

Executive Summary

Key issues

This inquiry focused on whether the laws relating to unauthorised driving offences should be reformed. Unauthorised driving offences are:

- drive while never having been licensed
- drive while licence disqualified, cancelled or suspended, and
- drive while licence suspended or cancelled due to fine default.

Some of the key issues raised in this inquiry are highlighted below.

Prevalence of unauthorised driving offences

In 2012, unauthorised driving offences were the third most common principal offences of which offenders were found guilty in the NSW Local Courts, after regulatory driving offences (such as speeding, parking and drink driving) and assault. In that year, 694 individuals were sentenced to full time imprisonment for unauthorised driving offences. Significant costs to the criminal justice system are incurred through the prosecution of these offences and the management of offenders.

Current penalties and licence disqualifications disproportionate to seriousness of offences

The current penalties for unauthorised driving offences include fines and imprisonment. Offenders will also have their licence disqualified for a set period of time. Inquiry participants felt that some of the penalties and disqualification periods for unauthorised driving offences are disproportionate to the seriousness of those offences. Some unauthorised driving offences carry penalties and disqualification periods that are similar to, or greater than, offences such as drink driving and certain dangerous driving offences.

A number of stakeholders noted that unauthorised drivers are not always unsafe drivers and, because of this, unauthorised driving offences generally do not pose the same risk to public safety as offences such as drink driving and dangerous driving.

Limited court discretion to determine licence disqualification periods

Licence disqualification periods are mandatory for unauthorised driving offences. This means that the disqualification period specified for the relevant offence will apply irrespective of the circumstances of the particular case.

The courts have virtually no discretion to impose a shorter licence disqualification period other than to avoid a disqualification entirely through an order dismissing the matter under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. However, stakeholders advised that this would rarely be an appropriate option for repeat offenders.

Not all road traffic offences carry mandatory disqualifications. For example, drink driving offences, negligent driving occasioning death or grievous bodily harm, and driving in a furious or reckless manner or at a dangerous speed do not carry mandatory licence disqualifications.

Instead, the court is given more discretion to impose a suitable disqualification period that is tailored to the circumstances of the case, although, not below the statutory minimum period.

Licence disqualification periods for unauthorised driving offences are also cumulative. 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. However, disqualifications for major road transport offences (including murder and manslaughter involving a vehicle and negligent driving where death or grievous bodily harm is occasioned) can generally be served concurrently; they are not cumulative.

Habitual Traffic Offenders Scheme

Unauthorised driving offences are also part of the Habitual Traffic Offenders Scheme. Once an offender has been convicted of three offences that are captured by the scheme within a five year period, they will be declared an Habitual Traffic Offender. They will then have their licence disqualified for a further five years. This is in addition to any disqualification periods that have been imposed for each of the three offences that led to them being declared an Habitual Traffic Offender.

Impact of lengthy licence disqualification periods

Inquiry participants' main concern was that the current arrangements for dealing with unauthorised driving offences can result in some offenders not only receiving fines and or imprisonment but also serving very lengthy licence disqualification periods – sometimes for more than a decade. According to stakeholders, this can have a significant impact on an individual's everyday life and can be disproportionate to the offence.

A number of inquiry participants spoke of the importance of having a driver licence, particularly in regional, rural and remote communities which may have little, or no, access to public transport. Without a driver licence, everyday tasks such as commuting to work, taking children to school, doing the grocery shopping and attending medical and other appointments can become very difficult. This can lead to social isolation, financial problems, further interaction with the criminal justice system and a sense of hopelessness. Aboriginal communities, young people and vulnerable groups are other sectors of the community who are particularly affected by the current laws.

Stakeholders also highlighted that long disqualification periods do not necessarily act as a deterrent to re-offending, with studies demonstrating that a number of unauthorised drivers continue to drive.

Licence suspension and cancellation for fine default

A particular concern raised by a number of stakeholders was licence suspensions and cancellations for fine default. The State Debt Recovery Office can direct Roads and Maritime Services to suspend a driver licence if an individual has outstanding fines. The fines do not necessarily have to be related to traffic offences. They may have been imposed because the individual failed to vote or travelled on a train without a ticket. Fifty two per cent of licences are suspended for non-payment of fines. Those who drive while suspended will have their licence disqualified.

Participants from NSW Government agencies explained that every Australian jurisdiction has moved to a system of licence restrictions for fine default and that this has been an effective mechanism for encouraging people to pay their fines. However, it also contributes to the large number of unauthorised driving offences each year.

Difficulties in obtaining a licence

Inquiry participants explained that 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 that those communities face include limited access to cars and licensed drivers to supervise learners and difficulties in obtaining identity documents such as birth certificates.

Inquiry outcomes

The Committee has made a number of recommendations to reform the laws relating to unauthorised driving offences to ensure that:

- courts have more discretion to impose appropriate disqualification periods that take into account the circumstances of the offender's case
- penalties and disqualification periods for these offences are proportionate to the crimes
- unauthorised driving offences will no longer be part of the Habitual Traffic Offenders scheme
- vehicle sanctions are available as a possible penalty for those who repeatedly drive while disqualified, and
- offenders who have served a minimum offence-free period will have the opportunity to apply to the court for it to consider whether it is appropriate to remove their outstanding disqualification.

The Committee's recommendations, if implemented, will ensure that offenders receive penalties and disqualification periods that are better tailored to the circumstances of their case. The courts will have the discretion to impose a serious penalty and a lengthy disqualification period where someone is a serial and wilful offender who poses a significant risk to public safety. However, low-level offenders, who are not a risk to public safety and who have reformed their behaviour can receive a penalty and disqualification period that reflects their less serious offence. The reforms will also encourage offenders to be of good behaviour while they are serving their disqualifications.

The Committee considers that these recommendations will assist in minimising the significant number of unauthorised driving offences each year and will address some of the impacts of lengthy disqualifications on the community. The recommendations have also been designed so as not to compromise public safety.

Report structure

Chapter One explains the conduct of this inquiry, including the submissions received by the Committee and the Committee's public hearing.

Chapter Two outlines the current unauthorised driving offences and the arrangements for dealing with these offences, including associated penalties and disqualification periods. It also explains the Habitual Traffic Offenders Scheme.

Chapter Three highlights the prevalence of unauthorised driving offences, considers community safety issues and discusses the impacts of the current arrangements on the community.

Chapter Four examines whether a right should be established for offenders to apply to have their outstanding disqualification periods removed if they have completed a minimum offence-free period.

Chapter Five explores whether the Habitual Traffic Offenders Scheme should be abolished.

Chapter Six considers whether the courts should be given discretion when imposing disqualification periods for unauthorised driving offences.

Chapter Seven assesses whether the maximum penalties for unauthorised driving offences, which include fines and imprisonment terms, should be revised.

Chapter Eight analyses whether vehicle sanctions should be introduced for offenders who repeatedly drive while disqualified.