



## Victorian Aboriginal Legal Service Co-operative Ltd.

*Head Office:*  
6 Alexandra Parade,  
P.O. Box 218  
Fitzroy, Victoria 3065  
Phone: (03) 9419 3888 (24 Hrs)  
Fax: (03) 9419 6024  
Toll Free: 1800 064 865

### **VALS' submission to the Sentencing Advisory Council in response to the 'Driving whilst disqualified or suspended Discussion Paper' - sent 18 July 2008**

Thank you for the opportunity to comment on the 'Driving while disqualified or suspended' Discussion Paper (May 2008). The Victorian Aboriginal Legal Service Co-operative Limited [VALS] provides the following responses to the questions in the Discussion Paper.

**Question 1:**            **The Council recommended that the mandatory minimum penalty under s 30 of the *Road Safety Act 1986* (Vic) should be removed in order to restore the courts' discretion to impose a proportionate and appropriate sentence. Do you agree that the Victorian government should repeal the mandatory minimum penalty under s 30 of the *Road Safety Act 1986* (Vic)?**

The Victorian Government should repeal the mandatory minimum penalty under s 30 of the *Road Safety Act 1986* (Vic) ("the Act"). The effect of the mandatory minimum penalty on Indigenous Australians is that it contributes as one factor in the over-representation of Indigenous Australians in the justice system. This is either through direct imprisonment or imprisonment through failure to pay a fine (1 penalty point: \$110.12).

Mandatory sentencing has been discredited in terms of its effect on Indigenous Australians. For instance, the Australian Government received negative international publicity for mandatory sentencing in the Northern Territory which had a disproportionate impact on Indigenous Australians and lead to arbitrary detention.

Arguably, s 30 of the Act results in indirect discrimination as Indigenous Australians are disproportionately affected by it, especially elements of the law that relate to recidivists which are harsher in Victoria than in other Australian jurisdictions. This is not because Indigenous Australians are targeted but that they are likely to fall within the jurisdiction of the law as indicated by the following statistics:

*In New South Wales during 2001 approximately 11% of all driving licence convictions involved Aboriginal defendants. In fact between 1997 and 2001 there was an increase in the number of Aboriginal people convicted for driver licence offences from 949 in 1997 to 1957 in 2001, an increase of 51.1%.<sup>1</sup>*

---

<sup>1</sup>NSW Bureau of Crime Statistics & Research, 'Driving Offences and Aboriginal People – Stage 1 – Offence Targeting Project' May 2003 as at [Http://www.lawlink.nsw.gov.au/lawlink/ajac/1l\\_ajac.nsf/vwFiles/driving\\_offences\\_aboriginal\\_people\\_stage1\\_offence\\_targeting\\_project\\_ajac\\_may2003.pdf/\\$file/driving\\_offences\\_aboriginal\\_people\\_stage1\\_offence\\_targeting\\_project\\_ajac\\_may2003.pdf](http://www.lawlink.nsw.gov.au/lawlink/ajac/1l_ajac.nsf/vwFiles/driving_offences_aboriginal_people_stage1_offence_targeting_project_ajac_may2003.pdf/$file/driving_offences_aboriginal_people_stage1_offence_targeting_project_ajac_may2003.pdf)

The above statistics need to be coupled with the following:

- Many Aboriginal communities across NSW face extreme transport disadvantage, with limited access to motor vehicles and licensed drivers, and dislocation from public transport services. As a result of these limited transport options, a driver's license sanction can have a 'community wide' effect.<sup>2</sup>
- As a principle, the punishment for incapacity to pay fines should not be imprisonment<sup>3</sup>
- There is an urgent need to develop culturally appropriate sanctions and financial penalties based on an individual's capacity to pay.<sup>4</sup>
- In WA Repeat offenders were more likely to be Indigenous.<sup>5</sup>
- The impact of a suspended/disqualified driver's licence is unevenly distributed for those with family support or those close to public transport, the impact of disqualification was minimal. However, for those who worked as tradespersons or who needed their licence as part of their jobs (eg: truck drivers, couriers) or to get to their place of work (eg: shift workers), the impact of licence disqualification was substantial.<sup>6</sup>

Given the above statistics and the particular impact of mandatory minimum penalties of minority groups VALS is disappointed that Indigenous Australians are not mentioned in the Discussion Paper.

Some Indigenous Australians have difficulty in obtaining a licence due to low socio-economic status (ie: low literacy etc).

Listed below are some cases that VALS' solicitors have illustrated the need for Magistrates to have discretion:

- A geriatric client in regional Victoria drove while his licence was suspended. He needed to get medication to open his airways. As he had a bad driving history, the mandatory sentencing applied.
- An intellectually disabled client living in regional Victoria, who also has acquired brain injury, is physically disabled and caring for 3 teenagers, didn't know that transport/support services were available to him and so drove to do the family shopping while disqualified and this breached a suspended sentence.

---

<sup>2</sup> Council of Social Service of New South Wales submission to NSW Sentencing Council re fines, 2006 as at <http://www.ncoss.org.au/bookshelf/transport/submissions/fines-feb05.pdf>

<sup>3</sup> *ibid*

<sup>4</sup> Ferrante Anna (University of Western Australia) 'The Disqualified Driver Study: a Study of Factors Relevant to the Use of Licence Disqualification as an Effective Legal Sanction in Western Australia', September 2003, p 30 as at [http://www.crc.law.uwa.edu.au/\\_\\_data/page/50334/DISQUALIFIED\\_DRIVER\\_STUDY.pdf](http://www.crc.law.uwa.edu.au/__data/page/50334/DISQUALIFIED_DRIVER_STUDY.pdf)

<sup>5</sup> Ferrante Anna (2003) above n 4, p vii.

<sup>6</sup> Ferrante Anna (2003) above n 4, p ix

**Question 2(a):** Should disqualified and suspended driving be disaggregated into two separate offences and, if so, should they be sanctioned differently?

The offences of disqualified and suspended driving should be disaggregated into two separate offences and sanctioned differently.

**Question 2(b):** Should there be different approaches to those who are disqualified/suspended by courts and those who are disqualified/suspended by reason of loss of demerit points or similar administrative means?

There should be different approaches to those who are disqualified/suspended by courts and those who are disqualified/suspended by reason of loss of demerit points or similar administrative means.

A possible exception would be drivers banned by a Court ex-parte. Those present in court while banned ordinarily have the benefit of a warning from a lawyer and/or Magistrate about the seriousness of a ban and the consequences of driving while banned. Many Magistrates consider further offending of this kind as 'contempt of the court' not just a driving offence. 'Administrative action' bans don't come with a warning and usually come in written form which poses problems for people with literacy problems.

**Question 3(a):** Should rehabilitation courses be used alongside existing sanctions, instead of existing sanctions or via a diversion program?

Rehabilitation courses should be used alongside existing sanctions, instead of existing sanctions, or through a diversion program. Rehabilitation courses should be legislated as formal a sentencing disposition and room should be left open for such courses to use alongside existing sentencing mechanisms in an informal manner. Rehabilitation does have a place in diversion programs.

VALS is supportive of rehabilitation as a factor in sentencing. VALS is concerned about a law and order trend that focuses more on a punitive approach. Rehabilitation can assist in reducing re-offending. Rehabilitation is part of a 'smart on crime' approach as opposed to a 'tough on crime' approach and makes sense.

**Question 3(b):** Should a problem-oriented court or court list be established and, if so, should it be aimed at addressing disqualified and suspended driving alone or at serious traffic offences generally?

It does not appear that a problem-oriented court or court list would be helpful.

**Question 4(a):** Would the introduction and selective use of restricted licences in Victoria (as an alternative to initial licence disqualifications or suspensions and *not* as a sanction for driving while disqualified or suspended) ensure a greater level of compliance with prohibitions on driving?

The introduction and selective use of restricted licences in Victoria (as an alternative to initial licence disqualifications or suspensions and *not* as a sanction for driving while disqualified or suspended) should occur to ensure a greater level of compliance with prohibitions on driving. This will benefit those living in regional areas and/or who are employed/apprenticed or in single-licence families where family members are minors or have health issues.. It will provide greater flexibility than currently exists.

**Question 4(b):**                    **If so, what restrictions would be appropriate for such licences and which types of drivers should be targeted?**

The restrictions that would be appropriate for such licenses could be the following:

- School hour drop off and pick up
- Work route only;
- Medical reasons for travel (ie: to hospital/doctors, chemist etc).

**Question 6:**                    **Should the use of an information campaign to enhance deterrence be explored?**

The use of an information campaign to enhance deterrence should be explored. Information is power and enables people to make informed choices.

**Question 7:**                    **Should third party enforcement measures, such as a continuing requirement for employers to check employees' licensing status, be explored?**

Third party enforcement measures, such as a continuing requirement for employers to check employees' licensing status, should be explored. This is because the temptation for disqualified drivers when offered a job is too great.