



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Crim:DHrg1576218

13 August 2018

The Hon. Melinda Pavey, MP  
Minister for Roads, Maritime and Freight  
52 Martin Place  
Sydney NSW 2000

By email: [oxley@parliament.nsw.gov.au](mailto:oxley@parliament.nsw.gov.au)

Dear Minister,

### **Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018**

We refer to the Road Transport Legislation Amendment (Road Safety) Bill 2018 (the Bill) introduced into Parliament on 8 August 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**

Denouncing a crime and deterring others from committing similar offences are two of the purposes of sentencing under section 3A of the *Crimes (Sentencing Procedure) Act 1999*. 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 further consequences may well have a significantly greater deterrent effect on future offending than a penalty notice, fine and suspension. A court appearance focuses the person on their behaviour.

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.

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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.<sup>1</sup> 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.

While drivers issued with a penalty notice will be able to elect to have their matter dealt with by a court or appeal against the immediate licence suspension,<sup>2</sup> the suspension is only removed if the immediate suspension appeal is successful or if the court election is finalised without a suspension. An immediate suspension appeal often takes several weeks, and a court election even longer. This is already a significant period of the minimum three-month suspension and is likely to lead to an increase in driving while suspended offences. The reforms will have an even more detrimental impact on people in rural and remote areas with part-time courts. The effect of court election should be to stay the process of the immediate suspension.

The automatic licence suspension will impact on people's livelihoods, particularly in regional and rural areas that lack public transport options. 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.<sup>3</sup>

### **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

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

<sup>2</sup> We note that the test for immediate licence suspensions is "exceptional circumstances", which is a high threshold. The Bill imposes the same test and burden for a first-time offender who has blown just over the low-range limit to a repeat offender who gets caught for a second and subsequent high range PCA.

<sup>3</sup> Road Transport Amendment (Driver Licence Disqualification) Bill 2017, Second Reading Speech, 12 September 2017, p1.

normal mental or physical faculties (whether temporarily or permanently)” is highly problematic and should be deleted from the Bill.

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.

If you would like to discuss these matters further, please do not hesitate to contact Michael Tidball, CEO, on (02) 9926 0215.

Yours sincerely,

A handwritten signature in black ink that reads "Doug Humphreys". The signature is written in a cursive, flowing style.

Doug Humphreys OAM  
**President**