

## ***Unauthorised Driving and Applications to Remove Disqualification Periods***

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As either a criminal lawyer or a practitioner who dabbles in criminal matters, traffic matters are likely a common occurrence in your practice. On the face of it, traffic offences appear straight forward, and for experienced lawyers that is generally the case. Despite this, it is important to keep appraised of recent law reform in the field. Unauthorised driving offences are just one aspect of traffic law which has been subject to significant reform over the past two years. These reforms impact the way in which you should advise clients, prepare and appear in unauthorised driving matters.

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## What are unauthorised driving offences?

Unauthorised driving offences are exactly what you would expect. Simply, if a person does not have a valid licence, they are committing an offence. It is the reason why they do not have a valid licence which underpins the offence type and the applicable penalties.

### Table of offences and legislative provisions

Offence	Description	Legislative Provision
Drive <b>unlicensed</b> or <b>never licenced</b>	Applies to a person who does not hold a licence, i.e. their licence has expired, or they have never actually held a licence (or not licenced for at least 5 years).	s.53(1),(3) <i>RTA</i>
Licence <b>suspended</b> or <b>cancelled for unpaid files</b>	The RMS are obligated to suspend a person's licence for unpaid fines. Before a person's licence is suspended, they will be notified.	s.66 <i>Fines Act 1996</i>
Licence <b>cancelled</b> or <b>refused</b> other than non-payment of fines	The RMS may cancel or refuse a person's licence in a range of circumstances, including learner drivers who exceeds their demerit points threshold or persons who fall under the ITOP <sup>1</sup> scheme.	s.54(4) and 54(5) <i>RTA</i>
Licence <b>suspended</b> other than non-payment of fines	The Police or RMS may suspend a person's licence for a number of reasons including: accumulation of demerit points, excessive speed offences and some PCA offences.	s.54(3) and 54(5) <i>RTA</i>
Drive whilst <b>disqualified</b>	A Court may disqualify a person from driving upon conviction for certain offences.	s.54(1) <i>RTA</i>

<sup>1</sup> ITOP is an acronym for Increased Traffic Offender Penalties: *RTA* s 43A. Unrestricted licence holders who exceed their demerit points limit twice in five years must re-sit and pass the Driver Knowledge Test. This is the test that all driver licence applicants must pass before receiving their learner licence. Drivers to whom ITOP applies must also complete a driver education course (i.e. an approved traffic offender program). Provisional licence holders who twice exceed their demerit points limit must also re-sit and pass the Driver Knowledge Test. Drivers who commit a second or subsequent drink driving offence in five years must pass the Driver Knowledge Test before they will be eligible to drive again.

## Definitions

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“Disqualification” and “suspension” are distinct concepts which are often confused and improperly referenced.

A **disqualification** order attaches to the person and is imposed by a court. The one exception to court-imposed disqualification is failure or election not to comply with an interlock order (before the 2017 reforms, Habitual Traffic Offender Declarations were another example). To drive again at the end of a disqualification period, an application for a new driver licence must be made. Licence disqualification is final unless a District Court appeal is successful, or a successful application is made to remove disqualification periods.

Licence **suspension** is the outcome of an administrative decision which attaches to the person’s licence. If a person’s licence is suspended, they will not have to re-apply for a new driver’s licence at the conclusion of their suspension period, unless their licence has expired or been otherwise surrendered. Some decisions to suspend, refuse or cancel a driver licence can be appealed to the Local Court. The Local Court exercises the same decision-making power as the executive authority responsible for the original decision i.e. the RMS or Police.

A licence is taken to be **cancelled** if the person has been disqualified from driving, has surrendered their licence, or their licence expired whilst suspended.<sup>2</sup>

## Recent Law Reform

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In 2017, penalties for unauthorised driving offences were overhauled, a scheme was introduced to remove court-imposed disqualification periods for eligible offenders (discussed below) and Habitual Traffic Offender Declarations were abolished.

For many years it had been apparent that long disqualification periods, particularly under the Habitual Traffic Offender Declaration scheme had seen some offenders incur disqualifications for decades and, in some cases, a lifetime. The impact of crushingly long disqualification periods detracts from a person’s prospects of rehabilitation. It can also exacerbate criminogenic risk factors, particularly employment. In 2016 Aboriginal people made up 14 per cent of those sentenced for unauthorised driving offences – a substantial overrepresentation of the Aboriginal

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<sup>2</sup> RTA s 207(1); s 223.

population. The reforms have been designed to not only reduce the impact of loss of licence for the Aboriginal community, but also disadvantaged people and people in regional and remote areas of NSW.<sup>3</sup> How successful these reforms are is yet to be accurately measured.

### Statistical overview (BOCSAR Local Court statistics)<sup>4</sup>

BOCSAR has reported that since 2013, relative to other matters that come before NSW criminal courts, traffic and vehicle regulatory offences have been increasing. The reasons for this increase are complex and factors such as improved detection technology deployed by NSW Police could have an effect on these figures. Regardless of the reason for such an increase, unauthorised driving offences are undoubtedly prevalent, the consequences to the offender are substantial and it is important to understand the intricacies of the applicable laws to secure the best outcome for your client.

Offence Type	2013	2014	2015	2016	2017
Drive whilst disqualified or suspended	9,698	10,101	10,587	11,860	12,461
Drive without licence	4,151	4,156	4,184	4,024	3,975
Other licence offences	47	25	29	61	48
Total number of offences before NSW Local Courts	97,369	101,577	108,863	115,237	118,401

### Penalties

The penalties for unlicensed driving offences are found at the discrete offence provision and sections 204 and 205A of the *Road Transport Act 2013* NSW (“RTA”).

To understand the operation of these penalties it is important to appreciate that upon conviction for an unlicensed driving offence, if a disqualification period applies, at least the minimum period of disqualification must be imposed.

<sup>3</sup> Paraphrased: <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/new-driver-disqualification-laws-commence-tomorrow.aspx>

<sup>4</sup> [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2018/mr-NSW-Criminal-Courts-Statistics-2017.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2018/mr-NSW-Criminal-Courts-Statistics-2017.aspx)

When a person is being sentenced for multiple offences which each carry disqualification periods, these disqualification periods can be set to run either concurrently or consecutively, but there cannot be a break between disqualification periods.<sup>5</sup>

There is no such thing as a 'work licence'. Conditional licencing can be imposed such as an interlock licence or speed inhibitor condition.<sup>6</sup>

If a person is imprisoned (excluding ICO and parole) for an offence that carries a disqualification period, the period of disqualification is extended by the period of imprisonment to be served.<sup>7</sup>

Section 203 of the *RTA* does not include unauthorised driving offences under the definition of an 'applicable offence' which would otherwise exclude a person from receiving a non-conviction order twice within 5 years.

**On page 6** are two tables outlining penalties for the various unlicensed driving offences. Importantly, for offences which carry a term of imprisonment, the range of applicable penalties under the *Crimes (Sentencing Procedure) Act 1999 (NSW)* apply. For most unauthorised driving offences, your focus as an advocate will be on either avoiding a conviction or reducing the period of disqualification. The default disqualification period will apply if no specific period is imposed by the court. As a default position, disqualification periods will commence from the date of conviction, not from the expiration of existing periods, making them concurrent rather than cumulative. Despite this, the court retains the power to specify a later date.<sup>8</sup>

These tables are distinguished by 'first' or 'second' offence penalties. If your client has, within the past 5 years been convicted of the same offence or an equivalent offence (including offences outside NSW) they will be sentenced according to the second offence provisions. It is important to acknowledge that unlicensed driving offences are not 'major offences' unless the offending occasions death or bodily harm.<sup>9</sup>

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<sup>5</sup> *RTA* 207A(1)

<sup>6</sup> *RTA* s 204(4).

<sup>7</sup> *RTA* s 206A

<sup>8</sup> *RTA* 207A

<sup>9</sup> *RTA* s 9. If the Court has insufficient evidence to determine whether an offence is a 'first' or 'second' offence, the default position is 'first' offence.

### First offence penalties

Offence	Fine	Imprisonment	Default* disqualification	Minimum disqualification
Drive while suspended / disqualified / cancelled / refused (1 <sup>st</sup> offence)	\$3,300	6 months	6 months	3 months
Fine default suspension / cancellation (1 <sup>st</sup> offence)	\$3,300	n/a	3 months	1 month
Drive unlicensed (1 <sup>st</sup> offence)	\$2,200	n/a	General disqualification provisions apply	General disqualification provisions apply
Drive never licensed (1 <sup>st</sup> offence)	\$2,200	n/a	General disqualification provisions apply	General disqualification provisions apply

### Second offence penalties

Offence	Fine	Imprisonment	Default* disqualification	Minimum disqualification
Drive while suspended / disqualified / cancelled / refused (2 <sup>nd</sup> offence)	\$5,500	12 months	12 months	6 months
Fine default suspension / cancellation (2 <sup>nd</sup> offence)	\$5,500	6 months	12 months	3 months
Drive unlicensed (2 <sup>nd</sup> offence)	\$2,200	n/a	General disqualification provisions apply	General disqualification provisions apply
Drive never licensed (2 <sup>nd</sup> offence)	\$3,300	6 months	12 months	3 months

## **Preparing for court**

How to prepare your client's matter to achieve the best possible outcome often starts with a referral to a traffic offender's program. The traffic offender's program is widely appreciated among the judiciary and is a factor which will often be taken into account in reducing a court-imposed disqualification period.<sup>10</sup> There has been an expansion in approved course providers which makes completing the traffic offender's program

<sup>10</sup> Application by the Attorney General under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning the Offence of High Range Prescribed Concentration of Alcohol Under Section 9(4) of the Road Transport (Safety and Traffic Management) Act 1999 (No. 3 of 2002) [2004] NSWCCA 303 [121].

more accessible. PCYC, SAVE and TORP are approved programs operating across Sydney and regional areas. Some approved courses can be partially undertaken online.

Asking your client to keep careful notes during the traffic offender's program will help them to not only make the most of the course, but it will also help you to understand the impact the course has had on them. This insight may assist you in crafting your submissions. Additionally, by asking your client to keep notes of what they have learnt during the course, they will be able to incorporate this in a letter to the court, reflecting on their offending and offering personal insight as to their prospects of rehabilitation and remorse.

Requesting that your client gather character references which acknowledge any prior criminal or traffic history, in addition to the circumstances surrounding the offending, is important. Always remember, quality over quantity. One or two detailed letters will be far more impactful than multiple vague letters. Of course, people of good standing in the community and who know your client well such as family members, friends, employers or colleagues are ideal referees.

If your client is facing loss of income and/or diminished employment opportunities as a consequence of their offending, or due to the cause of their original unauthorised driving, it is vital to obtain evidence of this from an employer, business partner or, if your client is self-employed, consider preparing an affidavit outlining their responsibilities, annexing their business registration and other relevant documents.

If your client is going to be adversely affected by ongoing loss of licence, obtaining evidence about this is crucial. Simply making a submission will have very limited impact. A helpful way to demonstrate this in a busy Local Court is by preparing an affidavit from your client and annexing details of public transport, or lack thereof. Other factors which may distinguish your client is evidence of additional hardship either they or someone else will encounter as a consequence of loss of licence. For example, someone with a mental illness may experience greater hardship if they are required to find new employment.

Obtain instructions from your client about any other matters that appear on their record and understand the circumstances of the offence/s. Your client may be able to give you important information that could mitigate the seriousness of the offence which can

also be included in affidavit evidence or a letter of reflection, supplemented by referees.

When representing repeat offenders, being creative with the conditions of Community Correction Orders or Intensive Correction Orders will often assist you.

### **Timing of conviction**

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If your client is being sentenced for multiple ‘major offences’ and/or driving whilst suspended or disqualified, even on different dates, it is important to try to have your client sentenced at the same time for all offences. A conviction should be simultaneously recorded to ensure each offence is treated as a ‘first offence’ for the purpose of establishing the maximum penalty, unless of course your client’s criminal history has already triggered the second or subsequent offence provisions.<sup>11</sup> That is, if your client is being sentenced for driving whilst suspended and mid-range drink driving, both Court Attendance Notices should be particularised as ‘first offence’.<sup>12</sup> This approach is not only important to cap the maximum penalties but it will assist your client to avoid a crushing sentence, taking into account the principles of totality and the default commencement date for disqualification periods and other sentencing options.

### **Objective seriousness**

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When sentencing an offender for driving whilst licence cancelled, Chief Magistrate Henson observed by way of obiter dicta, that some may form the view that driving whilst cancelled is less serious than driving whilst disqualified, the latter being a disregard for a Court order and worthy of more severe punishment. The Chief Magistrate questioned the correctness of such a view and quoted *R v Dang*<sup>13</sup> stating: “*The appropriate consideration is the relevant statutory regime and maximum penalty prescribed for the offence*”<sup>14</sup> when assessing the seriousness of each offence.

Section 21A of the *Crimes (Sentencing Procedure) Act 1999* sets out aggravating and mitigating factors which the Court can take into account when sentencing an offender. These factors are not limited to other factors the Court considers relevant at law.

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<sup>11</sup> RTA s 9

<sup>12</sup> *R v Ahmed* [2008] NSWDC 380 [31] no priority to be given to one conviction over another.

<sup>13</sup> *R v Dang* [2005] NSWCCA 430 [29].

<sup>14</sup> *Te Pairi* [2008] NSWLC 17.

When assessing unauthorised driving matters, the following factors among others\*, will often bear on an assessment of objective seriousness, and/or amount to circumstances of mitigation concerning the penalty to be imposed:

- Manner of detection i.e. was dangerous driving involved?
- Criminal antecedents, specifically for traffic offences
- Whether there were passengers in the vehicle
- Reason for driving
- Distance travelled
- Cooperation with police v. attempt to evade police
- Factors affecting moral culpability i.e. honest but not reasonable belief in holding a valid licence

\*Some of these factors may infringe *De Simoni*<sup>15</sup> or relate to an associated offence such as being detected via speeding. The associated offence may or may not be before the Court if it can be dealt with by way of an Infringement Notice. Note that double counting should not occur and be informed of the penalty associated with an Infringement Notice as it will be less than the maximum penalty within the Local Court's jurisdiction.

## **Plea making**

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The majority of unauthorised driving offences are finalised in the Local Court. When discussing plea making for these offences, we are generally focused on persuading Local Court Magistrates. Given the prevalence of these offences, it is important to be creative. If you can find a way to distinguish your client favourably among the many similar cases Magistrates preside over on a regular basis, you will be leaps and bounds ahead. Learning about your client, their responsibilities, whether they have done any charity work, specific hardship and other factors which distinguish your client are vitally important when it comes to presenting a compelling plea – preparation, no matter how straight forward such a matter may seem, is vital to obtain the best outcome for your client.

Below is a typical extract from a driving whilst disqualified facts sheet. This example would be characterised as an example of low objective seriousness. Whilst this is

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<sup>15</sup> *The Queen v De Simoni* (1981) 147 CLR 383 [389]

typical, the factors, among others, outlined above will adjust an assessment of objective seriousness.

FULL FACTS

The accused in the matter is [REDACTED], born [REDACTED].

About 11:45pm on Wednesday 25th May 2016, police stopped motor vehicle [REDACTED] a white Subaru sedan on Joseph Street in Kingswood for the purpose of a random breath test. Police spoke with the accused who was seated in the drivers seat and the only person in the vehicle at the time. The accused was submitted to a breath test which returned a negative result. The accused was asked to produced his drivers licence and has handed police a New South Wales class C P2 Provisional licence, number [REDACTED] and has informed police that his licence is currently suspended.

Checks completed on the accused licence revealed his licence to be endorsed suspended due to fine default from the 27.01.2016, however after further checks on the licence revealed the accused was convicted at Liverpool Local Court on the [REDACTED] for drive whilst suspended and was disqualified for a period of two years from 18.05.2016. The accused was issued Field Court Attendance Notice number [REDACTED] to attend Penrith Local Court on the 22.06.2016 and is now charged with the matter now before the court.

Joseph Street is a road defined in the act.

In this common example, it would be appropriate to submit the offending is towards the lowest range of objective seriousness for the following reasons:

- The offence was detected at an RBT as opposed to manner of driving
- There were no passengers in the vehicle
- The offender was cooperative with police and explained his licence was suspended (admitting to being unlicensed)
- The offender has a history of at least one unlicensed driving offence which will elevate the objective seriousness from examples that would otherwise fall in the lowest range.

## Defending unauthorised driving offences

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By and large, unlicensed driving matters are swiftly finalised, often only delayed by the completion of the traffic offender's program or preparation of a sentencing assessment report. However, in a small number of cases, your client may be able to defend the matter.

Aside from contending they were not the driver, a common basis for pleading not guilty arises when your client instructs you that they did not know their licence was cancelled, suspended or disqualified. These instructions will cause you to consider a defence of 'honest and reasonable mistake' based upon the principles in *Proudman v Dayman*<sup>16</sup>. The relevant passage in the judgment of Dixon J reads:

As a general rule an honest and reasonable belief in a state of facts which, if they existed, would make the defendant's act innocent affords an excuse for what would otherwise be an offence.

To successfully raise this defence, your client will most likely need to give evidence and satisfy the presiding Magistrate, on the balance of probabilities, that they not only held an honest belief that they were permitted to drive but that the basis for holding this belief was reasonable. Ask yourself this: were their efforts to ensure they were licenced reasonably prudent? The first limb of this test is relatively easier to prove and if accepted, despite a finding of guilt, may be used to mitigate the moral culpability associated with the offending. It is the second limb which is more difficult to prove.

If your client tells you, "*I didn't know*" or "*I didn't get the letter because I just moved house*", it is important to understand whether or not they have done everything they ought to have done, or everything that would be expected of a reasonable person in their position, to remain apprised of the status of their driver's licence – it is, after all, their responsibility. If your client has been reckless in meeting this responsibility, i.e. they moved house but waited a week to update the RMS of their new address or they were convicted in their absence and did not enquire as to the court outcome, it is quite unlikely they would meet the second limb on the balance of probabilities.

There are some considerations which may affect the reasonableness of your client's actions. Perhaps they suffer from mental illness or other extenuating circumstances impaired their ability to make relevant enquires.

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<sup>16</sup> *Proudman v Dayman* (1941) 67 CLR 536 [540]

Whether there is a defence or a compelling mitigating circumstance arising from an honest and/or reasonable belief can only be determined on a case by case basis.

If your client instructs you to run a plea in mitigation, this is a great way to distinguish your client's case from typical unlicensed driving scenarios. The most challenging aspect of running a plea based on an honest but unreasonable mistake of fact is being able to produce credible and convincing evidence at sentence. Due to the time restrictions in the Local Court, particularly the scarcity of time available to call your client to give evidence on a plea, drafting a detailed affidavit or setting the matter for sentence with adequate time to call your client may be necessary.

### **Application to remove disqualification periods**

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Is your client eligible to apply to remove court-imposed disqualification periods?

A person is **not eligible** if they have ever been convicted of any the following offences:<sup>17</sup>

- i. Murder or manslaughter (caused by use of a motor vehicle)
- ii. An offence against the Crimes Act which includes causing death, GBH or wounding (by use of a motor vehicle)
- iii. Predatory driving: *Crimes Act* s 51A
- iv. Police pursuits: *Crimes Act* s 51B
- v. Negligent driving causing death or GBH: *RTA* s 117
- vi. Intentional menacing driving: *RTA* s 118(1)
- vii. Fail to stop and assist after vehicle impact causing death or GBH: *Crimes Act* s 52AB
- viii. Fail to stop and assist after impact causing injury: *RTA* s146

A person is **eligible** to apply for the removal of a court-imposed disqualification if the disqualified person has not been convicted of any driving offence during the relevant offence-free period; and the court considers it appropriate to do so, taking into account relevant factors set out at section 221B(2) of the *RTA* (see below).

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<sup>17</sup> *RTA* s 221D

The **relevant offence-free period**<sup>18</sup> is either 2 or 4 years, depending on the offence(s) for which your client is currently disqualified and dates from the most recent conviction.

Offence – is your client serving a disqualification period for one of the following offences	Requisite offence-free period (since last conviction)
Any offence under the Crimes Act caused by the use of a motor vehicle NRPCA, SRPCA, LRPCA, MRPCA, HRPCA: <i>RTA s110</i> Drive with illicit drug present in blood: <i>RTA s111</i> DUI: <i>RTA s112</i> Furious/reckless driving: <i>RTA s117(2)</i> Drive speed/manner dangerous: <i>RTA s 117(2)</i> Menacing driving: <i>RTA s 118(2)</i> Fail/refuse breath analysis: <i>RTA cl 16(1)(b)</i> Fail/refuse to provide sample or prevent sample taking: <i>RTA cl 17</i> Wilful introduction/alteration of concentration: <i>RTA cl 18</i> Exceed speed over 30km/h (note this does not apply for matters dealt with by penalty notice because there is no conviction) Street racing: <i>RTA s 115(1)</i> Aggravated burnout: <i>RTA s 116(2)</i> Any other offence prescribed by the statutory rules	4 years
Being declared a habitual traffic offender or in any other case (such as a conviction for drive while disqualified, suspended, cancelled, refused)	2 years

If your client is eligible, the requisite form available on the RMS website (see appendix A) should be completed and properly witnessed. It should then be sent to [DisqualificationRemovalOrders@rms.nsw.gov.au](mailto:DisqualificationRemovalOrders@rms.nsw.gov.au). The RMS will send you a copy of your client's driving record, with a covering letter stating whether or not your client meets the eligibility requirements.

Both these documents (the certified driving record and covering letter) are generally needed before an application can be filed at the Local Court (see appendix B). Assuming your client is eligible, the filing fee for Local Court applications will be payable at the time the application is filed. At present, there is a significant delay within

<sup>18</sup> *RTA s 221A* (definitions)

the RMS processing these requests. Due to the inherent unfairness caused by delay, you may file a recently certified copy of your client's driving history, evidence of identification and the completed application then raise matters of eligibility and delay before the Court.

In the event your client is deemed ineligible by the RMS and you form the view that the RMS have made an incorrect decision, you can still file the application and argue the matter before the Court. Given the application is *ex-parte*, Magistrates often feel uncomfortable making a decision that is inconsistent with the RMS. It will assist the Court and your case, if you prepare written submissions, outline the legislative provisions clearly or make them available to the Court and review the second reading speech for these amendments.

The Court will have regard to the following factors when determining whether it is appropriate to remove disqualification periods<sup>19</sup>:

- a) The safety of the public.
- b) The applicant's overall driving record, including matters dealt with by way of Infringement Notice.
- c) Pending proceedings for alleged driving offences
- d) Whether the applicant drove or was in a position to drive a vehicle during the relevant offence free period.
- e) Any relevant conduct since the licence disqualification (matters of relevance may be given greater weight if they have been contemplated in the Second Reading Speech).
- f) The nature of the offence(s) leading to the disqualification including any other circumstance such as:
  - the applicant's capacity to carry out family or carer responsibilities,
  - the applicant's capacity to travel for employment, business, education, training, health, and finances, and
  - the availability of alternative forms of transport.
- g) Any other matter prescribed by the statutory rules

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<sup>19</sup> RTA s 221B(2)

There is no restriction on the number of applications which may be made to the Local Court.<sup>20</sup> These applications are often listed on RMS days despite being *ex-parte*, be aware that the Magistrate may call upon the RMS lawyer or Police Prosecutor for assistance.

### Final Words of Advice

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- If your client has not had their licence confiscated by Police, ensure they bring their licence to court on the date of their sentence hearing.
- Always advise your client to be vigilant in complying with their cancellation, suspension or disqualification period.
- Explain to your client if they are suspended and their licence will expire during the period of suspension, they must not drive until they have attended the RMS and obtained a new driver's licence. If they do not do this, they could be charged with driving whilst licence cancelled.
- If your client has been disqualified, advise them that until they have attended the RMS to obtain a new driver's licence at the conclusion of the disqualification period, they will remain disqualified regardless of whether the Court imposed disqualification period has ended.
- The Habitual Traffic Offender Scheme has ended but your client is permitted to make an application to quash any previously imposed Habitual Traffic Offender Declarations.<sup>21</sup>
- Remind clients who have accumulated multiple disqualification periods they may be eligible to apply to the court to remove the Court imposed disqualification periods.<sup>22</sup>



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<sup>20</sup> RTA s 221E

<sup>21</sup> *Dixon v Attorney General of NSW* [2018] NSWSC 1618

<sup>22</sup> RTA Div 3A



# Driving record application for disqualification removal order

Road Transport Act 2013

## INFORMATION TO APPLICANT

To determine whether you meet the eligibility requirements to apply for a disqualification removal order to the Local Court you firstly must obtain a copy of your driving record, which can be provided to you free of charge by Roads and Maritime Services. To do this you will need to complete this form and provide proof of identity documents that must be certified by a relevant witness (please refer to the identity and relevant witness information overleaf).

Your completed form can then be emailed to [DisqualificationRemovalOrders@rms.nsw.gov.au](mailto:DisqualificationRemovalOrders@rms.nsw.gov.au) or posted to Roads and Maritime Services at Disqualification Removal Orders, Locked Bag 14, Grafton NSW 2460.

Once Roads and Maritime receives your completed form it will undertake a review of your driving record to see whether you appear to meet the eligibility requirements. Information about the eligibility requirements are set out in the enclosed leaflet and can also be found online at [www.rms.nsw.gov.au/disqualification](http://www.rms.nsw.gov.au/disqualification).

Roads and Maritime will then send you a copy of your driving record with a covering letter to your preferred return email or postal address. The covering letter will state whether or not your driving record appears to show you meet the eligibility requirements. Both your driving record and the covering letter from Roads and Maritime must be submitted by you to the Local Court as part of your disqualification removal order application.

Further information about how to make your application to the Local Court and what the Court will consider in determining whether to remove the driving disqualification can be found online at [www.rms.nsw.gov.au/disqualification](http://www.rms.nsw.gov.au/disqualification).

Should your disqualification removal order application to the Local Court be rejected, you may not make another application for 12 months. Please also note you will not be provided with your driving record if you are not currently disqualified.

For further information about obtaining a copy of your driving record please contact (02) 6640 2821.

## CUSTOMER DETAILS

Surname		Given name(s)	
<input type="text"/>		<input type="text"/>	
Residential address		Postal address (if different to residential address)	
<input type="text"/>		<input type="text"/>	
Postcode		Postcode	
Daytime contact number	Mobile phone number	Email address	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Date of birth		Driver licence or customer number (if known)	
<input type="text"/> / <input type="text"/> / <input type="text"/> <small>Day      Month      Year</small>		<input type="text"/>	

**Note:** If your records show a different address to the details supplied, Roads and Maritime will update the address from the information supplied under customer details.

Are you Aboriginal or Torres Strait Islander?

YES

NO

*This question is optional. Do not tick either box if you do not wish to answer it.*

*Answering this question is voluntary. Roads and Maritime may use this information to develop driver licensing and vehicle registration services for Aboriginal people. Roads and Maritime will not disclose this information without your consent unless authorised by law.*

## DECLARATION (please print)

I, **Mr/Mrs/Miss/Ms/Other** \_\_\_\_\_

of (address) \_\_\_\_\_

hereby apply for the free issue of an up-to-date copy of my driving record. By submitting and signing this form, I declare that I am seeking a copy of my traffic record in connection with the making of an application for the removal of disqualification periods or obtaining legal advice on my eligibility to make such an application. I understand that if records reveal I am not currently a disqualified driver, I will not be issued with a copy of my traffic record.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

I would like to receive my driving record via  email to \_\_\_\_\_

mailed to \_\_\_\_\_

## IMPORTANT NOTES FOR THE WITNESSING OF THIS APPLICATION

**The witness must be one of the following:**

Barrister or Solicitor of the Supreme Court; Clerk of the local Court; Member of Parliament; Legally qualified Medical Practitioner; Alderperson or Councillor of any municipality; Town Clerk or Shire Secretary; Postal Manager; Manager or Accountant of any bank or building society; Justice of the Peace; Public Servant of at least five years permanent service; Minister of Religion; School Teacher; Member of the Police Force.

**INSTRUCTIONS TO WITNESS**

You must sight the applicant's original documents, photocopies are not acceptable. Then you must **certify a photocopy** of these original documents for inclusion with this application.

- Sight, photocopy and certify two documents, one from List 1 and one from List 2. The name must be the same on both documents.
- If there has been a change of name you must also sight an original document from the change of name document list on this page **and then certify a photocopy of the original change of name document.**
- Ask the applicant to sign in the 'Declaration' on the front of this application.
- Complete the witness declaration on this page (including official stamp if available).

Please  tick the appropriate boxes below to show the documents you have sighted.

**Proof of Identity documents** (original documents **MUST** be sighted, copied and certified)

**List 1**

- A current NSW photo identity card or one that expired in the last two years
- An Australian full birth certificate showing parental details, issued by an Australian Registry of Births, Deaths and Marriages (*BDM commemorative certificates are not acceptable*).
- A certificate of Aboriginality signed by a Chairperson or Secretary of an Aboriginal organisation such as the local land council, which details name, address and date of birth.
- An overseas birth certificate showing parental details provided a passport or an official Australian travel document is also shown.
- A current Australian or overseas passport (an expired **Australian passport** is also acceptable but only within the last two years).
- A Department of Foreign Affairs and Trade issued document from the following list:
  - a current consular photo identity card
  - a current Certificate of Identity
  - a current Document of Identity
  - a current Titre de Voyage
- A Department of Immigration and Citizenship or the Department of Immigration and Border Protection issued document from the following list:
  - Australian naturalisation or citizenship document
  - a Visa Evidence Card
  - a Document for Travel to Australia (up to 5 years from the date of issue on the accompanying visa)
  - Evidence of Immigration Status (EIS) ImmiCard (current or expired)
  - Permanent Residence Evidence (PRE) ImmiCard
  - Residence determination (RDI) ImmiCard
- A Roads and Maritime issued NSW photo driver licence or NSW Photo Card that has been expired more than 2 years but less than 5 years. The licence must display a card number and not have been revoked or be reported as lost, stolen or destroyed.

**List 2**

- A current Medicare card, Pensioner Concession Card, Department of Veterans' Affairs entitlement card or any other current entitlement card issued by the Commonwealth Government.
- A current Mobility Parking Scheme (MPS) permit, with or without a photo
- A current Roads and Maritime issued NSW photo Firearm, Security Industry or Commercial Agents and Private Inquiry Agents operator licence.
- A current photo identity card for the Australian Defence Force, excluding civilian staff or family.
- A current bank, building society, credit union, American Express or Diners Club International - passbook, account statement (up to one year old showing your name, residential or mailing address and account number on institution letterhead or stamp), plastic credit card or account card (showing in full your family name, first given name and signature).
- A utilities bill - telephone (landline only), gas, electricity, water/ council rates or land valuation notice up to one year old.
- An Australian secondary school, TAFE or university issued student identity card (current and displaying the name/photograph, when the card has no expiry date, it may be accepted up to two years from the date of issue) or evidence of course enrolment on the institution's letterhead up to one year old (must have student's name and address).

**Change of name documents**

(original documents **MUST** be sighted, copied and certified)

- a marriage certificate (issued by the BDM if married in NSW)
- a divorce document bearing the name being reverted to
- a full birth certificate showing the name at birth and the new name
- a deed poll registered with the relevant authority
- a change of name certificate issued by the BDM
- a completed instrument evidencing Change of Name form that has been registered in the Land Titles Office.

Provide a document/card number for the list 1 item ticked above

**WITNESS DECLARATION**

I have sighted the supporting document/s as marked. I have witnessed the applicant signing the declaration on the front of this form. I am convinced of their identity. I understand that my 'personal information' is being collected by Roads and Maritime for verification of the applicant's proof of identity documents and signature. Personal information is held by us at 20-44 Ennis Road, Milsons Point NSW 2061 and may be disclosed inside and outside NSW to verify the contents of this application. I understand that my witnessing of the applicant's Proof of Identity and signature is voluntary.

Applicant's name

Name of witness (PRINT CLEARLY)

Rank/position of witness

Signature of witness

Date

Day	Month	Year
/	/	

Witness email address

Witness telephone number

Official stamp of witness (if available) or JP registration number

# Application to remove driver licence disqualification

Road Transport Act 2013, section 221C

## Applicant Details

Name:

Residential address:

Postal address (if different from above):

Date of birth:

NSW Driver Licence number or RMS Customer Number:

Legal representative's name:

Legal representative's firm:

Legal representative's address:

## Order/s sought

That my driver licence disqualification is removed.

## Reasons in support of application

I have not been convicted of any driving offence during the relevant offence-free period.

I am eligible to apply as I have not committed a driving offence during the offence free period before making this application.

A Local Court has not refused an application for removal of my driver licence disqualification within the last 12 months.

I request that the Court take the following information into account:

Particulars of any pending proceedings against the applicant for an alleged driving offence:

I have attached an up-to-date statement of driving record and cover letter issued by Roads and Maritime Services.

I acknowledge that in the event this application is successful I must obtain a new licence from the Authority before driving and that the issue of a new licence is subject to the settlement of any outstanding debt with Revenue NSW.

Applicant Signature:

Date: