there a nexus?

Mr SUTTON: In some cases, absolutely.

The Hon. DANIEL MOOKHEY: So should a person lose their licence and then they have to bear the onus of going to court to obtain it back, there is a reasonable chance that they would have to explain it to their employer and that their employer, particularly if they are in a casual employment relationship or anything else that requires the use of a licence, may well desire to withdraw their employment. Is that an unheard of thing or have you encountered that?

Mr HUMPHREYS: It is quite apparent. I will give you an example. I am a defence lawyer in my spare time—of which there is little. I am currently assisting a member who was picked up with 0.075 and he has been issued with a termination notice by the Australian Defence Force on the basis of a 0.075 reading. Admittedly that is in Victoria, but it is low-range PCA. There is an example I can give you absolutely of a nexus. If a person drives for a living, absolute nexus.

The Hon. DANIEL MOOKHEY: These questions are getting to the ability for hardship to be considered. In your view, what is better placed to assess the hardship, a penalty infringement notice or a court?

Mr SUTTON: Court, must be.

The Hon. DANIEL MOOKHEY: Is there any capacity for any police officer issuing a penalty infringement notice to assess hardship?

Ms MILES: No.

The Hon. DANIEL MOOKHEY: Is it right that they are precluded under law from considering hardship?

Mr SUTTON: To be fair, the current legislation says a police officer "may" issue the infringement notice. That is as high as it can be put. The reality is that a police officer on the side of the road—

The Hon. TREVOR KHAN: If he gets a breath test reading he is going to issue an infringement notice as night follows day.

Mr SUTTON: Exactly right. As they do with mid range, an instant off the road.

The Hon. TREVOR KHAN: We are all in agreement there.

Mr DAVID SHOEBRIDGE: You will hardly have someone say, "Please send me to court, officer."

Mr SUTTON: Exactly.

Mr DAVID SHOEBRIDGE: That is not going to happen at the roadside.

Mr SUTTON: No, of course not.

The Hon. TREVOR KHAN: There is a possibility of alleged corruption if he does not issue the notice.

The Hon. DANIEL MOOKHEY: My final questions are: To what extent can any of these issues that have been elucidated this morning be addressed by amendment to the specific sections of the bill or the bill itself or are these parts of the bill irredeemable?

Mr LASKER: Can I answer that? The mandatory interlock legislation which I spoke about is not itself being touched by this bill. The mandatory five-year disqualification I referred to is not being changed by this bill. What this bill does is bring another 29,000 people under the interlock provisions since commencement. There have been 29,000 first offence mid-range PCA offences.

The Hon. TREVOR KHAN: Is someone using a camera in the back? Is that right?

The CHAIR: It is a staff member and fine by me.

Mr LASKER: In regards to what can be done to alleviate that situation where the document I table shows more than half the people who face mandatory interlock serve the full five years. To use the example of the mid-range PCA first offence and the proposed interlock provisions, it is a minimum disqualification of three months and an interlock period of 12 months. If a person does not get the device fitted they serve five years. Instead they could serve the three months and the 12 months interlock period, so they are off the road for the 15 months not the five years.

The Hon. DANIEL MOOKHEY: I do understand your point but for the sake of brevity and time, you said there is a problem with the interlock offence, Mr Wilson said there is a problem with the definition of "drug", and we all have a problem with penalty infringement notice sections of the bill. Do you have a view as to whether we should be removing those sections or amending those sections? Because we are going into Committee debate probably tomorrow. What is your view as to what we should specifically be pursuing or is it your view that these parts of the legislation should proceed no further?

Mr LASKER: In regard to the issuing of immediate suspension notice, so far as my organisation is concerned and my concerns, that is the major issue. That can be alleviated—

The Hon. DANIEL MOOKHEY: Division 2A, new section 15 should be omitted from the bill?

Mr LASKER: It can be alleviated if, rather than the suspension commence immediately, like with a person who pays a fine for an "exceed speed by 30 kilometres an hour", on payment of the penalty the suspension starts. The RMS writes to the person and says, "You are suspended for three months". Or, on the expiration of the period where the person can court elect then the RMS writes to the person and says, "You are suspended for three months." It works for "over 30 kilometre" speed matters. I do not see why it could not work for this. It would alleviate the immediate suspension and the issues of people not having procedural fairness and take the matter to court and argue their individual case.

The Hon. DANIEL MOOKHEY: Mr Sutton, would you and other members of the panel agree that is the way forward?

Mr SUTTON: No, I would prefer—it is in my written submissions—that mandatory interlock be removed completely and it becomes a discretionary tool, as it used to be, for magistrates to invoke. Can I say with the legislation that commenced today with respect to new sentencing regimes, the Government missed its mark by not allowing as well as what is now a section 9 (1) (b)—used to be 10 (1) (b)—to allow for licence suspension or disqualification. Instead of being available only upon conviction, if a magistrate chose not to convict then in certain circumstances if the Government wanted to be seen to be punishing people in some way then another tool in the magistrate's belt would be the ability to disqualify a licence.

Mr DAVID SHOEBRIDGE: The Government has in its submission pointed to a raft of literature, some of which supports what they say and some of which does not support what they say. One example is a United

States review in 2018 which found that administrative licence revocation—the automatic licence revocation—reduces alcohol-related fatal crash involvement by 5 per cent. Assuming that we are persuaded that there is that potential impact from administrative licence revocation of, say, a 5 per cent reduction of alcohol-related fatal crash involvement, how do we weigh up that impact against what is likely to be thousands of cases with a less extreme impact but potentially very real injustice to thousands of cases where there is loss of job and a five-year suspension as against fewer fatalities?

The Hon. TREVOR KHAN: That is asking people to make a bizarre value judgement.

Mr DAVID SHOEBRIDGE: That is the value judgement that the Government has come up with, except they have ignored the second.

Mr SPOHR: If the question is if licence suspension by administrative means reduces that rate, the other question is: What is the rate where that disqualification is done by a court? That is the comparison that we have all invited the Committee to draw.

Mr DAVID SHOEBRIDGE: That would require some kind of substantive review of what has been happening in courts as opposed to this assumption.

Mr SPOHR: Yes.

Mr DAVID SHOEBRIDGE: The Government has expressly said they have not undertaken that.

Mr WILSON: The Bureau of Crime Statistics and Research would have the statistics. The data would be there.

The CHAIR: Thank you very much. We are going to wrap up this session. Thank you all for your submissions, written and given in today's hearing. We appreciate your time. There are no questions on notice.

Mr DAVID SHOEBRIDGE: This is a novel process we have adopted in the upper House, of these rapid reviews. I know it short but it is the only way we can actually get it done in the legislative timeframe. I hope it is beneficial.

Mr HUMPHREYS: I thank the Committee for convening this. I would hope you have had an opportunity to hear some material that will be of interest to you. We know it is short. We would prefer that you do this than simply box on without the benefit of something like this.

(The witnesses withdrew)

ERIC HOWARD, Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne, sworn and examined

The CHAIR: In what capacity are you appearing?

Mr HOWARD: I am the Principal of Whiting Moyne, a strategic road safety advisory consultancy; I am the Global Road Safety Advisor for Monash University; I facilitate and lead the one-week Monash Road Safety Management Leadership Program held twice a year for Australasian and international practitioners; I was formerly General Manager, Road Safety at VicRoads from 1998 to 2006; and I have been involved in issues of this type for many years.

The CHAIR: Do you have a short opening statement you would like to make to the Committee before you take our questions?

Mr HOWARD: I have a very short series of points I would like to make and then I think it is better for your time if you get the questions that you have answered. You are considering a very important issue for the lives of your constituents. I commend you for dealing with this problem. Drink-driving is an enormous challenge. In Australia we have tried for years to improve it. It is tough. It is a big part of your road toll. I heard before your comments about the impact in country New South Wales. That is a very important issue. Again, inconvenience for people, I would argue, is a very valid concern, but it is difficult with the career I have had to equate that to the impact on families who have lost a loved one.

The CHAIR: Say that to the families.

Mr HOWARD: Absolutely. I have a strong view about it. The issue is mainly about general deterrence. I think specific deterrence, there are concerns, but even there the research is very clear. The international research, the Australian research, such as it is, is very clear that an immediate roadside suspension of a licence in a system that provides for certainty, consistency, celerity and a penalty that people would not want to experience, the latter point is particularly relevant for specific deterrence. But the other elements—certainty, consistency, celerity—have been shown to have a big impact on general deterrence, such that they affect people who have never been involved in drink-driving offences. You have seen the evidence. I have got my head around it more recently in recent days, but it is quite compelling and quite powerful. It is very difficult for people who are not in that space to understand the power of that. But it is a powerful piece of research across the world that I have seen.

Mr DAVID SHOEBRIDGE: I have not had a chance to review each of the studies that have been cited by the Government in their footnoted reports. For example, the first footnote in one report studies the "Alcohol policies and highway vehicle fatalities" by Christopher J. Ruhm, where they say that supports the assumption that administrative licence revocation reduces fatalities. Of course, that report did not deal with that at all, it dealt with beer taxes and the likelihood of increased beer taxes on reducing fatalities. The next report that I looked at was a report into drink-driving offenders in Victoria by Watson. Here we are really talking about first-time offenders and that report said that the research demonstrated that first time and repeat offenders often differ in both characteristics and treatment needs. So you deal with first-time offenders differently to how you deal with repeat offenders. I looked at the 2007 review on "Effects of drivers' license suspension policies on alcohol-related crash involvement: long-term follow-up in forty-six states" in the United States. It stated:

> The effectiveness of a deterrence policy appears to be more strongly affected by celerity—the speed by which punishment is applied after the offending behaviour—than by the high severity of the penalty.

The research is complicated.

Mr HOWARD: It is, yes.

Mr DAVID SHOEBRIDGE: It is not straightforward and I think it has been oversimplified and, in fact, exaggerated in the Government submissions. You say you have looked at these studies?

The Hon. TREVOR KHAN: Do you not ask him, "Do you agree with that?"

Mr DAVID SHOEBRIDGE: You say you have looked at the studies. What is your review, having looked at the studies over the weekend? Is it complicated?

Mr HOWARD: It is complicated. People do things differently in different jurisdictions. There is no question of that, and people have different ways of getting there. In looking at all of the information, a strong pattern emerges that says these administrative roadside suspensions have a very strong impact on behaviour.

Certainly doing it quickly prevents that period of time between detection and court appearance that can be very, very high risk, as we have seen, and there is good evidence that after returning from a suspension of licence that your behaviour is improved.

The Hon. DANIEL MOOKHEY: Sorry, Mr Howard, when you say that period of time between suspension and court appearance is very high risk, where is the data?

Mr HOWARD: There are studies in that submission that relate to that. The Victorian data is very important. There was a study from Victoria in 2014 which talks about the impact—they actually tracked drivers back through a long period of time, back until 1996, and they took three time periods where there were different conditions. Interlocks came in in 2002, so pre-interlocks, imposed interlocks and so on. There were three different regimes. They were able to show that the involvement in reoffending was greater in the period between detection and suspension compared with the period after they were banned from driving. So you had a period of high-risk behaviours than after the ban was in place. That is very clearly shown in that study. I cannot recall off the top of my head, but there are other some references to that as well. That is particularly important, because it was an exhaustive study of actual data.

Mr DAVID SHOEBRIDGE: Did you look at the stark comparison in recidivism between Victoria and New South Wales? Did you drill down into that data? You heard the evidence earlier about it being a 10-year recidivism rather than five years in New South Wales. On one view, the recidivism data in New South Wales may be overstated because of what it defines as recidivism. Those two pieces of information work in different directions. Have you drilled down into that?

Mr HOWARD: I have not had time to look. It is apples and oranges; you used that term. It really is. I do not know what the true answer is. I cannot help you there, but if you are taking people repeating illegal behaviours over a 10-year period, you will pick up more people than if you look at them doing it over five years. That is the bit I do not know.

Mr DAVID SHOEBRIDGE: It is core data. Are you surprised to find we have a legislative proposal before us and we do not have a proper analysis of the two?

Mr HOWARD: I do not know all the detail, but what I would say is this: If half of your people going before the courts for low-end alcohol offences are being dismissed —

The Hon. TREVOR KHAN: Section 10-ed out.

Mr HOWARD: —then they are not turning up in the data. You have a big problem. You have a massive problem.

Mr DAVID SHOEBRIDGE: Are you saying they are not turning up in the recidivism data?

Mr HOWARD: Yes, because they are not showing up as having an offence; they are not convicted. I will just make a comment to you—

Mr DAVID SHOEBRIDGE: I do not know if that is the case.

The CHAIR: Let Mr Howard have his view and put that to the Committee.

Mr HOWARD: Can I just say certainty and consistency are almost impossible to achieve in New South Wales at the moment with this low-end situation that you have? It is a basic issue to be dealt with, I suppose, but half of the people going before the courts are not recording a licence ban. Regardless of what the research is about that, and I think it is very clear, it cannot be good for encouraging people to do the right thing in the general community, and that is the message. Specific deterrence, you could argue it does not have a great effect, but certainly general deterrence does. I commend you on seeking to do better.

Mr DAVID SHOEBRIDGE: Is there any evidence that people think that if they get caught for a low-range alcohol offence they will keep their licence? Is there any evidence to support that that is the view? That would be relevant. As I understand it, the key deterrence factor is actually being caught. The penalty is the secondary deterrence. In respect of general deterrence, the likelihood of being apprehended is the main deterrence factor. Have you looked at those studies?

Mr HOWARD: I cannot answer your question, "Is there research on it?" But we know this: When there is a definite penalty and it is applied quickly, the general deterrence effect in the community is very strong.

The Hon. TREVOR KHAN: It is a reinforcement over the detection issue.

Mr HOWARD: It is. The detection—at the moment here, if you get detected everyone out there knows at a low level there is a good chance you will not get a penalty.

Mr DAVID SHOEBRIDGE: Are you sure that is the case? That is an assertion. The circles that I mix in, people would be very anxious about being caught drink-driving because of the assumption you would lose your licence. Putting to one side the moral opprobrium, which I think is strong, I do not have people coming to me saying, "Everyone gets off on drink-driving."

The Hon. TREVOR KHAN: That is not the evidence. The evidence is that 50 per cent do.

Mr DAVID SHOEBRIDGE: I am asking is that the conversation in the public, because it is not what I have heard.

Mr HOWARD: I cannot really answer that in New South Wales. If you look at the overseas experience, in North America they had all sorts of regimes for court before they brought in roadside administrative licence suspension, and the measured impacts are quite remarkable. The particular study that I think is very relevant is the one in Ontario where they evaluated their drinking and driving countermeasures. Basically they said you must have an expectation of likely detection. You are the world's leading jurisdiction in respect of detection. It is a great credit to New South Wales. You are global leaders, and that is the thing. But you are still shooting yourselves in the foot, in my view. They said you need a certain and consistent penalty applying to offenders and immediate swift imposition of that penalty—celerity—and this is very effective in preventing drink-driving in the general population—general deterrence—and also in the population of previously detected drinking drivers, so repeat offenders.

The Hon. DANIEL MOOKHEY: You cite the North American studies. Have you looked at other studies that have emanated out of the criminal justice reform aspect of the United States and Canada in which they do start focusing heavily on the sociology of who precisely are these penalties being applied to?

Mr HOWARD: No, I have not.

The Hon. DANIEL MOOKHEY: Are you aware that overwhelmingly those studies show that when you have, effectively, a form of mandatory sentencing being applied by police officers, it has a huge and disproportionate impact on people of colour in the United States?

The Hon. TREVOR KHAN: Are you referring to a particular study?

The Hon. DANIEL MOOKHEY: I can refer you to many, including, for example, the Justice Department and the City of Ferguson view into the Ferguson police department.

Mr DAVID SHOEBRIDGE: Or mandatory sentencing. I do not think that is an issue.

The Hon. TREVOR KHAN: I am just asking if you are talking about driving.

The Hon. DANIEL MOOKHEY: My point is that you are referring to United States that make a view about the impact of this on drink-driving, which is valid and worthy of the Committee's attention, of course. We are also looking at the wider impact in terms of the sociology. When you point to the United States example, I hear what you are saying about its impact on drug offences, but I also see it has had a huge impact on a whole variety of different communities there as well which have been the sort of by-product of these well-intentioned reforms that have the right public purpose. If we were to apply these principles to our law in New South Wales, how do we reconcile the two?

Mr HOWARD: I understand the dilemma. I would point towards the Canadian experience more than the United States' experience.

The Hon. DANIEL MOOKHEY: The Canadian experience shows the same sociological effects that you are seeing in the United States, in the United Kingdom and in all forms of mandatory sentencing at the level of police-imposed penalties.

Mr DAVID SHOEBRIDGE: And the British Columbia model is quite different.

The CHAIR: Is there a question?

The Hon. TREVOR KHAN: No, mandatory sentencing is not the same as police-imposed penalties. That is a misdescription.

The CHAIR: Do you have a question for Mr Howard?

The Hon. DANIEL MOOKHEY: My question is: If we are to write this into our law in New South Wales, what steps can we take to ensure that it is not going to have a disproportionate impact on certain groups?

Mr HOWARD: That is a very valid concern. I did some work up here some years ago in Aboriginal communities looking at young driver licensing issues in Tabulam. I understand some of the real concerns. But I think close evaluation of this—your advisers and the Government's advisers have to keep an eye on this. You monitor what is going on; you just do not let it happen, you keep an eye on it.

Mr DAVID SHOEBRIDGE: But every single time we have done this kind of mandatory thing and provided these kinds of non-discretionary policies, it has had a disproportionate impact upon Aboriginal citizens. The Aboriginal Legal Service just said here this will do it again. We can monitor it. We know what will happen.

The Hon. DANIEL MOOKHEY: I ask this because I am worried that, having read the Government's submission to this inquiry for this bill, it makes no reference to any of these factors. In fact, it makes me conclude that perhaps the Government has not considered them. It makes me think it is great to have an upper House inquiry that allows them to be considered. My question of the Government will be, in the like jurisdictions that you have studied, are there examples of the way in which penalty infringement notices can take into account hardship provisions? Are there any things we can say or look to write into this which would otherwise allow the House to consider whether or not these effects can be ameliorated?

Mr HOWARD: Rather than give you something off the top of my head, let me think about that for a couple of hours. I will come back to you with considered advice. Every place in the world is different. We live in this fantastic country, where we do care about all of our community. I commend you for that view. I do not have an answer immediately but I will come with some ideas for you. In Victoria it is not proven to be a major issue and, if it is, governments have to be prepared to act. But I will say in New South Wales when we looked at the problems of young Aboriginal people having access to supervision for driving that was not the issue. It was the fact that people are incarcerated, coming out of prison and had six to 10-year licence disqualifications. New South Wales has done work on that and we raised that to Roads and Maritime Services and others and it was dealt with by the Attorney General.

Mr DAVID SHOEBRIDGE: But all the submissions say this is going to unwind a big chunk of that. In fact, the Government's submission—I do not know if you have had a chance to read it—spends a page talking about all the issues with Aboriginal licence suspensions. They say it is problematic, difficult and it is substantially over-represented but then it makes absolutely no comment on how this bill will impact on it.

The CHAIR: I am not sure Mr Howard is here representing the Government.

The Hon. TREVOR KHAN: No, he is not.

The CHAIR: I would like to ask some questions.

Mr HOWARD: Can I just make a comment that general deterrence is a tough thing to introduce; it is tough. The ambition is to have the number of people doing this stuff reduced dramatically.

The CHAIR: Just on that, I understand specific deterrence from the Government's submission occurs when a motorist who has been apprehended and punished for drink-driving refrains from further drink-driving behaviour for fear of incurring additional punishment. I understand that. General deterrence occurs when a motorist refrains from drink-driving as a result of observing that others are being punished for a drink-driving offence. They are aware of that or they are warned of the impending penalties. Will you expand on that for the Committee?

Mr HOWARD: It is a bit like random breath testing. When you have strong publicity about it, campaigns and so on, people are deterred from drink-driving because they think it is everywhere—"I will be detected." That is true. What we now understand is the fact that you could be picked up by the roadside and lose your licence straight away is a very powerful general deterrent. People think, "I'm not going to do this."

The CHAIR: Particularly if, for example, we have heard about the inconvenience to a person who drives for their employment. Would you care to comment on whether if a person—I do not ask for a conjecture on their thoughts—drives for a living it is a great imposition on you if you lose your licence immediately and that equates to deterrence.

Mr HOWARD: Absolutely, and what we are trying to do here is to stop people being killed. We cannot have people out there who are impaired. They are a risk to my family, to me, to you, to everyone—to innocent people. This is the real issue, I think. Yes, if there are concerns about particular impacts, they have to be dealt with. But that is the issue.

The CHAIR: Inconvenience versus people's lives?

Mr HOWARD: It does not equate in my mind, no.

The CHAIR: The Committee has heard from a number of previous witnesses that they believe court attendance is an effective deterrent. Do you have any research to support that view?

Mr HOWARD: I do not.

The CHAIR: In your experience, what has proven to be the most effective deterrent to improve road users' behaviour?

Mr HOWARD: Deterrence of various types. I will quickly give you a little story. A senior bureaucrat in Bosnia spoke to me on a World Bank study—she and her husband were medicos. She was in the Department of Health and I was interviewing as part of a review of road safety. They had gone to Melbourne when their house was destroyed in the war. They had gone out there and brought there kids up there, educated them, and they had gone back to make a difference. She said, "I love the way the Victoria police educate the community on the roads." I said, "How do you mean?" She said they are out there all the time. The best education, sadly, is enforcement and good deterrence. If you really want to change behaviours that is where you have to go.

The CHAIR: It might seem obvious but I want to hear it from you. In your experience, are we likely to see drivers adjust or change their behaviour as a result of the penalty being an immediate loss?

Mr HOWARD: The research says unequivocally yes.

The CHAIR: You spoke about overseas. Can you expand on effective measures that are being used by road safety bodies around the world to combat drink- and drug driving?

Mr HOWARD: With drug driving, again, we have led the charge in this country in what we are doing in New South Wales and Victoria. And we are learning. This is an early-stage journey; I am sure we will get better technology and we will get better understanding of impairment and so on. We have commenced the journey because it is not acceptable to allow people to drive impaired. Drink-driving we have learnt a lot. We have done tremendous work here with random breath testing—the best in the world, as I said before. In April this year in Victoria we removed the 10 demerit points penalty, which was introduced in my time as general manager. We brought in the 10 and people would lose their licence with the 10 process at that time.

The Hon. TREVOR KHAN: What was the maximum number of points you could have?

Mr HOWARD: Twelve.

The Hon. TREVOR KHAN: If you were clear you could have a low-range PCA and you just did not lose your licence?

Mr HOWARD: Correct.

The Hon. TREVOR KHAN: Until April.

Mr DAVID SHOEBRIDGE: But any history of offending before that it was almost automatic?

Mr HOWARD: But what has changed the thinking in Victoria is that research has become available that says immediate loss of licence is a very effective sanction to change behaviour. That is what changed it.

The CHAIR: I am interested on the low-range PCA as "it is okay to drink a bit". I understand that a driver with a blood alcohol concentration in a low-range PCA is two to four times as likely to be involved in a car crash compared to a sober driver. So those drivers pose a serious risk, do they not?

Mr HOWARD: Yes, they do. If they are young and inexperienced drivers, the risk is even greater. It can be six times.

The CHAIR: Thank you. I think that is all I have. Lastly, do you care to comment on education programs and the combination of those?

Mr HOWARD: They are very important. We have not found our way with that either. I know the Victorians are looking at bringing something in the next 12 months but they have got to do work on it. I think you are in a similar position, from what I read in the government paper. But there is no doubt that well-targeted, motivating programs can have a good impact. I think it is very important that effort goes into those and does them well. Yes, I think there is a big place for it. There is evidence that these motivating programs work and we should turn our mind to doing it well.

The CHAIR: Similar to the programs that go into schools showing young people who have no experience of driving the results of inexperienced driving. I can have 20 years of driving experience or in substitute, but if I cannot give that there are 16- or 18-year-old, I can educate them about what might occur.

Mr HOWARD: It is about making that information interesting, desirable to acquire, not sitting there and preaching to people or telling them what to do but finding ways to get through to them.

The CHAIR: And life-saving.

Mr HOWARD: Yes, life-saving.

Mr DAVID SHOEBRIDGE: Could I ask you about the interlock?

Mr HOWARD: Yes.

Mr DAVID SHOEBRIDGE: There was very real concern about the cost of interlock and the fact that under the New South Wales current arrangements, 50 per cent of people who were ordered to have an interlock device end up not having it fitted and have an automatic five-year disqualification. Were you aware of that?

Mr HOWARD: I had not picked that up, no.

Mr DAVID SHOEBRIDGE: Is it not a pretty extraordinary outcome that 50 per cent of people ordered with an interlock get an automatic five-year disqualification because they do not get it fitted?

Mr HOWARD: I do not want to comment on what the Government has done. I mean that is—I do not have—

Mr DAVID SHOEBRIDGE: I am asking about that effect. Would you support that outcome from a policy basis?

Mr HOWARD: I will comment on the general principle. I want drunks to only be in cars that have got interlocks in them. I think that has got to be the objective.

Mr DAVID SHOEBRIDGE: I think we all agree on that, but I am asking you: Under the current regime, were you aware that in 50 per cent of cases where an interlock is ordered, the interlock is not fitted and people get an automatic five-year disqualification? Is your support of expanding the interlock regime informed by that information or not?

Mr HOWARD: I will certainly always support expanding the interlock regime. I will be asking myself why is that poor rate of uptake happening. I think that is important. I do not know the reasons.

The Hon. DANIEL MOOKHEY: Is it because people cannot afford it?

Mr DAVID SHOEBRIDGE: Overwhelmingly, the data shows that the people being caught and penalised on drink-driving tend to be from the lower socio-economic group.

Mr HOWARD: Yes, that is true. But are not there—

Mr DAVID SHOEBRIDGE: So that would be an obvious explanation to why they cannot afford it, would it not?

Mr HOWARD: I am sure I have read somewhere that you got schemes for supporting people.

Mr DAVID SHOEBRIDGE: Thirty-five per cent reductions still cost you $1,400 a year.

The Hon. TREVOR KHAN: Mr Shoebridge, I do not know if Mr Howard is really the one to be asking this. We have got Government witnesses coming in next.

The CHAIR: I am not sure that he is appropriate. I think we might finish there. We are behind time.

Mr DAVID SHOEBRIDGE: But Mr Howard is strongly supporting the interlock and I wonder if he knows what is actually happening out there, which is 50 per cent of people ordered with it get an automatic five-year disqualification.

The CHAIR: Mr Howard, I might ask you to finish on that question, unless there is anything else. We are behind time. I would like to get us back on schedule.

Mr DAVID SHOEBRIDGE: I was not aware of it until today.

Mr HOWARD: Thank you for the chance to put some thoughts here. I am here in a voluntary capacity. I am just interested in seeing deaths go down in Australia. This is important stuff and I understand the debate and the concerns about issues. I am confident that you will work through those. It is great to be here. Thank you.

The CHAIR: Thank you for your time, Mr Howard. We appreciate it.

(The witness withdrew)

BERNARD CARLON, Executive Director, Centre for Road Safety, Transport for NSW, sworn and examined

PAUL MCKNIGHT, Executive Director, Policy and Reform, Department of Justice, affirmed and examined

The CHAIR: Do either of you have a brief opening statement? We have the submission that you can assume we have read, albeit quickly and briefly. Do you have a opening statement that you would like to make to the Committee?

Mr CARLON: Yes, we would like to make a brief opening statement. The New South Wales Government's approach to dangerous behaviour of drink- and drug driving in New South Wales roads is underpinned by maximising deterrents to reduce the loss of lives and serious injuries. It is designed to prevent drink- and drug driving occurring as well as ensure offenders who choose to put lives at risk receive appropriate penalties, including a loss of licence. Having a New South Wales driver's licence is a privilege; not a right. It comes with responsibility and drivers who wish to needlessly put innocent lives at risk as well as their own must face those consequences of their behaviour. The 0.05 blood alcohol limit has been in place for almost 38 years in New South Wales and enforced through roadside road testing for almost 36 years. We have seen community attitudes to drink-driving shift dramatically over the years and this has prevented thousands of unnecessary deaths and serious injuries. The community recognises that drink-driving is dangerous and there has been broad support since 1970 increased random breath testing, zero alcohol limit for novice drivers, strengthened penalties and enhanced roadside testing and vehicle technologies like mandatory alcohol interlocks.

We know 90 per cent of the community consider alcohol and drug testing important for road safety and 84 per cent support alcohol interlocks for drink-drivers. In the last three years there have been 159 people killed and 2,847 people injured in crashes involving drink-drivers. One hundred and twenty of those deaths were in regional New South Wales—that is 75 per cent. If we want to continue to change driver behaviour and save lives, particularly in country New South Wales, we cannot just continue to treat these offences as we always have and expect different outcomes. In 2014 there were 50 fatalities involving a driver or a rider with an illicit drug in their system. This has increased by 62 per cent to 81 fatalities last year; 74 per cent of those deaths were in regional New South Wales. It is for those reasons that this bill has been brought to Parliament: in the context of an increase in the number of people killed and injured on our roads since 2014.

We have looked at the key contributors to the road toll like drink- and drug driving where there are significant challenges, especially in regional New South Wales. The initiatives in the bill draw on research, evidence from Australia and internationally, and build on a strong legacy of past initiatives to make penalties stronger, more certain and, where possible, swifter to directly tackle dangerous behaviour and stop people from taking the risk. This bill, alongside greater certainty of being caught, which the New South Wales Government is delivering through a commitment to increase on-road police enforcement, is designed to deter drivers from taking the risk through well-researched and proven interventions and, in turn, change behaviour and reduce trauma on our roads. The evidence indicates that these reforms will save lives and reduce serious injuries.

The CHAIR: Thank you, Mr Carlon. Mr McKnight, do you have an opening statement?

Mr McKNIGHT: I do not.

The CHAIR: Can I ask you either of you—whoever is best placed—to enlighten the Committee about other jurisdictions. We have heard a little bit about Victoria, but what other jurisdictions have moved to a penalty framework for drink- and drug driving as is proposed in this bill?

Mr CARLON: The proposal in the bill for a mandatory licence suspension at the roadside, Victoria has recently moved in that direction. In terms of the issuing of a penalty notice framework, it is in Victoria and Western Australia and New South Wales, that has been proposed, and South Australia. There are a number of states that have moved that way. Victoria had had that penalty infringement notice system in place for many place, as you had previously. But this intervention of licence suspension has only just been introduced in the Victorian penalty infringement notice. As you heard, up until April this year, it was a 10 demerit points system.

The CHAIR: There has been some discussion about the difference between the rates of drink-driving reoffending in New South Wales compared with Victoria. We have also seen some studies about that. I know it is addressed in the Government's submission but can you clarify why the reoffending rates differ between those two States?

Mr CARLON: Yes, I would like to make a statement first around the general recidivism research that is available and then I will hand over to my colleague. What has been quoted is three very different studies over

different time frames. The 8.1 per cent, as the Committee will see on pages 14 and 15 of our submission, essentially is a measure of who offended in low-range alcohol and then offended in any other category in the following year. The largest study conducted by BOCSAR in 2002 for a five-year period took those drivers who had offended and then measured their reoffender rate over the following five years—that was a 15.5 per cent recidivism rate. The Victorian study that the Committee heard about as well, which is a 10-year period, assessed the offending behaviours over 18 years. They are very different studies and the enforcement systems as well as the penalty systems that existed in those different times were significantly different from each other. That is why we are suggesting they are not comparable and it is not appropriate to compare those percentages in a simplistic way.

The CHAIR: So different penalty frameworks, different periods of time, different measures, and one I think measured all offences—not just driving.

Mr CARLON: The figure that was quoted on the 8.1 per cent was actually a measure of offenders who had low-range alcohol who then offended in any other way.

Mr DAVID SHOEBRIDGE: Is that not going to substantially overstate the rate of recidivism so it actually works against your argument? So it means the 8.1 per cent is likely to substantially overstate the recidivism rate?

Mr CARLON: I think it is probably appropriate for Mr McKnight to respond on the general recidivism comparisons.

Mr DAVID SHOEBRIDGE: No, I am asking you about the 8.1 per cent specifically. Is that not likely to have overstated the recidivism rate because you are comparing someone with a drink-driving offence and then any other offence?

The Hon. TREVOR KHAN: In the following year, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: In the following year.

Mr CARLON: Yes.

Mr DAVID SHOEBRIDGE: Is that not going to overstate the recidivism rate?

The Hon. TREVOR KHAN: As opposed to five years, as opposed to 10 years? It is apples and oranges.

Mr DAVID SHOEBRIDGE: Is that not going to overstate the recidivism rate?

Mr CARLON: No, it is simply a statement of the recidivism rate over those two years for those people who had the offence. So it is a totally different time frame. It would not overstate.

Mr McKNIGHT: If I could assist the Committee?

The CHAIR: Thank you, Mr McKnight.

Mr McKNIGHT: I think the time frame is the important issue here. What we see with reoffending is that over time the percentage of reoffending increases. What happens is it is described as a survival curve. In the first year we expect a certain percentage of people to reoffend and that percentage will go up as they have more time to offend. If you look at the general reoffending rate post court, in the first year it is about 20 per cent—this is all offenders who go to court—and over a 10-year period we have a BOCSAR study that says it is something over 50 per cent. So you can expect those rates to go up over a period of time.

The CHAIR: Can you talk me through the reoffending rate for the low-range PCA category? Are you aware of what that is?

Mr McKNIGHT: I am not. Mr Carlon has those figures.

Mr CARLON: I do not have those figures for the low-range reoffending rates. I understand they are published in BOCSAR reports. I do not have them to hand; however, they are publicly available.

The CHAIR: Are you able to get those?

Mr CARLON: Yes.

The CHAIR: We are not going to take questions on notice today. Are you able to get those to us quickly?

Mr CARLON: Yes.

The CHAIR: Within an hour of you leaving here today?

Mr CARLON: Yes.

The CHAIR: What other offences are subject to immediate licence suspensions in New South Wales?

Mr CARLON: Currently the mid-range drink-drive offence and the high-range drink-drive offence are both subject to immediate licence suspensions, as are the over 45 kilometres speed related offences.

The Hon. TREVOR KHAN: It is immediate or at a time specified by the police officers, is it not?

Mr CARLON: Yes.

The Hon. TREVOR KHAN: For instance, in the over 45 kilometres it is to get your car back home and then it will happen in the next day or so.

Mr CARLON: Yes.

Mr DAVID SHOEBRIDGE: Twenty-four minutes from now.

The Hon. TREVOR KHAN: Something like that—or 12 if you are driving really quickly.

Mr DAVID SHOEBRIDGE: I think they aim for 24.

The CHAIR: To successfully appeal against those offences is it necessary to demonstrate exceptional circumstances?

Mr CARLON: Any appeal would be required to demonstrate exceptional circumstances in court for the lifting of that suspension.

The CHAIR: So in order to appeal you have to demonstrate exceptional circumstances?

Mr CARLON: Yes.

The CHAIR: Does that include first-time offenders?

Mr CARLON: Yes. That is what this bill provides as well—it does not take away any of those appeal rights in terms of the proposal that has been put forward by the Government.

The CHAIR: In some of the submissions there have been queries about the definition of the word "drug" in the bill. I understand there is community concern about users of prescription drugs losing their licences. Can you clarify what that change will mean in practice?

Mr CARLON: Yes, I will just get that specific information for you.

The CHAIR: You might well have addressed it but I am just not sure that I have been able to find it.

Mr CARLON: On page 19 of the submission—

The CHAIR: Can you sum that up for the Committee in practical terms?

Mr CARLON: In simple terms, the process for driving under the influence offences are essentially not affected by this change of definition. Essentially, the term "drug" already in the Act currently encompasses a broad range of illegal and pharmaceutical drugs and alcohol—specifically, alcohol and a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985 and other substance prescribed by the statutory rules as a drug, and that includes pharmaceutical drugs.

The CHAIR: So they are already in there?

Mr CARLON: Yes.

The Hon. TREVOR KHAN: So OxyContin?

Mr CARLON: Yes.

The Hon. TREVOR KHAN: Various drugs such as that are already caught?

Mr CARLON: Various drugs, codeine, all of those drugs are currently registered on that list.

The Hon. DANIEL MOOKHEY: What about epilepsy medicine?

Mr CARLON: I am not specifically aware of that particular one but we can provide the list of drugs that are on that list. This particular reform is focused on having a definition that in fact captures those items, which are either new pharmaceutical drugs that have not been registered on the list at this point or new illicit drugs such

as synthetic drugs that have not been previously identified and listed on the register. It means if they are present, having been arrested by a police officer for the purposes of a blood and urine sample, and those levels are put to the court by an expert witness as having been impairing the driver at that point in time, those drugs outside the existing system of the register that are listed would still be able to be prosecuted for in those circumstances. That is a simple change and it is consistent with legislation that already exists in other jurisdictions like Queensland.

The CHAIR: I turn to interlocking devices. I would like to understand the thinking behind the proposal to extend mandatory interlock devices to mid-range PCA offences?

The Hon. TREVOR KHAN: First time. I think it now applies, does it not, to second offences?

Mr CARLON: Currently the regime applies for high-range and repeat offences in New South Wales. I know there has been discussion around the underlying five-year period of disqualification. Just to clarify that in fact at any time an individual seeks to then enter into the system by having an alcohol interlock installed in their vehicle, that can be done. There will be people who will take their three-month disqualification and then may not have a vehicle or may have other things going on in their lives and they decide at some other time to take it up—it is available at any time. That is part of the accessibility to the program that has been dealt with.

The rationale for moving to mid range, very clearly this separates the drinking and driving of those people who have offended at mid range. The studies show, particularly in Victoria which has had this program in place for longer than us, around an 81 per cent reduction in repeat offending for people who have an alcohol interlock installed in their vehicle. In April the Victorian system as well changed to actually have alcohol interlock apply for all drink-driving offences, including low range.

The Hon. TREVOR KHAN: I am sorry, could you say that again?

Mr CARLON: Victoria has implemented legislative reforms in April that have whole interlocks apply for all those offences, including low range. Clearly the evidence demonstrates that for mid range, which is a significant level of impairment, alcohol interlocks get people back into their vehicles more quickly as well. So the suspension period that you serve is reduced, which means that people do have access to a vehicle but a vehicle that means they have to separate their drinking and driving.

The Hon. TREVOR KHAN: Because on a mid range before they had to have a minimum period off the road of six months?

Mr CARLON: Yes.

The CHAIR: So these get you back in your car but you have to wear the cost of it. You can drive but clearly you have to wear that cost and undertake that, but it will get you back there faster.

Mr DAVID SHOEBRIDGE: If you can afford it.

Mr CARLON: And in New South Wales we are the only jurisdiction that has a financial hardship process which fully funds for those people who can prove it, which is administered by the Salvation Army, who are very familiar with running these programs as well in terms of determining financial hardship and supporting those applicants.

The CHAIR: We are talking about people's lives here, are we not? We always must weigh up the balance and inconvenience, but this is not just a jurisdictional inconvenience, this is people's lives that we are effectively trying to protect. Is that not right?

Mr CARLON: Yes. In my opening statement I did make it very clear that one of the issues that we have in terms of drink and drug driving is we are currently, over the last three years in particular, seeing no decline in fatalities and serious injuries and the trauma that is impacting the community. As I said, this proposal is about taking another step forward in implementing a change, as we have since 1970, to make a difference to reduction of that trauma based on the evidence that is available.

The Hon. DANIEL MOOKHEY: Mr Shoebridge and I are going to share our time to ask questions. I just want to pick up on one very small point that arose from my colleague's questioning about the definition of a drug. You described the scenario there in which a person is detected with a substance which is presumably unknown or has a level of impairment, an expert then comes forward and declares that it has led to impairment and therefore a penalty is applied. Does the offence as designed envisage any requirement for the person to know that they are impaired?

The Hon. TREVOR KHAN: That has never been an element of the offence.

The Hon. DANIEL MOOKHEY: I am asking the expert. Does it require there to be knowledge of that?

Mr CARLON: No. We recommend that people who are on medication discuss their medication with their doctors about whether they are fit to drive. Many of the medicines do have notifications on them that say, "If you are taking this medication you should not operate a vehicle". Similarly, where there are illicit drugs or inappropriate use of drugs, an officer must determine by the manner of driving or the appearance of the individual whether or not they are then subject to a sobriety assessment which leads to arrest for the purposes of a drug and urine test.

The Hon. DANIEL MOOKHEY: The reason I asked about this particular one and not the ones that are currently there is because the way in which this is written, "any other substance that when taken by an ordinary person may deprive the person of or impair his or her normal mental ability" applies a lot more discretion than otherwise is the case—"may deprive the person of or impair his or her normal mental ability". I have a close family member who is epileptic. You made the point that the reason why this is needed is because the nature of drugs change, both prescription and illegal. That applies equally to prescription drugs especially, and you make the point that a lot of advice is given to people which is to the effect of "Don't drive if you know you are impaired".

For example, a lot of people are epileptic, a lot of people have Parkinson's, a lot of people have motor neurone disease—effectively any brain-related illness where people are relying on medicines that are a suppressant, there is a one in 1,000 chance that they may be affected, but they have no idea. I am tempering the fact that there is a lot of risk in taking prescription drugs with the fact that we are creating an offence that has a lot more discretion. I am asking how do you envisage that applying in real life and how do you envisage that being reconciled from the perspective of a person who may not know that they are being affected or that they are impaired, particularly if they do not know which evidentiary standard they are meant to reach to prove otherwise?

Mr DAVID SHOEBRIDGE: May.

Mr CARLON: May. The purpose of the reform is to simply close those loopholes. The system is not being changed and the assessment that is being made around the merits and the proof that needs to be brought before a magistrate is not being changed.

The Hon. DANIEL MOOKHEY: Should that be written as "any other substance that will deprive the person of"?

Mr DAVID SHOEBRIDGE: The point is why did you choose "may" rather than "is likely to"? That is the point that Mr Mookhey is making. Obviously if you are taking an anti-epileptic drug and there might be a one in 1,000 chance that it impacts you on a particular day, are you saying those people cannot drive because it may impact upon them?

The Hon. DANIEL MOOKHEY: Are they meant to make that assessment every time they get behind the wheel?

Mr DAVID SHOEBRIDGE: Is that the intent?

The Hon. DANIEL MOOKHEY: It is not practical for a person who is suffering from that disease, that is why we usually ask for more legislative certainty when we say we apply a criminal sanction to them.

Mr DAVID SHOEBRIDGE: So is a one in 1,000 chance intended?

The Hon. TREVOR KHAN: Why do you not let him answer the question that Mr Mookhey has asked him?

Mr CARLON: The question I cannot answer on medical grounds in terms of the impact of the drugs, and that is why we give the general advice that people need to consult with their prescribing doctor around what the impact may be of that particular drug.

The Hon. DANIEL MOOKHEY: But the issue is that they can have that consultation with their doctor, but the way in which this legislation is written they have got no idea what to ask them. This is the point that Mr Shoebridge is also now picking up, that the way in which this is written with the use of the term "may"—which is not usually used in writing law; it is usually "likely to" or "will"—I am asking why is it written that way? Is that something which was intended? Is it something that we can amend to make it a better law?

Mr CARLON: I would need to get legal advice in terms of PCA and the drafting to determine whether or not that has any particular impact.

Mr DAVID SHOEBRIDGE: I will give you a scenario. You are on epilepsy medication, you have been driving safely for five years, no problem, but on one particular day you are particularly exhausted, you have not had enough sleep, you have not had enough to eat and therefore there is a more significant impact on that day and a police officer identifies you and you get tested. Are you intending to throw the book at that person? Is that what it is aimed at?

Mr CARLON: This does as well come down to individual responsibility about the way in which you are impacted, and if you are not fit to drive then that is an issue. But again, there are defences in court and defences in the process as well.

The Hon. DANIEL MOOKHEY: I do not wish to labour the point but, for example, I have a family member that if she inadvertently happens to drink grapefruit juice it impairs her ability to drive. She may not even be aware of it. We are designing laws so people can follow them. This is not a particularly gotcha moment, it is a technical drafting question. What advice do you have? Is that absolutely necessary or not?

Mr CARLON: I am happy to very quickly get legal advice with regard to the member's question.

Mr DAVID SHOEBRIDGE: "May" or "is likely".

The Hon. DANIEL MOOKHEY: Moving on, what is the reduction in crash rate or injury rate that you are expecting if we pass this law?

Mr CARLON: From the evidence that we have seen in the research that is available there is a range of impacts. Our circumstances in New South Wales clearly are different. It is a combination. This particular initiative within the Road Safety Plan is combined with the increases that are being proposed and implemented in the plan around increased detection and deterrence by police enforcement. We do not have specific numbers associated with the reductions, but what we can see is the deterrent effect that the licence suspension immediately at the roadside has had from the research around the world and also—

The Hon. DANIEL MOOKHEY: But you do not have a specific impact.

Mr CARLON: No, but we do have a specific target for the Road Safety Plan of a 30 per cent reduction by 2021.

Mr DAVID SHOEBRIDGE: But we are asking about this bill.

The Hon. DANIEL MOOKHEY: We are asking about this bill. Because we are examining this from an evidence base we want to know what type of impact you are anticipating it is going to have.

Mr CARLON: We do not have the specific numbers. We have a general target for the reduction of trauma on our roads.

Mr DAVID SHOEBRIDGE: What is the impact going to be on Aboriginal drivers? Will it be disproportionate or will it be the same as non-Aboriginal drivers?

Mr CARLON: We would hope that this has an impact on the trauma associated with Aboriginal communities as well. In terms of balance, 2.9 per cent of our population is Aboriginal and 4.7 per cent are subject to serious casualty crashes in terms of road trauma. Aboriginal casualties in alcohol-related crashes alone, there were 97 casualty crashes over the last five years. The Aboriginal community clearly are being impacted and over represented in our trauma figures and this is actually aimed specifically at reducing the trauma across the whole of the community but particularly where communities over represent.

Mr DAVID SHOEBRIDGE: Have you done any specific analysis about what the impact of these reforms will be on reduction of road trauma in Aboriginal communities? And, the rate of licence suspension and licence losses in Aboriginal communities? I ask you to address the questions separately.

Mr CARLON: The evidence base we have provided in our submission around the benefits of a faster, more immediate and certain penalty regime around licence suspension would be across the whole of the community in terms of the benefits for Aboriginal communities.

Mr DAVID SHOEBRIDGE: I am going to take that generalised answer as "no" unless you tell me it is not "no." Is the answer "no", because it is much quicker to say "no." We have a limited amount of time.

The CHAIR: Mr Shoebridge, I will ask that you allow—

Mr DAVID SHOEBRIDGE: Have you actually looked at the impact on Aboriginal people of—

The Hon. TREVOR KHAN: You do not need to be a goose.

Mr DAVID SHOEBRIDGE: —licence suspensions and the impact of road trauma: Yes or no?

Mr CARLON: Based on the evidence in our submission, this is intended and by the evidence will reduce road trauma across New South Wales. It is specific in relation to drug and alcohol trauma.

Mr DAVID SHOEBRIDGE: One of the lawyers described the rationale on page 12 of your submission, where you say that international research suggest that if an offender is caught drink-driving at any level they are likely to have taken the risk many times before and the use of that to justify swift and harsh sanctions, as Orwellian. What do you say to that?

Mr CARLON: The evidence is that people are taking risks by driving under the influence. That is happening. People in our research are saying that they are actually driving and taking those risks. In fact, more so in regional areas than the metropolitan areas. This is around reducing those risks through a deterrent effect by implementing swift and certain penalties in terms of licence suspension.

Mr DAVID SHOEBRIDGE: That did not address my question, with all due respect. My question is: The assumption that the Government has put forward is that if you have been caught once it is likely you have taken the risk many times before and that is the rationale to support the idea that you get swift and certain and harsh punishment. The assumption is you have been caught once but you have done it many times before—

The Hon. TREVOR KHAN: It is a rationale for general deterrence, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: —based upon statistical analysis. It was described as "Orwellian". The assumption that the individual will be punished for a perceived collective fault based on the stats.

The Hon. DANIEL MOOKHEY: Or past offences of which we have no knowledge.

Mr DAVID SHOEBRIDGE: The assumption of a prior offence.

Mr CARLON: This is about reducing the general risk across the whole of the community. I point to the success that has been achieved in the last 30 years in improving the general deterrent where people now find it socially unacceptable to be drink-driving. There has been a reduction in the number of people taking that risk, certainly. In the last three years we see an increase in the trauma associated with drink-driving and drug driving over the last five years. Yes, a general deterrent around the fact that people actually do admit to taking that risk and at a higher rate in our regional areas than the State average is pertinent to that.

Mr DAVID SHOEBRIDGE: I am not asking you about the deterrence, I am asking you about the rationale.

The Hon. TREVOR KHAN: That is the deterrence. Listen.

Mr DAVID SHOEBRIDGE: Is the rationale that we will punish you more severely because the assumption is that you have offended more than once, but we have only caught you once? That is how I read it. You got your go, Mr Khan.

The Hon. TREVOR KHAN: Actually, I have not.

Mr DAVID SHOEBRIDGE: The Government got its go. That is what it says. Is that the rationale?

Mr CARLON: The rationale for bringing to the attention of the Committee as part of the evidence base for the bill and its proposed changes to the system is that there is clearly amongst our community many people who are continuing to take the risk of drink-driving. There is a large proportion of the community that are taking that risk and that is translating into trauma outcomes in our community.

The Hon. DANIEL MOOKHEY: Is that risk universally distributed geographically across the State?

Mr CARLON: No, the research shows that actually there is a higher proportion of people who take that risk in the regional areas.

The Hon. DANIEL MOOKHEY: Have you got that broken down by region of New South Wales?

Mr CARLON: I do have the figures for regional versus metropolitan.

The Hon. DANIEL MOOKHEY: Do you mind tabling or providing that to the Committee so we can have that as the evidence base?

Mr CARLON: Yes.

The Hon. DANIEL MOOKHEY: Do you therefore expect should this be passed into law those are the areas that the new system of penalty infringement notices are likely to be applied? Are they where you expect the fines to be issued and the suspensions to take place?

Mr CARLON: We expect that having a swift and certain penalty regime in place for licence suspensions will be a strong general deterrent.

The Hon. DANIEL MOOKHEY: I am about to ask the question about the court systems in those areas and their ability to respond. Are you expecting for us to be able to forecast where infringement penalties will be applied on the basis of where the offences are currently taking place? It is a pretty straight forward question.

Mr CARLON: Yes, we would expect that the—

The Hon. DANIEL MOOKHEY: —Penalties are applied where the offence takes place?

Mr CARLON: Yes.

The Hon. DANIEL MOOKHEY: Has the justice department prepared any analysis as to the court systems in those areas and their ability to cope? What is the average wait time in court for a person who wishes to appeal their suspension before they arrive? Do you have a forecast of how long a person will wait?

Mr McKNIGHT: The average wait time for an appeal in 2017 across New South Wales was 23 total days and 17 working days.

The Hon. DANIEL MOOKHEY: What about regional New South Wales or rural and remote New South Wales?

Mr McKNIGHT: I can answer that question in respect of particular courts if you are interested in a particular court.

The Hon. DANIEL MOOKHEY: Yes.

Mr DAVID SHOEBRIDGE: Lightning Ridge.

The Hon. DANIEL MOOKHEY: Let us go to Lightning Ridge, Bourke and Brewarrina?

Mr McKNIGHT: I do not have figures for Lightning Ridge, which suggests that there might not have been an appeal brought there, it is a small court. For Bourke, the average working days is two. There was one appeal brought in 2017.

Mr DAVID SHOEBRIDGE: That is not a very useful average. Maybe you could tender that if you have a list.

Mr McKNIGHT: Happy to do that.

The Hon. DANIEL MOOKHEY: Have you prepared any forecasts on additional resource requirements for the courts to deal with this?

Mr McKNIGHT: We have not forecast the distribution of appeals across the court system.

The Hon. DANIEL MOOKHEY: You have said in your submission that you anticipate that there will be savings in time for courts. You nominate this as the second main benefit for the reform, that it will reduce the number of court matters. Page 14 of the Government submission.

Mr McKNIGHT: The Government submission puts this policy in the context of road safety benefits. We have assessed the impact on the courts. In the context of the road safety plan overall there are a number of impacts on the courts. Some aspects of the plan, including increased enforcement, will mean more matters come to court, including mid-range and high-range PCA will come to court in a greater number. The penalty notice provisions will take matters out of court. But, there will be a rate of contested matters. On balance, we assess that as reducing the number of matters that will come to court net.

Mr DAVID SHOEBRIDGE: You must have done numbers, or is it just a feel?

Mr McKNIGHT: Our assessment of this policy was done in the context of providing advice to Cabinet. I am afraid the numbers are Cabinet in confidence.

Mr DAVID SHOEBRIDGE: Seriously, you are claiming Cabinet in confidence over your assumption about the numbers?

The Hon. TREVOR KHAN: Instead of hysteria, why do we not ask that he reflect on that and within a couple of hours consider whether he can provide us with the numbers.

Mr DAVID SHOEBRIDGE: I will endorse that.

The Hon. DANIEL MOOKHEY: Do you agree with the proposition that appearance in court has a deterrent effect?

Mr McKNIGHT: I think the evidence base for deterrence in this particular context is well set out in the Government submission and Mr Carlon has put it. In a general sense, does coming to court increase deterrence? As witnesses this morning have said, there is very little evidence on that question. The only evidence I am aware of is in relation to young offenders, and there are some studies, including a recent study by Jia Wang and Don Weatherburn, that compares juveniles who are cautioned against juveniles coming to court, and that finds that caution is a more effective sanction than reducing reappearance.

The Hon. DANIEL MOOKHEY: That is interesting that we are not cautioning them. I do not think anyone is advancing a proposition that we should caution people who are caught drunk driving.

Mr McKNIGHT: Indeed.

Mr DAVID SHOEBRIDGE: And juvenile offenders are very distinct.

Mr McKNIGHT: Juvenile offenders are distinct as are driving offenders.

The Hon. DANIEL MOOKHEY: Did you hear the lawyers' panel?

Mr McKNIGHT: And the evidence base for young offenders and for driving offenders are particular evidence-based—

Mr DAVID SHOEBRIDGE: Surely you are not putting that study forward as a proper evidentiary basis for your policy?

The Hon. TREVOR KHAN: Do not cut him off, Mr Shoebridge.

Mr McKNIGHT: You asked if I was aware of any evidence about the effect on reoffending of simply coming to court.

The Hon. DANIEL MOOKHEY: I actually did not ask that.

The CHAIR: Please do not interrupt. He is answering the question from Mr Shoebridge. Allow him to do so. I am also mindful of the time.

The Hon. DANIEL MOOKHEY: It was my question.

The CHAIR: I ask that you do not interrupt the witness.

The Hon. DANIEL MOOKHEY: That is not the question that I asked. I did not ask specific to this offence or to road offences. I was asking, in your view, do you agree with the proposition that an appearance in court has a deterrent effect?

Mr McKNIGHT: I am answering that question from the point of view of the research evidence. As I say, I am not aware of any research evidence in a general sense to that question, apart from evidence that relates to young offenders.

Mr DAVID SHOEBRIDGE: Can I ask you a question about the ability for people with no or minimal income to get interlock. What is the current funding arrangement? Is there a proposal to increase the funding of that particular program and who applies it? I do not know about it.

Mr CARLON: We would be happy to provide more program detail. We are the only jurisdiction that has a program for financial hardship, which is funded out of the Community Road Safety Fund on the basis that anybody is eligible as assessed by the Salvation Army, which has the contract for that assessment process to determine whether somebody is in financial hardship, and 100 per cent of the costs are then covered by the Community Road Safety Fund.

Mr DAVID SHOEBRIDGE: Can you provide us with eligibility, how people access it and who has been accessing it to date?

Mr CARLON: Yes.

The Hon. TREVOR KHAN: Can you do it in a couple of hours? Like today?

Mr CARLON: We will attempt to, yes.

The Hon. TREVOR KHAN: The only reason is we are going to have a deliberative tomorrow. We assume the bill will come on tomorrow.

Mr CARLON: This was one of the initiatives in bringing forward the mandatory interlocks for high-range and repeat offenders, that it was recognised that this was an issue in respect of people's financial capability to participate in the scheme. That has been dealt with in that way by providing financial assistance through financial hardship assessment for 100 per cent.

Mr DAVID SHOEBRIDGE: Earlier I made a critique of your footnoted studies. I will give you the opportunity to respond to it. I have not read all of them. For example, neither of the studies at footnote 11 from my view support the proposition contained in the body of the report. If you want to correct me on that within the next few hours, you are welcome to. In fairness, I should put that to you.

Mr CARLON: On the point you have raised around the beer tax study, it included other policy measures in their regression models, including administrative licence suspension laws and, depending on the model used, the administrative laws were shown to be statistically significant associated with reducing drink-driving and drug-driving fatalities. This is a statistical analysis, but it went specifically to the proposal in the bill and the merits of that research. I say, as well, we need to take into account the full body of research and statistical analysis as well as the trauma trends that are currently happening in New South Wales. We were below the Government's 30 per cent reduction target in 2014 and we have seen a consistent rise in these fatalities and the whole package of the Road Safety Plan includes a range of different initiatives, including these matters in the bill, in order to reduce that trauma. This is about taking another step change to impacting on the way in which particularly low range drink-driving is affected.

Mr DAVID SHOEBRIDGE: My question was about footnote 11.

The CHAIR: We are going to finish there. Thank you very much for your evidence today and your written submission. I note there are now a couple of questions on notice. Are you able to return those to us in the next couple of hours but at the latest by 5.00 p.m. today?

Mr CARLON: Yes.

The CHAIR: Thank you.

Mr DAVID SHOEBRIDGE: We should get the document from Mr McKnight before he goes.

The CHAIR: Do you have that available?

Document tabled.

The CHAIR: Thank you.

(The witnesses withdrew)

The Committee adjourned at 13:05.