



CHAPTER 5

Indigenous driving issues in the Pilbara region

Alice Barter

The gross over-representation of Indigenous Australians in the criminal justice system is well recognised. This chapter shows that driving offences contribute significantly to this over-representation and investigates the problems associated with obtaining a driver's licence in the Pilbara region of Western Australia.¹ The 1991 Royal Commission into Aboriginal Deaths in Custody identified a huge difference between the imprisonment rates for Indigenous and non-Indigenous people.² The Royal Commission made 339 recommendations that focussed on reducing Indigenous over-representation at every stage of the criminal justice system. Despite these recommendations, between 1992 and 2010, the Indigenous imprisonment rate increased by 12%, compared with a relatively stable rate for non-Indigenous Australians, and it is still increasing.

Statistics recorded about prisoners in Western Australia in 2006 show that 4.7% of people in jail at that time were there for traffic and vehicle offences.⁴ Of that 4.7%, over half were Indigenous, despite Indigenous people representing only approximately 3.5% of the overall Western Australian population. Further, the rate of imprisonment of Indigenous people in Western Australia for driving and vehicle offences is 12.5% compared with a rate of 2.9% for non-Indigenous people.⁵ It has been estimated that 90% of the prisoners in Roebourne Regional Prison are Indigenous, and 40–60% are there for driving offences.⁶ This equates to over 100 Indigenous people being incarcerated for driving offences at any one time. Therefore, although driving offences are a relatively small proportion of the overall prison population, they contribute to the contemporary over-representation of Indigenous people in custody.

This must also be contextualised in the Western Australian sentencing framework where imprisonment is supposed to be the sentence of last resort, as well as the fact that a person cannot be sentenced to a term of imprisonment of less than six months. Further, while the forced separation from one's friends, family and day-to-day life is traumatic for all prisoners, the greater significance of kin and community relations, as well as a severe aversion to physical isolation in Indigenous cultures, exacerbates the trauma of separation for Indigenous prisoners.⁷

This chapter outlines recent research that investigated why there is such a high rate of Indigenous driving and licensing offences and how the over-representation of Indigenous Australians in prisons for licensing offences can be reduced, focusing on the Pilbara.⁸ The aims of the research were:

- to identify the specific barriers Indigenous people in the Pilbara region face in obtaining a driver's licence;
- to investigate the need to drive for Indigenous people in the Pilbara; and
- to examine current licensing initiatives and provide practical policy recommendations to assist Indigenous people in the Pilbara to obtain their driver's licences.

The research demonstrates that: unlicensed driving is prevalent in the Pilbara; licensing offences contribute significantly to Indigenous Australians being over-represented in the criminal justice system in the Pilbara and in prisons; and, the genesis of this problem is that many people have never got their driver's licence in the first place.

Structural barriers

There are major structural barriers to Indigenous Australians obtaining their driver's licence. One of these is the lack of sufficient identification. As other chapters in this collection have identified, many Indigenous people do not have a birth certificate and have trouble accessing

one to prove their identity for licensing purposes. Another related issue is many Indigenous people's lack of literacy and the fact that English is often not their first language. This makes it extremely difficult to fill in forms and other paperwork necessary to apply for a driver's licence. The Department of Transport offers translation services to people who have come from overseas countries; however, this option is not provided to Indigenous Australians. There is also a lack of education and understanding of technology and the protracted, bureaucratic licensing process. Access to technology, such as computers, which many people take for granted, is just not available to Indigenous people living in the Pilbara. There are also many families with limited financial capacity, and the costs associated with applying for a licence can be a significant barrier (as is also the case with birth certificates). This financial disadvantage also means there is a lack of suitable, licensed vehicles for people to learn to drive in and use for their practical driving assessment.

Further, many Indigenous people have a historical distrust of police and government. This can mean they are reluctant to go into government offices, such as the Registry of Births, Deaths and Marriages, to access the required identification documents and to obtain the paperwork necessary to sit a licensing test. Some Indigenous people feel 'shame' and intimidation as they do not like walking into a licensing centre or police station where they are the only Indigenous person. Another problem is a lack of services in regional Western Australia, and regional areas suffer from centralised

government. All government offices, such as the Registry of Birth, Deaths and Marriages and the Department of Transport, are based in Perth, which is a 16-hour drive from the Pilbara. There is also the issue of people's licences being suspended for non-payment of fines. It can be difficult for people to pay fines when they have a limited income, it can take a long time for people to pay off fines, and there is a lack of understanding of the process, so people do not know when they are allowed to drive again.

Ideological barriers

The relevance of a driver's licence is different for the Pilbara Indigenous community compared with the mainstream community. There is a sense that you do not need a licence to drive in the bush; not having a driver's licence is the norm and is intergenerational. There is also a lack of understanding as to the purpose of a licence and a lack of respect for 'whitefella' law. Conversely, the reality is that there is a norm of spending time incarcerated, and the threat of a prison sentence is not a deterrent.

The need to drive

The reality of living in a remote area is that people have a very real need to drive. It is impossible to compare driving in the city to driving in the Pilbara; the vast distances, harsh environment and lack of public transport means people must drive whether or not they hold a valid licence. Many of the communities in the Pilbara are very remote, with people needing to get into town to conduct business,

access medical services, shop and attend court, and many people live hours away from towns. The cost of taxis is prohibitive, with taxis in Newman charging \$10 per person to drive three kilometres; and due to the long distances and harsh conditions, other options like walking or riding bicycles are not realistic.

There are also cultural reasons for driving without a valid licence. The notion of 'culture' has two different aspects: first, people need to travel for law business, funerals, hunting and to visit family; second, in Indigenous law in the Pilbara, a person must do what an elder tells them, so they can be forced into driving even if they do not want to. Indigenous people in the Pilbara have a lack of understanding and lack of respect for 'whitefella' law as many people see their cultural obligation and traditional law as more important than mainstream law. In the local Indigenous cultures, bereavement or 'sorry time' is very important and people are expected to leave employment or other obligations to travel vast distances to pay their respects to the deceased person and their family. Many of the places they need to travel to are only accessible by driving a car.

A different need to drive is linked to community problems and alcoholism. Research participants identified a common reason given for driving as 'I was the most sober of the group'. There is also the need for people to escape from a dangerous situation, such as a fight, and for women to escape domestic violence.

The criminalisation of Indigenous Australians

The offence of driving without a valid licence is relatively minor and, if not associated with another offence, is essentially a 'victimless' crime. The harm caused by this offence, without any other offence such as dangerous driving, is very low. Charging people with a criminal offence for driving without a valid licence from a remote community to a town to do shopping, visit family, take children to school, or to attend cultural events, overtly criminalises Indigenous Australians. Interestingly, policing attitudes to driving without a licence depend on the area and the individual police officer. Some police officers turn a blind eye to people driving on tracks, but others view tracks the same as public roads, and will purposely target Indigenous people driving on them.

Initiatives

In Roebourne, there is a successful driving program run by the Ngarliyarndu Bindirri Aboriginal Corporation called the 'Red Dirt Driving Academy'. This is a community owned, culturally appropriate program that provides everything from assistance with getting a birth certificate, to practical driving tuition.

There is also a driver training program based in Port Hedland run by the Fortescue Metals Group Vocational Training and Employment Centre. This program also assists with all aspects of obtaining a driver's licence. Both of these programs have long waiting lists. Additionally, the Bloodwood Tree Association in South Hedland runs a 'Keys for Life' program, designed for young people, aged

15–16 years, to develop positive road user attitudes and start the learner’s permit application process; however, it does not assist people past the stage of obtaining a learner’s permit.

In 2008, the Department of Transport commenced a Remote Areas Licensing Program, which includes an ‘Open Licensing Day’ where services such as the Department of Transport, Fines Enforcement, Births, Deaths and Marriages, and Centrelink provide a ‘one stop shop’ to remote communities. Research participants were only aware of this being available once per year.

Recommendations

Despite the above initiatives, the low number of people holding a valid licence and the high number of people incarcerated for driving offences demonstrates that more needs to be done. There should be more engagement by the Department of Transport, as the government department responsible for ensuring the community is licensed, and as the department with access to a budget for this purpose. There also needs to be more communication between the Department of Transport and other government departments such as Births, Deaths and Marriages, Fines Enforcement and the courts. In particular, there needs to be a concerted effort to facilitate Indigenous people getting birth certificates so that lack of identification ceases to be a barrier to getting a drivers license.

The research findings make it clear that there are a number of relatively easy steps that could be taken to

reduce the over-representation of Indigenous Australians in prison for driving related offences. In particular:

- the existing programs could be expanded to assist more people in the Pilbara, and/or other accessible, culturally appropriate programs could be implemented alongside the above programs;
- the Department of Transport 'Open Licensing Day' should be run more frequently than once per year;
- the learners' test should be administered in the local language and/or verbally, and allowing an Indigenous support person to help, so as to make people feel less intimidated;
- for the Department of Transport to be more flexible in the form of identification they accept, so that individuals without a birth certificate can still get a driver's licence;
- comprehensive community education should be undertaken around the importance of licensing and road safety, particularly drink driving;
- improvement in police/community relations, such as cross-cultural awareness training, should be made available for police officers in country postings;
- improving education outcomes for Indigenous people in regional and remote areas, particularly around literacy;
- increasing employment options for Indigenous people in regional and remote areas; and
- law reform; specifically, to repeal the mandatory licence suspension periods in the *Road Traffic Act*

1974 (WA), as well as the minimum imprisonment sentence of six months; and to reinforce the notion of imprisonment being a sentence of last resort in the *Sentencing Act 1995* (WA).

There should also be a focus on addressing underlying issues such as poverty, literacy and alcoholism. Many of the Indigenous people in the Pilbara are severely disadvantaged and charging them with licensing offences is further disadvantaging them.

Conclusion

Given the significant need to drive and lack of alternative options, there is a link between the low number of people who hold a driver's licence and the high number of people incarcerated for licensing offences. While licensing offences are relatively minor and fall at the lower end of the harm scale, they carry a term of imprisonment, the most severe form of punishment. Incarceration disrupts families, culture and everyday life, and is highly damaging to communities. It has also been shown that incarceration leads to higher rates of recidivism and that prisoners are more likely to progress to more serious crimes with each successive imprisonment.⁹ Therefore, addressing the barriers to obtaining a licence identified in this chapter would likely decrease the number of Indigenous people in prison.

Endnotes

- 1 This chapter is based on research undertaken for a Master's thesis at the University of Melbourne in 2013, titled *White Law, Red Dirt: An Investigation into the Over-representation of Indigenous Australians in*

- Prison for Driving and Licensing Offences in the Pilbara Region of Western Australia.*
- 2 E Johnston, *Royal Commission into Aboriginal Deaths in Custody (RCIADIC), National Report*, Australian Government Printing Service, Canberra, 1991.
 - 3 Australian Institute of Criminology, 2012.
 - 4 N Loh et al., *Adult imprisonment, Western Australia 2006* (Annual Statistical Report Series No. 3), Crime Research Centre, University of Western Australia, Perth, 2009, p. 6.
 - 5 W Martin, 'Corrective services for Indigenous offenders — Stopping the revolving door', Chief Justice of Western Australia's Presentation to Joint Development Day, Department of Corrective Services, 2009, p. 11; N Loh & A Ferrante, *Aboriginal involvement in the Western Australian criminal justice system: A statistical review, 2001*, Crime Research Centre, University of Western Australia for WA Department of Indigenous Affairs, 2003, p. iv.
 - 6 Standing Committee on Aboriginal and Torres Strait Islander Affairs (SCATSIA), *Doing time — Time for doing: Indigenous youth in the criminal justice system*, House of Representatives, The Parliament of the Commonwealth of Australia, 2011, p. 231.
 - 7 B Wyatt, 'Indigenous Licensing and Fine Default: A Clean Slate', Western Australian Parliamentary Committee to Explore the Effect of Motor Driver's Licence and Driving Laws on Remote Communities, Report presented on behalf of the Minister for Corrective Services, Margaret Quirk MLA, 2007, p. 3.
 - 8 A Barter, *White law, red dirt: An investigation into the over-representation of Indigenous Australians in prison for driving and licensing offences in the Pilbara region of Western Australia*, Master of Criminology Minor Thesis, The University of Melbourne, 2013.
 - 9 B Wyatt, above n. 7.