

# Removal of Driving Disqualification

ss221A – 221E Road Transport Act (NSW) 2013

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New laws came into force in NSW on 28 October 2017 which allow disqualified drivers to apply to the Local Court to have their disqualification removed. Applying to remove a disqualification is an essential skill required by every criminal defence lawyer. This article aims to assist legal practitioners appearing in the Local Court of NSW.

## 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. For the application form [click here](#).

The ROFP is either two or four years depending on the offence committed:<sup>1</sup>

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"><li>• Furious driving</li><li>• Failure to stop and assist after impact causing GBH (s52AB)</li><li>• Prescribed concentration of alcohol (s110)</li><li>• Drug drive (s111)</li><li>• Negligent, furious or reckless driving (s117(c))</li><li>• Refusing breath or blood test, (Clauses 16 &amp; 17 of Schedule 3)</li><li>• Wilfully altering concentration of alcohol or drugs after a collision (Clause 18 of Schedule 3)</li><li>• Aiding, abetting, counselling or procuring the above.</li><li>• A major offence under previous legislation</li></ul>	Four years
Habitual Traffic Offender Declarations	Two years
Any other case	Two years

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<sup>1</sup> 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 (s117(1)(a) or (b)),
- (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,<sup>2</sup>
2. That '*the Local Court considers that it is appropriate to do so*',<sup>3</sup> and
3. That the Local Court has not rejected an earlier application within the last twelve months.<sup>4</sup>

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.

## Evidence

For every application, counsel should provide a written statement from the client detailing his or her personal circumstances including:

- Work commitments,
- Family commitments,
- Health problems (including family members),

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<sup>2</sup> s221B(1)(a) Road Transport Act 2013

<sup>3</sup> s221B(1)(b) Road Transport Act 2013

<sup>4</sup> s221C(4) Road Transport Act 2013

- Living in a remote location without public transport,
- The extenuating circumstances at the time of the offending, and
- The fact that they have matured in the years since the last offending.

## Submissions

After those facts are established, counsel should make submissions with respect to each of 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.

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