Major Driving Offences
Current Sentencing Practices

The Sentencing Advisory Council bridges the gap between the community, the courts, and the government by informing, educating, and advising on sentencing issues.

The Sentencing Advisory Council is an independent statutory body established in 2004 under amendments to the *Sentencing Act 1991*. The functions of the Council are to:

- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council's written views on the giving, or review, of a guideline judgment.

Council members come from a broad spectrum of professional and community backgrounds. Under the *Sentencing Act 1991*, Council members must be appointed under eight profile areas:

- two people with broad experience in community issues affecting the courts
- one senior academic
- one highly experienced defence lawyer
- one highly experienced prosecution lawyer
- one member of a victim of crime support or advocacy group
- one person involved in the management of a victim of crime support or advocacy group who is a victim of crime or a representative of victims of crime
- one member of the police force of the rank of senior sergeant or below who is actively engaged in criminal law enforcement duties
- the remainder must have experience in the operation of the criminal justice system.

For more information about the Council and sentencing generally, visit:
www.sentencingcouncil.vic.gov.au

Major Driving Offences
Current Sentencing Practices

Sentencing Advisory Council
June 2015

Contents

Contributors

Authors
Donald Ritchie and Zsombor Bathy

Sentencing Advisory Council

Chair
Arie Freiberg AM

Deputy-Chair
Lisa Ward

Council Members
Carmel Arthur
Hugh de Kretser
Fiona Dowsley
Helen Fatouros
David Grace QC
John Griffin PSM
Peter Kidd SC
Shane Patton
Barbara Rozenes
Geoff Wilkinson OAM
Kornelia Zimmer

Chief Executive Officer
Cynthia Marwood

Acknowledgments

Abbreviations

ADU	Adjourned undertaking
CBO	Community-based order
CCO	Community correction order
CI	Confidence interval
CTO	Combined custody and treatment order
FIN	Fine
ICO	Intensive correction order
ICSI	Intentionally causing serious injury
IMP	Imprisonment
PSS	Partially suspended sentence of imprisonment
TES	Total effective sentence
WSS	Wholly suspended sentence of imprisonment
YJC	Youth justice centre order

Glossary

Case	A collection of one or more proven charges against a person sentenced at the one hearing.
Charge	A single proven allegation of an offence.
Chi-square test	A statistical test of independence, used to examine the relationship between two categorical variables (for example, gender and sentence type).
Incident	The driving event that has resulted in the offending. The word 'incident' has been used in preference to 'accident' to avoid the connotation that the offending was not the result of deliberate conduct.
Instinctive synthesis	The method of sentencing by which the judge identifies all the factors that are relevant to the sentence, discusses their significance, and then makes a value judgment as to the appropriate sentence, given all the circumstances of the case. Sometimes instinctive synthesis is referred to as the 'intuitive synthesis' or 'sentencing synthesis'.
Median	The middle value in a set or a distribution of values. For example, in the following set of values:
	1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7
	4 is the median value. It represents a statistical midpoint, where half of the values (1, 2, 2, 3, 3) are below the median, and half of the values (5, 5, 6, 6, 7) are above the median. If a set has an even number of values, the two middle values (sometimes defined as the lower median and the upper median) are averaged to find the median.
Median total effective term of imprisonment	The middle value in a set of total effective sentences.
Nagelkerke's R square	A statistical measure of the amount of variance in an outcome variable explained by a set of predictor variables in a logistic regression model.
P-value	A measure of statistical significance or the likelihood that an observed statistical relationship between two or more variables has occurred by chance (if p-value = 0.05, there is a 5% likelihood the observed relationship occurred by chance alone).
Reference period	The seven-year period, from 2006–07 to 2012–13, examined in this report.
Reference offences	The offences of culpable driving causing death (*Crimes Act 1958* (Vic) s 318(1)), dangerous driving causing death (*Crimes Act 1958* (Vic) s 319(1)), negligently causing serious injury (where driving related) (*Crimes Act 1958* (Vic) s 24), and dangerous driving causing serious injury (*Crimes Act 1958* (Vic) s 319(1A)).

Standardised beta coefficient	A statistical measure used in logistic regression to describe the change in odds of being in one of the categories of an outcome variable when the value of a predictor variable increases by one unit.
Statistical significance	A statistical measure of the likelihood that the difference between two numbers has not occurred by chance. The most widely used threshold of statistical significance, and the threshold used in this report, is 0.05, which means there is a 5% likelihood that the observed difference occurred by chance alone.
Suspended sentence (*Sentencing Act 1991* (Vic) ss 27–31)	A term of imprisonment that is suspended (that is, not activated) wholly or in part for a specified period (the 'operational period'), subject to the condition to be of good behaviour (that is, not reoffend). Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014. However, suspended sentences were available for all of the reference offences during the reference period.
Total effective sentence	The product of individual sentences (and orders for cumulation or concurrency of those sentences) imposed on a person on the same occasion. In a case involving a single charge, the total effective sentence will be the sentence imposed for that charge. The total effective sentence is also known as the 'head sentence'.
Youth justice centre order (*Sentencing Act 1991* (Vic) ss 32–35)	A sentence requiring a young offender (15–21 years old) to be detained in a youth justice centre. A youth justice centre order may be imposed for a maximum of two years in the Magistrates' Court and for three years in the County and Supreme Courts.

1. Main findings

1.1   This report examines current sentencing practices between 2006–07 and 2012–13 (the 'reference period') for four major driving offences (collectively, the 'reference offences'):

- culpable driving causing death ('culpable driving');[1]
- dangerous driving causing death;[2]
- negligently causing serious injury (where driving related);[3] and
- dangerous driving causing serious injury.[4]

1.2   The report presents high-level sentencing outcomes at both the charge and the case level for each of the reference offences. Additionally, it examines sentencing outcomes for dangerous driving causing death and negligently causing serious injury for the periods before and after increases to the maximum penalties for those offences.

Cluster analysis

1.3   The report adopts a statistical tool called cluster analysis that identifies groups of cases with common characteristics. It shows that there are meaningful sub-groups of cases within each of the major driving offences that are distinguished by particular offender and offending characteristics.

1.4   Each of the offences cluster into two groups that are generally separated by the age of the offender (generally, under 25 vs over 30) and the type of driving behaviour within the case (generally, speed, alcohol, and intentional high-risk behaviour vs inattention and fatigue). These groupings are also associated with other differences between the sub-groups, such as the location of the victim and the offender's relationship to the victim.

1.5   Although distinct sub-groups emerge, the sentencing outcomes for cases within the sub-groups are generally similar. The small differences in the median sentences imposed for each sub-group within a single offence are not statistically significant.

1.6   These data suggest that, compared with other offences where there may be a broad range of harm and culpability within a single offence,[5] the seriousness of the harm caused in cases of major driving offences and the need for general deterrence are the predominant sentencing considerations. These key considerations appear to temper differences in sentence as a result of the manner in which the offences were committed or characteristics personal to the offender.

---

1.   *Crimes Act 1958* (Vic) s 318(1).
2.   *Crimes Act 1958* (Vic) s 319(1).
3.   *Crimes Act 1958* (Vic) s 24.
4.   *Crimes Act 1958* (Vic) s 319(1A).
5.   See, for example, the offence of aggravated burglary: *Crimes Act 1958* (Vic) s 77; Sentencing Advisory Council, *Aggravated Burglary: Current Sentencing Practices* (2011).

Regression analysis

1.7   With no significant differences in sentence outcomes according to the identified sub-groups, further analysis was undertaken to test for other factors that might explain differences in sentencing outcomes. The analysis used logistic regression modelling to test whether particular sentencing factors could predict sentencing outcomes, when the effects of other factors were removed.

1.8   Due to the large number of factors, a statistical process was used to select predictor variables (see [8.14]); of those variables analysed very few had a predictive influence.

1.9   The regression analysis found that, across all offences, speeding and the offender's prior offences relating to dishonesty or property predicted increased severity of sentence.

1.10   Regression analysis showed that for the non-culpable driving cases, the likelihood of an immediate custodial sentence was increased when:

- the driving behaviour included speeding;
- the offender had prior driving offences;
- the case included a charge of negligently causing serious injury; and
- the offender had prior dishonesty or property offences.

1.11   Inattention, however, significantly decreased the likelihood of an immediate custodial sentence for the non-culpable driving cases.

1.12   Factors that were predictive of sentencing outcomes for specific offences included:

- prior dishonesty or property offences and speeding, which increased the likelihood of a longer imprisonment sentence for culpable driving cases;
- speeding and past driving offences, which increased the likelihood of an immediate custodial sentence for dangerous driving causing death cases;
- permanent disability to any victim, which increased the likelihood of an immediate custodial sentence for negligently causing serious injury cases; and
- guilty plea and inattention, which decreased the likelihood of an immediate custodial sentence for dangerous driving causing serious injury cases; and
- past driving offences, which increased the likelihood of an immediate custodial sentence for dangerous driving causing serious injury cases.

Trends across offences

Driving behaviours

1.13   Speeding and alcohol were the predominant driving behaviours associated with three of the four major driving offences: culpable driving causing death, negligently causing serious injury, and dangerous driving causing serious injury. Inattention and speeding were the predominant driving behaviours associated with dangerous driving causing death.

1.14   Across all offence groups, over a quarter of cases (26%) involved both speeding and alcohol. Drug-affected drivers represented a small proportion of offenders (11%) across all of the major driving offences during the reference period.[6] The most common drug was cannabis (4%) while methylamphetamine/ice affected 2% of offenders.

---

6.   A further analysis of 26 of the 33 cases (81%) of culpable driving causing death and dangerous driving causing death sentenced in 2013–14 showed a similarly low proportion of drug-affected offenders (14.8%), consistent with the reference period.

Sentencing outcomes

1.15   Figure 1 shows the median values and distribution of imprisonment sentence lengths and non-parole periods imposed for cases of the reference offences (where the reference offence was the principal proven driving offence in the case) between 2006–07 and 2012–13.

Figure 1: Median values and distribution of total effective imprisonment sentence lengths (TES) and non-parole periods (NPP) for cases of all reference offences, 2006–07 to 2012–13
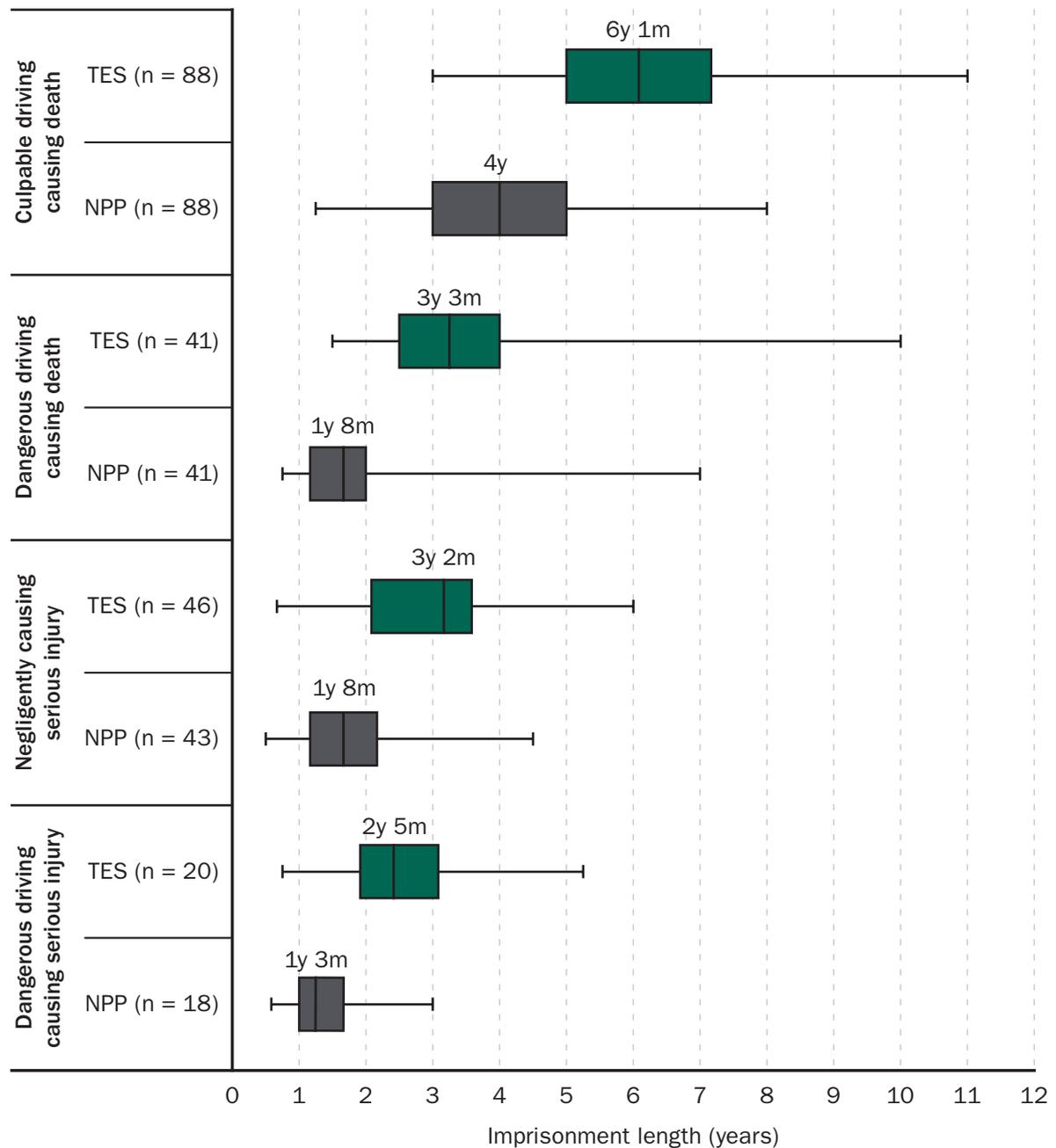
1.16   Table 1 presents the sentencing outcomes for all charges of the reference offences between 2006–07 and 2012–13.

Table 1: Sentencing data across all reference offences, by charge, 2006–07 to 2012–13

Sentence data	Culpable driving causing death	Dangerous driving causing death	Negligently causing serious injury	Dangerous driving causing serious injury
Maximum penalty	Level 3 (20 years)	Level 5 (10 years)	Level 5 (10 years)	Level 6 (5 years)
Imprisonment	**95 charges (84%)**	**56 charges (38%)**	**137 charges (67%)**	**68 charges (47%)**
Charge Minimum	2y	1y	6m	8m
Median	5y 6m	3y	2y 3m	1y 6m
Maximum	10y 6m	4y 4m	4y	4y
Partially suspended sentence	**1 charge (1%)**	**19 charges (13%)**	**17 charges (8%)**	**12 charges (8%)**
Charge Minimum	3y	1y 3m	6m	3m
Median	3y	2y	1y 6m	1y 3m
Maximum	3y	3y	3y	2y 6m
Youth justice centre order	**9 charges (8%)**	**6 charges (4%)**	**11 charges (5%)**	**11 charges (8%)**
Charge Minimum	1y	1y	3m	8m
Median	3y	2y	1y	1y 6m
Maximum	3y	2y 6m	3y	1y 6m
Wholly suspended sentence	**6 charges (5%)**	**62 charges (42%)**	**27 charges (13%)**	**45 charges (31%)**
Charge Minimum	2y	6m	6m	3m
Median	2y 8m	1y 6m	1y 2m	1y
Maximum	3y	3y	2y 6m	3y
Other sentences	**2 charges (2%)**[a]	**3 charges (2%)**[b]	**11 charges (5%)**[c]	**9 charges (6%)**[d]
Total	**113 charges (100%)**	**146 charges (100%)**	**203 charges (100%)**	**145 charges (100%)**

a. Other sentences imposed on charges of culpable driving causing death during the reference period were 1 wholly suspended sentence combined with a fine (1%) and 1 aggregate imprisonment sentence (1%).

b. Other sentences imposed on charges of dangerous driving causing death during the reference period were 2 community-based orders (2%) and 1 intensive correction order (1%).

c. Other sentences imposed on charges of negligently causing serious injury during the reference period were 4 aggregate imprisonment sentences (2%), 3 community-based orders (1%), 1 wholly suspended sentence combined with a fine (<1%), 1 community correction order (<1%), 1 fine (<1%), and 1 aggregate fine (<1%).

d. Other sentences imposed on charges of dangerous driving causing serious injury during the reference period were 4 community-based orders (3%), 3 wholly suspended sentences combined with a fine (2%), 1 intensive correction order (1%), and 1 community correction order (1%).

Culpable driving causing death

1.17 During the reference period, the offence of culpable driving causing death (104 cases) had the following features:

- 87% of offenders pleaded guilty;
- 64% of offenders were speeding and 63% were affected by alcohol;
- comparatively few offenders were affected by drugs (17%) and of those, the most common drug was cannabis (6% of cases);
- the majority of cases occurred within metropolitan Melbourne (57%);
- the majority of cases involved 1 victim (60%) and most victims were male (62%);
- victims were primarily passengers in the principal vehicle (57%) followed by occupants of another vehicle (30%);
- a slight majority of victims were friends of the offender (51%) followed by strangers (42%); and
- a substantial proportion of offenders (37%) were unlicensed and/or either had a suspended licence or were disqualified from obtaining a driver licence, at the time of the offending.

1.18 At the case level (as opposed to the individual charge level), a sentence of imprisonment was imposed in 84% of cases (n = 88) during the reference period. A wholly suspended sentence was imposed in 7% of cases (n = 7), and a partially suspended sentence was imposed in less than 1% of cases (n = 1). The median total effective term of imprisonment was 6 years and 1 month.

1.19 Within this offence during the reference period, the cluster analysis identified two sub-groups of cases (Cluster 1 and Cluster 2 – see [4.30]–[4.31] for a full description of each cluster).

1.20 Cluster 1 (76 cases) comprised cases in which the offender was younger (aged under 35) and killed or injured a passenger in the principal vehicle. Cluster 2 (28 cases) predominantly comprised cases in which the offender was older (aged 25 and over) and killed or injured a stranger to the offender who was an occupant of another vehicle or a pedestrian/bystander.

1.21 There was no statistical significance to differences in median terms of imprisonment imposed for cases in Cluster 1 compared with Cluster 2. There was, however, a near significant difference between the median non-parole periods imposed for Cluster 1 and Cluster 2, suggesting that the rehabilitative factors present in Cluster 1 cases (including youth) contribute towards the imposition of a longer parole period to further the offender's prospects of rehabilitation.

1.22 Regression analysis also showed that for culpable driving, prior dishonesty or property offences, and where the driving behaviour included speeding, both substantially increased the likelihood of a longer imprisonment term.

Dangerous driving causing death

1.23   During the reference period, the offence of dangerous driving causing death (124 cases) had the following features:

- 85% of offenders pleaded guilty;

- inattention (37%) and speeding (30%) were the most common driving behaviours;

- few cases involved alcohol (15%) or drug-affected drivers (5%) and where drug affected, the most common drug was cannabis (2% of cases);

- location of offending was evenly split between within (46%) and outside (48%) metropolitan Melbourne.[7] Considering differences in population, however, it is likely that a higher proportion of offences, relative to population, occur outside metropolitan Melbourne;

- the majority of cases involved 1 victim (66%) and most victims were male (61%);

- victims were primarily occupants of another vehicle (41%) followed by passengers in the principal vehicle (34%); and

- a substantial majority of victims were strangers to the offender (65%) followed by friends of the offender (25%).

1.24   At the case level (as opposed to the individual charge level), a sentence of imprisonment was imposed in 33.1% of cases (n = 41) during the reference period. A wholly suspended sentence was imposed in 46% of cases (n = 57), and a partially suspended sentence was imposed in 15.3% of cases (n = 19). The median total effective term of imprisonment was 3 years and 3 months.

1.25   After a 100% increase in the maximum penalty from 5 years to 10 years' imprisonment in 2008, the cumulative median sentence of imprisonment over the reference period for charges of dangerous driving causing death increased by 20%, from 2 years and 6 months to 3 years.

1.26   Within this offence during the reference period, the cluster analysis identified two sub-groups of cases (Cluster 1 and Cluster 2 – see [5.45]–[5.46] for a full description of each cluster).

1.27   Cluster 1 (69 cases) comprised cases in which the offender was younger (aged under 35), the driving behaviour involved speeding and alcohol, and the victim was a friend of the offender. Cluster 2 (55 cases) predominantly comprised cases in which the offender was older (aged 25 and over) and killed or injured a stranger to the offender who was an occupant of another vehicle (or a pedestrian/bystander), as a result of inattention.

1.28   There was no statistical significance to differences in median terms of imprisonment imposed for cases in Cluster 1 compared with Cluster 2.

1.29   Regression analysis showed that, for the specific offence of dangerous driving causing death, the two factors of speeding and past driving offences increased the likelihood of immediate custody.

---

7.   Percentages do not total 100% due to a number of cases where the location was unknown.

Negligently causing serious injury (where driving related)

1.30 During the reference period, the offence of negligently causing serious injury (77 cases) had the following features:

- all of the offenders pleaded guilty;
- speeding (55%) and driving affected by alcohol (49%) were the most common driving behaviours;
- few cases involved drug-affected drivers (13%) and where drug affected, the most common drug was cannabis (6% of cases);
- most cases occurred within metropolitan Melbourne (64%);
- the majority of cases involved 1 victim (58%) and most victims were male (52%);
- victims were primarily passengers in the principal vehicle (44%) followed by occupants of another vehicle (39%);
- a slight majority of all victims were strangers to the offender (53%) followed by friends of the offender (37%);
- in 64% of cases the offender had a record of prior offending, with prior driving offences being the most common (56%) followed by dishonesty/property offences (22%);
- a substantial proportion of offenders (34%) were unlicensed and/or had a suspended licence, or were disqualified from obtaining a driver licence, at the time of the offending; and
- a quarter of all offenders had a personal history of alcohol (26%) and/or substance abuse (25%).

1.31 At the case level (as opposed to the individual charge level), a sentence of imprisonment was imposed in 59% of cases (n = 46) during the reference period. A wholly suspended sentence was imposed in 17% of cases (n = 13), and a partially suspended sentence was imposed in 14% of cases (n = 11). The median total effective term of imprisonment was 3 years, 1 month, and 15 days.[8]

1.32 After a 100% increase in the maximum penalty from 5 years to 10 years in 2008, the cumulative median sentence of imprisonment over the reference period for charges of negligently causing serious injury increased by 25%, from 2 years to 2 years and 6 months.

1.33 Within this offence during the reference period, the cluster analysis identified two sub-groups of cases (Cluster 1 and Cluster 2 – see [6.35]–[6.36] for a full description of each cluster).

1.34 Cluster 1 (51 cases) comprised cases in which the offender was younger (aged under 35), was speeding, and injured a friend. Cluster 2 (26 cases) predominantly comprised cases in which the offender was older (aged 25 and over), had previous driving offences, and injured an occupant of another vehicle.

1.35 There was no statistical significance to differences in median terms of imprisonment imposed for cases in Cluster 1 compared with Cluster 2.

1.36 Regression analysis showed that, for the specific offence of negligently causing serious injury, permanent disability rendered on the victim was the only factor that resulted in a significant increased chance of immediate custody.

---

8.   This median sentence length is the result of an average of two middle values.

Dangerous driving causing serious injury

1.37 During the reference period, the offence of dangerous driving causing serious injury (50 cases) had the following features:

- 96% of offenders pleaded guilty;
- speeding (44%), driving affected by alcohol (40%), and intentional high-risk behaviour (32%) were the most common driving behaviours;
- the majority of cases occurred within metropolitan Melbourne (74%);
- the majority of cases involved 1 victim (74%) and most victims were female (51%);
- victims were primarily occupants of another vehicle (37%) or passengers in the principal vehicle (36%);
- a majority of all victims were strangers to the offender (61%);
- 60% of offenders had a record of prior offending, with prior driving offences being the most common (54%); and
- the majority of offenders were considered to have positive prospects of rehabilitation (80%) and a positive assessment of remorse (74%).

1.38 At the case level (as opposed to the individual charge level), a sentence of imprisonment was imposed in 39.2% of cases (n = 20) during the reference period. A wholly suspended sentence was imposed in 35.3% of cases (n = 18), and a partially suspended sentence was imposed in 15.7% of cases (n = 8). The median total effective term of imprisonment was 4 years and 6 months.

1.39 Within this offence during the reference period, the cluster analysis identified two sub-groups of cases (Cluster 1 and Cluster 2 – see [7.34]–[7.35] for a full description of each cluster).

1.40 Cluster 1 (27 cases) comprised cases in which the offender was younger (aged under 35), had a prior licence suspension, and injured a friend. Cluster 2 (23 cases) predominantly comprised cases in which the offender was older (aged 25 and over), and had prior violence-related offending, prior licence disqualification, and prior drink driving offences.

1.41 There was no statistical significance to differences in median terms of imprisonment imposed for cases in Cluster 1 compared with Cluster 2.

1.42 Regression analysis showed that, for the specific offence of dangerous driving causing serious injury, past driving offences was the only factor that resulted in a significantly increased chance of immediate custody; guilty plea and inattention were both associated with a decreased chance of receiving immediate custody.

2. Focus of report and overview of offences

2.1   Road trauma, and its effects on victims, offenders, and the community at large, is a major social problem.

2.2   Between July 2006 and June 2013, 1,106 people were killed on Victorian roads, including cyclists, drivers, motorcyclists, passengers, and pedestrians.[9] Over the same period there were 3,531 claims to the Victorian Transport Accident Commission involving the hospitalisation of persons as a result of road trauma for greater than 14 days, and 18,655 claims involving hospitalisation for 14 days or less.[10]

2.3   These fatalities and injuries do not always result in convictions; for example, if the driver that caused a road trauma incident is killed, then no charges or convictions will result.

2.4   This report therefore represents one component of a much wider social issue, and the behaviours and factors that relate to the sentencing of offences covered by this report must be considered within that context.

2.5   This report examines current sentencing practices for four major driving offences:
- culpable driving causing death ('culpable driving');[11]
- dangerous driving causing death;[12]
- negligently causing serious injury (where driving related);[13] and
- dangerous driving causing serious injury.[14]

2.6   The report covers a seven-year reference period from 2006–07 to 2012–13. In total, over 350 cases were analysed in order to present the following information for each of the reference offences:
- a profile of sentencing factors (for example, driving behaviour, victim characteristics, and offender characteristics);
- co-sentenced offences;
- high-level sentencing outcomes for each offence; and
- profiles of particular sub-groups of cases and their sentencing outcomes.

2.7   This report also examines changes in current sentencing practices as a result of changes to the maximum penalty for the offences of:
- dangerous driving causing death; and
- negligently causing serious injury.

---

9. Transport Accident Commission (TAC) Victoria, *TAC Victoria Statistics – 1 July 2009 to 30 June 2013* (Searchable Roadside Statistics, 2015) <http://www.tac.vic.gov.au/road-safety/statistics/online-crash-database> at 1 March 2015.
10. Transport Accident Commission (TAC) Victoria (2015) above n 9.
11. *Crimes Act 1958* (Vic) s 318(1).
12. *Crimes Act 1958* (Vic) s 319(1).
13. *Crimes Act 1958* (Vic) s 24.
14. *Crimes Act 1958* (Vic) s 319(1A).

2.8   This report is the second of two reports published in 2015 on current sentencing practices. The other report examines major drug offences.[15] Previous current sentencing practices reports, published in 2011, examined aggravated burglary and causing serious injury offences.[16]

Current sentencing practices

The use of statistics in sentencing

2.9   A court must have regard to current sentencing practices in sentencing an offender.[17] One of the statutory functions of the Sentencing Advisory Council ('the Council') is to provide the courts with statistical information about current sentencing practices.[18] The main source of statistical information about current sentencing practices for Victorian courts are the Council's SACStat online statistics database and Sentencing Snapshots series, which provide data on sentence types and distribution of sentence lengths.[19]

2.10   Sentencing statistics can assist a court in determining current sentencing practices, but statistics by themselves do not establish a sentencing practice.[20] Rather, statistics such as median sentence lengths are a 'valuable yardstick in indicating whether a sentence is manifestly inadequate or excessive, and in ensuring consistency in sentencing'.[21]

2.11   The Victorian Court of Appeal has noted the limitations of sentencing statistics and cautioned against their misuse. In *Russell v The Queen*, Kaye AJA stated that sentencing statistics are:

> at best, only a very crude guide as to the appropriate sentence in a case. The only information, on which such statistics are based, are, firstly, the relevant offence, and, secondly, the sentence. The statistics do not reveal anything about the underlying factors influencing the sentences in the cases comprised in the statistics, including the gravity of the offending, and the nature of the mitigating circumstances. In that way, the median statistic is, at best, a particularly rough cross check for a sentencing judge, in the event that a sentence determined by that judge might be significantly more, or less, than the median figure. To give statistics any greater weight than that would, necessarily, compromise the proper exercise of the instinctive synthesis, which lies at the heart of just and fair sentencing.[22]

2.12   Similar comments were made in some of the sentencing remarks analysed for this report.

Sentencing in comparable cases

2.13   Given the limitations of sentencing statistics, it is increasingly common for judges to compile tables of comparable cases in order to take account of current sentencing practices. As Neave JA

---

15. Sentencing Advisory Council, *Major Drug Offences: Current Sentencing Practices* (2015).

16. Sentencing Advisory Council (2011) above n 5; Sentencing Advisory Council, *Causing Serious Injury – Recklessly and Intentionally: Current Sentencing Practices* (2011).

17. *Sentencing Act 1991* (Vic) s 5(2)(b).

18. *Sentencing Act 1991* (Vic) s 108C(1)(b).

19. Sentencing Advisory Council, *Sentencing Snapshots* (2015) <http://www.sentencingcouncil.vic.gov.au/statistics/sentencing-snapshots> at 1 March 2015. The SACStat databases cover the Magistrates' Court and the higher courts (County Court and Supreme Court): Sentencing Advisory Council, *SACStat* (2014) <http://www.sentencingcouncil.vic.gov.au/sacstat/home.html> at 1 March 2015.

20. *Director of Public Prosecutions v Maynard* [2009] VSCA 129 (11 June 2009) [35].

21. *Director of Public Prosecutions v Hill* (2012) 223 A Crim R 285, 298.

22. *Russell v The Queen* (2011) 212 A Crim R 57, 70.

stated in *Director of Public Prosecutions (Cth) & Director of Public Prosecutions (Vic) v Edge*, these comparative tables:

> usually contain more information than simply the nature of the offence and the particular sentence imposed. Frequently, they indicate a range of matters relevant to the exercise of the sentencing discretion, including the age of the offender, whether or not the offender pleaded guilty, whether or not he or she had prior convictions, and whether or not there were other mitigating or aggravating features.[23]

2.14　Following the High Court of Australia's decision in *Barbaro v The Queen* ('*Barbaro*'), practitioners and the courts will continue to require comparative sentencing information. In *Barbaro*, the majority held that a judge should not take into account a prosecutor's submission about the bounds of an available range of sentences, nor should the prosecution provide such a submission.[24] This practice, however, is to be distinguished from 'the proper and ordinary use of sentencing statistics and other material indicating what sentences have been imposed in other (more or less) comparable cases'.[25] The majority stated that these comparable cases provide a yardstick against which to measure a proposed sentence, rather than marking 'the outer bounds of the permissible [sentencing] discretion.'[26]

2.15　*Barbaro* was considered by the Court of Appeal in the 2014 case of *Matthews v The Queen*.[27] The majority held that, following *Barbaro*, the Crown still has 'a duty to assist the sentencing judge to avoid appealable error', which, among a number of other considerations:

> also extends to making appropriate submissions on relevant questions of law, including statutorily prescribed maximum penalties, principles of sentencing reasonably thought to be applicable and *comparable and other relevant cases*.[28]

2.16　Further, the majority held that defence counsel were not prevented from submitting a quantified sentencing range, and that the Crown should be in a position to respond to that range and:

> be able to tell the judge whether in the Crown's submission it would be open to impose a sentence within that range; or, if not, to draw to the judge's attention the *comparable and other cases, current sentencing practices* and other relevant considerations which in the Crown's submission support that conclusion.[29]

2.17　Guided by these judicial observations, the Council has sought to address some of the limitations of sentencing statistics by:

- consulting with the courts and practitioners about the statistical information that would assist them in preparing sentencing submissions and determining sentences;[30]
- undertaking new analysis of sentencing factors such as driving behaviour, the presence of high risk factors, and the offender's remorse and prospects of rehabilitation; and
- using a method known as 'cluster analysis' to identify particular groups of cases within an offence (based on the features of the offender and the offending) and examine whether sentencing outcomes differ among these groups.[31]

---

23. *Director of Public Prosecutions (Cth) & Director of Public Prosecutions (Vic) v Edge* [2012] VSCA 289 (5 December 2012) [5].
24. *Barbaro v The Queen* (2014) 88 ALJR 372, 375 [7], 379 [42]–[43], 380 [49]. The majority thereby overturned the practice established by the Victorian Court of Appeal in *R v MacNeil-Brown* (2008) 20 VR 677.
25. *Barbaro v The Queen* (2014) 88 ALJR 372, 379.
26. Ibid.
27. *Matthews v The Queen; Vu v The Queen; Hashmi v The Queen* [2014] VSCA 291 (19 November 2014).
28. Ibid [27] (emphasis added).
29. Ibid [25] (emphasis added).
30. The Council consulted with representatives of the Court of Appeal, the County Court, the Office of Public Prosecutions, Victoria Legal Aid, Victoria Police, and Road Trauma Families Victoria.
31. The cluster analysis method is discussed at [3.4]–[3.6].

Overview of offences

2.18   The reference offences are the four most serious driving offences under the *Crimes Act 1958* (Vic). They all involve harm to a victim of death or serious injury. The historical maximum penalties for each offence are set out in Table 2. The current maximum penalty is presented in bold.

Table 2: **Historical maximum penalties for the offences of culpable driving causing death, dangerous driving causing death, negligently causing serious injury and dangerous driving causing serious injury**

Offence	Legislation	Maximum penalty	Applies to offences committed on or after
Culpable driving causing death	*Crimes Act 1958* (Vic) s 318(1)	**Level 3 imprisonment (20 years)**	1 September 1997
		Level 3 imprisonment (15 years)	13 June 1992
		Level 5 imprisonment (10 years)	22 April 1992
Dangerous driving causing death	*Crimes Act 1958* (Vic) s 319(1)	**Level 5 imprisonment (10 years)**	19 March 2008
Dangerous driving causing death or serious injuryª	*Crimes Act 1958* (Vic) s 319	Level 6 imprisonment (5 years)	12 October 2004
Negligently causing serious injury	*Crimes Act 1958* (Vic) s 24	**Level 5 imprisonment (10 years)**	19 March 2008
		Level 6 imprisonment (5 years)	22 April 1992
		3 years' imprisonment	24 March 1986
Dangerous driving causing serious injury	*Crimes Act 1958* (Vic) s 319(2)	**Level 6 imprisonment (5 years)**	19 March 2008
Dangerous driving causing death or serious injuryᵇ	*Crimes Act 1958* (Vic) s 319	Level 6 imprisonment (5 years)	12 October 2004

a.   This offence has been repealed.
b.   This offence has been repealed.

Culpable driving causing death

Offence history

2.19   Culpable driving causing death is the most serious of the fatal driving offences that can be charged against an alleged offender in Victoria. Since its introduction, the maximum penalty for this offence has doubled, from Level 5 imprisonment (10 years maximum) in 1992 to the current Level 3 imprisonment (20 years maximum) since 1997.

Offence particulars

2.20   Section 318 of the *Crimes Act 1958* (Vic) provides that:

> Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to Level 3 imprisonment (20 years maximum) or a Level 3 fine or both.[32]

32. *Crimes Act 1958* (Vic) s 318(1).

2.21   The *Crimes Act 1958* (Vic) elaborates that a person drives a motor vehicle culpably if he or she drives the motor vehicle:

   (a)   recklessly, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving; or

   (b)   negligently, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or

   (c)   whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or

   (d)   whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.[33]

2.22   On a trial of a person charged with culpable driving causing death, the jury may find the alternative verdict of dangerous driving causing death.[34]

Definition of 'negligently'

2.23   For the purposes of section 318(2)(b) above, in *R v De'Zilwa*,[35] the Court of Appeal held that a jury should be directed that a person drove negligently, if that person's driving:

> involved such a great falling short of the standard of care which a reasonable person would have exercised in the circumstances, and which involved such a high risk that death or serious injury would follow, that the driving causing death merited criminal punishment.[36]

2.24   The *Crimes Act 1958* (Vic) also elaborates on the definition of 'negligently' in subsection 318(2)(b), providing that negligence may be established in cases that relate to the fatigue of the offender by proving that:

   (a)   a person drove a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep while driving or of losing control of the vehicle; and

   (b)   by so driving the motor vehicle the person failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.[37]

Sentencing considerations

2.25   In the recent case of *Pasznyk v The Queen*[38] the Court of Appeal held that the offence of culpable driving causing death as structured in section 318 did not create a 'statutory hierarchy of seriousness' between different forms of the offence of culpable driving, with the reckless form of the offence of a higher ranking than the negligent form of the offence.

2.26   Instead, Priest, JA (with whom Redlich, JA agreed) stated:

> The correct position is, in my view, that for sentencing purposes the objective seriousness of each case — whether it be culpable driving by recklessness, negligence or another form — must be adjudged according to the factual circumstances peculiar to it, including the offender's state of mind. … [I]t is not correct to say that all cases of the reckless form of the offence are of a species worse than cases involving the negligent form. … [A]lthough the mental element is clearly different, there

33. *Crimes Act 1958* (Vic) s 318(2).

34. *Crimes Act 1958* (Vic) s 422A(1).

35. *R v De'Zilwa* (2002) 5 VR 408.

36. Ibid 423 [46].

37. *Crimes Act 1958* (Vic) s 318(2A).

38. *Pasznyk v The Queen* (2014) 66 MVR 415.

may be factual elements which will render the criminality of a case of causing death by grossly negligent driving worse than that of some cases of causing death by reckless culpable driving.[39]

2.27   In other words, the seriousness represented by the different categories of culpability within the single offence of culpable driving may overlap, and it cannot be assumed that a case falling under the reckless form of the offence will always be more serious than a case falling under the negligent form.

Dangerous driving causing death

Offence history

2.28   Prior to 2004, the major driving offences in Victoria were culpable driving causing death and 'dangerous driving', an offence under the *Road Safety Act 1986* (Vic) with a maximum penalty of two years' imprisonment and a minimum licence disqualification period of six months.[40]

2.29   The offence of 'dangerous driving causing death or serious injury' was introduced in 2004, to remedy a perceived gap in the seriousness between these two offences.[41] The new offence, which applied to offences committed on or after 13 October 2004 (and prior to 19 March 2008), had a maximum penalty of five years' imprisonment.[42]

2.30   In 2008, the offence of dangerous driving causing death or serious injury was divided into the separate offences of 'dangerous driving causing death' and 'dangerous driving causing serious injury'. The new offences, which apply the same level of culpability and differ only in terms of the degree of harm inflicted, carry maximum penalties of Level 5 imprisonment (10 years maximum) and Level 6 imprisonment (5 years maximum) respectively.[43]

2.31   This separation of the fatal form of dangerous driving (with a corresponding increased maximum penalty) applies to offences committed on or after 19 March 2008. For offences occurring between 13 October 2004 and 18 March 2008, the single offence of 'dangerous driving causing death or serious injury' will continue to apply.[44]

Offence particulars

2.32   The offence of dangerous driving causing death is prescribed in section 319(1) of the *Crimes Act 1958* (Vic) and provides that:

> A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes the death of another person is guilty of an indictable offence and liable to Level 5 imprisonment (10 years maximum).

2.33   In the Second Reading Speech for the Crimes (Dangerous Driving) Bill 2004 (Vic) the Attorney-General said:

> To establish this offence the prosecution will not be required to prove criminal negligence, which is required to prove culpable driving causing death. Rather, to establish the new offence, the prosecution will have to prove that the accused drove at a speed or in a manner dangerous to the public having regard to all the circumstances of the case, and by doing so, caused the death of or serious injury to another person.[45]

39. Ibid 429 (references omitted).

40. *Road Safety Act 1986* (Vic) s 64 (section now repealed).

41. Victoria, 'Crimes (Dangerous Driving) Bill', *Parliamentary Debates*, Legislative Assembly, 3 June 2004, 1798 (Rob Hulls, Attorney-General).

42. *Crimes Act 1958* (Vic) s 319 (section now amended).

43. *Crimes Amendment (Child Homicide) Act 2008* (Vic) s 5.

44. *Crimes Act 1958* (Vic) s 610.

45. Victoria, 'Crimes (Dangerous Driving) Bill', *Parliamentary Debates*, Legislative Assembly, 3 June 2004, 1798 (Rob Hulls, Attorney-General).

Definition of 'dangerous'

2.34   The High Court case of *King v The Queen*[46] considered the meaning of 'dangerous' and how the offence of dangerous driving causing death is to be distinguished from culpable driving causing death.

2.35   In relation to the meaning of 'dangerous' the majority of the court (French CJ, Crennan, and Kiefel, JJ) said:

> The ordinary meaning of "dangerous" is "[f]raught with or causing danger; involving risk; perilous; hazardous; unsafe". It describes, when applied to driving, a manner or speed of driving which gives rise to a risk to others, including motorists, cyclists, pedestrians and the driver's own passengers. Having regard to the ordinary meaning of the word, its context in s 319 and the purpose of s 319, as explained in the Second Reading Speech, negligence is not a necessary element of dangerous driving causing death or serious injury. Negligence may and, in many if not most cases will, underlie dangerous driving. But a person may drive with care and skill and yet drive dangerously. It is not appropriate to treat dangerousness as covering an interval in the range of negligent driving which is of lesser degree than driving which is "grossly negligent" within the meaning of s 318(2)(b) of the Crimes Act.[47]

2.36   Instead, the High Court found that whether the driving was dangerous:

> depends on whether it gave rise to the degree of risk set out by Barwick CJ in *McBride* and adopted by the plurality in *Jiminez* … That is the level of risk which should inform a trial judge's direction to a jury in respect of the offence under s 319.[48]

2.37   In *Jiminez v The Queen,* six justices approved Barwick CJ's encapsulation of the meaning of dangerous in *McBride v The Queen*, where it was stated:

> The section speaks of a speed or manner which is dangerous to the public. This imports a quality in the speed or manner of driving which either intrinsically in all circumstances, or because of the particular circumstances surrounding the driving, is in a real sense potentially dangerous to a human being or human beings who as a member or as members of the public may be upon or in the vicinity of the roadway on which the driving is taking place.[49]

Sentencing considerations

2.38   In *Director of Public Prosecutions v Oates*, Neave JA enunciated the general principles in relation to sentencing an offender for the offence of dangerous driving causing death, stating:

> general deterrence must be given considerable weight in sentencing an offender for dangerous driving causing death or serious injury. Members of the public must recognise that a person who kills or injures another while driving dangerously is likely to receive a significant term of imprisonment. As the New South Wales Court of Criminal Appeal said in *R v Whyte,* a custodial sentence will usually be appropriate for an offence of this kind, except in cases where the offender's level of moral culpability is low.[50]

---

46. *King v The Queen* [2012] HCA 24 (20 June 2012).

47. Ibid [38] (references omitted).

48. Ibid [46] (references omitted).

49. *Jiminez v The Queen* (1992) 173 CLR 572, 579 (Mason CJ, Brennan, Deane, Dawson, Toohey, and Gaudron JJ) quoting *McBride v The Queen* (1966) 115 CLR 44, 49.

50. *Director of Public Prosecutions v Oates* (2007) 47 MVR 483, 486 (references omitted).

2.39   This authority however, must be considered in light of the broader definition of 'dangerous' adopted by the High Court in *King v The Queen*.[51] The majority in that case stated:

> It is a consequence of this conclusion that the increased penalties applicable to offences against s 319 in its present amended form apply to offences which may be committed by transgressing a lower standard of liability than [had been previously applied]. There is no doubt that s 319 is capable of encompassing a range of driving behaviours some of which, apart from their tragic consequences, may attract considerably less condemnation than others. The legislature has imposed maximum penalties which, in effect, authorise a range of dispositions capable of encompassing the variety of circumstances in which offences may be committed against s 319. That variety must be reflected in the sentences which are imposed.[52]

Increase in maximum penalty

2.40   An increase in the maximum penalty for an offence (in circumstances where there is no amendment to the elements of the offence) represents a clear indication from parliament that the offence is to be regarded as more serious, and allows a court to depart from current sentencing practices.[53]

2.41   The maximum penalty for an offence must be considered by a court when sentencing,[54] and parliamentary guidance takes precedence over current sentencing practices.[55]

2.42   In *R v Reid*,[56] which concerned the increase in maximum penalty (in April 1992) for the offence of negligently causing serious injury, Callaway JA stated:

> Section 5(2)(a) of the Sentencing Act obliged his Honour to have regard to the maximum penalty prescribed for the offence. It was clearly relevant, in my opinion that it had been deliberately increased, and that relevance was not diminished significantly, or perhaps at all, by the fact that the change had been made four and a half years earlier. It is true that s24 is not directed only to injuries inflicted on the roads, but that is its main field of operation, which the legislature would have had in mind in deciding that, for a case in the worst class, the penalty should be five years' imprisonment without remissions.

2.43   In *R v Ma*[57], the importance of considering the specific intent of parliament in increasing the maximum penalty was emphasised by Callaway JA, who stated:

> Sometimes an increase in penalty means only that Parliament has thought of a worst class of case … that was either not previously contemplated or not adequately provided for. … Sometimes, however, the increase suggests that more severe penalties should be imposed not just for offences falling within the worst class but over a range (not necessarily the whole range) of cases. That is how increases in penalties for negligently causing serious injury and culpable driving causing death have often been understood.[58]

51. *King v The Queen* [2012] HCA 24 (20 June 2012).

52. Ibid [47] (references omitted).

53. *Director of Public Prosecutions v CPD* (2009) 22 VR 533, 549; *R v AB (No 2)* (2008) 18 VR 391, 404, 406.

54. *Sentencing Act 1991* (Vic) s 5(2)(a).

55. *Director of Public Prosecutions v Arney* [2007] VSCA 126 (12 June 2007) [13]–[14] (Nettle JA); *R v Kalanj* (1997) 98 A Crim R 505, 510–511; *R v Boaza* [1999] VSCA 126 (5 August 1999) [17]–[18]; *R v Sheppard* (1995) 77 A Crim R 139, 140–141.

56. *R v Reid* (Unreported, Victorian Court of Appeal, Brooking, Callaway JJA, and Southwell AJA, 9 October 1996) 9 (Callaway JA, joined by Brooking JA and Southwell AJA).

57. *R v Ma* (Unreported, Victorian Court of Appeal, Winneke P, Tadgell, and Callaway JJA, 18 March 1998).

58. Ibid 10–11 (references omitted).

2. Focus of report and overview of offences

2.44 In relation to the increase in maximum penalty for dangerous driving causing death, the Second Reading Speech by the Attorney-General stated:

> In order to clarify the hierarchy of these offences, the bill will split the offence of dangerous driving causing death or serious injury into two offences. The penalty for the offence of dangerous driving causing death will be increased from 5 to 10 years. …

> This change places greater emphasis on the harm that is caused by the offence and is consistent with the policy behind the creation of the child homicide offence and the increase to the penalty for negligently causing serious injury.[59]

Negligently causing serious injury

Offence history

2.45 The maximum penalty for the offence of negligently causing serious injury has increased a number of times, from 3 years' imprisonment in 1986, to Level 6 (5 years) in 1992, and finally to Level 5 (10 years) for offences committed on or after 19 March 2008.

2.46 The most recent increase followed a review of the maximum penalty by the Council, which recommended that it be increased from 5 years to 10 years on the basis that the previous maximum penalty was inadequate and:

> consistent with judges of the County Court, members of the Court of Appeal and the participants in the Council's consultation process … the current maximum penalty does not adequately reflect the serious nature of this offence… [and] does not provide for the worst examples of this offence.[60]

Offence particulars

2.47 Section 24 of the *Crimes Act 1958* (Vic) provides that:

> A person who by negligently doing or omitting to do an act causes serious injury to another person is guilty of an indictable offence.

2.48 The offence of negligently causing serious injury applies to a range of behaviours, and is not limited to injuries that result from driving. The vast majority of cases of this offence, however, relate to driving. Over the reference period, 85% of cases sentenced in the higher courts in which the principal proven offence was negligently causing serious injury were related to driving.

2.49 The degree of negligence required to constitute 'negligently causing serious injury' has been described as:

> an act or omission taking place in such circumstances which involved such a great falling short of the standard of care which a reasonable person would have exercised, and which involved such a high degree of risk that serious injury would follow, that the act or omission merits punishment under the criminal law.[61]

59. Victoria, 'Crimes Amendment (Child Homicide) Bill', *Parliamentary Debates*, Legislative Assembly, 6 December 2007, 4414 (Rob Hulls, Attorney-General).

60. Sentencing Advisory Council, *Maximum Penalty for Negligently Causing Serious Injury: Report* (2007) 3.

61. *R v Shields* [1981] VR 717, 723; *Nydam v The Queen* [1977] VR 430, 444.

2.50   If an indictment contains a charge of negligently causing serious injury and no charge of culpable driving causing death, the direction to the jury as to negligence 'should be that which would be appropriate to manslaughter'.[62]

2.51   If an indictment contains a charge of culpable driving causing death alongside a charge of negligently causing serious injury, however, the test of negligence under section 318(2)(b) will also define negligence for the purposes of section 24 (see [2.23]).[63]

Definition of 'serious injury'

2.52   During the reference period, the following definition of 'serious injury' applied to the offences of negligently causing serious injury and dangerous driving causing serious injury:

> 'injury' includes unconsciousness, hysteria, pain and any substantial impairment of bodily function;
>
> 'serious injury' includes a combination of injuries.[64]

Sentencing considerations

2.53   Although negligently causing serious injury is triable summarily, it is rarely prosecuted in the Magistrates' Court. Similarly, in the higher courts negligently causing serious injury is most often not the principal proven offence.

Increase in maximum penalty

2.54   The same considerations discussed at [2.40]–[2.43] equally apply to the increase in the maximum penalty for negligently causing serious injury.

2.55   In relation to the specific offence, the Second Reading Speech by the Attorney-General stated:

> the concern with negligently causing serious injury is that the statutory maximum is too low. The Council has recommended that the maximum penalty be increased from five years to 10 years' imprisonment. This will recognise the harm caused by the offender more adequately than the existing maximum penalty.
>
> Many of the most serious negligently causing serious injury offences are connected with motor vehicle collisions. This fact gives rise to an unsatisfactory outcome if a single collision has resulted in death to one person, resulting in a charge of culpable driving which carries a maximum penalty of 20 years, and serious injury to another, resulting in a charge of negligently causing serious injury, which carries a maximum penalty of only 5 years.
>
> The bill increases the maximum penalty for negligently causing serious injury to 10 years imprisonment. This places greater emphasis on the harm caused by the offence, in line with the government's continuing commitment to road safety.[65]

---

62. Ian Freckleton and Danielle Andrewartha, *Indictable Offences in Victoria* (5th ed., 2010) [148.120], citing *R v Shields* [1981] VR 717, 723.

63. Ibid 724.

64. *Crimes Act 1958* (Vic) s 15 (now amended). For offences committed after 1 July 2013, a different definition of 'injury' applies.

65. Victoria, 'Crimes Amendment (Child Homicide) Bill', *Parliamentary Debates*, Legislative Assembly, 6 December 2007, 4414 (Rob Hulls, Attorney-General).

2.56   In *Gorladenchearau v The Queen*[66] the Court of Appeal considered the current sentencing practices for negligently causing serious injury in light of the change to the maximum penalty, noting that:

> cases of driving-related [negligently causing serious injury] have a shocking similarity. The critical features recur: speed, inattention, intoxication (alcohol or drugs) and (often) prior convictions for driving offences. As a result, they form a class of cases – as do cases of [culpable driving causing death] and cases of glassing as a species of recklessly causing serious injury – where sentencing comparisons are more readily drawn than in relation to other offences, such as manslaughter, which are characterised by an infinite variation of circumstances. As the present appeal illustrates, the ready comparability of cases means that sentencing disparities are more starkly exposed.[67]

2.57   Although in that case the sentence on the charge of negligently causing serious injury was considered manifestly excessive, the court commented more generally that:

> sentences well above 50 per cent of the maximum were not uncommon before the maximum was increased. In *Director of Public Prosecutions (Vic) v Albert*, this Court referred to three decisions in which sentences of 3 years and 6 months' imprisonment, imposed at a time when the maximum penalty was 5 years, were upheld. Such a sentence represented 70 per cent of the applicable maximum. In each of those cases, the driver had a very bad driving record, unlike the present appellant, but parity of reasoning would suggest that sentences of above 5 years will be called for when such cases arise under the new maximum.[68]

Dangerous driving causing serious injury

Offence history

2.58   As described at [2.30], the separate offence of dangerous driving causing serious injury commenced on 19 March 2008. The maximum penalty remained the same as for the previous form of the offence – dangerous driving causing death or serious injury – being Level 6 imprisonment (5 years).

Offence particulars

2.59   Section 319(1A) of the *Crimes Act 1958* (Vic) provides that:

> A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes serious injury to another person is guilty of an indictable offence and liable to Level 6 imprisonment (5 years maximum).

2.60   The elements of the offence are the same as for dangerous driving causing death, aside from the offender having caused serious injury rather than death (see [2.32]–[2.37]).

Sentencing considerations

2.61   The same considerations discussed at [2.38]–[2.39] apply to the sentencing of dangerous driving causing serious injury.

---

66.   *Gorladenchearau v The Queen* [2011] VSCA 432 (16 December 2011).

67.   Ibid [43] (Maxwell, P) (references omitted).

68.   Ibid [51] (Maxwell, P) (references omitted).

Jurisdiction

2.62   Culpable driving causing death is an indictable offence and is not triable summarily. This offence may only be heard in either the County Court or the Supreme Court.[69]

2.63   Dangerous driving causing death, negligently causing serious injury, and dangerous driving causing serious injury are also indictable offences, but are triable summarily, by virtue of the maximum penalties for these offences.[70]

2.64   The Director of Public Prosecutions has issued *Director's Policy Dangerous Driving Causing Death and Serious Injury Pursuant to S.319 of the Crimes Act 1958*, which states:

> It is the Director's Policy that all offences of dangerous driving causing death should be prosecuted by the OPP in the indictable stream.[71]

2.65   In relation to the offence of dangerous driving causing serious injury, the Director's Policy states:

> there may be some cases which could be determined summarily, however it is the Director's Policy that all such cases be reviewed by the OPP … If deemed appropriate, the matter may be referred back to the summary stream or alternatively, prosecuted in the summary stream by the OPP.[72]

2.66   All of the cases analysed for this report were sentenced in the higher courts, with the majority of cases sentenced in the County Court.

Baseline sentencing

2.67   The baseline sentencing scheme applies to the offence of culpable driving causing death, in respect of offences committed on or after 2 November 2014.[73] None of the cases analysed in this report was affected by baseline sentencing, because all cases were sentenced prior to July 2013.

2.68   Baseline sentencing is the subject of other work by the Council[74] and is not examined here extensively. Commentary is made, however, in relation to the potential effect of the baseline sentencing scheme on the imposition of non-parole periods for cases involving culpable driving (see [4.39]–[4.45]).

69.   *Criminal Procedure Act 2009* (Vic) s 160. In deciding whether to prosecute a matter in the County or Supreme Court, the Director of Public Prosecutions will consider the complexity of the case, the seriousness of the alleged offence, any particular importance attaching to the case, and any other relevant consideration (*Criminal Procedure Act 2009* (Vic) s 160(2)).

70.   *Criminal Procedure Act 2009* (Vic) s 28(b)(i).

71.   Director of Public Prosecutions, Victoria, *Director's Policy: Dangerous Driving Causing Death and Serious Injury Pursuant to S.319 of the Crimes Act 1958* (Director of Public Prosecutions, 2010) <http://www.opp.vic.gov.au/Resources/DPP-s-policies> at 1 March 2015, [18.1.4].

72.   Ibid [18.1.5].

73.   *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic). This Act prescribes a 'baseline sentence' of 9 years. Where the nature and characteristics of a charge of culpable driving causing death before the court are equal to the nature and characteristics of the charge that, prior to baseline sentencing, received the median sentence (being the median that is calculated using the rules prescribed under the Act), the court is expected to impose the baseline sentence of 9 years. See Sentencing Advisory Council, *Calculating the Baseline Offence Median: Report* (2014).

74.   Sentencing Advisory Council (2014), above n 73; Sentencing Advisory Council, *Charges Sentenced to the Baseline Median Value: Guide to Baseline Sentencing Information* (2015) <http://www.sentencingcouncil.vic.gov.au/sites/default/files/Guide%20to%20Baseline%20 Sentencing%20Information_0.pdf> at 1 March 2015.

3. Sampling, method of analysis, and coding of sentencing factors

Number of cases and charges

3.1   Table 3 sets out the number of cases and charges of the reference offences and the percentage of cases with available sentencing remarks.

Table 3: **Number of cases and charges and availability of sentencing remarks for the reference offences, 2006–07 to 2012–13**

Offence	Total number of cases	Total number of charges	Number of cases with available sentencing remarks	Percentage of cases with available sentencing remarks
Culpable driving causing death	105	113	104	99%
Dangerous driving causing death	124	146	124	100%
Negligently causing serious injury	78	203	77	99%
Dangerous driving causing serious injury	51	145	50	98%
Total	**358**	**607**	**355**	**99%**

Alteration of sentences on appeal

3.2   The dataset in this report takes account of any sentences or convictions altered on appeal as of 30 September 2014.

Methods of analysis

3.3   Several methods of data analysis were employed in this report.

Cluster analysis

3.4   The cluster analysis method was used to examine whether there are meaningful sub-groups of cases within each reference offence. Cluster analysis is a way of 'organizing observed data (e.g., people, things, events, brands, companies) into meaningful taxonomies, groups, or clusters based on combinations of [variables]'.[75] A cluster analysis identifies groups of variables without any preconceived notion of how certain variables may be interrelated. The cluster analysis technique:

> provides no explanation as to why the clusters exist nor is any interpretation made. Each cluster thus describes, in terms of the data collected, the class to which its members belong. Items in each cluster are similar in some ways to each other and dissimilar to those in other clusters.[76]

---

75. Robert Burns and Richard Burns, 'Additional Advanced Chapter: Cluster Analysis' in *Business Research Methods and Statistics Using SPSS* (2008) 553.

76. Ibid.

3.5   Applied to sentencing, cluster analysis is a methodologically rigorous way of examining all available sentencing factors in parallel and determining whether particular combinations of sentencing factors are interrelated (for example, the analysis may discover a group of cases in which offenders were more likely than in other cases to have pleaded guilty, shown remorse, and demonstrated good prospects of rehabilitation). Once the total sample of cases is separated into groups based on these combinations of sentencing factors, other statistical tools can be used to analyse sentencing outcomes and determine whether sentencing differs between groups.

3.6   A cluster analysis therefore respects the instinctive synthesis performed by sentencing judges – it recognises that sentencing results from the weighing up of many factors, and it does not test the effect of any individual factor on sentencing.

Regression analysis

3.7   The differences in sentencing outcomes between offence sub-groups identified by the cluster analysis were not statistically significant (see [4.34], [5.47], [6.38], and [7.37]).

3.8   As a result, this report also presents (in Chapter 8) regression analysis, which sought to examine the effects of individual factors on sentencing outcomes, both for individual offences and for groupings of offences.

3.9   The regression analysis focused on whether a particular factor within a case influences:

- the imposition of a custodial sentence (that is, whether the presence of a factor significantly predicts the imposition of a custodial or a non-custodial sentence); and

- the length of an imprisonment sentence (that is, whether the presence of a factor significantly predicts the imposition of an imprisonment sentence above or below the median term of imprisonment).

Case-level analysis

3.10   For the analysis of case-level variables and sentencing outcomes, cases were classified into four groups by the most serious driving offence charge in the case. This means that, for example, a case of culpable driving causing death could include charges of culpable driving causing death alone, charges of culpable driving causing death with charges of negligently causing serious injury, or charges of culpable driving causing death with charges of dangerous driving causing serious injury.

3.11   Table 4 sets out the number of cases of each offence group, and the offences that make up the cases in the group.

3.12   The offence groups outlined in Table 4 are used throughout the report when analysing case-level statistics of a stated offence, such as offender details and total effective sentences.

Table 4: Major driving offences sentenced within each offence group, by most serious offence, 2006–07 to 2012–13

Offence group	Offences sentenced in cases	Number of cases (percentage of all cases)
Culpable driving causing death (105 cases)	Culpable driving causing death	65 (18%)
	Culpable driving causing death and negligently causing serious injury	38 (11%)
	Culpable driving causing death and dangerous driving causing serious injury	2 (1%)
Dangerous driving causing death (124 cases)	Dangerous driving causing death	88 (25%)
	Dangerous driving causing death and dangerous driving causing serious injury	33 (9%)
	Dangerous driving causing death and negligently causing serious injury	3 (1%)
Negligently causing serious injury (78 cases)	Negligently causing serious injury	78 (22%)
Dangerous driving causing serious injury (51 cases)	Dangerous driving causing serious injury	51 (14%)

Sentencing factors

3.13   The analysis examines sentencing factors (or variables) relating to the circumstances of the offence, the victim(s), and the offender. The selection of factors for analysis has been informed by stakeholder consultation, judicial commentary, and an examination of prior research in the area.

3.14   The selection of factors was not limited to only those factors known to directly influence sentencing outcomes. Instead, a broader approach was taken, that sought to identify profiles of offending behaviour within major driving offence cases, in addition to identifying those factors that may have contributed to the sentence imposed.

3.15   The sentencing remarks were coded for the factors set out in Table 5, Table 8, Table 13, and Table 17. If one of these factors was referred to by the judge in the sentencing remarks it was coded accordingly, regardless of the weight or degree of relevance attached to the particular factor by the judge. Most of the sentencing factors had binary values of 'yes' or 'no'. Some sentencing factors had multiple values; for example, prospects of rehabilitation had values of positive, negative, or not stated.

Aggravating factors for major driving offences

3.16   The New South Wales case of *R v Jurisic*[77] first put forward a series of factors that may aggravate the seriousness of a particular offence of dangerous driving causing death. These were subsequently adopted and revised by *R v Whyte*,[78] and applied by the Victorian Court of Appeal in *Director of Public Prosecutions v Neethling*[79] in relation to major driving offences in general.

---

77. *R v Jurisic* (1998) 45 NSWLR 209.

78. *R v Whyte* (2002) 55 NSWLR 252, 286.

79. *Director of Public Prosecutions v Neethling* (2009) 22 VR 466.

3.17   Those factors are as follows:

- extent and nature of the injuries inflicted;
- number of people put at risk;
- degree of speed;
- degree of intoxication or of substance abuse;
- erratic (or aggressive) driving;
- competitive driving or showing off;
- length of the journey during which others were exposed to risk;
- ignoring warnings;
- escaping police pursuit;
- degree of sleep deprivation; and
- failing to stop.

3.18   Where possible, the Council has included these factors, or developed proxies for these factors, that allow for their consideration in an aggregate form (such as 'intentional high-risk behaviour' discussed below).

Sentencing factors analysed

3.19   The analysis examines 29 sentencing factors (or variables) relating to the circumstances of the offence, the victim(s), and the offender.

3.20   The factors analysed in relation to the offence are:

- driving behaviour, including whether the incident was a result of (a) speeding, (b) drug-affected driving, (c) alcohol-affected driving, (d) fatigue, (e) inattention, (f) mobile phone use, or (g) intentional high-risk behaviour;
- the type of drug, where drug affected, including (a) cannabis, (b) methylamphetamine/ice, (c) MDMA/ecstasy, (d) heroin, (e) amphetamine/speed, (f) cocaine, (g) prescription drugs, or (h) where the drug type was not stated;
- whether the location of the offence was in (a) metropolitan Melbourne, (b) outside metropolitan Melbourne, or (c) not stated;
- the number of vehicles in the incident, from 1 to 5 or more;
- the type of vehicle, including (a) 4WD/SUV, (b) passenger vehicle, (c) truck/heavy goods vehicle, (d) motorcycle, or (e) where the vehicle type was uncertain or not stated;
- whether the vehicle was (a) stolen, (b) not stolen, or (c) not stated; and
- whether the offender was (a) a professional driver, (b) not a professional driver, or (c) not stated.

3.21   The factors analysed in relation to victims are:

- number of victims in the case, categorised as 1, 2, 3, 4, or 5 or more;
- gender of victims: male, female, or not stated;
- age of victims, including child victims;
- location of victims, including where the victim was a (a) cyclist, (b) motorcyclist, (c) pedestrian/bystander, (d) passenger in the principal vehicle, (e) occupant of another vehicle, or (f) the location of the victim was uncertain or not stated;
- relationship of the victim to offender, including (a) none (stranger), (b) friend, (c) child, (d) partner, (e) sibling, (f) parent, (g) other relative, or (h) uncertain or not stated;
- whether the victim (a) was or (b) was not wearing a seatbelt, or (c) where seatbelt status was uncertain or not stated;
- victim injuries including (a) bruising, (b) cuts/lacerations, (c) broken bones, (d) lost consciousness, (e) injuries to chest/lungs/internal organs, (f) head injuries, (g) permanent disability, and/or (h) permanent scarring;
- victim treatment, including (a) stitches, (b) hospitalisation, (c) surgery, and (d) ongoing care; and
- whether a Victim Impact Statement was (a) provided, (b) not provided, or (c) provision was uncertain or not stated.

3.22   The factors analysed in relation to the offender are as follows:

- gender;
- age;
- whether the offender committed the offence while serving an existing court order;
- history of prior imprisonment;
- whether the offender was (a) unlicensed or (b) his/her driver license was suspended or disqualified at the time of the offending;
- history of prior offending, including whether the offender had been previously sentenced for (a) violent offences, (b) dishonesty or property offences, (c) drug offences, (d) driving offences, (e) firearm offences, or (f) sexual offences;
- where the offender had prior driving offences, if those offences included (a) speeding offences, (b) drink driving offences, (c) drug driving offences, or (d) careless driving offences;
- whether the offender had a previous (a) licence suspension and/or (b) licence disqualification;
- offender history of (a) mental illness, (b) cognitive impairment, (c) substance abuse, (d) childhood sexual abuse, (e) childhood abuse, neglect, or severe disruption, or (f) adult trauma or health problems;
- whether the offender assisted police;
- whether the offender's prospects of rehabilitation were (a) positive or (b) negative;[80]
- whether the judge's assessment of remorse was (a) positive or (b) negative;
- whether the offender pleaded (a) guilty or (b) not guilty.

---

80. Unlike the analysis in Sentencing Advisory Council (2015), above n 15, the Council's analysis of rehabilitation for major driving offences did not justify a separate category for the circumstances where judicial comments suggested 'contingent' prospects of rehabilitation.

3.23   Some factors had binary values of 'yes' or 'no'. Many factors had multiple values; for example, prospects of rehabilitation had values of positive, negative, or not stated.

3.24   A number of the factors analysed are common to all cases of sentencing in Victoria, such as plea type and prospects of rehabilitation. Many of the other factors are unique to driving offences, or have a particular meaning in relation to driving offences.

3.25   The particular behaviours associated with major driving offences vary from case to case, and often involve a combination of circumstances. For example, across all offence groups, over a quarter of cases (26%) involved both speeding and alcohol.

3.26   A detailed discussion of the rationales behind the selection of each sentencing factor is presented in Appendix 1.

4. Culpable driving causing death

4.1   This section presents:

- a profile of sentencing factors for cases of culpable driving causing death ('culpable driving');
- the overall sentencing outcomes for this offence; and
- a profile of particular 'case clusters' and the sentencing outcomes for each cluster.

Profile of sentencing factors

4.2   There were 105 cases (113 charges) of culpable driving during the reference period. The sentencing remarks for 104 cases were available for analysis. The 104 cases were sentenced with a total of 180 charges of major driving offences, as outlined in Table 4.

4.3   Table 5 lists the number and percentage of the cases analysed in which a particular sentencing factor was referred to in the judge's sentencing remarks for offenders sentenced during the reference period.[81]

Table 5: Number and percentage of cases containing a particular sentencing factor, culpable driving, 2006–07 to 2012–13[82]

Sentencing factor		Cases/charges
Factors relating to the offence	**No. of cases**	**% of cases**
Driving behaviour – speeding	67	64%
Driving behaviour – alcohol affected	65	63%
Driving behaviour – intentional high-risk behaviour	26	25%
Driving behaviour – drug affected	18	17%
Driving behaviour – inattention	8	8%
Driving behaviour – fatigue	5	5%
Driving behaviour – mobile phone use	2	2%
Offender drug affected – cannabis	6	6%
Offender drug affected – methylamphetamine/ice	4	4%
Offender drug affected – prescription drugs	4	4%
Offender drug affected – amphetamine/speed	3	3%
Offender drug affected – heroin	1	1%
Offender drug affected – MDMA/ecstasy	1	1%
Offender drug affected – cocaine	0	0%
Offender drug affected – drug type not stated	0	0%
Location – metropolitan Melbourne	59	57%
Location – outside metropolitan Melbourne	42	40%
Location – not stated	3	3%

---

81. This section includes a profile of the factors mentioned in sentencing remarks. The presence of factors in sentencing remarks does not necessarily mean that the particular factor influenced the sentencing outcome.

82. Table 6 shows the percentage of *cases* containing a particular sentencing factor when referring to offenders. For factors relating to victims, the values are the percentage of *charges* in a case for all factors presented.

Sentencing factor		Cases/charges
1 vehicle in incident	57	55%
2 vehicles in incident	40	38%
3 vehicles in incident	2	2%
4 vehicles in incident	3	3%
5 or more vehicles in incident	0	0%
Offender vehicle – passenger vehicle	65	63%
Offender vehicle – truck	5	5%
Offender vehicle – 4WD/SUV	3	3%
Offender vehicle – motorbike	2	2%
Offender vehicle – uncertain or not stated	29	28%
Offender vehicle not stolen	97	93%
Offender vehicle stolen	7	7%
Offender not professional driver	98	94%
Offender professional driver	6	6%
Factors relating to victims[a]	No. of charges	% of charges
1 victim in case	62	60%
2 victims in case	24	23%
3 victims in case	9	9%
4 victims in case	5	5%
5 or more victims in case	4	4%
Victims – male	111	62%
Victims – female	66	37%
Victims – gender not stated	3	2%
Adult victims	99	55%
Child victims	21	12%
Victim age uncertain	60	33%
Victim age – under 18	21	12%
Victim age – 18–24 years	36	20%
Victim age – 25–34 years	5	3%
Victim age – 35–44 years	1	1%
Victim age – 45–54 years	8	4%
Victim age – 55 years and over	9	5%
Victim – passenger in principal vehicle	103	57%
Victim – occupant of other vehicle	54	30%
Victim – pedestrian/bystander	16	9%
Victim – cyclist	4	2%
Victim – motorcyclist	2	1%
Victim – uncertain or not stated	1	1%

Sentencing factor		Cases/charges
Victim relationship to offender – friend	92	51%
Victim relationship to offender – none (stranger)	76	42%
Victim relationship to offender – partner	5	3%
Victim relationship to offender – sibling	3	2%
Victim relationship to offender – child	1	1%
Victim relationship to offender – other relative	1	1%
Victim relationship to offender – parent	0	0%
Victim relationship to offender – unknown	2	1%
Victim not wearing seatbelt	27	15%
Victim wearing seatbelt	7	4%
Victim seatbelt status not stated	146	81%
Victim injury – broken bones	43	24%
Victim injury – cuts/lacerations	25	14%
Victim injury – head injuries	25	14%
Victim injury – chest/lungs/internal organs	20	11%
Victim injury – bruising	14	8%
Victim injury – permanent disability	9	5%
Victim injury – lost consciousness	4	2%
Victim injury – permanent scarring	3	2%
Victim treatment – hospitalisation	49	27%
Victim treatment – surgery	24	13%
Victim treatment – ongoing care	5	3%
Victim treatment – stitches	0	0%
Victim Impact Statement – provided	126	70%
Victim Impact Statement – not provided	23	13%
Victim Impact Statement – uncertain/not stated	31	17%
Factors relating to the offender	**No. of cases**	**% of cases**
Male	93	89%
Under 18	11	11%
18–24 years	50	48%
25–34 years	28	27%
35–44 years	10	10%
45–54 years	2	2%
55 years and over	3	3%
Offence committed while on existing court order	3	3%
Prior offending – any offences	65	63%
Prior offending – driving offences	55	53%
Prior offending – dishonesty/property offences	21	20%

Sentencing factor	Cases/charges	
Prior offending – drug offences	13	13%
Prior offending – violent offences	10	10%
Prior offending – firearm offences	2	2%
Prior offending – sexual offences	0	0%
Previously imprisoned	5	5%
Unlicensed at time of offending	30	29%
Licence suspended/disqualified at time of offending[b]	9	9%
Driving record – speeding offences	25	24%
Driving record – drink driving offences	24	23%
Driving record – licence disqualification	20	19%
Driving record – licence suspension	20	19%
Driving record – careless driving offences	13	13%
Driving record – drug driving offences	0	0%
Offender history – alcohol abuse	30	29%
Offender history – substance abuse	28	27%
Offender history – adult trauma/health problems	17	16%
Offender history – mental illness	17	16%
Offender history – childhood abuse/neglect/severe disruption	12	12%
Offender history – cognitive impairment	8	8%
Offender history – childhood sexual abuse	4	4%
Offender did not assist police/not stated	82	79%
Offender assisted police	22	21%
Prospects of rehabilitation – positive	81	78%
Prospects of rehabilitation – negative	4	4%
Prospects of rehabilitation – not stated	19	18%
Assessment of remorse – positive	87	84%
Assessment of remorse – negative	3	3%
Assessment of remorse – not stated	14	13%
Offender seriously injured	35	34%
Pleaded guilty	90	87%
Pleaded not guilty	14	13%

a. The factors relating to victims refer to all victims in the case, including victims that are the subject of charges other than culpable driving causing death: for example, where a case involves a charge of negligently causing serious injury in addition to the charge of culpable driving causing death. Further, factors relating to victim injury and victim treatment refer only to injured, and not deceased, victims.

b. For one case, the offender was both unlicensed at the time of the offending (that is, had never had a driver licence) and disqualified from obtaining a driver licence.

Discussion of factors

Driving behaviour

4.4   Speeding (64%) and alcohol (63%) were the most common driving behaviours in cases of culpable driving, followed by intentional high-risk behaviour (25%).

4.5   Comparatively few cases involved drug-affected drivers (17%)[83] and where drug affected, the most common drug was cannabis (6% of all cases, 33% of drug-affected offenders). Although there has been substantial commentary and concern expressed in relation to the use of methylamphetamine/ice,[84] that drug was present in only 4 cases over the reference period (4% of all cases, 22% of drug-affected offenders).

Vehicles

4.6   A slight majority of offences occurred in metropolitan Melbourne (57%); however, considering differences in population, it is likely that a higher proportion of offences, relative to population, occur outside metropolitan Melbourne. Most offences involved 1 vehicle (55%) and most vehicles were passenger vehicles (63%). Very few cases involved stolen vehicles (7%); similarly, very few offenders were professional drivers (6%).

Factors relating to victims

4.7   The factors relating to victims refer to all victims in the case, including victims that are the subject of charges other than culpable driving causing death: for example, where a case involves charges of negligently causing serious injury in addition to the charge or charges of culpable driving causing death.

4.8   The majority of cases involved 1 victim (60%) and most victims were male (62%). Of the cases where the age of the victim was stated, most victims were adults (55%).

4.9   Victims were primarily passengers in the principal vehicle (57%) followed by occupants of another vehicle (30%). A slight majority of victims were friends of the offender (51%) followed by strangers (42%).

4.10   Victims' seatbelt status was mentioned by the judge for 19% of all charges. Victims were recorded as not wearing a seatbelt for 15% of all charges.

4.11   Cases of culpable driving that also contained charges of negligently causing serious injury (37 cases with remarks) or charges of dangerous driving causing serious injury (2 cases) had victims that suffered broken bones (24%) as the most common injury, and for 27% of the charges victims were hospitalised.

---

83.   A further analysis of 13 (76%) of the 17 cases of culpable driving causing death sentenced in 2013–14 showed a similar proportion of drug-affected offenders (23%, representing 2 cases involving cannabis and 1 case involving methylamphetamine/ice), consistent with the reference period.

84.   See Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria: Final Report,* vol. 1 (2014) x–xiii.

Factors relating to the offender

Plea and assistance to authorities

4.12   The overwhelming majority (87%) of culpable driving offenders pleaded guilty. A plea of guilty ordinarily, though not necessarily, results in a sentence 'discount'.[85]

4.13   In 21% of cases the offender assisted police.

Prior offending and licence status

4.14   In 63% of cases the offender had a record of prior offending, with prior driving offences being the most common (53%). In approximately a quarter of cases the offender had a prior speeding offence (24%) and/or a prior drink driving offence (23%).

4.15   Accounting for one offender who had never been licensed and had a further disqualification from obtaining a driver licence, 37% of offenders were unlicensed and/or either had a suspended licence or were disqualified from obtaining a driver licence at the time of the offending.

Personal circumstances of the offender

4.16   In 30% of cases the offender had a history of alcohol abuse, with a similar proportion having a history of substance abuse (27%).

4.17   The majority of offenders were considered to have positive prospects of rehabilitation (78%) and a positive assessment of remorse (84%).

High-level sentencing outcomes

4.18   The data below relate to the sentencing outcomes for all charges and cases of culpable driving during the reference period.[86]

Sentences for individual charges

4.19   Imprisonment was imposed for 85% of charges (n = 96) during the reference period.[87]

4.20   Suspended sentences of imprisonment were rarely imposed, with less than 1% of charges (n = 1) receiving a partially suspended sentence, and 6% (n = 7) of charges receiving a wholly suspended sentence.[88]

4.21   A youth justice centre order was imposed for 8% of charges (n = 9).[89]

4.22   The median term of imprisonment for culpable driving causing death was 5 years and 6 months.

---

85. *Sentencing Act 1991* (Vic) s 5(2)(e); *Phillips v The Queen* (2012) 37 VR 594, 604.

86. The sentencing statistics discussed in this section are based on the data available from the Higher Courts Conviction Returns database provided by Court Services Victoria for the period 2006–07 to 2012–13. The Council performs quality assurance checks on these data. As sentencing statistics are always subject to revision due to quality assurance checks and the provision of additional data, the statistics in this section may differ somewhat from the statistics that the Council presents elsewhere in relation to the reference offences (for example, in the Council's SACStat – Higher Courts database and Sentencing Snapshots).

87. This figure includes one sentence of aggregate imprisonment.

88. This figure includes one combined sentence of a wholly suspended sentence with a fine.

89. The only other sentence imposed on a charge of culpable driving causing death during the reference period was a wholly suspended sentence combined with a fine, representing 1% of charges (n = 1).

Sentences for cases and non-parole periods

4.23   During the reference period, cases that included a proven charge of culpable driving causing death had:

- an average of 2.78 proven charges of any kind per case; and
- an average of 1.08 proven charges of culpable driving causing death per case.

4.24   Sentences of imprisonment were imposed in 84% of cases (n = 88) during the reference period. Wholly suspended sentences were imposed in 7% of cases (n = 7), and partially suspended sentences were imposed in 1% of cases (n = 1).

4.25   A youth justice centre order was imposed in 9% of cases (n = 9).

4.26   The median total effective term of imprisonment for cases of culpable driving causing death was 6 years and 1 month, 7 months higher than the median imprisonment term for individual charges of the offence.

4.27   During the reference period, the median non-parole period was 4 years, which represents 66% of the median imprisonment term of 6 years and 1 month.

Co-sentenced offences

4.28   Table 6 presents the 10 most common co-sentenced offences in cases of culpable driving. It shows the number and percentage of culpable driving cases that included each offence type as well as the average number of charges of each offence type. Negligently causing serious injury was the most common co-sentenced offence, in 36% of all culpable driving cases, followed by alcohol and drug driving offences (15%) and reckless conduct endangering life (10%). Theft was the fourth most common co-sentenced offence, in 8% of cases.

Table 6: **The 10 most frequently occurring offences in cases of culpable driving causing death, 2006–07 to 2012–13**

Offence	Number	Percentage	Average (mean)
Culpable driving causing death	105	100%	1.08
Negligently causing serious injury	38	36%	1.76
Alcohol or drug driving offences[a]	16	15%	1.06
Reckless conduct endangering life	10	10%	1.70
Theft	8	8%	1.88
Drive motor vehicle without licence/permit	7	7%	1.14
Drive whilst disqualified	4	4%	1.50
Fail to render assistance after accident	4	4%	1.00
Use an unsafe/unroadworthy vehicle[b]	4	4%	1.00
Reckless conduct endangering serious injury	3	3%	1.67

a.   This category of offences includes drink and drug driving offences under the *Road Safety Act 1986* (Vic) ss 49(1)(A), (B), (BA), (F), (G), (I).

b.   This category of offences includes vehicular offences under the *Road Safety (Vehicles) Regulations 1999* (Vic) reg 820 and *Road Safety (Vehicles) Regulations 2009* (Vic) reg 259.

Case sub-groups

4.29   The cluster analysis identified two sub-groups of cases within this offence.[90] The case characteristics within each sub-group are displayed in Appendix 1, along with the outcomes of relevant tests for differences in frequencies. The distinguishing characteristics of these sub-groups (referred to as *clusters*) are described below.

Cluster 1

4.30   Cluster 1 contains 76 cases (73% of all cases of culpable driving causing death). The defining characteristics of Cluster 1 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 2, Cluster 1 has significantly:

- more cases involving younger offenders, aged under 35 (100%);
- more cases involving single-car incidents (62%) and involving passenger vehicles (68%);
- more cases involving killing or injuring a passenger in the principal vehicle (66%);
- more cases involving intentional high-risk behaviour (30%);
- more cases involving stolen vehicles (9%);
- more cases where the victim or victims were a friend of the driver (60%) and where the victims were aged under 25 years (39%);
- fewer cases where the offender had prior offences involving drugs (7%);
- fewer cases where the offender had prior driving offences (43%); and
- more cases where the offender had positive rehabilitative prospects (84%).

Cluster 2

4.31   Cluster 2 contains 28 cases (27% of all cases of culpable driving causing death). The defining characteristics of Cluster 2 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 1, Cluster 2 has significantly:

- more cases with offenders aged 25 or older (100%);
- more cases where the victims were occupants of other vehicles (48%);
- more cases where the victims were strangers to the offender (71%);
- more cases with offenders who had priors for drug offending (29%) and priors for driving offences (79%);
- more cases where offenders had prior drink driving offences (50%)
- more cases where the offender had a history of substance abuse (46%), adult ill-health/homelessness/trauma (39%), and childhood abuse/neglect (25%); and
- fewer cases where the offender had positive prospects of rehabilitation (61%).

Case cluster sentencing outcomes

4.32   Table 7 shows the proportion of different sentence types imposed between the two clusters. For most sentence types there is little difference between the types of order imposed, save for youth justice centre orders, where 100% of the youth justice centre orders imposed (representing 12% of all cases) corresponded with the younger age group in Cluster 1. Similarly, partially suspended sentences were only imposed in Cluster 1 (for one case).

---

90. The case clusters were identified using the cluster analysis technique described at [3.4]–[3.6].

Table 7: Case-level sentences imposed, by cluster, culpable driving causing death, 2006–07 to 2012–13

Sentence type	Cluster	Sentences in cluster	Minimum	Median	Maximum	Percentage of sentences in cluster
Imprisonment	1	61	3y	6y	11y	80%
	2	26	4y	6y 7m	10y 6m	93%
Partially suspended sentence	1	1	3y	3y	3y	1%
	2	0	–	–	–	–
Youth justice centre order	1	9	1y	3y	3y	12%
	2	0	–	–	–	–
Wholly suspended sentence	1	5	2y 6m	3y	3y	7%
	2	2	3y	3y	3y	7%

4.33 Case-level sentences, rather than sentences at the individual charge level, are described in this section because the cluster analysis has been performed at the case level.

4.34 There was no significant difference observed between Cluster 1 and Cluster 2 in either the distribution of imprisonment sentences (3 to 11 years, and 4 years to 10 years and 6 months, respectively) or the median total effective sentences of imprisonment (6 years and 6 years and 7 months, respectively).

4.35 The distribution and median of the minimum non-parole period sentence lengths, however, were distributed differently with near significance. Cluster 1 had a median non-parole period of 3 years and 6 months, while Cluster 2 had a median non-parole period of 4 years and 3 months.

4.36 Figure 2 shows the distribution of total effective terms of imprisonment and non-parole periods by cluster. The non-parole periods range from 1 year and 3 months to 7 years and 6 months for Cluster 1, and 1 year and 3 months to 8 years for Cluster 2.

4.37 Given that Cluster 1 has significantly:

- more cases involving younger offenders, aged 35 or under (100%);
- more cases where the victim or victims were a friend of the driver (60%) and where the victim was aged under 25 years (39%); and
- more cases where the offender had positive rehabilitative prospects (84%)

when compared with Cluster 2, the lower median non-parole periods may reflect judges' views on the prospects of rehabilitation for this group of offenders.

4.38 These data are suggestive of the courts' balanced consideration of the purposes of sentencing for Cluster 1 offenders. On the one hand, the need for general deterrence and denunciation (in recognition of the harm resulting from such a serious offence as culpable driving causing death) is apparent in the fixing of the sentence on the charge. At the same time, the courts have had regard to the often strong prospects of rehabilitation for these offenders, when fixing the non-parole period.

Figure 2: Median values and distribution of total effective (case-level) sentences of imprisonment and non-parole periods, by cluster, culpable driving causing death, 2006–07 to 20012–13
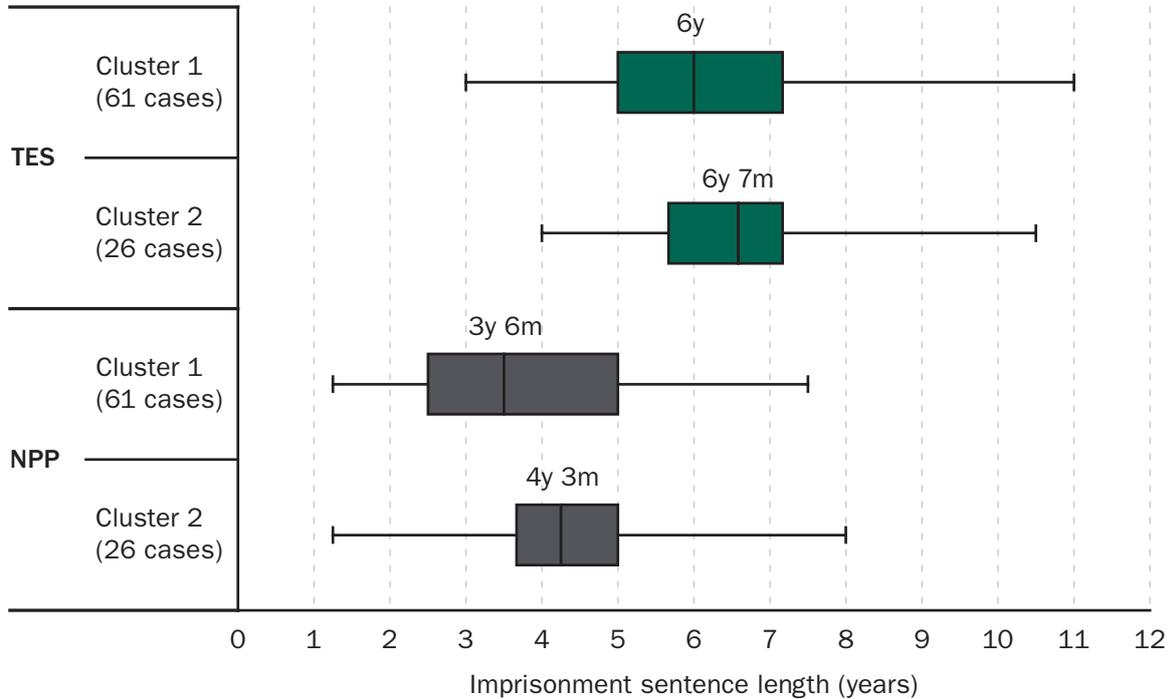
Non-parole periods and baseline sentencing

4.39   Baseline sentencing will apply to the sentencing of offenders, aged 18 years or older at the time of the offending, who are convicted of a charge of culpable driving committed after 2 November 2014.[91]

4.40   Figure 3 shows the distribution of sentences imposed for charges of culpable driving, from 2009–10 to 2013–14. This figure also shows the median value calculated in accordance with the *Sentencing Act 1991* (Vic) and the counting rules discussed in the Council's report *Calculating the Baseline Offence Median*.[92] The dotted red line represents the prescribed baseline sentence of 9 years.

Figure 3: Median value and distribution of sentences imposed for charges of culpable driving causing death, by sentence length, 2009–10 to 2013–14

---

91.   *Sentencing Act 1991* (Vic) s 5A; *Crimes Act 1958* (Vic) s 318(1A).

92.   *Sentencing Act 1991* (Vic) s 5B; Sentencing Advisory Council (2014), above n 73.

4.41   Baseline sentencing requires a court to impose a sentence on a charge of culpable driving consistent with parliament's intent that the median sentence for charges of that offence should be 9 years. For the period 2009–10 to 2013–14, the median sentence for charges of culpable driving was 5 years and 11 months.

4.42   Baseline sentencing also requires a court to impose a minimum non-parole period of 60% of the total effective sentence if the total effective sentence is less than 20 years.[93] During the reference period no cases of culpable driving causing death have received a total effective sentence of greater than 20 years, and so the minimum non-parole period of 60% is likely to apply to most cases of culpable driving causing death sentenced under the baseline scheme.

4.43   In Cluster 1, the proportion of the total effective sentence represented by the non-parole period ranges from 31% to 75%, while in Cluster 2, it ranges from 28% to 78%, with these distributions being significantly different ($p < 0.05$).

4.44   As Figure 4 shows, for Cluster 2 (26 cases), the median proportion of the total effective sentence represented by the non-parole period was greater than 60%. For Cluster 1 (61 cases), the median proportion of the total effective sentence represented by the non-parole period was less than 60%. In other words, half of all non-parole periods imposed for Cluster 1 cases represented less than 60% of the total effective imprisonment sentence in those cases.

4.45   With the introduction of baseline sentencing, a court will not be permitted to impose a non-parole period for a case of culpable driving that is less than 60% of the total effective sentence. The minimum non-parole period proportion will apply even if that case concerns – as with Cluster 1 – young offenders (aged 18 years or older) with strong prospects of rehabilitation, where those prospects might ordinarily have been recognised and encouraged through the imposition of a shorter non-parole period.

Figure 4: Median proportions and distribution of proportions of total effective sentences of imprisonment represented by non-parole periods, by cluster, culpable driving causing death, 2006–07 to 20012–13
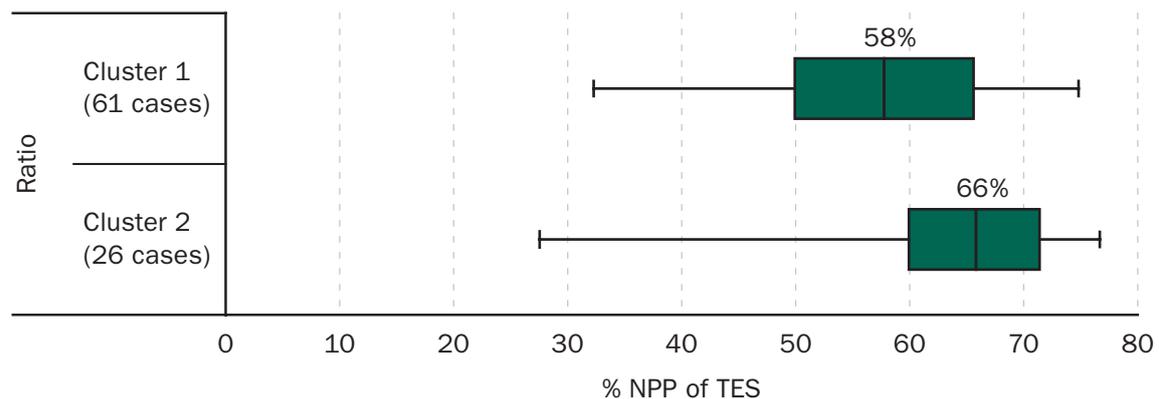
93.   *Sentencing Act 1991* (Vic) s 11A(4)(c).

5. Dangerous driving causing death

5.1   This section presents:

- a profile of sentencing factors for the offence of dangerous driving causing death;
- the overall sentencing outcomes for this offence;
- changes in sentencing outcomes as a result of the increase in maximum penalty; and
- a profile of particular 'case clusters' and the sentencing outcomes for each cluster.

Profile of sentencing factors

5.2   There were 124 cases (146 charges) of dangerous driving causing death during the reference period. The sentencing remarks for all 124 cases were available for analysis. The 124 cases were sentenced with a total of 216 charges of major driving offences, as outlined in Table 4.

5.3   Table 8 lists the number and percentage of the cases analysed in which a particular sentencing factor was referred to in the judge's sentencing remarks for offenders sentenced during the reference period.[94]

Table 8: **Number and percentage of cases containing a particular sentencing factor, dangerous driving causing death, 2006–07 to 2012–13**[95]

Sentencing factor		Cases/charges
Factors relating to the offence	**No. of cases**	**% of cases**
Driving behaviour – inattention	46	37%
Driving behaviour – speeding	37	30%
Driving behaviour – intentional high-risk behaviour	34	27%
Driving behaviour – alcohol affected	18	15%
Driving behaviour – fatigue	10	8%
Driving behaviour – drug affected	6	5%
Driving behaviour – mobile phone use	0	0%
Offender drug affected – cannabis	3	2%
Offender drug affected – prescription drugs	2	2%
Offender drug affected – amphetamine/speed	1	1%
Offender drug affected – methylamphetamine/ice	1	1%
Offender drug affected – cocaine	0	0%
Offender drug affected – heroin	0	0%
Offender drug affected – MDMA/ecstasy	0	0%
Offender drug affected – drug type not stated	0	0%

94. This section includes a profile of the factors mentioned in sentencing remarks. The presence of factors in sentencing remarks does not necessarily mean that the particular factor influenced the sentencing outcome.

95. This table shows the percentage of *cases* containing a particular sentencing factor, except in relation to the victim factors – the data for these factors refers to the percentage of *charges* having the particular factor.

Sentencing factor		Cases/charges
Location – outside metropolitan Melbourne	59	48%
Location – metropolitan Melbourne	57	46%
Location – not stated	8	6%
1 vehicle in incident	54	44%
2 vehicles in incident	58	47%
3 vehicles in incident	8	6%
4 vehicles in incident	1	1%
5 or more vehicles in incident	1	1%
Offender vehicle – passenger vehicle	80	65%
Offender vehicle – truck	14	11%
Offender vehicle – 4WD/SUV	4	3%
Offender vehicle – motorbike	3	2%
Offender vehicle – uncertain or not stated	23	19%
Offender vehicle not stolen	120	97%
Offender vehicle stolen	2	2%
Unclear/not stated if offender vehicle stolen	2	2%
Offender not professional driver	104	84%
Offender professional driver	16	13%
Uncertain/not stated if offender professional driver	4	3%
Factors relating to victims[a]	**No. of charges**	**% of charges**
1 victim in case	82	66%
2 victims in case	18	15%
3 victims in case	10	8%
4 victims in case	10	8%
5 or more victims in case	4	3%
Victims – male	132	61%
Victims – female	68	31%
Victims – gender not stated	16	7%
Adult victims	117	54%
Child victims	30	14%
Victim age uncertain	69	32%
Victim age – under 18	27	13%
Victim age – 18–24 years	22	10%
Victim age – 25–34 years	6	3%
Victim age – 35–44 years	3	1%
Victim age – 45–54 years	3	1%
Victim age – 55 years and over	13	6%
Victim – occupant of other vehicle	88	41%
Victim – passenger in principal vehicle	74	34%

Sentencing factor		Cases/charges
Victim – pedestrian/bystander	26	12%
Victim – motorcyclist	17	8%
Victim – cyclist	7	3%
Victim – uncertain or not stated	4	2%
Victim relationship to offender – none (stranger)	141	65%
Victim relationship to offender – friend	55	25%
Victim relationship to offender – partner	11	5%
Victim relationship to offender – other relative	5	2%
Victim relationship to offender – child	1	<1%
Victim relationship to offender – parent	1	<1%
Victim relationship to offender – sibling	1	<1%
Victim relationship to offender – unknown	1	<1%
Victim not wearing seatbelt	24	11%
Victim wearing seatbelt	3	1%
Victim seatbelt status not stated	189	88%
Victim injury – broken bones	47	22%
Victim injury – chest/lungs/internal organs	25	12%
Victim injury – cuts/lacerations	25	12%
Victim injury – bruising	14	6%
Victim injury – head injuries	13	6%
Victim injury – permanent disability	4	2%
Victim injury – lost consciousness	3	1%
Victim injury – permanent scarring	1	<1%
Victim treatment – hospitalisation	50	23%
Victim treatment – surgery	28	13%
Victim treatment – ongoing care	3	1%
Victim treatment – stitches	2	1%
Victim Impact Statement – provided	151	70%
Victim Impact Statement – not provided	25	12%
Victim Impact Statement – uncertain/not stated	40	19%
Factors relating to the offender	**No. of cases**	**% of cases**
Male	107	86%
Under 18	3	2%
18–24 years	47	38%
25–34 years	32	26%
35–44 years	19	15%
45–54 years	8	6%
55 years and over	14	11%

Sentencing factor	Cases/charges	
Offence committed while on existing court order	2	2%
Prior offending – any offences	51	41%
Prior offending – driving offences	44	35%
Prior offending – dishonesty/property offences	15	12%
Prior offending – drug offences	8	6%
Prior offending – violent offences	7	6%
Prior offending – firearm offences	2	2%
Prior offending – sexual offences	0	0%
Previously imprisoned	3	2%
Unlicensed at time of offending	4	3%
Licence suspended/disqualified at time of offending	3	2%
Driving record – speeding offences	26	21%
Driving record – licence suspension	14	11%
Driving record – careless driving offences	13	10%
Driving record – drink driving offences	13	10%
Driving record – licence disqualification	12	10%
Driving record – drug driving offences	1	1%
Offender history – childhood abuse/neglect/severe disruption	16	13%
Offender history – adult trauma/health problems	7	6%
Offender history – childhood sexual abuse	8	6%
Offender history – cognitive impairment	7	6%
Offender history – mental illness	7	6%
Offender history – substance abuse	2	2%
Offender history – alcohol abuse	1	1%
Offender did not assist police/not stated	93	75%
Offender assisted police	31	25%
Prospects of rehabilitation – positive	100	81%
Prospects of rehabilitation – negative	4	3%
Prospects of rehabilitation – not stated	20	16%
Assessment of remorse – positive	107	86%
Assessment of remorse – negative	8	6%
Assessment of remorse – not stated	9	7%
Offender seriously injured	30	24%
Pleaded guilty	105	85%
Pleaded not guilty	19	15%

a. The factors relating to victims refer to all victims in the case, including victims that are the subject of charges other than dangerous driving causing death: for example, where a case involves a charge of dangerous driving causing serious injury in addition to the charge of dangerous driving causing death. Further, factors relating to victim injury and victim treatment refer only to injured, and not deceased, victims.

Discussion of factors

Driving behaviour

5.4   Inattention (37%) and speeding (30%) were the most common driving behaviours in cases of dangerous driving causing death, followed by intentional high-risk behaviour (27%).

5.5   Compared with culpable driving, fewer cases of dangerous driving causing death involved alcohol (15%) or drug-affected drivers (5%).[96] Where drug affected, the most common drug was cannabis (2% of all cases, 50% of drug-affected offenders).

Location and vehicles

5.6   The location of offending was evenly split between within (46%) and outside (48%) metropolitan Melbourne. Considering differences in population, however, a higher proportion of offences relative to population occur outside metropolitan Melbourne.

5.7   Cases of dangerous driving causing death most commonly involved 2 vehicles (47%) and most offender vehicles were passenger vehicles (65%).

5.8   Very few cases involved stolen vehicles (2%) and compared with the other reference offences, a higher proportion of these cases involved professional drivers (13%).

Factors relating to victims

5.9   The factors relating to victims refer to all victims in the case, including victims that are the subject of charges other than dangerous driving causing death: for example, where a case involves charges of dangerous driving causing serious injury in addition to the charge or charges of dangerous driving causing death.

5.10   The majority of cases involved 1 victim (66%) and most victims were male (61%). Of the cases where the age of the victim was stated, most victims were adults (54%).

5.11   Victims were primarily occupants of another vehicle (41%) followed by passengers in the principal vehicle (34%). A substantial majority of victims were strangers to the offender (65%) followed by friends of the offender (25%).

5.12   Victims' seatbelt status was mentioned by the judge for 12% of all charges. Victims were recorded as not wearing a seatbelt for 11% of all charges.

5.13   Cases of dangerous driving causing death that also contained charges of dangerous driving causing serious injury (33 cases) or charges of negligently causing serious injury (3 cases) had victims that suffered broken bones (22% of all victims) as the most common injury, and for 23% of the charges victims were hospitalised.

---

96. A further analysis of 14 (88%) of the 16 cases of dangerous driving causing death sentenced in 2013–14 showed a similar proportion of drug-affected offenders (7%, representing 1 case involving prescription drugs), consistent with the reference period.

Factors relating to the offender

Plea and assistance to authorities

5.14   The overwhelming majority (85%) of dangerous driving causing death offenders pleaded guilty. A plea of guilty ordinarily, though not necessarily, results in a sentence 'discount'.[97]

5.15   In 25% of cases the offender assisted police.

Prior offending and licence status

5.16   In 41% of cases the offender had a record of prior offending, with prior driving offences being the most common (35%). The most common prior driving offence was speeding (21%).

5.17   For 5% of cases, the offender was unlicensed, had a license suspension, or was disqualified from obtaining a driver licence at the time of the offending.

Personal circumstances of the offender

5.18   Compared with culpable driving, far fewer cases involved offenders with a history of any of the personal factors such as alcohol abuse. The most common factor was childhood abuse/neglect/trauma in 13% of cases.

5.19   The majority of offenders were considered to have positive prospects of rehabilitation (81%) and a positive assessment of remorse (86%).

High-level sentencing outcomes

5.20   The data below relate to the sentencing outcomes for all charges and cases of dangerous driving causing death during the reference period.[98]

Sentences for individual charges

5.21   Wholly suspended sentences were imposed for 42% of charges (n = 62) during the reference period, and partially suspended sentences were imposed for 13% of charges (n = 19). Combined, suspended sentences accounted for 55% of charges (n = 81).

5.22   Imprisonment was imposed for 38% of charges (n = 56) and youth justice centre orders were imposed for 4% of charges (n = 6).[99]

5.23   The median term of imprisonment for a charge of dangerous driving causing death was 3 years.

---

97. *Sentencing Act 1991* (Vic) s 5(2)(e); *Phillips v The Queen* (2012) 37 VR 594, 604.

98. The sentencing statistics discussed in this section are based on the data available from the Higher Courts Conviction Returns database provided by Court Services Victoria for the period 2006–07 to 2012–13. The Council performs quality assurance checks on these data. As sentencing statistics are always subject to revision due to quality assurance checks and the provision of additional data, the statistics in this section may differ somewhat from the statistics that the Council presents elsewhere in relation to the reference offences (for example, in the Council's SACStat – Higher Courts database and Sentencing Snapshots).

99. The remaining sentences imposed on a charge of dangerous driving causing death during the reference period were an intensive correction order in 1% of charges (n = 1) and community-based orders in 1% of charges (n = 2).

Sentences for cases and non-parole periods

5.24   During the reference period, cases that included a proven charge of dangerous driving causing death had:

- an average of 2.16 proven charges of any kind per case; and
- an average of 1.18 proven charges of dangerous driving causing death per case.

5.25   Wholly suspended sentences were imposed in 46% of cases (n = 57), and partially suspended sentences were imposed in 15% of cases (n = 19). Combined, suspended sentences accounted for 61% of cases (n = 76).

5.26   Sentences of imprisonment were imposed in 33% of cases (n = 41) during the reference period.[100]

5.27   The median total effective term of imprisonment for cases of dangerous driving causing death was 3 years and 3 months, which is only 3 months higher than the median imprisonment term for individual charges of dangerous driving causing death.

5.28   During the reference period, the median non-parole period was 1 year and 8 months, which represents 51% of the median total effective imprisonment term of 3 years and 3 months.

Suspended sentences

5.29   Suspended sentences were abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.[101] However, suspended sentences were available for the offence of dangerous driving causing death during the reference period.[102]

5.30   It is notable that suspended sentences comprised 61% of sentences imposed for cases of this offence during the reference period, given the Court of Appeal has stated that a person who kills or injures another while driving dangerously is likely to receive a significant term of imprisonment.[103]

5.31   Future research will determine which types of sentences replace suspended sentences for this offence. It may be that a community correction order (CCO) of a suitable length and with appropriate conditions will be able to satisfy the purposes of sentencing for this offence.

5.32   The Court of Appeal has stated that a CCO:

> may be suitable even in cases of relatively serious offences, which might previously have attracted a medium term of imprisonment (such as, for example, aggravated burglary, intentionally causing serious injury, some forms of sexual offences involving minors, some kinds of rape and some categories of homicide). The sentencing judge may find that, in view of the objective gravity of the conduct and the personal circumstances of the offender, a properly-conditioned CCO of lengthy duration is capable of satisfying the requirements of proportionality, parsimony and just punishment, while affording the best prospects of rehabilitation.[104]

---

100.   The remaining sentences imposed for cases of dangerous driving causing death during the reference period were youth justice centre orders in 3% of cases (n = 4), community-based orders in 2% of cases (n = 2), and an intensive correction order in 1% of cases (n = 1).

101.   *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) s 2.

102.   The use of suspended sentences was restricted in the higher courts for *serious or significant* offences committed between 1 November 2006 and 30 April 2011 and then abolished in the higher courts for offences committed on or after 1 May 2011. The offence of dangerous driving causing death was not a serious or significant offence in relation to these restrictions.

103.   *Director of Public Prosecutions v Oates* (2007) 47 MVR 483, 488.

104.   *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) [131].

5.33   Given that the maximum penalty for dangerous driving causing death is among the lowest prescribed for homicide offences,[105] it may be a form of homicide considered suitable for a CCO, depending on the objective gravity of the conduct and the personal circumstances of the offender in the particular case.

5.34   Further, recent amendments to the *Sentencing Act 1991* (Vic) provide that a CCO:

> may be an appropriate sentence where, before the ability of the court to impose a suspended sentence was abolished, the court may have imposed a sentence of imprisonment and then suspended in whole that sentence of imprisonment.[106]

5.35   Table 9 displays the distribution of sentence types for individual charges of dangerous driving causing death by financial year. Over the reference period there was no indication of a decline in the use of wholly suspended sentences.

Table 9: **Percentage of charges by sentence type, dangerous driving causing death, 2006–07 to 2012–13**

Sentence type	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
Imprisonment	29%	44%	21%	62%	24%	52%	33%
Partially suspended sentence	14%	17%	21%	5%	21%	3%	11%
Wholly suspended sentence	43%	33%	54%	29%	48%	34%	56%

Co-sentenced offences

5.36   Table 10 presents the 10 most common co-sentenced offences in cases of dangerous driving causing death. It shows the number and percentage of dangerous driving causing death cases that included each offence type as well as the average number of charges of each offence type. Dangerous driving causing serious injury was the most common co-sentenced offence, in 27% of all dangerous driving causing death cases, followed by fail to stop/assist at fatal accident (4%) and alcohol or drug driving offences (3%).

Table 10: **The 10 most common offences in cases of dangerous driving causing death, 2006–07 to 2012–13**

Offence	Number	Percentage	Average (mean)
Dangerous driving causing death	124	100%	1.18
Dangerous driving causing serious injury	33	27%	2.00
Fail to stop/assist at fatal accident	5	4%	1.20
Alcohol or drug driving offences[a]	4	3%	1.00
Drive motor vehicle without licence/permit	4	3%	1.00
Theft	3	2%	2.00
Possess a drug of dependence	3	2%	1.67
Negligently causing serious injury	3	2%	1.33
Reckless conduct endangering serious injury	2	2%	3.50
Fail to render assistance after accident	2	2%	1.00

a.   This category of offences includes drink and drug driving offences under the *Road Safety Act 1986* (Vic) ss 49(1)(A), (B), (BA), (F), (G), (I).

105.   Another example of a homicide offence with a maximum penalty of Level 5 (10 years) is manslaughter by suicide pact: *Crimes Act 1958* (Vic) s 6B.

106.   *Sentencing Act 1991* (Vic) s 36(2).

Sentencing outcomes after change to maximum penalty

5.37   As discussed at [2.28]–[2.31], in 2008 the maximum penalty for dangerous driving causing death was increased from Level 6 (5 years' imprisonment) to Level 5 (10 years' imprisonment), and applies to offences committed on or after 19 March 2008.

5.38   Table 11 details descriptive statistics for the minimum, median, and maximum sentences imposed on charges of dangerous driving causing death, committed before and after the change in maximum penalty, during the reference period.

5.39   Previous increases in the maximum penalties for negligently causing serious injury (in the context of driving) and culpable driving were characterised as applying to the range of offending, rather than being seen as necessary for rare examples of very serious offending.[107]

5.40   Similarly, the Second Reading Speech relating to the increase in the maximum penalty for dangerous driving causing death stated that the increase 'places greater emphasis on the harm that is caused by the offence'[108] suggesting that the change in maximum penalty sought to address the harm caused by all examples of the offence (particularly when every example of this offence involves the death of a victim).

5.41   Despite this, the sentencing practices for dangerous driving causing death following the change in maximum penalty appear to have only partly addressed the intent expressed by parliament (see [2.44]).

Table 11: Sentencing statistics for dangerous driving causing death, by commission before or after 19 March 2008, 2006–07 to 2012–13

Offence before/after change in maximum penalty	Number of charges	Number of charges sentenced to imprisonment	Minimum (years)	Median (years)	Maximum (years)
Before	73	28	1y	2y 6m	3y 6m
After	72	28	1y 6m	3y	4y 4m

---

107.   *R v Ma* (Unreported, Victorian Court of Appeal, Winneke P, Tadgell, and Callaway JJA, 18 March 1998). See [2.40]–[2.44].

108.   Victoria, 'Crimes Amendment (Child Homicide) Bill', *Parliamentary Debates*, Legislative Assembly, 6 December 2007, 4414 (Rob Hulls, Attorney-General).

5.42   Figure 5 shows the increase in the cumulative median after the change in maximum penalty. Although the maximum penalty increased by 100% (from 5 years to 10 years), the cumulative median imprisonment sentence for charges of dangerous driving causing death over the reference period increased by 20%, from 2 years and 6 months to 3 years.

5.43   Analysis was also conducted to see if there had been a change in the sentence type imposed for the pre- and post-amendment charges of dangerous driving causing death. That analysis showed, however, that a near-identical proportion of charges received a term of imprisonment both before and after the amendment, during the reference period (38.4% before and 38.9% after). Further, the proportion of charges receiving a wholly suspended sentence or a partially suspended sentence did not change significantly.

Figure 5: Cumulative median imprisonment length imposed on charges of dangerous driving causing death, by offence period, sentenced in the higher courts between 2006–07 and 2012–13
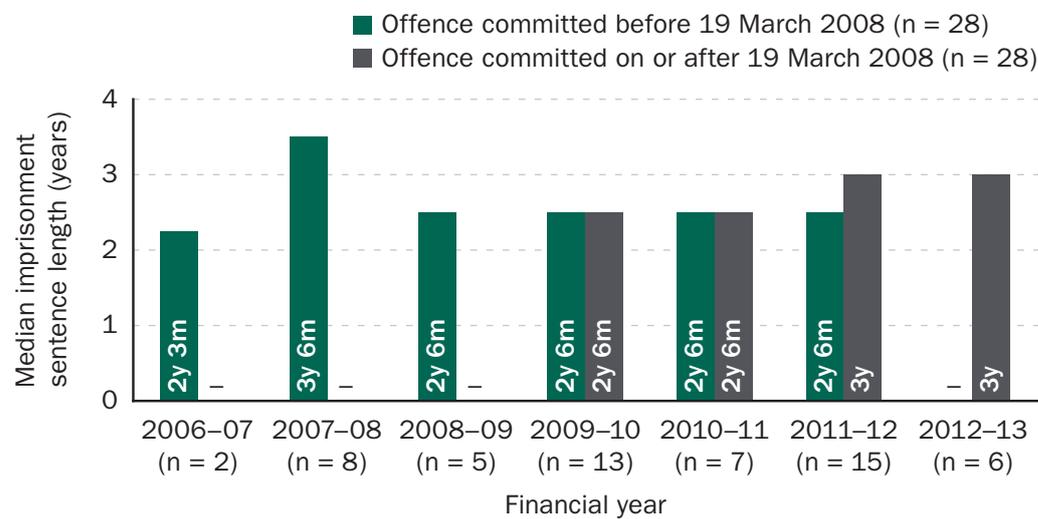
Case sub-groups

5.44 The cluster analysis identified two sub-groups of cases within this offence.[109] The case characteristics within each sub-group are displayed in Appendix 1, along with the outcomes of relevant tests for differences in frequencies. The distinguishing characteristics of these sub-groups (referred to as *clusters*) are described below.

Cluster 1

5.45 Cluster 1 contains 69 cases (56% of all cases of dangerous driving causing death). The defining characteristics of Cluster 1 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 2, Cluster 1 has significantly:

- more cases with an offender aged under 35 (100%);
- more cases involving speeding (45%) and alcohol (20%);
- more cases where the offender drove a passenger vehicle (74%);
- more cases where the victims were a friend of the offender (42%); and
- more cases where the offenders assisted police (32%).

Cluster 2

5.46 Cluster 2 contains 55 cases (44% of all cases of dangerous driving causing death). The defining characteristics of Cluster 2 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 1, Cluster 2 has significantly:

- more cases with offenders aged 25 or older (100%);
- more cases involving inattention (58%);
- more cases where the offender was a professional driver (22%);
- more cases involving a truck (22%);
- more cases where victims were the occupants of other vehicles (48%);
- more cases where victims were strangers to the offender (84%);
- more cases where the offender suffered from adult ill health/homelessness/trauma (22%); and
- more cases with a positive assessment of remorse (93%).

Case cluster sentencing outcomes

5.47 Table 12 shows the proportion of different sentence types imposed between the two clusters. For most sentence types there is little difference between the types of order imposed, save for youth justice centre orders, where 100% of the youth justice centre orders imposed (representing 6% of all cases in the cluster) corresponded with the younger age group in Cluster 1.

5.48 Figure 6 shows the distribution of total effective sentences of imprisonment and non-parole periods between the two clusters. Cluster 2 shows a greater range of total effective sentences imposed than Cluster 1 (and a correspondingly greater range of non-parole periods); however, differences in the median total effective sentence and the median non-parole periods imposed were not statistically significant.

---

109. The case clusters were identified using the cluster analysis technique described at [3.4]–[3.6].

Table 12: Case-level sentences imposed, by cluster, dangerous driving causing death, 2006–07 to 2012–13

Sentence type	Cluster	Sentences in cluster	Minimum (years)	Median (years)	Maximum (years)	Percentage of sentences in cluster
Imprisonment	1	25	1y 6m	3y 3m	7y 10m	36%
	2	16	2y	3y 9m	10y	29%
Partially suspended sentence	1	10	1y 6m	2y	3y	14%
	2	9	1y 3m	2y	3y	16%
Intensive correction order	1	0	–	–	–	0%
	2	1	1y	1y	1y	2%
Youth justice centre order	1	4	1y	2y 7m	3y	6%
	2	0	–	–	–	0%
Wholly suspended sentence	1	29	6m	1y 6m	3y	42%
	2	28	6m	2y	3y	51%
Community-based order	1	1	2y	2y	2y	1%
	2	1	2y	2y	2y	2%

Figure 6: Median values and distribution of total effective sentences and non-parole periods, by cluster, dangerous driving causing death, 2006–07 to 20012–13
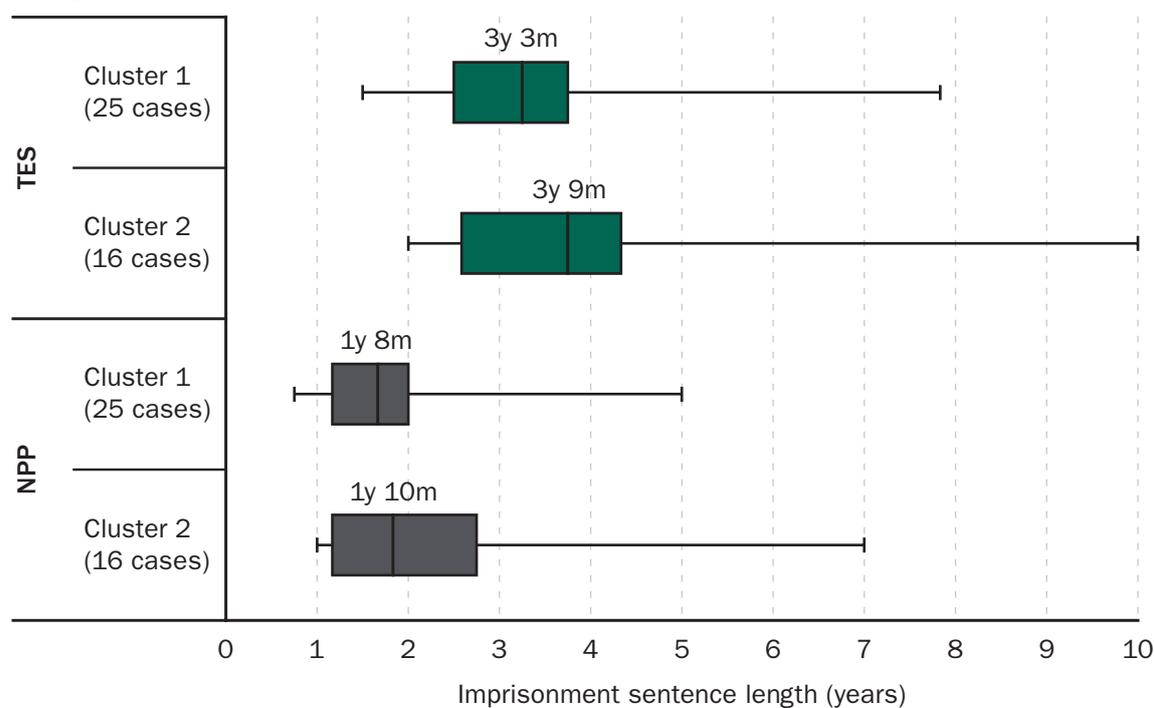
6. Negligently causing serious injury

6.1   This section presents:

- a profile of sentencing factors for the offence of negligently causing serious injury (where driving related);
- the high-level sentencing outcomes for this offence;
- changes in high-level sentencing outcomes as a result of an increase in the maximum penalty for this offence; and
- a profile of case sub-groups and the sentencing outcomes for each sub-group.

Profile of sentencing factors

6.2   There were 78 cases of negligently causing serious injury (where driving related) during the reference period. The sentencing remarks for 77 cases were available for analysis. The 77 cases were sentenced with a total of 131 charges of negligently causing serious injury, as outlined in Table 4.

6.3   Table 13 lists the number and percentage of the cases analysed in which a particular sentencing factor was referred to in the judge's sentencing remarks for offenders sentenced during the reference period.[110]

Table 13: Number and percentage of cases containing a particular sentencing factor, negligently causing serious injury (where driving related), 2006–07 to 2012–13[111]

Sentencing factor		Cases/charges
Factors relating to the offence	**No. of cases**	**% of cases**
Driving behaviour – speeding	42	55%
Driving behaviour – alcohol affected	38	49%
Driving behaviour – intentional high-risk behaviour	20	26%
Driving behaviour – drug affected	10	13%
Driving behaviour – fatigue	6	8%
Driving behaviour – inattention	6	8%
Driving behaviour – mobile phone use	0	0%
Offender drug affected – cannabis	5	6%
Offender drug affected – MDMA/ecstasy	2	3%
Offender drug affected – methylamphetamine/ice	2	3%
Offender drug affected – prescription drugs	2	3%
Offender drug affected – amphetamine/speed	1	1%
Offender drug affected – heroin	0	0%

---

110.   This section includes a profile of the factors mentioned in sentencing remarks. The presence of factors in sentencing remarks does not necessarily mean that the particular factor influenced the sentencing outcome.

111.   This table shows the percentage of *cases* containing a particular sentencing factor, except in relation to the victim factors – the data for these factors refers to the percentage of *charges* having the particular factor.

Sentencing factor	Cases/charges	
Offender drug affected – cocaine	0	0%
Offender drug affected – drug type not stated	0	0%
Location – metropolitan Melbourne	49	64%
Location – outside metropolitan Melbourne	21	27%
Location – not stated	7	9%
1 vehicle in incident	43	56%
2 vehicles in incident	30	39%
3 vehicles in incident	1	1%
4 vehicles in incident	1	1%
5 or more vehicles in incident	0	0%
Offender vehicle – passenger vehicle	54	70%
Offender vehicle – truck	3	4%
Offender vehicle – motorbike	2	3%
Offender vehicle – 4WD/SUV	1	1%
Offender vehicle – uncertain or not stated	17	22%
Offender vehicle not stolen	73	95%
Offender vehicle stolen	3	4%
Unclear/not stated if offender vehicle stolen	1	1%
Offender not professional driver	70	91%
Offender professional driver	5	6%
Uncertain/not stated if offender professional driver	2	3%
Factors relating to victims	**No. of charges**	**% of charges**
1 victim in case	45	58%
2 victims in case	17	22%
3 victims in case	9	12%
4 victims in case	5	6%
5 or more victims in case	1	1%
Victims – male	68	52%
Victims – female	56	43%
Victims – gender not stated	7	5%
Adult victims	62	47%
Child victims	18	14%
Victim age uncertain	51	39%
Victim age – under 18	17	13%
Victim age – 18–24 years	9	7%
Victim age – 25–34 years	3	2%
Victim age – 35–44 years	1	1%
Victim age – 45–54 years	1	1%
Victim age – 55 years and over	11	8%

Sentencing factor	Cases/charges	
Victim – passenger in principal vehicle	58	44%
Victim – occupant of other vehicle	51	39%
Victim – pedestrian/bystander	9	7%
Victim – cyclist	6	5%
Victim – motorcyclist	1	1%
Victim – uncertain or not stated	6	5%
Victim relationship to offender – none (stranger)	69	53%
Victim relationship to offender – friend	48	37%
Victim relationship to offender – child	6	5%
Victim relationship to offender – partner	4	3%
Victim relationship to offender – other relative	1	1%
Victim relationship to offender – parent	1	1%
Victim relationship to offender – sibling	0	0%
Victim relationship to offender – unknown	2	2%
Victim not wearing seatbelt	14	11%
Victim wearing seatbelt	5	4%
Victim seatbelt status not stated	112	85%
Victim injury – broken bones	85	65%
Victim injury – head injuries	61	47%
Victim injury – cuts/lacerations	50	38%
Victim injury – chest/lungs/internal organs	46	35%
Victim injury – permanent disability	35	27%
Victim injury – bruising	31	24%
Victim injury – lost consciousness	12	9%
Victim injury – permanent scarring	8	6%
Victim treatment – hospitalisation	88	67%
Victim treatment – surgery	53	40%
Victim treatment – ongoing care	31	24%
Victim treatment – stitches	7	5%
Victim Impact Statement – provided	74	56%
Victim Impact Statement – not provided	34	26%
Victim Impact Statement – uncertain/not stated	23	18%
Factors relating to the offender	**No. of cases**	**% of cases**
Male	64	83%
Under 18	0	0%
18–24 years	36	47%
25–34 years	20	26%
35–44 years	10	13%
45–54 years	6	8%
55 years and over	1	1%

Sentencing factor	Cases/charges	
Offence committed while on existing court order	7	9%
Prior offending – any offences	49	64%
Prior offending – driving offences	43	56%
Prior offending – dishonesty/property offences	17	22%
Prior offending – violent offences	14	18%
Prior offending – drug offences	5	6%
Prior offending – sexual offences	2	3%
Prior offending – firearm offences	1	1%
Previously imprisoned	10	13%
Unlicensed at time of offending	20	26%
Licence suspended/disqualified at time of offending[a]	10	13%
Driving record – drink driving offences	18	23%
Driving record – careless driving offences	15	19%
Driving record – licence disqualification	14	18%
Driving record – speeding offences	12	16%
Driving record – licence suspension	8	10%
Driving record – drug driving offences	0	0%
Offender history – alcohol abuse	20	26%
Offender history – substance abuse	19	25%
Offender history – mental illness	14	18%
Offender history – adult trauma/health problems	7	9%
Offender history – childhood abuse/neglect/severe disruption	6	8%
Offender history – childhood sexual abuse	5	6%
Offender history – cognitive impairment	5	6%
Offender did not assist police/not stated	60	78%
Offender assisted police	17	22%
Prospects of rehabilitation – positive	67	87%
Prospects of rehabilitation – negative	1	1%
Prospects of rehabilitation – not stated	9	12%
Assessment of remorse – positive	66	86%
Assessment of remorse – negative	4	5%
Assessment of remorse – not stated	7	9%
Offender seriously injured	22	29%
Pleaded guilty	77	100%
Pleaded not guilty	0	0%

a. For four cases the offender was both unlicensed at the time of the offending (that is, had never had a driver licence) and disqualified from obtaining a driver licence.

Discussion of factors

Driving behaviour

6.4   As with culpable driving causing death, speeding (55%) and driving affected by alcohol (49%) were the most common driving behaviours in cases of negligently causing serious injury, followed by intentional high-risk behaviour (26%).

6.5   Comparatively few cases involved drug-affected drivers (13%) and where drug affected, the most common drug was cannabis (6% of all cases, 50% of drug-affected offenders).

Location and vehicles

6.6   The majority of cases occurred within metropolitan Melbourne (64%). Cases of negligently causing serious injury most commonly involved 1 vehicle (56%) and most offender vehicles were passenger vehicles (70%).

Factors relating to victims

6.7   The majority of cases involved 1 victim (58%) and most victims were male (52%). Of the cases where the age of the victim was stated, victims were most commonly adults (47% of the 61% of victims with a stated age).

6.8   Victims were primarily passengers in the principal vehicle (44%) followed by occupants of another vehicle (39%) and then pedestrian/bystanders (7%). A slight majority of all victims were strangers to the offender (53%) followed by friends of the offender (37%).

6.9   Victims' seatbelt status was mentioned by the judge for relatively few charges (15%). Victims were recorded as not wearing a seatbelt for 11% of all charges.

6.10   The most common injury suffered by victims was broken bones (65%), followed by head injuries (47%). Over a quarter of victims suffered some form of permanent disability (27%). Further, 67% of victims required hospitalisation, and 24% require ongoing care.

Factors relating to the offender

Plea and assistance to authorities

6.11   All of the offenders in cases of negligently causing serious injury during the reference period pleaded guilty. A plea of guilty ordinarily, though not necessarily, results in a sentence 'discount'.[112]

6.12   In 22% of cases the offender assisted police.

Prior offending and licence status

6.13   In 64% of cases the offender had a record of prior offending, with prior driving offences being the most common (56%) followed by dishonesty/property offences (22%). Dishonesty and property offences are often a proxy for drug addiction or substance abuse, given the strong association between drug addiction and substance abuse and this type of offending.[113] The most common prior driving offence was a prior drink driving offence (23%).

---

112.   *Sentencing Act 1991* (Vic) s 5(2)(e); *Phillips v The Queen* (2012) 37 VR 594, 604.

113.   Jason Payne and Antonette Gaffney, 'How Much Crime Is Drug or Alcohol Related? Self-Reported Attributions of Police Detainees', *Trends and Issues in Crime and Criminal Justice* no. 439 (2012); Toni Makkai and Jason Payne, *Drugs and Crime: A Study of Incarcerated Male Offenders*, Research and Public Policy Series no. 52 (2003).

6.14   Accounting for four offenders who had never been licensed and had a further disqualification from obtaining a driver licence, 34% of offenders were unlicensed and/or had a suspended licence, or were disqualified from obtaining a driver licence, at the time of the offending.

Personal circumstances of the offender

6.15   A quarter of all offenders had a personal history of alcohol (26%) and/or substance abuse (25%).

6.16   The majority of offenders were considered to have positive prospects of rehabilitation (87%) and a positive assessment of remorse (86%).

High-level sentencing outcomes

6.17   The data below relate to the sentencing outcomes for all charges and cases of negligently causing serious injury (where driving related) during the reference period.[114]

Sentences for individual charges

6.18   Imprisonment was imposed for 69% of charges (n = 141) during the reference period.[115]

6.19   Wholly suspended sentences were imposed for 14% of charges (n = 28)[116] while partially suspended sentences were imposed for 8% of charges (n = 17).

6.20   A youth justice centre order was imposed for 5% of charges (n = 11).[117]

6.21   The median term of imprisonment for a charge of negligently causing serious injury (where driving related) was 2 years and 3 months. The shortest term of imprisonment was 6 months, and the longest term of imprisonment was 5 years and 10 months.

Sentences for cases and non-parole periods

6.22   During the reference period, cases that included a proven charge of negligently causing serious injury (where driving related) had:

   • an average of 3.12 proven charges of any kind per case; and

   • an average of 1.69 proven charges of negligently causing serious injury (where driving related) per case.

6.23   Sentences of imprisonment were imposed in 59% of cases (n = 46) during the reference period. Wholly suspended sentences were imposed in 17% of cases (n = 13), and partially suspended sentences were imposed in 14% of cases (n = 11).[118]

6.24   The median term of imprisonment for cases of negligently causing serious injury was 3 years and 2 months, which is 11 months longer than the median imprisonment term for individual charges of negligently causing serious injury.

---

114.   The sentencing statistics discussed in this section are based on the data available from the Higher Courts Conviction Returns database provided by Court Services Victoria for the period 2006–07 to 2012–13. The Council performs quality assurance checks on these data. As sentencing statistics are always subject to revision due to quality assurance checks and the provision of additional data, the statistics in this section may differ somewhat from the statistics that the Council presents elsewhere in relation to the reference offences (for example, in the Council's SACStat – Higher Courts database and Sentencing Snapshots).

115.   This figure includes four charges that received a sentence of aggregate imprisonment.

116.   This figure includes one charge that received a combined sentence of a wholly suspended sentence of imprisonment and a fine.

117.   Of the remaining charges, 1% received a community-based order (n = 3), less than 1% received a community correction order (n = 1), and 1% received a fine or aggregate fine (n = 2).

118.   Of the remaining cases, 6% received a youth justice centre order (n = 5), and a community-based order, community correction order, and fine were each imposed on 1% of the cases (n = 1).

6.25   During the reference period, the median non-parole period was 1 year and 8 months, which represents 53% of the median term of imprisonment for cases of negligently causing serious injury of 3 years and 2 months.

Co-sentenced offences

6.26   Table 14 presents the 10 most common co-sentenced offences in cases of negligently causing serious injury. It shows the number and percentage of negligently causing serious injury cases that included each offence type as well as the average number of charges of each offence type. Alcohol or drug driving offences were the most common co-sentenced offence in 27% of all negligently causing serious injury cases, followed by fail to render assistance after accident (12%) and drive whilst disqualified (10%).

Table 14: **The 10 most frequently occurring offences in cases of negligently causing serious injury (where driving related), 2006–07 to 2012–13**[119]

Offence	Number	Percentage	Average (mean)
Negligently causing serious injury	78	100%	1.69
Alcohol or drug driving offences[a]	21	27%	1.00
Fail to render assistance after accident	9	12%	1.44
Drive whilst disqualified	8	10%	1.00
Drive motor vehicle without licence/permit	7	9%	1.00
Reckless conduct endangering serious injury	6	8%	1.83
Use unregistered motor vehicle	4	5%	1.00
Reckless conduct endangering life	3	4%	1.33
Dangerous driving	3	4%	1.00
Drive whilst authorisation suspended	3	4%	1.00

a.   This category of offences includes drink and drug driving offences under the *Road Safety Act 1986* (Vic) ss 49(1)(A), (B), (BA), (F), (G), (I).

Sentencing outcomes after change to maximum penalty

6.27   As discussed at [2.45]–[2.46], in 2008 the maximum penalty for negligently causing serious injury was increased from Level 6 (5 years' imprisonment) to Level 5 (10 years' imprisonment), and applies to offences committed on or after 19 March 2008.

6.28   Table 15 details descriptive statistics for the minimum, median, and maximum sentences imposed on charges of negligently causing serious injury, committed before and after the change in maximum penalty, during the reference period.

6.29   Previous increases in the maximum penalties for negligently causing serious injury (in the context of driving) and culpable driving were characterised as applying to the range of offending, rather than being seen as necessary for rare examples of very serious offending (see [2.40]–[2.44]).

---

119.   Three further offences, each sentenced in 3 cases of negligently causing serious injury, were: driver fail to wear seatbelt, fail to stop vehicle after an accident, and learner driver without an experienced driver.

Table 15: Sentencing statistics for negligently causing serious injury, by commission before or after 19 March 2008, 2006–07 to 2012–13

Offence committed before/after change in maximum penalty	Number of charges	Number of charges sentenced to imprisonment	Minimum (years)	Median (years)	Maximum (years)
Before	100	68	9m	2y	4y
After	100	66	6m	2y 6m	4y

6.30   Similarly, the Second Reading Speech relating to the most recent increase in the maximum penalty for negligently causing serious injury stated that the increase 'places greater emphasis on the harm caused by the offence'[120] suggesting that the change in maximum penalty sought to address the harm caused by all examples of the offence.

6.31   Figure 7 shows the increase in the cumulative median imprisonment sentence after the change in maximum penalty. Although the maximum penalty increased by 100% (from 5 years to 10 years), the cumulative median imprisonment sentence for charges of negligently causing serious injury over the reference period increased by 25%, from 2 years to 2 years and 6 months.

6.32   As with dangerous driving causing death, the sentencing practices for negligently causing serious injury following the change in maximum penalty appear to have only partly addressed the intent expressed by parliament (see [2.55]), albeit to a slightly greater degree.

6.33   Analysis was also conducted to see if there had been a change in the sentence type imposed for the pre- and post-amendment charges of negligently causing serious injury. That analysis showed, however, that a very similar proportion of charges received a term of imprisonment both before and after the amendment, during the reference period (68% before and 66% after). Further, the proportion of charges receiving a wholly suspended sentence or a partially suspended sentence did not change significantly.

Figure 7: Cumulative median imprisonment length imposed on charges of negligently causing serious injury, by offence period, sentenced in the higher courts between 2006–07 and 2012–13

---
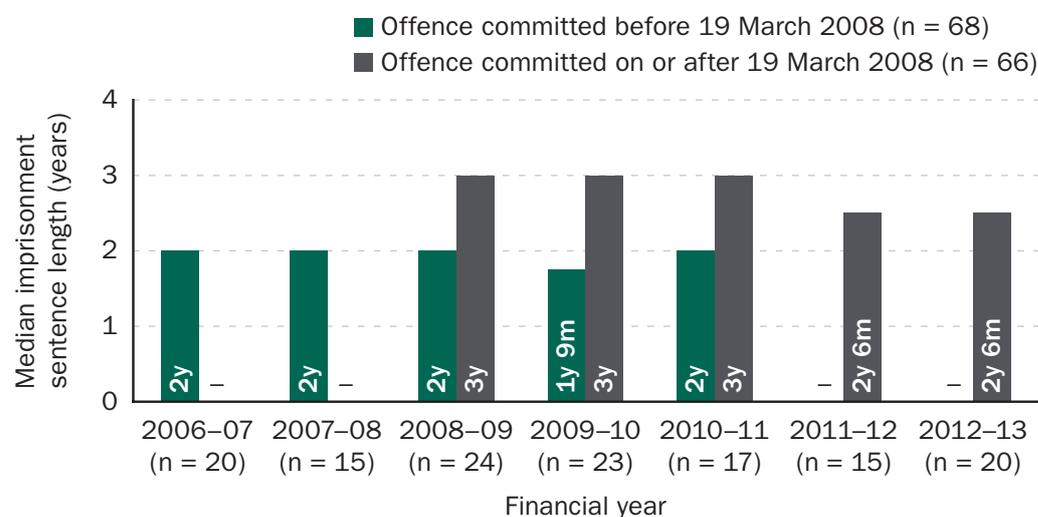
120.   Victoria, 'Crimes Amendment (Child Homicide) Bill', *Parliamentary Debates*, Legislative Assembly, 6 December 2007, 4414 (Rob Hulls, Attorney-General).

Case sub-groups

6.34   The cluster analysis identified two sub-groups of cases within this offence.[121] The case characteristics within each sub-group are displayed in Appendix 1, along with the outcomes of relevant tests for differences in frequencies. The distinguishing characteristics of these sub-groups (referred to as *clusters*) are described below.

Cluster 1

6.35   Cluster 1 contains 51 cases (66% of all cases of negligently causing serious injury). The defining characteristics of Cluster 1 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 2, Cluster 1 has significantly:

- more cases where the offender was aged under 35 (100%);
- more cases where speed was the driving behaviour related to offending (63%);
- more cases where the victim was a friend of the driver (44%);
- more cases where the offending occurred within metropolitan Melbourne (73%); and
- more cases where the offender was unlicensed at the time of the offence (33%).

Cluster 2

6.36   Cluster 2 contains 26 cases (34% of all cases of negligently causing serious injury). The defining characteristics of Cluster 2 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 1, Cluster 2 has significantly:

- more cases with offenders aged 25 or older (100%);
- more cases where the offending occurred outside metropolitan Melbourne (50%);
- more cases where the victim was an occupant of another vehicle (51%);
- more cases where the offender had previous driving offences (73%); and
- more cases where the offender recorded childhood abuse or neglect (19%).

Case cluster sentencing outcomes

6.37   Table 16 shows the proportion of different sentence types imposed between the two clusters. For most sentence types there is little difference between the types of order imposed, save for youth justice centre orders, where 100% of the youth justice centre orders imposed (representing 10% of all cases in the cluster) corresponded with the younger age group in Cluster 1.

6.38   Figure 8 shows the distribution of total effective sentences of imprisonment and non-parole periods between the two clusters. Cluster 1 shows a greater range of total effective sentences imposed than Cluster 2 (and a correspondingly greater range of non-parole periods); however, differences in the median total effective sentence and the median non-parole periods imposed were not statistically significant.

---

121.   The case clusters were identified using the cluster analysis technique described at [3.4]–[3.6].

Table 16: Case-level sentences imposed, by cluster, negligently causing serious injury, 2006–07 to 2012–13

Sentence type	Cluster	Sentences in cluster	Minimum (years)	Median (years)	Maximum (years)	Percentage of sentences in cluster
Imprisonment	1	29	8m	3y 3m	6y	56.86%
	2	16	1y 6m	3y 3m	5y	61.54%
Partially suspended sentence	1	7	1y 6m	1y 8m	2y 3m	13.73%
	2	4	1y	2y	3y	15.38%
Youth justice centre order	1	5	1y 4m	2y	3y	9.80%
	2	0	–	–	–	0.00%
Wholly suspended sentence	1	8	1y	1y 9m	3y	15.69%
	2	5	1y	2y 3m	3y	19.23%
Community-based order	1	0	–	–	–	0.00%
	2	1	2y	2y	2y	3.85%
Community correction order	1	1	2y	2y	2y	1.96%
	2	0	–	–	–	0.00%
Fine	1	1	–	–	–	1.96%
	2	0	–	–	–	0.00%

Figure 8: Median values and distribution of total effective sentences and non-parole periods, by cluster, negligently causing serious injury (driving related), 2006–07 to 20012–13[122]
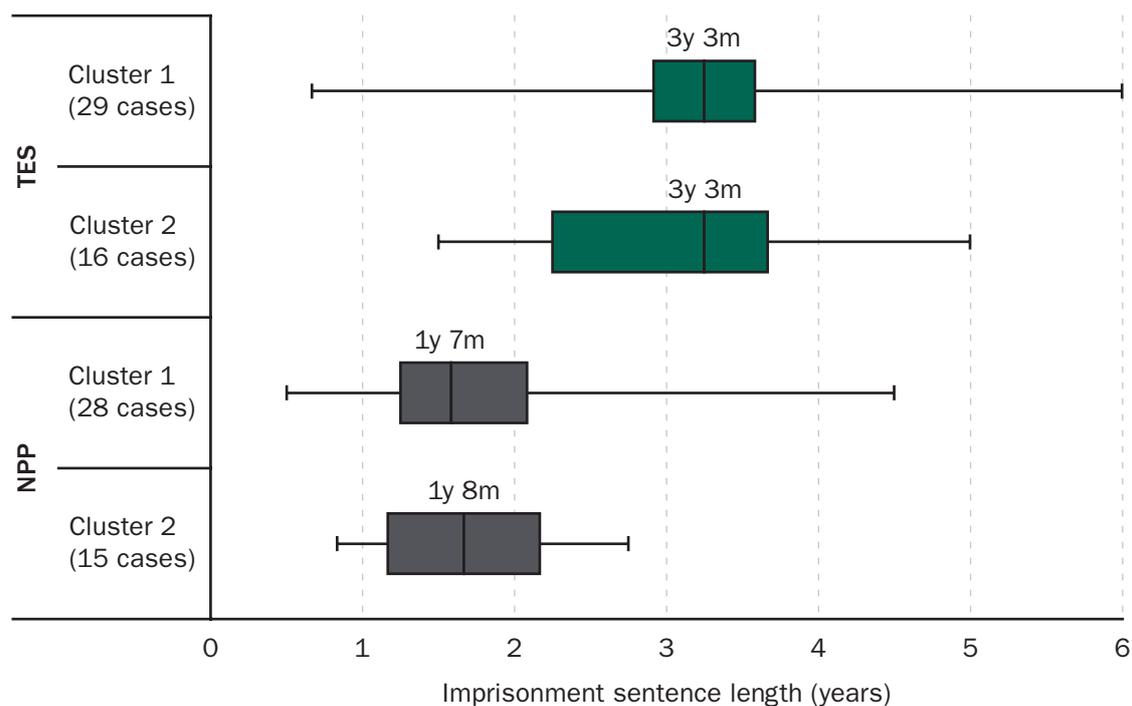
122.   Non-parole periods of zero have been excluded from this figure.

7. Dangerous driving causing serious injury

7.1   This section presents:

- a profile of sentencing factors for the offence of dangerous driving causing serious injury;
- the overall sentencing outcomes for this offence; and
- a profile of particular 'case clusters' and the sentencing outcomes for each cluster.

Profile of sentencing factors

7.2   There were 51 cases (145 charges)[123] of dangerous driving causing serious injury during the reference period. The sentencing remarks for 50 cases were available for analysis. The 50 cases were sentenced with a total of 76 charges of dangerous driving causing serious injury, as outlined in Table 4.

7.3   Table 17 lists the percentage of cases analysed in which a particular sentencing factor was referred to in the judge's sentencing remarks for offenders sentenced during the reference period.[124]

Table 17: Number and percentage of cases containing a particular sentencing factor, dangerous driving causing serious injury, 2006–07 to 2012–13[125]

Sentencing factor		Cases/charges
Factors relating to the offence	**No. of cases**	**% of cases**
Driving behaviour – speeding	22	44%
Driving behaviour – alcohol affected	20	40%
Driving behaviour – intentional high-risk behaviour	16	32%
Driving behaviour – inattention	9	18%
Driving behaviour – drug affected	4	8%
Driving behaviour – fatigue	3	6%
Driving behaviour – mobile phone use	0	0%
Offender drug affected – cannabis	1	2%
Offender drug affected – MDMA/ecstasy	1	2%
Offender drug affected – amphetamine/speed	0	0%
Offender drug affected – cocaine	0	0%
Offender drug affected – heroin	0	0%
Offender drug affected – methylamphetamine/ice	0	0%

123.   Sixty-eight charges of this offence committed during the reference period were sentenced in cases involving either culpable driving causing death or dangerous driving causing death.

124.   This section includes a profile of the factors mentioned in sentencing remarks. The presence of factors in sentencing remarks does not necessarily mean that the particular factor influenced the sentencing outcome.

125.   This table shows the percentage of cases containing a particular sentencing factor, except in relation to the victim factors – the data for these factors refer to the percentage of charges having the particular factor.

Sentencing factor	Cases/charges	
Offender drug affected – prescription drugs	0	0%
Offender drug affected – drug type not stated	2	4%
Location – metropolitan Melbourne	37	74%
Location – outside metropolitan Melbourne	9	18%
Location – not stated	4	8%
1 vehicle in incident	27	54%
2 vehicles in incident	17	34%
3 vehicles in incident	3	6%
4 vehicles in incident	1	2%
5 or more vehicles in incident	0	0%
Offender vehicle – passenger vehicle	33	66%
Offender vehicle – 4WD/SUV	2	4%
Offender vehicle – truck	2	4%
Offender vehicle – motorbike	0	0%
Offender vehicle – uncertain or not stated	13	26%
Offender vehicle not stolen	47	94%
Offender vehicle stolen	0	0%
Unclear/not stated if offender vehicle stolen	3	6%
Offender not professional driver	43	86%
Offender professional driver	2	4%
Uncertain/not stated if offender professional driver	5	10%

Factors relating to victims	No. of charges	% of charges
1 victim in case	37	74%
2 victims in case	6	12%
3 victims in case	4	8%
4 victims in case	1	2%
5 or more victims in case	2	4%
Victims – female	39	51%
Victims – male	33	43%
Victims – gender not stated	4	5%
Adult victims	27	36%
Child victims	17	22%
Victim age uncertain	32	42%
Victim age – under 18	12	16%
Victim age – 18–24 years	5	7%
Victim age – 25–34 years	2	3%
Victim age – 35–44 years	2	3%
Victim age – 45–54 years	0	0%
Victim age – 55 years and over	1	1%

Sentencing factor	Cases/charges	
Victim – occupant of other vehicle	28	37%
Victim – passenger in principal vehicle	27	36%
Victim – pedestrian/bystander	16	21%
Victim – cyclist	1	1%
Victim – motorcyclist	1	1%
Victim – uncertain or not stated	3	4%
Victim relationship to offender – none (stranger)	46	61%
Victim relationship to offender – friend	18	24%
Victim relationship to offender – child	3	4%
Victim relationship to offender – other relative	3	4%
Victim relationship to offender – partner	2	3%
Victim relationship to offender – sibling	1	1%
Victim relationship to offender – parent	0	0%
Victim relationship to offender – unknown	3	4%
Victim not wearing seatbelt	9	12%
Victim wearing seatbelt	3	4%
Victim seatbelt status not stated	64	84%
Victim injury – broken bones	55	72%
Victim injury – head injuries	35	46%
Victim injury – cuts/lacerations	31	41%
Victim injury – chest/lungs/internal organs	30	39%
Victim injury – bruising	21	28%
Victim injury – permanent disability	14	18%
Victim injury – permanent scarring	7	9%
Victim injury – lost consciousness	5	7%
Victim treatment – hospitalisation	62	82%
Victim treatment – surgery	38	50%
Victim treatment – ongoing care	15	20%
Victim treatment – stitches	6	8%
Victim Impact Statement – provided	51	67%
Victim Impact Statement – not provided	15	20%
Victim Impact Statement – uncertain/not stated	10	13%
Factors relating to the offender	**No. of cases**	**% of cases**
Male	42	84%
Under 18	1	2%
18–24 years	23	46%
25–34 years	10	20%
35–44 years	9	18%

Sentencing factor		Cases/charges
45–54 years	3	6%
55 years and over	3	6%
Offence committed while on existing court order	2	4%
Prior offending – any offences	30	60%
Prior offending – driving offences	27	54%
Prior offending – dishonesty/property offences	9	18%
Prior offending – violent offences	7	14%
Prior offending – drug offences	6	12%
Prior offending – sexual offences	2	4%
Prior offending – firearm offences	0	0%
Previously imprisoned	6	12%
Unlicensed at time of offending	6	12%
Licence suspended/disqualified at time of offending	2	4%
Driving record – drink driving offences	14	28%
Driving record – speeding offences	14	28%
Driving record – careless driving offences	10	20%
Driving record – licence suspension	9	18%
Driving record – licence disqualification	8	16%
Driving record – drug driving offences	0	0%
Offender history – alcohol abuse	12	24%
Offender history – substance abuse	11	22%
Offender history – adult trauma/health problems	6	12%
Offender history – childhood abuse/neglect/severe disruption	4	8%
Offender history – cognitive impairment	3	6%
Offender history – mental illness	2	4%
Offender history – childhood sexual abuse	1	2%
Offender did not assist police/not stated	37	74%
Offender assisted police	13	26%
Prospects of rehabilitation – positive	40	80%
Prospects of rehabilitation – negative	0	0%
Prospects of rehabilitation – not stated	10	20%
Assessment of remorse – positive	37	74%
Assessment of remorse – negative	4	8%
Assessment of remorse – not stated	9	18%
Offender seriously injured	13	26%
Pleaded guilty	48	96%
Pleaded not guilty	2	4%

Discussion of factors

Driving behaviour

7.4   As with culpable driving causing death and negligently causing serious injury, the same pattern of speeding (44%), driving affected by alcohol (40%), and intentional high-risk behaviour (32%) were the most common driving behaviours in cases of dangerous driving causing serious injury.

7.5   Few cases involved drug-affected drivers (8%) and where drug affected, the two drug types identified (with a single case each) were cannabis and MDMA/ecstasy.

Location and vehicles

7.6   The majority of cases occurred within metropolitan Melbourne (74%). Cases of dangerous driving causing serious injury most commonly involved 1 vehicle (54%) and most offender vehicles were passenger vehicles (66%).

Factors relating to victims

7.7   The majority of cases involved 1 victim (74%) and, unlike the other reference offences, most victims were female (51%). Of the cases where the age of the victim was stated, victims were most commonly adults (36% of the 58% of victims with a stated age).

7.8   Victims were primarily occupants of another vehicle (37%) closely followed by passengers in the principal vehicle (36%) and then pedestrian/bystanders (21%). A majority of all victims were strangers to the offender (61%) followed by friends of the offender (24%).

7.9   Victims' seatbelt status was mentioned by the judge for relatively few charges (16%). Victims were recorded as not wearing a seatbelt for 12% of all charges.

7.10   The most common injury suffered by victims was broken bones (72%) followed by head injuries (46%). Victims suffered some form of permanent disability in 18% of charges. Further, 82% of victims required hospitalisation, and 20% require ongoing care.

Factors relating to the offender

Plea and assistance to authorities

7.11   The overwhelming majority (96%) of dangerous driving causing serious injury offenders pleaded guilty. A plea of guilty ordinarily, though not necessarily, results in a sentence 'discount'.[126]

7.12   In 26% of cases the offender assisted police.

Prior offending and licence status

7.13   In 60% of cases the offender had a record of prior offending, with prior driving offences being the most common (54%) followed by dishonesty/property offences (18%). The most common prior driving offences were speeding and drink driving (both 28%).

7.14   For 16% of cases, the offender was unlicensed, had a license suspension, or was disqualified from obtaining a driver licence.

---

126.   *Sentencing Act 1991* (Vic) s 5(2)(e); *Phillips v The Queen* (2012) 37 VR 594, 604.

Personal circumstances of the offender

7.15   Just under a quarter of all offenders had a personal history of alcohol abuse (24%) followed by substance abuse (22%).

7.16   The majority of offenders were considered to have positive prospects of rehabilitation (80%) and a positive assessment of remorse (74%).

High-level sentencing outcomes

7.17   The data below relate to the sentencing outcomes for all charges and cases of dangerous driving causing serious injury during the reference period.[127]

Sentences for individual charges

7.18   Imprisonment was imposed for 47% of charges (n = 68). A wholly suspended sentence was imposed for 33% of charges (n = 48),[128] and a partially suspended sentence was imposed for 8% of charges (n = 12). Combined, suspended sentences were imposed for 37% of charges.

7.19   A youth justice centre order was imposed for 8% of charges (n = 11).[129]

7.20   The median term of imprisonment for a charge of dangerous driving causing serious injury was 1 year and 6 months.

Sentences for cases and non-parole periods

7.21   During the reference period, cases that included a proven charge of dangerous driving causing serious injury had:

• an average of 2.94 proven charges of any kind per case; and

• an average of 1.51 proven charges of dangerous driving causing serious injury per case.

7.22   A sentence of imprisonment was imposed in 39% of cases (n = 20). A wholly suspended sentence was imposed in 35% of cases (n = 18), and a partially suspended sentence was imposed in 16% of cases (n = 8).

7.23   A youth justice centre order was imposed in 4% of cases (n = 2).[130]

7.24   The median term of imprisonment for cases of dangerous driving causing serious injury was 2 years and 5 months, which is 11 months higher than the median imprisonment term for individual charges of dangerous driving causing serious injury.

7.25   During the reference period, the median non-parole period was 1 year and 3 months, which represents 52% of the median total effective imprisonment term of 2 years and 5 months.

---

127.   The sentencing statistics discussed in this section are based on the data available from the Higher Courts Conviction Returns database provided by Court Services Victoria for the period 2006–07 to 2012–13. The Council performs quality assurance checks on these data. As sentencing statistics are always subject to revision due to quality assurance checks and the provision of additional data, the statistics in this section may differ somewhat from the statistics that the Council presents elsewhere in relation to the reference offences (for example, in the Council's SACStat – Higher Courts database and Sentencing Snapshots).

128.   This figure includes three combined sentences of a wholly suspended sentence with a fine.

129.   The remaining sentences were: a community-based order for 3% of charges (n = 4), a community correction order for 1% of charges (n = 1), and an intensive correction order for 1% of charges (n = 1).

130.   The remaining total effective sentences were: a community-based order, a community correction order, and an intensive correction order each imposed for 2% of cases (n = 1).

Suspended sentences

7.26   Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.[131] However, suspended sentences were available for the offence of dangerous driving causing serious injury during the reference period.[132]

7.27   It is notable that suspended sentences comprised 35% of sentences imposed for cases of this offence during the reference period, given the Court of Appeal has stated that a person who kills or injures another while driving dangerously is likely to receive a significant term of imprisonment.[133]

7.28   Future research will determine which types of sentences replace suspended sentences for this offence. It may be that a community correction order (CCO) of a suitable length, and with appropriate conditions, will be able to satisfy the purposes of sentencing for this offence.

7.29   The Court of Appeal has stated that a CCO:

> may be suitable even in cases of relatively serious offences, which might previously have attracted a medium term of imprisonment (such as, for example, aggravated burglary, intentionally causing serious injury, some forms of sexual offences involving minors, some kinds of rape and some categories of homicide). The sentencing judge may find that, in view of the objective gravity of the conduct and the personal circumstances of the offender, a properly-conditioned CCO of lengthy duration is capable of satisfying the requirements of proportionality, parsimony and just punishment, while affording the best prospects of rehabilitation.[134]

7.30   Further, recent amendments to the *Sentencing Act 1991* (Vic) provide that a CCO:

> may be an appropriate sentence where, before the ability of the court to impose a suspended sentence was abolished, the court may have imposed a sentence of imprisonment and then suspended in whole that sentence of imprisonment.[135]

7.31   Table 18 displays the distribution of sentence types for individual charges of dangerous driving causing serious injury by financial year. Over the reference period there was no significant indication of a decline in the use of wholly suspended sentences.

Table 18: Percentage of charges by sentence type, dangerous driving causing serious injury, 2006–07 to 2012–13

Sentence type	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
Imprisonment	9%	50%	35%	59%	63%	41%	52%
Partially suspended sentence	9%	15%	12%	0%	16%	0%	11%
Wholly suspended sentence	0%	20%	35%	32%	21%	52%	33%

---

131.   *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) s 2.

132.   The use of suspended sentences was restricted in the higher courts for *serious or significant* offences committed between 1 November 2006 and 30 April 2011 and then abolished in the higher courts for offences committed on or after 1 May 2011. The offence of dangerous driving causing death was not a serious or significant offence in relation to these restrictions.

133.   *Director of Public Prosecutions v Oates* (2007) 47 MVR 483, 488.

134.   *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) [131].

135.   *Sentencing Act 1991* (Vic) s 36(2).

Co-sentenced offences

7.32 Table 19 presents the 10 most common co-sentenced offences in cases of dangerous driving causing serious injury. It shows the number and percentage of dangerous driving causing serious injury cases that included each offence type as well as the average number of charges of each offence type. Alcohol or drug driving offences were the most common co-sentenced offence, in 22% of all negligently causing serious injury cases, followed by fail to stop vehicle after an accident (20%) and fail to render assistance after accident (14%).

Table 19: The 10 most frequently occurring offences in cases of dangerous driving causing serious injury, 2006–07 to 2012–13[136]

Offence	Number	Percentage	Average (mean)
Dangerous driving causing serious injury	51	100%	1.51
Alcohol or drug driving offences[a]	11	22%	1.09
Fail to stop vehicle after an accident	10	20%	1.00
Fail to render assistance after an accident	7	14%	1.00
Reckless conduct endangering serious injury	4	8%	1.25
Drive motor vehicle without licence/permit	4	8%	1.00
Careless driving	2	4%	1.00
Use an unsafe/unroadworthy vehicle[b]	2	4%	1.00
Use an unregistered motor vehicle	2	4%	1.00
Assault police	1	2%	2.00

a. This category of offences includes vehicular offences under the *Road Safety Act 1986* (Vic) ss 49(1)(A), (B), (BA), (F), (G), (I).

b. This category of offences includes drink and drug driving offences under the *Road Safety (Vehicles) Regulations 1999* (Vic) reg 820 and *Road Safety (Vehicles) Regulations 2009* (Vic) reg 259.

---

136. Two further offences, each sentenced in 1 case of dangerous driving causing serious injury, were criminal damage and dealing with property suspected to be the proceeds of crime.

Case sub-groups

7.33   The cluster analysis identified two sub-groups of cases within this offence.[137] The case characteristics within each sub-group are displayed in Appendix 1, along with the outcomes of relevant tests for differences in frequencies. The distinguishing characteristics of these sub-groups (referred to as *clusters*) are described below.

Cluster 1

7.34   Cluster 1 contains 27 cases (54% of all cases of dangerous driving causing serious injury). The defining characteristics of Cluster 1 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 2, Cluster 1 has significantly:

- more cases with offenders aged under 35 (100%);
- more cases that involved victims that were friends of the offender (37%); and
- more cases where the offender had a prior license suspension (30%).

Cluster 2

7.35   Cluster 2 contains 23 cases (46% of all cases of dangerous driving causing serious injury). The defining characteristics of Cluster 2 are based on statistical testing (as detailed in Appendix 1). Relative to Cluster 1, Cluster 2 has significantly:

- more cases with offenders aged 25 or older (100%);
- more cases where the offender had a prior violence-related offence (26%);
- more cases where the offender had a prior licence disqualification (30%);
- more cases where the offender had a prior drink driving offence (48%); and
- more cases where the offender had experienced adult ill-health/homelessness/trauma (26%).

Case cluster sentencing outcomes

7.36   Table 20 shows the proportion of different sentence types imposed between the two clusters. For most sentence types there is little difference between the types of order imposed, save for youth justice centre orders, where 100% of the youth justice centre orders imposed (representing 7% of all cases in the cluster) corresponded with the younger age group in Cluster 1.

7.37   Figure 9 shows the distribution of total effective sentences of imprisonment and non-parole periods between the two clusters. Cluster 2 shows a greater range of total effective sentences imposed than Cluster 1 (and a correspondingly greater range of non-parole periods); however, differences in the median total effective sentence and the median non-parole periods imposed were not statistically significant.

7.38   The non-parole periods for Cluster 2 show a concentration of the top 75% of non-parole periods at 3 years.

---

137.   The case clusters were identified using the cluster analysis technique described at [3.4]–[3.6].

Table 20: Total effective sentences imposed, by cluster, dangerous driving causing serious injury, 2006–07 to 2012–13

Sentence type	Cluster	Sentences in cluster	Minimum (years)	Median (years)	Maximum (years)	Percentage of sentences in cluster
Imprisonment	1	10	1y 4m	2y 1m	3y 5m	37.%
	2	10	9m	2y 11m	5y 3m	43%
Partially suspended sentence	1	3	1y 6m	1y 6m	2y 7m	11%
	2	4	1y	1y 11m	2y 3m	17%
Intensive correction order	1	1	5m	5m	5m	4%
	2	0	–	–	–	0%
Youth justice centre order	1	2	8m	1y 4m	2y	7%
	2	0	–	–	–	0%
Wholly suspended sentence	1	11	9m	1y 6m	3y	41%
	2	7	1y	1y 6m	3y	30%
Community-based order	1	0	–	–	–	0%
	2	1	1y	1y	1y	4%
Community correction order	1	0	–	–	–	0%
	2	1	2y 6m	2y 6m	2y 6m	4%

Figure 9: Median values and distribution of total effective sentences and non-parole periods, by cluster, dangerous driving causing serious injury, 2006–07 to 20012–13[138]
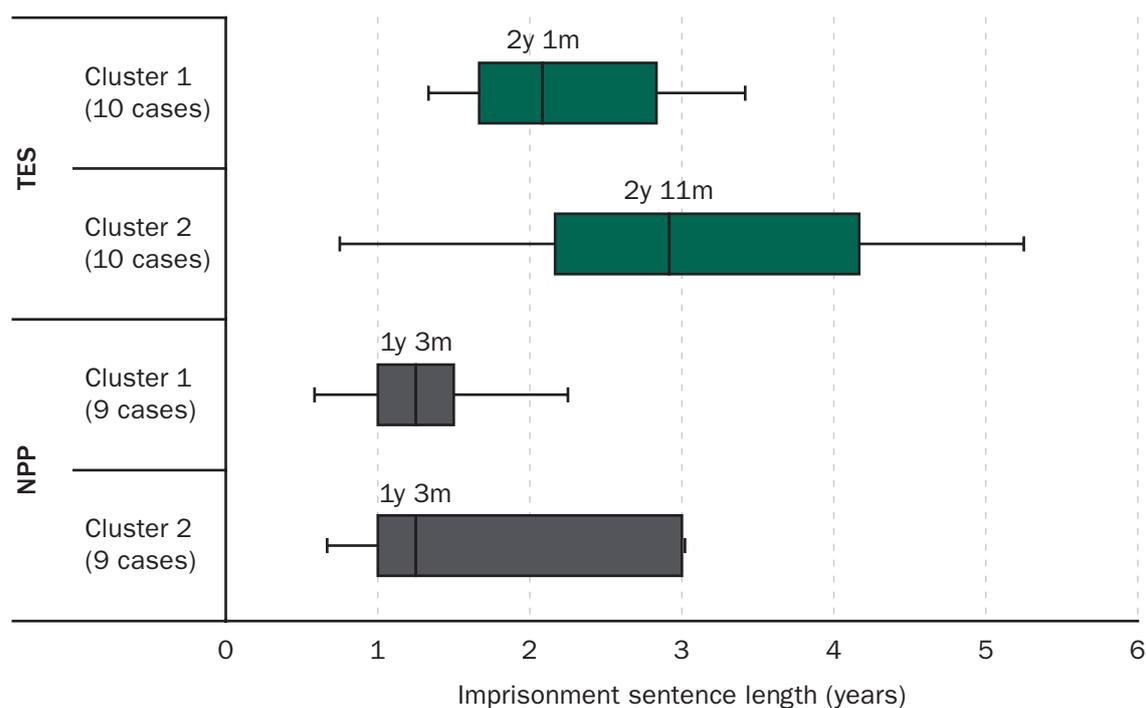
138. Non-parole periods of zero have been excluded from this figure.

8. Predicting sentence outcome for major driving offences

8.1   While the cluster analysis identified sub-groups based on a range of characteristics, these characteristics did not include sentence outcome. In fact, the differences in sentencing outcomes between offence sub-groups identified by the cluster analysis were not statistically significant (see [4.34], [5.47], [6.38], and [7.37]).

8.2   The aim of this chapter is therefore to explore whether particular factors influence the choice of sentence made by judges in the context of the reference offences. Although sentencing decisions are a synthesis of a large number of factors, advanced statistical techniques have the potential to separate out and measure the effect of individual factors while the effect of other factors are held constant or removed. Statistical techniques also allow an overall assessment of how well the group of factors included in a model predicts an outcome. This can tell us whether there might be important factors that have not been included in a model.

8.3   The statistical technique used here is logistic regression. The method involves predicting a binary outcome (an outcome with two options) using a set of predictor variables. The outcome in this analysis is the sentencing decision. Whether it is the type of sentence or the length of sentence, the sentencing decision needs to be reduced to a binary outcome.

8.4   Predictor variables should have some theoretical relevance to the outcome. Sentencing factors stated in section 5 of the *Sentencing Act 1991* (Vic), such as the level of culpability of the offender or the level of harm to a victim, are important to include in a model predicting sentence outcome.

Methodology

Offences

8.5   Sentencing decisions relating to the four reference offences were examined. As discussed at [2.18]–[2.61] these offences vary in terms of the harm caused to the victim(s) and the level of culpability of the offender. The offences have different maximum penalties and different sentencing practices.

Models

8.6   The aim of the analysis was to identify factors both across and within major driving offences. However, as the sentencing outcomes differed dramatically between culpable driving and the other reference offences, culpable driving could not be included in an overall model of the reference offences.

8.7   As a result, regression models were created relating to five offence or offence combinations:
- culpable driving;
- non-culpable driving offences (that is, all of the reference offences other than culpable driving, combined);
- dangerous driving causing death;
- negligently causing serious injury; and
- dangerous driving causing serious injury.

Assumption of independence

8.8   An important assumption underlying regression models is that observations in a model are independent from one another. This means that each observation, for example, relates to separate individuals.

8.9   There is a potential, using sentencing data, to violate the assumption of independence. Observations in sentencing data can have a mixture of case-level and charge-level information. Case-level information relates to the person being sentenced, such as their age and the total effective sentence. Charge-level information relates to individual charges, such as the type of offence and the sentence imposed on a charge.

8.10   In order to avoid violation of the assumption of independence it is important to include only one charge from each case as an observation in a regression model. This was achieved by identifying the charge in each case that received the most severe sentencing outcome for each regression model. For the models relating to individual offences, the charge(s) relating to the particular offence that received the most severe sentence was selected. For the model that related to three offences, the charge that received the most severe sentence overall was included.

Outcomes

8.11   Two outcome variables were considered: imprisonment sentence length and sentence type. The two categories of imprisonment sentence length were above the median and at or below the median, while the two categories of sentence type were immediate custodial and other.

8.12   If a particular offence or combination of offences resulted in a very small sample or was highly skewed, only one measure was examined (Table 21).

Table 21: Outcome variables used in regression models by each offence

Model	Sentence type	Imprisonment length
1. Culpable driving	No	Yes
2. Non-culpable driving offences	Yes	Yes
3. Dangerous driving causing death	Yes	No
4. Negligently causing serious injury	Yes	No
5. Dangerous driving causing serious injury	Yes	No

Predictor selection

8.13   Data on a large number of predictor variables were collected. These related to offending behaviour, offender background characteristics, and injuries to victim (and are discussed in detail in Chapter 3 of this report).

8.14   It was not possible to include all predictor variables in a regression model that uses a sample of under 300 observations. Thus a statistical process was used to selected predictor variables for entry into a regression model. The process involved examining the bivariate correlations between predictors and outcomes and only choosing predictors for which correlation was or neared statistical significance.

Results

8.15   Three components of logistic regression output will be interpreted here. First, the statistical significance of the model as a whole (using the Chi-square); second, the amount of variance the model explains in the outcome (Nagelkerke's R square); and, third, the effect size and statistical significance of each predictor variable (standardised beta coefficient and p-value).[139] The effect size indicates the likelihood of a particular outcome (such as an immediate custodial sentence) for a one-unit change in a predictor variable (the presence or lack of a particular factor, for example, speeding or fatigue), when all other variables in the model are held constant.

Culpable driving – predicting length of imprisonment

8.16   There were 104 culpable driving charges selected (out of a total of 113 culpable driving charges). As the vast majority of these charges received an immediate custodial sentence, the focus of the regression model for this offence was the length of imprisonment sentence (above the median versus at or below the median).

8.17   A total of 87 charges received imprisonment and the median was 66 months (5 years and 6 months). A total of 38 charges received a sentence of over 66 months while 49 received a sentence of 66 months or below.

8.18   A total of 10 predictor variables were selected for the regression model for this offence. The model as a whole achieved statistical significance (Chi-square (10) = 25.544, p < 0.01) and was able to explain 34.1% of the variance in sentence outcome (Nagelkerke's R square = 0.341).

8.19   Table 22 presents data on the results of the regression model for each of the predictors. The first columns to examine are the confidence intervals for the standardised beta values. The confidence intervals indicate the values within which 95% of standardised beta values fall. Where the confidence interval does not straddle 1.000 the standardised beta is deemed to be statistically significant, otherwise the standardised beta is not significant. Using this measure, two predictors reliably predicted whether a charge received a sentence above the median: prior dishonesty or property offences and where the driving behaviour included speeding.

8.20   Having established that these predictors are the only statistically significant predictors, the standardised beta values can be examined. They indicate the effect size on the outcome variable of each predictor variable or the factor by which the likelihood of an outcome is changed by the presence of a particular predictor variable. The two statistically significant predictor variables both increased the likelihood of a long imprisonment term – by a factor of 7.964 for the presence of prior dishonesty or property offences and a factor of 4.115 for the presence of speeding.

8.21   Variables such as plea, offender age, and location outside metropolitan Melbourne had no effect on the likelihood of a long imprisonment term for culpable driving.

---

139.   For definitions of these statistical tests and measures, see the glossary.

Table 22: Regression coefficients for predicting imprisonment sentence length for culpable driving

Variable	Standardised beta	95% confidence interval for standardised beta		Significance
		Lower	**Upper**	
Prior dishonesty or property offence	7.964	1.492	42.52	0.015*
Driving behaviour – speeding	4.115	1.249	13.563	0.020*
Offender history – alcohol abuse	2.505	0.813	7.725	0.110
Number of major driving charges	1.392	0.874	2.217	0.163
Prior driving offence	2.164	0.713	6.562	0.173
Driving behaviour – inattention	0.181	0.012	2.732	0.217
Prior violent offence	0.271	0.031	2.354	0.236
Location – outside metropolitan Melbourne	1.687	0.528	5.387	0.377
Offender aged under 25	0.678	0.202	2.089	0.499
Plea – guilty	0.962	0.163	5.686	0.966

* $p < 0.05$

Non-culpable driving offences

Predicting sentence type

8.22   There were 252 non-culpable driving charges selected (out of a total of 404 charges). A total of 154 charges received an immediate custodial sentence. The remaining 98 received some other sentence.

8.23   A total of 15 predictor variables were selected for entry into a regression model predicting sentence type. The model achieved statistical significance (Chi-square (15) = 77.565, $p < 0.001$) and explained 35.9% of the variance in sentence outcome (Nagelkerke's R square = 0.359).

8.24   Table 23 presents data on the results of the regression model for each of the predictors. The first columns to examine are the confidence intervals for the standardised beta values. The confidence intervals indicate the values within which 95% of standardised beta values fall. Where the confidence interval does not straddle 1.000 the standardised beta is deemed to be statistically significant, otherwise the standardised beta is not significant.

8.25   Five predictor variables achieved statistical significance. The strongest was where the driving behaviour included speeding, followed by past driving offences, negligently causing serious injury within the case, where the driving behaviour included inattention, and prior dishonesty or property offences. All of these factors increased the likelihood of an immediate custodial sentence, apart from inattention, which significantly decreased the likelihood of immediate custody.

8.26   A permanent disability to the victim achieved near significance and resulted in an increased chance of immediate custody. In contrast, victim injuries such as head injuries, cuts/lacerations, broken bones, and death had no effect on the type of sentence for these offences.[140]

---

140.   Note that cuts/lacerations did, however, have an effect on the length of sentence: see [8.28].

Table 23: Regression coefficients for predicting sentence type (immediate custody) for non-culpable driving offences

Variable	Standardised beta	95% confidence interval for standardised beta		Significance
		Lower	**Upper**	
Driving behaviour – speeding	3.178	1.552	6.507	0.002**
Prior driving offence	2.571	1.272	5.193	0.009**
Negligently causing serious injury in case	3.897	1.154	13.162	0.028*
Driving behaviour – inattention	0.452	0.213	0.96	0.039*
Prior dishonesty or property offence	2.818	1.005	7.899	0.049*
Permanent disability to victim	2.575	0.922	7.193	0.071
Offender history – alcohol abuse	2.528	0.765	8.349	0.128
Offence charges	1.295	0.862	1.945	0.213
Age of offender at sentence	0.984	0.959	1.01	0.217
Injury to victim – broken bones	0.558	0.207	1.508	0.250
Dangerous driving causing serious injury in case	1.648	0.644	4.215	0.297
Victim injury – death	1.832	0.520	6.455	0.346
Past violent offence	1.781	0.478	6.636	0.390
Victim injury – cuts/lacerations	1.201	0.463	3.117	0.706
Victim injury – head injuries	0.798	0.335	1.902	0.611

** $p < 0.01$, * $p < 0.05$

Predicting length of imprisonment

8.27   A total of 106 charges received imprisonment and the median term was 36 months. A total of 46 charges received a sentence above the median. The remaining 60 received a sentence at or below the median.

8.28   A total of seven predictor variables were selected for the regression model predicting imprisonment sentence length (Table 24). The model as a whole achieved statistical significance (Chi-square (7) = 30.745, $p < 0.001$) and was able to explain 33.8% of the variance in sentence outcome (Nagelkerke's R square = 0.338).

8.29   Table 24 presents data on the results of the regression model for each of the predictors. The first columns to examine are the confidence intervals for the standardised beta values. The confidence intervals indicate the values within which 95% of standardised beta values fall. Where the confidence interval does not straddle 1.000 the standardised beta is deemed to be statistically significant, otherwise the standardised beta is not significant.

Table 24: **Regression coefficients for predicting imprisonment length for non-culpable driving offences**

Variable	Standardised Beta	95% confidence interval for standardised beta		Significance
		Lower	**Upper**	
Victim injury – death	34.506	4.536	262.48	0.001*
Negligently causing serious injury in case	14.885	1.796	123.395	0.012*
Victim injury – cuts/lacerations	5.293	1.419	19.741	0.013*
Location – outside metropolitan Melbourne	3.184	1.240	8.176	0.016*
Driving behaviour – speeding	2.565	1.011	6.509	0.047*
Driving behaviour – drug affected	2.280	0.489	10.625	0.294
Dangerous driving causing serious injury in case	1.477	0.362	6.018	0.586

* $p < 0.05$

8.30 Five predictors were able to reliably increase the likelihood of a charge receiving an imprisonment sentence above the median, including:

- death of a victim;
- negligently causing serious injury within the case;
- cuts/lacerations to the victim;
- location: outside metropolitan Melbourne; and
- driving behaviour: speeding.

Dangerous driving causing death – predicting sentence type

8.31 Of the 124 charges selected for this offence, 63 received an immediate custodial sentence. The correlational analysis identified eight predictor variables. These were entered into a logistic regression model that achieved statistical significance (Chi-square (8) = 44.448, p < 0.001) and explained 40.2% of the variance in sentence type.

8.32 Table 25 presents data on the results of the regression model for each of the predictors. The first columns to examine are the confidence intervals for the standardised beta values. The confidence intervals indicate the values within which 95% of standardised beta values fall. Where the confidence interval does not straddle 1.000 the standardised beta is deemed to be statistically significant, otherwise the standardised beta is not significant.

8.33 Only two variables, where the driving behaviour included speeding and past driving offences, reached statistical significance; both increased the likelihood of immediate custody. However, a number of other predictors neared significance, including where the driving behaviour included inattention, prior dishonesty or property offences, and a guilty plea.

Table 25: Regression coefficients for predicting sentence type (immediate custody) for dangerous driving causing death

Variable	Standardised beta	95% confidence interval for standardised beta		Significance
		Lower	Upper	
Driving behaviour – speeding	5.179	1.644	16.316	0.005**
Prior driving offence	3.468	1.273	9.445	0.015*
Driving behaviour – inattention	0.434	0.162	1.160	0.096
Prior dishonesty or property offence	3.553	0.758	16.661	0.108
Plea – guilty	0.329	0.087	1.236	0.100
Location – outside metropolitan Melbourne	1.819	0.725	4.564	0.202
Age of offender at sentence	0.999	0.966	1.032	0.931
Offender injury – serious	1.084	0.357	3.298	0.886

** $p < 0.01$, * $p < 0.05$

Negligently causing serious injury – predicting sentence type

8.34   The majority of these charges received imprisonment so a regression was created predicting imprisonment sentence length. A total of 34 charges received a sentence above the median while the remaining 47 received a sentence at or below the median.

8.35   A model was created using seven predictor variables. The model achieved statistical significance and explained 35.8% of the variance in outcome.

8.36   Table 26 presents data on the results of the regression model for each of the predictors. The first columns to examine are the confidence intervals for the standardised beta values. The confidence intervals indicate the values within which 95% of standardised beta values fall. Where the confidence interval does not straddle 1.000 the standardised beta is deemed to be statistically significant, otherwise the standardised beta is not significant.

Table 26: Regression coefficients for predicting sentence type (immediate custody) for negligently causing serious injury

Variable	Standardised beta	95% confidence interval for standardised beta		Significance
		Lower	Upper	
Injury to victim – permanent disability	4.503	1.539	13.177	0.006**
Offender history – alcohol abuse	2.486	0.798	7.745	0.116
Location – outside metropolitan Melbourne	2.293	0.716	7.338	0.162
Driving behaviour – inattention	0.231	0.024	2.244	0.207
Injury to victim – cuts/lacerations	1.976	0.677	5.768	0.212
Injury to victim – chest, lung, or other internal organs	1.490	0.475	4.676	0.495
Prior dishonesty or property offence	1.454	0.403	5.252	0.567
Driving behaviour – fatigue	0.000	–	–	0.999

** $p < 0.01$

8.37   Only one predictor achieved statistical significance: permanent disability rendered on the victim, which resulted in an increased chance of immediate custody. The effect of alcohol abuse and location outside metropolitan Melbourne neared statistical significance in increasing the likelihood of immediate custody.

Dangerous driving causing serious injury – predicting sentence type

8.38   Of the 86 charges selected for dangerous driving causing serious injury, 51 received an immediate custodial sentence. The correlational analysis identified nine predictor variables. These were entered into a logistic regression model that achieved statistical significance (Chi-square (9) = 27.049, p < 0.01) and explained 36.4% of the variance in sentence type.

8.39   Table 27 presents data on the results of the regression model for each of the predictors. The first columns to examine are the confidence intervals for the standardised beta values. The confidence intervals indicate the values within which 95% of standardised beta values fall. Where the confidence interval does not straddle 1.000 the standardised beta is deemed to be statistically significant, otherwise the standardised beta is not significant.

8.40   Inattention, prior driving offences, and guilty plea reached statistical significance. While past driving offences increased the likelihood of immediate custody, guilty plea and inattention were both associated with a decreased chance of receiving immediate custody.

Table 27: Regression coefficients for predicting sentence type (immediate custody) for dangerous driving causing serious injury

Variable	Standardised beta	95% confidence interval for standardised beta		Significance
		Lower	Upper	
Driving behaviour – inattention	0.147	0.040	0.535	0.004**
Prior driving offence	4.339	1.249	15.075	0.021*
Plea – guilty	0.091	0.010	0.831	0.034*
Age of offender at sentence	0.962	0.919	1.007	0.097
Location – outside Metropolitan Melbourne	0.485	0.157	1.502	0.209
Prior dishonesty or property offence	2.328	0.389	13.929	0.354
Injury to offender – serious	1.231	0.352	4.304	0.745
Driving behaviour – drug affected	0.729	0.083	6.373	0.775
Driving behaviour – speeding	0.891	0.229	3.466	0.868

** p < 0.01, * p < 0.05

Summary

8.41   The regression models found a small number of significant predictors of sentence outcome across the offences.

8.42   Factors that were generic across offences were the driving behaviour of speeding and prior offences relating to dishonesty or property. Dishonesty and property offences are often associated with offenders who are drug addicted or have substance abuse issues.

8.43   Factors that were specific to some offences or offence groupings were:

- the presence of a negligently causing serious injury charge (which reliably increased the likelihood of a charge receiving an imprisonment sentence above the median, for non-culpable driving offences);

- location outside metropolitan Melbourne (which reliably increased the likelihood of a charge receiving an imprisonment sentence above the median, for non-culpable driving offences);

- driving behaviour involving inattention (which decreased the likelihood of an imprisonment sentence for non-culpable driving cases, notably dangerous driving causing serious injury cases);

- permanent disability to any victim (which increased the likelihood of a longer sentence for negligently causing serious injury cases); and

- guilty plea (which decreased the likelihood of a longer sentence for dangerous driving causing serious injury cases).

Appendix 1

Selection of sentencing factors for examination

This appendix discusses the rationale for the selection of each sentencing factor examined by the Council.

Driving behaviour

In order to generate a more detailed profile of offending, the Council coded for the presence of any of the following factors related to driving incidents within a case, rather than making a subjective assessment as to the predominant factor.

Speeding

The Council included within speeding both 'excessive' speeding, that is, where speeding is deliberate and substantially over the speed limit, and what is described as 'inappropriate' speeding, that is, travelling at a speed that is inappropriate for the conditions.[141]

In some instances, the reckless, negligent, or dangerous driving may result from a person driving a vehicle within the speed limit, but in such conditions that the speed limit is not safe – for example, such as travelling at the speed limit when the road is wet, or travelling at the speed limit around a sharp bend.

Drug affected

This factor was analysed where the judge referred to the intoxication of the offender by drugs (including licit or prescription drugs) being of the required extent to render the offender incapable of having proper control of the vehicle, and resulting in the driving incident.

Although it is the intoxication that is relevant to sentencing, and not the particular drug, in response to community interest,[142] drug type was analysed in order to determine which types of drugs were most common among drug-affected offenders during the reference period.

The selection of drug types for coding was informed by research on the most common types of drugs trafficked (and therefore presumed used) in Australia, and in Victoria in particular.[143]

In addition to prescription drugs, illicit drugs coded were:

- cannabis;
- methylamphetamine/ice;
- MDMA/ecstasy;
- heroin;
- amphetamine/speed; and
- cocaine.

---

141. Transport Accident Commission (TAC) Victoria, *Wipe Off Five – A Case Study* (Transport Accident Commission, 2002) <http://www.tac.vic.gov.au/__data/assets/pdf_file/0015/40560/TAC-Wipe-Off-5-Campaign.pdf> at 31 March 2015, 3.

142. Insofar as methylamphetamine/ice is concerned, see: Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria (2014), above n 84.

143. Australian Crime Commission, *Illicit Drug Data Report 2012–13* (2014) 7–14.

Alcohol affected

As with drug-affected drivers, this factor was analysed where the judge referred to the alcohol intoxication of the offender being of the required extent to render the offender incapable of having proper control of the vehicle. The testing measures used to determine whether a person is under the influence of alcohol or drugs are prescribed by legislation.[144]

Fatigue

Fatigue is known to produce the same effects upon driving behaviour as intoxication with alcohol.[145] The Centre for Accident Research and Road Safety has noted that:

> Fatigue crashes are usually severe, resulting in serious injury and death, as the driver makes no attempt to avoid or prevent the crash.[146]

The Council coded for the presence of fatigue as a driving factor within each of the cases analysed.

Drug use and fatigue

Victoria Police noted the strong link between drug use (particularly taking a stimulant drug, such as methylamphetamine/ice), subsequent fatigue, and road trauma.[147] This effect is sometimes described as 'rebound fatigue'.[148]

In those circumstances the culpability is based on the offender driving while fatigued, or in such a state of exhaustion, as to constitute reckless, negligent, or dangerous driving, rather than drug affected. As a result, the Council has coded such cases as 'fatigue'.

Inattention

Inattention was coded as a particular driving behaviour. A distinction was drawn between, for example, a person who drives through a red light through a lack of attention (not knowing it was red), and a person who knowingly drives through a red light. The former was categorised as 'inattention' and the latter as 'intentional high-risk behaviour'.

For the reasons discussed below, the Council separated out 'mobile phone use' from the broader category of 'inattention'.

Mobile phone use

The risks associated with the use of mobile phones while driving, particularly by young drivers, have been extensively documented for more than a decade.[149] It remains an area of particular community concern, demonstrated by successive public awareness campaigns[150] and increases in the infringement penalty for the illegal use of mobile phones while driving.[151]

---

144. *Road Safety Act 1986* (Vic) ss 53–58.

145. A. M. Williamson and Anne-Marie Feyer, 'Moderate Sleep Deprivation Produces Impairments in Cognitive and Motor Performance Equivalent to Legally Prescribed Levels of Alcohol Intoxication' (2000) 57 *Occupational and Environmental Medicine* 649.

146. Centre for Accident Research and Road Safety Queensland, *State of the Road: Fatigue Fact Sheet* (2011) 1.

147. Meeting with Victoria Police (12 August 2014).

148. Olaf H. Drummer, 'The Role of Drugs in Road Safety' (2008) 31(2) *Australian Prescriber* 33, 33.

149. Kristie Young and Michael Lenné, *Risks Associated With In-Vehicle Technology Use While Driving – Final Report* (2010); Suzanne McEvoy et al., 'Role of Mobile Phones in Motor Vehicle Crashes Resulting in Hospital Attendance: A Case-Crossover Study' (2005) *BMJ* 331; Leena Pöysti, Sirpa Rajalin, and Heikki Summala, 'Factors Influencing the Use of Cellular (Mobile) Phone During Driving and Hazards While Using It' (2005) 37(1) *Accident Analysis & Prevention* 47; Simon Hosking, Kristie Young, and Michael Regan, *The Effects of Text Messaging on Young Novice Driver Performance*, Report no. 246 (2006); Hans Thulin and Susanne Gustafsson, *Mobile Phone Use While Driving – Conclusions from Four Investigations*, VTI Report 490A (2004); Dave Lamble, Tatu Kauranen, Matti Laakso, and Heikki Summala, 'Cognitive Load and Detection Thresholds in Car Following Situations: Safety Implications for Using Mobile (Cellular) Telephones While Driving' (1999) 31(6) *Accident Analysis & Prevention* 617.

150. See, for example, the 'Blind' campaign, targeting distracted drivers, Transport Accident Commission Victoria, *TAC Campaigns* (*Distractions*, 2013) <https://www.tac.vic.gov.au/road-safety/tac-campaigns/distractions> at 15 January 2015.

In light of this, the Council sought to code for the presence of this factor in major driving offences separately from 'inattention' (although it might be considered a subset of that driving behaviour).

Intentional high-risk behaviour

The Council adopted a definition of intentional high-risk behaviour that was broader than what is commonly referred to as 'hooning'[152] in order to incorporate these behaviours alongside other intentional behaviours that involve a high level of risk.

This category sought to include the aggravating factors from *Neethling*[153] of:

- erratic (or aggressive) driving;
- competitive driving or showing off; and
- escaping police pursuit.

The broader definition adopted by the Council also encompassed:

- drag racing/street racing (whether spontaneous or planned);
- 'burn outs' – when the rear tyres of a vehicle are spun until they heat and smoke;
- 'donuts' – when the driver turns the front tyres until the steering is fully locked during a burn out, so that the car rotates and leaves a circular pattern of tread marks on the road surface;
- 'drifting' – when a vehicle slides sideways through a turn taken at high speed;
- 'speed trials' – when the speed capabilities of a vehicle is tested, sometimes filmed by the driver or passengers;
- swerving a vehicle between lanes or traffic, or across the roadway;
- intentionally driving through a red light or a stop sign at an intersection (against the right of way); and
- any combination of these high-risk behaviours.[154]

Location

Victoria is divided into 79 local government areas. Of these areas, 31 make up the Melbourne metropolitan region.[155] The Council's analysis sought to examine the proportion of major driving offences that are committed either within or outside this region, as a general proxy for rural/regional vs metropolitan offending.[156]

151. From 25 November 2013, the infringement penalty for the illegal use of mobile phones while driving was increased from 2 to 3 penalty units (from $289 to $433 at the time of amendment) and from 3 to 4 demerit points: *Road Safety Road Rules Amendment (Mobile Phones and Other Devices) Rules* 2013 (Vic).

152. Centre for Accident Research and Road Safety Queensland, *State of the Road: Hooning Fact Sheet* (2012) 1. The Council also sought to avoid confusion with the provisions of the *Road Safety Amendment (Hoon Driving) Act 2010* (Vic), which concerns motor vehicle impoundment, immobilisation, and forfeiture provisions in relation to serious offences.

153. *Director of Public Prosecutions v Neethling* (2009) 22 VR 466.

154. This list of intentional high-risk behaviours was adapted from Centre for Accident Research and Road Safety Queensland (2012), above n 152, 1.

155. The 31 local government areas (LGAs) within metropolitan Melbourne are: Banyule, Bayside, Boroondara, Brimbank, Cardinia, Casey, Darebin, Frankston, Glen Eira, Greater Dandenong, Hobsons Bay, Hume, Kingston, Knox, Manningham, Maribyrnong, Maroondah, Melbourne, Melton, Monash, Moonee Valley, Moreland, Mornington Peninsula, Nillumbik, Port Phillip, Stonnington, Whitehorse, Whittlesea, Wyndham, Yarra, and Yarra Ranges. These are defined as LGAs within, or partly within, the 'urban growth boundary' that constitutes Greater Melbourne: Metropolitan Planning Authority, *Urban Growth Boundary* (Metropolitan Planning Authority, 2012) <http://www.mpa.vic.gov.au/information/urban-growth-boundary/> at 1 March 2015.

156. One caveat to this analysis is that the City of Geelong, for example, falls outside the Melbourne metropolitan region but offending in that area is likely to be similar to that within the Melbourne metropolitan region. Further, some of these LGAs are only partly within the Melbourne metropolitan region.

Location was coded into:

- metropolitan Melbourne;
- outside metropolitan Melbourne; or
- not stated.

Vehicles

The number of vehicles involved in an incident is reflective of both the seriousness of the driving event and the number of people affected as victims (even if those people were not the subject of a major driving offence charge).

The Council also sought to code the type of vehicle driven by the offender. The vehicle categories included:

- 4WD/SUV;
- passenger vehicle;
- truck/semi-trailer/heavy goods vehicle;
- motorcycle; and
- uncertain or not stated.

Stolen vehicles

The Council coded for the circumstance where the principal vehicle driven by the offender was stolen. However, this did not necessarily mean that the offender stole the vehicle.

Professional drivers

The Council coded for the circumstance where an offender's usual occupation involved driving a vehicle, such as taxi drivers, truck drivers, and bus drivers. This factor included where the offender was not working at the time of the offending (such as a taxi driver driving a personal vehicle outside working hours).

This analysis sought to examine whether the consideration of an increased duty of care by a professional driver was reflected in sentencing outcomes.

Factors relating to victims

In addition to the number, gender, and age of victims, the Council coded for location of the victim, including whether the victim was a:

- cyclist;
- motorcyclist;
- pedestrian/bystander;
- passenger in principal vehicle;
- occupant of other vehicle; or
- uncertain or not stated.

Whether the victim was wearing a seatbelt (where relevant) was also coded.

The Council also examined the relationship of the victim to the offender, including:
- none (where the victim was a stranger);
- friend (including acquaintance or colleague);
- child;
- partner (including spouse, de facto spouse, or boyfriend/girlfriend);
- sibling;
- parent;
- other relative; or
- uncertain or not stated.

Victim injuries

The nature and extent of the injuries to victims, the consequential treatment, and ongoing issues are directly related to the harm caused by the offending.

For the cases of the fatal driving offences, victim injuries were coded for those victims that suffered serious injury and were the subject of separate charges of either negligently causing serious injury or dangerous driving causing serious injury.

The victim injuries coded were:
- bruising;
- cuts/lacerations;
- broken bones;
- loss of consciousness;
- chest/lungs/internal organs;
- head injuries;
- permanent disability; and/or
- permanent scarring.

Victim treatment

As a proxy for the seriousness of the injuries caused, the treatment required for the victims was also coded, including:
- stitches;
- hospitalisation;
- surgery; and/or
- ongoing care.

Victim Impact Statements

The Council coded for referral by the judge to a Victim Impact Statement in respect of any victim in a case, both where the victims themselves made the statement (for the injury offences) and where the family members of injured or deceased victims made statements.

Factors relating to the offender

In addition to gender and age, the Council coded for a number of different factors personal to the offender in each case.

Prior offending

An absence of prior offending is generally of less significance for major driving offences, on the basis that, while an offender's previous good character is still a relevant sentencing consideration, these offences are often committed by people of good character who have good prospects of rehabilitation.

In *R v Cody* Winneke P stated:

> this type of offence will not uncommonly be committed by persons who are of good character. The overriding purpose to be taken into account in imposing sentence for this offence is one of deterring the offender and all others who drive cars on the road from engaging in conduct similar to that ... in this case.[157]

In light of this authority, the Council sought to examine the effect of prior offending on sentence. In addition to whether the offender had been previously imprisoned, in relation to priors, the Council coded for:

- any offences;
- violent offences;
- dishonesty/property offences;
- drug offences;
- driving offences;
- firearm offences; and
- sexual offences.

Dishonesty/property offences were included as they are often a proxy for drug addiction and drug-related offending.[158] Firearm offences were included as they may be a general indicator of more serious criminality.[159]

The Council also coded whether or not, at the time of the offending, the offender was:

- on an existing sentencing order (such as a bail order, a parole order, or a sentence for a prior offence); and
- unlicensed or had a suspended or disqualified driving license.

Prior driving record

For those offenders who had a record of prior driving offences, the Council coded any mention of prior licence suspension or disqualification, along with the nature of the prior offences, including:

- speeding offences;
- drink driving offences;
- drug driving offences; and/or
- careless driving offences.

---

157. *R v Cody* (1997) 25 MVR 325.

158. Toni Makkai and Jeromey Temple, 'Drugs and Crime: Calculating Attributable Fractions', in David Collins and Helen Lapsley (eds), *Counting the Cost: Estimates of the Social Costs of Drug Abuse in Australia* in *2005–2006,* National Drug Strategy Monograph Series (2008); Toni Makkai and Jason Payne (2003), above n 113.

159. Megan Davies and Jenny Mouzos, *Court Outcomes for Firearm Offences in Australia,* Technical and Background Paper no. 31 (2008).

Offender history

Factors relating to the personal history of the offender were coded, including:

- mental illness;
- cognitive impairment;
- alcohol abuse;
- substance abuse;
- childhood sexual abuse;
- childhood abuse/neglect/severe disruption;[160] and/or
- adult trauma/health problems.[161]

Offender assisted police

Assistance to law enforcement authorities may reduce the sentence imposed, particularly where an offender undertakes to assist in the investigation or the prosecution of an offence.[162] Analysis of the sentencing remarks for the major driving offences suggests that the assistance tended to be in the nature of cooperation upon arrest and the making of full and frank admissions, rather than in the nature of an undertaking to assist.

An offender was considered to have assisted police where there was commentary broadly consistent with this conclusion, for example, where a judge stated that the offender cooperated with police during interviews and/or made full and frank admissions.

Prospects of rehabilitation

The offender's prospects of rehabilitation were coded in the categories of 'positive', 'negative', or 'not stated'. In the majority of cases, the sentencing judge made a clear assessment that the offender's prospects of rehabilitation fell within either the 'positive' or the 'negative' category.

Plea and assessment of remorse

The offender's plea of 'guilty' or 'not guilty' was coded, along with the often closely associated assessment of the offender's remorse.

As with prospects of rehabilitation, the judge's assessment of the offender's remorse was coded in the broad categories of 'positive', 'negative', or 'not stated'.

Offender seriously injured

In a number of major driving offence cases the offending results not only in the death or injury to victims that are subject of the charges, but also in serious injury to the offender him- or herself. The medical needs of a seriously injured offender, for example, are often a consideration in sentencing, as they will bear upon the experience of the offender in custody.

---

160. For the purpose of coding the sentencing remarks, 'childhood abuse, neglect, or severe disruption' included an interrupted or incomplete childhood education. In future studies, the Council intends to separate out 'limited childhood education' so data can be obtained on that factor alone.

161. 'Adult trauma' includes the loss of a partner or a child or a similarly traumatic experience.

162. *R v Gallagher* (1991) 23 NSWLR 220; *Sentencing Act 1991* (Vic) s 5(2AB).

Appendix 2

Culpable driving causing death

Table A1: Percentage of cases containing a particular sentencing factor, culpable driving causing death, Cluster 1 and Cluster 2, 2006–07 to 2012–13

Sentencing factor	% Cluster 1 (n=76)	% Cluster 2 (n=28)	Significant differences
Factors relating to the offence			
Driving behaviour – speeding	70	50	
Driving behaviour – drug affected	16	21	
Driving behaviour – alcohol affected	67	50	
Driving behaviour – fatigue	5	4	
Driving behaviour – inattention	7	11	
Driving behaviour – mobile phone use	3	0	
Driving behaviour – intentional high-risk behaviour	30	11	*
Offender drug affected – cannabis	8	0	*
Offender drug affected – methylamphetamine/ice	3	7	
Offender drug affected – MDMA/ecstasy	1	0	
Offender drug affected – heroin	0	4	
Offender drug affected – amphetamine/speed	1	7	
Offender drug affected – cocaine	0	0	
Offender drug affected – prescription drugs	0	14	*
Offender drug affected – drug type not stated	0	0	
Location – metropolitan Melbourne	58	54	
Location – outside metropolitan Melbourne	38	46	
Location – not stated	4	0	
1 vehicle in incident	62	36	*
2 vehicles in incident	33	54	
3 vehicles in incident	0	7	
4 vehicles in incident	3	4	
5 or more vehicles in incident	0	0	
Offender vehicle – 4WD/SUV	1	7	
Offender vehicle – passenger vehicle	68	46	*
Offender vehicle – truck	1	14	
Offender vehicle – motorbike	3	0	

Sentencing factor	% Cluster 1 (n=76)	% Cluster 2 (n=28)	Significant differences
Offender vehicle – uncertain or not stated	26	32	
Offender vehicle stolen	9	0	*
Offender vehicle not stolen	91	100	*
Offender professional driver	3	14	
Offender not professional driver	97	86	
Factors relating to victims			
1 victim in case	59	61	
2 victims in case	21	29	
3 victims in case	8	11	
4 victims in case	7	0	*
5 or more victims in case	5	0	*
Victims – male	63	57	
Victims – female	37	36	
Victims – gender not stated	0	7	
Child victims	14	5	*
Adult victims	57	48	
Victim age uncertain	29	48	*
Victim age – under 18	14	5	*
Victim age – 18–24 years	25	2	*
Victim age – 25–34 years	3	2	
Victim age – 35–44 years	1	0	
Victim age – 45–54 years	5	2	
Victim age – 55 years and over	4	7	
Victim – cyclist	0	10	*
Victim – motorcyclist	1	2	
Victim – pedestrian/bystander	8	12	
Victim – passenger in principal vehicle	66	29	*
Victim – occupant of other vehicle	25	48	*
Victim – uncertain or not stated	1	0	
Victim relationship to offender – none (stranger)	33	71	*
Victim relationship to offender – friend	60	21	*
Victim relationship to offender – child	0	2	
Victim relationship to offender – partner	2	5	

Sentencing factor	% Cluster 1 (n=76)	% Cluster 2 (n=28)	Significant differences
Victim relationship to offender – sibling	2	0	
Victim relationship to offender – parent	0	0	
Victim relationship to offender – other relative	1	0	
Victim relationship to offender – unknown	1	0	
Victim not wearing seatbelt	19	2	*
Victim wearing seatbelt	4	2	
Victim seatbelt status not stated	77	95	*
Victim injury – bruising	9	5	
Victim injury – cuts/lacerations	17	2	*
Victim injury – broken bones	28	10	*
Victim injury – lost consciousness	2	2	
Victim injury – chest/lungs/internal organs	12	10	
Victim injury – head injuries	17	5	*
Victim injury – permanent disability	7	0	*
Victim injury – permanent scarring	2	0	
Victim treatment – stitches	0	0	
Victim treatment – hospitalisation	31	14	*
Victim treatment – surgery	16	5	*
Victim treatment – ongoing care	4	0	*
Victim Impact Statement – provided	72	64	
Victim Impact Statement – not provided	13	12	
Victim Impact Statement – uncertain/not stated	15	24	
Factors relating to the offender			
Male	92	82	
Under 18	14	0	*
18–24 years	66	0	*
25–34 years	20	46	*
35–44 years	0	36	*
45–54 years	0	7	
55 years and over	0	11	
Committed offence while on existing court order	1	7	
Prior offending – any offences	53	89	*
Prior offending – violent offences	9	11	

Sentencing factor	% Cluster 1 (n=76)	% Cluster 2 (n=28)	Significant differences
Prior offending – dishonesty/property offences	16	32	
Prior offending – drug offences	7	29	*
Prior offending – driving offences	43	79	*
Prior offending – firearm offences	0	7	
Prior offending – sexual offences	0	0	
Previously imprisoned	1	14	
Unlicensed at time of offending	33	18	
Licence suspended/disqualified at time of offending	7	14	
Driving record – licence suspension	20	18	
Driving record – licence disqualification	14	32	
Driving record – speeding offences	21	32	
Driving record – drink driving offences	13	50	*
Driving record – drug driving offences	0	0	
Driving record – careless driving offences	9	21	
Offender history – mental illness	14	21	
Offender history – cognitive impairment	4	18	
Offender history – alcohol abuse	24	43	
Offender history – substance abuse	20	46	*
Offender history – childhood sexual abuse	4	4	
Offender history – childhood abuse/neglect/severe disruption	7	25	*
Offender history – adult trauma/health problems	8	39	*
Offender assisted police	20	25	
Offender did not assist police/not stated	80	75	
Prospects of rehabilitation – positive	84	61	*
Prospects of rehabilitation – negative	1	11	
Prospects of rehabilitation – not stated	14	29	
Assessment of remorse – positive	88	71	
Assessment of remorse – negative	0	11	
Assessment of remorse – not stated	12	18	
Pleaded guilty	88	82	
Pleaded not guilty	12	18	
Offender seriously injured	36	29	

Appendix 3

Dangerous driving causing death

Table A2: **Percentage of cases containing a particular sentencing factor, dangerous driving causing death, Cluster 1 and Cluster 2, 2006–07 to 2012–13**

Sentencing factor	% Cluster 1 (n=69)	% Cluster 2 (n=55)	Significant differences
Factors relating to the offence			
Driving behaviour – speeding	45	11	*
Driving behaviour – drug affected	3	7	
Driving behaviour – alcohol affected	20	7	*
Driving behaviour – fatigue	9	7	
Driving behaviour – inattention	20	58	*
Driving behaviour – mobile phone use	0	0	
Driving behaviour – intentional high-risk behaviour	28	27	
Offender drug affected – cannabis	1	4	
Offender drug affected – methylamphetamine/ice	1	0	
Offender drug affected – MDMA/ecstasy	0	0	
Offender drug affected – heroin	0	0	
Offender drug affected – amphetamine/speed	1	0	
Offender drug affected – cocaine	0	0	
Offender drug affected – prescription drugs	0	4	
Offender drug affected – drug type not stated	0	0	
Location – metropolitan Melbourne	43	49	
Location – outside metropolitan Melbourne	48	47	
Location – not stated	9	4	
1 vehicle in incident	49	36	
2 vehicles in incident	39	56	
3 vehicles in incident	9	4	
4 vehicles in incident	0	2	
5 or more vehicles in incident	0	2	
Offender vehicle – 4WD/SUV	3	4	
Offender vehicle – passenger vehicle	74	53	*
Offender vehicle – truck	3	22	*
Offender vehicle – motorbike	0	5	

Sentencing factor	% Cluster 1 (n=69)	% Cluster 2 (n=55)	Significant differences
Offender vehicle – uncertain or not stated	20	16	
Offender vehicle stolen	3	0	
Offender vehicle not stolen	94	100	*
Offender professional driver	6	22	*
Offender not professional driver	90	76	*
Factors relating to victims			
1 victim in case	70	62	
2 victims in case	10	20	
3 victims in case	9	7	
4 victims in case	9	7	
5 or more victims in case	3	4	
Victims – male	72	48	*
Victims – female	27	36	
Victims – gender not stated	1	15	*
Child victims	18	9	
Adult victims	50	60	
Victim age uncertain	32	31	
Victim age – under 18	16	8	
Victim age – 18–24 years	15	5	*
Victim age – 25–34 years	3	2	
Victim age – 35–44 years	1	2	
Victim age – 45–54 years	3	0	
Victim age – 55 years and over	4	8	
Victim – cyclist	3	4	
Victim – motorcyclist	4	12	*
Victim – pedestrian/bystander	5	20	*
Victim – passenger in principal vehicle	50	15	*
Victim – occupant of other vehicle	34	48	*
Victim – uncertain or not stated	3	0	*
Victim relationship to offender – none (stranger)	50	84	*
Victim relationship to offender – friend	42	6	*
Victim relationship to offender – child	0	1	
Victim relationship to offender – partner	5	5	

Sentencing factor	% Cluster 1 (n=69)	% Cluster 2 (n=55)	Significant differences
Victim relationship to offender – sibling	1	0	
Victim relationship to offender – parent	1	0	
Victim relationship to offender – other relative	1	4	
Victim relationship to offender – unknown	1	0	
Victim not wearing seatbelt	17	4	*
Victim wearing seatbelt	1	2	
Victim seatbelt status not stated	82	94	*
Victim injury – bruising	6	7	
Victim injury – cuts/lacerations	13	10	
Victim injury – broken bones	21	22	
Victim injury – lost consciousness	0	3	
Victim injury – chest/lungs/internal organs	14	9	
Victim injury – head injuries	7	5	
Victim injury – permanent disability	1	3	
Victim injury – permanent scarring	0	1	
Victim treatment – stitches	0	2	
Victim treatment – hospitalisation	26	20	
Victim treatment – surgery	17	8	*
Victim treatment – ongoing care	0	3	
Victim Impact Statement – provided	77	62	*
Victim Impact Statement – not provided	12	11	
Victim Impact Statement – uncertain/not stated	11	27	*
Factors relating to the offender			
Male	87	85	
Under 18	4	0	
18–24 years	68	0	*
25–34 years	26	25	
35–44 years	0	35	*
45–54 years	0	15	*
55 years and over	0	25	*
Committed offence while on existing court order	3	0	
Prior offending – any offences	42	40	
Prior offending – violent offences	7	4	

Sentencing factor	% Cluster 1 (n=69)	% Cluster 2 (n=55)	Significant differences
Prior offending – dishonesty/property offences	10	15	
Prior offending – drug offences	6	7	
Prior offending – driving offences	39	31	
Prior offending – firearm offences	0	4	
Prior offending – sexual offences	0	0	
Previously imprisoned	1	4	
Unlicensed at time of offending	4	2	
Licence suspended/disqualified at time of offending	3	2	
Driving record – licence suspension	16	5	
Driving record – licence disqualification	12	7	
Driving record – speeding offences	25	16	
Driving record – drink driving offences	6	16	
Driving record – drug driving offences	0	2	
Driving record – careless driving offences	9	13	
Offender history – mental illness	3	9	
Offender history – cognitive impairment	1	0	
Offender history – alcohol abuse	6	5	
Offender history – substance abuse	3	9	
Offender history – childhood sexual abuse	1	2	
Offender history – childhood abuse/neglect/severe disruption	6	7	
Offender history – adult trauma/health problems	6	22	*
Offender assisted police	32	16	*
Offender did not assist police/not stated	68	84	*
Prospects of rehabilitation – positive	84	76	
Prospects of rehabilitation – negative	3	4	
Prospects of rehabilitation – not stated	13	20	
Assessment of remorse – positive	81	93	*
Assessment of remorse – negative	9	4	
Assessment of remorse – not stated	10	4	
Pleaded guilty	81	89	
Pleaded not guilty	19	11	
Offender seriously injured	29	18	

Appendix 4

Negligently causing serious injury (driving related)

Table A3: Percentage of cases containing a particular sentencing factor, negligently causing serious injury (driving related), Cluster 1 and Cluster 2, 2006–07 to 2012–13

Sentencing factor	% Cluster 1 (n=51)	% Cluster 2 (n=26)	Significant differences
Factors relating to the offence			
Driving behaviour – speeding	63	38	*
Driving behaviour – drug affected	14	12	
Driving behaviour – alcohol affected	57	35	
Driving behaviour – fatigue	6	12	
Driving behaviour – inattention	6	12	
Driving behaviour – mobile phone use	0	0	
Driving behaviour – intentional high-risk behaviour	25	27	
Offender drug affected – cannabis	8	4	
Offender drug affected – methylamphetamine/ice	2	4	
Offender drug affected – MDMA/ecstasy	4	0	
Offender drug affected – heroin	0	0	
Offender drug affected – amphetamine/speed	0	4	
Offender drug affected – cocaine	0	0	
Offender drug affected – prescription drugs	2	4	
Offender drug affected – drug type not stated	0	0	
Location – metropolitan Melbourne	73	46	*
Location – outside metropolitan Melbourne	16	50	*
Location – not stated	12	4	
1 vehicle in incident	61	46	
2 vehicles in incident	37	42	
3 vehicles in incident	0	4	
4 vehicles in incident	0	4	
5 or more vehicles in incident	0	0	
Offender vehicle – 4WD/SUV	0	4	
Offender vehicle – passenger vehicle	71	69	
Offender vehicle – truck	0	12	
Offender vehicle – motorbike	2	4	

Sentencing factor	% Cluster 1 (n=51)	% Cluster 2 (n=26)	Significant differences
Offender vehicle – uncertain or not stated	27	12	
Offender vehicle stolen	4	4	
Offender vehicle not stolen	96	92	
Offender professional driver	2	15	
Offender not professional driver	98	77	*
Factors relating to victims			
1 victim in case	55	65	
2 victims in case	27	12	
3 victims in case	10	15	
4 victims in case	6	8	
5 or more victims in case	2	0	
Victims – male	53	49	
Victims – female	40	49	
Victims – gender not stated	7	2	
Child victims	11	19	
Adult victims	49	44	
Victim age uncertain	40	37	
Victim age – under 18	11	16	
Victim age – 18–24 years	9	2	
Victim age – 25–34 years	1	5	
Victim age – 35–44 years	1	0	
Victim age – 45–54 years	1	0	
Victim age – 55 years and over	10	5	
Victim – cyclist	6	2	
Victim – motorcyclist	1	0	
Victim – pedestrian/bystander	7	7	
Victim – passenger in principal vehicle	49	35	
Victim – occupant of other vehicle	33	51	*
Victim – uncertain or not stated	5	5	
Victim relationship to offender – none (stranger)	48	63	
Victim relationship to offender – friend	44	21	*
Victim relationship to offender – child	2	9	
Victim relationship to offender – partner	1	7	

Sentencing factor	% Cluster 1 (n=51)	% Cluster 2 (n=26)	Significant differences
Victim relationship to offender – sibling	0	0	
Victim relationship to offender – parent	1	0	
Victim relationship to offender – other relative	1	0	
Victim relationship to offender – unknown	2	0	
Victim not wearing seatbelt	11	9	
Victim wearing seatbelt	3	5	
Victim seatbelt status not stated	85	86	
Victim injury – bruising	19	33	
Victim injury – cuts/lacerations	33	49	
Victim injury – broken bones	61	72	
Victim injury – lost consciousness	7	14	
Victim injury – chest/lungs/internal organs	34	37	
Victim injury – head injuries	44	51	
Victim injury – permanent disability	28	23	
Victim injury – permanent scarring	5	9	
Victim treatment – stitches	7	2	
Victim treatment – hospitalisation	64	74	
Victim treatment – surgery	40	42	
Victim treatment – ongoing care	24	23	
Victim Impact Statement – provided	55	60	
Victim Impact Statement – not provided	25	28	
Victim Impact Statement – uncertain/not stated	20	12	
Factors relating to the offender			
Male	86	77	
Under 18	0	0	
18–24 years	71	0	*
25–34 years	22	35	
35–44 years	0	38	*
45–54 years	0	23	*
55 years and over	0	4	
Committed offence while on existing court order	10	8	
Prior offending – any offences	53	85	*
Prior offending – violent offences	14	27	

Sentencing factor	% Cluster 1 (n=51)	% Cluster 2 (n=26)	Significant differences
Prior offending – dishonesty/property offences	20	27	
Prior offending – drug offences	4	12	
Prior offending – driving offences	47	73	*
Prior offending – firearm offences	0	4	
Prior offending – sexual offences	2	4	
Previously imprisoned	12	15	
Unlicensed at time of offending	33	12	*
Licence suspended/disqualified at time of offending	14	12	
Driving record – licence suspension	8	15	
Driving record – licence disqualification	16	23	
Driving record – speeding offences	16	15	
Driving record – drink driving offences	22	27	
Driving record – drug driving offences	0	0	
Driving record – careless driving offences	16	27	
Offender history – mental illness	18	19	
Offender history – cognitive impairment	10	0	*
Offender history – alcohol abuse	24	31	
Offender history – substance abuse	22	31	
Offender history – childhood sexual abuse	2	15	
Offender history – childhood abuse/neglect/severe disruption	2	19	*
Offender history – adult trauma/health problems	4	19	
Offender assisted police	22	23	
Offender did not assist police/not stated	78	77	
Prospects of rehabilitation – positive	86	88	
Prospects of rehabilitation – negative	2	0	
Prospects of rehabilitation – not stated	12	12	
Assessment of remorse – positive	84	88	
Assessment of remorse – negative	8	0	*
Assessment of remorse – not stated	8	12	
Pleaded guilty	100	100	
Pleaded not guilty	0	0	
Offender seriously injured	22	42	

Appendix 5

Dangerous driving causing serious injury

Table A4: Percentage of cases containing a particular sentencing factor, dangerous driving causing serious injury, Cluster 1 and Cluster 2, 2006–07 to 2012–13

Sentencing factor	% Cluster 1 (n=27)	% Cluster 2 (n=23)	Significant differences
Factors relating to the offence			
Driving behaviour – speeding	48	39	
Driving behaviour – drug affected	4	13	
Driving behaviour – alcohol affected	33	48	
Driving behaviour – fatigue	11	0	
Driving behaviour – inattention	22	13	
Driving behaviour – mobile phone use	0	0	
Driving behaviour – intentional high-risk behaviour	33	30	
Offender drug affected – cannabis	0	4	
Offender drug affected – methylamphetamine/ice	0	0	
Offender drug affected – MDMA/ecstasy	0	4	
Offender drug affected – heroin	0	0	
Offender drug affected – amphetamine/speed	0	0	
Offender drug affected – cocaine	0	0	
Offender drug affected – prescription drugs	0	0	
Offender drug affected – drug type not stated	4	4	
Location – metropolitan Melbourne	70	78	
Location – outside metropolitan Melbourne	19	17	
Location – not stated	11	4	
1 vehicle in incident	59	48	
2 vehicles in incident	26	43	
3 vehicles in incident	7	4	
4 vehicles in incident	4	0	
5 or more vehicles in incident	0	0	
Offender vehicle – 4WD/SUV	0	9	
Offender vehicle – passenger vehicle	63	70	
Offender vehicle – truck	4	4	
Offender vehicle – motorbike	0	0	

Sentencing factor	% Cluster 1 (n=27)	% Cluster 2 (n=23)	Significant differences
Offender vehicle – uncertain or not stated	33	17	
Offender vehicle stolen	0	0	
Offender vehicle not stolen	96	91	
Offender professional driver	0	9	
Offender not professional driver	93	78	
Factors relating to victims			
1 victim in case	74	74	
2 victims in case	11	13	
3 victims in case	7	9	
4 victims in case	0	4	
5 or more victims in case	7	0	
Victims – male	44	42	
Victims – female	49	55	
Victims – gender not stated	7	3	
Child victims	21	24	
Adult victims	30	42	
Victim age uncertain	49	33	
Victim age – under 18	14	18	
Victim age – 18–24 years	12	0	*
Victim age – 25–34 years	2	3	
Victim age – 35–44 years	2	3	
Victim age – 45–54 years	0	0	
Victim age – 55 years and over	0	3	
Victim – cyclist	0	3	
Victim – motorcyclist	0	3	
Victim – pedestrian/bystander	23	18	
Victim – passenger in principal vehicle	44	24	
Victim – occupant of other vehicle	30	45	
Victim – uncertain or not stated	2	6	
Victim relationship to offender – none (stranger)	53	70	
Victim relationship to offender – friend	37	6	*
Victim relationship to offender – child	0	9	
Victim relationship to offender – partner	2	3	

Sentencing factor	% Cluster 1 (n=27)	% Cluster 2 (n=23)	Significant differences
Victim relationship to offender – sibling	2	0	
Victim relationship to offender – parent	0	0	
Victim relationship to offender – other relative	2	6	
Victim relationship to offender – unknown	2	6	
Victim not wearing seatbelt	2	24	*
Victim wearing seatbelt	2	6	
Victim seatbelt status not stated	95	70	*
Victim injury – bruising	28	27	
Victim injury – cuts/lacerations	47	33	
Victim injury – broken bones	65	82	
Victim injury – lost consciousness	5	9	
Victim injury – chest/lungs/internal organs	37	42	
Victim injury – head injuries	40	55	
Victim injury – permanent disability	19	18	
Victim injury – permanent scarring	7	12	
Victim treatment – stitches	9	6	
Victim treatment – hospitalisation	72	94	*
Victim treatment – surgery	42	61	
Victim treatment – ongoing care	16	24	
Victim Impact Statement – provided	65	70	
Victim Impact Statement – not provided	16	24	
Victim Impact Statement – uncertain/not stated	19	6	
Factors relating to the offender			
Male	89	78	
Under 18	4	0	
18–24 years	85	0	*
25–34 years	7	35	*
35–44 years	0	39	*
45–54 years	0	13	
55 years and over	0	13	
Committed offence while on existing court order	7	0	
Prior offending – any offences	48	74	
Prior offending – violent offences	4	26	*

Sentencing factor	% Cluster 1 (n=27)	% Cluster 2 (n=23)	Significant differences
Prior offending – dishonesty/property offences	11	26	
Prior offending – drug offences	4	22	
Prior offending – driving offences	44	65	
Prior offending – firearm offences	0	0	
Prior offending – sexual offences	4	4	
Previously imprisoned	7	17	
Unlicensed at time of offending	11	13	
Licence suspended/disqualified at time of offending	7	0	
Driving record – licence suspension	30	4	*
Driving record – licence disqualification	4	30	*
Driving record – speeding offences	26	30	
Driving record – drink driving offences	11	48	*
Driving record – drug driving offences	0	0	
Driving record – careless driving offences	15	26	
Offender history – mental illness	4	4	
Offender history – cognitive impairment	0	13	
Offender history – alcohol abuse	15	35	
Offender history – substance abuse	15	30	
Offender history – childhood sexual abuse	0	4	
Offender history – childhood abuse/neglect/severe disruption	4	13	
Offender history – adult trauma/health problems	0	26	*
Offender assisted police	22	30	
Offender did not assist police/not stated	78	70	
Prospects of rehabilitation – positive	81	78	
Prospects of rehabilitation – negative	0	0	
Prospects of rehabilitation – not stated	19	22	
Assessment of remorse – positive	74	74	
Assessment of remorse – negative	7	9	
Assessment of remorse – not stated	19	17	
Pleaded guilty	100	91	
Pleaded not guilty	0	9	
Offender seriously injured	19	35	

References

Bibliography

Australian Crime Commission, *Illicit Drug Data Report 2012–13* (Australian Crime Commission, 2014).

Burns, Robert and Richard Burns, *Business Research Methods and Statistics Using SPSS* (Sage Publications Ltd, 2008).

Centre for Accident Research and Road Safety Queensland, *State of the Road: Fatigue Fact Sheet* (Centre for Accident Research and Road Safety Queensland, 2011).

Centre for Accident Research and Road Safety Queensland, *State of the Road: Hooning Fact Sheet* (Centre for Accident Research and Road Safety Queensland, 2012).

Davies, Megan and Jenny Mouzos, *Court Outcomes for Firearm Offences in Australia*, Technical and Background Paper no. 31 (Australian Institute of Criminology, 2008).

Director of Public Prosecutions Victoria, *Director's Policy: Dangerous Driving Causing Death and Serious Injury Pursuant to S.319 of the Crimes Act 1958* (Director of Public Prosecutions Victoria, 2010).

Drummer, Olaf H., 'The Role of Drugs in Road Safety' (2008) 31(2) *Australian Prescriber* 33.

Freckleton, Ian and Danielle Andrewartha, *Indictable Offences in Victoria* (5th ed., Thomson Reuters, 2010).

Freiberg, Arie, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., Lawbook Co., 2014).

Hosking, Simon, Kristie Young, and Michael Regan, *The Effects of Text Messaging on Young Novice Driver Performance*, Report no. 246 (Monash University Accident Research Centre, 2006).

Lamble, Dave, Tatu Kauranen, Matti Laakso, and Heikki Summala, 'Cognitive Load and Detection Thresholds in Car Following Situations: Safety Implications for Using Mobile (Cellular) Telephones While Driving' (1999) 31(6) *Accident Analysis & Prevention* 617.

Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria: Final Report,* vols 1–2 (Law Reform, Drugs and Crime Prevention Committee, 2014).

Makkai, Toni and Jeromey Temple, 'Drugs and Crime: Calculating Attributable Fractions', in David Collins and Helen Lapsley (eds), *Counting the Cost: Estimates of the Social Costs of Drug Abuse in Australia* in *2005–2006,* National Drug Strategy Monograph Series (Commonwealth Department of Health and Ageing, 2008).

Makkai, Toni and Jason Payne, *Drugs and Crime: A Study of Incarcerated Male Offenders*, Research and Public Policy Series no. 52 (Australian Institute of Criminology, 2003).

McEvoy, Suzanne, Mark Stevenson, Anne McCartt, Mark Woodward, Claire Haworth, Peter Palamara, and Rina Cercarelli, 'Role of Mobile Phones in Motor Vehicle Crashes Resulting in Hospital Attendance: A Case-Crossover Study' (2005) *BMJ* 331.

Metropolitan Planning Authority, *Urban Growth Boundary* (Metropolitan Planning Authority, 2012) <http://www.mpa.vic.gov.au/information/urban-growth-boundary/>.

Payne, Jason and Antonette Gaffney, 'How Much Crime Is Drug or Alcohol Related? Self-Reported Attributions of Police Detainees', *Trends and Issues in Crime and Criminal Justice* no. 439 (Australian Institute of Criminology, 2012).

Pöysti, Leena, Sirpa Rajalin, and Heikki Summala, 'Factors Influencing the Use of Cellular (Mobile) Phone During Driving and Hazards While Using It' (2005) 37(1) *Accident Analysis & Prevention* 47.

Sentencing Advisory Council, *Aggravated Burglary: Current Sentencing Practices* (Sentencing Advisory Council, 2011).

Sentencing Advisory Council, *Calculating the Baseline Offence Median: Report* (Sentencing Advisory Council, 2014).

Sentencing Advisory Council, *Causing Serious Injury – Recklessly and Intentionally: Current Sentencing Practices* (Sentencing Advisory Council, 2011).

Sentencing Advisory Council, *Charges Sentenced to the Baseline Median Value: Guide to Baseline Sentencing Information* (Sentencing Advisory Council, 2015) <http://www.sentencingcouncil.vic.gov.au/sites/default/files/Guide%20to%20Baseline%20Sentencing%20Information_0.pdf>.

Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (Sentencing Advisory Council, 2014).

Sentencing Advisory Council, *Major Drug Offences: Current Sentencing Practices* (Sentencing Advisory Council, 2015).

Sentencing Advisory Council, *Maximum Penalty for Negligently Causing Serious Injury: Report* (Sentencing Advisory Council, 2007).

Sentencing Advisory Council, *SACStat* (Sentencing Advisory Council, 2014) <http://www.sentencingcouncil.vic.gov.au/sacstat/home.html>.

Sentencing Advisory Council, *Sentencing Snapshots* (Sentencing Advisory Council, 2015) <http://www.sentencingcouncil.vic.gov.au/statistics/sentencing-snapshots>.

Sentencing Guidelines Council, *Causing Death by Driving: Definitive Guideline* (Sentencing Guidelines Council, UK, 2008).

Thulin, Hans and Susanne Gustafsson, *Mobile Phone Use While Driving – Conclusions from Four Investigations*, VTI Report 490A (Swedish National Road and Transport Research Institute, 2004).

Transport Accident Commission (TAC) Victoria, *TAC Victoria Statistics – 1 July 2009 to 30 June 2013* (*Road Safety Statistics*, 2013) <http://www.tac.vic.gov.au/road-safety/statistics/online-crash-database>.

Transport Accident Commission (TAC) Victoria, *TAC Campaigns* (*Distractions*, 2013) <https://www.tac.vic.gov.au/road-safety/tac-campaigns/distractions>.

Transport Accident Commission (TAC) Victoria, *Wipe Off Five – A Case Study* (Transport Accident Commission, 2002) <http://www.tac.vic.gov.au/__data/assets/pdf_file/0015/40560/TAC-Wipe-Off-5-Campaign.pdf>.

Williamson, A. M. and Anne-Marie Feyer, 'Moderate Sleep Deprivation Produces Impairments in Cognitive and Motor Performance Equivalent to Legally Prescribed Levels of Alcohol Intoxication' (2000) 57 *Occupational and Environmental Medicine* 649.

Young, Kristie and Michael Lenné, *Risks Associated With In-Vehicle Technology Use While Driving – Final Report* (Monash University Accident Research Centre, 2010).

Case law

Barbaro v The Queen (2014) 88 ALJR 372

Boulton v The Queen [2014] VSCA 342 (22 December 2014)

Director of Public Prosecutions v Arney [2007] VSCA 126 (12 June 2007)

Director of Public Prosecutions v CPD (2009) 22 VR 533

Director of Public Prosecutions (Cth) v Edge [2012] VSCA 289 (5 December 2012)

Director of Public Prosecutions v Hill (2012) 223 A Crim R 285

Director of Public Prosecutions v Maynard [2009] VSCA 129 (11 June 2009)

Director of Public Prosecutions v Neethling (2009) 22 VR 466

Director of Public Prosecutions v Oates (2007) 47 MVR 483

Gorladenchearau v The Queen [2011] VSCA 432 (16 December 2011)

Jiminez v The Queen (1992) 173 CLR 572

King v The Queen [2012] HCA 24 (20 June 2012)

Matthews v The Queen; Vu v The Queen; Hashmi v The Queen [2014] VSCA 291 (19 November 2014)

McBride v The Queen (1966) 115 CLR 44

Nydam v The Queen [1977] VR 430

Pasznyk v The Queen (2014) 66 MVR 415

Phillips v The Queen (2012) 37 VR 594

R v AB (No 2) (2008) 18 VR 391

R v Boaza [1999] VSCA 126 (5 August 1999)

R v Cody (1997) 25 MVR 325

R v De'Zilwa (2002) 5 VR 408

R v Gallagher (1991) 23 NSWLR 220

R v Jurisic (1998) 45 NSWLR 209

R v Kalanj (1997) 98 A Crim R 505

R v Ma (Unreported, Victorian Court of Appeal, Winneke P, Tadgell, and Callaway JJA, 18 March 1998)

R v MacNeil-Brown (2008) 20 VR 677

R v Reid (Unreported, Victorian Court of Appeal, Brooking, Callaway JJA, and Southwell AJA, 9 October 1996)

R v Sheppard (1995) 77 A Crim R 139

R v Shields [1981] VR 717

R v Way (2004) 60 NSWLR 168

R v Whyte (2002) 55 NSWLR 252

Russell v The Queen (2011) 212 A Crim R 57

Wong v The Queen (2001) 207 CLR 584

Legislation and Bills

Victoria

Crimes Act 1958 (Vic)

Crimes Amendment (Child Homicide) Act 2008 (Vic)

Criminal Procedure Act 2009 (Vic)

Road Safety Amendment (Hoon Driving) Act 2010 (Vic)

Road Safety Act 1986 (Vic)

Road Safety Road Rules Amendment (Mobile Phones and Other Devices) Rules 2013 (Vic)

Road Safety (Vehicles) Regulations 1999 (Vic)

Road Safety (Vehicles) Regulations 2009 (Vic)

Sentencing Act 1991 (Vic)

Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)

Sentencing Amendment (Baseline Sentences) Act 2014 (Vic)

Quasi-legislative materials

Victoria, *Parliamentary Debates*, Legislative Assembly, 3 June 2004, 1798 (Rob Hulls, Attorney-General)

Victoria, *Parliamentary Debates*, Legislative Assembly, 6 December 2007, 4414 (Rob Hulls, Attorney-General)