



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 15**

**Imposition of Driving  
Disqualifications**

**WORKING PAPER**

**MARCH 1971**



## INTRODUCTION

As part of its programme the Law Reform Committee has been asked to consider the need for legislation to provide for the imposition of driving disqualifications on a person convicted of an offence in the commission of which he drives or uses a motor vehicle.

The Committee having completed its first consideration of the matter now issues this working paper. The paper does not represent the final views of the Committee.

Comments and criticisms are invited. The Committee requests that they be submitted by 1st May, 1971.

Copies of the paper are being forwarded to –

The Chief Justice and Judges of the Supreme Court

The Judges of the District Court

The Law Society

The Magistrates Institute

The Law School

The Crown Law Department

The Child Welfare Department

The Commissioner of Police

Other Law Reform Commissions and Committees with which this Committee is in correspondence.

The Committee may add to this list.

The research material on which this paper is based is at the offices of the Committee and will be made available on request.

## **TERMS OF REFERENCE**

1. “To consider the need for legislation to provide for the imposition of driving disqualifications on a person convicted of an offence in the commission of which he drives or uses a motor vehicle.”
2. The Committee is not concerned in this paper with those disqualifications which are imposed because the driver has demonstrated his unfitness as a driver.
3. In each of the jurisdictions referred to in paragraphs 9 to 16 below the relevant legislation is framed in terms generally wide enough to empower the court to disqualify not only the driver or person in charge of the vehicle but all the offenders involved in an offence in which a vehicle was used and the Committee interprets its terms of reference as being similarly extensive.

## **PRESENT POSITION IN WESTERN AUSTRALIA**

4. The powers of the courts to disqualify a person from holding or obtaining a driver's licence are contained in s.668A of the *Criminal Code* and certain sections of the *Traffic Act* and relate only to persons convicted of offences the actual commission of which directly involves the driving of a motor vehicle.
5. The only other relevant statutory provision is s.24(1)(a) of the *Traffic Act*. This empowers the Commissioner of Police to refuse to issue or renew, or to cancel or suspend a driving licence if he has reason to believe that the applicant for, or the holder of, a licence is not of good character. A right of appeal lies from the Commissioner's decision to a magistrate.
6. The Committee has been informed that in deciding whether to exercise his power the Commissioner has regard to all the circumstances of the case including, where the person has a criminal record, the seriousness of his offences and whether they involved the use of a motor vehicle. About fifty persons are disqualified under this power every year.

## **PROPOSALS FOR REFORM**

7. The former Chief Justice, Sir Albert Wolff, suggested to the Minister for Justice that the courts should be given power to disqualify from driving a person who had used a vehicle in connection with the commission of a crime.

8. Some magistrates have also made similar suggestions. The *Daily News* of 6th November, 1969, contained a report of a statement attributed to Mr. A.G. Smith S.M., to the effect that a vehicle play a large part in modern crime it would be desirable for courts to have the power to deprive offenders of their driving licences.

## **THE LAW IN OTHER JURISDICTIONS**

9. Queensland, South Australia, Tasmania and New Zealand have legislation broadly of the kind envisaged by Sir Albert Wolff.

### **Queensland**

10. Section 54(1) of the *Traffic Acts 1949-1969* (Q) provides that a person convicted of an offence may be disqualified from holding or obtaining a licence under the Act, either absolutely or for such period as the court thinks fit, if the court is satisfied –

- (a) that a licence held by the offender enabled, aided or facilitated the commission of the offence by him; or
- (b) that, having regard to the nature of the offence or the circumstances in which it was committed, or to both, the offender should in the interests of the public be prohibited from holding or obtaining a licence.

Any disqualification under the section is in addition to any punishment to which the offender is liable on conviction (s.54(3)).

## **South Australia**

11. Section 168 of the *Road Traffic Act 1961* (S.A.) includes a provision that where a person is convicted before a court for an offence in the commission of which a motor vehicle was used or the commission of which was facilitated by the use of a motor vehicle, the court may disqualify the offender from holding or obtaining a driver's licence for such period as it thinks fit or until further order.

12. Section 170 of that Act provides that if a court of summary jurisdiction is satisfied that a person has used or is likely to use a motor vehicle in connection with the commission of an offence by himself or another person, or to facilitate the escape of himself or any other person from arrest or punishment, it may disqualify him from holding or obtaining a driver's licence for such period as the court thinks fit, or until further order.

13. In *Coleman v. Mayne* (1966) S.A.S.R. 404, the Full Court held that an order of disqualification under s.170 of the *Traffic Act* is not made by way of punishment, but for the purpose of preventing crime, and that such an order may be made notwithstanding that the court had already imposed the maximum punishment authorised.

## **Tasmania**

14. The legislation is contained in s.391A of the *Criminal Code 1924*, as amended in 1966, and is in broadly similar terms to s.168 of the South Australian *Road Traffic Act*.

## **New Zealand**

15. The legislation is contained in s.44A of the *Criminal Justice Act 1954* inserted in 1969 and is the most explicit on the subject. The section applies to all offences punishable by imprisonment (other than driving offences under the *Transport Act 1962*, which are dealt with in that Act) and offences relating to the consumption of liquor in a public place.

16. The section is in the following terms –

Where a person is convicted of an offence to which the section applies and –

- (a) at the time of the commission of the offence the offender was the driver or person in charge of a motor vehicle; or
- (b) in the opinion of the court the commission of the offence was facilitated by the use of a motor vehicle by the offender, whether or not he was the driver of the person in charge; or
- (c) a motor vehicle was used by the offender, whether or not he was the driver or person in charge, to facilitate his flight or to avoid his detection or arrest after the commission of the offence; or
- (d) the offence was committed in, on, or from a motor vehicle; or
- (e) the offence was committed in respect of a motor vehicle,

the court may, in addition to or instead of passing any other sentence, order the offender to be disqualified from holding or obtaining a driver's licence for up to three years.

### **DISQUALIFICATION AS A MEANS OF PREVENTING CRIME**

17. Motor vehicles are an important factor in present day living. Amongst other things, they provide an important facility for the commission of many types of crime.

18. The argument in favour of the imposition of driving disqualification "not by way of punishment but for the purpose of preventing crime" (see paragraph 13 above) appears to rest on the assumption that disqualified offenders will be prevented from committing further offences because the disqualification will deprive them of the use of a motor vehicle.

19. However, it is questionable whether the type of offender who would be likely to use a motor vehicle in the commission of further offences is going to be deterred by the fact that he no longer has a driving licence. He would be more likely either to ignore the disqualification or to obtain some licenced person to drive him.

20. As against this, the United Kingdom Advisory Council on the Penal System, comprising a widely representative membership, has recommended to the Home Secretary that the courts be empowered to order driving disqualification for offenders convicted of an offence involving the use of a vehicle (*Report on Non-Custodial and Semi-Custodial Penalties*; 13 May 1970, published by the Home Office). The Council drew the distinction also made in this working paper between a disability imposed as a penalty and one intended to reduce the risk of an offender repeating the offence, and made the recommendation on the basis of reducing the risk of re-offending.

21. The Council accepted the submissions of the Association of Chief Officers of Police who did not consider that it was a serious objection to the proposal that a hardened criminal would use a vehicle whether he had a licence or not, since the local police would be aware of the disqualification and could take action if he were seen driving. In the case of lesser offenders the association suggested that disqualification would have the merit of providing some means of curtailing their activities.

## **DISQUALIFICATION AS A PENALTY**

22. Disqualification from driving as a penalty may serve as a deterrent in the same way as other penalties, and in some instances even as a special deterrent.

23. If it is to be used as a penalty there seems no reason why it should be restricted to offences in which vehicles have been used, because the deterrent effect of a disqualification would in many instances be as great even though a vehicle was not used in the offence for which the penalty is being imposed.

## **ARGUMENTS AGAINST DISQUALIFICATION**

24. The imposition of disqualification, whether it is imposed as a means of preventing crime or as a penalty, is likely to involve some difficulty and to result in certain undesirable consequences –

- (1) firstly, disqualification would be difficult to enforce. It is to be expected that those disqualified because they have used a motor vehicle for criminal



purposes, will - as a class - be less disposed to observe that disqualification than those disqualified because of breaches of the *Traffic Act*. Whilst the views of the United Kingdom Association of Chief Officers of Police (see paragraph 21 above) have some validity with regard to the non-compliant offender who resides in a town, or other small community, it seems unreal to place any reliance on this sort of interception with regard to the disqualified drivers who could continue to drive in the metropolitan area.

- (2) Secondly, it would fall much more heavily on some than on others, depending on whether or not the offender's livelihood depended on the right to drive. In this respect it would be even more uneven in its impact than a fine. This problem could be met to some extent by authorising the sentencing authority to limit the disqualification to non-working activities, but in many cases any such disqualification would involve a corresponding difficulty in enforcement (e.g. where the disqualified person is a taxi-driver, or a commercial traveller who works irregular hours).
- (3) Thirdly, as has been remarked above, the motor vehicle has an important part in present day life. As a consequence, the ability to drive assumes a certain social significance. The individual who is able to drive has an added usefulness - not only to himself, but, in some ways, to society as well (e.g. as in bringing help to an injured person in an emergency). It follows that to deprive a person of this ability, diminishes his usefulness as a member of society.

### **COMMITTEE'S TENTATIVE VIEW**

25. The Committee feels itself insufficiently informed at this stage to make proposals, though it tends to the view that such a power of disqualification, either as a penalty or as a means of preventing crime, is difficult to justify.

The nature of the topic is such that the Committee would welcome any views put to it.