



THE LAW SOCIETY  
OF NEW SOUTH WALES

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The Hon. Duncan Gay, MLC  
Minister for Roads and Ports  
Level 35 Governor Macquarie Tower  
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SYDNEY NSW 2000

By email: [office@gay.minister.nsw.gov.au](mailto:office@gay.minister.nsw.gov.au)

Dear Minister,

**Proposed amendments to the Road Transport Bill 2013**

The Law Society's Criminal Law Committee (Committee) has reviewed the *Road Transport Bill 2013* and has proposed a number of amendments to the Bill in the attached document.

The amendment in relation to section 9 seeks to correct what would appear to be an anomaly.

The other proposed amendments have been raised by the Law Society on previous occasions, and this new consolidated Act would appear to be a good opportunity to make the changes.

Yours sincerely,

John Dobson  
President

## **PROPOSED AMENDMENTS TO THE ROAD TRANSPORT BILL 2013**

### **1. SECTION 9**

Section 9 applies to the determination of whether an offence against a provision of the Act or the statutory rules is a first offence or a second or subsequent offence. Section 9 refers to a person who has been "found guilty" of another offence, which would include a section 10 dismissal (where a person is found guilty but no conviction is recorded).

However, section 205 that deals with disqualification periods refers to "conviction", and the calculation of the appropriate disqualification period relates to whether a person has been convicted or not.

Section 9 should be amended to refer to "conviction" rather than "found guilty" to remove this anomaly. This will create consistency between the different provisions.

### **2. SECTION 53(4)**

The automatic period of disqualification for a conviction for a second unlicensed offence is 3 years. This should be reduced to 12 months. There is no automatic period of disqualification for a first unlicensed conviction and therefore the automatic period jumps from nil to 3 years. There is no other offence in the Bill where this occurs.

Alternatively, section 53(4) could provide an automatic period of 3 years with a discretion to reduce to no less than 12 months.

### **3. SECTION 54(8) & 54(9)**

The periods of disqualification for Driving Whilst Disqualified, Driving Whilst Suspended and Driving Whilst Cancelled (other than non-payment of fine) should be amended so as there is a graduated series of disqualifications having regard to the seriousness of the offending. The Committee proposes:

- Driving Whilst Cancelled (other than non-payment of fine); 6 months (first offence) & 12 months (second or subsequent offence).
- Driving Whilst Suspended; 9 months (first offence) & 18 months (second or subsequent offence).
- Driving Whilst Disqualified; 12 months (first offence) & 2 years (second or subsequent offence).

Currently 12 months for a first offence and 2 years for a second offence apply to all three offences. In addition, the Committee submits that cumulative disqualification provided for in section 54(8)(a) should be abolished. The disqualification would then date from the date of conviction.

**4. SECTION 117(1)(b) OFFENCE DISQUALIFICATION PERIODS (Negligent Driving Causing GBH)**

The maximum penalties in section 117(1)(b) of 20 penalty units or 9 months for a first offence and 30 penalty units or 12 months for a second or subsequent offence are the same as the penalties for a first or second middle range drink driving offence.

The period of disqualification for a first offence or second or subsequent offence of negligent driving causing GBH should therefore be the equivalent also of middle range drink driving.

This would require section 205 to be amended so as to refer to a section 117(1)(b) offence in section 205(2)(b) which provides for the middle range drink driving disqualification periods for a first offence (i.e. automatic 12 months, minimum 6 months) and section 205(3)(b) which provides for the middle range drink driving disqualification periods for a second offence within 5 years (i.e. automatic 3 years, minimum 12 months).

**5. SECTIONS 216 to 221 (CHAPTER 7, PART 7.4, DIVISION 3); HABITUAL TRAFFIC OFFENDERS**

These provisions make repeat offenders liable for an additional 5 year disqualification period.

The provisions are onerous, are cumulative on any court imposed disqualification period and can be numerous 5 year periods on any combination of three offences so as to sometimes create 10, 20 and even 30 year periods of disqualification.

The provisions do not act as a general deterrence and simply lead to further offending.

**6. SECTION 225(3)(b)**

Section 225(3)(b) should be amended so as to extend the operation of that section to the Disqualification Compliance Period referred to in section 211 and Column 3 of the Table in section 210.

One (almost certainly unintended) consequence of the decision in *RTA v O'Sullivan* [2011] NSWSC 1258, is that where an interlock license is granted, the offender does not have the period of police suspension taken into account because section 225(3)(b) is expressed as applying to the disqualification period, but not the Disqualification Compliance Period. This amendment would remove a legislative ambiguity.