

Habitual Traffic Offenders

ss221A – 221E Road Transport Act (NSW) 2013

Applying to quash an Habitual Traffic Offender (HTO) Declaration is an essential skill required by every criminal defence lawyer. New laws came into effect on 28 October 2017. This article aims to assist legal practitioners appearing in the Local Court of NSW.

Prior to 28 October 2017, if you were convicted of three or more serious driving offences within five years, Roads and Maritime Services (RMS) would declare you to be an HTO. An HTO declaration carried an automatic five year disqualification in addition to the court imposed disqualification for the offences.

The HTO scheme has now been abolished. You can no longer be declared an HTO. Now, only a magistrates can impose a disqualification period. However, existing HTO declarations remain in force until they expire or are removed by a magistrate.

Relevant Offence Free Period

The first step is to obtain a letter from Roads & Maritime Services stating that you have completed the relevant offence free period (ROFP) and are eligible to apply to have the disqualification removed. There is no point attending the Local Court until the client has this letter and an up to date Traffic Record. The application form can be found [here](#).

The ROFP is either two or four years depending on the offences committed:

Speeding by more than 30Km/H over the limit, Races, attempts on speed records (s115) Road and drag racing (s116), Negligent / Dangerous / Furious drive (s117)	Four years
Major offences defined in s4: <ul style="list-style-type: none">• Furious driving• Prescribed concentration of alcohol• Drug drive• Negligent, furious or reckless driving• Refusing breath or blood test,• Wilfully altering concentration of alcohol or drugs after a collision• Aiding, abetting, counselling or procuring the above.	Four years
Habitual Traffic Offender Declarations ¹	Two years
Any other case	Two years

¹ s221A Road Transport Act 2013

Ineligible Offences

Section 221D provides that disqualifications cannot be reduced for the following offences:

- (a) Murder or manslaughter caused by the use of a motor vehicle,
- (b) Causing death, GBH or wounding by the use of a motor vehicle,
- (c) Predatory driving or police pursuits (s51A, s51B)
- (d) Negligent driving causing death or GBH,
- (e) Intentional menacing driving (s118),
- (f) Failing to stop and assist after vehicle impact causing death or GBH.

Clients who have been disqualified for these offences must apply for a remission to the Governor of NSW. This is known as a petition for mercy. The Governor of NSW has a broad discretion to dispense clemency which he or she exercises on the advice of the Attorney General's Department. Further information can be found [here](#).

The Test

Once you have the eligibility letter from RMS, you can apply to the Local Court to have the disqualification removed. The new legislation provides that a magistrate may remove a licence disqualification if three preconditions are met:

1. That the applicant has not re-offended during the relevant offence-free period,²
2. That *'the Local Court considers that it is appropriate to do so'*,³ and
3. That the Local Court has not rejected an earlier application within the last twelve months.⁴

Section 221B(2) also provides mandatory considerations which counsel needs to address:

- (a) The safety of the public,
- (b) The applicant's driving record,
- (c) Whether the applicant had access to a car during the ROFP,
- (d) Any relevant conduct subsequent to the disqualification,
- (e) The nature of the offences,
- (f) Other relevant circumstances,
- (g) Matters prescribed by the rules.

Submissions

The problem with all mandatory sentencing, not just HTO declarations is that it ignores the personal subjective features of the offender. Whilst a five year disqualification may have been appropriate for the average habitual offender, there are offenders for whom this is unjust and disproportionate.

² s221B(1)(a) Road Transport Act 2013

³ s221B(1)(b) Road Transport Act 2013

⁴ s221C(4) Road Transport Act 2013

This may be due to circumstances such as:

- Work commitments,
- Family commitments,
- Health problems (including family members),
- Living in a remote location without public transport,
- The extenuating circumstances at the time of the offending, or
- The fact that they have matured in the years since the last offending.

For every application, counsel should obtain a written statement from the client detailing each of these features with supporting documents such as character references and medical reports. After those facts are established, counsel should make submissions with respect to each the mandatory considerations in s221B(2) and finish with a submission that it is appropriate to remove the disqualification.

Should you require further assistance, I am available every day after 4pm.

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