Driving while Disqualified or Suspended

Discussion Paper

May 2008
Sentencing Advisory Council
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The Council would like to thank all of those who attended the workshop in relation to this reference. The Council would also like to thank the following people for their assistance in the preparation of this report: Jenni Coady, Alana Hodgins, Felicity Stewart and Dr Karen Gelb.
Have your say

Providing comments on the Discussion Paper

This paper outlines the law relating to driving disqualified or suspended in Victoria. It also discusses the causes and consequences of and responses to this behaviour.

The Council welcomes comments on the questions raised in this paper. Comments can be provided in writing by mail, email or fax, or orally by phone or in person.

You may choose to address each of the questions raised in the paper, or just the questions of most interest to you. You may also wish to provide comments on other issues or options not discussed in the paper or make a general comment. If you need any assistance in preparing your comments and/or need access to an interpreter, please contact the Council.

Due date for submissions: 18 July 2008

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Questions

The Council has formulated the following questions for consideration by those wishing to make submissions.

**Question 1**
The Council recommended that the mandatory minimum penalty under s 30 of the *Road Safety Act 1986* (Vic) should be removed in order to restore the courts' discretion to impose a proportionate and appropriate sentence. Do you agree that the Victorian government should repeal the mandatory minimum penalty under s 30 of the *Road Safety Act 1986* (Vic)?

**Question 2**
(a) Should disqualified and suspended driving be disaggregated into two separate offences and, if so, should they be sanctioned differently?

(b) Should there be different approaches to those who are disqualified/suspended by courts and those who are disqualified/suspended by reason of loss of demerit points or similar administrative means?

**Question 3**
(a) Should rehabilitation courses be used alongside existing sanctions, instead of existing sanctions or via a diversion program?

(b) Should a problem-oriented court or court list be established and, if so, should it be aimed at addressing disqualified and suspended driving alone or at serious traffic offences generally?

**Question 4**
(a) Would the introduction and selective use of restricted licences in Victoria (as an alternative to initial licence disqualifications or suspensions and *not* as a sanction for driving while disqualified or suspended) ensure a greater level of compliance with prohibitions on driving?

(b) If so, what restrictions would be appropriate for such licences and which types of drivers should be targeted?

**Question 5**
If the technological and procedural measures discussed in this paper are successful in enhancing detection of disqualified/suspended drivers, what sentencing issues may arise?

**Question 6**
Should the use of an information campaign to enhance deterrence be explored?

**Question 7**
Should third party enforcement measures, such as a continuing requirement for employers to check employees’ licensing status, be explored?
1. Background

1.1 Background to this project

1.1.1 Between 2004 and 2008, the Sentencing Advisory Council conducted a review of suspended sentences in Victoria. In the Suspended Sentences and Intermediate Sentencing Orders Final Report—Part 2 (2008) (‘Suspended Sentences Report’), the Council observed that between 2000-01 and 2006-07 nearly 9,000 suspended sentences were imposed in relation to the offence of driving while disqualified or suspended (hereafter, respectively, ‘DWD’ or ‘DWS’, or together ‘DWD/S’), making it the most common offence to receive a suspended sentence in the Magistrates’ Court, comprising approximately one-fifth of all suspended sentences imposed.

1.1.2 In the six-year period between 2000-01 and 2006-07 the number of people sentenced for the offences of disqualified driving/driving suspended nearly tripled. Approximately 2,850 people were sentenced in Victoria for the principal offence of driving disqualified/suspended in 2000-01 compared to 8,600 people in 2006-07.

1.1.3 The increasing number of these offences coming before the courts is cause for considerable concern, both legal and social. The former relates to the connection between the mandatory minimum sentence of one month’s imprisonment, which applies to second and subsequent offences of driving while disqualified or suspended under s 30 of the Road Safety Act 1986 (Vic) and the use of suspended sentences. Nearly one in four (24.1 per cent) of those sentenced for the offence of driving while disqualified received a suspended sentence, representing approximately 18.5 per cent of all suspended sentences imposed in the Magistrates’ Court. The overwhelming majority of these sentences (95.2 per cent) were wholly suspended.

1.1.4 When DWD/S was first introduced into Victorian law in 1949, disqualifications and suspensions were almost entirely the result of a successful conviction and a court order. In 2008, not only is there a wide range of other mechanisms for disqualification or suspension, many of these mechanisms, notably demerit points accrual, do not require a court appearance. These now account for the greater portion of prohibitions on driving. Disqualifications/suspensions now encompass a far wider range of behaviours than they did nearly sixty years ago and there is some evidence that different categories of drivers manifest different risk profiles and have different motivations for driving and may therefore require a more diverse range of legal responses.

1.1.5 Socially, DWD/S is problematic both in relation to drivers’ attitudes to the law in general and to efforts to reduce death and injury on the roads. Numerous studies indicate that disqualified driving and driving while suspended increase the risk factor of accidents and injury both to unlicensed drivers themselves and to society at large. It has also been suggested that these offences often occur alongside other dangerous and illegal conduct (for example, drink driving and other traffic offences). Because unlicensed drivers are by default also uninsured drivers, this behaviour can have significant economic as well as health consequences.

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1 These figures relate to where driving while disqualified or suspended was the principal proven offence sentenced in cases heard in the Magistrates’ Court. Often defendants will be charged and sentenced for multiple offences arising out of a given instance of criminal behaviour. The term ‘principle proven offence’ means the most serious offence for which the defendant is found guilty and sentenced. Where this occurs, a total effective sentence will be imposed, which will largely be determined in relation to the principal proven offence.

1. Background

1.2 Mandatory sentencing and suspended sentences

1.2.1 In its Suspended Sentences Report, the Council examined the relationship between mandatory sentencing, suspended sentences and DWD/S.

1.2.2 One concern highlighted in that report was that a major reason for the frequent use of suspended sentences in the Magistrates’ Court is the existence of the mandatory minimum sentence of imprisonment under section 30 of the Road Safety Act 1986 (Vic). A substantial proportion of suspended sentences in Victoria (18.5 per cent) are imposed for this offence. If the power of courts to impose suspended sentences of imprisonment were to be removed, there would be a risk of a correlative rise in prison populations.

1.2.3 The Suspended Sentences Report noted the Council’s concerns regarding the continued existence of the mandatory penalty under s 30 of the Road Safety Act 1986 (Vic) in view of the fact that other offences with potentially more serious consequences and greater levels of culpability do not attract mandatory sanctions for recidivist offending. DWD/S is one of only three offences under the Road Safety Act 1986 (Vic) that have mandatory imprisonment attached to them for recidivist offending. The Council noted in the Suspended Sentences Report that DWD/S may occur in circumstances where a driver is not driving dangerously, is not under the influence of alcohol or drugs, and does not cause any injury or damage to property. While there may be medical, social and economic risks associated with DWD/S (all of which will be discussed at length below), the Council was of the view that nothing about second or subsequent instances of DWD/S warranted it being singled out for a mandatory minimum penalty. The Council was of the view that the current DWD/S provisions may lead to potentially unjust sentences and are contrary to the principle of proportionality. The Council noted that the increasing prevalence of s 30 offences suggests that the penalties for this offence are failing to meet their original objective—that is, to deter people from driving while disqualified or suspended.

1.2.4 The Council recommended that the mandatory minimum penalty under s 30 of the Road Safety Act 1986 (Vic) should be removed to restore to sentencers the discretion to impose a proportionate and appropriate sentence. The Council suggested that further research was required to develop more effective responses that in the longer term may reduce the incidence of these offences and the harm they, and associated offending, may potentially cause to the community. This project has arisen out of the Council’s activities in this area.

1.2.5 The major issues that the Council will consider in this discussion paper include:

- the elements of DWD/S, the history of the offence and the sanctions that are prescribed for it;
- the current maximum penalty, mandatory penalty and available sanctions for DWD/S;
- the elements of other similar Victorian offences and their maximum penalties and available sanctions in comparison to DWD/S;
- the approach to DWD/S in other Australian jurisdictions in terms of sentencing;
- possible new sanctions in Victoria for DWD/S;
- the human and economic costs of disqualified or suspended driving; and
- other mechanisms for dealing with DWD/S including the effect of current technology on detection rate for the offences and the use of indirect methods for enforcing licence disqualification/suspension.

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3 The other two offences relate to leaving the scene of an accident Road Safety Act 1986 (Vic) ss 61(4) & (5). Both have mandatory sentences for repeat offences. Each offence has a minimum term of imprisonment of, respectively, not less than 4 months and not less than 14 days.

4 Sentencing Advisory Council, above n 2, [2.71]-[2.75].

5 Sentencing Advisory Council, above n 2, [2.78].

6 Sentencing Advisory Council, above n 2, [2.79].
1.3 The Council’s approach

1.3.1 On 21 December 2007, the Council released an information paper⁷ that briefly described the context of the project and provided information about the offences under review and some of the issues that have been previously identified.

1.3.2 In early 2008, the Council consulted with the following organisations:
• VicRoads;
• Victoria Police;
• Royal Automobile Club of Victoria (‘RACV’);
• Transport Accident Commission (‘TAC’);
• Monash University Accident Research Centre (‘MUARC’);
• Victorian Association of Drink and Drug-Drive Services (‘VADDS’);
• Infringements Court, Department of Justice;
• Infringement Management and Enforcement Services, Department of Justice; and
• Office of Secretary of the Department of Justice.

1.3.3 This discussion paper is the next phase of the project. The Council is releasing this paper in order to obtain submissions from the public regarding DWD/S and how the problem can be effectively dealt with.

1.3.4 The Council will consider all submissions in due course and may also undertake additional consultation with specific stakeholders. The fruits of this process will be incorporated into a final report.

⁷ Adrian Hoel and Nick Turner, Driving While Disqualified or Suspended (Information Paper, Sentencing Advisory Council, 2007) at 21 December 2007.

The information paper has received some attention in the media and in legal circles since its release. See, for example, Geoff Wilkinson, ‘Spotlight on Disqualified Drivers – Young Men Top Offenders’, Herald-Sun (Melbourne), 26 December 2007, 15.
2. Driving while suspended or disqualified

2.1 The offence

2.1.1 DWD/S is prohibited under the *Road Safety Act 1986 (Vic)* s 30:

(1) Subject to section 30AA, a person must not drive a motor vehicle on a highway while the authorisation granted to him or her to do so under this Part is suspended or during a period of disqualification from obtaining such an authorisation.

   Penalty: For a first offence, 30 penalty units or imprisonment for 4 months;
   For a subsequent offence, imprisonment for not less than 1 month and not more than 2 years.

(2) Section 49 of the *Sentencing Act 1991 (Vic)* does not apply with respect to proceedings for an offence against subsection (1).^8

2.1.2 The section encompasses two distinct types of conduct. As the terminology itself suggests, the offences differ in terms of the cause and extent of the prohibition on driving. DWD arises when it is proven beyond reasonable doubt that a person drives a motor vehicle on a highway during a period of disqualification from obtaining a licence or permit. DWS arises when it is proven beyond reasonable doubt that a person drives a motor vehicle on a highway while his or her licence or permit is suspended. Both courses of conduct are dealt with together under s 30 of the *Road Safety Act 1986 (Vic)* and attract the same penalty. Because of this, except where otherwise specified, this paper will refer to the ‘offence’ of DWD/S in the singular, rather than the ‘offences’ of driving while disqualified and driving while suspended, except where otherwise indicated.

2.2 Strict liability

2.2.1 Like many traffic offences,^9 DWD/S is a strict liability offence,^10 meaning that no *mens rea* needs to be established by the prosecution as an element of the offence in order to convict a defendant.^11 Thus, the prosecution does not need to prove that an accused either intended to driving disqualified/suspended or knew that he or she was disqualified/suspended at the time of driving the vehicle. However, the defence of honest and reasonable mistake applies in relation to DWD/S. To be successful the defence must be able to point to evidence that could induce a reasonable doubt in the trier of fact that the defendant was honestly and reasonably mistaken as to his or her licence status. The failure to update VicRoads as to one’s home address, absent extenuating facts, would be unlikely to be viewed as being either honest or reasonable and thus would not raise the defence.^12 Assuming such evidence can be proven to exist on the facts, the prosecution then bears the burden of disproving the defence and must do so beyond reasonable doubt.^13

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^8*Sentencing Act 1991 (Vic)* s 49 provides that courts may sentence an offender to a fine in addition to or instead of any other sentence to which an offender may be liable. *Sentencing Act 1991 (Vic)* s 49(1) provides that this section may be expressly excluded. *Road Safety Act 1986 (Vic)* s 30(2) does this.


^11For more on strict liability offences, see Butterworths, *Halsbury’s Laws of Australia*, vol 5 (at 11 March 2008) 130 Criminal Law, ‘5 Mistake and Strict Liability’ [130-7940].

^12In *DPP v Foster* (2000) 30 MVR 512; BC200000708 a very unusual set of facts, including where a licence-holder’s address had changed in circumstances beyond his control, were found to have been proven.

2.3 History of the offence

2.3.1 The offence of DWD/S was introduced in Victoria in 1949 when s 9 (1) was inserted into the Motor Car Act 1928 (Vic). The section prescribed a maximum penalty of 1 month’s imprisonment for a first offence. For a subsequent offence, it prescribed a mandatory minimum penalty of 1 month and a maximum penalty of 3 months’ imprisonment. Though the section purported to provide for a mandatory sanction for recidivists, courts were able to circumvent it by operation of s 71 of the Justices Act 1915 (Vic). Under this provision, courts were granted a residual discretion to exact a fine on first or subsequent offenders in lieu of a term of imprisonment for DWD/S. Administrative and demerit suspensions did not exist at that time.

2.3.2 The maximum penalties for the s 9 offence have fluctuated over the years as the offence has been included in the Acts which have succeeded the Motor Car Act 1928 (Vic). DWD/S was proscribed under s 28 of the Motor Car Act 1958 (Vic), the successor Act to the Motor Car Act 1928 (Vic). The Justices Act 1915 (Vic) had been superseded by the Justices Act 1958 (Vic). The latter Act preserved the discretion for courts to fine in lieu of imprisonment under s 74.

2.3.3 The most notable change in relation to these provisions occurred in 1967. An additional subsection was added to s 28 of the Motor Car Act 1958 (Vic) which expressly provided that s 74 of the Justices Act 1958 (Vic) would not apply in respect of a s 28 offence. This effectively meant the courts no longer had a discretion to fine a recidivist DWD/S offender in lieu of imprisonment. For the first time, DWD/S effectively had a wholly mandatory imprisonment sanction attached to it.15

2.3.4 Suspended sentences were not available as a sentencing option to courts in 1967. Though suspended sentences had been available to sentencers in the early part of the twentieth century under the Crimes Act 1915 (Vic) s 532 and the Crimes Act 1928 (Vic) s 532, this sentencing disposition had not been retained in the Crimes Act 1958 (Vic) and only found its way back into the Victorian statute books in the Penalties and Sentencing Act 1985 (Vic) ss 20-24.16

2.3.5 In 1978, further changes were introduced to the Motor Car Act 1958 (Vic).17 The maximum penalty for a first offence for DWD/S was increased to imprisonment for six months and the maximum for a subsequent offence was increased to imprisonment for 2 years. Courts were given a discretion to impose a fine of up to $1,000 for a first offence. In 1980, DWD/S was broadened to include motorbike riders, learner drivers and learner motorbike riders.18 In 1982, the maximum penalty for a first offence for DWD/S was reduced to imprisonment for four months and a maximum fine of 20 penalty units.19

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15 Ibid 27-8. See also John Willis, ‘The Proper Role of Criminal Law in Road Safety’ (Paper presented at the Australian Institute of Criminology Criminal Justice Planning and Coordination, Canberra, 19-21 April 1993) 203.
17 Motor Car Act 1978 (Vic) s 6.
19 Motor Car (Penalties) 1978 Act (Vic) s 19.
2.3.6 In 1986 the current Act, the *Road Safety Act 1986* (Vic) replaced the *Motor Car Act 1958* (Vic) and DWD/S was proscribed under s 30. The maximum prison terms remained the same but the maximum number of penalty units for a first offence was raised to 30 penalty units. The penalties have not changed since for DWD/S. Though the penalties have remained the same for DWD/S, the mechanisms for disqualification/suspension have expanded. When the offence was first introduced in 1949, disqualification and suspension were subject to a court order. Disqualifications and suspensions can now be imposed via traffic infringements notices, a discretionary decision by a police person or other authorised officer and exceeding one’s allotted demerit points as well as by order of the court.

2.4 The mandatory and maximum penalties

2.4.1 The current statutory maximum penalty for a first offence of DWD/S is a fine of 30 penalty units (a single penalty unit equates to $110.12) or imprisonment for four months.

2.4.2 The statutory maximum penalty for a subsequent DWD/S offence is 2 years’ imprisonment. Under the *Sentencing Act 1991* (Vic) s 109, courts also have a discretion to impose a fine in place of or in addition to the prescribed maximum term of imprisonment. There is a mandatory minimum sanction of 1 month’s imprisonment. Victorian courts have a general power to impose fines in addition to or in lieu of imprisonment where an offence only expressly prescribes imprisonment as a sanction. The maximum number of penalty units for such a fine is calculated by multiplying the maximum term of imprisonment in months by 10. This would yield a total of 240 penalty units for a recidivist DWD/S offender, which, at the current level stipulated for each penalty unit, amounts to a maximum penalty of $26,428.80. This general power to substitute penalties can, however, be excluded. The *Road Safety Act 1986* (Vic) s 30(2) expressly excludes *Sentencing Act 1991* (Vic) s 49. Accordingly, courts may not impose a fine instead of or in addition to imprisonment in respect of DWD/S. This means that courts that find that an immediate custodial sentence should not be imposed upon a recidivist DWD/S offender are unable to impose a fine, though they can suspend the sentence. While a suspended sentence is a serious sanction, the offender will not actually suffer any immediate financial loss and, provided he or she does not commit a further offence punishable by imprisonment, will not have to serve an immediate custodial sanction.

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20 See, for example, *Road Safety Act 1986* (Vic) ss 77, 88.
21 *Road Safety Act 1986* (Vic) s 51.
24 Victorian Government Gazette G12, 22 March 2007, 494 (the gazetted amount for the 2007-08 financial year is provided, but the Victorian Treasurer has a discretion to vary this amount under the *Monetary Units Act 2004* (Vic) s 5(2)).
26 *Road Safety Act 1986* (Vic) s 30.
29 *Sentencing Act 1991* (Vic) s 49(1).
30 See Semann v O’Connell (1994) 19 MVR 560; BC9401112.
2.5 The gravity of the offence

2.5.1 Under the Sentencing Act 1991 (Vic) s 109(1), offences are organised into a hierarchy of offence levels 1-9 by reference to their maximum custodial penalty, a level 1 offence being the most serious and a level 9 offence being the least serious. Not all the maximum sanctions for Victorian offences exactly correlate to the each of the levels set out in s 109, some falling between the levels. Nevertheless, s 109 provides a useful scale upon which to plot any given offence in order to compare its severity to other Victorian offences.

2.5.2 The maximum penalty for a first offence of DWD/S makes it approximately a level 9 offence (though a level 9 offence includes offences with maximums of up to 6 months’ imprisonment while s 30 only allows for 4 months’ imprisonment for a first offence). The maximum penalty for repeat DWS/D makes it a level 7 offence.

2.5.3 Despite its relatively low level of seriousness in the hierarchy of offences, DWD/S is one of the only offences in the Road Safety Act 1986 (Vic) carrying a mandatory minimum sentence of imprisonment. The few other offences attracting mandatory sentences of imprisonment involve repeat incidents of failing to render assistance where a person suffers injury or death (see Road Safety Act 1986 (Vic) s 61(4) and (5)). DWD/S is one of the few offences with a mandatory sentence under Victorian law. Serious offences under Victorian law, while carrying very high maximum penalties, generally do not have prescribed mandatory sentences (see, for example, the Crimes Act 1958 (Vic) s 3, which provides that murder has a maximum sentence of life imprisonment but does not prescribe a mandatory term).

2.5.4 Within the Road Safety Act 1986 (Vic) itself, DWD/S fits within the mid-range of offences. The maximum penalties under the Act range from the quite low to the severe. Some of the minor offences attract sanctions of 5 penalty units or less (such as failing to allow a motor vehicle/trailer to be inspected). There are mid-range offences which attract medium level penalties (such as drink driving under s 49(1)(a) of the Act which provides for a maximum penalty of 25 penalty units or 3 months’ imprisonment for a first offence, 120 penalty units or 12 months’ imprisonment for a second offence and 180 penalty units or 18 months’ imprisonment for a third or subsequent offence). At the high end, there are serious indictable offences with very substantial penalties (such as failing to render assistance where a person is either killed or suffers serious injury under s 61 of the Act, which has maximum penalty of 1,200 penalty units or 10 years’ imprisonment, and, in some circumstances attracts minimum terms of imprisonment for recidivists). The Act differentiates between a few classes of failing to render assistance based on the surrounding conduct of the offender and the harm suffered to others. The most serious form of the offence (with the penalty of 10 years’ imprisonment) does not prescribe a mandatory period of imprisonment for first or subsequent instances of the offence.


32 Road Safety Act 1986 (Vic) s 13(5).

33 Road Safety Act 1986 (Vic) s 49(2).

34 Road Safety Act 1986 (Vic) s 61(3).

35 Road Safety Act 1986 (Vic) s 61(4) and (5).

36 Road Safety Act 1986 (Vic) s 61.

37 Road Safety Act 1986 (Vic) s 61(3).
2.6 Comparing the penalties in other Australian jurisdictions

2.6.1 Appendix 1 provides an inter-jurisdictional comparison of the maximum penalties available for DWD/S.

2.6.2 The maximum penalties available for DWD/S in Victoria for first-time offenders are relatively low when compared to other Australian jurisdictions. Victoria has lower maximum fines for a first s 30 offence than three other Australian jurisdictions (the ACT, Queensland and Tasmania).\(^{38}\) The other Australian jurisdictions have fines from the same approximate level as Victoria up to $1,500 more than the maximum available in Victoria.

2.6.3 Victoria’s maximum term of imprisonment for a first s 30 offence (4 months’ imprisonment) is lower than all other Australian jurisdictions (which range from 6 to 18 months’ imprisonment).

2.6.4 In contrast, the maximum penalties for recidivist s 30 offences in Victoria are comparatively severe. Victorian courts cannot impose a fine instead of or in addition to imprisonment in respect of DWD/S.\(^{39}\) Despite the Victorian courts lacking a power to fine recidivist DWD/S offenders, it is worth noting the fine levels in other Australian jurisdictions. The highest fine prescribed in an Australian jurisdiction is in the ACT where a maximum fine of 100 penalty units (or $10,000) may be imposed.

2.6.5 In terms of the maximum term of imprisonment available, Victoria, South Australia and New South Wales are equally as severe, the maximum term being 2 years’ imprisonment in those jurisdictions. The next most severe jurisdictions (Western Australia and Queensland, the latter only for court-ordered disqualification) prescribe a maximum of 18 months’ imprisonment. The remaining jurisdictions prescribe a maximum of 12 months’ imprisonment. Only Victoria has a mandatory sentence of imprisonment for recidivist offenders.

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38 South Australia has no fixed limit for fines when substituted for imprisonment apart from the statutory limitation of the court itself.

2. Driving while suspended or disqualified
3. What triggers disqualification/suspension?

3.1 Disqualification/suspension for a single offence

3.1.1 For the purposes of the Road Safety Act 1986 (Vic) s 30, there is no difference between a disqualification and a suspension: DWD and DWS are of equal culpability. They differ, however, in terms of the event that triggers the disqualification/suspension and what occurs after the relevant period has elapsed.

3.1.2 In order to drive legally, a person who has been disqualified from holding a licence, must apply for a licence (this includes people who held a licence/permit and had it disqualified as well as people who have been convicted of driving unlicensed and never actually held a licence/permit to start with). Suspension works in a slightly different way. To be suspended, a driver must have actually held a licence/permit to start with. After a suspension period has elapsed, the driver will automatically have their licence returned to them.

3.1.3 The Road Safety Act 1986 (Vic) provides for a scheme of licence disqualification/suspension for committing various classes of offences under the Act and its subordinate instruments, including drink driving, excessive speed speeding offences, failing to render assistance and certain serious offences under the Crimes Act 1958 (Vic) where they involve vehicles. Courts also have a general power to disqualify/suspend a licence for such time as the court deems appropriate where any offence is committed under the Road Safety Act 1986 (Vic) or any offence in relation to the driving of a motor vehicle.

3.1.4 The Road Safety Act 1986 (Vic) empowers courts and/or Victoria Police and VicRoads officers to issue these disqualifications/susppensions. Some of these disqualifications and suspensions require the order of a court while others, such as traffic infringement notices, can be issued by authorised officers. There are prescribed minimum periods of disqualification/suspension for some of these offences which are detailed in the schedules to the Act. Other offence provisions expressly specify the period of disqualification/suspension within the offence provisions themselves or leave the period of disqualification/suspension at the discretion of the court. People who are disqualified/suspended are prohibited from re-applying for the licence/permit for the duration of the disqualification/suspension.

3.1.5 The table below sets out the periods of disqualification that apply in respect of being found guilty of drink driving. Under section 50(1A) of the Act the period of disqualification is determined by the concentration of alcohol in the offender’s blood or breath and whether the offence is a first or subsequent offence. If a person is found guilty but the court does not record a conviction, the court is not required to cancel the driver’s licence or permit or disqualify the offender from obtaining one, if the concentration of alcohol in the blood/breath of the offender was less than 0.05 (where there are relevant priors) or less than 0.07 in any other case.

40 Road Safety Act 1986 (Vic) ss 28(1)(a), 89D.
41 Road Safety Act 1986 (Vic) ss 50, 89C.
42 Road Safety Act 1986 (Vic) s 60(2).
43 Road Safety Act 1986 (Vic) s 89.
44 Road Safety Act 1986 (Vic) s 28(1)(b).
45 Road Safety Act 1986 (Vic) s 60(2).
46 Road Safety Act 1986 (Vic) s 28(1)(b).
47 Road Safety Act 1986 (Vic) s 50(1AB).
### Table 1: Minimum Disqualification Periods in Victoria for drink driving offences

<table>
<thead>
<tr>
<th>Level/Concentration</th>
<th>Minimum Disqualification</th>
<th>Minimum Disqualification</th>
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<tbody>
<tr>
<td></td>
<td>First Offence</td>
<td>Repeat Offender</td>
</tr>
<tr>
<td>Less than 0.07</td>
<td>6 months</td>
<td>12 months</td>
</tr>
<tr>
<td>0.07 or more but less than 0.08</td>
<td>6 months</td>
<td>14 months</td>
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<tr>
<td>0.08 or more but less than 0.09</td>
<td>6 months</td>
<td>16 months</td>
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<tr>
<td>0.09 or more but less than 0.10</td>
<td>6 months</td>
<td>18 months</td>
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<tr>
<td>0.10 or more but less than 0.11</td>
<td>10 months</td>
<td>20 months</td>
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<tr>
<td>0.11 or more but less than 0.12</td>
<td>11 months</td>
<td>22 months</td>
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<tr>
<td>0.12 or more but less than 0.13</td>
<td>12 months</td>
<td>24 months</td>
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<tr>
<td>0.13 or more but less than 0.14</td>
<td>13 months</td>
<td>26 months</td>
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<tr>
<td>0.14 or more but less than 0.15</td>
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<td>28 months</td>
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<td>0.15 or more but less than 0.16</td>
<td>15 months</td>
<td>30 months</td>
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<tr>
<td>0.16 or more but less than 0.17</td>
<td>16 months</td>
<td>32 months</td>
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<tr>
<td>0.17 or more but less than 0.18</td>
<td>17 months</td>
<td>34 months</td>
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<tr>
<td>0.18 or more but less than 0.19</td>
<td>18 months</td>
<td>36 months</td>
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<tr>
<td>0.19 or more but less than 0.20</td>
<td>19 months</td>
<td>38 months</td>
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<tr>
<td>0.20 or more but less than 0.21</td>
<td>20 months</td>
<td>40 months</td>
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<td>0.21 or more but less than 0.22</td>
<td>21 months</td>
<td>42 months</td>
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<td>44 months</td>
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<tr>
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<td>23 months</td>
<td>46 months</td>
</tr>
<tr>
<td>0.24 or more</td>
<td>24 months</td>
<td>48 months</td>
</tr>
</tbody>
</table>

#### 3.1.6 For refusing a blood or breath test or failing to stop or remain stopped at a preliminary breath testing station the minimum period of disqualification in Victoria is two years for a first offence and four years for a subsequent offence.48

#### 3.1.7 In addition, the Road Safety Act 1986 (Vic) s 51 provides for the immediate suspension of a person’s licence by a member of the police force or an officer of VicRoads in specified circumstances.49 These circumstances extend to situations where a person has been apprehended drink driving. Victoria Police and VicRoads officers are empowered to issue an immediate suspension to such drivers. The section deals with a range of circumstances and prescribes different types of disqualifications/suspensions. Some of these types of suspensions are interim sanctions, only remaining in force until the drink driving charges are dealt with in court.50 Other disqualifications under s 51 are more akin to ‘on the spot’ sanctions51 and can apply for distinct periods prescribed in the relevant sub-section.52

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48 Road Safety Act 1986 (Vic) s 50.
49 Road Safety Act 1986 (Vic) s 51.
50 For example, under the Road Safety Act 1986 (Vic) s 51(1).
51 For a succinct but slightly dated discussion of such sanctions, see Richard Fox, Criminal Justice On the Spot: Infringement Penalties in Victoria (Australian Institute of Criminology, 1995).
52 Road Safety Act 1986 (Vic) s 51(3)(b).
3.2 Disqualification/suspension from a course of offences

3.2.1 The Road Safety Act 1986 (Vic) provides for licence suspension where an offender commits a number of less serious driving offences. Under s 25 of the Act, a register of demerit points must be kept by VicRoads, which records demerit points incurred by licence/permit holders for traffic offences, each of which, on its own, would not lead to a licence suspension. Traffic offences carry different levels of demerit points by reference to their seriousness. If licence or permit holders incur more than the prescribed number of demerit points (12 or more demerit points over 3 years for fully licensed drivers, or 5 or more points within a year and 12 or more points over 3 years for holders of a probationary licence or a learner’s permit), VicRoads will suspend the licence/permit for a prescribed period.

3.2.2 There is some evidence that demerit point registers may lead to secondary deviance, for example, by other drivers agreeing to falsely admit to driving offences in order to allow the actual offender to escape the effects of excess demerit points accrual. There have been reports of this occurring in various European countries in which demerit points registers are used. Complete strangers, often pensioners, are ‘taking the rap’ for other drivers’ speeding offences for up to €1,500, the internet being the usual point of contact. As the detection mechanisms for driving offences becomes increasingly more automated this type of ‘trade’ is likely to become more and more widespread. There have been other schemes used in Australia along similar lines, for example where licensed vehicle users register motor vehicles in the name of relatives who do not have licences so that any notional demerit points will not affect the actual user of the vehicle. Another is where the registered owner submits a false statutory declaration stating that another person was driving his or her car. Most jurisdictions have had some success in prosecuting offenders attempting to use such punishment avoidance mechanisms, though the obvious problems of detection suggest that they will continue to occur.

3.2.3 VicRoads is also obliged to disqualify a driver’s licence or permit if that person has been convicted of a drink driving offence and the licence was not cancelled, unless VicRoads is satisfied that the person has completed an accredited driver education program within 3 months of being convicted.

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53 Including offences under the Road Safety Act 1986 (Vic) and its various subordinate instruments. The principal regulations under the Road Safety Act 1986 (Vic) are contained in the Road Safety (Drivers) Regulations 1999, the Road Safety (Driving Instructors) Regulations 1999 (Vic), the Road Safety (General) Regulations 1999 (Vic), the Road Safety (Road Rules) Regulations 1999 (Vic) and the Road Safety (Vehicles) Regulations 1999 (Vic).

54 A table of the demerit points for each offence is set out under the Road Safety (Driver) Regulations 1999 (Vic) table 301.

55 Road Safety Act 1986 (Vic) s 51(3).

56 Road Safety Act 1986 (Vic) s 25. Drivers may be able to retain their licence under certain circumstances in return for undertaking not to accrue any demerit points for a stated period, but if they do accrue points in that period they will face a more lengthy suspension.

57 Charles Bremner and Thomas Catan, ‘Pensioners Take Cash and Points to Keep Speeding Drivers on the Road’, The Times (London), 12 July 2007, online.

58 Ibid.


60 Gary Hughes, ‘Dodging Demerit Points’, The Australian (Sydney), 13 November 2006, online.

61 Road Safety Act 1986 (Vic) s 51(2).
3.3 Other grounds for disqualification/suspension

3.3.1 VicRoads also has the power to suspend or cancel licences and disqualify a person from driving on medical or other grounds such as driver infirmity. Disqualifications and suspensions in other Australian jurisdictions will also apply in Victoria. There are a number of other less common grounds upon which VicRoads and/or courts may disqualify people from driving. Cancellation of a licence amounts to disqualification for the purposes of the *Road Safety Act 1986* (Vic) s 30.

3.3.2 Under the *Road Safety Act 1986* (Vic) s 30A, a person who has been found not guilty of DWD/S by reason of not knowing that he or she was disqualified or suspended, may nevertheless have his or her period of disqualification or suspension extended by a court. This is to reflect the fact that the person was driving for some of that period, albeit unaware of the prohibition on driving. The court is essentially empowered to impose an additional period of disqualification or suspension so that the net period of the disqualification or suspension is no greater than that which was imposed in the first place. The court has the discretion not to impose such an additional period.

3.4 Unlicensed driving and driving while suspended under the *Infringements Act 2006* (Vic)

3.4.1 There are also two offences which closely resemble DWD/S, but which have much lower penalties attached to them.

3.4.2 Firstly, the *Road Safety Act 1986* s 18 prohibits unlicensed driving. While this appears to prohibit the same conduct as that which DWD/S seeks to regulate, there are some key differences. Unlicensed driving refers to both driving without a licence as well as driving with a licence but in breach of licence conditions. There are a few broad situations in which unlicensed driving may occur. One is where the driver has never had a licence. Another is where the driver has had a licence but failed to renew it or where the driver has had a licence but has been disqualified and that disqualification period has passed and the driver has failed to re-apply for a licence. The other situation in which a s 18 offence can occur is where a licensed driver breaches a condition of the licence (including the installation and use of an interlock device). In contrast, DWD/S deals with driving undertaken by people who drive while a disqualification or suspension is in force. Unlicensed driving has a variable maximum penalty depending on the circumstances of the offending. If the offender has been licensed in the past and did not have that previous licence cancelled in Victoria (or any other Australian jurisdiction), the maximum penalty is 10 penalty units or 1 month’s imprisonment. If a person is unlicensed but would have been subject to an interlock condition on driving had they applied to be licensed (for example, if they have been found guilty of drink driving and the relevant disqualification has lapsed), they will be

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63 *Road Safety Act 1986* (Vic) s 18.
64 Please note - licence cancellation and figures on licence cancellation will be aggregated with disqualification in this paper except where otherwise specified.
65 This would arise where the defence of honest and reasonable mistake is successfully raised to defend a charge of DWD/S (see Part 2).
67 *Road Safety Act 1986* (Vic) s 30(2).
68 *Road Safety Act 1986* (Vic) ss 18(1)(a), (c).
69 *Road Safety Act 1986* (Vic) s 18(1)(b).
liable for a higher penalty: 30 penalty units or imprisonment for 4 months.\textsuperscript{70} In all other cases, a person found guilty of a s 18 offence will be liable for a maximum penalty of 25 penalty units or imprisonment for 3 months.\textsuperscript{71}

3.4.3 Secondly, under the \textit{Road Safety Act 1986 (Vic)} s 30AA, it is an offence to drive when a person’s licence has been suspended under the \textit{Infringements Act 2006 (Vic)}. Part 8 of the \textit{Infringements Act 2006 (Vic)} empowers the Sheriff’s Office to direct VicRoads to suspend a person’s licence where money is owed by the person in respect of traffic and non-traffic infringements.\textsuperscript{72} There are notice requirements for this type of suspension\textsuperscript{73} and the length of the suspension will basically depend either on the debt being repaid in full or some type of payment agreement being entered into (at which point VicRoads will be notified and suspension will cease).\textsuperscript{74} The maximum penalty for driving whilst under an \textit{Infringements Act 2006 (Vic)} suspension is 10 penalty units.

\section*{3.5 Prevalence of and reasons for disqualification/suspension}

3.5.1 When the offence of driving while disqualified or suspended was originally introduced in Victoria in 1949,\textsuperscript{75} the primary mechanism for disqualifying a person from driving or for suspending the person’s licence was by court order after a criminal prosecution. At the time that the offence was first legislated, mechanisms for disqualification or suspension such as demerit point suspensions and immediate disqualifications or suspensions did not exist.

3.5.2 Since that time, the mechanisms for disqualification and suspension have increased and diversified. They now include interim and/or immediate infringement notice disqualifications/suspensions. Under the \textit{Road Safety Act 1986 (Vic)} s 51, where a person has been apprehended drink driving, his or her licence can be disqualified/suspended either as an interim measure prior to the matter being heard in court, or as a sanction in its own right. The \textit{Road Safety Act 1986 (Vic)} also makes provision for immediate disqualification/suspension where a driver is apprehended committing other traffic offences such as serious speeding offences.\textsuperscript{76}

3.5.3 The current offence of driving while disqualified or suspended in s 30 of the \textit{Road Safety Act 1986 (Vic)} does not distinguish between situations where the driver has been disqualified and situations where the driver’s licence has been suspended. However, data on the various methods of disqualification and suspension show significant differences between the two categories.

3.5.4 Figure 1 sets out the number of new licence disqualifications imposed in the years 2002-03, 2004-05 and 2006-07 and breaks down the total number of disqualifications by reference to the method of disqualification. Overwhelmingly, the major cause of licence disqualifications is by order of a court. In the year 2006-07, 11,413 people had their licences disqualified pursuant to the order of a court. The next most common cause for licence disqualification was via an immediate traffic infringement disqualification, which resulted in 6,675 disqualifications in the year 2006-07.

\begin{itemize}
\item \textsuperscript{70} \textit{Road Safety Act 1986 (Vic)} s 18(3).
\item \textsuperscript{71} \textit{Road Safety Act 1986 (Vic)} s 18(1).
\item \textsuperscript{72} \textit{Infringements Act 2006 (Vic)} ss 109, 110.
\item \textsuperscript{73} \textit{Infringements Act 2006 (Vic)} s 110(2).
\item \textsuperscript{74} \textit{Infringements Act 2006 (Vic)} s 111.
\item \textsuperscript{75} \textit{Motor Car Act 1928 (Vic)} s 9(1).
\item \textsuperscript{76} \textit{Road Safety Act 1986 (Vic)} ss 50, 89C.
\end{itemize}
3. What triggers disqualification/suspension?

3.5.5 Figure 2 sets out the number and causes of new licence suspensions in the years 2002-03, 2004-05 and 2006-07. In the year 2006-07, 25,446 licence-holders had their licences suspended as a result of demerit point accrual. The next largest group were people who had their licences suspended subject to an immediate traffic infringement: 18,590 people in the year 2006-07.

77 Under the Road Safety Act 1986 (Vic) ss 24, 28A, licences can be cancelled, respectively, by VicRoads or by a court. For the purposes of this discussion paper, the terms ‘cancellation’ and ‘disqualification’ have been used synonymously. The Road Safety Act 1986 (Vic) largely refers to these terms interchangeably.

78 Please note that the data in Figure 1 incorporate new disqualifications imposed upon all licence categories (fully licensed, probationary and learner drivers) within the relevant period.
3. What triggers disqualification/suspension?

3.5.6 Of the statistics set out in Figure 1 and Figure 2, the causes of disqualification and suspension are relatively stable across the years featured for every methods of suspension other than demerit points suspensions, which have doubled from 2002-03 to 2006-07. A much larger number of drivers are having their licences suspended than having their licences disqualified.

3.5.7 If we look at Figure 1 and Figure 2 together, it is clear that disqualifications and suspensions most often arise as a result of either demerit point accrual (25,446 in the year 2006-07) or as a result of an immediate traffic infringement (25,265 in the year 2006-07). Court ordered disqualifications and suspensions only accounted for 16,845 new disqualifications/suspensions in the year 2006-07. The next most common cause was via s 51 disqualifications/suspensions, which accounted for 7,520 new disqualifications/suspensions in that same period.

3.5.8 Figure 3 provides a direct comparison between the number of new licence disqualifications and new licence suspensions in the year 2006-07. A much larger number of people had their licence suspended compared to those who had their licence disqualified and the demerit point suspensions were by far the most common cause of drivers losing their licences.

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Figure 2: The number of new licence suspensions by method of suspension, 2002-03, 2004-05 and 2006-07

Source: Vic Roads

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79 Please note that the data in Figure 2 incorporate new suspensions imposed upon all licence categories (fully licensed, probationary and learner drivers) within the relevant period.
3. What triggers disqualification/suspension?

3.5.9 There are very little data currently available on the causes of disqualifications or suspensions of section 30 offenders. If the cause of the vast majority of drivers losing their licences is demerit point suspension, potentially they will figure prominently as s 30 offenders. Certainly the rise in the number of new demerit point suspensions between 2002 and 2007 (see Figure 2) matches the dramatic increase in the incidence of s 30 offending within roughly the same period (see Part 1). It must, again, be stressed that there are very little data on this and there may be no correlation between the increase in demerit point suspensions and s 30 offences generally.

Figure 3: The number of new licence disqualifications or suspensions by method of disqualification or suspension, 2006-07

![Bar chart showing the number of new licence disqualifications or suspensions by method of disqualification or suspension, 2006-07.](image)

Source: Vic Roads unpublished

80 Please note that the data in Figure 3 incorporate new disqualifications and new suspensions imposed upon all licence categories (fully licensed, probationary and learner drivers) within the relevant period.
4. Magistrates’ Court sentencing practices

4.1 Introduction

4.1.1 Disqualified driving/suspended driving encompasses a range of behaviours ranging from being found guilty of an offence and being formally disqualified from driving to incurring too many demerit points within a given period and receiving an administrative suspension. In these two scenarios, the only commonality is that the person is driving while his or her licence has been disqualified/suspended. In the first scenario, the offender would be aware of the disqualification, whereas in the latter situation the offender may not be aware that an administrative suspension has occurred (for example, if the offender has not actually received notice of the suspension).

4.1.2 The Sentencing Advisory Council examined sentences for DWD/S in the County Court and in the Magistrates’ Court during the period 2004-05 to 2006-07.

4.1.3 In the three years, between 2004-05 and 2006-07, 28,278 people were sentenced for at least one DWD/S offence in the Magistrates’ Court. In the same period, 20 people were sentenced for at least one DWD/S offence in the County Court of Victoria. No offences of DWD/S were dealt with in the Supreme Court during this period.

4.2 Jurisdiction

4.2.1 DWD/S is a summary offence and is thus triable in the Magistrates’ Court. The jurisdictional limit in the Magistrates’ Court is two years’ imprisonment for a single offence. If a defendant is charged with more than one offence committed at the same time, the court can impose cumulative sentences in relation to those charges up to a maximum of five years’ imprisonment. A magistrate is also empowered to impose an aggregate sentence of up to five years’ imprisonment. In relation to repeat offences of DWD/S the statutory maximum penalty (two years) is the same as the jurisdictional limit of the Magistrates’ Court.

4.2.2 Despite being a summary offence, it may sometimes be appropriate for DWD/S to be dealt with in the County Court or Supreme Court when criminal proceedings are brought against the defendant for other indictable offences. Summary charges can be dealt with in the higher courts if the accused consents to them being heard in those courts and indicates a willingness to plead guilty to those offences, in addition to the indictable matter.

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81 The statistical information presented here was provided by Court Services, Department of Justice (Vic). While the Sentencing Advisory Council has made every effort to ensure that these data are accurate at the time of publication, the data may be subject to revision.

82 Sentencing Act 1991 (Vic) s 113-113A.

83 Sentencing Act 1991 (Vic) s 113B.

84 Sentencing Act 1991 (Vic) s 9(2).

85 Crimes Act 1958 (Vic) s 359AA.
4.3 Statistics for driving while disqualified/suspended

4.3.1 In 2006-07 10,652 people were sentenced for at least one count of driving while disqualified/suspended. This is an increase of 31.6 per cent from 8,094 in 2004-05. An alternative counting methodology, the principal proven count, also shows an increase from approximately 2,846 people sentenced in 2000-01 compared to 8,615 people in 2006-07.

4.3.2 Figure 4 shows the sentencing outcomes for all people who were sentenced for at least one count of driving while disqualified in the Magistrates’ Court between 2004-05 and 2006-07. As shown the majority of people sentenced received a fine (59.4 percent), while 20.1 per cent received a wholly suspended sentence and 8.5 per cent received a period of imprisonment.

Figure 4: The percentage of people sentenced for driving while disqualified/suspended by sentence type, Magistrates’ Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007

86 The data used for analysis in this section were kindly provided by either Court Services, Department of Justice (Vic) or CourtLink. While the Sentencing Advisory Council has made every effort to ensure that these data are accurate at the time of publication, the data may be subject to revision.

87 Using this counting rule, statistics prior to 2004-05 are not available.

88 The principal proven count uses the offence that received the most severe sentence in a case. Therefore, it will not count people who were sentenced for driving while disqualified/suspended who also received a more severe sentence for a different charge.

89 These data need to be distinguished from those which indicate sentencing rates where DWD/S is the principal proven offence in a criminal matter rather than simply an offence.

90 ‘Other’ includes adjourned undertaking, youth justice centre order, home detention order, drug treatment order, convicted and discharged, dismissed and combined custody and treatment order.
4.3.3 Figure 5 indicates that the most common sanction imposed on s 30 offenders is a fine. A wholly suspended sentence of imprisonment was the next most common sanction followed by an immediate sentence of imprisonment.

4.3.4 Figure 5 sets out the sentencing dispositions of people sentenced for DWD/S in the Magistrates’ Court in the years 2004-05 to 2006-07. It distinguishes between the sentencing dispositions for disqualification and suspension. The statistics on each disposition are presented as a percentage of the whole number of matters sentenced. Figure 5 indicates that the most common sanction imposed on s 30 offenders is a fine. A wholly suspended sentence of imprisonment was the next most common sanction followed by an immediate sentence of imprisonment.

Figure 5: The percentage of people sentenced for driving while disqualified/suspended by sentence type and licence status, Magistrates’ Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007

4.3.5 Figure 6 shows the percentage of people who were sentenced to imprisonment for DWD/S collectively in the Magistrates’ Court during 2004-05 to 2006-07 by the length of imprisonment. As shown, the majority of people sentenced received imprisonment lengths of six months or shorter (88.2 percent).
4. Magistrates’ Court sentencing practices

Driving while Disqualified or Suspended Discussion Paper

Figure 6: The percentage of people who were sentenced to imprisonment for driving while disqualified/suspended by length of imprisonment, Magistrates’ Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007

4.3.6 Figure 7 depicts the percentage of people who were sentenced to imprisonment for DWD/S in the Magistrates’ Court during 2004-05 to 2006-07 by the length of imprisonment. Figure 7 contrasts terms of imprisonment imposed for DWD and DWS respectively. Figure 7 indicates that the severity of prison sentences do not vary much by reference to whether the offender was disqualified or suspended. Despite this seeming parity in severity, it should be noted that three-times more disqualified drivers are imprisoned than suspended drivers. Figure 7 indicates that sentences of imprisonment for DWD/S are generally 1 to 3 months in length.

Figure 7: The percentage of people who were sentenced to imprisonment for driving while disqualified/suspended by length of imprisonment and licence status, Magistrates’ Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007
4.3.7 Figure 8 shows the number of people sentenced for driving while disqualified by age and gender in the Magistrates’ Court during 2004-05 to 2006-07. As shown, the most common age group of people sentenced was 20-24 years while 89.0 per cent of all people sentenced were male.

Figure 8: The number of people sentenced for driving while disqualified/suspended by age and gender, Magistrates’ Court, 2004-05 to 2006-07

![Bar chart showing number sentenced by age and gender](chart.png)

Source: SAC CourtLink Extract December 2007

4.3.8 Figure 9 sets out the percentage of males and females, respectively, by reference to their age, who were sentenced for DWD/S in the Magistrates’ Court during 2004-05 to 2006-07. It indicates that the majority of s 30 offenders are aged between 20 and 34 years of age. This pattern is broadly similar for both disqualified and suspended drivers. The major deviation between the ages profile of disqualified and suspended drivers is in the 20-24 age bracket where there are approximately twice as many suspended drivers as disqualified drivers. At first glance, Figure 9 appears to suggest that this deviation is actually reversed in the older age brackets, albeit not so markedly because in most of those age brackets a higher percentage of people are disqualified drivers. Despite this apparent trend, it needs to be noted that there is a higher incidence of suspended driving (as the numbers noted below evidence) so the actual numbers of disqualified and suspended drivers in the age brackets after the 20-24 bracket are fairly similar.
Figure 9: The percentage of people sentenced for driving while disqualified/suspended by age and licence status, Magistrates' Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007

4.3.9 Figure 10 depicts the percentage of males and females, respectively, by reference to their age, who were sentenced for DWD alone in the Magistrates' Court during 2004-05 to 2006-07. It indicates that the age for s 30 offenders is quite similar as between males and females, with the majority of offenders being ages between 20 and 34 years of age and the incidence of DWD gradually tapering off after that age.

Figure 10: The percentage of people sentenced for driving while disqualified only by age and gender, Magistrates' Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007
4.3.10 Figure 11 sets out the percentage of males and females, respectively, by reference to their age, who were sentenced for DWS alone in the Magistrates’ Court during 2004-05 to 2006-07. Figure 11 indicates that the majority of offenders driving while suspended are in the 20-24 age bracket, accounting for over 20 per cent of male suspended drivers and over 30 per cent of female suspended drivers. While there a large number of offenders in the 25-29 and 30-34 age brackets, a much greater number of suspended drivers feature in the 20-24 age brackets. This contrasts the data on driving disqualified (see Figure 10) which indicates a more even distribution of offenders between the ages of 20 to 34.

Figure 11: The percentage of people sentenced for driving while suspended only by age and gender, Magistrates’ Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007
4.4 Concurrent offences

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

4.4.2 Figure 12 shows the number of people sentenced for at least one driving while suspended/disqualified offence by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 169, while the median was 2 offences. There were 8,164 people (28.9 per cent) sentenced for the single offence of driving while suspended/disqualified alone. A higher percentage of women were sentenced for a single offence (32.8 per cent compared to 28.4 per cent of men).

Figure 12: The percentage of people sentenced for driving while disqualified/suspended, Magistrates’ Court, 2004-05 to 2006-07

Source: SAC CourtLink Extract December 2007

4.4.3 While Figure 12 presents the number of sentenced offences for those sentenced for driving while suspended/disqualified, Table 2 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, 6,643 of the total 28,276 people (23.5 per cent) also received sentences for using an unregistered vehicle. On average, they were sentenced for 1.34 counts of using an unregistered vehicle.
Table 2: The number and percentage of the most common offences sentenced in addition to driving while disqualified/suspended, Magistrates’ Court, 2004-05 to 2006-07

<table>
<thead>
<tr>
<th>Offence</th>
<th>No.</th>
<th>%</th>
<th>Avg.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Driving while disqualified or suspended</td>
<td>28,276</td>
<td>100.0</td>
<td>1.27</td>
</tr>
<tr>
<td>2. Use an unregistered vehicle on a roadway</td>
<td>6,643</td>
<td>23.5</td>
<td>1.34</td>
</tr>
<tr>
<td>3. Drink drive (at/exceed limit within 3 hours or driving)</td>
<td>4,026</td>
<td>14.2</td>
<td>1.12</td>
</tr>
<tr>
<td>4. Exceed speed limit</td>
<td>3,166</td>
<td>11.2</td>
<td>1.09</td>
</tr>
<tr>
<td>5. Theft</td>
<td>1,982</td>
<td>7.0</td>
<td>3.40</td>
</tr>
<tr>
<td>6. Driver fail to provide/give false address when requested</td>
<td>1,795</td>
<td>6.3</td>
<td>1.15</td>
</tr>
<tr>
<td>7. Failure to answer bail</td>
<td>1,706</td>
<td>6.0</td>
<td>1.63</td>
</tr>
<tr>
<td>8. Careless driving</td>
<td>1,548</td>
<td>5.5</td>
<td>1.05</td>
</tr>
<tr>
<td>9. Fraudulent alteration/use of documents/identifying marks</td>
<td>1,289</td>
<td>4.6</td>
<td>1.33</td>
</tr>
<tr>
<td>10. Failure to wear seatbelt</td>
<td>1,056</td>
<td>3.7</td>
<td>1.03</td>
</tr>
</tbody>
</table>

People sentenced: 28,276 | 100.0 | 3.55

Source: SAC CourtLink Extract December 2007

This table only relates to cases where an offender was sentenced in respect of multiple offences at a single hearing.
4. Magistrates' Court sentencing practices

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5. Causes, consequences and responses

5.1 Profile of disqualified/suspended drivers

5.1.1 A number of Australian and overseas studies have interviewed people convicted of disqualified driving/driving suspended and have attempted to build up a profile of those who engage in this conduct in terms of gender, age and criminal history. Some of these studies have also tried to ascertain the behaviours that may be exhibited by such drivers in terms of safety and the incidence of other offending in conjunction with disqualified driving/driving suspended.

Who drives disqualified/suspended?

5.1.2 A recent Victorian study of disqualified drivers (‘MUARC Report’),92 stated that ‘older Victorian studies as well as more recent studies from interstate and from overseas consistently suggest that the overwhelming majority of disqualified drivers tend to be young males [citations omitted].’93 These findings are supported by Victorian court statistics.94 Research in the United Kingdom (‘UK’) has confirmed that driving disqualified driving/suspended is primarily engaged in by young men, with females making up less than 3 per cent of the offenders for disqualified driving.95

5.1.3 There has also been research assessing the criminal histories of disqualified drivers. The age profile for disqualified drivers has been found to fit the profile for criminal offences generally: 60-75 per cent of offenders were males between the ages of 18 and 32 years of age.97 A UK study indicated that 79 per cent of disqualified drivers had a criminal record compared to 72 per cent of mainstream criminal offenders and both groups had a 37 per cent likelihood of re-conviction within the next year.98 Another UK study attempted to assess the correlation between criminal histories involving motoring offences and criminal histories involving other types of offences by comparing the driving records of 52,000 drivers over a 4-year period with the UK Home Office Offenders Index. It was found that people who committed between 4 and 8 non-motoring offences committed an average of 21 times as many serious motoring offences and 3.9 times as many non-serious motoring offences as those who committed no non-motoring offences.100 It found that the strongest relationship between non-motoring and motoring offences was for the

92 Belinda Clark, and Irene Bobevski, Disqualified Drivers in Victoria: Literature Review and In-Depth Focus Group Study (Report No. 274, Monash University Accident Research Centre, 2008). The MUARC Report involved interviews with 40 disqualified/suspended drivers and 13 of their/partners. The MUARC Report also undertook a comprehensive review of the international and Australian literature regarding DWD/S, and specifically, that literature that has dealt with offenders’ own attitudes to DWD/S including self-reported breaches of disqualifications/suspensions.
93 Ibid 29. Clark and Bobevski cite B. Healy & W. Harrison, The Driving Behaviour of Motorists Disqualified from Driving (Report No. RN/86/, Alcohol, Drugs, And Legislative Countermeasures Branch, Road Traffic Authority,1986); Anna Ferrante, below n 107, 30-1; Scopatz, Hatch, Hilger Delucia and Tays, below n 113, 60. See also, Denis Donovan, ‘Driving While Intoxicated. Different Roads to and From the Problem’ (1989) 16(3) Criminal Justice and Behavior 270-298; Knox, Turner and Silcock, below n 97, 128.
94 Hoel and Turner, above n 7, 2. See also Figure 8, Figure 9, Figure 10 and Figure 11.
95 Gerry Rose, The Criminal Histories of Serious Traffic Offenders (Research Study 206, UK Home Office, 2000).
96 Ibid ix.
97 Ibid. This conclusion was also supported broadly in Duncan Knox, Blair Turner, David Silcock, Research into Unlicensed Driving: Final Report (UK Department for Transport, 2003) 60. Please note, the Knox et al study concerned both disqualified/suspended drivers and unlicensed drivers.
98 Ibid x.
100 Ibid 282.
offence of disqualified driving.\textsuperscript{101} Drivers who committed at least 9 non-motoring offences during the study period committed more than 100 times as many disqualified driving offences than those who committed no non-motoring offences during that period.\textsuperscript{102} These results may indicate that disqualified/suspended drivers share a similar profile to criminals found guilty of non-traffic offences.\textsuperscript{103} It may also suggest that these drivers may have a general proclivity to offend and, perhaps, that they may be harder to deter.

How often?

5.1.4 There is a large body of research that suggests that many, perhaps even most disqualified/suspended drivers drive while prohibited from doing so. There is evidence that some drivers will limit their driving whilst the disqualification/suspension is in force. There is also some evidence that many disqualified/suspended drivers are recidivist offenders.

5.1.5 The MUARC Report reported that the majority of the study’s participants admitted to driving disqualified/suspended, some intermittently observing the prohibition from driving and others showing blatant disregard for it.\textsuperscript{104} Only 12.5 per cent (5 out of the 40) of the participants in the MUARC stated that they intended to refrain from driving entirely within the period of the disqualification/suspension.\textsuperscript{105}

5.1.6 A 1990 Western Australian survey\textsuperscript{106} of 1,313 disqualified and suspended drivers found that 35.8 per cent admitted to driving whilst prohibited from doing so. The authors noted that the cross-tabulation of answers in the survey suggested that this figure was understated rather than overstated by the survey participants. A 2003 Western Australian study by Ferrante\textsuperscript{107} on the use and effectiveness of licence disqualification as a sanction similarly found that more than half of the disqualified drivers surveyed admitted to driving whilst disqualified. Ferrante cites studies from the United States (‘US’) that estimate the proportion of disqualified drivers who drive illegally as ranging from 25-75 per cent.\textsuperscript{108}

5.1.7 Ferrante suggested that disqualified/suspended drivers are often recidivist disqualified/suspended driving offenders. Her study found that of the recorded disqualifications/suspensions in Western Australia, under half (44.6 per cent) of the disqualified/suspended drivers had one licence disqualification/suspension, 15.6 per cent had two disqualifications/suspensions, 8.1 per cent had three disqualifications/suspensions, and just over one quarter (26.2 per cent) of all disqualified/suspended drivers account for over three-quarters (76 per cent) of the recorded disqualification/suspensions in that state.\textsuperscript{109}

Crash risk

5.1.8 A number of studies have concluded that disqualified/suspended drivers pose a greater crash risk than licensed drivers. It has also been suggested that many of these drivers also engage in other criminal conduct, which may involve other risky conduct. While the typical age and gender profile for disqualified/suspended drivers (young and male) matches that of high-risk licensed

\textsuperscript{101} Ibid 274.
\textsuperscript{102} Ibid 282.
\textsuperscript{103} This is also discussed in Knox, Turner and Silcock, above n 97, 130.
\textsuperscript{104} Clark and Bobevski, above n 92, 71.
\textsuperscript{105} Ibid.
\textsuperscript{106} D. Smith and G. Maisey, Survey of Driving By Disqualified and Suspended Drivers in Western Australia (Federal Office of Road Safety, 1990).
\textsuperscript{107} Anna Ferrante, The Disqualified Driver Study: A Study of Factors Relevant to the Use of Licence Disqualification as an Effective Legal Sanction in Western Australia (Crime Research Centre – University of Western Australia, 2003).
\textsuperscript{108} Ibid, v, 13, 65.
\textsuperscript{109} Ibid vii.
drivers generally, there is evidence that, even compensating for this, disqualified/suspended drivers have a significantly greater crash risk.

5.1.9 As well as disqualified/suspended drivers showing some tendencies to repeat disqualified driving, the Rose study also found that many of the incidents of serious traffic offences involved multiple crimes being committed in the same course of conduct: 62 per cent for serious traffic offences generally. The rate of multiple offending was highest for disqualified driving: 75 per cent of prosecutions for this crime involved more than one offence. Other serious traffic offences were considerably less likely to involve multiple offences in the same course of conduct. For example, only 41 per cent of the cases of drink driving involved multiple offences being committed. A 2003 UK study by Knox, Turner and Silcock on unlicensed driving (including disqualified driving/driving suspended and unlicensed driving) mirrored these statistics, suggesting that the comparative crash risk of unlicensed drivers was 2.7 to 9 times greater than for licensed drivers.

5.1.10 A 2003 Queensland report by Watson reached very similar conclusions. The report also cited a number of Australian and overseas studies which found that these drivers were involved in a proportionately much greater number of accidents than are licensed drivers. A US study cited in the report found that these drivers were involved in 4 times more accidents and that 11.1 per cent of all accidents involved unlicensed drivers.

5.1.11 Respondents in DWD/S surveys sometimes report that they drive more safely to avoid detection and some studies have discussed the notion of whether the avoidance of detection may act as a reward for safer driving. Watson considered this notion and dismissed it in line with the findings of other studies in the area: disqualified/suspended drivers may take preventative measures to avoid detection but these measures themselves being aimed at minimising detection rather than increasing safety. The figures cited above on crash risk would appear to confound the proposition as does the evidence that links DWD/S to other high-risk behaviours.

5.1.12 Australian studies on DWD/S have concluded that drivers’ prior driving history (as evidenced by demerit points or simply their previous offences alone) can be predictive of their future crash involvement. One of the more contentious causes of suspensions is suspension by accrual of demerit points. Though some may regard such drivers as being less dangerous (and therefore

110 See generally Rose, above n 95.
111 Knox, Turner and Silcock, above n 97, 17.
112 Barry Watson, The Road Safety Implications of Unlicensed Driving: A Survey of Unlicensed Drivers (Centre for Accident Research and Road Safety and Queensland University of Technology, 2003). The report surveyed offenders found guilty of driving disqualified and unlicensed driving and asked them about their attitudes and motivations. The report also utilised the results of existing studies in this area. This report did not distinguish between disqualified/suspended driving and unlicensed driving. Despite this, the results are nevertheless of obvious relevance.
113 Ibid 6, citing Lindsay Griffin and Sandra de la Zerda, Unlicensed to Kill (Foundation for Traffic Safety, 2000). This conclusion was re-confirmed in Robert Scopatz, Clayton Hatch, Barbara Hilger Delucia and Kelly Tays, Unlicensed to Kill 2 (Foundation for Traffic Safety, 2003).
115 Also discussed Clark and Bobevski, above n 92, 75-6 and in Knox, Turner and Silcock, above n 97, 131.
117 Ibid 8 citing figures from Griffin and de la Zerda, above n 113 that 74.1 per cent of the revoked drivers involved in fatal car crashes in their study had consumed alcohol compared to 19.9 per cent of the licensed drivers.
118 Clarke and Bobevski, above n 92, 9-10 citing Kathy Diamantopoulou, Max Cameron, David Dyte and Warren Harrison, The Relationship Between Demerit Points Accrual and Crash Involvement (Report No. 116, Monash University Accident Research Centre, 1997). This study compared a sample of peoples’ driving records over a two-year period to their crash involvement in the following two years. The major aim of the study was to find out what type of model was most accurate in predicting crash risk in terms of classifying the number of offences committed, the type of offences committed, the number of demerits points accrued, data on previous crash history or a combination of these factors. Their conclusion regarding predictive models is not of relevance to this paper, however their other conclusions are.
less deserving of suspension) than drivers who are disqualified/suspended as a result of a single more serious traffic offence, there is a need for more research in this area. The existing research is somewhat dated and the evidence does not bear out this belief that such drivers are necessarily less dangerous. A study by Diamantopoulou et al found a close correlation between driving history (whether by offence type, demerit points accrued, previous crash involvement or a combination of these variables) and future crash involvement. People who commit offences/accrue demerits have a much greater crash risk than those who do not. While the risk profiles may vary by reference to the cause of the disqualification/suspension, such drivers nevertheless have a greater crash risk.

5.1.13 As the modes of licence loss become more varied, particularly via administrative means, there is a need to assess the extent to which subgroups of disqualified/suspended drivers exist and whether these subgroups exhibit different risk profiles.

5.1.14 In the United States, Gebers and de Young examined the characteristics and relative crash risk of disqualified/suspended drivers. They analysed the driving records of a sample of three groups of drivers. The first group were drivers whose licences had been disqualified/suspended. The second was a random sample of Californian licensed drivers. The third group was a sample of licensed drivers who were deliberately chosen from a high risk class of drivers: male and under 25 years of age. Gebers and de Young divided the sample up by reference to the reason for the loss of licence. The categories included such groupings as physical/mental impairment, lack of skill, negligent operators and loss of licence due to failure to pay moneys (similar to Infringements Act 1999 (Vic) suspensions). Some of these categories tended to share demographic characteristics (for example, groups with physical/mental impairments tended to be older). Disqualified/suspended drivers were predominately male across the categories and tended to be younger. Gebers and de Young found that the risk profile of the various subcategories of disqualified/suspended drivers varied significantly. All categories had higher crash and conviction rates than those of the validly licensed drivers generally and somewhat higher rates than those of validly licensed 25-year-old males. The validly licensed 25 year-old males were found to have a slightly higher risk profile than general drivers (they were found to be 1.37 times more likely to be involved in a fatal/serious crash) but were still found to have a substantially lower risk profile than disqualified/suspended drivers.

5.1.15 Victorian research into the crash risk of disqualified/suspended drivers and motorcycle riders has concluded that disqualified drivers and riders were over-represented in serious accidents, crashes occurring in recreational times, single-vehicle crashes and crashes involving stationary objects. There is also evidence that disqualified/suspended drivers who are involved in crashes are 3 times more likely to be drink driving at the time.

119 Clarke and Bobevski, above n 92, 10 citing Diamantopoulou, Cameron, Dyte and Harrison, above n 118 79-81.
120 Ibid 15. See also Watson, above n 112, 12.
121 Michael Gebers and David de Young, An Examination of the Characteristics and Traffic Risk of Drivers Suspended/Revoked for Different Reasons (Report No. CALIF M500 R4r no.192, California Department of Motor Vehicles, 2002).
122 The Californian terminology for disqualified is ‘revoked’.
123 Clark and Bobevski note that the Gebers and de Young study had some limitations in terms of its methodology because, despite including a groups of licensed 25 year old male drivers in the cohort, they did not control for age or gender amongst the disqualified/suspended drivers. See Clarke and Bobevski, above n 92, 17.
124 Warren Harrison, ‘An Exploratory Investigation of the Crash Involvement of Disqualified Drivers and Motorcyclists’ (1997) 28(2) Journal of Safety Research 105. Harrison considered the involvement of disqualified drivers and motorcycle drivers in collisions by assessing the Victorian database of crashes with the total reported automotive injuries in a sample period and cross-referencing the data.
5.2 Sentencing purposes

Introduction

5.2.1 The five principal purposes of sentencing that have been identified in sentencing literature and in the literature specifically dealing with DWD/S are: retribution, deterrence, rehabilitation, incapacitation and denunciation. The *Sentencing Act 1991* (Vic) s 5 incorporates these sentencing purposes under the broader headings of: punishment, deterrence, rehabilitation, protection of the community and denunciation. For consistency, this discussion paper will adopt the terminology generally used in sentencing literature and in the literature specifically dealing with DWD/S, though it is noted that the purposes identified under the Act incorporate a broader range of considerations than retribution, deterrence, rehabilitation, incapacitation and denunciation. Denunciation is not addressed in any detail in any of the major studies on DWD/S so will not be directly addressed in this discussion paper.

5.2.2 A number of studies have attempted to assess the effectiveness of licence disqualification/suspension in achieving these, some by interviewing offenders and gauging their responses to their own sanctions and others by focusing on the actual sentences and reported incidents of offending.

5.2.3 A number of purposes have been identified for licence disqualification or suspension as a sanction: retribution (to punish offenders to reflect their blameworthiness), deterrence (deterring the offender or other would-be offenders from offending in the future) and incapacitation (restraining the offender for the period of the disqualification or suspension).

Retribution

5.2.4 In her 1993 UK study Mirrlees-Black interviewed 90 disqualified/suspended drivers and attempted to assess the effectiveness of licence disqualification/suspension in achieving retribution among other sentencing purposes. Mirrlees-Black concluded that disqualification was an effective sanction for achieving retribution. The vast majority of the disqualified drivers indicated that the disqualification had a serious effect on their lives, though the precise impact of the disqualification varied according to the length of the disqualification and the personal circumstances of the drivers. Most disqualified drivers reported that they drove. This may, indirectly, cast doubt upon whether disqualification actually successfully exacts retribution upon such drivers.

5.2.5 Ferrante’s 2003 Western Australian study involved interviews with disqualified/suspended drivers. The study concluded that disqualifications/suspensions can have a marked effect on disqualified/suspended drivers’ employment and family lives, particularly for those living further away from public transport, those who work non-standard hours and those who need to drive as part of their employment. This finding has also been made in other Australian and overseas studies. These factors influenced the perceptions of fairness and ultimately offenders’ motivation to drive disqualified/suspended: the greater the impact of the disqualification/suspension, the greater the likelihood of a disqualified/suspended driver driving.


127 Ferrante, above n 107.

128 Ibid vii.

129 See, for example, Clarke and Bobevski, above n 92, 65; Watson, above n 112, 12; Knox, Turner and Silcock, above n 97, 14.

130 Ferrante, above n 107, 65.
confirmed in a recent NSW study.\footnote{131} While Ferrante noted that disqualification/suspension was, to this extent, effective in achieving retribution, it might also be suggested that a more retributive sentence could, paradoxically, encourage rather than discourage offending.\footnote{132}

**Deterrence**

5.2.6 General deterrence was not assessed as part of the Mirrlees-Black study. The study did attempt to assess the specific deterrent value of licence disqualification. According to the responses of the disqualified drivers, deterrence seemed to be moderately successfully achieved, most participants saying that they would not commit the offence that led to them being disqualified from driving. The study, however, relied on offenders’ self-reporting rather than their actual subsequent driving records. As noted above, most drivers stated that they either would or had driven within the disqualification/suspension period which suggests that, despite their own contrary assurances, the sanction may not effectively deter then in the future.

5.2.7 Ferrante also noted that disqualification/suspension has a low level of specific deterrence. Many disqualified/suspended drivers continue to drive because there is a perceived low risk of detection.\footnote{133} Nevertheless, some disqualified/suspended drivers reported being deterred either partially or entirely from driving.\footnote{134} Drivers with no criminal record, drivers without a repeat traffic offence, female and non-Indigenous drivers were less likely to drive disqualified/suspended while drivers with past criminal records and no strong social attachments were less likely to be deterred.\footnote{135} The general deterrent effect of disqualification/suspension was more equivocal.

5.2.8 The MUARC Report reached very similar findings regarding the perception of disqualified/suspended drivers of risk of detection.\footnote{137} Drivers opting to drive in breach of their disqualification/suspension can learn punishment avoidance techniques which can further lower the perception of detection. This is particularly troubling give that, due to current Victorian legislation on licensing and on roadside breath tests, contact with law enforcement officers may often involve no licence check and even where one is conducted, the driver may be able to bluff his or her way through by using an invalid licence or the licence of a friend/family member.\footnote{138}

5.2.9 Watson similarly found that deterrence theory does not explain driver behaviour very well.\footnote{139} He noted that while deterrence theory cannot be entirely discounted as a result of this, there is a need to address punishment avoidance mechanisms and to address the psychosocial factors that underlie such conduct.\footnote{140}

\footnotetext[131]{See Steve Moffat and Suzanne Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences* (Contemporary Issues in Crime and Justice No. 106, NSW Bureau of Crime Statistics and Research, 2007) 9-10. Moffat and Poynton found that there was no evidence suggesting that longer licence disqualifications reduced recidivism and actually found that, for speeding offences, longer licence disqualifications actually seemed to increase the risk of re-offending.}

\footnotetext[132]{This is also discussed in Knox, Turner and Silcock, above n 97, 129.}

\footnotetext[133]{Ferrante, above n 107, 64.}

\footnotetext[134]{Ibid.}

\footnotetext[135]{Ibid.}

\footnotetext[136]{Clark and Bobevski, above n 92, 26 (citing Ferrante, above n 107, 64).}

\footnotetext[137]{Ibid 84-6.}

\footnotetext[138]{Watson discussed these issues as well as including direct and vicarious experience of punishment avoidance (see Watson, above n 112, 39-44, 55-64).}

\footnotetext[139]{Barry Watson, ‘How Effective is Deterrence Theory in Explaining Driver Behaviour: A Case Study of Unlicensed Driving.’ (Paper presented at the Road Safety: Research, Policing, Education Conference, Perth, Western Australia, November 2004).}

\footnotetext[140]{Ibid 9.}
Incapacitation

5.2.10 Mirrlees-Black found that incapacitation was the most problematic purpose in terms of licence disqualification. Ferrante also found that, due to the high levels of self-reported driving by disqualified/suspended drivers, incapacitation is not particularly effectively achieved. The statistics for rates of DWD/S in Victoria and general evidence regarding its prevalence would seem to support this. Ferrante, however, noted that of the disqualified/suspended drivers who are not wholly incapacitated, some may be partially incapacitated from driving which will still deliver some correlative road safety benefits. Ferrante notes, however, these safety benefits, be they simply driving less frequently or driving carefully so as to avoid detection, ‘tend to occur only while the licence disqualification [or suspension] is in place’ [original emphasis]. Ferrante also points out that any such safety benefits arising out of this limited incapacitation may well be counteracted by other financial and social implications such as disqualified/suspended drivers’ absence of insurance.

Rehabilitation

5.2.11 The absence of consideration of rehabilitation at all in many studies, such as Mirrlees-Black (which only assessed retribution, deterrence and incapacitation) is indicative of the unavailability and thus lack of use of rehabilitative sanctions for DWD/S. There have been, nevertheless, a few studies conducted on rehabilitation for DWD/S. Bakker et al analysed the results of a rehabilitative program run in New Zealand for 144 recidivist disqualified/suspended drivers ranging from 18-56 years of age. The participants were assessed regarding their motivation for participation and their intellectual aptitude and unsuitable people were screened out of the program. Treatment was conducted over 10 weeks in groups of 8-12 offenders. The groups met for 4 days a week for 2.5 hours. The treatment was aimed at trying to help offenders see the chain of behaviours leading to driving and identifying strategies to address those risk-inducing behaviours. The treatment also attempted to address offenders’ cognitive processes to preclude distortion and blame shifting/minimising behaviours. The offenders’ criminal histories were assessed and compared to match control statistics for re-offending. The study found that there was an 18 per cent reduction in convictions for DWD/S (though not necessarily for other offences) in the test cohort.

5.2.12 The MUARC Report found that current sanctions fail to succeed in bringing about positive attitudinal change and/or behavioural changes in disqualified/suspended drivers. It concluded that:

To decrease or prevent the road risk that disqualified drivers pose it is necessary to implement best practice rehabilitation programs to address perceptions and behaviours related to speeding, drink driving, and other dangerous driving.

141 Mirrlees-Black, above n 126.
142 Ferrante, above n 107, 65.
143 Ibid.
144 Ibid.
145 Ibid.
147 Ibid 540.
148 Ibid 540-1.
149 Ibid 554.
150 Clark and Bobevski, above n 92, 110.
5.2.13 The Watson and Knox, Turner and Silcock studies reached the same conclusions as the findings of the MUARC report. Watson cited a growing body of evidence that rehabilitation programs for serious traffic offending including disqualified driving have been successful when used alongside other licence sanctions and recommended the trialling of rehabilitative sanctions, particularly for recidivist disqualified drivers and, if successful, incorporation of them within the sanctioning hierarchy. Knox, Turner and Silcock made the same recommendation.

5.2.14 All of the above studies stressed that the relatively low detection rates for disqualified driving meant that many offenders are not being effectively deterred even where there are very severe sanctions imposed. Because of the behavioural aspects of this type of offending, incapacitation by means of imprisonment, which is used generally for recidivist disqualified/ suspended drivers, will only be effective for the duration of that sanction. There is a very high chance that such offenders will continue to drive upon being released into the community. The MUARC Report quoted two participants interviewed as part of that study who said:

> Until you can actually recognise on your own that you know about ways to stop going down the same paths…. Until you get to that point in time that I’ve learnt [sic]. It’s only two years of going through it and living through it and then eventually it gets wasted, not overnight waking up but it’s just growing and maturing a lot and it seeing what’s happening and that’s really been my learning curve because all the stuff that you have told, that didn’t teach me anything [sic]. I’d just even go harder the next time and how to avoid it and which road not to go down and you just hop in your car drinking…[sic] I think it’s a lot to do with maturity and what’s upstairs, how you think.

> …I didn’t think about anybody else and that’s the reason that happened and now I’m in a world where I do think of everyone else and I think that’s the message. We’ve got to think of others. Which is your point before, I could have knocked someone over. I didn’t even think of that. You don’t even think of anybody else but yourself.

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151 Watson, above n 112, 24.
152 Knox, Turner and Silcock, above n 97, 120.
153 Watson, above n 112, 24.
154 Watson, above n 112, 89.
155 Knox, Turner and Silcock, above n 97, 120.
156 Clark and Bobevski, above n 92, 82.
157 Ibid.
6. Sanctions for driving while disqualified or suspended

6.1 Current sanctions

6.1.1 The primary sanctions that may be imposed by courts in respect of DWD/S are:

- fines;
- imprisonment (immediate or suspended wholly or partially);
- intensive correction order; and
- a range of other sanctions such as home detention.

6.1.2 Figure 4 (above) indicates that from 2004-07 the most common sanction imposed by the Magistrates’ Court for DWD/S was a fine (59.4 per cent of cases). The next most common sanction imposed was a wholly suspended sentence of imprisonment (20.1 per cent of cases), followed by an immediate sentence of imprisonment (8.5 per cent of cases). An intensive correction order (5.0 per cent of cases) was the next most common sanction. A range of lesser-used sanctions made up the remaining 6.9 per cent of cases.

6.1.3 In addition to primary sanctions, there is a range of ancillary sanctions that may be imposed for DWD/S.

Primary sanctions

Fines

6.1.4 Fines are the most common sanction used in respect of DWD/S. They are available to a court when sentencing a first-time DWD/S offender but not when sentencing a recidivist offender. Recent Australian research has found that there is minimal evidence that fine levels play any positive role in deterring offenders from re-offending.\(^{158}\)

Imprisonment

6.1.5 Sentences of imprisonment, both immediate custodial and wholly/partially suspended sentences, are imposed in a significant number of cases. A prison sentence is currently mandatory for recidivist s 30 offenders though, at present, any such sentence can be wholly suspended. If suspended sentences are abolished in Victoria, courts will be required to impose immediate custodial prison sentences on potentially much larger numbers of offenders. This is likely to have attendant social and economic costs. The real recurrent cost of imprisoning an offender in Victoria is approximately $200 per day\(^{159}\) translating to $74,642.50 to house a prisoner for 365 days.

Other sanctions

6.1.6 A range of other primary sanctions may be imposed by courts for DWD/S including home detention,\(^{160}\) youth justice centre/youth residential centre orders\(^{161}\) and community-based orders.\(^{162}\) The power of courts to impose some of these sanctions on recidivist s 30 offenders is circumscribed by the current mandatory prison sentence contained in the section.

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158 Moffat and Poynton, above n 131, 9-10.
160 *Sentencing Act 1991* (Vic) s 18ZT.
161 *Sentencing Act 1991* (Vic) s 32.
162 *Sentencing Act 1991* (Vic) s 36.
Ancillary sanctions

6.1.7 Ancillary sanctions are sanctions that a court is either at liberty to, or in some cases must, impose on an offender, but which do not form a part of the core sanction for the offence. Ancillary sanctions that currently can be imposed for DWD/S include:

- licence disqualification/suspension;
- de-registration of a vehicle; and
- immobilisation, impoundment and forfeiture of the vehicle.

Licence disqualification/suspension

6.1.8 This sanction has been discussed in detail above in Part 3. Despite this, it is perhaps worth noting that courts are given a broad discretion to impose periods of disqualification/suspension on offenders convicted of any offence under the *Road Safety Act 1986* (Vic) and any offence in relation to the driving of a motor vehicle. A court then could clearly impose this sanction on a person convicted of DWD/S. It seems trite to suggest that this sanction may not deter disqualified/suspended drivers from offending in the future.

De-registration of a vehicle

6.1.9 Under the *Road Safety Act 1986* (Vic) s 31, courts are a given a discretion to order that the registration of the vehicle in/on which the traffic offence incurred be cancelled by VicRoads. Where the vehicle belongs to the offender, the court may also issue an order to VicRoads not to re-register the vehicle for such time as the court specifies. There are protections for third parties contained within s 31, which require the court to give an opportunity to third parties substantially affected by these orders to make representations to the court.

Vehicle immobilisation, impoundment and forfeiture

6.1.10 Under Part 2 of the *Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005* (Vic), the *Road Safety Act 1986* (Vic) was amended to provide for the immobilisation, impoundment and forfeiture of motor vehicles. These amendments are found under *Road Safety Act 1986* (Vic) part 6A. The amending Act received royal assent on 29 November 2005 and came into force on 1 July 2006. Aimed at addressing so-called ‘hoon’ driving, the provisions can be utilised where there are repeated commissions of ‘relevant offences’. Relevant offences are defined as:

- improper use of a vehicle where one or more tyres lose traction;
- exceeding the speed limit by 45km or more (or 25km or more in a 110km zone);
- engaging in a race or street trial;
- careless driving where it involves the improper use of a motor vehicle;
- dangerous driving where it involves the improper use of a motor vehicle;
- failure to have proper control of a vehicle where it involves the improper use of a motor vehicle;

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163 *Road Safety Act 1986* (Vic) s 28(1)(b).
164 *Road Safety Act 1986* (Vic) s 31(1).
165 *Road Safety Act 1986* (Vic) s 31(2).
167 As per the commencement provisions under *Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005* (Vic) s 2 and under *Road Safety Act 1986* (Vic) s 84E.
168 A ‘hoon’ is a slang Australian term meaning ‘a loutish, aggressive, or surly youth [or]... a fast, reckless driver of cars or boats’ (see *MacQuarie Dictionary* (revised 3rd ed., 2003) 914).
• causing a vehicle to make excessive smoke or noise where it involves the improper use of a motor vehicle; and
• repeat instances of DWD/S.  

6.1.11 In order for it to become operable, a person needs to have previously been found guilty of one of the above offences after Part 6A’s commencement. If, after Part 6A is triggered (which may be via an infringement notice), a member of Victoria Police reasonably believes that a vehicle has been used in the preceding 10 days in the commission of a relevant offence, that officer has the power to immobilise or impound the offender’s vehicle for 48 hours.  

If an offender commits a second relevant offence within 3 years of the first relevant offence (that is, after Part 6A has been triggered and a relevant offence committed after that time), the Chief Commissioner of Police can seek an order from a court for the immobilisation or impoundment of a vehicle for up to 3 months.  

If an offender commits a third (or subsequent) relevant offence within 3 years of the first relevant offence, the Chief Commissioner of Police can seek an order from a court that the vehicle be forfeited to the Crown. The vehicle can then be sold by the Chief Commissioner on behalf of the Crown. 

The Act sets out a list in priority of which the proceeds should be applied.  

6.1.12 If the offender was driving another person’s vehicle at the time of the relevant offence, Part 6A provides for vehicle substitution and also precludes the sale of vehicle so as to avoid the operation of the legislation. Third parties with rights in vehicles have a right to bring an application where they are affected by forfeiture order. The offender will be liable for the costs of immobilisation or impoundment. Offenders have limited rights of appeal under Part 6A on the grounds of exceptional hardship and provision is made for the Crown to pay for the costs of immobilisation or impoundment if the charges are not made out or are discontinued. 

6.1.13 Immobilisation, impoundment and forfeiture help establish a link between the nature of the offending and the sanction itself. This may help to limit the blame transference amongst s 30 offenders that has been reported in a number of studies as well as help deter offenders. The MUARC Report generally observed that disqualified/suspended drivers generally exhibited an unwillingness to take responsibility for their own previous illegal driving behaviour in relation to the disqualification/suspension being imposed. Several interviewees are quoted in the MUARC Report as saying that vehicle sanctions would assist compliance, reduce drivers’ temptation to drive and also serve to punish them further.

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170 See also Road Safety Act 1986 (Vic) ss 84F, 84C(1) (the latter section defines ‘designated period’ which changes by reference to the number of relevant offences committed).
171 Road Safety Act 1986 (Vic) s 84S.
172 Road Safety Act 1986 (Vic) s 84T.
173 Road Safety Act 1986 (Vic) s 84ZR.
174 Road Safety Act 1986 (Vic) s 84ZS.
175 Road Safety Act 1986 (Vic) s 84V.
176 Road Safety Act 1986 (Vic) ss 84X, 84YA, 84YB.
177 Road Safety Act 1986 (Vic) s 84ZF.
178 Road Safety Act 1986 (Vic) ss 84L, ZD.
179 Road Safety Act 1986 (Vic) s 84O.
180 Road Safety Act 1986 (Vic) s 84R.
181 See, for example, Clark and Bobevski, above n 92, 71-2.
182 Ibid 81.
183 Ibid 80.
184 Ibid 81.
6.1.14 These sanctions will be effective in incapacitating disqualified/suspended driver from using their own vehicle for the duration of the immobilisation, impoundment (or, in the case of forfeiture, permanently). Paradoxically, however, they will not preclude a driver from using another person’s vehicle and may even reduce of the risk of detection via automatic number plate recognition ('ANPR') technology (which is discussed below), assuming it is used alongside disqualification/suspension. Additionally, given that employment is cited by many disqualified/suspended drivers as being one of the main reasons for driving disqualified/suspended, immobilisation, impoundment and forfeiture may simply impel disqualified/suspended drivers to take similar steps in order to maintain their employment. Lastly, one of the major outcomes of immobilisation, impoundment and forfeiture for the disqualified/suspended driver will be the loss of the car either for a period or permanently. This may help to highlight the link between the disqualification/suspension and the driver’s own antecedent illegal behaviour. Conversely, the budget neutral nature of these sanctions (which charges the offenders for the costs associated with them) may act to obscure this link and allow offenders to further disown their own actions further. These sanctions may simply be viewed as another ‘revenue raising’ financial sanction and the blame transference mode of thinking reignited. Immobilisation, impoundment and forfeiture may simply become viewed as de facto financial sanctions with the various problems that they entail.

6.1.15 Part 6A has only been in force for just over one and a half years. To date, there have been 4,120 vehicles impounded. In this year alone, 718 vehicles have been impounded for 48 hours. A further 156 vehicles have been impounded for 3 months. Of these vehicle sanctions, the majority of the relevant offences have in fact been DWD/S. To date, no vehicles have been immobilised by Victoria Police.

6.1.16 Ferrante discussed a number of studies on vehicle actions in the US. She noted that though these actions have been found to have substantial specific deterrent value, they do not appear to have had any significant general deterrent value. Ferrante also noted that like licence sanctions, vehicle sanctions are only effective in incapacitating drivers while they are in force. It might also be added that, even where such a sanction is being enforced, an offender is still able to drive vehicles owned by third parties. Watson also discussed vehicle actions but noted there is scarce data to date on their effectiveness.

Conclusion

6.1.17 While there is a variety of primary and ancillary sanctions currently available to Victorian courts in sentencing s 30 offenders, it may be that other sanctions and/or enforcement mechanisms could better deal with such behaviour. These mechanisms may also involve better utilisation of technology to assist in deterring and/or incapacitating disqualified/suspended drivers from driving. Certainly, while there are a broad range of sanctions available to courts in dealing with s 30 offenders, the mandatory sanction prescribed for recidivist s 30 offenders, to some extent, limits the range of sanctions and thereby lessens the flexibility of the court to impose sanctions suitable to the specific offender being sentenced. In view of the facts that there is some evidence that s 30 offences are not a homogenous group and do not necessarily have the same motivations and risk profiles, this is not an ideal state of affairs.

185 ‘Hoon’ clocked at 110km/h’, The Age (Melbourne), 20 March 2007, online.
186 This contrasts practice of the Sheriff’s Office which has similar power to immobilise, impound and sell vehicles under Part 7 of the Infringements Act 2006 (Vic) and regularly makes use of all of these powers.
187 Ferrante, above n 107, 7-8.
188 Ibid 8.
189 Watson, above n 112, 22-3.
6.2 Better enforcement measures?

New primary sanctions

Rehabilitation courses and other therapeutic interventions

6.2.1 Several current disqualified/suspended driver studies have recommended either the use or the trial of rehabilitation courses for disqualified/suspended drivers. While, thus far, such courses have not existed as a sentencing alternative for DWD/S, they have been used for other serious traffic offences such as drink driving in Victoria and elsewhere. In early 2008, the Victorian government indicated its intention to utilise rehabilitative sanctions to address less serious traffic offences. As part of its Arrive Alive 2008-2017 campaign, the Victorian government has announced that it will introduce a new program to give drivers a chance to redeem their demerit points by completing a road safety program. Though the details of this program have not been released at the time of writing this discussion paper, this initiative would seem to evidence a willingness on the part of the current government to consider new approaches in dealing with traffic offences and the behaviours that contribute to such offending.

6.2.2 Rehabilitation courses could be legislated as formal sentencing dispositions. They also could be used, either formally or informally, alongside existing sentencing mechanisms such as adjournments. Rehabilitation could also be incorporated within a diversion program. If established within the criminal justice process rather than as a hurdle requirement for returning to the licensed driver system, these courses would also ensure that those drivers who may choose to remain outside the system would still get some benefit from these educative programs. Given there is a lack of homogeneity among s 30 offenders in terms of the circumstances of the offence triggering the prohibition on driving and also on their subsequent driving whilst subject to the prohibition, rehabilitation would need to be targeted towards specific classes of offender.

6.2.3 Another approach may be to establish a problem-oriented court or court list targeting DWD/S or serious traffic offences. A problem-oriented court is a court that is empowered to address other factors beyond criminal culpability, such as public safety or the welfare of the accused, in order to address underlying causes of criminal behaviour. The court exercises ongoing supervision over the accused who will be required to engage in some sort of program/process aimed at addressing the targeted behaviour and normally is required to plead guilty to the relevant offence. The court takes remedial action, which may include imprisonment if participants fail to engage in rehabilitation programs or commit further offences. Problem-oriented courts are supported by multidisciplinary teams that work closely with participants to facilitate their rehabilitation and collaborate closely with justice and community agencies. Problem-oriented courts exist in most Australian jurisdictions and target a variety of different behaviours and/or offenders. They include drug courts, Indigenous courts and domestic violence courts. These courts exist in many overseas jurisdictions also. The United States has over 80 courts, called ‘driving while intoxicated [or ‘DWI’] courts’, that are dedicated to assisting drug and/or alcohol

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190 Including Clark and Bobevski, above n 92, 110; Watson, above n 112, 24; Knox, Turner and Silcock, above n 97, 120.
191 See Mary Sheehan, Barry Watson, Cynthia Schonfeld, Angela Wallace and Bradley Partridge, Drink Driver Rehabilitation and Education in Victoria (Research Report 0501, Royal Australian Automobile Club of Victoria, 2005).
192 Watson, above n 112, 24-5. See also Knox, Turner and Silcock, above n 97, 29.
195 Ibid.
196 Ibid 196.
197 Ibid.
dependent offenders who drive while impaired and over 200 hybrid drug/DWI courts that also assist such offenders. An emerging body of research suggests that DWI courts have high completion rates and that they reduce recidivism in relation to DWI offences.\(^{198}\) Research on drug courts is more substantial, finding that they are cost-effective compared with imprisonment, that they reduce recidivism and promote participant well-being.\(^{199}\)

6.2.4 Problem-oriented courts are not synonymous with other mechanisms for the delivery of rehabilitative programs such as unsupervised diversions and restorative justice programs. These other innovations, while being court-related and even complementary to problem-oriented courts, lack the ongoing supervision that these courts entail.\(^{200}\)

6.2.5 Given the dangerous behaviours associated with DWD/S and the proclivity for disqualified/suspended drivers to re-offend, it may be worth considering the appropriateness of establishing a problem-oriented court or court list to address either DWD/S alone or serious traffic offences generally. This court could be reserved for recidivist offenders or, equally, could address all incidents of the targeted offences. If the latter approach were adopted, the relevant rehabilitation programs would need to be specifically tailored by reference to the type of offender. Problem-oriented courts are resource-intensive.\(^{201}\) Even if the costs can be offset by their benefits, which cannot be guaranteed, their high setup costs and relatively small-scale operations are substantial hurdles to overcome for governments in resolving to establish such courts.

**Restricted licences**

6.2.6 Unlike some other Australian jurisdictions,\(^{202}\) Victorian road legislation does not provide for the issuing of restricted licences for offenders on hardship grounds. Such licences are used extensively in the US.\(^{203}\) In a sense, these licences are both restrictive and permissive: they allow drivers who would otherwise be prohibited from driving to drive, but are restrictive in terms of the manner and frequency of that driving. They can provide for a variety of restrictions such as allowing a driver to drive only to prescribed places and/or at prescribed times.\(^{204}\) Restrictions could also, theoretically, extend to requiring the driver to drive in a prescribed vehicle only, in a vehicle fitted with monitoring device such as an interlock and/or to drive with or without prescribed passengers. Technically, the use of restricted licences is not a sanction; however, the selective use of restricted licences alongside the existing sanction of disqualification/suspension effectively amounts to an alternative sanction.

6.2.7 It may be that restricted licences would be an appropriate sanction as an alternative to an initial licence disqualification or suspension. The MUARC Report noted that there is very little incentive for disqualified drivers to participate in the licensed driver system.\(^{205}\) The same can be said for suspended drivers, at least whilst they are suspended. The use of restricted licences, either instead of or subsequent to a lesser period of disqualification/suspension, may be one incentive for encouraging such drivers to observe driving prohibitions and thereby lessen the incidence of DWD/S.

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200 Ibid 197-8.

201 Ibid 214.

202 Queensland, Western Australia and the ACT; see Watson, above n 112, 20.

203 Ibid.

204 Clark and Bobevski, above n 92, 99.

205 Clark and Bobevski, above n 92, 109.
6.2.8 A number of studies have indicated that while such sanctions may reduce the incidence of specific offences, such as drink driving, they do not deliver the same reductions in terms of overall offences and collisions. Watson also suggested that the use of such sanctions may actually undermine the general deterrent value of disqualification/suspension by implicitly suggesting the loss of one’s licence is not inevitable where licence loss offences are committed. For this reason, it is not suggested that restricted licences be used as a sanction for DWD/S itself.

Technological measures

6.2.9 Many studies have indicated there are, at best, only very low levels of both specific and general deterrence in respect of DWD/S in Victoria. In other words, many would-be or current disqualified/suspended drivers perceive that, if they drive, they are unlikely to be detected. As a result of this, the potentially serious legal consequences of DWD/S are failing to deter. A number of technological measures have been suggested that may deal with this state of affairs.

Automatic number plate recognition technology

6.2.10 Watson discussed the use of mobile data units and their success in reducing waiting times at vehicle licence checks as well as bringing a fourfold increase in the detection of unlicensed driving among other offences.

6.2.11 Victoria Police has also conducted trials of automatic number plate recognition (‘ANPR’) technology in Victoria. The technology can be used in both fixed and mobile units that are capable of reading number plates of passing cars and promptly alerting either the device operator or a central database where certain number plates are detected. While, thus far, the technology has been trialled mainly in respect of unregistered vehicles (the ANPR devices cross-referencing passing car number plates with the VicRoads current list of registered vehicles) it can also be utilised in respect of DWD/S (by cross-referencing the number plates of cars owned by disqualified/suspended drivers and, where one is detected, performing a licence check on the driver of the vehicle). Operational tests of ANPR technology have already yielded large detection rates for unregistered and disqualified/suspended drivers. In a single day using such scanners, Victoria Police apprehended 34 illegal drivers including 7 disqualified or suspended drivers and 11 people driving unregistered vehicles.

6.2.12 While there may be resource issues associated with the purchase, use and associated enforcement measures arising out of the above technologies, they may assist in raising the perceived risks of detection and thus act to deter some drivers, particularly if used in tandem with an information campaign.

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206 Watson, above n 112, 20.
207 Ibid.
208 Ibid.
6. Sanctions for driving while disqualified or suspended

6.2.13 Some writers\textsuperscript{211} have argued that licence and licence checking technology may help to ensure a greater level of deterrence is achieved by increasing the chances of detection.\textsuperscript{212} There are some issues in respect of licence carrying requirements; as the law stands, not all licence holders are required to carry licences while driving.\textsuperscript{213} This can allow disqualified/suspended drivers to manipulate the system by claiming to be a licensed family member or friend and/or by carrying that other person’s licence documentation.\textsuperscript{214} This would need to change for licence checking technology to be properly utilised. The other main issue that impacts upon the current effectiveness of licence checks is resource allocation: when police are checking licences, they are not able to detect or investigate other offences. Some of the issues regarding licence and checking technology also relate to resource allocation, both for the technology itself and for those who operate the technology.

6.2.14 While Victoria Police often routinely checks drivers’ licences at roadside breath test stations and when pulling vehicles over for other matters, there is no mandatory requirement that drivers’ licences be checked. Often, a licence will only be requested by a police officer when an offence has been detected (for example, a person has been stopped for speeding). Mandatory licence checks would help to bring about a greater perception of risk of detection by police. There are, however, some structural restraints upon such an approach being adopted, particularly where large numbers of vehicles are stopped and processed on a given road or in a given area (for example, as a result of a roadside breath testing station). When conducting roadside drug and alcohol stations, policing officers staffing the station are required by law to ‘ensure that no person is detained there any longer than is necessary’.\textsuperscript{215} This effectively precludes undue delays at such stations. While the law could be changed, this may conflict with broader traffic policy, traffic flows and would be likely to be very unpopular with drivers. Putting these traffic flow issues aside for a moment, there are still resource concerns. If police spend a longer time pulling over each individual driver, particularly those who have not been observed breaking the law, police will have less time to spend detecting traffic offences generally and the police will not be able to stop as many people. This will also, most likely, have implications in terms of revenue despite the prevalence of DWD/S in the community. As such, an increase in licence checks would need to balance these facts to ensure the efficacy of such a program was not lessening that of other traffic policing strategies.\textsuperscript{216}

6.2.15 The current Victorian drivers’ licences do not have a magnetic strip or a microchip in them. Magnetic strips are commonly used in credit cards. Microchips are now commonly used in documents such as passports. The benefit of utilising this type of technology in these types of documents is that it helps prevent the use of forged documentation and, assuming appropriate hardware is freely available, it speeds up scrutiny of documents. This carries with it the theoretical potential to detect prohibited behaviours more easily and/or detect wanted persons. The effectiveness of this type of technology depends on a number of matters:

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\textsuperscript{211} See, for example, Clark and Bobevski, above n 92, 109 and Knox, Turner and Silcock, above n 97, 118.

\textsuperscript{212} See, for example, Knox, Turner and Silcock, above n 97, 115.

\textsuperscript{213} See, for example, Clark and Bobevski, above n 92, 109.

\textsuperscript{214} Knox, Turner and Silcock, above n 97, 129.

\textsuperscript{215} Road Safety Act 1986 (Vic) s 54(4). Subsection 4 has not been exhaustively defined. In DPP v Webb (1992) 16 MVR 367; BC9200003, Ormiston J did not exhaustively define the meaning of the subsection but stated ‘the restriction on the liberty of the subject should be the minimum necessary to enable the test to be carried out’. On this interpretation, Victoria police can only delay a driver at a station for the purposes of administering a roadside breath test.

\textsuperscript{216} There is some discussion already in Australia as to the effectiveness of procedures such as roadside breath tests in catching traffic offenders. Many people, including operational police, argue that targeted tests are more effective in catching offenders rather than broad-brush testing which tends to confirm that most drivers are observing prohibitions such as on drink driving. See, for example, Tristan Swanwick and Michael Wray, ‘Police Urged to Fake RBTs’, Courier Mail (Brisbane), 7 April 2008, 4.
• The accuracy and dependability of the technology, including that embedded in the document itself (magnetic strips and microchips that degrade or which are simply temperamental may be an expensive waste of time) and the technology used to read the documents (undependable document readers, regardless of the dependability of the documents themselves, will similarly render the technology useless);

• The affordability of the technology, including both the embedded technology and that used to read the documents (otherwise functional technology may not be of much use if cost concerns make it uneconomical for it to be widely utilised. If licence readers are not installed in any/many police cars, the technology will not lead to any significant improvement in detection);

• The technology would need to be secure. Forgery and also deliberate attempts to damage the technology would need to be precluded. The latter conduct may be one way in which the holders of disqualified/suspended licences may avoid detection, as many documents that utilise microchip technology, such as passports, remain valid documents in the event of the chip becoming damaged so long as the damage is accidental. A disqualified/suspended driver may then be able to damage the chip to lessen the chances of detection via the new technology, particularly where police are stopping large numbers of vehicles); and

• General factors such as the capacity for disqualified/suspended drivers to use valid licence documents of friends/family members to avoid detection (licence technology would be unlikely to make much of an impact detecting such people).

6.2.16 No Australian jurisdictions currently use technologically enhanced licences, though Queensland plans to test licences with embedded microchips in 2008 and introduce them in 2009 as part of a public-private partnership. It is unclear whether or not VicRoads intends to make use of technological enhancements in Victorian drivers’ licences in the near future.

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217 Regarding US passports, see for example Jenna Wortham, ‘How to: Disable Your Passport’s RFID Chip’ (2007) 15.01 Wired Magazine <http://www.wired.com/wired/archive/15.01/start.html?pg=9> at 4 March 2008. Under Australian Passports Act 2005 (Cth) ss 20(2), 57, the relevant Minister is empowered to issue determinations as to the validity of Australian passports. Under Australian Passports Determination 2005 (Cth) s 5.1 an Australian passport becomes invalid where the photograph or machine-readable zone are damaged so that ‘the Minister is satisfied that it is no longer usable as evidence of the identity and citizenship of its holder or to facilitate international travel’. No specific reference is made to the microchip (the machine readable zone refers to the alphanumeric code at the foot of the second page of the passport under the passport bearer’s photo. The determination does not rule out the use of a passport with a damaged chip so long as it is still ‘usable’ and so long as the damage does not appear to be willful.

218 Under the Australian Passports Act 2005 (Cth) s 34(1) it is an offence to engage in conduct that damages an Australian passport but s 34(2) specifically excludes those who can prove that they have a reasonable excuse.

219 See Caroline Hart, ‘Micro-Chipping away at Privacy: Privacy Implications Created by the New Qld Driver Licence Proposal (2007) 7 QUT Law and Justice Journal 305, 306-7. See also Minister for Transport and Main Roads The Honourable Paul Lucas, ‘Government Shortlists Consortia for Smartcard Driver Licence’ (Ministerial Media Statement, 18 January 2007) unpaginated document. Significant privacy issues have been identified in the use of this technology. While these concerns are important, they are beyond the scope of this discussion paper.
Other Measures

Information campaigns

6.2.17 An information campaign about the penalties for and chances of detection for DWD/S, with or without enhanced detection measures, may help to raise the level of deterrence. The Victorian government has often made use of information campaign to target certain types of driver behaviour and to support specific traffic initiatives.225

6.2.18 Various studies have discussed the appropriateness of information campaigns for dealing with DWD/S and not all have supported such a measure. Watson notes that information campaigns may heighten/reinforce the impact of other measures, particularly, deterrence-focused measures like roadside breath tests.221 Conversely, Watson notes that such campaigns may have the latent effect of promoting ‘a perception that many unauthorised drivers go undetected or it may simply raise awareness of the possibility’.222 The MUARC Report suggested that the effectiveness of information campaigns would be largely contingent upon the undertaking of simultaneous action to decrease instances of punishment avoidance.223 In other words, the bark of the program would need to be supplemented by the bite. Conducting an information campaign without enhanced detection could mean that punishment avoidance (for example, via careful driving or imperfect licence checking procedures) may simply further confirm the perception that there is a low risk of detection for DWD/S.

Third party enforcement

6.2.19 Watson suggested that initiatives to enforce licence disqualification/suspension might be better achieved by using indirect methods. Such methods might include a legal requirement that employers periodically view all employees’ licences. Another would be to mandate stricter requirements on road corporations to take steps to make sure all disqualified/suspended licences are kept out of circulation. These mechanisms would help ensure that offenders could not defeat cursory licence checks and generally enhance the likelihood of effective deterrence.224 These third party compliance mechanisms would not only help preclude offending, they would also assist in workplace safety.225 These third party measures were also endorsed by the Knox, Turner and Silcock unlicensed driver study.226
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*Traffic Act 2004* (NT).

*Transport Operations (Road Use Management) Act 1999* (Qld).

*Vehicle & Traffic Act 1999* (Tas).
### Appendix 1: Inter-jurisdictional comparison

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<th>Offence</th>
<th>Description</th>
<th>Statutory Maximum</th>
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<td>Australian Capital Territory</td>
<td>Road Transport (Driver Licensing) Act 1999</td>
<td>32(1)(a)</td>
<td>Drive disqualified</td>
<td>Drive when licence disqualified</td>
<td>For both offences:&lt;br&gt;First offence – 50 penalty units or imprisonment for 6 months, or both.&lt;br&gt;Subsequent offence – 100 penalty units or imprisonment for 12 months, or both.&lt;br&gt;Currently, 1 penalty unit is $100.</td>
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<td>32(1)(b)</td>
<td>Drive suspended</td>
<td>Drive when licence suspended</td>
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<td>New South Wales</td>
<td>Road Transport (Driver Licensing) Act 1998</td>
<td>25A(1)</td>
<td>Drive disqualified</td>
<td>Drive when licence disqualified</td>
<td>For both offences:&lt;br&gt;First offence – 30 penalty units or imprisonment for 18 months, or both.&lt;br&gt;Subsequent offence – 50 penalty units or imprisonment for 2 years, or both.&lt;br&gt;Currently, 1 penalty unit is $110.</td>
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<td>25A(2)</td>
<td>Drive suspended</td>
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<td>Northern Territory</td>
<td>Traffic Act 2004</td>
<td>31(1)</td>
<td>Drive disqualified</td>
<td>Drive when licence disqualified</td>
<td>For s 31(1):&lt;br&gt;Imprisonment for 12 months (Sentencing Act 1995 (NT) s 16 allows courts to substitute a fine of up to 20 units for other penalties unless excluded).&lt;br&gt;</td>
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<td></td>
<td>32(1)</td>
<td>Drive while not licensed (includes suspensions subject to s 29A)</td>
<td>Drive when licence suspended</td>
<td>For s 32(1):&lt;br&gt;20 penalty units or imprisonment for 12 months (see s 52 of the Act which prescribes general penalties for non-compliance).&lt;br&gt;Currently, 1 penalty unit is $110.</td>
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<td>Queensland</td>
<td>Transport Operations (Road Use Management) Act 1999</td>
<td>78(1)</td>
<td>Driving motor vehicle without a driver licence</td>
<td>Paragraphs (a) and (b) distinguish between court ordered disqualification and demerit disqualification (suspension is the same as the latter see s 127(4))</td>
<td>If the person drives while disqualified by a court order:&lt;br&gt;60 penalty units or imprisonment for 18 months. &lt;br&gt;Otherwise:&lt;br&gt;40 penalty units or imprisonment for 12 months. &lt;br&gt;Currently, 1 penalty unit is $75.</td>
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227 Please note, a slightly different version of this table is featured in Coleman, above n 14, 59-62.
228 Legislation Act 2001 (ACT) s 113.
229 Crimes (Sentencing Procedure) Act 1999 (NSW) s 17.
230 Penalty Units Act (NT) s 3.
231 Penalties and Sentences Act 1992 (Qld) s 5(1)(b).
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<td>Motor Vehicle Act 1959</td>
<td>91(5)</td>
<td>Drive while disqualified or suspended</td>
<td>Disqualification and suspension dealt with under one section</td>
<td>For both offences: First offence – imprisonment for 6 months. Subsequent offence – imprisonment for 2 years. Imprisonment may be substituted, in part or wholly, for a fine under Criminal Law (Sentencing) Act 1998 (SA) ss 18, 34 and the statutory limit for the Magistrates’ Court is $10,000.</td>
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<td>Tasmania</td>
<td>Vehicle &amp; Traffic Act 1999</td>
<td>9(1)</td>
<td>Driving while subject to licence suspension</td>
<td>Driving while licence has been suspended</td>
<td>For s 9(1): First offence – 30 penalty units or imprisonment for 3 months. Subsequent offence – 60 penalty units or imprisonment for 6 months.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13(1)</td>
<td>Driving while disqualified</td>
<td>Driving while licence has been disqualified</td>
<td>For s 13(1): First offence – 40 penalty units or imprisonment for 6 months, or both. Subsequent offence – 80 penalty units or imprisonment for 12 months, or both. Currently, 1 penalty unit is $120.</td>
</tr>
<tr>
<td></td>
<td>Road Safety (Alcohol &amp; Drugs) Act 1970</td>
<td>19A</td>
<td>Driving while disqualified under this Act</td>
<td>Driving while subject to a driving disqualification under the Road Safety (Alcohol &amp; Drugs) Act 1970</td>
<td>First offence – 40 penalty units or imprisonment for 6 months, or both. Subsequent offence – 80 penalty units or imprisonment for 12 months, or both. Currently, 1 penalty unit is $120.</td>
</tr>
</tbody>
</table>

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232  Penalty Units and Other Penalties Act 1987 (Tas) s 3.

233  Penalty Units and Other Penalties Act 1987 (Tas) s 3.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Act</th>
<th>Section</th>
<th>Offence</th>
<th>Description</th>
<th>Statutory Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>Road Safety Act 1986</td>
<td>30</td>
<td>Drive while disqualified/suspended</td>
<td>Driving disqualified and driving suspended are dealt with under the same section</td>
<td>First offence – 30 penalty units or 4 months’ imprisonment. Subsequent offence – imprisonment for not less than 1 month and not more than 2 years. Normally, under the Sentencing Act 1991 (Vic) ss 49, 109(3), a fine may be imposed in addition to or in substitution for a term of imprisonment (where a fine is not otherwise prescribed). The operation of s 49 is expressly precluded by s 30(2). A fine may not be imposed in addition to or instead of a sentence of imprisonment. Currently, 1 penalty unit is $110.12.234</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Road Traffic Act 1974</td>
<td>49</td>
<td>Driving motor vehicle without appropriate driver’s licence</td>
<td>Subsection (2)(a)(iii) deals with driving disqualified while subsection (2)(a)(ii) deals with driving suspended</td>
<td>For both offences: First offence – a fine of not less than 8 or more than 40 penalty units or imprisonment for 12 months. Subsequent offence – a fine of not less than 20 and not more than 80 penalty units or imprisonment for 18. Currently, 1 penalty unit is $50.235</td>
</tr>
</tbody>
</table>

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234 Victorian Government Gazette G12, 22 March 2007, 494 (the gazetted amount for the 2007-08 financial year is provided here but may be varied by the Victorian Treasurer from time to time under the Monetary Units Act 2004 (Vic) s 5(2)).

235 Road Traffic Act 1974 (WA) s 5(1a) (note, this penalty unit only applies in respect of offences under this Act).
Appendix 2: Consultation


On 15 January 2008, the Council held a workshop with representatives of the Office of Secretary of the Department of Justice, Infringements Court (Department of Justice), Infringement Management and Enforcement Services (Department of Justice), VicRoads., Victoria Police, Royal Automobile Club of Victoria, Transport Accident Commission, Monash University Accident Research Centre, and the Victorian Association of Drink and Drug-Driven Services. This discussion paper reflects both the ongoing research of the Council in this area as well as the fruits of the 15 January 2008 workshop.

236 Hoel and Turner, above n 7.