

**Submission  
No 17**

## **DRIVER LICENCE DISQUALIFICATION REFORM**

**Organisation:** Mid North Coast Community Legal Centre  
**Name:** Mrs Kyrie Couch  
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Port Macquarie  
Suite 2, 52 Lord St  
(Po Box 2853)  
Port Macquarie NSW 2444  
T: 02 6580 2111  
F: 02 6583 4847  
info@mncclc.org.au

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The Committee Manager  
Committee on Law and Safety  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Sir/Madam

**Re: NSW Parliament Inquiry into Driver Licence Disqualification Reform**

The Mid North Coast Community Legal Centre (MNCCLC) is a community legal centre based in Port Macquarie in the Mid North Coast region of NSW. MNCCLC provides free legal advice to vulnerable people living in the Greater Taree, Kempsey Shire, and Port Macquarie-Hastings Local Government Areas. Last year, roads and traffic offences contributed to nearly ten per cent of advices given by the CLC, making it the third most common type of advice sought from clients.

The Centre welcomes the NSW Parliament Inquiry into Driver Licence Disqualification Reform. The effects of many years of driving disqualifications can be debilitating and far reaching, particularly in regional areas such as the Mid North Coast, where public transport options are limited or non-existent. Licence disqualification has far reaching implications especially on an individual's training and employment opportunities. Access to essential health services can become difficult and family and community obligations can become problematic, contributing to feelings of isolation and worthlessness.

As the law stands, the automatic minimum disqualification period for a first offence is three months, where the suspension was due to a fine default. For all other offences of driving while suspended, cancelled or disqualified, the automatic minimum disqualification period is 12 months. For a second or subsequent offence of driving while suspended, cancelled or disqualified, the mandatory minimum disqualification is two years. Magistrates, apart from invoking the operation of s10, have no discretion when imposing disqualification periods for unauthorised driving offences. We submit that provisions for automatic and minimum periods of disqualification are more appropriate, as opposed to the current oppressive, mandatory periods.

It is also important to note that these disqualification periods are cumulative upon any existing suspensions or disqualifications and we strongly advocate for magistrates to be presented with the



option of concurrent disqualification periods. We often witness cases where clients have been disqualified for 20+ years for offences committed in their teenage years or early 20's and are now responsible adults with parental responsibilities, rearing children without a driver's licence. Another common scenario is clients who have also been disqualified for 30+ years who are now rehabilitated, elderly and unable to drive to medical appointments.

## **CASE STUDY ONE**

### **"Lennie's Story"**

Lennie, aged 51, has been declared a habitual traffic offender and has had his licence disqualified until 2019 by a court order. Lennie has paid all of his traffic fines, completed weekend detention and spent time in gaol to compensate for his traffic offences. The majority of Lennie's traffic offences relate to driving whilst disqualified.

Lennie is a below-the-knee amputee and finds it difficult to use what limited public transport is available in the regional area where he lives. Lennie is also a carer for a person in a wheelchair and it is difficult for him to care for this person and get them to medical appointments when he doesn't have a licence and cannot navigate public transport. Lennie lives 16km from the nearest hospital and often has to travel even further to specialist appointments in larger cities.

Lennie's only avenue to recover his licence is to make an application for remission to the Attorney General. The Attorney General may, if there is an urgent and pressing need for the return of the applicant's licence, recommend that the Governor remits the unexpired period of driving disqualification imposed by the courts through the exercise of the Royal Prerogative of Mercy. However, this occurs in very rare circumstances and the applicant must be able to prove that the extraordinary circumstances arose after the penalty was imposed and could not have been a foreseeable consequence of the disqualification. Sadly, despite Lennie's obvious need for a licence, his circumstances did not meet the threshold required for remission.

## **CASE STUDY TWO**

### **"Jesse's Story"**

Jesse is 21 years old and holds a P1 licence. She was fined for evading a train fare but due to severe financial hardship was unable to pay the fine so she ignored it. Eventually, Jesse received a letter in the post suspending her driver's licence for 3 months but due to her difficulties with reading could not comprehend the letters content and continued to drive. Jesse was charged with Driving whilst Suspended by police on her way to work one morning and her licence disqualified until 12.4.2014. Jesse has since moved home to be a full time carer for her mother who has epilepsy and requires her licence to transport her to various medical appointments. Unfortunately, as Jesse's disqualification was court ordered, it must be served before she is able to drive again, irrespective of her need for a licence.

Clients like Lennie and Jesse have no legal avenue available to them to apply to the court to have the outstanding disqualification periods removed and we would support law reform of that nature, to allow other avenues after the completion of a minimum offence free period. Alternatively, placing a jurisdictional upper limit on accumulation of disqualifications in the Local Court may also be sufficient.

The centre supports the recommendation that the Habitual Offenders Scheme be abolished. The scheme provides that a driver will be declared a habitual offender if convicted of three major traffic offences within 5 years. The declaration of a person as a habitual offender will occur when the third major conviction is recorded. The legislation currently allows for a second Habitual offenders Declaration to take into account 2 previous offences recorded under the first Habitual Offenders Declaration. It is our submission that the practical effect of that legislation is unjust and oppressive. Habitual Offender Declarations fail to achieve their purpose of deterrence or rehabilitation. The evidence is overwhelming and illustrates that beyond a certain point disqualifications have little deterrent value.

### **CASE STUDY THREE**

#### **“Luis’ Story”**

Luis was a 58 year old who had his licence cancelled in 1999 for unpaid fines. He was employed as a mechanic and required to move vehicles in the work yard as a part of his employment and was often charged by police for Driving whilst Cancelled and Drive whilst Disqualified.

His last offence was in 2007 where he was sentenced to a period of incarceration. Flowing on from that the client received 2 Habitual Offender Declarations resulting in an additional 10 year disqualification on top of his already court ordered disqualification. On the day of sentencing, the magistrate reduced that period to 4 years.

He had not come under the detection of police and had a clean record for the past 5 years and sort to have his habitual offender declarations quashed. The client had been riding his bike to and from work for the past five years; however he now required 2 knee reconstructions and was unable to ride. He travelled from Cairns to Port Macquarie to appear in court at a cost of \$1,800.00 . The court refused his application to quash the two Habitual Offender Declarations as they had already been already been reduced from 10 years to 4 years by the court and deemed to be just and proportionate despite the second declaration resulting from only one additional charge.

In Australia, traffic offences are customarily reprimanded by way of licence disqualification and fines. However, for more serious offenders, such as habitual drink-drivers or offenders who repeatedly drive disqualified, harsher penalties are sanctioned. As an alternative, we would advocate for the implementation of vehicle sanctions (vehicle impoundment, immobilisation, forfeiture, confiscation of plates and interlock devices). It is our belief that these mechanisms would be more effective in

regulating the behaviour of repeat traffic offenders and produce a more practical outcome. A study<sup>1</sup> found that number plate confiscation significantly reduced re-offending. Furthermore, number plates belong to the state and so issues surrounding the seizure of private property are minimised. The CLC would strongly support similar mechanisms to reprimand repeat traffic offenders.

Yours Faithfully,

**Mid North Coast Community Legal Centre**

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<sup>1</sup> Voas RB, DeYoung DJ (2002) Vehicle action: effective policy for controlling drunk and other high-risk drivers? *Accident Analysis and Prevention* 34 (3):263-270.