



22 July 2013

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

KINGSFORD
LEGAL CENTRE

Dear Madam / Sir,

Driver Licence Disqualification Reform (Inquiry)

Kingsford Legal Centre (KLC) thanks you for the opportunity to comment on the inquiry into driver licence disqualification reform.

About Kingsford Legal Centre

KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas since 1981. KLC provides general advice on a wide range of legal issues and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

In 2012, KLC provided legal advice to 94 people about road traffic and motor vehicle regulatory offences.

Question 1a: Right to apply to the court to have any outstanding disqualification periods removed for people who complete a minimum offence free period

KLC would support reforms giving offenders the right to apply to court to have their outstanding disqualification period removed after completing a minimum offence free period on the basis that such a right may encourage offenders to comply with the conditions of their licence disqualification and may reduce reoffending.

Giving offenders the right to have their disqualification period reviewed by the court would also give courts the power to consider offenders' unique circumstances, such as, the impact a lengthy disqualification is having on their employment and employment prospects, family and carers' responsibilities and the availability of public transportation where they live.

Case Study 1

Our client was sexually assaulted on a train and started using drugs and alcohol to escape the memory of the assault. Our client was caught driving with high range PCA and was disqualified from driving and sentenced to a term of imprisonment. While in custody our client completed programs to help her deal with her drug and alcohol addiction. Shortly before she was due to be released she sought advice from us regarding whether she could have her outstanding licence disqualification period removed because she wanted to do some training to improve her employment prospects, but could not use public transport because it provoked memories of the assault, which brought on panic attacks. We advised her that she could not apply to have the remaining licence disqualification period revoked.

We submit that had our client had the right to seek to have her remaining disqualification period revoked, it would have been easier for her to reintegrate into and start contributing to and actively participating in the community post-release.

If the Committee does not agree with the above proposal, we submit that offenders should have the right to apply for a 'good behaviour licence', similar to the option available to full licence holders who have accumulated more than 12 demerit points in a three year period, after they have completed a minimum offence free period.

We submit that giving offenders the right to apply for a 'good behaviour licence' after a certain period of time would also encourage them to comply with the conditions of their licence disqualification and reduce reoffending.

Question 1b: Abolish the Habitual Offenders Scheme

KLC submits that the Habitual Offenders Scheme should be abolished because it has little impact on recidivism and often leads to reoffending.

Case Study 2

In 1992 our client was disqualified for driving for 2 years after he was caught driving with a mid-range PCA. Our client continued to drive while disqualified because he had to care for his grandparents and needed to drive his brother to the hospital to get dialysis three times a week. He was convicted of driving while disqualified on a number of occasions subsequently and was eventually declared as a Habitual Traffic Offender in 2007 and will be disqualified from driving until 2018. Our client still has family and carers responsibilities which require him to drive.

We submit that the habitual offender's declaration will not deter our client from driving and exposes him to further interaction with the criminal justice system.

A study conducted by the NSW Bureau of Crime Statistics and Research suggested "that longer licence disqualifications have little to no deterrent effect and, in fact, for some driving offences, may actually increase the risk of reoffending".¹

¹ S Moffatt and S Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences*, Crime and Justice Bulletin No 106 (NSW Bureau of Crime Statistics and Research, 2007) 10.

We further submit that habitual offender declarations can have the effect of entrenching systemic disadvantage, particularly for young people, the unemployed, people living in rural, regional and remote areas and people leaving correctional centres, by severely limiting their ability to gain employment, care for their families and more broadly contribute to and participate in our communities.

A 2007 survey of NSW magistrates found that 86% of respondents believed that habitual offender declarations were never or only sometimes an appropriate penalty, commenting that “horrendous penalties are imposed with huge repercussions” with sanctions “becoming meaningless” when offenders were being disqualified well into the next decade or in excess of thirty years.²

Question 1c: Provide courts with discretion when imposing disqualification periods for unauthorised driving offences

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

We do not support the current scheme which requires offenders to serve mandatory minimum licence disqualification periods for unauthorised driving offences. We submit that courts should have absolute discretion to impose appropriate disqualification periods or alternative penalties for unauthorised driving offences. This would allow courts to take into account the particular circumstances of the offence and the offender.

A 2007 survey of NSW magistrates found that 93% of respondents believed that mandatory disqualification was never or rarely appropriate, citing an in-principle objection to the fettering of judicial discretion and the practical hardship it occasioned for offenders and their family.³

Sixty-seven percent of magistrates surveyed never, or almost never, believe that suspending driver licences for non-payment of (non-traffic related) fines is appropriate, noting that licence sanctions fail to deter, fail to alleviate any of the causes of failure to pay and may actually exacerbate the cause of failing to pay and can result progressively in an accelerating or excessive interaction with the criminal justice system through secondary offending.⁴

Magistrates believed that the “blunt instrument” of sanctions was causing considerable hardship to disadvantaged people, such as the young, the unemployed, and people from rural or regional areas where there is no public transport.⁵

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

We believe that disqualification periods should run from the date of conviction. We understand that the *Road Transport Amendment (Disqualification on Conviction) Bill 2013*

² K McFarlane and P Poletti, *Judicial perceptions of fines as a sentencing option: A survey of NSW Magistrates* (NSW Sentencing Council, 2007) 49.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

proposes to reform the existing law to provide that where an offender is convicted of a serious driving offence and is sentenced to a custodial period of imprisonment and a period of licence disqualification, the period of licence disqualification begins after the period of imprisonment ends.

We do not agree with the proposed reforms. As discussed above, longer licence disqualification periods do not necessarily prevent reoffending. We submit that the NSW Government should instead focus on developing and delivering programs and services that address the causes of offending.

We further submit that requiring people to serve their licence disqualification period after finishing a custodial sentence severely inhibits their ability to reintegrate into the community and increases their risk of reoffending and having further interaction with criminal justice system.

Question 1d: Maximum penalties prescribed for unauthorised driving offences

As mentioned earlier, increasing the penalties does not necessarily reduce recidivism. KLC urges the committee to recommend that courts be given absolute discretion to tailor penalties for unauthorised driving offences to the circumstances of the offence and the offender.

Question 1e: Introduce vehicle sanctions for offenders who repeatedly drive while disqualified

As it is not clear what sanctions are being proposed, KLC does not believe that it is appropriate to comment.

If you would like more information, please call us on (02) 9385 9566. We are happy to discuss this issue with you further.

Yours faithfully,
KINGSFORD LEGAL CENTRE



Kellie McDonald
Solicitor



Grace Ip
Student Law Clerk