

**Submission
No 19**

DRIVER LICENCE DISQUALIFICATION REFORM

Organisation: The Law Society of New South Wales Criminal Law Committee
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THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: criminal:JDad756365

22 July 2013

Mr John Barilaro MP
Chair, Committee on Law and Safety
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: lawsafety@parliament.nsw.gov.au

Dear Chair,

Inquiry into Driver Licence Disqualification Reform

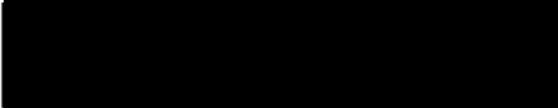
I write to you on behalf of the Criminal Law Committee ("Committee") of the Law Society of New South Wales in relation to the Legislative Assembly Committee on Law and Safety's inquiry into driver licence disqualification reform.

I thank you for the invitation to make a submission to the inquiry, and now attach the Committee's submission for your consideration.

I can also indicate that the Law Society would be interested in appearing at a public hearing to give evidence. Should this be of assistance, it would be helpful if you could please provide us with the details so that we can ensure appropriate representatives of the Committee are able to attend.

Thank you once again for the opportunity to make a submission to the inquiry.

Yours sincerely,


John Dobson
President

Criminal Law Committee Submissions on Inquiry into Driver Licence Disqualification Reform

The Criminal Law Committee of the Law Society of New South Wales ("Committee") has consistently advocated over a number of years for reform of "unauthorised driving offences." The Committee understands these to be particular offences under sections 53 and 54 of the *Road Transport Act 2013* (previously sections 25 and 25A of the *Road Transport (Driver Licensing) Act 1998*).

Addressing each of the issues raised in the Inquiry's Terms of Reference the Committee makes the following points:

1. (a) The Committee supports the concept of establishing a right for persons to apply to the Court to have outstanding disqualification periods removed having completed a minimum offence-free period.

The Committee suggests that the minimum offence-free period be either two or three years and that it be necessary to demonstrate certain reasons for such an application to be successful at Court. These could include family reasons, employment reasons, health, education, age, financial circumstances and place of residence.

Notice of such application should be required to be given to the RMS however the Committee would not envisage that it would be necessary for them to appear in relation to each application. The Committee notes that the RMS does not currently appear in the Local Court in relation to applications made to quash Habitual Traffic Offender Declarations.

The Committee's view is that any abolition of Habitual Traffic Offender Declarations will have a direct effect on lengthy disqualification periods (see 1(b) below).

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- (b) The Committee has proposed for many years that the Habitual Traffic Offenders Scheme be abolished. In the Committee's view, the additional periods of disqualification that arise are excessive, onerous and do not appear to act as any type of deterrent. They are antithetical to sentencing principles of rehabilitation as they are cumulative on any Court imposed disqualification period and do not commence until a Court imposed disqualification period has expired. The additional five year period is imposed on any combination of three offences within five years resulting in multiple declarations over the same five year period.

There is no right of appeal to the District Court and the only relief available is an application to the Local Court for the period to be quashed entirely or reduced to two years. The Committee is also aware that there appears to be a number of cases where the Local Court is in fact quashing such declarations; or, in many cases, at least reducing them to two years.

The detrimental effects of such declarations are especially seen in rural and regional NSW where there is less public transport available and a greater reliance on cars and hence, the need for a licence.

The Committee notes that lengthy periods of disqualification are already available for repeat offenders.

- (c) The Committee submits that any proposal to provide Courts with discretion when imposing disqualification periods for unauthorised driving offences would bring such penalties more into line with what occurs presently with disqualification periods for other offences such as drink driving matters.

Providing for automatic and minimum periods of disqualification rather than a mandatory period would allow a Court to tailor a penalty to suit the circumstances of a particular case. The Committee notes that presently this does not occur as the Court has no discretion (other than to deal with matters without conviction pursuant to Section 10 of the *Crimes Sentencing and Procedure Act 1999* so as to avoid the mandatory period of disqualification that would otherwise be imposed).

Further, the periods of disqualification do not distinguish between Driving Whilst Cancelled, Driving Whilst Suspended and Driving Whilst Disqualified. The Committee is of the view that Driving Whilst Disqualified should be treated as the most serious and Driving Whilst Cancelled and Driving Whilst Suspended not as seriously.

The only exception to this presently is for a first offence of Driving Whilst Suspended for fine default suspension which carries an automatic period of three months disqualification rather than the automatic period of 12 months that is attached to Drive Whilst Disqualified, Driving Whilst Suspended and Driving Whilst Cancelled. This recognised that Driving Whilst Suspended after fine default suspension was far less serious than the other offences.

The Committee suggests that for Driving Whilst Cancelled the automatic period of disqualification for a first offence should be six months with the Court having discretion to reduce that to a minimum of three months. For a second or subsequent offence the automatic period should be 12 months with a minimum six months.

The Committee also suggests that for the offence of Driving Whilst Suspended the automatic period should be nine months with the Court having the discretion to reduce that to a minimum of six months. For a second or subsequent offence the automatic period of disqualification should be 18 months with the Court having the discretion to reduce that to a minimum of 12 months.

The Committee also suggests that for the offence of Driving Whilst Disqualified the automatic period should be 12 months with the Court having the discretion to reduce that to a minimum of nine months. For a second or subsequent offence the automatic period of disqualification should be two years with the Court having the discretion to reduce that to a minimum of 18 months.

The Committee would also support the proposition that the disqualification periods imposed for these offences run from the date of conviction unless otherwise ordered.

There may need to be some recognition of the fact that Driving Whilst Disqualified is in direct contravention of a Court Order and in certain circumstances the disqualification period imposed should be cumulative on the disqualification that created the offence.

The Committee also notes the proposed new s 206A which is presently before Parliament (see Road Transport Amendment (Licence Disqualification on Conviction Bill 2013) which will provide for disqualification periods for people serving imprisonment not to commence until they are released from custody.

- (d) If it is considered that a range of penalties in relation to disqualification periods should reflect the different levels of seriousness of the different types of unauthorised driving offences, then the Committee submits that it would also be appropriate to have a range of maximum penalties prescribed for unauthorised driving offences that similarly reflect the different levels of seriousness. The Committee has prepared the table below setting out the current penalties and the proposed changes.

Offence	First offence	Second or subsequent Offence within 5 years
Drive while disqualified <i>(current penalty)</i>	<ul style="list-style-type: none"> • Maximum fine of \$3,300.00 • A maximum jail term of 18 months • Unlimited maximum disqualification period • A mandatory disqualification period of 12 months 	<ul style="list-style-type: none"> • Maximum fine of \$5,500.00 • A maximum jail term of 2 years • Unlimited maximum disqualification period • A mandatory disqualification period of 2 years
	<i>(proposed changes)</i> <ul style="list-style-type: none"> • Maximum fine of \$3,300.00 • A maximum jail term of 18 months • Automatic period of disqualification of 12 months. Court has discretion to reduce to a minimum of 9 months 	<ul style="list-style-type: none"> • Maximum fine of \$4,400.00 • A maximum jail term of 2 years • Automatic period of disqualification of 2 years. Court has discretion to reduce to a minimum of 18 months
Drive while suspended <i>(current penalty)</i>	<ul style="list-style-type: none"> • Maximum fine of \$3,300.00 • A maximum jail term of 18 months • Unlimited maximum disqualification period • A mandatory disqualification period of 12 months or a mandatory disqualification period of 3 months if you have been suspended for non-payment of a fine 	<ul style="list-style-type: none"> • Maximum fine of \$5,500.00 • A maximum jail term of 2 years • Unlimited maximum disqualification period • A mandatory disqualification period of 2 years

<i>(proposed changes)</i>	<ul style="list-style-type: none"> • Maximum fine of \$2,200.00 • A maximum jail term of 12 months • Automatic period of disqualification of 9 months. Court has discretion to reduce to a minimum period of 6 months. 	<ul style="list-style-type: none"> • Maximum fine of \$3,300.00 • A maximum jail term of 18 months • Automatic period of disqualification of 18 months. Court has discretion to reduce to a minimum of 12 months.
Drive while cancelled <i>(current penalty)</i>	<ul style="list-style-type: none"> • Maximum fine of \$3,300.00 • A maximum jail term of 18 months • Unlimited maximum disqualification period • Mandatory disqualification period of 12 months 	<ul style="list-style-type: none"> • Maximum fine of \$5,500.00 • A maximum jail term of 2 years • Unlimited maximum disqualification period • Mandatory disqualification period of 2 years
<i>(proposed changes)</i>	<ul style="list-style-type: none"> • Maximum fine of \$1,100.00 • A maximum jail term of 6 months • Automatic period of disqualification of 6 months. Court has discretion to reduce to a minimum period of 3 months. 	<ul style="list-style-type: none"> • Maximum fine of \$2,200.00 • A maximum jail term of 12 months • Automatic period of disqualification of 12 months. Court has discretion to reduce to a minimum period of 6 months.

- (e) The Committee opposes vehicle sanctions for offenders who repeatedly drive while disqualified. While the taking of a vehicle might be seen as appropriate in circumstances where a person repeatedly drives while disqualified it can create exceptional difficulties for other persons who either have an interest in that vehicle or who rely on it to some extent in circumstances where they have not committed any offence.

If such a sanction was to be considered then the Committee would suggest that it be only reserved for the worst offender. For example, when a person has been convicted of three Driving Whilst Disqualified offences within a period of five years. The Committee's view is that the sanction should not, in any circumstances, apply to those who drive while cancelled or drive while suspended.

The sanction should also have provision for an appeal to the Local Court against the taking of the vehicle, similar to what exists currently for burn out offences.