

Removal of Driver Disqualifications

Tip Sheet for Lawyers

Under a scheme which commenced in October 2017, an eligible person who has served the relevant 'offence-free period' may apply to the Local Court for the removal of their existing periods of disqualification.

This tip sheet has been developed as a guide to assist lawyers in identifying;

- whether a person is eligible to apply, and their offence-free period
- the process for making an application and what the court will take into account
- where to refer a client who requires the assistance of Legal Aid NSW

Who can apply?

The table below sets out the criteria regarding eligibility and factors determining the relevant *offence-free* period.

Not eligible to apply - Note that for eligibility, if a person has **ever** been convicted of an offence listed in section 221D, they will never be eligible to apply (regardless of whether the conviction is historic or resulted in a licence disqualification). There is no waiting period that will cure an issue of ineligibility.

When considering the **relevant offence-free period**, it is the offence leading to an **existing** disqualification that is important. To be 'offence-free' a person must not have been convicted of **any driving offence** throughout the relevant period which leads up to the time of the application and the date the court determines the matter.

Offences and circumstances which determine eligibility to apply and offence-free periods

Note: an offence free period is not broken by convictions for non-driving related offences

Not eligible to apply (section 221D)	Offence-free period of 4 years (as defined in section 221A)	Offence-free period of 2 years (as defined in section 221A)
<p>If a person is not eligible to apply if they have ever been convicted of any of the following offences;</p> <ul style="list-style-type: none"> • Murder or manslaughter caused by the use of a motor vehicle • An offence under the Crimes Act which comprises or includes causing, death, grievous bodily harm or wounding by the use of a motor vehicle • Crimes Act offences of Predatory Driving (section 51A) or Police Pursuits (section 51B) • Negligent driving causing death or grievous bodily harm • Intentional menacing driving • Failing to stop and assist after impact causing death or grievous bodily harm – s52AB of the Crimes Act or s146 of the Road Transport Act 	<p>A person must be eligible to apply and be offence free for 4 years if an existing period of disqualification was imposed because of a conviction for any of the following offences;</p> <ul style="list-style-type: none"> • A major offence (as defined in section 4 of the <i>Road Transport Act 2013</i>) • Exceeding the speed limit by more than 30 kilometres per hour • Street racing – section 115(1) • Aggravated burnout – section 116(2) • Or any other offence prescribed by the statutory rules 	<p>A person must be eligible to apply and be offence free for 2 years if an existing period of disqualification was imposed as a result of:</p> <ul style="list-style-type: none"> • Being declared an habitual traffic offender <p>Or</p> <ul style="list-style-type: none"> • in any other case

Note – Disqualifications imposed under section 211(1)(b) (a mandatory interlock order) or 214(2) (a prescribed dangerous driving offence) are **not** able to be removed by court order – see section 221D(2). A person who in all other respects is eligible to apply under the scheme, and has other disqualifications, may still apply. A successful application will result in the removal of all periods **except** the 211(1)(b) or 214(2) periods.

What will the court consider when deciding whether to remove a disqualification period?

Section 221B(2)(a) sets out the matters which the court must take into account and can be conveniently summarised as including;

- The safety of the public
- The applicant's overall driving record
- Any relevant conduct since the licence disqualification
- The applicant's capacity or requirement to travel to meet their commitments and the availability of public transport
- The applicant's health and finances and any other relevant circumstances

Making an application

Prior to making an application, the person should obtain legal advice from a legal practitioner. Ideally that practitioner would have access to **an up to date copy of the person's driving record**. In any event, the legislation requires an application to be accompanied by an up to date copy of their driving record and particulars of any pending proceedings.

A person who may be eligible under the scheme, but does not have their record, should first be directed to Roads and Maritime Services (RMS). Provided a person declares that they are seeking a copy of their driving record for this purpose, the driving record will be provided to the person **free of charge**. (RMS has a particular application form for these records)

The application to the court is to include any relevant matter that the applicant requests the court to take into account when determining the application – see s221C(2)(a).

Where possible the application should be supported by independent material in support of the matters relied upon. Obviously the nature of the materials required will depend upon the individual case. Examples of materials that an applicant may like to consider providing with the application are letters from an employer regarding the need for a licence, letters or supporting documents setting out caring or other responsibilities and evidence of the availability of public transport either generally, or at the time the applicant is required to travel.

To apply, complete the 'Application to remove driver licence disqualification' form which may be lodged at any Local Court. The application form can be found under 'Forms and fees' at www.localcourt.justice.nsw.gov.au

After the application has been determined

Application granted - you should warn the client that they are not entitled to drive until they have been issued with a drivers licence from the RMS. If they have any outstanding fines and have not entered into an arrangement to pay, or are not making the agreed payments, they should address this straight away. Normal rules apply in the case of outstanding fines. RMS will not be able to issue a licence.

Consider if the client appears to be a candidate for a Work Development Order to work off a fine. They can call the WDO Hotline at Revenue NSW on 1300 478 879. The WDO Service in the Civil Law Division can also assist clients to find a suitable WDO sponsor. Solicitors can refer to wdo@legalaid.nsw.gov.au.

Application refused - there is no right of appeal. As long as the person remains eligible and 'offence-free', a further application can be made after 12 months. It would be prudent to advise an unsuccessful applicant that they should continue to abide by their disqualification so that in 12 months they can try again. They should also consider any reasons given by the court for refusing the application and whether there is anything they can do to improve their prospects on a subsequent application. If the application is dismissed in the absence of the applicant, they are able to make an application for annulment – refer to section 221B(9) and (10)

Eligibility for legal aid

A person who is eligible to apply for the removal of disqualification periods, and fits within the Legal Aid NSW means test, may be assisted in their application and represented by the existing **Legal Aid NSW duty service** or by a member of the Driver Reform Implementation Team. A *grant of aid* will only be necessary in the rare cases where it is necessary for the disbursement of funds.

If you have a client who does not live in an area where in-house duty services are provided, you could refer them to the Driver Reform Implementation team at driverteam@legalaid.nsw.gov.au. Alternatively they could approach the duty solicitor at their nearest local court.

New penalties

The Road Transport Amendment (Driver Licence Disqualification) Bill 2017 amended the penalties for a number of offences under the Road Transport Act 2013.

New penalties as from 28 October 2017				
Offence	Fine	Default* disqualification period	Minimum disqualification period	Term of imprisonment
Section 53(1)(a) – Driving unlicensed	20 p.u.	Court decision	Court decision	n/a
Section 53(3) – first offence (Never Licensed)	20 p.u.	Court decision	Court decision	n/a
Section 53(3) – second or subsequent offence (Never Licensed)	30 p.u.	12 months	3 months	6 months
Section 54(1),(3) or (4) – first offence (Driving while disqualified, suspended or after licence refusal or cancellation)	30 p.u.	6 months	3 months	6 months
Section 54 (1), (3) or (4) – second or subsequent offence (Driving while disqualified, suspended or after licence refusal or cancellation)	50 p.u.	12 months	6 months	12 months
Section 54(5) – first offence (Driving after licence suspended or cancelled for non-payment of fine)	30 p.u.	3 months	1 month	n/a
Section 54(5) – second or subsequent offence (Driving after licence suspended or cancelled for non-payment of fine)	50 p.u.	12 months	3 months	6 months

Note: As a default position, disqualifications periods will commence from the date of conviction, and not from the expiration of existing periods, making them concurrent rather than cumulative. The court retains the power to specify a later date – see section 207A of the Act.

* The default disqualification period will apply if no specific period is imposed by the court