PCA AND DRIVING TOOL KIT FOR LOCAL COURT LAWYERS – INCLUDING 5 HELPFUL TIPS FROM MAGISTRATE THOMAS

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Introduction

Driving and traffic offences cross social, financial and geographical divides unlike any other offences before the Local Court. Driving offences are committed by people from all walks of life. Offenders can be employed, on government support or visiting our country on holidays.

For this reason, driving and traffic offences are amongst the most prevalent offences dealt with in the Local Court. Practitioners, both from the private and government/NGO practices must develop a depth of knowledge in an area of law that is constantly changing, full of complexity and sometimes arbitrary rules and exceptions.

As a junior lawyer practicing on the Mid-North Coast of New South Wales, I saw firsthand the impact significant licence disqualifications could have on clients in a rural area. Clients were often faced with the loss of employment, housing, lack of access to health care or isolation from the wider community due to the loss of their licence.

During this period, I was lucky enough to have access to several very helpful papers (which are still available on CriminalCPD) written by Magistrate Brett Thomas before his ascension to the Bench. I was also lucky enough to appear before Magistrate Thomas in several regional Courts in Macksville, Taree, Kempsey and Coffs Harbour. Magistrate Thomas greatly assisted a number of defence lawyers and prosecutors to navigate the minefield of first or second offences, habitual traffic offender declarations, RMS sentencing corrections and a range of other issues that arise daily in traffic lists across the states Local Courts.

The first part of the paper will deal with several important legislative provisions a practitioner must know if they are to effectively advise and appear for clients in driving and traffic matters. In the second part of the paper Magistrate Thomas has kindly agreed to distil his years of knowledge and experience to provide a number of useful advocacy and general tips for lawyers who are appearing for clients charged with driving and traffic offences.

The caveat to this paper is that since being assented to on 3 April 2013 the *Road Transport Act* has been amended by 50 different pieces of legislation with a further 5 amending Acts awaiting commencement[1]. This means you must continually refer to the up-to-date legislation and regularly seek to review the current state of the law.

If you have any questions, please feel free to contact me at any time.

[1] This statistic was valid on 16/01/2025 and is likely already outdated.

Disqualification periods – you should get somewhere between the automatic and minimum.

This may seem straight forward but one the great silences in life is when a Magistrate ask the parties what the disqualification period is for the offence before the Court and both prosecutor and defence lawyer reach for their phone, laptop or tablet to consult Mr Google of Counsel.

There are two quick ways to locate and find the relevant disqualification periods for each offence. You can use the helpful table located in the Bench Book (Road transport legislation) or alternatively you can search the law part code located on the CAN here Lawcodes.

Once you are aware of the relevant period you should also be aware of sections 224 and 206B(2) of the *Road Transport Act*. Where a notice of suspension by police has issued under s 224, the court must take into account the period of suspension when deciding whether to make any order under s 206B(2). Section s 206B(4) provides that the period of suspension together with the period of disqualification can be taken together to satisfy all or part of any mandatory minimum period of disqualification required to be imposed on conviction. Therefore, when varying an automatic disqualification period, the period of suspension must be counted towards any disqualification imposed.

Where multiple major offences arise out of the one incident, to determine whether the conviction is a first or second conviction, Section 205(4) states that the other conviction(s) shall be disregarded and the maximum automatic disqualification in respect of all offences shall be 3 years for a first conviction and 5 years for a second conviction. The court may determine a longer period or a shorter period of not less than 12 months and 2 years respectively.

Further to this Section 205(4A) applies where multiple major offences arise out of the one incident and include a combined alcohol and drug driving offence under s 111A(1), (2) or (3), to determine whether the conviction is a first or second conviction, the other conviction(s) shall be disregarded and the maximum automatic disqualification in respect of all offences shall be 4 years for a first conviction and 6 years for a second conviction. The court may determine a longer period or a shorter period of not less than 18 months and 3 years respectively.

First or Second offence – isn't as advertised.

The Act and the statutory rules provide in some cases for different penalties or disqualification periods, or for forfeitures or the making of mandatory interlock orders, in connection with an offence depending on whether a particular offence is a first offence or a second or subsequent offence.

The definition of second or subsequent offence is found at section 9 of the *Road Transport Act*. It can best be described as clunky. In short, an offence is a second offence where a person has been previously convicted of this offence or any major offence (s 4), or dealt with by penalty notice for an alcohol or other drug related driving offence, within 5 years. "Dealt with" is defined as it being paid or partly paid, or if not paid that no election has been made to court and the time for such election has lapsed: s 4(5)

Section 9 of the *Road Transport Act* contains the definition of "second or subsequent offence" the relevant sections are as follows:

> (1) Application of section This section applies to the determination of whether an offence against a provision of this Act or the statutory rules is:
>
> (a) a first offence, or
>
> (b) a second or subsequent offence.
>
> (2) **Second or subsequent offence** If a person is convicted of an offence (the **"new offence"**) against a provision of this Act or the statutory rules, the new offence is a **"second or subsequent offence"** only if:
>
> (a) the person, within the applicable re-offending period (if any) for the offence concerned, was convicted of another offence (the **"previous offence"**) that was:
>
> (i) an offence against the same provision, or
>
> (ii) an offence against a former corresponding provision, or
>
> (iii) an equivalent offence to the new offence, and
>
> (b) the occasion when the new offence occurred was different from the occasion when the previous offence occurred…

(7) In determining whether an offence is a second or subsequent offence, the following matters are immaterial:

(a) the order in which the offences concerned are committed,

(b) whether or not the offences concerned were subject to the same penalties.

(8) **First offence** An offence against a provision of this Act or the statutory rules is a **"first offence"** if it is not a second or subsequent offence.

(9) If the court is satisfied that a person is guilty of an offence but cannot determine (from the information available to the court) whether the offence is a first offence for which the person was convicted, the court may only impose a penalty for the offence as if it were a first offence.

Knowledge and awareness of the interplay of the above sections, particularly section 7, is extremely important when dealing with an offender who stands to be sentenced for multiple driving offences which have occurred at different times. This is best demonstrated in *R v El Kerhani [2021] NSWLC 14*[2].

Ahmad El Kerhani was charged with twice driving a vehicle with illicit drugs in blood. The first charge relates to driving on 13 July 2021 and was first before the court on 1 December 2021 when there was a plea of guilty. The second charge relates to driving on 29 July 2021 and was first before the court on 18 November 2021 when there was a plea of guilty.

Both offences were charged as a first offence. Mr El Kerhani was to be sentenced for both offences on the same day. The Police Prosecutor submitted that should the Court convict him of the first of these offences, they would seek to amend the court attendance notice to charge the second in time offence as a second or subsequent offence, thereby exposing the accused to the increased penalty.[3]

The question to be determined by Local Court Magistrate Brender was whether the accused was liable to a penalty and disqualification as a first offence, or as a second or subsequent offence. After considering, rules of statutory construction and previous iterations of past Road Transport Legislation. His Honour found the following:

14. The new legislation focuses on conviction, clarifying that the order of the occasions of offending is immaterial (ss 7). The critical question is whether at the time of

[2] R v El Kerhani [2021] NSWLC 14 - BarNet Jade - BarNet Jade
[3] Ibid [3].

conviction relating to the "new offence" the person within the applicable re-offending period "was", i.e. had been in the past, "convicted" of another relevant (first) offence (ss 2(a)), which first offence occurred on a different occasion (ss 2(b)).

15. *This new definition was inserted after the above cases.*

16. *Thus, in cases where there has been a prior (first) conviction,* ***the legislature has displaced the Coke principle and intends that the second offence to be sentenced is to be treated as a second offence regardless of the occasion when that offence occurred****, i.e. whether or not it was before the date of the occurrence of the other offence, or whether or not it was before the date of conviction for the other offence.* ***This leads to a change in the penalty and disqualification regime depending on when Police choose to charge matters and when they become the subject of conviction, including any delays arising from adjournments, different time frames in different court lists, whether one is delayed by a different plea, whether one is the subject of an ex parte conviction etc. That is the necessary consequence of the wording of the provisions.***

17. *In this case the two matters are to be sentenced on the same day.*

18. *In R v Ahmed [2008] NSWDC 380, Bennett SC DCJ considered the authorities as to when a conviction has occurred. His Honour referred to authority (i) that judicial acts are taken to date from the earliest minute of the day on which they are done (Edwards v the Queen (1854) 9 Ex. 628), and* ***(ii) where convictions are both entered on the same day in the course of contemporaneous proceedings neither one could be said to precede the other*** *(R v Miller [1986] 2 Qd R 518). His Honour held two convictions in the same proceedings should be treated as having occurred simultaneously. As it is a decision of another inferior court that is not clearly wrong, I will follow it (cf Valentine v Eid (1992) 27 NSWLR 615). There is nothing said inconsistent with that case in the 3 Supreme Court cases.*

19. ***The convictions when I pronounce them, will be treated as occurring at the same time.***

20. ***For those reasons I will treat both offences as first offences.***

21. ***The position would be different if the offences had been sentenced on different days, so the second conviction would be on a later date than the first***

> ***conviction, or if there had been a conviction, for example on non-appearance, at an earlier stage of one of them***. *Because of the Ahmed principle, both convictions are deemed here to be on the same day at the same time. So I will not grant leave to amend the CAN of the second charge to be sentenced to treat it as a second offence.*

Therefore, it may be of benefit for a client with multiple matters for sentence to seek to have them dealt with together, if possible, to avoid earlier offences becoming second or subsequent offences post-conviction.

There can be a very real practical difficulty in working out when the 5-year period commences or expires due to appeals or annulment applications and various other matters.

In those circumstances, it can be important to draw the courts attention to section 9(9) which states If the court is satisfied that a person is guilty of an offence but cannot determine (from the information available to the court) whether the offence is a first offence for which the person was convicted, the court may only impose a penalty for the offence as if it were a first offence.

Interlocks – it takes your breath away.

The mandatory interlock program requires the Court to impose an interlock period for certain offences. The interlock program allows the participant to receive a shorter period of disqualification but requires them to fit an expensive interlock system, at their own cost, before being able to obtain a driver's licence. They must use and maintain the device for the required period as a condition of their driver's licence.

A "mandatory interlock offence" is an offence against s 110(1)–(3) (driving with the novice, special or low range prescribed concentration of alcohol), that is a *second or subsequent offence* by the offender or any other alcohol-related major offence. Further, s 209 defines first, second and subsequent offences of high and middle range drink driving (s 110(4) and (5)), combined alcohol and drug driving (s 111A(1), (2) and (3)), driving under the influence of alcohol or any other drug (s 112), and refusing breath analysis or to provide samples (cll 16 and 17, Sch 3), as mandatory interlock offences.

Lawyers should advise client that this order also disqualifies the person from holding a driver licence during the period of 5 years commencing on the day of the conviction *unless* the person has first held an "interlock driver licence" for a period equivalent to the "minimum interlock period".

However, there are some exceptions to the fitting of an interlock device. Section 212(3) states that a court may make an interlock exemption order **only** if the offender proves to the court's satisfaction:

> (a) that the offender does not have access to a vehicle in which to install an interlock device, or
>
> (b) that the offender has a medical condition diagnosed by a registered medical practitioner that prevents the offender from providing a sufficient breath sample to operate an approved interlock device and it is not reasonably practicable for an interlock device to be modified to enable the offender to operate the device, or
>
> (c) if the offender is convicted of a first offence against ss 110(4)(a), (b), (c) or 111A(2), making the mandatory interlock order would cause severe hardship to the offender and making an interlock exemption order is more appropriate in all the circumstances.

Section 212(4) states a person has "access" to a vehicle if the person is the registered operator, owner or part owner of the vehicle or shares the use of the vehicle with the registered operator, owner or part owner of the vehicle, and it is reasonable in the circumstances to install an interlock device in the vehicle.

Section 212(5) states that an interlock exemption order **must not** be made (except in relation to a conviction for an offence against ss 110(4)(a), (b), (c) or 111A(2) that is a first offence) merely because an offender:

> (a) cannot afford the cost of installing or maintaining an approved interlock device (s 48 provides for financial assistance in certain cases), or
>
> (b) will be prevented from driving a vehicle in the course of his or her employment if the interlock order is made, or
>
> (c) has access to a vehicle but the registered operator of the vehicle refuses to consent to the installation of an interlock device.

Noting the restrictions and requirements in the above sections, it is not uncommon for Magistrates to request that an exemption application be accompanied with evidence, either in the form of medical documentation, affidavit or oral evidence, before granting any application.

You must also advise your client that if they are exempted, they will be disqualified for a longer period of time. As highlighted in the Bench Book the note following s 212(2) suggests that only the relevant "automatic" disqualification period will apply if an exemption order is

made. However, the wording of the sub-section still appears to permit a court to reduce such a disqualification period in accordance with the normal operation of s 205.

Non-convictions got restrictions

Section 203 of the *Road Transport Act* outlines that Section 10 of the *Crimes (Sentencing Procedure) Act 1999* is ***not available*** to a defendant for an "applicable offence" if, at the time of or during the 5 years before the court's determination, a previous s 10 has been applied in relation to another "applicable offence". Applicable offences are set out in s 203(2) and include:

- Drink and drug driving offences
- furious, reckless or menacing driving (s 117(2) or s 118)
- offences of failing to stop and assist (s 146 or s 52AB *Crimes Act 1900*)
- an offence of negligent driving causing death or GBH.

It is important to obtain a clients criminal and traffic history before providing any advice to a client about their prospects of obtaining a non-conviction for a driving offence.

On this note, if you a bold enough to consider seeking a non-conviction bond for a high range PCA matter you should be well aware of what was said by the Court of Criminal Appeal on 8 September 2004 in the "Guideline Judgement". The full title of this judgement is: *Application by the Attorney General Under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning the Offence of High Range Prescribed Concentration of Alcohol Under Section 9(4) of the Road Transport (Safety and Traffic Management) Act 1999 (No 3 of 2002)* (2004) 61 NSWLR 305.

These are testing times – Testing periods for breath/blood/urine samples.

What should be a simple rule can get complicated so I will do my best to keep it simple. The rules for time periods for testing are hidden in Schedule 3 of the *Road Transport Act*.

A Police Officer cannot require a person to submit to a test, analysis or assessment, or to provide a sample, under this Schedule, if

1. They are in hospital and their doctor objects on the grounds that compliance with it would be prejudicial to the proper care or treatment of that person.

2. If it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to the person's medical condition to submit to the test, analysis or assessment or provide the sample
3. at any time after the expiration of the relevant period (if any) for the test, analysis, assessment or sample concerned (more on this below); and
4. At the person's home (otherwise known as the home safe, I will probably be charged with DUI instead rule). [4]

The relevant time periods for the test, analysis or assessment are:

1. For a breath test, analysis or oral fluid test 2 hours from the time the person was driving, occupying the driver's seat or supervising a learner driver;
2. For a blood sample 4 hours, from the time the person was driving, occupying the driver's seat or supervising a learner driver
3. For a blood and urine test where police believe that as a result of an accident someone may has died or may die within 30 days, 4 hours if the driver is not an accident hospital patient. [5]

However, if Police wish to rely upon the reading as prima facie evidence of the concentration of alcohol or drugs at the time of driving there are further time periods that must be adhered to.

They are as follows:

1. For an offence against section 110 (Presence of prescribed concentration of alcohol in person's breath or blood) the concentration of alcohol on the certificate is taken to be the concentration of alcohol in the person's breath or blood at the time of the driving if the breath analysis was made, or blood sample taken, within 2 hours of the time of driving unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at the time concerned was lower.[6]
2. for an offence against section 111 (Presence of certain drugs (other than alcohol) in oral fluid, blood or urine) evidence of the presence of drug is admissible if conducted within 2 hours of the time of driving for an oral fluid sample and 4 hours for a blood or urine sample unless the defendant proves the absence of the drug when the driving occurred.[7]

[4] *Road Transport Act (NSW) 2013* Schedule 3, Part 2, ss 2 .
[5] Ibid.
[6] Ibid ss31.
[7] Ibid ss32.

3. For an offence of driving under the influence of drugs, if the sample was taken within 4 hours unless the defendant proves the absence of impairment.

It is important to be aware of these periods particularly if there has been a period between your client driving the car and the police detecting your client's driving. This most often occurs where an accident occurs on a secluded road and a passerby finds the driver and calls the police or an ambulance for assistance.

However, if your client is an "accident hospital patient". These time periods can be waived. "accident hospital patient" means a person who attends at, or is admitted into, a hospital for examination or treatment in consequence of an accident (whether occurring in this jurisdiction or elsewhere) and is at least 15 years of age.[8]

Subsection 11 provides an obligation on a medical practitioner to take a sample of an accident patient's blood for analysis as soon as practicable. This duty exists whether or not the patient consents. There is no time limit for this test and subsection 11(6) states that a blood sample taken under this clause may be used for the purpose of conducting an analysis to determine the concentration of alcohol in the blood.

This clause is best demonstrated in the following scenario.

Your client, Clive Hemsworth was seen drinking at the Bellingen Pub from 3pm until close at 12am. He appeared unsteady on his feet and was cut off by the bar staff just before leaving. Clive decides to drive to his friend's house approximately 15km away for some "kick ons". He is seen driving out of the car park on CCTV at 12:03.

He drives approximately about 10km before losing control and sliding off the road. He is trapped in the car. At around 1:00 am a local off duty policeman on his way home finds Clive and calls 000. Police and ambulance arrive at 2am. Clive is admitted to Coffs Harbour Hospital for treatment at 2:30am. Clive told the off-duty officer he was driving for about 5 minutes before he crashed.

A nurse takes a sample of Clive's blood at 3:00am. An analysis of the blood shows that the blood alcohol level in the sample was 0.090 grams of alcohol per 100ml of blood.

At this point it is important to note a few important aspects. Police cannot prove that Clive was driving the car at any point after 1:00am. Indeed, there is significant doubt that he drove at any time after 12:08 to 12:10am. Therefore the 2-hour period for the evidence of his blood alcohol concentration to be prima facie evidence of his concentration of alcohol when driving has expired by the time the blood sample is taken at 3:00am.

[8] Ibid Division 4, ss10.

Therefore, whilst the blood sample can be used for analysis to determine the concentration of alcohol in the blood, the analysis itself is not admissible to prove an offence of driving with a mid-range prescribed concentration of alcohol.

However, this does not mean that Police cannot seek to obtain an expert statement from a pharmacologist that provides an opinion as to what the concentration of alcohol would have been when Clive was driving at 12:03am.

Unfortunately for Clive, Police do this and the expert states that in his opinion at the time of driving Clive's blood alcohol concentration would have been between 0.18 and 0.15 grams per 100ml of blood. Police charge Clive with high-range PCA on the basis of this opinion.

Although, if your client has managed to maintain their right to silence, the expert will often be unaware the precise amount, type or pace of drinks, whether the client had eaten, any medical conditions they may suffer, their weight height and other relevant factors. This is often reflected in their opinion and is conceded to have an impact on the accuracy of the range. The opinion should also acknowledge that there is a divergence in how people break down alcohol and how quickly it can be absorbed in the body.

If you are confronted with an expert statement from bloods taken outside of the 2-hour window you may wish to consider getting your own expert to comment on the possible range and the impact of the above factors. Alternatively, I have had success emailing the Police experts and asking if the above matters could widen or impact the concentration range and that it is possible it could have been lower at the time of driving. In this case, the expert concedes that Clive's blood alcohol concentration could have been as low as 0.11 at the time he drove if he had only recently consumed his final drinks before driving and had not had much to eat that night.

This then provides a strong basis to negotiate the charge with Police to a mid-range PCA instead of a high-range.

However, as a final word of warning, all argument about the range can fall to the wayside if the prosecutor wises up and lays a drive under the influence of alcohol charge. Therefore, there is real benefit in negotiations to lesser PCA charges in circumstances where the expert evidence could point to reading within that range.

Drive with illicit? No more someone slipped it in my coffee defence.

All practitioners must now be aware that following the decision of *R v Narouz [2024] NSWCCA 14* the CCA has confirmed that The language, context and structure of s 111 of the *Road Transport Act 2013* (NSW), including matters of internal coherence, support an interpretation of subsection (1) of that section **as creating an offence of absolute liability**: at [44]-[45], [60].

Habitual Traffic Offenders Declarations – Let's get on the road again

Habitual Traffic Offenders Declarations were abolished on 28 October 2017. Eligible persons can now apply to have disqualifications removed after an offence free period between 2 and 4 years.

Unfortunately, it is not uncommon that a person subject to a lengthy Habitual Traffic Offender Declaration (it is not uncommon for some people to be disqualified for periods of over 20-30 years) to come before the Court for a further drive whilst disqualified having been unaware they could have applied to have their disqualification removed. It is important that you review a client's record and if you see a HTO provide them advice about applying to have it quashed.

A person declared to be a habitual traffic offender under s 217 (rep) before the scheme was abolished may apply to have that declaration quashed. Section 220 as in force immediately before 28 October 2017 continues to apply (set out below). The Local Court may determine the application even if it was not the court that convicted the person of the relevant offence: Sch 4, cl 65(2A).

A declaration that a person is a habitual traffic offender may be quashed if the court determines the disqualification imposed is a disproportionate and unjust consequence having regard to the person's total driving record and the special circumstances of the case: s 220(1).

If the declaration is quashed, the court must give reasons: s 220(2).

It is my experience that the Court is often very willing to grant such an application in circumstances where parliament has abolished the scheme due to the unjust and disproportionate impact HTO's were having on disqualified drivers.

Stays for Appeals? Praying to a higher power.

Whilst ordinarily sentences from the Local Court are stayed if an appeal is lodged, s63(2A) of the *Crimes Appeal and Review Act 2001 (NSW)* states that Subsection (2) does not operate to stay a suspension or disqualification of a driver licence that arose as the consequence of a conviction if, immediately before the proceedings giving rise to the conviction, a suspension was in force under Division 4 of Part 7.4 of the *Road Transport Act 2013* (or a former corresponding provision within the meaning of that Act) for the offence to which the conviction relates.

However, section 2B states an appeal court may order that a suspension or disqualification referred to in subsection (2A) be stayed if the court considers a stay to be appropriate in the circumstances.

If you believe there may be a significant time period before the hearing of the appeal, you may wish to seek the matter be listed for mention at an earlier date with written submissions to be filed as to why the District Court should stay the disqualification before the hearing of the appeal. It is the writer's view you would need a strong basis for this to occur.

Finally, if the disqualification arose from an offence which did not have a prior licence suspension subsection (2) of CARA operates to stay the operation of a disqualification of a driver licence that arises under an Act as a consequence of a conviction, whether the relevant appeal is against the conviction or the sentence imposed as a consequence of the conviction.

Magistrate Thomas' 5 helpful hints

1. **KNOW YOUR CLIENTS TRAFFIC RECORD –** It still amazes me the number of lawyers who do not properly look at or analyse their client's traffic record. It is vital and you should never take your clients word for what is on their traffic record. They are inevitably wrong or deliberately talking it down and they are the worst historians.
2. **FIRST OR SECOND OFFENCE –** Try and know whether it is a first or second offence. The Police do not know, and many prosecutors do not check. It can make a big difference to penalty. I sometimes ask, "do we all agree it is a first or second offence" and everybody goes scurrying for the traffic record. Do not be afraid to try and use Section 9(9) which must be one of the most innovative statutory provisions

I have ever seen. If in doubt it is a first offence. I even tried it once with Transport NSW when they sent something back to me and I have not heard back. Maybe they were not so sure either.

3. **DON'T FORGET INTERLOCK EXEMPTION-** It can sometimes be worth asking for an exemption. Many courts are happy to deal with them on the spot and my experience is most prosecutors do not get too worried about whether the Court deals grants an exemption. I agree with JP that if an exemption is made then it is still possible to argue that the automatic period can be reduced. It will still be a longer period off the road than the initial disqualification period that applies when an interlock is applied. Note the less onerous test or greater grounds for exemption for a first MPCA offence as per Section 212(3)(c). This can sometimes be helpful. Don't forget to remind your clients that there is a 5-year default disqualification period if they do not get their interlock licence. I always make a point of telling the defendant when imposing penalties, but I am not so sure that many of my colleagues do the same.

4. **EVERYBODY HAS A NEED FOR A LICENCE –** Do not allow your plea to overwhelmed by your clients need for a licence. It is not all about that and it is only one of many matters we consider. It carries no greater weight than other matters. Such submissions also carry a great deal more weight if supported by evidence. Whether it be an employer's reference or medical evidence about an ill child. Bald statements of a need for a licence are all too common. Your plea should also talk about the objective seriousness of the offence and not just about the subjective case even if it means acknowledging the seriousness of what has occurred and the position the defendant has placed themselves in.

5. **THERE ARE STILL HABITUAL TRAFFIC OFFENDER DECLARATIONS OUT THERE –** I quashed 5 recently at Kempsey and the applicant had received a letter from TNSW as recently as November telling her about them (but no reference to the ability to apply to have them quashed). I am of the view that they should in almost most cases be quashed. I still think of those that missed the opportunity to apply when there was some uncertainty (subsequently proved wrong) about the Local Courts ability to consider applications to quash declarations. They may still be out there and in many cases probably having served full time custody for driving whilst disqualified because they happen to live in an area where such applications were not considered. Always remember an application to quash a habitual offender declaration is different to an application to remove a court imposed disqualification.

BRETT THOMAS

MAGISTRATE

LOCAL COURT NSW.

13th FEBRUARY 2025