

Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending

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Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending

Published by the Sentencing Advisory Council
Melbourne, Victoria, Australia

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ISBN 978-1-925071-23-8 (Online)

Authorised by the Sentencing Advisory Council,
Level 3, 333 Queen Street, Melbourne VIC 3000

Publications of the Sentencing Advisory Council follow the Melbourne University Law Review Association Inc *Australian Guide to Legal Citation* (3rd ed., 2010).

This report reflects the law as at 6 June 2016

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Acknowledgments

The Council would like to thank a number of people and organisations for assistance in the preparation of this study, including the Supervising Magistrates of the Family Violence and Family Law portfolio of the Magistrates' Court of Victoria and the staff of the Magistrates' Court of Victoria, Court Services Victoria, the Crime Statistics Agency Victoria, Victoria Police, Victoria Legal Aid, the Royal Commission into Family Violence (Victoria), Domestic Violence Victoria, White Ribbon Australia, The Federation of Community Legal Centres Victoria, the Domestic Violence Resource Centre Victoria, No To Violence, Women's Legal Service Victoria, Victorian Aboriginal Legal Services, InTouch Multicultural Centre Against Family Violence, the Department of Justice and Regulation, Victoria, Dr Renata Alexander (Faculty of Law, Monash University), Sarah Ward, and the Victorian Government Library Service.

Glossary

Adjourned undertaking	A sentence type that involves the adjournment of a criminal matter and the release of an offender, with or without conviction, for a specified period provided the offender gives an undertaking with attached conditions.
Affected family member	A person who is the subject of an application for a family violence intervention order under the <i>Family Violence Protection Act 2008</i> (Vic).
Breach	In this study, a term used to refer to a person's non-compliance with an intervention order or safety notice. Unless referring to a specific offence, the terms 'breach' and 'contravene' are used interchangeably.
Case	In this study, one or more charges against a person that are sentenced at the one hearing.
Charge	In this study, a single proven count of an offence.
Co-sentenced offence	An offence sentenced in the same case as the index offence.
Common Risk Assessment Framework	The <i>Family Violence Risk Assessment and Risk Management Framework</i> , also called the Common Risk Assessment Framework (CRAF). Introduced by the Victorian Government in 2007, the Common Risk Assessment Framework sets out a number of evidence-based factors that 'are associated with greater likelihood and/or severity of family violence'. ¹
Community correction order	A sentence type that involves the release of an offender, with or without conviction, on an order with attached mandatory and program conditions. A community correction order can be imposed for a period of up to the length of the maximum term of imprisonment available for the sentenced offence.
Community orders	In this study, community-based orders, intensive correction orders, and community correction orders.
Community-based order	A now abolished sentence that involved the release of an offender, with or without conviction, for a period of up to two years on an order with attached mandatory and program conditions.
Contravene	In this study, a term used to refer to a person's non-compliance with an intervention order or safety notice. Unless referring to a specific offence, the terms 'contravene' and 'breach' are used interchangeably.
Contravention/breach offence	Any of a range of offences of contravening or breaching an intervention order or safety notice, including contravening a family violence intervention order or contravening a family violence safety notice under sections 123 and 37 of the <i>Family Violence Protection Act 2008</i> (Vic) (the two 'index offences' in this study).
Contravention offender	A person found guilty of a contravention/breach offence.
Contravention offending	Offending that includes at least one proven charge of a contravention/breach offence.

1. Department of Human Services, *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1–3* (2nd ed., 2012) 28.

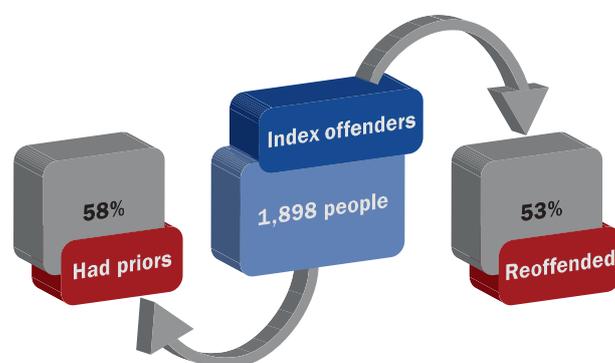
Criminal Justice Diversion Program	A program that allows a court to adjourn proceedings against a person for a period of up to 12 months under a diversion plan with attached conditions. Diversion is not a sentencing order and it operates prior to any finding of guilt and/or sentence, but it is treated as a sentence type in this study because it is available for the offence of contravening a family violence intervention order or contravening a family violence safety notice (the 'index offences').
Discharged with conviction	A sentence type that involves the conviction of an offender and discharge without conditions.
Dismissal	In this study, an order that involves the dismissal of the charge without conviction of an offender and without conditions.
Diversion	In this study, an order made under the Criminal Justice Diversion Program.
Family violence	Conduct defined under section 5 of the <i>Family Violence Protection Act 2008</i> (Vic), including behaviour towards a family member, or exposing a child to any such behaviour, that is: <ul style="list-style-type: none"> • physically, sexually, emotionally, psychologically, or economically abusive; • threatening or coercive; or • controlling or dominating such that a family member fears for his or her own or another's safety or wellbeing. <p>The examples of family violence provided in the Act include intentionally damaging the affected family member's property.</p>
Family violence order	In this study, a term encompassing family violence intervention orders and family violence safety notices.
Fine	A sentence that involves a court-ordered monetary penalty requiring an offender to pay a sum of money to the state.
Imprisonment	In this study, a sentence of imprisonment that is served immediately, as distinct from a sentence of imprisonment that is partially or wholly suspended.
Index offence	In this study, the offence of contravening a family violence intervention order under section 123 of the <i>Family Violence Protection Act</i> (2008) or the offence of contravening a family violence safety notice under section 37 of the <i>Family Violence Protection Act</i> (2008). See further [1.25]–[1.26].
Index offender	In this study, a person sentenced in 2009–10 for at least one charge of an index offence. The person may have been sentenced for other offences in the case in addition to the index offence or offences.
Index sentence	In this study, an index offender's first sentence in 2009–10 for an index offence. If an offender was sentenced for an index offence once in 2009–10, that sentence is the index sentence. If an offender was sentenced more than once in 2009–10 for an index offence, the earliest sentence is the index sentence.
Index year	In this study, the 2009–10 financial year.
Intensive correction order	A now abolished sentencing order that involved a term of imprisonment of up to 12 months served in the community with mandatory and program conditions.
Low-end order	A category of sentence types that includes adjourned undertakings, conviction and discharge, and dismissal.
Non-parole period	The minimum period of time that an offender sentenced to imprisonment must spend in custody before becoming eligible for parole.

Partially suspended sentence of imprisonment	A now abolished sentencing order that was a sentence of imprisonment, part of which was served immediately and part of which was held in suspense for a specified period (referred to as the operational period), on the condition that the offender did not commit any further offence punishable by imprisonment during that period.
Principal offence	The offence attached to the charge that receives the most severe sentence in a case. Where offences have an equal sentence, the offence with the lowest ranking on the National Offence Index ² is the principal offence.
Prior sentence	In this study, a term used to describe a sentenced charge or case that occurred in the five years before an index offender's index sentence. Each case or event is described as a prior 'sentence' even though, technically, a prior sentence event involving multiple charges may involve multiple sentences in the one case.
Protected person	A person who is protected by a family violence intervention order or a family violence safety notice.
Recidivist	An offender found guilty of at least one criminal offence after the imposition of a sentence.
Reoffending	The extent to which an adult person, having been sentenced in any Victorian court, returns to court and is convicted for a subsequent offence or subsequent offences.
Reoffending sentence event	In this study, a sentence event in the five years after the index sentence. See also 'sentence event'.
Respondent	A person against whom there has been a family violence intervention order, a family violence safety notice, or an application for a family violence intervention order.
Sentence event	A case or cases encompassing one or more proven charges in which a sentence is (or sentences are) imposed on an offender at the same time.
Statistical significance	In this study, differences in values – described as 'statistically significant' – indicating the likelihood that the difference between two or more numbers has not occurred by chance. The most widely used threshold of statistical significance, and the threshold used in this study, is 0.05, which means that there is a 5% probability that the observed difference occurred by chance alone. Statistical significance is often expressed as a 'p-value'. A statistically significant result does not necessarily mean that the magnitude of the difference between groups is large, as relatively small differences may be statistically significant.
Total effective sentence	In a case involving a single charge, the sentence imposed for that charge; in a case involving multiple charges, the final sentence resulting from orders of cumulation or concurrency for each of the sentencing orders for each charge in the case.
Wholly suspended sentence of imprisonment	A now abolished sentencing order that was a sentence of imprisonment held in suspense for a specified period (referred to as the operational period), on the condition that the offender did not commit any further offence punishable by imprisonment during that period.
Young adult offender	In this study, a person aged between 18 and 24 (inclusive) at the time of sentencing.

2. Australian Bureau of Statistics, *National Offence Index*, cat. no. 1234.0.55.001 (2009).

Executive summary

This study considers 1,898 people who were sentenced in the Victorian Magistrates' Court in 2009–10 for contravening a family violence intervention order (FVIO) or family violence safety notice (FVSN). In this study, these two offences are referred to as the 'index offences' and the 1,898 people are referred to as the 'index offenders'.



The study examines offending patterns for index offenders over an 11-year period, including prior offences in the five years before the index sentence in 2009–10. It examines reoffending patterns in the five years up to 2014–15 and the factors that were associated with reoffending.

The study finds clear differences in the rate and nature of reoffending according to the age and gender of the offender, whether the offender had prior offences, and the type of prior offences that the offender had.

This study is intended to help inform decisions about effective responses to family violence by the courts, policy-makers, and those who develop, review, and operate programs to address violent behaviour. It attempts to address the lack of understanding of recidivism identified by the Royal Commission into Family Violence in its recently released report.³ Understanding reoffending may contribute to identifying the risks associated with family violence and ensuring that sentencing options and practices, as well as offender interventions, focus on how best to mitigate these risks and protect the affected family member and, ultimately, the community. The findings of this study are timely given the review of the Victorian Common Risk Assessment Framework that is currently underway and the Royal Commission's recent recommendations for reforms to behaviour change programs and for more specialist family violence courts.

Although charging practices and sentencing options have changed since 2009–10, the findings of this study provide new information about offenders' risk and offending patterns, casting new light on the sentences that were imposed and providing an evidence base for rethinking effective and meaningful sentencing of this complex offender group.

Index offenders and index sentence

Age, gender, and relationship

The vast majority of index offenders were male (1,641), but one in seven (257) were female. There was little difference in age between male and female offenders in the index group. Both had a median age of 36 years, and approximately 15% of each gender were under 25 years of age.

The Council studied Crime Statistics Agency data on the relationship between perpetrators and victims in contravention of FVIO/FVSN incidents over the same period as this study. This data revealed that, where the relationship was known, a substantially higher percentage of male perpetrators (82%) than female perpetrators (54%) offended against their current or former partner.

3. State of Victoria, Royal Commission into Family Violence, *Volume VI: Report and Recommendations* (2016) 148.

Males aged between 18 and 20 years were as likely to offend against a current or former partner as they were to offend against another family member. Males aged over 20 years were far more likely to offend against a current or former partner (87%) than against another family member (13%).

Females under the age of 25 were more likely to offend against another family member (54%) than against a current or former partner (46%). Females aged 25 years or older were more likely to offend against current or former partners (61%) than against another family member (39%).

Contraventions of family violence intervention orders versus safety notices

The offence of contravening a family violence intervention order was far more common than the offence of contravening a family violence safety notice. Of the 1,898 index offenders, 94% were sentenced for contravening a family violence intervention order, 6% were sentenced for contravening a family violence safety notice, and a further 1% (14 people) were sentenced for both index offences.

Co-sentenced offences at the index sentence

At the index sentence, almost half of the index offender group (884 people) were sentenced only for a contravention offence or offences (including the index offence), that is, there were no other offence types sentenced. The remainder of the index offenders (1,014 people or 53%) were sentenced for multiple offence types.

Approximately one in three index offenders had additional contravention/breach offences sentenced with their index offence: one in four were sentenced for at least one assault/cause injury offence charge with their index offence, and around one in five were sentenced for at least one criminal damage offence charge with their index offence.

While it could not be established whether the co-sentenced offences were part of the contravention incident or incidents, most of the common co-sentenced offence types are the types of offences that might be expected in family violence incidents. Therefore, even though it cannot be established that such offences were associated with the contravention charge, such an association cannot easily be excluded. Whether or not an offence is committed against a family member, offences such as assault/cause injury may indicate an increased risk of future family violence.

Prior offending

What proportion of index offenders had prior offences?

Almost 60% of the index offenders had been sentenced for an offence of any type at least once in the five years before being sentenced for an index offence. However, there is insufficient data to determine how many of these prior offences were family violence related.

While a higher proportion of males (60%) than females (47%) had previously been sentenced, the proportion of both with prior offences was high. Over two-thirds (68%) of young adult offenders had been sentenced in the five years before the index sentence compared with 56% of offenders over the age of 25 years.

Types of prior offence

Three of the five most common prior offence types were highly relevant to family violence offending, with approximately:

- one in four index offenders previously sentenced at least once for an assault/cause injury offence, which was the most common prior offence type;
- one in five index offenders previously sentenced at least once for a contravention/breach offence; and
- one in five index offenders previously sentenced at least once for a criminal damage offence, which is a recognised form of violence in the context of a family relationship.

Driving offences were also prevalent, with one in four index offenders having at least one prior sentence for a general driving offence (the second most common prior offence type) and one in five having a prior sentence for unauthorised driving (such as driving while disqualified). Offences such as driving while disqualified have some relevance to contravention offences, given that these offences can also involve disobeying a court order (or legal requirement).

There were significant differences in prior offences among four age–gender groups: young adult males (aged 18–24), older males (25+), young adult females (18–24), and older females (25+):

- Theft/deception was the most common prior sentenced offence type for young adult males (42% had at least one prior sentence for a theft/deception offence), and this group had the highest rate of prior sentences for such offences.
- Assault/cause injury was the most common prior offence type for young adult females (27%) and older males (26%). Although assault/cause injury was not their most common prior offence type, young adult males had a higher rate of prior assault/cause injury offence types than the other three age–gender groups (35%).
- Criminal damage was much more common among the prior offences of young adult males (30% had at least one prior offence of criminal damage) compared with the other three groups. In comparison, around one in five older males and young adult females had at least one prior sentence for criminal damage, as did one in 10 older females.
- The rate of prior driving offences was higher for males than for females across all three driving offence categories. For example, approximately one-third of young adult males and one-quarter of older males had at least one prior sentence for a general driving offence, compared with 14% of young adult females and 15% of older females. Young males had higher rates of prior driving offences than older males.

There is insufficient data to determine which prior offences had been committed in the context of family violence. Nevertheless, the range of prior offences for the older group appeared more relevant to the contravention charge, whereas the overall prior offending patterns of the younger group appeared more generalist, with a combination of highly relevant and minimally relevant prior offence types. At the same time, young adults (both male and female) had much higher rates of assault/cause injury prior offences than their older counterparts.

Prior or co-sentenced assault/cause injury offences and threats to kill or injure

Regardless of whether it is perpetrated against a family member, conduct such as assault and threats to kill or injure are recognised in the Victorian Common Risk Assessment Framework as factors that increase the risk of a person committing family violence in the future.

Almost half of the index offenders had previously been sentenced and/or were sentenced at the index sentence for charges involving an assault/cause injury offence and/or threats to kill or injure. These index offenders were sentenced to imprisonment, community-based orders, and fines for the contravention offence in almost equal numbers (around 20% each).

Reoffending

Reoffending rate

Just over half of the index offenders were sentenced for a new offence (of any type) in the five years following their index sentence. This was higher than the five-year reoffending rate for the general offender population sentenced in 2004–05 (37%), suggesting that offenders who breach family violence intervention orders and family violence safety notices are more likely to reoffend.

Type of reoffending

Nearly one-quarter of index offenders reoffended with a further contravention/breach offence while 22% reoffended with assault/cause injury offences. Driving offences also featured in reoffending, with one in four index offenders reoffending with at least one driving offence.

There was insufficient data to establish how many of the reoffending cases occurred in the context of family violence, and it is clear that index offenders engaged in a wide range of subsequent offending. However, the two most common reoffence types (contravention/breach and assault/cause injury) are relevant to the original contravention charge and to the assessment of future risk, even if they have not been committed against a family member.

Prevalence of common offence types across the 11-year study period

Assault/cause injury

Across the 11-year study period (from 2004–05 to 2014–15):

- **one in two** index offenders had at least one assault/cause injury offence sentenced at some point in the 11 years (52%);
- **one in three** older females (25+) were sentenced for assault/cause injury (31%), which, while high, was substantially lower than the proportion of males in the same age group (52%) or younger females (59%); and
- over **two in three** young adult males were sentenced for an assault/cause injury offence (68%).

The high assault/cause injury offence rate of young adult male index offenders may support prioritising this group for behaviour change programs and may suggest that specifically tailored programs are required for this group. Likewise, these findings suggest that a different approach to

addressing offending behaviour may be required for young adult females who contravene family violence orders, compared with their older counterparts.

These findings are relevant to implementing the reforms to behavioural change programs recently recommended by the Royal Commission into Family Violence, for example, introducing measures to identify the spectrum of programs, services, and initiatives that should be available in Victoria to respond to all perpetrators across varying forms and risk levels of family violence (Recommendation 86).

Contravention

The majority of index offenders did not have a prior contravention/breach offence or reoffend with a contravention/breach offence. Across the 11-year study period (from 2004–05 to 2014–15), approximately:

- **one in five** index offenders had at least one prior sentence for a contravention/breach offence;
- **one in four** index offenders reoffended at least once with a contravention/breach offence; and
- **two in five** index offenders sentenced previously for a contravention/breach offence reoffended at least once with a contravention/breach offence in the five years after the index sentence.

Correlation between the number of contravention charges and the likelihood of assault

There was an association between the number of sentenced contravention offence charges that index offenders had across the 11-year study period and the likelihood that index offenders also had at least one assault/cause injury offence sentenced. For example, 41% of index offenders with only one contravention charge also had a sentenced assault/cause injury charge or charges; 71% of those with 10 or more sentenced contravention charges had at least one assault/cause injury charge sentenced. This finding suggests a strong correlation between the propensity to contravene intervention orders and the propensity to offend violently.

The same association was evident for criminal damage offences and, to a lesser extent, unauthorised driving offences.

Factors associated with reoffending

Prior offences and reoffending

There was a correlation between the *presence* of prior offences and reoffending, in that:

- around two-thirds of the index offenders with at least one prior sentence *did* reoffend; and
- around two-thirds of the index offenders without prior sentences *did not* reoffend.

There was also a correlation between the *number* of prior sentence events and the reoffending rate of index offenders. While less than one-third of index offenders with no prior offences reoffended, the reoffending rate increased to over half of index offenders with a single prior sentence event. As the number of prior sentence events increased, so did the reoffending rate, with almost nine out of 10 index offenders with five or more prior sentence events reoffending within five years.

A correlation was also found between 'prior violence' and reoffending. Almost half of the index offenders (48%) had 'prior violence', which was defined as a prior or co-sentenced offence of assault/cause injury and/or threat to kill/injure. Almost two-thirds (64%) of this group reoffended, making these index offenders far more likely to have reoffended than those with no prior offences (31%).

The more times that an index offender had been sentenced for assault/cause injury and/or threat to kill/injure, the more likely he or she was to reoffend – with 90% of index offenders with four or more prior or co-sentenced assault/threat offence cases reoffending.

Age and gender

A higher proportion of males (54%) than females (43%) reoffended, although the rate was high for both. Around two in three young adult offenders (65%) reoffended, compared with half of offenders aged 25 or older.

Older males (25+) reoffended with contravention/breach offences at the highest rate of the age–gender groups (26% reoffended with a contravention/breach offence, which was their most common reoffence type). Contravention/breach was also the most common reoffence type for older women (15%).

Some observations about young adult offenders

Overall, this study found a number of key differences between young adult offenders (18–24) and older offenders that have implications for sentencing, policy, and the future design of behaviour change programs following the recommendations of the Royal Commission into Family Violence.

Offence patterns

Young adult males were far more likely to offend against a current or former partner (69%) than against another family member (31%). Young adult females were more likely to offend against another family member such as a parent or a sibling (54%) than against a current or former partner (46%).

Two in three young males and over half of young females were sentenced for assault/cause injury offences in the 11-year study period, making young adult offenders far more likely than their older counterparts to be sentenced for these offences.

Assault/cause injury was the most common co-sentenced offence type for young adult offenders. While a high proportion of both younger and older adult offenders had relevant co-sentenced offences such as assault and criminal damage, a higher proportion of young adult offenders were also sentenced for other less relevant offences such as theft/deception offences. This may suggest that the older group was more ‘specialist’ than the younger group.

Prior offences and reoffending rate

Young adult offenders were more likely to have prior sentences than older offenders (68% compared with 56%) and were also more likely to reoffend than their older counterparts (65% compared with 50%).

Reoffending patterns

While assault/cause injury was one of the most common reoffence types for all index offenders, young adult males reoffended with assault/cause injury offences at almost three times the rate of older females (35% compared with 13%). One in five young females reoffended at least once with an assault/cause injury offence.

Young adult males had the highest rate of reoffending with criminal damage offences (24%), and criminal damage was the most common reoffence type for young adult females (23%).

Young adult females had the highest rate of assault/resist/obstruct police reoffence types of the four age–gender groups (11%).

Looking at reoffending by index offenders *with prior offences*, young adult males (18–24) with prior offences reoffended at the highest rate of the age–gender groups (80%), and older females (25+) with prior offences reoffended at the lowest rate (61%).

Sentences imposed

Overview

Fines (32%) and adjourned undertakings (37%) were the most common outcomes in cases in which only index offences were sentenced. These were followed by diversion (9%), wholly suspended sentences (6%), community-based orders (6%), imprisonment (3%), partially suspended sentences (1%), and intensive correction orders (1%).

Where index offenders were sentenced with other offences, community-based orders were the most common outcome (24%). This was followed by fines (18%), imprisonment (18%), adjourned undertakings (15%), wholly suspended sentences (14%), intensive correction orders (6%), partially suspended sentences (3%), and diversion (2%).

Fines

The use of fines in cases with co-sentenced assault/cause injury

In almost one in six cases in which the offender was fined for an index offence, the offender was also sentenced for at least one assault/cause injury offence (75 out of 465 cases or 16%). These offenders were usually also fined for the assault/cause injury charge(s) (in 58 of the 75 cases), and all of these fines were *aggregate fines*, suggesting that the assault/cause injury offence was related to the contravention of the family violence order.

Over half of these 75 offenders had prior offences, and one in four had at least one prior sentence for an assault/cause injury offence. In the five years after these 75 index offenders were fined at their index sentence, one in four were sentenced for a new assault/cause injury offence (19 of 75 or 25.3%).

Reoffending following the imposition of a fine

Of the 465 index offenders who were sentenced to a fine for their index offence in 2009–10:

- one in two reoffended generally in the next five years (233 people);
- one in five reoffended with a contravention/breach offence in the next five years (97 people); and
- one in five reoffended at least once with an assault/cause injury offence in the next five years (96 people). In total, these 96 people were sentenced for 299 assault/cause injury charges between them in the five years after their index offence.

Fine repayment

Index offenders had a lower fine repayment rate than the general offender population that had a fine imposed in 2009–10. Less than half of the 465 fined index offenders had completed repayment of their fines by June 2013 (48%), compared with 56% of the general offender population fined in the same year. Index offenders who had made no fine payments by June 2013 had a higher reoffending rate (57% reoffended) than those who had completed their fine payment (44% reoffended).

Compared with those who had completed payment, non-payers also had significantly higher rates of reoffending with an assault/cause injury offence (25% compared with 18%) and of reoffending with a contravention/breach offence (28% compared with 17%).

1. The importance of understanding family violence offending

The aim of this study

- I.1 Family violence is a critical issue for Victoria and its criminal justice system. While it is unknown whether the prevalence of family violence is on the rise, it is clear that the level of family violence being reported to Victoria Police and being dealt with in the courts has increased dramatically since 2005.⁴ This increase has been influenced by changes to criminal justice responses to family violence that have encouraged people to report family violence to police.
- I.2 This study aims to provide information about the prior offences, reoffending patterns, and factors associated with reoffending among a cohort of offenders who engaged in family violence related behaviour. This study focuses on offending over an 11-year period (from 2004–05 to 2014–15) by 1,898 people (the 'index offenders') who were sentenced in 2009–10 for contravening a family violence intervention order (FVIO) or contravening a family violence safety notice (FVSN) (the 'index offences'). While some of these offenders may have consented to the original intervention order without admissions, others were made subject to the intervention order because a court was satisfied that they had previously committed family violence and were likely to do so again. All of these offenders were found guilty of defying the terms of the court order (or police safety notice) and for most of them, the contravention was accompanied by other offending.
- I.3 The study examines a number of factors that relate to reoffending, including the offenders' age and gender, their offending patterns, and their prior offences (in the five years before their contravention offence). With reference to these factors, the study then looks forward and examines reoffending patterns over the next five years (to 2014–15).⁵
- I.4 This study is intended to help inform decisions about effective responses to family violence by the courts, policy-makers, and those who develop, review, and operate programs to address violent behaviour. Understanding reoffending may contribute to identifying the risk of future family violence and ensuring that sentencing options and practices focus on how best to mitigate that risk and protect the affected family member and, ultimately, the community. The study attempts to address the lack of understanding of recidivism identified by the Royal Commission into Family Violence in its recently released report.⁶

Research questions

- I.5 This study examines a cohort of offenders who were sentenced in 2009–10 (the 'index year') in the Victorian Magistrates' Court for contravening a family violence intervention order or contravening a family violence safety notice, in order to address three research questions:
 1. What are offenders' prior offending patterns?
 2. What are offenders' reoffending patterns?
 3. What factors are associated with offenders' reoffending?

4. Victoria Police, *Crime Statistics 2013/2014* (2014) 5.

5. See Appendix A for more information about the reoffending database and the methodology for this study.

6. State of Victoria, Royal Commission into Family Violence (2016), above n 3, 148.

Reducing reoffending is an aim of sentencing

- 1.6 Reducing reoffending is one of the primary aims of sentencing and of the criminal justice system generally. Three of the five purposes of sentencing in the *Sentencing Act 1991* (Vic) relate to the future behaviour of the offender and, more specifically, to reducing the chances of reoffending:
- deterring the offender from committing similar offences;
 - establishing conditions that the court considers may facilitate the rehabilitation of the offender; and
 - protecting the community from the offender.⁷
- 1.7 Reducing reoffending is arguably a universal goal of criminal justice systems. Holding perpetrators accountable for their violence and reducing their risk of recidivism are key strategies in the Council of Australian Governments' *National Plan to Reduce Violence against Women and Their Children 2010–2022*.⁸ Understanding reoffending rates is vital to policy discussions regarding how best to manage risk and reduce reoffending and the role of sentencing in achieving this goal.
- 1.8 The likelihood of an offender committing further offences may be affected by many factors, including his or her social, psychological, and criminal background; experience while serving a sentence; and circumstances once the sentence has been completed. The same factors that contribute to a court's choice of sentence may affect the likelihood of reoffending.

Family violence is of particular concern to the Victorian community

- 1.9 Family violence is of great concern in the community and across all levels of government.⁹ Justice ministers and police have stated that preventing, and responding to, family violence is the number one law and order issue in Victoria.¹⁰
- 1.10 Many organisations and entities continue to grapple with how best to respond to family violence. The Victorian Government strategy *Ending Violence Against Women and Children* was released in October 2014, proposing increased funding for initiatives and services, including legal aid services.¹¹ Since then, the Victorian Royal Commission into Family Violence has delivered its report to the government after receiving submissions from a broad range of organisations,¹² and the government has announced that it will implement all of the Royal Commission's recommendations.¹³ Other Australian jurisdictions are simultaneously reviewing issues relating to family violence.¹⁴ The literature around family violence continues to evolve,¹⁵ and family violence continues to feature prominently in the Australian media.

7. *Sentencing Act 1991* (Vic) ss 5(1)(b)–(c), (e).

8. Council of Australian Governments (COAG), *National Plan to Reduce Violence against Women and Their Children 2010–2022* (2011) 29.

9. See for example, *ibid*; Department of Social Services, *Second Action Plan 2013–2016: Moving Ahead: Of the National Plan to Reduce Violence against Women and Their Children 2010–2022* (2014); State of Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016) 1.

10. The Victorian Government Prevention of Family Violence portfolio is described by Fiona Richardson MP, Minister for Women and Minister for Prevention of Family Violence, as '[l]eading a whole-of-government strategy in the prevention of the most serious law and order issue that we face, to shape our responses as a government and as a community, and ensure perpetrators are held to account': Fiona Richardson, Presentation to the 2015–16 Public Accounts and Estimates Committee Hearing (Melbourne, 21 May 2015).

11. Victorian Government, *Ending Violence against Women and Children: Further Initiatives for Victoria's Action Plan to Address Violence against Women and Children: Everyone Has a Responsibility to Act 2012–2015* (2014).

12. The Royal Commission into Family Violence commenced in February 2015 'to inquire into and report on how Victoria's response to family violence can be improved by providing practical recommendations to stop family violence'. The Commission received nearly 1,000 submissions and delivered its report and recommendations to the government on 29 March 2016: State of Victoria, Royal Commission into Family Violence, *Volume I: Report and Recommendations* (2016) 1, 5.

13. Victorian Government, *Getting It Done: Victorian Budget 16/17: Overview* (2016) 22.

Changes to law and practice

- I.11 The past decade has seen significant legal, cultural, and practical changes to the Victorian family violence system. Many of these changes were sparked by the Victorian Law Reform Commission's 2002 review of family violence laws¹⁶ and formed part of the integrated family violence service system developed by the Victorian Government in 2005.¹⁷
- I.12 In 2004, Victoria Police introduced a *Code of Practice for the Investigation of Family Violence*, which has since been revised.¹⁸ Victoria Police launched its Enhanced Family Violence Service Delivery Model in 2011, establishing specialist family violence teams across the state at high-demand locations.¹⁹ In 2015 Victoria Police established Australia's first Family Violence Command as a central point of accountability for family violence within Victoria Police (headed by Australia's first Family Violence Assistant Commissioner).²⁰
- I.13 Over the same period, the Victorian Magistrates' Court:
- introduced a specialist Family Violence Court Division and integrated family violence support services at certain venues of the Magistrates' Court (in 2005);²¹
 - established the Magistrates' Court Family Violence Taskforce (in November 2014); and
 - released its *Response to Family Violence 2015–2017*, which details six initiatives aimed at improving family violence services across the state, including providing family violence training to family violence registrars and to all Victorian magistrates.²²
- I.14 While the Magistrates' Court has undergone a period of significant reform, its recent joint submission to the Royal Commission into Family Violence noted that there 'is also much still to be done to achieve the vision we have for providing an appropriate response to the problem of family violence'.²³

14. For example, the NSW Sentencing Council recently undertook an analysis of New South Wales sentencing in domestic violence cases and reported to the New South Wales Government on 18 February 2016: NSW Sentencing Council, *Domestic Violence* (NSW Sentencing Council, 2016) <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/sent_council_index/sent_council_current_projects/Domestic%20Violence/Domestic_violence.aspx> at 15 June 2016. In October 2015, the Tasmanian Sentencing Advisory Council published a report on the sentencing of family violence offenders: Sentencing Advisory Council (Tasmania), *Sentencing of Adult Family Violence Offenders: Final Report No. 5* (2015). The Australian Law Reform Commission completed a review of family violence in 2010, recommending (among other things) a national bench book on family violence with guidance on how to sentence contravention offences (modelled on the guiding principles published by the Council): Australian Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114 (2010) 555. On 9 June 2015, the federal Attorney-General announced that work had commenced on a National Family Violence Bench Book, which will be available in June 2017: Attorney-General for Australia, 'National Family Violence Bench Book', Media Release (9 June 2015) <<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2015/SecondQuarter/9-June-2015-National-Family-Violence-Bench-Book.aspx>> at 6 June 2016.

15. Recent studies include Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View* (2015); Hayley Boxall et al., *Prior Offending among Family Violence Perpetrators: A Tasmanian Sample*, Trends and Issues in Crime and Criminal Justice no. 493 (2015).

16. See Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006).

17. For a discussion of the Victorian Government's family violence policies since 2001, see Victorian Government, *Royal Commission into Family Violence: Victorian Government Submission* (2015). For a detailed history of family violence reforms and responses in Victoria, and nationally, see: State of Victoria, *Royal Commission into Family Violence, Volume III: Report and Recommendations* (2016) 189–239.

18. The code of practice was revised in 2010, and again more recently in June 2014: Victoria Police, *Code of Practice for the Investigation of Family Violence* (3rd ed., 2014).

19. Victoria Police, *Victoria Police Annual Report 2011–12* (2012) 45.

20. Victoria Police, *Victoria Police Submission to the Royal Commission into Family Violence* (2015) 38–41.

21. Kate Hawkins and Felicity Broughton, 'Sentencing in Family Violence Cases' (Paper presented at Current Issues in Sentencing Conference, National Judicial College of Australia, Canberra, 6–7 February 2016) 4.

22. Magistrates' Court of Victoria, *Response to Family Violence 2015–2017* (2014).

23. Magistrates' Court of Victoria and Children's Court of Victoria, *Submission to the Royal Commission into Family Violence* (2015) i.

- 1.15 Along with the range of initiatives introduced by Victoria Police and the Victorian Magistrates' Court, in 2007 the Victorian Government developed a shared *Family Violence Risk Assessment and Risk Management Framework* (the 'Common Risk Assessment Framework' or 'CRAF').²⁴ The Common Risk Assessment Framework – which is funded and administered by the Department of Health and Human Services – applies to service providers and informs police decision-making about family violence intervention order applications.²⁵ The importance of the Common Risk Assessment Framework was highlighted by the Minister for Families and Children in announcing a review of it in 2016:

There are many different services that play a role in supporting those experiencing family violence – it is important we are using the most effective and consistent method of assessing and responding to risk.²⁶

- 1.16 In addition to these and other changes to the law and practice relating to family violence, charging practices and sentencing options have changed since 2009–10, when the offender cohort examined in this study was sentenced. However, the study adds new information about the cohort's offending patterns, which is relevant to considerations of risk assessment, offender interventions, and how such offenders can most effectively be sentenced.

The Family Violence Protection Act 2008 (Vic)

- 1.17 The *Family Violence Protection Act 2008* (Vic) was introduced in 2008 after a review of family violence laws by the Victorian Law Reform Commission.²⁷ Replacing the *Crimes (Family Violence) Act 1987* (Vic), the 2008 Act introduced numerous changes to the previous scheme, including broadening the definition of 'family violence' and the grounds on which a family violence intervention order could be obtained. It also introduced police-issued family violence safety notices, enabling police to provide short-term protection until an intervention order is in place.
- 1.18 The definition of 'family violence' in the 2008 Act captures the breadth of physical and non-physical violence that may occur within family or 'family-like' relationships, including behaviour that is:
- physically, sexually, emotionally, psychologically, or economically abusive;
 - threatening or coercive; or
 - controlling or dominating such that a family member fears for his or her own or another's safety or wellbeing.²⁸
- 1.19 The violent behaviour does not need to constitute a criminal offence in order to qualify as family violence.²⁹ Another important feature of the *Family Violence Protection Act 2008* (Vic) is

24. Department of Human Services, *Family Violence Risk Assessment and Risk Management Framework* (2007). A second edition was published in 2012. A review of the Common Risk Assessment Framework, announced in February 2016, will consider: (1) how the framework has been used and by whom; (2) the extent to which it is embedded into organisational practice; and (3) the framework's perceived effectiveness across various groups and communities: Minister for Families and Children, 'Improving Victoria's Family Violence Risk Response', Media Release (4 February 2016) <<http://www.premier.vic.gov.au/improving-victorias-family-violence-risk-response/>> at 2 June 2016, 1.

25. Department of Human Services (2012), above n 1; Victoria Police (2014), above n 18, 4.

26. Minister for Families and Children (2016), above n 24, 1.

27. Victorian Law Reform Commission (2006), above n 16. A detailed analysis of the changes introduced can be found in the Council's previous reports: Sentencing Advisory Council, *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (2009); Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention: Monitoring Report* (2013).

28. *Family Violence Protection Act 2008* (Vic) s 5(1). See further Sentencing Advisory Council (2013), above n 27. The Royal Commission into Family Violence has recommended further expansion of the statutory examples of economic abuse provided in section 6 to include, for example, dowry-related abuse: State of Victoria, Royal Commission into Family Violence, *Volume V: Report and Recommendations* (2016) 122 (Recommendation 156).

29. *Family Violence Protection Act 2008* (Vic) s 5(3).

that it expressly recognises that the witnessing of family violence by children constitutes family violence in itself.³⁰ It also:

- clarifies the meaning of economic abuse and emotional or psychological abuse, and provides examples of each form of abuse;³¹ and
- expressly identifies certain forms of behaviour as family violence, including unlawful deprivation of liberty, actual or threatened sexual assault, intentionally damaging a family member's property, or threatening to do so, and harming, or threatening to harm, an animal so as to control, dominate, or coerce a family member.³²

Family violence intervention orders and safety notices

- 1.20 One tool for protecting victims and preventing offending is the use of family violence intervention orders and safety notices. Central to their effectiveness is that contraventions of orders or notices are taken seriously and those who contravene orders or notices are held accountable.
- 1.21 Since 1987, a victim of family violence in Victoria has been able to apply to the Magistrates' Court (or the Children's Court)³³ for a family violence intervention order.³⁴ These orders are intended to provide a measure of protection from further family violence by prohibiting certain behaviours by the perpetrator of the violence, or excluding the perpetrator from the family residence. Family violence intervention orders are now provided for under the *Family Violence Protection Act 2008* (Vic) and by definition include both final and interim orders.³⁵
- 1.22 Police may issue family violence safety notices (without application to the court) if they believe on reasonable grounds that the notice is necessary to ensure the safety, or preserve the property, of the affected family member, or to protect a child who has been subjected to family violence. A family violence safety notice is taken to be an application for a family violence intervention order.³⁶

Increase in the number of intervention orders since 2009–10

- 1.23 Since the index year (2009–10), there has been a 54.6% increase in the number of family violence intervention orders issued by the Magistrates' Court: from 17,777 in 2009–10 to 27,478 in 2014–15 (Figure 1, page 6), with the rate of family violence intervention orders per 100,000 people increasing from 328.0 to 466.8 (Figure 2, page 6). In the same period, there was a 183.5% increase in the number of family violence safety notices issued, from 3,563 to 10,100.³⁷

30. *Family Violence Protection Act 2008* (Vic) s 5(1)(b). The Act provides a non-exhaustive list of behaviours that may constitute a child's exposure to family violence, including seeing or hearing an assault, overhearing threats of physical abuse, comforting or providing assistance to a victim of physical abuse, or being present when police attend a family violence incident.

31. *Family Violence Protection Act 2008* (Vic) ss 6–7.

32. *Family Violence Protection Act 2008* (Vic) s 5(2). Although recognised as family violence when committed against family members, sexual offences and animal cruelty offences were rare in this study.

33. If the affected family member, the protected person, or the respondent is a child at the time the application is made, the Children's Court and the Magistrates' Court each have jurisdiction to deal with the application; however, if the respondent is a child, the application should be dealt with by the Children's Court if practicable: *Family Violence Protection Act 2008* (Vic) s 146.

34. *Crimes (Family Violence) Act 1987* (Vic) s 4; *Family Violence Protection Act 2008* (Vic) pt 4.

35. *Family Violence Protection Act 2008* (Vic) s 11. Prior to the Act, intervention orders were imposed under the *Crimes (Family Violence) Act 1987* (Vic). For a detailed history of family violence reforms and responses in Victoria, and nationally, see State of Victoria, Royal Commission into Family Violence (2016), above n 17, 118–138.

36. *Family Violence Protection Act 2008* (Vic) ss 24, 26, 31. See further Sentencing Advisory Council, *Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report* (2015) 7–16.

37. Sentencing Advisory Council (2015), above n 36, 12 (Figure 3).

Figure 1: Number of FVIOs made by the Magistrates’ Court of Victoria and number of family violence incidents recorded by Victoria Police, 2009–10 to 2014–15³⁸

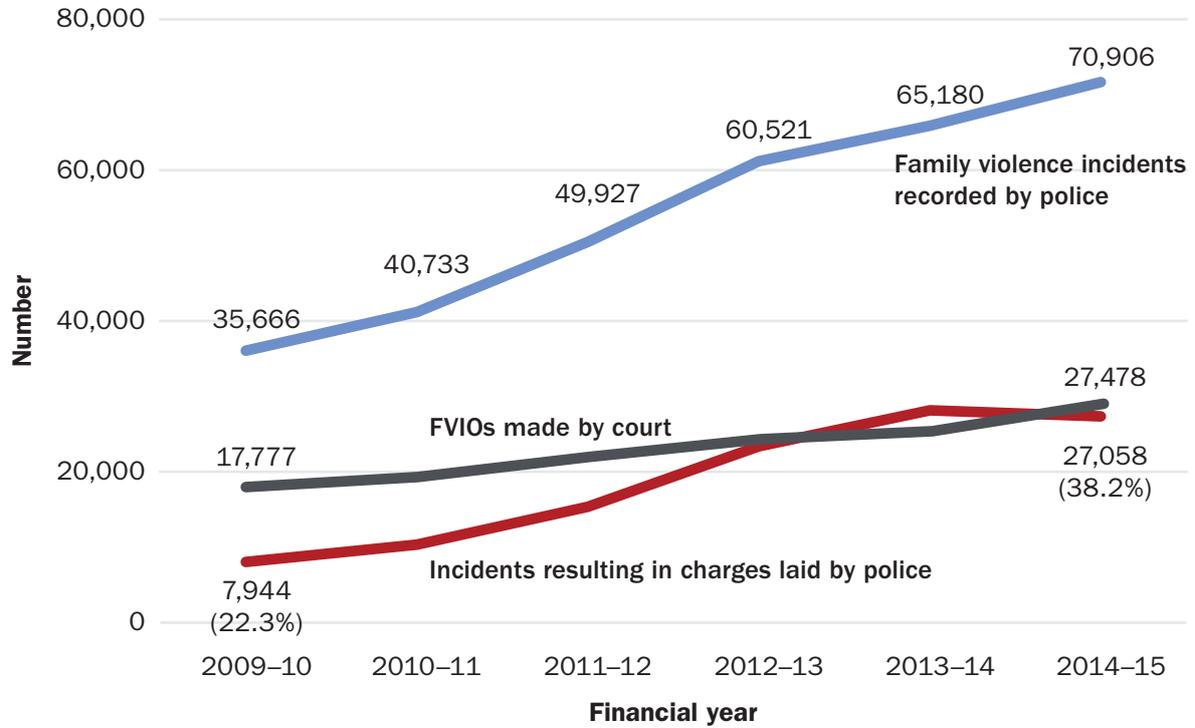
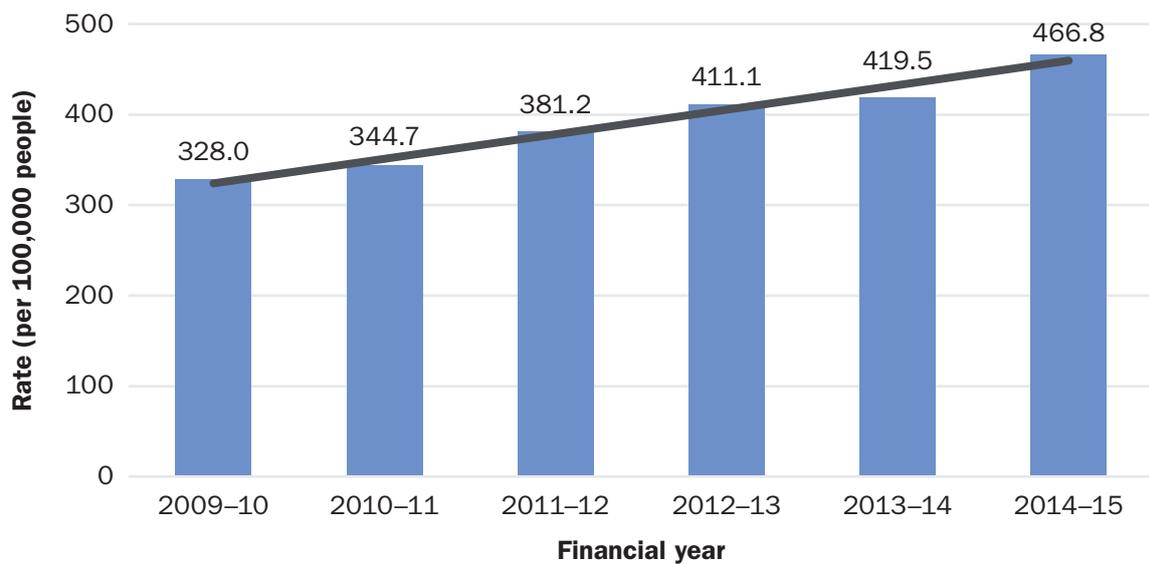


Figure 2: Family violence intervention order rate (orders per 100,000 people), Magistrates’ Court of Victoria, 2009–10 to 2014–15



38. Sentencing Advisory Council, above n 36, 16. Data on family violence incidents and incidents resulting in charges laid by police is from the Crime Statistics Agency. Data on the number of family violence intervention orders imposed is from the Magistrates’ Court of Victoria.

The index offences of contravening a family violence intervention order or safety notice

I.24 It is a summary criminal offence to contravene a family violence intervention order or safety notice under the *Family Violence Protection Act 2008* (Vic).³⁹ Three aggravated contravention offences, which commenced on 17 April 2013, target repeated, persistent, or particularly harmful contraventions of family violence intervention orders and safety notices.⁴⁰

The index offences

I.25 The two summary contravention offences are the 'index offences' examined in this study:

- contravening a family violence intervention order under section 123 of the *Family Violence Protection Act 2008* (Vic); and
- contravening a family violence safety notice under section 37 of the *Family Violence Protection Act 2008* (Vic).

I.26 Offenders who were sentenced in 2009–10 in the Victorian Magistrates' Court for either (or both) of these offences have been included in this study as 'index offenders'.

Non-index contravention/breach offences

I.27 While not included as index offences in this study, a number of other contravention or breach offences are included in the broader category of 'contravention/breach offences' in this study's examination of prior offences, co-sentenced offences, and reoffending.

Aggravated offences of contravening a family violence intervention order or safety notice

I.28 The three aggravated contravention offences under the *Family Violence Protection Act 2008* (Vic) are:

- contravening a family violence safety notice intending to cause harm or fear for safety (section 37A);
- contravening a family violence intervention order intending to cause harm or fear for safety (section 123A); and
- persistently contravening a family violence intervention order or safety notice (section 25A).

I.29 The aggravated offences are indictable offences triable summarily. This means that the offences may be heard and determined in the Magistrates' Court if the court considers it appropriate and the accused consents to a summary hearing.⁴¹ The maximum penalty for each offence is five years' imprisonment or a fine of up to 600 penalty units or both.⁴²

I.30 As these offences only came into effect on 17 April 2013, they could not be included as index offences (the index year is 2009–10). However, they have been included in the examination of reoffending by the index offenders, in the offence category of 'contravention/breach'.

39. Under the *Family Violence Protection Act 2008* (Vic), it is a (summary) offence to contravene a family violence intervention order (FVIO) (section 123) or a family violence safety notice (FVSN) (section 37). The maximum penalty for each index offence is two years' imprisonment or a fine of up to 240 penalty units or both. For further detail about contravention offences and the use of FVIOs and FVSNs, see Sentencing Advisory Council (2015), above n 36, 17–24.

40. Victoria, *Parliamentary Debates*, Legislative Assembly, 15 November 2012, 5075–5077 (Robert Clark, Attorney-General).

41. *Criminal Procedure Act 2009* (Vic) ss 28(1)(b), 29.

42. Sections 37A and 123A are aimed at contraventions that, while not constituting an offence other than a contravention, are particularly harmful to the victim: Explanatory Memorandum, Justice Legislation Amendment (Family Violence and Other Matters) Bill 2012 (Vic) 4.

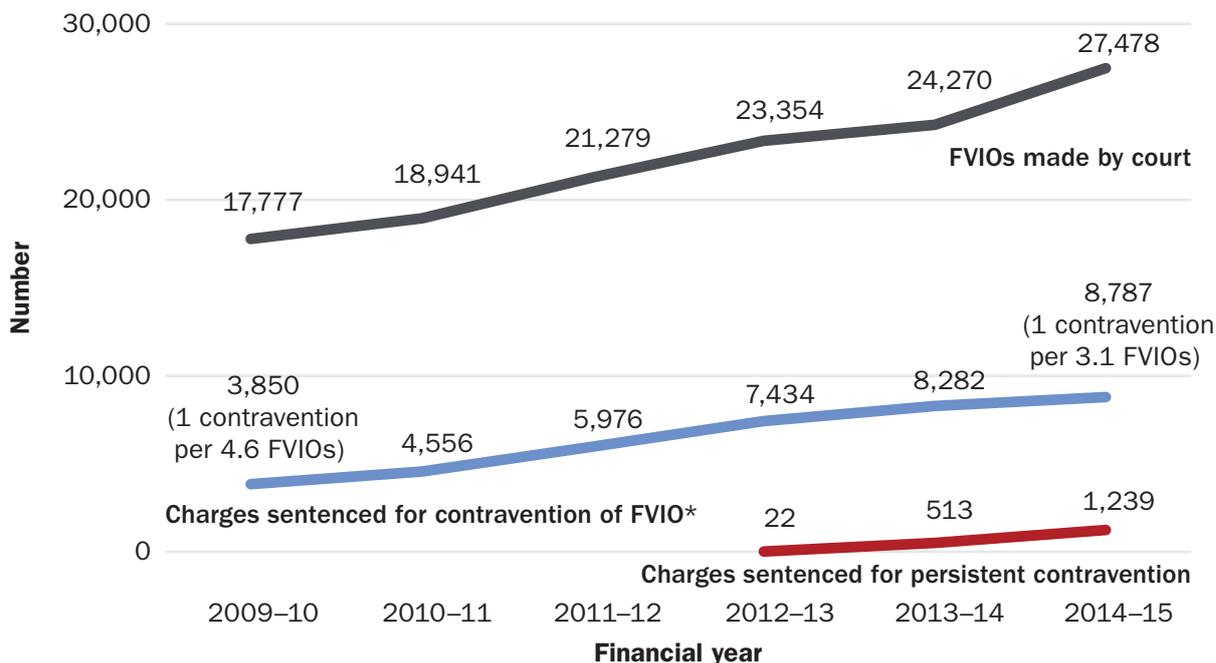
Other non-index contravention/breach offences

- 1.31 Other offences are also included in the broader category of ‘contravention/breach’ in the examination of prior offences, co-sentenced offences, and reoffending in this study, for example:
- the former offence of breaching an intervention order under the *Crimes (Family Violence) Act 1987* (Vic);⁴³ and
 - the offences of contravening a personal safety intervention order or stalking intervention order.⁴⁴

Increase in the number and rate of contravention offences since 2009–10

1.32 Since the index year (2009–10), there has been an increase in the approximate rate at which family violence intervention orders (FVIOs) are contravened (Figure 3). The Council estimated the contravention rate by dividing the number of issued FVIOs by the number of FVIOs contravened in each financial year, although there are some limitations to this calculation.⁴⁵

Figure 3: Number of issued FVIOs, sentenced charges of contravening an FVIO (including contraventions intending to cause harm or fear for safety), and sentenced charges of persistent contravention, Magistrates’ Court of Victoria, 2009–10 to 2014–15⁴⁶



*Includes contravention of FVIO intending to cause harm or fear for safety – after 17 April 2013.

43. *Crimes (Family Violence) Act 1987* (Vic) s 22.

44. Personal safety intervention orders are issued under the *Personal Safety Intervention Orders Act 2010* (Vic) where a person fears for his or her safety because of the behaviour of a non-family member (subject to other legislative criteria). Stalking intervention orders were issued under the *Stalking Intervention Orders Act 2008* (Vic), which was repealed and replaced by the *Personal Safety Intervention Orders Act 2010* (Vic), commencing 5 September 2011.

45. The contravention rate is approximate as data on granted family violence intervention orders (FVIOs) is held in a separate database from FVIO contraventions and the two databases are not able to be readily linked. Further, as multiple contraventions may relate to a single FVIO, a small number of repeat offenders might inflate the contravention rate. See further Sentencing Advisory Council (2015), above n 36, 19–21.

46. Data relating to the persistent contravention offence was analysed separately due to difficulties in counting contraventions for this offence. Assuming that all persistent contravention offences involved a contravention of a family violence intervention order (as opposed to a family violence safety notice), the contravention rate in 2014–15 would have increased to one contravention per 2.7 family violence intervention orders. See further Sentencing Advisory Council (2015), above n 36, 22.

Subject to these qualifications, Figure 3 suggests that the estimated rate of contraventions (excluding charges of persistent contravention) increased in the five years after the index year, from one contravention per 4.6 FVIOs in 2009–10 to one contravention per 3.1 FVIOs in 2014–15.

- I.33 Crime Statistics Agency data published by the Royal Commission into Family Violence shows that reported family violence perpetrators (27,552 in 2010) far exceeded the 1,898 offenders who were sentenced for contravening a family violence intervention order or safety notice in 2009–10. The number of new, unique perpetrators recorded by police rose from 17,575 in 2010 to 24,187 in 2014.⁴⁷ In that year, new perpetrators made up 54% of all unique perpetrators, a decrease of 10 percentage points since 2010. This indicates that repeat offenders constitute an increasing proportion of family violence perpetrators in Victoria.
- I.34 The increase in the rate of family violence incidents and family violence intervention orders, and the rate at which orders are being breached provide important context for this study.

The Council's previous research on contravention offences

- I.35 This study is the latest in a series of publications by the Council:
- *Breaching Intervention Orders: Report* (2008) recommended the same maximum penalty for breaches of family violence intervention orders, stalking intervention orders, and police-issued family violence safety notices. These recommendations were implemented in the *Family Violence Protection Act 2008* (Vic).
 - *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (2009) examined sentencing practices for breaches of family violence intervention orders.
 - *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009) set out 'low', 'medium', and 'high' sentencing ranges and identified factors that might place a case into a particular sentencing range.
 - *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention: Monitoring Report* (2013) examined sentencing practices for contravention from July 2004 to June 2012 and identified a change from financial penalties to sentences with greater potential for intervention.
 - *Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report* (2015) examined changes over time to the number of family violence incidents attended by police, the number of family violence intervention orders granted by the courts, and, in particular, sentencing practices in relation to contravention offences.

The Council's previous research on reoffending

- I.36 Reoffending has been the focus of three recent reports released by the Council:
- *Reoffending Following Sentencing in the Magistrates' Court of Victoria* (2013) examined the relationship between reoffending and the type of sentence imposed on an offender.
 - *Exploring the Relationship between Community-based Order Conditions and Reoffending* (2014) examined the use of community-based orders, including whether reoffending rates differed between offenders who did and did not receive a 'supervision' condition.
 - *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) examined reoffending patterns for 63,366 people sentenced between July 2004 and June 2014.

47. State of Victoria, Royal Commission into Family Violence, *Volume VII: Commissioned Research* (2016) 114.

- 1.37 The Council's reoffending database has also been used in other projects. For example, the Council's 2014 fines review examined reoffending by offenders who had been fined, and found that offenders who had completed their fine repayments had lower reoffending rates.⁴⁸
- 1.38 This study brings together the Council's previous work on reoffending and on the offence of contravening a family violence intervention order, examining differences in reoffending by the index offenders associated with age, gender, offending patterns, and the rate and type of prior offences.
- 1.39 The Council's previous work on reoffending found that, overall, reoffending rates were higher for males than for females and higher for young adult offenders (18–24) than for older adult offenders (25+).⁴⁹ This study investigates whether these age and gender differences apply to the index offenders.
- 1.40 Current and prior offence types have been identified as factors that may be associated with an increased risk of family violence offending (see further [1.43]). This study examines whether different reoffending rates are associated with the presence and type of prior and co-sentenced offences and discusses how certain prior offences may indicate a higher level of risk and therefore may influence the sentencing purposes that are likely to be emphasised in the case.

Reoffending, risk, and community protection

- 1.41 The purpose of the *Family Violence Protection Act 2008* (Vic) is to:
- maximise safety for children and adults who have experienced family violence;
 - prevent and reduce family violence to the greatest extent possible; and
 - promote the accountability of perpetrators of family violence for their actions.⁵⁰
- 1.42 The purpose of the Act is to be achieved by providing an effective system of family violence intervention orders and safety notices and creating offences for contravention.⁵¹ It 'requires the court to understand the factors that can increase a person's risk of further family violence, as well [as] appreciate how to respond to and manage that risk'⁵² through all parts of the system, including sentencing offences under the Act.⁵³
- 1.43 An offender's prior and co-sentenced offences may be important predictors of future offending.⁵⁴ The Victorian Common Risk Assessment Framework sets out a number of

48. Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria: Report* (2014) 45.

49. Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) 18–19.

50. *Family Violence Protection Act 2008* (Vic) s 1.

51. *Family Violence Protection Act 2008* (Vic) s 2.

52. Judicial College of Victoria, '5.14 – Risk Assessment and Management – A Framework to Assist Judicial Decision Making', *Family Violence Bench Book* (Judicial College of Victoria, 2013) <<http://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34679.htm>> at 6 June 2016.

53. The two index offences (contravening a family violence intervention order and contravening a family violence safety notice) are set out in sections 123 and 37 (respectively) of the *Family Violence Protection Act 2008* (Vic).

54. Department of Human Services (2012), above n 1, 27; Jacquelyn Campbell et al., 'Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study' (2003) 93(7) *American Journal of Public Health* 1089, 1089–1097; Boxall et al. (2015), above n 15, 1; Hayley Boxall et al., *Identifying First-Time Family Violence Perpetrators: The Usefulness and Utility of Categorisations Based on Police Offence Records*, Trends and Issues in Crime and Criminal Justice no. 487 (2015) 2; Andrew R. Klein and Terri Tobin, 'A Longitudinal Study of Arrested Batterers, 1995–2005' (2008) 14(2) *Violence Against Women* 136, 137–139; New Zealand Police, *Family Violence Risk Assessment: Review of International Research* (2011) 24–26.

evidence-based factors that 'are associated with greater likelihood and/or severity of family violence',⁵⁵ including:

- a previous or current breach of an intervention order, which 'indicates the defendant is not willing to abide by the orders of a court' and 'should be considered a serious indicator of increased risk of future violence',⁵⁶ and
- a history of violent behaviour, as:

Perpetrators with a history of violence are more likely to use violence against family members. This can occur even if the violence has not previously been directed towards family members. Other victims may have included strangers, acquaintances and/or police officers.

The nature of the violence may include credible threats or use of weapons, and attempted or actual assaults. Violent men generally engage in more frequent and more severe family violence than perpetrators who do not have a violent past.⁵⁷

I.44 Risk assessment tools are increasingly being used by police and others as a means of 'identifying those at risk of reoffending and to pinpoint opportunities for intervention'.⁵⁸

I.45 A key opportunity for identifying those at risk of future violence and providing a meaningful intervention is through the sentencing process. In its 2015 report *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View*, the RMIT Centre for Innovative Justice in Victoria suggested that:

attendance at court by an abusive man should be seen as an opportunity for multiple, *purposeful* interactions. This is particularly the case where the man has not had previous contact with – or has managed to avoid the scrutiny of – other agencies. In these circumstances, the court system represents a chance to bring him, and keep him, under the spotlight.⁵⁹

I.46 The Centre for Innovative Justice suggests that effective sentencing of family violence perpetrators requires ongoing monitoring by the court, swift and certain sanctions for non-compliance, early referral to treatment and services, interventions that can be tailored to the defendant's circumstances, and 'leveraging a perpetrator's "stake in conformity"'.⁶⁰

I.47 Similarly, in a recent paper by Magistrate Kate Hawkins and Deputy Chief Magistrate Felicity Broughton, the authors emphasise that:

Contact with the justice system often represents the only proactive intervention that many perpetrators experience. This interaction should therefore provide information, identify risk and need alike, map a plan for ongoing interaction and challenge the denial and minimisation that so many family violence perpetrators display. The Courts should explore ways in which they can maximise the use of contact between the perpetrators of family violence and the court so that the interactions are as purposeful and effective as possible every time ... Sentencing options such as community correction orders and adjourned undertakings are useful vehicles for therapeutic jurisprudence.⁶¹

55. Department of Human Services (2012), above n 1, 28. The Common Risk Assessment Framework refers to 'reliable research indicating that some factors are associated with a greater likelihood and/or severity of family violence' but does not provide a reference list of that research: at 26.

56. Ibid 27.

57. Ibid 28.

58. Boxall et al. (2015), above n 15, 1. The Victorian Crime Statistics Agency found that in incidents that police responded to in 2010, police assessed the risk of future violence as 'likely' for 55% of recidivists and 'unlikely' for 60% of non-recidivists, making their assessments 'slightly better than chance': State of Victoria, Royal Commission into Family Violence (2016), above n 47, 129.

59. Centre for Innovative Justice (2015), above n 15, 54.

60. Ibid 67.

61. Hawkins and Broughton (2016), above n 21, 18 (citations omitted).

- I.48 The presentation at court of a person with a contravention charge means that earlier interventions (such as the intervention order) have not been effective in curbing the offender's behaviour. Moreover, it means the offender presents as having an increased risk of future family violence.⁶² Where the contravention is accompanied by a proven charge of assault, causing injury, or threats to kill/injure, or other risk factors are present, the sentencing exercise is a key (and possibly final) opportunity to intervene and address the offender's behaviour before it escalates.
- I.49 The Council's *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* – which were developed in 2009 in consultation with the Magistrates' Court of Victoria – recommend that community protection, including protecting the affected family member from the offender, should be the primary purpose of sentencing contravention offences. Similarly, the Victorian Court of Appeal has emphasised that general and specific deterrence are of fundamental importance in sentencing family violence offences.⁶³ These issues are explored further in Chapter 7.

Overview

- I.50 Using data from the Council's reoffending database, this study:
- examines differences in index offenders' age, gender, and offending patterns in the case involving the index offence (Chapter 2);
 - looks backwards five years from the original 2009–10 index sentence to identify the prior sentences imposed on the index offenders in all Victorian courts: the Children's Court, the Magistrates' Court, the County Court, and the Supreme Court (Chapter 3);
 - tracks index offenders' subsequent sentences in the five years from their index sentence across all Victorian courts (Chapter 4);
 - considers the prevalence of particular offences across the entire 11-year study period and investigates whether there is any correlation between the number of sentenced contravention charges and the likelihood that an offender will also be sentenced for assault/cause injury, criminal damage, or unauthorised driving (Chapter 5);
 - examines differences in reoffending based on an offender's age, gender, and prior criminal history (Chapter 6); and
 - discusses the implications of the above findings on sentencing contravention offences (Chapter 7).

62. Department of Human Services (2012), above n 1, 27.

63. *Director of Public Prosecutions v Meyers* (2014) 44 VR 486, 497–498; *Pasinis v The Queen* [2014] VSCA 97, [57]. For further discussion of Court of Appeal guidance on sentencing offenders for family violence offences, see Katherine Farrell, 'Let the Sentence Fit the Crime' (2015) 89(10) *Law Institute Journal* 32, 35.

2. The index offender group

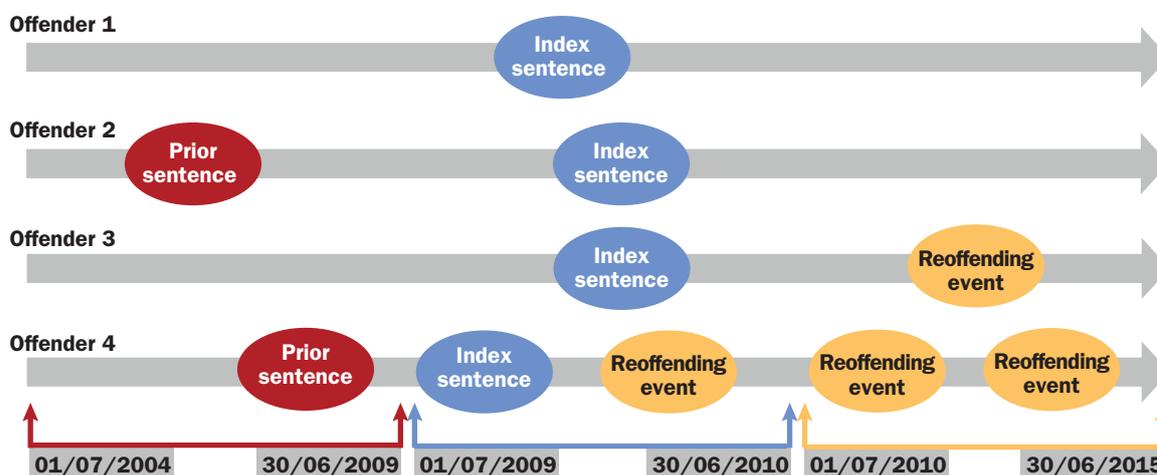
The index offenders

- 2.1 This study examines a cohort of offenders who were sentenced from 1 July 2009 to 30 June 2010 in the Magistrates' Court of Victoria for at least one of two particular offences under sections 123 and 37 of the *Family Violence Protection Act 2008* (Vic): contravening a family violence intervention order and contravening a family violence safety notice (the 'index offences').⁶⁴ The final index offender population comprised 1,898 people.
- 2.2 Contravening a family violence intervention order was the most common index offence: 94% of the 1,898 index offenders were sentenced for contravening a family violence intervention order (1,777 people), 6% were sentenced for contravening a family violence safety notice (107 people), and a further 1% were sentenced for both (14 people).

The index sentence

- 2.3 The 'index sentence' is the first sentence imposed on an index offender in 2009–10 for an index offence charge or charges. Figure 4 illustrates the process for nominating the index sentence and the period over which prior offences and reoffending have been examined, giving some typical scenarios. For example, some index offenders:
- were sentenced on only one occasion in the 11-year period for the case that involved the index offence charge (or charges) (such as 'Offender 1');
 - had been previously sentenced but did not reoffend ('Offender 2');
 - had no prior sentence events (in the five years before the index sentence) but reoffended in the five years after the index sentence (such as 'Offender 3');
 - were sentenced more than once in 2009–10 ('Offender 4'). If multiple sentence events in 2009–10 included an index offence, the first sentence event was selected as the 'index sentence' (and reoffending was examined over the five years from the date of that first sentence).

Figure 4: Methodology for identifying the index sentence, prior sentence events, and reoffending sentence events⁶⁵



64. As only one person was sentenced in the higher courts in 2009–10 for an index offence, the index group was confined to people sentenced in the Magistrates' Court (see Appendix A). For further information about the index offences, see [1.25]–[1.26].

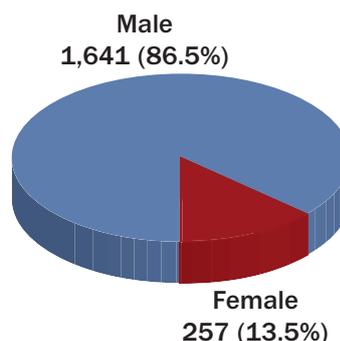
Age, gender, and relationship with affected family member

Gender

- 2.4 Consistent with previous studies of family violence offending,⁶⁶ the present study has found that the vast majority, 86.5%, of the 1,898 index offenders were male and 13.5% were female (Figure 5).
- 2.5 The Supervising Magistrates of the Family Violence and Family Law portfolio of the Victorian Magistrates' Court (whom the Council consulted for this study) noted that in intimate partner cases involving female offenders, it is not uncommon for there to be mutual intervention orders. The breach can relate to arranging contact with the children who are living with the female offender, or it can occur in circumstances in which there is ongoing family violence against the female offender.⁶⁷
- 2.6 Further, a recent study by Victoria Legal Aid examined a group of people who had sought legal assistance upon being charged with contravening a family violence intervention order between 2008 and 2015. The study found that the 'indicators for disadvantage' tended to be stronger for females who had received legal assistance for a charge of contravening a family violence intervention order:

female clients who received a grant of aid ... [were] more likely to be in receipt of a benefit (84 per cent, compared with 72 per cent of males), and ... to be receiving the Disability Support Pension (38 per cent, compared with 26 per cent of men).⁶⁸

Figure 5: Number and percentage of index offenders, by gender, 2009–10



Age

- 2.7 The median age of index offenders was 36 years, while the most common age group was 35–44 years (34.0%), followed by 25–34 years (30.2%) (Figure 6, page 15). There was little difference in the age profiles of male and female offenders: each had a median age of 36 years, and approximately 15% of each gender were under the age of 25. This age distribution is consistent with the experience of those consulted for this study,⁶⁹ and with the findings of other studies, including Victoria Legal Aid's recent study.⁷⁰
- 2.8 Attendees at the Council's family violence roundtable suggested that the age distribution of index offenders is likely to reflect the age at which people form more serious intimate relationships (such as marriage or cohabitation) and may reflect other factors associated with increased risk, such as pregnancy, new birth, and/or separation.

65. Figure 4 is based on Crime Statistics Agency, *Predictors of Recidivism amongst Police Recorded Family Violence Perpetrators*, In Brief no. 4 (2016) 6.

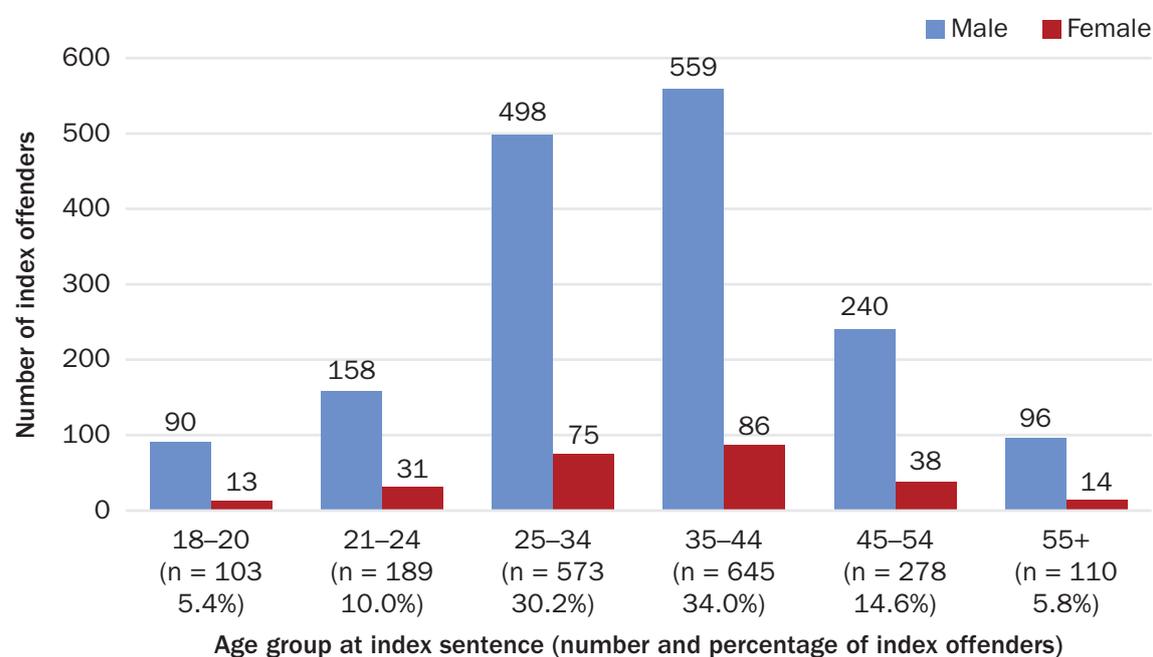
66. See for example, Victoria Legal Aid, *Characteristics of Respondents Charged with Breach of Family Violence Intervention Orders*, Research Brief (2015) 5; Sentencing Advisory Council (2009), above n 27, 9; Sarah Napier et al., *Who Goes to Prison for Breaching an Apprehended Domestic Violence Order? An Analysis of Police Narratives*, Bureau Brief no. 107 (2015) 7.

67. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates' Court of Victoria (9 March 2016).

68. Victoria Legal Aid (2015), above n 66, 4. However, the brief acknowledged that as 'VLA eligibility guidelines ... provide assistance to the most disadvantaged, certain characteristics relating to socio-economic disadvantage are going to be overrepresented in our client cohort': at 2. See also Lily Trimboli, *Persons Convicted of Breaching Apprehended Domestic Violence Orders: Their Characteristics and Penalties*, Bureau Brief no. 102 (2015) 3.

69. Family Violence Roundtable (9 February 2016); Meeting with Representatives of Victoria Police (11 February 2016); Meeting with Representatives of Victoria Legal Aid (12 February 2016).

70. Victoria Legal Aid (2015), above n 66, 4. See also Trimboli (2015), above n 68, 3.

Figure 6: Number of index offenders, by age and gender, 2009–10

2.9 A number of participants also referred to the under-reporting of family violence, commenting that younger and older cohorts may be less willing to report incidents to the police, and that parents may be reluctant to report violence committed against them by their child.⁷¹ Representatives of Victoria Police commented that ‘[w]hat we know about adolescent violence in the home is that particularly where it is a child and parent, the parents are very reluctant to report anything’.⁷² Similarly, representatives of Victoria Legal Aid commented that:

parents are very reluctant to report it because they are embarrassed, they’re protective, they’re concerned about the consequences of reporting, they don’t necessarily feel that the supports are in place or accessible for them to address the issues, they don’t necessarily want the [young person] removed from the home, so there are lots of factors that lead to underreporting.⁷³

2.10 These views were supported in the findings of the Royal Commission into Family Violence:

Parents are often reluctant to report their children’s behaviour to the police because of feelings of shame and self-blame or because they fear their child might get a criminal record. This can leave the parents feeling isolated and helpless.⁷⁴

2.11 Representatives of Victoria Legal Aid and the consulted magistrates commented that young adult offenders who contravene family violence intervention orders commonly exhibit mental health issues and problems with drugs and/or alcohol. Consulted magistrates believed that addressing the needs of this specific group provides a greater chance of reducing their offending compared with offending by older male offenders.⁷⁵

71. Family Violence Roundtable (9 February 2016). See further Appendix A, 84.

72. Meeting with Representatives of Victoria Police (11 February 2016).

73. Meeting with Representatives of Victoria Legal Aid (12 February 2016).

74. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 31.

75. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates’ Court of Victoria (9 March 2016).

Relationship between the offender and the affected family member

- 2.12 The data in this study does not include information on the relationship between the offender and the victim. However, data from the Crime Statistics Agency incorporates relationship information for family violence incidents attended by police each year, including incidents in which perpetrators were charged with contravening family violence intervention orders and safety notices.
- 2.13 The index offences sentenced in 2009–10 were committed between 24 April 2008 and 30 June 2010. The Crime Statistics Agency data showed that 4,828 offenders were charged with an index offence in the two-year period between July 2008 and June 2010, and it is likely that most index offenders would be a subset of this group.⁷⁶ Although the data is not linked, useful insights can be gained from the age/gender/relationship profile of the larger group, which may assist in interpreting and understanding the data presented in this study.
- 2.14 Figures 7 and 8 (page 17) present the age group, and the relationship with the affected family member, of male perpetrators and female perpetrators, respectively.⁷⁷ The data reveals that:
- male perpetrators (82.1%) were more likely than female perpetrators (54.0%) to offend against their current or former partners. Almost half of the female perpetrators (46.0%) offended against other family members (for example, parents or siblings);
 - males aged 18 to 20 years had an almost equal number of contravention incidents that related to a current/former partner (101 or 49.5%) and another family member (103 or 50.5%);
 - males aged over 20 years were more likely to have a contravention offence that related to a current/former partner (2,616 or 86.9%) than another family member (395 or 13.1%);
 - female perpetrators aged 18 to 24 years had more incidents against other family members (37 or 54.4%) than against current or former partners (31 or 45.6%); and
 - female perpetrators aged 25 or older had more incidents involving current or former partners (148 or 61.2%) than against other family members. However, the proportion of partner incidents was lower than for male perpetrators in the same age group (2,356 or 87.5%).

76. From July 2008 to June 2010, Victoria Police recorded 69,543 family violence incidents (33,877 family violence incidents in 2008–09 and 35,666 in 2009–10). Of these, at least one index offence was recorded from 9,320 of the incidents recorded by police in 2008–09, and from 10,309 of the incidents in 2009–10. Over this period, 4,828 unique alleged offenders were recorded for at least one contravention of a family violence intervention order or safety notice (3,765 were either arrested or issued with a summons, and 1,380 were given a caution, an intent to summons, or some other form of outcome): Crime Statistics Agency (Victoria), unpublished data.

77. Some of the index offence charges for the 4,828 offenders arose from a recorded 'family violence incident', where the perpetrator's age and relationship with the affected family member were recorded. Offenders are presented in these figures more than once if they offended multiple times (for example, against multiple relatives or multiple orders). The offenders presented here are a subset of the 4,828 offenders charged for index offences between July 2008 and June 2010. A 'family violence flag' was raised in around half of all contravention orders in this period: Crime Statistics Agency (Victoria), unpublished data.

Figure 7: Family violence incidents involving contravening an FVIO/FVSN by male perpetrators, by age and relationship with the victim, July 2008 to June 2010⁷⁸

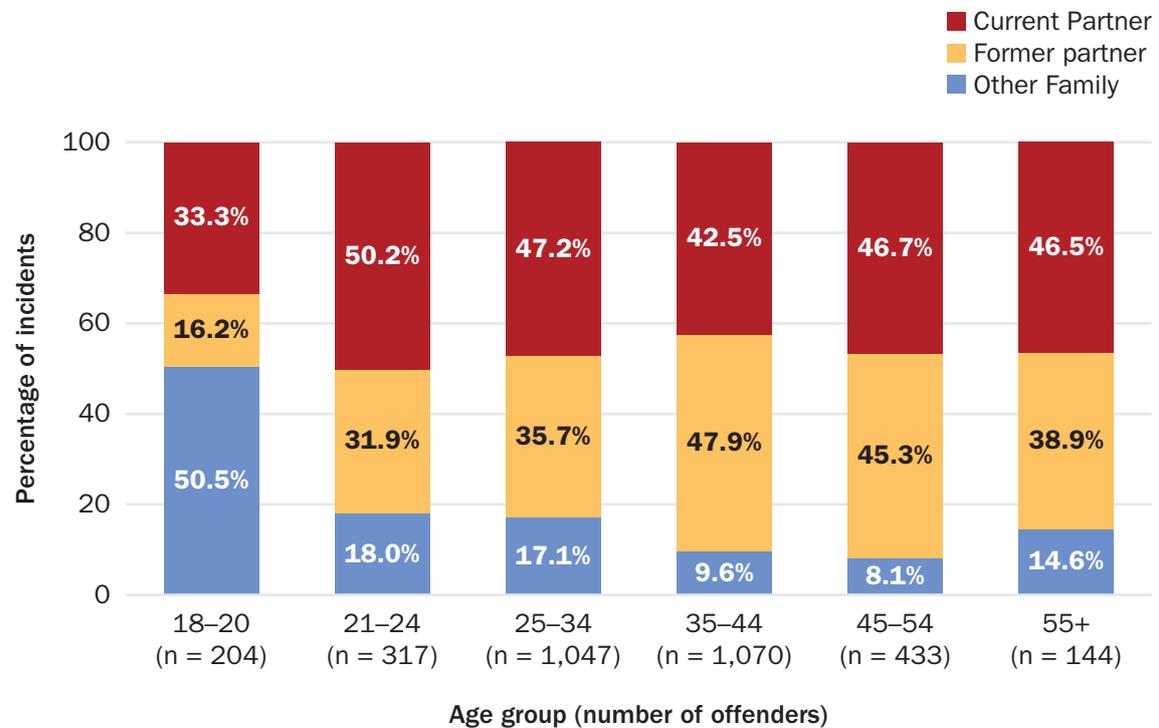
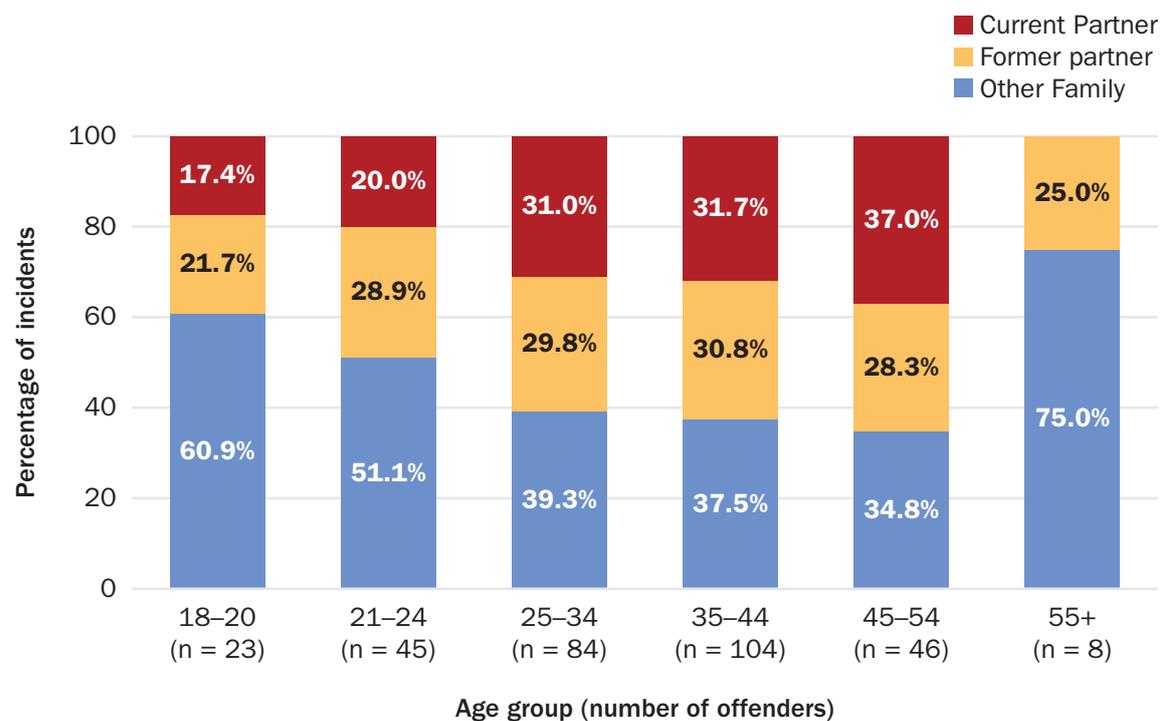


Figure 8: Family violence incidents involving contravening an FVIO/FVSN by female perpetrators, by age and relationship with the victim, July 2008 to June 2010⁷⁹



78. Crime Statistics Agency (Victoria), unpublished data.

79. Crime Statistics Agency (Victoria), unpublished data.

Offending patterns

How many index offenders were sentenced for other offences?

- 2.15 At their index sentence, the 1,898 index offenders were sentenced for a total of 8,142 charges between them (an average of 4.29 charges per index offender).
- 2.16 The index offenders fell into three distinct offending groups:
- **Single charge:** 609 index offenders (32.1%) were sentenced for just one charge of an index offence, with no other charges.
 - **Multiple contraventions:** 275 index offenders (14.5%) were sentenced for multiple contraventions at the index sentence, but for no other offence types:
 - 253 index offenders were sentenced for multiple index offence charges, but for no other offence types; and
 - 22 index offenders were sentenced for an index offence or offences plus at least one non-index contravention/breach offence or offences (such as contravening a stalking intervention order),⁸⁰ but for no other offence types.
 - **Multiple offence types:** 1,014 index offenders (53.4%) were also sentenced for *other offence types* as well as the index offences at their index sentence.
- 2.17 Therefore, at their index sentence, almost half of the index offenders (884 or 46.6%) were sentenced *only for a contravention offence or offences* (including the index offence), and for no other offence types. The remaining offenders were sentenced for multiple offence types (53.4%).

What offence types were sentenced with the index offence?

- 2.18 All of the charges sentenced alongside the index offence have been grouped into offence categories.⁸¹ To be included in a category, an offender had to have at least one co-sentenced offence falling into that category.
- 2.19 Figure 9 (page 19) shows that, in addition to the *index offence*, at the index sentence:⁸²
- 705 index offenders (37.1%) were sentenced for additional contravention/breach offences⁸³ (the largest category of co-sentenced offences). Of these, 430 index offenders also had other offence types sentenced (275 had multiple contraventions but no other offence types).
 - 529 index offenders (27.9%) were also sentenced for an assault/cause injury offence (the second most common category of co-sentenced offences).
 - 342 index offenders (18.0%) were sentenced for criminal damage. When committed against a family member, such conduct is explicitly included in the definition of family violence in the *Family Violence Protection Act 2008* (Vic).⁸⁴

80. For further information about non-index contravention offences see [1.27]–[1.31].

81. See Appendix B for offence categories. See [7.19]–[7.21] for a discussion of the influence of co-sentenced offences on the sentence imposed on the index offence.

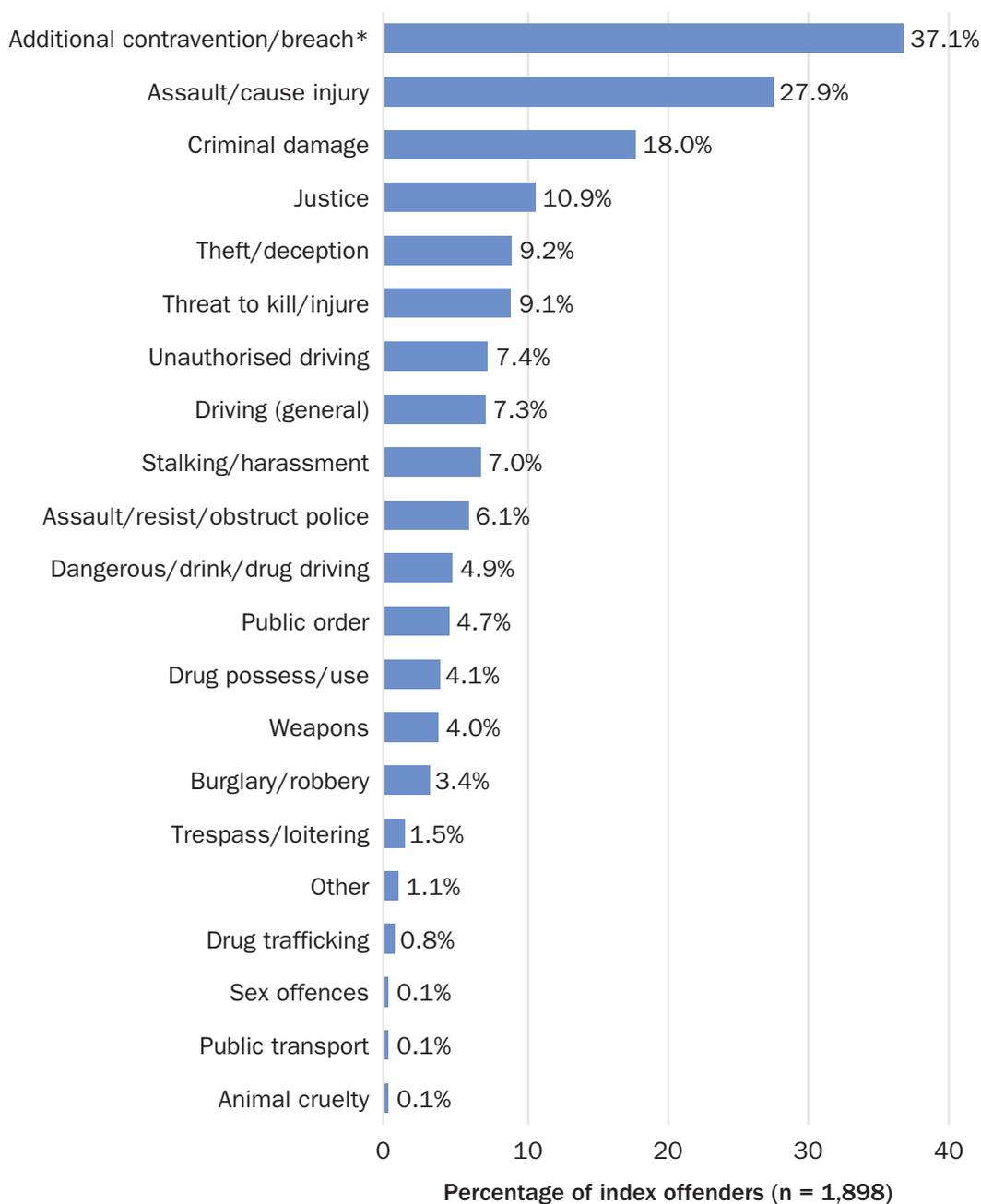
82. Although these offences were sentenced at the same time as the contravention offence, they did not necessarily occur on the same date. For example, an offender sentenced for contravention and assault may have assaulted the person protected by the intervention order in the same incident, or may have assaulted someone else in a totally unrelated incident. Even for charges that were committed on the same date, there is insufficient detail in the data to ascertain whether charges are from related incidents.

83. 'Additional breach/contravention offences' included a second (or subsequent) index offence in the case and/or an additional non-index contravention/breach offence, such as the former offence of breaching an intervention order under section 22 of the *Crimes (Family Violence) Act 1987* (Vic). For further information about non-index contravention offences see [1.27]–[1.31].

84. *Family Violence Protection Act 2008* (Vic) s 5(2)(c).

- 206 index offenders (10.9%) were sentenced for justice offences, most commonly the offence of failing to answer bail (*Bail Act 1977 (Vic) s 30(1)*).
- 174 index offenders (9.2%) were sentenced for theft/deception offences.
- 173 index offenders (9.1%) were sentenced for threat to kill/injure offences.

Figure 9: Percentage of index offenders with at least one co-sentenced charge of a particular offence type at the index sentence, 2009–10



*This category represents cases with more than one charge of an index offence or with a different contravention/breach charge sentenced with the index offence.

- 2.20 While the data does not contain sufficient detail to establish whether the co-sentenced offences were related to the index offence, many of the common co-sentenced offence groups are the types of offences that might be expected in family violence incidents. Therefore, even though it cannot be established that such offences were associated with the contravention charge, such an association cannot easily be excluded.⁸⁵ Offences such as assault/cause injury and threat to kill/injure are indicators of an increased risk of family violence (regardless of whether or not the offence was committed against a family member), according to the Common Risk Assessment Framework, as are the offences of contravening a family violence intervention order or safety notice.⁸⁶
- 2.21 Family Violence Roundtable participants reported that the findings shown in Figure 9 were consistent with their experience: offenders are frequently charged with assault and property damage offences at the same time as contravening a family violence intervention order or safety notice.⁸⁷ Participants' comments were supported by Crime Statistics Agency data, which showed that assault was the most serious offence charged in 6,022 of the 9,331 family violence incidents that resulted in criminal charges (64.5%).⁸⁸
- 2.22 Roundtable participants and Victoria Police, however, expressed surprise at the low incidence of co-sentenced sexual offences.⁸⁹ Roundtable participants commented that this reflected issues such as the under-reporting and delayed reporting of sexual offences, including (or particularly) offences committed in the context of a family relationship.⁹⁰ Representatives of Victoria Legal Aid expressed surprise that there were not more offenders with co-sentenced drug possession and use offences, as in their experience, 'in a significant number of cases, drug use or possession is part of the combination of offences'.⁹¹
- 2.23 Index offenders who were sentenced for multiple offence types are represented in Figure 9 according to all of the offence categories relevant to their case. While there were many different combinations of co-sentenced offences, there were also some common overlaps between offence types. For example, some co-sentenced offence types frequently presented with assault/cause injury offences, as explored next.

Overlap between assault/cause injury offences and other offence types

- 2.24 Assault/cause injury was the most common co-sentenced offence type (after additional contravention/breach offences).
- 2.25 Over one-third of the index offenders sentenced for multiple contravention/breach offences were also sentenced for any combination of assault/cause injury offences, threat to kill/injure offences, and/or assault police offences (261 out of 705 index offenders).⁹²

85. In some cases, it is possible to link the index offence with co-sentenced offences due to the use of an aggregate sentence. See further [7.19]–[7.20], [7.31].

86. Department of Human Services (2012), above n 1, 27. See further [1.15].

87. Family Violence Roundtable (9 February 2016). See further Appendix A.

88. State of Victoria, Royal Commission into Family Violence (2016), above n 47, 124–125.

89. Family Violence Roundtable (9 February 2016); Meeting with Representatives of Victoria Police (11 February 2016).

90. Family Violence Roundtable (9 February 2016).

91. Meeting with Representatives of Victoria Legal Aid (12 February 2016).

92. Of the 705 index offenders who were sentenced for more than one contravention/breach offence, 37.0% were also sentenced for any combination of assault/cause injury offences, threat to kill/injure offences, and/or assault police offences (261 out of 705 people).

- 2.26 Of the 342 index offenders who were co-sentenced for criminal damage offences, 61.7% were also co-sentenced for any combination of assault/cause injury offences, threat to kill/injure offences, and/or assault police offences (211 index offenders).
- 2.27 Three in five index offenders co-sentenced for threat to kill or cause injury offences were also co-sentenced for assault/cause injury offences (104 index offenders).⁹³

Age and gender differences in co-sentenced offence types

- 2.28 The overall co-sentenced offence trend displayed in Figure 9 was evident for each age–gender group, with the three most common co-sentenced offence types being additional contravention/breach, assault/cause injury, and criminal damage. Table 1 (page 22) shows that:
- the most common co-sentenced offence type for each age–gender group (except young adult males) was additional contravention/breach offences. The group with the highest proportion of people sentenced for such offences was older females (42.7%);
 - the proportion of offenders who were co-sentenced for assault/cause injury offences ranged from 41.1% of young adult males (for whom assault/cause injury was the most common co-sentenced offence) to 16.4% of older females; and
 - the proportion of offenders with co-sentenced criminal damage offences ranged from 39.1% of young adult males to 10.8% of older females.
- 2.29 Of the four age–gender groups, young adult males were sentenced at a higher rate for almost all offence types at their index sentence. Young adult females were sentenced at the highest rate for public order offences, while older females were sentenced at the highest rate for stalking and harassment.

93. Just under one-third of the index offenders (598 people) were co-sentenced for assault/cause injury offences or threat to kill/injure offences at the same time as they were sentenced for the index offence: 425 index offenders (22.4%) were co-sentenced for assault/cause injury offences (but not for threat to kill/injure offences); 104 index offenders (5.5%) were co-sentenced for both assault/cause injury offences and threat to kill/injure offences (therefore, 60.1% of index offenders sentenced for threat to kill/injure offences also had at least one assault/cause injury charge sentenced); and 19.7% of index offenders sentenced for assault/cause injury offences also had at least one threat to kill/injure charge sentenced); and 69 index offenders (3.6%) were co-sentenced for threat to kill/injure offences (but not for assault/cause injury offences). Of the 598 index offenders co-sentenced for assault/cause injury offences and/or threat to kill/injure offences, 29 were also co-sentenced for assault police offences.

Table 1: Percentage of index offenders by the offence types sentenced with the index offence, by age and gender, 2009–10

Offence (ranked as per Figure 9)	Percentage of age–gender group co-sentenced for at least one charge of a particular offence type at the index sentence in 2009–10			
	Young adult males (18–24)	Older males (25+)	Young adult females (18–24)	Older females (25+)
Additional contravention/breach	37.5%	36.3%	34.1%	42.7%
Assault/cause injury	41.1%	27.1%	31.8%	16.4%
Criminal damage	39.1%	15.4%	18.2%	10.8%
Justice	18.1%	10.2%	15.9%	5.6%
Theft/deception	19.4%	8.2%	4.5%	4.7%
Threat to kill/injure	15.3%	8.8%	4.5%	5.2%
Unauthorised driving	14.5%	7.0%	2.3%	2.8%
Driving (general)	14.1%	6.7%	6.8%	2.8%
Stalking/harassment	6.9%	7.0%	2.3%	8.0%
Assault/resist/obstruct police	8.5%	6.0%	4.5%	4.7%
Dangerous/drink/drug driving	8.1%	4.8%	4.5%	1.9%
Public order	5.6%	4.3%	9.1%	5.6%
Drug possess/use	6.0%	4.3%	2.3%	0.5%
Weapons	9.3%	3.3%	2.3%	2.3%
Burglary/robbery	7.7%	3.0%	2.3%	0.9%
Trespass/loitering	2.0%	1.6%	–	0.9%
Other	1.6%	1.1%	2.3%	0.5%
Drug trafficking	–	1.1%	2.3%	–
Sex offences	–	0.1%	–	–
Public transport	0.8%	–	–	–
Animal cruelty	–	0.1%	–	–
Total index offenders in group	248 offenders	1,393 offenders	44 offenders	213 offenders

This table is colour-coded to show the prevalence of different offence categories for each age–gender group (based on the proportion of the group sentenced at least once for that offence). The darkest shade shows the most prevalent offence category in that group. Each successively lighter shade indicates less prevalent offences in the age–gender group. Dashes indicate that no person in the group was sentenced for a charge of the offence category.

3. Prior criminal history

- 3.1 This chapter examines the prior offending patterns, including age and gender differences, of index offenders in the five years leading up to the index sentence. Later in this study, reoffending rates are examined with reference to prior criminal history (see further [6.11]–[6.33]). Chapter 7 explores the implications of these findings for sentencing.

Relevance of prior convictions to sentencing

- 3.2 Previous studies have recognised prior criminality as a predictor of future offending by family violence offenders.⁹⁴ Likewise, most risk assessment tools ‘involve an evaluation of the nature and extent of the perpetrator’s prior criminal history’.⁹⁵ A number of risk factors in the Victorian Common Risk Assessment Framework relate to prior offending, such as previous intervention order breaches and previous violence or threats (regardless of whether or not the conduct was perpetrated against a family member).⁹⁶ Risk assessment tools are increasingly being used by police and others as ‘a primary mechanism for identifying those at risk of reoffending and to pinpoint opportunities for intervention’.⁹⁷
- 3.3 One clear opportunity for intervention is at the time of sentencing a contravention offence. By virtue of having contravened an intervention order, the offender presents at court with an increased risk of future family violence.⁹⁸ Where other risk factors are present – such as a prior conviction for assault, causing injury, or threat to kill/injure – the sentencing exercise represents a crucial opportunity to intervene. In such cases the prior offences might be expected to raise a ‘red flag’ about the degree of risk that a person presents, particularly to affected family members.⁹⁹ In the context of family violence offending, relevant prior offences may also indicate that the offender’s behaviour is escalating.¹⁰⁰ The Tasmanian Sentencing Advisory Council recently emphasised this, noting the importance of sentencing officers having access to ‘a complete record of prior family violence convictions and protection orders imposed’.¹⁰¹
- 3.4 Prior criminal history is relevant to both the court’s choice of sentencing purpose and disposition (subject to other sentencing principles such as parsimony and proportionality) and an offender’s risk of reoffending.¹⁰²

94. See for example, Boxall et al. (2015), above n 15, 1; Victoria Legal Aid (2015), above n 66, 5; Trimboli (2015), above n 68, 1, 4; Tara N. Richards et al., ‘A 10-Year Analysis of Rearrests among a Cohort of Domestic Violence Offenders’ (2014) 29(6) *Violence and Victims* 887, 890; Kathryn E. Moracco et al., ‘Who Are the Defendants in Domestic Violence Protection Order Cases?’ (2010) 16(11) *Violence Against Women* 1,201, 1,205; Klein and Tobin (2008), above n 57, 139; Anna Stewart, ‘Who Are the Respondents of Domestic Violence Protection Orders?’ (2000) 33(1) *The Australian and New Zealand Journal of Criminology* 77, 77.

95. Boxall et al. (2015), above n 15, 1. See also [1.43].

96. Department of Human Services (2012), above n 1, 27. For further information about the Common Risk Assessment Framework, see [1.15].

97. Boxall et al. (2015), above n 15, 1.

98. The Common Risk Assessment Framework includes contravening a family violence intervention order as ‘a serious indicator of increased risk of future violence’: Department of Human Services (2012), above n 1, 27.

99. In Chapter 6, reoffending rates are examined according to whether or not the index offenders had prior offences, and whether or not the index offenders were sentenced for an assault or threat offence either before or at the same time as the index offence: see further [6.11]–[6.25].

100. Boxall et al. (2015), above n 15, 1–2.

101. Sentencing Advisory Council (Tasmania) (2015), above n 14, 36 (Observation 7).

102. The principle of parsimony requires that the sentence imposed must be no more severe than is necessary to meet the purposes of sentencing. The principle of proportionality means that the severity of the sentence must fit the seriousness of the offence.

- 3.5 For example, prior convictions for assault-related offences are likely to be highly relevant to sentencing an offender for contravening a family violence intervention order. In such cases, deterring the offender from further offending and protecting the community (particularly the affected family member) are critical, and are best realised by tailoring the sentence to the greatest extent possible to address and reduce the offender's risk.¹⁰³ These purposes are unlikely to be given effect by the imposition of a purely financial penalty.¹⁰⁴
- 3.6 Conversely, a lack of prior offences may indicate that a swift, certain intervention may divert the offender from a path of violent offending before it becomes entrenched.¹⁰⁵
- 3.7 Every offender is unique, and an offender's offending pattern may not align with general trends. Nonetheless, understanding the relationship between criminal history and the risk of future offending is fundamental both to the task of sentencing an individual and, more broadly, to the development of appropriate sentencing options and other criminal justice system responses to family violence offenders (including programs designed to change offender behaviour and reduce an offender's risk of future offending).
- 3.8 Prior criminality (or a lack thereof) is also considered in the court's determination of the offender's character, which is one of the factors that a court must have regard to in sentencing an offender.¹⁰⁶ In determining the offender's character, the court may consider 'the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender'.¹⁰⁷ The court may also consider the general reputation of the offender and any significant contributions made by the offender to the community.¹⁰⁸
- 3.9 Some caution, however, is required in assessing character in family violence cases in which an offender has no prior proven charges. While not the subject of this study, it is observed that considerations of character can be problematic in family violence cases. The often private nature of family violence offences means that perpetrators may be well regarded in the community while committing violence inside their homes. The offender's good reputation in some cases may make it easier for him or her to commit family violence undetected for a considerable time, as recognised by the Sentencing Guidelines Council (UK):

As a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognised that one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two personae. In respect of an offence of violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour.¹⁰⁹

103. *Director of Public Prosecutions v Meyers* (2014) 44 VR 486, 496–497; Sentencing Advisory Council, *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009) 3; Hawkins and Broughton (2016), above n 21, 22.

104. For further discussion of the use of fines for contravention offences, see Chapter 7.

105. Boxall et al. (2015), above n 57, 2. See also Klein and Tobin (2008), above n 57, 143: '[defendants] with guilty findings and those without, are distinguished because prior ... research suggest[s] that these groups of defendants respond to interventions differently. Those with lesser prior criminal histories and who are older are more amenable to treatment and/or supervision' (citations omitted).

106. *Sentencing Act 1991* (Vic) s 5(2)(f).

107. *Sentencing Act 1991* (Vic) s 6(a).

108. *Sentencing Act 1991* (Vic) ss 6(b)–(c).

109. Sentencing Guidelines Council (UK), *Overarching Principles – Domestic Violence: Definitive Guideline* (2006) 5–6. There was discussion about whether or not the guideline should provide that 'positive good character is of greater relevance where the court is satisfied that the offence was an isolated incident', in light of evidence 'that on average women are assaulted 35 times before they report domestic violence to the authorities. There are grounds for scepticism about how often "isolated incidents" in this context will prove to be genuinely isolated rather than part of a concealed pattern': House of Commons Home Affairs Committee, *Draft Sentencing Guidelines – Overarching Principles: Domestic Violence and Breach of a Protective Order: Third Report of Session 2005–06* (2006) 19.

What proportion of index offenders have prior sentences?

- 3.10 At the time of sentencing, only prior convictions or findings of guilt are considered by the court. Therefore, if previous conduct has been alleged or charged, but has not yet been proven, the allegations are not generally taken into account in determining the offender's character, in accordance with the presumption of innocence.
- 3.11 Consistent with the approach set out in the *Sentencing Act 1991* (Vic), in this chapter only offences that have been proven and sentenced before the index sentence are included in the count of prior offences. For this reason, a more accurate descriptor is 'prior sentences'. Offences that occurred *before* the index sentence but were not sentenced until *after* the index sentence are not included in the count of prior sentences.¹¹⁰ Offences sentenced in other states or territories are also not included.
- 3.12 The count of prior sentences, however, includes 32 prior cases in which the charges were dealt with by an order for diversion.¹¹¹ As diversion is not a 'sentence' and orders for diversion do not form part of a person's criminal history, information about these cases would not have been available to the court at the index sentence.¹¹² While not prior 'sentences', diversion cases are included in this study to present a fuller picture of the offending patterns of index offenders and the criminal justice response to their behaviour.

Cumulative rate of prior sentences

- 3.13 Figure 10 (page 26) shows the proportion of the 1,898 index offenders who were sentenced in the five years before the index sentence in 2009–10. Just over one-quarter were sentenced for an offence in the 12 months before their index sentence, while over half were sentenced at least once in the five years before their index sentence (1,103 or 58.1%). The number of prior sentence events is discussed at [3.25].
- 3.14 The remaining 795 index offenders (41.9%) had no prior sentences recorded in the data in the five years before the index sentence. However, it is possible that some index offenders had offended but had not been charged or that charges had not proceeded to the point of a finding of guilt.
- 3.15 The high rate of prior offences found in this study is broadly consistent with the high rate of prior offences found in other studies of people who breach family violence intervention orders. For example, a 2015 study of family violence perpetrators in Tasmania found that 'approximately two-thirds (69%, n = 1,369) ... had been reported to the police for family violence offending and/or other types of offending during the preceding six year period'.¹¹³ Likewise, a recent New South Wales study found that 77.8% of people found guilty of breaching an apprehended domestic violence order had prior proven court appearances in the previous five years.¹¹⁴

110. Data on prior offences sentenced after the index sentence is presented at [3.17]–[3.21].

111. In certain circumstances, the Magistrates' Court may adjourn proceedings against an accused for up to 12 months to enable the person to complete the diversion program: *Criminal Procedure Act 2009* (Vic) s 59. Diversion is not a sentencing order and operates without any finding of guilt (although the accused must acknowledge his or her responsibility for the offence).

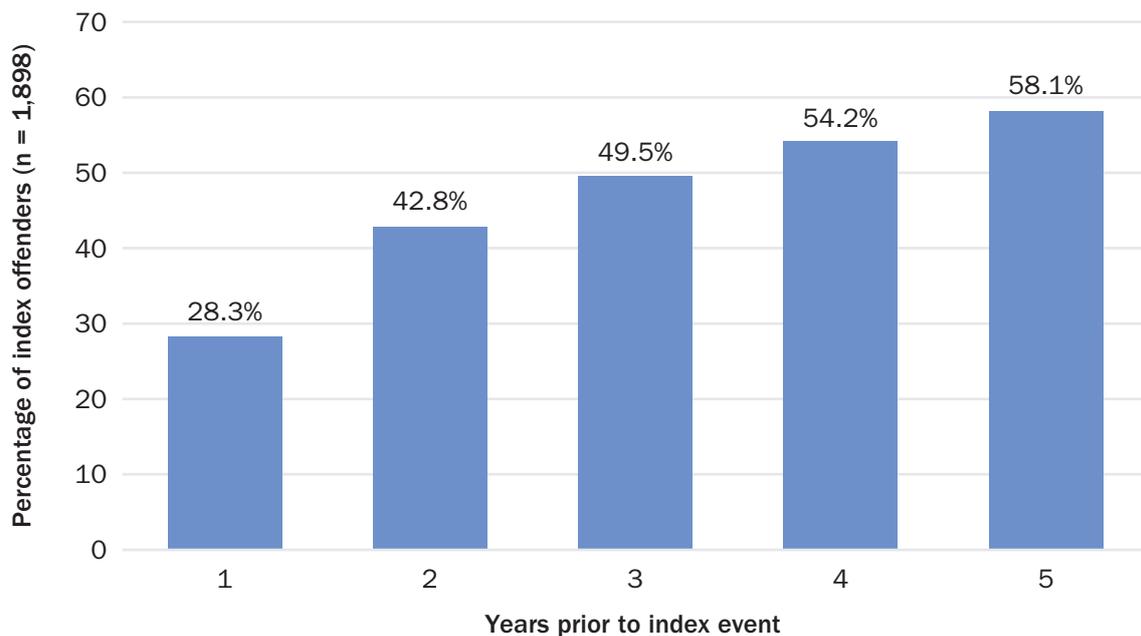
112. See [7.57]–[7.63] for further information about the Criminal Justice Diversion Program and [7.64]–[7.70] for a discussion of reoffending by index offenders who received an order for diversion.

113. Boxall et al. (2015), above n 15, 5. Even allowing for differences in counting rules (for example, the study looked at reports to the police rather than sentenced charges), this finding is still broadly consistent with the Council's findings.

114. The study found that 22.2% of the people examined had no proven court appearances in the preceding five years: Trimboli (2015), above n 68, 1. See also Moracco et al. (2010), above n 94, 1,205.

3.16 Participants in the Council's Family Violence Roundtable commented that the percentages shown in Figure 10 are likely to underestimate the actual instances of prior offending due to attrition rates.¹¹⁵ Similarly, it is possible that some offenders had prior sentences from more than five years before the index sentence or from another jurisdiction. It is also the case that some offenders had committed offences before the index sentence, but the offences were not proven and sentenced until after the index sentence, as explored next.

Figure 10: Percentage of index offenders with a prior sentence, by years before the index sentence



Prior offences sentenced after the index sentence

3.17 As discussed, the examination of prior sentences in this chapter is limited to prior cases in which both the offence date and the sentence date occurred before the index sentence.

3.18 Excluded from the data on prior sentences in this chapter, as well as the data on subsequent offences in the next chapter, are offences committed *before* the index sentence but not sentenced until *after* the index sentence. While not prior sentences, they are offences that occurred before the index sentence and were ultimately proven; therefore, it is worth examining their effect on the rate of prior offences reported in this chapter.

3.19 The Council's analysis found that:

- 362 of the 1,103 index offenders with prior sentences also had at least one prior offence that was sentenced *after* their index sentence. As these index offenders already had prior sentences, the prior offences sentenced afterwards did not affect the rate of prior offences reported in this chapter; and
- 146 index offenders had no prior sentences but *had a prior offence that was sentenced after the index sentence*. Although these index offenders committed an offence before the index sentence, they were not included in the count of index offenders with prior sentences because the offence was only sentenced after the index sentence.

115. Family Violence Roundtable (9 February 2016).

- 3.20 If the analysis of 'prior sentences' in this chapter were to include prior *offences*, regardless of whether the offences were proven and sentenced before or after the index sentence, the proportion of index offenders with 'prior offences' would increase from 58.1% of index offenders to 65.8% of index offenders (1,249 out of 1,898 index offenders).
- 3.21 Offences committed before, but sentenced after, the index sentence are not included in the discussion of prior sentences in the remainder of this report. However, the effect of these offences on the rate of prior offences is noteworthy.

Gender and age differences in the rate of prior offending

- 3.22 Male index offenders were more likely than not to have at least one prior sentence (for any offence type) in the five years before the index sentence (59.8%). While the proportion of the 257 female index offenders with prior sentences was lower, it still amounted to 47.1%.¹¹⁶
- 3.23 Young adult offenders (18–24 inclusive) comprised 15% of the index offenders. Over half (54.8%) of the young adult index offenders had been sentenced in the two years before their index sentence, compared with 40.6% of older offenders (25+). The five-year rate of prior sentences was higher for young adult offenders than for offenders aged 25 or older at the index sentence (67.8% compared with 56.4%).¹¹⁷
- 3.24 An analysis of both age and gender shows that young adult males had the highest rate of prior offending (70.2%), while older females had the lowest (45.5%) – although this still amounted to almost half of the older female group (Table 2).

Table 2: The number and proportion of index offenders sentenced at least once in the five years before the index sentence in 2009–10, by age and gender

Age–gender group	Number sentenced at least once prior to index sentence, 2004–05 to 2009–10	Proportion sentenced at least once prior to index sentence, 2004–05 to 2009–10
Young males (18–24)	174 out of 248	70.2%
Older males (25+)	808 out of 1,393	58.0%
Young females (18–24)	24 out of 44	54.5%
Older females (25+)	97 out of 213	45.5%
Total (all index offenders)	1,103 out of 1,898	58.1%

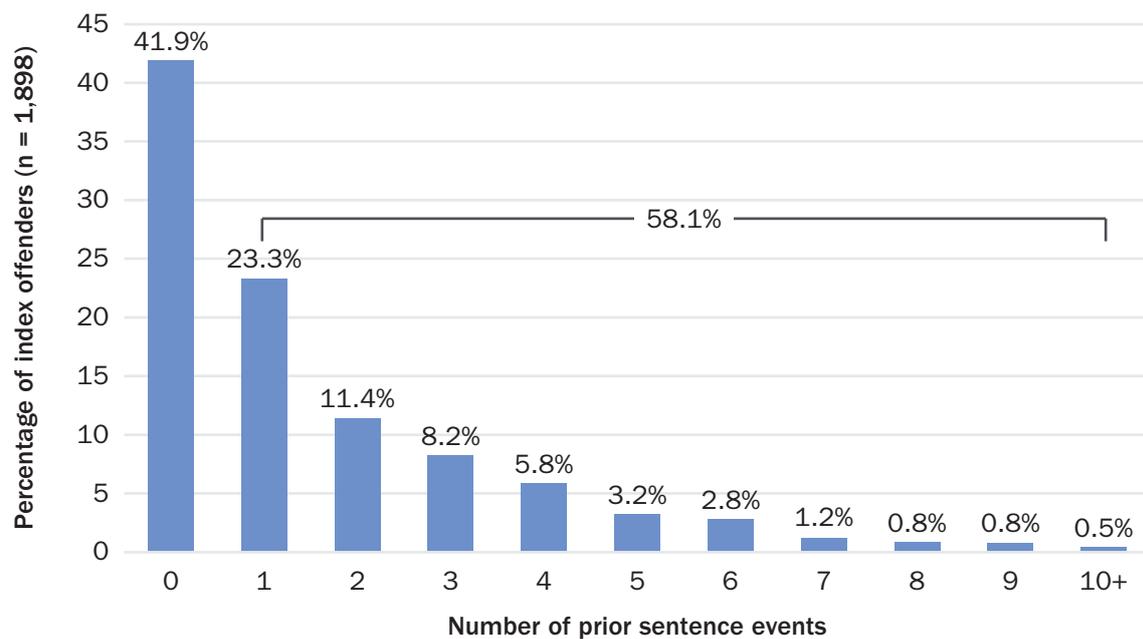
116. The difference between the rate of prior offences for male and female index offenders was statistically significant. All differences in proportions in this study were assessed using the z-test of statistical significance. Differences in proportions were deemed statistically significant if the probability of the difference occurring by chance (as assessed by the z-statistic) was less than 5%.

117. The difference in the overall rate between age groups was statistically significant at the 5% level ($p < 0.05$).

Number of prior sentence events

- 3.25 Figure 11 shows the number of prior sentence events that index offenders had, ranging from none to over 10. Around one-quarter of index offenders had just one prior sentence event, while six index offenders (all males) had more than 10 prior sentence events. One older male was sentenced 27 times in the five years before the index sentence, while the maximum number of prior sentence events for young adult males was 11 and the maximum number for females was eight.
- 3.26 In the five years before the index sentence, the 1,103 index offenders with prior offences were sentenced for 2,952 cases (an average of about 2.7 prior sentence events per person), involving 11,709 sentenced charges (an average of 10.6 charges per person).
- 3.27 Males with prior offences had an average of 2.8 prior sentence events each, which was higher than the 1.9 prior sentence event average for females. Young adults with prior offences had a higher average number of prior sentence events than offenders aged 25 or older (3.3 compared with 2.5).¹¹⁸

Figure 11: Percentage of index offenders, by number of prior sentence events in the five years before the index sentence, 2004–05 to 2009–10



118. The difference between young adult offenders and offenders aged 25 or older was statistically significant.

Type of prior offence

- 3.28 Figure 12 (page 30) shows that in the five years before the index sentence, approximately:
- one in four index offenders had been sentenced at least once for an assault/cause injury offence (485 index offenders or 25.6%), which was the most common prior offence type. This is consistent with other research into the prior offences of those who breach family violence intervention orders;¹¹⁹
 - one in five index offenders previously had been sentenced for contravention/breach of a family violence intervention order or safety notice (360 index offenders or 19.0%);
 - one in five index offenders previously had been sentenced for criminal damage (352 index offenders or 18.5%);
 - three of the 10 most common prior offence types related to road safety: 18.0% of index offenders had a prior sentence for unauthorised driving (such as driving while disqualified), 15.0% had a prior sentence for dangerous driving (for example, drink-driving), and 23.9% had at least one prior general driving offence;¹²⁰ and
 - 14.3% had previously been sentenced for at least one justice offence.
- 3.29 Participants in the Council's Family Violence Roundtable commented that Figure 12 reveals distinct offender profiles: while some offenders are more 'generalist' and commit a wide variety of offences, others 'specialise' in family violence offences. Consistent with comments in relation to co-sentenced offences (see Figure 9), roundtable participants expressed surprise that the rate of prior sentences for sexual offences, kidnapping, false imprisonment, and animal cruelty was not higher as, anecdotally, such conduct arises in the context of family violence.¹²¹
- 3.30 Victoria Police were also surprised at the relatively low rates of prior stalking, harassment, and threat to kill/injure offences for this offender cohort.¹²² However, both Victoria Legal Aid and Victoria Police commented that there can be a perceived overlap between stalking and contravention offences, and therefore stalking charges are sometimes withdrawn during the plea negotiation process.¹²³ Representatives of Victoria Legal Aid were interested in the low rate of stalking offences, given that stalking is a known risk factor. They commented that, because of the practice of negotiating out stalking charges, it is important to understand that these findings do not mean that stalking is not a risk factor. They added that, in their experience, stalking is more likely to comprise conduct such as telephoning the victim, and that it is much more difficult to negotiate out stalking charges that involve 'physical' conduct such as physically following the victim.¹²⁴

119. For example, a study of people found guilty of breaching an apprehended domestic violence order in New South Wales in 2013 found that the 'most frequent types of prior proven offences were violent offences', the main categories of which were assault offences and stalking. The study also found that 28.7% of offenders had at least one proven charge of breaching an apprehended domestic violence order, which is higher than the proportion of index offenders with a prior contravention/breach offence (19.0%) in the present study: Trimboli (2015), above n 68, 4. See also Klein and Tobin (2008), above n 57, 139.

120. This category does not include road safety offences that were initiated and resolved with an infringement penalty notice. For further information about the offences in each offence category, see Appendix B.

121. Family Violence Roundtable (9 February 2016). See further Appendix A.

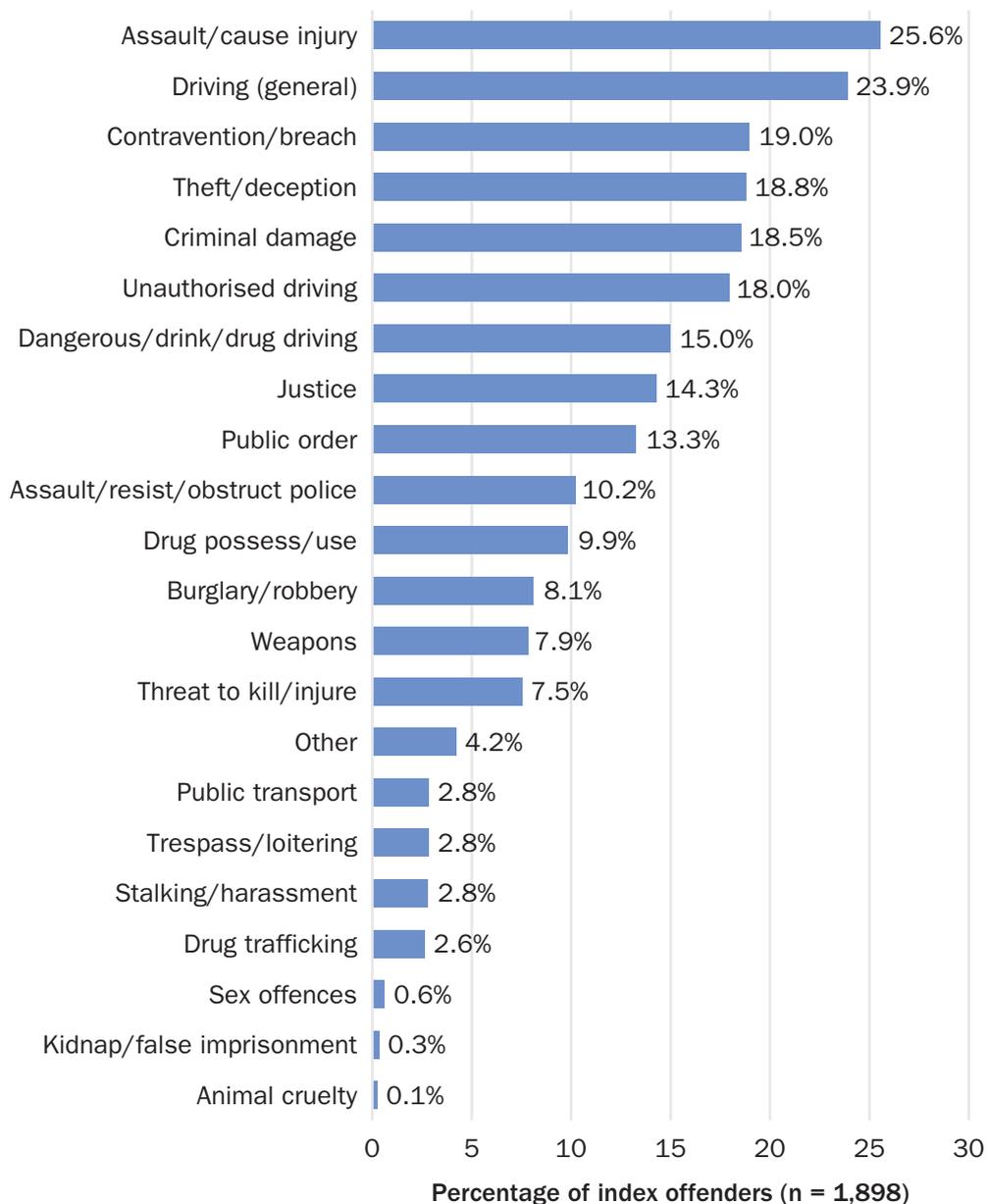
122. Meeting with Representatives of Victoria Police (11 February 2016). Representatives of Victoria Police were also surprised at the low rate of prior sexual offences.

123. Meeting with Representatives of Victoria Police (11 February 2016); Meeting with Representatives of Victoria Legal Aid (12 February 2016).

124. Meeting with Representatives of Victoria Legal Aid (12 February 2016).

3.31 Figure 12 shows that 19% of index offenders in 2009–10 had prior contravention/breach offences sentenced in the five years before the index sentence. However, the Crime Statistics Agency reports that 39% of unique family violence perpetrators (12,097 out of 30,695) recorded by police in 2010–11 had prior recorded family violence incidents. Just 9% of the 30,695 perpetrators had recorded offences of breaching a family violence intervention order dating back to 2004–05.¹²⁵

Figure 12: Percentage of index offenders previously sentenced, by prior offence type, 2004–05 to 2009–10¹²⁶



125. State of Victoria, Royal Commission into Family Violence (2016), above n 47, 119. Of the 30,695 unique family violence perpetrators recorded by police in 2010–11, 12,097 had at least one prior family violence incident recorded. This is the sum of the bars corresponding to one or more prior family violence incidents in Figure 62: at 119.

126. For an explanation of the specific offences in each offence category, see Appendix B. The offence classification groups presented in the graph are not mutually exclusive, and offenders may have been sentenced for multiple offence types in the five years before the index sentence.

Gender and age differences in prior offence type

3.32 There were significant differences, as well as similarities, in the distribution of prior sentence offence types for the four age–gender groups (Table 3, page 32):

- Assault/cause injury was the most common prior offence type for young adult females (27.3%) and older males (25.7%). Although assault/cause injury was not their most common prior offence type, male young adult offenders had a higher rate of prior assault/cause injury offence types than the other three age–gender groups: 35.1% of young adult males had at least one prior sentenced charge of an assault/cause injury offence, almost three times the rate of older females (13.1%).
- Theft/deception was the most common prior offence type for young adult males: 41.9% had at least one prior sentence for a theft/deception offence, also considerably higher than the theft/deception rates for the other groups.
- Criminal damage was a more common prior offence for young adult males (29.8%) than for any of the other three age–gender groups. Just under one in five older males (17.8%) and young adult females (18.2%) had at least one prior sentence for criminal damage compared with one in 10 older females.
- Young adult males and young adult females were more likely to have prior sentenced public transport offences than the older offender groups (10.9% and 11.4% respectively). No older females had previous sentences for public transport offences in the five years before their index sentence.
- The rate of prior driving offences was higher for men than for women across all three driving offence categories (driving (general), unauthorised driving, and dangerous/drink/drug driving). For example, approximately one-third of young adult males and one-quarter of older males had a prior sentence for at least one general driving offence, compared with 13.6% of young adult females and 15.0% of older females. Young adult males had higher rates of prior driving offences than older males.

3.33 There is insufficient data to know whether prior offences had been committed in the context of family violence. Nonetheless, the spread of offences for the older groups appeared more relevant to the contravention charge, whereas the overall prior offending patterns of the younger groups appeared more generalist, with a combination of highly relevant and minimally relevant offence types. Young adult males had a higher prior offence rate for almost every offence type; notable exceptions include prior contravention/breach and prior threat to kill/injure offences, for which older males had higher prior offence rates.

Table 3: Percentage of index offenders by prior offence type and age-gender group, 2004–05 to 2009–10

Offence (ranked as per Figure 12)	Percentage of group with at least one prior sentenced charge of a particular offence type in the five years before 2009–10			
	Young adult males (18–24)	Older males (25+)	Young adult females (18–24)	Older females (25+)
Assault/cause injury	35.1%	25.7%	27.3%	13.1%
Driving (general)	32.7%	24.0%	13.6%	15.0%
Contravention/breach	12.5%	21.1%	9.1%	14.6%
Theft/deception	41.9%	16.2%	18.2%	9.4%
Criminal damage	29.8%	17.8%	18.2%	10.3%
Unauthorised driving	27.4%	18.3%	4.5%	7.5%
Dangerous/drink/drug driving	17.3%	15.6%	–	11.7%
Justice	26.2%	14.1%	9.1%	2.3%
Public order	18.5%	13.4%	9.1%	7.5%
Assault/resist/obstruct police	12.5%	10.2%	11.4%	7.5%
Drug possess/use	14.5%	10.0%	4.5%	4.7%
Burglary/robbery	20.6%	7.2%	4.5%	0.5%
Weapons	12.5%	8.2%	2.3%	1.4%
Threat to kill/injure	6.9%	8.5%	–	2.3%
Other	10.5%	3.3%	6.8%	2.3%
Public transport	10.9%	1.6%	11.4%	–
Trespass/loitering	6.5%	2.7%	–	0.5%
Stalking/harassment	2.0%	2.9%	–	3.3%
Drug trafficking	2.8%	2.7%	–	2.8%
Sexual offences	1.6%	0.6%	–	–
Kidnap/false imprisonment	0.8%	0.3%	–	–
Animal cruelty	–	0.1%	–	–
Total index offenders in group	248 offenders	1,393 offenders	44 offenders	213 offenders

This table is colour-coded to show the prevalence of different offence categories for each age-gender group (based on the proportion of the group sentenced at least once for that offence). The darkest shade shows the most prevalent offence category in that group. Each successively lighter shade indicates less prevalent offences in the age-gender group. Dashes indicate that no person in the group was sentenced for a charge of the offence category.

4. Reoffending patterns

4.1 This chapter examines the level and type of reoffending by index offenders in the five years after their index sentence. Factors associated with reoffending (age, gender, and prior offences) are examined in Chapter 6. In this study, a 'reoffending sentence event' is a sentence or sentences imposed in a case for an offence or offences that were committed in the five years after the index sentence (see further Appendix A).

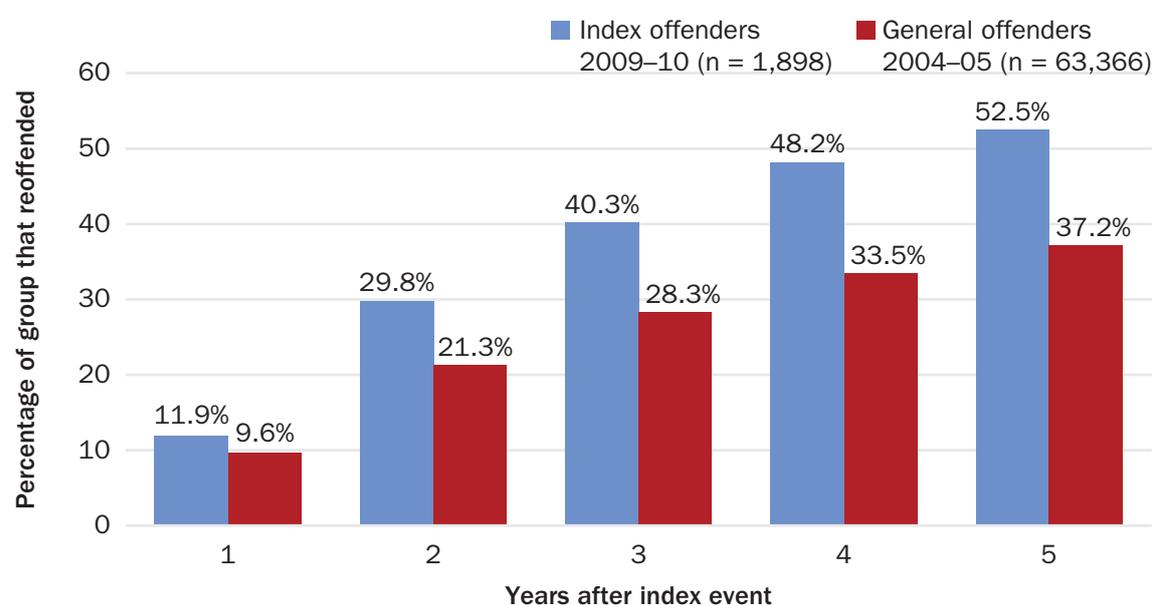
What percentage of index offenders reoffended?

Five-year cumulative reoffending rate

4.2 In the five years after the index sentence, just over half of the index offenders were sentenced for a further offence (997 or 52.5%).¹²⁷ This was higher than the five-year reoffending rate for the general offender population sentenced in 2004–05 (37.2%), suggesting that those who contravened intervention orders were more likely to reoffend than the general offender population (Figure 13).

4.3 Most reoffending took place in the first three years after the index sentence. The 40.3% cumulative reoffending rate after three years represented over three-quarters of the five-year reoffending rate.¹²⁸

Figure 13: Comparison of cumulative reoffending rate for index offenders (in the five years following the index sentence in 2009–10) and cumulative reoffending rate for the general offender population (in the five years following sentence in 2004–05)¹²⁹



127. The reoffending rate is broadly consistent with the findings of recent studies by Victoria Legal Aid and the Crime Statistics Agency. Victoria Legal Aid reported that between 2008 and 2015, nearly half of their clients who had received assistance for contravening a family violence intervention order returned for further legal assistance for criminal offences at some time in the study period: Victoria Legal Aid (2015), above n 66, ii. Similarly, in the Crime Statistics Agency's study, around 50% of the index offenders from 2010 were recorded for a future family violence incident within five years of the index event: State of Victoria, Royal Commission into Family Violence (2016), above n 47, 135 (Figure 69).

128. This trend was also evident for the general offender population: the 28.3% reoffending rate after three years represented three-quarters (76.1%) of the total reoffending rate within five years of the 2004–05 sentence.

129. The five-year cumulative reoffending rate for the general offender population was drawn from Sentencing Advisory Council (2015), above n 49, 8 (Figure 1). This study examined reoffending patterns for 63,366 people sentenced in Victoria's criminal courts between July 2004 and June 2014. Their reoffending rate after nine years was 44.9%.

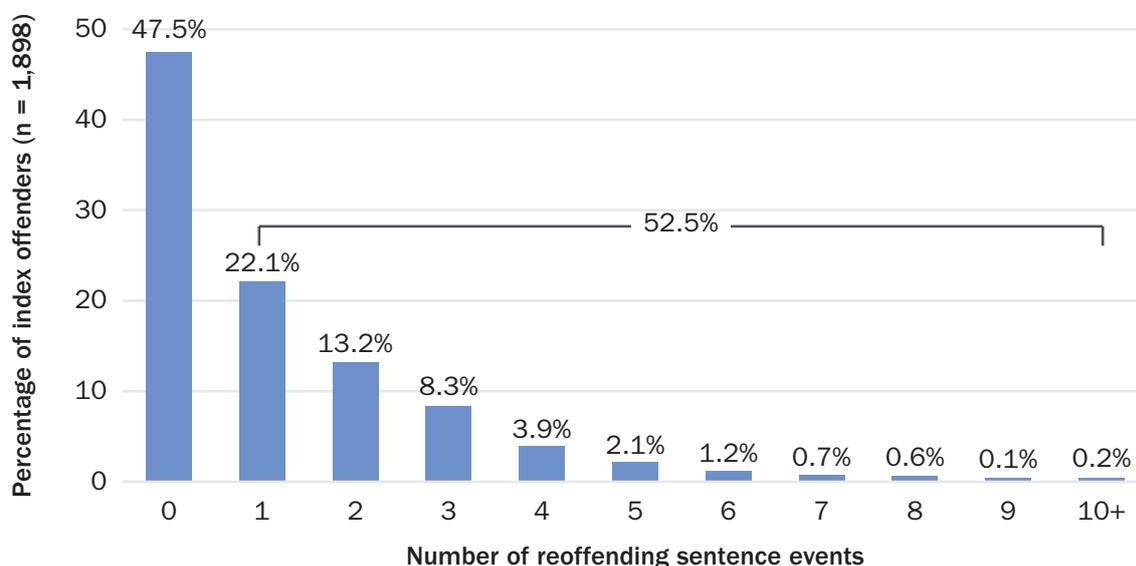
Limitations of using subsequent sentences to gauge reoffending

- 4.4 As this analysis is limited to subsequent *sentence* events, it captures some, but not all, reoffending by index offenders. The data is limited to subsequent offences of which the index offender has been found guilty and for which the court has imposed a sentence (the data also includes cases in which the index offender has been dealt with under the Criminal Justice Diversion Program – see further [7.57]–[7.70]). Although this is an appropriate measure of reoffending (and the presumption of innocence applies to those who have not been convicted of an offence), it is likely that the actual rate of reoffending is higher than the rate revealed by data that is limited to subsequent sentences.
- 4.5 Much has been done to improve the reporting, recording, and prosecution of family violence incidents, and reported incidents have been steadily increasing over the last decade, but the circumstances of family violence may still make reporting difficult or dangerous for victims. Even if an incident is reported, victims of family violence may find it difficult to continue with the prosecution; for example, they may feel under pressure not to give evidence in court even if they have made a statement to police. While prosecution can still go ahead if there is other evidence, the unwillingness of the victim to give evidence can lead to charges being withdrawn. In such cases, even if subsequent offending had occurred, it would not be captured in the reoffending database. Participants in the Council's Family Violence Roundtable commented that the reoffending rate shown in Figure 13 is likely to underestimate the actual instances of reoffending.
- 4.6 Therefore, the reoffending rate disclosed by the data should be viewed as the base level of reoffending for this offender cohort.

Number of reoffending sentence events

- 4.7 Figure 14 shows the number of reoffending sentence events¹³⁰ that the index offenders faced in the five years after the index sentence. Just under one-quarter of index offenders had a single

Figure 14: Percentage of index offenders, by number of reoffending sentence events in the five years after the index sentence, 2009–10 to 2014–15



130. A 'sentence event' is a case or cases encompassing one or more proven charges in which a sentence is (or sentences are) imposed on an offender *at the same time*.

reoffending sentence event, while two index offenders had more than 10 reoffending sentence events. One young adult female was sentenced 18 times in the five years after the index sentence, while the largest number of reoffending sentence events for males was 13.

- 4.8 Between them, the 997 reoffenders had 2,286 reoffending sentence events (an average of 2.3 per reoffender), involving 8,898 sentenced charges (an average of 8.9 charges per reoffender).
- 4.9 Males who reoffended had an average of 2.3 reoffending sentence events each, which was higher than the average of 1.9 reoffending sentence events for females. Young adult reoffenders (18–24) had a slightly higher average number of reoffending sentence events than older reoffenders (25+) (2.7 compared with 2.3).
- 4.10 By way of general context, data from the Crime Statistics Agency shows that the proportion of family violence perpetrators with more than one incident recorded against them per year increased in the 10 years since 2006, from 18.4% to 27.0%.¹³¹

Type of reoffending

- 4.11 The findings in this study about the type and context of reoffending by index offenders are relevant to sentencing policy and practice and to the development of offender interventions and programs. Of particular interest is the level of reoffending that relates to family violence or is relevant to assessing the risk of family violence.
- 4.12 There was insufficient data to establish how many of the 2,219 subsequent Magistrates' Court cases occurred in the context of family violence. Nonetheless, sentencing remarks were available for 31 out of the 67 subsequent cases in the higher courts (the County and Supreme Courts). An analysis of these 31 cases revealed that 17 involved offences against an intimate partner, former intimate partner, another family member, or someone connected to a current or former intimate relationship (for example, the new partner of a former partner).
- 4.13 Although the context of most reoffending cases was unavailable, the Council was able to examine the offence types across all subsequently sentenced charges for an index offender following the index sentence. Figure 15 (page 36) presents the proportion of all index offenders that reoffended at least once with a particular offence type.¹³²
- 4.14 While it is clear that index offenders engaged in a wide range of subsequent offending, Figure 15 shows that the two most common reoffending offence types were highly relevant to the original (index) contravention charge and to the assessment of the risk of future family violence:
- the most common reoffence type was contravention/breach offences, with almost one in four index offenders (23.9%) sentenced for at least one new contravention/breach offence in the five years after their index sentence;¹³³ and
 - the second most common reoffence type was assault/cause injury, with over one in five index offenders reoffending at least once with an assault/cause injury offence (417 people or 22.0%).¹³⁴

131. Crime Statistics Agency, *How Many Repeat Family Violence Perpetrators Were There in Victoria over the Past 10 Years?* In fact no. 2 (2016) 2.

132. As most reoffenders were sentenced for multiple charges, the offence type categories overlap.

133. Of the 1,503 total contravention/breach charges sentenced in subsequent cases, the majority (88.6% of charges) were for contravening a family violence intervention order (1,332 charges), 2.7% were for contravening a family violence intervention order intending to cause harm or fear for safety (40 charges), 2.6% were for contravening a family violence safety notice (39 charges), and 2.4% were for persistently contravening a family violence intervention order or safety notice (36 charges).

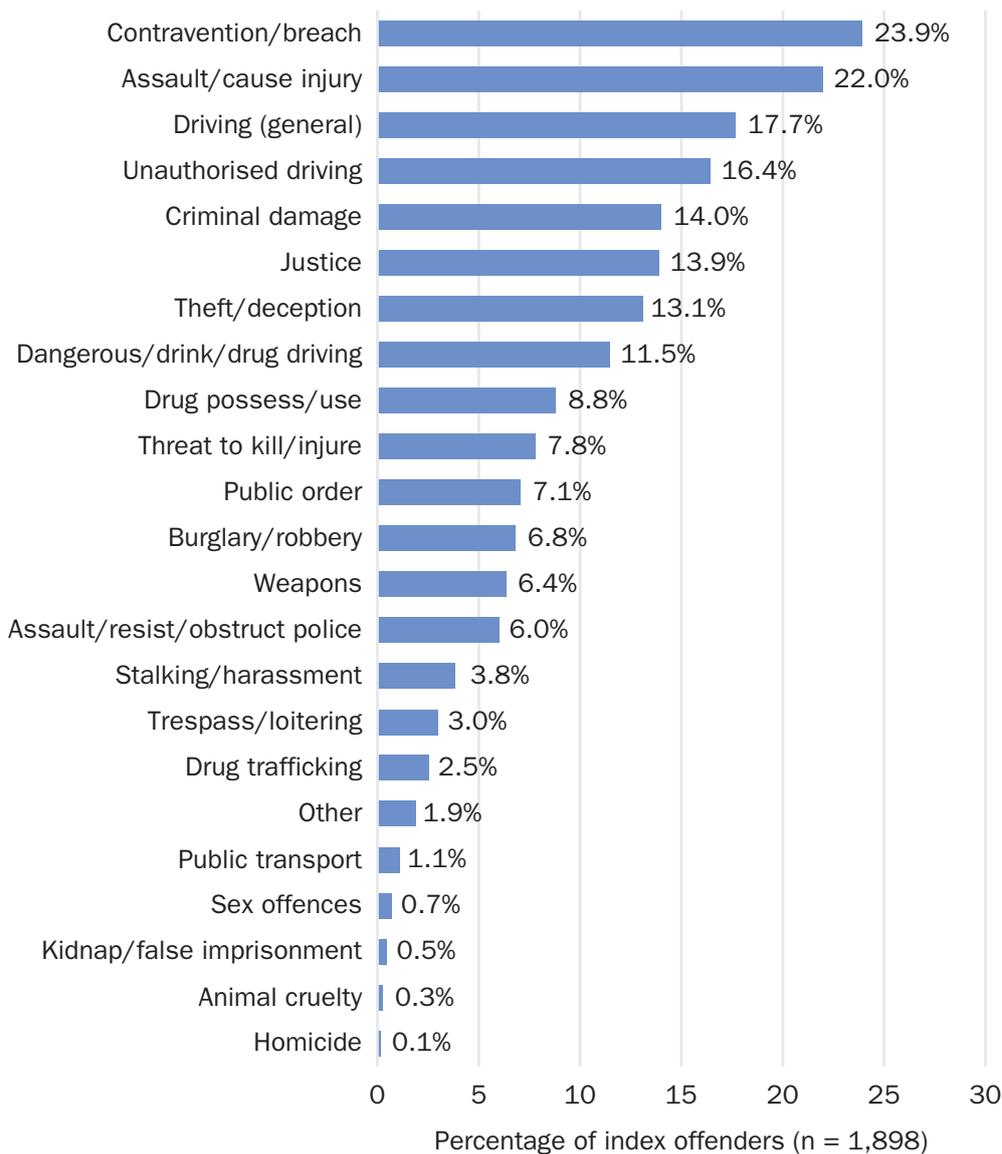
134. Of these 417 people, 101 were subsequently sentenced for causing injury or causing serious injury offences (but no assault/endanger offences), 202 were subsequently sentenced for assault/endanger offences (but no cause injury/cause serious injury offences), and 114 were subsequently sentenced for both causing injury/serious injury offences and assault/endanger offences.

4.15 Other reoffence types that may constitute family violence when committed against a family member and may be relevant to the assessment of family violence risk (even when not committed against a family member) included:

- criminal damage offences (14.0% of index offenders were sentenced at least once for criminal damage in the five years after their index sentence);
- threat to kill/injure offences (7.8% of index offenders); and
- stalking/harassment offences (3.8% of index offenders).

4.16 In addition, 16.4% of index offenders were subsequently sentenced for unauthorised driving offences, 11.5% for dangerous/drink/drug driving offences, and 17.7% for other driving offences. While such offences are not obviously related to contravention, an overlapping feature of driving while disqualified or suspended is the offender’s disregard of an order (often made by a court) not to drive. Similarly, dangerous/drink/drug driving offences show a disregard for the safety and wellbeing of others.

Figure 15: Percentage of index offenders, by reoffending offence type, 2009–10 to 2014–15¹³⁵



135. For an explanation of the specific offences in each offence category, see Appendix B.

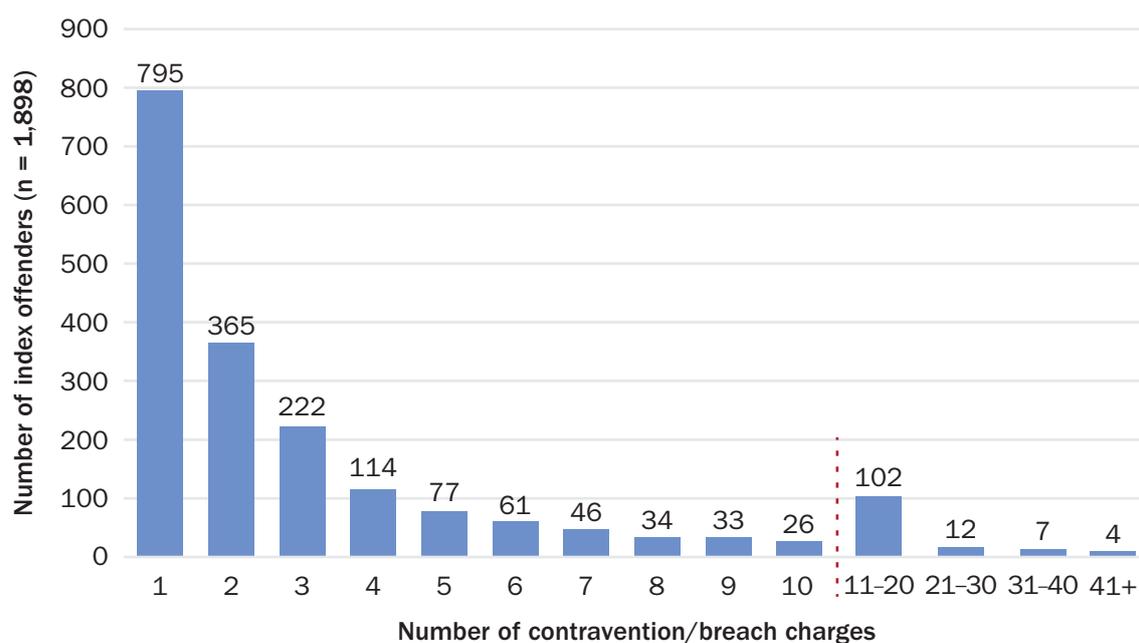
5. Prevalence of common offence types across the 11-year study period

- 5.1 Chapter 2 of this study examines the prevalence of particular offence types among index offenders' co-sentenced offences; Chapter 3 does the same for prior offences, and Chapter 4 for reoffending.
- 5.2 This chapter combines all of the index offenders' sentenced charges across the 11-year study period (from 2004–05 to 2014–15), including charges sentenced at the index sentence, to assess the prevalence of particular offence types for this offender cohort. In total, the 1,898 index offenders were sentenced for 28,749 charges (any offence type) in the study period.¹³⁶

Number of contravention/breach charges

- 5.3 Figure 16 shows the number of contravention/breach charges for which index offenders were sentenced across the 11-year study period. Approximately 40% of index offenders had a single contravention/breach charge sentenced (795 index offenders), and a similar proportion had two to five contravention/breach charges sentenced (778). The remaining 20% of index offenders had six or more contravention/breach charges sentenced across the 11 years.

Figure 16: Number of index offenders, by number of contravention charges sentenced in the 11-year study period, 2004–05 to 2014–15



¹³⁶ For a breakdown of all sentenced charges for the index group across the 11-year study period, see Appendix B.

- 5.4 The offence of persistently contravening a family violence intervention order (FVIO) or a family violence safety notice (FVSN) came into effect on 17 April 2013. As a single charge of persistently contravening an FVIO or FVSN can cover multiple instances of offending, follow-up studies may find lower numbers of contravention charges across a similar period.
- 5.5 The majority of index offenders did not have a prior contravention/breach offence. Similarly, the majority did not reoffend with a contravention/breach offence. Over the 11-year study period, approximately:
- **one in five** index offenders had at least one prior sentence for a contravention/breach offence;
 - **one in four** index offenders reoffended at least once with a contravention/breach offence; and
 - **two in five** index offenders sentenced previously for a contravention/breach offence reoffended at least once with a contravention/breach offence (143 index offenders).
- 5.6 The following two case studies examine the most prolific male and female offenders (in terms of the number of contravention charges in the 11-year study period). The case studies provide context for Figure 16, showing that there can be very different patterns of prolific offending.

Case Study 1: Most prolific male index offender

D, a male index offender who was 39 years old at his index sentence, was sentenced for two cases (the index sentence and one prior sentence) in the 11-year study period. In total, he was sentenced for 50 contravention/breach charges, all of which were sentenced at the index sentence.

First sentence event	March 2008	One charge of using a hand-held phone while driving (on 25 October 2005). Sentenced to a fine.
Second sentence event (index sentence)	April 2010	Between August 2008 and February 2010: 50 charges of contravening a family violence intervention order, four charges of stalking, and one charge each of harassing a witness and inciting another to commit an offence. Sentenced to a term of aggregate imprisonment.

- 5.7 While an extreme example of offending, Case Study 2 illustrates the difficulty of curbing such behaviour at the sentencing stage. It also reinforces the importance of early intervention and of ensuring that sentences for first-time contravention offenders meaningfully address an offender’s behaviour.

Case Study 2: Most prolific female index offender

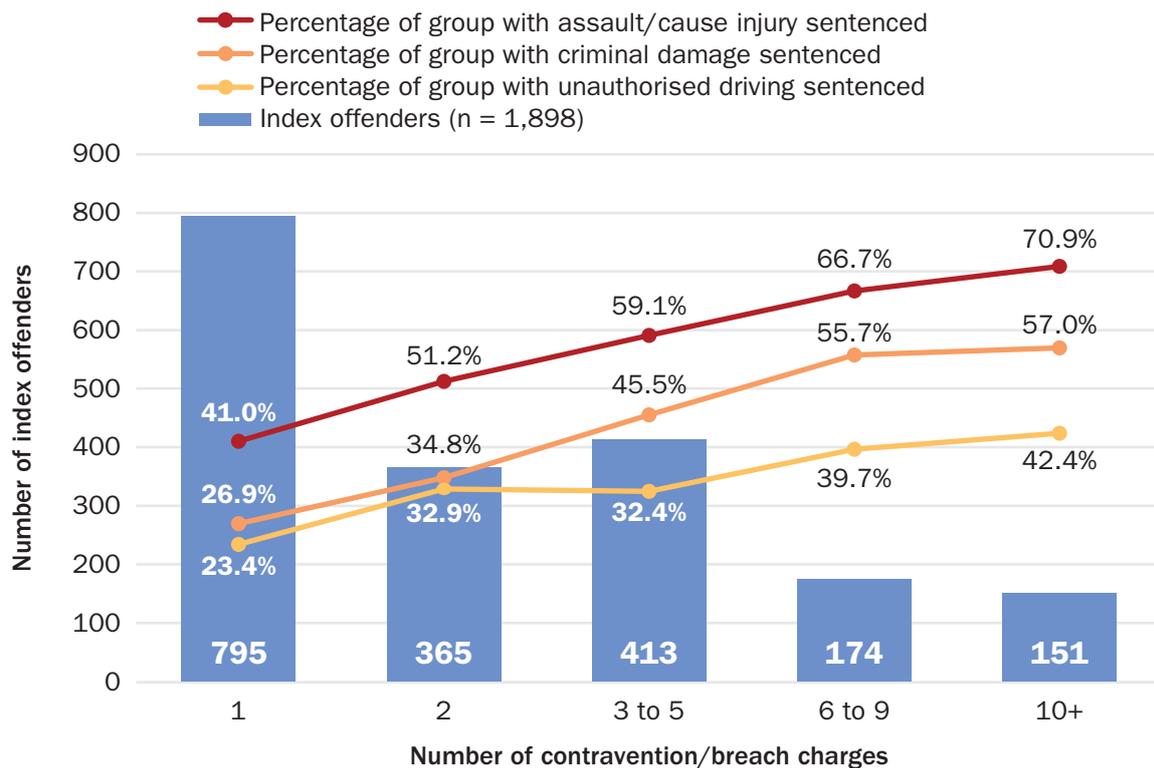
D was a female index offender who was 40 years old at the time of her index sentence. In total she had 176 contravention/breach charges sentenced in 11 years over eight cases, two sentenced prior to the index case and five subsequent.

First sentence event	April 2005	Two charges of stalking and 160 charges of breaching an intervention order. Sentenced to a fine for all charges.
Second sentence event	November 2005	One charge each of unlawful assault and throw missile to injure/danger/damage. Two charges of using a carriage service to menace/harass. Sentenced to a fine for all charges.
Third sentence event (index sentence)	November 2009	One charge of contravening a family violence intervention order, five charges of contravening a family violence safety notice. Sentenced to a community-based order for all charges.
Fourth sentence event	June 2010	Two charges of contravening a family violence intervention order. Sentenced to an adjourned undertaking for both charges.
Fifth sentence event	November 2011	Six charges of contravening a family violence intervention order. Sentenced to a wholly suspended sentence.
Sixth sentence event	November 2011	One charge of contravening a family violence intervention order. Sentenced to a fine.
Seventh sentence event	March 2013	One charge of contravening a family violence intervention order. Sentenced to a fine.
Eighth sentence event	August 2014	One charge of contravening a personal safety intervention order. Sentenced to a community correction order.

Correlation between the number of contravention/breach charges and the likelihood of assault, criminal damage, and unauthorised driving

- 5.8 The number of sentenced contravention/breach charges correlated with the proportion of index offenders sentenced for assault/cause injury, criminal damage, and unauthorised driving charges at some stage in the 11-year study period (Figure 17).
- 5.9 Figure 17 shows that the percentage of index offenders sentenced for assault/cause injury offences progressively increased as the number of contravention charges increased: 41.0% of index offenders with one contravention charge, over half of index offenders with two contravention charges, and more than two-thirds of index offenders with six or more contravention/breach charges were also sentenced at least once for an assault/cause injury offence anywhere in the study period.

Figure 17: Number of index offenders by total number of contravention/breach charges sentenced and percentage of index offenders with an assault/cause injury, criminal damage, or unauthorised driving offence sentenced, 2004–05 to 2014–15



- 5.10 Consulted magistrates suggested that the data in Figure 17 shows a 'strong correlation between the propensity to use violence and the propensity to contravene intervention orders'. They commented that this demonstrates the seriousness of contravention offending and 'deals with myths that there isn't any real correlation between breaches of intervention orders and the reality of the risks to the family'.¹³⁷
- 5.11 A similar trend emerged for criminal damage and, to a lesser extent, for unauthorised driving, with the likelihood of offenders being sentenced for these two offences increasing with the number of contravention/breach charges sentenced.
- 5.12 As to whether any of the index offenders had assault/cause injury or criminal damage charges sentenced at the same time as contravention/breach offences at any time in the 11-year period, this study found that:
- 708 of the 980 index offenders with sentences for assault/cause injury (72.2%) had at least one case in which a contravention/breach charge was sentenced *at the same time* as assault/cause injury (with an average of 1.3 such cases per person); and
 - 489 of the 712 index offenders with sentences for criminal damage (68.7%) had at least one case in which a contravention/breach charge was sentenced *at the same time* as criminal damage (with an average of 1.2 such cases per person).

Prevalent offences

- 5.13 Table 4 (page 42) compares the proportion of index offenders sentenced for at least one charge of a particular offence type at any stage in the 11-year study period from 2004–05 to 2014–15, across four mutually exclusive age–gender groups: young adult males (18–24), older males (25+), young adult females (18–24), and older females (25+). Table 4 reveals that, over the 11-year study period:
- young adult males had the highest rate of committing most offences;
 - aside from contravention/breach, assault/cause injury was the most common offence type for each age–gender group, but young adult males were sentenced for this offence at the highest rate (68.1%);
 - criminal damage was the second most common offence type for all offenders, although the proportion of young adult offenders committing this offence was around double the rate of their older counterparts;
 - both young adult males and young adult females were sentenced for public transport offences at a much higher rate than older males and females across the 11 years, though most of these offences were prior to the index sentence; and
 - a substantially higher proportion of young adult males were sentenced for driving offences, with 54.4% sentenced for general driving offences, 50.8% for unauthorised driving offences, and 35.5% for dangerous/drink/drug driving at any time across the 11-year study period.

137. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates' Court of Victoria (9 March 2016). See further [2.11].

Table 4: Percentage of index offenders sentenced for each offence type at any time from 2004–05 to 2014–15, by age and gender

Offence (ranked by overall volume)	Percentage of group sentenced for at least one charge of a particular offence type at any time in the period from 2004–05 to 2014–15			
	Young adult males (18–24)	Older males (25+)	Young adult females (18–24)	Older females (25+)
Contravention/breach	100.0%	100.0%	100.0%	100.0%
Assault/cause injury	68.1%	51.6%	59.1%	31.0%
Criminal damage	62.1%	35.1%	50.0%	22.1%
Driving (general)	54.4%	34.9%	27.3%	22.1%
Unauthorised driving	50.8%	29.1%	18.2%	15.5%
Justice	49.6%	28.4%	22.7%	11.3%
Theft/deception	54.8%	25.1%	22.7%	14.6%
Dangerous/drink/drug driving	35.5%	26.8%	9.1%	16.4%
Threat to kill/injure	29.0%	21.2%	18.2%	10.8%
Public order	29.0%	19.2%	15.9%	14.6%
Assault/resist/obstruct police	24.6%	18.2%	22.7%	11.7%
Drug possess/use	27.8%	17.7%	13.6%	7.5%
Weapons	29.4%	14.8%	9.1%	6.1%
Burglary/robbery	31.5%	13.1%	13.6%	3.8%
Stalking/harassment	11.3%	11.5%	2.3%	10.8%
Trespass/loitering	12.9%	6.6%	–	1.4%
Other	13.7%	5.5%	9.1%	3.3%
Drug trafficking	5.6%	6.0%	2.3%	2.8%
Public transport	14.1%	2.2%	15.9%	0.5%
Sex offences	3.2%	1.3%	–	–
Kidnap/false imprisonment	1.6%	1.1%	–	0.5%
Animal cruelty	–	0.6%	–	–
Homicide	–	0.1%	–	–
Total index offenders in group	248 offenders	1,393 offenders	44 offenders	213 offenders

This table is colour-coded to show the prevalence of different offence categories for each age–gender group (based on the proportion of the group sentenced at least once for that offence). The darkest shade shows the most prevalent offence category in that group. Each successively lighter shade indicates less prevalent offences in the age–gender group. Dashes indicate that no person in the group was sentenced for a charge of the offence category.

Prevalence of assault/cause injury offences

- 5.14 More than half of the index offenders had at least one assault/cause injury offence sentenced at some point in the 11-year study period (980 or 51.6%). Of these index offenders, 71 had prior, co-sentenced, *and* reoffending assault/cause injury offences.
- 5.15 Compared with their older counterparts, a far higher proportion of young adult males (68.1%) and young adult females (59.1%) were sentenced for assault/cause injury offences at least once in the 11-year study period. A substantially lower proportion of older females were sentenced for assault/cause injury than the other three age–gender groups, although the rate was still one in three. Those consulted on the data commented that, in their experience, young adult index offenders had a high rate of mental health, drug, and/or alcohol issues that contributed to their offending.¹³⁸
- 5.16 These findings may support prioritising young adult male contravention offenders for behavioural change programs and may suggest that specifically tailored men's behaviour change programs are indicated for young adult males. Likewise, a different approach may be required for young female index offenders, compared with their older counterparts. The findings also support the Royal Commission's conclusion that '[e]xisting programs do not cater for different cohorts of perpetrators' and that adolescent family violence 'differs from that perpetrated by adults and requires a specialist response[,] one that is far more comprehensive than the current patchwork of supports'.¹³⁹
- 5.17 The higher assault rate of young adult index offenders also supports the call by the Magistrates' Court and the Children's Court (in their joint submission to the Royal Commission) for '[s]tatewide access to a broad range of court interventions, including ... specific programs for children and young people using family violence in the home (including youth specific behavioural change programs)'.¹⁴⁰
- 5.18 The Royal Commission concluded that 'there is insufficient breadth and diversity in perpetrator interventions in Victoria' and recommended the development of:
- a suite of interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, reducing re-offending and meeting the needs of victims.¹⁴¹
- 5.19 The Royal Commission emphasised the need for the government to receive expert advice on 'the spectrum of programs, services and initiatives that should be available in Victoria—in the justice system and in the community—to respond to all perpetrators across varying forms and risk levels of family violence' and recommended that the 'interventions and programs must also be subject to an effective compliance and oversight scheme'.¹⁴²
- 5.20 The findings of the current study, particularly in relation to age and gender differences in reoffending and the prevalence of violent offences, are relevant to the implementation of these recommendations.

138. Family Violence Roundtable (9 February 2016); Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates' Court of Victoria (9 March 2016); Meeting with Representatives of Victoria Legal Aid (12 February 2016). See further [2.11].

139. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 28, 31.

140. Magistrates' Court of Victoria and Children's Court of Victoria (2015), above n 23, 38.

141. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 28; see also 56, 69, 71 (Recommendations 40, 86, and 91).

142. *Ibid* 28, 69 (Recommendation 86).

Prevalence of driving offences

- 5.21 Across the 11-year study period, 36% of index offenders had at least one general driving offence sentenced, 30% had at least one unauthorised driving offence sentenced, and 26% had at least one dangerous/drink/drug driving offence sentenced.
- 5.22 Figure 17 shows a correlation between the total number of contravention/breach charges sentenced and the presence of an unauthorised driving offence. While 23.4% of index offenders with one contravention/breach charge were also sentenced for unauthorised driving, this rose to 42.4% of index offenders with 10 or more contravention/breach charges. This is consistent with the results of other studies; for example, a study of Tasmanian family violence perpetrators found a 'moderate' association between 'offenders apprehended by police for non-family-related violent offences, traffic offences, or breach of violence order offences and the identification of violent offending directed towards their intimate partners'.¹⁴³
- 5.23 Family Violence Roundtable participants commented that the contravention/breach offences and driving while disqualified or suspended (after a court order) share a common element of refusing to comply with a court order. They suggested that the presence of driving and other non-violent offences in index offenders' offending patterns indicates that a subgroup of the cohort had a general disregard for the law, which was exhibited in a range of offending, including contravening family violence intervention orders.¹⁴⁴ This view is consistent with other studies of family violence offenders that suggest that 'they are not a homogeneous group'.¹⁴⁵ Rather, there is some evidence of a subgroup of offenders who engage in violent and anti-social behaviours both inside and outside the home and for whom criminal and abusive behaviours are 'ingrained and intertwined, not easily eliminated over the long run'.¹⁴⁶

143. Boxall et al. (2015), above n 15, 7.

144. Family Violence Roundtable (9 February 2016). See further Appendix A.

145. Boxall et al. (2015), above n 15, 7. See also Tara N. Richards et al., 'A Longitudinal Examination of Offending and Specialization Among a Sample of Massachusetts Domestic Violence Offenders' (2012) 28(3) *Journal of Interpersonal Violence* 643, 643, 645–646, 658; Richards et al. (2014), above n 94, 889.

146. Klein and Tobin (2008), above n 57, 151; Boxall et al. (2015), above n 15, 7.

6. Factors associated with reoffending

- 6.1 This chapter examines factors that may be associated with reoffending, namely the age and gender of the offender and the offender's prior offending patterns.¹⁴⁷
- 6.2 Other factors that may be associated with differences in family violence reoffending, but were not available in the data, include unemployment, substance abuse, mental illness, homelessness, pregnancy, and children.¹⁴⁸ Consulted magistrates advised that, while reoffending rates for index offenders were due to a complex range of factors, in their view the need for an offender and victim to maintain contact due to shared parenting arrangements was a significant contributing factor.¹⁴⁹

Age and gender

Age and gender differences in the reoffending rate

- 6.3 Around half of both males and females reoffended within five years of the index sentence, although the proportion of the 1,641 male index offenders who reoffended (54.0%) was higher than that of the 257 female index offenders (43.2%).¹⁵⁰ Both males and females were slightly more likely to have a prior sentence than a subsequent sentence (59.8% for males and 47.1% for females). Index offenders aged 21–24 were the most likely to reoffend within five years of their index sentence.
- 6.4 Figure 18 (page 46) shows the five-year reoffending rate of index offenders, according to their gender and their age group at the time of the index sentence. Table 5 (page 46) summarises reoffending across four age–gender groups: young adult males (18–24), older males (25+), young adult females (18–24), and older females (25+). Key differences included:
- young adult males had the highest reoffending rate (67.3%), while older females had the lowest reoffending rate (40.8%) – although this was still higher than the reoffending rate for the general criminal population (Figure 13, page 33);
 - the reoffending rate was significantly higher for young adult males and females (18–24) than for their older counterparts for each year after the index sentence, particularly in the first 12 months:
 - within 6 months of their index sentence, 7.9% of young adult males and females had been resentenced for at least one new offence, compared with 4.2% of older males and females;
 - within 12 months of their index sentence, 19.5% of young adult males and females had been resentenced for at least one new offence, compared with 10.5% of older males and females;

147. Reoffending is measured in terms of subsequent sentences imposed on an index offender. A 'reoffending sentence event' is a sentence or sentences imposed in a case for an offence or offences that were committed in the five years after the index sentence. See further [4.1], [4.4]–[4.5].

148. Victoria Legal Aid (2015), above n 66, 1–11; Morocco et al. (2010), above n 94, 1,205; Victoria Police (2015), above n 20, 35–37; New Zealand Police (2011), above n 57, 25–26.

149. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates' Court of Victoria (9 March 2016).

150. The difference between the reoffending rates of males and females was statistically significant.

- within 24 months of their index sentence, 38.4% of young adult males and females had been resentenced for at least one new offence, compared with 28.3% of older males and females; and
- within five years of their index sentence, almost two-thirds (65.4%) of young adult males and females had been resentenced for at least one new offence, compared with 50.2% of older males and females; and
- the reoffending rate progressively dropped for older age groups. While over 60% of index offenders aged *under* 35 reoffended, the rate dropped to around one in three index offenders aged 45 and older. The oldest reoffender in the index group was 76 years old.

Figure 18: Percentage of index offenders who reoffended at least once in the five years after the index sentence in 2009–10, by age and gender, 2009–10 to 2014–15

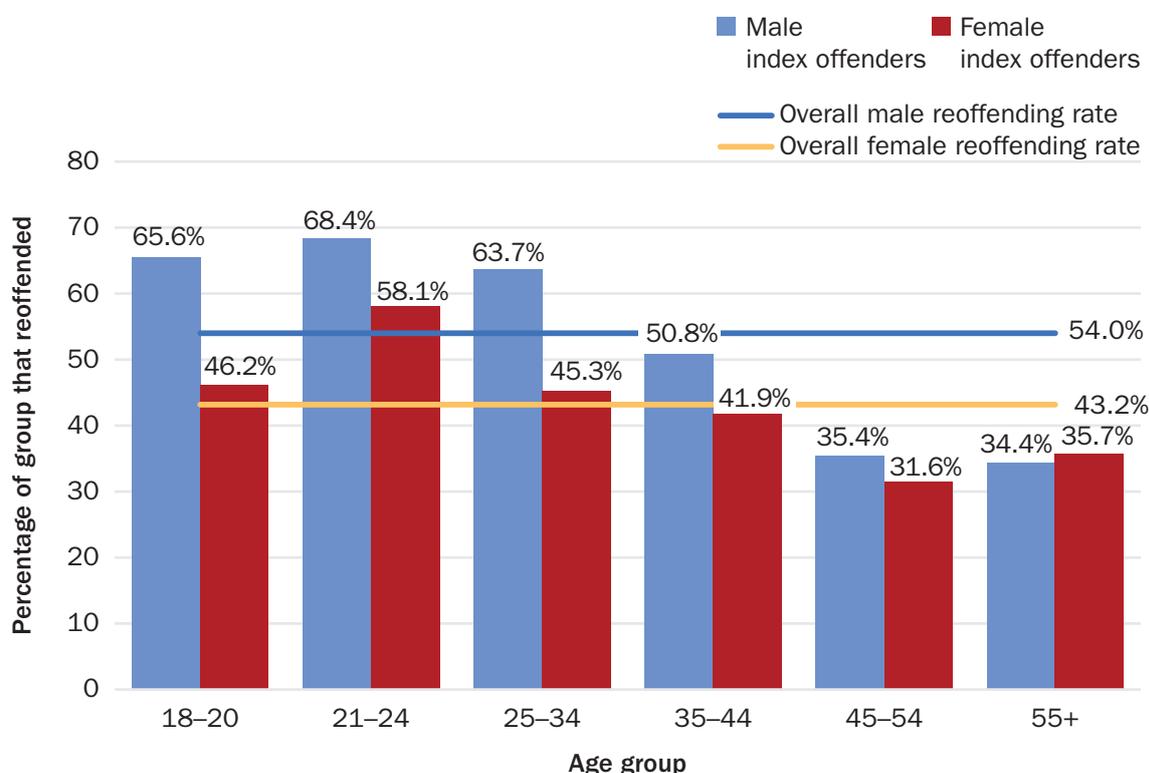


Table 5: Number and percentage of index offenders who reoffended at least once in the five years after the index sentence in 2009–10, by age and gender

Age–gender group	Number sentenced at least once after index sentence, 2009–10 to 2014–15	Proportion sentenced at least once after index sentence, 2009–10 to 2014–15
Young males (18–24)	167 out of 248	67.3%
Older males (25+)	719 out of 1,393	51.6%
Young females (18–24)	24 out of 44	54.5%
Older females (25+)	87 out of 213	40.8%
Total (all index offenders)	997 out of 1,898	52.5%

- 6.5 The five-year reoffending rate for young adult index offenders (65.4%) was also considerably higher than the reoffending rate for young adult offenders in the Council's 2015 study of reoffending across the general offender population,¹⁵¹ even though reoffending was tracked over a longer period (nine years) in that study. In the 2015 study, around half of young adult offenders (aged 18–24) had reoffended within *nine* years of their index sentence.
- 6.6 Consistent with these findings, recent Crime Statistics Agency research shows that repeat family violence perpetrators (people recorded for incidents by police) were most likely to be young males with a history of violent and contravention offences who were perpetrating the offence against a current or former partner.¹⁵² Overall, around 50% of the Crime Statistics Agency's index offenders from 2010 were recorded for a future family violence incident within five years of their index sentence.¹⁵³

Age and gender differences in the number of reoffending sentence events

- 6.7 The average number of reoffending sentence events was significantly higher for male reoffenders (2.34) than for female reoffenders (1.94). While most female reoffenders (58.6%) reoffended only once in the five-year period, less than half of male reoffenders had only one reoffending sentence event (40.1%). Just under one in 10 female reoffenders (8.1%) and one in five male reoffenders (17.9%) had more than three reoffending sentence events. One female was sentenced 18 times after her index sentence, while one male was sentenced 13 times.
- 6.8 There was no significant difference in the number of reoffending episodes of young adult and older reoffenders, with an average of 2.66 reoffending sentence events for young adult reoffenders (18–24) and 2.21 for older reoffenders (25+).

Age and gender differences in reoffence type

- 6.9 Table 6 (page 48) shows the differences in reoffence type according to the age and gender of index offenders:
- The most common reoffence type for both older males and older females was contravention/breach. Older males had the highest rate of contravention/breach reoffending (25.7%).
 - While assault/cause injury was one of the most common reoffence types for all index offenders, young adult males reoffended with an assault/cause injury offence at three times the rate of older females (34.7% compared with 13.1%).
 - The most common reoffence type for young adult males was driving (general) (35.1%), and young adult males had a higher rate of reoffending with this offence than the other three age–gender groups.
 - Young adult males had the highest rate of criminal damage reoffending (23.8%). Criminal damage was the most common reoffence type for young adult females (22.7% of the 44 young adult female index offenders).
 - Young adult females had the highest rate of reoffending involving assault/resist/obstruct police (11.4%).

151. Sentencing Advisory Council (2015), above n 49.

152. State of Victoria, Royal Commission into Family Violence (2016), above n 47, 135.

153. *Ibid* (Figure 69).

Table 6: Percentage of index offenders sentenced, by reoffence type and age–gender group, 2009–10 to 2014–15

Offence (ranked as per Figure 15)	Percentage of group that reoffended at least once with a particular offence type in the period from 2009–10 to 2014–15			
	Young adult males (18–24)	Older males (25+)	Young adult females (18–24)	Older females (25+)
Contravention/breach	23.0%	25.7%	15.9%	15.0%
Assault/cause injury	34.7%	21.1%	20.5%	13.1%
Driving (general)	35.1%	15.9%	15.9%	8.9%
Unauthorised driving	31.5%	15.0%	11.4%	9.4%
Criminal damage	23.8%	13.0%	22.7%	7.5%
Justice	23.0%	13.6%	9.1%	6.6%
Theft/deception	23.8%	12.2%	15.9%	6.1%
Dangerous/drink/drug driving	19.0%	11.1%	4.5%	6.6%
Drug possess/use	14.9%	8.5%	9.1%	3.8%
Threat to kill/injure	12.5%	7.5%	9.1%	4.2%
Public order offences	12.5%	6.2%	9.1%	5.6%
Burglary/robbery	13.7%	6.2%	6.8%	2.3%
Weapons	11.7%	5.9%	6.8%	3.3%
Assault/resist/obstruct police	9.7%	5.7%	11.4%	2.8%
Stalking/harassment	4.8%	3.8%	–	3.8%
Trespass/loitering	6.0%	2.9%	–	0.5%
Drug trafficking	4.0%	2.7%	–	–
Other	2.8%	1.9%	2.3%	0.9%
Public transport	3.2%	0.7%	4.5%	0.5%
Sexual offences	1.6%	0.6%	–	–
Kidnap/false imprisonment	0.8%	0.4%	–	0.5%
Animal cruelty	–	0.4%	–	–
Homicide	–	0.1%	–	–
Total index offenders in group	248 offenders	1,393 offenders	44 offenders	213 offenders

This table is colour-coded to show the prevalence of different offence categories for each age–gender group (based on the proportion of the group sentenced at least once for that offence). The darkest shade shows the most prevalent offence category in that group. Each successively lighter shade indicates less prevalent offences in the age–gender group. Dashes indicate that no person in the group was sentenced for a charge of the offence category.

6.10 Consulted magistrates noted that the low rate of some types of reoffending does not necessarily provide an accurate picture. For example, the low rate of 'sexual offence' reoffending was likely to be due to underreporting. Magistrates also noted that, in their day-to-day experience, a charge of threatening to kill/injure was frequently present at the commencement of contravening a family violence intervention order or family violence safety notice cases, but withdrawn during plea negotiations. Similarly, in their experience, magistrates saw the withdrawal of many charges of burglary or aggravated burglary involving the family home in the context of family violence.¹⁵⁴

Prior offences and reoffending

6.11 Just over one-quarter of index offenders had only the index sentence in the 11-year study period (that is, these index offenders had no prior offences sentenced in the five years before their index sentence and no subsequent offences sentenced in the five years after their index sentence).¹⁵⁵ The remainder had prior sentences, subsequent sentences, or both.

6.12 This section examines the direct correspondence between index offenders' prior sentence history and their reoffending in the five years after their index sentence.

What proportion of index offenders with prior offences reoffended?

6.13 There was a correlation between the *presence* of prior offences and reoffending:

- around two-thirds of index offenders *with* at least one prior sentence *did* reoffend; and
- around two-thirds of index offenders *without* prior sentences *did not* reoffend.¹⁵⁶

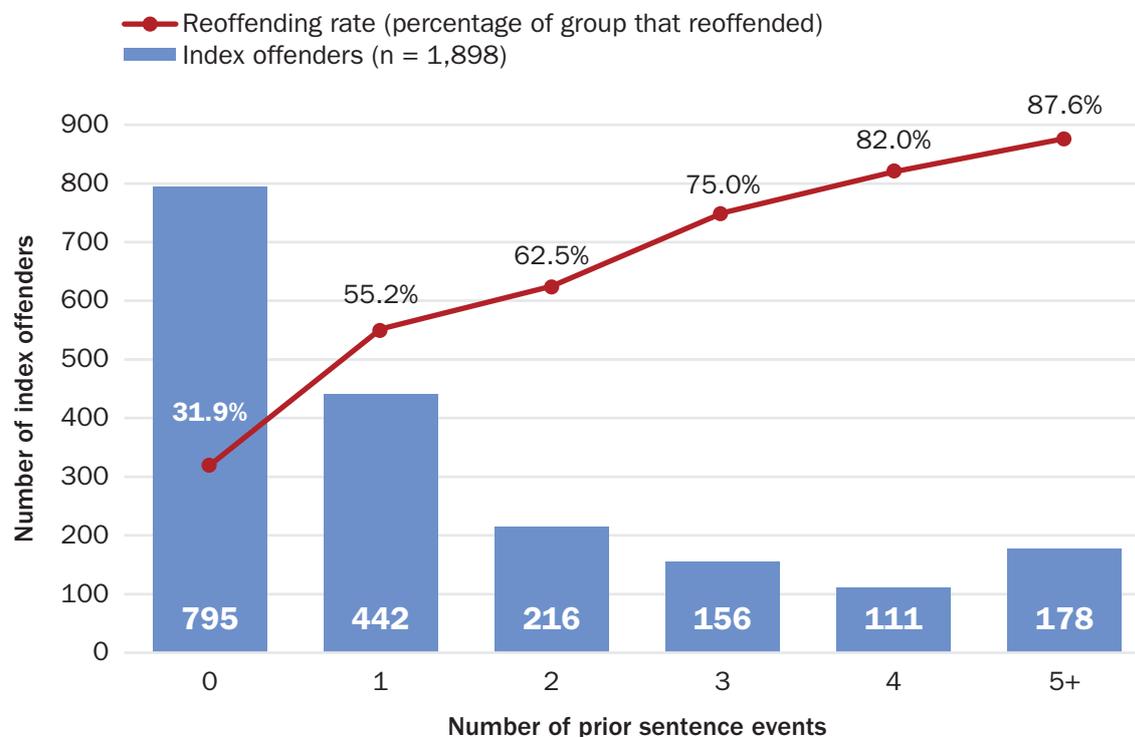
6.14 There was also a correlation between the *number* of prior sentence events and the reoffending rate of index offenders (Figure 19, page 50). While the majority of index offenders with no prior sentence events *did not* reoffend (68.1%), over half of the index offenders with a single prior sentence event reoffended (55.2% or 244 of 442). The reoffending rate progressively increased to 87.6% of the index offenders with five or more prior sentence events.

154. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates' Court of Victoria (9 March 2016).

155. Of the 1,898 index offenders, 541 (28.5%) had neither prior nor subsequent sentences in the 11-year study period.

156. Of the 1,103 index offenders with at least one prior sentence, 743 reoffended (67.4%). Of the 795 index offenders with no prior sentences, 541 did not reoffend (68.1%). This finding is consistent with the results of other studies. See for example, Stewart (2000), above n 94, 77–79; Victoria Legal Aid (2015), above n 66, 6–7.

Figure 19: Reoffending rate of index offenders by number of prior sentence events



6.15 Participants at the Family Violence Roundtable suggested that this finding demonstrates:

- the failure of sentences imposed for contravening family violence intervention orders and safety notices to act as a deterrent and to adequately address offending behaviour;
- the lack of a co-ordinated response from the criminal justice system;
- a lack of fear of consequences by offenders;
- the criminogenic effect of repeated contact with the justice system; and/or
- problems with the current allocation of resources to prevent reoffending.¹⁵⁷

Were there differences in reoffence type between index offenders with and without prior offences?

6.16 In addition to correlating with a higher overall reoffending rate for index offenders, the presence of any prior offences correlated with the percentage of index offenders who reoffended with a contravention/breach offence or with an assault/cause injury or threat to kill/injure offence¹⁵⁸ (Figure 20, page 51):

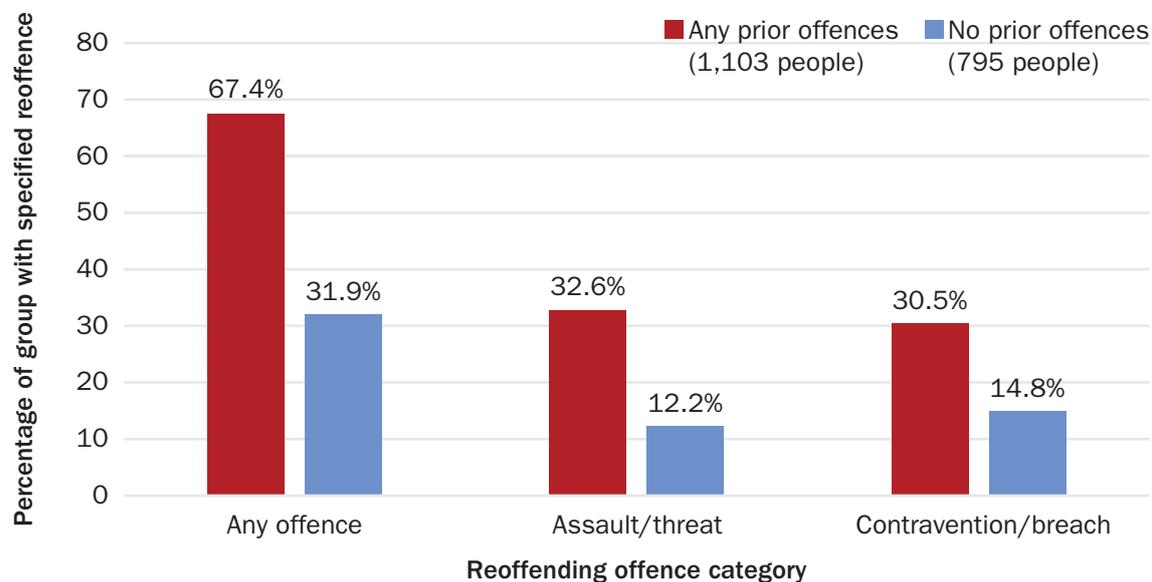
- Index offenders with prior offences were almost three times as likely to reoffend with assault/threat offences as index offenders with no priors (32.6% compared with 12.2%); and
- Index offenders with prior offences were twice as likely to reoffend with contravention/breach offences as index offenders with no priors (30.5% compared with 14.8%).¹⁵⁹

157. Family Violence Roundtable (9 February 2016). See further Appendix A, 84.

158. For this analysis, the offence categories of assault/cause injury and threat to kill/injure were combined into one category, which was called 'assault/threat'.

159. In Figure 20, the subsequent offence categories are not mutually exclusive, and offenders' reoffending sentence events may also include other offence types.

Figure 20: Specific reoffending rates, by the presence of prior sentences and subsequent offence category



Was there an association between prior and subsequent contravention/breach offences?

6.17 Index offenders with at least one prior offence of contravention/breach were twice as likely to reoffend with a contravention/breach offence: 40% of 360 index offenders with a prior sentence for contravention/breach reoffended at least once with a contravention/breach offence (compared with 20% of the 1,538 index offenders who did not have a prior sentence for contravention/breach).

The influence of previous and co-sentenced assaults, threats, and dangerous driving on reoffending

6.18 As well as being associated with the presence or absence of prior offences (Figure 19), reoffending rates differed according to the *type* of prior offence. The Council examined two offence categories: (1) assault/threat¹⁶⁰ (2) dangerous/drink/drug driving.

6.19 The Council included both *prior* and *co-sentenced* offences in the analysis, grouping the index offenders into three mutually exclusive groups according to the presence of each co-sentenced and prior offence type.¹⁶¹ For example, for the assault/threat offence category, the three groups comprised index offenders:

1. without prior offences and with no assault/threat offences co-sentenced at the index sentence;
2. with prior offences but none for assault/threat. No co-sentenced offences of assault/threat at the index sentence; and
3. with prior offences for assault/threat offences and/or co-sentenced assault/threat offences. Some index offenders with co-sentenced assault/threat offences may have had no prior offences.

6.20 The reoffending rates of these groups were then compared.

160. This group combines the offence categories of 'assault/cause injury' and 'threat to kill/injure'. See further Appendix A (Methodology) and Appendix B (Offence type classifications).

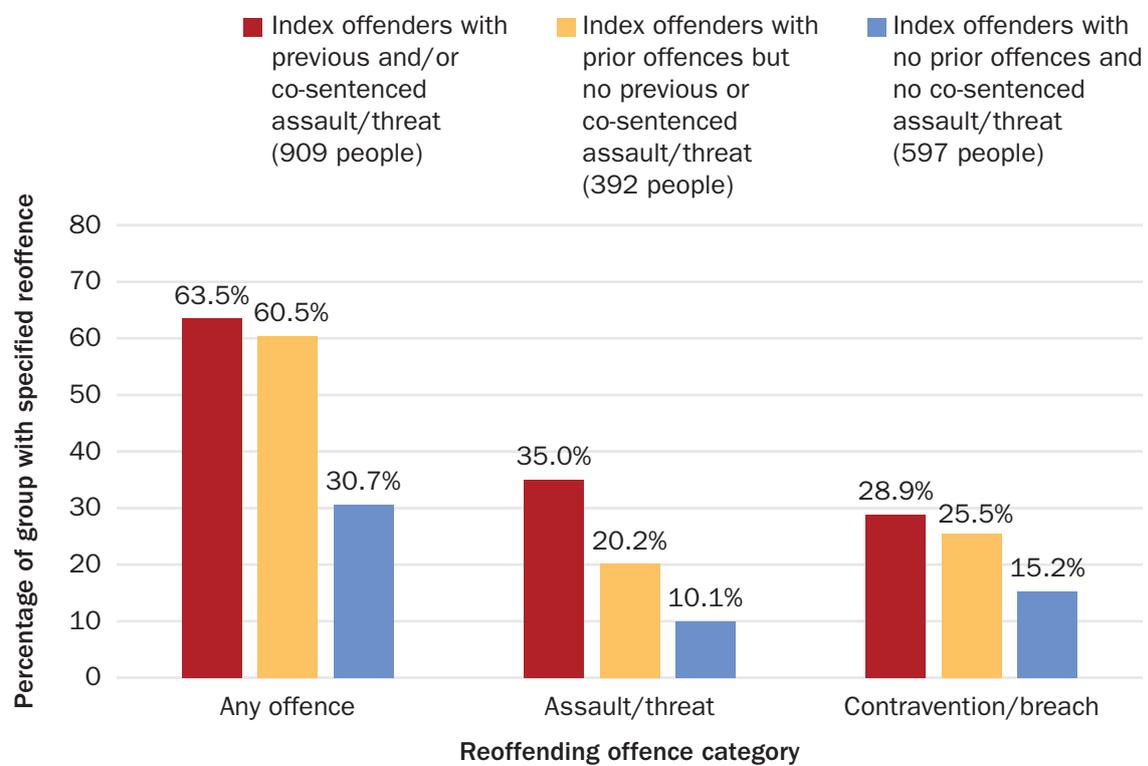
161. This analysis does not take into account the number of charges or cases per index offender in which the offence type was sentenced, only that at least one charge was sentenced in an index offender's history prior to and/or including the index sentence.

The influence of the *presence* of previous assault/threat offences on reoffending

6.21 Figure 21 presents the rates at which index offenders with and without previous assault/threat offences:

- reoffended with any offence;
- reoffended at least once with a new assault/threat offence; and
- reoffended at least once with a new contravention/breach offence (Figure 21).

Figure 21: Specific reoffending rates by the presence of specific violent co-sentenced or prior offences and subsequent offence category



- 6.22 For each of these three reoffending categories, index offenders with no prior offences and no co-sentenced assault/threat offences had a considerably lower reoffending rate than index offenders with previously or co-sentenced assault/threat offences (Figure 21). This is consistent with the findings of other studies.¹⁶²
- 6.23 Figure 21 also shows similar rates of general reoffending for (1) index offenders with prior offences but no prior or co-sentenced assault/threat offences and (2) index offenders with assault/threat offences in their prior history or at their index sentence. The rate at which index offenders reoffended with a contravention/breach offence was also similar across these two categories, with just over one-quarter of index offenders in these categories reoffending with a contravention/breach charge.
- 6.24 In contrast, index offenders with previous or co-sentenced assault/threat offences were substantially more likely to reoffend with an assault/threat offence (35.0%) than other index offenders (20.2% of index offenders with no previous or co-sentenced assault/threat offences but with other prior offences reoffended with an assault/threat offence, as did 10.1% of index offenders with no prior offences and no co-sentenced assault/threat offences (Figure 21)).
- 6.25 Family Violence Roundtable participants commented that these findings demonstrate some of the problems with the criminal justice system in effecting behavioural change, including that:
- there are limited and unsophisticated options for rehabilitation;
 - offenders' attitudes are often quite entrenched; and
 - family violence is often driven by multiple complex factors, but the criminal justice system tries to resolve this with a 'one-dimensional system and a limited bag of tricks'.¹⁶³
- 6.26 Family Violence Roundtable participants were also concerned about the reoffending rates of index offenders with no prior offences and no co-sentenced assault/threat offences (the third bar in each set). Participants were particularly concerned that one in 10 (10.1%) went on to commit an assault/cause injury offence or a threat to kill/injure offence after their 2009–10 sentence for contravention, commenting that this finding indicates the limited effectiveness of criminal justice system interventions in the context of family violence.¹⁶⁴
- 6.27 The importance of effective early intervention in relation to first-time family violence perpetrators (that is, those with no prior criminal history) was emphasised in a recent study published by the Australian Institute of Criminology, in which the authors stated that the identification of first-time family violence perpetrators:
- provides criminal justice and treatment agencies with an opportunity to intervene early in what could be—if ignored or not prioritised—a significant and long-term violent criminal career ... By intervening early and attempting to address the underlying causes of the violent behaviour, individual offenders may be diverted away from a criminal career that would have significant and negative consequences for their intimate partners, families and the community more broadly ...
- First-time [family violence perpetrators] have also received a lot of attention within the family violence treatment and rehabilitation sector because of evidence that, as a group, they respond more positively to treatment (both court-mandated and voluntary) and are less likely to 'drop out' than [perpetrators] with a history of family violence offending.¹⁶⁵

162. See for example, Boxall et al. (2015), above n 57, 1.

163. Family Violence Roundtable (9 February 2016). See further Appendix A, 84.

164. Family Violence Roundtable (9 February 2016). See further Appendix A, 84.

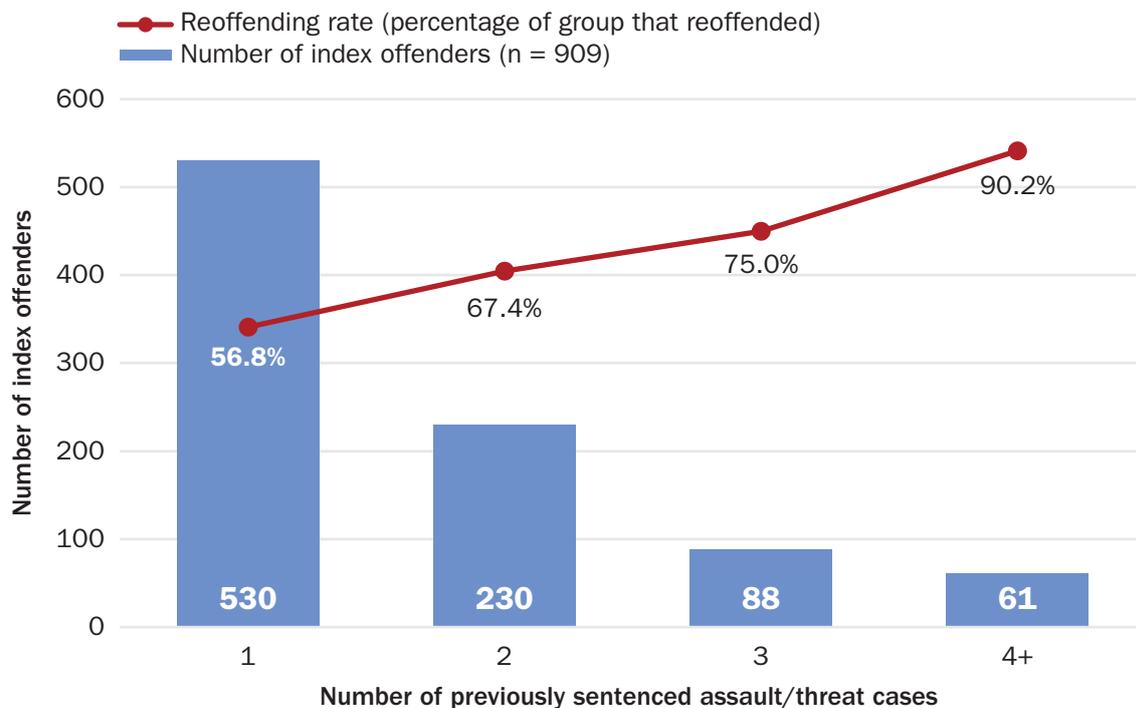
165. Boxall et al. (2015), above n 57, 2–3 (citations omitted).

The influence of the *number* of previous assault/threat sentences on reoffending

6.28 Figure 21 shows that the 909 index offenders who previously had been sentenced for assault/threat offences (in the period up to and including their index sentence) were more likely than not to reoffend (with any offence type) in the five years after their index sentence.

6.29 The reoffending rate was also correlated with the *number* of previous assault/threat-related sentence appearances that index offenders had, up to and including their index sentence (Figure 22). While just over half (56.8%) of index offenders with one assault/threat sentence event reoffended, the reoffending rate progressively increased to 90.2% of index offenders with four or more previous sentences for assault/threat offences (55 out of 61 index offenders with four or more assault/threat sentence events subsequently reoffended).

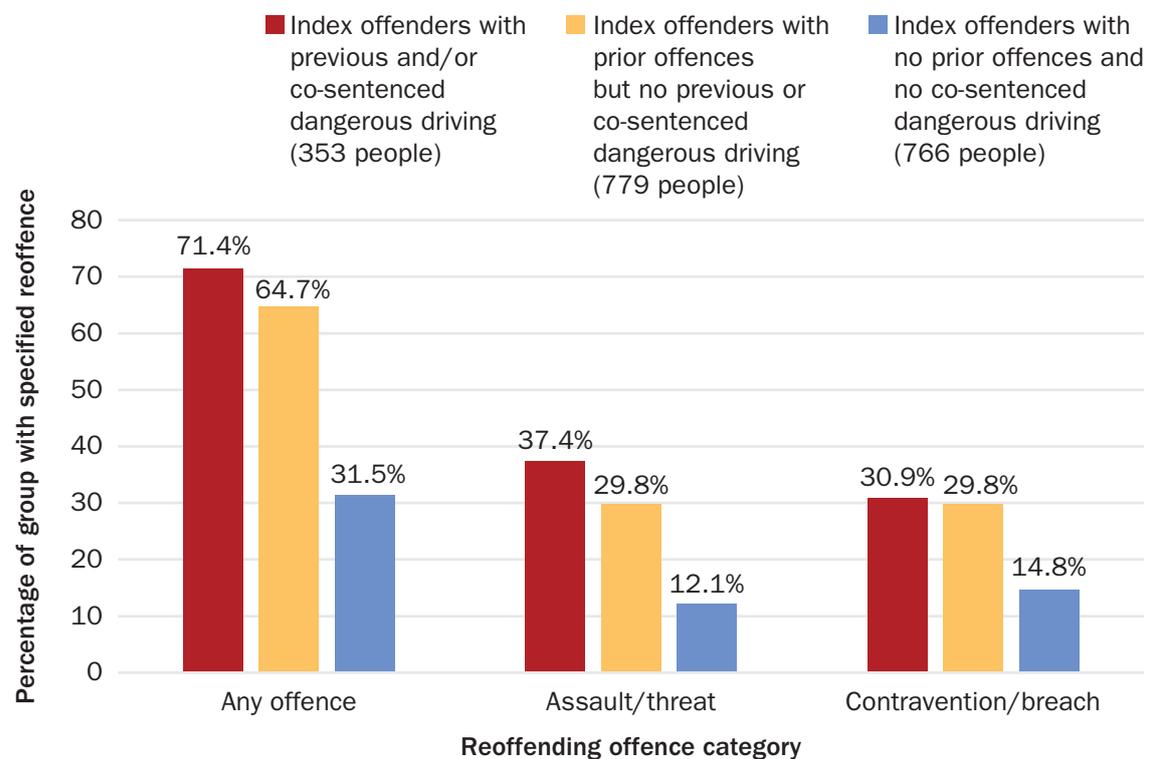
Figure 22: Reoffending rate by number of previously sentenced assault/threat cases



The influence of the *presence* of previous dangerous/drink/drug driving offences on reoffending

6.30 Index offenders with previous or co-sentenced dangerous/drink/drug driving offences (including driving in a dangerous manner/at a dangerous speed, drink-driving, and drug-driving) had higher overall and assault/threat reoffending rates than the two groups with no sentences for dangerous/drink/drug driving offences (Figure 23).

Figure 23: Specific reoffending rates by the presence of prior or co-sentenced dangerous driving offences and reoffending offence category



6.31 The dangerous/drink/drug driving group was tested for the presence of previous assault/threat sentences, in case these appeared to be influencing the dangerous driving reoffending rates.

This analysis revealed that:

- 223 index offenders had a history of both assault/threat offending and dangerous driving offending (just under two-thirds of the 353 index offenders with previous dangerous/drink/drug driving offences);
- 686 index offenders had assault/threat offences but no dangerous/drink/drug driving offences; and
- 130 index offenders had dangerous/drink/drug driving offences but no assault/threat offences.

6.32 Of the three groups, the group with both dangerous/drink/drug driving and assault/threat had the highest reoffending rate (75.8%). This group also had the highest rate of reoffending with an assault/threat offence (43.9%), followed by the group with assault/threat offences but no dangerous/drink/drug driving offences (32.1%) and the group with dangerous/drink/drug driving offences but no assault/threat offences (26.2%).

6.33 It is not possible to draw definitive causal links between dangerous driving and reoffending (either generally or with specific offence types such as contravention or assault). Nonetheless, the finding that the general and assault/threat reoffending rates were higher if offenders had a history of dangerous driving as well as assault/threat offences makes it difficult to rule out prior road safety offences as irrelevant in assessing future risk. Therefore, such offences should not be readily dismissed as irrelevant when sentencing people who have breached intervention orders.

7. The implications for sentencing

- 7.1 This chapter examines the sentences imposed on index offenders in light of the findings about their prior and subsequent offending, considering the purposes of sentencing in family violence cases and the implications for the choice of sentence type.¹⁶⁶

Purposes of sentencing in family violence cases

- 7.2 The purpose of the *Family Violence Protection Act 2008* (Vic) is to:
- maximise safety for children and adults who have experienced family violence;
 - prevent and reduce family violence to the greatest extent possible; and
 - promote the accountability of perpetrators of family violence for their actions.¹⁶⁷
- 7.3 The purpose of the Act is to be achieved by providing an effective system of family violence intervention orders and family violence safety notices and creating offences for contravention (including the two index offences).¹⁶⁸ It 'requires the court to understand the factors that can increase a person's risk of further family violence, as well [as] appreciate how to respond to and manage that risk'.¹⁶⁹ This extends to all parts of the system, including sentencing offences under the Act, such as the two index offences.¹⁷⁰
- 7.4 This purpose must be read alongside the *Sentencing Act 1991* (Vic), which sets out the only purposes for which a sentence may be imposed: to punish the offender; to denounce the offender's conduct, to deter the offender or others from future offending, to facilitate the offender's rehabilitation, to protect the community, or a combination of these purposes.¹⁷¹
- 7.5 A number of principles for sentencing family violence offenders have also evolved, including:
- the importance of deterrence and denunciation, particularly in light of the unique context of family violence;
 - the significant and broad-reaching effects of family violence, which 'are not confined to physical injury' but extend to 'long-lasting psychological trauma', which may impact on the victim's finances and job status;
 - the importance of effectively enforcing intervention orders; and
 - the rejection of any claim that intimate partner violence is a less serious form of violence (including the assertion that the victim's level of fear was less than it would have been had the attacker been a stranger).¹⁷²

166. See also the discussion at [1.41]–[1.49]; [3.4]–[3.5].

167. *Family Violence Protection Act 2008* (Vic) s 1.

168. *Family Violence Protection Act 2008* (Vic) s 2.

169. Judicial College of Victoria (2013), above n 52.

170. The index offences are set out in *Family Violence Protection Act 2008* (Vic) ss 37, 123.

171. *Sentencing Act 1991* (Vic) s 5(1).

172. State of Victoria, Royal Commission into Family Violence (2016), above n 17, 194, referring to *Pasinis v The Queen* [2014] VSCA 97 (22 May 2014) 6–7; *R v Cotham* [1998] VSCA 111 (17 November 1998) 3; *Filiz v The Queen* [2014] VSCA 212 (11 September 2014); *R v Goodall* [2000] VSCA 106 (31 May 2000) 32–35.

Sentencing as an opportunity for intervention

- 7.6 The sentencing process is increasingly being recognised as a key opportunity for intervention in family violence cases. In some cases, it may be the first contact that the offender has with the criminal justice system. It is crucial that this opportunity is used to hold offenders accountable for their behaviour: to deter them from future violence and to protect the affected family member and the community.¹⁷³
- 7.7 Consulted magistrates emphasised the importance of the sentencing process as a means of holding perpetrators accountable and protecting families. They commented that effective sentencing extends beyond the actual sentence imposed to the sentencing process itself – for example, meaningful interactions between the court and the offender. Highlighting the need for the ‘development of problem solving approaches’, which are ‘crucial in this area’, magistrates commented that the main sentencing objective in these cases is imposing ‘effective and meaningful sentences that impact positively on the safety of families’.¹⁷⁴
- 7.8 Submission 1000 to the Royal Commission into Family Violence cautioned that:
- When police and other justice systems don’t respond seriously and pro-actively it sends a powerful message to perpetrators that they are free to do as they wish and that there will be no consequences or accountability for their violence.¹⁷⁵
- 7.9 The Royal Commission emphasised that:
- Family violence policy must aim to stop violence at its source ... Efforts to keep victims safe must be strengthened through a consistent and rigorous approach to perpetrator accountability. Bringing perpetrators into view and assisting them to change behaviours [are] essential to reducing family violence.¹⁷⁶
- 7.10 In many cases, rehabilitating the offender can be an important means of increasing safety, as recognised in the Council’s 2009 *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (the ‘Guiding Principles’):
- the major purpose of sentencing in these cases should be to achieve ongoing compliance with intervention orders, which will ultimately lead to better protection of victims and their families. Punitive outcomes are not necessarily the right answer.
- The Council strongly believes that imprisonment is not the ultimate response to every serious offence. Rehabilitative or interventionist measures with offenders should be encouraged where they can lead to long term protection of victims and the community more generally.¹⁷⁷
- 7.11 The importance of emphasising offender accountability and rehabilitation in appropriate cases was recognised by the Royal Commission into Family Violence, which referred to Loddon Campaspe Community Legal Centre’s survey of 190 women who had sought intervention orders:
- Many women, however, did not wish offenders to be punished by imprisonment. They wanted a broad integrated response to family violence that sees a shifting of focus from women to offenders.

173. Sentencing Advisory Council (2009), above n 103; Centre for Innovative Justice (2015), above n 15, 54.

174. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates’ Court of Victoria (9 March 2016).

175. Wendy and John Thompson, *Submission to the Royal Commission into Family Violence* (2015) 2 (Submission 1000).

176. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 10.

177. Sentencing Advisory Council (2009), above n 103, 1.

They recommended that this response include early offender intervention, the offenders to hear and understand the impacts their violence has had on the women and their children and acknowledge the harm they have caused. It also includes facilitating offender engagement with relevant men's behaviour change programs and long-term monitoring and mentoring that addresses individual offender needs not to reoffend. The women's greatest priority was feeling heard, and wanting the behaviour to stop.¹⁷⁸

7.12 The Royal Commission concluded that:

Some perpetrators may be able to change their behaviour with an appropriate level of support or as a result of a particular style of behaviour change program; others will need more tailored and intensive assistance, including those with a mental illness or problems with drug and alcohol use. Other perpetrators will continue to pose unacceptable risks to their family members, requiring stricter justice system-based interventions.¹⁷⁹

7.13 Similarly, in its study of sentencing family violence offenders, the Tasmanian Sentencing Advisory Council concluded that 'the data does not provide a basis for claiming that harsher penalties would reduce recidivism rates' and:

The imposition of sanctions alone is not bringing about a change in offender behaviour. It may be that a greater investment in rehabilitative interventions and the adoption of a more therapeutic approach to sentencing should be considered.¹⁸⁰

7.14 In their paper 'Sentencing in Family Violence Cases', Magistrate Kate Hawkins and Deputy Chief Magistrate Felicity Broughton address the issue of 'effective responses to family violence related offending', concluding:

Family violence offending is recidivist in nature. Research demonstrates that the most effective interventions in family violence offending involve:

- Monitored participation in a comprehensive men's behavioural change program and ongoing support for victims;
- Individual treatment plans that deal with reducing risk factors such as drug and alcohol abuse, mental illness, homelessness etc;
- Increasing deterrence by increasing the risk of being caught rather than the risk of harsher penalties of itself.¹⁸¹

7.15 The authors provide three examples of 'how a Victorian magistrate may approach family violence criminal sentencing', as set out in Table 7 (page 60).

178. State of Victoria, Royal Commission into Family Violence (2016), above n 17, 209.

179. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 10.

180. Sentencing Advisory Council (Tasmania) (2015), above n 14, 30–31 (Observation 5), referred to in State of Victoria, Royal Commission into Family Violence (2016), above n 17, 210.

181. Hawkins and Broughton (2016), above n 21, 22.

Table 7: Suggested approach to sentencing family violence¹⁸²

Example	Suggested approach
A first-time offender where the family violence is of a lower level and the risk of future violence is reduced →	An undertaking to be of good behavior for 12 months with a requirement that the offender complete a men’s behaviour change program.
A first-time offender where the family violence is more serious, the risk of future violence remains high, and/or there has been a breach of a civil protection order →	A community correction order with conditions such as community work, participation in a men’s behaviour change program, and other programs to reduce risk.
A repeat offender and/or where the family violence is of a serious nature, the risk remains high, and/or the violence is occurring in contravention of a civil protection order →	<ul style="list-style-type: none"> • A term of imprisonment with a community correction order following release from custody to address the rehabilitation needs. This community correction order may include a judicial monitoring condition so that the offender is required to appear before the judge [or magistrate] to review their progress on the community correction order; or • A term of imprisonment with a minimum term to be served before an offender can apply for release into the community on supervised parole (overseen by Community Correctional Services).

7.16 The authors note that sentencing judges and magistrates have ‘a range of sentencing tools at their disposal’ to give effect to research on the most effective interventions in family violence offending, and they observe that ‘as with much offending, there is a greater deterrence effect gained not from the imposition of longer sentences but by the management of risk’.¹⁸³

7.17 In this chapter, the role of sentencing as an opportunity for intervention and to manage risk is discussed in relation to the use of fines and the Criminal Justice Diversion Program.

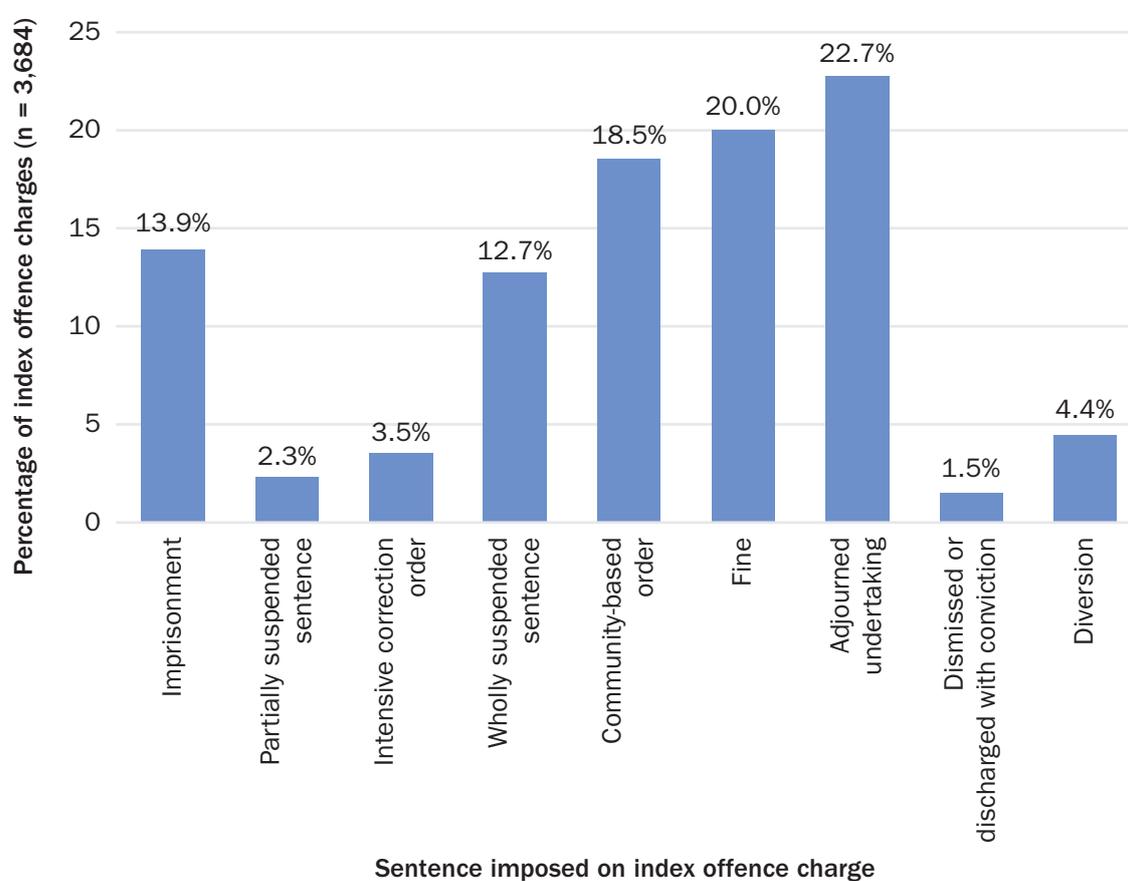
182. Hawkins and Broughton (2016), above n 21, 22–23.

183. Ibid 22.

Overview of the sentences imposed on index offences

7.18 Figure 24 shows the sentence imposed on the 3,684 index offence charges in 2009–10. Where an index offender received multiple sentence types for an index offence charge in the case, the most serious sentence imposed was selected. Sentences ranged from imprisonment (513 or 13.9%) to fines (738 or 20.0%), adjourned undertakings (838 or 22.7%), and dismissals or discharges (55 or 1.5%). Just over 4% of index offence charges (163 charges) were dealt with by way of diversion.¹⁸⁴ For index offenders sentenced to imprisonment, the median length of imprisonment for the case was five months.

Figure 24: Percentage of index offence charges, by sentence imposed, 2009–10¹⁸⁵



184. In certain circumstances, the Magistrates' Court may adjourn proceedings against an accused for up to 12 months to enable the person to complete the diversion program: *Criminal Procedure Act 2009* (Vic) s 59. For further discussion of the use of diversion for contravention offences see [7.57]–[7.70].

185. Other sentence types not displayed in Figure 24 comprise combined custody and treatment orders, hospital security orders, and youth justice centre orders. These sentences were only imposed for 0.3% of index offence charges in total. Since 2009–10, numerous changes to the sentencing landscape have affected sentencing for contravention offences, for example, the abolition of suspended sentences in Victoria. At the same time, sentencing practices for contravention offences have changed. This ongoing process of change in contravention sentencing means that the sentencing practices reported here do not necessarily reflect sentencing as it is in 2016. See further Sentencing Advisory Council (2015), above n 36, 27–31.

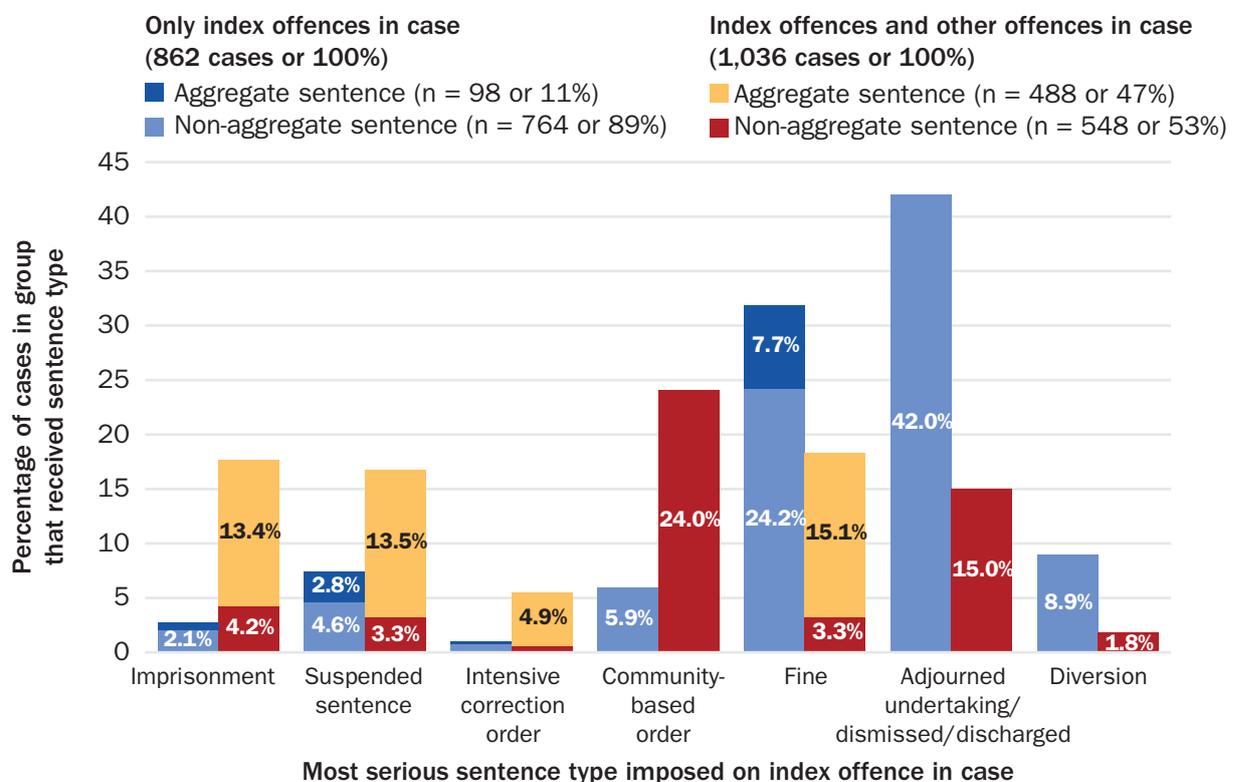
The influence of other offences on the sentences imposed for the index offences

Influence of the *presence* of other offences on the sentence for the contravention charge

7.19 Figure 25 examines the distribution of the most serious sentence type imposed on an index offence in each case, and shows that the sentence type for the index offence charge appears to be influenced by both the presence of other offence types sentenced in the case and whether or not an aggregate sentence was imposed.

7.20 A court may impose an aggregate sentence of imprisonment¹⁸⁶ or an aggregate fine¹⁸⁷ (or both)¹⁸⁸ – instead of individual sentences for each charge in a case – where the court convicts an offender of two or more offences that are *founded on the same facts, or form, or are part of, a series of offences of the same or a similar character*.¹⁸⁹ Of the 1,036 index offenders who were co-sentenced for other offence types alongside their index offence, 488 received an aggregate sentence for the contravention charge (47.1%). The use of aggregate sentences for the index offence and other co-sentenced offences in these cases makes it likely that the charges were part of the same incident or otherwise related. This provides some context for the co-sentenced offences presented in Figure 9.

Figure 25: Most serious sentence imposed on an index offence charge, by contents of case and sentence aggregation, 2009–10¹⁹⁰



186. *Sentencing Act 1991* (Vic) s 9.

187. *Sentencing Act 1991* (Vic) s 51. The court may impose one fine for these offences that does not exceed the sum of the maximum fines that could be imposed for each offence, subject to certain qualifications.

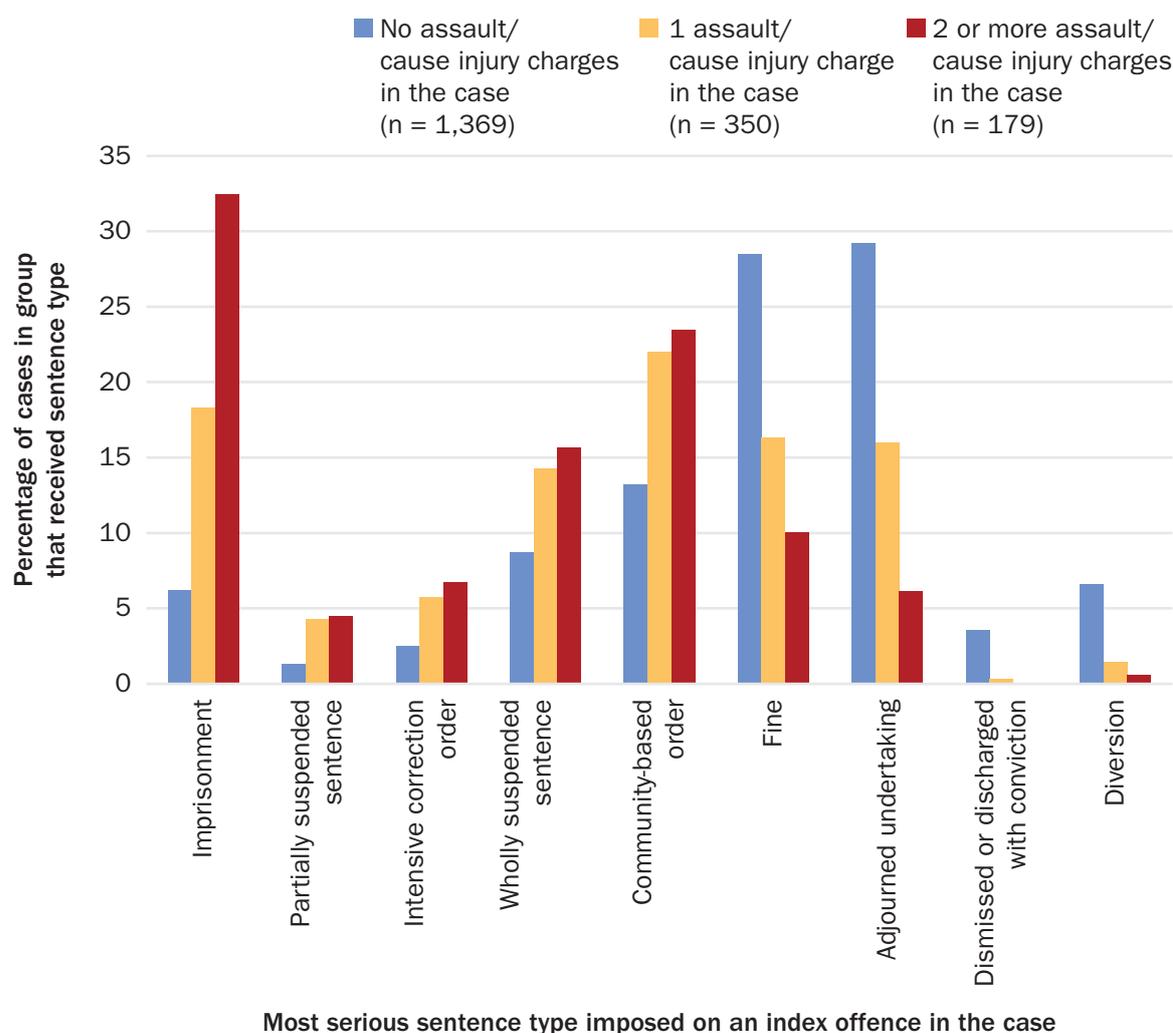
188. *Sentencing Act 1991* (Vic) s 49.

189. *Sentencing Act 1991* (Vic) s 9(1). The maximum aggregate sentence of imprisonment that can be ordered by a magistrate in a case with multiple charges is five years: *Sentencing Act 1991* (Vic) s 113B.

Influence of the *number of co-sentenced assault/cause injury charges on the sentence for the contravention charge*

7.21 Sentences imposed for index offences also appear to be influenced by the *number* of other offence type charges sentenced. For example, the presence and number of assault/cause injury charges co-sentenced with index offences appeared to influence the most serious sentence for the contravention charge (Figure 26). The imprisonment rate for index offences progressively increased as the number of co-sentenced assault/cause injury charges increased, while the rate of community-based orders rose from 13.2% of cases with no assault/cause injury charges to 23.5% of cases with two or more assault/cause injury charges. Fines decreased from 28.5% of cases with no assault/cause injury co-sentenced charges to 10.1% of cases with two or more assault/cause injury charges sentenced alongside an index offence. The use of fines in sentencing contravention offences is discussed next.

Figure 26: Most serious sentence type imposed on an index offence in the case, by number of assault/cause injury charges also present in the case, 2009–10¹⁹¹



190. The numbers displayed in Figure 25 are percentages of the type of sentence (aggregate and non-aggregate) of all sentences in that offence category (index offence(s) only and other offences). Other sentence types not displayed comprise combined custody and treatment orders, hospital security orders, and youth justice centre orders. These sentences were only imposed for index offence charges in cases with other sentenced offences (0.7% aggregate and 0.2% non-aggregate in total).

191. Other sentence types not shown here comprise combined custody and treatment orders, hospital security orders, and youth justice centre orders.

Fines

7.22 In a number of previous reports, the Council has cautioned against the use of fines in sentencing contravention offences,¹⁹² even if an offence appears relatively minor to the sentencing court. Others have raised similar concerns.¹⁹³ Fines have been criticised as being an inappropriate and ineffective sentencing disposition for contravention offences on the basis that:

- fines may compound the harm experienced by the victim, for example, if the offender coerces the affected family member into paying the fine, or if the offender and victim are in a relationship of financial interdependence and the offender's fine payment withdraws resources from the family as a whole;
- fines are unable to provide any level of rehabilitation of the offender or protection of the victim and the community;
- fines do not address the offender's risk and are unlikely to deter future offending; and
- unpaid fines mean the offender escapes any legal consequence, accountability, or punishment for the offending behaviour.¹⁹⁴

7.23 A qualifier to the criticism of fines as a sentence for contravention offences is the use of fines in cases in which the court has already used a period of deferred sentencing prior to imposing the fine.¹⁹⁵ The court may defer sentencing an offender for up to 12 months to allow the offender to demonstrate rehabilitation or participate in a program aimed at addressing the underlying causes of the offending, among other such purposes. During the deferral, the offender may be required to appear in court for a review and, if the offender is not complying with the requirements of the deferral or the court decides that the continued deferral is no longer appropriate, the sentencing of the offender can immediately be brought forward.¹⁹⁶

7.24 Consulted magistrates noted that data on the number of fines imposed for contravention charges did not indicate the proportion of fines that had been imposed following the deferral of the offender's sentencing. Deferred sentencing can be an effective tool in some cases, as it is a therapeutic approach that ensures that the offender remains accountable to the court while engaging in relevant programs to address the underlying causes of the offending behaviour. When sentencing the offender at the end of the deferral period, the court must take into account the offender's behaviour during the deferral period.¹⁹⁷ In cases in which the offender has cooperated with the terms of the deferral, this may warrant a less serious sentence (such as a fine) than would have been imposed had the offender not actively participated in programs, counselling, and other such measures during the deferral period.¹⁹⁸ Even in the

192. Sentencing Advisory Council (2009), above n 27, 134; Sentencing Advisory Council (2009), above n 103; Sentencing Advisory Council (2015), above n 36, 49.

193. See for example, Centre for Innovative Justice (2015), above n 15, 54. Stakeholders at the Family Violence Roundtable reiterated their previous concerns about the use of fines for sentencing contravention offences, even if the contravention offence appears relatively minor: Family Violence Roundtable (9 February 2016).

194. Sentencing Advisory Council (2009), above n 27, 50–55, 134; Sentencing Advisory Council (2009), above n 103; Sentencing Advisory Council (2015), above n 36; Centre for Innovative Justice (2015), above n 15, 54; Australian Law Reform Commission (2010), above n 14, 509–543. See [7.38]–[7.43] for a discussion of fine repayment.

195. If the Magistrates' Court or the County Court finds a person guilty of an offence and is of the opinion that sentencing should, in the interests of the offender, be deferred and the offender agrees to the deferral, the court may defer sentencing the offender for up to 12 months, for example, to allow the offender to participate in programs aimed at addressing the underlying causes of the offending: *Sentencing Act 1991 (Vic)* s 83A.

196. *Sentencing Act 1991 (Vic)* ss 83A(1A)–(1D).

197. *Sentencing Act 1991 (Vic)* s 83A(3)(a).

198. Meeting with Supervising Magistrates, Family Violence and Family Law, Magistrates' Court of Victoria (9 March 2016).

absence of a formal deferral, some offenders may immediately engage with a rehabilitation program or service (such as seeing a psychologist) upon being charged or seeking legal advice, and, as a result of their progress, by the time they are sentenced, the court may decide that a fine is appropriate.¹⁹⁹

- 7.25 In some cases, the use of fines may be explained by the offender's pre-sentence rehabilitation efforts and/or the accompanying use of deferred sentencing (which is not included in the data). In other cases, it is likely that fines were imposed at first instance. Since its 2009 review, the Council, along with other organisations, has repeatedly cautioned against, or raised concerns in relation to, the use of fines for sentencing contravention charges.²⁰⁰ In 2015, the Centre for Innovative Justice (CIJ) echoed the Council's concerns:

Of equal concern are sentences imposed upon a perpetrator, if convicted, which are not seen to reflect the gravity of the crime. For example, the CIJ was contacted by one woman who, having repeatedly pursued a response to her former partner's multiple breaches of an intervention order, was extremely distressed and frustrated when he received only a fine as punishment, an amount that was a small percentage of his annual income. By contrast, the violence still had an ongoing effect on the wellbeing of this woman and her children. A similar concern about the use of fines, as well as comparatively short custodial sentences, was echoed throughout the CIJ's consultations.

Courts and jurisdictions are well aware of all these criticisms and are working hard to address them. Specialist courts ... are part of these efforts. As one Magistrate remarked in consultations, 'we want women to come to court, there needs to be a visible justice response, but it also has to be a safe one'.²⁰¹

- 7.26 In its 2009 report on breaching intervention orders, the Council concluded that the major purpose of sentencing in contravention cases should be to achieve ongoing compliance with intervention orders, which will ultimately lead to better protection of victims and their families. The Council emphasised that in some cases this purpose could be served by rehabilitative measures, rather than punitive outcomes.²⁰²
- 7.27 Since the 2009–10 sentencing of the index offenders discussed in this study, the response to family violence by the courts and the criminal justice system has continued to evolve, and sentencing patterns have changed considerably, including an increase in the use of imprisonment and community sentences (such as community correction orders). However, in 2014–15, fines were still used to sentence one in four offenders for contravening family violence intervention orders (Figure 27, page 66). The information in this study on the offending patterns of index offenders provides new evidence as to why the use of fines for family violence offences remains problematic.

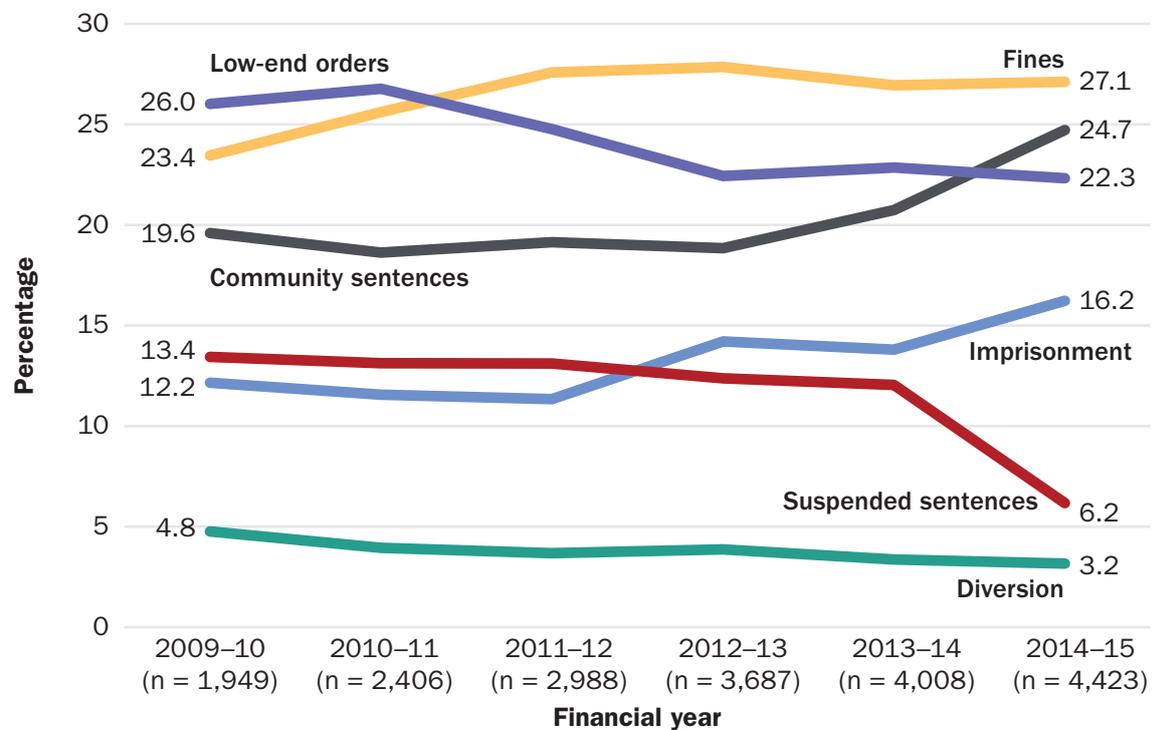
199. Meeting with Representatives of Victoria Legal Aid (12 February 2016).

200. See for example, Sentencing Advisory Council (2015), above n 36; Centre for Innovative Justice (2015), above n 15; Australian Law Reform Commission (2010), above n 14, 509–543.

201. Centre for Innovative Justice (2015), above n 15, 23 (citation omitted). The Centre for Innovative Justice refers to recent Victorian Magistrates' Court initiatives, including expanding dedicated services to all headquarter courts, increasing the availability of safe waiting areas, a video conferencing pilot, a two-day specialist course for all magistrates on the dynamics of family violence, and trialling a fast-tracking procedure for family violence offences, including breaches, to be brought within a set timeframe: see Magistrates' Court of Victoria (2014), above n 22.

202. Sentencing Advisory Council (2009), above n 103.

Figure 27: Percentage of cases, by the most serious sentence imposed on a charge of contravening an FVIO in the case, Magistrates' Court of Victoria, 2009–10 to 2014–15²⁰³



7.28 Participants in the Council's Family Violence Roundtable commented that the data on the reoffending rate and number of reoffending sentence events shows the 'intractable' nature of the problem and that sentences and offender rehabilitation programs are not dealing adequately with underlying behaviour. One participant said that the data indicates that perpetrators are not being properly held to account for family violence; another participant commented that the data indicates that fines are not effective in dealing with this type of offending.²⁰⁴

203. Sentencing Advisory Council (2015), above n 36, 31 (Figure 7). The percentages for each period may not total 100% as 'other' sentences (which accounted for less than 1% of sentences) are not shown. Figure 27 shows the sentences imposed for the *principal* family violence intervention order (FVIO) contravention offence in a case (that is, the FVIO contravention offence that received the most severe sentence in a case). The percentages shown in relation to the year 2009–10 in Figure 27 vary slightly from the percentages shown in Figure 24 due to slight differences in counting rules.

204. Family Violence Roundtable (9 February 2016). See further Appendix A.

Use of fines in cases with co-sentenced assault/cause injury offences

- 7.29 This study has shown that one in two index offenders committed an assault/cause injury offence over the 11-year study period. For these index offenders, the sentencing hearing in 2009–10 was an opportunity to assess and address their risk and behaviour.
- 7.30 In almost one in six cases in which index offenders were fined for a contravention offence, they were also sentenced for at least one assault/cause injury offence (75 out of 465 cases or 16.1%). Conversely, in more than one in 10 cases in which the contravention charge was co-sentenced with assault/cause injury, the index offender received a fine for the contravention offence (75 index offenders or 14.1% – Figure 26).
- 7.31 Of these 75 index offenders, 58 were also fined for the assault/cause injury charge(s),²⁰⁵ and all of these fines were aggregate. This suggests that the assault/cause injury was related to the index contravention offence, as aggregate fines may only be imposed where an offender is convicted by a court of two or more offences that are *founded on the same facts, or form, or are part of, a series of offences of the same or a similar character*.²⁰⁶
- 7.32 Of the 75 fined index offenders who were also sentenced for assault/cause injury offences:
- 44 had at least one prior sentence;
 - 10 had at least one prior sentence for a contravention/breach offence and 18 had at least one prior sentence for an assault/cause injury offence (six had prior sentences for both contravention/breach and assault/cause injury); and
 - one in four reoffended with at least one assault/cause injury offence.
- 7.33 A participant at the Family Violence Roundtable commented that his/her organisation receives constant feedback that women want sentences that provide safety and give them a sense of justice. It was almost universally agreed at the roundtable that fines do not achieve any key purpose when used as a sentence for contravention offences. Participants were particularly concerned to hear that offenders had received fines in cases in which the contravention offence was accompanied by one or more assault/cause injury offences.²⁰⁷

205. Of the 75 people who received a fine for the index offence in a case in which at least one assault/cause injury charge was also sentenced, the most serious penalty in each case for the assault/cause injury charges were a fine (58 or 77.3%), a wholly suspended sentence (8 or 10.7%), imprisonment (6 or 8.0%), an adjourned undertaking (2 or 2.7%), and a partially suspended sentence (1 or 1.3%).

206. *Sentencing Act 1991 (Vic)* s 9(1).

207. Family Violence Roundtable (9 February 2016). See further Appendix A.

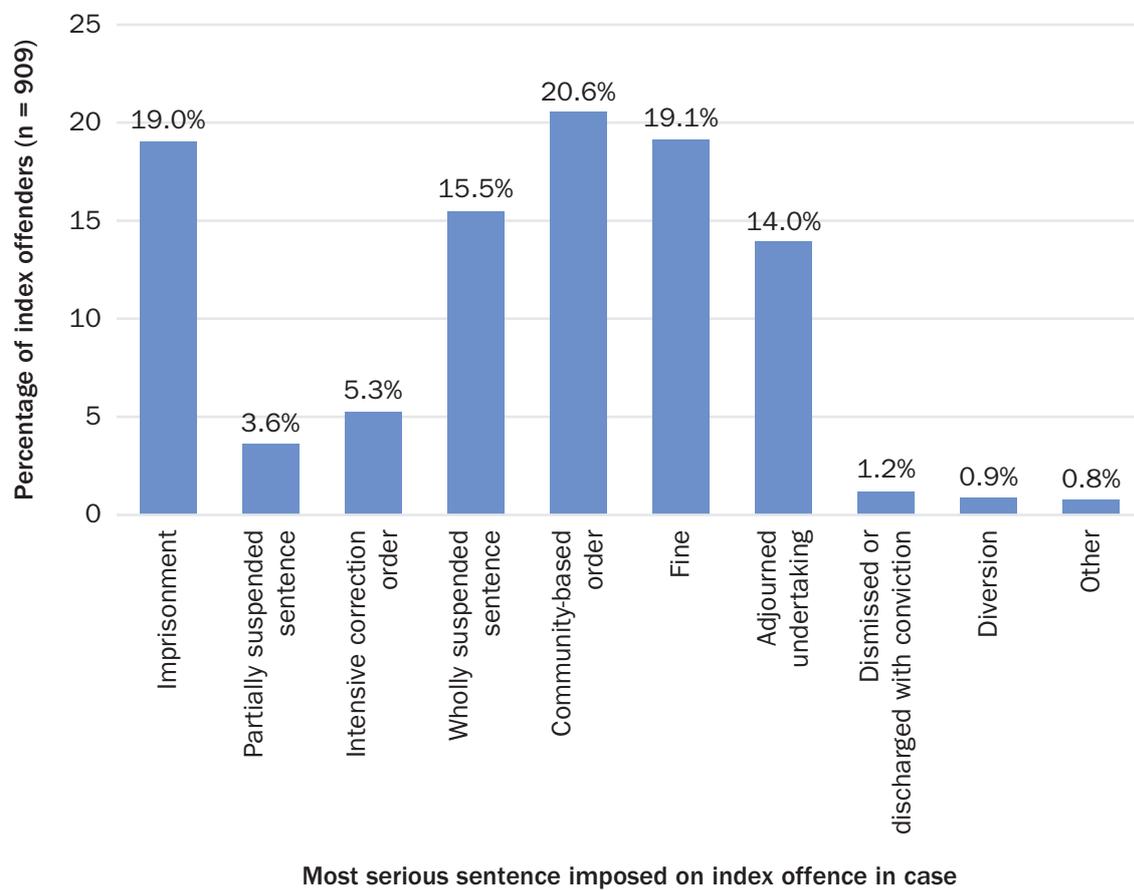
Assault/cause injury before or with the contravention

7.34 The previous discussion examined the use of fines in cases with *co-sentenced* assault/cause injury offences. This discussion adds to the analysis:

- *prior* assault/cause injury offences; and
- *co-sentenced* and *prior* threat to kill/injure offences.

7.35 Almost half of the index offenders (909 or 47.9%) had previously been sentenced and/or were sentenced at the index sentence for assault and/or threat offence(s). Figure 28 shows that this group received imprisonment, community-based orders, and fines for the contravention offence in almost equal numbers (around 20% each).

Figure 28: Percentage of index offenders with prior or co-sentenced assault/cause injury or threat to kill/injure, by the most serious sentence imposed for an index offence charge, 2009–10²⁰⁸



208. 'Other' sentence types comprise combined custody and treatment orders, hospital security orders, and youth justice centre orders. A general overview of sentencing outcomes for all index offenders is presented in Figure 25.

Reoffending after a fine

- 7.36 Of the 465 index offenders who were fined for their index offence in 2009–10:²⁰⁹
- one in two (233 or 50.1%) reoffended generally in the next five years;
 - one in five (97 or 20.9%) reoffended with a contravention/breach offence in the next five years; and
 - one in five (96 or 20.6%) reoffended at least once with an assault/cause injury offence in the next five years (19 of whom had been co-sentenced for an assault/cause injury offence at the time that they were fined for the index offence).
- 7.37 The 96 index offenders who reoffended with assault/cause injury offences were collectively sentenced for 299 assault/cause injury charges in the five years after their index offence. In total, their reoffending in this five-year period involved 2,049 sentenced charges.

Fine payment

Repayment rate for all offenders fined in 2009–10

- 7.38 The Council's 2014 review of fine imposition and enforcement in Victoria revealed that of the 28,543 Magistrates' Court cases in which fines were imposed in 2009–10 (for any offence type), only 55.6% of the fines had been paid as at 2012–13.²¹⁰

Repayment for fined index offenders

- 7.39 The repayment data used for the 2014 fines review was matched to the index offender group in this study, revealing that index offenders had an even lower repayment rate than the general offender population who were fined in the same year. Less than half of the 465 fined index offenders had completed repayment of their fines by June 2013 (221 or 47.5%).²¹¹

Association between non-payment and reoffending

- 7.40 In the 2014 Fines Review, the Council also found an association between non-payment of fines and reoffending.²¹² A similar association was found for the 465 fined index offenders in the current study (Figure 29, page 70).
- 7.41 Of the 221 fined index offenders who had completed payment of their fine by June 2013, 43.9% reoffended at least once in their five years after their index sentence. The reoffending rate jumped to 56.9% for the 202 fined index offenders who had made no repayments by June 2013. This difference was statistically significant.

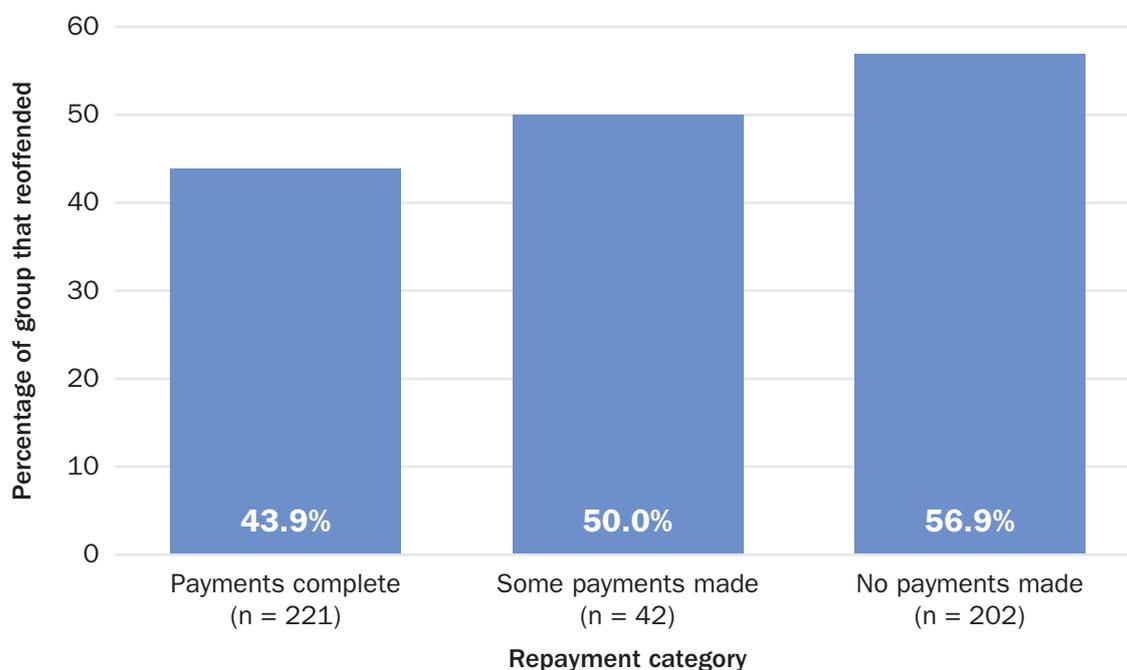
209. Where index offenders had multiple index offences, the most serious sentence imposed upon an index offence in the case was the sentence used for analysis.

210. Sentencing Advisory Council (2014), above n 48, 36. Although fine 'payment' included non-monetary forms of repayment such as community work and imprisonment, fine repayment for this group was overwhelmingly through monetary payment: at 42.

211. Fine payment data was available to June 2013 and includes the non-monetary forms of repayment such as community work and imprisonment where the fine amount is converted to a time value. Fine payment is considered for all the fines in these 465 cases and is not specific to any charges in the case. That is, full payment was indicated when all fines in the case were paid in the period available for cases of interest.

212. Sentencing Advisory Council (2014), above n 48, 45.

Figure 29: Reoffending rate (from 2009–10 to 2014–15) of index offenders whose most serious sentence for an index offence was a fine, by whether the fine had been paid by 30 June 2013



7.42 A higher proportion of index offenders who had made no repayment by June 2013 reoffended with an assault/cause injury offence than index offenders who had fully paid their fine (24.8% and 17.6% respectively).²¹³ Similarly, a higher proportion of index offenders who did not make any payments reoffended with a contravention/breach offence (57 or 28.2%) than index offenders who completed payment (37 or 16.7%). This difference was also statistically significant.²¹⁴

7.43 In its 2014 report on fines, the Council commented that:

the effectiveness of a fine is questionable in circumstances where the recipient has not paid the fine and has subsequently reoffended. In such circumstances, it is difficult to see which purpose or purposes of sentencing the fine has achieved. If the fine is unpaid, the offender has escaped punishment and others are less likely to be deterred. If the offender has reoffended, it is difficult to argue that the offender has been rehabilitated or deterred, or that the community has been protected. While the act of imposing the fine, including the fine amount, may manifest the court’s denunciation of the type of conduct, that denunciation is weakened if the fine is not enforced.²¹⁵

213. Of the 42 offenders who had made some payment of their fine by June 2013, seven reoffended at least once with an assault/cause injury offence in the five years after their index offence.

214. Of the 42 offenders who had made some payment of their fine by June 2013, three reoffended at least once with a contravention/breach offence in the five years after their index offence.

215. Sentencing Advisory Council (2014), above n 48, 47.

Comment

- 7.44 For the 233 fined index offenders who reoffended, the 2009–10 sentence was arguably a missed opportunity to intervene and use the sentencing exercise to the fullest extent possible to deter the offender, maximise safety, and protect the community. Ninety-six of these offenders were collectively sentenced for a further 299 assault/cause injury charges. Arguably, at least some of these offences might have been prevented if the 2009–10 sentencing exercise had more effectively engaged the index offender and addressed his or her behaviour.
- 7.45 Where the fines of index offenders who reoffended – particularly with violence or further contraventions – went unpaid, the use of fines is particularly problematic, given that:
- the purpose of the *Family Violence Protection Act 2008* (Vic) – in which the two index offences are situated – is to maximise safety, reduce family violence, and promote the accountability of the offender for his or her behaviour;²¹⁶ and
 - the *Sentencing Act 1991* (Vic) provides that the *only* purposes of sentencing are to punish the offender or to denounce the offender's conduct, to deter the offender or others from future offending, to facilitate the offender's rehabilitation, or to protect the community.²¹⁷
- 7.46 Although sentencing this offender cohort is a complex exercise, it is difficult to see what sentencing purposes were achieved in cases in which the fine was not paid and the index offender reoffended. Similarly, it is difficult to see how the purpose of the *Family Violence Protection Act 2008* was reflected.
- 7.47 One qualifier is that it is unknown whether the fine in any of these cases followed a period of deferred sentencing during which the court supervised the index offender and put in place measures to address the underlying causes of the offending behaviour. Such cases might more easily be reconciled with the purposes of holding the offender accountable and establishing conditions to facilitate the offender's rehabilitation.
- 7.48 The Council's Guiding Principles were intended to guide the sentencing of contraventions of family violence intervention orders, based on the presence of particular factors.²¹⁸ Speaking at the launch of the Guiding Principles on 23 June 2009, the then Chief Magistrate Ian Gray commented that they were:
- valuable because they recognise the importance of judicial discretion on the one hand and acknowledge that difficulties in current sentencing practices may occur because of lack of information provided to the courts.²¹⁹
- 7.49 He emphasised the 'need for the sentencing exercise to be seen at least in part and probably centrally through the prism of safety and protection for those who obtain the order in the first place'.²²⁰
- 7.50 The Guiding Principles set out factors that may place a case in the 'low' category, for which sentencing dispositions such as an adjourned undertaking, a fine, or a community-based order (since abolished) may be appropriate. Factors placing a case in this category included that the offender had no prior family violence convictions (or very few non-family violence convictions).

216. *Family Violence Protection Act 2008* (Vic) s 1. See further [1.41]–[1.42], [7.2]–[7.3].

217. *Sentencing Act 1991* (Vic) s 5(1).

218. Sentencing Advisory Council (2009), above n 103.

219. Ian Gray, Launch Speech for Sentencing Advisory Council, *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (Melbourne, 23 June 2009).

220. *Ibid.*

- 7.51 Factors moving a particular case up to the category of 'medium' (which would now arguably suggest a community correction order as the appropriate disposition) included more than one instance of offending and/or the offender having some *relevant prior convictions*.²²¹
- 7.52 Six years have passed since the index offenders were sentenced, and sentencing practices have changed since then.²²² Of concern, however, is the use of fines to sentence contraventions in cases where the index offender has prior or co-sentenced offences of assault/cause injury and/or threat to kill/injure, in light of the increased risk of future family violence that may be indicated by such conduct.²²³ Given that subsequent Council reports on sentencing for contravention offences have highlighted the continued (and recently increasing) use of fines for contravention offences,²²⁴ the issues raised previously remain current.
- 7.53 The findings in this study – particularly in relation to reoffending, fine repayment, and the propensity of this offender cohort to commit assault/cause injury offences – raise further questions about the effectiveness of fines as the sole penalty when sentencing contravention offences.
- 7.54 The ongoing concern about the use of fines in sentencing contravention offences was one of the issues raised with the Royal Commission into Family Violence. The Royal Commission noted that family violence intervention orders 'are an important way of keeping victims safe and preventing perpetrators from continuing their use of violence',²²⁵ commenting that '[w]hatever laws we have will be only as effective as those who enforce, prosecute and apply them'.²²⁶ The Royal Commission considered that the most effective way to address concerns about current sentencing practices was to '[improve] these practices—through education, training and embedding best practice and family violence expertise in the courts' and recommended that:
- the Magistrates' Court continue its move to a more therapeutic and specialised approach to family violence that supports victims and promotes perpetrators' compliance with court orders. It proposes that within five years family violence matters should be heard in specialised courts, which should also have the ability to hear related matters involving the same family.²²⁷
- 7.55 Further, the Royal Commission concluded that:
- More work is needed to develop a suite of interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, reducing re-offending and meeting the needs of victims.²²⁸
- 7.56 The successful implementation of the Royal Commission's recommendations is expected to support and augment the Magistrates' Court's existing efforts to bring a more therapeutic approach to family violence matters, including the sentencing of contravention offences. The results of this study add to the body of evidence that is available to inform the effective implementation of these recommendations.

221. Sentencing Advisory Council (2009), above n 103, 5.

222. See further Figure 27; Sentencing Advisory Council (2015), above n 36, 2–3, 31.

223. Department of Human Services (2012), above n 1, 27.

224. Sentencing Advisory Council (2013), above n 27, 51; Sentencing Advisory Council (2015), above n 36, 31. The 2015 study found that fines remained a relatively common penalty for non-aggravated family violence intervention order and family violence safety notice contravention, even through the use of imprisonment and community sentences had increased since the three-year period from July 2009 to 30 June 2012. In 2014–15, fines were imposed in 27.1% of non-aggravated family violence intervention order contravention cases, which was a 3.7% increase in their use.

225. State of Victoria, Royal Commission into Family Violence (2016), above n 17, 156.

226. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 27.

227. *Ibid* 26.

228. *Ibid* 28.

The Criminal Justice Diversion Program

7.57 In certain circumstances, the Magistrates' Court may adjourn proceedings against an accused for up to 12 months to enable the person to complete a diversion program.²²⁹

7.58 A diversion order is not a 'sentencing' order as it operates without any finding of guilt (although the accused must acknowledge his or her responsibility for the offence). Instead, a diversion order is an 'alternative and/or complementary procedure to normal case processes', intended to:

provide benefits to the victim (if any), the accused and the community as a whole. Victims are actively engaged and are invited to participate in the process, including on matters regarding restitution and how the offence has affected them; victims frequently receive letters of apology from the accused. Accused benefit from the program by avoiding an accessible criminal record, by receiving appropriate assistance through rehabilitation, counselling and/or treatment, whilst the community benefits by way of donations or unpaid community work to various charities or local community projects.²³⁰

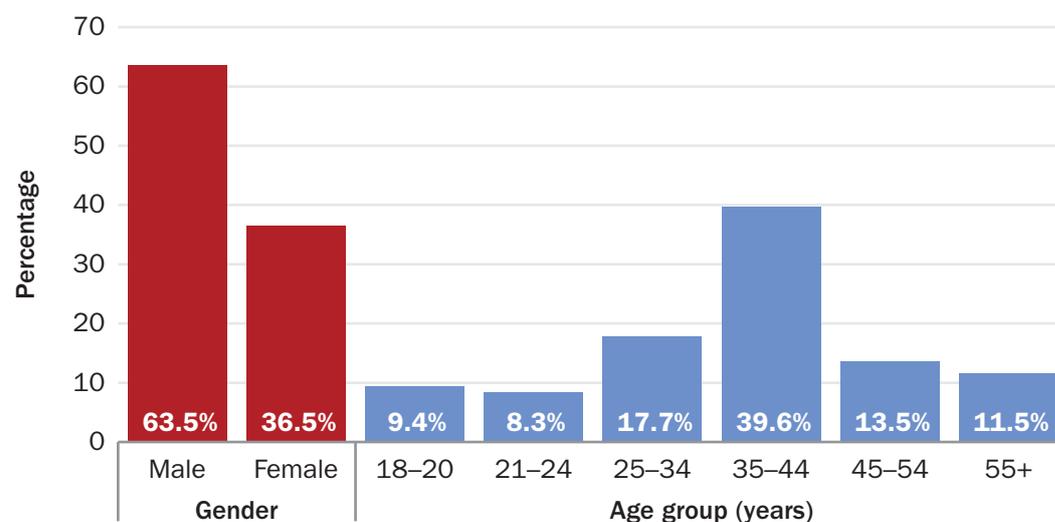
7.59 A diversion plan may require the accused to comply with any condition that the magistrate or registrar decides, for example:

- apologising to the victim in a letter or in person;
- compensating the victim;
- attending counselling and/or treatment;
- performing voluntary work; and/or
- donating money to a charitable organisation.²³¹

Index offenders who received a diversion order

7.60 In total, 96 index offenders (5.1%) received an order for diversion for their index offence (Figure 25). The age and gender distribution of index offenders who received a diversion order is presented in Figure 30.

Figure 30: Percentage of index offenders who received an order for diversion for their index offence charges, by age and gender, 2009–10



229. *Criminal Procedure Act 2009* (Vic) s 59.

230. Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (Magistrates' Court of Victoria, 2016) <<https://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program>> at 15 June 2016.

231. *Ibid.*

Diversion in cases with at least one assault/cause injury charge sentenced

- 7.61 Six index offenders with co-sentenced assault/cause injury charges received diversion for their index offence charge(s) (Figure 28 and Table 8). All of these index offenders also received diversion for all of the other charges in their case, including the assault/cause injury charges. The six cases are set out in Table 8.
- 7.62 The offender in Case 2 was the only one of the six index offenders with prior offences in the five years before the index sentence. He had one prior sentence for driving offences including careless driving, driving without 'L' plates displayed and without a qualified driver, and failing to report an accident to the police when the owner of the vehicle was not present. He was sentenced to a fine for these offences.
- 7.63 The offender in Case 1 was the only one who reoffended within five years of the index sentence. In July 2013 – more than three years after her index sentence – she was sentenced for unlawful assault and failing to have a valid ticket on public transport. The court dismissed the charges without conviction.²³² In deciding to do so, the court would have been unaware that the offender had received a diversion order in 2010 for assault, criminal damage, and contravening a family violence intervention order.

Table 8: Overview of six cases with co-sentenced assault/cause injury offences, in which the index offender received a diversion order, 2009–10

Case	Age (at index sentence)	Gender	Offences in case
1	18	Female	Unlawful assault Criminal damage Contravene family violence intervention order
2	21	Male	Unlawful assault Criminal damage Contravene family violence intervention order
3	25	Male	Unlawful assault Theft of a motor vehicle Possess controlled weapon without excuse Two charges of contravening a family violence intervention order
4	41	Female	Unlawful assault Contravene family violence intervention order
5	47	Male	Unlawful assault Contravene family violence intervention order
6	55	Male	Recklessly cause injury Two charges of unlawful assault Contravene family violence safety notice

232. Under section 76 of the *Sentencing Act 1991* (Vic), a court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) dismiss the charge.

Proportion of index offenders on diversion who reoffended

- 7.64 Of the 96 index offenders who received diversion for their index offence, 26 reoffended (27.1% of index offenders who received diversion).²³³
- 7.65 The reoffending rate of index offenders who received diversion was lower than that for the overall index offender population (52.5%). This may reflect the factors that caused the police and the court to agree to the diversion, rather than the operation of the diversion order itself. A concerning aspect of reoffending by diversion recipients is that, due to the way in which diversion operates, the court tasked with sentencing the subsequent offences would not be aware of the previous contravention offence(s) (this is illustrated by the example discussed at [7.63] and by Case Study 3).

Case Study 3: Reoffending by a diversion recipient

Index sentence

In 2009, D was charged with one count of contravening a family violence intervention order. He had no prior offences in the five years leading up to that count. The charge was dealt with by way of an order for diversion. There is insufficient data to ascertain the identity or relationship of the affected family member in this case.

Subsequent offence 1

A jury found D guilty of a serious violent offence against the former partner of D's new partner (after Family Court disputes about assets and custody). On the plea, D's counsel submitted that he had previously been of good character and tendered character references. In light of these references, the sentencing judge found that D was regarded as a non-violent person by those who had known him well, and that *there was nothing in his background to suggest otherwise*. The judge would not have been made aware of the previous contravention charge that had been dealt with by way of diversion.

Subsequent offence 2

About one year after the contravention offence, and 16 days after subsequent offence 1, the offender committed one count of intentionally damaging property (criminal damage) and one count of making a false report to police. This offence was sentenced after subsequent offence 1 was sentenced. The sentencing court would not have had information about the previous contravention offence, even if the criminal damage offence was family violence related.

- 7.66 The Common Risk Assessment Framework identifies previous or current breach of an intervention order as 'a serious indicator of increased risk of future violence'.²³⁴ Particularly in cases in which subsequent offending involves family violence, it is troubling that the highly relevant information about a past contravention or contraventions would not be available to the sentencing court because of a diversion outcome. In such circumstances, the sentencing court may be less likely to identify a pattern of offending or increasing risk and may view the subsequent offence as 'isolated' or 'out of character' rather than another step on a continuum of violence that is possibly escalating.
- 7.67 At the Family Violence Roundtable, participants emphasised that the diversion program remains an important disposition for contravention cases in certain, rare circumstances, while acknowledging its shortcomings in terms of alerting future sentencing courts to previous

233. Of the six index offenders who received diversion for the index offence and an assault/cause injury offence or offences, one index offender reoffended in the five years after the index sentence: see [7.63].

234. Department of Human Services (2012), above n 1, 27.

contraventions.²³⁵ Representatives of Victoria Police and Victoria Legal Aid agreed with this view, representatives of Victoria Legal Aid describing diversion as 'crucial' and Victoria Police representatives adding that the more tools that the court has available to them, the better equipped courts are to deliver effective sentences for this offender cohort.²³⁶

7.68 Roundtable participants, and representatives of Victoria Police and Victoria Legal Aid, all reported that police rarely agree to a diversion in family violence matters, unless the offending is of a very minor nature.²³⁷ These stakeholders independently provided the same examples of when diversion could be an appropriate disposition for contravention offences:

1. Where the primary perpetrator of violence takes out an intervention order against an affected family member as 'another act of control', and appears to have 'set them up' to breach the order – particularly in circumstances in which the affected family member is from a culturally or linguistically diverse background and may not fully understand the terms of the order or proceedings.
2. Where the requirements of a Family Court order are inconsistent with an intervention order, and the breach is confined to conduct that complies with the Family Court order (for example, sending a text message that is solely about child contact). This issue was also raised in the Centre for Innovative Justice's report, which cautioned that:

'siloining' between child protection, family law and Magistrates' Courts – such as inconsistency between family law orders which direct that contact should take place and family violence orders which prohibit it – can often mean that jurisdictions work against each other to the detriment of the victim of family violence and her children.²³⁸

7.69 A question arises as to whether contravention offences should be specifically excluded from the diversion program, such as has been done for other offences like drink-driving.²³⁹ In response to this question, roundtable participants expressed the view that contravention offences should not.²⁴⁰ However, participants emphasised that the use of diversion should be confined to rare circumstances and that diversion orders, if granted, should incorporate a structured rehabilitation plan.²⁴¹ Participants commented that diversion could be used as an opportunity for early intervention for offenders who have not previously offended – particularly young adult offenders.²⁴² While the most common age for diversion was 35–44 years old in 2009–10 (Figure 10), it is possible that the approach to diversion and consequently the age distribution of its recipients have changed in more recent years.

7.70 Representatives of Victoria Legal Aid and Victoria Police reported that in contravention cases, diversion is becoming increasingly more difficult to obtain, and it is usually confined to only exceptional cases (such as the above examples).²⁴³ This was supported by the data, which showed that the use of diversion in relation to charges of contravening a family violence intervention order or safety notice has decreased from 4.8% of contravention cases sentenced in 2009–10 to 3.2% of contravention cases sentenced in 2014–15 (see Figure 27).²⁴⁴

235. Family Violence Roundtable (9 February 2016).

236. Meeting with Representatives of Victoria Police (11 February 2016); Meeting with Representatives of Victoria Legal Aid (12 February 2016).

237. Family Violence Roundtable (9 February 2016); Meeting with Representatives of Victoria Police (11 February 2016); Meeting with Representatives of Victoria Legal Aid (12 February 2016).

238. Centre for Innovative Justice (2015), above n 15, 81 (citation omitted).

239. *Criminal Procedure Act 2009* (Vic) s 59(1)(b).

240. Family Violence Roundtable (9 February 2016).

241. Family Violence Roundtable (9 February 2016).

242. Family Violence Roundtable (9 February 2016).

243. Meeting with Representatives of Victoria Police (11 February 2016); Meeting with Representatives of Victoria Legal Aid (12 February 2016).

244. See also Sentencing Advisory Council (2015), above n 36, 31.

8. Concluding observations

- 8.1 The focus of this analysis has been on the patterns of prior offending and reoffending of the index offenders. It is important to acknowledge that the majority of index offenders did not reoffend with a contravention offence or have prior offences for contravention. However, over half were sentenced for more than one contravention/breach offence in the 11-year study period. Likewise, over half were sentenced for at least one assault/cause injury offence over the study period.
- 8.2 This study has produced a number of findings, including that young adult offenders have different offending profiles and that there appears to be a correlation between the propensity to contravene intervention orders and the propensity to commit violent offences. These findings have implications for risk assessment (including the current review of the Common Risk Assessment Framework), for the prioritising of certain groups of offenders for behaviour change programs, and for the review of such programs recommended by the Royal Commission into Family Violence.²⁴⁵ The findings also have implications for the approach to sentencing contraventions of a family violence intervention order or safety notice in the future, particularly in light of the changes recommended by the Royal Commission.
- 8.3 Not all of the information that indicates an elevated risk of future violence is available to the sentencing court. However, an offender's prior and co-sentenced offences may be important predictors of future reoffending. According to the Common Risk Assessment Framework, introduced by the Victorian Government in 2007, by virtue of having been found guilty of contravening a family violence intervention order, all index offenders have at least one factor that increases their likelihood of future family violence.²⁴⁶ Consistent with the identification of contravention offences as a risk factor, this analysis found that over half of the index offenders reoffended generally within five years of their index sentence,²⁴⁷ almost one-quarter reoffended with a further contravention/breach offence, and around one in five reoffended with an assault/cause injury offence.
- 8.4 For some index offenders, a history of violent behaviour raises additional risk factors. In this study, particular attention has been paid to violent offending sentenced alongside, or prior to, the index offence. Relevant findings include:
- At the index sentence, more than one in three index offenders had multiple contravention/breach offences (the most common co-sentenced offence type) and over one in four were sentenced for at least one assault/cause injury offence alongside their index offence (Figure 9).
 - The most common prior offence for index offenders was assault/cause injury, with one-quarter of index offenders previously sentenced for assault/cause injury offences (Figure 12).
 - Contravention/breach and assault/cause injury were the two most common reoffence types (Figure 15).
 - Over half of the index offenders were sentenced for at least one assault/cause injury offence over the 11-year study period (see [5.14]).

245. State of Victoria, Royal Commission into Family Violence (2016), above n 9, 56 (Recommendation 40).

246. Department of Human Services (2007), above n 24, 54.

247. The reoffending rate for the index offenders was higher than the reoffending rate for the general offender population sentenced in 2004–05 (37.2%): see Figure 13.

- 8.5 Based on these findings, the Council repeats its previous caution that deterring an offender from further offending and protecting the community – particularly the affected family member(s) – should usually be paramount in the choice of sentencing purpose and disposition in sentencing an offender for contravening a family violence intervention order or safety notice. Even for contravention offences that appear relatively minor, the presence of relevant prior offences in the offender’s criminal history often flags the need for greater intervention than a solely financial penalty.
- 8.6 For family violence related offences, it is crucial that the sentencing exercise is treated by courts as an opportunity to intervene, to prevent behaviour escalating, to assess and address risk, and to ensure that the sentence imposed is effective and purposeful. Where a contravention offender is fined and the fine is unpaid and/or the recipient reoffends (particularly with further violent or family violence related offending), there is a strong argument that the sentence imposed was ineffective, in that it served none of the purposes of sentencing offenders set out in the *Sentencing Act 1991* (Vic). Furthermore, it is difficult to see how the use of a fine in such cases is consistent with the purpose of the *Family Violence Protection Act 2008* (Vic) (which establishes the contravention offences): ‘to maximise safety’, ‘reduce family violence’, and ‘promote the accountability’ of the offender for their actions.²⁴⁸
- 8.7 Where a contravention charge is accompanied by factors that indicate a heightened risk – such as a previous or co-sentenced assault – specific deterrence and community protection are particularly important. In some cases, the best long-term protection may be achieved by sentencing dispositions such as community correction orders or adjourned undertakings, which are able to couple strong deterrence measures with measures designed to facilitate the offender’s rehabilitation through behaviour change programs and other treatment programs. In other cases, the incapacitation of the offender through a custodial sentence may be required. Critical to sentencing contravention offenders is ensuring that the sentence imposed is an effective vehicle for achieving its intended purposes. A clear risk of ineffective sentencing of contravention offences is that the system of intervention orders and safety notices will be undermined.

248. *Family Violence Protection Act 2008* (Vic) s 1.

Appendix A: Methodology for considering reoffending

This study focuses on a cohort of 1,898 adult offenders (the 'index offenders') who were sentenced in the Magistrates' Court of Victoria in 2009–10 for the offences of contravening a family violence intervention order (FVIO) or family violence safety notice (FVSN) (the 'index offences').

The Council's approach to addressing the research questions in [1.5] was primarily statistical, examining administrative data collected by the Victorian Magistrates' Court, the County Court, the Supreme Court, and the Children's Court. Court Services Victoria provided the Council with the data from the courts, and the Council combined the data into one dataset. Sentencing records belonging to the one person were linked together using name and date of birth information attached to each record. This combined dataset forms the Council's 'reoffending database'.

The study examines patterns in age, gender, and offence type throughout offenders' prior and subsequent sentences across all Victorian courts: the Children's Court, the Magistrates' Court, the County Court, and the Supreme Court.

Index offences

The two 'index offences' examined in this study are:

- contravening a family violence intervention order under section 123 of the *Family Violence Protection Act 2008* (Vic); and
- contravening a family violence safety notice under section 37 of the *Family Violence Protection Act 2008* (Vic).

The following related offences were not included as index offences:

- the repealed offence of breaching an intervention order (under section 22 of the *Crimes (Family Violence) Act 1987* (Vic));²⁴⁹ and
- the three indictable contravention offences (under sections 37A, 123A, and 125A of the *Family Violence Protection Act 2008* (Vic):
 - contravening a family violence safety notice intending harm or fear for safety (section 37A);
 - contravening a family violence intervention order intending harm or fear for safety (section 123A); and
 - persistently contravening a family violence intervention order or safety notice (section 125A).²⁵⁰

249. Although there were 551 cases with at least one offence of breaching an intervention order in 2009–10, progressively fewer offenders each year are likely to be sentenced for this offence given that the new contravention offences commenced operation in 2008. These cases were not included in the index group as the data does not distinguish between breach of stalking intervention orders and breach of family violence intervention orders, and the offence had a lower maximum penalty than the two contravention offences.

250. All three offences have maximum penalties of five years' imprisonment or 600 penalty units. Sections 37A and 123A are aimed at contraventions that, while not constituting an offence other than a contravention, are particularly harmful to the victim: Explanatory Memorandum, Justice Legislation Amendment (Family Violence and Other Matters) Bill 2012 (Vic) 4. The three indictable offences were introduced in 2012 by the *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic) and commenced 17 April 2013. Therefore the offences could not be included in the index group (which covers offenders sentenced in 2009–10). However, they are included in the reoffending data.

Identifying individuals within the reoffending database

The Council identified multiple records of the same name and date of birth appearing in the database in order to establish when an individual has appeared within the database on more than one occasion (and has therefore been sentenced on more than one occasion). To address problems with alternative spellings of names and errors in dates of birth, the Council used a series of rules to allow matching, despite the presence of common mistakes and alternative spellings.²⁵¹ Based on the Soundex idea of matching common sounds, this method was developed by the New South Wales Bureau of Crime Statistics and Research (BOCSAR) for its own recidivism database.²⁵²

Measure of prior and subsequent offending

In order to study reoffending, information about two events for each offender need to be measurable: the index sentence and the reoffending sentence event.

The index sentence is the event that qualifies an offender for inclusion in the study. In the present study, the index sentence is the first sentence for an offence of contravening a family violence intervention order or safety notice imposed on each offender in the period from July 2009 to June 2010. This is not necessarily the first sentence an offender has received, nor is it necessarily an offender's first or only sentence in that 12-month period.

A reoffending sentence event is an event indicating that an offender has offended subsequent to his or her index sentence. In the present study, a reoffending sentence event is any sentence imposed following the index sentence for an offence committed after the index sentence. The period for inclusion in the present study is five years for each index offender from his or her index offence. For example, an index offender who received his or her first sentence for an index offence on 10 January 2010 would have any sentences from 10 January 2005 to 10 January 2015 included in the dataset. Any charged offences committed before the index sentence but sentenced after the index sentence were excluded completely from this study.

Measure of offence type

In considering the offence type of prior offences, co-sentenced offences, and subsequent offences, the Council examined all charges for which the offender was sentenced, not just the principal proven offence²⁵³ in a case. However, breaches of sentencing orders were not included in the count of sentenced offences in this study (due to data limitations) unless the breach involved the commission of a new offence. For example, a proven charge of failing to comply with a supervision condition of a community correction order was not considered a new sentence event in the study. However, if a person breached a community correction order by committing an assault, the assault and the sentence for the assault were included as a new sentence event in the study.

251. Three versions of a name have been employed, each using the first letter in the name with subsequent letters recoded into alternative digits based on their common sounds. Alternative versions of date of birth based on common mistakes (such as inverting the month and day or the ones and tens integers for year of birth, e.g. 7/12/1956 and 12/7/1965) were also used to match dates of birth and to attempt to overcome data entry errors.

252. Jiuzhao Hua and Jacqueline Fitzgerald, *Matching Court Records to Measure Reoffending*, Crime and Justice Bulletin no. 95 (2006) 2.

253. The principal proven offence is the offence that received the most severe sentence (based on sentence type and sentence quantum) in a case. Where multiple offences received the most severe sentence in a case, the offence ranked as the most serious according to the National Offence Index (Australian Bureau of Statistics (2009), above n 2) is the principal offence. However, in this study all offences in a case are examined.

Offences were grouped into the following categories (each category includes attempted offences). Some of the common original offences charged in each category are listed in parentheses. For further information on the specific offences included in each category, see Appendix B.

1. Contravention/breach (contravene family violence intervention order, contravene family violence safety notice, breach intervention order).
2. Assault/cause injury (unlawful assault, recklessly causing injury/serious injury, intentionally causing injury/serious injury, assault with a weapon, affray).²⁵⁴
3. Homicide (attempted murder).
4. Animal cruelty (aggravated cruelty to an animal, abuse an animal).
5. Sex offences (sexual penetration with a child under 16, indecent assault, indecent act with a child, rape).
6. Burglary/robbery (robbery, burglary, aggravated burglary, enter building with intent to steal).
7. Drug trafficking (cultivate cannabis, traffick a drug of dependence).
8. Drug possession/use (possess cannabis, use cannabis, possess amphetamine, possess heroin).
9. Theft/deception (theft (from shop, from motor vehicle, of a motor vehicle), obtain property by deception, deal with property suspected as proceeds of crime, go equipped to steal).
10. Weapons offences (carry or possess a controlled weapon without excuse, incorrect storage of dangerous articles, manufacture a prohibited weapon).
11. Justice (failure to answer bail, commit indictable offence while on bail, hinder the management of jail, contravene a condition of bail, harass a witness).
12. Criminal damage (intentionally damaging or destroying property, damage by fire (arson),²⁵⁵ wilful damage, threatening to damage or destroy property).
13. Threat to kill/injure (making a threat to kill or to inflict serious injury).
14. Assault/resist/obstruct police (assault, resist, hinder police, make false report to police).
15. Stalking/harassment (stalking, use a carriage service to harass/menace).
16. Public order (drunk in a public place, behaving offensively in a public place, wilfully giving false alarm, beg alms, wilful and obscene exposure).
17. Trespass/loitering (entering a private place without excuse, unlawful presence on premises, known thief loitering, wilful trespass).
18. Public transport (failure to produce a valid ticket, placing feet on furniture, using offensive language, resist an officer, consume alcohol, smoking).
19. Kidnapping/false imprisonment (false imprisonment, kidnapping, assault and injuriously imprison).
20. Unauthorised driving (driving while disqualified, suspended, or unlicensed, breach alcohol interlock condition).
21. Dangerous/drink/drug driving (exceeding prescribed concentration of alcohol while driving, refusing breath/blood test, driving in a dangerous manner/at a dangerous speed (exceeding speed limit by more than 35km/h)).
22. Driving (general) (using an unregistered vehicle, careless driving, exceed speed limit).
23. 'Other' (attempt to commit an indictable offence (where offence not defined), failure to submit a tax return, possess/consume liquor while under 18, pet registration offences).

254. This category does not include offences such as assault police. These offences are separately analysed (see category number 14). While it is not possible to identify whether the assault charges were against the same victim as any contravention charges, it is reasonable to presume that assault police charges were not against the same victim, and for this reason these offences were considered in a separate category.

255. Six charges of offences of leaving a fire unattended and lighting a fire on a total fire ban day are included in this category. There were no charges of arson causing death sentenced in any case analysed for the offender cohort.

Measure of sentence

Sentenced charges

A 'charge' is a single proven count of an offence in a case. Within a single case, an offender may be sentenced for one charge or for multiple charges. For example, in one case, an offender may be sentenced for two charges of contravening a family violence intervention order and one charge of assault.

Sentenced cases

A 'case' is a collection of one or more charges against an offender sentenced at the one hearing.

In this study, the measure of sentence at the case level is the most severe sentence type imposed on the index offence in a case. Where a case involves more than one index offence, the most serious sentence type imposed for the index offences is used.

Sentences have been grouped into five categories:

- immediate custodial (imprisonment and partially suspended sentences);
- wholly suspended sentences;
- community orders (community-based orders, intensive correction orders, and community correction orders);
- fines;
- low-end orders (adjourned undertakings, convicted and discharged, and dismissals); and
- other.

If an index offence charge has multiple sentences attached to it (for example, a combination of imprisonment and a community correction order), only the most severe sentence is displayed (in this example, imprisonment).

Both aggregate and non-aggregate sentences are included when determining the most severe sentence for a contravention charge. However, the proportion of sentences that are aggregate sentences are identified.

Limitations

There are limitations in the reoffending database, as with any database that is derived from data collected for administrative rather than research purposes. While these limitations do not significantly affect the validity of the findings of this research, they must nonetheless be noted.

Missing information

First, the database does not include data for cases in which either the name or the date of birth was missing from the source datasets. This does not affect a large proportion of the cases: of approximately 600,000 cases sentenced between July 2004 and June 2011, just over 10% were missing the offender's date of birth. Most of these cases were sentenced in the Magistrates' Court and had a principal offence relating to parking. Only a very small proportion of cases with missing dates of birth were sentenced in the Supreme Court. Attempting to match cases on the basis of last name and first name alone would have led to false matches, thus reducing the accuracy of the database.

Over- and under-matching

Second, some degree of over-matching and under-matching of cases to the one individual is inevitable in this sort of database. Over-matching can occur in the rare situation where more than one person has the same name and date of birth. Under-matching can occur when a person has multiple names in the data that are more than simply minor misspellings or alternate spellings that can be overcome with Soundex rules.

The use of an alias or a legitimate change of name by deed poll can lead to this kind of problem. While it is methodologically difficult to provide a precise figure for the size of these problems, analyses by BOCSAR have shown that the Soundex methodology is highly reliable.²⁵⁶

Measurement of reoffending

This study examines time to 'reoffending' indirectly by using the date that the subsequent sentence was imposed, rather than the date on which the subsequent offence was committed. This is due to limitations such as the absence of complete information about offence dates, which are not available for higher court (County Court and Supreme Court) sentences in the database.

There is always a delay between the commission of an offence and sentencing for the offence. The amount of delay varies depending on factors such as how long it took for police to become aware of the offence, how long police took to investigate the offence and proceed to court, and whether the new offence was heard in the Magistrates' Court or in a higher court.

The Council found that the median time between offence and sentence in the Magistrates' Court is six months while in the higher courts it is 19 months. This delay is not considered case by case in the dataset used for this study.

As the reoffending database is limited to subsequent *sentencing* events, it is able to capture some, but not all, reoffending by index offenders. The database is limited to subsequent offences for which the offender has been found guilty and the court has imposed a sentence on the offender. This is an appropriate measure of reoffending, and the presumption of innocence applies to those who have not been convicted of an offence. However, it is likely that the actual rate of reoffending is higher than the rate revealed by data that is limited to subsequent sentences.

For these reasons, the reoffending rate disclosed by the data should be viewed as the base level of reoffending for this offender cohort.

Lack of data in relation to family violence context

The data does not distinguish between family violence and non-family violence offences of the same type (for example, whether a charge of assault or criminal damage was committed in the context of family violence). A number of studies from Australia and elsewhere have commented on the limitations on family violence research as a result of the lack of data in relation to context.²⁵⁷ Collection of family violence context data has commenced in some Australian jurisdictions such as New South Wales, and there are indications that such data will be collected in future in Victoria.

256. Hua and Fitzgerald (2006), above n 252, 8.

257. For example, Neil Donnelly and Suzanne Poynton, *Prison Penalties for Serious Domestic and Non-Domestic Assaults*, Bureau Brief no. 110 (2015) 2.

Much has been done to improve the reporting and recording of family violence incidents,²⁵⁸ and reported incidents have been steadily increasing over the last decade.²⁵⁹ However, the circumstances of family violence may still make reporting difficult or dangerous for victims. Even if an incident is reported, victims of family violence may find it difficult to continue with the prosecution; for example, they may feel under pressure not to give evidence in court even if they have made a statement to police. While prosecution can still go ahead if there is other evidence, the unwillingness of the victim to give evidence can lead to charges being withdrawn. In such cases, even if subsequent offending had occurred, it would not be captured in the reoffending database.

Consultation

In the course of preparing this study, the Council consulted with key stakeholders to gain further insight into the key findings and the factors underlying contravention of family violence orders. The Council met with the Supervising Magistrates of the Family Violence and Family Law portfolio of the Magistrates' Court of Victoria, representatives of Victoria Police, Victoria Legal Aid, the Crime Statistics Agency (Victoria), and the Royal Commission into Family Violence.

The Council also convened a roundtable with representatives from organisations and entities including:

- Domestic Violence Victoria;
- White Ribbon Australia;
- the Federation of Community Legal Centres (Victoria);
- the Domestic Violence Resource Centre (Victoria);
- No To Violence;
- Women's Legal Service Victoria;
- Victorian Aboriginal Legal Services;
- InTouch Multicultural Centre Against Family Violence;
- the Department of Justice and Regulation, Victoria; and
- Dr Renata Alexander (Faculty of Law, Monash University).

A number of questions about the findings were put to those consulted and their feedback has informed parts of this study.

258. Examples include the introduction of the *Code of Practice for the Investigation of Family Violence* in August 2004 and the commencement of the *Family Violence Protection Act 2008* (Vic).

259. For example, '[d]uring 2013/14, there were 65,393 incidents where police submitted family incident reports. This was 8.0% higher than the 60,550 reports submitted in 2012/13. There has been a steady rise in the reporting of family incidents since the introduction of the Code of Practice for the Investigation of Family Violence in August 2004 and legislative change brought about by the Family Violence Protection Act 2008. Offences related to family incidents, such as assaults and sex offences, have risen as a result of this increased reporting: Victoria Police (2014), above n 4, 5.

Appendix B: Offence type categories

Table A1 sets out the offence categories used in this study. For each category, the table shows the specific offences committed by index offenders over the period of the study (1 July 2004 to 30 June 2015 inclusive).²⁶⁰ The last column shows the number of charges of each offence for which index offenders were sentenced in the study period. In the driving (general) offence category, 136 specific offences with fewer than three charges in the whole study period were combined into a category of 'miscellaneous', and the total number of these charges is shown.

Table A1: Type and number of charges sentenced in each offence category between July 2004 and June 2015

Category	Offence description	Statutory reference	Number of charges sentenced
Animal cruelty	Aggravated cruelty to an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 10(1)	6
	Abuse an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	2
	Allow prohibited procedure carried out on animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 11A(1)	1
Assault/cause injury	Unlawful assault	<i>Summary Offences Act 1966</i> (Vic) s 23	1,305
	Recklessly cause injury	<i>Crimes Act 1958</i> (Vic) s 18	695
	Intentionally cause injury	<i>Crimes Act 1958</i> (Vic) s 18	202
	Assault with weapon	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	121
	Recklessly cause serious injury	<i>Crimes Act 1958</i> (Vic) s 17	89
	Reckless conduct endanger serious injury	<i>Crimes Act 1958</i> (Vic) s 23	74
	Throw missile injure/danger/damage property	<i>Summary Offences Act 1966</i> (Vic) s 7(g)	48
	Assault by kicking	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	40
	Unlawful assault	Common law	38
	Assault in company	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	23
	Affray	Common law	22
	Discharge missile to cause injury/danger	<i>Summary Offences Act 1966</i> (Vic) s 7(g)	16
	Reckless conduct endanger life	<i>Crimes Act 1958</i> (Vic) s 22	16

260. The offence displayed in Table A1 generally represents the description of the offence stated in the source databases. The statutory reference represents the section or subsection of the Act or Regulation to which the offence belongs.

The offence description and statutory reference displayed do not always match the offence and statutory reference in current legislation. One reason for this is that some offences belong to legislation that, at the time of publication, has been amended or repealed.

A number of issues existed with the offence and statutory reference information contained in the source data. These included the presence of multiple descriptions for what was clearly the same offence, inconsistency in the specificity of offence descriptions, and statutory references that could not be verified due to repealed legislation. The Council overcame these issues by aggregating certain offence descriptions to higher level offence categories or defaulting to the statutory reference provided in the source data.

Category	Offence description	Statutory reference	Number of charges sentenced
	Aggravated assault of female	<i>Summary Offences Act 1966</i> (Vic) s 24(1)(a)	14
	Intentionally cause serious injury	<i>Crimes Act 1958</i> (Vic) s 16	11
	Assault with instrument	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	9
	Negligently cause serious injury	<i>Crimes Act 1958</i> (Vic) s 24	3
	Aggravated assault of person under 14	<i>Summary Offences Act 1966</i> (Vic) s 24(1)(a)	2
	Attempted assault with weapon	<i>Crimes Act 1958</i> (Vic) s 321M	2
	Intentionally or recklessly cause injury	<i>Crimes Act 1958</i> (Vic) s 18	2
	Permit dog to attack person	<i>Summary Offences Act 1966</i> (Vic) s 8(e)	1
	Wilfully set on dog to attack	<i>Domestic Animals Act 1994</i> (Vic) s 28	1
Assault/resist/obstruct police	Resist police	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	482
	Assault police	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	278
	Hinder police	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	46
	Assault police on duty	<i>Crimes Act 1958</i> (Vic) s 31(1)(b)	32
	Make false report to police	<i>Summary Offences Act 1966</i> (Vic) s 53(1)	24
	Assault operational staff – ambulance	<i>Summary Offences Act 1966</i> (Vic) s 51(1)	3
	Obstruct/resist police	<i>Crimes Act 1958</i> (Vic) s (31)(1)(b)	3
	Assault/resist/obstruct officer	<i>Customs Act 1901</i> (Cth) s 232(b)	2
	Hinder person engaged emergency activity	<i>Emergency Management Act 1986</i> (Vic) s 36(1)	2
	Obstruct operational staff – ambulance	<i>Summary Offences Act 1966</i> (Vic) s 51(1)	2
	Resist person assisting police	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	2
	Threaten to assault police on duty	<i>Crimes Act 1958</i> (Vic) s 31(1)(b)	2
	Assault emergency worker on duty	<i>Summary Offences Act 1966</i> (Vic) s 51(2)	1
	Assault protective services officer	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	1
	Delay police	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	1
	Obstruct police /person assisting police	<i>Summary Offences Act 1966</i> (Vic) s 52(1)	1
	Burglary/robbery	Burglary	<i>Crimes Act 1958</i> (Vic) s 76(1)
Aggravated burglary		<i>Crimes Act 1958</i> (Vic) s 77(1)	78
Robbery		<i>Crimes Act 1958</i> (Vic) s 75	44
Enter building with intent to steal		<i>Crimes Act 1958</i> (Vic) s 76(1)(a)	30
Armed robbery		<i>Crimes Act 1958</i> (Vic) s 75A	27
Attempted burglary		<i>Crimes Act 1958</i> (Vic) s 321M	20
Attempted robbery		<i>Crimes Act 1958</i> (Vic) s 321M	16
Attempted armed robbery		<i>Crimes Act 1958</i> (Vic) s 321M	8
Attempted aggravated burglary		<i>Crimes Act 1958</i> (Vic) s 321M	4
Assault with intent to rob		<i>Crimes Act 1958</i> (Vic) s 75	3
Enter building with intent to assault		<i>Crimes Act 1958</i> (Vic) s 76(1)(b)(i)	1

Category	Offence description	Statutory reference	Number of charges sentenced
Contravention/ breach	Contravene family violence intervention order	<i>Family Violence Protection Act 2008</i> (Vic) s 123(2)	5,003
	Breach intervention order	<i>Crimes (Family Violence) Act 1987</i> (Vic) s 22	1,475
	Contravene family violence safety notice	<i>Family Violence Protection Act 2008</i> (Vic) s 37(2)	201
	Contravene family violence intervention order intending harm or fear	<i>Family Violence Protection Act 2008</i> (Vic) s 123A(2)	40
	Persistently contravene family violence intervention order or safety notice	<i>Family Violence Protection Act 2008</i> (Vic) s 125A(1)	36
	Contravene personal safety intervention order	<i>Personal Safety Intervention Orders Act 2010</i> (Vic) s 100(2)	34
	Contravene stalking intervention order	<i>Stalking Intervention Orders Act 2008</i> (Vic) s 32	33
Criminal damage	Intentionally destroy/damage property	<i>Crimes Act 1958</i> (Vic) s 197(1)	1,509
	Wilfully damage/injure/trespass property	<i>Summary Offences Act 1966</i> (Vic) s 9(1)	210
	Threat to destroy/damage property	<i>Crimes Act 1958</i> (Vic) s 198(a)	52
	Criminal damage by fire (arson)	<i>Crimes Act 1958</i> (Vic) s 197(6)	28
	Arson	<i>Crimes Act 1958</i> (Vic) s 197(6)	6
	Light fire in open air in country during fire danger period	<i>Country Fire Authority Act 1958</i> (Vic) s 37	4
	Attempted criminal damage (intent damage/destroy)	<i>Crimes Act 1958</i> (Vic) s 321M	3
	Attempted arson	<i>Crimes Act 1958</i> (Vic) s 321M	1
	Attempted criminal damage by fire (arson)	<i>Crimes Act 1958</i> (Vic) s 321M	1
	Deface any structure without consent	<i>Summary Offences Act 1966</i> (Vic) s 10(1)	1
	Leave fire in open without person in charge	<i>Summary Offences Act 1966</i> (Vic) s 11(1)(b)	1
	Light fire in open air during total fire ban	<i>Country Fire Authority Act 1958</i> (Vic) s 40(4)(a)	1
	Light/use fire and destroy/damage property	<i>Summary Offences Act 1966</i> (Vic) s 11(1)(a)	1
Dangerous/ drink/drug driving	Exceed prescribed concentration of alcohol within 3 hours – breath test	<i>Road Safety Act 1986</i> (Vic) s 49(1)(f)	453
	Drive in a dangerous manner	<i>Road Safety Act 1986</i> (Vic) s 64(1)	96
	Refuse undergo breath test	<i>Road Safety Act 1986</i> (Vic) s 49(1)(e)	95
	Refuse preliminary breath test	<i>Road Safety Act 1986</i> (Vic) s 49(1)(c)	33
	Exceed prescribed concentration of alcohol within 3 hours – blood test	<i>Road Safety Act 1986</i> (Vic) s 49(1)(g)	28
	Drive at a dangerous speed	<i>Road Safety Act 1986</i> (Vic) s 64(1)	23
	Drive while exceeding the prescribed concentration of alcohol	<i>Road Safety Act 1986</i> (Vic) s 49(1)(b)	23
Drive motor vehicle under the influence of intoxicating liquor	<i>Road Safety Act 1986</i> (Vic) s 49(1)(a)	22	

Category	Offence description	Statutory reference	Number of charges sentenced
	Fail oral fluid test within 3 hours of driving	<i>Road Safety Act 1986 (Vic) s 49(1)(h)</i>	16
	Exceed speed limit by 45km/h or more	<i>Road Safety Road Rules 2009 (Vic) r 20(1)(b)</i>	10
	Drive motor vehicle under the influence of a drug	<i>Road Safety Act 1986 (Vic) s 49(1)(a)</i>	7
	Drive vehicle while exceeding prescribed concentration of drugs	<i>Road Safety Act 1986 (Vic) s 49(1)(bb)</i>	5
	Exceed speed limit by 35km/h but less than 45km/h	<i>Road Safety Road Rules 2009 (Vic) r 20(1)(c)</i>	5
	Exceed speed limit by 45km/h or more	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 20</i>	5
	Fail drug blood test within 3 hours of driving	<i>Road Safety Act 1986 (Vic) s 49(1)(i)</i>	5
	Dangerous driving while pursued by police	<i>Crimes Act 1958 (Vic) s 319AA(1)</i>	4
	Exceed prescribed concentration of alcohol within 3 hours – accompanying driver or driving instructor breath test	<i>Road Safety Act 1986 (Vic) s 49(1)(f)</i>	4
	Fail to stop at preliminary breath test station	<i>Road Safety Act 1986 (Vic) s 49(1)(d)</i>	3
	Refuse to provide a sample of oral fluid	<i>Road Safety Act 1986 (Vic) s 49(1)(eb)</i>	3
	Refuse undergo assessment for drug impairment	<i>Road Safety Act 1986 (Vic) s 49(1)(ca)</i>	3
	Refuse undergo further breath test	<i>Road Safety Act 1986 (Vic) s 49(1)(e)</i>	3
	Drive in a dangerous manner causing serious injury	<i>Crimes Act 1958 (Vic) s 319(1)</i>	1
	Exceed prescribed concentration of alcohol within 3 hours – breath test	<i>Marine (Drug, Alcohol and Pollution Control) Act 1988 (Vic) s 28(1)(e)</i>	1
	In charge of vehicle while impaired by a drug	<i>Road Safety Act 1986 (Vic) s 49(1)(ba)</i>	1
	Refuse to provide a sample of blood	<i>Road Safety Act 1986 (Vic) s 49(1)(eb)</i>	1
Driving (general)	Use unregistered vehicle on highway	<i>Road Safety Act 1986 (Vic) s 7(1)</i>	821
	Careless driving	<i>Road Safety Act 1986 (Vic) s 65</i>	230
	Fraudulently alter or use vehicle registration	<i>Road Safety Act 1986 (Vic) s 72(1)(b)</i>	190
	Learner driver without an experienced driver	<i>Road Safety (Drivers) Regulations 1999 (Vic) r 213.1.b</i>	139
	Drive without L plates displayed	<i>Road Safety (Drivers) Regulations 1999 (Vic) r 214.1</i>	115
	Exceed speed limit	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 21.1</i>	85
	Fail to stop vehicle after an accident	<i>Road Safety Act 1986 (Vic) s 61(1)(a)</i>	59
	Tamper with motor vehicle	<i>Road Safety Act 1986 (Vic) s 70(1)</i>	50

Category	Offence description	Statutory reference	Number of charges sentenced
	State false name/address	<i>Road Safety Act 1986</i> (Vic) s 59(2)(b)	49
	Fail to make entry – solo driving	<i>Road Safety (Drivers) Regulations 1999</i> (Vic) r 510.1.a.i	46
	Driver fail to wear seatbelt	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 264.1	44
	Exceed speed limit	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 20	41
	Fail report to police when owner not present	<i>Road Safety Act 1986</i> (Vic) s 61(1)(f)	41
	Exceed speed limit by 10km/h and less than 25km/h	<i>Road Safety Road Rules 2009</i> (Vic) r 20	36
	Use vehicle not in a safe and roadworthy condition	<i>Road Safety (Vehicles) Regulations 2009</i> (Vic) r 259.1	36
	Drive without P plates displayed	<i>Road Safety (Drivers) Regulations 1999</i> (Vic) r 217.1	33
	Learner driver without an experienced driver	<i>Road Safety (Drivers) Regulations 2009</i> (Vic) r 46.2	33
	Fail to give name /address where property damaged	<i>Road Safety Act 1986</i> (Vic) s 61(1)(c)(i)	31
	Driver fails to wear seatbelt	<i>Road Safety Road Rules 2009</i> (Vic) r 264.1	28
	Drive vehicle causing loss of traction	<i>Road Safety Act 1986</i> (Vic) s 65A(1)	26
	Drive vehicle with numberplate not affixed as required	<i>Road Safety (Vehicles) Regulations 2009</i> (Vic) r 50.1	26
	Use vehicle not in a safe and roadworthy condition	<i>Road Safety (Vehicles) Regulations 1999</i> (Vic) r 820.1	26
	Drive without L plates displayed	<i>Road Safety (Drivers) Regulations 2009</i> (Vic) r 47.1	25
	Display numberplate or registration other than issued	<i>Road Safety (Vehicles) Regulations 2009</i> (Vic) r 246.1	20
	Fail to give name/address at accident where person is injured	<i>Road Safety Act 1986</i> (Vic) s 61(1)(c)(i)	20
	Fail to stop vehicle on police request	<i>Road Safety Act 1986</i> (Vic) s 64A(1)	20
	Use vehicle not compliant with regulation standard	<i>Road Safety (Vehicles) Regulations 1999</i> (Vic) r 819.3	19
	Display numberplate or registration other than issued	<i>Road Safety (Vehicles) Regulations 1999</i> (Vic) r 801(b)(i)	18
	Drive in breach of licence or permit condition	<i>Road Safety Act 1986</i> (Vic) s 18(1)(b)	18
	Numberplates not displayed as required	<i>Road Safety (Vehicles) Regulations 1999</i> (Vic) r 222.6	18
	Use hand held mobile phone while vehicle moving	<i>Road Safety Road Rules 2009</i> (Vic) r 300.1	18
	Use hand held phone while driving	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 300.1	18

Category	Offence description	Statutory reference	Number of charges sentenced
	Exceed speed limit by 25km/h and less than 35km/h	<i>Road Safety Road Rules 2009</i> (Vic) r 20	16
	Fail to notify corporation of change of resident address	<i>Road Safety (Drivers) Regulations 1999</i> (Vic) r 225.1.b	16
	Exceed 100km/h speed limit	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 25.3	15
	Forge identifying number for authority	<i>Road Safety Act 1986</i> (Vic) s 72(1)(a)	15
	Drive vehicle unregistered in toll zone	<i>Melbourne City Link Act 1995</i> (Vic) s 73(1)	14
	Fail to obey lawful direction of police	<i>Road Safety Act 1986</i> (Vic) s 59(1)(b)	14
	Make unnecessary noise or smoke	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 291	14
	Stop a heavy vehicle on a road in a built-up area	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 200(2)	14
	Drive without P plates displayed	<i>Road Safety (Drivers) Regulations 2009</i> (Vic) r 55.1	13
	Exceed speed limit by less than 10km/h	<i>Road Safety Road Rules 2009</i> (Vic) r 20	13
	Fraudulently use vehicle licence plate	<i>Road Safety Act 1986</i> (Vic) s 72(1A)(b)	13
	Motor vehicle trader makes a false entry in purchase book	<i>Motor Car Traders Act 1986</i> (Vic) s 35(3)	13
	Not probationary licenced driver with P plates	<i>Road Safety (Drivers) Regulations 1999</i> (Vic) r 217.2	13
	Fraudulently lend vehicle registration label	<i>Road Safety Act 1986</i> (Vic) s 72(1)(c)	12
	Fail to give name/address to representative of injured party after an accident	<i>Road Safety Act 1986</i> (Vic) s 61(1)(c)(ii)	11
	Fail to render assistance after an accident	<i>Road Safety Act 1986</i> (Vic) s 61(1)(b)	11
	Fail to wear a motor bike helmet	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 270.1.a	11
	Fail to give information regarding driver	<i>Road Safety Act 1986</i> (Vic) s 60(1)	10
	Fail to wear an approved bicycle helmet	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 256.1	10
	Rider fail to wear a motor bike helmet	<i>Road Safety Road Rules 2009</i> (Vic) r 270.1(a)	10
	Enter intersection – red traffic light	<i>Road Safety Road Rules 2009</i> (Vic) r 59.1	9
	Fail stop before stop line at traffic lights	<i>Road Safety (Road Rules) Regulations 1999</i> (Vic) r 56.1.a	9
	Fail to carry probationary licence	<i>Road Safety Act 1986</i> (Vic) s 21(1A)	9
	Tamper with/install another odometer	<i>Motor Car Traders Act 1986</i> (Vic) s 38	9
	Use vehicle in breach of defect notice	<i>Road Safety (Vehicles) Regulations 1999</i> (Vic) r 702.1	9

Category	Offence description	Statutory reference	Number of charges sentenced
	Enter intersection – red traffic light	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 59.1</i>	8
	Fail to give left signal for long enough	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 46.1</i>	8
	Fail to report an accident to police	<i>Road Safety Act 1986 (Vic) s 61(1)(e)</i>	8
	Fail to stop motor vehicle on request	<i>Road Safety Act 1986 (Vic) s 59(1)(a)</i>	8
	Forge vehicle identifying number	<i>Road Safety Act 1986 (Vic) s 72(1)(a)</i>	8
	Enter intersection – red traffic arrow	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 60</i>	7
	Fail to give right change direction signal	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 48.1</i>	7
	Fail to state name and address	<i>Road Safety Act 1986 (Vic) s 59(2)(b)</i>	7
	Use vehicle not compliant with regulation standard	<i>Road Safety (Vehicles) Regulations 2009 (Vic) r 258.2</i>	7
	Drive at night with ineffective headlights	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 215.1.A</i>	6
	Enter intersection – red traffic arrow	<i>Road Safety Road Rules 2009 (Vic) r 60</i>	6
	Fail stop and give way – stop sign or line	<i>Road Safety Road Rules 2009 (Vic) r 67(1)</i>	6
	Fail to carry learner permit	<i>Road Safety Act 1986 (Vic) s 22(6)</i>	6
	Fail to have proper control of vehicle	<i>Road Safety Road Rules 2009 (Vic) r 297.1</i>	6
	Probationary driver driving a prohibited vehicle	<i>Road Safety (Drivers) Regulations 2009 (Vic) r 57.1</i>	6
	Reverse vehicle when unsafe	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 296.1</i>	6
	Vehicle acquirer fails to complete documents	<i>Road Safety (Vehicles) Regulations 1999 (Vic) r 230.1</i>	5
	Cyclist fails to wear approved bicycle helmet	<i>Road Safety Road Rules 2009 (Vic) r 256(1)</i>	5
	Drive on Eastlink unregistered	<i>EastLink Project Act 2004 (Vic) s 204(1)</i>	5
	Fail to ensure a passenger under 16 wears a seatbelt	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 266.1</i>	5
	Fail to ensure child is in a suitable restraint	<i>Road Safety Road Rules 2009 (Vic) r 266.1</i>	5
	Fail to give name/address to police	<i>Road Safety Act 1986 (Vic) s 61(1)(d)</i>	5
	Fail to keep left of dividing line	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 132.2</i>	5
	Fail to obey one-way sign	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 98.1</i>	5
	Fail to produce licence on request	<i>Road Safety Act 1986 (Vic) s 59(1)(a)</i>	5
	Fraudulently procure the use of a vehicle	<i>Road Safety Act 1986 (Vic) s 69(a)</i>	5
	Licence holder fails to notify change of personal details	<i>Road Safety (Drivers) Regulations 2009 (Vic) r 67.1</i>	5

Category	Offence description	Statutory reference	Number of charges sentenced
	Drive on a path	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 288.1</i>	4
	Exceed signed speed limit	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 22.1</i>	4
	Exceed 50km/h speed limit	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 25.2</i>	4
	Fail to give left signal for long enough	<i>Road Safety Road Rules 2009 (Vic) r 46.1</i>	4
	Fail to stop before stop line and red traffic light	<i>Road Safety Road Rules 2009 (Vic) r 56.1.a</i>	4
	Make unnecessary noise or smoke	<i>Road Safety Road Rules 2009 (Vic) r 291</i>	4
	Remove defective label when not authorised	<i>Road Safety (Vehicles) Regulations 1999 (Vic) r 703.7</i>	4
	Reverse vehicle when unsafe	<i>Road Safety Road Rules 2009 (Vic) r 296.1</i>	4
	Affix numberplate other than issued to vehicle	<i>Road Safety (Vehicles) Regulations 2009 (Vic) r 246.5</i>	3
	Drive at night with ineffective headlights	<i>Road Safety Road Rules 2009 (Vic) r 215.1(a)</i>	3
	Fail to give way intersection give way sign	<i>Road Safety Road Rules 2009 (Vic) r 69.1</i>	3
	Fail to notify corporation change name/address	<i>Road Safety (Vehicles) Regulations 1999 (Vic) r 225.1(b)</i>	3
	Fail to give way at intersection	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 69.1</i>	3
	Fail to have proper control of vehicle	<i>Road Safety (Road Rules) Regulations 1999 (Vic) r 297.1</i>	3
	Fail to notify corporation of change of name	<i>Road Safety (Drivers) Regulations 1999 (Vic) r 225.1.a</i>	3
	Fail to produce permit on request	<i>Road Safety Act 1986 (Vic) s 59(1)(a)</i>	3
	Fail to send driver licence as required	<i>Road Safety (Drivers) Regulations 1999 (Vic) r 304.4.d</i>	3
	Fail to state name/address on request	<i>Road Safety Act 1986 (Vic) s 59(1)(a)</i>	3
	Forgery of materials purporting to be vehicle registration documents	<i>Road Safety Act 1986 (Vic) s 72(2)</i>	3
	Learner driver towing trailer	<i>Road Safety (Drivers) Regulations 1999 (Vic) r 213.1.a</i>	3
	Permit unlicensed person to drive	<i>Road Safety Act 1986 (Vic) s 32(1)</i>	3
	Record misleading entry in work diary	<i>Road Safety Act 1986 (Vic) s 191Z</i>	3
	Use hand held mobile phone while vehicle stationary	<i>Road Safety Road Rules 2009 (Vic) r 300.1</i>	3
	Use vehicle with no registration label	<i>Road Safety (Vehicles) Regulations 1999 (Vic) r 223.7</i>	3
	Miscellaneous driving offences (with less than 3 charges sentenced in study period)	(125 offences)	161

Category	Offence description	Statutory reference	Number of charges sentenced
Drug possess/ use	Possess cannabis	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	349
	Possess a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	257
	Use cannabis	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 75</i>	172
	Use a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 75</i>	109
	Alter prescription for drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 77</i>	9
	Attempt to possess drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	3
	Attempt to obtain a drug with false representation	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 78</i>	2
	Cultivate a narcotic plant	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 72B</i>	2
	Possess a Schedule 4 poison	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 36B(2)</i>	2
	Possess gamma-hydroxybutanoic acid	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71D</i>	2
	Attempt to use a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 75</i>	1
Drug trafficking	Trafficking in a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	85
	Cultivate cannabis	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 72B</i>	65
	Possess material/equipment for the manufacture of a drug of dependence for trafficking	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71A</i>	4
	Attempted trafficking in a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	3
	Trafficking in a commercial quantity of a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AA</i>	2
	Traffick cannabis	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71</i>	1
Homicide	Attempted murder	<i>Crimes Act 1958 (Vic) s 321M</i>	1
Justice	Failure to answer bail	<i>Bail Act 1977 (Vic) s 30(1)</i>	1,036
	Act to threaten security/order	<i>Corrections (Police Gaols) Regulations 2005 (Vic) r 13.1(a)(i)</i>	52
	Commit indictable offence while on bail	<i>Bail Act 1977 (Vic) s 30B</i>	45
	State false name when requested	<i>Crimes Act 1958 (Vic) s 456AA(3)(b)</i>	41
	Contravene a conduct condition of bail	<i>Bail Act 1977 (Vic) s 30A(1)</i>	37
	Act in a disruptive manner	<i>Corrections (Police Gaols) Regulations 2005 (Vic) r 13.1(b)</i>	34

Category	Offence description	Statutory reference	Number of charges sentenced
	Harass a witness	<i>Summary Offences Act 1966</i> (Vic) s 52A	25
	Fail to comply with reporting obligations	<i>Sex Offenders Registration Act 2004</i> (Vic) s 46(1)	23
	State false address when requested	<i>Crimes Act 1958</i> (Vic) s 456AA(3)(c)	16
	Possess anything without authority within a police gaol	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13.1(d)	13
	Refuse or fail to state name and address	<i>Crimes Act 1958</i> (Vic) s 456AA(3)(a)	12
	Act to threaten security/order of a gaol	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13.1(a)(i)	10
	Contravene order – fail to attend counselling	<i>Family Violence Protection Act 2008</i> (Vic) s 130(4)	7
	Escape from lawful detention	<i>Summary Offences Act 1966</i> (Vic) s 49E(b)	7
	Fail to comply with order	<i>Taxation Administration Act 1953</i> (Cth) s 8H	7
	Failure to comply with an undertaking order	<i>Sentencing Act 1991</i> (Vic) s 79(1)	7
	Threaten damage to gaol	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13.1(a)(iii)	7
	Escape from custody from police member	<i>Crimes Act 1958</i> (Vic) s 479C(1)(b)	6
	Impersonate member of police force	<i>Police Regulation Act 1958</i> (Vic) s 97	6
	Pervert the course of justice	Common law	6
	Act to threaten the safety of person in gaol	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13.1(a)(ii)	5
	Escape from prison/police gaol	<i>Crimes Act 1958</i> (Vic) s 479C(1)(a)	5
	Threaten the good order of a police gaol	<i>Corrections (Police Gaols) Regulations 1995</i> (Vic) r 11.1(a)	5
	Fail attend counselling – family violence	<i>Crimes (Family Violence) Act 1987</i> (Vic) s 8D(4)	4
	Falsely report an emergency to an ambulance service	<i>Ambulance Services Act 1986</i> (Vic) s 39AA	4
	Assist child to be absent under an accommodation order	<i>Children, Youth and Families Act 2005</i> (Vic) s 496(1)(b)	3
	Harbour a child under an order	<i>Children, Youth and Families Act 2005</i> (Vic) s 495(a)	3
	Make vexatious call to emergency services	<i>Criminal Code Act 1995</i> (Cth) s 474.18(2)	3
	Act in a disruptive manner	<i>Corrections (Police Gaols) Regulations 1995</i> (Vic) r 11.1(b)	2
	Impersonate an officer of the CFA	<i>Country Fire Authority Act 1958</i> (Vic) s 107A(3)	2
	Offer a bribe to a member to forgo duty	<i>Police Regulation Act 1958</i> (Vic) s 97	2

Category	Offence description	Statutory reference	Number of charges sentenced
	Take/send anything into a prison	<i>Corrections Act 1986</i> (Vic) s 32(1)(c)	2
	Act as a crowd controller without a licence	<i>Private Security Act 2004</i> (Vic) s 7(c)	1
	Attempt to give anything to a detainee	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 11.1	1
	Breach of suspended sentence order	<i>Sentencing Act 1991</i> (Vic) s 31(1)	1
	Breach parole – contact a specified person	<i>Corrections Act 1986</i> (Vic) s 78A	1
	Bribe public official	Common law	1
	Conspire to pervert course of justice	<i>Crimes Act 1958</i> (Vic) s 321(1)	1
	Contravene a <i>Family Law Act</i> order	<i>Family Law Act 1975</i> (Vic) s 112AD	1
	Contravene release on adjournment order	<i>Sentencing Act 1991</i> (Vic) s 83AC(1)	1
	Disobey lawful direction within a police gaol	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13.1(f)	1
	Drink intoxicating liquor	<i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r 317	1
	Escape from lawful custody	<i>Vagrancy Act 1966</i> (Vic) s 8(b)	1
	Fail to attend interview – counselling report	<i>Crimes (Family Violence) Act 1987</i> (Vic) s 8C(5)	1
	Fail to attend interview – eligible counselling	<i>Family Violence Protection Act 2008</i> (Vic) s 129(5)	1
	Fail to surrender a required document	<i>Working with Children Act 2005</i> (Vic) s 23(4)	1
	Indecent/offensive language on public transport vehicle or premises	<i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r 301.3(a)	1
	Possess an article to interfere with security/order	<i>Corrections (Police Gaols) Regulations 1995</i> (Vic) r 11.1(d)	1
	Receive an article without authority	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13.1(c)	1
	Spit on any rail/road vehicle	<i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r 316	1
	Unauthorised entry/exit rail premises	<i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r 309.1(a)	1
Kidnap/false imprisonment	False imprisonment	Common law	15
	Assault and injuriously imprison	Common law	5
	Kidnapping	Common law	2
	Child stealing	<i>Crimes Act 1958</i> (Vic) s 63(2)	1
	Unlawful and injurious imprisonment	Common law	1

Category	Offence description	Statutory reference	Number of charges sentenced
Other	Attempt to commit indictable offence	<i>Crimes Act 1958 (Vic) s 321M</i>	90
	Fail to furnish a return under tax law	<i>Taxation Administration Act 1953 (Cth) s 8C(1)(a)</i>	14
	Person under 18 years possesses liquor	<i>Liquor Control Reform Act 1998 (Vic) s 123(1)(b)</i>	14
	Dog not confined between sunrise and sunset	<i>Domestic Animals Act 1994 (Vic) s 24(1)</i>	12
	Drunk/violent/quarrelsome person fails to leave licensed premises on request	<i>Liquor Control Reform Act 1998 (Vic) s 114(2)</i>	10
	Fail to furnish an approved form	<i>Taxation Administration Act 1953 (Cth) s 8C(1)(a)</i>	8
	Unregistered dog/cat	<i>Domestic Animals Act 1994 (Vic) s 10(1)</i>	7
	Local law offence	Local law offence	4
	Possess prohibited fireworks	<i>Dangerous Goods (Explosives) Regulations 2000 (Vic) r 803.2</i>	4
	Set off fireworks without permission	<i>Summary Offences Act 1966 (Vic) s 4(j)</i>	4
	Carry on electrical contracting while unregistered	<i>Electricity Safety Act 1998 (Vic) s 30</i>	3
	Carry out electrical installation while unlicensed	<i>Electricity Safety Act 1998 (Vic) s 38(a)</i>	3
	Dangerous dog attack/bite animal	<i>Domestic Animals Act 1994 (Vic) s 29(1)</i>	3
	Install unsafe electrical equipment	<i>Electricity Safety Act 1998 (Vic) s 43(1)</i>	3
	Leave child without supervision or care	<i>Children, Youth and Families Act 2005 (Vic) s 494(1)</i>	3
	Non-licensee supplies liquor to person under 18 years	<i>Liquor Control Reform Act 1998 (Vic) s 119(3)(a)</i>	3
Miscellaneous other offences (with less than 3 charges sentenced in study period)	(33 offences)	39	
Public order offences	Drunk in a public place	<i>Summary Offences Act 1966 (Vic) s 13</i>	327
	Use indecent/obscene/abusive language in a public place	<i>Summary Offences Act 1966 (Vic) s 17(1)(c)</i>	189
	Behave in indecent/offensive manner in a public place	<i>Summary Offences Act 1966 (Vic) s 17(1)(d)</i>	114
	Wilfully give false fire alarm	<i>Summary Offences Act 1966 (Vic) s 12(1)</i>	27
	Consume/possess liquor in a public place	Local law offence	21
	Behave in riotous manner in public place	<i>Summary Offences Act 1966 (Vic) s 17(1)(d)</i>	18
	Beg alms	<i>Summary Offences Act 1966 (Vic) s 49A(1)</i>	17
	Drunk and disorderly in public place	<i>Summary Offences Act 1966 (Vic) s 14</i>	11
	Wilful and obscene exposure in public	<i>Summary Offences Act 1966 (Vic) s 19</i>	10
	Deposit litter	<i>Environment Protection Act 1970 (Vic) s 45E(1)</i>	9

Category	Offence description	Statutory reference	Number of charges sentenced
	Possess graffiti implement with intent to mark	<i>Graffiti Prevention Act 2007</i> (Vic) s 8	7
	Wilful and obscene exposure	Common law	7
	Behave in insulting manner in a public place	<i>Summary Offences Act 1966</i> (Vic) s 17(1)(d)	5
	Mark graffiti on property without consent	<i>Graffiti Prevention Act 2007</i> (Vic) s 5	5
	Aggravated littering	<i>Environment Protection Act 1970</i> (Vic) s 45F	3
	Fail to comply direction to abate noise	<i>Environment Protection Act 1970</i> (Vic) s 48A(8)	3
	Solicit for prostitution in public place	<i>Sex Work Act 1994</i> (Vic) s 12(2)(b)	2
	Use indecent language/gesture	<i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r 301.3(a)	2
	Wilful and obscene exposure in public	<i>Vagrancy Act 1966</i> (Vic) s 7(1)(c)	2
	Beg alms	<i>Vagrancy Act 1966</i> (Vic) s 6(1)(d)	1
	Behave disorderly manner while drunk	<i>Summary Offences Act 1966</i> (Vic) s 16(a)	1
	Behave in disorderly manner	<i>Public Order (Protection of Persons and Property) Act 1971</i> (Cth) s 12(2)(b)	1
	Behave riotously while drunk – public	<i>Summary Offences Act 1966</i> (Vic) s 16(a)	1
	Cause false fire alarm to be given	<i>Summary Offences Act 1966</i> (Vic) s 12(1)	1
	Fail provide information within specified time	<i>Environment Protection Act 1970</i> (Vic) s 45ZL(7)	1
	Failed to ensure that no animal escapes	Local law offence	1
	Give false name	Local law offence	1
	Include false/mislead information in statement	<i>Environment Protection Act 1970</i> (Vic) s 45ZJ(4)	1
	Invite for prostitution in public place	<i>Sex Work Act 1994</i> (Vic) s 12(2)(b)	1
	Light fire in open air without permit	Local law offence	1
	Offensive behaviour on council land	Local law offence	1
	Provide incorrect information to authority	<i>Environment Protection Act 1970</i> (Vic) s 59D(a)	1
	Solicit for prostitution in public place	<i>Sex Work Act 1994</i> (Vic) s 13(2)	1
	Suspected person loiter in public place	<i>Vagrancy Act 1966</i> (Vic) s 7(1)(f)(ii)	1
Public transport	Fail produce valid ticket on a passenger vehicle	<i>Transport (Ticketing) Regulations 2006</i> (Vic) r 7.2	29
	Fail to produce valid ticket on request	<i>Transport (Compliance and Miscellaneous) Act 1983</i> (Vic) s 221(4)	23
	Resist an officer	<i>Transport (Compliance and Miscellaneous) Act 1983</i> (Vic) s 225(3)(a)	14
	Fail comply with request to produce ticket	<i>Transport (Compliance and Miscellaneous) Act 1983</i> (Vic) s 221AA(2)	13

Category	Offence description	Statutory reference	Number of charges sentenced
	Place feet on furniture in carriage	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 222(3)(e)</i>	13
	Use offensive language in a rail vehicle	<i>Transport (Conduct) Regulations 2005 (Vic) r 28(a)</i>	12
	Use offensive language on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic) r 28(a)</i>	12
	Travel without valid ticket	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 221(3)</i>	11
	Use indecent/threatening language in rail vehicle	<i>Transport (Conduct) Regulations 2005 (Vic) r 28(a)</i>	8
	Fail produce evidence of concession or entitlement	<i>Transport (Ticketing) Regulations 2006 (Vic) r 9.3</i>	7
	Drink liquor in a rail vehicle	<i>Transport (Conduct) Regulations 2005 (Vic) r 24.1</i>	6
	Fail produce valid ticket in a designated area	<i>Transport (Ticketing) Regulations 2006 (Vic) r 8.2</i>	6
	Refuse/fail to comply with request	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 218B(4)(a)</i>	6
	Drink liquor on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic) r 24.1</i>	4
	Fail produce valid ticket for inspection	<i>Transport (Passenger Vehicles) Regulations 2005 (Vic) r 45</i>	4
	False name/address	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 218B(4)(b)</i>	4
	Smoke in covered area of train platform	<i>Transport (Conduct) Regulations 2005 (Vic) r 24A.1(c)</i>	4
	Smoke tobacco in carriage	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 222A(1)(a)</i>	4
	Behave in disorderly manner in rail vehicle	<i>Transport (Conduct) Regulations 2005 (Vic) r 28(b)</i>	3
	Fail to have valid ticket in a designated area	<i>Transport (Ticketing) Regulations 2006 (Vic) r 6.2</i>	3
	Fail to have valid ticket in a passenger vehicle	<i>Transport (Ticketing) Regulations 2006 (Vic) r 6.1</i>	3
	Fail to leave rail premises on request	<i>Transport (Conduct) Regulations 2005 (Vic) r 54.2</i>	3
	Possess open liquor container on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic) r 24.2</i>	3
	Possess open liquor container on rail vehicle	<i>Transport (Conduct) Regulations 2005 (Vic) r 24.2</i>	3
	Smoke tobacco on a covered train platform	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 222A(1)(b)</i>	3
	Miscellaneous public transport offences (with less than 3 charges sentenced in study period)	(50 offences)	58

Category	Offence description	Statutory reference	Number of charges sentenced
Sex offences	Sexual penetration with a child under 16 years	<i>Crimes Act 1958</i> (Vic) s 45(1)	19
	Indecent assault	<i>Crimes Act 1958</i> (Vic) s 39(1)	18
	Indecent act with child under 16	<i>Crimes Act 1958</i> (Vic) s 47(1)	9
	Indecent act in presence of child under 16	<i>Crimes Act 1958</i> (Vic) s 47(1)	5
	Indecent act with a child aged 16–17 under care/supervision/authority	<i>Crimes Act 1958</i> (Vic) s 49(1)	3
	Sexual penetration of a child under 10 (superseded)	<i>Crimes Act 1958</i> (Vic) s 47(1)	3
	Convicted sex offender loiter in a public place	<i>Crimes Act 1958</i> (Vic) s 60B(2)(b)	2
	Incest with sibling	<i>Crimes Act 1958</i> (Vic) s 44(4)	2
	Rape	<i>Crimes Act 1958</i> (Vic) s 38(1)	2
	Attempted sexual penetration of a child under 10 (superseded)	<i>Crimes Act 1958</i> (Vic) s 45(1)	1
	Convicted sex offender loiter near school	<i>Crimes Act 1958</i> (Vic) s 60B(2)(b)	1
	Gross indecency with a person under 16 (superseded)	<i>Crimes Act 1958</i> (Vic) s 50(1)(a)	1
	Induce child to take part in prostitution	<i>Sex Work Act 1994</i> (Vic) s 5(1)	1
	Knowingly possess child pornography	<i>Crimes Act 1958</i> (Vic) s 70(1)	1
	Loiter without reasonable excuse near a child centre	<i>Crimes Act 1958</i> (Vic) s 60B(2)(b)	1
Stalking/harassment	Stalk another person	<i>Crimes Act 1958</i> (Vic) s 21A(1)	289
	Use a carriage service to harass/menace	<i>Criminal Code Act 1995</i> (Cth) s 474.17(1)	158
	Use carriage service to menace/harass	<i>Crimes Act 1914</i> (Cth) s 85ZE(1)(a)	9
	Install tracking device to locate person	<i>Surveillance Devices Act 1999</i> (Vic) s 8(1)(a)	1
	Use carriage service/content of communication – harass	<i>Criminal Code Act 1995</i> (Cth) s 474.17(1)	1
	Use content of communication to menace	<i>Criminal Code Act 1995</i> (Cth) s 474.17(1)	1
	Use telecommunications service to harass	<i>Telecommunications Regulations 1975</i> (Cth) r 38(1)	1
Theft/deception	Theft	<i>Crimes Act 1958</i> (Vic) s 74	1,386
	Theft from a shop	<i>Crimes Act 1958</i> (Vic) s 74	860
	Obtain property by deception	<i>Crimes Act 1958</i> (Vic) s 81(1)	437
	Deal property suspected to be proceeds of crime	<i>Crimes Act 1958</i> (Vic) s 195	242
	Handle stolen goods	<i>Crimes Act 1958</i> (Vic) s 88(1)	234
	Theft of a motor vehicle	<i>Crimes Act 1958</i> (Vic) s 74	214
	Go equipped to steal/cheat	<i>Crimes Act 1958</i> (Vic) s 91(1)	160
	Theft from motor vehicle	<i>Crimes Act 1958</i> (Vic) s 74	159

Category	Offence description	Statutory reference	Number of charges sentenced
	Attempted theft from motor vehicle	<i>Crimes Act 1958 (Vic) s 321M</i>	60
	Attempt to obtain property by deception	<i>Crimes Act 1958 (Vic) s 321M</i>	49
	Obtain financial advantage by deception	<i>Crimes Act 1958 (Vic) s 82(1)</i>	32
	Theft of a bicycle	<i>Crimes Act 1958 (Vic) s 74</i>	30
	Dishonestly assist in retention of stolen goods	<i>Crimes Act 1958 (Vic) s 88(1)</i>	29
	Make a false document to the prejudice of another	<i>Crimes Act 1958 (Vic) s 83A(1)</i>	28
	Attempted theft	<i>Crimes Act 1958 (Vic) s 321M</i>	27
	Use a false document to prejudice other	<i>Crimes Act 1958 (Vic) s 83A(2)</i>	22
	Attempted theft of a motor vehicle	<i>Crimes Act 1958 (Vic) s 321M</i>	21
	Obtain financial advantage by deception	<i>Criminal Code Act 1995 (Cth) s 135.2(1)</i>	16
	Dishonestly assist in the disposal of stolen goods	<i>Crimes Act 1958 (Vic) s 88(1)</i>	7
	Knowingly deal with proceeds of crime	<i>Crimes Act 1958 (Vic) s 194(2)</i>	7
	Obtain property by deception	<i>Criminal Code Act 1995 (Cth) s 134.1</i>	7
	Possess suspected stolen goods	<i>Summary Offences Act 1966 (Vic) s 26(1)</i>	7
	Attempted theft from a shop	<i>Crimes Act 1958 (Vic) s 321M</i>	8
	Possess housebreaking implements	<i>Summary Offences Act 1966 (Vic) s 49D(1)</i>	6
	Theft of trailer	<i>Crimes Act 1958 (Vic) s 74</i>	5
	Make/use identification information to commit an indictable offence	<i>Crimes Act 1958 (Vic) s 192B(1)</i>	5
	Possess counterfeit money	<i>Crimes (Currency) Act 1981 (Cth) s 9(1)(a)</i>	4
	Have article of disguise with unlawful intent	<i>Summary Offences Act 1966 (Vic) s 49C(b)</i>	3
	Impersonate a public official	<i>Criminal Code Act 1995 (Cth) s 148.1</i>	3
	Improper use of a defence service decoration	<i>Defence Act 1903 (Cth) s 80B(1)</i>	3
	Wear defence emblem while not authorised	<i>Defence Act 1903 (Cth) s 83(1)</i>	3
	Attempt to commit an offence	<i>Criminal Code Act 1995 (Cth) s 11.1(1)</i>	2
	Blackmail	<i>Crimes Act 1958 (Vic) s 87</i>	2
	Impersonate returned soldier	<i>Defence Act 1903 (Cth) s 80(1)</i>	2
	Make counterfeit money	<i>Crimes (Currency) Act 1981 (Cth) s 6</i>	2
	Negligently deal with proceeds of crime	<i>Crimes Act 1958 (Vic) s 194(4)</i>	2
	Possession of equipment to make/supply/retain identification documentation	<i>Crimes Act 1958 (Vic) s 192D(1)</i>	2
	Attempt to obtain financial advantage by deception	<i>Crimes Act 1958 (Vic) s 321M</i>	1

Category	Offence description	Statutory reference	Number of charges sentenced
	Attempted theft of a bicycle	<i>Crimes Act 1958</i> (Vic) s 321M	1
	Defraud the Commonwealth	<i>Commonwealth Crimes Act 1914</i> (Cth) s 29D	1
	Dishonestly appropriate a postal message	<i>Criminal Code Act 1995</i> (Cth) s 471.1(1)(a)(iii)	1
	Dishonestly cause a loss to a Commonwealth entity	<i>Criminal Code Act 1995</i> (Cth) s 135.1(5)	1
	Dishonestly obtain delivery of articles	<i>Criminal Code Act 1995</i> (Cth) s 471.8	1
	Knowingly deal and conceal proceeds of crime	<i>Crimes Act 1958</i> (Vic) s 194(1)	1
	Possess tools to manufacture counterfeit money	<i>Crimes (Currency) Act 1981</i> (Cth) s 11(1)(c)	1
	Possession identification information – commit/facilitate indictable offence	<i>Crimes Act 1958</i> (Vic) s 192C(1)	1
	Utter counterfeit money	<i>Crimes (Currency) Act 1981</i> (Cth) s 7	1
Threat to kill/ injure	Threat to kill	<i>Crimes Act 1958</i> (Vic) s 20	584
	Threaten to inflict serious injury	<i>Crimes Act 1958</i> (Vic) s 21	169
	Bomb hoax – make statement or convey information	<i>Crimes Act 1958</i> (Vic) s 317A(2)	27
	Bomb hoax – place article or substance	<i>Crimes Act 1958</i> (Vic) s 317A(1)(a)	2
	Extortion with threat to inflict injury	<i>Crimes Act 1958</i> (Vic) s 27	2
	Use threatening words	<i>Sex Work Act 1994</i> (Vic) s 16(b)	2
	Extortion with threat to kill	<i>Crimes Act 1958</i> (Vic) s 27	1
Trespass/ loitering	Without authority/excuse enter a private place	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(e)	115
	Without authority/excuse enter a scheduled public place	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(e)	21
	Enter a place where likely to cause a breach of peace	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(g)	11
	Unlawfully on premises/precinct	<i>Vagrancy Act 1966</i> (Vic) s 7(1)(i)	10
	Known thief loiter in public place	<i>Summary Offences Act 1966</i> (Vic) s 49B(1)	9
	Wilfully trespass in a public place	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(d)	7
	Refuse to leave private place after warning	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(f)	6
	Trespass	<i>Public Order (Protection of Persons and Property) Act 1971</i> (Cth) s 12	2
	Reputed thief loiter in public place	<i>Summary Offences Act 1966</i> (Vic) s 49B(1)	1
	Trespass on land/premises of authority	<i>Water Act 1989</i> (Vic) s 291	1
Wilfully trespass in a public place	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(d)	1	

Category	Offence description	Statutory reference	Number of charges sentenced
Unauthorised driving	Drive while disqualified	<i>Road Safety Act 1986 (Vic) s 30(1)</i>	595
	Drive motor vehicle without licence	<i>Road Safety Act 1986 (Vic) s 18(1)(a)</i>	564
	Drive while authorisation suspended	<i>Road Safety Act 1986 (Vic) s 30(1)</i>	553
	Breach alcohol interlock condition	<i>Road Safety Act 1986 (Vic) s 50AAD(1)(a)</i>	34
	Drive motor vehicle without permit	<i>Road Safety Act 1986 (Vic) s 18(1)(a)</i>	6
	Drive while authorisation cancelled	<i>Road Safety Act 1986 (Vic) s 30(1)</i>	3
Weapons	Use/carry a controlled weapon without excuse	<i>Control of Weapons Act 1990 (Vic) s 6(1)</i>	249
	Possess a dangerous article in public place	<i>Control of Weapons Act 1990 (Vic) s 7(1)</i>	79
	Possess a prohibited weapon without exemption/approval	<i>Control of Weapons Act 1990 (Vic) s 5(1)(e)</i>	75
	Prohibited person possess a firearm	<i>Firearms Act 1996 (Vic) s 5(1)</i>	48
	Possess ammunition without licence or permit	<i>Firearms Act 1996 (Vic) s 124(1)</i>	32
	Possess/use/carry a prohibited weapon without exemption/approval	<i>Control of Weapons Act 1990 (Vic) s 5AA</i>	19
	Unlicensed person stores a firearm or ammunition in an insecure manner	<i>Firearms Act 1996 (Vic) s 129A</i>	16
	Possess an unregistered general category handgun	<i>Firearms Act 1996 (Vic) s 7B(1)</i>	14
	Non-prohibited person possesses a category A longarm without a licence	<i>Firearms Act 1996 (Vic) s 6(1)</i>	11
	Non-prohibited person possesses a registered general category handgun without a licence	<i>Firearms Act 1996 (Vic) s 7(1)</i>	5
	Own a longarm firearm without a licence	<i>Firearms Act 1996 (Vic) s 135(1)</i>	5
	Fail to store a category A or B longarm correctly	<i>Firearms Act 1996 (Vic) s 121(1)</i>	4
	Non-prohibited person possesses an unregistered category A longarm	<i>Firearms Act 1996 (Vic) s 6(1)</i>	4
	Possess a category A or B longarm without a licence	<i>Firearms Act 1996 (Vic) s 135(1)</i>	4
	Carry ammunition in an unsafe manner	<i>Firearms Act 1996 (Vic) s 126(4)</i>	3
	Carry an offensive weapon on court premises	<i>Court Security Act 1980 (Vic) s 4</i>	3
	Non-prohibited person possesses a handgun without a licence	<i>Firearms Act 1996 (Vic) s 7</i>	3
	Alter a firearm to a different category without the consent of the Commissioner	<i>Firearms Act 1996 (Vic) s 134A</i>	2
	Deal/store unauthorised explosives without approval	<i>Dangerous Goods Act 1985 (Vic) s 54(5)</i>	2

Category	Offence description	Statutory reference	Number of charges sentenced
	Possess explosive substance without excuse	<i>Crimes Act 1958</i> (Vic) s 317(4)	2
	Possess an imitation general category handgun	<i>Firearms Act 1996</i> (Vic) s 7	2
	Possess an unregistered handgun	<i>Firearms Act 1996</i> (Vic) s 7	2
	Prohibited person possesses a firearm	<i>Firearms Act 1996</i> (Vic) s 5(1)	2
	Shorten the barrel of a longarm	<i>Firearms Act 1996</i> (Vic) s 134(1)	2
	Unlicensed person owns a handgun	<i>Firearms Act 1996</i> (Vic) s 135(2)	2
	Armed with a prohibited weapon with criminal intent	<i>Crimes Act 1958</i> (Vic) s 31B(2)	1
	Armed with a controlled weapon with criminal intent	<i>Vagrancy Act 1966</i> (Vic) s 8(a)	1
	Carry a controlled weapon in the immediate vicinity of licenced premises	<i>Control of Weapons Act 1990</i> (Vic) s 6(1A)	1
	Carry loaded firearm in a populated place	<i>Firearms Act 1996</i> (Vic) s 130(1)	1
	Manufacture a prohibited weapon	<i>Control of Weapons Act 1990</i> (Vic) s 5(1)(c)	1
	Non-prohibited person possesses a category B longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(2)	1
	Non-prohibited person possesses a category E longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(5)	1
	Non-prohibited person possesses an unregistered category E longarm	<i>Firearms Act 1996</i> (Vic) s 6(5)	1
	Possess an imitation firearm without exempt/approval	<i>Control of Weapons Act 1990</i> (Vic) s 5AB(1)	1
	Possess a prohibited weapon immediate vicinity of licenced premises	<i>Control of Weapons Act 1990</i> (Vic) s 5(1A)	1
	Possess a firearm on court premises	<i>Court Security Act 1980</i> (Vic) s 4	1
	Possess a prescribed weapon without an exemption/approval	<i>Control of Weapons Act 1990</i> (Vic) s 5(1)(d)	1
	Possess a prohibited weapon in licenced premises	<i>Control of Weapons Act 1990</i> (Vic) s 5(1A)	1
	Prohibited person possesses a silencer	<i>Firearms Act 1996</i> (Vic) s 5(2)	1
	Prohibited person possesses other prescribed item	<i>Firearms Act 1996</i> (Vic) s 5(2)	1
	Prohibited person possesses an imitation firearm	<i>Control of Weapons Act 1990</i> (Vic) s 5AB(2)	1
	Unlicensed dealer seeks a category E handgun	<i>Firearms Act 1996</i> (Vic) s 59(2)	1
	Use a firearm in a dangerous manner	<i>Firearms Act 1996</i> (Vic) s 129	1
Total charges sentenced from 1 July 2004 to 30 June 2015			28,749

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