



**The Hon Brad Hazzard MP
Attorney General
Minister for Justice**

**The Hon Duncan Gay MLC
Minister for Roads and Freight**

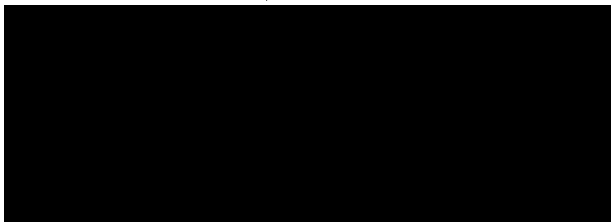
Ms Ronda Miller
Clerk of the Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Miller

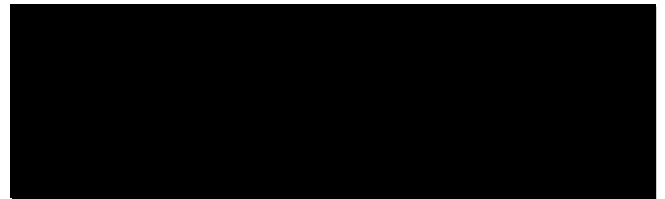
We write in relation to Report No. 3/55 of the Legislative Assembly Committee on Law and Safety - *Driver Licence Disqualification Reform*.

Please find enclosed the NSW Government's response to the Committee on Law and Safety.

Yours sincerely



**The Hon Duncan Gay MLC
Minister for Roads and Freight**



**The Hon Brad Hazzard MP
Attorney General and Minister for
Justice**

20 JUN 2014

**NSW Government Response to the
Legislative Assembly Committee on Law and Safety
Report on Driver Licence Disqualification Reform**

June 2014

Introduction

On 25 June 2013, the Attorney General and Minister for Justice and Minister for Roads and Ports referred an inquiry to the Legislative Assembly Committee on Law and Safety that required it to report on whether it is appropriate to reform the law related to unauthorised driving offences. The full terms of reference were:

1. That the Legislative Assembly Committee on Law and Safety inquire into and report on whether it is appropriate to reform the law relates to unauthorised driving offences, in particular to:
 - a) Establish a right to apply to the court to have any outstanding disqualification periods removed for people who complete a minimum offence free period;
 - b) Abolish the Habitual Traffic Offenders scheme;
 - c) Provide courts with discretion when imposing disqualification periods for unauthorised driving offences by:
 - i) Providing for automatic (and minimum) periods rather than mandatory periods
 - ii) Requiring that disqualification periods run from the date of conviction unless otherwise ordered.
 - d) Revise the maximum penalties prescribed for unauthorised driving offences; and
 - e) Introduce vehicle sanctions for offenders who repeatedly drive while disqualified.
2. In carrying out the inquiry the Legislative Assembly Committee on Law and Safety will have particular regard to:
 - a) Previous reports that have drawn attention to problems associated with driver licence disqualification including, but not limited to, reports by the Legislative Council Standing Committee on Law and Justice, the NSW Sentencing Council, the NSW Ombudsman and the NSW Law Reform Commission;
 - b) Reforms contained in the *Road Transport Amendment (Licence Disqualification on Conviction) Bill 2013*;
 - c) The need to ensure that reforms do not have an undue adverse impact on community safety; and
 - d) Any related matters.

The Committee's Final Report was tabled in Parliament on 21 November 2013. The Committee made 16 recommendations in total. The Committee's recommendations are designed to ensure that offenders receive penalties and disqualification periods that are better tailored to the circumstances of each case and to encourage offenders to be of good behaviour while they are serving their disqualification periods. At the same time, the recommendations preserve the ability of the courts to impose serious penalties and lengthy

disqualification periods where someone is a serial and wilful offender who poses a significant risk to public safety.

NSW Government Response

Recommendation 1: The Committee recommends that the NSW Government establish a right for those who have been convicted of road traffic offences to apply to have licence disqualification periods removed or reduced after they have completed a minimum offence-free period and that this right be administered by the NSW Courts.

Recommendation 2: The Committee recommends that the NSW Government, in establishing this right to apply to the court and the relevant offence-free period, balance:

- the possible impacts on court workload
- public safety
- the level of seriousness of different road traffic offence/s, and
- providing an incentive for offenders to be of good behaviour during their licence disqualification period.

Recommendation 3: The Committee recommends that the NSW Government ensure that, in determining whether a licence disqualification period should be removed or reduced, the courts consider:

- the character of the individual
- the individual's conduct since the original licence disqualification period was imposed
- the nature of the offence
- public safety, and
- any relevant circumstances

Response

The NSW Government supports these recommendations. It will introduce legislation to amend the *Road Transport Act 2013* to provide the Local and District Courts with the power to order that any outstanding disqualification periods are revoked for people who have completed a minimum offence-free period and who do not represent a road safety risk.

An applicant will be required to complete a minimum offence-free period of two years to be eligible to make an application. Where a person has committed certain other offences as one of the chain of offences leading to their current disqualification, they will be required to complete a minimum offence-free period of four years.

In deciding whether to grant an application, the courts will be required to take into account the following factors:

- Public safety;
- The character of the individual;

- The individual's conduct since the original disqualification period was imposed;
- The nature of the offence that led to the disqualification; and
- Any other relevant circumstances.

The NSW Government considers that allowing drivers to apply to have outstanding periods of disqualification removed after they have completed a minimum offence-free period will provide an incentive for those drivers to comply with the law and refrain from driving. However, where drivers continue to commit unauthorised driving offences, they would still be subject to significant penalties, including fines and possible imprisonment.

Recommendation 4: The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to remove the unauthorised driving offences referred to in sections 53(3) and 54(1), (3) and (4) of that Act from the Habitual Traffic Offenders Scheme.

Recommendation 5: The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to provide that an Habitual Traffic Offender declaration no longer comes into effect automatically after three relevant offences within five years. Instead, an Habitual Traffic Offender declaration should only be imposed once a court has accepted an application requesting that such a declaration be made.

Recommendation 6: The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to specify that offences dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999* do not count towards an Habitual Traffic Offender declaration.

Recommendation 7: The Committee recommends that the NSW Government review the Habitual Traffic Offenders Scheme as it applies to the remaining 'relevant offences' in section 216 of the *Road Transport Act 2013* to determine whether or not the Scheme should be abolished.

Response

The NSW Government agrees with the Committee's concerns regarding the operation of the Habitual Traffic Offender (HTO) Scheme and will introduce legislation to abolish it. The NSW Government notes that the Committee heard a number of criticisms of the HTO Scheme. In particular, the Committee accepted that HTO declarations do not appear to be an effective deterrent to committing future driving offences, but in fact may reduce motivation to reform behaviour. There has been no evaluation of the Scheme that supports its retention. As the Committee notes, magistrates will continue to have the ability to impose lengthy disqualification periods in appropriate cases.

Recommendation 8: The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to remove the mandatory licence disqualification periods for unauthorised driving offences and replace them with automatic and minimum licence disqualification periods which include:

- a minimum disqualification period
- a default disqualification period that would apply unless the court selected another period of time, and
- no maximum period.

Recommendation 9: The Committee recommends that the NSW Government ensure that, when prescribing minimum and default (automatic) disqualification periods, driving while disqualified is treated as more serious than driving while licence suspended or cancelled (whether or not for fine default), and driving while never having been licenced.

Response

The NSW Government supports these recommendations. It will introduce legislation to amend the *Road Transport Act 2013* to remove the mandatory licence disqualification periods for unauthorised driving offences and replace them with automatic and minimum licence disqualification periods. Disqualification periods will be set to ensure that driving while disqualified, suspended or cancelled is treated as more serious than driving while licence suspended or cancelled for fine default.

Recommendation 10: The Committee recommends that the NSW Government introduce amendments to the *Road Transport Act 2013* to provide that licence disqualification periods for unauthorised driving offences run from the date of conviction unless otherwise ordered by the court.

Response

The NSW Government supports this recommendation. It will introduce legislation to amend the *Road Transport Act 2013* to provide that licence disqualification periods for unauthorised driving offences run from the date of conviction unless otherwise ordered by the court. Disqualification periods for other driving offences in NSW, including drink driving offences, run from the date of conviction and are not cumulative. The NSW Government notes that implementation of this recommendation would not affect the operation of the *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013*, which relates to 'major disqualification' offences and does not relate to unauthorised driving offences.

Recommendation 11: The Committee recommends that the NSW Government review the maximum penalties (fines and terms of imprisonment) for unauthorised driving offences.

Recommendation 12: The Committee recommends that the NSW Government ensure that, when reviewing the maximum penalties, drive while disqualified is treated as more serious than driving while licence suspended or cancelled (whether or not for fine default) and driving while never having been licensed.

Response

The NSW Government supports these recommendations. It will introduce legislation to amend the *Road Transport Act 2013* to revise the maximum imprisonment terms that relate to unauthorised driving offences. Maximum imprisonment terms will be set in a manner that is proportionate to the maximum imprisonment terms that currently apply to low and mid-range PCA (drink driving) offences. Drive while disqualified, suspended or cancelled will be treated as more serious than drive while licence cancelled or suspended for fine default.

Recommendation 13: The Committee recommends that the NSW Government introduce vehicle sanctions for those who repeatedly drive while disqualified.

Recommendation 14: The Committee recommends that the NSW Government carry out further research to determine whether vehicle sanctions should be imposed by the Police, the courts, or both.

Recommendation 15: The Committee recommends that the NSW Government take into account the following factors when establishing vehicle sanctions for those who repeatedly drive while disqualified:

- whether vehicle sanctions may cause undue hardship to particular offenders;
- the extent to which offenders pose a serious risk to community safety,
- any impacts on third parties who may own the vehicle, have an interest in it, or rely on it
- ensuring that offenders are afforded procedural fairness and an opportunity to appeal against a vehicle sanction,
- any other relevant matters.

Recommendation 16: The Committee recommends that vehicle sanctions for repeatedly driving while disqualified include possible confiscation of number plates or vehicles for up to three months, but not vehicle forfeiture.

Response

The Committee's report has noted that the introduction of vehicle sanctions for unauthorised driving offences may be useful in certain circumstances. Research by the Bureau of Crime Statistics and Research has supported the view that longer disqualification periods have little deterrent effect, and in some cases, may increase the risk of reoffending.

Austrroads in its report '*Developing measures to reduce unlicensed driving*' also argued that vehicle impoundment or immobilization is 'the most promising sanction' for dealing with unlicensed driving. The Committee acknowledges the Austrroads report and the overseas research which showed an association between the use of vehicle sanctions and reduction in recidivism and crashes.

The Committee recognized the merit of introducing vehicle sanctions but commented that it should be available as a penalty for a limited number of offenders who repeatedly drive while disqualified or who put the public's safety at risk.

While the Committee also acknowledged that unauthorised driving in itself may not pose the same public safety risk in the same manner as other serious driving offences such as drink or drug driving, it was considered that vehicle sanctions could be an effective measure for dealing with recidivist unauthorised drivers.

The community has an expectation that all drivers on NSW roads should be legally licensed, and that those who choose to repeatedly drive illegally should be punished accordingly.

The NSW Government supports the availability of vehicle sanctions for disqualified drivers including those who also pose a serious risk to public safety. It will introduce legislation to expand existing provisions in the *Road Transport Act 2013* which allow number plates or vehicles to be confiscated by the Police.

In cases where a person is charged with an offence of 'drive while disqualified' or 'unlicensed – never licensed' on a third occasion within a five year period, the vehicle or number plates may be confiscated for a period of three months.

Where a disqualified or 'never licensed' driver is also detected speeding by more than 30 km/h, the vehicle or number plates may also be confiscated for a period of three months.

Where a disqualified or 'never licensed' driver is also detected committing an existing 'sanctionable offence' (as prescribed under section 237 of the *Road Transport Act 2013* – this includes speeding by more than 45 km/h, street racing or aggravated burnout offences & engaging in a police pursuit), the vehicle or number plates may be confiscated for a period of six months. The

current three month sanction period will continue to apply to licensed drivers who commit these sanctionable offences.

This approach will ensure that vehicle sanctions are only imposed where an offender repeatedly drives while unauthorised to do so or who poses an immediate risk to community safety. In accordance with current confiscation provisions and to ensure that parties are afforded procedural fairness, a person will be able to apply to the court after five days to have the number plates returned if they can demonstrate 'extreme hardship' to a person other than the offender. This will enable business owners or family members who are reliant on a vehicle to have the number plates or vehicle returned.