

Habitual Traffic Offenders

s216 - 221 Road Transport Act (NSW) 2013

NOTE: The HTO scheme was abolished in 2017. No more HTODs will be imposed but those in effect will need to be served or quashed. This paper is for historical purposes only.

Last year a client came to me who had received not one, not two, but three Habitual Traffic Offender Declarations (HTOD). As a result, he was disqualified for 15 years in addition to the two year disqualification imposed by the court for the most recent offence. I made an application to the Local Court of NSW and succeeded in having his disqualification period reduced from 15 years to only two years. This article will explain the HTOD legislation and the procedure for applying to have them quashed.

Habitual Traffic Offender Declarations

Roads & Maritime Services will declare any driver who commits three 'relevant offences' within a five year period to be an HTO.¹ This includes matters which are dismissed under s10 Crimes (Sentencing Procedure) Act (NSW) 1999.² This disqualification is in addition to whatever disqualification the court chooses to impose for the original offences.³ It's also possible to be declared a habitual offender more than once which means ten or even fifteen years off the road in addition to the court imposed disqualification.

The problems with this type of mandatory sentencing is that it fails to take into account the personal subjective features of the offender. While a five year disqualification may be appropriate for the average habitual offender, there are offenders for whom this is unjust and disproportionate 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.

Relevant Offences

The term 'Relevant Offence' is defined in s217 Road Transport Act (NSW) 2013 to include:

- Causing death or harm to a person with a vehicle,
- Speeding by more than 45Km/H over,
- Drink Driving / Drug Driving,
- Negligent, Reckless, Furious or Menacing Driving,
- Driving Whilst Unlicensed or Disqualified / Suspended,

¹ s216(1) Road Transport Act (NSW) 2013

² s216(2) Road Transport Act (NSW) 2013

³ s221 Road Transport Act (NSW) 2013

Application to Quash HTOD

Section 220 Road Transport Act (NSW) 2013 gives the court a discretion to quash the HTOD if:

'the disqualification imposed by the declaration is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case.'

However, the court must give its reasons for doing so.⁴ Which means that it is up to the advocate to provide those reasons to the court with appropriate supporting material. This will include character references from family members, employers and medical practitioners to demonstrate that the five-year disqualification is *'disproportionate and unjust in the special circumstances of the case'*.

Right of Appeal?

Section 220(3) Road Transport Act (NSW) 2013 provides:

'However, a declaration or disqualification under this Division cannot be appealed to any court whether under this or any other Act.'

At first glance this seems a little unfair. But there is no limit on the number of times an offender can apply to have the HTOD quashed. So if one magistrate says no, then he or she can wait a few months and apply again – hopefully to a more sympathetic magistrate.

We lawyers are often unfairly criticised for pursuing this tactic. But those critics misunderstand the purpose of the legislation. The aim is not to ruin people's lives by preventing them finding employment or caring for themselves and their family. The aim is to change people's behaviour to reduce the danger of harm to themselves and other road users. This occurs simply with the passage of time as a person develops and matures.

Final Thought

The client I mentioned in the first paragraph had an appalling traffic record. In fact, the magistrate said:

'Mr Nowlan, your client could teach the Traffic Offenders Intervention Program. He has personal experience of every traffic offence in NSW – and their legal consequences.'

However, he still reduced the disqualification from 15 years to two years.

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⁴ s220(2) Road Transport Act (NSW) 2013