

Submission
No 2

**INQUIRY INTO ROAD TRANSPORT LEGISLATION
AMENDMENT (PENALTIES AND OTHER SANCTIONS)
BILL 2018**

Organisation: The Law Society of New South Wales
Date Received: 21 September 2018



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Crim:DHrg1587060

20 September 2018

Ms Rebecca Main
Director
Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

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

Dear Ms Main,

Inquiry into the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

Thank you for inviting the Law Society to make a submission to the inquiry into the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018.

The Bill establishes penalty notices for novice, special, low-range PCA offences and driving with the presence of an illicit drug offence for a first-time offence. Police will be able to issue an immediate three-month licence suspension notice for novice, special or low-range drink-driving offence at the roadside or station.

The Law Society does not support the Bill. In particular, we have concerns that the effect of the “drink driving is a crime” campaign will be diluted if low-range PCA offences are dealt with by penalty notices rather than by the courts. We are of the view that the reforms will decrease deterrence, increase offence and recidivism rates, and have a significant impact on people’s livelihoods - particularly those living in regional and remote areas. We are also concerned that despite being designed to reduce the pressure on the Local Court, they may in fact have the opposite effect.

We have detailed our concerns below for your consideration.

Automatic licence suspension

The proposed automatic suspension effectively undermines the court’s discretion, because it is likely that if a person court-elects on a penalty notice they will have already served their suspension period by the time the matter is listed in court. The effect of court election should be to stay the process of the immediate suspension.

Further, a successful appeal against an immediate licence suspension is difficult because the person must demonstrate “exceptional circumstances”, which is a high threshold. The Bill imposes the same test and burden for a first-time offender who is just over the low-range limit as that applied to a repeat offender who gets caught for a second and subsequent high range PCA.

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There is a genuine deterrent factor for first time low-range PCA offenders in going to court – the experience, and shame, of having to appear before a Magistrate, undertake a traffic offender program, and be warned of the consequences of further offending may well have a significantly greater deterrent effect on future offending than a penalty notice, fine and suspension.

Many first offenders may not seek legal advice following receipt of an infringement notice and may therefore be unaware of the alternative options available at court, including a discharge without conviction, a possible reduction in penalty and the availability of therapeutic models such as traffic offender programs.

The imposition of a penalty notice and an immediate three-month suspension has been justified by the Minister on the basis of reducing the pressure on the court system. However, the most recent statistics show that low-range PCAs were only 1.9% of all Local Court matters.¹ Further, we are concerned that the reforms will actually increase the burden on the Local Court. It is likely that there will be a significant increase in urgent applications for appeals against the licence suspension, resulting in two hearings rather than one.

The automatic licence suspension will impact on people's livelihoods, particularly in regional and rural areas that lack public transport options and where courts sit on a part-time basis. Driving while suspended offences will increase, snowballing into further periods of disqualification. The Bill appears to be contrary to the Government's 2017 reforms which were aimed at reducing the length of disqualification periods. In support of the 2017 reforms, the Attorney General noted that the driver licence disqualification framework:

... has a serious adverse social impact, particularly on vulnerable people and people in regional and rural areas, as long disqualifications affect the ability to travel for education and employment purposes.

... it contributes to the over-representation of Aboriginal people in the criminal justice system, with more than 14 per cent of those sentenced and almost a third of those imprisoned for unauthorised driving identifying as Aboriginal.²

Mandatory Interlock for mid-range PCA

Mandatory interlock periods tend to disproportionately impact disadvantaged sections of the community and people who drive for a living. Therefore, the situations where a court can make an interlock exemption order should be expanded for mid-range PCA offences. For example, an exemption order should be available if an interlock is not required in the interests of justice, or the court does not consider it appropriate or necessary when considering the traffic record, subjective circumstances of the offender, implications on any persons other than the offender (i.e. family, employer etc) or any other matter it deems necessary.

Section 4 definition "drug"

The proposal to amend the section 4 definition of "drug" to include: "any other substance that, when taken by an ordinary person, may deprive the person of, or impair, his or her normal mental or physical faculties (whether temporarily or permanently)" is highly problematic and should be deleted from the Bill.

¹ NSW Bureau of Crime Statistics and Research, *NSW Local Criminal Court Statistics October 2012 to September 2017*, for the year 2016-2017.

² Road Transport Amendment (Driver Licence Disqualification) Bill 2017, Second Reading Speech, 12 September 2017, p1.

The definition is broad, vague and imprecise. Perhaps most importantly, it does not require any evidentiary connection between the drug test and any negative impact on the ability to drive.

Drug driving offences are matters where there are legitimate defences available and under the proposed provisions people will be subject to an automatic three-month licence suspension.

We look forward to appearing before the inquiry's public hearing on Monday 24 September 2018.

Yours sincerely,

Doug Humphreys OAM
President