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25 July 2013

Mr John Barilaro MP
Chair, Committee on Law and Safety
Parliament House
Macquarie St
Sydney NSW 2000

Dear Mr Barilaro,

Thank you for the opportunity to provide a submission to the Legislative Assembly Committee on Law and Safety inquiry into driver licence disqualification reform. I note that the purpose of the inquiry is to examine and report on whether it is appropriate to reform the law related to the following unauthorised driving offences:

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

In particular, to:

- a) Establish a right to the court to have any outstanding disqualification periods removed for people who complete a minimum offence free period;
- b) Abolish the Habitual Traffic Offenders Scheme;
- c) Provide courts with discretion when imposing disqualification periods for unauthorised driving offences by:
 - i) Providing for automatic (and minimum) periods rather than mandatory periods; and
 - ii) Requiring that disqualification periods run from the date of conviction unless otherwise ordered.
- d) Revise the maximum penalties prescribed for unauthorised driving offences; and
- e) Introduce vehicle sanctions for offenders who repeatedly drive while disqualified.

I note that the terms of reference for the inquiry require the committee to have regard to “*previous reports that have drawn attention to problems associated with driver licence disqualification including...reports by...the NSW Ombudsman*”.

As committee members would be aware, my office is often required by Parliament to review the operation of new laws, particularly those conferring additional powers on police. In 2005 I tabled a report about one such review of the NSW Police Force’s implementation of the Criminal Infringement Notice (CINs) scheme trial.¹ In 2010, I tabled a further report about

¹ NSW Ombudsman, *Review of the impact of Criminal Infringement Notices on Aboriginal communities*, July 2010 (provided to the Attorney General and Minister for Police in August 2009); *On the Spot Justice?: the trial of Criminal Infringement Notices by NSW Police*, November 2005. Available at www.ombo.nsw.gov.au.

our subsequent review of the impact of the CINs scheme on Aboriginal communities. Both reports are available from our website at www.ombo.nsw.gov.au.

While these reports did not directly canvas the subject of driver licence disqualification, they contained a number of observations about the detrimental and disproportionate impact of the fines system, particularly State Debt Recover Office (SDRO) fine default sanctions imposed by the Roads and Traffic Authority (RTA) on vulnerable groups, especially Aboriginal people. In particular, I refer the committee to Chapter 12 of my 2005 report, and Chapter 8 of my 2010 report. My office also drew attention to this issue in our 2010 submission to the NSW Law Reform Commission's inquiry into penalty notices and our 2007 submission to the NSW Sentencing Council's review of the effectiveness of fines as a sentencing option. As we reported in those submissions, the common theme to emerge from our work, as well as from the available literature, is that vulnerable groups generally have less capacity to pay fines, and limited understanding of how to negotiate 'the fines system'. (I have attached copies of both submissions.)

SDRO sanctions imposed by the RTA usually involve the fine recipient's driver's licence being suspended or car registration cancelled. If the fine recipient does not have a car registered in his or her name, and does not possess a driver's licence, he or she will be restricted from dealing with the RTA so that it is not possible to obtain a licence or transfer registration of a car. While the SDRO does have the discretion to lift restrictions in exceptional circumstances if the fines remain outstanding, vulnerable people with limited ability to understand and negotiate the administrative processes associated with the fines system are more likely to experience difficulties applying for this dispensation.²

The committee is no doubt aware that unlicensed driving is prevalent, and indeed often considered a normal practice, in Aboriginal communities across the country. A state-wide qualitative and quantitative research study commissioned by the RTA in 2008 confirmed that one of the major reasons for unlicensed driving is the impact of SDRO fine sanctions imposed by the RTA, and in fact recommended that the use of licence suspension as an SDRO fine default sanction be reconsidered.³ Our 2010 CINs review found that Aboriginal people who received an 'on the spot' fine were much more likely to be referred for enforcement action by the SDRO as a result of difficulties in paying the fine.

Other well-documented reasons for the prevalence of unlicensed driving among Aboriginal people include poor literacy and computer literacy; inadequate access to appropriate driving instruction/supervision; and a combination of vast distances, a lack of alternative transport options and kinship obligations in rural and remote communities that make driving imperative.⁴ Moreover, in several reports in recent years we have highlighted the inadequacy of service delivery in a number of Aboriginal communities in NSW, which compounds the chronic disadvantage that already affects the lives of many of their members.⁵ While we know

² NSW Ombudsman, op.cit. NSW Sentencing Council, op.cit.

³ Elliot and Shanahan Research (for the Roads and Traffic Authority), *Investigation of Aboriginal Driver Licensing Issues*, December 2008.

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

⁴ Many of the barriers listed above similarly affect other vulnerable groups, including socio-economically disadvantaged young people (whether Aboriginal or non-Aboriginal), people with a disability and recently arrived migrants.

⁵ NSW Ombudsman, *Audit of the implementation of the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* (2013); *Addressing Aboriginal disadvantage: the need to do things differently* (2011); *Service provision to the Bourke and Brewarrina communities* (2010). All available at www.ombo.nsw.gov.au.

from our work with Aboriginal communities that holding and maintaining a valid driver's licence is highly valued, it is very difficult for the majority of individuals to achieve in the context of the chaotic circumstances surrounding them on a daily basis.⁶

As our 2010 CINs review noted, loss of a driver's licence or the inability to obtain one can have a range of detrimental impacts, including reduced employment options or termination of employment; limited access to essential services; and social isolation. It is unsurprising that, faced with these consequences, many people – particularly if they are already affected by disadvantage – will choose to drive regardless of whether they hold a valid licence, thereby risking further involvement in the fines system and the criminal justice system more broadly.

Our 2010 CINs review found that the imposition of RTA sanctions in response to unpaid CIN penalties appeared to have increased the risk of secondary offending by Aboriginal people, particularly young people who make up the majority of CIN recipients. In most cases, the secondary offences associated with the sanctions, such as driving while a driver's licence suspension is in place, were more serious than the original CIN offence. It has been reported that regulatory driving offences, including licensing offences, are significant contributors to custodial sentences for Aboriginal people, and that driving offences – the most common being driving while disqualified – accounted for 15% of the increase in the rate of Aboriginal imprisonment in NSW between 2001 and 2008.⁷ As the NSW Sentencing Council has commented, "*the disproportionate number of Aboriginal people imprisoned for drive while suspended, cancelled or disqualified offences (whether initially incurred through by fine default or for poor or unlicensed driving) is of concern.*"⁸

Because unlicensed driving is so prevalent in Aboriginal communities, any reform to the law relating to unauthorised driving offences will potentially impact upon Aboriginal people in a significant way. In general, our work with Aboriginal communities would lead us to be supportive of any reforms that would provide for greater flexibility and discretion in the provision and application of penalties for the offences in question.

Our 2010 CINs review acknowledged the important reforms effected by the *Fines Further Amendment Act 2008*, which created separate suspended and cancelled driver offences arising from non-payment of a fine or penalty notice, and:

- provides for a shorter disqualification period for a person convicted for the first time of driving without a licence if the licence was suspended or cancelled because of fine default (rather than unsafe driving practices);
- allows the court to consider certain factors, such as the impact a lengthy disqualification would have on employment and the offender's ability to pay the outstanding debt; and
- provides that the offence of driving without a licence if the licence was suspended or cancelled because of fine default is not a relevant offence for the purpose of declaring

⁶ This work includes handling inquiries and complaints by Aboriginal people as well as identifying and addressing systemic issues that affect Aboriginal communities. Through this work we have directly liaised with thousands of Aboriginal people across the state as well as hundreds of agencies servicing the communities in which they live.

⁷ Professor Rebecca Ivers, St George Institute for International Health, *Development of a community based Aboriginal driver licensing service: the AstraZeneca Young Health Programme*. Paper delivered at the 2012 Australasian College of Road Safety National Conference. <http://www.acrs.org.au/wp-content/uploads/Ivers-R-PPT.pdf>

⁸ NSW Sentencing Council, op.cit. p155.

a person to be a habitual traffic offender, which entails a five year driver's licence disqualification period.

In relation to the current inquiry, we would also emphasise the potential value of linking penalties for unauthorised driving offences, where appropriate, with access to diversionary initiatives that are designed to overcome those factors behind the high rate of unlicensed driving among Aboriginal people and other disadvantaged groups. Our 2010 CINs review outlined a number of initiatives, many of them operating at a local community level, and we are aware of others that have since commenced. For example, the Driving Change program, which is partially funded by the NSW Government, was launched in May 2013 by The George Institute for Global Health. The program will fund positions for local Driver Licensing Champions, create mentoring opportunities and provide links to existing services and information in six communities (initially Redfern, Shellharbour and Griffith) across the state, with the aim of supporting young Aboriginal people to obtain a driver's licence.

I hope that the committee will find our submission to be of assistance. Please do not hesitate to contact Ms Julianna Demetrius, Director, Strategic Projects Division, on (02) 9286 0920 should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B. Barbour', with a stylized flourish at the end.

Bruce Barbour
NSW Ombudsman