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Our Ref: RBGMM1289957

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The Hon Michael Daley MP
Minister for Roads
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

Learner driver disqualification periods: RTA policy and computer system

The Law Society's Criminal Law Committee (Committee) would like to bring to your attention a number of issues surrounding the RTA's policy relating to disqualification periods for learner drivers and deficiencies with the RTA's computer system.

The case study below highlights the relevant issues.

Case study

On 20 January 2009, a young man was convicted of driving unaccompanied on his learner licence. At the time of conviction he had completed the 100 hours of driving needed in order to apply for his P-plates.

On the date of the offence his licence was suspended by the police under s 205(1B) of the *Road Transport (General) Act 2005*. By the time he was sentenced, his licence had been suspended for over 3 months.

Clause 15(3) of the *Road Transport (Driving Licensing) Regulation 2008* provides that if a person is convicted of driving as an unaccompanied learner, he or she is disqualified:

for 3 months, or

for a different period in accordance with sub-clause 15(4).

Clause 15(4) provides that the court may specify a disqualification period of:

more than 3 months but no more than 12 months, or

less than 3 months if the disqualification period, added to any suspension period already served, is not less than 3 months.

In this case, the presiding Magistrate ordered no disqualification period because the client's learner licence had already been suspended for 3 months.



However, when the young man tried to book his P-plate test at the RTA, he was told that he had been disqualified from driving and that he needed to resit the test for his learner's licence and complete another 100 hours of driving before he could sit for his P-plates.

The RTA explained to the solicitors that the effect of a licence disqualification is different to that of a licence suspension – the former requiring the person to start their log-book from scratch.

In order to convince the RTA that their client had not been disqualified, they provided a copy of the Bench papers which recorded "Nil disqualification period".

Nonetheless, the RTA took the view that the Regulations required a mandatory disqualification period and that the young man must have been disqualified. After some discussions, the RTA conceded that this view was incorrect but informed the solicitors that their computer system does not allow for the input of no disqualification period.

The solution to this problem which was initially proposed by the RTA was to record the client's suspension period as a disqualification period. In the solicitor's view this solution was unacceptable given that it would require our client to complete another 100 hours of driving before he could sit for his P plates.

In the case of the young man in question the RTA found an alternative solution, yet the solicitors understand that this solution is not systemic and the problem remains that the RTA's computer system does not allow a 'nil disqualification' period to be input in these circumstances.

Issues raised

The case raises a number of issues of concern:

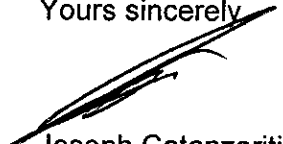
1. It appears to be RTA policy that a learner driver who is disqualified must start his or her 100 (recently increased to 120) hours of driving from scratch. This is an unreasonable barrier to gaining a driver's licence. Section 189 of the *Road Transport (General) Act 2005* provides that "disqualification operates to cancel, permanently, any driver licence held by the person at the time of his or her disqualification". However, in the Committee's view, this does not necessarily mean that a learner driver should be required to start from scratch and complete their entire log-book again.
2. In the context of clause 15 of the Regulations, the RTA computer system does not allow for the input of a 'nil disqualification'. The solutions proposed by the RTA (namely, to enter the suspension period as a disqualification period) is not only inaccurate, but (at least under current RTA policy) would require the person to start their 100 hours of driving again.
3. The RTA initially took the view that clause 15 of the Regulations mandates a minimum disqualification period. Many people will not understand the difference between a licence suspension and disqualification, and they will not have a solicitor to advocate on their behalf. If these people are mistakenly told by the RTA that they have been disqualified and that they must start their log-book again, they are likely to accept this as fact. Not only might that be false, but in some cases it might increase the prospect of these people being convicted of driving unaccompanied due to the difficulty of amassing 200 hours (or possibly more) of accompanied driving.

Action requested

1. The Committee would appreciate if the RTA could clarify its policy in relation to a learner driver who is disqualified from driving. Is the effect of the licence disqualification that the person has to start their log-book from scratch no matter how many hours they have accumulated?
2. The Committee requests that the RTA's computer system be updated as a matter of urgency so that it can allow for the input of 'nil disqualification'.
3. Clause 15(4) of the *Road Transport (Driving Licensing) Regulation 2008* should be amended to allow for *no* disqualification to be imposed if the defendant's licence has already been suspended for 3 months or more.

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

Yours sincerely



Joseph Catanzariti
President