

**Submission
No 21**

DRIVER LICENCE DISQUALIFICATION REFORM

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Driver Licence Disqualification Reform Inquiry July 2013
Legislative Assembly Committee on Law and Safety

1. I make this submission in my personal capacity although clearly my understanding of this area is informed by my experience both as a criminal lawyer and as a Magistrate. It may be that the Committee considers wholesale reform of the current system is appropriate. The matters I raise are restricted to particular issues with the current legislation and recently repealed legislation.
2. A real concern is that the current lengthy automatic licence disqualification periods have the potential to operate particularly harshly on the young, and on disadvantaged and indigenous offenders. In a report prepared for the RTA in 2008 it was found that in most indigenous communities unlicensed driving “was considered the norm”. I would urge all members of the committee to consider this RTA report as it describes some issues concerning driver licensing that apply to any person living in poverty, and that certainly apply to many people appearing before the courts for disqualified driving offences, as well as other offences relating to a person’s lack of a valid licence. (An Investigation of Aboriginal Driver Licencing Issues, Prepared for: Roads & Traffic Authority of NSW December 2008 E&S Research http://www.rta.nsw.gov.au/publicationsstatisticsforms/downloads/aboriginal_licensing_report171208.pdf),
3. It is not unusual for a person charged with “driving while disqualified” (“DWD”) to already have disqualifications in place extending more than 10 years. The lengthy disqualification periods to which some people are currently subject have often been acquired during a flurry of offending in the person’s teens and early twenties, and the person has often already served prison terms for previous DWD offences.
4. There is currently an automatic 3 year disqualification imposed on persons convicted of second offence unlicensed driving (never licensed) (s25(3) Road Transport (Driver Licensing) Act 1998 – now s53(4) Road Transport Act). These offences are frequently committed by people who are very young. Offenders can be dealt with in the Local Court for this offence from age 16. A

3 year disqualification at a young age, for an offender who was usually not driving drunk, or dangerously, has the appearance of disproportionality with disqualification penalties for those offences. Three years is a very long time for an 18 year old. By contrast, an offence of dangerous driving also has an automatic disqualification of three years, but that can be reduced by a court to one year. No discretion exists for the second offence “never licensed” offence.

5. In addition, magistrates currently have no discretion to reduce the 2 year disqualification that accumulates for every conviction for DWD after the first (within a five year period). It is not unusual to see defendants with more than five convictions for disqualified driving, and more than 10 years of disqualification to serve.
6. The only way these disqualification consequences can currently be avoided is by dealing with an offender under s10 Crimes (Sentencing Procedure) Act. That is almost inevitably not appropriate where a person is a repeat offender.
7. The lack of adequate discretion in the sentencing court in relation to disqualification periods on conviction for unlicensed, suspended, cancelled and disqualified drivers is one contributing factor to these lengthy existing disqualifications. The other is that there is currently no way in NSW for a person already disqualified for a lengthy period to apply to have their disqualification removed (apart from an application for executive clemency).
8. There are two ways of dealing with this. One is to provide sentencing courts with more discretion. The other is to provide a mechanism by which persons already disqualified far into the future could get their licence back after a specified period, by application to a court.
9. In relation to providing sentencing courts with greater discretion I suggest consideration be given to the following:
 - a. Amending the Road Transport Act 2013 by amending existing section 53(4) (which relates to second offence “never licensed” offenders) to give the court a discretion to impose an appropriate disqualification period, if necessary with a minimum period more in line with disqualification periods for other offences.

- b. Amending the Road Transport Act section 54(8)(a) and (b) by deleting the words “from the date of expiration of the existing disqualification or suspension” and inserting instead “specified by the court”. This would give a sentencing court a discretion to date a mandatory disqualification period from any appropriate date, and in appropriate circumstances to make disqualification periods concurrent rather than cumulative.
- 10. In addition, a relicensing system for people who have served a qualifying period of time off the road, would be a very useful reform. That is particularly because it would apply to people already subject to long disqualifications. Other states already have such provisions in place. Such a scheme would also allow a person’s changed circumstances to be taken into account.
- 11. People grow up. They mature. They gain insight, they have children, their parents grow old and get sick, their life circumstances change. Allowing repeat offenders some hope of getting a driver’s licence back would recognise that these changes also affect how people drive, and their need to drive. Such a scheme has the potential to reduce re-offending, and imprisonment rates. It also has the potential to increase safety on the roads.
- 12. A relicensing scheme could allow a person who has a specified period in the community without committing a driving offence to make an application to a court for an order permitting them to reapply for a driver’s licence. If successful, any remaining period of disqualification would be quashed. Such a scheme would give such offenders a real incentive not to reoffend during the specified period. Offenders would still need to satisfy the court that it was appropriate to quash the disqualification in their circumstances.

Disqualification versus suspension for speeding offences

- 13. While strictly outside the terms of this Inquiry, I would like to raise another disqualification issue that could potentially be addressed.
- 14. Currently the Road Rules 2008 Rule 10-2 sets out the disqualification penalties applicable to offences, dealt with by a court, of speeding at more

than 30 or 45 km/hr over the speed limit. The relevant disqualification periods are 3 and 6 months respectively.

15. A person who receives an infringement notice for either of these offences who pays the fine will not be disqualified from driving as a result of the offence. Their licence will be administratively suspended by RMS, a decision against which they have a right of appeal to the Local Court. On such an appeal the Magistrate has the power to reduce the suspension to a shorter period, or to quash it.
16. However, a person who elects to take such an infringement to court and then either pleads guilty or is found guilty is disqualified on conviction. The period of such disqualification cannot be reduced. At the end of the disqualification the licence is cancelled and the person must reapply for a further licence and take any necessary tests (unlike a person whose licence is suspended, whose licence remains in force at the end of the suspension, assuming it has not expired). People who make court elections frequently do so without the benefit of legal advice, unaware that the consequence will be disqualification rather than conviction, and unaware they will lose their appeal against suspension. It is not readily apparent why this distinction should exist, and why on conviction by a court for such an offence the RMS could not administratively suspend the person's licence for the relevant period (as they do when someone pays the fine).

Disqualification anomaly P/L drivers

17. This is also outside the terms of reference of the Inquiry, but is an apparent anomaly which could be easily addressed.
18. The road transport legislation generally permits a court to take into account a period of suspension of a driver's licence by a police officer, when fixing a period of disqualification. This is the case for major offences, and for speeding at more than 45 km/hr over the limit, pursuant to Road Rules 10-2 (4)(b)(ii), and for driving as an unaccompanied learner.

19. However, police also have the power to suspend a licence, where the person is a Learner or Provisional licence holder, for speeding at between 30 and 45 km/hr over the limit (s205 (1A)(b) Road Transport (General) Act 2005, now s224(1)(c)(ii) Road Transport Act 2013). In such a case, the period of suspension cannot be taken into account by a court that convicts the person of the offence, and any disqualification must commence from the date of conviction, and must be for a period of at least 3 months – there is no equivalent to Road Rule 10-2(4)(b)(ii) for drivers who have speeding offences of more than 30 km over the limit dealt with by a court.
20. The effect of this is that anyone whose licence is suspended by police is able to have the period of suspension taken into account by a court which convicts them, except for L and P platers suspended for driving at between 30 and 45 km/hr over the applicable speed limit.
21. The anomaly inherent in this can be demonstrated by considering that an L or P plater who is accused of driving at more than 45 km/hr over the limit, or while under the influence of alcohol or drugs, can have the suspension period taken into account to reduce their disqualification, but an L or P plater accused of driving at more than 30 km/hr over the limit cannot. There cannot be any logical policy reason for this distinction, which places a person committing a more serious offence in a better legal position than a person committing a less serious offence.
22. I would urge that consideration be given to amending Road Rules 10-2 (4) to allow suspension periods to be taken into account in these circumstances.
23. I commend these matters to you for consideration. I would be happy to provide any other information you may need.

Clare Farnan

