



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: rbg577254

15 November 2011

The Hon Duncan Gay MLC
Minister for Roads and Ports
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Minister,

Roads and Traffic Authority of New South Wales v O'Sullivan

The Law Society's Criminal Law Committee (Committee) has asked that I write to you in relation to the decision of *Roads and Traffic Authority of New South Wales v O'Sullivan* [2011] NSWSC 1258.

On application by the Roads and Traffic Authority (RTA)¹, the Supreme Court made a decision regarding the Local Court and how periods of suspension and disqualification for major traffic offences are to be determined, calculated, announced and implemented.

The Court has decided that any disqualification is to date from the date of conviction but it also acknowledged that under section 205(6)(b) of the *Road Transport (General) Act 2005* it is possible for a period of suspension to be regarded as satisfying all or part of a period of disqualification imposed by a Court.

The Committee is concerned that the practical application of the decision may cause confusion and uncertainty, especially amongst those people who are appearing before the Local Court in NSW and having their licences disqualified.

The Committee understands that the Local Court has, as a result of the decision, implemented a system whereby if a Court invokes section 205(6)(b) of the *Road Transport (General) Act 2005* this will be noted on the JusticeLink system and then transmitted to the RTA. This will be in the form of an order by the Court that "**Section 205(6)(b) RT (Gen) Act applies**".

The Committee wishes to ensure that as a result of this notification there will be no difficulty in licences being reissued to persons at the correct time i.e. after the period imposed by the Court having regard to both the suspension and disqualification period. In other words, the calculation of the period dates from the date of suspension and not from the date of conviction.

If this does not occur then the system will be open to criticism, which may reflect badly on the administration of justice in NSW.

¹ The Committee notes that as of 1 November 2011 the RTA is now Roads and Maritime Services. For ease of reference this correspondence refers to Roads and Maritime Services as the RTA.

It is for this reason that the Committee requests that action be taken to ensure that the practical effect of the Court's decision is properly managed and that the RTA will properly recognise the orders made by the Court.

This can be done by ensuring that if the Court makes a section 205(6)(b) order then the RTA will calculate the relevant period that the person will be without their licence from the date of suspension and not from the date of conviction.

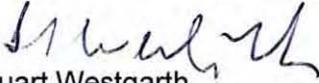
The Committee also notes that James J in *O'Sullivan* endorsed remarks made by the Court of Criminal Appeal in *Hei Hei v R* [2009] NSWCCA 87 that the purpose of the road transport legislation would be best served by giving Courts the discretion and flexibility to set appropriate commencement and conclusion dates for disqualification periods. This would also include cumulative periods, which, in view of *O'Sullivan*, cannot now be done by the Court.

It is for this reason that in addition to ensuring the RTA correctly implements Court decisions that flow from *O'Sullivan* the Committee requests that the Government move quickly to amend the legislation so as to give the Court clear power to date any period of disqualification from the date of any suspension.

The Committee understands that your Parliamentary Secretary is aware of the decision in *O'Sullivan* and its consequences and I have therefore copied him in on this correspondence.

I look forward to hearing from you at your earliest convenience.

Yours sincerely,


Stuart Westgarth
President

cc
The Hon John Ajaka MLC
Parliamentary Secretary to the Minister for Roads and Ports