

Agreement in Principle

Mr MICHAEL DALEY (Maroubra—Minister for Roads) [11.00 a.m.]: I move:

That this bill be now agreed to in principle.

The primary purpose of the Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009 is to amend road transport legislation to remove an anomaly where a person becomes eligible to apply for a licence even though disqualification periods set by the courts are still to be served. The bill has been developed through consultation involving the Roads and Traffic Authority, the Attorney General's Department and the courts administration. A licence disqualification is a serious matter. Removing a person from the roads for serious driving offences is not done lightly as it can impact on a person's lifestyle and on the type of employment they can engage in. But it is necessary so that the public is protected from these irresponsible drivers. This bill does not seek to introduce new licence disqualification penalties. Instead, the bill seeks to ensure that all licence disqualification periods that have been ordered by the courts are served before a licence can be issued.

Currently, section 187 of the Road Transport (General) Act 2005 allows a court to convict a person of a major driving offence and apply a licence disqualification. Some examples of major offences include drink and drug driving, Crimes Act offences involving the use of motor vehicles, and driving in a manner or speed that is dangerous. Section 188 of the Act sets out the minimum, maximum and automatic periods of licence disqualification applying to the major offences. Rule 10-2 of the Road Rules 2008 sets the licence disqualification periods that apply for excessive speeding offences. These provisions require the licence disqualification periods to commence on the date of conviction. Section 201 of the Road Transport (General) Act 2005 provides for a period of licence disqualification following a declaration as a habitual offender and periods of licence disqualification for unauthorised driving are provided for in the Road Transport (Driver Licensing) Act 1998.

These require the licence disqualification periods to commence at the end of all other disqualification periods. In the case of serial offenders, the person may have had numerous licence disqualification periods ordered by the courts. These may have been ordered to be served concurrently, consecutively or a mixture of both, and result in a continuous chain of licence disqualification periods that spans many years. However, the law—and rightfully so—gives a convicted person the opportunity to seek judicial review of a court's decision. The review can be in the form of an appeal, an annulment and rehearing or a matter being set aside or, in particular, an application to quash a declaration under the Habitual Offender Scheme.

When a person is successful in their application for review, the related disqualification period is also removed. This can sometimes cause a gap in what was previously a continuous chain of licence disqualification periods. The disqualification periods that follow the gap become future orphan periods of disqualification. It creates the unintended situation of a person becoming eligible to apply for a licence during the gap period, even though a future disqualification is still to be served. The elements of the bill before the House are designed to ensure that the gap is closed. This will be done by introducing an explicit provision so that any future orphan disqualification periods are brought forward automatically by statute to recreate a continuous period of licence disqualification. There appears to be no impediment to bringing forward a disqualification period that was automatically applied as a consequence of a conviction. However, the same cannot be said where a court specifies when the disqualification period is to start and end.

In these cases, a court-ordered disqualification period cannot be brought forward. However, an application can be made to the court under section 43 (2) of the Crimes (Sentencing Procedure) Act 1999 for the court to reconsider its original decision should it determine there was an error. However, even after going through this process, some courts have ruled that there was no error at the time the court made its original decision and they therefore see no reason to change the original order. The need to make an application under section 43 (2) places an unnecessary burden on the offender and on the court for what could be seen as simply an administrative change.

Specifically, the proposed amendments to road transport legislation are as follows. Proposed section 188A will be introduced into the Act. It will provide that where a disqualification is removed or reduced following a court review and a gap is created in what was a continuous chain of disqualification periods, any future orphan disqualification period that followed will be brought forward so that there is no gap and the continuous disqualification period is maintained. Proposed section 188A will also provide that where a matter that was successfully reviewed is further prosecuted by police and they are successful, any new licence disqualification period is to be served at the end of all other licence disqualification periods applying to the person. A proposed subsection will be introduced into section 25A of the Road Transport (Driver Licensing) Act 1999 that will make the offence of driving while disqualified not apply if the new section 188A causes the status of a driver to change from unlicensed to disqualified and the Roads and Traffic Authority has not advised the person of the change.

The arrangements proposed in this bill will not impact in any way on law-abiding citizens and will allow for efficiencies in enforcing the principles of the current legislation. From a road safety perspective, there is a significant public safety risk in issuing a licence during the gap when the person is yet to serve all the disqualification periods that have been imposed by courts. The changes in the bill are needed because the current legislation does not provide for all future orphan disqualification periods to be automatically brought forward. Adoption of the proposed reforms also ensures that where a person has gone to the effort of having a matter reviewed by the court and is successful in having a disqualification overturned on review, the person rightfully gains the benefit of that effort and is eligible to apply for a licence earlier. I trust members will lend their support to the bill, and I commend it to the House.