

# Sentencing Snapshot

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

April 2009  
No. 74

## Unlicensed driving

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of unlicensed driving and details the age and gender<sup>2</sup> of people sentenced for this offence in the Magistrates' Court of Victoria between 2004–05 and 2007–08.

A person commits the offence of unlicensed driving where he or she either drives without a licence<sup>3</sup> or, though he or she has a licence, drives in breach of a licence condition.<sup>4</sup> The offence has three distinct maximum penalties:

- If a court is satisfied that a driver has held a driver's licence in the past (either in Australian jurisdictions or an international driving permit) and that licence had not previously been cancelled as a result of offending in Australian jurisdictions, the maximum penalty is a fine not exceeding 10 penalty units or imprisonment for 1 month.<sup>5</sup>
- The offence has a higher maximum penalty where a court is satisfied that a person has previously been disqualified from obtaining a driver's licence, successfully completes the disqualification period, but then drives without re-licensing where that driver would have been required by law to install an alcohol interlock. The maximum penalty is a fine not exceeding 30 penalty units or imprisonment for 4 months.<sup>6</sup>
- In all other cases, the offence has a maximum penalty of a fine not exceeding 25 penalty units or imprisonment for 3 months.<sup>7</sup>

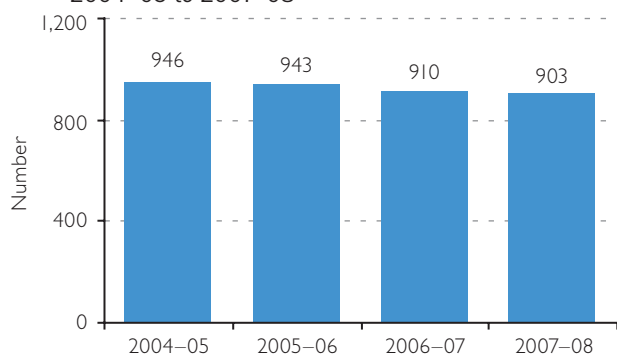
Unlicensed driving is a summary offence and is thus triable in the Magistrates' Court, though it may be tried alongside more serious charges in a higher court.

Unlicensed driving was the principal offence in 1.4% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

### People sentenced

Over the four-year period, the Magistrates' Court sentenced 3,702 people for the principal offence of unlicensed driving. In 2007–08, there were 903 people who were sentenced for the principal proven offence of unlicensed driving.<sup>8</sup> This has steadily decreased each year from 946 people in 2004–05.

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



### Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for unlicensed driving during 2004–05 to 2007–08. Over the four-year period, the majority of those sentenced for unlicensed driving received a non-custodial sentence (3,068 people or 82.9%), including 2,747 people who received a fine (74.2%).

There were also 459 people who received a non-immediate custodial sentence (12.4%), including 402 people who received a wholly suspended sentence (10.9%).

An additional 62 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).<sup>9</sup>

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

| Sentence Type                      | Total        | %            |
|------------------------------------|--------------|--------------|
| <b>Immediate custodial</b>         | <b>175</b>   | <b>4.7</b>   |
| Imprisonment                       | 162          | 4.4          |
| Partially suspended sentence       | 9            | 0.2          |
| Youth justice centre order         | 4            | 0.1          |
| <b>Other custodial</b>             | <b>459</b>   | <b>12.4</b>  |
| Drug treatment order               | 1            | 0.0          |
| Wholly suspended sentence          | 402          | 10.9         |
| Intensive correction order         | 56           | 1.5          |
| <b>Non-custodial</b>               | <b>3,068</b> | <b>82.9</b>  |
| Community-based order              | 140          | 3.8          |
| Fine                               | 2,747        | 74.2         |
| Adjourned undertaking              | 151          | 4.1          |
| Convicted and discharged (s 73 SA) | 15           | 0.4          |
| Dismissed (s 76 SA)                | 15           | 0.4          |
| <b>People sentenced</b>            | <b>3,702</b> | <b>100.0</b> |
| Criminal justice diversion program | 62           |              |
| <b>Total dispositions</b>          | <b>3,764</b> |              |

## Record of conviction

While recording a conviction is mandatory for people sentenced to a custodial order, a magistrate may use discretion when deciding whether to record a conviction for people who receive a non-custodial order.<sup>10</sup> In 2006–07 and 2007–08,<sup>11</sup> a conviction was recorded for 89.0% of the 1,340 people who received a fine and 19.2% of the 73 people who received an adjourned undertaking. Overall, 87.8% of people sentenced had a conviction recorded in 2006–07 and 2007–08.

## Age and gender

Over the four-year period, the majority of those sentenced were men (3,119 people or 84.3%).<sup>12</sup> The age of people sentenced for unlicensed driving ranged from 17 years to 83 years, while the median age was 29 years (meaning that half of the people were aged 29 years or younger and half were 29 years or older). The median age of women sentenced was older than that of men (32 years compared to 29 years).

## Sentencing outcomes by gender and age group

Table 2 shows the number and percentage of people who were sentenced for unlicensed driving by sentence type. The first two columns show sentence types by gender, while the next four columns show the sentence types by age group.

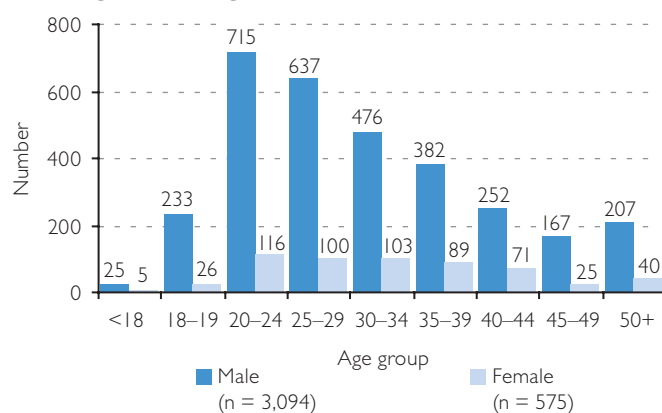
A higher percentage of men received non-immediate custodial sentences (13.7% of men compared to 5.5% of women).

Conversely, a higher percentage of women received non-custodial sentences (93.1% of women compared to 81.0% of men).

When examining individual sentence types, a higher percentage of men received wholly suspended sentences (11.9% compared to 5.3% of women) and imprisonment (4.9% compared to 1.4%). Conversely, a higher percentage of women received fines (79.8% compared to 73.2% of men).

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence and an intensive correction order. Conversely, a higher percentage of younger people received a non-custodial sentence.

**Figure 2:** The number of people sentenced for unlicensed driving by gender and age, 2004–05 to 2007–08



**Table 2:** The number and percentage of people sentenced for unlicensed driving by sentence type, gender and age group, 2004–05 to 2007–08

| Sentencing outcome                 | Gender                          |                               | Age group                    |                                 |                                 |                               | All People                      |
|------------------------------------|---------------------------------|-------------------------------|------------------------------|---------------------------------|---------------------------------|-------------------------------|---------------------------------|
|                                    | Male                            | Female                        | <18                          | 18–24                           | 25–39                           | 40+                           |                                 |
| <b>Immediate custodial</b>         | <b>167</b><br><b>(5.4%)</b>     | <b>8</b><br><b>(1.4%)</b>     | <b>0</b><br>–                | <b>35</b><br><b>(3.2%)</b>      | <b>108</b><br><b>(6.0%)</b>     | <b>32</b><br><b>(4.2%)</b>    | <b>175</b><br><b>(4.7%)</b>     |
| Imprisonment                       | 154<br>(4.9%)                   | 8<br>(1.4%)                   | 0<br>–                       | 30<br>(2.8%)                    | 104<br>(5.8%)                   | 28<br>(3.7%)                  | 162<br>(4.4%)                   |
| Partially suspended sentence       | 9<br>(0.3%)                     | 0<br>–                        | 0<br>–                       | 1<br>(<0.1%)                    | 4<br>(0.2%)                     | 4<br>(0.5%)                   | 9<br>(0.2%)                     |
| Youth justice centre order         | 4<br>(0.1%)                     | 0<br>–                        | 0<br>–                       | 4<br>(0.4%)                     | 0<br>–                          | 0<br>–                        | 4<br>(0.1%)                     |
| <b>Other custodial</b>             | <b>427</b><br><b>(13.7%)</b>    | <b>32</b><br><b>(5.5%)</b>    | <b>0</b><br>–                | <b>64</b><br><b>(5.9%)</b>      | <b>259</b><br><b>(14.5%)</b>    | <b>133</b><br><b>(17.5%)</b>  | <b>459</b><br><b>(12.4%)</b>    |
| Drug treatment order               | 1<br>(<0.1%)                    | 0<br>–                        | 0<br>–                       | 0<br>–                          | 0<br>–                          | 1<br>(0.1%)                   | 1<br>(<0.1%)                    |
| Wholly suspended sentence          | 371<br>(11.9%)                  | 31<br>(5.3%)                  | 0<br>–                       | 57<br>(5.2%)                    | 227<br>(12.7%)                  | 115<br>(15.1%)                | 402<br>(10.9%)                  |
| Intensive correction order         | 55<br>(1.8%)                    | 1<br>(0.2%)                   | 0<br>–                       | 7<br>(0.6%)                     | 32<br>(1.8%)                    | 17<br>(2.2%)                  | 56<br>(1.5%)                    |
| <b>Non-custodial</b>               | <b>2,525</b><br><b>(81.0%)</b>  | <b>543</b><br><b>(93.1%)</b>  | <b>30</b><br><b>(100.0%)</b> | <b>991</b><br><b>(90.9%)</b>    | <b>1,420</b><br><b>(79.5%)</b>  | <b>597</b><br><b>(78.3%)</b>  | <b>3,068</b><br><b>(82.9%)</b>  |
| Community-based order              | 112<br>(3.6%)                   | 28<br>(4.8%)                  | 2<br>(6.7%)                  | 42<br>(3.9%)                    | 66<br>(3.7%)                    | 30<br>(3.9%)                  | 140<br>(3.8%)                   |
| Fine                               | 2,282<br>(73.2%)                | 465<br>(79.8%)                | 23<br>(76.7%)                | 888<br>(81.5%)                  | 1,287<br>(72.0%)                | 529<br>(69.4%)                | 2,747<br>(74.2%)                |
| Adjourned undertaking              | 109<br>(3.5%)                   | 42<br>(7.2%)                  | 5<br>(16.7%)                 | 54<br>(5.0%)                    | 57<br>(3.2%)                    | 27<br>(3.5%)                  | 151<br>(4.1%)                   |
| Convicted and discharged (s 73 SA) | 13<br>(0.4%)                    | 2<br>(0.3%)                   | 0<br>–                       | 1<br>(<0.1%)                    | 6<br>(0.3%)                     | 7<br>(0.9%)                   | 15<br>(0.4%)                    |
| Dismissed (s 76 SA)                | 9<br>(0.3%)                     | 6<br>(1.0%)                   | 0<br>–                       | 6<br>(0.6%)                     | 4<br>(0.2%)                     | 4<br>(0.5%)                   | 15<br>(0.4%)                    |
| <b>People sentenced</b>            | <b>3,119</b><br><b>(100.0%)</b> | <b>583</b><br><b>(100.0%)</b> | <b>30</b><br><b>(100.0%)</b> | <b>1,090</b><br><b>(100.0%)</b> | <b>1,787</b><br><b>(100.0%)</b> | <b>762</b><br><b>(100.0%)</b> | <b>3,702</b><br><b>(100.0%)</b> |

## Sentencing outcomes by year

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

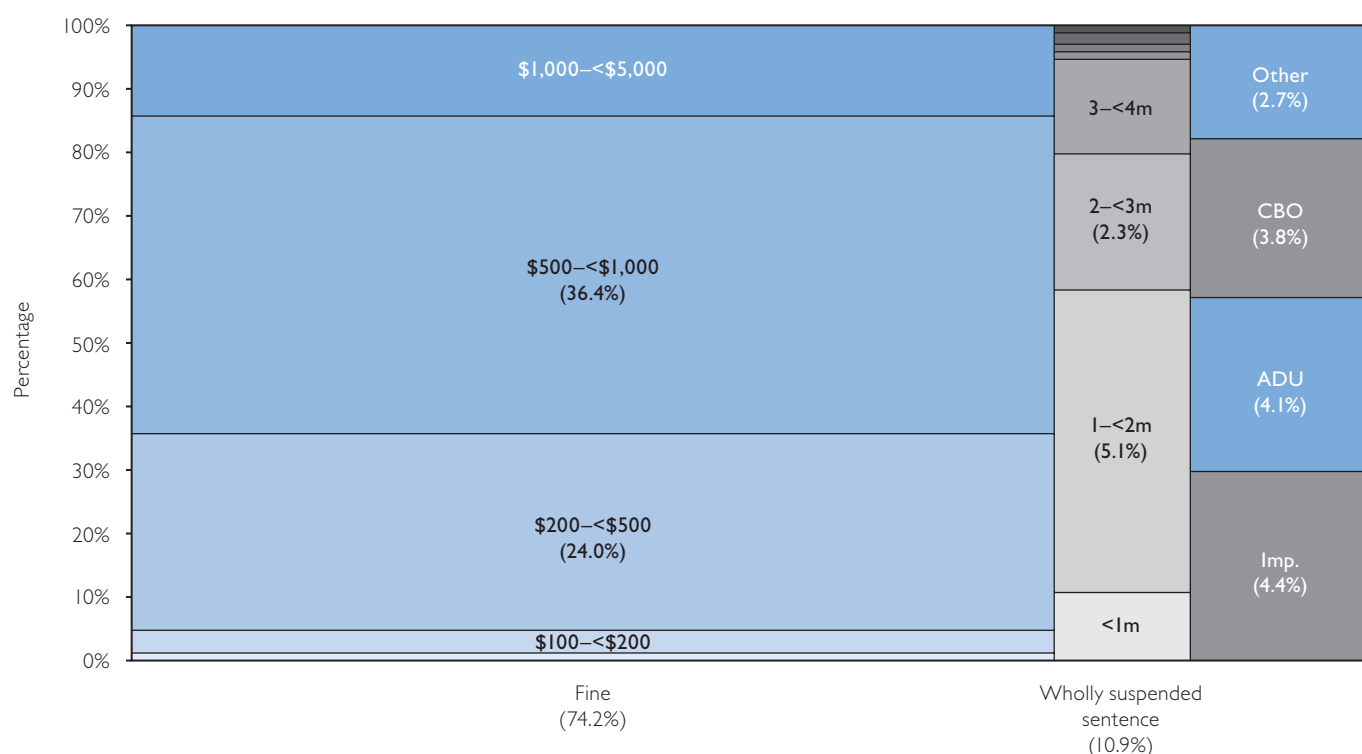
The number and percentage of people who received an immediate custodial sentence increased from 27 people and 2.9% in 2004–05 to 38 people and 4.2% in 2007–08.

The number and percentage of people who received a non-immediate custodial sentence decreased from 122 people and 12.9% in 2004–05 to 92 people and 10.2% in 2007–08. While the number of people who received a non-custodial sentence decreased from 797 people in 2004–05 to 773 people in 2007–08, the percentage of people increased from 80.5% to 85.6% over the past year.

## Sentencing Map

Figure 3 presents both the sentencing outcomes and the quanta for those outcomes for people sentenced for unlicensed driving. For example, 74.2% of people sentenced received a fine, including 36.4% who received a fine of \$500 to less than \$1,000. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

**Figure 3:** Sentencing Map: The percentage of people sentenced for unlicensed driving by sentencing outcomes and sentencing quanta, 2004–05 to 2007–08<sup>14</sup>



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

**Table 3:** The number and percentage of people sentenced for unlicensed driving by sentence type and year, 2004–05 to 2007–08<sup>13</sup>

| Sentence Type                      | 2004–05                      | 2005–06                      | 2006–07                      | 2007–08                      |
|------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| <b>Immediate custodial</b>         | <b>27</b><br><b>(2.9%)</b>   | <b>59</b><br><b>(6.3%)</b>   | <b>51</b><br><b>(5.6%)</b>   | <b>38</b><br><b>(4.2%)</b>   |
| Imprisonment                       | 24<br>(2.5%)                 | 56<br>(5.9%)                 | 46<br>(5.1%)                 | 36<br>(4.0%)                 |
| Partially suspended sentence       | 2<br>(0.2%)                  | 2<br>(0.2%)                  | 4<br>(0.4%)                  | 1<br>(0.1%)                  |
| Youth justice centre order         | 1<br>(0.1%)                  | 1<br>(0.1%)                  | 1<br>(0.1%)                  | 1<br>(0.1%)                  |
| <b>Other custodial</b>             | <b>122</b><br><b>(12.9%)</b> | <b>119</b><br><b>(12.6%)</b> | <b>126</b><br><b>(13.8%)</b> | <b>92</b><br><b>(10.2%)</b>  |
| Drug treatment order               | 0<br>–                       | 0<br>–                       | 0<br>–                       | 1<br>(0.1%)                  |
| Wholly suspended sentence          | 116<br>(12.3%)               | 102<br>(10.8%)               | 109<br>(12.0%)               | 75<br>(8.3%)                 |
| Intensive correction order         | 6<br>(0.6%)                  | 17<br>(1.8%)                 | 17<br>(1.9%)                 | 16<br>(1.8%)                 |
| <b>Non-custodial</b>               | <b>797</b><br><b>(84.2%)</b> | <b>765</b><br><b>(81.1%)</b> | <b>733</b><br><b>(80.5%)</b> | <b>773</b><br><b>(85.6%)</b> |
| Community-based order              | 28<br>(3.0%)                 | 42<br>(4.5%)                 | 42<br>(4.6%)                 | 28<br>(3.1%)                 |
| Fine                               | 724<br>(76.5%)               | 683<br>(72.4%)               | 638<br>(70.1%)               | 702<br>(77.7%)               |
| Adjourned undertaking              | 42<br>(4.4%)                 | 36<br>(3.8%)                 | 40<br>(4.4%)                 | 33<br>(3.7%)                 |
| Convicted and discharged (s 73 SA) | 3<br>(0.3%)                  | 4<br>(0.4%)                  | 4<br>(0.4%)                  | 4<br>(0.4%)                  |
| Dismissed (s 76 SA)                |                              |                              | 9<br>(1.0%)                  | 6<br>(0.7%)                  |
| <b>People sentenced</b>            | <b>946</b>                   | <b>943</b>                   | <b>910</b>                   | <b>903</b>                   |

## Principal sentence

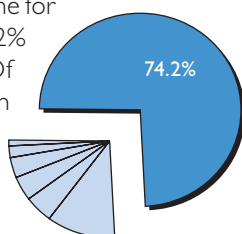
This section examines the use of the three most common principal sentencing outcomes for this offence.<sup>15</sup> Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided.<sup>16</sup> Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.<sup>17</sup>

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

## Fine

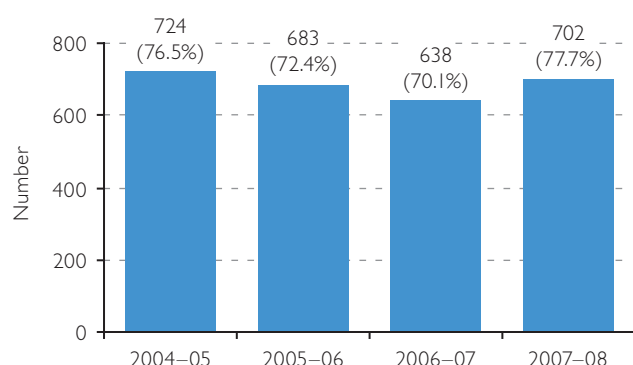
### Trends

There were 2,747 people who received a fine for unlicensed driving. This represented 74.2% of all people sentenced for this offence. Of the 1,340 people who received a fine in 2006–07 and 2007–08, 89.0% also had a conviction recorded (1,192 people). Figure 4 shows the trends in the number and percentage of people who received a fine for unlicensed driving.



In 2007–08, 702 people received a fine for the principal proven offence of unlicensed driving. This has increased over the past year from 638 people in 2006–07, after decreasing the previous two years. Also, the proportion of people who received a fine for unlicensed driving increased over the past year from 70.1% to 77.7%.

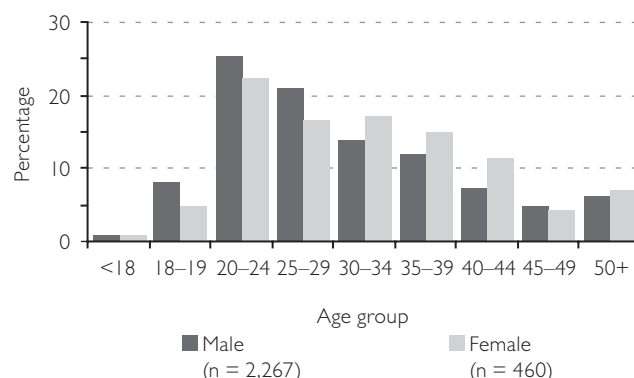
**Figure 4:** The number and percentage of people who received a fine for unlicensed driving, 2004–05 to 2007–08



### Age and gender

Of the 2,747 people who received a fine, 83.1% were men. Figure 5 shows the age groups of people who received a fine for unlicensed driving by gender. The median age of these people was 28 years, while women were generally older than their male counterparts (a median age of 31 years compared to 28 years).

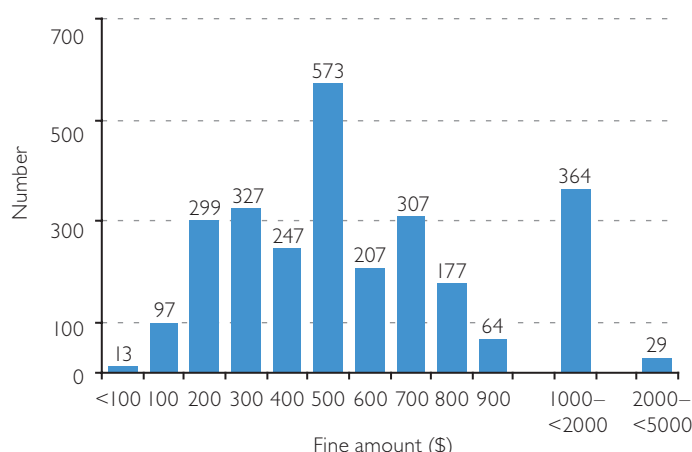
**Figure 5:** The percentage of people who received a fine for unlicensed driving by age and gender, 2004–05 to 2007–08



### Fine Amount

Figure 6 shows the number of people who received a fine for unlicensed driving by the amount of the fine. While the amount of the fine ranged from \$25 to \$4,000, the median was \$500. Aggregate fines were imposed for 52.8% of people who received a fine.<sup>18</sup>

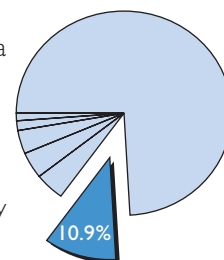
**Figure 6:** The number of people who received a fine for unlicensed driving by the amount of the fine, 2004–05 to 2007–08



## Wholly suspended sentence

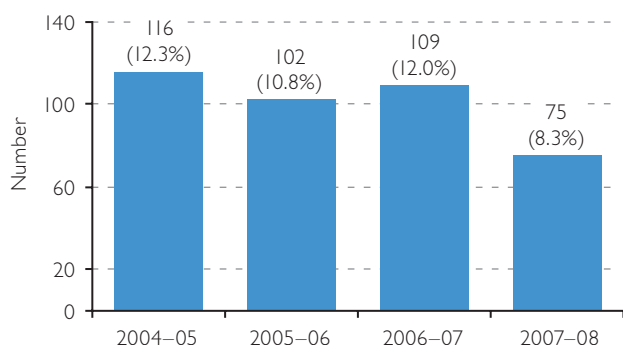
### Trends

There were 402 people who received a wholly suspended sentence for unlicensed driving. This represented 10.9% of all people sentenced for this offence. Figure 7 shows the trends in the number and percentage of people who received a wholly suspended sentence for unlicensed driving.



In 2007–08, 75 people received a wholly suspended sentence for the principal proven offence of unlicensed driving. This has decreased over the past year from 109 people in 2006–07, after remaining relatively stable the previous year. Also, the proportion of people who received a wholly suspended sentence for unlicensed driving decreased over the past year from 12.0% to 8.3%.

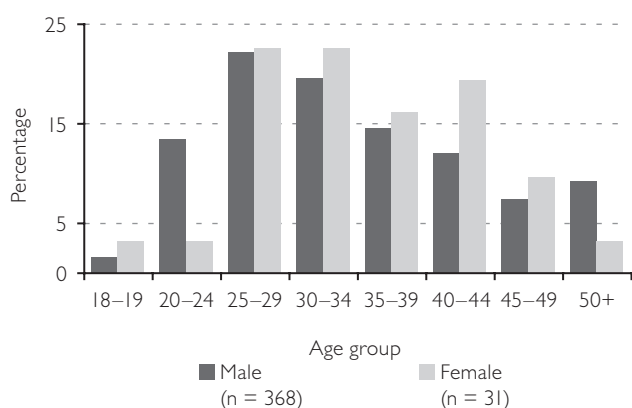
**Figure 7:** The number and percentage of people who received a wholly suspended sentence for unlicensed driving, 2004–05 to 2007–08



### Age and gender

Of the 402 people who received a wholly suspended sentence, 92.3% were men. Figure 8 shows the age groups of people who received a wholly suspended sentence for unlicensed driving by gender. The median age of these people was 33 years. This was the same for both men and women.

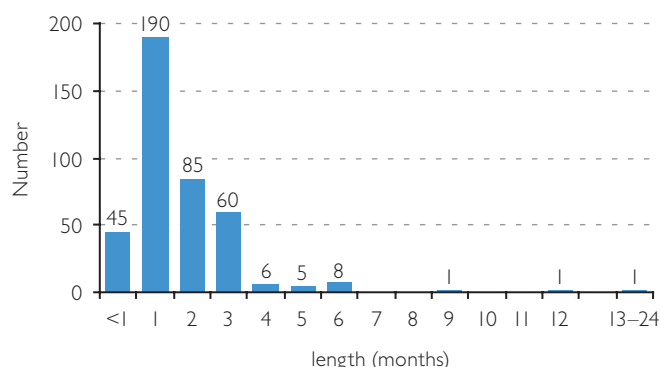
**Figure 8:** The percentage of people who received a wholly suspended sentence for unlicensed driving by age and gender, 2004–05 to 2007–08



### Length of sentence

Figure 9 shows the number of people who received a wholly suspended sentence for unlicensed driving by the length of the sentence. While the length of wholly suspended sentences ranged from four days to two years, the median was one month (meaning that half were shorter than one month and half were longer than one month). Aggregate wholly suspended sentences were imposed for 28.9% of people who received a wholly suspended sentence.<sup>19</sup> The majority of operational periods were 12 months (61.2%).

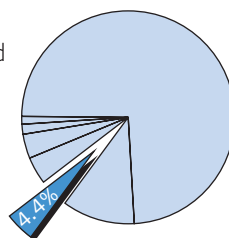
**Figure 9:** The number of people who received a wholly suspended sentence for unlicensed driving by the length of sentence of imprisonment, 2004–05 to 2007–08



### Imprisonment

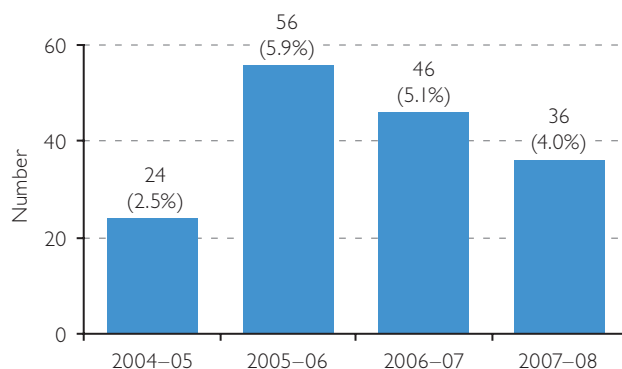
#### Trends

There were 162 people who were sentenced to imprisonment for unlicensed driving. This represented 4.4% of all people sentenced for this offence. Figure 10 shows the trends in the number and percentage of people who were sentenced to imprisonment for unlicensed driving.



In 2007–08, 36 people were sentenced to imprisonment for the principal proven offence of unlicensed driving. This has decreased each of the past two years from 56 people in 2005–06, after increasing substantially the previous year. Also, the proportion of people who were sentenced to imprisonment for unlicensed driving decreased each of the past two years from 5.9% in 2005–06 to 4.0% in 2007–08.

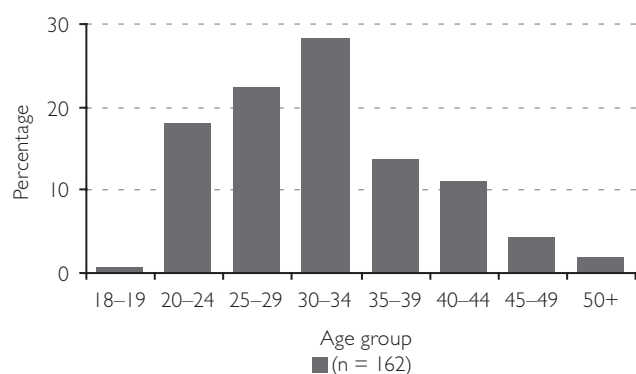
**Figure 10:** The number and percentage of people who were sentenced to imprisonment for unlicensed driving, 2004–05 to 2007–08



### Age and gender

Of the 162 people who received a period of imprisonment, 95.1% were men. Figure 11 shows the age groups of people who were sentenced to imprisonment for unlicensed driving. The median age of these people was 31 years.

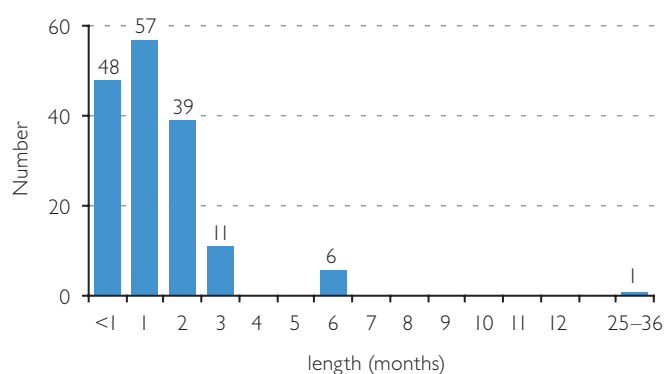
**Figure 11:** The percentage of people who were sentenced to imprisonment for unlicensed driving by age, 2004–05 to 2007–08



### Length of sentence

Figure 12 shows the number of people who were sentenced to imprisonment for unlicensed driving by the length of the sentence. While the length of imprisonment ranged from one day to two years and six months, the median was one month (meaning that half were shorter than one month and half were longer than one month). Aggregate periods of imprisonment were imposed for 17.3% of people who were sentenced to imprisonment.<sup>20</sup>

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

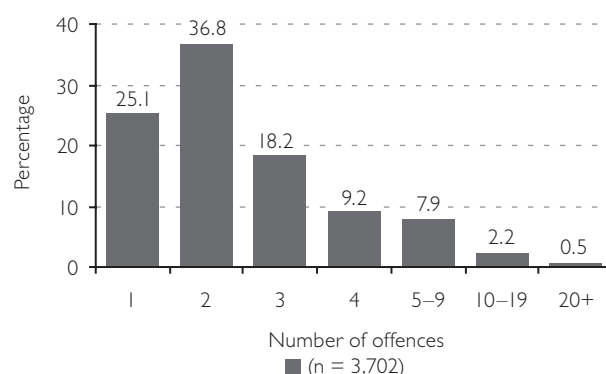


### Other offences finalised at the same hearing

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

Figure 13 shows the percentage of people sentenced for the principal offence of unlicensed driving by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 130, while the median was 2 offences. There were 929 people (25.1%) sentenced for the single offence of unlicensed driving alone. The average number of offences per person sentenced for unlicensed driving was 2.89.

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



While Figure 13 presents the number of sentenced offences for those sentenced for unlicensed driving, Table 4 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 1,370 of the total 3,702 people (37.0%) also received sentences for using an unregistered vehicle. On average, they were sentenced for 1.17 charges of using an unregistered vehicle. The first row indicates that the average number of charges of unlicensed driving sentenced per person was 1.20.

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

| Offence  | No.          | %            | Avg.        |
|--|--------------|--------------|-------------|
| 1 unlicensed driving   | 3,702        | 100.0        | 1.20        |
| 2 use an unregistered vehicle                                | 1,370        | 37.0         | 1.17        |
| 3 refuse to allow doctor to obtain blood sample for analysis | 328          | 8.9          | 1.02        |
| 4 drive at speed over the speed limit                        | 279          | 7.5          | 1.07        |
| 5 exceed signed speed limit – 100 kph                        | 195          | 5.3          | 1.09        |
| 6 drink driving (s 49.1(f) RSA)                              | 189          | 5.1          | 1.11        |
| 7 fraudulently alter identifying number                      | 150          | 4.1          | 1.37        |
| 8 drive in breach of licence condition                       | 129          | 3.5          | 1.10        |
| 9 use vehicle – not safe/not roadworthy                      | 112          | 3.0          | 1.09        |
| 10 fail to wear motor bike helmet                            | 111          | 3.0          | 1.05        |
| <b>People sentenced</b>                                      | <b>3,702</b> | <b>100.0</b> | <b>2.89</b> |

### Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of unlicensed driving. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.<sup>21</sup>

Table 5 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004–05 to 2007–08 where the principal proven offence was unlicensed driving, by the other sentence types also imposed in the case. For example, of the 3,239 people who received a fine as part of their total effective sentence, 9.6% also received a wholly suspended sentence.



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

- a fine with a wholly suspended sentence (75.0% of the 416 people who received a wholly suspended sentence);
- a fine with an intensive correction order (67.2% of the 61 people);
- a fine with an imprisonment term (65.9% of the 164 people);
- a fine with an adjourned undertaking (36.3% of the 248 people); and
- a fine with a community-based order (24.9% of the 189 people).

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

|              | Fine         | WSS        | ADU        | CBO        | Imp.       | ICO       |
|--------------|--------------|------------|------------|------------|------------|-----------|
| Fine         | 100%         | 75.0%      | 36.3%      | 24.9%      | 65.9%      | 67.2%     |
| WSS          | 9.6%         | 100%       | 3.2%       | 22.8%      | 6.7%       | 4.9%      |
| ADU          | 2.8%         | 1.9%       | 100%       | 1.6%       | 0.6%       | 1.6%      |
| CBO          | 1.5%         | 10.3%      | 1.2%       | 100%       | 1.2%       | 9.8%      |
| Imp.         | 3.3%         | 2.6%       | 0.4%       | 1.1%       | 100%       | 8.2%      |
| ICO          | 1.3%         | 0.7%       | 0.4%       | 3.2%       | 3.0%       | 100%      |
| <b>Total</b> | <b>3,239</b> | <b>416</b> | <b>248</b> | <b>189</b> | <b>164</b> | <b>61</b> |

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

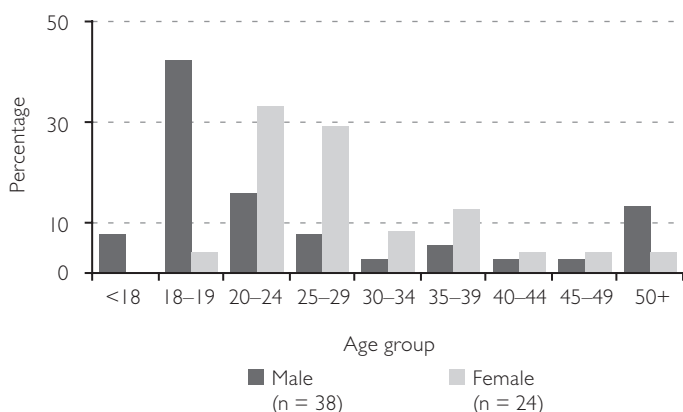
## Criminal justice diversion plan<sup>22</sup>

Although the criminal justice diversion plan is not a sentencing outcome, it is a dispositional process that does help to reflect the work of the courts. Over the four-year period, 62 people were given a criminal justice diversion plan.

## Age and gender

Of the 62 people who were referred to the criminal justice diversion program, 61.3% were men. Figure 14 shows the age groups of people who were referred to the criminal justice diversion program for unlicensed driving by gender. The median age of these people was 23 years, while women were much older than their male counterparts (a median age of 26 years compared to 20 years and six months).

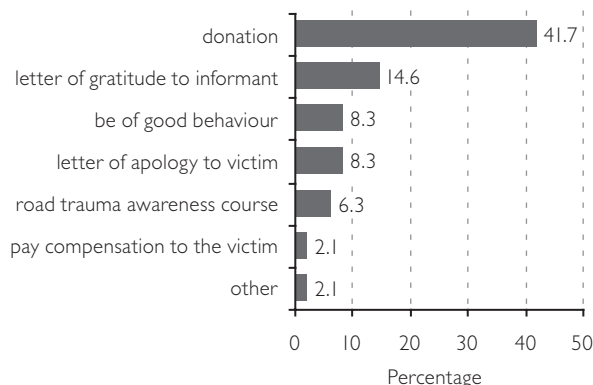
**Figure 14:** The percentage of people who were referred to the criminal justice diversion program for unlicensed driving by age and gender, 2004–05 to 2007–08



## Conditions

Figure 15 shows the percentage of people who received a criminal justice diversion plan for unlicensed driving by the types of conditions set. People can be given more than one condition on a diversion plan. As shown, the most common condition listed for diversion plans was a donation (41.7% of people).

**Figure 15:** The percentage of conditions set for people who received a criminal justice diversion plan for unlicensed driving, 2004–05 to 2007–08



Note: other includes defensive drivers course.

## Summary

The Magistrates' Court sentenced 3,702 people for the principal offence of unlicensed driving between 2004–05 and 2007–08. Over this period, the majority of those sentenced were men (3,119 people or 84.3%), while 59% were aged between 20 and 35 years.

Most people sentenced for unlicensed driving received a non-custodial sentence (3,068 people or 82.9%), including 2,747 people who received a fine (74.2%). A conviction was recorded with the principal sentence for 87.8% of people sentenced.

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

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence and an intensive correction order. Conversely, a higher percentage of younger people received a non-custodial sentence.

Each of the 3,702 people was sentenced for an average of 2.89 offences, including 1.20 offences of unlicensed driving. The most common offence finalised in conjunction with unlicensed driving was using an unregistered vehicle (37.0% of all cases).

Common sentence types imposed in conjunction with another sentence type included a fine with a wholly suspended sentence (75.0% of the 416 people who received a wholly suspended sentence), a fine with an intensive correction order (67.2% of the 61 people), a fine with an imprisonment term (65.9% of the 164 people) and a fine with an adjourned undertaking (36.3% of the 248 people).

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

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

- 2 The data used for analysis in this report contain information on age and gender characteristics. Indigenous status was unknown for 97.8% of people sentenced over this period. Therefore no analyses are presented on Indigenous status.
- 3 *Road Safety Act 1986* (Vic) s 18(1)(a), (c). Note, where a person drives without a licence but also has been disqualified or suspended from driving, they are committing a more serious offence, being either driving while disqualified or driving while suspended, both of which have more severe penalties (see Sentencing Snapshots No. 72 and No. 73).
- 4 *Road Safety Act 1986* (Vic) s 18(1)(b). This includes conditions such as that the driver drive a vehicle equipped with an alcohol interlock.
- 5 *Road Safety Act 1986* (Vic) s 18(2). The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website <[www.ocpc.vic.gov.au](http://www.ocpc.vic.gov.au)>.
- 6 *Road Safety Act 1986* (Vic) s 18(3).
- 7 *Road Safety Act 1986* (Vic) s 18(1).
- 8 The number of people sentenced excludes those who participated in the criminal justice diversion program.

Only the people who had charges that were dismissed in 2006–07 and 2007–08 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (*Children, Youth and Families Act 2005* (Vic) s 360(1)(a)) or 'dismissed' (*Sentencing Act 1991* (Vic) s 76). The charges that were dismissed in 2004–05 and 2005–06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the four-year period could be an under-representation. In 2007–08, 9 people had charges that were dismissed pursuant to this legislation. This made up 1.0% of people sentenced in that year.

- 9 The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.
- 10 *Sentencing Act 1991* (Vic) s 7, 8.
- In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social wellbeing or on his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).
- 11 Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004–05 and 2005–06.
- 12 The age was unknown for 25 men and 8 women sentenced for unlicensed driving (0.9%). These people are excluded from all age analyses in this report.

- 13 Refer fn. 8.

- 14 Aggregate sentence lengths are shown for people who received an aggregate sentence.
- 15 The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.
- 16 Where there are sufficient numbers of both males and females sentenced for each sentencing outcome, the age groups are shown by gender. Otherwise the age groups are shown independent of gender. Also, the age was unknown for 33 people sentenced for unlicensed driving. These people are excluded from these analyses.
- 17 Aggregate sentence lengths are shown for people who received an aggregate sentence. Fine amounts lower than \$1,000 are rounded up to the nearest \$100, while fine amounts equal to or over \$1,000 are grouped into categories. Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006–07 and 2007–08.
- 18 The amount of non-aggregate fines ranged from \$25 to \$2,500, with a median of \$400, while the amount of aggregate fines ranged from \$50 to \$4,000, with a median of \$700.
- 19 The length of non-aggregate wholly suspended sentences ranged from four days to nine months, with a median of one month, while the length of aggregate wholly suspended sentences ranged from seven days to two years, with a median of two months.
- 20 The length of non-aggregate periods of imprisonment ranged from one day to six months, with a median of one month, while the length of aggregate periods of imprisonment ranged from six days to two years and six months, with a median of two months.
- 21 While a total of 164 people were sentenced to at least one period of imprisonment in the case, 162 people had imprisonment listed against their principal proven offence. There were 2 people sentenced to a period of imprisonment, but who received a partially suspended sentence of imprisonment for the principal proven offence.
- Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.
- 22 The data analysed in this section were compiled by merging the sentencing outcomes database with an extract from the criminal justice diversion plan database. Of the 62 people who were placed on the diversion program for this offence, 48 were matched to and had conditions listed in the criminal justice diversion plan database (77.4%).

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