

1. In the course of this Review the Commission will doubtless have brought to its attention the fact that there are many people who are in gaol serving short sentences for driving offences. Many of these offences will be “Drive While Disqualified” (DWD) contrary to s25A Road Transport (Driver Licensing) Act 1998.
2. No doubt suggestions will be made aimed at getting those people out of gaol by having magistrates impose alternatives to imprisonment. Such alternatives already exist, and are regularly used. However, as a magistrate dealing almost daily with the sentencing of people who drive disqualified I am well aware of the limitations many defendants face in complying with community based orders. They are frequently assessed as unsuitable for community service (CSO), intensive correction (ICO) or Home Detention (HD). They are frequently recidivist offenders.
3. The lengthy disqualification periods already in place have often been acquired during a flurry of offending in the person’s teens and early twenties, and the person has often already served prison terms for previous DWD offences.
4. It would be helpful to consider dealing with this problem further back in the chain that leads to these offences. This Review is at least an opportunity to consider the question of discretions available in respect of disqualification periods.
5. There is currently an automatic 3 year disqualification imposed on persons convicted of second offence unlicensed driving (never licensed) (s25(3) Road Transport (Driver Licensing) Act 1998). These offences are frequently committed by people who are very young. Offenders can be dealt with in the Local Court for this offence from age 16.
6. In addition, magistrates currently have no discretion to reduce the 2 year disqualification that accumulates for every conviction for driving disqualified after the first (within a five year period). It is not unusual to see defendants

with more than five convictions for disqualified driving, and more than 10 years of disqualification to serve (leaving aside any habitual offender disqualifications).

7. The only way these disqualification consequences can currently be avoided is by dealing with an offender under s10. That is not always appropriate.
8. The lack of adequate discretion in the sentencing court in relation to disqualification periods on conviction for unlicensed, suspended, cancelled and disqualified drivers is one contributing factor to these lengthy existing disqualifications. The other is that there is currently no way in NSW for a person already disqualified for a lengthy period to apply to have their disqualification removed (apart from an application for executive clemency).
9. There are two alternative ways of dealing with this. One is to provide sentencing courts with more discretion. The other is to provide a mechanism by which persons already disqualified far into the future could get their licence back after a specified period, by application to a court.
10. In relation to providing sentencing courts with adequate discretion (Term of Reference 2), I suggest consideration be given to the following:
 - a. Amending the Road Transport (Driver Licensing) Act 1998 by removing existing section 25(3) which provides an automatic 3 year disqualification for a person convicted for the second time of driving unlicensed, who has not held a licence in the preceding 5 years. In its place give the court a discretion to impose an appropriate disqualification period, if necessary with a minimum disqualification period. At present the only way the 3 year disqualification can be avoided is by an order under s10, which may also not be appropriate.
 - b. Amending the Road Transport (Driver Licensing) Act section 25A(7)(a) and (b) by deleting everything after the words “of expiration of the existing disqualification ...” and inserting instead “specified by

the court". This would give a sentencing court a discretion to date a mandatory disqualification period from any appropriate date, and in appropriate circumstances to make disqualification periods concurrent rather than cumulative.

11. I recognise that the second alternative is outside the terms of reference of this enquiry, although in my view it would be a potentially useful reform. That is particularly because it would apply to people already subject to long disqualifications. Other states already have such provisions in place. Such a scheme would also allow a person's changed circumstances to be taken into account.
12. People grow up. They mature. They gain insight, they have children, their parents grow old and get sick, their life circumstances change. Allowing repeat offenders some hope of getting a driver's licence back would recognise that these changes also affect how people drive. Such a scheme has the potential to reduce re-offending, and imprisonment rates. It also has the potential to increase safety on the roads.
13. A relicensing scheme could allow a person who has a specified period in the community without committing a driving offence to make an application to a court for an order permitting them to reapply for a driver's licence. If successful, any remaining period of disqualification would be quashed. Such a scheme would give such offenders a real incentive not to reoffend during the specified period. Offenders would still need to satisfy the court that it was appropriate to quash the disqualification in their circumstances.
14. I commend these matters to you for consideration. I would be happy to provide any other information you may need.



Clare Farnan