

## **Driving while disqualified or suspended in Victoria: When little works**

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### **Abstract**

All Australian jurisdictions currently use licence disqualification and suspension as a sanction for traffic offences and, increasingly, for non-payment of fines. While these sanctions are not new responses to aberrant driving behaviour, the mechanisms triggering them have changed and increased over the years, particularly licence suspensions for excess demerit points. Over recent years, the number of disqualifications and suspensions has dramatically increased and with them, convictions for the offences of driving while disqualified or suspended.

National and international studies indicate that drivers convicted of these offences pose a greater crash risk to themselves and community. Many suggest that they will often engage in dangerous and/or illegal behaviours while behind the wheel. Investigations on both recidivism and the attitudes of disqualified or suspended drivers themselves demonstrate that many, perhaps even most, do not comply with their driving prohibition. Disqualification and suspension are failing to achieve their sentencing purposes.

The Victorian Sentencing Advisory Council is conducting a review of the causes, consequences of and responses to driving disqualified or suspended in Victoria, with a view to producing a final report in late 2008. This report will provide a review of Australian and overseas studies on the issue and will include Victorian statistics on disqualifications, suspensions and on sentencing for this offence. Additionally, it will evaluate the appropriateness of rehabilitative sanctions to this behaviour and explore ways of better achieving deterrence. This paper will discuss the issues that arise in this area and provide a brief overview of the consultations conducted by the Sentencing Advisory Council and the work it is currently undertaking.

### **Keywords**

Driving disqualified, driving suspended, mandatory sentencing, behaviour change

### **Introduction**

Licence disqualification and suspension have been used in Australian and overseas jurisdictions for many years. Whereas previously these sanctions were imposed solely by a court in response to a finding of guilt for a specific offence, they are now being imposed by other people/bodies. Roads authorities (in Victoria's case, VicRoads) and police are now empowered to impose licence bans on drivers.<sup>3</sup> Some of these powers to disqualify or suspend are mandatory where an offence is committed, while other powers are discretionary.

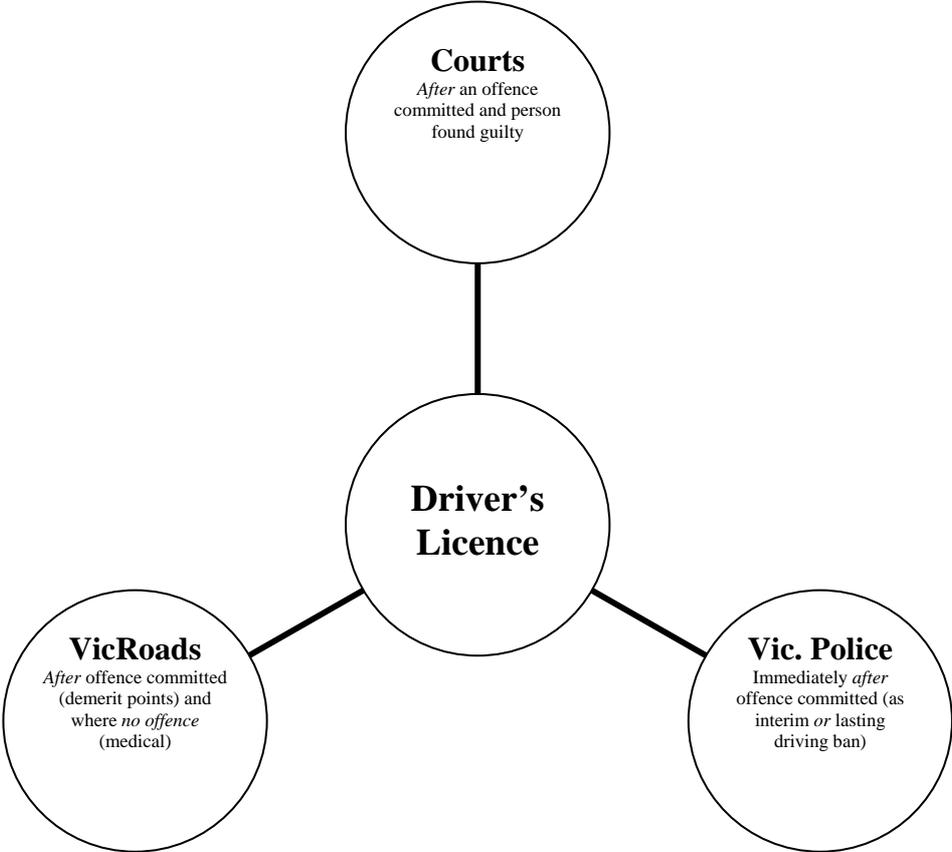
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<sup>3</sup> For details on the scope of the powers of Victoria Police and VicRoads to suspend or disqualify licenses, see Hoel (2008: 11-14).

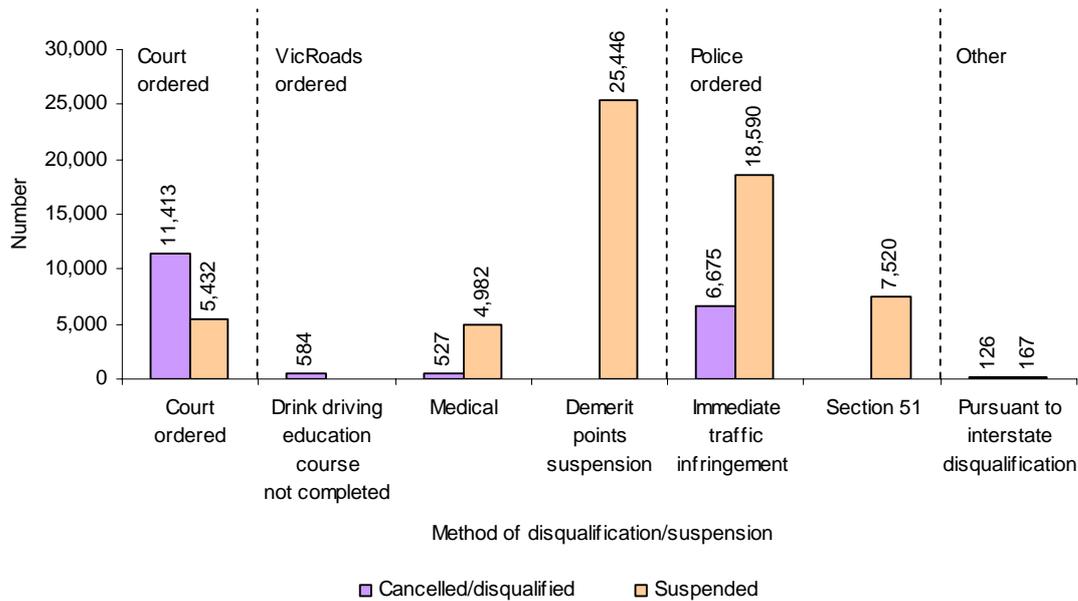
**Figure 1: The bodies empowered to disqualify or suspend drivers' licences**



Licence bans imposed by police and VicRoads, particularly due to accruing excess demerit points, now far exceed those imposed by courts.

Figure 2 sets out the combined causes of suspensions and disqualifications in the year 2006-07.

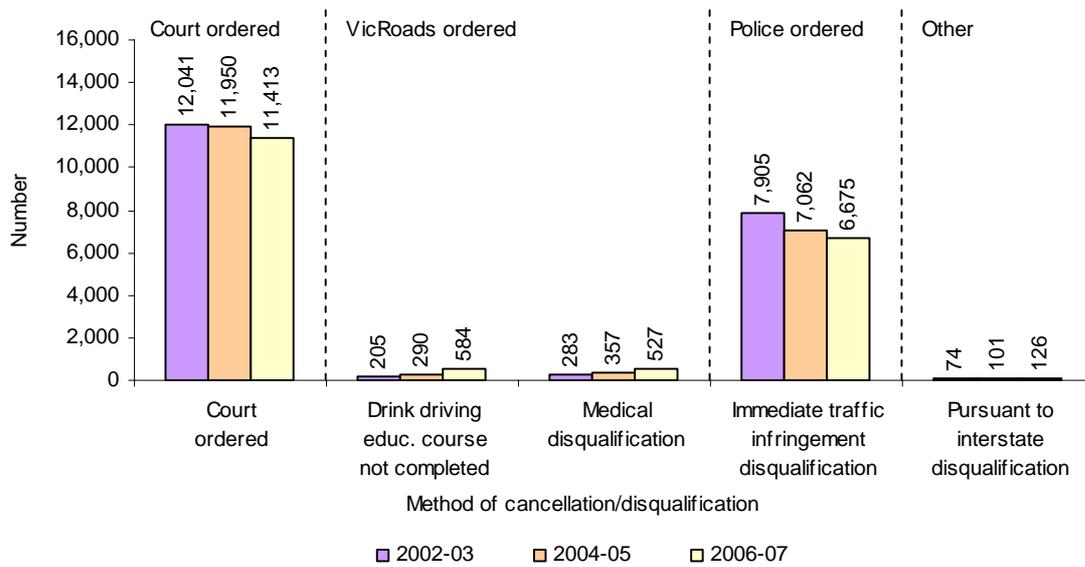
**Figure 2: The number of new licence disqualifications or suspensions by method of disqualification or suspension, 2006-07<sup>4</sup>**



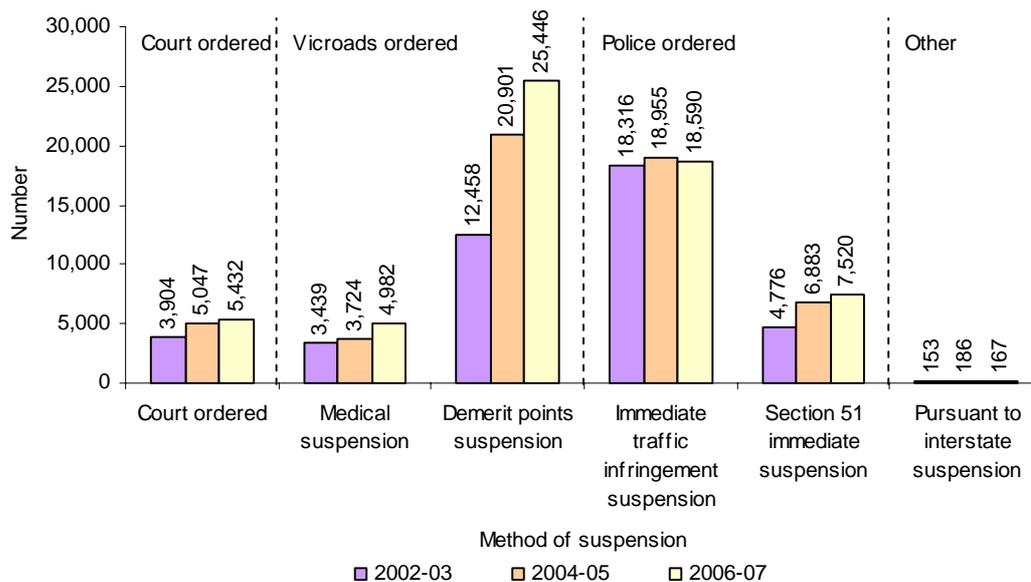
The incidents of disqualification and suspension by reference to most of the causes have increased gradually, remaining fairly stable from year to year. The number of demerit points suspensions has dramatically increased, almost doubling from the years 2002-3 to 2006-07. Figure 3 sets out the causes of disqualifications in the years the years 2002-3 to 2006-07. Figure 4 sets out the causes of suspension in the years the years 2002-3 to 2006-07.

<sup>4</sup> Source: VicRoads. Please note that the data incorporate new disqualifications and new suspensions imposed upon all licence categories (fully licensed, probationary and learner drivers) within the relevant period).

**Figure 3: The number of new licence cancellations/disqualifications<sup>5</sup> by method of cancellation/disqualification, 2002-03, 2004-05 and 2006-07<sup>6</sup>**



**Figure 4: The number of new licence suspensions by method of suspension, 2002-03, 2004-05 and 2006-07<sup>7</sup>**



In roughly the same period, the years 2000-01 to 2006-07, convictions for the offences of driving while disqualified or suspended (found under section 30 the *Road Safety Act 1986*)

<sup>5</sup> Under the *Road Safety Act 1986* (Vic) ss 24, 28A, licences can be cancelled, respectively, by VicRoads or by a court. In this paper, for brevity, we have referred to 'licence disqualification' rather than 'cancellation and disqualification'. The *Road Safety Act 1986* (Vic) largely refers to these terms interchangeably.

<sup>6</sup> Source: VicRoads. Please note that the data incorporate new disqualifications imposed upon all licence categories (fully licensed, probationary and learner drivers) within the relevant period.

<sup>7</sup> Source: VicRoads. Please note that the data incorporate new suspensions imposed upon all licence categories (fully licensed, probationary and learner drivers) within the relevant period.

have increased by a factor of three.<sup>8</sup> In the year 2000-01, approximately 2,850 people were found guilty of driving while disqualified or suspended. In the year 2006-07, approximately 8,600 people were found guilty of the same offence (Sentencing Advisory Council, 2008: paragraph 2.51).

Victoria has some of the harshest penalties in Australia for driving while disqualified or suspended. The maximum penalty for first time offenders is imprisonment for four months. The penalty for repeat offenders is a mandatory sentence of imprisonment for one month and a maximum penalty of imprisonment for 2 years. Figure 5 sets out a cross-jurisdictional comparison of the maximum penalties for driving disqualified or suspended.

**Figure 5: Jurisdictional comparison of maximum sentences for driving disqualified or suspended<sup>9</sup>**

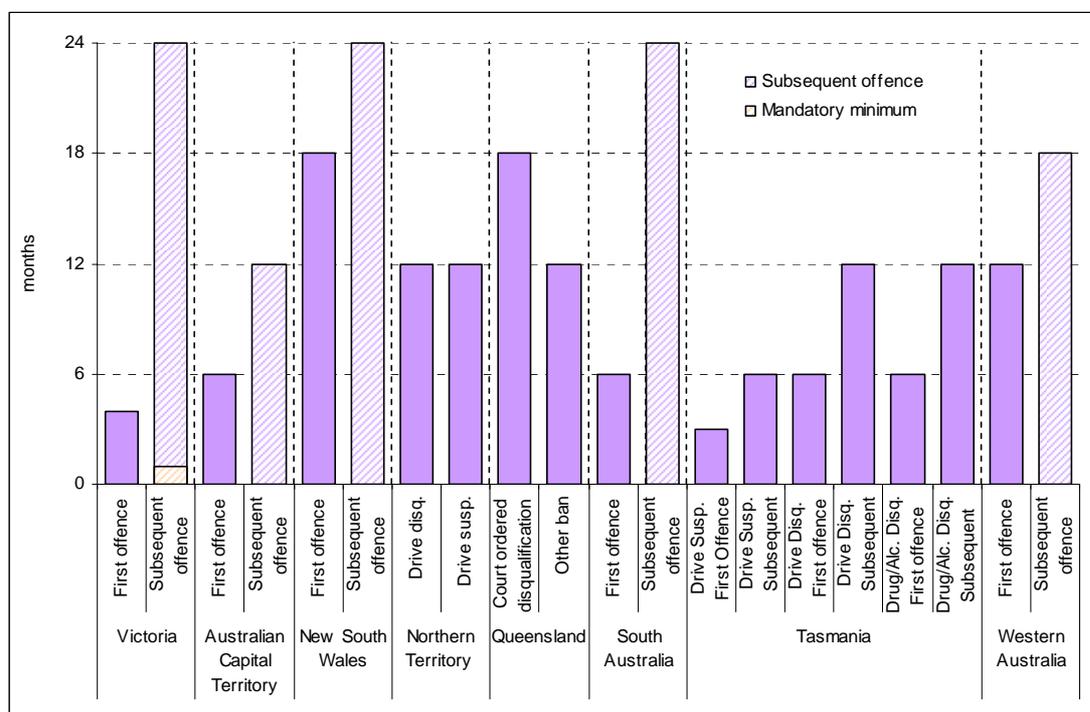
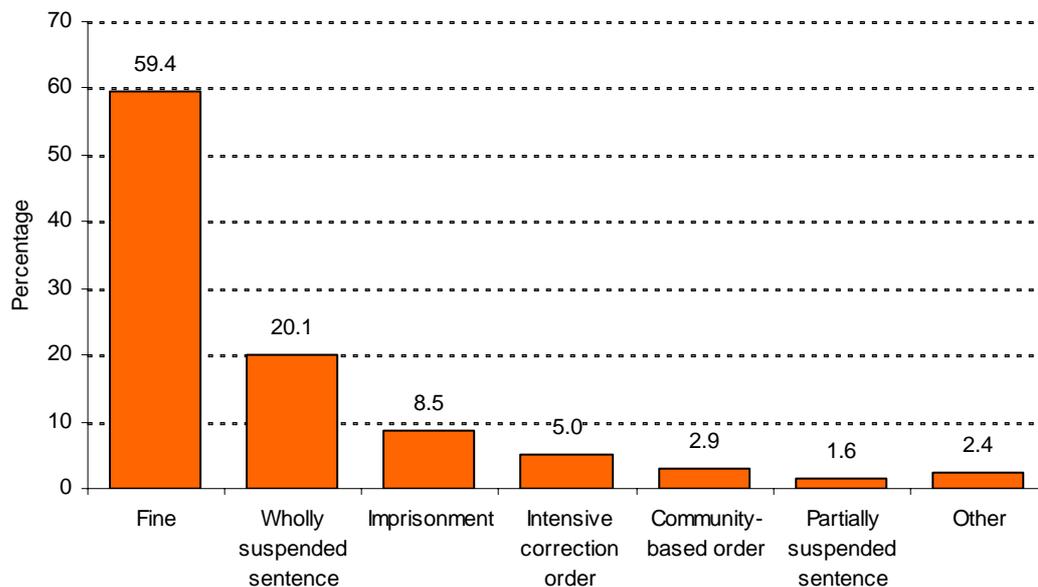


Figure 6 sets out the current sentencing practices for driving while disqualified or suspended (Hoel, 2008: 20-21). Figure 7 sets out the same information but distinguishes between disqualifications and suspensions.

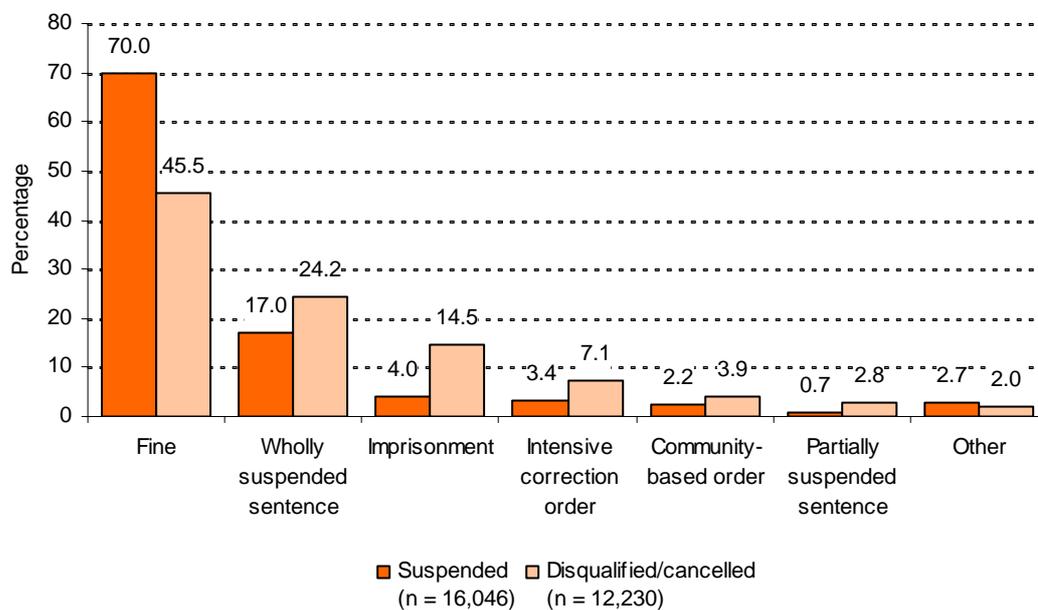
<sup>8</sup> Though falling under a single provision, driving while disqualified or suspended encompasses two distinct offences, driving disqualified and driving suspended. For simplicity, we have referenced to them in the singular (e.g. the ‘offence of driving while disqualified or suspended’ etc).

<sup>9</sup> Note, some jurisdictions have separate offences for driving disqualified and driving suspended. Some also have variants of these offences where the offences involve other licence bans (see Appendix 1 of Hoel 2008 for a full jurisdictional comparison). It should also be noted that while some offences have graduated maximum penalties for recidivist offending, other jurisdictions do not.

**Figure 6: The percentage of people sentenced for driving while disqualified/suspended by sentence type, Magistrates' Court, 2004-05 to 2006-07<sup>10</sup>**



**Figure 7: The percentage of people sentenced for driving while disqualified/suspended by sentence type and licence status, Magistrates' Court, 2004-05 to 2006-07<sup>11</sup>**



You will note the very high use of suspended sentences. Nearly one in four (24.1 per cent) of those sentenced for driving while disqualified or suspended in this period received a suspended sentence, representing approximately 18.5 per cent of all suspended sentences imposed in the Magistrates' Court. Of these, the overwhelming majority (95.2 per cent) were wholly suspended (Sentencing Advisory Council, 2008: paragraph 2.51). While suspended

<sup>10</sup> Source: SAC CourtLink Extract December 2007. 'Other' includes adjourned undertaking, youth justice centre order, home detention order, drug treatment order, convicted and discharged, dismissed and combined custody and treatment order.

<sup>11</sup> Source: SAC CourtLink Extract December 2007.

sentences are used in a wide range of circumstances, it is more than a coincidence that driving while disqualified or suspended is one of only a handful of offences in Victoria which have a mandatory prison sentence prescribed.

These statistics point to a growing problem in terms of the incidence of the offence. They also point to a sentencing problem in terms of the number of people coming before the courts and how the courts can effectively deal with such offenders.

### **Driving while disqualified or suspended and road risk**

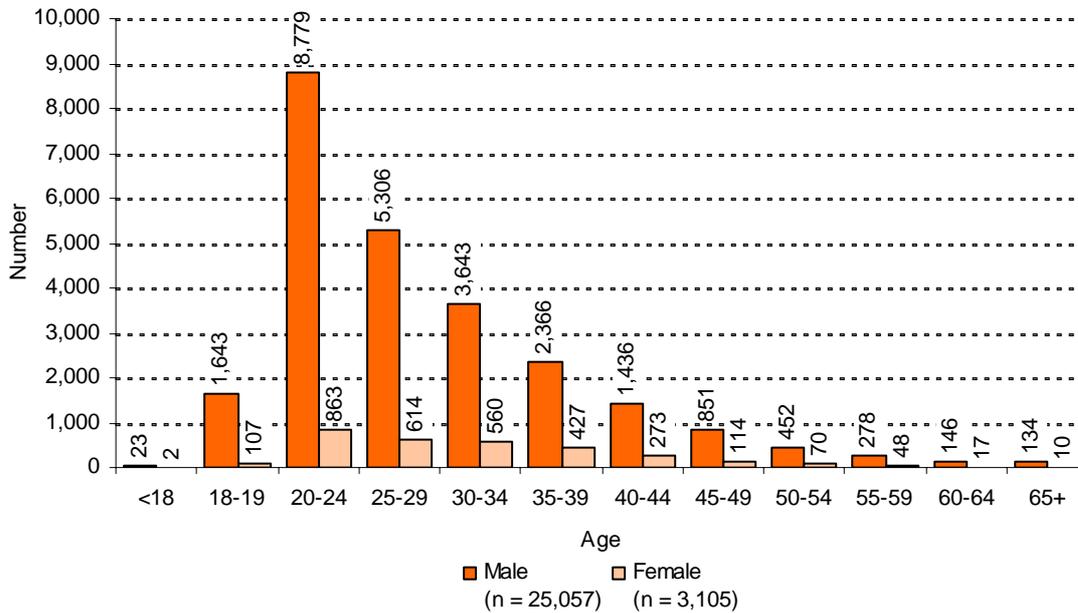
National and international studies overwhelmingly indicate that drivers convicted of driving while disqualified or suspended pose a greater crash risk to themselves and to the community.

Many suggest that they will often engage in dangerous and/or illegal behaviours while behind the wheel, either as a result of their own compulsions or as a consequence of trying to avoid detection. A UK study by Knox, Turner and Silcock (2003) 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. These conclusions have been confirmed in Australia (Watson, 2003) and overseas (Griffin and de la Zerda, 2000) and have also been confirmed in respect of demerit points suspended drivers (Diamantopoulou et al 1997).

Investigations both on recidivism and on the attitudes of disqualified or suspended drivers themselves demonstrate that many, perhaps even most, do not comply with their driving prohibition (Clark and Bobevski 2008). A 2003 Western Australian study (Ferrante) assessing self-reported driving by these offenders found that 35.8 per cent of drivers admitted to driving but suggested that this was likely to be an understatement of the real number. The same study cited US research indicating that anything from 25 per cent to 75 per cent of drivers drive when prohibited from doing so. There is some evidence that the longer the licence ban, the more likely a person is to breach it, such people often learning punishment avoidance techniques along the way (Clark and Bobevski 2008). Disqualified and suspended drivers are overrepresented in categories of crashes involving single vehicles, stationary objects, crashes in recreational times and serious accidents (Harrison 1997). There is also evidence that disqualified or suspended drivers who are involved in crashes involving serious casualties are 3 times more likely to be drink driving at the time. Disqualification and suspension are failing to achieve their sentencing purposes.

The profile of offending for driving while disqualified or suspended matches that of criminal offending generally: young males are the main offenders. Figure 8 sets out the age of offenders and differentiates between males and females.

**Figure 8: The number of people sentenced for driving while disqualified/suspended by age and gender, Magistrates' Court, 2004-05 to 2006-07<sup>12</sup>**



Statistics also show some concerning issues in terms of criminal co-morbidity: people who drive while disqualified or suspended are often involved in other serious criminal behaviour, both traffic and otherwise. Table 1 sets out the most common offences for which people convicted of drive while disqualified or suspended are also convicted of.

<sup>12</sup> Source: SAC CourtLink Extract December 2007.

**Table 1: The number and percentage of the most common offences sentenced in addition to driving while disqualified/suspended, Magistrates' Court, 2004-05 to 2006-07<sup>13</sup>**

	<b>Offence</b>	<b>No.</b>	<b>%</b>	<b>Avg.</b>
1	Driving while disqualified or suspended <i>Road Safety Act 1986 (Vic) section 30</i>	28,276	100.0	1.27
2	Use an unregistered vehicle on a roadway <i>Road Safety Act 1986 (Vic) section 7(1)</i>	6,643	23.5	1.34
3	Drink drive (at/exceed limit within 3 hours or driving) <i>Road Safety Act 1986 (Vic) section 49(1)(f)</i>	4,026	14.2	1.12
4	Exceed speed limit <i>Road Safety (Road Rules) Regulations 1999 (Vic) rr 20</i>	3,166	11.2	1.09
5	Theft <i>Crimes Act 1958 (Vic) section 74</i>	1,982	7.0	3.40
6	Driver fail to provide/give false address when requested <i>Road Safety Act 1986 (Vic) section 59(2)</i>	1,795	6.3	1.15
7	Failure to answer bail <i>Bail Act 1977 (Vic) section 30</i>	1,706	6.0	1.63
8	Careless driving <i>Road Safety Act 1986 (Vic) section 65</i>	1,548	5.5	1.05
9	Fraudulent alteration/use of documents/identifying marks <i>Road Safety Act 1986 (Vic) section 72(1)(b)</i>	1,289	4.6	1.33
10	Failure to wear seatbelt <i>Road Safety (Road Rules) Regulations 1999 (Vic) rr 264</i>	1,056	3.7	1.03
	<b>People sentenced</b>	<b>28,276</b>	<b>100.0</b>	<b>3.55</b>

### When little works

The Victorian Sentencing Advisory Council is conducting a review of the causes, consequences of and responses to driving disqualified or suspended in Victoria. To this end it published a discussion paper in June 2008.<sup>14</sup> The discussion paper has been and continues to be used as a tool for consulting with government, private and community stakeholders. The fruits of this consultation and research will be incorporated into a final report which will include an in-depth review of Australian and overseas studies on the issue. The final report will also include a detailed statistical analysis of VicRoads data which will be linked to sentencing statistics on disqualifications, suspension and sentencing for this offence. The Council will also evaluate the appropriateness of current sanctions for driving while disqualified or suspended with a particular emphasis on rehabilitative sanctions to this behaviour.

Our research and consultations indicate that those who drive while disqualified or suspended are not a homogenous group. Though they tend to share similar age and gender profiles, the root cause of the driving prohibition is quite different. The Council is of the view that, to adequately address driving while disqualified or suspended, it may be more appropriate to

<sup>13</sup> 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.

<sup>14</sup> See Hoel (2008). A copy of this discussion paper can be accessed on the Council's website: [www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au).

look at these root causes rather than to address the driving while disqualified or suspended itself, addressing these causes at that early stage.

There are some good reasons for approaching the issue in this fashion. Firstly, the logical cause of the offending is being addressed. Secondly, it is likely to better address future offending.

Take the following scenario: a driver drink drives and has his or her disqualified. The Driver is then subsequently apprehended for driving while disqualified or suspended. Under the current regime, the driver would not have been required to attend an alcohol education course if and when the driver attempted to re-licence after the disqualification period had elapsed. Similarly, the driver would only have an interlock installed in his or her car once her or she attempted (and was actually successful) in re-licensing. A few categories of drivers may not be required to attend any course at all, nor are they required to install an interlock in their cars (Sheehan et al 2005).

We have already discussed the statistics on people who drive while disqualified or suspended. It may often be easier for these people to continue to drive without a licence than to re-licence, particularly if they are a repeat offender. When we apprehend such a driver for driving while disqualified or suspended, we are left in a quandary: a whole range of normal sanctions can be applied, including imprisonment and a further disqualification or suspension but, even if courts decide to get tough and impose severe terms of imprisonment and long-term licence bans, these people are likely to again drive while disqualified or suspended and drive free of any requirement to attend rehabilitative courses or to have a vehicle sanction (such as an interlock) applied to their vehicle. In fact, many people who are apprehended for driving while disqualified or suspended are detected only because they are breaking some other law and are stopped by police to investigate that other offence.

So, to return to our scenario, our drink driver is likely to have been detected only as a result of some other offending, in this case, as Table 1 would suggest, it is likely to be as a result of drink driving. We are of the view that the current regime of sanctions ought to be changed at least in respect to some types of disqualified or suspended drivers. The question then is: how do we know which drivers to target and with what sanctions?

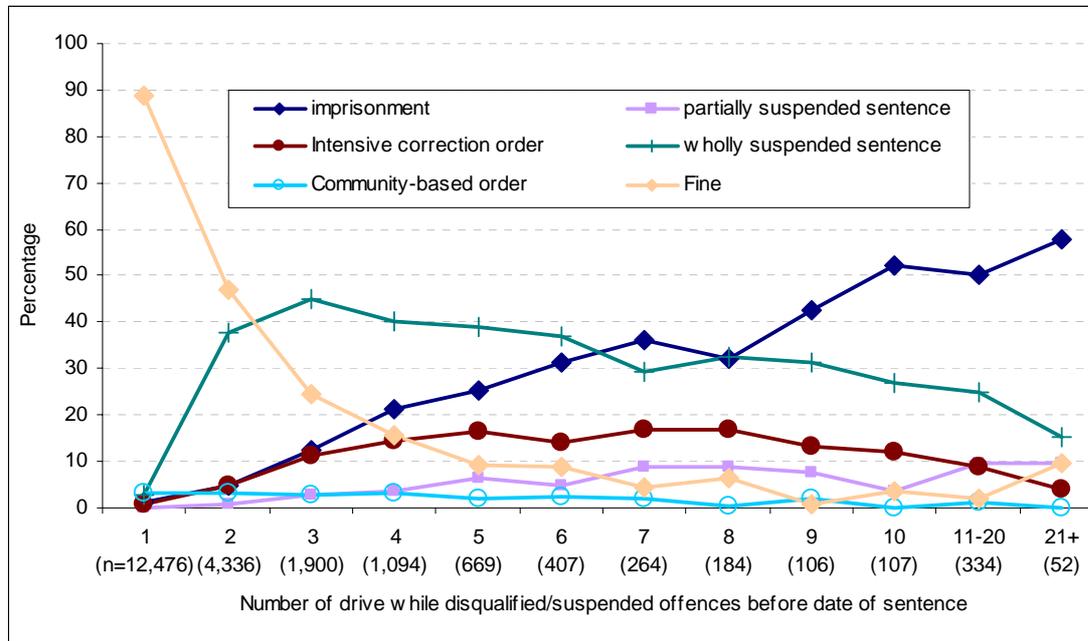
### **The way forward**

The Council has acquired the VicRoads driving records of every driver convicted of driving while disqualified or suspended between July 2004 to June 2007 (approximately 22,000 driving records). The records include offences both before and after the target offences occurred and include both traffic offences and other non-traffic offences committed where vehicles were used. These driving records will be matched to sentencing data for the subject offence. The Council will also be able to use this data to assess issues such as recidivism and co-morbidity.

Some preliminary statistical analysis conducted by the Council is suggestive of high levels of recidivism for driving while disqualified or suspended. Figure 9 sets out the statistics for this as well as the sentences for this offence. It is interesting to note that even with more than 11 priors, some offenders are still getting wholly suspended sentences, with only roughly half getting immediate terms of imprisonment. It may well be, however, that multiple counts of

driving while disqualified or suspended are being sentenced at the same time, which would explain this. The Council is still in the process of analysing the data in relation to this matter.

**Figure 9: The number of findings of guilt for driving while disqualified or suspended and the sentences imposed for them<sup>15</sup>**



Within the body of disqualified or suspended drivers there are clusters of drivers that can be isolated, and that these classifications may themselves be useful in targeting specific sanctions, particularly rehabilitative ones. For example, Table 1 indicates that 7 per cent of people who are sentenced for the offence of driving while disqualified or suspended are also sentenced for the offence of theft. The two most common offence sentenced alongside driving while disqualified or suspended were driving an unregistered vehicle (23.5 per cent) and drink driving (14.2 per cent).

With the VicRoads driver history data, the Council will be able to ascertain the extent to which road safety related offences contribute to drivers losing their licences and whether these behaviours persist within and after licence ban periods.

From consultations and submissions to date in this area, the Council knows that there is a substantial level of community support for use of targeted rehabilitation for some sorts of disqualified or suspended drivers, particularly where the cause of the licence ban is alcohol or drug dependence. The data analysis that the Council is currently conducting will allow the Council to ascertain the proportion of drivers in this category from the broader group of offenders, point to the statistical chances of such drivers breaching driving bans and quantify the likelihood of such people continuing to drink drive in the future.

The Council will also be able to identify the root causes of licence bans of other clusters of disqualified or suspended drivers which may be less clear cut and therefore less appropriately addressed with a rehabilitative sanction. There may also be patterns that emerge in these other clusters of people in terms of frequency and types of offending (this will allow anecdotal

<sup>15</sup> This data is for cases where the principal proven offence is driving while disqualified or suspended.

notions to be tested, such as that many disqualified or suspended drivers also engage in unlicensed driving when their licence ban has elapsed).

### **New sanctions and new approaches**

The current sanctions available for traffic offences include: prison (immediate, partially or wholly suspended), intensive correction orders, home detention, community-based orders, fines, de-registration of an offender's vehicle, licence disqualification and suspension. Some traffic offences, so called 'hoon' offences (which include driving disqualified or suspended), may also draw ancillary sanctions such as impoundment, immobilisation and forfeiture. As noted above, a range of other interventions can be mandated as part of the re-licensing process, including drink and drug courses and interlocks.

Armed with some empirical evidence of the driving behaviour of disqualified or suspended drivers, the Council will be making recommendations in terms of better use of existing sanctions for driving disqualified or suspended as well as the introduction of new sanctions for targeted offenders.

One of the new sanctions is likely to be court-ordered rehabilitation for drink drivers and drug drivers to be undertaken as a part of their sentence rather than as a re-licensing condition. A scheme along these lines is already being trialled in Victoria, under which the court defers sentencing an offender to allow the offender to undergo treatment for alcohol-related offending, after which the offender is sentenced. Australian and international studies in the area have suggested that targeted rehabilitative sanctions are necessary to properly address the risk that disqualified and suspended drivers pose (including Clark and Bobevski 2008; Knox, Turner and Silcock 2003 and Watson 2003). Additionally, and in view of the high levels of driving disqualified or suspended, the Council is also seriously considering the efficacy of both greater use of impoundment legislation to incapacitate these drivers from driving, as well as greater use of interlocks for drink drivers as a trade-off for lowering disqualification or suspension periods.

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