DRIVING LICENCE RELATED OFFENCES:

STRATEGIES TO ADDRESS RECIDIVISM

EXECUTIVE LEADERSHIP PROGRAM (ELP 02/04)

Presentation to

BOARD OF MANAGEMENT

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Action Learning Set:

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INTRODUCTION

The acquisition of a driver's licence represents status, independence and liberty. This plastic card is, very often, a pathway to identification, employment, travel and economic security. For many, that road begins at 17 years of age but for some, the road to the Roads and Traffic Authority is a dream beyond their reach that often turns into a nightmare.

New South Wales’ traffic laws are strict and their implementation and administration by the Roads and Traffic Authority is rigid. While this process has great strength, it also demonstrates weakness in the inflexible manner it deals with people convicted of driving licence offences. This paper will propose alternatives to the existing practices of imposing a correctional sanction or financial penalty or disqualifying a person from legally driving. These propositions are based on the thoughts and ideas of several of the key stakeholders in this area, and the review of strategies implemented in other jurisdictions.

With the increase in the number of vehicles on our roads so too has the number of traffic related offences increased and, not surprisingly, a significant number of those offences involve driving a motor vehicle without a licence. The origins of the behaviour known as “Drive Whilst Disqualified” is often complex. Offence mapping of an individual’s journey to sanction by the criminal justice system and the Roads and Traffic Authority reveals that, in many cases, offenders find themselves in circumstances where they can only fail.

For some groups of offenders it has been the culmination of other criminal offences impacting upon their licence disqualification and for a minority group of offenders it is merely an inability to pay fines. The rate of incarceration and the consequent costs to the NSW community (which will be discussed in greater detail later) demonstrates that “persistent driving offending is a substantial problem for law enforcement and correctional agencies” (Bakker, Ward, Cryer & Hudson – Behavioural Change Vol.4 1997).

At Court a “driving licence” offender faces a barrage of penalties, which could include licence disqualification period, a fine, imprisonment and/or community supervision. The Courts tend to impose short fixed sentences of full time or part time custody for repeat driving offences. This short time in custody makes it difficult to engage many offenders in intervention programs. Notwithstanding are the social costs of locking offenders in custody for minimum fixed sentences, when men and women lose the housing, accommodation, employment and often their children to foster care.

Much research has suggested that 70% of all crime is conducted by 10% of all criminals and the data describing NSW driving licence offenders indicates a very high recidivism rate. Sentence planning for this group of offenders should include offender management programs that incorporate traffic offending behaviour and these programs should be available in the community and custodial environments. The Department has already responded to the challenge of traffic offending by entering into a partnership with the Road and Traffic Authority to deliver the Sober Driver Program.
This report will examine existing strategies and recommend new directions that aim to influence existing legislative practice, improve partnerships and provide offenders with the opportunity to reduce their offending behaviour and gain/regain or retain their drivers licence.

PROJECT OBJECTIVES

**Objective 1**

*To examine the prevalence and recidivism of offenders convicted of driving licence related offences (in custody and in the community) in order to inform policy and program development.*

Driving licence related offenders data [30 June 2003 (NSW)1]

Table 1 shows offenders in correctional centres in NSW whose most serious offence was in the “driving/traffic” category. The following should be noted:

- of a total of 495 offenders in custody (males and females) 228 have the most serious offence of *drive whilst licence suspended or drive without licence* (215 male).

- 111 offenders have the most serious offence of *driving under the influence of alcohol/drugs* (almost one half of the number of offenders for driving related offences that do not involve drugs and alcohol).

The number of offenders in custody for driving licence related offences is significant (228). At approximately $170 per day these offenders cost the community $38,760 per day ($14,147,400 per year).

Table 2 shows inmates with known prior adult imprisonment for driving/traffic offences. Of the 495 offenders described above 324 of them have been sentenced to full time imprisonment before. 432 of the 495 have been convicted of driving licence offences before - a recidivism rate of 87.3%.

Table 3 describes the target group of this project - those offenders whose previous conviction was “drive whilst disqualified” and “drive without licence”.

Table 4 describes the previous convictions of the target group. Of the 228 offenders in fulltime custody only 13 had not had any previous court based sanction. This translates to a recidivism rate of 94.3%! This very high recidivism rate indicates that existing attempts to sanction, punish or penalise this group have failed.

Table 5 shows the length of sentence for inmates in custody with most serious offence driving/traffic category. Of a total of 228 inmates, some 115 (approx 50 %) are serving sentences of less than 1 year and of 228 inmates, some 113 are serving sentence of more than 1 year. This figure will be examined later in the context of delivering programs designed to reduce reoffending and in terms of the potential savings if those programs could be delivered in the community.

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1 All tables are set out in Appendix A
Tables 6, 7 and 8 describe periodic detainees convicted of driving and traffic offences and reinforces the extremely high recidivism rate for this suite of offences.

**Objective 2**

*A review of the existing legislative framework and sentencing options to determine if recommendations regarding changes to legislation should be made or changes to existing sentencing options were possible.*

The current legislation in NSW pertaining to driving and traffic offences is described in:
- Road Transport (Driver Licensing) Act 1998
- Road Transport (Driver Licensing) Regulation 1999
- Road Transport (General) Act 1999

Road Transport (Driver Licensing) Act 1998 and Regulations (1999) establish a driver licensing scheme that provides for:
- Demerit points system
- Issue of licences
- Suspension of licences
- Cancellation of licences
- Renewal of licences
- Classes of drivers licences

The statutory authority administering the legislation is the Roads and Traffic Authority of New South Wales (RTA). The RTA may also cancel licences pursuant to the Fines Act 1996 (unpaid fines).

As described earlier driver licences are vital to many people. They are a means of authorizing the driving of a motor vehicle on roads and roads related areas and also enable the identification of persons as licensed drivers of motor vehicles. The licence as a means of identification is extremely important to many people as it may be the only way they have of proving their identity.

Driver licensing scheme is highly regulated and the RTA has extremely wide powers. To some extent the legislative framework is cumbersome for example the life disqualification legislation (discussed later).

Penalties for driving licence related offences are severe, uncompromising and swiftly escalate where there is a second or subsequent offence. Where these offenders are not involved in drug/alcohol related driving offences, nor involved in any personal or property damage, it could be argued that the penalty regime is extremely harsh.
The penalties provide for a large financial penalty as well as a custodial sentence – up to $3,300 or 18 months in prison (or both) for a first offence or up to $5,500 or 2 years prison (or both) for a second/subsequent offence. These sanctions can have severe consequences:

- loss of means of identification
- loss of income (loss of main/only breadwinner – families, extended families), and
- loss of means of social contact, entertainment, sport which can lead to isolation and depression.

This impact upon the ability of a person to gain or maintain employment leads to the increased likelihood of being unable to pay fines. Many people in this situation chose to continue to drive and quickly accumulate unmanageable amounts, which ultimately lead them to a custodial sentence.

Consequences are more severe in remote areas of NSW where public transport is virtually non-existent outside of regional centres. Unskilled workers, who travel large distances to obtain seasonal and/or casual employment, rely on their ability to drive from job to job.

These circumstances have a great impact on Aboriginal people and are discussed further in Objective 3.

**Habitual Traffic Offenders**

In addition to this legislation there also exists the possibility of life disqualification through the habitual traffic offenders legislation (Section 28 & 30 Road Transport (General) Act 1999). A person may be declared to be a habitual traffic offender if:

- convicted (by a court) of a relevant offence (drive whilst disqualified, drive whilst suspended, drive whilst licence refused or cancelled), and
- the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences committed on different occasions.

If convicted a person is automatically disqualified from holding a driver's licence for a period of 5 years. Courts may order a longer period of disqualification including disqualification for life or may order a lesser period of disqualification, but must state reasons and cannot order below 2 years. Sentences, periods of disqualification run sequentially not concurrently and a period of disqualification under the habitual traffic offenders legislation does not commence until all other disqualification and all other periods of licence suspension or cancellation have been completed.
The Crimes (Sentencing Procedure) Act 1999 enables courts to impose custodial based alternatives to full time detention. Section 6 enables the court to impose **periodic detention** where the sentence of imprisonment is not more than 3 years. This is an extremely problematic sentence for a driving offender given the few periodic detention centres across the state and the difficulty of appearing without transport.

The Crimes (Sentencing Procedure) Act 1999 has several non-custodial options require further examination beyond this paper:

- Section 8 - community service orders
- Section 9 - good behaviour bonds
- Section 10 - dismissal of charges and conditional discharge of offender
- Section 11 - deferral of sentencing for rehabilitation and other purposes
- Section 12 - suspended sentences

Section 11 allows the diversion of offenders to appropriate programs and could be utilised as an alternative to custody for driving licence related offenders. Of those 115 target group offenders serving less than twelve months a number might have their sentence deferred but with a requirement to participate in an education and therapeutic program. Section 11 is the legislation that allows the court system to divert “dual diagnosis” women to Biyani House at Malabar.

If the courts were to impose a non-custodial sentence on the project’s target group offenders could be required to participate in a program similar to the 40 week DOT program from New Zealand. Given that it costs $7 a day to manage an offender in the community compared to approximately $170 a day to manage them in custody, over the life of the 40 week program there would be cost savings of $45,640 to the community for a group of just ten inmates.

**Objective 3**

*To investigate national and international best practice responses and programs addressing driving licence offences.*

**Sober Driving Program – NSW Department of Corrective Services Community Offender Services**

The Sober Driver Program is for adult offenders who are convicted of a second drink driving offence within five years. The Sober Driver Program is a nine week educational program delivered by the Probation and Parole Service. Participants attend a two hour group session once a week. For those living in country NSW, alternate program delivery methods will be available to ensure equity of access.
The program aims to:

• reduce drink driving offending by graduates of the program.
• enable participants understand the effects of drink driving on themselves and the community.
• assist participants to build skills, strategies and knowledge to apply in future situations to ensure they do not re-offend.

The nine sessions of the Sober Driver Program use both educational and therapeutic approaches including the principles of relapse prevention. The program will require the active involvement of participants and will draw on their life experiences.

A person may be referred to the Sober Driving Program as a condition of a court order or by referral through a supervising Probation and Parole Officer.

The program is funded by the Roads and Traffic Authority and the Motor Accidents Authority and is delivered by the Probation and Parole Service.

Program Delivery Costs - Sober Driver Program

The Sober Driving Manual identifies 4 options for program delivery and administration and training costs. The most expensive format is that of a Contract facilitator, a PPO Co-facilitator with a backfilled co-facilitator. Total costs for the nine weeks are $5705, including $979 for training. There would also be additional expenses for such items as return airfares, meals and miscellaneous expenses.

Driving Offender Treatment Program – New Zealand

New Zealand researchers have recently examined targeting specific driving offences rather than a broader category that includes drink driving. A cognitive-behavioural treatment program (relapse prevention) was piloted over 10 weeks with groups of 8 – 12 offenders in custodial and community-based settings. The pilot program developed an assessment tool to identify the most appropriate candidates. This tool is worthy of further review given the need for appropriate assessment identified by Assistant Commissioner Luke Grant and Community Offender Services staff, Peter Harvey and Ken Mayes. The program entailed the delivery of five (5) modules: cognitive restructuring, social skills, anger management, problem solving, relapse prevention.

On evaluation an overall reduction in re-offending (18%) was achieved. The New Zealand researchers recommend having offenders treated at an early age rather than waiting for a build up of similar driving convictions. It was considered that the lack of any difference between the prison and community-based groups suggested that the more cost-effective alternative of community-based treatment should be continued, especially as research has reported that community-based treatment is generally more effective than prison programs (Andrews, 1990 referred to in Bakker et al 2000).
On the Road

A recent Aboriginal Justice Advisory Council (AJAC) report has found that more than 2000 Aboriginal people were convicted in NSW in 2001 of driving licence offences. This makes driving offences the third most common type of convictions of Aboriginal people, after assault and disorderly conduct. Of those convicted in 2001, 7.8% received a custodial sentence.

As a result of the targeting of driving licence offence by the AJAC the "On the Road" project was implemented in Lismore. This model is an example of how community partnerships can address this crime prevention problem in a practical manner.

The project is being coordinated by Lismore Adult Community Education (ACE) in conjunction with local elders, AJAC, Lismore Council's Road Safety Officer, and Lismore Probation and Parole.

The State Debt Recovery Office has also been involved in the program as many participants have outstanding fines. As at December 2002, 60 people had regained their licence through fine negotiations.

The project identified a number of barriers to Aboriginal people obtaining driver's licences including:

- Difficulty in accessing and reluctance to use the regional RTA service centre;
- Low levels of literacy; and
- Changes to licensing procedures (learner drivers are now required to complete 50 hours of driving before attempting to obtain a probationary licence).

The On the Road driver education program assists Aboriginal people gain a full Class C (car vehicle) licence by providing access to computerised Driver Knowledge testing and outreach licence testing in Aboriginal Land Councils, as well as driving lessons and basic computer training for licence applicants. The program also aims to offer driver mentoring, vehicle systems and maintenance training, and first aid training.

On the Road operates with $34,060 in funding from the Crime Prevention Division, $34,000 from the Roads and Transport Authority and $20,000 from the Motor Accidents Authority.

This model of crime prevention is one that could be further developed in the custodial environment. The Department currently has computerised Driver Knowledge testing in two correctional centres. If this program could be extended to other centres and incorporated basic computer training, driving lessons and licence testing for licence applicants a significant number of offenders would be able to leave custody with a licence and in some cases more importantly a means of identification. This would greatly assist offenders in returning to community life and enhance their chances of gaining employment.
As indicated in the On the Road program, other agencies have indicated willingness to participate in crime prevention programs and are willing to provide funds and resources. These options should be further examined by the Department of Corrective Services and are discussed further in Objective 4.

**Objective 4**

Consultation with key Departmental staff and other government agencies involved in the management of offenders convicted of driving licence offences.

The members of the ELP group, with the Commissioner's approval, sought to interview representatives of agencies they felt were key stakeholders in responding to offenders convicted of driving licence offences. The consultation/interview process was the most rewarding aspect of the project. The group were provided with a range of attitudes, opinions and possible options to address the issues surrounding driving licence offences. The valuable information gained highlights the enormous value in consulting with those who have the knowledge and experience to allow the best possible outcome.

The ELP Group spoke with:

- Michael Darmody, Crime Prevention Division, Attorney General's Department
- Commissioner RG Woodham
- Ken Mayes, Unit Leader COS
- Assistant Commissioner Luke Grant
- Peter Harvey, Coordinator, Sober Driving Program
- Chief Magistrate deemed it inappropriate to provide advice

There were several themes that rose out of the interviews the group recorded. Those themes were:

- The recognition that punishment doesn't work although there is an expectation that offenders should be punished;
- The futility of continuing to fine offenders;
- The need to look at the problem another way;
- The enhanced role the Department might take;

In the ELP group's interview with the Commissioner, Mr Woodham made mention of a program that operated in the ACT. The Alcohol and drug Foundation (ADFACT) facilitate the program and it operates 9 weeks with participants attending each weeknight. The program mainly targets drink drivers and there is a financial cost to the participants. This program model requires further investigation and may be another option for the justice system to utilize in diverting people from a custodial sentence.
The Commissioner demonstrated a willingness to think outside the square and to consider practical options that could have an enormous impact if implemented. Mr Woodham suggested waiving or paying fines for offenders to gain their licence and suggested that the Department had a role in assisting offenders to gain their licence in custody and while under the supervision of Community Offender Services.

Michael Darmody indicated that a whole of government approach was necessary to successfully tackle the issue. Mr Darmody stated that the courts required a broad range of sentencing options. This echoed Luke Grant's statement to the group that assessment of an offender's individual circumstance was essential in determining the value of an offender participating in a program.

Peter Harvey reminded the ELP group that the community considered the offences to be serious and that there was an expectation that offenders would be punished. Mr Harvey highlighted the value in consulting with the Aboriginal community when dealing with this group of offenders. This statement was verified by the findings of the AJAC report discussed earlier – its success is reflected in the implementation of the On the Road program.

Ken Mayes described his experience in New Zealand examining therapeutic programs and stated there was a role for a therapeutic program for driving licence offenders in NSW. One of the consultation's most insightful statements came from Mr Mayes when he said that offenders must have hope if they are to succeed and that there must be a reward for participating in programs (ie, getting a licence).

The extraordinary recidivism rate of this group of offenders highlights that current responses to these crimes are not working. The information gained by the ELP group indicates that it would be beneficial to the community and the Department to examine other ways of reducing driving licence offending.

RECOMMENDATIONS

The ELP Group addressed four of the five objectives it identified in the project brief and developed a number of recommendations. The fifth objective can only be achieved through the development of interagency relationships and is addressed in recommendation one. The ELP group made specific recommendations regarding:

1. A greater role for the Department of Corrective Services in the development and application of penalties for driving licence related offences;

2. The development of alternative sentencing options to enable offenders to participate in a community based cognitive behavioural treatment program;

3. Further investigation into the development of a cognitive behavioural treatment program to address the criminogenic needs of “driving licence” offenders that could be delivered both in custody and in the community, and

4. Expansion of existing driving licence related programs currently delivered by the Department as part of the Throughcare exit planning process.
References


Road Transport (General) Act 1999
Regulation 1999
Road Transport (Driver Licensing) Act 1998
Sentencing options
Objective 1 - Existing legislation and
<table>
<thead>
<tr>
<th>First offence</th>
<th>Second/ Subsequent</th>
<th>Never Licenced</th>
<th>Licence Refused</th>
<th>Suspended</th>
<th>Disqualified</th>
<th>Drive Whilst</th>
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<td>18 Mits or Both</td>
<td>18 Mits or Both</td>
<td>$2,200 or prison</td>
<td>$3,300 or prison</td>
<td>$5,500</td>
<td>$3,300</td>
<td>$5,500</td>
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<td>2 Years or Both</td>
<td>18 Mits or Both</td>
<td>$2,200 or prison</td>
<td>$3,300 or prison</td>
<td>$5,500</td>
<td>$3,300</td>
<td>$5,500</td>
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<td>2 Years or Both</td>
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<td>PLUS 3 Yr Disqual</td>
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<td>$5,500</td>
<td>$3,300</td>
<td>$5,500</td>
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</table>
Objective 1 - Existing Legislation and Sentencing Options

- Minimum
- If shorter – must state reasons (2 years)
- Courts may order longer period or shorter period
- Automatically disqualified – 5 years
- Declaration - Habitual Traffic Offender
- Sections 28 & 30 Road Transport (General) Act
- Life Disqualification

- Objective 2 - \text{...}
<table>
<thead>
<tr>
<th>Non-custodial</th>
<th>Custodial</th>
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<tr>
<td>Deferred sentencing (s 12)</td>
<td>Suspended sentences (s 10)</td>
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<td>Conditional discharge (s 9)</td>
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<td>Good behaviour bonds (s 7)</td>
<td>Home detention (s 6)</td>
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<td>Community service orders (s 6)</td>
<td>Periodic detention (s 6)</td>
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**Crimes (Sentencing Procedure) Act 1999**

Objective 1 - Non-custodial & custodial alternatives
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<th>Offence</th>
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<tr>
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<tr>
<td>Drive whilst licence suspended</td>
<td>13</td>
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<td>Other</td>
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<td>495</td>
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Objective 2 - The Research Data
Superintending P&P Officer
May be referred to program by court or through facilitators
Costs for 9 weeks - $4726 + 979 for training of
Funded by RTA and Motor Accident Authority
Release prevention principal
Educational and therapeutic approach including
Staff
9 week course delivered in the community by COS

Sober Driving Program Model

Driving Licence Offences Video 2
Objection 3 - Review of Literature and Programs Addressing
Objective 3 – review of literature and programs addressing driving licence offences

Driving Offender Program – NZ

• targeting specific driving offences rather than a broader category that includes drink driving.
• cognitive-behavioural treatment program (relapse prevention) (10 weeks - groups of 8-12) in custodial & community-based settings.
• developed an assessment tool need for appropriate assessment.
• five (5) modules: cognitive restructuring, social skills, anger management, problem solving, relapse prevention.
Objective 3 – review of literature and programs addressing driving licence offences

Driving Offender Program – NZ

- On evaluation an overall reduction in re-offending (18%)
- Recommend having offenders treated at an early age rather than waiting for a build up of similar driving convictions.
- The lack of any difference between the prison and community-based groups
Objective 3 – review of literature and programs addressing driving licence offences video 3

On the Road

- Outcome of AJAC report – Driving Offences and Aboriginal People (Offence Targeting Project 2003)
- Crime prevention project coordinated by Elders, AJAC, Lismore Council, and Lismore P&PS
- State Debt Recovery Service - fine negotiations allowed people to regain their licence
Objectives: Review of literature and programs addressing driving licence offences

- Identification and employability
- Exit planning processes
- Program
- Currently delivering part of the On the Road system – in custody and in community
- Model could be implemented in correctional
- Funded by AGS, RTA, & MAA
- (car vehicle) licence
- Assists Aboriginal people gain a full Class C driving licence/offences

On the Road
deemed it inappropriate to seek the advice of the Chief Magistrate –

Programmes:  
- Peter Harvey Coordinator, Sober Driving
- Ken Mayes, Unit Leader, COS AGS
- Michael Darwood, Crime Prevention Div'n
- Assistant Commissioner, Luke Grant
- Commissioner, RG Woodham

Objective 4 – Consultation with Stakeholders
Community video 4

Licence programs in custody and in the parole, criminogenic need

Assessment – individual needs, suitability to

Whole of Government Approach

First offenders – break the cycle early

Impact of licence loss – part of the problem

Punishment doesn’t work

Objective 4 – Consultation with stakeholders
Objective 4 - Consultation with shareholders

- In government
- Expertise required on the local court as well as
- Use existing legislation and resources better
- Innovation (waive or pay their fines)
- Community (costs)
- Custody artificial environment - programs in the
- RTA is willing to engage