

Legislative Council Hansard – 10 October 2017 – Proof

**ROAD TRANSPORT AMENDMENT (DRIVER LICENCE DISQUALIFICATION) BILL
2017***Second Reading***The Hon. RICK COLLESS (18:08):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.**Leave granted.**

The Government is pleased to introduce the Road Transport Amendment (Driver Licence Disqualification) Bill 2017. This bill will change the penalties for driver licence disqualification to ensure that they are fairer and more effective in reducing unauthorised driving and repeat offending.

Overview—fair and proportionate driver disqualification periods

The current driver licence disqualification framework:

first, **increases the risk of reoffending**, with evidence showing long disqualifications are not a deterrent to unauthorised driving—yet some people have disqualification periods of more than 10 years (in addition to fines and imprisonment terms),

second, has a **serious adverse social impact, particularly on vulnerable people** and people in regional and rural areas, as long disqualifications affect the ability to travel for education and employment purposes,

third, **contributes to the overrepresentation of Aboriginal people in the criminal justice system**, with more than 14 per cent of those sentenced and almost a third of those imprisoned for unauthorised driving identifying as Aboriginal,

fourth, is **harsher by comparison with other jurisdictions**, and

fifth, **imposes a significant burden on the criminal justice system** (with about 12 per cent of people sentenced in New South Wales are sentenced for unauthorised driving offences), increasing the pressure on the court and prison systems.

The measures detailed in the bill will make the community safer by giving roadside police greater powers to impose vehicle sanctions, such as confiscating number plates and impounding the vehicles, of those who continue to drive while unauthorised or are disqualified drivers who commit certain dangerous driving offences. These measures will allow police to take swift action in appropriate cases. The reforms will also provide disqualified drivers a clear way to return to lawful driving if they have remained compliant with their disqualification period for a minimum period.

The Government has committed \$13 million to implement this scheme. In contrast operating the current regime costs the justice system around \$70 million per year. These reforms will ensure the penalties for driver licence disqualification are more effective in reducing unauthorised driving and repeat offending.

2013 Report by Committee on Law and Safety

The Legislative Assembly's Law and Safety Committee's 2013 report on Driver Licence Disqualification Reform identified a number of problems with the current disqualification laws:

First, long disqualification periods have a serious adverse impact on a person's mobility, access to education and access to essential goods and services.

Second, disqualification from driving can also have a significant negative impact on a person's employment prospects, by removing a person's transport to work or their ability to gain work-related skills. This is particularly the case in remote and regional areas of the State.

Third, disproportionate effects of unauthorised driving sanctions in regional parts of New South Wales are particularly acute for Aboriginal communities.

The committee came across examples of how the system results in people being subject to significant periods of disqualification. For example, take a young person who has no public transport in their area and continues to drive while disqualified to maintain their apprenticeship. If this driver were caught driving disqualified four times, then, in addition to facing gaol time, their disqualification would be extended for a mandatory period. In this case, even though this driver had not been charged with any other driving offences, if the offences occurred within a certain period, the disqualification would then automatically be extended for an additional period on top of the existing disqualifications and gaol time, due to the operation of the Habitual Traffic Offender Scheme. This would mean this young person would be effectively disqualified until 2034. This young person would suffer significant long term hardship because they were trying to maintain employment and provide for themselves and their family.

This is not an isolated example. There are a number of people who find themselves disqualified for issues entirely unrelated to their ability to drive on our roads. For example, Revenue NSW (formerly the State Debt Recovery Office) can direct Roads and Maritime Services to suspend a driver licence if an individual has an outstanding fine. The fine may not necessarily be related to a traffic offence. The fine may have been imposed because the individual failed to vote, did not pay for a fishing licence, failed to wear a helmet or travelled on a train without a ticket. If those suspended drivers then drove while suspended, they could have their licence disqualified.

Further, some sectors of the community, particularly Aboriginal people, can find it difficult to obtain a licence, which can lead to unauthorised driving becoming more prevalent in those communities. Obstacles include limited access to cars and licensed drivers to supervise learners and difficulties in obtaining identity documents such as birth certificates. Those living in remote areas of New South Wales may encounter hurdles when trying to apply for a birth certificate, including the cost associated with registering their birth and obtaining the birth certificate and the long distance between remote communities and the nearest registry office.

The process of registering and applying for a birth certificate itself can also be overwhelming or overly complex for those who may have low literacy levels and who are unfamiliar with government procedures. Additional barriers that many people face include literacy problems and difficulties passing the driver knowledge test, and costs associated with obtaining a licence. It is important that our driver disqualification framework does not unfairly disadvantage these people.

Before the current system was introduced in 1998, by the now Opposition, a driver whose licence was suspended for failing to pay a fine and who was then caught driving unlawfully on four subsequent occasions would have incurred a total disqualification period of two years. Once the Opposition introduced their reforms the same driver would be disqualified for a total of 17 years with no incentive to return to lawful driving.

In 2013, the Committee on Law and Safety tabled a report recommending reform to address these and other issues with New South Wales's disqualification framework. The Government responded in 2014 and largely agreed to the recommendations. This Bill will implement the Government response to the committee's report through six key reforms.

Firstly, the bill will allow drivers who do the right thing and remained compliant with their disqualification period, to apply to the Local Court to have their remaining disqualification period lifted. Applicants will need to remain compliant with their disqualification period for two or four years depending on the seriousness of the offence. Drivers who have had their disqualification lifted will still need to apply to Roads and Maritime Services and complete the required road safety and knowledge tests to get their licence back. To protect community safety, disqualified drivers who have ever been convicted of serious driving offences involving death or grievous bodily harm, will never be eligible to have their disqualifications lifted early.

Secondly, the bill abolishes the Habitual Traffic Offender Scheme. No other Australian jurisdiction has such a scheme and the evidence suggests that lengthy disqualification does not have a deterrent effect on unauthorised driving.

Thirdly, the bill will provide minimum automatic disqualification periods, as per other traffic offences, and courts will have more flexibility to consider the circumstances of each case.

Fourthly, penalties for unauthorised driving will be made fairer and more proportionate with other driving offences. Currently, repeat unauthorised driving penalties in New South Wales are similar to the State's maximum penalties for very serious offences such as high range drink driving.

Fifthly, the bill will provide for multiple disqualifications for unauthorised driving offences to operate concurrently (like for other driving offences and similar to other jurisdictions), unless otherwise ordered by the court.

Finally, the bill provides for police to impose vehicle sanctions, such as confiscation of number plates and the ability to impound vehicles of those who continue to drive whilst unauthorised and disqualified drivers who commit certain serious driving offences.

I now turn to the detail of the bill.

Removing outstanding driver disqualification periods

Item 15 will enable a disqualified driver to apply to the Local Court to have their remaining disqualification period removed or reduced after they have been compliant with their disqualification period for a minimum period.

I would like to make it very clear that offenders who have ever been convicted of the most serious category of driving offences causing death or injury, will never be eligible to apply to have their disqualification periods removed under the reform measures. This includes offences causing death or grievous bodily harm by driving, hit and runs, predatory or menacing driving and certain other serious driving offences.

The Court will only lift an order or reduce a driver's disqualification period if the person has not been convicted of any driving offence for the duration of the relevant offence-free period. This will be four years for any disqualification arising from serious offences and two years in other cases (for example, where the applicant has been convicted of driving while disqualified, unlicensed driving or low level speeding offences).

Similar schemes enabling the removal of a disqualification period operate in Queensland, Western Australia and the United Kingdom. Unlike schemes operating in those jurisdictions, the New South Wales scheme will require an applicant to remain compliant with their licence disqualification for a set period before they can apply.

Disqualified drivers who are serving lengthy disqualification periods, but who can demonstrate they have reformed their behaviour by complying with their disqualification, will be able to apply to have their disqualification period lifted. This will incentivise and put individuals on the path to return to lawful driving. They will still need to apply for a driving licence before they can get back on the road. Before lifting a disqualification period, the Local Court must take into account a number of considerations including public safety, the applicant's driving record and the nature of offences leading to disqualification.

Abolition of Habitual Traffic Offender scheme

Item 14 abolishes the Habitual Traffic Offender Scheme. Under the Scheme, people who are convicted of three relevant serious driving offences in a five year period are disqualified for five years, unless a court rules otherwise. The court may order a person be disqualified for longer periods, including disqualification for life.

These disqualification periods apply on top of existing disqualification periods. Disqualification periods are also cumulative, which means that they do not start until other disqualification periods have expired. The result of this is lengthy, automatic and excessive hardship on drivers, sometimes for more than 10 years.

No other Australian jurisdiction has an equivalent scheme. The current scheme entrenches disadvantage among vulnerable people in the community. It disproportionately affects young people, the unemployed, and people living in rural, regional and remote areas, by severely limiting their ability to gain employment, care for their families and more broadly contribute to and participate in our communities.

The Bureau of Crime Statistics and Research has found that longer licence disqualification periods have little or no deterrent effect, and in some cases, may increase the risk of reoffending.

Beyond a certain point, additional punishments, on top of a disqualified driver's initial disqualification period, reduces their motivation to turn their life around. Sanctions become meaningless when people are disqualified for very lengthy periods. It effectively results in a double penalty for the same crime. This results in crushing periods of disqualification, severely limiting a person's employment prospects.

It is important to emphasise that magistrates would continue to have the discretion to impose lengthy disqualification periods in appropriate cases. The amendments will remove disproportionate penalties, while ensuring the framework retains safeguards for drink and drug drivers, who pose a threat to community safety are kept off the road.

Penalties and driver disqualifications for offences by disqualified drivers or by drivers not holding a licence Items 1, 3 and 4 revise the maximum penalties for unauthorised driving offences.

It is an offence for a person to drive a motor vehicle while unlicensed, or to employ or permit an unlicensed driver to drive a motor vehicle. It is also an offence for a person to drive a motor vehicle (or apply for a driver licence) while disqualified, or if the person's driver licence has been cancelled or suspended.

At present, the maximum prison sentence for driving while disqualified, suspended or cancelled is 18 months for the first offence and 2 years for a second or subsequent offence.

Penalties for unauthorised driving will also be made fairer and more proportionate. Currently, repeat unauthorised driving penalties in New South Wales are similar to the State's maximum penalties for very serious offences such as high range drink driving. The bill will ensure the maximum penalties are proportionate to the seriousness of driving offences and will clearly distinguish between driving while unlicensed or disqualified, and more serious offences such as drink and drug driving.

Items 1, 3 and 4 will decrease the maximum periods of imprisonment that may be imposed on people who drive without a licence.

The amendments will reduce the current imprisonment term from 18 months to six months and reduce maximum imprisonment terms, currently up to two years in some cases, down to 12 months. In the case of the cancellation or suspension of a licence for non-payment of a fine, a period of imprisonment of six months will only apply for a second or subsequent offence.

This regime will still be tougher than the penalties that apply to low range drink driving offences.

Item 10 will insert a new section 205A which will provide for automatic and minimum disqualification periods, rather than mandatory disqualification periods.

Most driving offences, such as drink driving, carry an automatic disqualification period that the court has discretion to either reduce (down to a set minimum level), or increase, at the time of conviction. Unauthorised driving offences, however, currently carry mandatory disqualification periods that cannot be altered in any way by the court.

The proposed reform will amend the framework so that unauthorised driving offences carry automatic and minimum disqualification periods, which the court can reduce or increase, like other driving offences.

Under the amendments, an automatic disqualification period will apply to a driver, unless the court considers a shorter or longer period should apply. This will allow a court to consider the individual circumstances of each case when deciding the outcome.

A system of automatic and minimum periods involves a default period of disqualification applying on conviction, which can be revised up or down at the court's discretion. Courts will not be able to reduce the disqualification any less than the specified minimum period of disqualification.

Consistent with the Law and Safety Committee's recommendations, driving while disqualified will be treated more harshly than driving while suspended for fine default.

Section 205A will provide for:

Six months automatic disqualification for people driving while their licence is disqualified, cancelled or suspended (and not less than three months). An automatic 12 month disqualification for a second or subsequent offence (which cannot be reduced to any less than six months), will also apply.

Three months automatic disqualification for driving with a licence cancelled or suspended for a fine default (which cannot be reduced to any less than one month), with additional automatic 12 month disqualification for a second or subsequent offence (which cannot be reduced to any less than three months).

Automatic 12 month disqualification if a person drives who has never been licensed (which cannot be reduced to any less than three months).

Other penalties, such as fines, bonds and supervised orders, will continue to apply to unauthorised driving offences in addition to disqualification periods.

Commencement of disqualification periods

The existing licence disqualification period for an offence of unauthorised driving is cumulative, and not concurrent. This means that the disqualification period does not start until any existing disqualifications have expired. For example, if an offender is serving a two year disqualification and is convicted of a subsequent offence which carries a further two year disqualification, the second disqualification period will not commence until after the first period has been served. This is inconsistent with other road transport offences, which are generally served concurrently rather than cumulative. This approach for disqualified drivers is not supported by the evidence. Evidence shows long disqualifications can operate as a perverse incentive for people to drive before their disqualification ends (resulting in them breaking the law). The concurrent approach presented in this bill will align with how disqualification periods work for all other driving offences in New South Wales, including drink driving offences, which run from the date of conviction and are not cumulative.

Item 12 will introduce amendments to provide that disqualification periods will commence on the date of conviction unless the court orders a later date. This will ensure that a disqualification period for a number of offences are not cumulative, unless the court so orders.

Immediate driver licence suspensions

Item 17 amends section 225 which covers immediate licence suspension notices. One issue faced under the current framework is that it is unclear whether drivers who are already suspended may be issued with an immediate suspension notice. For example, if a driver is already suspended for fine default, and is then pulled over for a high range drink driving offence, it is unclear whether NSW Police can issue an immediate roadside suspension notice for the new offence. It is important that this is addressed because under the current system the driver may pay the fines for the original suspension the next day and be able to drive straight away.

Item 17 clarifies that the period of an immediate driver licence suspension, imposed by a police officer when a driver is charged with certain serious driving offences, has effect *despite* any other suspension to which the licence is subject or the lifting of that other suspension. This will ensure dangerous drivers can be issued immediate suspension notices in appropriate cases and be kept off the road.

Greater powers for roadside police

Items 18-20 extend the current three month vehicle sanctions to apply where a disqualified driver is caught exceeding the speed limit by more than 30 kilometres per hour. Vehicle sanctions will also apply if a person is charged with driving while disqualified, or driving while unlicensed, three times in a five year period. Police will be able to impose longer vehicle sanctions of six months where a disqualified driver commits a sanctionable offence. Essentially, driving while disqualified would be an "aggravating" factor.

As is currently the case, these amendments will only apply to a disqualified driver who is also the registered operator of the vehicle.

In cases where the offender is driving another person's vehicle, Police will notify Roads and Maritime in writing of the incident. Roads and Maritime will then send the registered operator a suspension warning letter advising them that suspension action may be taken against the vehicle if a further offence is committed in that vehicle. This existing process ensures that registered operators are not punished for the crimes of others but put on notice that failure to properly exercise control over the vehicle's use will not be tolerated.

Conclusion

This bill will reduce unauthorised driving and repeat offending. Certain disqualified drivers that have been compliant with their disqualification for a minimum period, will be able to apply to the Local Court to have their disqualifications lifted early—providing a clear way to return to lawful driving. Disqualified drivers who have ever been convicted of driving offences involving death or grievous bodily harm will never be eligible to have their disqualifications lifted early.

Rather than the current system that results in lengthy disqualification periods that are not an effective deterrent, penalties will be more effective in reducing unauthorised driving and repeat offending. Police will also have stronger powers to impose sanctions on disqualified drivers.

Further, courts will still have strong powers to impose disqualifications for serious driving offences, like drink and drug driving.

Ultimately, we are reforming the driver disqualification regime to incentivise the return to lawful driving and punish serious driving offenders in order to achieve a fairer, more balanced system in New South Wales.

I commend the bill to the House.

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