Submission No 10

DRIVER LICENCE DISQUALIFICATION REFORM

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THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Criminal Law Committee

Committee on Law and Safety

Inquiry into Driver Licence Disqualification Reform

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NSWYL Submission

Committee on Law and Safety
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Introduction

The NSW Young Lawyers Criminal Law Committee ("the Committee") refers to the terms of reference promulgated by the Committee on Law and Safety on 25 June 2013 on driver licence disqualification reform. The Committee has structured its submission by reference to the section “Reform” in the terms of reference.

NSW Young Lawyers, a division of the Law Society of NSW, is made up of legal practitioners and law students, who are under the age of 36 or in their first five years of practice. Our membership is made up of some 13,000 persons.

The Committee provides education to the legal profession and wider community on current and future developments in the criminal law, and identifies and submits on issues in need of law reform.

Summary

In the Committee's view, a review of the driver licence disqualification provisions in the *Road Transport Act 2013* should be conducted with the aim of delivering a more outcomes-focused scheme that will benefit the community as a whole. Most pressingly, the present licence disqualification regime for "unauthorised driving offences" is dissatisfactory on a number of levels. The Committee draws particular attention to lengthy disqualification periods that do not dissuade offending, and the general curtailment of discretion in imposing such orders.

The reforms the Committee expressly supports include:

1. **a right to apply to the Local Court for removal of outstanding disqualification periods on completion of a minimum offence free period (which period should be of a standard length);**
2. **abolishment of the Habitual Traffic Offenders scheme; and**
3. **an introduction of discretion in the imposition of disqualification periods imposed for unauthorised driving offences**

That the Legislative Assembly Committee on Law and Safety inquire into and report on whether it is appropriate to reform the law related 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;

The Committee supports, for the reasons discussed below, a right similar to that outlined, by application to the Local Court.

The application of harsh compulsory penalties for unauthorised driving offences frequently results in disqualification periods that extend for decades into the future. Anecdotal experience of members, gained from discussing motivations for offending with numerous clients and relayed to the Committee, is that once the disqualification period extends far enough into the future, the prospect of again obtaining a licence provides little motivation for compliance with the disqualification.

By way of example: if a person is disqualified until 2030 (not uncommon), the threat of that disqualification being extended further is unlikely to motivate compliance with the law. Rather, many of these offenders only "get the message" when they receive a serious sentence, such as an Intensive Correction Order, or even full-time imprisonment. The Committee is bolstered in this view by other sources that confirm that the threat of disqualification has little impact upon re-offending, and that a significant number of (or even a majority of) disqualified drivers do at some point drive whilst disqualified.[1]

The only available conclusion is that when automatic penalties have the effect, in the case of an individual offender, of accruing into a disqualification period that extends for an insurmountable length of time, the legislation does not achieve its purpose. It does not lead to a change in behaviour and it does not protect the community. It leads only to further opportunity for offending and punishment.

That being said, the Committee notes that this change may run contrary to "truth in sentencing" principles. Whilst this should not be a bar to the suggested change, we note the need to ensure that offenders to perceive "punishment" for their offences such that specific and, more importantly, general deterrence is not reduced or hampered.

The Committee is broadly in favour of the change suggested, but urge careful consideration as to the precise timeframes, rules and conditions with which licences are re-issued. We certainly support the remission occurring only upon application to the Local Court, rather than it being an administrative decision of the Roads and Maritime Services. It is also important that the "offence free period" be of a standard length, not itself crushingly long. Three years would be appropriate.

b) Abolish the Habitual Traffic Offenders scheme;

The Committee supports this reform, for a number of reasons.

First, the magistrate who sentences a person for an offence that carries a disqualification period will have turned his or her mind to what period of disqualification is appropriate, taking into account all the circumstances. In circumstances where longer periods of disqualification are called for, magistrates are capable of applying those periods.

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[1] *Driving While Disqualified or Suspended* (Victoria Sentencing Advisory Council, April 2009), [1.18], [2.88], [2.98]; and *The Disqualified Driver Study* (Crime Research Centre, University of Western Australia, September 2003, pp 13 and 64

Second, for a third offence within five years, the minimum and automatic disqualifications will already be substantial. Further, an offender is unlikely to receive a great deal of leniency from a court, given that he or she is a multiple offender. There is no obvious reason, therefore, why a further five years should be automatically imposed.

Third, the offender is given no opportunity to explain to Roads and Maritime Services why such a penalty is inappropriate, and indeed there is no discretion for the authority to not impose the disqualification. Magistrates do have a discretion to quash said declarations on sentence, but the requirement that the court only quash the declaration where it is a "disproportionate and unjust consequence" generally precludes such an application.

Fourth, while it is possible to, at a later date, make an application to the court that convicted the offender to quash the declaration, this unnecessarily burdens an already crowded court system. Further offending in the interim period (including unauthorised driving offences) usually has the effect of drastically reducing the likelihood of such an application being granted.

Fifth, for a "second or subsequent" unauthorised driving offence, the minimum and automatic period of disqualification is two years. The Committee considers this to be a more than sufficient in the circumstances.

Sixth, the Committee repeats its response to on the previous question – in the absence of evidence that further disqualifications actually deter offending, and given that the offender is no more or less a danger than before the unauthorised driving offence (as opposed to if, for example, a Drink Driving offence had been committed), it is difficult to understand the purpose of further disqualification.

c) Provide courts with discretion when imposing disqualification periods for unauthorised diving offences by:

i). Providing for automatic (and minimum) periods rather than mandatory periods; and

The Committee favours magistrates having greater discretion to deal with the individual circumstances of each offender. (The Committee has already outlined above its opposition to long mandatory disqualification.)

One member provided an example to the Committee of how the present disqualification regime may create individual unfairness:

> The most common example is someone who loses their licence on the spot drink driving. They don't realise and think they have until they go to court to keep driving when they get picked up for drive while suspended. Then they end up with a minimum 12 month disqualification on top of what they would have got for the drink driving. This could be even if they were lining up for a s10 or a minor penalty for the drink driving.

If the "automatic" and "minimum" scheme suggested by the terms of reference corresponds to a maximum and minimum penalty scheme, it would be a useful reform. The distance between the available penalties would have to be great enough to allow magistrates real discretion in the instant case.

On a related matter, the Committee in general supports a reduction in the disqualification periods imposed for unauthorised driving offences. It is incongruous, for instance, that the minimum disqualification period for Driving Whilst Disqualified is the same as for High Range Drink Driving. There is no obvious reason to not have different minimum and automatic disqualification periods of disqualification for unauthorised driving offences.

ii). Requiring that disqualification periods run from the date of conviction unless otherwise ordered.

The Committee supports the suggestion that disqualification periods for unauthorised driving offences be permitted to commence on the date of

conviction. This would be more appropriate because it would prevent the rapid accumulation of periods of disqualification for repeat offenders. The phrase "unless otherwise ordered" concerns the Committee, in that such a change would require, in our view, a substantial reworking of the law surrounding the operation of disqualification periods generally.[2]

The Committee observes that this is consistent with r 10-2(9) of the Road Rules 2008, which states that disqualification commences on conviction for speeding offences.

d) Revise the maximum penalties prescribed for unauthorised driving offences; and

The Committee does not support any amendment to the present maximum penalties for unauthorised driving offences.

Any implementation of an automatic and minimum scheme should observe the present disqualification periods (and terms of imprisonment) as the ceiling of condign punishment. The Committee concedes that pecuniary penalties should be adjusted with inflation, but that is accounted for by the usual inflationary adjustment of penalty units.

e) Introduce vehicle sanctions for offenders who repeatedly drive while disqualified.

The Committee does have any particular views on this suggestion.

The Committee is not presently aware of any research into whether the vehicle sanctions that were introduced for "hoon" offences in NSW have been effective. We are obliged to observe that in Victoria such sanctions have been shown to be effective to some extent.[3] But this is qualified by a suggestion that this is true only during the period of sanction.[4]

If such a sanction were to be introduced, provision should be made to permit the return of the vehicle on application to the Local Court.

[2] See the problems faced in *Roads and Traffic Authority of NSW v Higginson* [2011] NSWCA 151, for example.
[3] *Driving While Disqualified or Suspended* (Victoria Sentencing Advisory Council, April 2009), [3.34].
[4] *The Disqualified Driver Study* (Crime Research Centre, University of Western Australia, September 2003, p 8.

The Committee thanks you for the opportunity to comment, and is able to attend a public hearing to give evidence if so required.

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]

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