



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Crim:JDad778862

4 October 2013

Mr John Barilaro MP
Chair, Committee on Law and Safety
Parliament House
Macquarie Street
Sydney NSW 2000

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

Dear Chair,

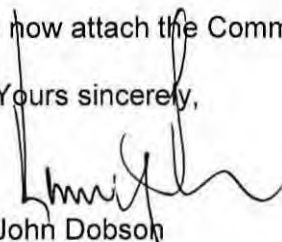
Inquiry into Driver Licence Disqualification Reform

I write to you on behalf of the Criminal Law Committee ("the Committee") of the Law Society of New South Wales in relation to the Legislative Assembly Committee on Law and Safety inquiry into driver licence disqualification reform.

I refer to the attendance of Mr Brett Thomas and Mr Greg Elks at the public hearing on 30 August 2013 and thank you for the invitation to make further comments.

I now attach the Committee's further submission for your consideration.

Yours sincerely,


P.P. John Dobson
President

Criminal Law Committee Submissions on Inquiry into Driver Licence Disqualification Reform

Additional questions after public hearing in August 2013

- 1. Do you think licence suspension or cancellation is an appropriate penalty for fine default, particularly in relation to more vulnerable sectors of the community?**

No.

- 2. Do you think that imprisonment is an appropriate penalty for those who have had their licence suspended or cancelled due to fine default but still continue to drive?**

No.

- 3. Do the courts currently have any power to reduce a licence disqualification period for an unauthorised driving offence?**

No. The Criminal Law Committee ("Committee") refers to its submission of 22 July 2013, in particular its table with proposed penalties. The table provides for disqualification periods that can be reduced at the discretion of the court.

- 4. Some submissions have suggested that the Habitual Traffic Offenders Scheme results in a double penalty, as offenders have already been sentenced in respect of each of their individual offences. What is your view on this?**

The Committee agrees that the Habitual Traffic Offenders Scheme results in a double penalty. This is consistent with our continued position as set out in 1(b) of our 22 July 2013 submission to you.

- 5. Your submission notes that current disqualification periods do not distinguish between driving while cancelled, driving while suspended and driving while disqualified. Your submission said that you consider driving while disqualified to be treated as the most serious of the three offences. Could you please explain your rationale to the Committee?**

The Committee's view is that driving while disqualified is disobeying a court order and could be said to constitute a form of contempt. This differs to the other driving offences which may arise out of an administrative function or demerit point cancellation.

- 6. Your submission contains suggestions on what penalties might be appropriate for unauthorised driving offences. You've made suggestions as to automatic disqualification periods and suggested that the court have discretion to reduce those periods. Do you think the court should also have discretion not to impose a disqualification period at all, if it is appropriate in the circumstances?**

It is the Committee's view that the court should also have discretion not to impose a disqualification period at all, if it is appropriate under the circumstances.

7. **Your submission says that you oppose the use of vehicle sanctions for unauthorised driving offences. Would you support the use of vehicle sanctions if there were parameters around their use?**

The Committee would support the use of vehicle sanctions if there were parameters around their use, but only for the most serious offences; that is, those with aggravated circumstances and for repeat offenders.

8. **The Committee understands that where an unauthorised driving offence has been dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, the offence could still count towards being declared a Habitual Traffic Offender. Have you come across any situations where this has occurred?**

Yes. The Committee submits that this situation does occur, particularly in driving while suspended and driving while cancelled matters.

9. **Are there any other reforms that are not specifically listed in the terms of reference for this inquiry that you consider would be beneficial for dealing with unauthorised driving offences?**

The Committee refers to Magistrate Clare Farnan's submission to the inquiry which raises various reforms not specifically listed in the terms of reference. The Committee supports this submission.

The Committee submits that the offence of a second unlicensed driving conviction within five years, which carries an automatic three year disqualification period, is too severe and excessive. The Committee submits that this disqualification period should be substantially reduced.