Drink Driving and other traffic offences: Successful plea making in the Local Court

Presented by

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PROFILE

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PART A – THE LAW

1. INTRODUCTION

This paper will look at the most common traffic offences dealt with in the local court. Particular attention will be paid to plea making and the most common of all traffic offences – drink driving.

Traffic law is not often seen as glamorous. Those who practice in it do not underestimate its complexity, spread as it is, over a number of pieces of legislation. Nor do they underestimate the consequences that loss of a licence can have on an individual. Losing a licence can be devastating. A person's livelihood or sense of independence can be at stake.

Traffic law is one of those areas of the law that is constantly changing. The executive is always either repairing the breaches caused by "technical" defences, creating new offences or removing the court's discretion in imposing penalties; whilst practitioners are ever on the search for further "technicalities" with which to breach, if not storm, the ramparts. Make sure you keep up with developments.

Many of the top-ten offences dealt with in the Local Courts are driving offences. According to Judicial Commission statistics published in 2003[1], the following traffic offences feature amongst the top 20 offences dealt with in the local court for 2002 (with ranking in brackets):

1. Mid Range PCA (1)
2. Drive while disqualified (4)
3. High Range PCA (5)
4. Low Range PCA (6)
5. Drive while suspended (10)
6. Drive without being licensed (12)
7. Negligent driving (without causing death or GBH) (13)
8. Drive unregistered vehicle (14)
9. Drive while licence refused/cancelled (15)

Nearly half of the top 20 offences dealt with are driving offences.

[1] Jason Keane and Patrizia Poletti (2003) *Common Offences in the Local Court*, Judicial Commission of NSW (Sentencing Trends and Issues No 28 – September 2003)

1.1 Navigating your way around the road transport legislation

Section 5 of the *Road Transport (General) Act 2005* defines "road transport legislation". It includes, *inter alia*, the *Road Transport (Driver Licensing Act)* 1998 and the *Road Transport (Safety and Traffic Management) Act* 1999. Be aware of other relevant legislation, for example, police powers relating to vehicle and traffic in Part 12 of the *Law Enforcement (Powers and Responsibilities) Act 2002.*

The acts that make up the road transport legislation are subject to various provisions in the *Road Transport (General) Act 2005* concerning the administration and enforcement of road transport legislation generally.

The key Acts for the purpose of this paper are the following:

The *Road Transport (Safety and Traffic Management) Act 1999* which covers alcohol and other drug use, speeding and other dangerous driving, traffic control devices and vehicle safety and accidents.

The *Road Transport (General) Act 2005* deals with, *inter alia*, investigation powers relating to road transport legislation (Chap 4), enforcement of road transport legislation (Chap 5) – which includes proceedings for offences, sanctions relating to licences and evidential provisions.

The *Road Transport (Driver Licensing) Act 1998* deals with the driver licensing system (Part 2) - including the demerit points system, interlock devices (Part 2A), and licence offences (Part 3).

1.2 Common terms

Words and phrases such as "drive", "driver", "motor vehicle", "road", "road related area", "use" (of a vehicle) and "vehicle" are terms that are defined in the road transport legislation (see the dictionaries at the end of the *Road Transport (Safety and Traffic Management Act)* 1999 and *the Road Transport (Driver Licensing) Act* 1998, and section 3 of the *Road Transport (General) Act 2005*).

2. DRINK DRIVING: PCA & DUI

Drink driving offences are dealt with in Part 2 of the *Transport (Safety and Traffic Management) Act 1999.*

When analysing the drink/drug driving provisions only a year ago in 2006, Douglas Brown calculated that the legislation contained about 10,000 words spread over 33 sections and 110 subsections.[2] We now have 50 sections (sections 8 to 39A) and my word

[2] Douglas Brown (2006) *Traffic Offences and Accidents* (4th ed) LexisNexis Butterworths Australia, p165.

count check gives a figure of 17,969 words! It will soon be 52 with a new section 8A to commence[3] and an 8B to be enacted[4]. It is beyond the scope of this paper to look at all the sections, let alone in any detail.

2.1 A brief overview of Part 2 – Alcohol and other drug use

Section 8 is an interpretation provision.

Sections 9 to 12 are the offence provisions.

Sections 13 to 18 cover random breath testing and breath analysis. They specify the powers and procedure to be followed in conducting breath tests/analysis. There are offence provisions relating to refusing or failing to undergo a breath test, and willfully altering blood alcohol concentration. Note in particular section 17 which specifies when a breath test/analysis is not permitted: if the person has been admitted to hospital (unless the doctor approves), if the officer forms the view that it would be dangerous for the person having regard to injuries sustained, if more than 2 hours have passed since the time of driving, or at the person's home.[5]

Sections 18A to 18H essentially cover the same matters as sections 13 to 18, but in relation to random oral fluid testing (saliva test) for prescribed illicit drugs.

Sections 19 to 24 cover blood analysis of accident patients following accidents.

Sections 24A to 24D deal with blood and urine analysis of persons who are not accident patients following fatal accidents.

Sections 25 to 29 deal with sobriety assessments and related drug analysis.

Section 31 permits a police officer to remove a vehicle involved in a prescribed offence.

Sections 32 to 38 are the provisions that deal with evidentiary and other procedural matters. Note in particular section 33 on the evidentiary certificate of the blood alcohol reading. Note also section 34 – samples in relation to offences under section 12(1) (DUI) used to be required to be taken within 2 hours after the event. That has now been extended to 4 hours.

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[3] *Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007*

[4] Road *Transport Legislation (Breath Testing and Analysis) Bill 2007* (Second reading speech delivered on 28 November 2007)

[5] There is no difference between single and dual occupancy properties. Thus a breath test performed in the driveway of the block of units where the driver lived was not permitted. The common area driveway formed part of the driver's "place of abode": *Director of Public Prosecutions (NSW) v Skewes* (2002) 37 MVR 545; [2002] NSWSC 1008. Note that the section no longer uses the terminology "place of abode". That phrase has been replaced by "home".

Section 39 deals with personal liability of sample takers (ie no civil or criminal liability when undertaken in good faith).

Section 39A permits a police officer to conduct both a breath test and oral fluid test on a person.

2.2 PCA offences

Section 9 of the Road *Transport (Safety and Traffic Management) Act 1999* makes it an offence for a person to

(i) drive a motor vehicle, or
(ii) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
(iii) occupy the seat in a motor vehicle next to the holder of a learner licence who is driving the vehicle (if the person is a special category supervisor and/or holder of a driver licence other than a provisional or learner licence)

while there is present in the person's blood the prescribed concentration of alcohol.

There are 5 categories of PCA:

Range Category[6]	**Start of range (Grammes of alcohol in 100ml of blood)**[7]	**End of range (Grammes of alcohol in 100ml of blood)**
Novice	More than 0	Less than 0.02
Special	0.02	Less than 0.05
Low	0.05	Less than 0.08
Middle	0.08	Less than 0.15
High	0.15	N/A

[6] The prescribed concentrations of alcohol will appear in a new section 8A when the *Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007* commences.
[7] Please note a bill before parliament: *Road Transport Legislation (Breath Testing and Analysis) Bill 2007.* The objects of the bill are to amend the *Road Transport (Safety and Traffic Management) Act 1999* and other legislation so that the breath sample revealed by breath testing or analysis can be expressed in terms of the amount of alcohol in grammes in 210 litres of exhaled breath and the approval of new breath testing devices (the current reference will still apply to current breath measuring devices). The reading in 210 litres of exhaled breath is equivalent to the reading in 100ml of blood, so the prescribed concentrations remain the same.

2.2.1 Novice

A person comes within this range if he or she is the holder of a learner licence or provisional licence.[8]

For someone being prosecuted under the novice range, it is a defence if the defendant proves that the PCA was *not* caused (in whole or part) by

(i) the consumption of an alcoholic beverage (otherwise than for the purpose of religious observance), or
(ii) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.[9]

2.2.2 Special category

A person is a special category driver if the person in respect of a motor vehicle:

(i) holds a learner or provisional licence for motor vehicles of a class that includes that motor vehicle
(ii) the person does not hold a licence because
- it is suspended or cancelled
- the person is a disqualified driver
- the person's application for a driver licence has been refused
- the person has never obtained a driver licence

(iii) the person has a licence issued outside of NSW that has been suspended or cancelled
(iv) the motor vehicle is driven for hire or reward
(v) the motor vehicle is a coach or heavy motor vehicle
(vi) the motor vehicle (or any trailer being towed by it) carries dangerous goods or a radioactive substance.[10]

2.2.3 High Range PCA – Guideline judgment

On 8 September 2004, the Court of Criminal Appeal delivered a guideline judgment on the offence of high range PCA: *Re Application by Attorney-General (No 3 of 2002)* (2004) 61 NSWLR 305.

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[8] Section 9(1A)
[9] Section 11A
[10] Section 8(3). Be aware that the definition of special category driver in section 8 will change when the *Transport (Safety and Traffic Management) Amendment (Novice Drivers) Act 2007*commences. It is not a change of any particular substance.

Before anything further comment is made, it is important to note that a guideline judgment is just that – a guideline. Guidelines exist to provide a meaningful and structured guidance to judges in the sentencing process. They are not a straitjacket. They do not restrict a judge's discretion.

The lead judgment is that of Howie J. There is no substitute for reading the whole judgment but, in summary, he made the following guideline:

(1) An ordinary case of the offence of high range PCA is one where:

- (i) the offender drove to avoid personal inconvenience or because the offender did not believe that he or she was sufficiently affected by alcohol;
- (ii) the offender was detected by a random breath test;
- (iii) the offender has prior good character;
- (iv) the offender has nil, or a minor, traffic record;
- (v) the offender's licence was suspended on detection;
- (vi) the offender pleaded guilty;
- (vii) there is little or no risk of re-offending;
- (viii) the offender would be significantly inconvenienced by loss of licence.

(2) In an ordinary case of an offence of high range PCA:

- (i) an order under s 10 of the *Crimes (Sentencing Procedure) Act* will rarely be appropriate;
- (iii) a conviction cannot be avoided only because the offender has attended, or will attend, a driver's education or awareness course;
- (iii) the automatic disqualification period will be appropriate unless there is a good reason to reduce the period of disqualification:
- (iv) a good reason under (iii) may include:
  - (a) the nature of the offender's employment;
  - (b) the absence of any viable alternative transport;
  - (c) sickness or infirmity of the offender or another person.

(3) In an ordinary case of a second or subsequent high range PCA offence:

- (i) an order under s 9 of the *Crimes (Sentencing Procedure) Act* will rarely be appropriate;
- (ii) an order under s 10 of the *Crimes (Sentencing Procedure) Act* would very rarely be appropriate;
- (iii) where the prior offence was a high range PCA, any sentence of less severity than a community service order would generally be inappropriate.

(4) The moral culpability of a high range PCA offender is increased by:

(i) the degree of intoxication above 0.15;
(ii) erratic or aggressive driving;
(iii) a collision between the vehicle and any other object;
(iv) competitive driving or showing off;
(v) the length of the journey at which others are exposed to risk;
(vi) the number of persons actually put at risk by the driving.

(5) In a case where the moral culpability of a high range PCA offender is increased:

(i) an order under s 9 or s 10 of the *Crimes (Sentencing Procedure) Act* would very rarely be appropriate;
(ii) where a number of factors of aggravation are present to a significant degree, a sentence of any less severity than imprisonment of some kind, including a suspended sentence, would generally be inappropriate.

(6) In a case where the moral culpability of the offender of a second or subsequent high range PCA offence is increased:

(i) a sentence of any less severity than imprisonment of some kind would generally be inappropriate;
(ii) where any number of aggravating factors are present to a significant degree or where the prior offence is a high range PCA offence, a sentence of less severity than full-time imprisonment would generally be inappropriate.

2.3 Driving Under the Influence (DUI) offence

A DUI charge usually arises where the police have been unable to take a blood-alcohol reading but allege that the person is under the influence of alcohol.

It also arises where the allegation is that the person is affected by a drug other than alcohol. In relation to other drugs, see also the relatively new section 11B dealing with prescribed illicit drugs (cannabis, speed and ecstasy), and morphine and cocaine.

Section 12 of the *Road Transport (Safety and Traffic Management) Act 1999* makes it an offence for a person to

(i) drive a motor vehicle, or
(ii) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or

(iii) occupy the seat in a motor vehicle next to the holder of a learner licence who is driving the vehicle (if the person is the holder of a driver licence other than a provisional or learner licence)

while under the influence of alcohol or any other drug.

It is an offence of strict liability.

Evidence of whether a person is "under the influence" is usually given by the police officer as to his or her observations, both of the person (eg alcohol on breath, glassy eyes, slurred speech) and surrounding circumstances (eg erratic driving, empty alcohol containers strewn in the vehicle). It is circumstantial evidence. This is direct evidence of fact, not expert opinion evidence.

Drug is defined in the Dictionary of the *Road Transport (Safety and Traffic Management) Act 1999*. It includes alcohol, a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985* and any other prescribed substance (for which see clause 127 and Schedule 4 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

2.4 Other comment

Place where offence committed

As can be seen from many driving offence provisions in the road transport legislation, the prosecution needs to establish not only that a person was driving a motor vehicle but that the offence occurred on a road or road related area. In other words, there is usually a qualification on where the offence can be committed. The drink driving offence provisions make no reference to road or road related area. There is no qualification on the place where a drink driving offence can be committed.

Strict liability

Drink driving offences are offences of strict liability. The prosecution does not need to prove a guilty mind (or *mens rea*). No question of proving a specific state of mind arises, whether it be knowledge, intention, or some other form of mental advertence.

Nonetheless the common law still provides for the defendant's state of mind to be raised as a defence – the defence of honest and reasonable mistake of fact. It is a rule that is expressed in the case of *Proudman v Dayman* (1941) 67 CLR 536.

Thus, even where the legislature has removed mens rea as an element of a statutory offence (expressly or impliedly), the courts are reluctant to convict someone on the performance of the guilty act (*actus reus*) and no more. To paraphrase Dixon J in his judgment: it is one thing to deny that a guilty mind is an essential ingredient of an

offence, it is another thing altogether to say that an honest belief founded on reasonable grounds cannot exculpate a person.

The common law rule is put as follows: "an honest and reasonable belief in a state of facts which, if they existed, would make the defendant's act innocent affords an excuse for doing what would otherwise be an offence".[11]

For further discussion of the general principles of *mens rea* and statutory offences, see *He Kaw Teh v R* (1985) 157 CLR 523.

We can see in the rule's expression of "honest and reasonable" that it has two parts that must be satisfied – the first a subjective test, and the second an objective one.

The defence in relation to drink driving offences remains a theoretical possibility, but in practice rarely arises. The usual scenario is that of the person who has made a mistake as to the amount of drinks consumed, or a mistake as to whether the amount consumed put the person over the limit. These are not reasonable mistakes.

The defence more commonly arises in some of the offences discussed below, particularly the offence of drive while suspended.

3. DRIVE WHILE DISQUALIFIED

The offence of drive while disqualified is seen by courts as more than just a substantive offence. Because a disqualification has been imposed by a court, driving while disqualified is seen effectively as a breach of a court order.

A repeat drive while disqualified driver offender places him/herself at risk of a custodial sentence.

Section 25A(1)(a) of the *Road Transport (Driver Licensing) Act 1998* makes it an offence for a person disqualified from holding or obtaining a driver licence from driving a motor vehicle on a road or road related area during the period of disqualification.

The prosecution must prove:

(i) a person
(ii) driving
(iii) a motor vehicle
(iv) on a road or road related area
(v) the order of disqualification (in particular its commencement and expiry date)

It is an offence of strict liability. The defence of honest and reasonable mistake rarely arises because a person is usually present in court when a disqualification order is made.

[11] *Proudman v Dayman* (1941) 67 CLR 536 per Dixon J at 540.

It is rare that a person could reasonably say that he/she is unaware of the disqualification order. However, the defence is available.[12]

4. DRIVE WHILE SUSPENDED

Section 25A(2)(a) of the *Road Transport (Driver Licensing) Act 1998* makes it an offence for a person whose driver licence is suspended from driving a motor vehicle (of a class to which the suspended driver licence related) on a road or road related area.

A common defence to this charge is that the person was not aware that he/she had been suspended, that is, the honest and reasonable mistake of fact defence (eg the person did not receive the letter from the RTA stating he/she would be suspended). The defendant has to show that the belief that he/she was not suspended was held both honestly and reasonably.

Proof that a person was suspended may be given by means of a certificate issued by a prescribed officer.[13] Given the usual defence to this charge, the prosecution invariably leads evidence of the service of the notice of suspension, usually a letter from the RTA.

5. DRIVE WHILE LICENCE REFUSED / CANCELLED

Section 25A(3)(a) of the *Road Transport (Driver Licensing) Act 1998* makes it an offence for a person whose application for a driver licence is refused or whose driver licence is cancelled from driving a motor vehicle (of a class to which the refused/cancelled driver licence related) on a road or road related area.

Where a driver licence is cancelled and the licence later expires, that person is no longer a person whose driver's licence is cancelled.[14] After the licence expiry date, the person is simply an unlicensed driver.

Proof that a person was refused/cancelled may be given by means of a certificate issued by a prescribed officer.[15]

6. DRIVE WITHOUT BEING LICENSED

Section 25(1)(a) of the *Road Transport (Driver Licensing) Act 1998* makes it an offence for a person to "drive a motor vehicle on any road or road related area without being licensed for that purpose", unless exempted by the regulations.

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[12] *El Hassan v NSW DPP & Anor* [2000] NSWCA 330
[13] Section 230(1)(z) *Road Transport (General) Act 2005*
[14] *Director of Public Prosecutions v Greene* (2003) 58 NSWLR 252
[15] Section 230(1)(y) & (z) *Road Transport (General) Act 2005*

The prosecution needs to prove:

(i) a person
(ii) not exempted by the regulations
(iii) driving
(iv) a motor vehicle
(v) on a road or road related area
(vi) without a driver licence

It is a strict liability offence.

Proof that a person does not hold a licence may be given by means of a certificate issued by a prescribed officer.[16]

7. NEGLIGENT DRIVING (NOT OCCASIONING DEATH/GBH)

Section 42(1) *Road Transport (Safety and Traffic Management) Act* 1999 provides that a person "must not drive a motor vehicle negligently on a road or road related area".

The prosecution must prove:

(i) a person
(ii) driving
(iii) a motor vehicle
(iv) negligently
(v) on a road or road related area

It is impossible to formulate a precise definition of what amounts to "negligent driving". It covers a wide range of bad driving. It might relate to a single incident or it could relate to an accumulation of incidents that together make out negligent driving. It could include overt acts or omissions on the driver's part.

Obviously it is at the lower end of the range of bad driving offences.

8. USE UNREGISTERED VEHICLE

Section 18 of the *Road Transport (Vehicle Registration) Act 1997* makes it an offence for a person to "use an unregistered registrable vehicle on a road or road related area".

Note the use of the word "use", rather than "drive". This broadens the reach of this offence.

[16] Section 230(1)(l) *Road Transport (General) Act 2005*

It is a strict liability offence. Honest and reasonable mistake of fact is theoretically available as a defence, although it would be hard to imagine what factual circumstances might make out such a defence, particularly if it is the person's own vehicle.

Most people who borrow another's car probably do not turn their minds to checking whether the vehicle is registered or not before using it. A person who finds themselves charged with this offence in these circumstances will be unlikely to succeed with an honest and reasonable mistake of fact defence. Lack of inquiry is not reasonable. The defence presupposes that you have turned your mind to the question of fact about which you have made the honest and reasonable mistake. If you have simply not averted your mind to the issue, you will not make out the defence.

The elements are:

(i) a person
(ii) used
(iii) an unregistered registrable vehicle (ie a vehicle that should have been registered)
(iv) on a road or road related area

Proof that a vehicle was not registered may be given by means of a certificate issued by a prescribed officer.[17]

8.1 Uninsured

The registration process is tied together with the obtaining of third party insurance (ie a green slip). Registration is not possible without a valid green slip. For this reason a "use unregistered vehicle" charge is often also accompanied with a charge under section 7 of the *Motor Vehicles (Third Party Insurance) Act 1942*. Section 7 provides that "[a]ny person who uses or causes, permits or suffers any other person to use an uninsured motor vehicle upon a public street shall be guilty of an offence".

This is also an offence of strict liability. Section 7(4) provides that it is "a sufficient defence ... if the defendant proves ... that at the time the vehicle was used upon the public street the defendant had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle". In essence this is a statutory expression of the common law honest and reasonable mistake of fact defence.

[17] Section 230(1)(h) Road Transport (General) Act 2005

9. PENALTIES

9.1 Immediate suspension

Section 205(1) of the *Road Transport (General) Act 2005* provides that if a person is charged by a police officer with any of certain offences including, *inter alia*, mid range or high range PCA, the police may (within 48 hours after the person is charged) give the person a suspension notice, immediately suspending the person from driving a motor vehicle.

If the person is ultimately convicted of the offence, section 205(6) provides that the court must take the suspension period into account when calculating the disqualification period, ie the commencement of the disqualification can be backdated to commence from the day the offender's licence was suspended.

9.2 Maximum penalties

The offences discussed above all have varying fine amounts and the more serious offences also carry imprisonment as a maximum penalty. The specific penalties for a selection of offences is contained in the annexed table.

9.3 Disqualification

The disqualification provisions are contained in sections 187 to 189 of the *Road Transport (General) Act 2005*.

Section 187, *inter alia*, limits the use of section 10 of the *Crimes (Sentencing Procedure) Act 1999*. If someone is to be sentenced on a specified charge (including drink driving offences) and within the previous 5 years that person has had the benefit of a section 10 (for an offence of the class specified in the section), then section 10 has no application.

Section 188 provides that, upon conviction, the relevant automatic disqualification period applies, depending on whether or not there is a conviction for a major offence within the previous 5 years (see further below). The court has the discretion to reduce that to the relevant minimum. In effect this creates a mandatory disqualification (for at least the minimum period), unless an offender is not convicted pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

Section 189 provides that a person who is disqualified surrender his/her licence, either immediately at court following conviction or as soon as practicable after being convicted.

The effect of disqualification is that it cancels, permanently, any driver licence held by the person at the time of disqualification. For this reason, at the end of the

disqualification period, the person must apply for a new licence. If a person were to just commence driving again, he/she is liable to be charged with drive while cancelled.

9.4 Repeat offenders - Major offence

Section 188 creates two categories of disqualification – the disqualification that applies where there is no previous conviction for any major offence within the 5 years before conviction, and the disqualification period that applies if there is. The section defines those offences that qualify as "major offences".

9.5 Habitual traffic offenders

Sections 198 to 203 of the *Road Transport (General) Act 2005* deal with habitual traffic offenders. In effect it is a "three strikes" provision, where three offences within a certain period leads to a further five years disqualification.

A person who commits a "relevant offence" (including a major offence, a prescribed speeding offence, unlicensed driving – second offence, driving while disqualified/suspended/refused/cancelled) is automatically declared an habitual traffic offender, if:

(i) the person is convicted in NSW of a relevant offence, and
(ii) the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences *committed on different occasions.*

A relevant offence includes an offence for which a person has been dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999.*

Section 201 provides that if a person is declared an habitual traffic offender, then that person is disqualified from holding a licence by the declaration (without the requirement for any specific court order) for 5 years.

The court may order a longer disqualification period (including life).

The disqualification commences once all other disqualifications have ended.

The court, if it determines that the 5 years is "a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case" may order a shorter period (but not less than 2 years).

9.5.1 Appealing a habitual traffic offender declaration

Section 202 provides that a habitual offender declaration may be quashed by a court that convicts the person of a relevant offence, either at the time of conviction or at a later

time, if it determines that 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.

If it decides to quash a declaration, the court must state its reasons for doing so.

Thus an application can be made at the time your client is being sentenced for the relevant offence or at any later time. If your client is facing such a declaration, consider carefully whether an application should be made at the time of sentencing for the order to be reduced or quashed. If the application is refused at the time of sentencing, it does not preclude you from making further applications for it to be quashed.

If an application is not made at the time of sentencing, or it has been made but refused, an appropriate later time might be after your client has served all the court-imposed disqualifications.

If an application is made at a later time, it has to be filed using the relevant form available on the "forms and fees" link of the local court website) with payment of a fee.

Magistrates do not usually require your client to give evidence from the witness box, although to give the application its greatest chance of success, I suggest you rely on more than just submissions from the bar table. Present the client's evidence in an affidavit. Prepare your client to give evidence, in case the magistrate wants to hear from him/her.

The affidavit should cover the usual subjectives (age, occupation, family etc). It should also cover the client's traffic history and past offending behaviour and an explanation of the factors that lead to the offences. What insight does your client have into the past offences (this should be covered in detail, a client that skirts around the issue may only succeed in showing he/she has learnt nothing). What changes has your client made in his/her life since then. How has your client changed and how can he/she demonstrate that change in attitude (has any counselling been undertaken, rehabilitation, courses etc). Your client should swear/affirm to what should be obvious – he/she has not driven since last being disqualified. What difficulties has your client experienced without his/her licence. Why does your client need a licence now (is there a job opportunity, elderly parent that needs help with transport etc).

Back this up with appropriate references, doctors reports etc. A well prepared affidavit together with supporting evidence will go a long way to achieving the desired result. In your submissions, address the grounds which the magistrate has to consider under section 202.

PART B – THE PLEA

10. TAKING INSTRUCTIONS

10.1 The Facts

Ask all the W questions – who, what, where, why, when, with whom, how etc

Who was in the car? What time was it? Where were you going to/coming from? Why were you driving? When did you have your last drink? What were you drinking?

Gathering all this information will make sure you are on top of the facts. When you are delivering your plea and the Magistrate asks "How many drinks did your client have" and you have to say "One moment your Honour" whilst you turn around to get the answer from your client it (i) disrupts the flow of your submissions (ii) may demonstrate a tardiness in preparing the matter. Either way it does not help your advocacy.

Do not give advice about the case without having at least the facts sheet and traffic/criminal record. Do not rely on your client's memory of past offences.

Explode the myths – there is no such thing as a "work licence" in NSW.

10.2 The subjectives

Obtain relevant information about your client: background, age, education, current occupation and work history, incomings and outgoings, health, family and any other subjective factors that might be significant.

11. SHOULD YOU CLIENT PLEAD GUILTY?

Although the focus of this paper is presenting a plea of guilty, given that in the vast majority of drink driving cases this is the proper result, you should always satisfy yourself that your client should be pleading guilty.

In considering whether a defence might exist you must know the legislation, the case law and the rules of evidence.

Consider the following (non-exhaustive) checklist:

(i) was the client "driving"?
(ii) was the client driving on a road/road related area?
(iii) Does the novice range client have a defence under section 11A?
(iv) Do the facts reveal a situation where the police officer was not permitted to conduct the breath test under section 17?

(v) Does the relevant evidentiary certificate comply with the law?
(vi) Do you client's instructions raise a possible *Proudman v Dayman* honest and reasonable mistake of fact defence?

In most cases, the appropriate course is to plead guilty. Your role then becomes one of damage control, doing your best to see that your client faces the minimal possible charge and gets the lowest possible penalty and disqualification period.

12. CONSIDERING THE CHARGE/S & MAKING REPRESENTATIONS

Once you have taken full instructions and considered those instructions in light of what the police facts state you may need to consider whether representations need to be made.

Consider whether the charge is the most appropriate available. Is there a back-up charge? It may be possible to successfully negotiate a plea to a lesser charge, for example, speed 45kph over the limit, rather than speed manner dangerous.

Ensure you comply with Practice Note No 10 of 2003 (amended 20 November 2006) which outlines the procedural and time standard requirements for representations.

Do not forget to look ahead, or think of the bigger picture, when considering whether to make representations for a charge to be withdrawn. As a general rule of thumb, representations for withdrawal of a charge should be made on material that is "on the record", or obvious on a reading of the alleged facts. For example, care should be taken when you have identified a problem in the prosecution case that may mean it cannot be made out at hearing. If that problem is remediable, then it is pointless making representations identifying the problem when the only result will be that the prosecution fixes it. It may be better in such circumstances, to keep your powder dry until the hearing, rather than engaging in an ultimately pointless exercise in demonstrating your cleverness.

13. TRAFFIC OFFENDER PROGRAM

There are a number of traffic offender programs run by various organisations. They usually run for up to eight weeks. This involves attendance at one evening per week. There are assignments to complete. A report is provided at the end if you have successfully completed the program.

A referral can be initiated at your own request or at the court's initiative.

The programs cover a variety of topic areas. The underlying theme is teaching traffic offenders about their social obligations on the road. If your client can demonstrate a change in attitude after completing the program, the hope is that the court will take this into account on penalty.

13.1 The Guideline Judgment and the Traffic Offender Program

There seems to be confusion amongst some about what the High Range PCA Guideline judgment has to say about traffic offender programs.

At paragraph 121 of the judgment, Howie J states:

> Notwithstanding the undoubted beneficial effect upon a driver of participation in a driver education program, that fact can have little impact, in my view, upon the appropriate sentence to be imposed for an offence of high range PCA in the usual case, *except in so far as the length of disqualification may be concerned or the amount of a fine.* The offence in general is so serious and the criminality involved in even a typical case so high that, in my view, the participation of the offender in a program cannot be seen as an alternative to punishment for an offence of this nature. In particular, there is no warrant at all for making an order under s 10 simply because the offender has participated in such a program or is to do so as part of the conditions of a bond. [emphasis added]

The guideline judgment does not say that participation in a traffic offender's program is of no value, or that it cannot affect the length of the disqualification period imposed by the Court. The court is merely saying that participation in such a programme will not of itself warrant a section 10 order. However, the judgment is clear that participation in a traffic offender's program should have an impact on the length of disqualification and/or the amount of a fine.

If you are confronted with a bench that says that the guideline judgment states that participation in a traffic offender's program will have no effect on the sentence, you should respectfully submit that this is not what the guideline judgment says.

13.2 Sober Driver Program

The Sober Driver Program is a post-sentence program delivered by the Probation and Parole Service. It is for adult offenders who have been convicted of a second drink driving offence within 5 years.

An offender can be referred to the program either as part of a court order (eg as a condition of a supervised bond) or through a supervising probation and parole officer.

It runs for 9 weeks. A 2 hour session is held once per week. A certificate of successful completion is provided at the end.

The program aims to reduce drink driving offending by teaching participants skills, strategies and knowledge to apply in future situations to ensure they do not re-offend.

14. INTERLOCK PROGRAM

The Alcohol Interlock Program is dealt with in sections 190 to 197 of the *Road Transport (General) Act 2005* (see also sections 21 to 21D of the *Road Transport (Driver Licensing Act) 1998* on interlock devices).

I will not go into too much detail – the RTA has materials available on its website that summarises the detail of the program.

It commenced in 2003 as a new penalty option in sentencing drink drivers of some serious drink driving offences. It enables drivers convicted of certain alcohol-related offences to continue driving after serving a reduced disqualification period. Participation is voluntary.

The court decides whether a person is eligible. It will make two orders. The first will be the full disqualification period. The second will specify the reduced disqualification period and the period on the interlock program (during which time the person holds an interlock driver licence). In effect the usual disqualification is halved (eg if the usual disqualification is 12 months, the reduced disqualification will be 6 months), but the interlock period is doubled (ie 12 months usual disqualification becomes 24 months on an interlock licence).

The interlock device is a breath-testing unit which is connected to the ignition. Unless the driver passes a breath test, the car will not start. As part of the requirements, the person must attend an appointment with a doctor trained in the drink-less program. There is no passing or failing the consultation, but the medical certificate provided forms part of the application for an interlock licence.

The benefit of the program is that it enables the participant to continue driving after serving a reduced disqualification period.

Explain it fully to your client. It is not for everyone. There are costs in installing and removing the device, costs of the medical consultation, as well as ongoing monthly maintenance costs of the device. The device has to be regularly submitted for inspection. Many clients, when they have the details and cost of the program explained to them, decide it is all too painful and will rather just accept the usual disqualification.

Generally it is only suitable for the highly motivated client who can afford the costs and has a significant need for his/her licence (usually for work reasons).

If there is a failure to comply with the interlock licence conditions, it will be cancelled and the person will serve out the balance of the full disqualification period.

15. MAKING YOUR PLEA

Practical tips:

Make sure your client brings his/her licence.

Make sure he/she does not drive to court.

Tell your client to dress appropriately. Be specific, as "appropriate clothing" is an elastic concept. I once saw an offender being sentenced in a traffic matter dressed in a "Holden Racing Team" shirt – hardly likely to inspire the court's confidence.

Most practitioners note that magistrates will scale a drink driving case that comes before them on the day relative to the other cases that come before them that same day. In these circumstances, human nature dictates that a court may be less likely to give a borderline case that comes up first the benefit of a section 10, lest it create any expectation among others waiting for their turn that they deserve similar leniency. If your case is borderline, you may wish to let a few pleas pass before you mention your matter. It also enables you to judge the magistrate's attitude in similar matters, particularly where you are unfamiliar with that magistrate. You can then adjust your submissions accordingly.

Know the magistrate. If you are familiar with the particular magistrate you will know what his/her particular attitudes are to certain objective features, offences or certain types of submissions. If you are not, speak with a fellow practitioner.

Be aware of fundamental sentencing concepts:

Retribution

Deterrence (general and specific)

Prevention

Rehabilitation

Be aware of sentencing options:

Section 10, fines, bonds, community service, home detention, periodic detention etc

15.1 Facts – Mitigating/Aggravating

Where does the reading fall within the range?

What was manner of driving? Did client come to notice because of RBT, erratic driving or collision?

If came to notice due to manner of driving, was there any danger to the public, any damage to property?

Reason for driving.

Length of trip (eg just going up to shops, or driving from one end of Sydney to the other).

Anyone else in the car? (eg children)

15.2 Traffic Record/Antecedents

How long has he/she had a licence?

What is prior traffic record/criminal antecedents?

First offender?

If priors – how bad, how many hours does he/she spend on the road (ie can the 10 speeding offences in the last 5 years be placed in the context of someone who drives 12 hours a day, 6 days a week? eg sales rep), how long ago since last offence (eg is there something in your client's subjectives that can characterise this offence as a relapse caused by particular circumstances, rather than yet another offence in the context of a bad driving record).

Where possible, take instructions on each entry on your client's traffic record. Can any positive gloss be made? Sometimes a traffic record will be sheer doom and gloom. However do not ignore it in your submissions. As with all bad news, deal with it at the start and move on to the positives.

15.3 Subjectives

Plea of guilty (is it early?)

Any expression of remorse

Defendant's age/character/background (see references)

Successfully completed Traffic Offenders Program (see TOP)

Any underlying issue behind alcohol use (depression, family break-up etc)

Any evidence alcohol issue being addressed – rehabilitation, counselling etc

NB: If rehabilitation is required, reinforce with your client how important it is to put concrete measures into place well before the sentence date. It is much better to be turning up to court on the day of the plea with a progress report from the relevant doctor/councillor/rehab than to be submitting "My client intends to find a rehab..." At this point the court usually demonstrates its confidence in your client's intentions by stifling a yawn. If your sentence date will not motivate you, you will hardly find the motivation once court is over.

Usual – occupation, family, income, health

15.4 Need for a licence

Any particular hardship factors that demonstrate a need for a licence?

Is licence essential to person's job/business?

Are they main/sole breadwinner?

Are there significant financial commitments (eg mortgage)?

What is the impact on third parties? (family, employees)

Is public transport easily available?

15.5 References

References should be used sparingly. Two or three references or character testimonials are usually more than enough, but there is no hard and fast rule. If someone is facing a serious charge, a dozen references from respected community members can well be an overwhelming demonstration that your client has acted out of character.

A reference should meet some basic requirements. A generic reference along the lines of "To whom it may concern, Joe Bloggs is a wonderful person who wouldn't hurt a flea" for someone facing an assault charge is worse than useless, its tender would no doubt be interpreted as a sign of your client's mendacity (and would no doubt lead to questions about your own judgment). A reference should contain the following:

(i) It should be addressed to: The Presiding Magistrate
(ii) It should address the charges/facts that your client faces. The court is entitled to know that the referee knows to whom and why the reference is being provided. Otherwise, expect it to be given little weight.
(iii) It should state how long the referee has known your client
(iv) It should not urge upon the court a particular result or penalty. No one likes to be told what to do. It should be restricted to what the referee can say about the

person and the offending behaviour in light of his/her knowledge of the person.

(v) It should be signed. In this age of electronic communication, it is increasingly common to see unsigned references sent via e-mail. This is not good enough. If it is from an employer or someone acting in a professional capacity, it should also be on the employer's/professional's letterhead, unless that person is providing the reference strictly in their personal capacity.

Read through each reference carefully. Sometimes clients will hand you a folder with everything from HSC results from last decade to a letter from mum. You are not a mere conduit through which such material is tendered to the court. Go through the references you are given and if there is nothing there that will assist your plea, it is better not to use them.

Tell your client at the first interview what the requirements are for a reference. It may be too late to remedy the situation on the day of the plea if the client turns up to court with poorly prepared references.

Do not assume that the bench has thoroughly digested your testimonials and understands how they fit into your plea. Work the references into your plea by briefly quoting a relevant passage or state how the reference supports your submissions about a particular proposition, eg why your client acted in a certain way etc.

References can be useful for 2 other reasons:

Firstly, if there is some sensitive issue, eg a health condition, family problem – you may be able to avoid mentioning it in open court. With your attention focused on the bench sometimes you can forget that the court is a public forum and that there are 30 people sitting behind you. If there is some matter that is particularly sensitive, consider how it can be conveyed to the court in an appropriate way.

Secondly, there is often someone from The Leader, The Torch (insert your local paper here...) intently scribbling at the back of the court. Week in, week out, two or three driving cases make their way onto page 5 of the local paper. If your client has a high profile locally: doctor, police officer, local councillor etc, chances are greater that he/she will be reported on. This can cause significant further embarrassment for your client. If you have all your relevant material in references, you may be able to refer to facts such as your client's occupation in generalities and thus perhaps avoid piquing any media interest in your client.

15.6 Pre Sentence Reports

If your client is before the court on a second or subsequent major offence (and the first offence is not stale), or there are serious aggravating features to the offence, the

possibility of a custodial sentence exists. You will need to consider whether to get a pre sentence report.

There are two types of PSRs:

(i) A short or "options" report. This is called for where you or the court has a particular alternative to full-time custody in mind (eg community service or weekend detention) and all that is required is a quick assessment to see whether your client is suitable/eligible for such an option. This is prepared on the day by the duty probation and parole officer. It is usually in the form of a one-sheet piece of paper that assesses suitability for a supervised bond, community service or weekend detention. It may be delivered orally. Obviously such reports are only available where there is a duty officer present.

(ii) A full PSR. An adjournment of at least 6 weeks is required for the preparation of a full report. Together with considering your client's suitability for alternatives to full-time custody, it will usually have varying degrees of detail on your client's subjective circumstances and record the attitudes expressed by your client towards the offence and his/her offending behaviour. The probation officer will also likely have spoken with family members, treating doctors, and examined any history of previous supervision etc where relevant.

If you think a PSR is required, call for one at the outset, before you embark on your submissions. Stress upon your client the importance of punctual attendance for any appointments and cooperating with the probation service. Adjourning the matter for a PSR only to have a poor or equivocal report come back because your client did not take the process seriously is not helpful.

15.7 Penalty

Know from the outset what you are seeking and tailor your submissions to that goal. The only caveat is that you must be satisfied that the goal you seek is realistic. What are you seeking – a section 10? A reduction of disqualification from the automatic to the minimum period? An alternative to a full-time custodial sentence?

Section 10

The following are key factors in deciding whether a section 10 application has any reasonable prospects of success – a clean/good *lengthy* driving record, powerful subjective features, a lack of aggravating features, a lower end reading. The first of these factors is often crucial, particularly if your case can find no comfort in the other factors.

15.8 Final checklist

Has the disqualification been backdated to the day that client's licence was suspended?

Has the court specified a start and end date (to ensure no confusion)?

Will you ask for a habitual offender declaration to be quashed or reduced?

Has your client disobeyed your instructions not to drive to court? If so, at least make sure he/she obeys your entreaties not to drive home. It is not altogether uncommon for a recently disqualified driver to hop into his/her car after court and find himself/herself arrested soon after.

15.9 Aftermath

Naturally you will explain the penalty to your client, rights of appeal etc but some matters need special mention:

Your client cannot just start driving again after he/she has finished the disqualification period. Your client must apply for a licence afresh.

If a habitual offender declaration will be made, remember that your client can come back to court at a later date to seek to have it quashed. An appropriate time for this to happen might be once the court imposed disqualifications has expired. If the client can show that he has been out of trouble for the last few years, and particularly if there is evidence that your client's ways have been reformed, the application may be successful.

In a defended matter, the prosecution may appeal, particularly if you have won on a "technical" defence that may set a precedent in relation to the interpretation of a legislative provision that is unfavourable to the prosecution.

16. ADVOCACY

What follows are some brief points made with a view to assisting the less experienced practitioner. Everyone develops their own style of advocacy. Ultimately that style springs from the individual's personality. To that extent, there are no set rules that can be adopted by all. Nonetheless, some tips seem to be recurringly discussed.

The ultimate goal of advocacy is persuasion. That starts with being prepared. With preparation you will develop the objective of your submissions and the confidence to be bold - an essential part of your role.

When does your advocacy commence? When you rise to your feet at the bar table to begin your plea? No – it commences as soon as you enter the courtroom. Enter with a sense of purpose, look neat, be organised, do not drop files, do not carry on extended conversations and do not read a newspaper at the bar table (I have seen it happen).

Focus on the relevant issues. Be brief and concise. The courts are busy. If you demonstrate your respect for the court's valuable time that respect will be repaid to you by the magistrate listening to your every word. If you ramble and digress into irrelevancies, the court will switch off.

You achieve this by having a structure. For example, a plea may be structured along these lines: addressing the objective facts/your client's version of what happened (and any expression of contrition); antecedents; subjective factors (at the time of the offence and current – prospects for rehabilitation); and the appropriate penalty.

If nothing can be said about the facts, do not mouth platitudes about how "this is an extremely serious offence" etc. Acknowledge the facts and move on to whatever positive subjective features there are (eg out of character, compelling excuse for driving).

Eye contact is essential. Look at the bench and maintain your gaze. It is hard for the bench to concentrate on what you are saying if your head is buried in the bar table. It is easier said than done for the nervous or inexperienced but try to be conscious of it and with practice you will improve. Liberate yourself from your notes. Put your submissions down in brief headings or dot points. You will surprise yourself at how much you have committed to memory. The other benefit is that it enables you to pick up on any queues from the magistrate, particularly non-verbal ones.

The best cue you can ever get is a question from the bench. It will usually reveal what the magistrate is thinking about a particular issue. Answer the question directly. Do not avoid the question or dissemble. Even if the question seems antagonistic, it is not necessarily so. Often it indicates that the magistrate is with you, but wants to play "devil's advocate" before he/she is finally convinced to adopt your submission.

If you tender a document, pause and allow time for the Magistrate to read it. By keeping your eyes on the bench, you will see when the magistrate has finished reading.

Know the Advocacy Rules (Rules A15 – A72 of the Revised Professional Conduct Rules).

16.1 Etiquette – a few random observations on bad habits

A court is no place for banter

There seems to be an extraordinary amount of practitioners who deliver a chirpy "good morning" to the bench or engage in similar pleasantries. Be aware that this annoys some magistrates. It suggests familiarity with the magistrate, which well may be a matter of fact (particular if you a regular in that particular court), but hardly needs to be made a show of to the public gallery. I know "good morning" sounds like a fairly innocuous pleasantry, but remember a court is a formal place and the magistrate a representative of the rule of law. Just as it is important to avoid even the appearance of bias, so too it is important to avoid even the appearance that some personal relationship or acquaintance between bench and advocate will intrude upon the case before the court.

If you are after some "filler" words to start you off and calm your nerves, can I suggest you use the following formula "May it please the court, I mention matter number ....."

Of course, sometimes the magistrate himself/herself engages you with a "good morning", which leaves you little choice but to reply in kind. Perhaps the etiquette of pleasantries in court is changing, but until it is universally adopted it is better to err on the side of caution.

"I think..." and other personal opinions

What you think is irrelevant and will lead to a gnashing of teeth on the part of a magistrate. You fulfill your duties as an advocate (both to your client and the court) by making submissions on the law and facts, not offering your personal opinions. An appropriate alternative is "In my submission....", but do not over do it.

Along a similar vein, sometimes I hear a submission along these lines: "Your honour, I have spoken to Ms X at length about this offence, I am confident you won't see her before the courts again". Again, the court is interested in your submissions, not personal opinions (let alone Delphic predictions). Further, Murphy's Law suggests the client will be back before the same Magistrate for another driving offence 6 months down the track and he/she will demonstrate an uncanny ability at recollecting what you said on the last occasion.

The fizzler

A number of times I have heard an advocate end a plea along these lines: "Your honour, that is the highest I can put it, I leave it in your hands". This is not good. Firstly, you have a duty to your client. An advocate should be seeking to persuade the court to adopt the

advocate's suggested result. Secondly, you are an officer of the court. It is your role to assist the court to coming to an appropriate sentence. "I leave it in your hands" suggests you are washing your hands of the matter and leaving your client and the magistrate high and dry. It is bad advocacy and comes across as disrespectful to the court.

Going through the motions

"Those are my submissions, unless Your Honour has any further questions" are often an advocate's final words. There is nothing at all wrong with them, but consider whether you can end on a stronger, less formulaic, note. Nine times out of ten the magistrate does not have a question, and the other one time out of ten he/she will ask the question whether invited to or not. Consider whether there is some other powerful submission that should be the final words ringing in the magistrate's ears, rather than this ritualistic incantation.

Do not question the law

Anything that suggests you are questioning the law achieves nothing. I have heard this type of submission made: "Your Honour, my client is only here today because of the harshness of the habitual offender laws". If you want to change the law, get into politics. In the meantime, do not expect the court to present you with a sympathetic shoulder to cry on in making such a submission. You are not your client's cheer squad. Such a submission suggests you are your client's parrot, not a professional learned in the law.

Admit your ignorance

If the court asks you about a section or case you are not aware of, admit your ignorance. Feigning knowledge stands out like a sore thumb.

Your client is not "my client"

Try to avoid referring to your client as "my client"/"the defendant"/"the offender". Firstly, "my client" has the aura of you being a "gun for hire". It unnecessarily focuses on the commercial aspect of your relationship. Secondly, all such references de-humanise your client, which is precisely the opposite of what you want to achieve in presenting a plea. When referring to your client, refer to "Mr/Mrs/Ms X". Remember you are trying to paint a picture of your client to the court outside of that one presented in the facts sheet and antecedents. It is harder to do that when your client remains "the defendant".

Jargon

Rid your vocabulary of lawyer/police jargon: "Your Honour, the reason Mr X had a false licence on his person was because..." Jargon obscures your message. No one in the real world uses phrases like "on his person". Jargon gets in the way of communicating your message. Unless you are communicating, you cannot persuade.

17. POSTSCRIPT

I hope you found this paper useful. Constructive criticism is welcome. I can be contacted at angel@selbornechambers.com.au

Nic Angelov
11 December 2007

18. USEFUL MATERIAL

18.1 Primary Materials

18.1.1 Main Legislation

Australian Road Rules
Motor Vehicles (Third Party Insurance) Act 1942
Road Transport (Safety and Traffic Management) Act 1999
Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999
Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999
Road Transport (General) Act 2005
Road Transport (General) Regulation 2005
Road Transport (Driver Licensing) Act 1998
Road Transport (Driver Licensing) Regulation 1999
Road Transport (Mass, Loading & Access) Regulation 2005
Road Transport (Vehicle Registration) Act 1997
Road Transport (Vehicle Registration) Regulation 1998
Roads Act 1993
Roads (General) Regulation 2000

Other:

Crimes Act 1900
Law Enforcement (Powers and Responsibilities) Act 2002
See Part 12 – Powers Relating to Vehicles and Traffic

18.1.2 Cases

Guideline judgments:

Re Application by Attorney-General (No 3 of 2002) (2004) 61 NSWLR 305
On High Range PCA offences
R v Thomson; R v Houlton (2000) 49 NSWLR 383
On pleas of guilty

Other guideline judgments on traffic offences:

R v Jurisic (1998) 45 NSWLR 209
R v Whyte (2002) 55 NSWLR 252

Other:

Proudman v Dayman (1941) 67 CLR 536
On the common law defence of honest and reasonable mistake of fact

18.1.3 Law Reports

Australian Criminal Reports (ACrimR) 1979 –
Motor Vehicle Reports (MVR) 1983 –
New South Wales Law Reports (NSWLR) 1971 –

18.2 Secondary Materials

18.2.1 Books

Britts, M M G (2006) *Traffic Law Handbook* (11th ed) Law Book Co
Brown, Douglas (2006) *Traffic Offences and Accidents* (4th ed) LexisNexis Butterworths
Poletti, Patrizia et al (1997) *Magistrates' Attitudes to Drink-Driving, Drug-Driving and Speeding* Judicial Commission of NSW

18.2.2 Articles

Celal Bayari (2003) *Sentencing drink-driving offenders in the NSW Local Court* Judicial Commission of NSW (Sentencing Trends and Issues No 27 – March 2003)
Patrizia Poletti (2005) *Impact of the high range PCA guideline judgment on sentencing drink drivers in NSW* Judicial Commission of NSW (Sentencing Trends and Issues No 35 – September 2005)

18.2.3 Loose-leaf services

Criminal Practice and Procedure NSW LexisNexis Butterworths
Local Court Criminal Practice NSW LexisNexis Butterworths Australia
Leslie & Britts Motor Vehicle Law New South Wales Law Book Co
Motor and Traffic Law New South Wales Butterworths Australia

18.3 Useful Websites

Traffic:

State Debt Recovery Office	www.sdro.nsw.gov.au
Roads and Traffic Authority	www.rta.nsw.gov.au
Motor Accidents Authority	www.maa.nsw.gov.au
Guardian Interlock	www.guardianinterlock.com.au

General:

Lawlink	www.lawlink.nsw.gov.au
Public Defenders	access via lawlink
Legal Aid NSW	www.legalaid.nsw.gov.au
Criminal Law Survival Kit	www.criminallawsurvivalkit.com.au
Judicial Commission of NSW	www.judcom.nsw.gov.au

18.4 Traffic Offenders Programs (in Sydney)

Blacktown

Traffic Offenders Program (TOP) Inc
www.trafficoffenders.com.au

The PCYC run traffic offender programs at their **Bankstown, Belmore, Daceyville, Redfern, Rockdale** and **Sutherland** premises. Contact the relevant PCYC for further information.

Penrith

Responsible Driver Programme – run by Penrith City Council. As of January 2008 it will be known as the TOP and run by Penrith PCYC.

There will be others I am not aware of. Please check with your local courthouse to found out about your nearest traffic offenders program.

SELECTED PENALTIES UNDER ROAD TRANSPORT LEGISLATION

Offence (M = major offence)	**First Offence**				**Second offence**			
	Max. Penalties		**Disqualification** (no major offence within previous 5 yrs)		**Max. Penalties**		**Disqualification** (prev. convicted of major offence within 5 yrs)	
	Fine	**Gaol**	**Auto.**	**Min.**	**Fine**	**Gaol**	**Auto.**	**Min.**
Novice range M	$1100	Nil	6 mths	3 mths	$2200	Nil	12 mths	6 mths
Special range M	$1100	Nil	6 mths	3 mths	2200	Nil	12 mths	6 mths
Low range M	$1100	Nil	6 mths	3 mths	2200	Nil	12 mths	6 mths
Mid range M	$2200	9 mths	12 mths	6 mths	3300	12 mths	3 yrs	12 mths
High range M	$3300	18 mths	3 yrs	12 mths	5500	2 yrs	5 yrs	2 yrs
DUI M	2200	9 mths (only for a s12(1) (a) or (b) offence	12 mths	6 mths	3300	12 mths (only for a s12(1) (a) or (b) offence	3 yrs	12 mths
DWD	3300	18 mths	Automatic cumulative disq for 12 mths (s25A RTDL)		5500	2 yrs	Automatic cumulative disq for 2 yrs	
DWS	3300	18 mths	Automatic cumulative disq for 12 mths		5500	2 yrs	Automatic cumulative disq for 2 yrs	

UNLIC (s 25 (1) (a))	2200	Nil	No auto or min. General power to disqualify (s187 RTG)	N/A	N/A	N/A	N/A
DWC	3300	18 mths	Automatic cumulative disq for 12 mths	5500	2 yrs	Automatic cumulative disq for 2 yrs	
NEG DRIVE	1100	Nil	No auto or min. General power to disqualify (s187 RTG)	N/A	N/A	N/A	N/A
UNReG VEH	2200	Nil	No auto or min. General power to disqualify (s187 RTG)	N/A	N/A	N/A	N/A