

Sentencing Snapshot

Sentencing trends
in the Magistrates'
Court of Victoria
2004–05 to 2007–08

April 2009
No. 72

Driving while disqualified

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of driving while disqualified and details the age and gender² of people sentenced for this offence in the Magistrates' Court of Victoria between 2004–05 and 2007–08.

A person commits the offence of driving while disqualified if he or she drives during a period in which he or she has been disqualified from obtaining a driver's licence or permit.³ The penalty prescribed for a first offence is 30 penalty units⁴ or imprisonment for 4 months, or for a subsequent offence imprisonment for a minimum of 1 month and a maximum of 2 years.⁵

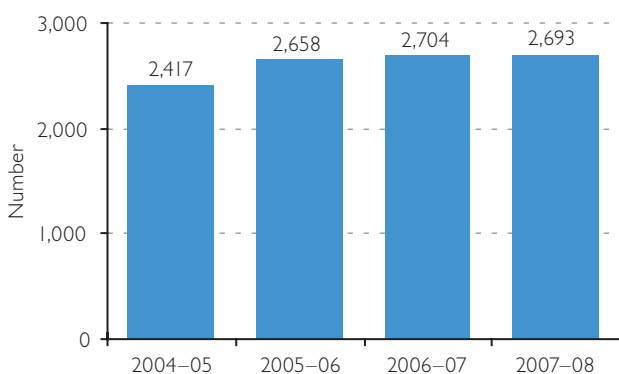
Driving while disqualified is a summary offence and is thus triable in the Magistrates' Court, though it may be tried alongside more serious charges in a higher court.

Driving while disqualified was the principal offence in 3.8% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

People sentenced

Over the four-year period, the Magistrates' Court sentenced 10,472 people for the principal offence of driving while disqualified. In 2007–08, there were 2,693 people who were sentenced for the principal proven offence of driving while disqualified.⁶ This remained relatively stable with the previous two years.

Figure 1: The number of people sentenced for driving while disqualified, 2004–05 to 2007–08



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for driving while disqualified during 2004–05 to 2007–08. Over the four-year period, just over half of those sentenced for driving while disqualified received a non-custodial sentence (5,257 people or 50.2%), including 4,982 people who received a fine (47.6%).

There were also 3,886 people who received a non-immediate custodial sentence (37.1%), including 3,187 people who received a wholly suspended sentence (30.4%).

An additional 4 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).⁷

Table 1: The number and percentage of people sentenced for driving while disqualified by sentence type, 2004–05 to 2007–08

Sentence Type	Total	%
Immediate custodial	1,329	12.7
Imprisonment	1,063	10.2
Partially suspended sentence	248	2.4
Youth justice centre order	18	0.2
Other custodial	3,886	37.1
Drug treatment order	7	0.1
Home detention order	21	0.2
Wholly suspended sentence	3,187	30.4
Intensive correction order	671	6.4
Non-custodial	5,257	50.2
Community-based order	147	1.4
Fine	4,982	47.6
Adjourned undertaking	121	1.2
Convicted and discharged (s 73 SA)	5	0.0
Dismissed (s 76 SA)	2	0.0
People sentenced	10,472	100.0
Criminal justice diversion program	4	
Total dispositions	10,476	

Sentencing outcomes by year

Table 3 shows the number and percentage of people sentenced each year from 2004–05 to 2007–08 for driving while disqualified by the type of sentence imposed.

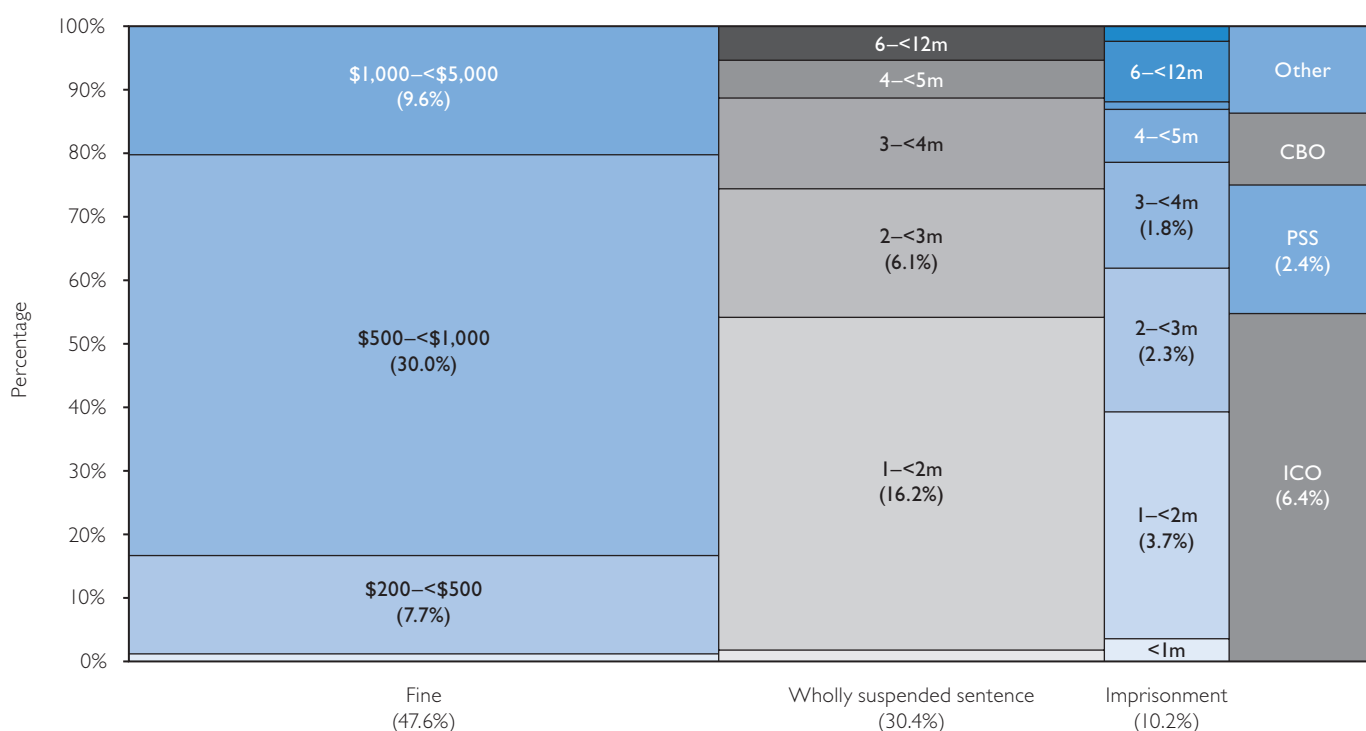
The number and percentage of people who received an immediate custodial sentence decreased from 334 people and 13.8% in 2004–05 to 292 people and 10.8% in 2007–08.

While the number of people who received a non-immediate custodial sentence increased from 923 people in 2004–05 to 1,003 people in 2007–08, the percentage of people slightly decreased over the same period from 38.2% to 37.2%. The number and percentage of people who received a non-custodial sentence increased from 1,160 people and 48.0% in 2004–05 to 1,398 people and 51.9% in 2007–08.

Sentencing Map

Figure 3 presents both the sentencing outcomes and the quanta for those outcomes for people sentenced for driving while disqualified. For example, 47.6% of people sentenced received a fine, including 30.0% who received a fine of \$500 to less than \$1,000. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

Figure 3: Sentencing Map: The percentage of people sentenced for driving while disqualified by sentencing outcomes and sentencing quanta, 2004–05 to 2007–08¹²



Note: ICO refers to intensive correction order; PSS refers to partially suspended sentence and CBO refers to community-based order. Other includes adjourned undertaking, home detention order; youth justice centre order; drug treatment order; convicted and discharged (s 73 SA) and dismissed (s 76 SA).

Table 3: The number and percentage of people sentenced for driving while disqualified by sentence type and year, 2004–05 to 2007–08¹¹

Sentence Type	2004–05	2005–06	2006–07	2007–08
Immediate custodial	334 (13.8%)	368 (13.8%)	335 (12.4%)	292 (10.8%)
Imprisonment	255 (10.6%)	282 (10.6%)	277 (10.2%)	249 (9.2%)
Partially suspended sentence	72 (3.0%)	79 (3.0%)	56 (2.1%)	41 (1.5%)
Youth justice centre order	7 (0.3%)	7 (0.3%)	2 (<0.1%)	2 (<0.1%)
Other custodial	923 (38.2%)	998 (37.5%)	962 (35.6%)	1,003 (37.2%)
Drug treatment order	1 (<0.1%)	1 (<0.1%)	3 (0.1%)	2 (<0.1%)
Home detention order	2 (<0.1%)	8 (0.3%)	4 (0.1%)	7 (0.3%)
Wholly suspended sentence	775 (32.1%)	811 (30.5%)	783 (29.0%)	818 (30.4%)
Intensive correction order	145 (6.0%)	178 (6.7%)	172 (6.4%)	176 (6.5%)
Non-custodial	1,160 (48.0%)	1,292 (48.6%)	1,407 (52.0%)	1,398 (51.9%)
Community-based order	29 (1.2%)	40 (1.5%)	45 (1.7%)	33 (1.2%)
Fine	1,106 (45.8%)	1,228 (46.2%)	1,329 (49.1%)	1,319 (49.0%)
Adjourned undertaking	25 (1.0%)	23 (0.9%)	29 (1.1%)	44 (1.6%)
Convicted and discharged (s 73 SA)	0 –	1 (<0.1%)	2 (<0.1%)	2 (<0.1%)
Dismissed (s 76 SA)			2 (<0.1%)	0 –
People sentenced	2,417	2,658	2,704	2,693

Principal sentence

This section examines the use of the three most common principal sentencing outcomes for this offence.¹³ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided.¹⁴ Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.¹⁵

The three most common sentences imposed for driving while disqualified are fine, wholly suspended sentence and imprisonment.

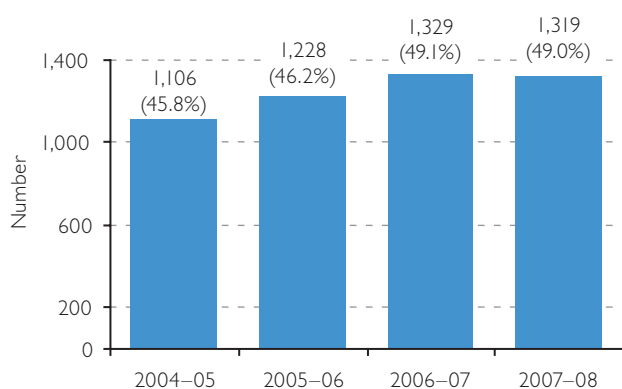
Fine

Trends

There were 4,982 people who received a fine for driving while disqualified. This represented 47.6% of all people sentenced for this offence. Of the 2,648 people who received a fine in 2006–07 and 2007–08, 88.1% also had a conviction recorded (2,334 people). Figure 4 shows the trends in the number and percentage of people who received a fine for driving while disqualified.

In 2007–08, 1,319 people received a fine for the principal proven offence of driving while disqualified. This has increased each of the past three years from 1,106 people in 2004–05. The proportion of people who received a fine for driving while disqualified remained relatively stable over the past four years, ranging from 45.8% in 2004–05 to 49.1% in 2006–07.

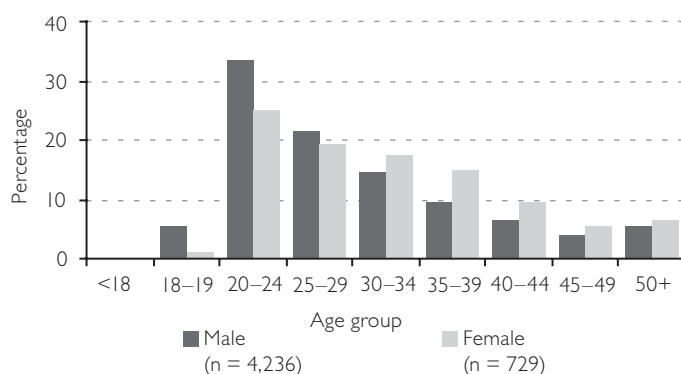
Figure 4: The number and percentage of people who received a fine for driving while disqualified, 2004–05 to 2007–08



Age and gender

Of the 4,982 people who received a fine, 85.3% were men. Figure 5 shows the age groups of people who received a fine for driving while disqualified by gender. The median age of these people was 27 years, while women were much older than their male counterparts (a median age of 31 years compared to 27 years).

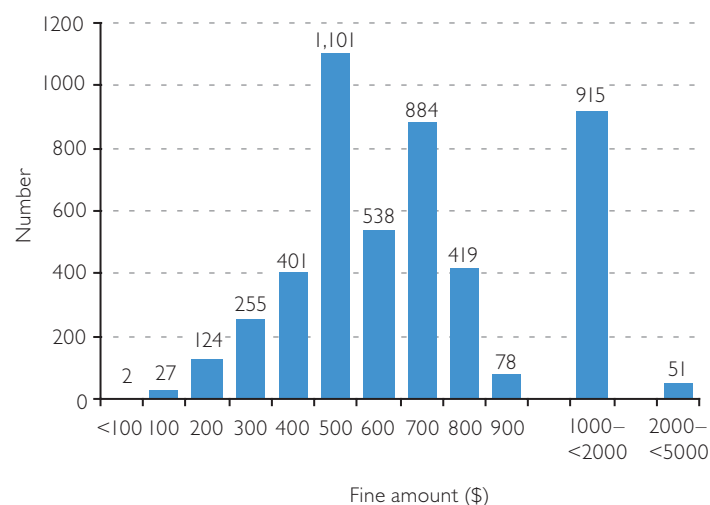
Figure 5: The percentage of people who received a fine for driving while disqualified by age and gender, 2004–05 to 2007–08



Fine Amount

Figure 6 shows the number of people who received a fine for driving while disqualified by the amount of the fine. While the amount of the fine ranged from \$50 to \$4,000, the median was \$600. Aggregate fines were imposed for 32.7% of people who received a fine.¹⁶

Figure 6: The number of people who received a fine for driving while disqualified by the amount of the fine, 2004–05 to 2007–08



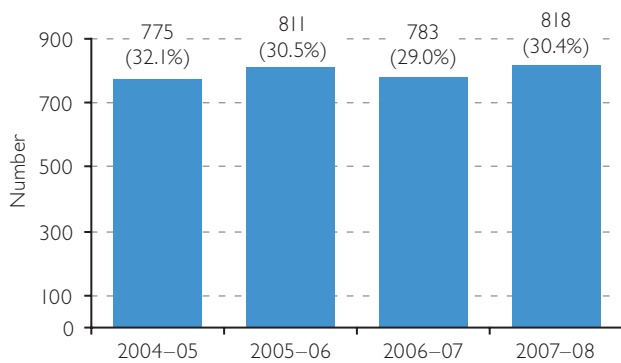
Wholly suspended sentence

Trends

There were 3,187 people who received a wholly suspended sentence for driving while disqualified. This represented 30.4% of all people sentenced for this offence. Figure 7 shows the trends in the number and percentage of people who received a wholly suspended sentence for driving while disqualified.

In 2007–08, 818 people received a wholly suspended sentence for the principal proven offence of driving while disqualified. This has remained relatively stable over the past four years, ranging from 775 people in 2004–05 to 818 in 2007–08. Also, the proportion of people who received a wholly suspended sentence for driving while disqualified remained relatively stable over the past four years, ranging from 29.0% in 2006–07 to 32.1% in 2004–05.

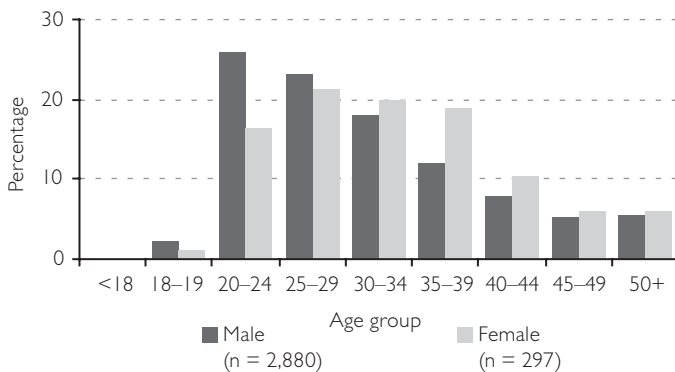
Figure 7: The number and percentage of people who received a wholly suspended sentence for driving while disqualified, 2004–05 to 2007–08



Age and gender

Of the 3,187 people who received a wholly suspended sentence, 90.7% were men. Figure 8 shows the age groups of people who received a wholly suspended sentence for driving while disqualified by gender. The median age of these people was 29 years, while women were generally older than their male counterparts (a median age of 32 years compared to 29 years).

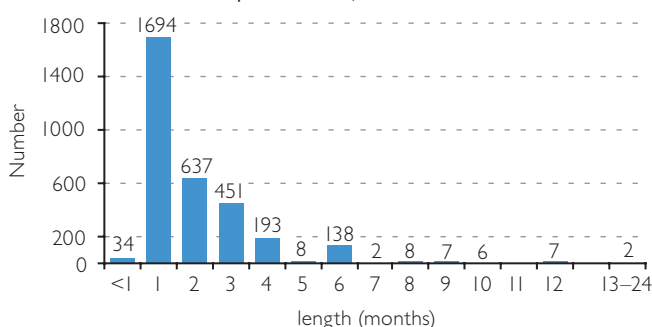
Figure 8: The percentage of people who received a wholly suspended sentence for driving while disqualified by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 9 shows the number of people who received a wholly suspended sentence for driving while disqualified by the length of the sentence. While the length of wholly suspended sentences ranged from seven days to one year and three months, the median was one month (meaning that half were shorter than one month and half were longer than one month). Aggregate wholly suspended sentences were imposed for 16.5% of people who received a wholly suspended sentence.¹⁷ The majority of operational periods were 12 months (58.1%).

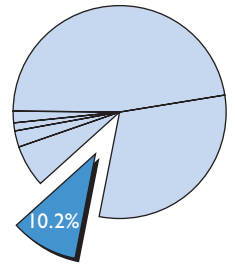
Figure 9: The number of people who received a wholly suspended sentence for driving while disqualified by the length of sentence of imprisonment, 2004–05 to 2007–08



Imprisonment

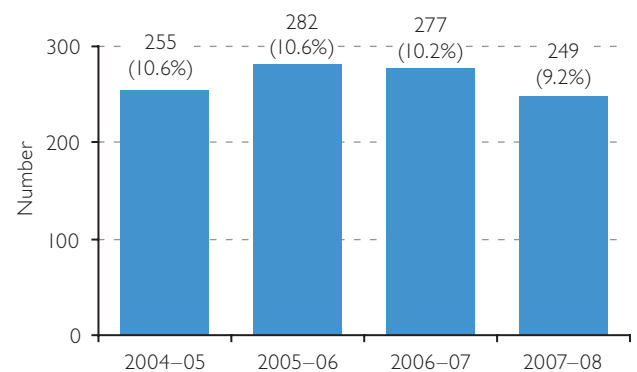
Trends

There were 1,063 people who were sentenced to imprisonment for driving while disqualified. This represented 10.2% of all people sentenced for this offence. Figure 10 shows the trends in the number and percentage of people who were sentenced to imprisonment for driving while disqualified.



In 2007–08, 249 people were sentenced to imprisonment for the principal proven offence of driving while disqualified. This has decreased each of the past two years from 282 people in 2005–06, after increasing the previous year. Also, the proportion of people who were sentenced to imprisonment for driving while disqualified decreased over the past year from 10.2% to 9.2%.

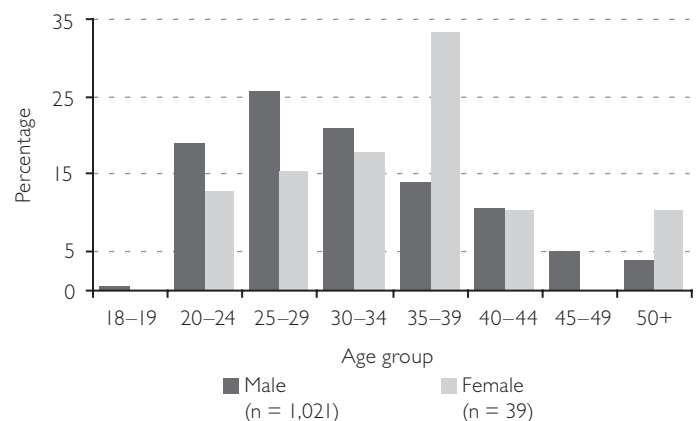
Figure 10: The number and percentage of people who were sentenced to imprisonment for driving while disqualified, 2004–05 to 2007–08



Age and gender

Of the 1,063 people who received a period of imprisonment, 96.3% were men. Figure 11 shows the age groups of people who were sentenced to imprisonment for driving while disqualified by gender. The median age of these people was 31 years, while women were much older than their male counterparts (a median age of 35 years compared to 31 years).

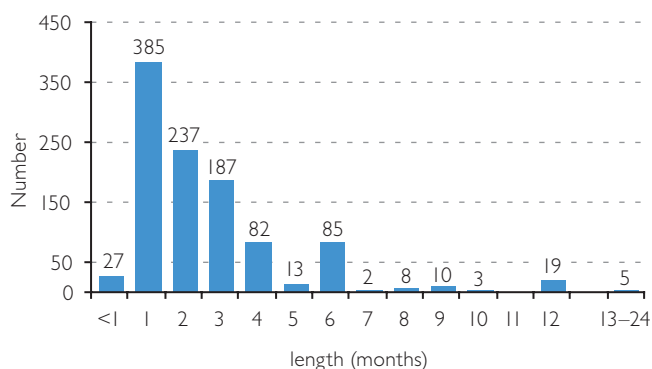
Figure 11: The percentage of people who were sentenced to imprisonment for driving while disqualified by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 12 shows the number of people who were sentenced to imprisonment for driving while disqualified by the length of the sentence. While the length of imprisonment ranged from one day to one year and six months, the median was two months (meaning that half were shorter than two months and half were longer than two months). Aggregate periods of imprisonment were imposed for 22.8% of people who were sentenced to imprisonment.¹⁸

Figure 12: The number of people who were sentenced to imprisonment for driving while disqualified by the length of order, 2004–05 to 2007–08

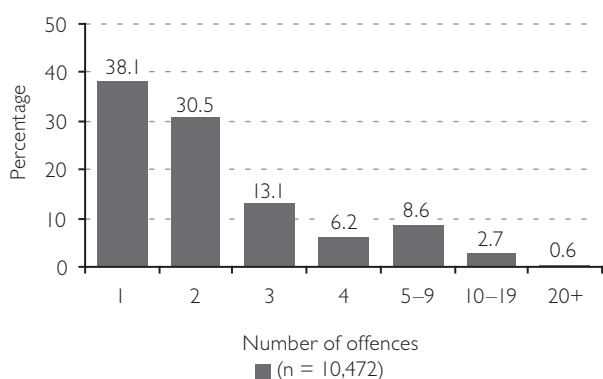


Other offences finalised at the same hearing

Often people prosecuted for driving while disqualified face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of driving while disqualified.

Figure 13 shows the percentage of people sentenced for the principal offence of driving while disqualified by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 68, while the median was 2 offences. There were 3,994 people (38.1%) sentenced for the single offence of driving while disqualified alone. A higher percentage of women were sentenced for a single offence only (46.4% compared to 37.1% of men). The average number of offences per person sentenced for driving while disqualified was 2.70.

Figure 13: The percentage of cases where driving while disqualified was the principal offence by the number of offences where a sentence was imposed in that case, 2004–05 to 2007–08



While Figure 13 presents the number of sentenced offences for those sentenced for driving while disqualified, Table 4 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 2,920 of the total 10,472 people (27.9%) also received sentences for using an unregistered vehicle. On average, they were sentenced for 1.30 charges of using an unregistered vehicle. The first row indicates that the average number of charges of driving while disqualified sentenced per person was 1.27.

Table 4: The number and percentage of people sentenced for the principal offence of driving while disqualified by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2007–08

Offence	No.	%	Avg.
1 drive while disqualified	10,472	100.0	1.27
2 use an unregistered vehicle	2,920	27.9	1.30
3 drive at speed over the speed limit	793	7.6	1.07
4 drink driving (s 49.1(f) RSA)	730	7.0	1.11
5 exceed signed speed limit – 100 kph	469	4.5	1.04
6 failing to appear on bail	452	4.3	1.47
7 state false address when requested (RSA)	441	4.2	1.15
8 fraudulently alter identifying number	380	3.6	1.30
9 driver fail to wear seatbelt	358	3.4	1.03
10 careless driving	327	3.1	1.05
People sentenced	10,472	100.0	2.70

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of driving while disqualified. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.¹⁹

Table 5 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004–05 to 2007–08 where the principal proven offence was driving while disqualified, by the other sentence types also imposed in the case. For example, of the 8,326 people who received a fine as part of their total effective sentence, 25.0% also received a wholly suspended sentence.

Common sentence types imposed in conjunction with another sentence type include:

- a fine with an imprisonment term (64.0% of the 1,097 people who were sentenced to imprisonment);
- a fine with a wholly suspended sentence (64.0% of the 3,255 people);
- a fine with an intensive correction order (62.6% of the 676 people);
- a wholly suspended sentence with a community-based order (58.6% of the 425 people);
- a wholly suspended sentence with an adjourned undertaking (36.7% of the 305 people);
- a fine with a community-based order (30.8% of the 425 people); and
- a fine with an adjourned undertaking (27.9% of the 305 people).

Table 5: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004–05 to 2007–08

	Fine	WSS	Imp.	ICO	CBO	ADU
Fine	100%	64.0%	64.0%	62.6%	30.8%	27.9%
WSS	25.0%	100%	3.0%	2.4%	58.6%	36.7%
Imp.	8.4%	1.0%	100%	0.6%	3.5%	2.3%
ICO	5.1%	0.5%	0.4%	100%	2.8%	5.6%
CBO	1.6%	7.6%	1.4%	1.8%	100%	3.6%
ADU	1.0%	3.4%	0.6%	2.5%	2.6%	100%
Total	8,326	3,255	1,097	676	425	305

Note: WSS refers to wholly suspended sentence, Imp. refers to imprisonment, ICO refers to intensive correction order, CBO refers to community-based order and ADU refers to adjourned undertaking.

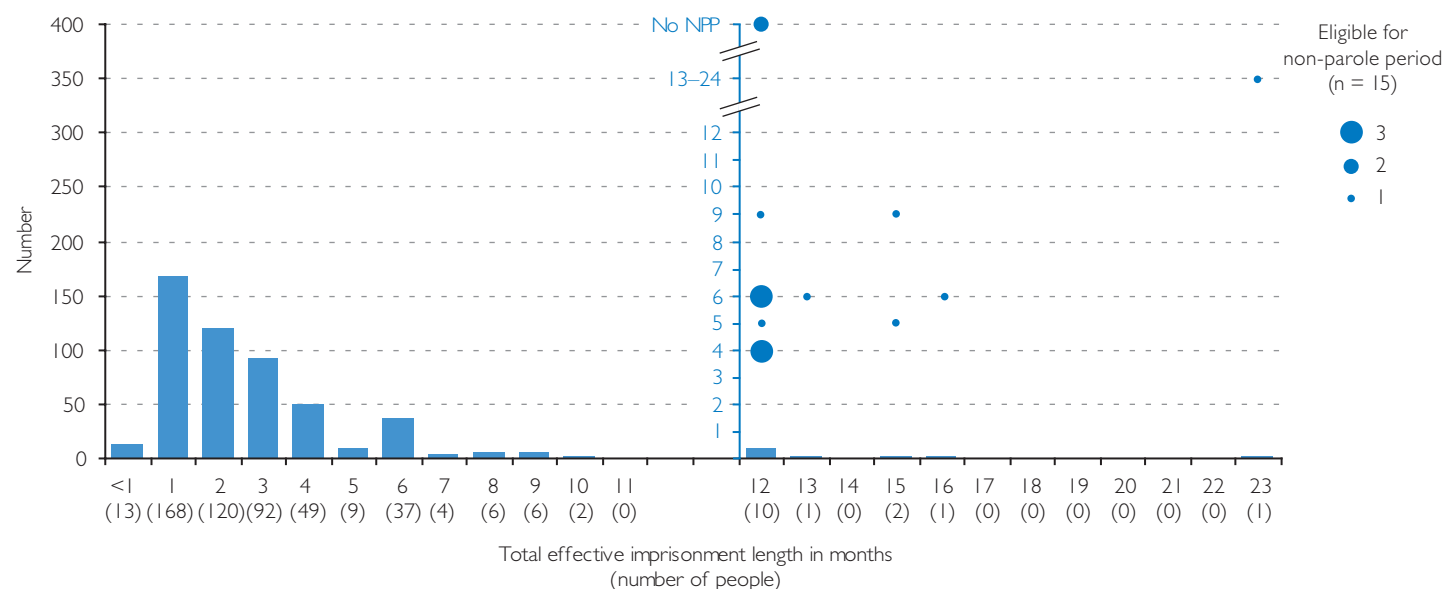
Total effective sentence of imprisonment and non-parole period

The total effective sentence of imprisonment aggregates the sentences of imprisonment imposed for each charge in a case and takes into account whether the court orders sentences to be served concurrently (at the same time) or cumulatively. When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where the court does not set a non-parole period, the person must serve the entirety of the imprisonment term.

There were 521 people given a total effective sentence of imprisonment in 2006–07 and 2007–08.²⁰ There were 15 people eligible for a non-parole period in 2006–07 and 2007–08, of whom 13 were given a non-parole period. This makes up 2.5% of all those who were given a total effective sentence of imprisonment.

Figure 14 shows the number of people sentenced to imprisonment for driving while disqualified during 2006–07 and 2007–08 by the length of their total effective sentence.

Figure 14: The number of people sentenced to imprisonment for driving while disqualified by the total effective sentence length and the non-parole period imposed, 2006–07 and 2007–08



The right side of the graph also shows the length of non-parole periods for people who were sentenced to a period of 12 months' imprisonment or more. The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination.²¹

Total effective imprisonment lengths ranged from seven days to one year and eleven months, while the most common length was 1 month (168 people).

For people who were sentenced to a term of imprisonment of 12 months or longer, the most common combinations of imprisonment length and non-parole period were one year with a non-parole period of six months, and one year with a non-parole period of four months (3 people each – as represented by the largest bubbles on the chart). The longest total effective sentence imposed was one year and eleven months with a non-parole period of one year and two months.

Summary

The Magistrates' Court sentenced 10,472 people for the principal offence of driving while disqualified between 2004–05 and 2007–08. Over this period, the majority of those sentenced were men (9,287 people or 88.7%), while 67% were aged between 20 and 35 years.

Just over half of the people sentenced for driving while disqualified received a non-custodial sentence (5,257 people or 50.2%), including 4,982 people who received a fine (47.6%). A conviction was recorded with the principal sentence for 93.3% of people sentenced.

Men were more likely to receive sentences of imprisonment and wholly suspended sentences. Conversely, women were more likely to receive fines.

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence. Conversely, a higher percentage of younger people received a non-custodial sentence, including a fine.

Each of the 10,472 people was sentenced for an average of 2.70 offences, including 1.27 offences of driving while disqualified. The most common offence finalised in conjunction with driving while disqualified was using an unregistered vehicle (27.9% of all cases).

Common sentence types imposed in conjunction with another sentence type included a fine with an imprisonment term (64.0% of the 1,097 people who were sentenced to imprisonment), a fine with a wholly suspended sentence (64.0% of the 3,255 people), a fine with an intensive correction order (62.6% of the 676 people), a wholly suspended sentence with a community-based order (58.6% of the 425 people), a wholly suspended sentence with an adjourned undertaking (36.7% of the 305 people), a fine with a community-based order (30.8% of the 425 people) and a fine with an adjourned undertaking (27.9% of the 305 people).

Lengths of total effective sentences ranged from seven days to one year and eleven months with a non-parole period of one year and two months. The most common length was 1 month (168 people).

1 The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of driving while disqualified in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for driving while disqualified who received a more serious sentence for another offence on the same charge sheet.

2 The data used for analysis in this report contain information on age and gender characteristics. Indigenous status was unknown for 97.9% of people sentenced over this period. Therefore no analyses are presented on Indigenous status.

3 *Road Safety Act 1986* (Vic) s 30(1).

4 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website <www.ocpc.vic.gov.au>.

5 *Road Safety Act 1986* (Vic) s 30(1).

6 The number of people sentenced excludes those who participated in the criminal justice diversion program.

Only the people who had charges that were dismissed in 2006–07 and 2007–08 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (*Children, Youth and Families Act 2005* (Vic) s 360(1)(a)) or 'dismissed' (*Sentencing Act 1991* (Vic) s 76). The charges that were dismissed in 2004–05 and 2005–06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the four-year period could be an under-representation. In 2007–08, 2 people had charges that were dismissed pursuant to this legislation. This made up 0.07% of people sentenced in that year.

7 The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.

8 *Sentencing Act 1991* (Vic) s 7, 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social wellbeing or on his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).

9 Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004–05 and 2005–06.

10 The age was unknown for 29 men and 4 women sentenced for driving while disqualified (0.3%). These people are excluded from all age analyses in this report.

11 Refer fn. 6.

12 Aggregate sentence lengths are shown for people who received an aggregate sentence.

13 The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.

14 Where there are sufficient numbers of both males and females sentenced for each sentencing outcome, the age groups are shown by gender. Otherwise the age groups are shown independent of gender. Also, the age was unknown for 33 people sentenced for driving while disqualified. These people are excluded from these analyses.

15 Aggregate sentence lengths are shown for people who received an aggregate sentence. Fine amounts lower than \$1,000 are rounded up to the nearest \$100, while fine amounts equal to or over \$1,000 are grouped into categories. Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006–07 and 2007–08.

16 The amount of non-aggregate fines ranged from \$50 to \$3,000, with a median of \$600, while the amount of aggregate fines ranged from \$100 to \$4,000, with a median of \$700.

17 The length of non-aggregate wholly suspended sentences ranged from seven days to one year and three months, with a median of one month, while the length of aggregate wholly suspended sentences ranged from thirteen days to one year, with a median of three months.

18 The length of non-aggregate periods of imprisonment ranged from one day to one year and six months, with a median of two months, while the length of aggregate periods of imprisonment ranged from thirteen days to one year and six months, with a median of three months.

19 While a total of 1,097 people were sentenced to at least one period of imprisonment in the case, 1,063 people had imprisonment listed against their principal proven offence. There were 34 people sentenced to a period of imprisonment, but who received a partially suspended sentence of imprisonment for the principal proven offence.

Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.

20 Total effective imprisonment lengths and non-parole periods are only available for 2006–07 and 2007–08.

21 Non-parole periods are rounded down to the nearest month, while non-parole periods greater than one year are grouped into categories of years.

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