



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 15

**Imposition of Driving
Disqualifications**

WORKING PAPER

MARCH 1971

IFlun9yDUCTION Tj 170165 T0TD /F Tc 0 .1875Tw ()

Tj 170 -205 TD /F.120981Tc

TERMS OF REFERENCE

1. “To consider the need for legislation to provide for the imposition of driving disqualificat

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.

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.