

## Recording a conviction – PSA considerations apply

- It is a legal “fiction” that a traffic conviction is not a criminal conviction.
- The Court is to give reasons why a conviction should be recorded on the traffic history.

[Wilson v Commissioner of Police \[2022\] QDC 15](#): Young tradesman sentenced for drug and traffic offences. No convictions recorded on the drug offences, traffic conviction recorded. Appeal court confirmed same considerations apply where exercising the discretion for traffic offences. Appeal court reversed the recording of the conviction.

*R v WAJ* [2010] QCA 87 at [15] - “Nevertheless, in the absence of any sentencing remarks expressly directed to the discretion or to the relevant provisions it is appropriate to proceed on the footing that the discretion miscarried and must be exercised afresh” – Applied to traffic convictions as an appealable error in [Clinton v Commissioner of Police \[2022\] QDC 222](#).

[Clinton v Commissioner of Police \[2022\] QDC 222](#) – 18 year old who worked in construction for his parents charged with a Evade Police, somewhat protracted and involving Polair. The magistrate fell into error with the impact of a traffic conviction and the PSA – No conviction recorded on appeal (noting the fine was imposed – not the 50 days)

## Disqualification periods – where the court is imposing more than the minimum:

- Reasons are to be given.
- Still involves a balancing of the rehabilitation factors.

[Johnson v QPS \[2015\] QDC 264](#) - [12], [17] and [29]- The Court should give reasons when imposing a period of disqualification that would exceed the statutory minimum.

[Clout v Commissioner of Police \[2022\] QDC 234](#) – Citing Johnston, defendant stole a dog wash vehicle not knowing people and a dog were in the back. After a short but turbulent drive the defendant abandoned the vehicle. The defendant was charged with dangerous operation of a motor vehicle (the mandatory minimum was 6 months loss of license). No submission on the period of disqualification were made by defence at the plea, there was no invitation from the bench. At first instance the defendant was disqualified from holding a license for 2 years.

On appeal the court noted the application of PSA s 9(1), that disqualification must be just but also take into account the rehabilitation of the defendant and the importance of a license in a person’s rehabilitation at [11].

On appeal the period was reduced to 12 months.

- Connecting s 9(1) to the disqualification period and rehabilitation.
- Affirms court to give reasons where imposing more than mandatory minimum period.

## Disqualification period considerations:

[Sutcliffe v Queensland Police Service \[2022\] QDC 135](#) citing *R v Osborne* [2014] QCA 291 the Court of Appeal at [57] stated:

“[57] However, the discretion arising under s 187(1) as to the period of disqualification is broad and not expressed as being confined solely to “the nature of the offence, or to the circumstances in which it was committed.” Other considerations which have been regarded as relevant to that discretion include:

- the need for protection of the public from persons who create danger on the road, particularly those with a pattern of doing so; *R v Cunningham* [2005] QCA 321; *R v Dean* (2006) 45 MVR 542, 544

- the consequences of the disqualification upon the offender's future employment prospects; *R v Plath* [2003] QCA 567, [18-19]; *R v Cunningham* [2005] QCA 321; *R v Dean* (2006) 45 MVR 542, 544.
- the risk that the disqualification period may create a disincentive to rehabilitation on release from custody; *R v Plath* [2003] QCA 567, [18-19]
- the extent to which the disqualification period will operate as an additional penalty to other penalties imposed." (*R v Nhu Ly*).

*R v Nhu Ly* [1996] 1 Qd R 543: Macrossan CJ stressed the desirability of the disqualification serving some purpose other than that served by other available punishments: "Although the discretion which arises is a broad one, it can be accepted that the disqualification, whilst it will operate as an additional penalty, is not meant to be simply a gratuitous addition to other available punishments. There should be an apparent purpose in disqualification as such, rather than would, say, be served by a heavier fine or a longer prison term."