

Road Safety Disqualification Notices (Excessive Drink Drive Notices)

Cameron Scott – Barriste - Edward Coke Chambers

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Drink driving and drug driving cases often arise in circumstances of misjudgement and genuine belief that the driver would not be over the blood alcohol limit of 0.05%. However, for individuals who blow over 0.15% or are facing a second or subsequent offence (even if that offence is very low range i.e. between 0.05% and 0.07%) , or if you fail or refuse to participate in a breath or oral fluid test, or a blood test, police have the power to immediately disqualify a driver. This is done via a notice called a Road Safety Disqualification Notice, but which is known in the legislation as an Excessive Drink Drive Notice (EDDN).

Immediate disqualification can have serious consequences for anyone, from the possible loss of employment, inability to transport dependent children or family members, to social isolation if you live in a rural or remote area. Thankfully, you can have an EDDN cancelled. Section 18E of the Road Safety (Alcohol and Drugs) Act 1970 provides:

“A person to whom a notice is given under section 18B(1) may appeal against that notice to the Magistrates Court on the ground that the notice will cause the person severe and unusual hardship or that there are other special circumstances as to why the notice should not have been given.”

The critical factor for the Magistrate in hearing the appeal is to decide whether the EDDN will cause you severe and unusual hardship. Such examples may include the risk of loss of employment, or inability to transport a dependent family member to critical medical appointments such as chemotherapy or dialysis.

The Tasmanian Courts have had a lot to say about what is or is not severe and unusual hardship. Severe and unusual hardship was considered in a decision called *Registrar of Motor Vehicles v Eeles* [1984] Tas R 24. Justice Neasey said:

“...the condition that the court be satisfied that disqualification will impose or is imposing severe and unusual hardship is a stringent one, which the applicant for a restricted licence bears the onus of establishing.

And

“...'severe' 'denotes a rigorous quality – if not extreme, then at least marked', and cited the Shorter Oxford English Dictionary, Vol2, pp 1857–8. I, with respect, agree. I would add for myself that the source quoted by Everett J., in referring to impersonal agencies which can be 'severe', marks out one category as being, 'events or circumstances, labour or exercise, a struggle, test, trial, etc. and says 'severe' means in that context, 'hard to sustain or endure; arduous'. 'Hardship' falls most aptly into that category, and the word 'hardship' itself means, 'the quality of being hard to bear; hardness; severity; hardness of fate or circumstance'– *opcit.*, Vol.1, p66.”

As you can see, severe and unusual hardship is a high threshold, requiring careful consideration by the Courts of the circumstances of your case. Therefore, it is critical that you have a carefully and professionally prepared application supported by a comprehensive affidavit that addresses all of the factors relevant to proving severe and unusual hardship.

How can Cameron Scott help you if you receive a Road Safety Disqualification Notice?

As a barrister, Cameron can help you by preparing a carefully drafted application supported by an affidavit or statutory declaration that addresses all of the relevant evidence and factors in your case that will enable a Magistrate to make the decision to cancel the Road Safety Disqualification Notice.

In some cases, Cameron is also able to negotiate with police to obtain their consent and agreement to cancel the Road Safety Disqualification Notice that has been issued to you.

If you have any questions, or wish to engage Cameron to assist you to obtain a cancellation of your Road Safety Disqualification Notice, please contact Cameron on 0404 268 345 (m) or by email: cameron@cameronscottbarrister.com.au