



# The impact of the high range PCA guideline judgment on sentencing for PCA offences in NSW

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*This bulletin evaluates the impact of a guideline judgment issued by the NSW Court of Criminal Appeal for the offence of high range PCA. The study finds evidence that the guideline judgment resulted in (a) a reduction in the use of s.10 non-conviction orders for high range PCA offences; (b) an increase in the use of more severe sanctions for this type of offence; (c) greater uniformity in the use of s.10 non-conviction orders across court locations; and (d) an incidental flow-on effect for other PCA offences, in particular, mid range PCA offences.*

*Keywords: drink driving, sentencing, guideline judgments, dismissals and conditional discharges, consistency in approach.*

## INTRODUCTION

High range prescribed concentration of alcohol (PCA) ranks as one of the most serious summary offences dealt with by local courts. Under the *Road Transport (Safety and Traffic Management) Act 1999*, a conviction for any PCA offence carries with it a mandatory period of licence disqualification, in addition to any other penalty the law allows and a court may see fit to impose. Although the guiding legislation establishes that a conviction for a PCA offence automatically leads to a period of licence disqualification, it is possible to be found guilty and yet avoid the usual consequences of a recorded conviction and sentence. Section 10 of the *Crimes (Sentencing Procedure) Act 1999* permits a court, in certain circumstances,<sup>1</sup> to find a person guilty of an offence and yet direct that the relevant charge be dismissed or the offender conditionally discharged without conviction.

Over the last decade, there has been a rapid growth in the frequency with which

PCA offences have been dismissed or conditionally discharged, and a corresponding decline in the proportion of proven PCA offences resulting in licence disqualification (Moffatt, Weatherburn & Fitzgerald 2004). The growth in the use of s.10 non-conviction orders has also been exceedingly uneven, with some courts being very likely to deal with PCA offences in this manner and other courts rarely doing so. For instance, Moffatt, Weatherburn & Fitzgerald (2004, p6) showed that 45 per cent of high range PCA cases heard in Newcastle Local Court in 2002 were dealt with by way of a s.10 non-conviction order. In comparison, during the same year, Kempsey, Windsor, Nowra and Wollongong Local Courts had no cases of high range PCA where a s.10 non-conviction order was applied (Moffatt et al.).

As a result of what was regarded as systemic leniency in sentencing, the Attorney General applied to the NSW Court of Criminal Appeal (CCA) for a guideline judgment for the offence of high range PCA.<sup>2</sup> In the Attorney's application, evidence was presented indicating that

the sentences being imposed for this offence did not reflect the increase in the maximum penalties imposed in 1998. In its decision on the Attorney General's submission, the CCA held that courts were not imposing sentences that reflected the objective seriousness of the offence (at 133, (2004) 61 NSWLR 305). Accordingly, on 8 September 2004, a five-judge bench of the NSW CCA delivered a guideline judgment for the offence of high range PCA. The aim of this study is to examine the longer-term impact of the guideline judgment on sentencing severity and overall penalties for the offence of high range PCA.

## THE NSW GUIDELINE JUDGMENT SYSTEM

The NSW guideline judgment system was created in response to criticisms about inconsistencies and leniency in sentencing outcomes for particular offences. In *R v. Jurisic*, (1998) 45 NSWLR 209L at 221, the first guideline judgment to be delivered in NSW, Chief

Justice Spigelman made it clear that a fundamental purpose of the guideline judgment system was to reinforce public confidence in the integrity of the sentencing process by showing that judges are responsive to criticisms of sentencing outcomes.

The aim of the guideline judgment system is to set out the general principles of sentencing and to outline the range of penalties that may be applied to a given offence. The judgments are not binding in a formal sense. They seek to achieve a balance between the continued existence of sentencing discretion (a vital component of a fair and individualised system of criminal justice) and structured consistency, which is essential in maintaining equality and in limiting unwarranted disparities.

### THE HIGH RANGE PCA GUIDELINE JUDGMENT

In issuing the guideline judgment, the CCA constructed what it regarded as an ordinary case of high range PCA to use as a model against which a sentencing court could determine whether the case before it is similar or more/less severe. An ordinary case of the offence of high range PCA, according to the CCA at paragraph 146(1), 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.

The CCA also set out two important principles concerning appropriate penalty types for an ordinary case. Firstly, the court held (at paragraph 146(2)(i)) that, while s.10 non-conviction orders could

be used in cases of high range PCA offences, their use is rarely appropriate. Secondly, the court held (at paragraph 146(2)(iii) and (iv)) that the automatic period of licence disqualification is always appropriate unless there is good reason to reduce the period of disqualification. A good reason may include the nature of the offender's employment; the absence of viable transport alternatives; sickness or infirmity of the offender or another person.

### THE INITIAL IMPACT OF THE GUIDELINE JUDGMENT

Poletti (2005) evaluated the impact of the high range PCA guideline judgment in the first three months following its promulgation. She found a significant decline in the use of s.10 non-conviction orders for the offence of high range PCA and a significant increase in the proportion of offenders receiving periods of licence disqualification. She noted that these changes began before the promulgation of the guideline judgment, but pointed out that they occurred contemporaneously with the hearing date for the guideline judgment in May 2004. Poletti therefore attributed the reduction in the use of s.10 non-conviction orders partly to the publicity surrounding the hearing, partly to the guideline judgment itself and partly to related research and education programs.

Poletti made another two important observations. The first was a significant increase in the length of licence disqualification periods, due largely to the growth in offenders receiving an automatic three-year licence disqualification period. The second was evidence of an incidental effect upon other categories of PCA offences, with changes in the sentencing pattern observed for both mid and low range PCA offences. The main incidental trend observed for both these categories was a shift towards the imposition of more severe penalties.

The current bulletin builds on Poletti's findings and examines longer-term sentencing trends resulting from the high range PCA guideline judgment.

## THE IMPACT OF THE HIGH RANGE PCA GUIDELINE JUDGMENT ON SENTENCING PATTERNS

In order to measure the impact of the guideline judgment, this study compares the penalties imposed for high range PCA offences (and the flow-on effect to mid and low range PCA offences) in the 24 month period since the guideline judgment was delivered (8 September 2004 to 8 September 2006) with the penalties imposed in the 24 month period before the guideline judgment was introduced (7 September 2002 to 7 September 2004).

The sample for this study comprised 97,024 PCA offences finalised in the NSW Local Courts. Of these 18,989 were high range PCA offences, 50,451 were mid range PCA offences and 27,491 were low range PCA cases. A very small number of cases (n =137) had missing penalty information and/or involved juvenile offenders. When these were removed,<sup>3</sup> there were 49,161 offences in the pre-guideline period and 47,812 in the post-guideline period. All data were sourced from the NSW Bureau of Crime Statistics and Research.

### OVERVIEW OF PENALTIES

Figure 1 shows the types of penalties imposed for high range PCA offences both before and after the guideline judgment was introduced in September 2004.

As Figure 1 shows, there was a significant decline in the use of s.10 non-conviction orders in the post-guideline period, falling from 9.3 per cent to 2.7 per cent. The overall fall, in percentage terms, was just under 71 per cent. There was also a substantial fall in the use of fines as the primary penalty (down 14.6 percentage points). This fall was offset by increases in the use of Community Service Orders (up 7.2 percentage points), s.9 bond (up 3.8 percentage points), s.12 suspended sentences (up 6.4 percentage points), periodic detention (up 1.3 percentage points), home detention (up 0.8

percentage points) and prison (up 1.8 percentage points).

The move to more severe penalties is also evident in changes to the average length of sentences imposed in the post-guideline period. The average prison sentence increased from 6.3 months to 6.8 months, while the average number

of hours served under a Community Service Order increased slightly, from 159 hours to 165 hours in the post-guideline period. Furthermore, although the overall proportion of offenders receiving a fine as their primary penalty substantially declined, the average fine amount rose by \$36 — from \$1,006 to \$1,042 in the post-guideline period.

**LICENCE DISQUALIFICATION PERIODS**

Licence disqualification is an essential component of sentencing for all PCA offences. Under section 188 of the *Road Transport (General) Act 2005* (formerly section 25 of the *Road Transport (General) Act 1999*), conviction for any PCA offence carries with it an automatic period of licence disqualification. For the offence of high range PCA, the legislation stipulates a presumptive automatic disqualification period of three years for a first offence; and of five years for a second or subsequent offence. Though these periods are presumed to apply, the legislation gives sentencers discretion to impose lesser penalties, as long as they do not fall below 12 months for a high range PCA offence, six months for a mid range PCA offence and three months for a low range PCA offence. The guideline judgment stated (at paragraph 146 (2)(iii)) that:

...in an ordinary case of an offence of high range PCA the automatic disqualification period will be appropriate unless there is good reason to reduce the period of disqualification...

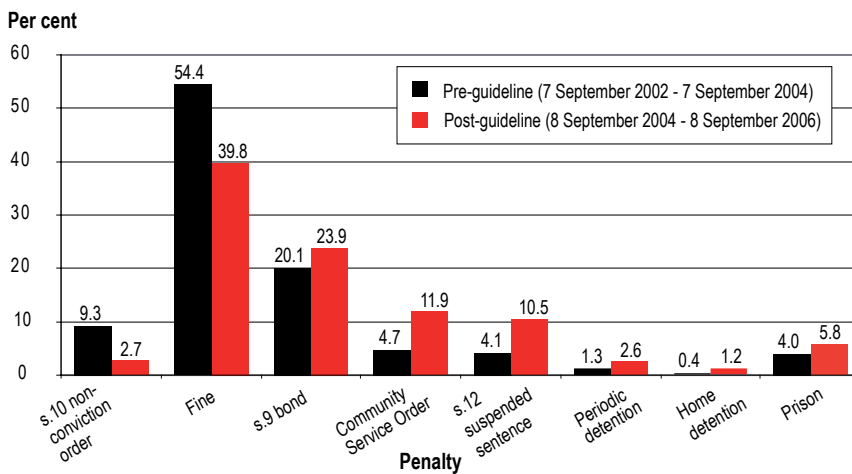
Prior to the promulgation of the guideline judgment, 88.9 per cent of high range PCA offenders were disqualified from driving. Therefore in just over 11 per cent of the 10,232 finalised cases heard during this period the offender avoided mandatory licence disqualification. In contrast, in the post-guideline period, the proportion of offenders being disqualified increased by almost seven percentage points, to 95.6 per cent ( $\chi^2 = 287.4$ ,  $df=1$ ,  $p < 0.01$ ). As can be seen from Figure 2, this increase almost exactly mirrors the decline in s.10 non-conviction orders.

**LENGTH OF LICENCE DISQUALIFICATION PERIODS**

Figure 3 shows that there was also a substantial increase in the duration of disqualification periods ( $\chi^2 = 492.2$ ,  $df=8$ ,  $p < 0.01$ ).

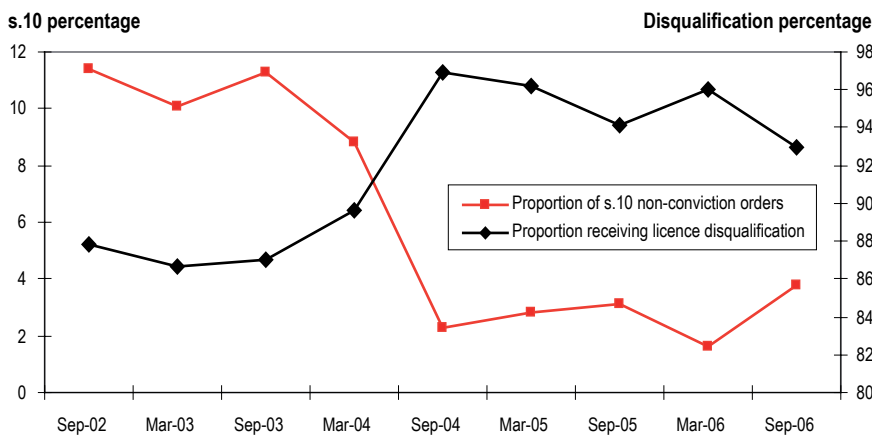
Periods of 12 months or less, reflecting the presumptive minimum disqualification length, declined by just over 13 percentage points, from 40.2 per cent to 26.8 per cent in the post-guideline period.

**Figure 1: Trends in overall penalty types for high range PCA offences (7 September 2002 – 8 September 2006)**



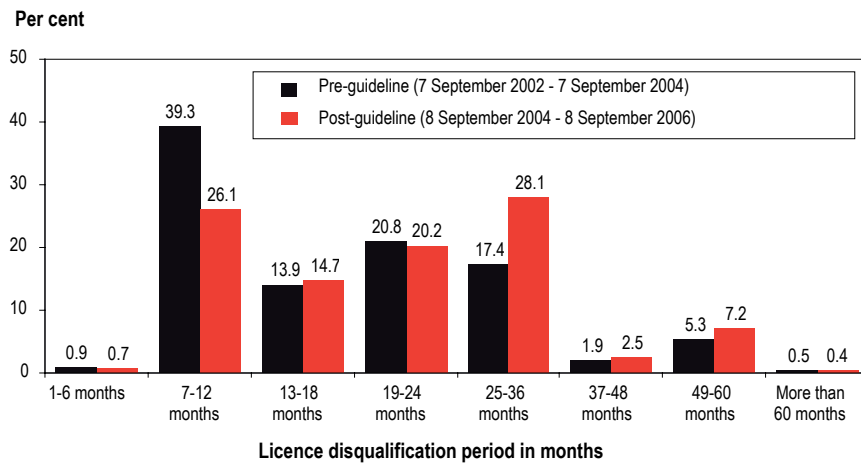
*N = 18,938 finalised cases. Fines can also be used with other penalties considered to be higher in the sentencing hierarchy, for example, s.9 bonds and Community Service Orders. In such cases, only the primary penalty is shown. Consequently, fines are only selected as the primary penalty if they have not been imposed with any other penalty. The percentages before and after the guideline judgment do not add up to 100 per cent because cases involving juveniles or very rare penalties (e.g. sentenced to rising of the court) have been left out. All penalties other than s.10 non-conviction orders carry a mandatory licence disqualification.*

**Figure 2: Trends in s.10 non-conviction orders and licence disqualification for high range PCA offences (7 September 2002 – 8 September 2006)**



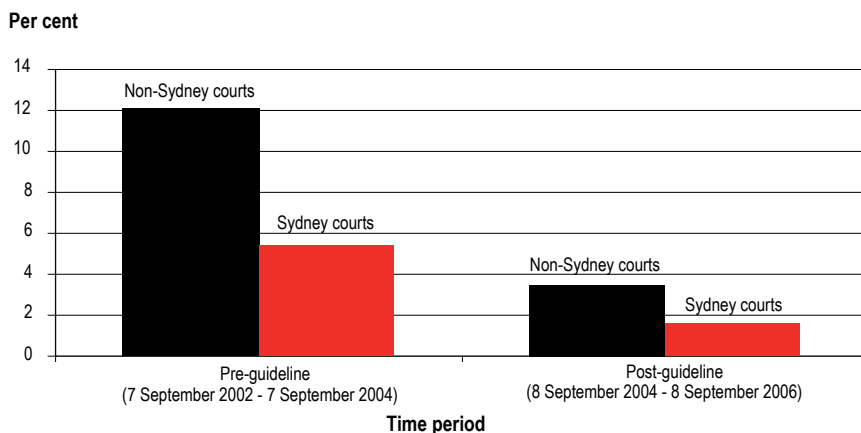
*N = 8,938 finalised cases.*

**Figure 3: Trends in licence disqualification periods for high range PCA offences (7 September 2002 – 8 September 2006)**



*N = 17,415 finalised cases. The disqualification periods imposed by the courts usually fell in the upper limit of each duration category - that is, 12 months, 18 months, 2 years, 3 years, 4 years and 5 years. The most common period longer than 5 years was 10 years (which occurred in 58 cases).*

**Figure 4: Proportion of s.10 non-conviction orders for high range PCA by court location and test period (7 September 2002 – 8 September 2006)**



*N = 1,501 finalised cases. Sydney courts include all courts inside the Sydney Statistical Division except those in the Gosford/Wyong Statistical Subdivision.*

Conversely, licence disqualification periods lasting longer than two years increased by more than 13 percentage points, from 25.1 per cent to 38.5 per cent. Most of this increase was due to the more frequent imposition of the automatic disqualification period of three years (which increased by 10.7 percentage points). Interestingly, while the guideline

judgment substantially increased the number of high range PCA offenders receiving the automatic three-year licence disqualification, 41.6 per cent of offenders in the post-guideline period received disqualification periods of 18 months or less. This is only half the length of the presumptive disqualification period.

**THE USE OF S.10 NON-CONVICTION ORDERS AND COURT LOCATION**

In the guideline judgment at paragraph 133, Howie, J noted that:

...there appears to me to be both generally and in some particular courts an over-utilisation of the section (10) in dealing with high range PCA offences, presumably in order to avoid the statutory consequences of a conviction. In my opinion, in the overwhelming majority of cases ... where the offence was dismissed or the offender was discharged, there was no proper basis for the application of the section...

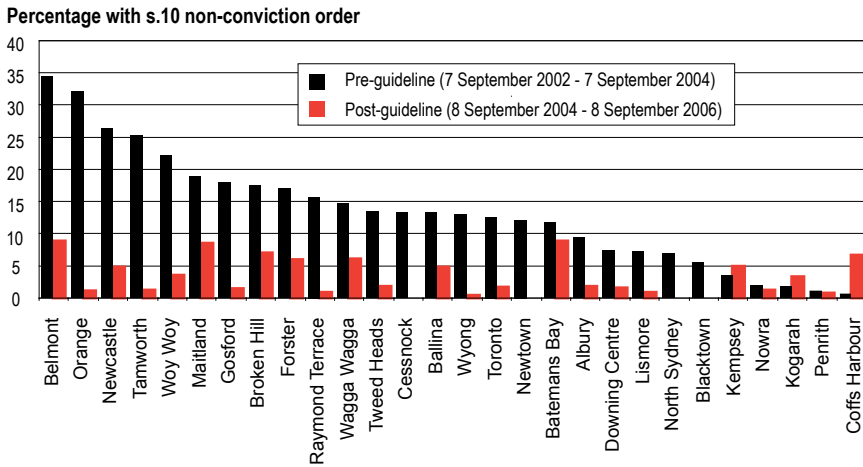
Part of the reason for issuing a guideline judgment for the offence of high range PCA was the concern that some courts were imposing excessively lenient sentences (see sections 133 and 134 of the CCA judgment).

Figure 4 shows the impact the guideline judgment had on the level of disparity across court locations.

Prior to the guideline judgment there were significant differences between Sydney courts and non-Sydney courts in their use of s.10 non-conviction orders ( $\chi^2=107.7$ ,  $df=1$ ,  $p < 0.01$ ). During this period, courts located outside of Sydney used s.10 non-conviction orders in approximately one in eight (12.1%) high range PCA cases, while courts located in Sydney used s.10 non-conviction orders in an average of one in 20 (5.4%) high range PCA cases. As Figure 4 shows, following the promulgation of the guideline judgment, the use of s.10 non-conviction orders declined dramatically across both Sydney (down 70%) and non-Sydney (down 71%) courts. The gap between Sydney and non-Sydney courts in their percentage use of s.10 non-conviction orders also declined, from 6.7 percentage points (12.1% non-Sydney v 5.4% Sydney) to 1.9 percentage points (3.5% non-Sydney v 1.6% Sydney).

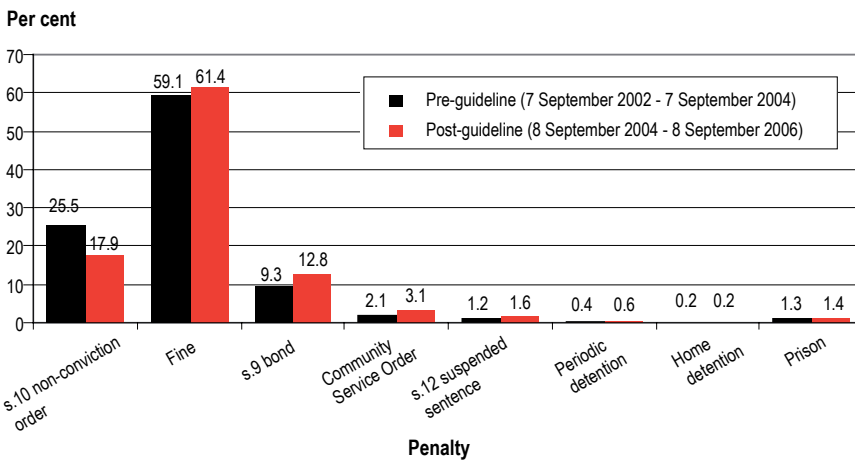
Despite the overall downward trend in the use of dismissals and conditional discharges, significant disparity between Sydney and non-Sydney courts is still apparent in the post-guideline period, with offenders sentenced in non-Sydney courts still significantly more likely to receive a non-conviction order ( $\chi^2=9.1$ ,  $df=1$ ,  $p < 0.01$ ). An explanation for this

**Figure 5: High range PCA s.10 non-conviction rate (%) by Local Court and test period (7 September 2002 – 8 September 2006)**



N = 1,501 finalised cases. Figure 5 includes information on only 28 out of the 50 courts in NSW that dealt with more than 48 high range PCA cases in both the pre and post guideline periods. For a full list, see Appendix 1.

**Figure 6: Trends in overall penalty types for mid range PCA offences (7 September 2002 – 8 September 2006)**



N = 50,451 finalised cases. Fines can also be used with other penalties considered to be higher in the sentencing hierarchy, for example, s.9 bonds and Community Service Orders. In such cases, only the primary penalty is shown. The percentages before and after the guideline judgment do not add up to 100 per cent because cases involving juveniles or very rare penalties (e.g. sentenced to rising of the court) have been left out. All penalties other than s.10 non-conviction orders carry a mandatory licence disqualification.

disparity can be found in the wording of the guideline judgment. At paragraph 146 (2) (iii) and (iv) (b) of the guideline; the CCA states that in an 'ordinary case' of high range PCA a good reason for reducing the automatic period of disqualification may include the absence of any viable alternative transport. In many NSW country and regional areas, the lack of viable transport may explain

the higher use of s.10 non-conviction orders in an attempt to avoid mandatory licence disqualification.

As can be seen from Figure 5, the use of s.10 non-conviction orders has not been uniform across all courts.<sup>4</sup>

Figure 5 shows the overall reduction in the use of s.10 non-conviction orders across individual courts in NSW. The

guideline judgment has reduced the use of s.10 non-conviction orders across the vast majority of courts. During the pre-guideline period the standard deviation between courts in their use of s.10 non-conviction orders was 7.7 (i.e. the percentage of s.10 non-conviction orders varied by an average of 7.7 percentage points), signifying substantial disparity based on court location. In contrast, after the introduction of the guideline judgment, the standard deviation in the use of s.10 non-conviction orders decreased to only 2.6 (down by 5.1 percentage points).

### FLOW-ON EFFECT TO OTHER PCA OFFENCES

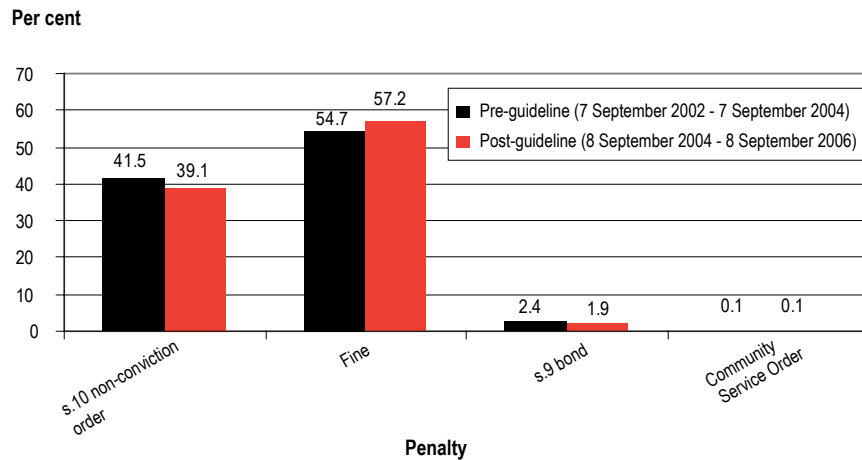
While the guideline judgment was only concerned with high range PCA offences, the question naturally arises as to whether there have been flow-on or incidental effects on other PCA offences. This is an important question to examine given that just over three quarters of offenders charged with PCA offences in NSW during the sample period were charged with either mid or low range PCA (49.1% and 26.7% respectively).

### OVERVIEW OF PENALTIES

The effect of the high range PCA guideline judgment on sentencing outcomes differs considerably for mid and low range PCA offences.

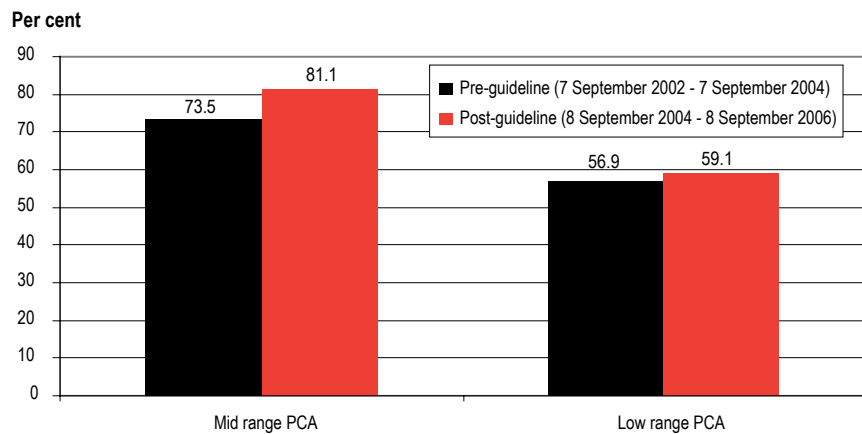
As Figure 6 indicates, the use of s.10 non-conviction orders for mid range PCA offences declined by almost eight percentage points, from 25.5 per cent to 17.9 per cent in the post-guideline period. Although in absolute terms this is comparable to the decline in the use of s.10 non-conviction orders for high range PCA offences (viz. around seven percentage points), in relative terms it is much smaller (30% compared with 71%). As can be seen from Figure 6, the decline in the use of s.10 non-conviction orders for mid range PCA offences has been offset by increases in the use of other more severe dispositions, such as fines (up 3.9%, from 59.1% to 61.4%), s.9 bonds (up 38%, from 9.3% to 12.8%) and Community Service Orders (up 47.6%,

**Figure 7: Trends in overall penalty types for low range PCA offences (7 September 2002 – 8 September 2006)**



*N = 27,447 finalised cases. Fines can also be used with other penalties considered to be higher in the sentencing hierarchy, for example, s.9 bonds and Community Service Orders. In such cases, only the primary penalty is shown. Consequently, fines are only selected as the primary penalty if they have not been imposed with any other penalty. The percentages before and after the guideline judgment do not add up to 100 per cent because cases involving juveniles or very rare penalties (e.g. sentenced to rising of the court) have been left out. All penalties other than s.10 non-conviction orders carry a mandatory licence disqualification.*

**Figure 8: Proportion of mid and low range PCA offenders disqualified from driving by test period (7 September 2002 – 8 September 2006)**



*N = 78,035 cases*

from 2.1% to 3.1%). These effects are similar to those observed for high range PCA offences. Note, however, that while use of s.10 non-conviction orders have become quite rare for high range PCA offences, almost one in five mid range PCA offenders still receive s.10 non-conviction orders in the post-guideline period.

Figure 7 shows the change in sentence outcomes for low range PCA offences. It suggests that the guideline judgment has had little impact on sentencing outcomes for this offence. The use of s.10 non-conviction orders declined by just over two percentage points, from 41.5 per cent to 39.1 per cent in the post-guideline period. This change has been balanced

by a 2.5 percentage point increase in the use of fines as the primary sentencing penalty.

**LICENCE DISQUALIFICATION PERIODS**

Figure 8 shows changes in the use of licence disqualification for mid and low range PCA offences.

The percentage of mid range PCA offenders receiving periods of licence disqualification increased by 7.6 percentage points, from 73.5 per cent to 81.1 per cent. This increase results from the decline in s.10 non-conviction orders (down 8.6 percentage points, from 26.5% to 17.9%) as all other sentencing options carry a mandatory licence disqualification. The proportion of low range PCA offenders receiving licence disqualifications also increased, but only by 2.2 percentage points, from 56.9 per cent to 59.1 per cent.

As with high range PCA offences, there has been a shift towards greater imposition of the automatic licence disqualification period for mid and low range PCA offences in the post-guideline period. The number of offenders receiving the automatic length of disqualification for mid range PCA rose by 6.8 percentage points, while for low range PCA, the increase was 3.5 percentage points. The majority of this growth was driven by lower usage of the minimum disqualification periods of six months for mid range PCA offences and three months for low range PCA offences.

**TRENDS IN THE USE OF S.10 NON-CONVICTION ORDERS**

The proportion of mid and low range PCA offenders receiving s.10 non-conviction orders is significantly greater than the proportion of high range PCA offenders ( $\chi^2=7087.4$ ,  $df=2$ ,  $p < 0.01$ ). As Figure 9 shows, in the post-guideline period, an offender charged with mid range PCA is almost seven times more likely to receive an order under s.10 non-conviction orders than an offender charged with high range PCA. This difference is even greater for low range PCA offenders where the

likelihood increases to more than 14 times the likelihood for high range PCA offenders.

Figure 9, however, also shows a substantial (30%) decline in the proportion of mid range PCA offenders receiving s.10 non-conviction orders.

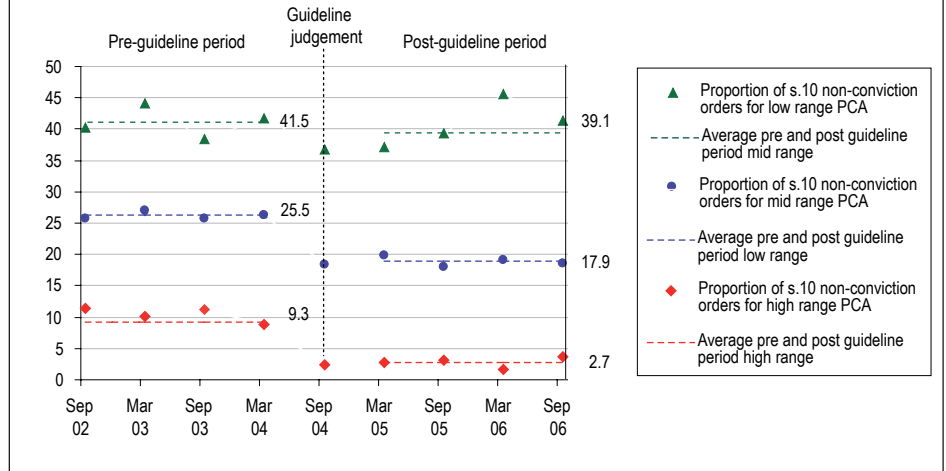
The timing reflects the trend observed for high range PCA offences, falling noticeably in September 2004 following the promulgation of the guideline judgment. This reduced level in the use of s.10 non-conviction orders for mid range PCA offences remains consistent throughout the 24 month post-guideline period.

There appears to have been no significant change in the proportion of low range PCA offenders receiving s.10 non-conviction orders over the 48-month analysis period. In fact, despite some fluctuation, the resulting trend varies by only one per cent from the first to the last month of the four year study period. This result differs somewhat from the finding by Poletti (2005) of an initial decline in the use of s.10 non-conviction orders for all three categories of PCA offences. As Figure 9 shows, while there was an initial downward trend in the use of s.10 non-conviction orders for low range PCA offences, this trend reversed later in the 24-month post-guideline period.

**THE USE OF S.10 NON-CONVICTION ORDERS AND COURT LOCATION**

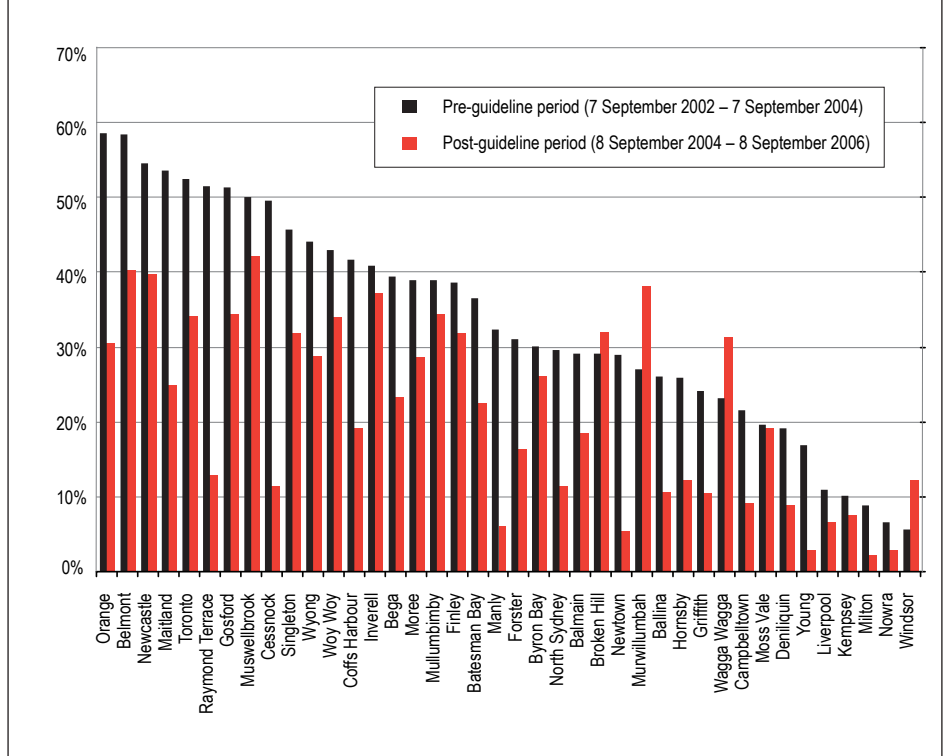
As was the case with high range PCA offences, prior to the guideline judgment, substantial disparity existed between Sydney and non-Sydney courts in their use of s.10 non-conviction orders for mid range PCA offences. Prior to the guideline judgment, about 19 per cent of mid range offenders sentenced in Sydney courts and 32 per cent of mid range offenders in non-Sydney courts were receiving s.10 non-conviction orders. After the guideline judgment, the percentage of s.10 non-conviction orders imposed by Sydney courts fell 38 per cent, to just under 12 per cent, while the percentage of s.10 non-conviction orders imposed by non-Sydney fell 26 per cent, to 24 per cent.

**Figure 9: Trends in the use of s.10 non-conviction orders by type of PCA offence, plotted at six monthly intervals (7 September 2002 – 8 September 2006)**



N = 24,434 finalised cases

**Figure 10: Mid range PCA s.10 non-conviction rate (%) by Local Court and test period (7 September 2002 – 8 September 2006)**

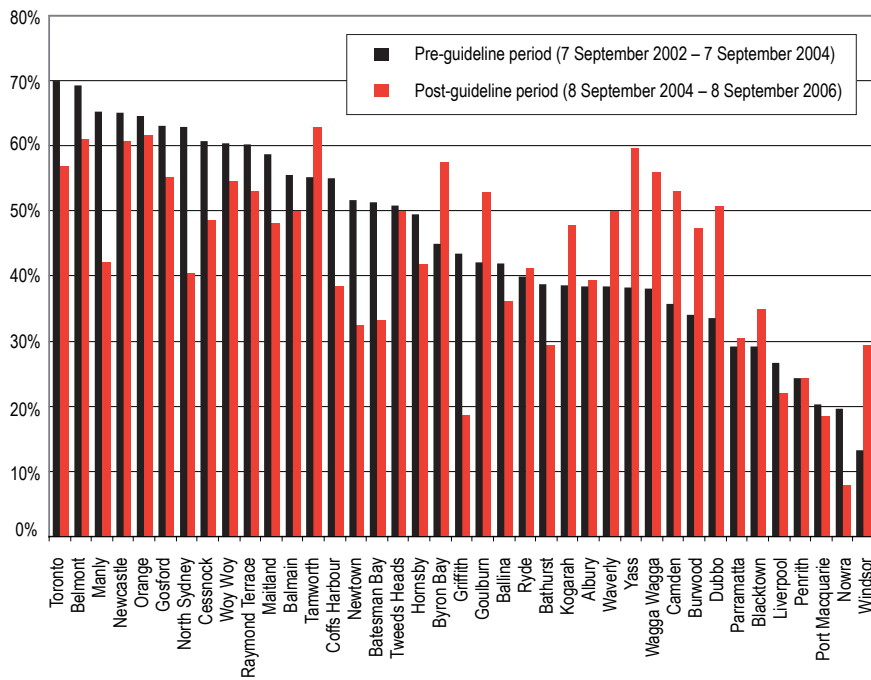


N = 22,736 finalised cases. Figure 10 includes information on only 40 out of the 75 courts in NSW that dealt with more than 48 mid range PCA cases. For a full list see Appendix 2.

Thus, while the use of s.10 non-conviction orders declined in both Sydney and non-Sydney courts, the gap between the locations in the use of s.10 non-conviction orders remained roughly the same (13.5 percentage points in the pre-guideline

period and 12.4 percentage points in the post-guideline period). The difference between the two groups of courts in the use of s.10 non-conviction orders remains significant ( $\chi^2=619.3$ ,  $df=1$ ,  $p < 0.01$ ).

**Figure 11: Low range PCA s.10 non-conviction rate (%) by Local Court and test period (7 September 2002 – 8 September 2006)**



N = 16,615 finalised cases. Figure 11 includes information on only 39 out of the 55 courts in NSW that dealt with more than 48 low range PCA cases. For a full list see Appendix 3.

Figure 10 shows that some degree of disparity between individual courts was reduced as a result of the guideline judgment.<sup>5</sup> During the pre-guideline period the standard deviation between courts in their use of s.10 non-conviction orders for mid range PCA was 13.7 percentage points. In contrast, after the introduction of the guideline judgment the standard deviation between courts in the use of s.10 non-conviction orders was 10.7 (down three percentage points), indicating that the high range PCA guideline had some incidental effect on reducing the disparity between courts in the use of s.10 non-conviction orders for mid range PCA offences.

The situation for low range PCA offences is somewhat different. There was a very small change in the gap between Sydney and non-Sydney courts in the use of s.10 non-conviction orders. Prior to the guideline judgment, the gap between the locations was 8.5

percentage points (38.6% for Sydney versus 47.1% for non-Sydney courts). After the guideline judgment, the gap between them was 7.5 percentage points (37.2% for Sydney versus 44.7% for non-Sydney courts). The pattern was the same between individual courts. During the pre-guideline period, the standard deviation between courts in their use of s.10 non-conviction orders for low range PCA was 13.1 percentage points. After the introduction of the guideline judgment, the standard deviation between courts in the percentage use of s.10 non-conviction orders declined by only 0.4 percentage points. The high range PCA guideline judgment therefore had minimal effect on disparity between courts in the use of s.10 non-conviction orders for low range PCA offences.

It is worth noting that many of the courts that applied s.10 non-convictions orders more frequently in the pre-guideline period have reduced the rate at which

they applied these orders in the post-guideline period. For example, the top 12 courts listed in Figure 11 have all, to some extent, reduced the proportion of low range PCA offenders receiving s.10 non-conviction orders. In contrast, some courts that appeared to have lower level use of s.10 non-conviction orders in the pre-guideline period, such as Windsor Local Court, have substantially increased the rate at which s.10 non-conviction orders are applied.

## CONCLUSION

In issuing the guideline judgment for the offence of high range PCA, the NSW CCA sought to reduce systemic leniency in sentencing by guiding sentencers to impose penalties that more closely reflected the aims and intent of the guiding legislation. In particular, the guideline aimed to curb the rapid growth in the frequency with which high range PCA offences were being dismissed or conditionally discharged, and the corresponding decline in the proportion of proven offences resulting in licence disqualification.

The results presented here suggest that the guideline judgment has been very effective in increasing the severity and consistency of sentencing for high range PCA offences. The use of s.10 non-conviction orders for high range PCA offences fell by 71 per cent. Against this backdrop, increases were observed in the proportion of offenders given s.9 bonds (up 19% from 20.1 to 23.9 percentage points), Community Service Orders (up 153% from 4.7 to 11.9 percentage points), suspended prison sentences (up 156% from 4.1 to 10.5 percentage points), periodic detention (up 100% from 1.3 to 2.6 percentage points), home detention (up 200% from 0.4 to 1.2 percentage points) and prison (up 45% from 4.0 to 5.8 percentage points). In addition to these changes, the proportion of high range PCA offenders whose licences were suspended rose by 6.7 per cent, (from to 88.9 to 95.6 percentage points) and the percentage of such offenders who had their licence suspended for longer than



two years rose by 52 per cent (from 25.1 to 38.2 percentage points).

The results also show that for high range PCA the disparity in sentencing outcomes between courts located in and outside of Sydney has been substantially lessened. During the pre-guideline period, the standard deviation across all courts in their percentage use of s.10 non-conviction orders was 7.7 (i.e. the percentage of s.10 non-conviction orders varied by an average of 7.7 percentage points), signifying substantial disparity based on court location. After the introduction of the guideline judgment, the standard deviation in the use of s.10 non-conviction orders reduced to only 2.6 (down by 5.1 percentage points).

Although the guideline judgment was directed at sentencing for high range PCA offences, the results show evidence of flow-on effects for mid range PCA offences. The proportion of mid range PCA offences being finalised with s.10 non-conviction orders has declined by 30 per cent since the guideline judgement. The fall in s.10 non-conviction orders meant that there were increases in the percentage of offenders who had their licence disqualified (up 10%, from 73.5 to 81.1 percentage points), the percentage fined (up 3.9%, from 59.1 to 61.4 percentage points) and the percentage given a s.9 bond (up 37.6%, from 9.3 to 12.8 percentage points). No reduction was observed in the disparity between Sydney and non-Sydney courts in the use of s.10 non-conviction orders for mid range PCA offences (although both groups of courts reduced their use of s.10 non-conviction orders). There was, however, a slight reduction in the disparity between individual courts in their use of s.10 non-conviction orders.

The changes in sentencing for low range PCA offences were minimal. There was a slight (and non-significant) reduction in the percentage of offenders convicted of a low range PCA offence who were given a s.10 non-conviction order (down from 41.5% to 39.1%), a slight increase in the percentage fined (up from 54.7% to 57.2%) and a small increase in the

percentage of low range PCA offenders who were disqualified from driving, from 56.9 to 59.1 percentage points. There was a slight reduction in the percentage variation across courts but variation between courts in the use of s.10 non-conviction orders remains marked. Whether the differences between courts can be explained in terms of variation within cases is a matter that could be addressed in further research.

## NOTES

1. The relevant principles for the use of section 10 and its predecessor, section 556A of the Crimes Act are to be found in *Cobiac v. Liddy* (1969) 119 LRC 257 (see, in particular, Windeyer J at 269, *R v. Ingrassia* (1997), 41 NSWLR 447 and *R v Paris* (2001), NSW CCA 323 (et al.)).
2. 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 Roads Transport (Safety and Traffic Management) Act 1999 (No. 3 of 2002) (2004) NSW CCA 303.
3. There were too few juveniles to include in the analysis.
4. For statistical reasons, the comparison that follows has been restricted to courts that have dealt with at least 48 cases of high range PCA during both the pre- and post-guideline analysis periods.
5. See note 4.

## REFERENCES

- Moffatt, S, Weatherburn, D & Fitzgerald, J 2004, *Sentencing drink-drivers: The use of dismissals and conditional discharges*, Crime and Justice Bulletin no. 81, New South Wales Bureau of Crime Statistics and Research, Sydney.
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## APPENDIX

**Appendix 1: Percentage of s.10 non-conviction orders as a total of all penalties for high range PCA offences across all NSW courts (7 September 2002 – 8 September 2006)**

<b>Court location</b>	<b>Pre-Guideline period (7 Sept 2002 – 7 Sept 2004)</b>	<b>Post-Guideline period (8 Sept 2004 – 8 Sept 2006)</b>
Albury	9.40%	1.80%
Ballina	13.30%	4.80%
Balmain	7.90%	6.10%
Batemans Bay	11.80%	8.90%
Bathurst	5.00%	1.80%
Belmont	34.50%	8.90%
Blacktown	5.30%	0%
Broken Hill	17.40%	7.10%
Burwood	6.10%	0.60%
Byron Bay	5.80%	0%
Campbelltown	5.80%	2.60%
Cessnock	13.30%	0%
Coffs Harbour	0.10%	6.70%
Downing Centre	7.40%	1.60%
Dubbo	9.60%	3.20%
Fairfield	8.80%	3.20%
Foster	17.00%	6.00%
Gosford	17.90%	1.50%
Grafton	11.00%	1.80%
Griffith	6.90%	0%
Hornsby	4.90%	0.70%
Kempsey	3.60%	5.00%
Kogarah	1.90%	3.30%
Lismore	7.30%	0.90%
Liverpool	4.00%	2.10%
Maitland	19.00%	8.60%
Manly	5.40%	1.30%
Newcastle	26.40%	4.90%
Newtown	12.10%	0%
North Sydney	6.90%	0%
Nowra	2.00%	1.30%
Orange	32.10%	1.10%
Parramatta	2.60%	2.30%
Penrith	1.20%	0.80%
Port Kembla	3.20%	4.00%
Port Macquarie	8.80%	7.20%
Queanbeyan	4.80%	0.70%
Raymond Terrace	15.70%	0.90%
Ryde	10.10%	5.30%
Sutherland	7.30%	1.20%
Tamworth	25.30%	1.30%
Taree	10.60%	3.90%
Toronto	12.60%	1.70%
Tweeds Heads	13.40%	1.90%
Wagga Wagga	14.70%	6.10%
Waverly	4.30%	0.30%
Windsor	2.50%	0%
Wollongong	3.30%	2.50%
Woy Woy	22.20%	3.60%
Wyong	12.90%	0.50%

**Appendix 2: Percentage of s.10 non-conviction orders as a total of all penalties for mid range PCA offences across all NSW courts (7 September 2002 – 8 September 2006)**

<i>Court location</i>	<i>Pre-Guideline period (7 Sept 2002 – 7 Sept 2004)</i>	<i>Post-Guideline period (8 Sept 2004 – 8 Sept 2006)</i>	<i>Court location</i>	<i>Pre-Guideline period (7 Sept 2002 – 7 Sept 2004)</i>	<i>Post-Guideline period (8 Sept 2004 – 8 Sept 2006)</i>
Albury	23.20%	22.80%	Liverpool	10.90%	6.60%
Armidale	10.30%	8.50%	MacLean	21.80%	25.90%
Ballina	26.00%	10.60%	Maitland	53.60%	24.90%
Balmain	29.10%	18.50%	Manly	32.30%	6.10%
Bankstown	10.00%	17.60%	Milton	8.90%	2.30%
Batemans Bay	36.50%	22.60%	Moree	38.90%	28.60%
Bathurst	21.70%	22.50%	Moss Vale	19.60%	19.20%
Bega	39.40%	23.40%	Mudgee	24.00%	25.80%
Belmont	58.40%	40.20%	Mullumbimby	38.90%	34.50%
Blacktown	15.30%	13.00%	Murwillumbah	27.00%	38.20%
Broken Hill	29.10%	32.10%	Muswellbrook	50.00%	42.20%
Burwood	14.40%	16.80%	Newcastle	54.50%	39.70%
Byron Bay	30.10%	26.00%	Newtown	29.00%	5.50%
Camden	19.00%	20.00%	North Sydney	29.60%	11.50%
Campbelltown	21.50%	9.20%	Nowra	6.60%	2.90%
Casino	20.60%	8.20%	Orange	58.50%	30.60%
Cessnock	49.60%	11.40%	Parramatta	14.30%	11.30%
Coffs Harbour	41.70%	19.20%	Penrith	8.40%	9.80%
Cooma	28.80%	24.80%	Picton	26.30%	13.60%
Cowra	15.70%	6.00%	Port Kembla	9.70%	9.00%
Deniliquin	19.10%	8.80%	Port Macquarie	15.50%	10.30%
Downing Centre	13.70%	10.30%	Queanbeyan	16.80%	18.40%
Dubbo	20.60%	25.80%	Raymond Terrace	51.50%	12.90%
Fairfield	16.10%	13.50%	Ryde	25.60%	20.40%
Finley	38.60%	31.90%	Singleton	45.70%	31.90%
Forster	31.10%	16.40%	Sutherland	23.00%	11.90%
Gosford	51.40%	34.50%	Tamworth	41.60%	36.00%
Goulburn	25.40%	26.90%	Taree	29.00%	14.20%
Grafton	23.20%	15.80%	Toronto	52.40%	34.10%
Griffith	24.10%	10.50%	Tweeds Heads	33.00%	36.30%
Hornsby	25.90%	12.30%	Wagga Wagga	23.20%	31.30%
Inverell	40.90%	37.10%	Waverly	16.80%	6.80%
Katoomba	13.20%	7.90%	Windsor	5.70%	12.20%
Kempsey	10.10%	7.50%	Wollongong	9.90%	7.70%
Kogarah	21.40%	27.00%	Woy Woy	42.90%	34.00%
Leeton	18.50%	8.60%	Wyong	44.10%	28.80%
Lismore	19.10%	13.90%	Young	16.90%	2.90%
Lithgow	19.00%	18.60%			

**Appendix 3: Percentage of s.10 non-conviction orders as a total of all penalties for low range PCA offences across all NSW courts (7 September 2002 – 8 September 2006)**

<i>Court location</i>	<i>Pre-Guideline period (7 Sept 2002 – 7 Sept 2004)</i>	<i>Post-Guideline period (8 Sept 2004 – 8 Sept 2006)</i>
Albury	37.50%	38.40%
Armidale	32.10%	31.30%
Ballina	40.90%	35.40%
Balmain	54.10%	48.80%
Batemans Bay	50.00%	32.40%
Bathurst	37.80%	28.60%
Belmont	67.60%	59.50%
Blacktown	28.40%	34.10%
Burwood	33.20%	46.10%
Byron Bay	43.90%	56.10%
Camden	34.80%	51.70%
Campbelltown	33.10%	27.00%
Casino	40.00%	35.00%
Cessnock	59.20%	47.40%
Coffs Harbour	53.60%	37.50%
Cooma	44.70%	25.40%
Downing Centre	29.50%	33.10%
Dubbo	32.70%	49.50%
Fairfield	27.50%	22.70%
Forster	46.00%	34.30%
Gosford	61.50%	53.90%
Goulburn	41.10%	51.60%
Grafton	40.50%	27.10%
Griffith	42.30%	18.20%
Hornsby	48.20%	40.70%
Kogarah	37.60%	46.60%
Lismore	26.40%	27.20%
Liverpool	26.00%	21.50%
Maitland	57.30%	46.90%
Manly	63.60%	41.10%
Moss Vale	46.40%	35.60%
Newcastle	63.40%	59.20%
Newtown	50.40%	31.80%
North Sydney	61.30%	39.40%
Nowra	19.20%	7.70%
Orange	63.00%	60.20%
Parramatta	28.40%	29.70%
Penrith	23.80%	23.80%
Port Kembla	36.60%	25.00%
Port Macquarie	19.80%	18.00%
Queanbeyan	36.80%	39.10%
Raymond Terrace	58.80%	51.70%
Ryde	38.90%	40.20%
Sutherland	35.40%	33.60%
Tamworth	53.80%	61.30%
Taree	42.60%	36.30%
Toronto	68.30%	55.40%
Tweeds Heads	49.60%	48.80%
Wagga Wagga	37.20%	54.70%
Waverly	37.40%	48.80%
Windsor	12.90%	28.60%
Wollongong	37.60%	31.10%
Woy Woy	58.90%	53.20%
Wyong	48.10%	52.80%
Yass	37.30%	58.20%

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