

Chapter 9

Motor vehicle offences

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A. Overview

9-1 Introduction

As a duty lawyer, you should not represent first and second offenders in relation to drink driving offences unless there is a risk of imprisonment. You can act in relation to any traffic matter where there is a risk of imprisonment and disqualified driving offences.

The sections of legislation discussed in this chapter relate to the [Transport Operations \(Road Use Management\) Act 1995](#) (Qld).

B. Vehicle offences involving liquor or other drugs

9-2 Drink driving offences

Driving under the influence

Under s 79(1), there is a maximum penalty of 28 penalty units or 9 months' imprisonment for driving under the influence of liquor or a drug.

However, if the defendant has had other convictions under s 79(1) in the previous five years, then:

- s 79(1A) orders a maximum penalty of 60 penalty units or 18 months' imprisonment if they have had one previous conviction
- s 79(1C) orders that 'imprisonment must be imposed as the whole or part of the punishment' if they have had:
 - two or more previous convictions
 - a previous charge dealt with on indictment relating to a motor vehicle, or
 - a previous conviction under s 328A.

Driving over the middle limit but not over the high limit

Section 79(1F) orders a maximum penalty of 20 penalty units or 6 months' imprisonment for driving over the middle alcohol limit (0.10) but under the high alcohol limit (0.15).

Driving over the general limit but not over the middle limit

Section 79(2) orders a maximum penalty of 14 penalty units or 3 months' imprisonment for driving over the general alcohol limit (0.05) but under the middle alcohol limit (0.10).

Driving over the no alcohol limit but not over the general limit

Section 79(2A), (2B) and (2D) all relate to particular types of licence or vehicle. This section orders a maximum penalty of 14 penalty units or 3 months' imprisonment for driving over the no alcohol limit (0.00) but under the general alcohol limit (0.05).

However, if the defendant has had previous convictions under s 79 (1F), (2), (2AA), (2A), (2B) or (2D) in the previous five years, then:

- s 79(2F) orders a maximum penalty of 20 penalty units or 6 months' imprisonment if they have had one previous conviction
- s 79(2G) orders a maximum penalty of 28 penalty units or 9 months' imprisonment if they have had two or more previous convictions
- s 79(2H) orders a maximum penalty or 30 penalty units or 1 year's imprisonment if they have had a previous:
 - charge dealt with on indictment relating to a motor vehicle
 - conviction under s 328A, or
 - conviction under s 79(1).

Driving with a relevant drug present

Section 79(2AA) orders a maximum penalty of 14 penalty units or 3 months' imprisonment for driving with a relevant drug present in saliva.

Immediate suspension

Section 79B provides for immediate suspension if a defendant has been charged under ss 79(1), 79(F) or 80(11), unless a court authorises them to drive under s 79E and they obtain a replacement licence under s 79(F).

Failing to provide specimen of breath

Section 80(5A) orders a maximum penalty of 40 penalty units or 6 months' imprisonment for failing to provide a breath specimen where police suspect an offence within the previous three hours.

Failing to provide specimen of breath, saliva or blood

Section 80 also orders a maximum penalty of 28 penalty units or 9 months' imprisonment for failing to provide a specimen of breath, saliva or blood—the same penalty as a high reading under s 79(1).

9-3 Definitions

Definition of 'on a road' or 'elsewhere'

The offences referred to above may be committed upon a road or elsewhere (s 79(11)). Schedule 4 of the Transport Operations (Road Use Management) Act defines a road and 'elsewhere' has been judicially defined to mean 'any place other than a road'.

Definition of 'motor vehicle'

A motor vehicle is defined in Schedule 4 of the Act. Note that it may still be considered a 'motor vehicle' even if it is in a condition in which it is impossible to drive.

Definition of 'driving'

Causing a vehicle to move by the force of gravity down a road, and controlling the handlebars and brakes, is defined as 'driving'. A vehicle under tow is not being driven (*McNaughtan v Garland; ex parte McNaughtan* [1979] Qd R 240 and *Wallace v Major* [1946] KB 473).

Pushing a vehicle with one hand on the steering wheel is not considered driving.

9-4 Defences

The following are acceptable defences under the Act:

- The breath analysis was not carried out within three hours of driving or being in charge of a motor vehicle.
- The drawing of the blood specimen did not take place within three hours of the driving or being in charge of a motor vehicle

The suspect was not driving the motor vehicle at the material time.

- The suspect was not in charge of the motor vehicle at the material time.
- The blood specimen was not dealt with in line with all of the requirements of s 80.

The defence under s 24 of the *Criminal Code Act 1899* (Qld) (mistake of fact) is not available for offences under s 79 of the Transport Operations (Road Use Management) Act, as it is statutorily excluded under s 79(12).

If the person ceased driving before consuming alcohol, they have committed no offence.

Defences to failure to provide charges

Under s 80(11A), the person has not committed an offence of failing to supply if they can satisfy the court that:

- ‘the requisition to provide the specimen was not lawfully made, or
- the person was, because of the events that occurred, incapable of providing the specimen, or that
- there was some other reason of a substantial character for the person’s failure to provide the specimen other than a desire to avoid providing information that might be used in evidence’.

C. Unlicensed, disqualified and suspended driving

9-5 Unlicensed driving where the defendant is not under disqualification

Any person who drives a motor vehicle without a driver licence commits an offence (s 78(1)). The maximum penalty is 40 penalty units or 1 year’s imprisonment. As a first offence, this normally attracts a fine.

9-6 Disqualified driving

Under s 78, if a person drives a motor vehicle after being disqualified by a court order, they are committing a very serious offence with a maximum penalty of 60 penalty units or 18 months’ imprisonment. Generally, magistrates will consider jailing a disqualified driver caught driving in the first half of the disqualification period but imprisonment is not automatic. Additionally, a person convicted of driving while disqualified by a court order will be disqualified from holding or obtaining a driver licence for at least two years.

9-7 Driving while suspended

If a person is breathalysed and issued a certificate showing a reading of 0.05% or more, their driver licence is suspended for 24 hours from the time of the reading. The police officer concerned must give the person charged a notice under s 79D.

9-8 Driving with accumulated demerit points

When the holder of an open or provisional licence, or learners permit, has accumulated more demerit points than are allowed under their licence, they are unable to drive. It is an offence to drive with accumulated demerit points.

9-9 Mandatory disqualification periods

Section 78(3) outlines when a court must disqualify a person from holding or obtaining a Queensland driver licence. These are:

- at least one month for driving under the influence
- 2–5 years if disqualified by a court
- six months if disqualified due to allocation of demerit points
- six months if their interstate licence is suspended due to allocation of demerit points
- six months if convicted of driving more than 40 km over the speed limit
- 1–6 months if the SPER has suspended the licence
- 1–6 months if they are a repeat unlicensed driver, i.e. convicted under s 78 within the previous five years
- 2–5 years if convicted under s 79B in addition to any of the above.

D. Dangerous operation of vehicle

9-10 Dangerous operation of vehicle

The charge of dangerous operation comes under s 328A of the Criminal Code. There are three possible charges:

- dangerous operation (to be dealt with summarily) (s 328A(1))
- dangerous operation causing grievous bodily harm
- dangerous operation causing death (to be dealt with on indictment).

E. Driving without due care and attention

9-11 Driving without due care and attention

Under s 83 of the Transport Operations (Road Use Management) Act, it is an offence for any person to drive ‘a motor vehicle on a road or elsewhere without due care and attention or without reasonable consideration for other persons using the road or place’.

No mandatory licence disqualification is set out in relation to this offence. However, the court does have the power to disqualify under s 187 of the [Penalties and Sentences Act 1992](#) (Qld). You will need to put as much material as possible before the court about the defendant’s need for and use of their licence, and the consequences of disqualification.

F. Restricted (provisional) licence

9-12 Who may apply for a provisional licence?

Under s 87, a person convicted under s 79 may apply for a provisional licence (i.e. a restricted licence), which restricts them to driving a motor vehicle for the purpose of earning their living.

9-13 Who may not apply for a provisional licence?

Under s 87(5), a person may not apply for a provisional licence if they:

- have had their driver licence suspended or cancelled, or been disqualified from holding or obtaining a driver licence, within the last five years

- have been convicted under s 79 or of dangerous driving within the last five years
- do not hold a Queensland driver licence (not being a learners permit) when they apply.

9-14 What factors will satisfy the court?

The applicant must satisfy the court on the balance of probabilities that:

- ‘(i) the applicant is a fit and proper person to hold a restricted licence, having regard to the safety of other road users and the public generally; and
- (ii) a refusal of the application would cause extreme hardship to the applicant or the applicant’s family by depriving the applicant of the applicant’s means of earning the applicant’s livelihood’ (s 87(5)(a)).

9-15 How does a person apply for a restricted licence?

The applicant should obtain and file a written application available at the magistrates court. Most courts request that an applicant file this application on the day that the matter is adjourned from the mention court to a date for the hearing. However, they can file it, by leave, on the day of the hearing.

9-16 What evidence is required at the hearing?

The applicant must be prepared to personally give evidence and be cross-examined by the police prosecutor.

The applicant will require evidence from their employer about both the terms and conditions of employment and the effect of the loss of licence on that employment.

Affidavits and references concerning the applicant’s character are useful but may be admitted only by consent.

G. Removing absolute disqualification under section 131

9-17 Who may apply?

Any person who has been disqualified from holding or obtaining a driver licence, either absolutely or for at least two years, under the Transport Operations (Road Use Management) Act or any other Act may apply to have their disqualification removed.

9-18 When can a person apply?

An applicant may apply for the removal of their disqualification order at any time from two years after the date of the previous disqualification order.

9-19 Where should they file?

An applicant may file the application in the magistrates court in Queensland where they live if the disqualification order was made by a magistrate or justice. The application should refer to all disqualifications, in excess of two years, that the applicant wishes to have removed.

If the disqualification order was made in the Supreme Court or a district court, the applicant should file the application in the court that made the order.