

Driving While Disqualified or Suspended

Information Paper

Background

December 2007

Pursuant to its statutory functions to conduct research and consult on sentencing matters the Sentencing Advisory Council (the Council) has resolved to undertake a scoping study on the offence of disqualified driving / driving suspended, its causes and the most effective means of responding to it. This study will draw together the existing literature in this area as well as consider the view of key government and private stakeholders in this area.

Disqualified driving / driving suspended are proscribed under the *Road Safety Act 1986* (Vic) s 30. The Act provides for a maximum sentence of 30 penalty units or imprisonment for 4 months for a first offence. For a subsequent offence, the Act provides for a mandatory minimum sanction of imprisonment for 1 month and a maximum sentence of imprisonment for 2 years. This is the only offence in the *Road Safety Act 1986* (Vic) carrying a mandatory minimum sentence of imprisonment.

Victoria is the only Australian jurisdiction that makes use of a mandatory sanction of imprisonment for repeated incidents of this offence. Disqualified driving / driving suspended occur where a person drives when that person has been disqualified from driving or when that person's licence is suspended. This needs to be distinguished from the offence of driving without a licence. Driving without a licence has a maximum penalty of 25 penalty units or up to 3 months' imprisonment and has no stipulated increases or mandatory penalties for recidivism.¹

The number of people sentenced for disqualified driving / driving suspended has increased markedly over a six-year period, with approximately three times as many people sentenced in 2006–07 than in 2000–01. There were approximately 2,846 people sentenced in Victoria for the principal offence of unlicensed driving in 2000-01 compared to 8,615 people in 2006-07. Almost one in four offenders found guilty of a s 30 offence is sentenced to a suspended term of imprisonment. The Victorian government is currently considering abrogating suspended sentences in Victoria, which would mean that, unless the sanction prescribed for repeat disqualified driving / driving suspended is amended, a large number of people would be serving actual prison time.

While symptomatically disqualified driving / driving suspended gives rise to a number of important sentencing issues, this phenomenon also raises a number of other broader societal issues. Numerous studies indicate that disqualified driving / driving suspended increases the risk factor of accidents and injury both to unlicensed drivers themselves and to society at large. It has also been suggested that disqualified driving / driving suspended often occurs alongside other dangerous and illegal conduct (for example, drink driving and other traffic offences). Because unlicensed drivers are by default also uninsured drivers, this behaviour can have significant economic as well as health consequences.



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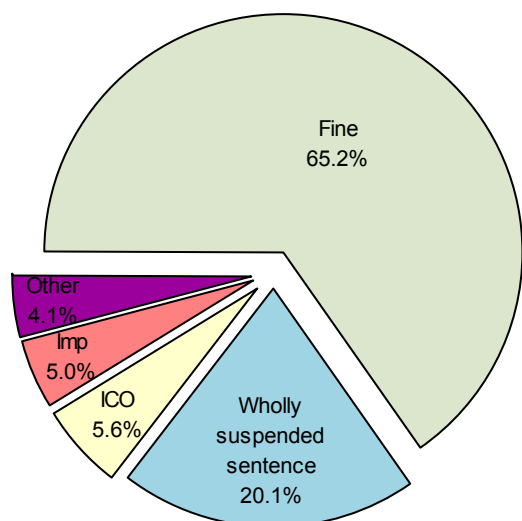
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Reported incidence and sentencing outcomes

There were approximately 2,846 people sentenced for the principal offence of unlicensed driving in 2000-01 compared to 8,615 people in 2006-07. Of the total number of suspended sentences imposed in Victoria in 2003-04 for all offences, 23.7 percent of them were convicted of disqualified driving / driving suspended.²

Figure 1 shows the sentencing outcomes for people who were sentenced for driving while disqualified in the Magistrates' Court between 2004-05 and 2006-07. As shown the majority of people sentenced received a fine (65.2 percent), while around one in five received a wholly suspended sentence.

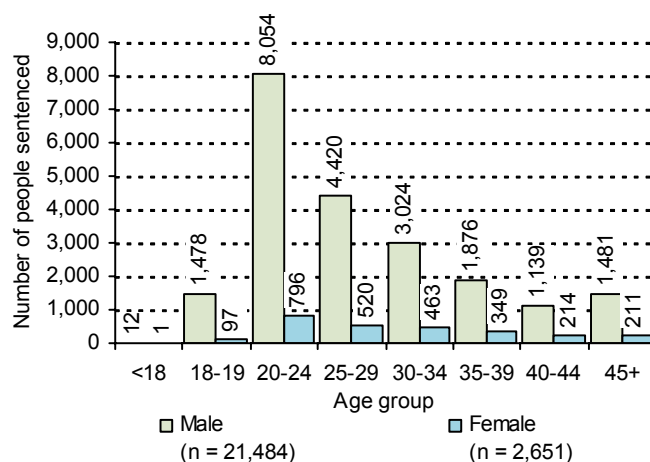
Figure 1: The percentage of people sentenced for driving while disqualified by sentence type, Magistrates' Court, 2004-05 to 2006-07³



Source: SAC CourtLink Extract December 2007

Figure 2 shows the number of people sentenced for driving while disqualified by age and gender. As shown, the most common age group of people sentenced was 20-24 years while 89.1 percent of all people sentenced were male.

Figure 2: The number of people sentenced for driving while disqualified by age and gender, Magistrates' Court, 2004-05 to 2006-07



Source: SAC CourtLink Extract December 2007

Disqualified driving / suspended driving encompasses a range of behaviours ranging from somebody who has been found guilty of an offence and has been formally disqualified from driving to a person who has incurred too many demerit points within a given period and has received an administrative suspension. In these two scenarios, the only commonality is that the person is driving while his or her licence has been disqualified / suspended. In the first scenario, the offender would be keenly aware of the disqualification, whereas in the latter situation the offender may not even be aware that an administrative suspension has occurred (for example, if the offender has not actually received notice of the suspension).

Causes, consequences and responses

A number of Australian and overseas studies have interviewed people convicted of disqualified driving / driving suspended and have attempted to build up a profile of those who engage in this conduct in terms of gender, age and criminal history. Some of these studies have also tried to ascertain the behaviours that may be exhibited by such drivers in terms of safety and the incidence of other offending in conjunction with disqualified driving / driving suspended. A brief précis is provided below.

A 2000 UK study⁴ found that disqualified driving / driving suspended is primarily engaged in by young men. The study found that females made up less than 3 percent of the offenders for disqualified driving. The age profile for disqualified drivers fitted the profile for criminal offences generally – 60-75 percent of offenders were males between the ages of 18 and 32 years of age.⁵ In terms of criminal histories, 79 percent of disqualified drivers had a criminal record compared to 72 percent of mainstream criminal offenders and both groups had a 37 percent likelihood of re-conviction within the next year. The study found that disqualified drivers showed some tendencies to repeat

disqualified driving. It also noted that many of the incidents of serious traffic offences involved multiple crimes being committed in the same course of conduct – 62 percent for serious traffic offences generally. The rate of multiple offending was highest for disqualified driving – 75 percent of prosecutions for this crime involved more than one offence. Other serious traffic offences were considerably less likely to involve multiple offences in the same course of conduct – for example, only 41 percent of the cases of drink driving involved multiple offences being committed. A related 2003 UK study on unlicensed driving (including disqualified driving / driving suspended and unlicensed driving) mirrored these statistics, suggesting that the comparative crash risk of unlicensed drivers was 2.7 to 9 times greater than for licensed drivers.⁶

A 2003 Queensland report⁷ reached very similar conclusions. The report surveyed offenders found guilty of driving disqualified and unlicensed driving and asked them about their attitudes and motivations. The report also utilised the results of existing studies in this area. This report did not distinguish between disqualified / suspended driving and unlicensed driving. Despite this, the results are nevertheless of obvious relevance. The report cited a number of Australian and overseas studies which found that these drivers were involved in a proportionately much greater number of accidents than are licensed drivers. A US study cited in the report found that these drivers were involved in 4 times more accidents and that 11.1 percent of all accidents involved unlicensed drivers.⁸ The report found that many people who drove disqualified and drove suspended cited their employment as the basis for their actions. The report also considered the common belief that disqualified drivers drive *more* safely to avoid detection and dismissed this belief in line with the findings of other Australian studies in the area. The report concluded that unlicensed drivers are a danger to others and themselves. The report also concluded that initiatives to enforce licence disqualification / suspension might be better achieved by using indirect methods. Such methods might include a legal requirement that employers periodically view all employees' licences. Another would be to mandate stricter requirements on road corporations to take steps to make sure all disqualified / suspended licences are kept out of circulation. These mechanisms would help ensure that offenders could not defeat cursory licence checks and generally enhance the likelihood of effective deterrence.⁹ These third party compliance mechanisms would not only help preclude offending – they would also assist in workplace safety.¹⁰

A 1997 Victorian article¹¹ considered the involvement of disqualified drivers and motorcycle drivers in collisions by assessing the Victorian database of crashes with the total reported automotive injuries in a sample period and cross-referencing the data. The article concluded that disqualified drivers and riders were over-represented in serious accidents, crashes occurring in recreational times, single-vehicle crashes and crashes involving stationary objects. The article also discussed earlier research suggesting that

disqualified drivers involved in crashes are 3 times more likely to be drink driving at the time.

A 1990 Western Australian survey of 1,313 disqualified and suspended drivers¹² found that 35.8 percent admitted to driving whilst prohibited from doing so. The authors noted that the cross-tabulation of answers in the survey suggested that this figure was understated rather than overstated by the survey participants. A 2003 Western Australian study¹³ on the use and effectiveness of licence disqualification as a sanction similarly found that more than half of the disqualified drivers surveyed admitted to driving whilst disqualified.

A 2007 UK article¹⁴ attempted to assess the correlation between criminal histories involving motoring offences and criminal histories involving other types of offences by comparing the driving records of 52,000 drivers over a 4 year period with the Home Office Offenders Index. It was found that people who committed between 4 and 8 non-motoring offences committed an average of 21 times as many serious motoring offences and 3.9 times as many non-serious motoring offences as those who committed no non-motoring offences. It found that the strongest relationship between non-motoring and motoring offences was for the offence of disqualified driving. Drivers who committed at least 9 non-motoring offences during the study period committed more than 100 times as many disqualified driving offences than those who committed no non-motoring offences during that period. These results may indicate that disqualified / suspended drivers share a similar profile to criminals found guilty of non-traffic offences. It may also suggest that these drivers may have a general proclivity to offend and, perhaps, that they may be harder to deter.

Sentencing issues

The preceding commentary has discussed the causes of licences being disqualified or suspended and how well such disqualifications are complied with. We now need to consider what other measures could be adopted to address this conduct aside from or additional to licence disqualification / suspension. Given that the above studies overwhelmingly indicate that many drivers drive whilst disqualified or suspended, it has been contended that courts should impose some re-educative / rehabilitative sanction as part of the offender's sentence aimed at addressing aberrant driver behaviour both during and after the disqualification / suspension period.¹⁵ This could take the form of a mandatory order by the court or could simply be a voluntary or semi-voluntary program, the completion of which might persuade the judge or magistrate to reduce or cancel a penalty. At present, where it exists at all, driver education is only required as a part of the re-licensing process rather than as part of the sanction. As such, only those drivers intending to stay within or rejoin the legitimate driving system need to undertake the prescribed training.

Those who decide not to do so may continue to drive heedless and / or ignorant of the dangers that led to the licence disqualification / suspension in the first place. This approach was also favoured in a UK study on disqualified driving¹⁶ which saw it as preferable to imprisonment and fines which it considered being appropriate only in the most serious instances of the offence.

There has been a small amount of academic debate of disqualified driving / driving suspended and the penalties prescribed for it. This research has specifically focused on the appropriateness of prescribing mandatory imprisonment for s 30 recidivists. The researchers contend that this sanction is disproportionate to the gravity of the offence itself and is disproportionate when compared to sanctions for other offences. They note that a whole range of conduct gives rise to licence disqualification / suspension potentially ranging from wilful disregard of a court order to administrative suspension of which the offender may not even be aware. It is also contended that Victoria's sanctions for this class of offence are disproportionate to those prescribed in other Australian jurisdictions.

Summary of findings

The above research indicates the following:

- People convicted of disqualified driving / driving suspended are involved in a proportionately higher number of road accidents than other drivers suggesting that they have a greater risk associated with them.
- Evidence suggests that many of those engaging in disqualified driving / driving suspended also engage in other traffic and non-traffic offences. This may mean that such people have a general proclivity to offend or it may suggest that they have a greater propensity to engage in risk-taking behaviours, or both.
- Rehabilitation / education should be incorporated within the sentencing process and favoured over more retributive penalties such as fines and imprisonment. It is contended that this would not only better address the behaviours leading to disqualification but would also ensure that those resolving not to get re-licensed and who intend to drive would nevertheless have the benefit of such educative programs.
- Raising the risk of detection may assist in deterring disqualified /suspended drivers from driving. This may be enhanced by utilising third parties such as employers to carry out licence checks as part of their workplace safety regime. Closer regulation and control of the licences of disqualified / suspended drivers may also raise the risk of detection by precluding such drivers from using these documents to evade cursory licence checks.

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Endnotes

- ¹ Licence suspensions arising out of enforcement action for non-payment of fines under the *Infringements Act 2006* (Vic) do not fall under s 30. The *Road Safety Act 1986* (Vic) creates a separate offence for this type of suspended driving under s 30AA and expressly excludes it from the operation of s 30.
- ² Nick Turner, *Suspended Sentences in Victoria: A Statistical Profile* (Sentencing Advisory Council, 2007) 8 (http://www.sentencingcouncil.vic.gov.au/wps/wcm/connect/Sentencing+Council/resources/file/eb34e941d123ab7/Suspended_Sentences_Stat_Profile.pdf).
- ³ 'Other' includes adjourned undertaking, community based order, partially suspended sentence, dismissed, youth training centre order, criminal justice diversion program, convicted and discharged, discharged and combined custody and treatment order.
- ⁴ Gerry Rose, *The Criminal Histories of Serious Traffic Offenders* (Research Study 206, Home Office, 2000).
- ⁵ This conclusion was also supported broadly in the Duncan Knox, Blair Turner, David Silcock, *Research into Unlicensed Driving: Final Report* (UK Department for Transport, 2003) 60. Please note - this study concerned both disqualified / suspended drivers as well as unlicensed drivers.
- ⁶ Ibid 17.
- ⁷ Barry Watson, *The Road Safety Implications of Unlicensed Driving: A Survey of Unlicensed Drivers* (Centre for Accident Research and Road Safety and Queensland University of Technology, 2003).
- ⁸ Ibid 6, citing Lindsay Griffin and Sandra de la Zerda, *Unlicensed to Kill* (Foundation for Traffic Safety, 2000). This conclusion was re-confirmed in Robert Scopatz, Clayton Hatch, Barbara Hilger Delucia and Kelly Tays, *Unlicensed to Kill 2* (Foundation for Traffic Safety, 2003).
- ⁹ Watson, above n 7, 27, 43. This approach was also advocated in Knox, Turner and Silcock, above n 5, 118, 119.
- ¹⁰ For a discussion of third party compliance regimes generally, see Peter Grabosky, 'Discussion Paper: Inside the Pyramid: Towards a Conceptual Framework for the Analysis of Regulatory Systems' (1997) 25 *International Journal of the Sociology of Law* 195.
- ¹¹ Warren Harrison, 'An Exploratory Investigation of the Crash Involvement of Disqualified Drivers and Motorcyclists' (1997) 28(2) *Journal of Safety Research* 105.

- ¹² D. Smith and G. Maisey, *Survey of Driving By Disqualified and Suspended Drivers in Western Australia* (Federal Office of Road Safety, 1990).
- ¹³ Anna Ferrante, *The Disqualified Driver Study: A Study of Factors Relevant to the Use of Licence Disqualification as an Effective Legal Sanction in Western Australia* (Crime Research Centre – University of Western Australia, 2003).
- ¹⁴ Jeremy Broughton, 'The Correlation between Motoring and Other Types of Offence' (2007) 39 *Accident Analysis and Prevention* 274.
- ¹⁵ Royal Automobile Club of Victoria, Drink Driver Rehabilitation and Education in Victoria (Research Report 05/01, RACV, 2005). See also Sentencing Advisory Council, Maximum Penalties for Repeat Drink Driving (Report, Sentencing Advisory Council, 2005) 32 (http://www.sentencingcouncil.vic.gov.au/wps/wcm/connect/Sentencing+Council/resources/file/ebacf90d9a7a596/Maximum_Penalties_Repeat_Drink_Driving_Report_2005.pdf).
- ¹⁶ Knox, Turner and Silcock, above n 5, 118-20.

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