

Licence Appeals

ss266-267 Road Transport Act (NSW) 2013

There is no appeal to the Local Court for an unrestricted licence holder who incurs 13 or more demerits in a three-year period. However, Roads & Maritime Services (RMS) have a discretion not to suspend your licence if they form the opinion:

'it would be unreasonable to do so, having regard to the date when any relevant offence was committed'.¹

So, if some of the offending is close to three years old, it may be worthwhile to write to RMS and ask them to exercise their discretion under s33(2)(a). I have applied before and been successful – [click here](#).

Appeals to the Local Court of NSW

'Appealable Decisions'² can be appealed to a magistrate in the Local Court.³ The court has a discretion to set aside or vary⁴ three types of licence suspensions:

1. A decision by RMS to suspend a Probationary licence for demerit points,⁵
2. A decision by RMS to suspend an unrestricted licence for speeding,⁶ and
3. A decision of a police officer to give the person an immediate licence suspension notice.⁷

An appeal against one of these decisions must be lodged within 28 days of notification by the decision maker.⁸

Basis for Appeal

The problem with these types of mandatory sentences is that they fail to take into account the personal subjective features of the offender or the extenuating circumstances of the offending. While a three-month disqualification may be appropriate for the worse offenders, it can be unjust and disproportionate for others.

The court will have regard to three factors and it is up to the advocate to cover these areas and provide supporting material. These are:

- The circumstances of the offending,
- The offender's traffic record and general character, and
- The offender's need for a Driver Licence

¹ s33(2)(a) Roads Transport Act (NSW) 2013

² See definition in s266 Roads Transport Act (NSW) 2013

³ s267 Roads Transport Act (NSW) 2013

⁴ s268 Roads Transport Act (NSW) 2013

⁵ ss40, 266(1)(d) Roads Transport Act (NSW) 2013

⁶ ss59, 266(1)(e) Roads Transport Act (NSW) 2013

⁷ s266(1)(b) Roads Transport Act (NSW) 2013

⁸ s267(2) Roads Transport Act (NSW) 2013

Extenuating Circumstances

There is no excuse for speeding, so don't even try it. Just acknowledge guilt and show remorse. There may be mitigating factors and exculpatory circumstances for other demerit point offences like failing to stop at a stop sign or failing to display P-plates.

Traffic Record & General Character

The traffic record can't be helped. Hopefully, the most recent offending is out of character and the other offending was many years ago. It is up to the advocate to provide evidence of the offender's good character to the court with appropriate supporting material. This will include character references from family members, employers and medical practitioners to demonstrate that the offending was out of character. It helps if the offender is employed or is studying.

Need for a Driver Licence

Again, it is up to the advocate to provide evidence of this need for a licence. This may be due to:

- Family commitments,
- Work commitments,
- Poor health of the offender or of a family member.

Test for the Discretion

The legislation gives the court wide discretion to set aside or vary the suspension or to:

*'making such other order as seems just to the Court in the circumstances.'*⁹

However, the legislation doesn't provide a test for the exercise of the discretion. The analogous legislation dealing with Habitual Traffic Offender Declarations offered some guidance:

*'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.'*¹⁰

An advocate would be wise to finish with a submission that the extenuating circumstances and the subjective features of the offender make the suspension 'disproportionate and unjust' in all the circumstances.

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⁹ s268(2)(d) Roads Transport Act (NSW) 2013

¹⁰ s220 Road Transport Act (NSW) 2013