

Addressing the “crime problem” of the Northern Territory Intervention: alternate paths to regulating minor driving offences in remote Indigenous communities

Dr Thalia Anthony
Dr Harry Blagg

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EXECUTIVE SUMMARY

This study examines the incidence of Indigenous driving offending in the Northern Territory since 2006 and assesses the effectiveness of law enforcement in addressing this crime. It seeks to ascertain alternative forms of regulating driver safety and whether they are better suited to Indigenous communities. In doing so, it identifies some of the major reasons for offending. It is particularly concerned with driving offences that have increased dramatically since 2006, including driving unlicensed and driving unregistered and uninsured cars.

Background

Since mid-2006 the issue of law enforcement has been at the forefront of the Federal Government's interventions in the Northern Territory (hereafter 'NT'). Even before legislation was enacted in the form of the *Northern Territory National Emergency Response Act 2007* (Cth) to address an official emergency over child sexual abuse (commonly known as the 'NT Intervention'), Federal police were deployed to NT Indigenous communities. The work of the Federal Police has been assisted by the Australian Crime Commission and additional NT Police in Indigenous communities. Considerable resources have been allocated to the task of extending the reach of mainstream forms of policing and governance. The mobilisation has been underpinned by an implicit assumption that law enforcement 'works' in regulating Indigenous affairs. The presumption that strong legislation, backed up by tough policing, is necessary when responding to perceived problems in Indigenous communities has a long history. However, successive inquiries since the landmark 1991 *Royal Commission into Aboriginal Deaths in Custody* have questioned the effectiveness of 'top down' models of policing when dealing with the realities of life in Indigenous communities.

While the public gaze has been focused on the issue of child abuse in remote communities, one of the escalating crime matters in the Northern Territory has been minor unlawful driving incidents. One of the key impacts of additional police in remote NT Indigenous communities is the increase in criminalisation of driving offenders. There has been a focus particularly on unlicensed, unregistered and uninsured vehicles. Of lesser significance is the criminalisation of alcohol-related driving offences, seatbelt offences and street sign offences. Driving offences have formed a bulk of officially recorded offending in Indigenous communities since mid-2006.

Methodology

Although this research was designed as a qualitative analysis of Indigenous perceptions of unlawful driving and agency responses, it has a quantitative component that provides an overview of the increase in driving offending and the high levels of Indigenous road fatalities and injuries. This quantitative aspect helps to underscore the impact that NT law enforcement in recent years is having on the criminalisation of unlawful driving, without commensurate decreases in Indigenous road crashes. The quantitative aspects of this study entail:

- (a) Analysis of NT Police data on rates of driving criminalisation in the NT, focusing especially on the minor offences of unlicensed, unregistered and uninsured, for the four years before and after 2006 when the Federal Government took greater a greater role in NT law enforcement
- (b) Analysis of court lists on the proportion of driving offences before local courts in prescribed communities over a random period
- (c) Analysis of court data from two communities (in Lajamanu and Yuendumu) on the aggregate number of driving offences in the four years before and after 2006
- (d) Analysis of NT Correctional Services data on imprisonment rates for driving offenders from 2006
- (e) Analysis of data from the Road Transport, Department of Justice and other sources on Indigenous road fatalities and injuries

In terms of the qualitative aspects of the study we gauged the perspectives on driving offending through interviews and focus groups with people living and working in Indigenous communities (including those who had committed driving offences), Aboriginal legal services' staff, police prosecutors, various magistrates, those responsible for driving regulation from a broad cross-section of departments in the NT Government, a wide-range of staff from NT Police and non-government organisations working in NT Indigenous communities. Our interviews were intended to ascertain the reasons for the increased criminalisation of driving offenders, causes of driving offending and ways to reduce driver offending.

Although our interviews (especially with non-Indigenous people and agencies) were concerned with Indigenous driving offending broadly within the NT, we also had a specific focus on the Warlpiri communities of Lajamanu and Yuendumu as case studies. This enabled a more in-depth understanding of the overall trends in driving offending. They were selected due to our observations in their local courts (formally referred to as 'courts of summary jurisdiction' and widely known as 'bush courts') of a steep increase in driving offending, and because we had relationships with Warlpiri and non-Warlpiri people in these communities. In Lajamanu and Yuendumu we not only

conducted interviews and focus groups with locals, but also observed the bush courts' sentencing of driving offenders.

We drew on published materials and reports that documented driving programs operating in the NT and elsewhere in Australia to compare their effectiveness in changing driving behaviours, improving road safety and reducing unlawful driving, while considering the need for community-based local strategies. We relied on other documents that recorded NT community views on driving and changes to driver criminality since the NT Intervention. Finally, we assessed the 2011 legislative changes towards diversion in the NT and how this may impact on driving offenders.

Throughout this report we use the term 'Indigenous' to refer to general issues, 'Aboriginal' to refer to Northern Territory Aboriginal people and 'Warlpiri' to refer to Aboriginal people living in Lajamanu and Yuendumu.

Quantitative findings

Between mid-2006, with the first deployment of Federal police to address the child sex crime 'emergency', and 2010, the rate of driving criminalisation increased by 250 per cent in the NT. The highest increases occurred in relation to driving unlicensed, uninsured and unregistered. An analysis of court lists in Indigenous prescribed communities revealed that almost half of all offending related to driving, with two-thirds of driving offending relating to licensing or registration. In our case study communities of Yuendumu and Lajamanu, driving offending increased by 50 per cent and 65 per cent respectively. The sharp increase in the criminalisation of drivers over that period was not matched with a reduction in recidivism, road fatalities or injuries.

Qualitative findings

There were a number of key reasons provided for driving offending in NT Indigenous communities:

- Insufficient services in communities to assist acquiring licences or registering vehicles
- A focus on law enforcement could overshadow police efforts to assist in becoming lawful drivers and divert drivers into learner driving schemes
- The fact that police officers provide licensing and registration services deters some Indigenous people from using these services
- A lack of awareness among offenders of the differences between driving offences, especially driving disqualified and driving unlicensed
- Inadequate financial means to purchase and maintain roadworthy cars that could be registered and insured

- Cars in Indigenous communities were especially prone to becoming unroadworthy, and unable to be registered, given the damage inflicted on cars by tracks, unsealed roads and poorly maintained bitumen roads in and around communities
- Non-payment of fines resulting in licence cancellation and then unlicensed driving offences, sometimes without the driver being aware that their licence was cancelled
- The requirement for identification in attaining a licence presents Indigenous people with particular challenges given the lack of birth certificates and uses of different names in various identification documents.

Interviewees primarily attributed the increase in driving offending to the increase in police in communities and tougher policing. They also pointed to the push by the NT and Federal Government governments to integrate Indigenous people in communities into the market economy. This meant that they often had to drive in communities or to workplaces outside of communities, such as cities and mines. This push was not matched by an increase in services to assist drivers to acquire licenses.

The policing approach to driver offending varied across communities. Some took a zero tolerance approach in relation to unlicensed and unregistered offences, whereas others cautioned drivers and assisted them with getting licenses and registering their vehicles. Some provided licensing and registration services throughout the week, whereas others provided them for only a few hours each week. Across the board, the police took a tough approach to alcohol-related driving offences. When a zero tolerance strategy was pursued, police tended to target more minor driving offenders to send a message.

The various government stakeholders and police recognised that regulation outside of law enforcement was necessary to reduce driver offending. However, no stakeholder was willing to take responsibility for providing services to assist with driver legality as part of their core business. They generally regarded changes to Indigenous behaviour as necessary without recognising the concomitant need for infrastructure investment, especially upgrading roads and covering unsealed roads. Overall, there was a lack of coordination in the provision of driver services to Indigenous communities and lack of resources for licensing and registration.

Key Recommendations

1. The investment in law enforcement for drivers should in part be redirected to an investment in road safety (especially improving roads in and around communities) and services for drivers and vehicles in Indigenous communities.

2. There needs to be a coordinated approach among government agencies regarding the service provision to and regulation of drivers and vehicles.
3. The provision of permanent Motor Vehicle Registry (hereafter 'MVR') offices in Indigenous communities classified as growth towns. This could provide a one-stop-shop for driving services and programs. In smaller communities, the services and programs may be provided through regular visits of MVR officers. For MVR services to meet local demand they would need to engage locals in their operations and strategies and employ local officers to undertake testing and other services.
4. An investment on upgrading roads on highways where most Indigenous road fatalities occur.
5. There should be a two-way approach to driver safety in which Indigenous communities commit to driver behavioural change where governments commit to road upgrades. The current approach is heavily slanted towards behavioural change and a more balanced approach is required.
6. There needs to be a greater level of communication between government, police and Aboriginal communities on driver related law and policy. Currently, there is little awareness in the communities as to why many new processes are necessary and the law remains unclear and confusing. It is essential to develop culturally appropriate materials and educational packages in relevant languages in partnership with community organisations.
7. Sentencing legislation and decisions need to prioritise diversion into driver training and licensing, drink driver education. Fines should be used as a last resort, especially given that non-payment results in the cancellation of a licence. Prison should not be a sentencing option for driving unlicensed, uninsured or unregistered because of its limited impact on recidivism.
8. There needs to be a greater role for community based and community owned justice mechanisms in providing diversionary options for those found guilty of driving related matters.
9. There is a need to create pre-court diversionary options as part of police cautioning systems, where offenders are diverted into community managed projects, as a way of reducing unnecessary contact with the criminal justice system.
10. Efforts should be made to disaggregate driving offences if the punishment is to be meaningful.
11. Where driving crimes are aggregated, sentencing should be concurrent and not cumulative.
12. Important initiatives that have had a demonstrated impact in terms of reducing levels of alcohol related driving, such as Night Patrols, need to be returned to full community

ownership and allowed to determine their own working practices without interference from centralised bureaucracy. They need to be adequately resourced.

13. Current criminalisation strategies are preventing young Aboriginal people from accessing the labour market. The recommendations of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2010) calling for special remote area drivers licenses should be carefully studied in the NT.
14. Reform the *Traffic Act* to provide exceptions for Indigenous driving on tracks on Aboriginal country analogous to exceptions for driving on cattle stations.
15. There needs to be more research into the increase policing of driving offences.

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RATIONALE AND AIMS OF STUDY

The criminalisation of driving matters in the NT increased dramatically when the Federal Government began the deployment of police to Indigenous communities in mid-2006. The driving offences that increased are primarily driving unlicensed, driving an uninsured vehicle and driving an unregistered vehicle. These three offences, often brought together against the one offender, are referred to collectively as the 'driving offence trifecta' (see Gosford 2008). These minor offences have consumed the resources of the criminal justice system, particularly the lower courts, without evidence of positive impacts on deterrence or driver safety.

At least as early as 1991 there were calls for minor driving matters to be dealt with through programs outside the criminal justice system and especially for diversion from prison as a sentencing option. The Royal Commission into Aboriginal Deaths in Custody (1991: Recommendation 95) recommended programs to reduce imprisonment for driving offences. However, there have been minimal attempts to implement this recommendation across Australia. Figures from 1993/94 revealed that 92.4 per cent (231/250) of persons imprisoned for driving offences were Aboriginal. By contrast only 45 per cent of people given Community Service Orders for driving offences were Aboriginal. Furthermore, while the ratio of Indigenous to non-Indigenous people being charged for serious driving offences is 1:1; the imprisonment rate is 9:1 (Human Rights and Equal Opportunities Commission 1996). In the NT, the increase in the number of Indigenous people imprisoned for driving offending demonstrates that this recommendation has not been effectively addressed (Northern Territory Department of Justice 2009, 2008, 2004).

A key policy imperative for law enforcement strategies against unlawful driving is to reduce road injuries and fatalities. This policy is based on two assumptions: 1) Behaviours relating to driving are responsible for road injuries (as opposed to infrastructure, facilities available for driver training, etc), and 2) Law enforcement is effective in altering Indigenous behaviour in relation to driving. Road safety is of vital importance for Indigenous people in the NT, as they are almost three times as likely to be killed on the road as non-Indigenous people (Clapham et al 2009: S19). This study assesses the validity of the assumption that law enforcement improves driver safety for Indigenous people from remote communities, particularly in comparison to other strategies for improving Indigenous driver safety.

More specifically, this study seeks to ascertain:

1. Why Indigenous people in remote communities drive
2. Why Indigenous driving offenders in the NT Indigenous communities are not complying with driver laws – especially why they are not obtaining licences, registration and insurance
3. Indigenous perceptions of driver legality and safety

4. Services available in communities to enable Indigenous people to attain the status of driver legality and whether they are appropriately adapted to the culture of Indigenous communities and Indigenous understandings of law, driving and health
5. Programs provided to promote Indigenous driver safety in the NT and the degree of awareness of these programs in Indigenous communities
6. Alternative avenues for regulating driver legality and preventing road injuries within and outside of the criminal justice system, which have proved successful in other Indigenous communities in Australia.

This information will be used to consider ways to improve Indigenous driver safety resources and their access to resources and services for becoming a lawful driver, including:

1. services for obtaining a licence, registering and maintaining roadworthy cars
2. driving programs that are based on cross-cultural understandings of health and safety
3. drink driver education
4. greater regulation of the sale of vehicles in communities to ensure roadworthy vehicles are purchased
5. more appropriate ways to police and sentence unlawful drivers, including diversionary programs
6. law reform to *Traffic Act* that to provide exceptions for Indigenous driving on tracks on Aboriginal country analogous to exceptions for driving on cattle stations

The broad objectives of this study are to contribute to policies aimed at:

1. increasing the number of licenced drivers and insured and registered vehicles in communities
2. reducing the number of Indigenous deaths and injuries on NT roads
3. lowering the number of Indigenous people in prisons and thereby decreasing the burden on prisons in detaining driving offenders
4. reducing the load on courts in processing driving offenders
5. break the criminal cycle that driving offending can create, especially for young offenders.

While the findings from this study are relevant directly to the NT, they will resonate with attempts to reduce Indigenous driver illegality in other Australian jurisdictions and are relevant to their strategies for improving Indigenous road safety. Many of the abovementioned objectives are relevant to government planning in Indigenous communities across Australia.

This report builds on the few major reports on Indigenous road safety that were produced before the NT Intervention (see Macaulay et al 2003; NT Road Safety Taskforce 2006). The

focus of our report is especially on the criminalisation of driving offenders and develops studies that point to the need for community-based diversionary programs (Macaulay et al 2003: 57; McCausland and Alison Vivian 2009: 26). Unlike much of the research on Indigenous driving across Australia, that is mostly empirical or steeped in policy analyses, this study relies on the perspectives of stakeholders, especially NT Indigenous people and Warlpiri people in particular, to reach conclusions about the most effective way for increasing Indigenous driver legality and safety and thus reduce criminality.

INTRODUCTION

Context of increased law enforcement in NT Indigenous communities since mid-2006

Although drivers have been on the receiving end of greater policing since 2006 (see below at pages 37-38), the impetus for more police in NT communities was reporting on sexual crimes. On May 15 2006, the ABC's flag ship current affairs program *Lateline* reported that child sexual abuse in Mtitjulu was occurring beyond the reach of the criminal law. Alice Springs Crown Prosecutor Nanette Rogers pointed to a number of child sexual assault cases and commented on the difficulties associated with prosecuting child sexual offenders in the NT (Jones 2006). The following night, the Minister for Indigenous Affairs, Mal Brough, repeated comments on *Lateline* by an anonymous youth worker (subsequently identified as a senior official in the Minister's department – see Graham 2008) that Indigenous males were operating 'paedophile rings' in Indigenous communities, which was later proven false (Graham 2008). Brough said that Indigenous offenders need to be 'dealt with, not by tribal law, but by the judicial system that operates throughout Australia' (Jones 2006a).

This report led to an initial mobilisation of Federal police to the NT in mid-2006 (discussed below). At the same time, the NT Government initiated an inquiry into how to tackle sexual abuse in NT Indigenous communities. A year later the *Little Children Are Sacred* Report (Wild and Anderson 2007) was released. Although it did not investigate the incidence of child abuse in Indigenous communities,¹ its recommendations to address child abuse (mainly through community-based mechanisms) were used to support the Federal Government's Intervention, on the basis that a crime epidemic in Indigenous communities had reached emergency levels. Prime Minister John Howard described the Indigenous victims as 'children living out a Hobbesian nightmare of violence, abuse and neglect' (Howard 2007: 1). The implication was that the situation required urgent and broad-sweeping legislative measures to address Indigenous dysfunction. Within two weeks of the release of the *Little Children Are Sacred* Report, the Federal Government announced that it would be taking control of 73 Indigenous communities in the NT.

The Federal Government introduced a number of legislative and non-legislative measures to increase law enforcement in Indigenous communities. The key legislative measure was the *Northern Territory National Emergency Response Act 2007* (Cth), which was directed at protecting Indigenous children from abuse (Brough 2007: 10). Minister Brough (2007: 10) stated that it was 'time to

¹ The report noted that the exact rate of child sexual abuse remained unclear because no detailed child maltreatment or abuse prevalence studies had been conducted (Wild and Anderson 2007: 235). The Report also acknowledged that there was 'nothing new or extraordinary about the allegation of sexual abuse of Aboriginal children of the Northern Territory' (Wild and Anderson 2007: 5).

intervene and declare an emergency situation' in relation to child sexual abuse in Indigenous communities (2007: 10). The Emergency legislation applied to Aboriginal land and prescribed Indigenous communities across the NT. The legislation criminalised the possession, transportation, sale and consumption of alcohol in prescribed areas (which involved extending pre-existing alcohol restrictions over Indigenous communities), and modified NT legislation relating to alcohol restrictions and police powers regarding the apprehension of intoxicated people.² It also provided bans on pornography, cultural and customary law considerations in bail and sentencing, five year leases over townships on land rights land, the abolition of the Community Development Employment Projects (hereafter 'CDEP') program, the appointment of Government business managers for Indigenous communities and quarantining at least 50 per cent of all Indigenous peoples' welfare income. These legislative measures required the suspension of the *Racial Discrimination Act* 1975 (Cth). The following section discusses the impact of the NT Intervention on policing in Indigenous communities.

Police roll out under the NT Intervention

The initial response to the report on Mtitjulu aired on *Lateline* was not a legislative one. Minister Brough pointed to the need for more policing. He identified that only eight of the 40 central Australian Indigenous communities had a police presence at the time (ABC 2006). Following the Lateline reports in mid-2006, and a year before the *Northern Territory National Emergency Response Act*, the Federal Government committed \$130 million towards law and order strategies in Indigenous communities, including \$40 million for police stations and police housing and \$15 million for Australian Federal intelligence gathering and Federal Police 'strike teams' (ABC 2006; Cripps 2007: 6).

When the Federal Government officially declared a *state of national emergency* in 2007, it mobilised the army to re-establish law and order in Indigenous communities. The immediate objective of the NT Intervention was 'to provide for more police and police stations, and to give police additional powers' (Select Committee 2009: 98). The NT Emergency Response (NTER) Taskforce was set up before the legislation to provide oversight for the measures (Brough 2007: 11). However, the army were also given a role, and Major-General Dave Chalmers was put in charge of the NTER operational command.

² Part 2 of the *Northern Territory National Emergency Responses Act 2007* (Cth) modified provisions of the *Liquor Act* (NT), *Liquor Regulations* (NT) and the *Police Administration Act* (NT) and imposed new requirements on the Northern Territory Licensing Commission. These offences overlapped with pre-existing legislation that restricted alcohol licensing and ongoing community initiatives such as dry areas and alcohol management plans (NTER Review 2008; Select Committee 2009).

Taskforce Themis constituted a major part of the policing strategy. It was set up in 2007 to lead the building of 18 new police stations in Indigenous communities.³ It sought to supplement the 39 police stations that previously covered NT communities (Allen Consulting 2010: v; NTER Review 2008: 36). From 2007, 45 Australian Federal Police and interstate police, and 18 NT police were deployed (Select Committee 2009: 98). There was also an expansion of NT night patrol services, and their control was controversially handed over from Indigenous people (especially women) to local shire councils (NTER Review 2008: 4.164). In introducing the NT Emergency Response Bill, Minister Brough (2007: 11) stated, 'We have begun to provide extra Federal Police to make communities safe. The states have committed to provide police and the Australian government has agreed to cover all their costs'.

Other investment in law and order under the NT Intervention was channelled to the Australian Crime Commission (hereafter 'ACC') – Australia's national criminal intelligence agency that deals with serious and organised crime – which received an additional \$5.5 million to investigate child sexual abuse, as well as violence, drug trafficking and alcohol-related crime in Indigenous communities (Australian Government 2009: 24). The powers of the ACC were broadened to oversee the National Indigenous Intelligence Taskforce (hereafter 'NIIT'). The NIIT was tasked with gathering evidence and sharing data with law enforcement agencies and government departments on violent crime, particularly family violence, in NT Indigenous communities (NTER Review 2008: 26-27).

Impact of Intervention on NT Incarceration rates

The impact of the Federal Government's 'law and order' strategy in the NT correlated with increased Indigenous incarceration rates. The NT prison rate increased faster than any other state or territory since the Intervention, with a 23 per cent increase between 2006-2009 (Australian Bureau of Statistics ('ABS') 2009: 33). This is 16 per cent above the increase in the average Australian imprisonment rate between 2006-2009. Figure 1 depicts the NT growth rate compared to the Australian growth rate. At 30 June 2009, the NT had the highest imprisonment rate in Australia at 658 prisoners per 100,000 adult population (ABS 2009: 33). This is four times the national rate of 171 per 100,000. For the year 2007-2008 NT prisons were operating at 103% capacity. The following year, 2008-2009, this had risen to 120 per cent capacity (Jackson and Hardy 2010: 1).

³ These communities were Mutitjulu, Imanpa, Santa Teresa, Haasts Bluff, Nyirripi, Arlparra (Utopia), Willowra, Galiwinku, Ramingining, Gapuwiyak, Yarralin, Peppimenarti, Minyerri, Bulman/Weemol, Minjilang, Waruwi, Numbulwar, Alpururulam.

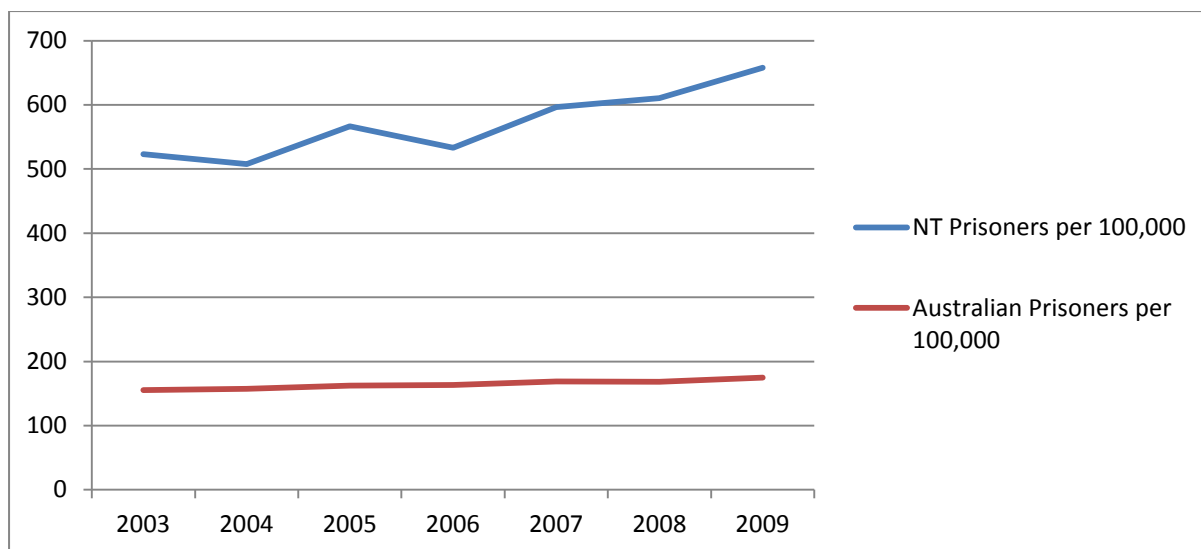


Figure 1: Comparison of Northern Territory rate of imprisonment with Australian average, 2003-2009.
Source: Australian Bureau of Statistics (2009).

The Indigenous population constituted 82 per cent of the total prison population. This was the highest Indigenous prison population of any Australian jurisdiction, and totalled 57 per cent above the Australian average (ABS 2009: 31). This has been identified by the Steering Committee for the Review of Government Services (2009a: 67) as a major problem confronting Indigenous communities in the NT. However, while incarceration rates have been high and increasing for Indigenous people in the NT, there has not been an increase in the proportion of Indigenous people being incarcerated. In fact between 2006 and 2009, there was a very slight decrease from 82.4 per cent to 81.8 per cent (ABS 2009: 35). This indicates that although the Intervention has increased imprisonment across the NT, it has affected Indigenous and non-Indigenous people equally. Therefore, despite special measures to increase policing in NT Indigenous communities, there was no evidence to show more Indigenous offending resulting in imprisonment compared to non-Indigenous offending resulting in imprisonment.

Driving offenders as proportion of prison population

Approximately twenty-five per cent of the prison population is 'made up of driving offenders' (McCarthy 2011). Ninety-seven per cent of these are Indigenous people (Collins and Barson 2011: 26). On any given day driving offenders amount to nine per cent of the prison population because driving offenders tend to be in prison for a short period, according to a contributor from Correctional Services to a focus group in July 2010. They serve an average of 75 days (McCarthy 2011).

Types of driving offending

For the purpose of this analysis, driving offences are categorised based on classifications of the Australian Bureau of Statistics (2008: Division 14). These categories are used in this report and conflate a number of offences recorded in the NT Police, Fire and Emergency Services (Annual Reports and used as part of the quantitative data analysis in this report. These categories are used in this report:

- **Driver Licence Offences:** pertaining to the ownership or use of a driver's licence and comprises driving while licence disqualified or suspended (including driving with an expired licence); *driving without a licence*; and 'driving offences, nec' (all other driving licence offences, such as driving contrary to the conditions of a licence enabling restricted driving, not displaying 'L' or 'P' plates - and failing to produce licence on demand).
- **Vehicle Registration and Roadworthiness Offences:** registration offences (driving an *unregistered vehicle*; driving an *uninsured vehicle*; number plates obscured / missing / not attached and failure to transfer vehicle ownership) and roadworthiness offences (faulty or no lights, defective vehicle, driving an unroadworthy vehicle and vehicle produces pollution, including excessive noise or smoke).
- **Regulatory Driving Offences:** driver exceeding the prescribed content of alcohol limit (excluding 'driving under the influence of alcohol or drugs and driving impaired and they do or potentially cause injury'); speeding; parking offences, and 'regulatory driving offences, nec' (including failure to wear seat belts, failure to give appropriate signal, failure to stop or render assistance after an accident, failure to keep left of double lines, disobey traffic control signal such as stopping or giving way, failure to stop motor vehicle on request, refusal of breath test, failure to secure a child in a vehicle and driving while using handheld phone) (excluding dangerous or negligent driving).

The final category – Regulatory Driving Offences – includes exceeding the speed limit, but speeding offences are excluded from our analysis because they are not normally heard by the court and often not processed through police officers. Furthermore, speed limits were only introduced on NT highways in 2006, therefore it is difficult to identify trends. Given that the numbers are so high, we are unable to identify the proportion of Indigenous people caught for speeding.

The offences in the above categories are mostly prescribed under the *Traffic Act* (NT) and less commonly under the *Motor Vehicle Act* (NT). The penalties are harsh. For example, driving while disqualified and driving unregistered attracts a penalty of 12 months imprisonment (*Traffic Act* ss31, 33). Courts routinely impose prison sentences for first driving while disqualified offences (*Henda v Cahill* [2009] NTSC 63: [8]). There are also offences under the *Motor Vehicle Act* (NT) s117A, which

attract up to six months imprisonment (s117), such as not bearing a registered number plate (ss111, 112), not producing a driver's licence upon request of an officer (s113) and driving a defective vehicle (s128A). Sentencing will be discussed below at page 60. The *Traffic Act* applies to driving on a public street or place (see for example *Traffic Act* (NT) ss32-37 on licence, registration and insurance requirements).

One of the issues raised in a report on policing in communities where Themis police stations were recently established (hereafter 'the Themis Report') is that there is a 'grey area surrounding whether all, some or no Aboriginal land is classed as public for the purposes of motor vehicle offences' (Pilkington 2009: 63). Nonetheless, the police and courts have assumed the *Traffic Act* and *Motor Vehicle Act* apply to Aboriginal land generally.

METHODOLOGY

Quantitative

This study draws on two primary sources recording the amount of driving offending in the NT. First, we use local court data provided by the NT Supreme Court for the four years before the increase in police and four years after 2006 when the Federal law enforcement interventions began. This data records offences heard in Yuendumu and Lajamanu local courts. The driving offences are then aggregated in the four years before and after 2006. In addition, we used daily local court lists obtained from the NT Department of Justice (2011) website to acquire a broader snapshot of the proportion of driving offences to overall offences in prescribed communities between March and June 2010.

There are a number of limitations with the methodology of observing offences in local courts to reach conclusions about the amount of driving offences in Indigenous communities, namely the data does *not*:

- Reveal whether the accused is Indigenous or non-Indigenous. Given the significant portion of the population in these communities are Indigenous and our court observations that the great majority of defendants before local community courts are Indigenous, we take these figures as roughly representative. However, our observations also reveal that non-Warlpiri people who came before the Yuendumu local court tended to be involved in more serious, non-driving offences. Therefore, the proportion of Indigenous driving offending is likely to be higher.
- Indicate where the offence occurred. Driving offences can occur on highways or in communities other than where the court sits. Our observations nonetheless show that the majority of driving offences heard in the local court occur in the local community. Similarly, it is not known whether all offences are by locals or outsiders who committed offences in the community.
- Provide information on community offenders who have their matters dealt with in courts in Katherine, Alice Springs or Darwin, often involving more serious offending. Indictable offences (such as unlawful homicide and sexual offences) are heard by the NT Supreme Court after a committal in a Court of Summary Jurisdiction (NT Department of Justice 2005). Nevertheless, 97 per cent of criminal charges are heard in the local courts for minor matters

(NT Department of Justice 2010: 88-89). This figure would be even greater if appeals to the higher courts were removed.

- Show the number of convictions, but merely the alleged offending. For driving offenders, our court observations showed that virtually all offenders who commit driving offences plead guilty and the court appearance is merely for the purposes of sentencing. Therefore, almost all of the recorded driving offences will result in a conviction. For non-driving offenders, trials were more likely, although most of these offenders also went straight to sentencing. Overall, driving offenders would be more likely than non-driving offenders to receive a conviction, although only very slightly.

The second primary source is the NT Police, Fire and Emergency Services (hereafter NTPFES) Annual Reports, which are analysed to discern the trend in offending between 2002 and 2010 (four years before and four years since Federal law and order interventions in 2006). The statistics in the NTPFES Annual Reports are based on the Police Realtime Online Management of Information Systems (PROMIS). PROMIS covers any incident that necessitates investigation, resource allocation or any form of action by the NTPFES. Based on this system, the NTPFES (2005: 143) notes the clearance rate for driving offences is 95 per cent.

This report quantifies the driving offences in the NTPFES Annual Reports based on the categories discussed on pages 18-19 above, including three licence offences, registration offences, roadworthiness offences, parking offences, and regulatory driving offences (such as not wearing a seatbelt). This study does not include the tens of thousands of speeding offences quantified in NTPFES Annual Reports, for reasons noted above at page 19

The NTPFES statistics on more serious driving offences of negligent or driving where harm is caused and dangerous driving that are otherwise provided in the annual reports are excluded from this study. These serious driving offences come under the *Criminal Code Act* (NT), such as section 174F that provides for the indictable offence of 'driving motor vehicle causing death or serious harm' (maximum 10 year imprisonment); s174FA that provides for 'hit and run' (maximum 10 year imprisonment), or s218 for unlawful use of vehicle causing serious harm (maximum seven years imprisonment). The study is concerned only with minor driving offences that are heard in the local courts and are victimless crimes. This also overcomes changes in reporting in the 2009-10 Annual Report, where crime data for the first time was provided in accordance with the National Crime Recording Standard (NTPFES 2010: 132). This means that crime recording is based on each criminal incident affecting the victim rather than each unique offence (eg assault and aggravated assault) (NTPFES 2008: 96).

This methodological component that draws on the NTFES annual reports provides an overall picture of driver offending since Federal law and order interventions in the NT since 2006. However, the limitation of this methodology is that it does not locate where the offences are occurring and whether they are committed by Indigenous or non-Indigenous people. Complemented with the community court data, certain inferences can be drawn about the contribution of Indigenous communities to the overall rates of driving offending in the NT. But a shortcoming of this inference is that not all driving offences require a court appearance. Therefore court lists are not a complete indication of the levels of driving charges in communities. They nonetheless cover a wide ambit and often include “ticketable” driving offences (such as driving without a seatbelt) that do not warrant a court appearance. This occurs because the police frequently bring *all* driving offences to court when the offender commits one offence that mandates a court appearance. The North Australian Aboriginal Justice Agency (hereafter ‘NAAJA’) also provided us with data that showed single ticketable driving offences brought to court that do not necessitate a court appearance.

Qualitative

The qualitative component of the study had two primary aspects:

- Interviews with Warlpiri people and non-Warlpiri service providers in the case study communities of Yuendumu and Lajamanu
- Interviews with NT government and non-government service providers and policy makers in relation to driving. These interviews took place in Darwin and Alice Springs.

For both groups we sought to identify problems, issues and strategies for reducing driver offending – especially drive unlicensed, unregistered and uninsured, but also more broadly such as driving disqualified and drink driving.

Case study communities: Lajamanu and Yuendumu

Two Warlpiri communities, Lajamanu and Yuendumu (each with a population of approximately 1000), constituted the case studies for this study. They are among the 20 ‘growth towns’ that the NT and Federal governments have identified as hubs for service centralisation that will enable them to integrate into the market economy (NT Government 2011). The governments regard driving as important to fulfilling this role of market integration in terms of providing a capacity to travel to employment and drive heavy vehicles as part of employment. The size and services available in these communities are well beyond many Indigenous communities across the Territory. Since

addressing driving offending is likely to require more services for drivers, these communities are well positioned for a consideration of the initial possibilities for expanding driver and vehicle services.

Given that the Yuendumu and Lajamanu communities continue to practice Warlpiri laws, this gives rise to questions about how driver education, services, regulation compliance and penalties may be adapted to cultural understandings of law and safety. We sought to examine not only the production of culturally appropriate educational resources and licensing systems, but also how Indigenous peoples themselves may be involved in the sentencing and justice directions in relation to Indigenous driving offenders.

While the case studies of Lajamanu and Yuendumu do not claim to represent the experience of Indigenous communities across the NT, with fewer drinking problems and lower violent offending than previously 'wet' communities, they nonetheless have comparable (albeit slightly higher) levels of driver offending as other prescribed Indigenous communities (see Table 3 below). Therefore, considerations in relation to Lajamanu and Yuendumu are likely to be relevant to other Indigenous communities in the NT, and perhaps more broadly across Australia.⁴ Indeed, lawyers from NAAJA said that driving matters are fairly similar 'from bush court to bush court'. This concurs with our observations of court lists from a range of communities. Moreover, by studying two communities in-depth we were able to identify differences in policing and driver licensing/registration facilities which indicates the relevance of local circumstances.

We visited Lajamanu twice and Yuendumu once in 2010 to conduct interviews with Warlpiri and non-Warlpiri people. The Warlpiri men and women who we interviewed included 16 in Lajamanu, comprising 7 respected Elders, 4 younger community members (between the ages of approximately 21 and 35) and 5 people who had committed a driving offence in the past year. They were asked about reasons for offending – i.e. driving without licence, registration or while intoxicated (either themselves or in the community) and how to assist licensing drivers, registration of vehicles and reduction of drink driving (see Appendices A-B on discussion points). We also interviewed local police, police prosecutors, shire managers, government staff, health clinic doctors, youth workers and lawyers from Aboriginal legal services in relation to the reasons for the high and increasing levels of unlawful drivers and their criminalisation, causes of driver offending and ways to reduce driver offending (see questions in Appendices C-F).

A further 23 defendants in Lajamanu local court were observed in sentencing for driving offences and 11 in Yuendumu local court, including one sentenced by the Yuendumu community court. In this study, our court observations over 2007 and 2008 in Lajamanu and Yuendumu are

⁴ In terms of driver injury, Indigenous communities across Australia are overrepresented (Henley and Harrison 2010: 2). Therefore, this study resonates with a national concern for Indigenous road safety.

raised briefly for the purposes of comparison. Magistrate Carey presided over both the 2008 and 2010 court sittings in Lajamanu. Magistrate Neill presided over the Yuendumu court sitting. Respected Indigenous Elders at Yuendumu were involved in the community court. Court observations sought to identify the reasons for offending and measures to overcome their offending behaviour. Such reasons are filtered through the representation provided by the defendants' advocates; the NAAJA in Lajamanu and the Central Australian Aboriginal Legal Aid Service (hereafter 'CAALAS') in Yuendumu.

Government agencies

To understand the policy framework for driving regulation and criminalisation, driver programs and related policy objectives (such as Indigenous employment) we had focus groups with staff from the following NT government departments and agencies: Lands and Planning (NT Transport Group, including the Motor Vehicle Registry in Darwin and Alice Springs), Justice (including Correctional Services), Department of Housing, Local Government and Regional Services (Indigenous Economic Development Unit). We also met with staff from Central Desert Shire, whose jurisdiction covers Lajamanu and Yuendumu. We interviewed local police, superintendents and police prosecutors to gain a sense of law enforcement procedures, police approaches to drivers and policy directives, and sentencing matters, as well as their education strategies (see Appendices C and E that contain an overview of the questions put to the interviewees and focus groups).

Non-government organisations and service providers

In order to gauge the community-run programs to improve road safety, increase licensing and driver awareness, we interviewed staff from Indigenous organisations and support services, including Mount Theo (which operates in Lajamanu and Yuendumu), Tangentyere Council (which operates in Yuendumu), the Central Australian Youth Link Up Service (which operates in Yuendumu) and NT Legal Aid (Outreach) (see discussion points in Appendix F). We also interviewed out-reach officers from NAAJA, CAALAS and the Northern Territory Legal Aid Commission (see questions in Appendix D).

Interview techniques

In conducting interviews, we adopted the methodology developed by the Centre for Accident Research and Road Safety, Queensland (Edmonston et al 2003: 5), which was based on 'problem identification' approach, including:

- (i) A focus group with five respected Indigenous Elders (who we had come to know from our earlier trips) to ascertain their perceptions on current licensing and registration arrangements, cultural issues on driving, law enforcement of driving and the impact of unlawful driving on the community. We sought to be 'non-intrusive' in our approach and promote 'a two-way exchange', rather than the traditional Western research practice of 'intensive direct questioning' (Edmonston et al 2003: 5). Therefore, although the discussion points in Appendix A operated as a framework we encouraged the Warlpiri Elders to direct the course of the discussion.
- (ii) Interviews with younger Indigenous people, including offenders (see Appendix B), on their perceptions of licensing and registration processes, reasons for driving unlawfully, feelings about the sentence they received for driving unlawfully and adequacy of driver training and drink driver education courses.
- (iii) Interviews with police officers in communities to examine factors contributing to higher criminalisation rates and how to overcome problems of unlawful driving (see Appendix C).
- (iv) Interviews with NAAJA and CAALAS lawyers representing driving offenders in Lajamanu and Yuendumu respectively about their clients' issues with acquiring a licence and registration/roadworthy vehicles, their views of the sentencing process and the reasons for reoffending (see Appendix D).
- (v) Discussions with magistrates presiding over bush courts in the case study communities to in relation to sentencing driving offenders and the role of community courts.
- (vi) Meet with providers of road safety services in Indigenous communities identify some of the shortcomings in the current preventative projects (Appendix E).
- (vii) Acquire government perspectives through interagency focus groups, including with Lands and Planning, NT Transport Group, Motor Vehicle Registry, Justice, Correctional Services and Indigenous Economic Development, to identify how to address Indigenous driver legality and safety (see Appendix E).

Meetings with governmental and non-governmental organisations operated through formal protocols based on discussion points about the causes, impacts, reforms and limitations of existing programs in relation to Indigenous driving offending. In our meetings there was also time set aside

for informal discussion and brainstorming about alternative regulatory systems in relation to driving legality and safety.

Secondary material: comparative data and independent studies

To enhance and contextualise findings in relation to this methodology we analysed a selective range of independent studies on Indigenous driving offending. We also looked at driver safety programs and initiatives in Indigenous communities elsewhere in Australia, many of which were showcased at the 2010 Indigenous Road Safety Forum. We sought to use this data to consider alternative options for reducing driving offending and increasing driver safety, while noting the need for localised strategies.

Ethics approval

This study was approved by the University of Technology Sydney Human Research Ethics Committee.

INCIDENCE OF DRIVING OFFENDING AND ROAD INJURIES

Driving offending rates

Northern Territory-wide

Northern Territory-wide there has been a spike in driving offences since mid-2006. This coincided with Federal initiatives to deploy additional police and police resources to Indigenous communities. This was consolidated in 2007 with the rollout of Taskforce Themis in Indigenous communities, see page 17 above. The NTPFES Annual Reports reveal that sexual offending as recorded on PROMIS has remained fairly steady in the three years before and since mid-2006 (see Table 2). By contrast, there has been a steady and significant increase in driving offending rates in the NT (see Table 1). The increase – based on an average of overall driving offending between mid-2002 to mid-2006 (n = 9320) and from mid-2006 to mid-2010 (n = 23456) – amounts to over 250 per cent. Figure 2 demonstrates the relative increase in overall driving offending as compared to overall sexual offending. It also shows the growth in the particular driving offending increases that this study is concerned with. All categories have substantially increased, with the greatest spike in regulatory driving offences in recent years.

	PRE-FEDERAL LAW ENFORCEMENT				POST-FEDERAL LAW ENFORCEMENT			
Offence	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Licence offences	1986	3049	2993	3074	3926	4589	5616	6312
Vehicle Registration and Roadworthiness Offences	2356	3000	2835	2888	5862	6282	6774	7121
Regulatory Driving Offences, nec (excl speeding)	2788	4169	3855	4287	9055	10227	12889	15171
TOTAL Driving offences	7130	10218	9683	10249	18843	21098	25279	28604

Table 1: Incidence of yearly driving offences across the Northern Territory 2003-2009.

Source: NTPFES Annual Reports 2003-20010.

	PRE-FEDERAL POLICING				POST- FEDERAL POLICING			
Offence	2002/03 ⁵	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Aggravated Sexual Assault	134	304	246	253	277	326	298	281
Non-aggravated sexual assault	66	99	85	75	98	64	77	72
Non-assaultive sexual offences against a child	5	15	11	16	9	12	2	2
Non-assaultive sexual offences, nec	n/a	0	6	2	1	2	4	0
TOTAL Sexual offences	205	418	348	346	385	404	381	355

Table 2: Incidence of sexual offences investigated in the Northern Territory 2003-20010.

Source: NTPFES Annual Reports 2004-2009.

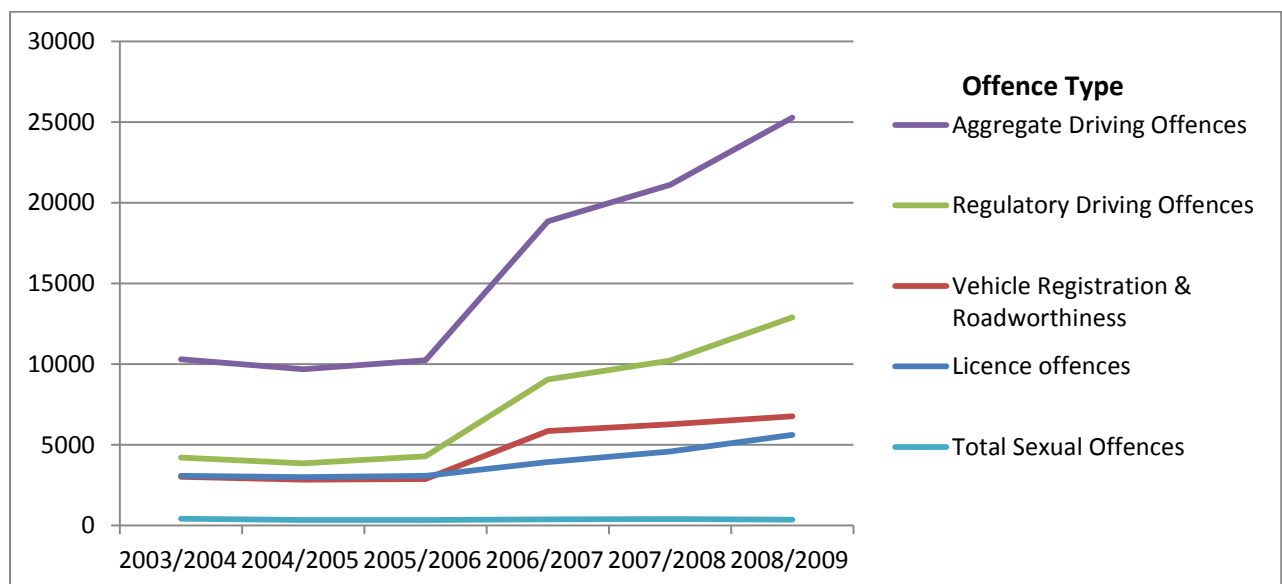


Figure 2: Rate of driving and sexual offences in the Northern Territory 2003-2009.

Source: NTPFES Annual Reports 2003-20010.

⁵ Note methodological differentials may not make the statistics for this year an accurate point of comparison.

Indigenous communities

Given that the NTPFES Annual Reports do not indicate the extent to which policing of offences is occurring in prescribed communities or by Indigenous people, local courts lists provide some insights into the extent to which prescribed communities are harbouring the burden of greater processing of driving offending. There are two sets of data. The first is a vertical comparison of driving offending over time. It relies on court lists between 2002-2010 to assess whether there has been a growth in driving offending in the communities of Lajamanu and Yuendumu.

The second data set is lateral. It comprises a snap shot of all offences listed in local courts in prescribed communities between 23 March and 1 June 2010 (a randomly selected period), in order to indicate whether the level of offending is comparable among Indigenous communities and especially in relation to the case study communities. It was beyond the scope of this study to assess the driving offending of all communities, so this data is invariably limited.

(a) Growth in recorded driving offending: Lajamanu and Yuendumu

An examination of court lists between 2002 and 2010 show that in Yuendumu there was a 50 per cent increase from 2002-2006 (n = 658) to 2006-2010 (n = 987) in driving offending. In Lajamanu there was a 65 per cent increase from 2002-2006 (n = 631) to 2006-2010 (n = 1042) in driving offending. This data excludes any duplicate case numbers in the lists.

(b) Proportion of driving offences to overall offences in prescribed communities in set period

Local court lists in prescribed communities over a random three-month period reveals that there are similarly high portions of driving offences vis-à-vis other offences in prescribed communities. Table 3 provides a breakdown of adult driving offences heard in courts in prescribed Indigenous communities and an aggregation of non-driving offences. Driving offences are distributed fairly evenly between licence, registration/roadworthy and regulatory offences. It could be inferred from the figures in Table 3 that the increased policing in prescribed communities contributed to the overall increase in prosecuting driving offences in the NT. However, some communities have higher levels of driving offending than others, which this study does not endeavour to explain.

Court lists reveal that across prescribed communities the largest single offence category is in relation to driving. Of these, driving unlicensed, unregistered and uninsured are the most common, as well as the more serious offence of driving whilst disqualified. The statistics in Table 3 demonstrate that approximately two-thirds of prosecutions for unlawful driving in Indigenous communities relate to licence and registration offences. These three offences are commonly charged together for the one offender as discerned from court lists. Less significant offences relate to drink

driving, which constitute seven per cent of crimes mentioned in community courts. Statistically, almost half of all offences were driving offences. Over half of offences were driving related in our case study community of Yuendumu. If Maningrida (which takes up a high proportion of all offences) was removed, the figure would be above 50 per cent. It should be noted that Maningrida represents an outlier from the other statistics, receiving a very high proportion of all matters.

Community	Licence Offence	Registration Offence (eg car unregistered, uninsured, unroadworthy)	Regulatory Driving Offence (eg fail to wear seat belt /stop, LRA, MRA)	Dangerous driving offences	Other offences	Total offences	Percentage of driving offences
Ali Curung	11	14	8	0	17	50	66%
Alayangula (Groote Eylandt)	25	35	17	1	84	162	48%
Hermannsburg	16	15	11	4	16	62	74%
Kalkaringi (Dagaragu)	38	38	37	2	70	185	62%
Kintore	5	3	9	1	33	51	35%
Maningrida	19	10	34	9	204	276	26%
Mutitjulu	19	25	19	1	51	115	56%
Nguiu	1	2	3	0	37	43	14%
Ngukurr	16	7	14	0	44	80	46%
Papunya	10	9	10	1	34	64	47%
Wadeye	11	20	15	3	93	142	35%
Yuendumu	28	16	15	1	43	103	58%
TOTAL	199	194	192	23	726	1333	46%

Table 3: Proportion of driving offences in Northern Territory prescribed communities, 23 March – 1 June 2010. Source: Daily Local Court Lists, NT Justice Department.

Table 4 demonstrates the ratio between the number of people appearing before each court for driving offences against those appearing for other offences. It indicates how the police lay multiple prosecutions in the one criminal ‘transaction’. The multiple charges mean that the penalties will be significant. It emphasises the high proportion of driving offending among court appearances.

Table 4 indicates a similarly high ratio of driving offenders to non-driving offenders among prescribed communities, including Yuendumu. It shows that although the distribution between driving and non-driving offending is roughly the same as in Table 3, defendants typically have a string of driving charges in one court appearance. Bob Gosford (2008) observed at Yuendumu court that

‘charging-up’ (where multiple charges are laid against the one offender for the one criminal act) is used in relation to driving offenders:

A trifecta of “drive unlicensed”, “drive unregistered” and “drive uninsured” are commonly listed against a defendant, with two of the three being withdrawn on entry of a guilty plea. The other biggie out here is “drive disqualified”, and at this sitting 25 people are charged with this offence. All of them are likely to add to the gross over-representation of Aboriginal people in the NT prison population — where the 30% of the general population that is Aboriginal accounts for over 80% of the prison population.

Court	Appearance for other offence	Appearance for driving offence
Ali Curung	8	11 (58%)
Alayangula	38	26 (41%)
Hermannsburg	5	17 (77%)
Kalkaringi	42	45 (52%)
Kintore	17	5 (23%)
Maningrida	115	25 (18%)
Mutitjulu	28	22 (44%)
Nguiu	24	3 (11%)
Ngukurr	22	16 (42%)
Papunya	18	13 (42%)
Wadeye	56	16 (22%)
Yuendumu	31	27 (47%)

Table 4: Ratio of driving offenders to non-driving offenders in Northern Territory prescribed communities, 23 March – 1 June 2010. Source: Daily Local Court Lists, NT Justice Department.

(c) Perceived increase in Indigenous driving criminalisation

Interviewees in prescribed communities observed that there has been an increase in the prosecution of driving offenders. This increase has paralleled the increase in NT Intervention police. Interviewees pointed out that the police have actively sought out unlawful drivers since 2006. Visits to Yuendumu court by Harry Blagg between 2007 and 2008 found a fourfold increase in the court lists – the overwhelming majority of cases involved minor driving offences.

Incidence of prison rates and sentences

Based on the NT Correctional Services Annual Statistics between 2006 and 2009, the following trends emerged:

2006/2007

- 2006/2007 Annual Report records that on 30 June 2007 there were 78% more prisoners (n = 41) serving sentences for driving disqualified than on the same day the previous year (n = 23) (Northern Territory Department of Justice 2007: 15). This represents 5 per cent of total prisoners. Prisoners who had driving as their primary form of offending constituted 10% of prisoners in the NT (2007: 15).

2007/2008

- There was an overall increase in the number of sentence commencements for 'Traffic and motor vehicle offences', such that there were 17% more (n = 62) commencements for these offences in 2007-08 compared with the previous year (Northern Territory Department of Justice 2008: 25). However, the number over the entire year is 24 per cent given that prison terms are only for a matter of months (for example, an average 78 days driving without a licence and 105 days driving above the prescribed alcohol limit) (2008: 24). This is an increase from 20 per cent in the previous year (Northern Territory Department of Justice 2007: 22). For Indigenous offenders, it is 26 per cent of all prisoners in 2007-2008 and 24 per cent the year before. Of those sentenced to prison for driving licence offences, 99 per cent are Indigenous; and for those sentenced for exceeding the alcohol limit, 98 per cent are Indigenous (Northern Territory Department of Justice 2008: 24).
- In addition, an unpublished background paper prepared by the Department of Housing, Local Government and Community Services on Aboriginal driving, given to us in a focus group, notes that during 2007-2008, of the 1639 prisoners, 13.4% (n = 219) were imprisoned for drink driving related matters.

2008/2009

- 2008/2009 Annual Report records that on 30 June 2009 there were 11% more prisoners (n = 50) serving sentences for the category 'driving licence offences' than on the same day the previous year (n = 42) (Northern Territory Department of Justice 2009: 17). There was a slight increase in prisoners serving sentences for 'exceeding the prescribed alcohol limit' in 2009 (n = 57) compared with 2008 (n = 54) (2009: 17).
- In terms of adult sentenced episode commencements, in the period 2008/2009 there were 13 Indigenous persons serving sentence in this period for 'driving under the influence'. This represents a slight increase (n = 10) from the period 2007/2008 (2009: 24). There were 14

Indigenous persons serving sentence in this period for 'dangerous driving', compared with 5 for the period 2007/2008 (2009: 24).

- In terms of adult sentenced episode commencements, in the period 2008/2009 there were 237 (n = 237, 13%) Indigenous persons serving sentence in this period for 'driving licences offences'. This represents a slight increase (n = 197, 12%) from the period 2007/2008 (2009: 24).
- In terms of adult sentenced episode commencements, in the period 2008/2009 there were 239 (n = 239, 13%) Indigenous persons serving sentence in this period for 'exceeding alcohol limit'. This represents a relatively stable trend (n = 209, 13%) compared with the period 2007/2008 (2009: 24).

A background paper prepared by the Department of Housing, Local Government and Community Services on Aboriginal driving (provided to us in an interview) notes that between 2003-2008 a person convicted of driving under the influence of alcohol in the NT:

is more likely to be jailed than in the rest of Australia. An Indigenous offender was, to a large degree, much more likely to be jailed than a non-Indigenous offender in the NT. The figures were, respectively, 23.9% and 1.8%. This was very much the case at all blood alcohol concentration levels (citing a Department of Justice report, 'An Analysis of Driving Under the Influence of Alcohol in the NT 2003-2008').

Incidence of road fatalities and injuries

The safety concerns relating to minor driving offences arise from the high incidence of road fatalities where the Indigenous driver did not have a licence or was not driving a roadworthy vehicle. Overall, the NT has the highest level of land transport hospitalisations per 100,000 registered vehicles (Steering Committee for the Review of Government Service Provision 2011: 6.58-6.59). In relation to Indigenous people, they have higher levels of road fatalities than non-Indigenous people (NT Road Safety Taskforce 2006: 2). Whilst Indigenous people constitute 30 per cent of the NT population, they make up over 50 per cent of the total road toll and are three times more likely to be involved in a serious or fatal road crash than non-Indigenous people (Somssich 2009: 32).

The fatality rate is particularly concerning given that non-Indigenous in the NT have a fatality rate that is twice that of any other Australian jurisdiction (NT Road Safety Taskforce 2006: 2). But at the same time, this figure is part of a broader picture. While the rate of Indigenous driving fatalities is the highest in the country, Indigenous people are *not* more overrepresented when compared with other jurisdictions (2006: 37). In fact, the overrepresentation is significantly higher in Western Australia and South Australia (2006: 37). Therefore the high rate of fatalities in the NT is an overall

problem for both Indigenous and non-Indigenous people and not simply one of Indigenous behaviours.

Seventy per cent of NT Indigenous vehicle occupants or motor cyclists killed between 1996 and 1999 were either unlicensed or in a vehicle driven by an unlicensed person (Letch and Jennie Carroll 2008: 290). Helps et al (2008: 4) found that a large portion of motor vehicle fatalities in the NT was for Indigenous people not wearing seatbelts and alcohol was a much higher factor for Indigenous than non-Indigenous people. Between 1997 and 2000 the Australian road fatality rate for Indigenous people was estimated to be about three times that of non-Indigenous people (Letch and Jennie Carroll 2008: 290). A health study published in 2008 found that Indigenous Australians are two to three times more likely to have a transport-related fatal injury than non-Indigenous Australians and Indigenous road fatalities account for 25 per cent of all Indigenous injury deaths (Clapham et al 2008: S19).

Since 2007, NT road fatalities have not shown any significant downward trend – 44 in 2006; 57 in 2007 and 75 in 2008; 31 in 2009; 50 in 2010 (NT Road Transport Group 2011; ABS 2011). However, the latest ‘road crash’ data shows an increase in the levels of serious injuries: 511 in 2006 (NT Department of Planning and Infrastructure 2006: 2); 529 in 2007 (NT Department of Planning and Infrastructure 2007: 3) and 648 in 2008 (NT Department of Planning and Infrastructure 2008: 3). Interestingly, in 2006, the NT Road Safety Taskforce (2006: 9) noted that Indigenous people are under-represented in serious road injuries (24%; Indigenous people represent 30% of the NT population – although Indigenous people probably represent much less than that of the driving population). The NT Transport Group (2011a) asserts that the ‘high representation of Indigenous people in road crashes is inextricably linked to geographical, cultural, social, educational and economic issues’.

Rates of recidivism

Recidivism for driving offences has historically been very high. Overall, prisoners who served a sentence for assault had the highest rate of return at 51%, followed by drink driving (44%), break and enter (42%) and driving offences (41%) (NT Office of Crime Prevention 2005: 6). Prisoners who served a sentence for assault had the highest rate of return for the same offence at 31%. Driving offences had the second highest rate of return to the same offence at 17%, followed by Break and Enter (15%) and Drink Driving (13%) (2005: 7).

The unpublished background paper prepared by the NT Department of Housing, Local Government and Community Services on Aboriginal driving, and given to us in a focus group, refers to the trend for repeat convictions for driving under the influence of alcohol between 2003-2008:

Indigenous people were hugely over-represented [compared to non-Indigenous people] amongst those who were on conviction numbers 2, 3, 4, 5, 6 or 7+. The chance of being imprisoned for a repeat offence climbs steadily as the conviction number increases. To a large degree, repeat Indigenous offenders are much more likely to be imprisoned than non-Indigenous repeat offenders. For example, of those caught in the 0.08 – 0.15 [blood alcohol] category, for a 3rd conviction 49% of Indigenous people were jailed versus 12% for non-Indigenous (citing a Department of Justice report, 'An Analysis of Driving Under the Influence of Alcohol in the NT 2003-2008').

REASONS FOR INCREASE IN DRIVING OFFENDING

Law Enforcement and normalisation

Interviewees across all groups were unequivocal that the main reasons for the increase in driving criminalisation were:

- an increase in police presence since the NT Intervention; some sources described this as a 'policing blitz', especially by the new Federal police, and
- a change in policing styles away from the use of discretion not to prosecute for low level offending in remote communities and towards more robust 'zero tolerance' style of policing which treats remote communities the same as mainstream towns, with little allowance made for the prevailing social conditions and the extreme absence of mainstream infrastructure and resources.

Magistrate Birch, who presides over a number of local courts in prescribed communities, observed that there has been a growth in unlawful driving prosecutions since more police have been placed in Indigenous communities in mid-2006:

I think the number of people being charged with a variety of offences has increased because now there are more police officers as a result of the Intervention and a broad section of communities that didn't have police before, and hence, people who might have been driving unlicensed or driving disqualified wouldn't have been detected in the past and they are being now (Gosford 2008).

Interviewees from government departments spoke of the need to 'normalise' Indigenous communities, especially growth towns, through enforcing traffic laws in communities. The idea was that Indigenous people in remote growth towns would be treated the same as residents in large towns and cities, and this would come with greater service delivery, buildings, facilities, infrastructure 'like any other country town in Australia' (NT Government 2011).

However, we found scant evidence that the greater emphasis on 'normalisation', law enforcement and criminalisation was being matched by any new educational or administrative initiatives designed to assist Indigenous people in communities understand and negotiate the labyrinth of newly enforced laws of the criminal justice system. There were no new services akin to those provided by the Motor Vehicle Registry (hereafter 'MVR') in large towns and cities. This implies that driving in communities while unlicensed, unregistered and uninsured has been a

consistent practice in remote communities, and all that has changed is the increased policing of these offences.

The Northern Territory Intervention

An observation emerged in interviews that not only had the Intervention put more police on the ground – both NT and Federal Police – which allowed for the detection of driving offences, but it also placed pressure on police to increase their prosecutions. According to one lawyer interviewed, there was pressure on police to meet targets in relation to driving offending to demonstrate they were taking such offending more seriously by laying charges. This conforms with the historical view that by picking up street crimes, including driving offences, police convey the image they are ‘doing something’ to justify their presence (Blagg and Wilkie 1997). It was noted in the Themis Report that ‘many respondents mentioned how police would drive around as their main activity, booking people for unregistered cars and issuing fines’ (Pilkington 2009: 81).

Driving crimes require minimal investigation and reliance on witnesses compared to other crimes and have a high clearance rate (see p22 above). Certainly they are less complex and problematic to prosecute than child abuse and family violence – the type of offending that motivated the NT Intervention. Local people in communities where stations were established under Taskforce Themis said that the new police liked to drive around to be seen (Pilkington 2009: 80-81). This is unlike the private nature of pursuing crimes in the domestic sphere. Furthermore, policing driving offences captures a number of crimes in the one act, particularly driving unlicensed, uninsured and unregistered. It usually leads to convictions as driving offences are mostly dealt with by way of a plea and rarely contested in court, as observed in the courts within the case study communities. There is a strong case for arguing that the police are collecting the “low hanging fruit” in preference to developing long terms strategies for dealing with family violence.

Change in police practice

Common practice before the NT Intervention was for police to turn a blind eye to drivers in communities, especially on tracks or unsealed roads (which predominate in Indigenous communities), or proceed by way of caution. Locally negotiated compromise had ensured that main roads were policed according to the mainstream law while Aboriginal people were permitted a degree of latitude when driving off ‘the beaten track’, as it were. The Themis Report found that prior to the establishment of Themis police stations, drivers were not criminalised to such a significant

extent because police used their discretion not to prosecute driving on Aboriginal land (Pilkington 2009: 62).

In recent years there has been a more indiscriminate approach to charging driving offenders in communities. The head of Taskforce Themis made his zero tolerance approach clear in relation to road safety: 'Now, what I'm saying to you is that if you're caught driving an unregistered, uninsured motor vehicle. The police officer must stop you driving an unregistered, uninsured motor vehicle. He doesn't have any choice about that' (cited in Pilkington 2009: 63). A police officer in one of the case study communities described the new approach as 'zero tolerance policing'. The view was put that if a soft approach was taken on driving offending then Indigenous people would not learn important lessons and this would flow onto other areas of criminal activity. This reflects evidence we found of institutional racism, which perpetuated the view that Indigenous people wilfully and flagrantly disobeyed the law and could change their behaviour if they so choose.

This approach reflects evidence we found in our discussions with police and other agencies of institutional racism, which was perpetuated by the view that Indigenous people wilfully and flagrantly disobeyed the law and could change their behaviour if they so choose.

Road safety strategies

Road safety has increasingly become a key part of the business plans of police. Police interviewed spoke of the greater policy pressure to vigorously enforce driving laws in response to road injuries and fatalities. The NT Road Safety Taskforce Report 2006 – *SAFER ROAD USE: A Territory Imperative* – made a range of recommendations that were adopted by the NT Government in 2006/2007 (see NT Government 2011a). Most relevant to policing include:

- i. Increase penalties for alcohol-related offences, speeding and not wearing seatbelts
- ii. Immediate suspension of driver licences for repeat drink driving offenders
- iii. Highway Patrol and Remote Area Traffic Patrol units to operate out of Katherine and Alice Springs
- iv. A dedicated NT Police traffic branch known as the Northern Traffic Operations.

Change in Indigenous community circumstances

Boundary changes: from dry to prescribed areas

Service providers in the case study communities pointed out that since the NT Intervention more Indigenous people are travelling by car to access alcohol in towns. Given that there are no longer

'dry communities', but rather much larger prescribed areas where alcohol is prohibited, Indigenous people do not have relatively nearby drinking places (such as at the border of communities) to sober up before driving. They therefore, travel to towns (such as Katherine or Alice Springs) to consume alcohol and take long drives back, often covering hundreds of kilometres.

We were told by NT government service providers who had worked in several Indigenous communities that changes to the boundaries of communities were having an impact on the prosecution of cases by the police across the Central Desert. One example that was described by an interviewee as a case in point was the Tanami Desert community of Yulumu. There drink driving had increased due to widened boundaries with no defined entry points capable of being policed by the community night patrol. Previously there was a ten-mile boundary at the edge of the community; the night patrol would police the entry point and stop people from driving (through persuading them to sleep it off or driving them back home). Now there are no clear entry points because all of Aboriginal land is a restricted area. This in turn weakened the ability of the night patrol to prevent drink driving.

Narrowing scope of night patrols

Changes in the administration of night patrols in the wake of the NT Intervention were having a negative impact on the capacity of communities to intervene in relation to alcohol and driving. The Federal Government has increased investment in patrols as a means of increasing the quantum of law and order in communities. They remain amongst the most effective mechanisms for dealing with anti-social behaviour on remote communities (Walker and Forrester 2002: 2-3; Blagg and Valuri 2003: 15-23, 77-78; Blagg 2008: 107-109). However, they are now prevented by funding bodies from operating off community, which means they have fewer options in terms of picking up Indigenous people who may be drinking off the community boundary.

The decline in the broader functions of night patrols (which included taking groups to sporting events on other communities or Alice Springs and supervising their behaviour) form part of a cluster of pressures leading to Aboriginal people driving on highways more frequently, as patrols often ferried people to court, the clinic, the hospital, sporting events, funerals and cultural business. Indigenous peoples are driving more and this in turn increases their likelihood of being caught. Often drink driving would be one of the charges laid for people returning from towns after drinking, but in the same process, police would also lay charges relating to unlicensed drivers, unregistered cars and other driving offences.

Change in road status

In order to more clearly enforce the law, roads in Indigenous communities will soon be gazetted. This reflects a trend in recent years of authorities bringing Aboriginal 'spaces' within the framework of the general law (Blagg 2005). For many Warlpiri people this has broader significance; it symbolises the relentless encroachment of the non-Aboriginal world. Over the life of the study we found an increasingly vocalised sense of injustice and dismay amongst community members regarding what they saw as an unwarranted extension of 'white-fella' rules into the Indigenous domain, beyond that required to resolve problem such as child abuse. This was expressed in relation to matters such as the increasing tendency by new police officers to extend the application of road related legislation to cover areas such as traditional lands, un-gazetted tracks and back-roads which, hitherto, has been considered to lie outside the scope of the legal system and tacitly acknowledged the extent to which Aboriginal people in remote locations had little option but to drive at certain times.

At Yuendumu there was a degree of consternation when a brand new STOP sign was placed at the main 'junction' between roads at the centre of the community and the police began charging people who failed to stop. There had been no negotiation or discussion with the community on the issue. A group of Warlpiri people expressed concern that this was just another layer of rules that would make Yuendumu like a 'white-fella' town, with no place for *Yapa* (Warlpiri people). One old lady concurred, saying, 'Yes, and next they'll come and shoot all us black-fellas.'

Against this new regulatory framework, local community people had not experienced significant improvements to roads. A submission by the Central Australian Aboriginal Legal Aid Service ('CAALAS') and the North Australian Aboriginal Justice Agency ('NAAJA') to a Senate Committee rehearses the common realities of community life: the roads are terrible, rutted, destructive of vehicles and dangerous. Cars bought at high cost from unscrupulous dealers in Alice Springs breakdown, they join the graveyard of scrapped cars in the community. Getting registered is a mammoth task, police on the community often don't do it, it requires a costly journey to another community some distance away. At the same time community people pay a \$600 registration fee to contribute to road maintenance! (CAALAS and NAAJA 2008: 9-10). We unearthed similar stories on our journey through the Tanami Desert.

High police turnover frails trust and respect for "whitefella law"

The influx of new officers, who were often rotated through communities every few months, meant that relationships and understandings had to be constantly re-built and re-negotiated. This situation had been exacerbated since the NT Intervention and has made it difficult for locals to trust the tactics of the police. The police, it was said by a number of sources – including police themselves –

were in danger of losing important cultural knowledge of communities and there were decreasing levels of mutual respect. On one case study community there were cases of inexperienced officers breaking cultural taboos regarding entry onto Warlpiri law grounds. In other instances there have been reports of police over-reacting to trivial incidents and creating resentment in remote communities. The CAALAS and NAAJA (2008: 4) submission to a Senate Committee reported negative comments from some communities that, “white cops are going over board” and are treating the community members as though “we’re criminals”. The community members stated the problem was with the new recruits, rather than with the older police’. Another source cited in the same submission discussed the community of Utopia following the arrival of new police officers:

The police have been focusing on road rules. They have a speed camera and have been fining people who are travelling too fast. They have been booking people driving unregistered vehicles, and they have been prosecuting drivers who have too many people in the car. People are getting fines which they don't understand and can't pay. The court list has been growing since the police arrived, mainly for non-payment of fines. Immediately the police have arrived, the number of people on the wrong side of the law has grown. It's as if all of a sudden the people of Utopia have become more criminal than they were (quoted in CAALAS and NAAJA (2008: 4)).

DRIVING GOVERNANCE

The network of governing agencies in relation to driving and road safety is broad, far reaching and comprises diverse institutions. Letch and Carroll (2008) point out the multiplicity of agencies involved in driving regulation and road safety in Australia, often with minimal cooperation or coordination. In remote NT, driving governance is even more layered due to the multiple layers of governance within Indigenous communities. These include:

- **NT Department of Lands and Planning** – responsibilities include Aboriginal road safety campaigns and community outreach. The programs comprise *Kick a Goal for Road Safety* (promoting road safety messages to schools and clinics and involving Aboriginal Community Police Officers), *Muttacar Sorry Business Tour* (Indigenous community performers present workshops that highlight issues of alcohol, risk taking behaviours, not wearing seatbelts and overcrowding) (NT Government 2011b), ‘in-language’ talking posters on road safety involving 52 remote communities (which sought to overcome English language barriers for Indigenous people living in the remote NT) and the Barunga Road Safety Song Competition.
- **Motor Vehicle Registry** (within Department of Lands and Planning) – responsibilities include licensing, registration, etc.
- **Indigenous Economic Development Unit, NT Department of Housing, Local Government and Regional Services** – responsibilities include promoting licensing for employment purposes.
- **Shires** (Local government areas) – responsible for service provision at large across Aboriginal communities.
- **NT Department of Justice** (including Correctional Services) – responsibilities include enforcing penalties of driving offenders and promoting diversion. It has also provided licensing programs in prisons.
- **Police** (Federal and NT) – responsibilities include policing, warning, cautioning and charging driving offenders as well as providing licensing and registration services (performing licence tests, issuing and updating licences and registering vehicles). We were told that the Federal Police may not have the requisite Motor Vehicle Registry training to provide licensing and registration services.
- **Prosecutors** - prosecute driving offenders and are involved at trial and sentencing stages.
- **Courts of summary jurisdiction** – responsible for trying and sentencing Aboriginal driving offenders.

- **Indigenous community courts** (occasionally presides bush courts) – these provide community input into sentencing decisions and community Elders have the opportunity to verbally discipline the offender by explaining the wrong of their offence and its implications for the community. This is communicated in Warlpiri language.
- **Indigenous community organisations** – involved in assisting with licensing and registration. For example Mt Theo at Yuendumu provides help with obtaining identification and other administrative requirements for licensing as well as servicing vehicles to make them roadworthy and capable of being registered, and Tangentyere Council provides Aboriginal people with ID cards that assist reach the requisite points of identification required for a driver's licence.
- **Community Elders and respected people** – involved in encouraging driver safety and legality as part of their overall role in maintaining the cohesion of communities and ensuring the lawfulness of citizens – whether that be according to *Yapa* (Warlpiri) law or *Kardiya* (whitefella) law.
- **CAALAS** – provides material on road safety and licensing (including TV ads on driving disqualified), pre-release drink driver education and assistance with licensing for Aboriginal prisoners and cards and fact sheets on driving (note that CAALAS only covers the southern region of the NT).
- **NT Department of Education, Employment and Training** – responsibility for driver training in Aboriginal communities.
- **Charles Darwin University** – involved in driver training in communities and prisons.

This broad network lends itself to dynamic and multi-skilled responses to driver safety. The network engages centralised policy-based knowledge and centrifugal local knowledge. However, the network, as Letch and Carroll (2008) assert, is not always coordinated and rarely cohesive. Road safety programs, according to the NT Road Safety Taskforce (2006: 39), were 'not well-integrated' and were 'restricted by availability of resources' and their sporadic operation. Funding for road safety in the NT is 'well below that in other jurisdictions' and does not allow for 'multi-faceted education campaigns' which are needed to accommodate 'Aboriginal people in remote communities for whom English is not a first language and who face very different circumstances' (2006: 64).

The uncoordinated nature of road safety governance lends itself to mixed objectives and priorities. For example, staff from the Indigenous Economic Development Unit of the NT Department of Housing, Local Government and Regional Services regard it as a priority to get Aboriginal people licensed so they can travel to and perform work, whereas the courts and justice agencies are in the practice of removing licenses for the purpose of punishment (including as a penalty for non-driving related matters such as non-payment of fines). The diverse network also results in agents

disavowing responsibility and shifting blame. For instance, most of the bodies identified the need for licensing services in communities but none of them regarded it as their core business.

Competition between agencies and between government agencies and community based organisations over scarce resources, appeared to grow over the lifetime of the study, as each tried to gain leverage by claiming to have the authority and/or expertise to deal with a particular problem. Within Indigenous Affairs in the NT this is sometimes referred to as ‘discourse capture’ (when some group claims master status as the main, or sole, authority on an issue) which can lead to ‘resource capture’ (when the group takes possession of the matrix of institutional, governmental and financial resources). Invariably, government agencies will be better placed in terms of resources and social capital to implement their strategies. But even within government, there is not necessarily a cohesive message, and some agencies (especially those related to law enforcement) will have a greater day-to-day role in driver legality, even if many other government agencies are concerned with training, education and systems based on incentives.

Diverse approaches to driver regulation emerged within the network of agencies servicing communities, government and non-government. Very broadly, the approaches can be categorised as *behavioural* (improving driver attitudes to safe and legal driving) and *structural* (improving facilities that enable driver legality and safety). Aboriginal people living in Yuendumu, Lajamanu and other remote communities, as well as community organisations, voiced concerns about behavioural issues (such as aversion of young people to obtaining licences) and structural impediments (such as the expense of safe vehicles, the poor quality of roads and the inaccessibility of licensing and registration services, especially in remote communities and for those living in poverty).

The government agencies were, instead, overwhelmingly preoccupied with the behavioural aspects of driving. Their strategies aimed at changing attitudes about driver safety, such as in relation to drink driving, overcrowding, restraints and speeding. This fed into the adoption of educational campaigns and punishment systems as the primary mechanisms for addressing road safety. The pervasiveness of Government in resourcing driver and road safety issues, and the dominance of the police and justice agencies in establishing the parameters of debate about driving issues, meant that the emphasis on behavioural change prevailed over support for structural changes, of a kind supported by community based agencies.

The NT Road Safety Taskforce (2006: 12) advocated ‘a comprehensive approach’ to driving safety given many ‘remote and sparsely populated’ communities in the NT. In its report, it called for a ‘whole-of-Government approach, and to ensure continued community engagement’ (2006: 71). Its proposed model saw a Road Safety Co-ordination Group consisting of senior personnel from Department of Planning and Infrastructure (now Lands and Planning, and Construction and

Infrastructure), NT Police, Territory Insurance Office and Department of Health, Local Government Association of the NT as well as local representatives from municipal councils (prior to Shires), the Automobile Association of the NT (AANT) and a road safety expert (2006: 71). Following this recommendation, the NT Government established this group and also included in its membership the Department of Justice, Education and Training, and Business and Employment (Road Coordination Group 2009).

However, the government did *not* adopt the aspect of the Taskforce's proposed coordination group that involves local representation. The NT Road Safety Taskforce (2006: 73) articulated that local representation will enhance 'Aboriginal input' in 'road safety and the community-based road safety program'. Therefore, this centralised Road Safety Group only provides one side of the coin. The NT Road Safety Taskforce (2006: 39) noted that 'many of the mass communication tools used to raise road safety awareness in the wider community are not as effective in remote Aboriginal communities'. The involvement of government and industry stakeholders needs to be matched with local representation if it is to be responsive to Aboriginal community needs and local initiatives.

Just as critical to effective driving governance is local community support by government. In particular, the provision of MVRs in communities to provide *coordinated driving services and resources*. This should include community-based road safety officers that work closely with locals to progress NT road safety campaigns in the community, assist with community-based road safety awareness, to oversee learner driver training and courses to ensure they are adapted locally and involve locals in their running and to provide licence testing (NT Road Safety Taskforce 2006: 39). Resourcing needs to be responsive to local driver safety initiatives to make it a workable model for Aboriginal communities. The NT Road Safety Taskforce (2006: 39) pointed out that road safety programs need to be 'conducted in their own communities and implemented in a way to ensure local ownership'. We observed that some of the most effective road safety strategies, such as Mt Theo's mechanic workshop, engaged communities and had clear flow-on effects in terms of roadworthy vehicles.

WARLPIRI PERSPECTIVES ON OFFENDING AND REGULATION

'Why do we drive without a licence? We love driving, we love cars' (anonymous Warlpiri participant, September 2010)

Our interviews with Warlpiri participants highlighted that the connection between the offences of driving unlicensed, unregistered and uninsured and its associated health risks are not communicated effectively in communities. Punitive responses fail to address the cultural disengagement with driving regulations and broader structural issues that Warlpiri people have identified. They also fail to take into account the very real pressures placed on Warlpiri people in remote locations to drive, under conditions where cultural obligations and the immediate exigencies of life inevitably take precedence.

Furthermore, we found that criminalisation does not engage with the 'expressive' dimensions of driving in the bush, as articulated in the quote above on loving cars and driving. Driving is exciting. Warlpiri people, particularly young people, love cars. Driving allows a degree of freedom. It is risky and 'edgy', an escape from the drabness and monotony of much community life. Warlpiri youth have few avenues for creative, hedonistic activities where they can safely express a 'radical difference' or masculinity: football offers one of the few officially sanctioned, creative outlets within remote communities, and there is a dearth of structured youth leisure activities. Colin Tatz captures some of the attraction for sport on remote Indigenous communities:

Much is unchanged: short lifespan, gross ill-health, lack of housing and sanitation, massive unemployment, less than adequate education, social breakdown in many communities and a devastating youth suicide rate so indicative of people feeling purposelessness about life. Yet sport is not a luxury or a leisure activity at the end of an arduous week. In many communities, it provides a sense of belonging and a feeling of coherence. It gives youth a sense of belonging, something to stand for. It provides meaning and purpose, without which life is not worth living (Tatz 2009).

The sanctions and penalties of the white justice system have been notoriously ineffective in shifting attitudes and behaviours within Indigenous communities. Organisations such as the Central Australian Youth Link-Up Service (CAYLUS, Tangentyere Council) and Mt Theo prefer to see strategies based upon partnerships between communities and agencies, and a holistic, rather than piecemeal approach to service delivery, to offer meaningful and safe programs for youths on communities in Central Australia. This is an approach endorsed by more recent government

announcements post-NT Intervention (see Steering Committee for the Review of Government Service Provision 2009: 5.76).

Nonetheless, there was also a clear belief among Warlpiri people that they should obey the law and drive safely. They had little tolerance for anti-social driving behaviours. We observed most people in the case study communities drive at approximately 20km/hr. 'Hoon driving' was frowned upon and we observed that on community roads drivers behaved impeccably. Some Warlpiri people said, with a note of irony, that the better the driving, the worse the driver's criminal record – they did not want to be stopped by the police.

Attitudes to licensing

Based on our interviews in Lajamanu and Yuendumu, there was limited appreciation as to why a licence is required beyond the fact that it is the law. On the basis that it is the law, Warlpiri people with whom we spoke universally recognised that there is a legal obligation to get a licence. However, there is not a deeper recognition of the safety implications of learning to drive and road rules; in other words, how road rules impact on other drivers and pedestrians on the road. Given that there are virtually no road injuries in communities, according to the local health clinic staff, there is no inherent understanding of the need to abide by road rules whilst in communities or learn the requisite rules for a licence. The road rules, signs and street configurations that are examined in obtaining a licence do not exist in communities – or are only slowly and unevenly emerging. Therefore, a driver's licence is regarded as a legal necessity rather than a reflection of possessing relevant skill to be used in communities.

Moreover, Warlpiri people willing to get licences identified a number of barriers: a lack of interpreters for driving tests, difficulty in understanding driving tests, marked reluctance to go to police station to get licences, lack of income to afford a licence, inability to source documentation for ID points required for a licence, and inability to keep licence if they do not pay a fine.

Warlpiri people, particularly those with cultural authority, acknowledged that there were instances where Warlpiri would be placed under extreme pressure – by relatives in particular – to drive while unlicensed. Younger people who had driven unlawfully spoke of pressure from Elders to be driven to the health clinic, shops and cultural and family occasions and events (including funerals). While the Elders were critical of the failure of young people to obtain licences, they nonetheless relied on them for transportation. For young people, driving to meet cultural obligations, or where there was a special relationship with the passenger, were non-negotiable, with or without a licence.

Attitudes to registration – insurance – roadworthy vehicles

The main barrier for having a registered car, as identified by Warlpiri interviewees, was the cost of maintaining a roadworthy vehicle and the cost of insurance. We were told that cars sold to Warlpiri 'are shiny on the outside but bad on the inside'. They are 'dangerous and too expensive and you can't drive them'. They felt ripped off by unscrupulous car dealers and could not afford to maintain their cars and consequently the police would not register their vehicles. Some also expressed dismay at the high compulsory third party insurance costs that were approximately \$800.

Old methods for fixing cars, popularised by the Yuendumu based 'Bush Mechanics', were no longer feasible – it is impossible to cannibalize a motor vehicle these days because of computer driven electronics. Warlpiri expressed frustration that they didn't know what to do when a car was refused registration 'so just keep driving car'. At the same time, registration was recognised as a legal requirement. Both Elders and young people recognised the need to attain registration, but felt incapable of meeting the requisite vehicle standard for registration.

Drink driving

Drink driving, by far, attracted the most direct response in relation to its dangerousness. It was deeply forbidden by community members who understood its link to injuries and death. Punishment – by both laws – was regarded as an appropriate response to drink drivers, particularly where this resulted in injury or death.

Drive disqualified

Some drivers who had been disqualified understood that driving whilst disqualified was wrong. However, they went on to do so because they thought they had not driven for a sufficiently long period (such as a number of years) for it to represent the period of their punishment. Therefore, the main concern with drive disqualified was the prohibitively long period (for example, five years) that the punishment represented. In general, interviewees did not understand why drive disqualified was such a grievous offence and attracted such a long sentence. They did not comprehend how it was an offence against the administration of justice.

General issues about law enforcement, obtaining legality and road safety

Police and law enforcement

There were different attitudes towards police and law enforcement in communities. This generally reflected the level of service the police provided. In one community, the attitude towards police was highly favourable. Community members said that the police provided licensing services all the time and rather than charge unlicensed offenders, the police assisted them in obtaining their licence. Interviewees in this community said that when people were charged for illegal driving that it was fair and they should be taught to follow the rules. In another community, Warlpiri people spoke of the police's hard approach to charging people driving unregistered, uninsured, unlicensed, disobeying traffic rules and driving unroadworthy vehicles. They perceived that white people were not policed the same, including white people who had been drinking alcohol. In one community there was a petition circulating against police practices in relation to picking up Warlpiri drivers alone.

Some Warlpiri people spoke of the efforts that many drivers made to avoid drink driving, only to be picked up during a random breath test for being unlicensed or having an unregistered vehicle. They felt that they were in a hopeless situation and their efforts were not being rewarded.

The Themis Report noted that Indigenous people have observed the discriminatory over-policing of Indigenous people for driving over the blood alcohol range compared to non-Indigenous people who were generally not breath tested for alcohol (Pilkington 2009: 65). In one community with a new Themis station, the police spent 'a lot of time on the main road checking cars as they come back from the nearest pub' and were reported to take the keys of a car and abandoned them hundreds of kilometres from his community (2009: 101). This combination of police practices and Indigenous perceptions are more likely to result in Indigenous community members resisting, rather than promoting, compliance with traffic laws.

No obedience to Yapa (Warlpiri) law, no obedience to Kardiya (white) law

Following on from the Warlpiri view that lawful driving is necessary, Warlpiri felt that offenders in the community did not follow the 'white' driving laws because they had lost respect for all law, both *Yapa* and *Kardiya*. Elders were convinced that the best way to ensure that young people respected white law was through greater respect for *Yapa* law. They believed that building mutual respect for both laws would ensure that young people would become better behaved, and said that attempts to dismantle Warlpiri authority did not ensure that that Warlpiri people began to follow white law, rather it lead to a kind of anomie, or lawlessness.

Licensing provided by police

Some Warlpiri expressed a reluctance to go to the 'cop shop' to get a licence. They didn't want to expose themselves to the police as not having a licence as they believed this would make them a target. They also were reluctant to approach the police station to obtain a licence if they had other outstanding charges.

Pressure to drive and over-crowding

We have alluded to the pressures placed on Warlpiri people to drive above at page 48. This is not a simple matter to resolve, suffice to say that the mainstream law has little deterrent effect given the pressures exerted.

Behavioural changes to driving legality requiring engagement of Elders

Elders maintain that the dismantling of community authority and structures meant that they were unable to exert influence, they said that magistrates and police should involve Elders more in court decision making and helping to change attitudes in the community. The present structure of bush courts does not currently achieve this as magistrates ignore Elders in the courts. Over the four days we observed bush court in the case study communities, the community court sat once to sentence a defendant. This was out of a total of approximately 90 defendants who were sentenced, primarily for driving offences.

Different perception of community roads

There is a tradition in remote 'outback' communities of viewing driving on dirt 'back' roads as less rigorously governed by formal law – sometimes with the tacit approval of authorities. In recent years there has been an increased tendency for authorities to bring such 'liminal' spaces within the framework of the general law and criminalise the behaviour (Blagg 2005; Blagg 2008). A number of Warlpiri interviewees spoke out against policing vehicles on bush tracks because it was not a road but a space for cultural business.

More broadly, the Themis Report found that Aboriginal people have taken issue with the 'crackdown' of driving unlicensed/unregistered/uninsured in communities since the NT Intervention (Pilkington 2009: 80). It noted that many Aboriginal people believed they should be able to drive unregistered or unlicensed in two places: within communities and on bush tracks on Aboriginal land

(Pilkington 2009: 41). Interviewees felt that laws and policing of driving unregistered vehicles should apply to Aboriginal land in the same way it is applied to cattle stations for non-Indigenous people (ie with exemption from the law) (2009: 62).⁶

⁶ The NT *Traffic Act* gives special dispensation to pastoralists, whose vehicles do not have to be inspected to obtain registration (under section 137B of the *Motor Vehicles Act*), and also gives special dispensation to the motor sports community (Pilkington 2009: 656).

REGULATION ISSUES AND THE NEED FOR REFORM

This section addresses the issues of service provision, education, criminal sanctions and diversion, especially in relation to licensing, registration and roadworthy vehicles.

Service provision

Licensing and registration services

Criminalisation does not provide an effective means of deterrence when the issue is a lack of affordable licencing and registration services. Magistrate Birch maintains that ‘there just aren’t the facilities for people to undertake driving programs, to do the drink-driving course, to even have the wherewithal to apply for a driver’s license’ (Gosford 2008). At the same time, a license for Indigenous people is plastic social capital. As Kickbusch (2008: 51) explains, a licence provides autonomy, identity, family, access to sport, recreation, employment, health services, shopping, social networks and education. It is much more than road safety that regulators may equate it with. But it is ‘not a straightforward process’, given low levels of literacy and lack of access to vehicles and instruction and identification documents (2008: 51).

An important aspect of Indigenous people having the wherewithal to apply for a driver’s licence is through establishing MVR offices in communities. For smaller communities with fewer than 100 residents, the MVR may provide roaming offices on regular occasions.⁷ Police stations are not suitable places for licensing processes. One interviewee referred to a program in Maningrida where 300 people successfully did a course to become eligible for a licence. The course was regarded as a success because of the involvement of women and the community in training and the use of local knowledges. But six months later, only five went to police station to get licence (by paying \$25). The interviewee speculated that locals ‘didn’t want to confront coppers’ especially if they had a record. However, it is critical that MVR offices are ‘Indigenous friendly’. According to an unpublished background paper prepared by the Department of Housing, Local Government and Community Services, Indigenous people ‘felt uncomfortable at MVR outlets’.

The MVR would need to adapt their services to Indigenous communities in the following ways:

- **Identification:** A core aspect of licensing services for Indigenous people is the facilitation of identification searches. 100 points is required to obtain a licence and this invariably requires a birth certificate – which many Aboriginal people either do not have or have under another

⁷ In the NT there are approximately 77 recognised major Aboriginal communities and 800 other locations with populations of between five and 100 people (NT Road Safety Taskforce 2006: 38).

name. Mt Theo regarded this as a primary obstacle for licensing. While they were involved in assisting Warlpiri people acquire birth certificates, it was a time-consuming, bureaucratic process for which they were not adequately resourced to properly undertake.⁸

- **Driver Training and driver mentors/supervisors:** According to the Department of Education, Employment and Training, there is a substantial need in communities for driver training. Learner drivers are required to complete a minimum hours of drivers with a licensed driver and record this in a log-book. However, remote communities often lack qualified driver mentors with roadworthy and registered cars. There needs to be programs to support Aboriginal driving mentors in communities. This requires licensed drivers with registered cars. Staff from the NT Department of Housing, Local Government and Regional Services said that driver training would be most effective where it was taught by Aboriginal people, including the testing component. Gerry McCue produced an information paper, entitled 'To become a driver trainer in a remote community', on the steps for becoming a driver trainer in a remote community. They entail the Registered Training Organisation (RTO) training community people; once completed, they would work for an RTO who is contracted to deliver driver training in their region, and negotiate with the RTO to get to the level needed to test people to get a driver's licence. The paper states,

Three important parts of getting the driver training qualification are being able to drive well, being able to demonstrate that you are good at teaching people to drive and having a registered vehicle.

The paper nonetheless recognises that there are no driver trainer courses done routinely outside of Darwin or Alice Springs. Moreover, for Aboriginal people seeking a licence, the number of hours required to obtain a licence should take into consideration the limited roads in remote communities. In the case study communities, it would take less than half an hour to travel down every road and these are large communities. Some communities have merely one road going through them.

- **Instruction for theory tests** – given low levels of Indigenous literacy and numeracy in remote NT communities,⁹ learning road rules from the NT Road Users' Handbook (NT Government 2009) is

⁸ Acquiring a birth certificate may require a deed poll to change the applicant's name (where the name is different to what is noted on the certificate) or an application to the Supreme Court to create a new identity where the applicant does not have a birth certificate. These can be expensive processes.

⁹ Literacy levels for Indigenous people decrease as remoteness increases. The percentage of Year 9 Indigenous students in very remote locations who have not achieved the national minimum reading standard is 88.3 per cent in the Northern Territory (Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011: [121]).

problematic. These books should be provided in Indigenous languages without jargon to make them accessible to Indigenous people. The Standing Committee's (Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011: [144], Recommendation 21) inquiry into Indigenous Youth in the Criminal Justice recommends that governments develop learner driver resources in 'multiple media forms with due consideration to the literacy needs of Indigenous communities'. In South Australia, individuals can download the Driver's Handbook in a LexiFlow format, increasing access to people with literacy support needs. However, access is limited by computer and internet use (2011: [124]).

- There are some resources available to assist with road rules and learning for tests. In Tennant Creek, Alice Springs and Katherine there is a bilingual interactive computer game (Driving Our Future 2011) that is customised for these places, including footage of local roads. Ideally this type of program would be widely adapted to remote communities and available in language.
- For both driver training and theory instruction, it would be opportune for this to be incorporated into school curriculum, where local Aboriginal instructors (RTOs) were employed to provide this service. Otherwise, Aboriginal MVR officers should be involved in the instruction.
- **Modified theory testing** – theory tests should be given tests orally in language (by an Aboriginal officer) or with the use of an interpreter. We were told of such a service offered in Alice Springs but not in communities. Currently testing is only offered in English. One driving trainer in a case study community pointed out that the language in the theory tests was highly convoluted (such as 'junction' or 'manoeuvre'). One outreach lawyer said that 'telling an Aboriginal person to get a licence can be like telling a whitefella to get a PhD'. In one case study community the police provided oral tests, but that was regarded as the exception. The other case study community required a written test, which was the norm in communities. With either oral or written tests, an interpreter should be provided if required by the applicant. In Western Australia, the Department of Transport, licensing division engages with community groups, Aboriginal corporations and government agencies to enable them to deliver theory testing. The Department also has a theory testing project, which has revised the learners theory test to cater for lower literacy levels and where English is not the first language spoken. It aims to remove any ambiguities in the questions. Currently the test is only available in a paper or oral based format however, a CD version (with visual aids) is in the process of being developed.

Expansion and broadening of prison-based driver and drink driver education

In the past there was an arrangement supported by the MVR, NT Correctional Services, and Charles Darwin University where driver training and licensing was provided to eligible adult prisoners at both

Darwin and Alice Springs Correctional Centre (NT Office for Crime Prevention 2005: 9). They provided instruction in the theory and practice that is necessary to obtain a Learner's Permit and a full Driver's Licence (2005: 9).¹⁰ This did not extend to those who are convicted but not imprisoned, or those not in the criminal justice system but without a licence. The program has since been cut due to resourcing, but should be reconsidered. By engaging the MVR in license testing and providing licences in prison would help cut the vicious circle for these prisoners.

In NT communities, Charles Darwin University runs the Remote Areas Driver Training program to facilitate driver training in rural and remote communities. Aboriginal Community Police Offices are informed of courses being run in their area and are invited to participate or give presentations to the classes.¹¹

Drink driver education is available in prisons. CAALAS is now involved in Drink Driver Education and assisting with the acquisition of licences for prisoners. NAAJA does not undertake such programs in prisons in Darwin or Katherine. A young Warlpiri person who was imprisoned for five months for driving disqualified expressed his gratefulness for having the opportunity to do the three day intensive drink driver education course in Berrima prison. He said he did it because it was free, whereas he could not afford to do it on the outside where you have to pay upfront (\$350 for 1 unit and \$500 for the 2 unit course¹²). The utility of these courses in prisons indicate the need to extend them in prisons and provide them free in communities. Correctional Services also pointed out that mechanics courses in prisons were successful but there funding has been cut.

Provision of public transport

There is a desperate need for government funded and Aboriginal-run affordable transport in and around Indigenous communities. Public transport is non-existent in Indigenous communities and there are limited bus services within or between communities and towns/cities or among communities. Flights to towns and cities from remote communities such as Lajamanu can cost in excess of \$1000 each way because it requires chartering a light aircraft. Therefore, private or community motor vehicles are the principal 'means of transport for most Aboriginal people living in rural and remote areas', especially in Central Australia, the Barkly and Katherine Regions (NT Road Taskforce 2006: 38). Cars are also preferred because they carry many passengers and are used to provide favours. This communal way of travelling is the norm in Aboriginal communities. We were

¹⁰ See: Charles Darwin University (2010).

¹¹ See: Charles Darwin University (2010).

¹² Provided by Amity (2011).

told by government staff that there are fewer community vehicles because community councils lost their assets with the formation of shires in 2007.

The Themis Report found that enforcing lawful driving in Indigenous communities is quite 'sticky' because law enforcement does not overcome significant socio-economic, geographic and cultural factors that preclude the use of alternative transport (Pilkington 2009: 36). Nonetheless, transport is necessary for cultural activities, participating in ceremonies, attending funerals, looking after country, hunting, collecting bush tucker, finding bush medicine, going to school, accessing medical centres and attending court (2009: 13, 41, 80). Chris Cunneen (2001: 44), in his seminal work on policing Indigenous people, noted that unlawful driving reflects a complex social reality in Indigenous communities:

Aboriginal people often live in rural and remote areas poorly serviced by public transport and are therefore dependent on a motor vehicle in a way that the 'average' non-Aboriginal person is not. Unemployment and low income affect the ability to pay for registration and to own vehicles more likely to be classified roadworthy, and negatively impact on the ability to pay for any traffic fines. Failure to pay traffic fines results in licence cancellation. Discriminatory police practices may increase the likelihood of detection of unlicensed drivers through selective procedures of stopping Aboriginal drivers (2001: 44-45).

Seatbelts and baby capsules

Police and Aboriginal legal services spoke of new laws relating to baby capsules and seats and the increasing enforcement of seatbelt wearing (NT Transport Group 2010). These two factors do not prevent crashes but reducing the 'severity of injury and risk of death' (NT Road Taskforce 2006: 9). Aboriginal people comprised 55% and 51% respectively of driver and passenger fatalities and serious injuries where seatbelts were fitted but not worn between 2005 and 2006 (2006: 86, Table 12). Of the fatalities, 87.5% occurred on rural roads (NT Road Taskforce 2006: 9).

A significant barrier to wearing seatbelts and fitting capsules is overcrowding of vehicles. Aboriginal people spoke of loving to drive in a car full of people. This was part of the driving experience for Aboriginal people, underpinned by a shortage of cars in communities. A Shire Services Manager spoke of overcrowding resulting in not enough seatbelts to go round with people 'hanging out of windows'.

Baby capsules, which according to lawyers and police have not yet been phased into communities, were likely to be met with resistance due to the issue of overcrowding, the cost of buying or hiring them and their limited availability in communities. Interviewees from the NT

Transport Group referred to one community where \$25,000 was spent on child restraints but there was no one to install the capsules. Indeed authorised inspectors who can assist with the installation of child restraints are scarce and tend to be in larger towns (NT Transport Group 2011b).

Abandonment of relationship between non-payment of fines and suspension of licences

Aboriginal people with unpaid fines cannot acquire a driver's licence or, if they have a licence, have it suspended. The Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011: 126) described the 'vicious circle' of young people being fined for not having a licence and then not being able to acquire a licence because of a financial inability to pay the fine. Warlpiri people in the case study communities spoke of not being aware of this suspension until they were charged. This was confirmed by Centrelink staff. The staff referred to the fact that the fine-repayment process had been transferred from Centrelink to the Fines Recovery Unit (FRU). This had resulted in more suspensions of licences because the FRU takes two weeks before the conviction is on the system and the repayment scheme can be set up.

Roadworthy vehicles

Vehicle purchasing: Regulation of the car market in Aboriginal communities and towns

In the case study communities the police spoke of the reduction of the practice of used car dealers entering communities to sell over-priced and unroadworthy cars. Tangentyere Council staff estimated that the lifespan of a car in an Indigenous community is three months. A Warlpiri interviewee who was a former police officer said that shonky car dealers were selling cars in the community with petrol leaks and other problems that led to them being banned. However, this practice of disreputable dealers coming into communities continued in other communities, whereby car trailers driven by car dealers come into communities at royalty time. The former police officer told us that in towns Warlpiri were sold cars with a limited life span and a risk to road users, including in major centres such as Katherine. These cars were sold with no or only a few months registration. He said that consumer affairs people need to investigate this problem. Shire services managers spoke of local dealers who would sell unroadworthy vehicles for a few thousand dollars and deduct payments for these vehicles from their BasicsCard. They said there is no real place for Aboriginal people in communities to seek advice about purchasing cars, consequently 'Indigenous are open slather in the car market'. By contrast, white fellas can get their car inspected by the Automobile Association of the NT in Darwin (see AANT 2011).

There needs to be regulation of the motor vehicle market to restrict illegitimate car dealers who sell cars that are not roadworthy. This involves providing authorised inspectors who can check cars for faults and defects. A superintendent in an interview suggested that the most efficient means of ensuring roadworthiness would be to put the onus on the seller, rather than the purchaser, to receive a certificate of roadworthiness from the an inspector and have the car registered. The Warlpiri former police officer said that cars should be sold with three years registration and insurance.¹³ The superintendent said this will take the 'garbage' off the streets and increased registered and insured cars and wipe out the majority of carpet baggers in the car market.

Vehicle servicing: Training of community-based mechanics

In Lajamanu the mechanic we interviewed had never serviced a Warlpiri person's car. His only customers were white people and government staff. He surmised that Warlpiri could not afford to have their cars maintained. In Yuendumu this situation prompted Mt Theo to set up a mechanic's workshop. This provides resources for the training of Warlpiri in mechanic skills. There are high levels of demand for this program and insufficient funding. Support for community organisations to run such workshops would both increase the number of registered and roadworthy vehicles and provide local people with skills. The establishment of local MVR offices in communities could support such community initiatives.

Road expenditure

There is a sharp disjuncture between the expectation for Aboriginal people to comply with road rules enforced in towns and the provision of roads comparable to that in towns and cities. Roads in and surrounding Aboriginal communities are overwhelmingly unsealed, unguttered and have an uneven surface. This is damaging to vehicles and hastens their lifespan as roadworthy vehicles. In addition, roads lack divided carriageways, road shoulders, controlled access points and adequate width, making them 'not safe for high speed travel' (NT Road Safety Taskforce 2006: 2). We were told by people living in a case study community that the poor road conditions 'make cars junk, if they aren't junk already'.

¹³ Police in the case study communities also said the problem of stamp duty having to be paid (which cost 3% of cost of vehicle and is often around \$300) to register car would be overcome if it was included at the point of sale.

The NT Road Safety Taskforce (2006: 38) pointed to the great distance Aboriginal people travel with 75 per cent living outside regional centres in the NT. This exposes Aboriginal to road crash risk factors including 'increased exposure through greater distances travelled; more travel on roads with higher speed limits; roads of poorer quality (often unsealed)' (2006: 38).

The message being sent to Aboriginal people is that "we expect you to follow whitefellas road rules but don't expect to receive whitefellas' roads". This makes it problematic for building Aboriginal confidence in the justice system and its rules as well as their understanding of the significance of road rules. This is especially so when Aboriginal people are punished for having vehicles that are damaged by roads around communities, which the government has not felt necessary to upgrade. These are effectively unroadworthy roads that require significant investment.

Sentencing and restricted licences

Lack of awareness of penal consequences of unlawful driving

The penalties attached to licensing are not clearly understood. Magistrate Birch stated that Indigenous people may not be aware that driving unlicensed attracts serious criminal penalties and 'even if they are aware of it [many Indigenous people] may not properly understand it' (Gosford 2008). Our interviews with Warlpiri driving offenders and other Warlpiri persons revealed that there was especially a lack of understanding about the nature of drive whilst disqualified and why the periods of disqualification were so long and the violation of a disqualification order could attract a lengthy prison sentence. A NAAJA lawyer told us that there is 'not much understanding in communities of the gradients of driving offending' and why drive unlicensed attracts a much smaller penalty than drive disqualified. CAALAS had run a TV ad campaign to attempt to address this confusion, as well as run a radio show in language and do outreach community visits with the NT Legal Aide Commission.

The involvement of community Elders through community courts would facilitate the transmission of the message about lawful driving. Given the high levels of recidivism for driving offenders, community involvement may prove more meaningful than magistrates delivering the message.

Severity of sentence

Of the licensing offences, driving disqualified attracts the most severe penalty. Licence disqualification arises where a court finds a person of driving under the influence of alcohol (see

Traffic Act (NT) s29AAR). For a second high range drink driving conviction *or* failing to provide a sample of breath or blood for an alcohol analysis will automatically result in a five-year disqualification (*Traffic Act* (NT) s21(4)). Lawyers regarded this as ‘too penal’. They told us that many Aboriginal people who are disqualified from driving will go without driving for what they regard as a very long time (such as a number of years) and then they feel that the time must have passed and they start driving again only to find the disqualification period is still on foot.

Section 31 of the *Traffic Act* provides for a 12 month prison sentence for driving whilst disqualified. In *Breadon v Nicholas* [2010] NTSC 70, the Supreme Court held that prison sentences are the norm for driving whilst disqualified:

[25] Ground 2 was that the learned Magistrate erred by failing to consider sentencing options other than a period of actual imprisonment. Although a sentence of actual imprisonment is a sanction of last resort, the attitude of the Courts for quite some time in relation to the offence of driving whilst disqualified is to treat this offence as a serious one. As Rice J observed in *Pryce v Foster* [(1986) 38 NTR 23 at 28] the constant attitude adopted by this Court in relation to this offence is to indicate that unless exceptional circumstances exist, a term of imprisonment is *almost inevitable*. (emphasis added)

Other case law maintains that since at least 1976 ‘the usual disposition for an offender who drives whilst disqualified is by way of a sentence of imprisonment even for a first offence’ (*Henda v Cahill* [2009] NTSC 63: [8]). In our discussions with CAALAS and NAAJA, we were told that a conviction for driving disqualified invariably results in a prison sentence. This was confirmed by our in-court observations of sentencing drive disqualified offenders in the case study communities. This involved a prison sentence of a number of years for the repeat offenders that we witnessed in court. First time offenders usually receive a custodial sentence of several months.

At the same time, we were told by lawyers and witnessed in bush courts that drink driving (including medium range), including where it was combined with dangerous driving, often results in a fine. A CAALAS lawyer mentioned that for Aboriginal people this is inexplicable because of the seriousness to them of drink driving in contrast to driving safely while disqualified. Indeed, Warlpiri who had been disqualified took extra care when driving and made sure they didn’t drink drive. They would often pass a breath test only to be charged for driving disqualified or without a licence and, according to Warlpiri interviewees, thought that they were being punished irrespective of their efforts not to drink drive.

Driving unregistered also attracts maximum 12 month prison sentence (*Traffic Act* s33). There are also 'regulatory' offences under the *Motor Vehicle Act* (NT) s117A, which attract up to six months imprisonment (s117), such as not bearing a registered number plate (ss111, 112), not producing a driver's licence upon request of an officer (s113) and driving a defective vehicle (s128A).

The imposition of fines, however, is an unfavourable alternative. Given the low means of Aboriginal people to pay fines, it can often result in licence suspension and other flow on effects. For example, if a driver is not wearing a seatbelt it attracts a fine of \$400. We were also told of the 'double whammy' imposed on those who complete their disqualification period and then have to pay to install an alcohol ignition lock for up to three years (see NT Transport Group 2010a). If the lock is not fitted, the offender has to serve out this period with a further disqualification. Also, those convicted of drink driving are made to pay for drink driver education, as discussed above. There is no evidence that fines or imprisonment help reduce recidivism. In fact the link between non-payment of fines and licence suspension can entrench the criminal cycle.

Special driver's licence

i. New special licence provisions for driving offenders

In 2011 the *Motor Vehicles Act* (NT) was amended to insert Part 2A, which introduces special driver's licences for offenders who have their licences disqualified or are unlicensed (*Justice (Corrections) and Other Legislation Amendment Act* 2011 (NT) s36). To obtain a special licence, the sentencing court has to impose a community order for drive disqualified, provided for under s39A of the *Sentencing Act* (NT) and s25K of the *Motor Vehicles Act*. The special licence permits the offender to drive while supervised while undertaking practical training as part of a driving program to rehabilitate drink drivers and promote road safety (ss 25L(1), 25N (4), 25P).

Upon the discharge of the community order, the offender may apply for a court order to be eligible to apply for a driver's licence (s25Q). Considerations for granting the order include the successful completion of a driving program as well as the seriousness of the offence resulting in the disqualification, community safety and the offender's need for a licence in terms of employment (s25R). If the offender is unlicensed, the court only can make an order for a learner licence and if the applicant is otherwise on an alcohol ignition lock licence after disqualification, the court may only make an order for such a licence (s25R(3)-(4)). The special licences are not available for offenders who have licence disqualifications that exceed five years (s25K).

ii. Limitations of NT special licences

The introduction of special licences in the NT is exclusively to 'overcome the legal problem that if an offender is driving on a road' during training 'the offender is technically committing the offence of driving whilst disqualified', according to the Second Reading Speech (McCarthy 2011). While it brings the NT into line with other Australian jurisdictions that have long had restricted or extraordinary licences, other states and territories allow a person who is disqualified from driving to apply to a sentencing court for a restricted licence where it is necessary for the applicant or his/her family member to attend medical treatment or employment (see Sentencing Advisory Council (2009: [3.117] on the legislation in other states and territories). Therefore, the special licence elsewhere allows the offender to drive for the purpose of these activities. The Sentencing Advisory Council (Victoria) (2009: [3.113]-[3.114]) proposed restricted licences to enable the offender to maintain employment, family obligations and social contacts. In particular, restricted licences should be available where driving is a necessary part of the offender's employment or where there is no reasonable alternative for travel to and from work (such as public transport) (2009: [3.115]). In some states, 'severe and unusual hardship' and the health of the driver or family member are also grounds for a restricted licence (2009: [3.117]).

On the basis that Aboriginal people in remote areas with no other feasible transport options need to drive for cultural purposes such as attending funerals or ceremonies, the Law Reform Commission of Western Australia (2006: 17) recommended that the criteria for an application for an extraordinary drivers licence take 'into account customary law and cultural obligations'. Kinship obligations may also require Aboriginal people to drive other people for these purposes (2006: 17). This reflects the circumstances of Aboriginal people and is not limited to the narrow criteria relevant to non-Aboriginal people (2006: 17).

iii. Broad licence for remote communities

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011: [146], Recommendation 21) has recommended a licence for people living in remote communities. This would be easier to obtain than a 'full' licence and would permit people living in remote communities to drive in their communities. The rationale is that those in remote communities do not have the same traffic regime as in cities and should not be subject to the same rules (2011: [133]). The licence would be cost less, not require the same number of logged hours in qualified driving instruction and have a reduced time on Ls and Ps before receiving the licence (2011: [137]). This has been endorsed by mining companies as it would enable them to employ more locals (2011: [133]).

Diversion

As a general rule, diversion is more effective if it occurs before the sentencing stage. By the time a matter is sentenced, the offender is well and truly caught up in the criminal justice system. Nonetheless, sentencing options should include diverting Aboriginal people away from the criminal justice system and towards licensing or drink driver programs. For offences involving unroadworthy cars, diversion into a mechanics course or car maintenance course may be appropriate.

The NT Government in 2011 implemented its 'New Era in Corrections' (NT Government 2011c), which included sentencing and special licensing amendments discussed above. The objective of this policy is to reduce imprisonment and recidivism through the introduction of community based orders and community custody orders (McCarthy 2011). The 'new sentencing option for low-level offenders *not* facing an imprisonment period called, the Community Based Order, aims to provide supervision in the community and mandate programs, treatment or training with the option for a court to order electronic monitoring and community work' for up to two years. Under this order, offenders can be mandated to attend rehabilitation and training programs and may also be subject to electronic monitoring by Community Corrections officers.

The Community Custody Order is for offenders facing imprisonment of up to 12 months. The Court can order offenders to attend rehabilitation and training, participate in employment and a minimum of 12 hours community work per week and may be subject to electronic monitoring. The order 'is deemed imprisonment in the community for a term of up to twelve months' and 'mandates intensive supervision by community corrections, community work and programs, treatment or training' (McCarthy 2011). A Supported Accommodation and Treatment Centre will be built next to Alice Springs prison that will provide an Intensive Driver Offender Program (Collins and Barson 2011: 26). As part of this program, courts will be given the power to order driving offenders facing 12 months or less imprisonment into the program (for both residents and non-residents of the Centre) that will include: alcohol and other drug treatment and therapeutic intervention; drink driving education; a mechanical workshop, and driver licensing training (NT Government 2011d).

As discussed below in the section on 'Lessons from Comparable Jurisdictions', diversion for Aboriginal people tends to be most effective when run by Indigenous people and in communities. This is reiterated in the *Indigenous Road Safety Report* (Macaulay et al 2003), which found that driver safety programs are most useful when Indigenous community members assist their people obtain licences and understand road rules, especially when orally communicated in their language.

Alcohol

Interviews with Warlpiri people identified drink driving as their greatest road safety concern. Indeed, between 2000-2006 Aboriginal people were over-represented in alcohol-related road fatalities and serious injuries (NT Road Safety Taskforce 2006: 85, Table 8, Appendix I). Of the 144 alcohol-related fatalities, 67% were Aboriginal and 33% were non-Aboriginal. Of the 463 alcohol-related serious injuries, 45% were Aboriginal and 55% were non-Aboriginal (2006: 8).

However, criminalisation was not reducing the incidence of drink driving. The most recent statistics we obtained showed an increase in the proportion of repeat drink driving offenders, particularly Aboriginal drink drivers (NT Road Safety Taskforce 2006: 17).

According to the NT Road Safety Taskforce (2006: 17) Aboriginal people from 'dry' communities were travelling to towns to drink and then driving home again. With the introduction of 'prescribed communities' – which covers a much larger area of alcohol restrictions beyond community boundaries – Aboriginal people are now travelling further to drink, according to NT Shire staff. The role of night patrols in transporting people from drinking points to the community was critical in the safe return home of drink drivers. Such night patrol functions and use of their vehicles in this way have been restricted since the NT Intervention.

In relation to drink driver education (DDE), there have been efforts to customise courses for delivery in Aboriginal communities by Amity Community Services – the provider of such courses. The DDE course 'aims to provide course participants with information and skills to enable them to make informed decisions regarding their own future drink driving behaviour' (Amity 2010). Research by Amity reveals there is no conclusive data that DDE reduces reoffending (Dwyer and Bolton 1998: 10). More recently, Pedersen and Crundall (2005) show that the proportion of licenced drink driving offenders who had a previous conviction (and who therefore must have completed the DDE course) has progressively increased: from 4% in 1998 to 15.5% in 2004 (cited in NT Road Safety Taskforce 2006: 20). This begs an examination of the 'nature, governance and effectiveness of the current mandatory drink drivers education course' (2006: 21, Recommendation 3).

However, given that it part of a broad package of road safety strategies and that is imposed as part of a sentence for drink drivers, it should be freely available to Aboriginal people in remote communities, rather on a 'user-pays' basis, which is the current practice. Such courses provided by Amity Community Services cost \$350 or \$500 (for two units). There is a minimum of six to eight pre-enrolled and pre-paid participants. We were told that Amity's DDE course is oversubscribed so it can take months to do the course. The NT Road Safety Taskforce (2006: 20) notes,

With RTOs functioning on a commercial basis, the course is only delivered when the number of participants justifies the cost. This results in the frequency and accessibility of courses being problematic for offenders in less populated areas – especially Aboriginal people in remote communities.

LESSONS FROM INDIGENOUS DRIVING AND ROAD SAFETY PROGRAMS IN COMPARABLE JURISDICTIONS: A SNAPSHOT

The 'safe system' model for improving road safety is premised on four pillars: (1) safe roads and roadside, (2) safe vehicles, (3) safe speeds, and (4) safe people (Cook 2010: 4). Most states and territories have 'developed comprehensive strategies' which are reflective of the safe system approach (2010: 4). This approach recognises that changing behaviours is not in itself sufficient for road safety, but that behaviours also need to be matched with improving roads and vehicles and reducing speed limits. In recognition of this, the NT government has focused on shoulder sealing and installing barriers to reduce run-off-crashes on rural roads (2010: 7). It has also removed open speed limits (2010: 9). Most programs, however, are exclusively aimed at improving safe behaviours in drivers/people.

There is an overall lack of data on 'what works' to make people safer. The predominant approach has been aimed at punishing people. The discussion thus far has shown that punishment alone is not working in terms of making Indigenous people in remote NT communities safer. However, diversionary programs such as drink driver education (see p73), also have not proven to change attitudes and reduce driver offending. In other jurisdictions there has been some evidence of the effectiveness of diversion, although not in relation to Indigenous drivers. Mills et al (2008) evaluated the effectiveness of the NSW Sober Driver Programme (SDP), which utilised a combination of approaches, including education components and group cognitive behavioural therapy in relation to drink driving in conjunction with punitive sanctions. They found that SDP participants were 43 per cent less likely to re-offend over two years compared with those who received sanctions alone. Survey respondents demonstrated improved knowledge, attitudes and skills regarding drink driving (cited in Senior et al Undated: 49).

This section looks at a range of driver safety programs around Australia – especially those based in Indigenous communities. The Western Australian government has identified the need to examine community-based programs for driver education given the great cost of criminalisation (Banks 2008). While few community-based programs have been formally evaluated, they provide an alternative to the conventional wisdom on punishment as a means of reform. Such programs provide insights into how the NT driver safety regime may be enhanced through diversion (especially pre-sentencing). This section does not examine all programs but draws on a select number on a state-by-state basis, particularly those focused on licensing and drink driving.

Western Australia

In relation to roadworthy vehicles, the government has instigated a program to help Aboriginal corporations establish approved inspection stations in their communities. The aim of the project is to reduce the distances that people travel to have their vehicles inspected and the problems that can arise if the vehicle fails the inspection.

The *Driver Support Program* helps local Indigenous people in the East Kimberley to gain their driver's licence and undergo driver training in order to increase their job readiness and open up opportunities for advancement that a driver's licence brings (Australian Government 2010: 1). It is part of the East Kimberley Development Package that aims to increase the number of Indigenous people in the workforce. Young people taking part in the program are provided with both written and verbal assessment. This program is delivered by Aboriginal police liaison officers who provide Aboriginal clients with driver education sessions followed by a verbal or written test. Young people are then referred to the East Kimberley Community Development Employment Projects (CDEP) program to support young people achieve their supervised driving requirements. There is assistance with accessing reliable vehicles and willing supervisors to undertake the required hours of supervised driving, payment of outstanding fines (through linking young people with financial assistance programs) and gaining identification documents (Department of State Development, Western Australian Government 2010).

New South Wales

The Traffic Offender Intervention Program was introduced in 2007 as a Regulation of the *Criminal Procedure Act 1986* (NSW). Clause 3 of the Regulation allows the magistrate to refer a traffic offender to a traffic program. The goal of the program is to provide offenders with the information and skills necessary to develop positive attitudes towards driving and develop safer driving behaviours. Course content may include road safety, drink and drug driving education, legal consequences of traffic offences, impact of traffic offences and maintenance of safe vehicles (Traffic Offender Intervention Program Operating Guidelines 3.2.1). However, for Indigenous offenders from remote communities, referral to this program depends on its availability in Indigenous communities.

A drivers' licence program in Wilcannia (western NSW) that included numeracy and literacy programs, and drug and alcohol education. The program was strongly supported by the Wilcannia community and was seen as fulfilling a local need and reducing crime rates (McCausland and Vivian

2009: 26). However, the program is no longer in existence (2009: 27). McCausland and Vivian (2009: 27) point to the positive role of partnerships in Wilcannia that have developed between communities and the State Debt Recovery Office where those who had lost their licences or had sanctions on their licences could apply to have them reinstated while they paid their fines.

In Lismore a Driver Education Program, *On the Road* (2011), was designed to reduce high levels of driver offending by Aboriginal people on the Far North Coast of NSW (.The program responded to research that found that the factors which contributed to unlicensed driving included a lack of awareness of how to obtain a birth certificate, lack of funds to pay for driver knowledge handbooks or driving lessons, limited literacy and computer literacy levels and the lack of access to vehicles to learn to drive and licensed drivers willing to provide 50 hours driving practice, as is required by the Graduated Licensing Scheme in NSW. The program provides access to a computer-based driver knowledge test in local Aboriginal agencies offices, literacy, numeracy and computer skills training, free driving lessons, licence testing in local Aboriginal community sites (such as Aboriginal Land Councils), access to supervised driving practice, vehicle systems and maintenance training, first aid training and assistance with applications to the NSW State Debt Recovery Office for 'time to pay' to allow disqualified drivers to regain licences (*On the Road* 2011).

The *New England north west license training project* provides a group of people who are trained and resourced to conduct classes for people with low literacy so they can pass the Road and Traffic Authority (RTA) driver knowledge test and gain a drivers licence, and also settle any outstanding fines they may have with the State Debt Recovery Office (SDRO). Like many of these programs, there are a broad range of stakeholders involved: key community people, local police, TAFE, Aboriginal Land Councils, Community Development Employment programs, Aboriginal employment services, job network providers and staff from government and non-government sectors. The success of the project has resulted in many communities implementing the program at a local level and the courts referring people to the program to gain a licence (New South Wales Government 2011).

Queensland

There are a range of programs to improve licence acquisition and road safety. In Hopevale, Mossman, Kennedy and Old Mapoon, there is a hands-on method of teaching for licence testing. This has raised the pass rate for the first attempt from 10 per cent to 85 per cent (Macaulay et al 2003: 58). In the Cape York communities of Hopevale and Kowanyama the community manages road safety programs.

In the remote central Queensland community of Woorabinda, the road safety trial employed a local Indigenous project officer ('community worker') to implement a dynamic community-based approach to driver safety and legality, with the support of the Department of Transport. This form of 'doing road safety business' involves incorporating road safety messages into community. The community worker says the program is based on 'mob rules'. This involves providing facilitators to engage local community members on road safety rather than simply providing booklets and brochures. The community worker emphasises that 'training the trainer' is essential where English is not first language (Major-Oakley and Edmonston 2010). Dual drive vehicles were introduced to help Aboriginal people attain the 120 logged driver hours required for licensing. Child restraints are provided for free from the day care centre to encourage their use, and run information sessions on restraints. Whole-of-community yarns on road safety are organised, and include the police to 'tame the law enforcement approach' (Major-Oakley and Edmonston 2010). The police no longer 'give out tickets but tell people to go to day care centres and help them fit restraints'). Road safety programs are also run through art classes. They run a Youth Drive Alive session of 1 hour per week for 7 weeks to engage students in Years 10 and 11 on road safety and to get them thinking about how their friends drive. They also have a 'Fatality Free Friday' that engages doctors, first aid instructors and other health professionals. They also help to attain identification documents. They act as a conduit between the police ('authority people') who 'Aboriginal people don't like going to because they get shamed out' (Major-Oakley and Edmonston 2010).

South Australia

The South Australia Police (SAPOL) and the Motor Accident Commission are providing road safety education to remote Indigenous Communities in the Anangu Pitjantjatjara Yankunytjatjara (APY) lands in the remote north-west of South Australia. In consultation with local communities and police, the SAPOL police travel to the APY Lands to deliver road safety education. In addition to police and AFL personalities delivering a road safety message, the Motor Accident Commission addressed the issue of seatbelts being used as tow-ropes when vehicles broke down. This was addressed by supplying a number of tow ropes to the communities in order to reduce this practice. Consequently, more seatbelts have been left in vehicles for their intended purpose.

The *Right Turn Driver Education Program* is for young Indigenous people to assist them to obtain their learners permit, or build up their log book hours to obtain their probationary license. The program is a partnership between Whitelion South Australia and the Adelaide based program, Wiltanendi (Whitelion 2011). A vehicle is made available for young people to use it for driver training

and logging hours. They will be placed with volunteers who will help them obtain their Learner's licence or help them build up their log book hours to obtain their Probationary licence. Whitelion Learning Centre also provides a mechanics program that teaches young people to strip and build cars (Whitelion 2011).

Victoria

The 'L2P Learner Driver/Mentor Program' is part of the *Let's GET connected Gippsland East Aboriginal driver education project*. It involves the recruitment and training of supervising drivers to mentor disadvantaged youth who without this opportunity would have limited hours of driving experience. The program covers the East Gippsland and Wellington shires and aims to help young drivers to achieve the requisite skills to gain their probationary licence and improve safety by providing learner drivers with experience in different environments and situations. A critical component is the training of local mentors. In its first year, by September 2010, 10 probationary licences were awarded, 34 mentors trained and 15 Indigenous people involved in assisting with obtaining Learner's Permit thus far. There have been four 5-star rated vehicles dedicated to the program (McHugh and James 2010: 3; VicRoads 2011).

The *Gippsland East Aboriginal driver education project*, which began in 2007, is part of the *Let's GET connected transport project*. It identified that unlicensed driving, unroadworthy vehicles, financial costs, lack of personal identification and an inability to access education and training opportunities created serious social and road safety problems within the Gippsland East Indigenous community. This project has supported the Indigenous community to obtain learners permits, probationary licences, employment, education and training and personal identifications. This program has helped 94 people get their L-plates and 61 get their probationary licence (Victorian Government 2009: 61). The Victorian Government claims this program has led to 17 people finding jobs, 13 enrolling for further education at East Gippsland TAFE, 5 training as mentors to assist others through the program and 54 people obtaining identification documents to assist in obtaining a driver's licence (Victorian Government 2009: 61). Reflecting a broad governance approach, this program is run in partnership with Mission Australia and more than 30 government agencies and community organisations. Additional funding has come from a variety of industry sources. Road safety is also taught through classroom sessions, mentoring and access to internet modules.

DISCUSSION

This report has questioned the utility, morality and relevance of the current law enforcement approach to driving related matters in the NT. An alternative strategy for dealing with the problem of driving offending needs to be negotiated with Aboriginal people on remote communities, premised on building appropriate forms of infrastructure.

There is a need for a coordinated approach that brings together the various entities (community based, community owned, government and private) currently operating in remote sites to provide integrated services. The lack of coordination and communication between the array of government and non-government agencies that are said to 'service' Aboriginal communities has created incoherency and confusion. While there is powerful rhetoric around the idea of a whole-of-government response to issues in remote Indigenous communities, we found that agencies on the ground were often acting in isolation from one another, and were unaware of each other's strategies (or, on occasion, their very existence)¹⁴. Worse still, there appeared to be an increased tendency, within Yuendumu in particular, for some key government agencies involved in the new governance structures created by the NT Intervention to ignore and bypass existing Indigenous agencies and consultative structures (these had been flagged as part of the problem by NT Intervention bureaucrats). For example, following a reported outbreak of petrol sniffing on an outstation, Shire management and police excluded Mt Theo from a hastily convened response team, on the grounds that they (the Shire and police) needed to get 'runs on the board' and be seen to have a credible strategy for dealing with the problem themselves – without Mt Theo. These kind of developments reduced community 'trust' of non-Aboriginal agencies, strengthening the belief that government was intent on demolishing Aboriginal representative structures. The strategy seemed remarkably short sighted given Mt Theo's well-deserved reputation as an example of best practice in relation to government/all of community partnership, having virtually eradicated petrol sniffing in Central Australia, and the history of lamentable failure accrued by top-down government strategies.

There is particular need to ensure that community directed initiatives are given particular prominence to balance the tendency for government to impose top down solutions through imposed structures of governance. The current vogue for 'normalising' remote towns can mean riding roughshod over successful community owed initiatives which have a successful track record in

¹⁴ This is not a problem restricted to Central Australia. It can be reduced by a degree of planning. On the Dampier Peninsula north of Broome in the Kimberley, communities maintain a 'community diary' accessible by agencies, whose visits are then coordinated centrally by the community, this prevents 'agency overload' on some days and creates opportunities for agencies to liaise.

dealing with complex issues. Furthermore, such programs generally function in a way that strengthens community bonds, rather than undermines them. Relationships between the mainstream justice system (indeed, all structures of white authority) and Aboriginal communities are founded on a degree of mutual uncertainty, incoherence and ambiguity. Mainstream authorities often have wildly distorted impressions of what Indigenous people think and believe and how they shape their priorities. One profound misconception is that Aboriginal people will place adherence to our laws and rules above their own, provided they are given sufficient incentives (carrot and/or stick) to do so. This is to grossly overstate the importance of white values and practices for many Aboriginal people, and to massively understate the centrality of Aboriginal law in these communities. Aboriginal people in Central Australia are largely bound by Aboriginal law and culture (Committee of Inquiry into Aboriginal Customary Law Committee 2003 (NT)). Aboriginal law, not white law, shapes priorities and structures daily life in remote Aboriginal communities. Obligations to kin often take precedence over obligations to white law – no matter how unpleasant the consequences. On pragmatic grounds, therefore, there is a strong imperative to work with, rather than attempt to undermine and marginalise, Aboriginal law and culture.

Through its Mechanic Training initiatives the Mt Theo program has shown that, properly resourced, community-based and controlled initiatives such as these have the capacity to handle skill enhancing, job-ready projects that could complement new initiatives on Yuendumu and Lajamanu. Such initiatives should be supplemented with community-directed education on driving and vehicles that is run by local people, in language and employing culturally appropriate and relevant programs.

There should also be special licences for community activities (prescribed by community) that can allow Aboriginal people to fulfil important personal, cultural and employment related obligations.

These initiatives would be strengthened by allowing police and courts (in consultation with community owned bodies led by Elders) to develop community based, and community owned, sentencing options for offenders that would achieve a balance between *Yapa* and *Kardiya* cultural requirements. The current system on remote communities, one senior police officer suggested, is a 'legal system, not a justice system' where rules are imposed in a top down fashion without any attempts made to nurture legitimacy from within the community. Our research showed that, for their part, Aboriginal people, especially Elders, were motivated to work with mainstream agencies and the white legal system.

There needs to be an entirely new community engagement strategy designed to involve remote communities in creating culturally appropriate and culturally secure strategies for dealing with the issue of vehicle related safety. The Closing the Gap initiative acknowledges the centrality of Aboriginal culture and recognizes the need to build on 'the strengths of Indigenous cultures and identities, with assistance from a range of cultural programs', when creating initiatives on remote communities (Australian Government 2011).

The way forward lies in replacing the strategy of road and community normalisation with practical and meaningful community engagement. Current narratives around road safety reflect white priorities and preoccupations. Training on road safety needs to be linked to Indigenous notions of cultural health and wellbeing. Macaulay et al (2003: 22) point to 'historical and cultural factors influencing the beliefs and perceptions Indigenous people hold regarding health/injury, the acquisition of health knowledge, "road safety" and transportation'. These need to be embedded in any strategies designed to improve road safety in Indigenous communities.

KEY RECOMMENDATIONS

1. The investment in law enforcement for drivers should in part be redirected to an investment in road safety (especially improving roads in and around communities) and services for drivers and vehicles in Indigenous communities.
2. There needs to be a coordinated approach among government agencies to the service provision to and regulation of drivers and vehicles.
3. The provision of Motor Vehicle Registry offices in Indigenous communities classified as growth towns on an ongoing basis and the provision of their services on a regular basis in smaller communities could provide a one-stop-shop for Indigenous people to become lawful drivers. For these services to meet local demand they would need to engage locals in their operations and strategies.
4. The investment in road normalisation, such as providing signs, in communities would better be spent on upgrading roads on highways where most Indigenous road fatalities occur. Communities need to be more closely involved in planning for the growth and development of remote communities. There are fears that current strategies will dispossess Aboriginal inhabitants and force them to surrender important aspects of their local cultural identities.
5. There should be a two-way, or 'both-ways', strategy on driver safety in which Indigenous communities commit to driver behavioural change where governments commit to road

upgrades. The current approach is heavily slanted towards behavioural change and a more balanced approach is required.

6. There needs to be a greater level of communication between government, police and Aboriginal communities on driver related law and policy. Currently, there is little awareness in the communities as to why many new processes are necessary and the law remains unclear and confusing. It is essential to develop culturally appropriate materials and educational packages in relevant languages in partnership with community organisations.
7. Sentencing legislation and decisions need to prioritise diversion into driver training, licensing and drink driving education. Fines should be used as a last resort, especially given that non-payment results in the cancellation of a licence. Prison should not be a sentencing option for driving unlicensed, uninsured or unregistered because its lack of impact on recidivism.
8. There needs to be a greater role for community based and community owned justice mechanisms in providing diversionary options for those found guilty of driving related matters.
9. There is a need to create pre-court diversionary options as part of police cautioning systems, where offenders are diverted into community managed projects, as a way of reducing unnecessary contact with the criminal justice system.
10. Efforts should be made to disaggregate driving offences if the punishment is to be meaningful.
11. Where driving crimes are aggregated, sentencing should be concurrent and not cumulative.
12. Important initiatives that have had a demonstrated impact in terms of reducing levels of alcohol related driving, such as Night Patrols, need to be returned to full community ownership and allowed to determine their own working practices without interference from centralised bureaucracy. They need to be adequately resourced.
13. Current criminalisation strategies are preventing young Aboriginal people from accessing the labour market. The recommendations of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011) calling for special remote area drivers licenses should be carefully studied in the NT.
14. Reform the *Traffic Act* to provide exceptions for Indigenous driving on tracks on Aboriginal country analogous to exceptions for driving on cattle stations.
15. There needs to be more research into the unanticipated consequences of increased policing of driving offences in remote NT communities. Our inquiries unearthed serious problems in two Warlpiri communities, however it is clear that the impact has been problematic across the Territory. In light of the serious implications for communities of what can only be

described as a process of mass criminalisation, it is essential that the full picture is comprehensively documented and analysed.

CONCLUSIONS

This research assessed the extent to which there is an awareness of driving regulations in communities, a comprehension of their utility and how cross-cultural strategies and local programs may be developed for improving regulatory systems. New strategies designed to reduce road fatalities, based upon use of the criminal law to force behavioural changes on to Aboriginal people, were devised without discussion or negotiation with Aboriginal communities. Policy was developed and imposed from above with little (often without any) attempts made to consult Aboriginal people in advance. While reducing road fatalities is an unambiguously worthy aim, one of the unintended consequences of the current strategy have been to create another serious problem in terms of increased criminalisation of Indigenous people.

Aboriginal people face multiple barriers to achieving driver legality and reducing fatalities. These are associated with inadequate infrastructure and roads and a serious lack of administrative support services. The rational - and just - option would have been for government to match strategies of behavioural change with improvements to roads and infrastructure. They should have been underpinned by processes intended to build both capital and capacity within Aboriginal communities. Similarly they should have been prefigured by a process of negotiation with Aboriginal communities on the basis of what Article 18 of the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP) calls 'free, prior and informed consent'.

A fundamental reality in Central Australia is that there are two, not one, systems of law and culture. Aboriginal people are 'bound' by Aboriginal law and culture. Aboriginal people may have little choice but to obey the demands of law and culture even where this means falling foul of white law. There is a wealth of evidence from a range of credible sources (Australian Law Reform Commission 1986; Committee of Inquiry into Aboriginal Customary Law 2003 (NT); Law Reform Commission of Western Australia 2006) demonstrating that Aboriginal people would rather endure censure by the white legal system than break Aboriginal law, because it is the latter that underpins and gives meaning to a host of important relationships and reciprocal ties. Elders have an alternative to this scenario that involves a new partnership between legal systems based on mutual respect. They suggested that young Aboriginal people would be more receptive to messages about driver safety and alcohol use, and demonstrate greater respect for the white legal system, if the two laws worked together. They argued that when white people undermined the authority of Aboriginal law and culture Aboriginal people did not transfer allegiance to the white system, rather they became, in a sense, "lawless".

We also found that Aboriginal communities had only a limited understanding of how to meet regulatory driving requirements. There is an urgent need for investment in community

situated, culturally secure, bodies offering a one-stop-shop for licensing (including identification)/registration/vehicle inspection and maintenance). Community ownership of these bodies would reduce the alienation created by having to attend the police station, while encouraging a coherent, multi-agency approach to the delivery of service – some of which are currently only available in towns. This investment would be lieu of law enforcement.

Given that both Commonwealth and Territory governments have justified increased and more intensive policing of remote communities on the basis of concerns about endemic abuse of children, the increased criminalisation for driving related issues (of a group already massively over-represented in the criminal justice system) appears to us to lack moral and political legitimacy.

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APPENDICES

Appendix A: Discussion points for focus group with Warlpiri Elders and young people

- Should *yapa* be made to get a licence and have their cars registered etc? Why? Should they be punished if they do not have these?
- Why don't *yapa* get a licence, registration, drink drive etc?
- What do the police do to *yapa* who don't have a licence, registration, etc?
- Do a lot of *yapa* get in trouble for not having a licence, registration, drink driving etc?
- What could be done to help licensing, registration, drink driving etc?

Appendix B: Discussion points with Warlpiri driving offenders

- What driving offence did you get in trouble for and what punishment did you receive?
- Why did you not get a licence/ not get your vehicle registered/ drive after drinking?
- Did you do any driver programs such as drink driving education? How did you feel about it?
- What should be done to stop you and others from committing this offence again?
- Have you since got a licence, registration, done drink driver education etc? (as relevant)

Appendix C: Questions to police working in Aboriginal communities

- Have you noticed the level of driving offending increase in the community? If so, why do you think this is the case?
- Has there been a change to the level of policing of driving offending in the community?
- If so, why and what does it involve (eg more or less cautions; more or less prosecutions)?
- What do you do if you pull over someone who is without a licence, registration, etc?

- Why do you think Aboriginal people are not obtaining a license/insurance/registration?
- What would help Aboriginal people obtain a license/insurance/registration?
- Has policing of driving offences reduced road injuries in and around Indigenous communities?
- Is there a high level of repeat offending in communities?
- Do the police especially monitor repeat offenders on the road?

Appendix D: Questions to CAALAS/NAAJA lawyers

- What are the most common driving offences prosecuted in bush courts?
- Why are these offences committed?
- Have you noticed an increase or decrease in the prosecution of driving offenders? If so, which offences and why do you think this has been the case?
- Have you noticed any differences to the sentences handed down for Aboriginal driving offenders? If so, what changes?
- Do Aboriginal clients understand the culpability of their offence?
- What could be done to prevent driving offending?
- Does imprisonment work in preventing such offending?
- Who should manage programs to prevent driving offending?
- What does CAALAS/NAAJA do to facilitate Aboriginal people becoming lawful drivers?

Appendix E: Discussion points for NT Government staff from various departments

- How significant is lawful Aboriginal driving for the functioning and development of Aboriginal communities and economies?
- What are the issues related to the failure to comply with driver laws?
- Does the criminalisation of unlawful drivers have a broad impact on Aboriginal communities? If so, what is the impact?
- Do you believe there is a relationship between the criminalisation of unlawful drivers and road safety? Do you think the penalties are appropriate?
- What programs, services and / or infrastructure are needed to improve road safety?

- Does your agency/department provide programs or services to reduce Aboriginal driver offending and/or improve Aboriginal road safety? If so, what are the successes and limitations of these programs/services?

Appendix F: Discussion points for Non-Government Organisations working in Lajamanu and Yuendumu

- Have you identified any problems that unlawful driving creates for the communities of Aboriginal driving offenders?
- How you noticed a change in the policing of unlawful driving, or the manner in which police services are provided for drivers?
- Why do you think Aboriginal people are failing to get licensed or register their vehicles?
- Does your organisation provide services/programs or support for attaining driver legality. If so, what are these?
- What strategies are required to overcome unlawful Aboriginal driving in remote communities?