

## Criminal Law Committee

### Driver Licence Disqualification Reform

### Response to Questions on Notice

**17 September 2013**

**The Director**

Legislative Assembly Committees  
Parliament House  
Macquarie St  
Sydney NSW 2000  
[lawsafety@parliament.nsw.gov.au](mailto:lawsafety@parliament.nsw.gov.au)

**Contact:**

**Greg Johnson**

*President, NSW Young Lawyers*

**Alexander Edwards**

*Chair, NSW Young Lawyers Criminal Law Committee*

**Authors:**

**Andrew Tiedt**

*Vice Chair, NSW Young Lawyers Criminal Law Committee*

**Thomas Spohr**

*Vice President, NSW Young Lawyers*

## Introduction

On 5 September 2013, the NSW Young Lawyers Criminal Law Committee (“the Committee”) was provided with a list of additional questions in respect of the Driver Licence Disqualification Reform Inquiry (“the Inquiry”).

Below we set out our answers to those questions. We note that this submission needs to be read in conjunction with our oral evidence of 30 August 2013 and our previous submission, dated 22 July 2013.

## Answers to questions on notice

### **1. Some submissions have suggested that the Habitual Traffic Offenders Scheme results in a double penalty as offenders have already received a penalty in respect of each of their individual offences. What is your view on this?**

With great respect to those who have expressed that view, the Committee considers the term “double penalty” unhelpful. The law frequently empowers – indeed even *requires* – the imposition of a “double” penalty. For example:

- For many criminal offences, the court is empowered to fine, or imprison, or both.
- A person committing a traffic offence will pay a fine but also accrue demerit points that may eventually result in their licence being suspended.
- For an unauthorised driving offence, the court imposes both a criminal penalty and a licence disqualification.

The Committee considers that the real problem with Habitual Offender Declarations is that they impose a disqualification beyond the disqualification that the judicial officer considered appropriate (within the limits of minimum and automatic disqualification periods). In other words: our submission is that Habitual Offender Declarations are a penalty that the judicial officer cannot vary to take account of the circumstances, and that is unsatisfactory.

The committee accepts, of course, that a sentencing court has a discretion to “quash” the Habitual Offender Declaration where it considers that a “... *disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case*” – but does point out that this is a high bar that is seldom met.

**2. Your submission contained an example of a hypothetical person who loses their licence on the spot for drink driving. They don't realise that they have to stop driving immediately and think that they have until their court appearance date. They then keep driving and accumulate a further disqualification for driving while suspended. Is this a common problem and what do you think should be done about this?**

In the Committee's experience that is indeed a common problem, however the Committee is regrettably unsure whether the remainder of the Inquiry's question was directed to:

- A. The issue of the person *not being aware* of the suspension in the first place;  
or
- B. The automatic nature of the penalty that is subsequently imposed.

We have accordingly done our best to answer the question either way.

***A. IF THE QUESTION IS INTENDED TO ASK WHAT SHOULD BE DONE ABOUT THE FACT THAT SOME OFFENDERS DRIVE, NOT REALISING THEY ARE SUSPENDED:***

Communicating to an arrested person that they cannot drive until after court is mostly an issue for police – the information police provide to a person when they are stopped, and the way that information is provided, are vital to ensuring that a person does not commit further “drive whilst suspended” offences before the next court date.

It is important, however, to understand that the person is, using our hypothetical, intoxicated – which may affect their ability to understand and retain information given to them by police when they are arrested, but might also say something about quality of their judgment (at least some of the time).

***IF THE QUESTION IS ABOUT THE PENALTIES THAT EVENTUALLY COME ABOUT FROM THE FURTHER (SUSPENDED) DRIVING:***

In our submission the problem is that the discretion of a judicial officer is limited on both on the minimum disqualification periods and the start date of those disqualification periods. In our view, if greater discretion were given to judicial officers, some injustices could be avoided through the appropriate use of discretion.

Minimum periods of disqualification which have to be accumulated on each other are, at their core, mandatory sentences. In the Committee's respectful view, mandatory sentencing is an ineffective tool, and injustices almost invariably result and in our view this scenario provides an excellent example of that proposition.

### **3. Your submission states that you are broadly in favour of establishing a right for people to apply to the court to have any outstanding disqualification periods removed for people who complete a minimum offence free period. How would this work?**

As one example, it would be possible for a person to be entitled to apply to the Local Court once they have had 3 years without an offence under the *Road Transport Act*. The legislation could be similar to that included in section 268 of the *Road Transport Act* (a separate section would be required to allow for the fact that these appeals would not be in relation to a decision of the Authority).

It would also be possible to include a presumption in the Act that requires, for example, a demonstrated change in circumstances or character, or imposes a need for exceptional circumstances. Our recommendation, however, would be for the court to be empowered to quash remaining disqualification periods if it “is appropriate in all the circumstances”. It would similarly be possible to include provision for a sentencing court to order that no such application should be allowed for a particular sentence (for example if an offence was considered particularly serious), or to exclude particularly serious offences from the scheme – remembering, however, that the Committee favours simplicity wherever possible in this area.

As we indicated in our verbal evidence, the core point to be made is that a person would be entitled to *apply*, rather than given a *right* to get their licence back.

This approach could also have an additional benefit to this Inquiry. If the decision is made to end the Habitual Offender Declarations scheme, transitional arrangements could be complicated and span a very long time (in some cases, decades). But if an application scheme were enacted, affected persons could simply be informed that they have a right to reapply for a licence if they have not offended in the last 3 years. It could also deal adequately with the perceived injustice that some might feel if the decision is made to stop accumulating disqualification periods for unauthorised driving offences. Those persons would merely need to be of good behaviour for 3 years and they would then be able to reapply for their licence.

### **4. Would you support the use of vehicle sanctions if there were parameters around their use?**

Possibly, provided that there were broad powers for the return of the vehicle and the decision to confiscate the vehicle was only applied in limited, appropriate circumstances. We would recommend that police only be able to confiscate the vehicle where the vehicle is registered in the name of the driver who commits the unauthorised driving offence, in order to avoid sanctioning other people’s property for an offender’s misconduct. Further, any such driver should be able to apply for the car to be returned under section 249 of the *Road Transport Act*.

**5. Are there any other reforms that are not specifically listed in the terms of reference for this inquiry that you consider would be beneficial for dealing with unauthorised driving offences?**

We have not been able to identify any.

The Committee once again thanks the Inquiry for the opportunity to make a submission.

If you have any questions in relation to the matters raised in this submission, please contact:

**Greg Johnson**, President of NSW Young Lawyers  
[REDACTED]

OR

**Alexander Edwards**, Chair of the NSW Young Lawyers Criminal Law Committee  
[REDACTED]

Yours faithfully,

[REDACTED]

**Alexander Edwards | Chair, Criminal Law Committee**  
**NSW Young Lawyers | The Law Society of New South Wales**