

NSW Legal Assistance Forum

Submission to the NSW Sentencing Council

Repeat Traffic Offenders

March 2019

1. About the NSW Legal Assistance Forum

The NSW Legal Assistance Forum (NLAFF) is an interagency forum that brings together the key legal service providers in NSW across the government, non-government and private sectors with an interest in the provision of legal services to socially and economically disadvantaged communities. Current NLAFF members include:

- Aboriginal Legal Service NSW/ACT
- Community Legal Centres NSW
- Cooperative Legal Service Delivery (CLSD) (Legal Aid)
- Justice Connect
- LawAccess NSW
- Law and Justice Foundation of NSW
- Law Society of NSW
- Legal Aid NSW
- Legal Information Access Centre (State Library of NSW)
- NSW Bar Association
- NSW Department of Justice
- Public Interest Advocacy Centre

NLAFF aims to increase access to justice through:

- promoting the development of innovative service delivery models to address identified gaps in legal service provision for marginalised groups in the Australian community;
- improving the alignment of planning, program design and service delivery of legal assistance providers;
- promoting cooperative arrangements and collaboration between organisations within the community and justice sectors.

NLAFF operates on several key principles, including being informed by a focus on real outcomes for disadvantaged people, and identifying gaps in legal services to disadvantaged clients and devise strategies to effectively address those gaps.

NLAFF convenes working groups that address specific issues relating to access to justice for socially and economically disadvantaged persons in NSW. NLAFF has established a Fines and Traffic Law Working Group with the aim of reducing the number of people who experience legal problems associated with fines, licence suspensions, and disqualification. The Working Group has a focus on young people and Aboriginal people who are disproportionately disadvantaged by the lack of alternative transport.

This submission to the Sentencing Council was prepared with advice from members of the NLAFF Fines and Traffic Law Working Group.

2. Executive Summary

NLAFF thanks the NSW Sentencing Council for the opportunity to provide comments on questions raised in its Consultation Paper on Repeat Traffic Offenders. Our comments draw on the expertise of NLAFF members, who have extensive experience in dealing with socially and economically disadvantaged people and in providing legal and advocacy services to those who have legal problems associated with fines, traffic matter and licensing.

In summary, NLAFF is of the view that:

- Sentences should be individualised to the circumstances of the repeat driving offender;
- Programs and initiatives addressing drivers' repeated offending should be available for offenders regardless of where they live;

- Maximum penalties for alcohol and drug related driving offences should be proportionate to the levels of impairment;
- Immediate suspensions for low-range PCA and drug related driving offences effectively transfer court discretions to police, and may deny accused persons of natural justice;
- Subjective circumstances such as a background of social disadvantage geographic location of the offender and other social disadvantage should be included in sentencing principles;
- Fines and penalty notices are generally ineffective in dealing with repeat traffic offending and reducing recidivism, and can result in the unintended and undesirable outcome of funnelling disadvantaged people into acute hardship;
- Licence suspensions create a regime of disadvantage and should only be imposed for driving related offences in limited circumstances, and not for non-driving related offences, such as non-payment of fines;
- The time at which an application for an ignition interlock exemption can be made should be broadened so that an offender can take their matter back to court, or have the review assessed administratively by the Roads and Maritime Services (RMS) where significant change in circumstances has occurred;
- The imposition of the current mandatory alcohol interlock system has a disproportionate and unintentional impact by punishing socially and economically disadvantaged members of the community;
- The current vehicle sanction system has, inadvertently and disproportionately, a negative impact on remote and disadvantaged communities;
- Reasonable hardship provisions (e.g. to address financial hardship) need to be included in an intelligent speed adaptation system in dealing with repeat traffic offending;
- Specialist traffic courts are not our preference at this stage. Dedicated traffic lists in existing courts with appropriate resources to assist people who are disadvantaged may be a better option.

Furthermore, we note that repeat traffic offenders make up only a small percentage of driving offences involving harm. Data from the Bureau of Crime Statistics and Research¹ show that repeat traffic offenders are a very small subset of traffic offenders:

- only 8.8% of offenders have appeared in court one or more times with any proven driving offence in 2011-2016
- total appearances with proven offences in:
 - drive whilst disqualified or suspended (4.2%)
 - dangerous or negligent acts (2.9%)
 - negligent driving (0.3%) and
 - PCA offence (3.4%)

For this reason, NLAF is of the view that any reform recommended by the Sentencing Council to promote road safety should go beyond reforms that target recidivist traffic offenders. NLAF supports the expansion of learner driver education initiatives, and in particular those that meet the needs of disadvantaged people in rural and remote areas and where public transport is limited. We also support programs that work well with Aboriginal communities, like Birrang Aboriginal Corporation. A key initiative under Bourke's justice reinvestment program, funded by philanthropy, saw a 72% reduction in the number of young people proceeded against for driving without a licence between 2015-2017.² In

¹ NSW Bureau of Crime Statistics and Research request No 18-16506, cited in *Repeat Traffic Offenders Consultation Paper* (2018) The NSW Sentencing Council, at p. 14.

² <http://www.justreinvest.org.au/new-evidence-from-Bourke/>

our view, learner driver courses need to be better coordinated and equitably spread across NSW. A clear view of what is available and independently evaluated is required. NLAFF also supports the expansion of other programs that specifically target the needs of Aboriginal and rural/remote communities, and support drug and alcohol rehabilitation.

3. Response to consultation paper questions

Below are our members' comments on the questions of the Sentencing Council:

No.	Question	NLAFF Comments
1.2	<p>Dealing with repeat driving offenders</p> <p>Considering the existing and possible sentencing and other available responses to repeat driving offenders (outlined in chapters 4-6):</p> <p>(1) What options are appropriate for sentencing repeat driving offenders who may pose an ongoing risk to the community?</p> <p>(2) What sorts of offenders should they target?</p> <p>(3) What changes could be made to the law to make it more effective in dealing with repeat driving offenders who may pose an ongoing risk to the community?</p>	<p>NLAFF commends the NSW Government for the traffic law reforms which took effect in October 2017. These reforms were the result of careful consideration, supported by evidence that lengthy disqualifications do not reduce recidivism and indeed are often counter-productive.</p> <p>In the experience of NLAFF members who work with socially and economically disadvantaged clients, the reforms are starting to show an impact in reducing repeat offending.</p> <p>There is no one-size-fits-all approach to sentencing repeat driving offenders who may pose an ongoing risk to the community. <u>Sentences should be individualised</u>, and programs/interventions need to be tailored to the offender.</p> <p>Individualised justice requires a range of <u>programs addressing drivers' repeat offending</u> to which can be referred. These programs should be available to offenders <u>regardless of where they live</u>. Our experience is that, in remote areas of NSW where there may be high socio-economic disadvantage, offenders do not have the same access to initiatives that may help them address offending.</p> <p>The Traffic Offenders Intervention Program (TOIP) is available in Moree. The Program was only available as a weekly program delivered for several hours during the evening. The Moree Cooperative Legal Service Delivery (CLSD) program partnership identified that this was a barrier for many people charged with offences, who might be eligible for TOIP, living outside of Moree in surrounding communities of Mungindi, Toomelah and Boggabilla. The CLSD advocated for the Moree based TOIP to be available on a more flexible basis for people living</p>

		<p>outside Moree. TOIP is now delivered over a weekend in Moree. While this is likely to improve access for some people, others are still likely to struggle to attend the weekend program due to lack of access to private transport to travel to Moree and the need to stay in Moree for a weekend.</p>
<p>2.5</p>	<p>Alcohol and drug-related driving offences (1) Are the maximum penalties for alcohol and drug related driving offences appropriate? If not, what should they be? (2) Are the sentencing outcomes for alcohol and drug related driving offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?</p>	<p>The maximum penalties and the sentencing outcomes for alcohol and drug related driving offences are generally appropriate, subject to our comments below.</p> <p><u>Maximum penalty should be proportionate to impairment</u> Currently, the penalties and disqualification periods for driving with an illicit drug present in the driver's oral fluid/blood align with the penalties for low range PCA.</p> <p>NLAF is of the view that the maximum penalty for this offence should not be increased. On the contrary, there are factors which indicate the penalty for this offence should be less than that which is currently applicable to low range PCA offences.</p> <p>Traces of marijuana may remain in the driver's oral fluid for several days and be detectable, even though it may not be shown to cause any impairment to the driver, whereas the evidence is clear as to a degree of affectation by a driver who has the low range concentration of alcohol in their system. NLAF believes that maximum penalties and sentencing outcomes should reflect drivers' impairment levels proportionately.</p> <p>NLAF also submits that this offence should not carry any automatic disqualification. If the court wishes to disqualify, it would still have the discretion to do so.</p> <p><u>Immediate suspension in low-range PCA and drug driving</u> NLAF is opposed to the new police power to issue immediate licence suspension notices for low-range PCA and drug driving offences, which will commence in May 2019, along with new police powers to issue penalty notices for these offences. In our view, this is effectively transferring discretion from the courts to the police, bearing in mind the difficulty of appealing such suspensions to the court.</p>

		<p>NLAF is also concerned that the provisions for a stay of the immediate licence suspension are too restrictive and may deny natural justice. In many cases a person who elects to go to court will have served the suspension before the court has the chance to hear the matter. This undermines a person's right to elect to have their matter heard by a court and to advance matters in mitigation.</p>
<p>3.3</p>	<p>Subjective circumstances (1) Are the sentencing principles that relate to subjective circumstances appropriate for dealing with repeat driving offenders? (2) If not, what changes should be made and how could they be achieved?</p>	<p>Sentencing principles must properly consider subjective circumstances such as <u>background of systemic deprivation, remote/rural/regional (RRR) location of the offender and other social disadvantage</u> in appropriate cases.</p> <p>In the case of <i>Bugmy v R</i>³, the High Court of Australia considered an Aboriginal offender's systemic social deprivation and individual history of mental illness to be relevant sentencing factors. The High Court also recognised that the effects of a background of profound social deprivation do not diminish over time or with repeat offending.</p> <p>There are communities in NSW, including some Aboriginal communities in remote NSW, where a substantial proportion of people face significant barriers to obtaining and maintaining driver licences and consequently drive unlicensed. These include literacy problems and difficulties passing the driver knowledge test; limited access to licensed drivers to supervise learner drivers; the costs associated with obtaining a licence, owning and maintaining a car being unaffordable⁴ and driving sanctions arising from unpaid fines. Furthermore, it has been acknowledged by the research literature⁵ that the graduated licensing systems increase the difficulties of obtaining licences for individuals in disadvantaged groups and remote communities.</p> <p>In addition to these barriers, many Aboriginal people experience difficulties obtaining the proof of identity documents necessary to apply for a licence, such as</p>

³ (2013) 302 ALR 192

⁴These difficulties are detailed in Elliot & Shanahan (2008) *Investigation of Aboriginal Driver Licensing Issues*. The Report was commissioned by the RTA (now Roads and Maritime Services).

⁵ Senserrick, T & Haworth N (2005) *Review of literature regarding national and international young driver training, licensing and regulatory systems, Report to Western Australia Road Safety Council, Monash University Accident Research Centre*.

		<p>birth certificates and certificates evidencing a change of name. These issues may have direct relevance to repeat offending in driving offences, particularly in driver disqualification offences, and should therefore be considered as relevant subjective circumstances in sentencing.</p> <p>The High Court, in its decision in <i>Bugmy</i>, takes a race-neutral approach to section 5(1) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW). As such, in sentencing repeat driving offenders, courts should give attention to an Aboriginal offender’s “deprived” background in the same way as it would to a non-Aboriginal offender’s “deprived” background in considering mitigating circumstances.</p>
4	<p>Fines and penalty notices</p> <p>(1) How effective are fines in dealing with repeat traffic offenders?</p> <p>(2) How effective are penalty notices in dealing with repeat traffic offenders?</p>	<p>There is little evidence that higher fines and punitive enforcement regimes exert strong deterrent effects or have an impact on reoffending.⁶ They have limited efficacy in terms of behaviour change and recidivism.⁷ Further, there is evidence that the fines system has an unfair and disproportionate impact of people experiencing hardship and disadvantage.</p> <p>Driving sanctions for non-payment of fines in NSW, including licence suspension, cancellation of vehicle registration and RMS business restrictions, compound hardship and have a disproportionate impact on regional communities, Aboriginal people, young people and other vulnerable groups. In communities with limited public transport, driving sanctions can affect a person’s livelihood and ability to access basic services.</p> <p>Fines enforcement measures have perverse and unintended consequences for many NLAF member clients. Continuing to drive (usually from necessity) while suspended for fine default creates a cycle of</p>

⁶ NSW Sentencing Council (2006) *The Effectiveness of Fines as a Sentencing Option: Court Imposed Fines and Penalty Notices, Interim Report*, at [3.33]-[3.38]; NSW Law Reform Commission, *Sentencing*, Report 79 (1996) at [3.45]; Homeless Persons’ Legal Service and Public Interest Advocacy Centre (2006) *Not Such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW*; NSW Department of Attorney General and Justice (2011) *A Fairer Fine System for Disadvantaged People* ; NSW Law Reform Commission (2012) *Penalty Notices*, Report 132 ; Australian Law Reform Commission (2017) *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133; Law and Justice Foundation of NSW (2018) *Fines: are disadvantaged people at a disadvantage?*, p.27.

⁷ Fine, A., & van Rooij, B. (2017). For whom does deterrence affect behavior? Identifying key individual differences. *Law and Human Behavior*, 41(4), 354-360.

		<p>secondary offending and an entry point to the criminal justice system and incarceration.</p> <p>NLAF members support the recommendation of the Australian Law Reform Commission⁸ that licence suspension for fine default arising from non-driving related offences should be removed.</p> <p>Initiatives to assist vulnerable people with fines debt, such as the NSW Work and Development Order (WDO) Scheme, can help mitigate the impact of the fines system. Introduced in 2011, the WDO Scheme aims to divert eligible participants from the enforcement system and reduce secondary offending. Fines are cleared through participation in meaningful activities such as volunteer work, financial counselling, educational programs, or treatment for mental health issues or drug and alcohol addiction. Since commencement of the scheme, over 63,000 WDOs have been approved clearing \$139 million in outstanding fines (at Feb 2019).</p> <p>WDOs are supported in the community without additional funding by not-for-profit organisations, government services and health practitioners. The scheme relies on the goodwill and existing capacity of providers which can limit its availability, particularly in regional and remote communities where services are more limited. Additional resources to expand and promote the WDO scheme should be considered.</p> <p>However, mitigation measures such as the WDO Scheme need to operate alongside a fair and proportionate penalty notice regime. The recent Fairer Penalty Notice System review, initiated by Revenue NSW with multi-agency participation, identified reform opportunities that should continue to be progressed.</p> <p>NLAF recommends that penalty notice reform includes:</p> <ul style="list-style-type: none"> • reduced fines for young people and Centrelink recipients; • better and more transparent use of cautions by issuing authorities including police;
--	--	--

⁸ Australian Law Reform Commission (2017) *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, at Recommendation 12-1.

		<ul style="list-style-type: none"> limits on the number of penalty notices that can be issued for a single incident.
5.1/5.2	<p>Licence suspension</p> <p>(1) Does the system of licence suspension for driving offences adequately deal with repeat traffic offenders?</p> <p>(2) How could the current system be adjusted to deal with repeat traffic offenders more effectively?</p>	<p><u>Non-driving related offences</u></p> <p>Currently, non-driving related misconduct, such as unpaid fines and graffiti offences, lead to licence suspensions through the accumulation of demerit points (in the case of a graffiti offence), or imposed by the Roads & Maritime Services (RMS) administratively.</p> <p>This can have a devastating effect on certain individuals, particularly in RRR communities that rely on their driver licences to access health and other essential services, and for employment and financial security.</p> <p>These unintended consequences were recognised in section 54(6) of <i>Road Transport Act 2013</i> (NSW) for offences relating to driving while the person’s licence is suspended or cancelled for non-payment of fines. In these cases sentencing courts “must take into account the effect the penalty or period of disqualification will have on the person’s employment and the person’s ability to pay the outstanding fine that caused the person’s driver licence to be suspended or cancelled.”</p> <p>NLAF is of the view that licence suspensions should only be imposed for driving-related offences. We would therefore support legislative changes to restrict licence sanctions to only be imposed for driving related traffic offences.</p> <p><u>Individualised approach to sentencing</u></p> <p>In general, NLAF welcomes the changes to automatic period of disqualification and prescribed minimum, away from a mandatory disqualification period. NLAF emphasises the importance of continuing to ensure that courts take an individualised approach to properly considering a person’s subjective circumstances.</p>
5.3	<p>Penalties for unauthorised driving</p> <p>(1) Does the current system of penalties for unauthorised driving help prevent repeat driving offences?</p> <p>(2) What changes could be made to help the system prevent repeat driving offences more effectively?</p>	
6.1 & 6.2	<p>Ignition interlock programs</p> <p>(1) Is the NSW mandatory alcohol interlock program effective in dealing with repeat traffic offending? If so, why? If not, why not?</p>	<p>NLAF is concerned that the current mandatory alcohol interlock system is disproportionately and unintentionally punishing disadvantaged members of the community.</p>

	<p>(2) What changes could be made to the NSW mandatory alcohol interlock program to reduce repeat traffic offending?</p>	<p><u>Timing of exemption applications</u></p> <p>At present, an interlock exemption order can only be made at the time of sentencing. This restriction has a significant impact on defendants who may otherwise qualify for an exemption, but for their capacity or circumstances:</p> <ul style="list-style-type: none"> • As a large proportion of defendants are unrepresented due to legal aid not being widely available for traffic offence matters, many unrepresented defendants may not have the capacity to make an application for an interlock exemption order in court. • Defendants whose circumstances change after sentencing (e.g. due to loss of employment or vehicle) would not be able to make applications for an interlock exemption order. The impact of not getting an exemption and not being able to install an interlock device is that the person remains disqualified for 5 years. This is a penalty which is disproportionate to the offending, and disproportionate to the penalty experienced by a person who has the capacity to pay for an interlock device. <p>This can be best demonstrated by a client of one of NLAF’s members who was placed on the interlock licence. She was subsequently diagnosed with throat cancer and was no longer able to use the interlock device in her vehicle.</p> <p>Her options as the law currently stands were to:</p> <ol style="list-style-type: none"> (a) Continue to pay to have the device installed but not drive (as she couldn’t use the device) and obtain her full licence once the interlock period expired, or (b) Drop out of the interlock program and be disqualified for five years since she would be non-compliant with the interlock order <p>Neither ideal at a time when she needed her licence the most for various medical appointments.</p> <p>Alternative options could include allowing offenders to take their matter back to court or have a re-assessment done administratively by the RMS where there has been a significant change in circumstances.</p> <p><u>Design of interlock programs</u></p> <p>NLAF submits that the current design of the mandatory interlock programs is prohibitive for many</p>
--	--	---

		<p>who are socially and economically disadvantaged for the following reasons:</p> <ul style="list-style-type: none"> • the participation cost of around \$2,200-\$2,500 (full fee)⁹ for the mandatory alcohol interlock program exceeds financial capacity; • their vehicles are often incompatible with the interlock system; • inflexibility of the system does not allow changes in circumstances to be considered.
6.2	<p>Vehicle sanctions (1) Is the system of vehicle sanctions in NSW effective in dealing with repeat offending? If so, why? If not, why not? (2) What changes could be made to the system of vehicle sanctions to reduce repeat offending?</p>	<p>The potential hardship of vehicle sanctions in NSW in dealing with repeat offending in disadvantaged and/or remote communities may outweigh its potential benefits. While we acknowledge that the system of vehicle sanctions contains some hardship provisions, they apply only to third parties and not offenders.</p> <p>In their research report '<i>Developing measures to reduce unlicensed driving</i>¹⁰', Austroads puts forward the option of vehicle impoundment or immobilisation as a measure to reduced unlicensed driving. The Report acknowledges the risks of implementing such a scheme, including the negative impact that removal of vehicles would have on remote or disadvantaged communities.</p> <p>Austroads proposes that a best practice vehicle sanctions system would need to include hardship provisions.</p> <p><i>"If the impoundment or immobilisation of a vehicle denies a remote community of one of its few roadworthy vehicles, then the negative effects on that community need to be weighed against the positive effects of applying a sanction."</i></p> <p>In weighing up the positive and negative effects of vehicle sanctions, NLAF submits that the following factors be considered in sentencing:</p> <ul style="list-style-type: none"> • whether the offence was one that posed a serious risk to public safety;

⁹ <https://www.rms.nsw.gov.au/roads/safety-rules/demerits-offences/drug-alcohol/alcohol-interlock-program-faqs.html>

¹⁰ Austroads Ltd (2013) *Developing measures to reduce unlicensed driving*, <http://www.ors.wa.gov.au/Documents/Media/ors-austroads-unlicensed-driving.aspx>.



		<ul style="list-style-type: none"> • the availability of alternative transport (including public transport or social support networks that can provide alternate transport); • the geographic location of the driver and whether s/he resides in a regional or remote area; • any social or economic disadvantage experienced by the driver; • hardship to third parties if vehicle sanctions were imposed (for example, dependents who rely on the driver to transport them to school, medical services or employment or more broadly, the economic hardship that will be experienced by dependents if the vehicle is impounded and the driver is not able to work); • the driver's need to use the vehicle, (for example to attend medical appointments, education, employment); and • whether or not the vehicle sanction is likely to assist in preventing the driver from re-offending.
<p>6.3</p>	<p>Intelligent speed adaptation systems (1) Would a system of intelligent speed assistance technology be effective in dealing with repeat traffic offending? If so, why? If not, why not? (2) What system of intelligent speed assistance technology could be introduced in NSW to deal with repeat traffic offending?</p>	<p>Unless reasonable hardship provisions are included, the proposed intelligent speed adaption system would not be effective in dealing with repeat traffic offending for similar reasons as above.</p> <p>NLAF is concerned that the significant cost of intelligent speed adaption systems (approximately \$650 – \$1800) would inadvertently punish offenders for their lack of financial capacity.</p>
<p>6.4</p>	<p>Specialist traffic courts or lists (1) Would a specialist traffic court or list be effective in dealing with repeat traffic offending? If so, why? If not, why not? (2) What type of specialist traffic court or list could be introduced in NSW to deal with repeat traffic offending?</p>	<p>NLAF is concerned that the introduction of Traffic Courts may <u>undermine the message that driving offences are serious</u>. It may feed a perception that it is not that serious a matter – ‘it is only traffic court’.</p> <p>NLAF is also concerned that if Traffic Courts were introduced, it would need to be <u>universally available</u>, otherwise those in remote and rural communities may be further disadvantaged.</p> <p>NLAF is aware that there are already certain lists in courts with high volumes of driving and traffic offence matters. As mentioned above, legal aid is generally not available for traffic matters, unless there is an associated charge that carries a risk of imprisonment.</p>

		<p>The Cooperative Legal Service Delivery Program at Legal Aid NSW has funded for a limited time several Community Legal Centres to represent disadvantaged people who would not be eligible for assistance from Legal Aid NSW or the Aboriginal Legal Service and who would otherwise experience hardship without legal representation. This service was able <u>deal with matters efficiently in Court</u> which benefited all parties. These matters were more likely to be <u>finalised quickly</u>, resulting in <u>decreased incidents of warrants being issued and unlicensed driving</u>.</p> <p>The Government may consider <u>funding such a service</u> to assist people who are disadvantaged, rather than introducing specialist Traffic Courts.</p>
<p>6.5</p>	<p>Prevention courses (1) How effective are the various prevention courses for traffic offenders in NSW? (2) What could be done to make existing courses more effective in reducing recidivist traffic offending? (3) What further courses could be introduced to help reduce recidivist traffic offending? In what circumstances could they be most effectively deployed?</p>	<p>In 2013, the Audit Office of NSW found that the NSW Government's responses to improve legal and safe driving among Aboriginal people have had limited success reducing Aboriginal peoples' over-representation in road accident fatalities, traffic-related offending and imprisonments.</p> <p>The Audit office found that Aboriginal people are losing their licence for fine default at around three times the rate of non-Aboriginal people and face real barriers to regaining it.</p> <p>The Report discussed the significant barriers for Aboriginal people to obtain, retain and regain driver licences that included:</p> <ul style="list-style-type: none"> • a critical shortage of supervising drivers to assist learner drivers complete the required 120 hours of supervised driving • poorer literacy and numeracy skills among Aboriginal people which lower the pass rates for the driver knowledge test • not having a birth certificate which is the main proof of identity to obtain a driver licence • the layout, location and hours of operations of motor registries. <p>The Audit Office also found that Aboriginal people found guilty of a 'driver licence' offence are also more likely to be imprisoned: in 2011, 12% of Aboriginal people found guilty of a 'driver licence'</p>

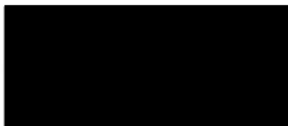
		<p>offence were imprisoned, compared to 5% for non-Aboriginal people.</p> <p>Challenges facing Aboriginal people in regaining their driver licences include knowing the options available for paying fines and managing debt, the ability to attend court if required and understanding court processes.</p> <p>The Audit Office also found that Government programs to address the barriers Aboriginal people face in obtaining and retaining a driver licence have had limited success at reducing the over-representation of Aboriginal people charged with or imprisoned for traffic offences. Driving programs have generally been only available in limited areas and for a short time. They also suffer from constraints in insurance coverage and volunteer driver reimbursements, lack of program ownership, uncertain funding and poor evaluation.</p> <p>Some local programs have been more successful over longer periods of time. Some of the factors contributing to the longevity of these programs include a vision towards employment, utilising connections into Aboriginal communities and involving Aboriginal people in program development and delivery¹¹.</p>
6.6	<p>Stricter penalties (1) Should stricter penalties be introduced for repeat traffic offenders? (2) If so, what offences should be subject to these stricter penalties?</p>	<p>NLAF does not consider that stricter penalties are required for repeat traffic offenders in the absence of evidence to support their deterrent effect.</p>
7	<p>7.1 Communities requiring special attention What communities, in addition to those listed in Chapter 7, might require special attention when dealing with driving offences?</p>	<p>In illustrating the needs of communities requiring special attention, the Sentencing Council could consider the activities and outcomes of the Bourke Justice Reinvestment Initiative¹², and the regional community's approach to driving offences.</p> <p>Bourke previously had very high rates of driver license offences. In addressing the underlying issues</p>

¹¹ <https://www.audit.nsw.gov.au/our-work/reports/improving-legal-and-safe-driving-among-aboriginal-people>

¹² <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>

	<p>7.2 Remote and regional communities What changes should be made so that traffic law operates effectively for people in remote and regional communities?</p> <p>7.3 Young people What changes should be made so that traffic law operates effectively for young people?</p> <p>7.4 Aboriginal people What changes should be made so that traffic law operates effectively for Aboriginal people?</p>	<p>that led to that offending, the community found that reasons for offenders driving unlicensed were:</p> <ol style="list-style-type: none"> (1) they did not have the required identity documents to legally hold a license; (2) they had not done the driver knowledge test; (3) low and no level of literacy that meant they needed assistance with the driver knowledge test. <p>The Bourke community introduced a culturally appropriate learner driver course run by Birrang Regional Alliance Ltd. They also introduced the Literacy for Life program for Aboriginal people. Over a 2-year period, this led to a 72% reduction in youth driver license offending matters, and over 230 people getting their drivers licenses. Furthermore, NLAF members have heard of instances where police officers are sitting in vehicles of newly licensed learner drivers to assist them in getting their requisite learner hours.</p>
--	--	---

NLAF would welcome any further opportunities to provide comments on the issue of repeat traffic offenders. If you have any questions about this submission, please contact Lillian Leigh, NLAF Project Manager nlaf@lawfoundation.net.au.



Brendan Thomas
 Chair of the NSW Legal Assistance Forum