

Sentencing Advisory Council

Annual Report 2008–2009

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Highlights of the year

- In April 2009 the Council released its report on *Driving While Disqualified or Suspended* recommending a package of reforms.
- In June 2009 the Council released its report on *Sentencing Practices for Breach of Family Violence Intervention Orders* examining current sentencing practices and setting out a set of guiding principles.
- During 2008–09 the Council published 23 Snapshots for the Magistrates' Court. The reports contain previously unpublished statistics on sentence outcomes in the Magistrates' Court of Victoria for the four years between July 2004 and June 2008.
- For the first time since its establishment, the Council is conducting a large-scale, representative survey of public opinion about sentencing. The Council has joined a multi-jurisdictional, national research project that is being funded by the Australian Research Council.
- The Council's reports and Sentencing Snapshots were cited in more than 30 judgments during 2008–09 in the Court of Appeal, the Supreme Court and the County Court.
- Chair of the Council, Professor Arie Freiberg, received an honour as part of the Queen's Birthday awards by becoming a member of the Order of Australia.

Chair's Foreword

In an extraordinarily difficult financial climate it was a great pleasure and relief to learn that the Council had received ongoing funding in the 2009 state budget. There are many competing demands on the resources of the state and it would have been understandable had the government decided to prioritise hospitals, schools or roads over one of the government's many advisory bodies.

However, the decision to continue the operation of the Council after its initial five-year period is a welcome vote of confidence in the Council and its work and a recognition of its important role in the development of sentencing policy. The Council's Chief Executive Officer, Mr Stephen Farrow, summarises some of the findings of the independent evaluation of the Council in his report, among the most important of which are the confidence that stakeholders have in the Council's processes and the fairness of its reports, and the general belief that the quality of decision-making about sentencing has improved. Important also are the independent indicators of the value and impact of the Council's work – citations by the courts and academics, downloads of its documents from the website, and adoption of its recommendations. To date, most of the Council's recommendations have been swiftly implemented.

Two major reports whose adoption would have significant effects on the criminal justice system have yet to receive formal responses. The first, on high-risk offenders, published in May 2007, dealt with the highly controversial issue of the disposition of sex offenders following the expiration of their sentence. The second, on suspended sentences and intermediate sentencing orders, published in April 2008, recommended a major overhaul of the sentencing hierarchy. Both require major legislative reform and a considerable investment of resources. These remain matters for government.

The evaluation, completed in August 2008, documented that since its establishment, the Council had released 51 statistical publications, had undertaken research in twelve areas resulting in 25 research publications totalling nearly 2,300 pages, had involved 1,100 individuals in 'You be the Judge' sessions and had distributed 780 teachers' kits. It concluded that the Council had provided value for money.

The evaluation of the Council recommended that more work should be undertaken in relation to the Council's community engagement activities and the Council has happily accepted this advice. This year's annual report indicates that we have increased our activity in this area and will continue to devote more resources to this one statutory function that distinguishes us from most other sentencing councils or commissions elsewhere.

As always, the Council is only able to fulfil its functions with the very capable and enthusiastic assistance of the staff of the Secretariat, ably led by its CEO, Stephen Farrow. Stephen's leadership of his team, and his capacity to work harmoniously with the Department of Justice and with external stakeholders have ensured the continued success of the Council. His meticulous and tireless work in preparing the submission to government was instrumental in producing the favourable budgetary outcome.

My fellow Council members continue selflessly to contribute their time, wisdom and energy to the ongoing project of sentencing reform. The amount of work required of them is not insignificant and they carry out their duties not only conscientiously, but collegially and with good humour. Though it is invidious to single out any individual Council members, we congratulate Mr Simon Overland on his appointment as Chief Commissioner of Police and thank him for remaining on the Council when it would have been easier to step down. We also congratulate Ms Carmel Arthur on her appointment to the Adult Parole Board and Ms Barbara Rozenes on becoming President of Court Network.



Professor Arie Freiberg
Chair



Professor
Arie Freiberg

CEO's Report

When the Council was established in 2004, it was funded for a fixed term with the stipulation that ongoing funding could be sought following an independent evaluation of its work. In February 2008 the Department of Justice engaged Success Works to conduct an evaluation of the Council. The evaluation involved both an examination of the Council's outputs and interviews with sixty individuals, including representatives of victims of crime organisations, journalists, legal practitioners, judges and government representatives.

In its report, which was submitted to the Department of Justice in August 2008, Success Works observed that:

almost without exception, these individuals were positive about the value and contribution of SAC [...] Many felt that SAC had gone a long way toward the achievement of its longer term outcomes. Judicial officers and defence and prosecution representatives felt that SAC has had a significant impact on the consistency of sentences. They, and victims of crime and government representatives, felt that there was improved support for sentencing decisions and for sentencing reforms as a result of the efforts of the SAC. Judicial officers and government interviewees felt that SAC's research and consultation efforts had resulted in sentencing reforms which were well grounded and reflecting best practice. Journalists and victims of crime representatives felt that they had a better understanding of sentencing processes and issues as a result of SAC's work.

Success Works concluded that 'SAC is a highly effective and successful organisation that represents value for money for the Victorian Government' and recommended that SAC be established on a permanent and ongoing basis.

Ongoing funding was secured in the 2009 State Budget. This will enable the Council to continue to fulfil its important role and is a credit to the work of its members and staff over the past five years.

The many achievements listed in this report are a testament to the hard work and skills of the staff of the secretariat in conducting research, analysing data, consulting with stakeholders, preparing papers and providing assistance to Council members. It is a pleasure to lead such an enthusiastic and talented team, and I thank each member of staff who contributed over the past year.

During the past financial year, the Council held many meetings, roundtables and forums with a wide range of stakeholders and received a large number of submissions. The Council greatly values the input provided by people who contribute their time and energy in taking part in our consultation processes.

The Council benefits from the cooperation of many parts of the Department of Justice. In particular, I would like to thank John Griffin, Executive Director Courts, for his support and advice. The Courts Statistical Services Unit, the Courtlink unit of the Magistrates' Court and Corrections Victoria have continued to assist us with access to data for our analyses and publications.

One of the Council's great strengths is the diversity of its members. They bring a wealth of experience to the Council's deliberations and they have each contributed in many ways: attending meetings, facilitating roundtables with stakeholders and providing comments on draft documents.

Finally, I would like to thank the Council's Chair, Professor Arie Freiberg. On 8 June 2009 Professor Freiberg received a rare honour as part of the Queen's Birthday awards by becoming a member of the Order of Australia (AM) for 'service to the law, particularly in the fields of criminology and reform relating to sentencing, to legal education and academic leadership'.

His tireless work as Chair of the Council doubtless played a significant part in this award, and I would like to congratulate him on behalf of all of the staff of the Council. We are very aware of his energy, enthusiasm and commitment and the enormous impact that he has had, and continues to have, on sentencing reform, and are delighted to see that it has been recognised in this very public way.



Stephen Farrow
Chief Executive Officer



Stephen Farrow

Functions and Objectives

Our Functions

The Sentencing Advisory Council is an independent statutory body that was established in 2004 under amendments to the *Sentencing Act 1991*. The Council was formed to implement a key recommendation arising out of Professor Arie Freiberg's 2002 *Pathways to Justice* report. This report recognised the need for a body that would allow properly informed public opinion to be taken into account in the sentencing process, and that would also facilitate the dissemination of up-to-date and accurate sentencing data to assist judges in their role, promote consistency in sentencing outcomes and inform the community more generally on sentencing issues.

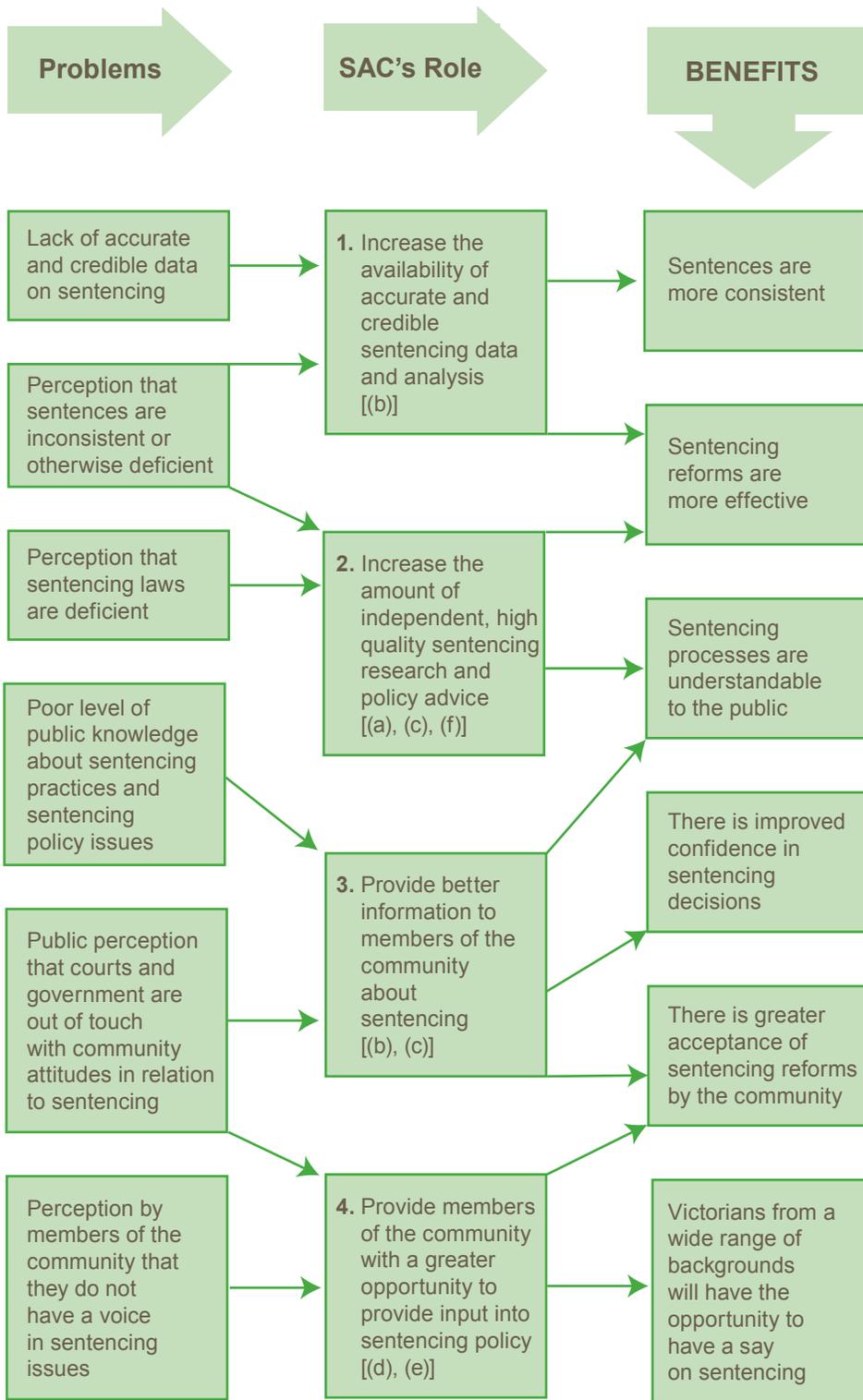
Under section 108C of the *Sentencing Act 1991*, the functions of the Council are:

- a) to state in writing to the Court of Appeal its views in relation to the giving, or review, of a guideline judgment;
- b) to provide statistical information on sentencing, including information on current sentencing practices, to members of the judiciary and other interested persons;
- c) to conduct research, and disseminate information to members of the judiciary and other interested persons, on sentencing matters;
- d) to gauge public opinion on sentencing matters;
- e) to consult, on sentencing matters, with government departments and other interested persons and bodies as well as the general public; and
- f) to advise the Attorney-General on sentencing matters.

In his second reading speech introducing the provisions establishing the Council, the Attorney-General stated that the Council would 'allow properly ascertained and informed public opinion to be taken into account in the criminal justice system on a permanent and formal basis'.

The Attorney-General indicated that this would be achieved through the broad membership of the Council, because the Council comprises people with broad community experience in issues affecting courts and members of victim of crime support or advocacy groups as well as experienced legal practitioners. The Attorney-General envisaged that this would facilitate broad community input into the activities of the Council and would ensure that the justice system is informed by the views and experience of the community.

Figure 1 identifies the context of the Council's role and its statutory functions (indicated in the figure by the letters that refer to the statutory functions listed above) and the benefits that flow from the Council's work.



**FIGURE 1:
THE CONTEXT FOR THE
COUNCIL'S ROLE**

Soon after it was established, the Council summarised its role as:

Bridging the gap between the community, the courts and government by informing, educating and advising on sentencing issues

The work of the Council revolves around providing sound evidence upon which to base sentencing policies and practice, and increasing community confidence in those sentencing policies and practices. As figure 1 illustrates, the objectives of the Council are:

- to increase the availability of accurate and credible sentencing data and analysis;
- to increase the amount of independent, high quality sentencing research and policy advice;
- to provide better information to members of the community about sentencing; and
- to provide members of the community with a greater opportunity to provide input into sentencing policy.

The community that the Council serves is diverse and complex; this is reflected in the breadth and variety of Council publications and activities. Those with an interest in the Council's projects can

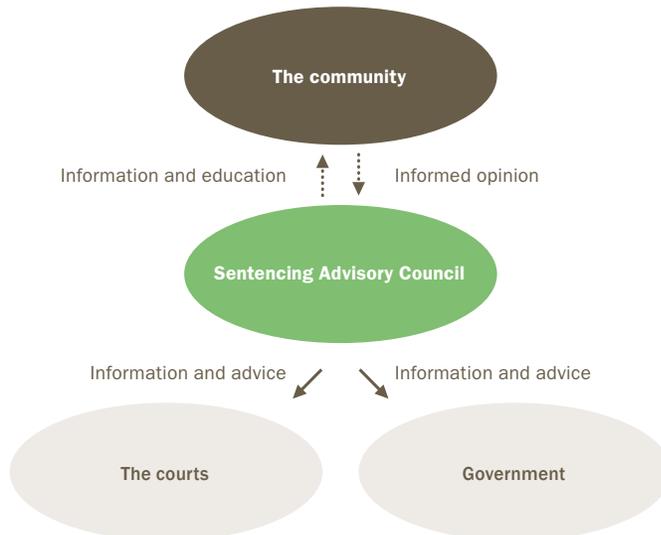
participate in ways such as responding to discussion papers, taking part in consultation forums or providing advice and feedback on specific issues and areas of expertise.

During 2008–09 the Council consulted with a wide range of individuals and organisations, both in Melbourne and in regional Victoria. Some of the stakeholders with whom we consulted included judges, magistrates, court staff, victims, offenders, victim advocacy groups, offender support organisations, police, academics, legal practitioners, psychologists and child development experts, road safety experts, community legal centres, departmental officers and staff from Corrections Victoria.

The role of the Council can be pictured as in figure 2.

The diagram shows the four basic flows of information, education and advice both to and from the Council. The arrows between the community and the Council are dotted to emphasise that there is not a sharp distinction between the two, as section 108F of the *Sentencing Act 1991* (Vic) requires that at least two members of the Council have broad experience in community issues affecting the courts.

**FIGURE 2:
ROLE OF THE
SENTENCING
ADVISORY COUNCIL**



Our Guiding Principles

The Council has agreed on a set of guiding principles to underpin the way in which it carries out its functions. The objective is to ensure that our work is of the highest quality and that the Council maintains productive and responsive relationships with its stakeholders.

The Council is committed to:

- demonstrating integrity through evidence-based information and advice;
- adopting an inclusive, consultative, and open approach to our work;
- maintaining independence in the process of building a bridge between government, the judiciary and the community;
- being responsive to the needs of stakeholders; and
- supporting and developing staff.

Our Recent Achievements

In 2008 the Department of Justice commissioned an independent evaluation of the Council. The evaluation concluded that there is an ongoing need for the Council and recommended that it be established on an ongoing basis. Based on interviews with the Council's stakeholders, the evaluation concluded that:

SAC represents a best practice approach to sentencing law reform in relation to its consultation processes; quality of reports; accessibility; public education programs; lack of bias; diverse membership; high quality staff and chair; independence from government and judiciary; capacity to generate its own research and the provision of a voice for the community in the sentencing process.

The evaluation noted that when complex and emotive sentencing issues arise, the Attorney-General is able to refer the matter to the Council for consultation and advice. The Council enables members of the community to be engaged in the development of sentencing policy without sentencing policy becoming simply populist. The Council's public education

work is a key part of this. A stakeholder is quoted in the evaluation report stating that:

Sentencing can be such an emotive issue and really feeds a tabloid media perspective. One of our biggest problems is that small groups of unhappy or disaffected victims can present themselves in the media as the majority. The media and the general public gets the wrong perspective on what it is that victims really think. Often the victims are looking for someone to explain it [the sentence] to them. SAC does an enormous amount to counter that tabloid perspective – and get it all back into proportion.

All interviewees valued the Council's consultation processes. One interviewee said 'I always feel we've been listened to, even if we don't win', while another concluded that 'it is best practice consultation in my view'.

In terms of impact on intermediate and long term outcomes, the evaluation concluded that:

In particular, judicial officers and defence and prosecution representatives felt that SAC has had a significant impact on the consistency of sentences, particularly through the provision of sentencing statistics. They, and others such as the victims of crime representatives and government interviewees, felt that there was improved support for sentencing decisions and for sentencing reforms as a result of the efforts of the SAC. Judicial officers and government interviewees felt that SAC's research and consultation efforts had resulted in sentencing reforms which were well grounded and reflecting best practice. Journalists and victims of crime representatives felt that they had a better understanding of sentencing processes and issues as a result of SAC's work which, in turn, should influence their communications with members of the public on sentencing issues.

The evaluation clearly found that the Council provides a valuable and unique service to government, the courts and the community.

Council Members

In 2008–09 there were 12 Council members who represented a range of perspectives and who came from a broad spectrum of professional and community backgrounds. Under section 108F of the *Sentencing Act 1991*, the Council must have at least nine and not more than twelve members who fall within the following profile areas:

- one senior academic;
- two people with broad experience in community issues affecting the courts;
- one highly experienced defence lawyer;
- one highly experienced prosecution lawyer;
- one member of a victim of crime support or advocacy group; and
- the remaining Council members must be people with experience in the operation of the criminal justice system.

In addition to their attendance at Council meetings, Council members contribute to projects in a variety of ways. Council members facilitate community forums, lead roundtable discussions with stakeholders and make themselves available for Secretariat staff to discuss the many complex issues that arise during the Council's work.

Professor Arie Freiberg AM (Chair)

Profile – Senior member of an academic institution

Professor Arie Freiberg is the Dean of Law at Monash University and headed a major review of Victorian sentencing laws during 2001–2002. Professor Freiberg is an authority on sentencing issues and the criminal justice system who has undertaken extensive research on sentencing theory, policy and practice.

Council meetings attended: 9/9

Carmel Arthur

Profile – Operation of the criminal justice system

Carmel Arthur has great personal insight into the operation of the criminal justice system, both from her experience as a victim of crime and through her long association with Victoria Police. She was appointed to the Adult Parole Board in early 2009.

Council meetings attended: 8/9

David Grace QC

Profile – Highly experienced defence lawyer

David Grace has over 30 years' experience as a legal practitioner, having appeared in numerous court jurisdictions in a number of leading sentencing cases. He regularly appears in the High Court and the Court of Appeal and was the previous Chair of the Criminal Law Section of the Law Institute of Victoria.

Council meetings attended: 7/9

Rudolph Kirby

Profile – Operation of the criminal justice system

A qualified lawyer, Mr Kirby practised in regional Victoria before moving to Melbourne in 2007 to manage Koori programs and initiatives at the Magistrates' Court of Victoria. He has been actively involved in a range of Indigenous community associations and programs. Mr Kirby is currently the Deputy Director of the Koori Justice Unit in the Department of Justice.

Council meetings attended: 4/9

Andrea Lott

Profile – Community issues affecting courts

Andrea Lott brings over 20 years' experience in the delivery and management of services, particularly in working with families and individuals who are homeless or at risk of homelessness and those who have come into contact with the criminal justice system. Andrea is the CEO of the Victorian Association for the Care and Resettlement of Offenders (VACRO) and is also a member of the Victorian Women's Correctional Services Advisory Committee, the Ministerial Community Advisory Committee and the Corrections Employment Ministerial Advisory Committee.

Council meetings attended: 5/9

Thérèse McCarthy

Profile – Community issues affecting courts

Thérèse McCarthy has a long history of involvement with community organisations such as Centre Against Sexual Assault (CASA) House and Court Network. She has also worked with Australian courts to enhance the relationship between the courts and the community. Ms McCarthy brings to the Council a community perspective on a range of criminal justice issues including domestic violence and sexual assault.

Council meetings attended: 5/9

Professor Jenny Morgan**Profile – Member of a victim of crime support or advocacy group**

Professor Jenny Morgan is a member and previous co-chair of the Women's Domestic Violence Crisis Service and has extensive experience in victims' issues. She is a former Chair of the Board of Centre Against Sexual Assault (CASA) House, former member of the Board of Court Network, and has written extensively on issues to do with gender and the law.

Council meetings attended: 7/9

Simon Overland APM**Profile – Operation of the criminal justice system**

Simon Overland has extensive experience in law enforcement and administration at senior executive levels with the Australian Federal Police and Victoria Police as Assistant Commissioner (Crime) and Deputy Commissioner. In March 2009 he was appointed Chief Commissioner of Victoria Police.

Council meetings attended: 8/9

Barbara Rozenes**Profile – Member of a victim of crime support or advocacy group**

Barbara Rozenes is President of Court Network, a community organisation designed to assist court users. She has had close contact with victims of crime and others in more than 18 years of service as a weekly volunteer networker in the Supreme and County Courts. In 2006 she was elected to the Committee of the Victorian Association of Restorative Justice and completed a Ratione's Certificate in Mediation to become an Associate Member of the Australian Institute of Arbitrators and Mediators. Ms Rozenes is also an Ambassador for Windana Drug and Alcohol Centre.

Council meetings attended: 7/9

Gavin Silbert SC**Profile – Highly experienced prosecution lawyer**

Gavin Silbert joined the Council in November 2007. He has over 30 years' experience as a barrister having appeared in all jurisdictions, including the Court of Appeal and the High Court. He was appointed Chief Crown Prosecutor for Victoria in March 2008.

Council meetings attended: 8/9

Lisa Ward**Profile – Operation of the criminal justice system**

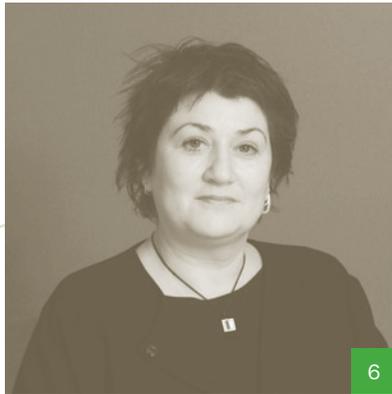
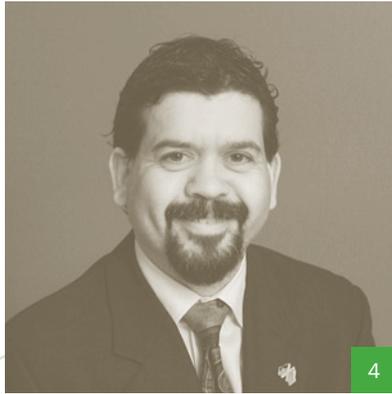
Lisa Ward was appointed to the Council in August 2008. She has extensive experience in a range of human services including Juvenile Justice, Child Protection and Adult Corrections. For the last decade, she has operated a human services consulting business, providing research, program evaluation and policy review services to government and community organisations. Ms Ward is a member of the Adult Parole Board and the Victorian Women's Correctional Services Advisory Committee.

Council meetings attended: 6/7

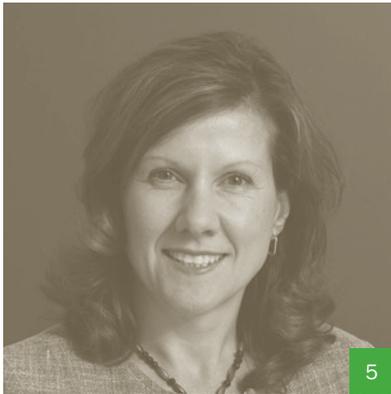
David Ware**Profile – Operation of the criminal justice system**

David Ware joined the Council in August 2007. A Barrister and Solicitor of the Supreme Court of Victoria, Mr Ware has over 20 years' experience in public administration within Victoria, with a particular focus on strategy, planning, policy and development across a range of social policy areas. Mr Ware is the Director of Wagering Licence Allocation for the Gambling Licences Review.

Council meetings attended: 7/9



1. Arie Freiberg AM
2. Carmel Arthur
3. David Grace QC
4. Rudolph Kirby
5. Andrea Lott
6. Thérèse McCarthy



1. Jenny Morgan
2. Simon Overland APM
3. Barbara Rozenes
4. Gavin Silbert SC
5. Lisa Ward
6. David Ware

Council Secretariat

Staff

The part-time Council members are supported by a Secretariat which undertakes the Council's daily work. While the Secretariat's organisational structure remained stable over 2008–09, there were several changes in staffing.

Secretariat staff bring skills from a range of disciplines such as law, policy development, criminology, statistics, publishing and community education and engagement to assist the Council in meeting its objectives.

In 2008–09 Secretariat staff included:

Chief Executive Officer

Stephen Farrow

Legal Policy

Principal Legal Policy Officer:
Felicity Stewart

Senior Legal Policy Officer:
Andrea David

Senior Legal Policy Officer:
Hilary Little (to December 2008)

Senior Legal Policy Officer:
Louise Close (from December 2008)

Senior Legal Policy Officer:
Nina Hudson (from January 2009)

Legal Policy Officer:
Adrian Hoel (to November 2008)

Criminology

Senior Criminologist:
Karen Gelb

Statistics and Data

Senior Data Analyst:
Nick Turner

Data Analyst:
Geoff Fisher

Data Analyst:
Barry Woodhouse (from November 2008)

Community Engagement

Community Engagement Manager:
Jenni Coady

Publications and Website Officer:
Catherine Jeffreys (from July 2008)

Administration

Office Manager:
Prue Boughey

Administrative Assistant:
Clare Hendry (to November 2008)

Administrative Assistant:
Sarah Lappin (from November 2008)

Casual Librarian:
Julie Bransden

Youth Employment Scheme Trainee:
Belinda Price (from October 2008)

Student Interns

The Council's student research placement program aims to foster greater collaboration with universities and to assist the Council with its research priorities. Students with suitable research skills and a demonstrated commitment to public interest are selected to undertake short-term supervised research projects that typically overlap with the Council's work program and, in some cases, the students' current academic research. The Council also partners with the Victoria Law Foundation's Legal Policy Placement Program.

In 2008–09 the Council hosted four students in its student research placement program.

Melbourne University Public Affairs Internship Program

Nadia Leo

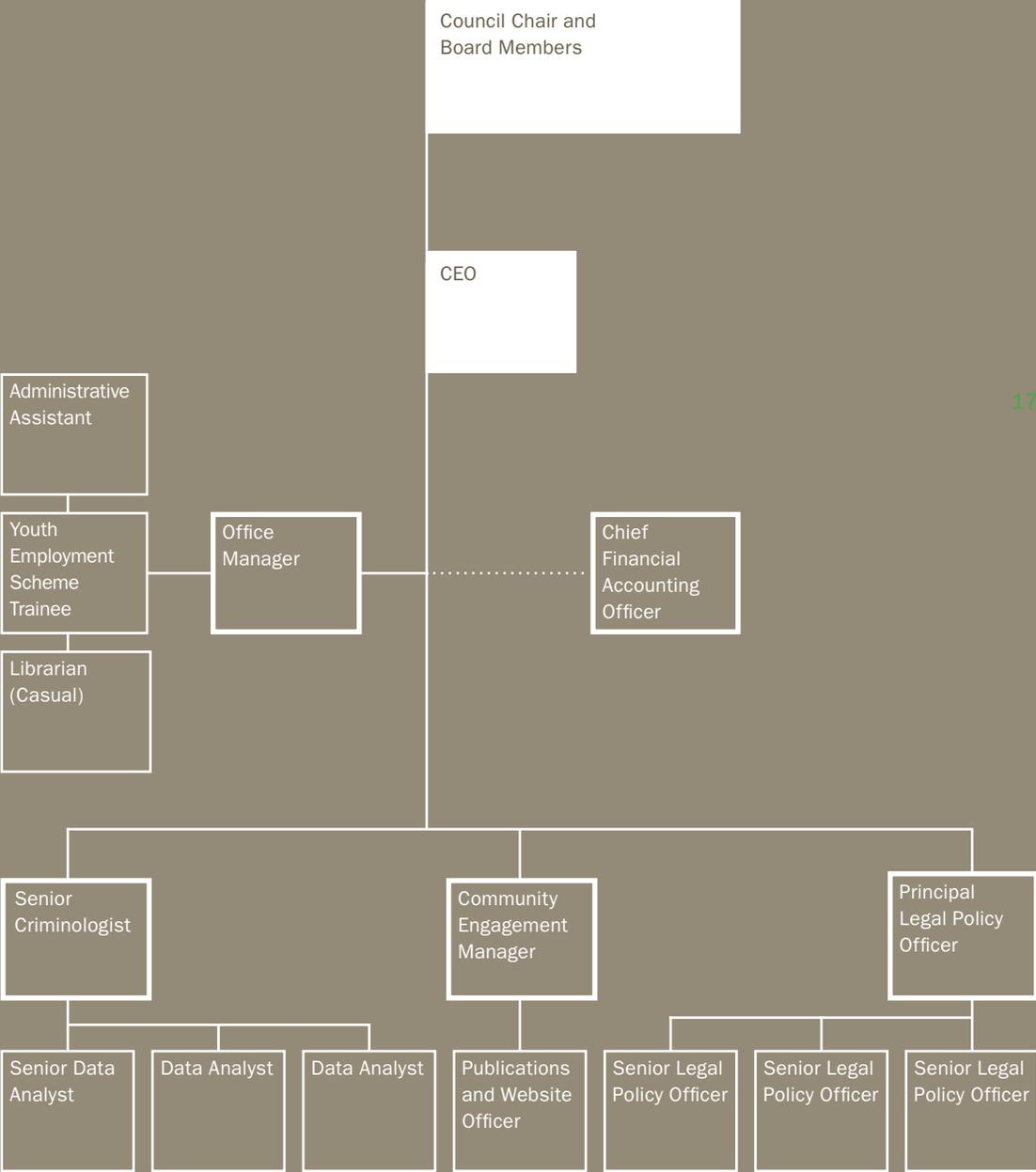
Victoria Law Foundation Legal Sector Internship Program

Sheeana Dhanji

Natalia Antolak-Saper

Claire Bridge

Organisational Chart



References from the Attorney-General

One of the Council's key statutory functions is to conduct research and advise the Attorney-General on sentencing matters. During 2008–09 the Council worked on several projects at the request of the Attorney-General, the Hon. Rob Hulls, MP.

Sentencing for Breach of Family Violence Intervention Orders

In April 2008 the Attorney-General asked the Sentencing Advisory Council to report on:

1. The appropriate statutory maximum penalties for the offences of breaching:
 - (a) a family violence intervention order;
 - (b) a stalking intervention order; and
 - (c) a family violence safety notice.
2. Sentencing practices for the offence of breaching an intervention order.

In particular, the Attorney-General asked the Council to refer to the issues raised in the Victorian Law Reform Commission's 2006 *Review of Family Violence Laws: Report* regarding sentencing practices relating to breaches of family violence intervention orders. The report identified stakeholders' concerns that sentences for breaches of these orders were inconsistent and did not reflect the seriousness of the offending.

In May 2008 the Council provided its advice to the Attorney-General on the first part of the reference, considering maximum penalties for the above offences, and published its report *Breaching Intervention Orders* in June 2008.

The Government adopted the Council's advice and incorporated its recommendations in the *Family Violence Protection Act 2008* (Vic).

Sentencing Practices for Breach of Family Violence Intervention Orders

For the second part of this review, the Council decided that, in order to report accurately on sentencing practices for breach of these orders, it needed to consult with those involved in the sentencing process itself, in addition to undertaking a statistical analysis of the relevant data.

The Council conducted a series of consultations with a number of stakeholders, including:

- meetings with court staff and magistrates at the Family Violence Divisions of the Magistrates' Court at Heidelberg and Ballarat;
- focus groups with Victoria Police;
- roundtables with community legal centre representatives, family violence service providers, defence lawyers and workers from men's family violence programs;
- a meeting with a family violence victims' support group; and
- a survey of Victorian magistrates.

Penalties not sufficiently reflecting the seriousness of the offence

The stakeholders that were consulted considered breach of a family violence intervention order to be a serious criminal offence; however, few were of the opinion that current sanctions reflect this seriousness.

The Council's data analysis confirmed stakeholder perceptions that there is a predominance of lower end orders – fines and adjourned undertakings – for breach offences. Between July 2004 and June 2007, 37.2 per cent of people sentenced in the Magistrates' Court for breach of a family violence intervention order received a fine. A further 18.5 per cent received an adjourned undertaking. The data also showed that courts impose these lower end orders relatively frequently on repeat offenders.

Are sentences achieving their purposes?

The Council's data analysis showed that the most common sentencing disposition for breaching an intervention order is a fine. The purpose of a fine is generally said to be to punish the offender and act as a deterrent to future offending by the offender and others. However, the dynamics of family violence mean that fines can punish the victim as much or more than the offender. Therefore sentences with more flexibility in terms of punishment (such as conditional orders that can incorporate community work and/or a financial condition), which are structured to ensure that it is the offender who must serve the punishment, may be more effective in achieving the purposes of sentencing.

Inconsistency

The Council was limited in its ability to assess whether there is consistency in sentencing among magistrates for breaches of family violence intervention orders, as there are no available data to support such an analysis. However, anecdotal evidence obtained from the consultations suggests that inconsistency is an issue when sentencing for this offence.

Possible reasons for current sentencing practices for breach

There are many reasons why sentencing for breaches of family violence intervention orders is difficult. Not only are magistrates operating with very little in the way of guidance in sentencing breach matters, but they often have only minimal information at their disposal about the background and context of the breach. This limits their ability to impose appropriate sentences as without the relevant background, much of the behaviour covered by this offence may seem less serious.

Guiding principles

In order to promote more appropriate and consistent sentencing practices for breach of family violence intervention orders, the Council took the view that magistrates would be assisted by some guidance over and above the general principles provided in the *Sentencing Act 1991* (Vic).



The Attorney-General, the Hon. Rob Hulls, MP, speaking at the launch of the *Sentencing for Breach of Family Violence Intervention Orders Final Report*

The Council developed some guiding principles, drawing on its research, consultations and data analysis, for use by judicial officers who sentence breach of family violence intervention orders.

The Council identified the main purpose of sentencing for family violence intervention orders as being to achieve compliance with the order or future orders to ensure the safety and protection of the victim. In the guiding principles, the Council identified a number of sentencing factors that are particularly relevant to breach of family violence intervention orders, and suggested ways in which judicial officers may consider these factors.

The Council intended that these principles will assist magistrates in placing appropriate weight on the factors most relevant to this offence. In addition, the principles will promote some level of consistency of approach among sentencers.

The Council also saw a wider role for the guiding principles to be used by all those involved in the sentencing process. Police prosecutors and defence lawyers may also use the guiding principles in formulating their submissions to the court at sentencing hearings for breaches of family violence intervention orders. The principles can promote consistency by providing a framework for submissions across different courts around Victoria.

Launch of the Final Report

On 26 June 2009 the Council launched its Final Report on *Sentencing Practices for Breach of Family Violence Intervention Orders* at Parliament House. The Attorney-General, the Hon. Rob Hulls, MP, and the Chief Magistrate, Mr Ian Gray, spoke at the launch.

Sentence Indication Monitoring

In September 2007 the Council released its Final Report, *Sentence Indications and Specified Sentence Discounts*. The report responded to a request from the Attorney-General for advice on whether a sentence indication scheme should be adopted in Victoria and if so, the form that such a scheme should take and whether it should incorporate a specified sentence discount for a guilty plea.

Sentence indication permits a judicial officer to give a defendant a general indication of the sentence that would be imposed if the defendant pleaded guilty at that stage of the proceedings. A specified sentence discount nominates the precise discount that applies for those offenders who plead guilty.

In its Final Report the Council supported the use of sentence indication and made a number of key proposals for reform. It recommended that the informal sentence indication process already in use for summary proceedings in the Magistrates' Court be given explicit statutory underpinning. The Council also recommended that sentence indication should be made available in indictable proceedings in the County Court as a pilot program, subject to ongoing monitoring.

In relation to specified sentence discounts, the Council recommended that courts be required, when passing sentence on an offender who has pleaded guilty, to state the 'sentencing value' of the guilty plea, by stating the sentence that would have been imposed, but for the guilty plea. However, the Council did not support the legislative prescription of the reduction that courts should provide when sentencing an offender who has pleaded guilty.

On 13 March 2008 the *Criminal Procedure Legislation Amendment Act 2008* (Vic) was passed by Parliament. The Act created a sentence indication and sentence discount scheme in the Magistrates' and County

Courts broadly consistent with the recommendations in the Council's Final Report. The Act also provided for the scheme to operate in the Supreme Court. The reforms relating to sentence indication in the County and Supreme Courts came into force on 1 July 2008. The Act contains a sunset clause relating to sentence indications in the County and Supreme Courts: unless further legislation is passed to continue their operation, the relevant provisions will be repealed on 1 July 2010.

In July 2008 the Attorney-General asked the Council to monitor, report and make recommendations in relation to the operation of the sentence indication scheme in the County and Supreme Courts. The monitoring of the scheme has been requested to assist the government and Parliament in determining whether sentence indication in the higher courts should be retained beyond the date of the sunset clause.

The terms of reference require the Council to monitor and report on the impact of the scheme on case flow, sentencing outcomes, the key people involved in sentence indications (victims and the accused), and the resources and operations of key participating agencies. In particular, the Council has been asked to make recommendations concerning whether the operation of the scheme should be extended and, if so, whether any changes should be made to improve its operation.

As part of its monitoring of the sentence indication scheme, the Council has collected data from the Office of Public Prosecutions on the operation of sentence indications in the County and Supreme Courts from July 2008 to June 2009. The Council has undertaken preliminary consultations with key stakeholders and will continue to consult with a range of key participating agencies, victims and offenders to collect qualitative data on the impact of the sentence indication scheme.

The outcomes of the Council's consultations will be used to advise the Attorney-General on how the pilot scheme is working under the current legislation. The Council's advice on the impact of the sentence indication pilot and any recommendations in relation to the operation of the scheme will be provided to the Attorney-General by the end of 2009.

Review of Maximum Penalties for Child Sexual Penetration

In December 2008 the Attorney-General asked the Sentencing Advisory Council to consider the maximum penalties for the offence of sexual penetration with a child under 16 pursuant to section 45 of the *Crimes Act 1958* (Vic). This offence currently carries a maximum penalty of 10 years' imprisonment, however when the offending is aggravated by the fact that the victim was under the care, supervision or authority of the offender, or was under 10 years of age at the time of the offence, the maximum penalties increase to 15 and 25 years respectively. The Attorney-General requested that the Council consider each circumstance of aggravation, and advise on the adequacy of each applicable maximum penalty for this offence.

The Attorney-General noted that this reference might require a consideration of current sentencing practices and the surrounding legislative framework of offences and penalties for relevant sexual offences against children.

In March 2009 the Council released a consultation paper that described the context of the reference and provided information about the offence of sexual penetration with a child under 16 and related offences in Victoria. The consultation paper outlined the current position in relation to the maximum penalties for this offence, as well as considering the functions of maximum penalties more generally.

The Council's consultation process centred around four questions:

1. Do the current maximum penalties for the offence of taking part in an act of sexual penetration with a child under the age of 16 appropriately reflect the range of offending in each form of the offence?
2. What are the advantages and disadvantages of having age as a statutory aggravating factor for this offence?
3. What are the advantages and disadvantages of having 'care, supervision or authority' as a statutory aggravating factor for this offence where the victim is between 10 and 16?
4. If you think that there should be some change to the current offence structure, should there be:
 - a) graduated penalties for different statutory aggravating factors
 - b) one penalty to encompass all the relevant offending.

The Council invited written submissions on these questions and conducted a series of meetings with relevant stakeholders from March to June 2009. The community was encouraged to participate in the consultation process through advertisements placed in *The Age* and the *Herald Sun* newspapers; the Council received 24 written submissions from a range of stakeholders and from members of the public.

In conjunction with the consultation paper, the Council released a statistical report entitled *Sentencing for Sexual Penetration Offences: A Statistical Paper* that analysed sentencing practices in Victoria for offences involving the sexual penetration of children. The paper was extensively referred to during the consultation process.

The Council will release a Final Report in September 2009 containing its advice and recommendations to the Attorney-General regarding this reference.

Sentencing, Parole Revocation and Confiscation Orders

In February 2009 the Attorney-General asked the Sentencing Advisory Council for advice on options for addressing the consequences and implications of a number of specific Victorian Court of Appeal decisions. These decisions concerned the relevance to sentencing of parole and confiscation proceedings (*R v Piacentino*; *R v Ahmed* (2007) 15 VR 501; *R v Alashkar*; *R v Tayar* (2007) 17 VR 65; *R v McLeod* (2007) 16 VR 682).

The decisions concerned the relevance to sentencing, both before and after an offender is sentenced, of:

- a decision by the Adult Parole Board to revoke the offender's parole for further offending; and
- a decision by a court or an automatic order to confiscate certain types of property belonging to the offender.

In its recent decisions, the Court of Appeal has held that parole revocation and confiscation orders are relevant to sentencing, irrespective of their timing relative to sentence. In cases where such events occur *after* sentencing, they can constitute 'fresh evidence' that may provide a ground of appeal and could possibly result in resentencing by the Court of Appeal. This departs from the previous approach used in sentencing offenders in these circumstances. This change has potential implications for the application of sentencing principles as well as practical implications for the criminal justice system as a whole.

In providing its advice, the Council was asked to consider the intersection of the common law sentencing principles of totality and proportionality with provisions of the *Sentencing Act 1991* (Vic). The terms of reference request the Council to consult with the Court of Appeal, the

Supreme, County and Magistrates' Courts, the Director of Public Prosecutions and the Adult Parole Board and take into account the practical implications of any suggested reforms.

In June 2009 the Council released a discussion and options paper in which it called for submissions on the issues raised by this reference. In the paper, the Council discussed the consequences and implications of the Court of Appeal decisions and put a number of questions to stakeholders seeking their thoughts on these issues. The Council also asked for submissions on the legal, policy and practical implications of some possible options for reform relating to parole and confiscation respectively.

The Council has commenced its consultation with interested stakeholders on the issues and options raised in the paper. Submissions are due to close at the end of July 2009. The Council will consider these consultations as it formulates its advice to the Attorney-General on the options for reform. A final report will be released later in 2009.

Sentencing for Offences Motivated by Hatred or Prejudice

In June 2009 the Attorney-General sought advice from the Sentencing Advisory Council as to how the *Sentencing Act 1991* (Vic) could be amended so that, where an offence is motivated by hate or prejudice against a particular group (for example, based on their race, religion, ethnicity, disability or sexual orientation), this motivation is taken into account as an aggravating circumstance at the time of sentencing. The Council was asked to have particular regard to the approach adopted in the *Crimes (Sentencing Procedure) Act 1999* (NSW). The Council was asked to provide its advice by early July 2009.



The Attorney-General, the Hon. Rob Hulls, MP, addressing the media at the launch of the *Sentencing for Breach of Family Violence Intervention Orders Final Report*

Other Key Projects

Mandatory Sentencing

In August 2008 the Council released two papers on the issue of mandatory sentencing. The first, an information paper, presented an overview of how sentencing currently works in Victoria and how sentencing would differ under various mandatory sentencing regimes. The second was a more detailed research paper entitled *Sentencing Matters: Mandatory Sentencing* that presented a thorough analysis of the aims, costs and benefits of various mandatory sentencing regimes around the world.

The information paper was designed with a non-technical audience in mind. The Council strives to make its research and publications accessible to a wide range of audiences, and this paper was written in plain language for a lay audience.

After presenting a case study and examining the factors that judges must consider in sentencing under the current legislation in Victoria, the paper describes the spectrum of approaches to discretion in sentencing. Discretion may range from a broad discretion, with the court being able to take into account any factors considered relevant and to impose any sentence, to a fixed penalty scheme, where parliament specifies a set penalty for an offence and the court has no discretion at all.

Victoria's sentencing falls under a 'structured discretion' approach: Parliament specifies a maximum penalty

and provides a set of general guidelines in sentencing legislation; the court can impose any sentence below the statutory maximum, subject to legislation, common law principles and appellate review; and the court can also take a wide variety of factors into account when imposing a sentence.

The research paper was designed for a more technical audience. It therefore presented a more detailed analysis of sentencing in Victoria under a structured discretionary regime, and continued with an examination of various criticisms that have been directed at such discretionary systems.

A number of criticisms have been levelled at systems such as that in Victoria, and they generally involve one or more of the following concerns:

- Inconsistency – discretionary sentencing leads to unjustified disparity. Calls for mandatory sentencing reflect a lack of confidence that the courts can impose consistent sentences.
- Leniency – discretionary sentencing results in sentences that are too lenient and that do not accord with contemporary community values.
- Relationship between courts and parliament – it is sometimes suggested that courts are simply failing to sentence in accordance with the will of parliament (and its constituents, the community).

The research paper considers a number of alternatives to discretionary regimes, including presumptive minimum sentences, standard non-parole periods and the more prescriptive sentencing guidelines such as those found in the United States.

Such mandatory sentencing regimes have typically been founded upon several principles, including retribution, deterrence, incapacitation and consistency. The research paper examines the evidence on the effectiveness of mandatory sentencing in achieving each

of these goals. The bulk of the evidence in this area is quite clear: mandatory sentencing does not achieve its stated aims of providing greater consistency in sentencing and more closely reflecting community expectations of punishment.

In particular, the evidence on mandatory sentencing shows the following:

- Mandatory sentencing has a disproportionate effect on some segments of society – the effects of many such regimes are felt more keenly by first-time and/or minor offenders, as well as by offenders of particular vulnerability such as young people, Indigenous people and women.
- Mandatory sentencing often results in significant economic costs to society – the evidence shows that it is responsible for increasing the rate of incarceration, and imprisonment is a very expensive sanction.
- Mandatory sentencing is circumvented by lawyers, judges and juries both by accepted mechanisms (such as plea bargaining) and by less visible means such as displacing judicial discretion to other less transparent parts of the legal system.

The research paper concludes that current research indicates that it is very unlikely that mandatory sentencing regimes can be successful.



Driving while Disqualified or Suspended

The Council's report on *Driving While Disqualified or Suspended* was published in April 2009.

This project arose from a recommendation by the Council in its *Suspended Sentences Final Report—Part 2* (2008), that further research was required on the offence of driving while disqualified or suspended and its causes, consequences and the current responses to the offence.

Over the past decade, the prevalence of the offence of driving while disqualified or suspended has increased significantly. By 2007–08, it was the most common principal proven offence in the Magistrates' Court.

Driving while disqualified or suspended has a mandatory minimum penalty of one month's imprisonment if the offender has previously been found guilty of the offence. In its review of suspended sentences, the Council identified this mandatory minimum penalty as one of the major factors that has led to the high use of suspended sentences of imprisonment in the Magistrates' Court. The suspended sentences for that one offence constituted almost one-fifth of all suspended sentences imposed in the Magistrates' Court.

The Council conducted extensive research and consultation, including:

- Reviewing national and international literature on driving while disqualified or suspended as well as research on offending patterns and sentencing trends for the offence in Victoria.
- Convening a number of workshops with a panel of road safety, policing, legal and policy experts including representatives from VicRoads, Victoria Police, the Royal Automobile Club of Victoria, the Transport Accident Commission, Monash University Accident Research Centre, the Victorian Association of Drink and Drug-Driver Services, the Infringements Court

(Department of Justice) and Infringement Management and Enforcement Services (Department of Justice).

- Analysing a large amount of statistical data from VicRoads and from the courts, and holding focus groups with people whose licences have been suspended or who have been disqualified from driving, to obtain qualitative information.
- Seeking and considering views from a broad range of stakeholders through roundtables and a public call for submissions.

This research led to a greater understanding of some of the reasons why people commit the offence of driving while disqualified or suspended and why the number of prosecutions for this offence has been increasing. This enabled the Council to assess the effect of the mandatory minimum penalty and to anticipate the likely consequences if it were to be abolished. It also enabled the Council to develop a set of approaches that may be more effective in responding to this offending behaviour.

A major concern about changing or removing the mandatory minimum penalty was what effect, if any, this might have on road safety. This concern was a central consideration in the Council's discussions and conclusions in this project.

As a result of the Council's research the Council concluded that the mandatory minimum penalty:

- is not effective in protecting the community from future offences.
- is contributing to sentencing outcomes that cannot directly facilitate the offender's rehabilitation, for example, in cases where alcohol problems have contributed to the offence.
- is resulting in sentences that have limited capacity to prevent the offender from reoffending in the medium to long term. At most, offenders are incarcerated briefly, which means that they are only incapacitated temporarily.

- can result in penalties for driving while disqualified or suspended that are disproportionately high compared to other related offences.
- is causing strains on the criminal justice system.

For these reasons, the Council recommended that although second and subsequent offences of driving while disqualified or suspended should continue to carry a maximum penalty of two years' imprisonment, the mandatory minimum penalty of imprisonment for these offences should be repealed.

The Council examined a range of options for dealing more effectively with this form of criminal behaviour, by addressing deterrence, incapacitation and rehabilitation.

Deterring offending by increasing detection

The Council's research and consultation showed that a significant reason why people drive while disqualified or suspended is that they consider the risk of being detected to be small. The Council considered that the most important factors in deterring people from committing this offence are an increased likelihood of being caught and an increased awareness of that likelihood.

A possible method of addressing both of these factors is to improve the targeting of – and increase the frequency of – licence checks. The Council made a number of recommendations about the expanded use of automated number plate recognition technology (ANPR) to help police target those who drive while disqualified or suspended.

Impoundment, immobilisation and forfeiture of vehicles

The Council's research revealed that for many people who are banned from driving, having a car sitting in the driveway provides an opportunity, and a strong temptation, to continue to drive. It is currently possible for police briefly to impound or immobilise a vehicle that

has been driven by a person who is disqualified or suspended. In limited situations, it is possible to apply to a court for a longer period of impoundment or immobilisation or, in some cases, forfeiture of the vehicle. The Council recommended a series of changes to that scheme to provide greater flexibility in the use of impoundment and immobilisation.

Earlier intervention for drink drivers

A significant number of people who commit the offence of driving while disqualified or suspended have underlying problems with alcohol dependency or misuse. The Council found that many drink drivers continue to drive during the disqualification period and because of the cost and complexity of the re-licensing process, many do not undertake it but simply continue to drive without a licence, and hence without an alcohol interlock.

The Council proposed a new pathway so that, in appropriate cases, it would be possible:

- to require offenders to confront and address an underlying problem with alcohol at an early stage; and
- to increase the likelihood that offenders will return to the licensing scheme and as a consequence will be subject to an alcohol interlock condition.

A specialist list for driving offences

The Magistrates' Court currently has a range of specialist courts, divisions and lists. The Council recommended that the Magistrates' Court consider establishing an opt-in list for cases involving defendants for whom the traditional interventions have failed and who are willing to plead guilty and undergo more focussed and intensive programs. Such a list could provide a specialised process that may be particularly useful in cases involving repeat drink driving offenders who have not been responsive to previous court orders and who pose a significant danger to the community if they continue to drive in breach of licence sanctions and court orders.

Sentencing Statistics

When the Sentencing Advisory Council was established in 2004, one of its key tasks was to provide statistical information on current sentencing practices to members of the judiciary and other interested people. This continues to be a major role of the Council as the regular provision of such data is essential to support judicial officers in the complex task of sentencing and to promote consistent sentencing practice. In consultation with the courts and with the Courts Statistical Services Unit of the Department of Justice, the Council has developed a set of accurate databases and a range of techniques to extract and analyse such data. These data have proved extremely valuable and have been an integral part of many of the Council's projects.

During 2008–09 the Council continued to release data on offences heard in the higher courts although it focussed its efforts on producing statistical information on offences heard in the Magistrates' Court of Victoria.

Sentencing Snapshots – Magistrates' Court

The Sentencing Snapshots series presents summary information on sentencing trends and issues in Victoria. During 2008–09 the Council continued to expand on this series, with a total of 39 such reports published for both the Magistrates' Court and the higher courts.

In June 2008 the Council published the first three Snapshots for offences heard in the Magistrates' Court of Victoria. The release of Magistrates' Court data

represents a significant and important step forward in the Council's work on providing statistical information on sentencing to the judiciary and to the broader community.

During 2008–09 the Council published 23 Snapshots for the Magistrates' Court. The reports contain previously unpublished statistics on sentence outcomes in the Magistrates' Court of Victoria for the four years between July 2004 and June 2008, as well as the age and gender of people sentenced for each of the offences.

The Magistrates' Court Sentencing Snapshots released this year are:

August 2008

- No. 52 – Theft of a Motor Vehicle
- No. 53 – Theft from a Motor Vehicle
- No. 54 – Theft from a Shop
- No. 55 – Theft of a Bicycle
- No. 56 – Other Theft

October 2008

- No. 57 – Burglary
- No. 58 – Aggravated Burglary
- No. 59 – Handling Stolen Goods
- No. 60 – Going Equipped to Steal

December 2008

- No. 61 – Causing Serious Injury Recklessly
- No. 62 – Causing Injury Intentionally
- No. 63 – Causing Injury Recklessly

February 2009

- No. 64 – Possessing Amphetamines
- No. 65 – Possessing Cannabis
- No. 66 – Possessing Ecstasy
- No. 67 – Possessing Heroin
- No. 68 – Trafficking Amphetamines
- No. 69 – Trafficking Cannabis
- No. 70 – Trafficking Ecstasy
- No. 71 – Trafficking Heroin

April 2009

- No. 72 – Driving while Disqualified
- No. 73 – Driving while Suspended
- No. 74 – Unlicensed Driving

The Council has now published 26 Snapshots for offences heard in the Magistrates' Court of Victoria.

Sentencing Snapshots – Higher Courts

During 2008–09 the Council continued to expand on its higher courts Snapshot series, with 16 such reports published, all of which provided an update of snapshots previously released. The higher courts Sentencing Snapshots released this year are:

June 2009

- No. 75 – Handling Stolen Goods
- No. 76 – Theft
- No. 77 – Obtaining a Financial Advantage by Deception
- No. 78 – Obtaining Property by Deception
- No. 79 – Arson
- No. 80 – Indecent Assault
- No. 81 – Indecent Act with a Child under 16
- No. 82 – Maintain a Sexual Relationship with a Child under 16
- No. 83 – Rape
- No. 84 – Murder
- No. 85 – Manslaughter
- No. 86 – Culpable Driving Causing Death
- No. 87 – Making a Threat to Kill
- No. 88 – Sexual Penetration of a Child aged between 10 and 16
- No. 89 – Sexual Penetration of a Child under Care
- No. 90 – Sexual Penetration of a Child aged under 10

Each Snapshot examined trends by reference to the age and gender of the sentenced person, sentence types and lengths, principal and total effective sentences and non-parole periods.

The Council has now published over 60 Snapshots for offences heard in the County Court and Supreme Court, covering over 80 per cent of all people sentenced in those courts.

The Sentencing Snapshots are available free for download from the Council's website. In the coming year the Council will continue to release Snapshots on the most prevalent offences in the Magistrates' Court of Victoria and will also update previously released Snapshots for people sentenced in the higher courts.

Statistical Profiles

Sentencing Outcomes for Theft in the Magistrates’ Court of Victoria

In conjunction with its Sentencing Snapshots on theft offences in the Magistrates’ Court, the Council prepared a Statistical Profile that compared sentencing outcomes across the different types of theft offences.

The report examined the sentences imposed on 18,214 people sentenced in the Magistrates’ Court for the principal offence of theft between 2004–05 and 2007–08. The most common type of theft that was sentenced was theft from a shop (8,296 people). There were 2,231 people sentenced for theft of a motor vehicle and 963 people sentenced for theft from a motor vehicle. A further 120 people were sentenced for theft of a bicycle, while 6,604 people were sentenced for ‘other’ theft.

Overall, the number of people sentenced for theft decreased over the four-year period, including those sentenced for theft of a motor vehicle (down 31.7%), theft from a shop (down 39.0%) and ‘other’ theft (down 14.1%).

While women made up less than half of all people sentenced for each type of theft, they most commonly appeared among those sentenced for theft from a shop (42.3%). For each of the five types of theft, the women who were sentenced were older than their male counterparts. People

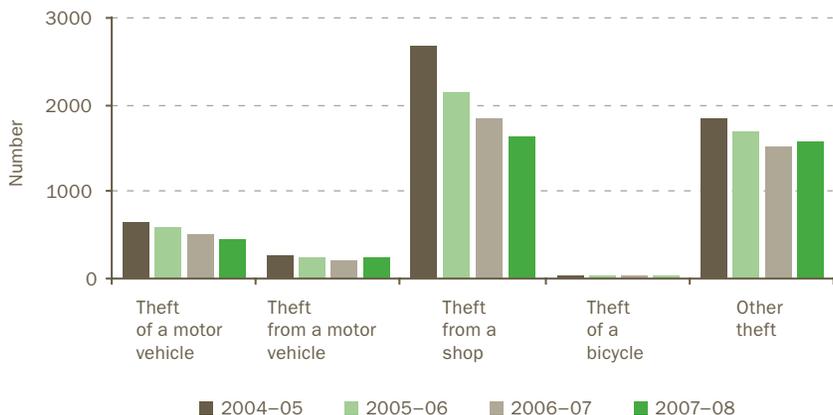
sentenced for theft from a shop tended to be older with a median age of 32 years while people sentenced for theft of a bicycle (23 years) and theft from a motor vehicle (24 years) tended to be younger.

Over the four-year period, the majority of those sentenced by the Magistrates’ Court for theft received a non-custodial sentence (13,298 people or 73.0%), including 6,228 people who received a fine (34.2%), 4,326 people who received an adjourned undertaking (23.8%) and 2,546 people who received a community-based order (14.0%).

The sentences imposed differed according to the type of theft. Nearly one-third (32.1%) of people sentenced for theft of a motor vehicle received an immediate custodial sentence, including 25.2% who were sentenced to imprisonment. In contrast, less than one in ten of those sentenced for theft from a shop received an immediate custodial sentence. Non-custodial sentences were most common for those who were sentenced for theft from a shop (80.4%), theft of a bicycle (74.2%) and other theft (74.3%).

An additional 4,119 people participated in the criminal justice diversion program. The use of this diversion program differed according to the type of theft. The diversion program was used more frequently for ‘other’ theft (1,941 of the 8,545 dispositions) and for theft from a shop (1,747 of the 10,043 dispositions).

**FIGURE 3:
THE NUMBER OF
PEOPLE SENTENCED
FOR THEFT BY THE
TYPE OF THEFT,
2004–05 TO
2007–08**



Sentencing Outcomes for Trafficking and Possessing Drugs in the Magistrates' Court of Victoria

The Council took a similar approach when releasing its Sentencing Snapshots on drug offences in the Magistrates' Court, releasing one Statistical Profile on drug possession offences and another on drug trafficking offences. These profiles compared sentencing outcomes across the different drug-type offences.

The trafficking profile presented an overview of sentencing outcomes imposed for drug trafficking in the Magistrates' Court, comparing outcomes for the drug types of amphetamines, cannabis, heroin, ecstasy and 'other' drugs. In doing so, it brought together the analyses presented in each of the four Sentencing Snapshots on drug trafficking in the Magistrates' Court.

Between 2004–05 and 2007–08 3,714 people were sentenced for the principal offence of trafficking a drug of dependence. The most common drug was cannabis (1,485 people or 40.0%) followed by heroin (1,013 people or 27.3%), amphetamines (594 people, or 16.0%), ecstasy (312 people or 8.4%), and other drug (310 people or 8.3%).

The majority of people sentenced for trafficking a drug of dependence received a non-custodial sentence (1563 people or 42.1%), such as a community-based order (905 people or 24.4%) or a fine (429 people or 11.6%). Imprisonment also accounted for one in six sentencing outcomes (596 people or 16.0%).

Individuals sentenced for trafficking heroin were more likely to receive a custodial sentence (73.1% of all sentences for this offence). People sentenced for trafficking ecstasy were among the least likely to receive a custodial sentence (40.7% of all sentences for this offence).

Similar to the statistical profile for trafficking a drug of dependence, the possession profile gave an overview of sentencing practices in the Magistrates' Court of Victoria for the offence of possessing a drug of dependence.

The Magistrates' Court sentenced 5,147 people for the principal offence of possessing a drug of dependence between 2004–05 and 2007–08. The most common drug involved was cannabis (2,808 people or 54.6%) followed by amphetamines (1,054 people or 20.5%), heroin (792 people, or 15.4%), and finally ecstasy (238 people or 4.6%). The remaining 250 people (4.9%) were sentenced for possessing some other type of drug.

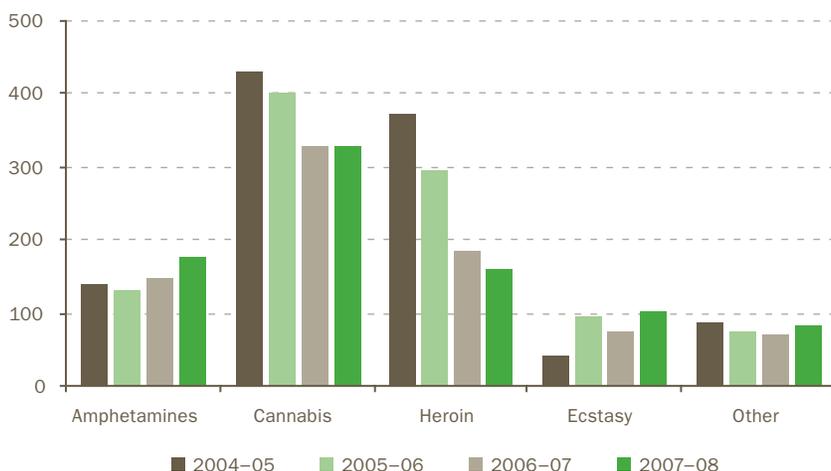


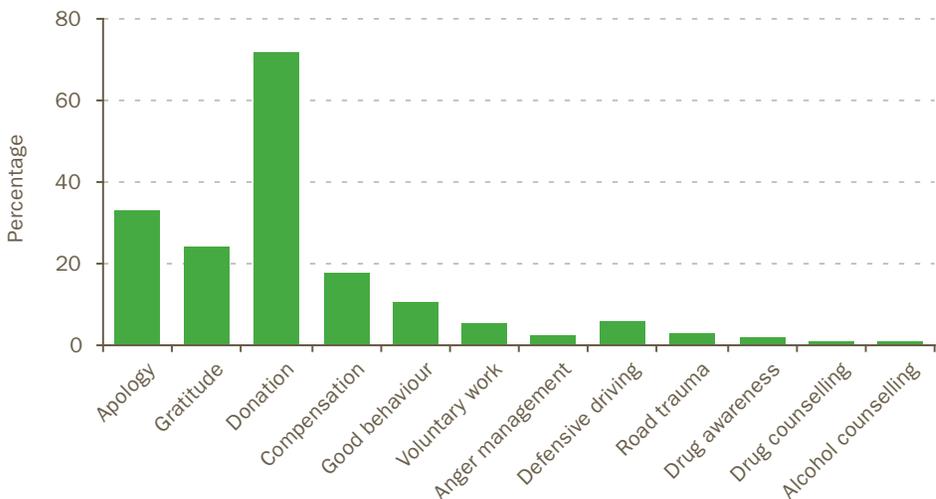
FIGURE 4: THE NUMBER OF PEOPLE SENTENCED FOR EACH DRUG TRAFFICKING CATEGORY, 2004-05 TO 2007-08

Most people sentenced for possessing a drug of dependence received a non-custodial sentence (93.4%), such as a fine (59.5%) or an adjourned undertaking (25.3%). Fewer than one in twenty people were sentenced to a term of imprisonment (163 people or 3.2%).

Individuals sentenced for possession of heroin tended to receive more severe sentence types, with 17.0% receiving some form of custodial sentence. Conversely, only 1.8% of individuals sentenced for possession of cannabis received a custodial outcome.

As well as being younger, people sentenced for possessing ecstasy were mostly male (88.2%), were more likely to be sentenced for possessing other types of drugs at the same time (24.4% were also sentenced for possessing amphetamines, 18.9% for possessing cannabis and 11.8% for possessing some other drug), and were more likely to receive a larger fine (median \$500 compared with \$500 for amphetamines, \$400 for 'other' drugs, \$300 for heroin, and \$300 for cannabis).

**FIGURE 5:
PERCENTAGE OF
DIVERSION DEFENDANTS
ACCORDING TO
CONDITION TYPE,
2006–07**



The Criminal Justice Diversion Program in Victoria

The Council also released a Statistical Profile on people undertaking diversion plans as part of the Criminal Justice Diversion Program (CJDP). Operating in the Magistrates' Court, the CJDP provides defendants with the opportunity to avoid a criminal record by undertaking specific conditions, such as apologising to the victim.

Just over 5,000 people were placed on a diversion plan in 2006–07, representing 7.2 per cent of all defendants who received a disposition in the Magistrates' Court. Property offences made up the most common broad category of principal offences for defendants commencing a diversion plan (35.6%) while the least common was offences against the person (11.6%).

The most common condition imposed on defendants was to make a donation (71.7%), followed by apologising to the victim (33.1%) and writing a letter of gratitude to the informant (24.0%). The majority of diversion plans had multiple conditions attached to them (51.6%) and the average length of a plan was 2.6 months.

Sentencing Outcomes for Sexual Penetration Offences

As part of its work to inform the public and to develop evidence-based advice, the Council released a Statistical Profile on sentencing outcomes for sexual penetration offences in Victoria. This profile was released in conjunction with the Council’s consultation paper on sexual penetration with a child under 16.

The profile compared sentencing practices between 2006–07 and 2007–08 for the following offence categories:

- sexual penetration with a child under 10;
- sexual penetration with a child aged between 10 and 16 and under the care, supervision or authority of the offender;
- sexual penetration with a child aged between 10 and 16;
- rape; and
- incest.

The analysis found that over 90 per cent of charges for sexual penetration with a child aged under 10, incest and rape received imprisonment, compared with just over half for sexual penetration with a child aged 10 to 16. For charges that received imprisonment, rape charges had the longest average term (4.7 years) while sexual penetration with a child aged 10 to 16 had the shortest (2.3 years).

Sentencing at the case level (total effective sentence) was substantially more severe than sentencing at the charge level. For example, the average imprisonment term for incest was 4.1 years at the charge level and 7.7 years at the case level. This was due to the prevalence of cases with multiple charges, which typically related to sexual offences.

The profile also examined sentence variation for sexual penetration with a child under 16 offences according to a number of factors, including the age of the victim, the age of the defendant, the age difference between the defendant and the victim, the gender of the defendant, prior sexual offending and plea type.

This part of the analysis found substantial variation in sentencing for the three categories of sexual penetration with a child under 16 according to a number of factors. Most notably, the age of the victim had a clear effect on sentencing outcomes: for each of the three types of offence, as the victim’s age increased the proportion of charges that received a term of imprisonment decreased, as did the length of the imprisonment term. In addition, the defendant’s age at the time of the offence appeared to be relevant in sentencing: as the defendant’s age (and the age discrepancy between the defendant and the victim) increased, the severity of the sentence also increased.

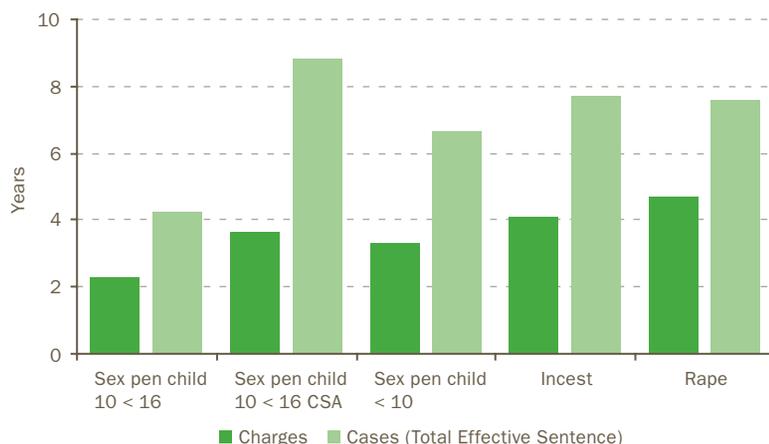


FIGURE 6: AVERAGE IMPRISONMENT SENTENCE LENGTH (YEARS) BY LEVEL OF ANALYSIS AND OFFENCE TYPE, 2006–07 TO 2007–08

Sentencing Monitoring

The Council launched its online sentencing monitoring resource in December 2005. This set of statistics, drawn from a variety of published and unpublished sources, provides a comprehensive overview of criminal justice system data and sentencing trends across Victoria. The resource was updated in 2009 to include 2007–08 data.

Designed to be accessible to a broad audience, information is presented in visually accessible graphs with plain English explanations. Those with a specific interest in a particular area can download the source data underlying the analysis.

People Sentenced

This section analyses trends in the number of people sentenced in each court between 1999–00 and 2007–08. Over this time the Magistrates' Court sentenced the overwhelming majority of people (88%) followed by the Children's Court (10%) and the County and Supreme Courts (2%).

From 2006–07 to 2007–08 the number of people sentenced increased in the Magistrates' Court and in the higher courts, but decreased in the Children's Court:

- an increase of 9% in the Magistrates' Court (up from 80,066 to 88,077);
- a decrease of 16% in the Children's Court (down from 11,214 to 9,437); and
- an increase of 5% in the higher courts (up from 2,100 to 2,206).

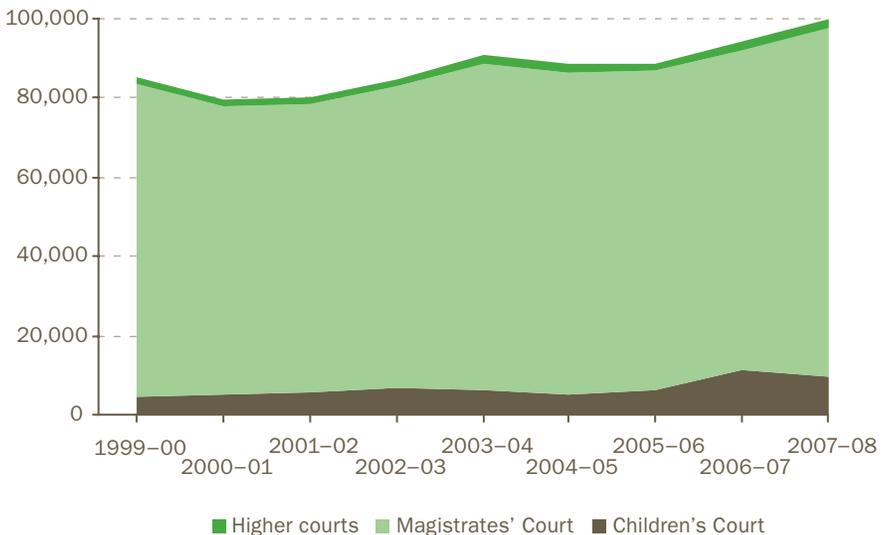
Sentencing Outcomes

This segment examines trends in the types of sentences imposed in the various courts. Historical data on sentencing trends are also presented where available.

In 2007–08 the higher courts sentenced 2,206 people – a 54 per cent increase since 1997–98 (up from 1,431). Of these people:

- 45% or 1,002 were sentenced to imprisonment;
- 30% or 653 were sentenced to a wholly or partially suspended sentence;
- 4% or 93 were sentenced to a fine; and
- 10% or 210 were sentenced to a community-based order.

**FIGURE 7:
PEOPLE SENTENCED IN
VICTORIA BY COURT,
1999–00 TO 2007–08**



Overall, sentencing trends in the higher courts have remained largely consistent over the past ten years. Notable changes between 1997–98 and 2007–08 were:

- An increase in the percentage of people sentenced who received wholly and partially suspended sentences of imprisonment from 27% in 2001–02 to a high of 35% in 2004–05. Since then it has remained relatively stable, ranging between 27% in 2006–07 and 31% in 2005–06.
- An increase in the percentage of people sentenced who received imprisonment from 42% in 1997–98 to a high of 50% in 2001–02. Over the past five years the rate has remained consistent, ranging between 46% in 2003–04 and 49% in 2006–07, however it did drop to a low of 43% in 2004–05.

Prison and Detention

This section provides an extensive analysis of trends in imprisonment and detention in Victoria, in other Australian states and territories and in other nations. Long-term trends in

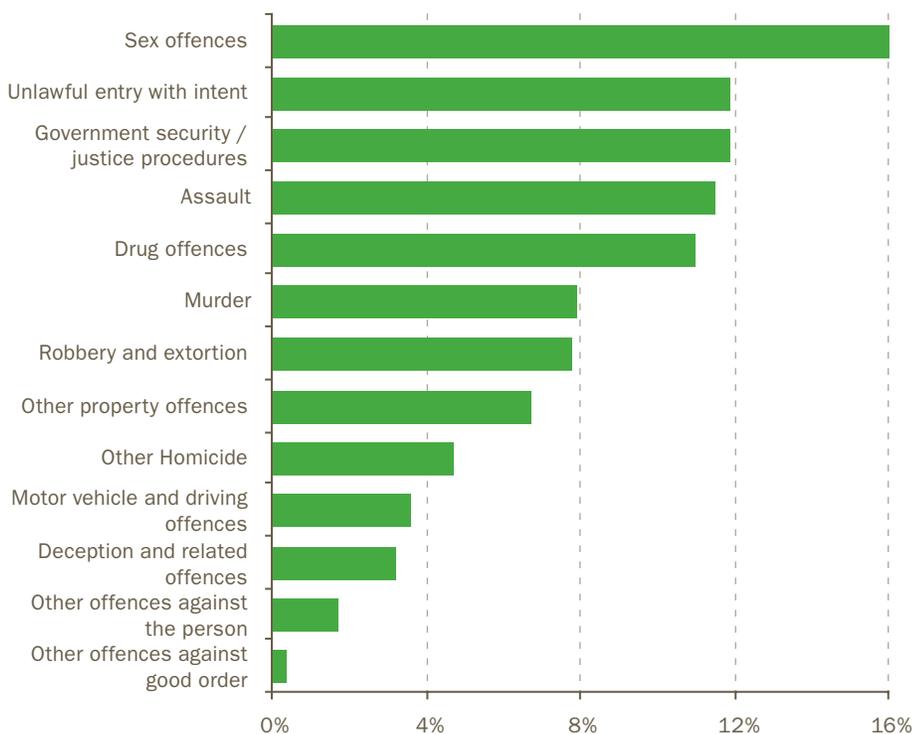
prisoner populations and imprisonment rates are analysed, and comparisons are made between the numbers of prisoners serving sentences versus being on remand awaiting trial. Information is also presented about the proportion of people released from prison in Victoria who come back into contact with corrective services (prison or community corrections) within two years.

The three most commonly occurring Most Serious Offences among all sentenced prisoners were:

- sex offences (16.8%);
- unlawful entry with intent (11.9%); and
- government security/justice procedure offences (11.9%).

Community Corrections

These sections present information on people sentenced to correctional orders to be served in the community, and the number and rate of young people currently held in detention. Selected information from other jurisdictions is also presented for comparison.



**FIGURE 8:
ALL SENTENCED
PRISONERS BY
MOST SERIOUS
OFFENCE 2008**

Measuring Public Opinion

One of the Council’s statutory functions under section 108C(1)(d) is to gauge public opinion on sentencing matters. This is separate from, but linked to, the Council’s function under section 108C(1)(e) to consult on sentencing matters.

There are many challenges involved in gauging public opinion. Much of the time, the voice of the general community is heard via the media. However the methods used by the media to gather information on ‘what the public thinks’ do not always provide a deeper understanding of the subtleties of community attitudes on complex issues.

The Council has continued its work in this area throughout 2008–09, producing two more research papers and participating in a national study on public opinion about sentencing.

More Myths and Misconceptions

In September 2008 the Council released an update to its 2006 research paper, *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing*. In the two years since the *Myths* paper was originally released, several new studies from around the world were published that added to the literature in this field. While none of the studies reported findings that were at odds with those included in the original *Myths* report, the updated paper reviewed the newer studies to ensure that the Council, and the Council’s stakeholders, had access to the most recent information possible.

More Myths and Misconceptions revisited some of the key messages derived from the original *Myths* paper: that, in the abstract, people believe that sentences are too lenient; that people have little accurate knowledge of crime and the criminal justice system; that people become less punitive when they are given

more information about a case; and that people are willing to accept alternatives to imprisonment.

The research paper also presented a discussion of the evidence about public confidence in the courts, which was not included in the original paper. Research has consistently found that people have the most confidence in the police and the least in the courts and prisons. When asked why they have little confidence in the courts, people typically cite lenient sentencing.

Public confidence is a priority for the criminal justice system for a number of reasons: the system relies heavily on confidence as victims need to be sufficiently confident in order to report crime in the first instance; without the co-operation of complainants, witnesses and jurors, prosecutions would not be effective; and public confidence is necessary for the legitimacy and function of the court.

As with other areas of public opinion about sentencing, measuring public confidence is difficult as confidence may be operationally defined in several ways. Respondents may be asked about trust or confidence, about one part of the criminal justice system or about the system as a whole, about outcomes of the system or processes, or about the people who run various systems and institutions.

To highlight some of the issues that arise when measuring public opinion about sentencing, in September 2008 the Council also released a methodological paper for a more technical readership.

Measuring Public Opinion about Sentencing

The Council's methodological paper on measuring public opinion about sentencing was released as a companion to *More Myths and Misconceptions*. The paper was designed to consider some of the methodological issues that arise when measuring informed public opinion about sentencing.

The focus of the literature on survey methodology has shifted in the last 20 years, from understanding the effects of survey errors to focusing on the causes of these errors and how to prevent them. This new focus has led to the development of theories about how people decide to participate in surveys and how respondents arrive at their answers to survey questions.

Applying concepts from cognitive psychology and related disciplines, researchers have considered how to maximise survey participation and how to reduce measurement error for respondents. The Council's methodological paper, *Measuring Public Opinion about Sentencing*, presented some of the ways in which survey developers can work to reduce measurement error in their surveys, considering issues such as question-order (context) effects, response-order effects and designing optimal survey questions.

Measuring Public Opinion about Sentencing highlights a number of elements of optimal survey design:

- including measures of the strength of people's attitudes, rather than just measuring the attitudes themselves – strong attitudes will have significant effects and will resist even the strongest pressure to change, while weak effects will have little impact on a person's thinking or actions and will be more vulnerable to situational pressures;

- as earlier questions may influence the interpretation of later ones (creating a question-order or 'context' effect), optimal survey design will involve varying the order of questions, ensuring questions are as specific and neutral as possible, and using introductory statements to help respondents distinguish topics and refocus their thoughts;
- as the order in which response alternatives are presented can significantly affect the results of public opinion surveys, optimal survey questionnaires will involve a rotation of the order of response choices and keeping questions and their responses short and simple, especially in situations where the questionnaire is particularly long;
- minimising the use of 'no opinion' or 'don't know' options to avoid fatigued and unmotivated respondents simply picking the easiest answer that requires the least cognitive effort;
- considering the level of respondents' prior knowledge about potential responses, and providing a menu of options from which to choose for those items where respondents may have little knowledge; and
- providing respondents with a more realistic setting in which to make their decisions – offering explicit trade-offs between various options – via the use of paired comparisons in constrained choice questions that force respondents to choose one or the other option.

The paper concluded that researchers need to consider these methodological issues in order to develop an optimal survey instrument to measure informed public opinion about sentencing.

Sentencing and Public Confidence: Public Perception and the Role of the Public in Sentencing Practice and Policy

For the first time since its establishment, the Council is conducting a large-scale, representative survey of public opinion about sentencing. Although gauging public opinion is one of the Council's statutory functions, until 2008–09 we have not been in a position to undertake such work.

The Council has joined a national research project that is being funded by the Australian Research Council. The research is multi-jurisdictional, involving the following Chief Investigators:

- Professor Geraldine Mackenzie (Bond University)
- Dr David Indermaur (Crime Research Centre, University of Western Australia)
- Professor Rod Broadhurst (Australian National University)
- Professor Kate Warner (University of Tasmania)
- Dr Lynne Roberts (Curtin University)
- Mr Nigel Stobbs (Queensland University of Technology)

Public confidence is critical to the effective operation of the criminal justice system. The research will generate much-needed current national data on public attitudes about sentencing and will examine avenues for incorporating public opinion into sentencing policy and processes.

Specifically, the aims of the research are as follows:

- to measure public confidence in sentencing;
- to analyse predictors of confidence;
- to assess the malleability of confidence as a measure of likely tolerance of reform;
- to examine the stability of punitive attitudes over time; and
- to apply focus group methods to assess ways in which opinion can be measured to inform sentencing policy.

The research involves a longitudinal design that surveys people repeatedly over four separate phases:

- Phase 1 – A large national telephone survey, in each state and territory, allowing comparisons across jurisdictions in top-of-the-head responses to questions about sentencing and the courts.
- Phase 2 – An in-depth survey for selected respondents from the first phase to see if opinions will change with the provision of more information about sentencing.
- Phase 3 – A series of deliberative focus groups to provide participants with more detailed information about sentencing and with an opportunity for considered discussion and debate about sentencing issues.
- Phase 4 – A final survey of people from each of the previous three phases to determine whether any changes in opinions about sentencing and the courts are maintained over time.

The process of providing information and allowing for deliberation and discussion is central to serious attempts to measure informed public attitudes (*public judgment*) as opposed to top-of-the-head responses (*mass public opinion*). This research provides the public with just such an opportunity.

Community Information and Education

You be the Judge

You be the Judge is the Council's hallmark community education program. The aim of the program is to enhance community knowledge of sentencing and to impart some understanding of the complexities inherent in the sentencing process.

You be the Judge sessions are run regularly for a variety of audiences, and the program also exists as a teacher's kit based on the Victorian school curriculum.

Sessions

The original purpose of the public information sessions was to provide participants with a better understanding of the complexity of sentencing, and to demonstrate that there is much more involved in the process than will appear in a newspaper article.

In 2009 the *You be the Judge* sessions were redeveloped so as to broaden the learning outcomes and to make the sessions more interactive while being able to capture data from participants.

The interactivity and data capture was achieved through the use of an Audience Response System (ARS) in sessions. With the ARS, each participant uses their individual handset to input responses to various questions throughout the session. As responses are received into the system, graphs are displayed to show group responses and prompt discussion. Demographic data such as age and gender are also captured to enable analysis of the data after the session. Not only does this form of delivery increase interactivity and interest, but it allows us to gather consistent data from each group.

The new sessions allow participants to provide a 'gut-reaction' sentence to a newspaper article, followed by a more considered sentence at the end of the session after being exposed to information about sentencing principles and trends for the particular case under review. With the data captured, we can analyse the difference between the two sentences given by each participant, and the aspects of the session that most influenced their decision-making.

Figure 9 (page 40) compares the initial and final imprisonment sentences given by 193 participants in the first eight sessions that were held. A culpable driving causing death case study was used in all of these sessions; the final total effective sentence given by the judge in the actual case was seven years' imprisonment.

Up until the end of June 2009 more than 370 participants were involved in 13 sessions in locations throughout Victoria, including Mildura, Yarrowonga, Shepparton, Grovedale, Geelong, Horsham and several Melbourne suburbs.

Teaching Material

The *You be the Judge* teacher’s kit continues to be a very popular resource with teachers of Years 9 to 12. The material was developed to assist teachers in educating students about the purposes, methods and complexities of sentencing. The program uses real sentencing case studies that provide a vehicle for students to discuss and consider offences committed, to apply the principles of sentencing and to experience for themselves some of what is involved in handing down a sentence.

The case studies concentrate on the sentencing phase of the legal process and are drawn from real cases in Victoria. The kit includes a teacher’s guide and slide shows for each case study. The guide provides background notes on sentencing in the Victorian court system, preparation for presenting the case studies and links to relevant curriculum and other resources. The slide shows are accompanied by notes that include relevant statistics and information about sentencing for the crimes featured in the cases, suggested activities and possible assessment tasks.

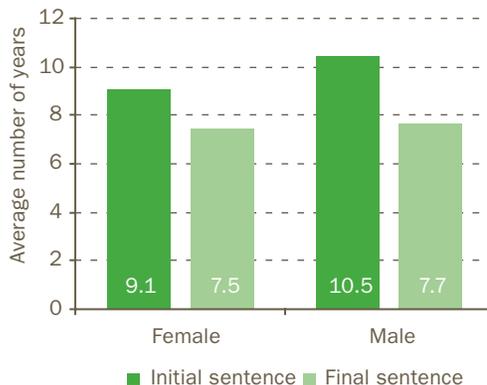
In early 2009 the Council began revising the kit, which is being split into two separate products – one for VCE Legal Studies and a new kit specifically targeted at several domains within the Victorian Essential Learning Standards (VELS) Years 9 and 10 curriculum. The curriculum for both areas is being reviewed to ensure continuing relevance, and new case studies are being produced for both kits.

The VELS kit will encourage teachers to team-teach across a number of domains, including English, Mathematics, the Arts and Information Technology. An important aspect of *You be the Judge* is the opportunity to teach and develop thinking skills – applied intellectual activities that use information to achieve outcomes and include elements such as solving problems, making decisions, thinking critically, developing an argument and using evidence in support of that argument.

You be the Judge also provides useful and timely links with the *National Framework for Values Education in Australian Schools*. The program ties in very closely with all nine Values for Australian Schooling articulated in the National Framework and supports values education by exploring both the values reflected in the sentencing component of the justice system and the interpretation of these values by those who have participated in the system.

The two new kits will be available for teachers in August 2009.

**FIGURE 9:
AVERAGE INITIAL
IMPRISONMENT
SENTENCE COMPARED
TO AVERAGE FINAL
IMPRISONMENT
SENTENCE BY GENDER
IN ‘YOU BE THE JUDGE’
SESSIONS (CULPABLE
DRIVING CASE STUDY)**



Website

The Council's website <www.sentencingcouncil.vic.gov.au> continues to be an important tool for delivering information about sentencing in Victoria. As well as providing information about the Council's objectives, structure and activities, the site contains:

- sentencing statistics – with around 60 pages of graphs and commentary on data such as prison populations, sentencing outcomes and community corrections;
- information about Council projects – which provides up to date information on terms of reference for projects, how members of the community can become involved, and access to the many reports produced as a result of all the research and consultation we undertake; and
- plain-English information about how sentencing operates in Victoria – this area of the site looks at the law, processes for sentencing and all of the sentencing options from imprisonment to dismissals for both adults and young people.

In 2008–09 the number of publications on the Council's website increased by over 50%. There are now 146 publications on the site as PDF (portable document format) documents, ranging in size from one page up to 348 pages.

The growing amount of information on the site corresponds to an increasing number of visitors. During 2008–09 there were over 29,300 user sessions, a 22% increase on the previous year.

The Council makes every effort to ensure that the website reaches AA standard accessibility according to the World Wide Web Consortium. Users of the site are encouraged to provide feedback on their experience in using the site and on any new content they would like us to produce. A feedback form is available to assist in providing comments.

Figure 10 shows the number of user sessions for the Council's website over the last 3 years.

Media Mentions and Other Citations

The Council continued to gather significant attention in the media over the course of the year, in particular around the release of its various publications. The Council's work was reported in more than 40 newspaper articles and television and radio segments during 2008–09.

The Council's work is now also widely cited in judicial and academic circles. The Council's reports and its Sentencing Snapshots were cited in more than 30 judgments during 2008–09 in the Court of



**FIGURE 10:
NUMBER OF USER
SESSIONS FROM
2006-07 TO 2008-09**

Appeal, the Supreme Court and the County Court (*DPP v Avci* [2008] VSCA 256; *DPP v CPD* [2009] VSCA 114; *DPP v DDJ* [2009] VSCA 115; *DPP v Lovett* [2008] VSCA 262; *DPP v McClelland* [2008] VSCA 168; *DPP v Monteiro* [2009] VSCA 105; *R v Crossley* [2008] VSCA 134; *R v Curtain* [2009] VSCA 38; *R v Dudkowski* [2009] VSCA 12; *R v Hildebrandt* [2008] VSCA 142; *R v Hyland* [2008] VSCA 220; *R v Jagroop* [2009] VSCA 46; *R v Nguyen* [2009] VSCA 64; *R v Parker* [2009] VSCA 19; *R v Phan* [2009] VSCA 3; *R v Scott* [2009] VSCA 20; *R v Vandenberg* [2009] VSCA 9; *R v Williamson* [2009] VSCA 21; *R v Dowsett* [2009] VSC 88; *R v Flaherty* (No 2) [2008] VSC 270; *R v Johnstone* [2008] VSC 584; *R v Margach* [2008] VSC 255; *R v Sumner* [2009] VCC; *R v Bradley* [2009] VCC; *R v Cervantes* [2009] VCC; *R v Dowie* [2009] VCC; *R v Francis* [2009] VCC; *R v Nguyen* [2009] VCC; *R v Pajic* [2009] VCC; *R v Smith* [2008] VCC; *R v Patounas* [2009] VCC; *R v Pillar* [2009] VCC).

In addition, in May 2009 speakers in the British House of Lords cited the Council in their discussions about establishing a similar body in the United Kingdom:

Have the Government given any thought to the merits of a sentencing advisory council, such as the one in Victoria, Australia, which does not get involved in designing guidelines for the judiciary, but has the role of researching sentencing policy, collecting and analysing sentencing information, providing information on sentencing to the government, judiciary and the public and providing feedback on the effectiveness of sentences? Would that not be a model that could command the widest support and lead to the best outcome while preserving the independence of our much respected judiciary?

In June 2009 the Justice Committee of the Scottish Parliament also cited the Council in their deliberations, in the context of improving public understanding of community penalties:

I can give you an example of a sentencing council that has taken public engagement and education seriously. The Sentencing Advisory Council in Victoria, Australia, has been energetic in that regard. It runs a ‘you be the judge’ roadshow for schools, trade unions, colleges and other places, at which judges and the community discuss sentencing.

It generates many reports about sentencing practice, it is good at disseminating that information, and it has good relationships with the media. It does not stop scare stories coming out, but it provides positive stories about sentencing, which are difficult to get into the media unless there is a relationship with them...The Victoria council is a good example of a body that tries to build public engagement.

The book *Penal Populism, Sentencing Councils and Sentencing Policy*, edited by Professor Arie Freiberg and Dr Karen Gelb, was given positive reviews in both the *British Journal of Criminology* and *The Original Law Review* in Canada during 2008–09. An excerpt from the *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing* research report appeared in the April 2009 edition of the *Federal Sentencing Reporter* in the United States. The research paper *Recidivism of Sex Offenders* was cited as an example of ‘science translation’, providing an ‘accessible overview of a body of empirical literature relevant to a law reform debate’. In his chapter ‘Social Science and Criminal Law Reform’ in the 2009 book *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (edited by Bernadette McSherry, Alan Norrie and Simon Bronitt), Mark Nolan writes about the recidivism research:

The impact of the Gelb report illustrates the importance of evidence-based discussion in such a controversial area of criminal law reform that divides both lay and expert legal commentators alike (p 167).

Speaking Engagements

Date	Audience	Topic	Presenter
4 July 2008	Australian Association of Crown Prosecutors Annual Conference	The Role of the Sentencing Advisory Council in Sentencing	Arie Freiberg
29 July 2008	Victorian Commercial Teachers Association Legal Studies Program for Teachers	Suspended Sentences Reforms	Arie Freiberg
12 August 2008	University of the Third Age, Stonnington	You be the Judge	Arie Freiberg
13 August 2008	The Williamson Foundation Community Leadership Program	Justice (Crime, Law and Order)	Arie Freiberg
21 August 2008	Community Partnerships and Accountability Group, Neighbourhood Justice Centre	Non-Adversarial Justice	Arie Freiberg
23 August 2008	Victoria Police Custodial Medicine Unit Annual Conference	You be the Judge	Arie Freiberg
16 September 2008	VCE Legal Studies Students – Part of Victoria Law Foundation’s Civics Roadshow	You be the Judge	Andrea David Prue Boughey
19 September 2008	The Australasian College of Road Safety and The Travelsafe Committee of the Queensland Parliament	Driving while Disqualified or Suspended in Victoria: When Little Works	Arie Freiberg
1 October 2008	Saferoads 2008	Driving while Disqualified or Suspended: Cars, Crime and Creative Solutions	Arie Freiberg
5 November 2008	Supreme and County Court Judges	Provocation in Homicide	Arie Freiberg
18 November 2008	Department of Justice – VACP	Principles and Purposes of Sentencing	Arie Freiberg
25 November 2008	Victorian Commercial Teachers Association – Comview 2008 Conference	Sentencing: True Justice at a Discount	Arie Freiberg
30 November 2008	Australian Jewish Democratic Society Annual Dinner	Sentencing Matters: Penal Populism and Sentencing Policy	Arie Freiberg

5 December 2008	Australian Institute of Criminology International Conference on Homicide	Provocation in Homicide	Arie Freiberg Felicity Stewart
29 January 2009	Year 12 English Students	Capital Punishment in Australia	Andrea David
6 February 2009	Sentencing Workshop for Judges and Magistrates	Interpreting Sentencing Statistics	Nick Turner Arie Freiberg
18 February 2009	New South Wales Bureau of Crime Statistics and Research 40th Anniversary Symposium	Evidence, Emotion and Criminal Justice: The Limits to Evidence-Based Policy	Arie Freiberg
16 March 2009	University Students	You be the Judge	Jenni Coady
18 March 2009	VCE Students	You be the Judge	Jenni Coady
19 March 2009	VCE Students	You be the Judge	Jenni Coady
20 March 2009	National Judicial Orientation Program, National Judicial College of Australia	Sentencing	Arie Freiberg
23 March 2009	VCE Students	You be the Judge	Jenni Coady
23 March 2009	VCE Students	You be the Judge	Jenni Coady
25 March 2009	VCE Students	You be the Judge	Jenni Coady
25 March 2009	Primary School Teachers	You be the Judge	Jenni Coady
31 March 2009	VCE Students	You be the Judge	Jenni Coady
1 April 2009	VCE Students	You be the Judge	Jenni Coady
22 April 2009	Year 10 Students	You be the Judge	Jenni Coady
13 May 2009	Victoria Law Foundation Talks – VCE Legal Studies Program	You be the Judge	Jenni Coady
14 May 2009	Australasian Court Administrators' Group Conference	Sentencing and Public Confidence: Public Perceptions and the Role of the Public in Sentencing Practice and Policy	Karen Gelb
21 May 2009	International Centre for Prison Studies, King's College London	The Victorian Sentencing Advisory Council	Arie Freiberg
25 May 2009	Year 11 Legal Studies Students	You be the Judge	Jenni Coady
25 May 2009	Years 9, 10 and 11 Legal Studies Students	You be the Judge	Jenni Coady
22 June 2009	University of the Third Age, Waverly	You be the Judge	Arie Freiberg

Visitors

The Council welcomed a number of visitors from Australia, Japan and the United States during 2008–09.

- The Hon. Kerry Shine, MP, Queensland Attorney-General; Annastacia Palaszczuk, MP; Barbara Stone, MP; Desley Scott, MP; Julie Grantham, Director-General of the QLD Department of Justice; and Derran Moss, Senior Policy Advisor to the Attorney-General.
- The Hon. Lara Giddings, MP, Tasmanian Attorney-General.
- Judge Daisaku Kaneko of the Tokyo High Court and Judge Atsushi Shiraishi of the Tokyo District Court.
- Mitsuaki Sasaki, Professor of Juvenile Law, Kobe Gakuin University; Tadahiro Maeda, Professor of Juvenile Law, Konan University; Takao Fuchino, Associate Professor of Criminal Procedure Law, Ritsumeikan University; Takahiro Inoue, Associate Professor of Criminal Law, Kyushu University; Kouji Amari, Lecturer in Criminal Law, Hokkai Gakuen University; Mutsumi Ito, Associate Professor of Criminal Procedure Law, Mie University; Mari Hirayama, Lecturer in Criminology, Hakuo University; Kie Takahira, Attorney at Law; and Chie Morihisa, Assistant Professor of Criminology, Kyushu University.
- Professor Steven Chanenson, Pennsylvania Commission on Sentencing.

Organisational Governance and Statutory Compliance

As a Public Entity, accountable and effective governance is required under the *Financial Management Act 1994*, the *Public Administration Act 2004*, the *Audit Act 1994*, and other applicable laws, regulations and directions from the Minister of Finance.

The Council has undertaken to complete compliance certification under the Financial Management Certification Framework in conjunction with the Department of Justice.

Human Resource Management

The Sentencing Advisory Council promotes the personal and professional development of its staff in order to achieve sustained improvements and to create satisfying career paths. The Council actively promotes safe work practices, career development, work/life balance and a friendly and non-discriminatory working environment.

Staff Development and Training

During 2008–09 the Sentencing Advisory Council offered a wide range of programs to equip staff with the knowledge and skills required to perform their jobs successfully. Staff members were encouraged to extend their professional skills via:

- attendance at internal and external professional development courses in communication, finance, personal development, statistics and information technology;
- attendance and presentation of papers at relevant conferences;
- executive and management training programs; and
- assistance to staff members undertaking undergraduate and postgraduate studies.

Financial Management

The Council and secretariat abide by a Financial Code of Practice that encompasses procurement, the use of assets and resources, potential conflicts of interest, secondary employment, financial gifts and gratuities. Employees are subject to the Department of Justice Code of Conduct (consistent with the Victorian Public Service Code of Conduct and the objectives of the *Public Administration Act 2004*) and regular financial reporting is scrutinised by internal audit provided by Oakton Services.

Outsourced Consultancies and Major Contracts

There were no outsourced consultancies or contracts in excess of \$100,000.

Privacy

The Sentencing Advisory Council manages personal information in accordance with the *Information Privacy Act 2000* and its privacy policy. Regular reviews are carried out in relation to the recording of personal information to ensure that the Council is in compliance with regulations. There were no privacy related complaints for the year ending 30 June 2009.

Freedom of Information

The *Freedom of Information Act 1982* allows the public the right to access documents held by the Council. For the year ending 30 June 2009 there were no FOI applications.

Whistleblowers

The *Whistleblowers Protection Act 2001* encourages and facilitates disclosures of improper conduct by public officers and public bodies. For the year ending 30 June 2009 the Council was not subject to any complaints or disclosures.

Compliance with the *Building Act 1993*

The Sentencing Advisory Council does not own or control any government buildings in so far as the Council utilises building infrastructure and property services provided by the Department of Justice.

Implementation of the Victorian Industry Participation Policy

The *Victorian Industry Participation Policy Act 2003* requires public bodies and departments to report on the application of the Victorian Industry Participation Policy in all tenders over \$3 million in metropolitan Melbourne and \$1 million in regional Victoria. While the Council uses local suppliers for goods and services the policy does not apply to the Council due to the threshold of expenditure.

Occupational Health and Safety

The Council has assigned an Occupational Health and Safety (OHS) Officer and OHS has been factored into the Council's overall risk management framework. In addition to attending OHS presentations, all staff are provided with materials on the *Occupational Health and Safety Act 2004* and with guides on ergonomic assessment. Staff also have access to ergonomic equipment and to

assessments by qualified professionals, and all have participated in fire-drill evacuation exercises. There were no claims of OHS related injury for the year ending 30 June 2009.

Industrial Relations

The Council enjoys a cooperative relationship with employee representative organisations. For the year ending 30 June 2009 no time was lost through industrial disputes or accidents.

Merit and Equity

Department of Justice merit and equity principles are applied in the appointment and management of staff and the Council's guiding principles are consistent with the Public sector values and employment principles articulated in the *Public Administration Act 2004*.

Social and Cultural Diversity

The Council acknowledges the importance of cultural diversity and endeavours to maintain an inclusive, consultative and open approach to its work. Diversity is enhanced through the selection criteria of Council members (appointed by the Attorney-General), staff recruitment, student research placements and a broad community consultation strategy that includes a diverse range of individuals and community groups.

Environmental Management and Impacts

Operating within the context of the Department of Justice, the Council has adopted the Department's Environmental Management policy, implementing efficient office recycling, waste management and energy efficiency practices. As part of its ongoing commitment to reducing its environmental impact, the Council's 2008–09 *Annual Report* is only available electronically via the Council's website.

Audit and Finance Committee

Because of their small size and to maximise the most effective use of limited resources, the Sentencing Advisory Council and the Judicial College of Victoria combined to establish a joint Audit and Finance Committee to oversee their financial operations. The committee consists of the following members:

- Karol Hill (Chairperson – independent member)
- Karen Gelb (Sentencing Advisory Council representative)
- Karen Bruce (Judicial College of Victoria representative)
- John Bafit (independent member – Department of Human Services)

Tony Phillips, Financial Consultant for Lindsay and Associates, is the Council's Chief Financial Accounting Officer and attends committee meetings by standing invitation, providing finance support as required. The Chief Executive Officers of both organisations and a representative of the Office of the Auditor-General also attend meetings by standing invitation.

The Audit and Finance Committee undertakes the oversight of:

- financial performance and the financial reporting process, including the annual financial statements;
- the scope of work, performance and independence of internal audit;
- the scope of work, performance and independence of the external auditor;
- the operation and implementation of the risk management framework;
- matters of accountability and internal control affecting the operations of the Council;
- the effectiveness of management information systems and other systems of internal control;
- the acceptability of, correct accounting treatment for, and disclosure of significant transactions that are not part of the Council's normal course of business;

- the sign-off of accounting policies; and
- the Council's process for monitoring compliance with laws and regulations and its own code of conduct and code of financial practice.

In performing its duties, the Audit and Finance Committee maintains an effective working relationship with the management of the Council secretariat, the Council board, and both internal and external auditors.

Risk Management

In accordance with DTF Standing Direction 4.5.5, the following attestation of compliance is made following agreement by the Audit and Finance Committee that such an assurance can be given:

I, Stephen Farrow (CEO), certify that the Sentencing Advisory Council has risk management processes in place consistent with the *Australian/New Zealand Risk Management Standard* and an internal control system is in place that enables the executive to understand, manage and satisfactorily control risk exposures. The Audit and Finance Committee verifies this assurance and that the risk profile of the Sentencing Advisory Council has been critically reviewed within the last 12 months.



Stephen Farrow
Chief Executive Officer
Sentencing Advisory Council

Additional Information

The Council's published reports and other public documents are all available online at <www.sentencingcouncil.vic.gov.au>. Any other relevant information in relation to the financial year is retained by the accountable officer and is available on request subject to Freedom of Information requirements and our Privacy policy.

Financial Statements

for the Financial Year

Ended 30 June 2009

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Comprehensive Operating Statement for the financial year ended 30 June 2009

	Notes	2009 \$	2008 \$
Income from transactions			
Grant from the Department of Justice	2	1,979,200	1,476,512
Total income from transactions		1,979,200	1,476,512
Expenses from transactions			
Employee benefits	3(a)	1,286,108	1,025,795
Depreciation and amortisation	3(b)	–	1,788
Finance costs	3(c)	–	352
Grants and other transfers	3(d)	–	18,000
Other operating expenses	3(e)	605,053	431,644
Total expenses from transactions		1,891,161	1,477,579
Net result from transactions		88,039	(1,067)
Other economic flows included in net result			
Net gain/(loss) on non-financial assets	4(a)	–	223
Employee benefits	4(b)	(8,520)	702
Total other economic flows included in net result		(8,520)	925
Net result		79,519	(142)
Comprehensive result		79,519	(142)

The comprehensive operating statement should be read in conjunction with the accompanying notes included on pages 64–65.

Balance Sheet
as at 30 June 2009

	Notes	2009 \$	2008 \$
Assets			
Financial assets			
Cash and deposits	14(a)	500	500
Receivables	5	495,622	329,851
Total financial assets		496,122	330,351
Total assets		496,122	330,351
Liabilities			
Payables	7	116,022	105,640
Provisions	8	226,246	150,376
Total liabilities		342,268	256,016
Net assets		153,854	74,335
Equity			
Accumulated surplus/(deficit)		(163,523)	(243,042)
Contributed capital		317,377	317,377
Total equity		153,854	74,335
– Commitments for expenditure	11		
– Contingent liabilities and contingent assets	12		

The above balance sheet should be read in conjunction with the accompanying notes included on pages 65, 67–69, 72, 75.

Statement of Changes in Equity for the financial year ended 30 June 2009

	Equity at 1 July 2008	Total comprehensive result	Transactions with owners in their capacity as owners	Equity at 30 June 2009
	\$	\$	\$	\$
Accumulated surplus/ (deficit)	(243,042)	79,519	–	(163,523)
Contributions by owners	317,377	–	–	317,377
Total equity at end of financial year	74,335	79,519	–	153,854

	Equity at 1 July 2007	Total comprehensive result	Transactions with owners in their capacity as owners	Equity at 30 June 2008
	\$	\$	\$	\$
Accumulated surplus/ (deficit)	(242,900)	(142)	–	(243,042)
Contributions by owners	317,377	–	–	317,377
Total equity at end of financial year	74,477	(142)	–	74,335

The above statement of changes in equity should be read in conjunction with the accompanying notes included in the following pages.

Cash Flow Statement

for the financial year ended 30 June 2009

	Note	2009 \$	2008 \$
Cash flows from operating activities			
<i>Receipts</i>			
Receipts from the Department of Justice		1,813,429	1,421,610
Total receipts		1,813,429	1,421,610
<i>Payments</i>			
Payments to suppliers and employees		(1,813,429)	(1,423,514)
Interest and other costs of finance paid		–	(352)
Total payments		(1,813,429)	(1,423,866)
Net cash flows from/(used in) operating activities	14(b)	–	(2,256)
Cash flows from investing activities			
Proceeds from sale of non-financial assets		–	20,767
Net cash flows from/(used in) investing activities		–	20,767
Cash flows from financing activities			
Repayment of finance lease			(22,611)
Net cash flows from/(used in) financing activities		–	(22,611)
Net increase/(decrease) in cash and cash equivalents		–	(4,100)
Cash and deposits at the beginning of the financial year		500	4,600
Cash and deposits at the end of the financial year	14(a)	500	500

The above cash flow statement should be read in conjunction with the accompanying notes included on page 75.

Notes to the Financial Statements for the financial year ended 30 June 2009

Note 1. Summary of Significant Accounting Policies

(a) Statement of compliance

The financial report is a general-purpose financial report which has been prepared on an accrual basis in accordance with the *Financial Management Act 1994* and applicable Australian Accounting Standards and Interpretations (AASs). AASs include Australian equivalents to International Financial Reporting Standards.

In applying AASs, the Sentencing Advisory Council (SAC) has, where relevant, applied those paragraphs applicable to not-for-profit entities.

(b) Basis of preparation

The financial statements have been prepared on a historical cost basis. Cost is based on the fair values of the consideration given in exchange for assets.

In the application of AASs, management is required to make judgements, estimates and assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstance, the results of which form the basis of making the judgments. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period or in the period of the revision, and future periods if the revision affects both current and future periods.

Accounting policies are selected and applied in a manner which ensures that the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions or other events is reported.

The accounting policies set out below have been applied in preparing the financial statements for the year ended 30 June 2009 and the comparative information presented for the year ended 30 June 2008.

(c) Scope and presentation of financial statements

Early adoption of AASB 101 (September 2007)

As a result of a state wide policy to improve consistency in public sector reporting, SAC has revised the presentation of its complete set of financial statements to align with the AASB 1049 presentation format, used in the Financial Report for the State and the general government sector. In addition, SAC has also early adopted the September 2007 version of AASB 101.

In keeping with AASB 101 (September 2007) this complete set of financials includes the following changes:

- (a) the notion of:
 - ‘a complete set of financial statements’ rather than using ‘financial report’;
 - ‘changes in equity’ rather than ‘movements in equity’; and
 - ‘transactions with owners in their capacity as owners’ rather than ‘transactions with owners as owners’.
- (b) references to equity holders as *owner*.

Some of the changes applied to the financial statements and notes as a result of alignment to AASB 1049 that are allowable under the AASB101 (September 2007) include the following:

- extended operating statement incorporating non owner changes in equity, which is now referred to as comprehensive operating statement;
- items being presented by liquidity order in the balance sheet;
- the inclusion of a limited number of Government Finance Statistics (GFS) classifications, such as income or expenses from transactions, and other economic flows; and
- a glossary of terms included in the notes explaining certain terms, including GFS terms adopted.

Comprehensive operating statement

The comprehensive operating statement includes items previously included in the statement of changes in equity.

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Income and expenses in the comprehensive operating statement are separated into either ‘transactions’ or ‘other economic flows’.

Balance sheet

Items of assets and liabilities in the balance sheet are:

- ranked in liquidity order;
- aggregated into financial and non- financial assets;
- classified according to GFS terminology, but retain measurement and disclosure rules under existing accounting standards applicable to SAC; and
- current versus non-current assets and liabilities are disclosed in the notes where relevant.

Statement of changes in equity

The statement of changes in equity presents reconciliations of each owner and owner equity opening balance at the beginning of the year to the closing balance at the end of the year, showing separately movements due to amounts recognised in the comprehensive result and amounts recognised in equity related to transactions with owners in their capacity as owners.

Cash flow statement

The cash flow statement classifies flows by operating, investing and financing activities in accordance with AASB 107 Cash Flow Statements. There were no significant changes due to alignment of SAC’s financial statements presentation formats to AASB 1049.

Notes to the Financial Statements for the financial year ended 30 June 2009

(d) Reporting entity

The financial report covers the Sentencing Advisory Council as an individual reporting entity.

The Sentencing Advisory Council (SAC) is an independent government-funded body established in July 2004 by the *Sentencing (Amendment) Act 2003*. The Council was formed to implement a key recommendation arising out of Professor Arie Freiberg's 2002 review of sentencing in Victoria. The 'Pathways to Justice' report recognised the need for a body that would allow properly informed public opinion to be taken into account in the sentencing process, as well as the dissemination of up-to-date and accurate sentencing data to assist judges in their role to promote consistency in sentencing outcomes.

Its principal address is:

The Sentencing Advisory Council
4/436 Lonsdale Street
MELBOURNE VIC 3000

The financial report includes all the controlled activities of SAC.

A description of the nature of SAC's functions and principal activities is included in the Report of Operations on page 6 which does not form part of these financial statements.

Functions and funding

SAC's functions are set out in Section 108C of the *Sentencing Act 1991* and are to provide statistical information on sentencing, including information on current sentencing practices, to members of the judiciary and other interested persons; to conduct research, and disseminate information to members of the judiciary and other interested persons, on sentencing matters; to gauge public opinion on sentencing matters; to consult, on sentencing matters, with government departments and other interested persons and bodies as well as the general public; to advise the Attorney-General on sentencing matters; and to state in writing to the Court of Appeal its views in relation to the giving, or review, of a guideline judgment.

SAC is funded for the provision of outputs consistent with its statutory function. Funds are from accrual-based grants derived from monies appropriated annually by Parliament through the Department of Justice (DoJ).

(e) Events after reporting date

Assets, liabilities, income or expenses arise from past transactions or other past events. Where the transactions result from an agreement between SAC and other parties, the transactions are only recognised when the agreement is irrevocable at or before balance date. Adjustments are made to amounts recognised in the financial statements for events which occur after the reporting date and before the date the statements are authorised for issue, where those events provide information about conditions which existed at the reporting date. Note disclosure is made about events between the reporting date and the date the statements are authorised for issue where the events relate to conditions which arose after the reporting date and which may have a material impact on the results of subsequent years.

(f) Goods and Services Tax (GST)

Income, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the taxation authority. In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and Payables are stated exclusive of the amount of GST receivable or payable. DoJ manages the GST transactions on behalf of SAC and the net amount of GST recoverable from or payable to the Australian Taxation Office is recognised in the financial statements of DoJ.

(g) Income from transactions

Income becomes controlled by SAC when it is appropriated from the Consolidated Fund by the Victorian Parliament and applied to the purposes defined under the relevant appropriations act.

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Amounts disclosed as income are, where applicable, net of returns, allowances and duties and taxes.

Income is recognised for SAC's major activity as follows:

Grants from the Department of Justice

Income from the outputs SAC provided to Government is recognised when those outputs have been delivered and the Minister has certified delivery of those outputs in accordance with the specified performance criteria.

Notes to the Financial Statements for the financial year ended 30 June 2009

(h) Expenses from transactions

Grants and other payments

Grants and other payments to third parties are recognised as an expense in the reporting period in which they are paid and payable.

Employee benefits

Expenses for employee benefits are recognised when incurred, except for contributions in respect of defined benefits plans.

Superannuation

The amount charged in the comprehensive operating statement in respect of defined benefit superannuation plans represents the contributions made by SAC to the superannuation plan in respect to the current services of current SAC staff. Superannuation contributions are made to the plans based on the relevant rules of each plan.

The Department of Treasury and Finance centrally recognises the defined benefit liability or surplus of most Victorian government employees in such funds.

The amount charged to the comprehensive operating statement in respect of defined benefit superannuation plans represents the accrual of benefits during the reporting period. Note 9 provides further details.

Depreciation and amortisation

Depreciation is provided on plant and equipment. Depreciation is generally calculated on a straight line basis so as to write off the net cost or other revalued amount of each item of plant and equipment over its expected useful life to its estimated residual value. Leasehold improvements are depreciated over the period of the lease or estimated useful life, whichever is the shorter, using the straight-line method. The estimated useful lives, residual values and depreciation method are reviewed at the end of each annual reporting period.

The following estimated useful lives are used in the calculation of depreciation:

	2009	2008
Plant and Equipment	2–15 years	2–15 years

Interest expense

Interest expenses are recognised as expenses in the period in which they are incurred.

Supplies and services

Supplies and services expenses are recognised as an expense in the reporting period in which they are incurred.

(i) Other economic flows included in net result

Other economic flows included in net result

Other economic flows measure the change in volume or value of assets or liabilities that do not result from transactions.

Impairment of financial assets

Bad and doubtful debts are assessed on a regular basis. Those bad debts considered as written off by mutual consent are classified as a transaction expense. The allowance for doubtful receivables and bad debts not written off by mutual consent are adjusted as 'other economic flows'.

Other gains/(losses) from other economic flows

Other gains/(losses) from other economic flows include the gains or losses from reclassifications of amounts from reserves and/or accumulated surplus to net result, and from the revaluation of the present value of the long service leave liability due to changes in the bond interest rates.

(j) Financial assets

Cash and deposits

Cash and deposits, including cash equivalents, comprise cash on hand.

For the cash flow statement presentation purposes, cash and cash equivalents includes cash on hand.

Receivables

Receivables consist predominantly of amounts owing by the Department of Justice.

Receivables are recognised initially at fair value and subsequently measured at amortised cost, using the effective interest rate method, less any accumulated impairment.

Leases

Lease of plant, equipment and vehicles are classified as finance leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

SAC as lessee

Finance leases are recognised as assets and liabilities at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payment, each determined at the inception of the lease. The leased asset is depreciated over the shorter of the estimated useful life of the asset or the term of the lease.

Minimum lease payments are allocated between the principal component of the lease liability, and the interest expense calculated using the interest rate implicit in the lease, and charged directly to the comprehensive operating statement. Contingent rentals associated with finance leases are recognised as an expense in the period in which they are incurred.

Operating lease payments, including any contingent rentals, are recognised as an expense in the comprehensive operating statement on a straight line basis over the lease term, except where another systematic basis is more representative of the time pattern of the benefits derived from the use of the leased asset.

Notes to the Financial Statements for the financial year ended 30 June 2009

(k) Liabilities

Payables

Payables represent liabilities for goods and services provided to SAC that are unpaid at the end of the financial year. Payables are initially measured at fair value, being the cost of the goods and services, and then subsequently measured at amortised cost.

Interest bearing liabilities

Interest bearing liabilities are initially measured at fair value, being the cost of the interest bearing liabilities, net of transaction costs.

Subsequent to initial recognition, interest bearing liabilities are measured at amortised cost with any difference between the initial recognised amount and the redemption value being recognised in profit and loss over the period of the interest bearing liability using the effective interest rate method.

Provisions

Provisions are recognised when SAC has a present obligation, the future sacrifice of economic benefits is probable, and the amount of the provision can be measured reliably.

The amount recognised as a provision is the best estimate of the consideration required to settle the present obligation at reporting date, taking into account the risks and uncertainties surrounding the obligation. Where a provision is measured using the cashflows estimated to settle the present obligation, its carrying amount is the present value of those cashflows.

Employee benefits

(i) Wages and salaries, annual leave and sick leave

Liabilities for wages and salaries, including non monetary benefits, annual leave and accumulating sick leave expected to be settled within 12 months of the reporting date are recognised in the provision for employee benefits in respect of employee services up to the reporting date, classified as current liabilities and measured at their nominal values.

Those liabilities that are not expected to be settled within 12 months are recognised in the provision for employee benefits as current liabilities, measured at present value of the amounts expected to be paid when the liabilities are settled using the remuneration rate expected to apply at the time of settlement.

(ii) Long service leave

Liability for long service leave (LSL) is recognised in the provision for employee benefits.

Current liability – unconditional LSL is disclosed in the notes to the financial statements as a current liability even where SAC does not expect to settle the liability within 12 months because it will not have the unconditional right to defer the settlement of the entitlement should an employee take leave within 12 months.

The components of this current LSL liability are measured at:

- present value – component that SAC does not expect to settle within 12 months; and
- nominal value – component that SAC expects to settle within 12 months.

Non-current liability – conditional LSL is disclosed as a non-current liability. There is an unconditional right to defer the settlement of the entitlement until the employee has completed the requisite years of service.

This non-current LSL liability is measured at present value. Gain or loss following revaluation of the present value of non current LSL liability due to changes in bond interest rates is recognised as an other economic flow (refer to Note 1(i)).

(iii) Employee benefits on-costs

Employee benefits on-costs (payroll tax, workers compensation, superannuation, annual leave and LSL accrued while on LSL taken in service) are recognised separately from the provision for employee benefits.

(l) Commitments

Commitments are disclosed at their nominal value and inclusive of the GST payable.

(m) Contingent assets and contingent liabilities

Contingent assets and contingent liabilities are not recognised in the balance sheet, but are disclosed by way of a note and, if quantifiable, are measured at nominal value. Contingent assets and contingent liabilities are presented exclusive of GST receivable or payable respectively.

(n) Equity

Contribution by owners

Additions to net assets which have been designated as contributions by owners are recognised as contributed capital. Other transfers that are in the nature of contributions or distributions have also been designated as contribution by owners.

Transfers of net assets arising from administrative restructurings are treated as distributions to or contributions by owners.

(o) Functional and presentation currency

The functional currency of SAC is the Australian dollar, which has also been identified as the presentation currency of SAC.

(p) Rounding of amounts

Amounts in the financial report have been rounded to the nearest dollar, unless otherwise stated.

Notes to the Financial Statements for the financial year ended 30 June 2009

(q) New accounting standards and interpretations

Certain new accounting standards and interpretations have been published that are not mandatory for the 30 June 2009 reporting period. The Department of Treasury and Finance assesses the impact of these new standards and advises departments and other entities of their applicability and early adoption where applicable.

As advised in Note 1(c) SAC has early adopted the September 2007 version of AASB 101.

As at 30 June 2009, the following standards and interpretations had been issued but were not mandatory for financial year ending 30 June 2009. SAC has not, and does not intend to, adopt these standards early.

Standard/Interpretation	Summary	Applicable for annual reporting periods beginning or ending on	Impact on SAC financial statements
AASB 8 Operating Segments	Supersedes AASB 114 <i>Segment Reporting</i>	Beginning 1 January 2009	Not applicable
AASB 2007–3 Amendments to Australian Accounting Standards arising from AASB 8 (AASB 5, AASB 6, AASB 102, AASB 107, AASB 119, AASB 127, AASB 134, AASB 136, AASB 1023 & AASB 1038)	An accompanying amending standard, also introduced consequential amendments into other Standards	Beginning 1 January 2009	Impact expected to be insignificant
AASB 123 Borrowing Costs	Option to expense borrowing cost related to a qualifying asset had been removed. Entities are now required to capitalise borrowing costs relevant to qualifying assets. In February 2009, the AASB decided that not-for-profit public sector entities could continue to expense borrowing costs attributable to qualifying assets pending the outcome of various IPSASB/AASB projects.	Beginning 1 January 2009	SAC continues to expense borrowing costs
AASB 2007–6 Amendments to Australian Accounting Standards arising from AASB 123 (AASB 1, AASB 101, AASB 107, AASB 111, AASB 116 & AASB 138 and Interpretations 1 & 12)	An accompanying amending standard, also introduced consequential amendments in other Standards	Beginning 1 January 2009	Same as AASB 123 above

AASB 2008–2 Amendments to Australian Accounting Standards – Puttable Financial Instruments and Obligations arising on Liquidation (AASB 7, AASB 101, AASB 132, AASB 139 & Interpretation 2).	This Amending Standard introduces an exception to the definition of financial liability to classify as equity instruments certain puttable financial instruments and certain instruments that impose on an entity an obligation to deliver to another party a pro rata share of the net assets of the entity only on liquidation of the entity.	Beginning 1 January 2009	Not applicable to not-for-profit entities
AASB 2008–3 Amendments to Australian Accounting Standards arising from AASB 3 & AASB 127 (AASB 1, 2, 4, 5, 7, 101, 107, 112, 114, 116, 121, 128, 131, 132, 133, 134, 136, 137, 138, 139 and Interpretations 9 & 107)	This Standard gives effect to consequential changes arising from revised AASB 3 and amended AASB 127. The Prefaces to those Standards summarise the main requirements of those Standards.	Beginning 1 July 2009	Impact expected to be insignificant
AASB 2008–5 Amendments to Australian Accounting Standards arising from the Annual Improvements Projects (AASBs 5, 7, 101, 102, 107, 108, 110, 116, 118, 119, 120, 123, 127, 128, 129, 131, 132, 134, 136, 138, 140, 141, 1023, & 1038)	A suite of amendments to existing standards following issuance of IASB Standard improvements to IFRSs in May 2008. Some amendments result in accounting changes for presentation, recognition and measurement purposes.	Beginning 1 January 2009	Impact is being evaluated
AASB 2008–6 Further Amendments to Australian Accounting Standards arising from the Annual Improvements Projects (AASB 1 & AASB 5)	The amendments require all the assets and liabilities of a for-sale subsidiary's to be classified as held for sale and clarify the disclosures required when the subsidiary is part of a disposal group that meets the definition of a discontinued operation.	Beginning 1 July 2009	Impact expected to be insignificant
AASB 2008–7 Amendments to Australian Accounting Standards – Cost of an Investment in a Subsidiary Jointly Controlled Entity or Associate (AASB 1, AASB 118, AASB 121, AASB 127, & AASB 136)	Changes mainly relate to treatment of dividends from subsidiaries or controlled entities.	Beginning 1 January 2009	Impact expected to be insignificant
AASB 2008–08 Amendments to Australian Accounting Standards – Eligible Hedged Items (AASB 139)	The amendments to AASB 139 clarify how the principles that determine whether a hedged risk or portion of cash flows is eligible for designation as a hedged item should be applied in particular situations.	Beginning 1 July 2009	Impact is being evaluated
AASB 2008–09 Amendments to AASB 1049 for consistency with AASB 101	Amendments to AASB 1049 for consistency with AASB 101 (September 2007) version.	Beginning 1 January 2009	Not applicable to public sector entities except for certain presentation formats

Notes to the Financial Statements for the financial year ended 30 June 2009

Note 2. Income from Transactions

	2009 \$	2008 \$
Grants and other transfers (other than contributions by owners)		
Department of Justice	1,979,200	1,476,512
Total grants	1,979,200	1,476,512
Total income	1,979,200	1,476,512

Note 3. Expenses from Transactions

	2009 \$	2008 \$
(a) Employee benefits		
Post employment benefits:		
– Defined contribution superannuation plans	88,714	71,533
Salary, wages and long service leave	1,063,080	874,862
Other on-costs (fringe benefits tax, payroll tax and workcover levy)	59,882	50,881
Staff Training	74,432	28,519
Total employee benefits	1,286,108	1,025,795
(b) Depreciation and amortisation		
Amortisation of non-current physical and intangible assets	–	1,788
Total depreciation and amortisation	–	1,788
(c) Finance costs		
Finance lease interest	–	352
Total finance costs	–	352
(d) Grants and other payments		
Grant to University of Western Australia	–	18,000
Total grants and other payments	–	18,000

	2009	2008
	\$	\$
(e) Other operating expenses		
Supplies and services		
– Purchase of supplies and consumables	124,148	105,436
– Purchase of services	339,721	196,249
– Maintenance	32,743	36,620
– Other (rent and associated costs)	105,523	83,253
Total supplies and services	602,135	421,558
Operating lease rental expenses		
– Minimum lease payments	2,918	10,086
Total operating lease rental expenses	2,918	10,086
Total other operating expenses	605,053	431,644

Note 4. Other Economic Flows Included in Net Result

	2009	2008
	\$	\$
(a) Net gain/(loss) on non-financial assets		
Net gain on disposal of physical assets	–	223
(b) Employee benefits		
Long service leave expense	(8,520)	702
Total other economic flows	(8,520)	925

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Note 5. Receivables

	2009	2008
	\$	\$
Current receivables		
Statutory		
Amount owing from the Department of Justice	463,326	310,661
Total current receivables	463,326	310,661
Non-current receivables		
Statutory		
Amount owing from the Department of Justice	32,296	19,190
Total non-current receivables	32,296	19,190
Total receivables	495,622	329,851

Notes to the Financial Statements for the financial year ended 30 June 2009

Note 6. Plant and Equipment

Classification by 'Public Safety and Environment' Purpose Group

Table 6.1 Carrying amounts

	2009 \$	2008 \$
Nature-based classification		
Leasehold fitout		
– Leasehold fitout at fair value	446,673	446,673
– less: accumulated amortisation	(446,673)	(446,673)
	–	–
Plant and equipment under finance lease		
– Plant and equipment under finance lease at fair value	–	–
– less: accumulated depreciation	–	–
	–	–
Net carrying amount of plant and equipment	–	–

Classification by 'Public Safety and Environment' Purpose Group

Table 6.2 Movements in carrying amount

	Motor vehicle under finance lease at cost \$	Total \$
Carrying amount		
Balance at 1 July 2007	22,332	22,332
Additions	–	–
Disposals	(20,544)	(20,544)
Depreciation expense	–	–
Amortisation expense	(1,788)	(1,788)
Balance at 1 July 2008	–	–

	Motor vehicle under finance lease at cost	Total
	\$	\$
Additions	–	–
Disposals	–	–
Depreciation expense	–	–
Amortisation expense	–	–
Balance as at 30 June 2009	–	–

The following useful lives are used in the calculation of amortisation:

Motor vehicle 4 years

Table 6.3 Aggregate amortisation recognised as an expense during the year

	2009	2008
	\$	\$
Motor vehicle	–	(1,788)
	–	(1,788)

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Note 7. Payables

	2009	2008
	\$	\$
Current payables		
<i>Contractual</i>		
Amounts payable to trade creditors	71,785	81,534
Accrued salaries	43,920	23,274
Total contractual payables	115,705	104,808
<i>Statutory</i>		
Taxes payable	317	832
Total contractual payables	317	832
Total payables	116,022	105,640

(a) Maturity analysis of payables

Refer to table 13.2 in Note 13.

(b) Nature and extent of risk arising from payables

Refer to note 13d.

Notes to the Financial Statements

for the financial year ended 30 June 2009

Note 8. Provisions

	2009	2008
	\$	\$
Current		
Employee benefits (i) (note 8(a))		
Unconditional and expected to be settled within 12 months (ii)	94,107	69,428
Unconditional and expected to be settled after 12 months (iii)	69,078	42,727
	163,185	112,155
Provisions related to employee benefit on-costs (note 8(a))		
Unconditional and expected to be settled within 12 months (ii)	19,904	12,577
Unconditional and expected to be settled after 12 months (iii)	10,861	6,454
	30,765	19,031
Total current provisions	193,950	131,186
Non-current		
Employee benefits (i) (note 8(a))	28,071	16,676
Provisions related to employee benefit on-costs (note 8(a))	4,225	2,514
Total non-current provisions	32,296	19,190
Total provisions	226,246	150,376

(a) Employee benefits (i) and related on-costs

	2009	2008
	\$	\$
Current employee benefits		
Annual leave entitlements	44,623	24,437
Unconditional long service leave entitlements	118,562	87,718
Non-current employee benefits		
Conditional long service leave entitlements	28,071	16,676
Total employee benefits	191,256	128,831
Current on-costs	30,765	19,031
Non-current on-costs	4,225	2,514
Total on-costs	34,990	21,545
Total employee benefits and related on-costs	226,246	150,376

Notes:

(i) Provisions for employee benefits consist of amounts for annual leave and long service leave accrued by employees, not including on-costs.

(ii) The amounts disclosed are nominal amounts.

(iii) The amounts disclosed are discounted to present values.

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(b) Movement in provisions

	On-costs Annual leave 2009 \$	On-costs LSL 2009 \$	Total 2009 \$
Opening balance	5,806	15,739	21,545
Additional provisions recognised	28,250	6,329	34,579
Reductions arising from payments/other sacrifices of future economic benefits	(21,134)		(21,134)
Closing balance	12,922	22,068	34,990
Current	12,922	17,843	30,765
Non-current	–	4,225	4,225
	12,922	22,068	34,990

Notes to the Financial Statements for the financial year ended 30 June 2009

Note 9. Superannuation

Employees of SAC are entitled to receive superannuation benefits and SAC contributes to both defined benefit and defined contribution plans. The defined benefit plan(s) provides benefits based on years of service and final average salary.

SAC does not recognise any defined benefit liability in respect of the plan(s) because the entity has no legal or constructive obligation to pay future benefits relating to its employees; its only obligation is to pay superannuation contributions as they fall due. The Department of Treasury and Finance recognises and discloses the State's defined benefit liabilities in its financial statements.

However, superannuation contributions paid and payable for the reporting period are included as part of employee benefits in the comprehensive operating statement of SAC.

The name and details of the major superannuation funds and contributions made by SAC are as follows;

	Paid contribution for the Year		Contribution Outstanding at Year End	
	2009 \$	2008 \$	2009 \$	2008 \$
State Superannuation Fund – Revised and New	–	(457)	–	–
VicSuper	75,684	65,983	–	–
Various other funds	13,029	6,007	–	–
Total	88,713	71,533	–	–

Notes:

(a) *The bases for contributions are determined by the various schemes.*

(b) *The above amounts were measured as at 30 June of each year, or in the case of employer contributions relate to the years ended 30 June.*

(a) Superannuation expense recognised in the Comprehensive Operating Statement

	2009	2008
	\$	\$
Defined benefit plans		
Current service cost	–	(457)
Total expense recognised in respect of defined benefit plans	–	(457)
Defined contribution plans		
Employer contributions to defined contributions plans	88,713	71,990
	88,713	71,990
Total superannuation expense recognised in comprehensive operating statement	88,713	71,533

Note 10. Leases

Disclosure for lessees – operating leases

Leasing arrangements

Operating leases relate to equipment with lease terms of 4 years. SAC does not have an option to purchase leased assets at the expiry of the lease term.

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	2009	2008
	\$	\$
Non-cancellable operating leases payable		
Not longer than one year	–	1,734
Longer than one year but not longer than five years	–	–
	–	1,734

Notes to the Financial Statements for the financial year ended 30 June 2009

Note 11. Commitments for Expenditure

(a) Capital expenditure commitments

There were no commitments for capital expenditure as at 30 June 2009 (\$Nil – 2008).

	2009 \$	2008 \$
(b) Other expenditure commitments		
Outsourcing commitments		
Payable:		
Not longer one year	–	23,246
Longer than one year and not longer than five years	–	–
Longer than five years	–	–
Total other expenditure commitments	–	23,246
Total commitments for expenditure (inclusive of GST)	–	23,246
Less GST recoverable from the Australian Taxation Office	–	(2,113)
Total commitments for expenditure (exclusive of GST)	–	21,133

Note 12. Contingent Assets and Contingent Liabilities

At balance date there were no contingent assets or liabilities not provided for in the balance sheet as at 30 June 2009 (\$nil – 2008)

Note 13. Financial Instruments

(a) Financial risk management objectives and policies

SAC's principal financial instruments comprise of:

- cash assets
- receivables
- payables (excluding statutory payables); and
- finance lease payables

Details of significant accounting policies and methods adopted, including the criteria for recognition, the basis of measurement and the basis on which income and expenses are recognised, in respect of each class of financial asset, financial liability and equity instrument are disclosed in Note 1 to the financial statements.

The main purpose in holding financial instruments is to prudently manage SAC's financial risks within the Government policy parameters.

The carrying amount of SAC's financial assets and financial liabilities by category are in the following table:

Table 13.1: Categorisation of financial instruments

	2009 \$	2008 \$
Financial assets		
Cash and deposits	500	500
Total financial assets	500	500
Financial liabilities		
At amortised cost	115,705	104,808
Total financial liabilities	115,705	104,808

Notes:

(i) The total amount of financial assets disclosed here excludes statutory receivables (i.e. Amounts owing from Victorian Government and GST input tax credit recoverable).

(ii) The amount of financial liabilities disclosed here exclude statutory payables (i.e.: Taxes payable).

(b) Credit risk

Credit risk arises from the financial assets of SAC, which comprise cash and deposits, trade and other receivables. SAC's exposure to credit risk arises from the potential default of a counter party on their contractual obligations resulting in financial loss to SAC. Credit risk is measured at fair value and is monitored on a regular basis.

Credit risk associated with SAC's financial assets is minimal because the only debtor is the Department of Justice.

Provision of impairment for financial assets is calculated based on past experience, and current and expected changes in client credit ratings.

The carrying amount of financial assets recorded in the financial statements, net of any allowances for losses, represents SAC's maximum exposure to credit risk without taking account of the value of collateral obtained.

Financial assets that are either past due or impaired

Currently SAC does not hold any collateral as security nor credit enhancements relating to any of its financial assets.

Notes to the Financial Statements for the financial year ended 30 June 2009

At the reporting date, there is no event to indicate that any of the financial assets were impaired.

There are no financial assets that have had their terms renegotiated so as to prevent them from being past due or impaired, and they are stated at the carrying amounts as indicated.

(c) Liquidity risks

Liquidity risk arises when SAC is unable to meet its financial obligations as they fall due. SAC operates under the Government fair payments policy of settling financial obligations within 30 days and in the event of a dispute, makes payments within 30 days from the date of resolution. It also continuously manages risk through monitoring future cash flows and maturities.

SAC's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

Maximum exposure to liquidity risk is the carrying amounts of financial liabilities as disclosed in the face the balance sheet.

The following table discloses the contractual maturity analysis for SAC's financial liabilities:

Table 13.2: Maturity analysis of financial liabilities

	Carrying amount	Nominal amount	Maturity dates (i)			
			Less than 1 month	1–3 months	3 months–1 year	1–5 years
2009						
Financial liabilities						
Payables	115,705	115,705	115,705	–	–	–
	115,705	115,705	115,705	–	–	–
2008						
Financial liabilities						
Payables	104,808	104,808	104,808	–	–	–
	104,808	104,808	104,808	–	–	–

Note:

(i) The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities.

(d) Market risk

SAC's exposure to market risk is primarily through interest rate risk. The exposure to interest rate risk is insignificant and arises through SAC's interest bearing liabilities.

Interest rate risk

Interest rate risk might arise as a result of its floating interest bearing liabilities. Currently SAC does not have interest bearing liabilities so its exposure to risk is insignificant.

(e) Fair values

Management considers that the carrying amount of financial assets and liabilities of SAC approximates their fair values because of the short term nature of the financial instruments and the expectation they will be paid in full.

Note 14. Cash flow Information

(a) Reconciliation of cash and deposits

	2009 \$	2008 \$
Total cash and deposits disclosed in the balance sheet	500	500
Balance as per cash flow statement	500	500

(b) Reconciliation of net result for the period to net cash flows from operating activities

Net result for the period	79,519	(142)
Non-cash movements:		
Gain on disposal of non-current asset	–	(223)
Depreciation and amortisation of non-current assets	–	1,788
Movements in assets and liabilities		
(Increase)/decrease in current receivables	(152,665)	(90,221)
(Increase)/decrease in non-current receivables	(13,106)	35,318
Increase/(decrease) in current payables	10,382	67,959
Increase/(decrease) in current provisions	62,764	18,583
Increase/(decrease) in non-current provisions	13,106	(35,318)
Net cash provided by operating activities	–	(2,256)

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Note 15. Remuneration of Auditors

	2009 \$	2008 \$
Victorian Auditor-General's Office		
Audit of the financial report	11,000	10,000
	11,000	10,000

Notes to the Financial Statements for the financial year ended 30 June 2009

Note 16. Responsible Persons

In accordance with the Ministerial Directions issued by the Minister for Finance under the *Financial Management Act 1994*, the following disclosures are made regarding responsible persons for the reporting period.

Ministers and the Department

The persons who held the positions of Ministers and Secretary of the Department are as follows:

Attorney-General	The Hon. Rob Hulls, MP	1 July 2008 to 30 June 2009
Acting Attorney-General	The Hon. John Lenders, MLC	22 August 2008 to 6 September 2008
	The Hon. Bob Cameron, MP	16 October 2008 to 26 October 2008
	The Hon. John Lenders, MLC	20 December 2008 to 4 January 2009
	The Hon. Peter Batchelor, MP	5 January 2009 to 7 January 2009
	The Hon. Bob Cameron, MP	3 April 2009 to 9 April 2009
	The Hon. Bob Cameron, MP	23 April 2009 to 26 April 2009
	The Hon. Tony Robinson, MP	26 June 2009 to 30 June 2009
	Secretary to the Department of Justice	Ms. Penny Armytage
Acting Secretary to the Department of Justice	Dr. Claire Noone	5 June 2009 to 12 June 2009

Sentencing Advisory Council

The persons who were Responsible Persons of SAC for the reporting period are as follows:

Accountable Officer

Chief Executive Officer	Mr. Stephen Farrow	1 July 2008 to 30 June 2009
Acting Chief Executive Officer	Ms. Jenni Coady	23 October 2008 to 10 November 2008

Statutory Office Holders

Chairperson	Professor Arie Freiberg AM	1 July 2008 to 30 June 2009
Council members	Carmel Arthur	1 July 2008 to 30 June 2009
	David Grace QC	1 July 2008 to 30 June 2009
	Rudolph Kirby	1 July 2008 to 30 June 2009
	Andrea Lott	1 July 2008 to 30 June 2009
	Thérèse McCarthy	1 July 2008 to 30 June 2009
	Professor Jenny Morgan	1 July 2008 to 30 June 2009
	Simon Overland APM	1 July 2008 to 30 June 2009
	Barbara Rozenes	1 July 2008 to 30 June 2009
	Gavin Silbert SC	1 July 2008 to 30 June 2009
	David Ware	1 July 2008 to 30 June 2009
Lisa Ward	11 August 2008 to 30 June 2009	

Notes to the Financial Statements for the financial year ended 30 June 2009

Remuneration

Ministers and the Department

Amounts relating to Ministers are reported in the financial statements of the Department of Premier and Cabinet. Remuneration received or receivable by the Secretary in connection with the management of the Department during the period is reported by the Department of Justice.

Sentencing Advisory Council

Remuneration received or receivable by the Accountable Officers (Chief Executive Officers) in connection with the management of SAC during the reporting period was in the range:

	Total Remuneration		Base Remuneration	
	2009 No.	2008 No.	2009 No.	2008 No.
\$10,000 – \$10,999		1		1
\$40,000 – \$49,999				1
\$50,000 – \$59,999		2		1
\$130,000 – \$139,999	1		1	
Total numbers	1	3	1	3

There are no executive officers other than the above.

SAC Council members are appointed by Governor-in-Council order under sections 108F(1)(f) and 108F(2) of the *Sentencing Act 1991 (Vic)* (the Act). Details of the appointment, including payment provisions, are contained in a schedule attached to the order. Council members, depending on their substantive employment, are eligible for remuneration according to section 108H(1)(b) of the Act and the schedule attached to the order appointing them. Remuneration of Council members is made in line with their Governor-in-Council appointment and Department of Premier and Cabinet guideline, Guidelines for the Appointment and Remuneration of Part-Time Non-Executive Directors of State Government Boards and Members of Statutory Bodies and Advisory Committees. During the 2008–09 financial year, 9 Council members were eligible for remuneration for their work on the Council.

Related party transactions

A number of Council members are employed by the Department of Justice. During the financial year, SAC and the Department conducted business transactions at arms length and at normal commercial terms.

Note 17. Subsequent Events

There were no significant events occurring after reporting date to be reported as at 30 June 2009 (\$Nil – 2008).

Note 18. Glossary of Terms

Total comprehensive result is the change in equity for the period other than changes arising from transactions with owners. It is the aggregate of net result and other non-owner changes in equity.

Commitments

Commitments include those operating, capital and other outsourcing commitments arising from non cancellable contractual or statutory sources.

Employee benefits expense

Employee benefits expense include all costs related to employment including wages and salaries, leave entitlements, redundancy payments and superannuation contributions.

Financial asset

A financial asset is any asset that is:

- (a) cash;
- (b) an equity instrument of another entity;
- (c) a contractual right:
 - to receive cash or another financial asset from another entity; or
 - to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or
- (d) a contract that will or may be settled in the entity's own equity instruments and is:
 - a non derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments.

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Financial statements

Depending on the context of the sentence where the term 'financial statements' is used, it may include only the main financial statements (i.e. comprehensive operating statement, balance sheet, cash flow statements, and statement of changes in equity); or it may also be used to replace the old term 'financial report' under the revised AASB 101 (Sept 2007), which means it may include the main financial statements and the notes.

Interest expense

Costs incurred in connection with the borrowing of funds. Interest expenses include interest on bank overdrafts and short term and long term borrowings, amortisation of discounts or premiums relating to borrowings, interest component of finance lease repayments, and the increase in financial liabilities and non employee provisions due to the unwinding of discounts to reflect the passage of time.

Net result

Net result is a measure of financial performance of the operations for the period. It is the result of items of revenue, gains and expenses (including losses) recognised for the period, excluding those that are classified as 'other non owner changes in equity'.

Net result from transactions/net operating balance

Net result from transactions or net operating balance is a key fiscal aggregate and is revenue from transactions minus expenses from transactions. It is a summary measure of the ongoing sustainability of operations. It excludes gains and losses resulting from changes in the volume of assets. It is the component of the change in net worth that is due to transactions and can be attributed directly to government policies.

Other economic flows

Other economic flows are changes in the volume or value of an asset or liability that do not result from transactions. It includes gains and losses from disposals, revaluations and impairments of non current physical assets; fair value changes of financial instruments and agricultural assets; and depletion of natural assets (non produced) from their use or removal. In simple terms, other economic flows are changes arising from market re-measurements.

Payables

Includes short and long term trade and accounts payable, grants and interest payable.

Receivables

Includes short and long term trade credit and accounts receivable, grants, taxes and interest receivable.

Supplies and services

Supplies and services generally represent cost of goods sold and day to day running costs, including maintenance costs, incurred in the normal operations of the Council.

Transactions

Transactions are those economic flows that are considered to arise as a result of policy decisions usually an interaction between two entities by mutual agreement. They also include flows within an entity such as depreciation where the owner is simultaneously acting as the owner of the depreciating asset and as the consumer of the service provided by the asset. Taxation is regarded as mutually agreed interactions between the government and taxpayers. Transactions can be in kind (e.g. assets provided/given free of charge or for nominal consideration) or where the final consideration is cash. In simple terms, transactions arise from the policy decisions of the government.

Accountable Officer's and Chief Finance and Accounting Officer's Declaration

Accountable officer's and chief finance and accounting officer's declaration

We certify that the attached financial statements for the Sentencing Advisory Council has been prepared in accordance with Standing Direction 4.2 of the *Financial Management Act* 1994, applicable Financial Reporting Directions, Australian accounting standards and other mandatory professional reporting requirements.

We further state that, in our opinion, the information set out in the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement and notes forming part of the financial statements, presents fairly the financial transactions during the year ended 30 June 2009 and financial position of the Council as at 30 June 2009.

We are not aware of any circumstances which would render any particulars included in the financial report to be misleading or inaccurate.

We authorise the attached financial report for issue on 17 September 2009



Mr. Stephen Farrow
Chief Executive Officer
Accountable Officer
Sentencing Advisory Council

Melbourne
17 September 2009



Mr. Anthony Phillips
Chief Finance and Accounting Officer
Sentencing Advisory Council

Melbourne
17 September 2009



Prof. Arie Freiberg AM
Chair
Sentencing Advisory Council

Melbourne
17 September 2009

VAGO

Victorian Auditor-General's Office

INDEPENDENT AUDITOR'S REPORT

To the Council Members, Sentencing Advisory Council

The Financial Report

The accompanying financial report for the year ended 30 June 2009 of the Sentencing Advisory Council which comprises the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement, a summary of significant accounting policies and other explanatory notes to and forming part of the financial report, and the Accountable officer's and chief finance and accounting officer's declaration has been audited.

The Council Members' Responsibility for the Financial Report

The Members of the Sentencing Advisory Council are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the financial reporting requirements of *Financial Management Act*. This responsibility includes:

- establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error
- selecting and applying appropriate accounting policies
- making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

As required by the *Audit Act 1994*, my responsibility is to express an opinion on the financial report based on the audit, which has been conducted in accordance with Australian Auditing Standards. These Standards require compliance with relevant ethical requirements relating to audit engagements and that the audit be planned and performed to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The audit procedures selected depend on judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, consideration is given to the internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of the accounting policies used, and the reasonableness of accounting estimates made by the Council Members, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

VAGO

Victorian Auditor-General's Office

Independent Auditor's Report (continued)

Matters Relating to the Electronic Presentation of the Audited Financial Report

This auditor's report relates to the financial report published in both the annual report and on the website of the Sentencing Advisory Council for the year ended 30 June 2009. The Members of the Sentencing Advisory Council are responsible for the integrity of the website. I have not been engaged to report on the integrity of the website. The auditor's report refers only to the statements named above. An opinion is not provided on any other information which may have been hyperlinked to or from these statements. If users of this report are concerned with the inherent risks arising from electronic data communications, they are advised to refer to the hard copy of the audited financial report to confirm the information included in the audited financial report presented on the Sentencing Advisory Council website.

Independence

The Auditor-General's independence is established by the *Constitution Act 1975*. The Auditor-General is not subject to direction by any person about the way in which his powers and responsibilities are to be exercised. In conducting the audit, the Auditor-General, his staff and delegates complied with all applicable independence requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial report presents fairly, in all material respects, the financial position of the Sentencing Advisory Council as at 30 June 2009 and its financial performance and cash flows for the year then ended in accordance with applicable Australian Accounting Standards (including the Australian Accounting Interpretations), and the financial reporting requirements of the *Financial Management Act 1994*.

MELBOURNE
18 September 2009


D D R Pearson
Auditor-General

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The Annual Report of the Sentencing Advisory Council is prepared in accordance with all relevant Victorian legislation. This index has been prepared to facilitate identification of the Council's compliance with statutory disclosure requirements.

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ISSN 1832-9853 (Print)
1836-6392 (Online)

