



**Justice**  
Sentencing Council

# Repeat traffic offenders

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Consultation Paper  
December 2018



## **NSW Sentencing Council**

December 2018

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ISBN 978-1-922254-37-5 (electronic)

## Make a submission

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## Terms of reference

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The Sentencing Council is to review the sentencing of recidivist traffic offenders who may pose an ongoing risk to the community and make recommendations for reform to promote road safety. In conducting the review, the Council should:

1. Provide sentencing statistics on such offenders and analyse them in terms of relevant offender characteristics;
2. Consider the principles the courts should apply when sentencing such offenders;
3. Have regard to the availability of, and relevant findings on, driver intervention programs and other initiatives in NSW and other comparable jurisdictions;
4. Consult with road safety and other experts, and consider international best practice, on how best to deter recidivist traffic offenders from reoffending and encourage safe driving practices; and
5. Have regard to any other matter the Council considers relevant.

[Received 18 April 2018]



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### Acknowledgements

We acknowledge with gratitude the assistance of:

- Transport for NSW, Centre for Road Safety
- NSW Bureau of Crime Statistics and Research
- NSW Police Force

## CP Repeat traffic offenders

# Questions

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## 1. Introduction

### 1.1 Identifying repeat offending

- (1) Is the current list of offences that make up repeat offending for the purposes of the *Road Transport Act 2013* (NSW) appropriate?
- (2) If not, what changes should be made to this list of offences?
- (3) What other ways are there to identify repeat traffic offending that gives rise to an ongoing risk of harm to the community?

### 1.2 Dealing with repeat driving offenders

Considering the existing and possible sentencing and other available responses to repeat driving offenders (outlined in chapters 4-6):

- (1) What options are appropriate for sentencing repeat driving offenders who may pose an ongoing risk to the community?
- (2) What sorts of offenders should they target?
- (3) What changes could be made to the law to make it more effective in dealing with repeat driving offenders who may pose an ongoing risk to the community?

## 2. Driving offences involving harm or a high risk of harm

### 2.1 Driving offences resulting in death

- (1) Are the maximum penalties for driving offences resulting in death appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for driving offences resulting in death appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### 2.2 Driving offences resulting in injury

- (1) Are the maximum penalties for driving offences causing injury appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for driving offences causing injury appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### 2.3 Identifying other offences that carry a high risk of harm

- (1) What other driving offences should be considered in the group of offences carrying a high risk of harm?
- (2) Are the maximum penalties for these other offences appropriate? If not, what should they be?
- (3) Are the sentencing outcomes for these other offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### **2.4 Speeding offences**

- (1) Are the maximum penalties for high range speeding offences appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for high range speeding offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### **2.5 Alcohol and drug-related driving offences**

- (1) Are the maximum penalties for alcohol and drug related driving offences appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for alcohol and drug related driving offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### **2.6 Fatigue related driving offences**

- (1) Are the maximum penalties for fatigue related driving offences appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for fatigue related driving offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### **2.7 Driving offences carrying a high risk of harm**

- (1) Are the maximum penalties for driving offences carrying a high risk of harm appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for driving offences carrying a high risk of harm appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

## **3. Sentencing principles**

### **3.1 Guideline judgments**

- (1) Do the guideline judgments on dangerous driving and high range prescribed concentration of alcohol continue to be appropriate?
- (2) If not, how should they be changed?
- (3) What other driving offences could be subject to guideline judgments?
- (4) What should those guidelines contain?

### **3.2 Objective circumstances**

- (1) Are the sentencing principles that relate to objective circumstances appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

### **3.3 Subjective circumstances**

- (1) Are the sentencing principles that relate to subjective circumstances appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

### **3.4 Other considerations**

- (1) Are the other considerations listed in paragraphs [3.52] – [3.61] appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

### **3.5 Repeat offending**

- (1) Are the sentencing principles relating to repeat offending appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

## **4. Fines and penalty notices**

### **4.1 Fines and penalty notices**

- (1) How effective are fines in dealing with repeat traffic offenders?
- (2) How effective are penalty notices in dealing with repeat traffic offenders?

## **5. Suspension, disqualification and unauthorised driving**

### **5.1 Licence suspension**

- (1) Does the system of licence suspension for driving offences adequately deal with repeat traffic offenders?
- (2) How could the current system be adjusted to deal with repeat traffic offenders more effectively?

### **5.2 Licence suspension**

- (1) Does the system of licence suspension for driving offences adequately deal with repeat traffic offenders?
- (2) How could the current system be adjusted to deal with repeat traffic offenders more effectively?

### **5.3 Penalties for unauthorised driving**

- (1) Does the current system of penalties for unauthorised driving help prevent repeat driving offences?
- (2) What changes could be made to help the system prevent repeat driving offences more effectively?

## 6. Special penalties and interventions for driving offences

### 6.1 Ignition interlock programs

- (1) Is the NSW mandatory alcohol interlock program effective in dealing with repeat traffic offending? If so, why? If not, why not?
- (2) What changes could be made to the NSW mandatory alcohol interlock program to reduce repeat traffic offending?

### 6.2 Vehicle sanctions

- (1) Is the system of vehicle sanctions in NSW effective in dealing with repeat offending? If so, why? If not, why not?
- (2) What changes could be made to the system of vehicle sanctions to reduce repeat offending?

### 6.3 Intelligent speed adaptation systems

- (1) Would a system of intelligent speed assistance technology be effective in dealing with repeat traffic offending? If so, why? If not, why not?
- (2) What system of intelligent speed assistance technology could be introduced in NSW to deal with repeat traffic offending?

### 6.4 Specialist traffic courts or lists

- (1) Would a specialist traffic court or list be effective in dealing with repeat traffic offending? If so, why? If not, why not?
- (2) What type of specialist traffic court or list could be introduced in NSW to deal with repeat traffic offending?

### 6.5 Prevention courses

- (1) How effective are the various prevention courses for traffic offenders in NSW?
- (2) What could be done to make existing courses more effective in reducing recidivist traffic offending?
- (3) What further courses could be introduced to help reduce recidivist traffic offending? In what circumstances could they be most effectively deployed?

### 6.6 Stricter penalties

- (1) Should stricter penalties be introduced for repeat traffic offenders?
- (2) If so, what offences should be subject to these stricter penalties?

### 6.7 Intensive supervision programs

How could the intensive supervision of repeat traffic offenders be improved?

## 7. Communities requiring special attention

### 7.1 Communities requiring special attention

What communities, in addition to those listed in Chapter 7, might require special attention when dealing with driving offences?

### 7.2 Remote and regional communities

What changes should be made so that traffic law operates effectively for people in remote and regional communities?

### 7.3 Young people

What changes should be made so that traffic law operates effectively for young people?

### 7.4 Aboriginal people

What changes should be made so that traffic law operates effectively for Aboriginal people?





# 1. Introduction

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## In brief

We have been asked to review the sentencing of repeat traffic offenders who pose an ongoing risk to the community, in light of an increasing number of road deaths. A number of factors contribute to motor accidents and road deaths, including speeding, fatigue, alcohol, driver distraction and the presence of drugs. Our aim is to identify repeat offenders who can be subject to appropriate interventions. We note that sentencing is not the only way of reducing risk to the community on the roads.

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- 1.1 This chapter introduces the review, sets out the background to the review and explains our approach to the terms of reference.

## Terms of reference

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- 1.2 On 19 April 2018, the Attorney General asked us to review the sentencing of repeat traffic offenders who may pose an ongoing risk to the community:

The Sentencing Council is to review the sentencing of recidivist traffic offenders who may pose an ongoing risk to the community and make recommendations for reform to promote road safety. In conducting the review, the Council should:

## CP Repeat traffic offenders

1. Provide sentencing statistics on such offenders and analyse them in terms of relevant offender characteristics;
  2. Consider the principles the courts should apply when sentencing such offenders;
  3. Have regard to the availability of, and relevant findings on, driver intervention programs and other initiatives in NSW and other comparable jurisdictions;
  4. Consult with road safety and other experts, and consider international best practice, on how best to deter recidivist traffic offenders from reoffending and encourage safe driving practices; and
  5. Have regard to any other matter the Council considers relevant.
- 1.3 The terms of reference arose in the context of media and community commentary surrounding the 2017 road toll. The commentary highlighted concerns that the courts may not be managing the highest risk, recidivist traffic offenders in a manner that is consistent with public expectations.<sup>1</sup>
- 1.4 Reviewing the sentencing of “recidivist traffic offenders who may pose an ongoing risk to the community” and making recommendations to “promote road safety” necessarily involves identifying the offences that represent the most serious risk of harm to the community and the offenders who commit them. We consider these questions later in this chapter.

## The road toll

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- 1.5 This section sets out some background data on the road toll, including deaths and injuries. We consider the behaviours that cause crashes in the next section.

### Deaths

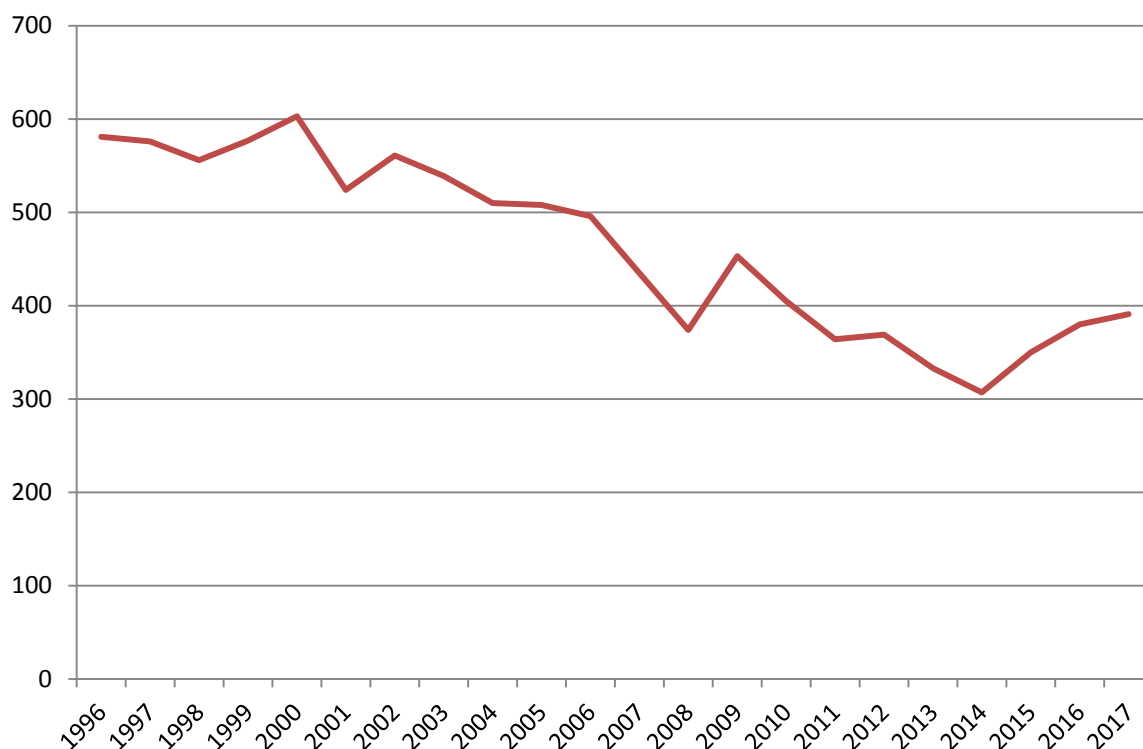
- 1.6 The 2017 provisional road toll is 389 deaths (equivalent to a fatality rate of 4.94 per 100,000 population). This is nine more deaths than in 2016, and is the third consecutive year that the road toll has increased. The NSW State Priority aims to reduce road deaths by at least 30% from 2011 levels by 2021.<sup>2</sup>
- 1.7 Figure 1.1 sets out road deaths for 1996-2017.

---

1. J Fife-Yeomans, “Tragic Toll of Failed Laws” *Daily Telegraph* (Sydney), 18 January 2018, 1; C James, “Serial Pests Need to Get Off Our Roads”, *The Advertiser* (Adelaide), 15 January 2018, 16; D Penberthy, “Falkholt Deaths Demand Change”, *Herald-Sun* (Melbourne), 28 January 2018, 49; A Clennell, “Tougher Measures to Tackle Rising Road Toll”, *The Australian*, 29 January 2018, 2.

2. NSW, *State Priorities* (2015).

Figure 1.1: Road deaths in NSW – 1996-2017



Source: Centre for Road Safety.

- 1.8 However, many deaths do not result in charges, convictions or sentencing. Table 1.1 shows that, in 2017, the driver (or rider) at fault was killed in 162 cases (46% of fatal crashes).

Table 1.1: Deceased drivers in fatal collisions, 2014-2017

	2014	2015	2016	2017
Fatal crashes	285	326	356	351
Total deaths	307	350	380	389
Deceased driver	153	155	183	186
Deceased driver's vehicle at fault (percentage of fatal crashes)	127 (45%)	133 (41%)	151 (42%)	162 (46%)
Deceased driver's vehicle not at fault or unknown	26	22	32	24

Information supplied by NSW Police Force, 18 September 2018.

- 1.9 Key issues identified in the 2017 road toll statistics include:

- 69% of deaths occurred on country roads (267 deaths)<sup>3</sup>

3. Transport for NSW, Centre for Road Safety, "Crash and Casualty Statistics – NSW General View: Fatality Trends by Region" (11 October 2018)

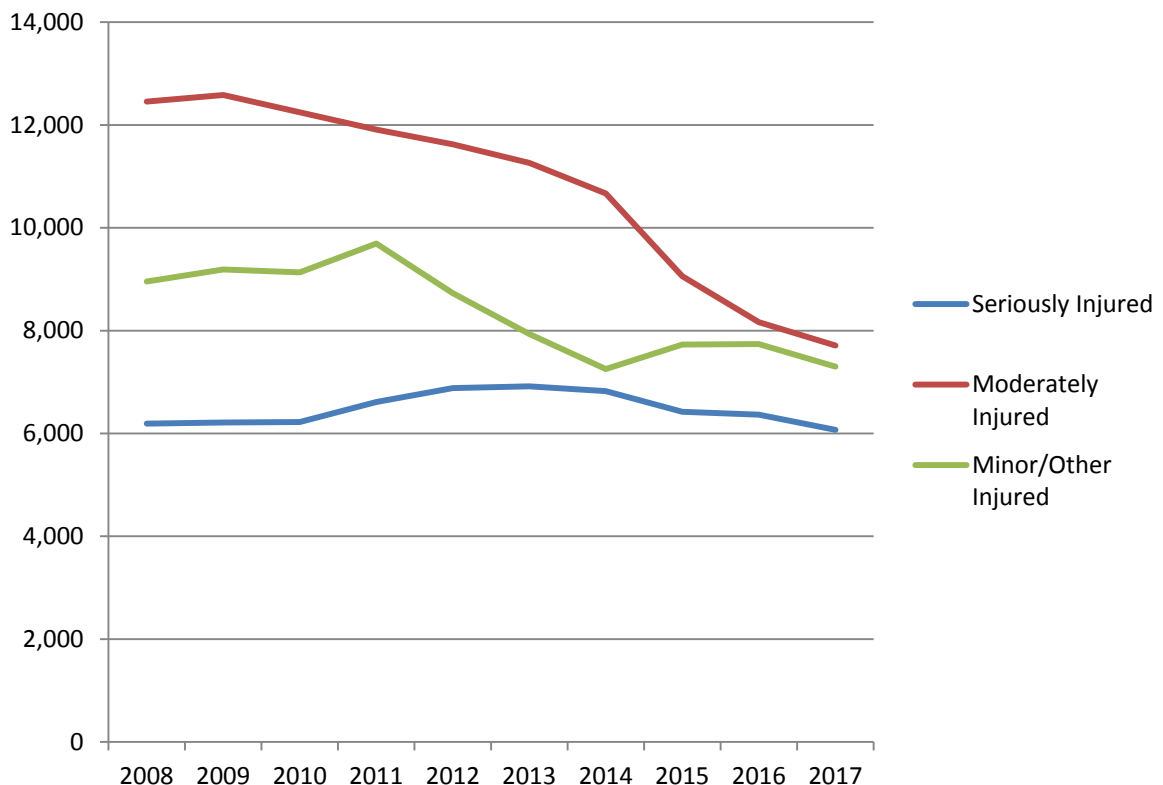
## CP Repeat traffic offenders

- there was a 52% increase in the number of passengers killed (from 54 in 2016 to 82 in 2017)<sup>4</sup>
- there was an 8% increase in fatal crashes occurring on state highways (from 92 in 2016 to 99 in 2017), and
- 66 fatal crashes involving heavy trucks resulted in 79 deaths, and there was a 41% increase in deaths when compared to 2016.

## Injuries

- 1.10 By contrast with deaths, it appears that the number of injuries are falling. Figure 1.2 sets out road user injuries for 2008-2017. The declining trend is most noticeable for moderate and minor injuries.

Figure 1.2: Road user injuries in NSW, 2008-2017



Source: Transport for NSW, Centre for Road Safety.

## Offences that pose an ongoing risk to the community

- 1.11 In identifying the offences that pose a serious ongoing risk to the community, we have considered available data on the factors most commonly present where

[www.roadsafety.transport.nsw.gov.au/statistics/interactivecrashstats/nsw.html?tabnsw=5](http://www.roadsafety.transport.nsw.gov.au/statistics/interactivecrashstats/nsw.html?tabnsw=5) (retrieved 14 November 2018).

4. Transport for NSW, Centre for Road Safety, "Crash and Casualty Statistics – NSW General View: Fatality Trends by Road User" (11 October 2018)  
[www.roadsafety.transport.nsw.gov.au/statistics/interactivecrashstats/nsw.html?tabnsw=5](http://www.roadsafety.transport.nsw.gov.au/statistics/interactivecrashstats/nsw.html?tabnsw=5) (retrieved 14 November 2018).

someone is killed or injured in a car crash. In response to this data, we have set out in Chapter 2 the offences that arise from these factors and which we, therefore, consider pose a serious and ongoing risk of harm to the community.

## Factors involved in motor accidents

1.12 The top three factors involved in motor accidents are:

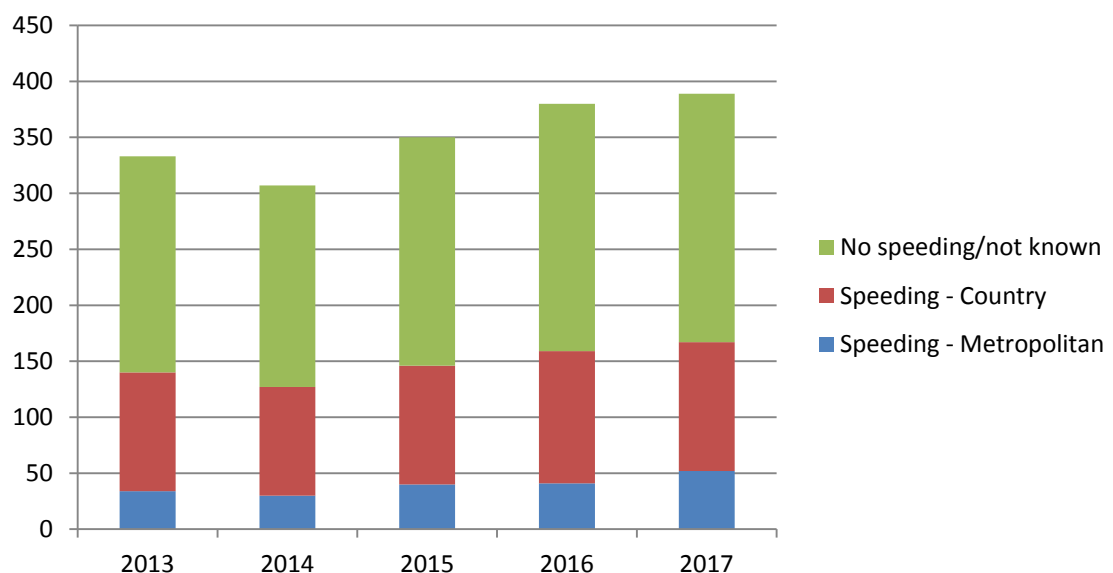
- speeding
- fatigue, and
- driving with a prescribed concentration of alcohol (“PCA”).

1.13 Other potential causes of vehicle crashes include driver distraction (particularly from mobile telephone use) and the presence of drugs in the driver’s system. While the risks involved with such activities are well known, there is little data available about their relationship to motor vehicle crashes in NSW.

### Speeding

1.14 Figure 1.3 shows road deaths where speeding was a known factor. In 2017, speeding was a factor in 167 road deaths (43%). Of these deaths, 52 took place in metropolitan areas and 115 took place in country areas. “Speeding” in this context does not differentiate between speeding that is inappropriate for the road conditions or class of licence.<sup>5</sup>

Figure 1.3: Road deaths – speeding, 2013-2017

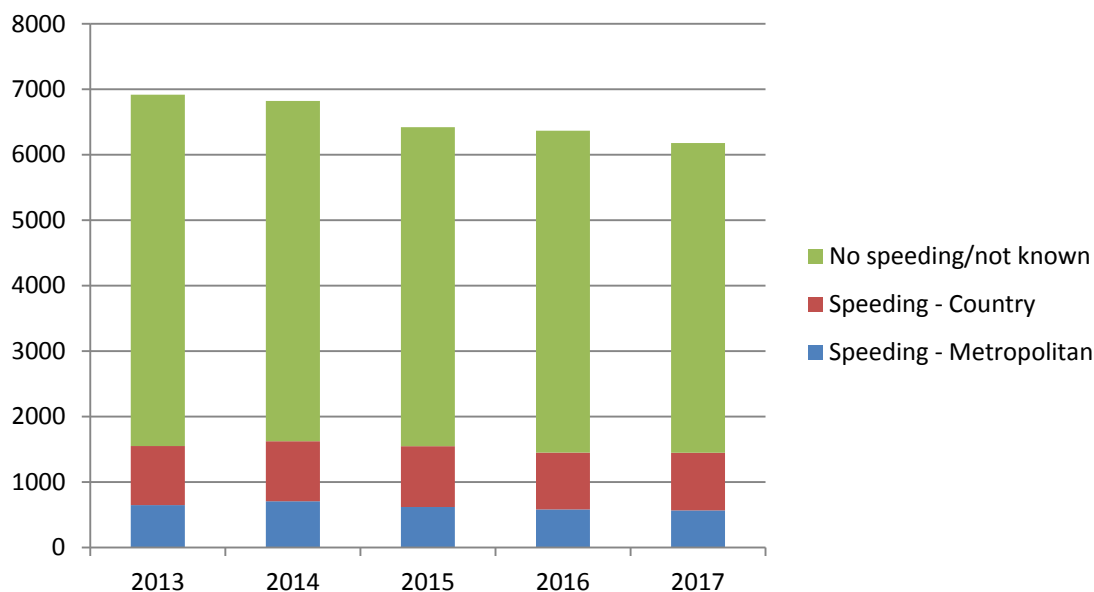


Source: Transport for NSW, Centre for Road Safety, *Crash and casualty statistics (updated 11 October 2018)*.

1.15 Figure 1.4 shows serious road injuries where speeding was a known factor. In 2017, speeding was a factor in 1,449 serious injuries (23%). Of these injuries, 569 took place in metropolitan areas and 880 took place in country areas.

5. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [1.12].

Figure 1.4: Serious injuries to road users – speeding, 2013-2017

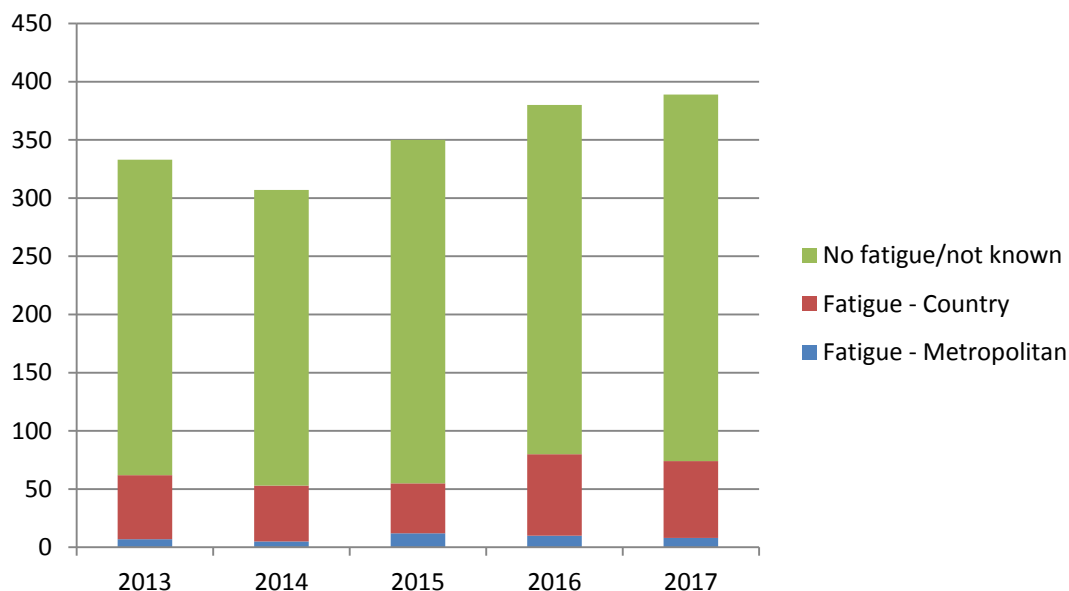


Source: Transport for NSW, Centre for Road Safety, Crash and casualty statistics (updated 11 October 2018).

### Fatigue

1.16 Figure 1.5 shows road deaths where fatigue was a known factor. In 2017, fatigue was a factor in 74 road deaths (19%). Of these deaths, 8 took place in metropolitan areas and 66 took place in country areas.

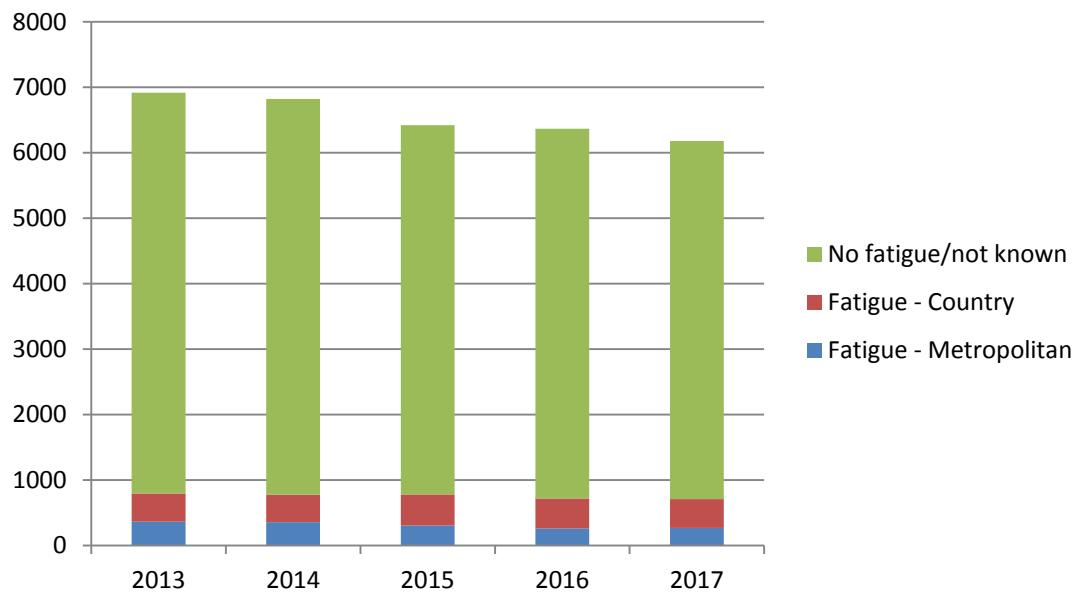
Figure 1.5: Road deaths – fatigue, 2013-2017



Source: Transport for NSW, Centre for Road Safety, Crash and casualty statistics (updated 11 October 2018).

1.17 Figure 1.6 shows serious injuries to road users where fatigue was a known factor. In 2017, fatigue was a factor in 709 serious injuries (11%). Of these injuries, 270 took place in metropolitan areas and 439 took place in country areas.

Figure 1.6: Serious injuries to road users – fatigue, 2013-2017

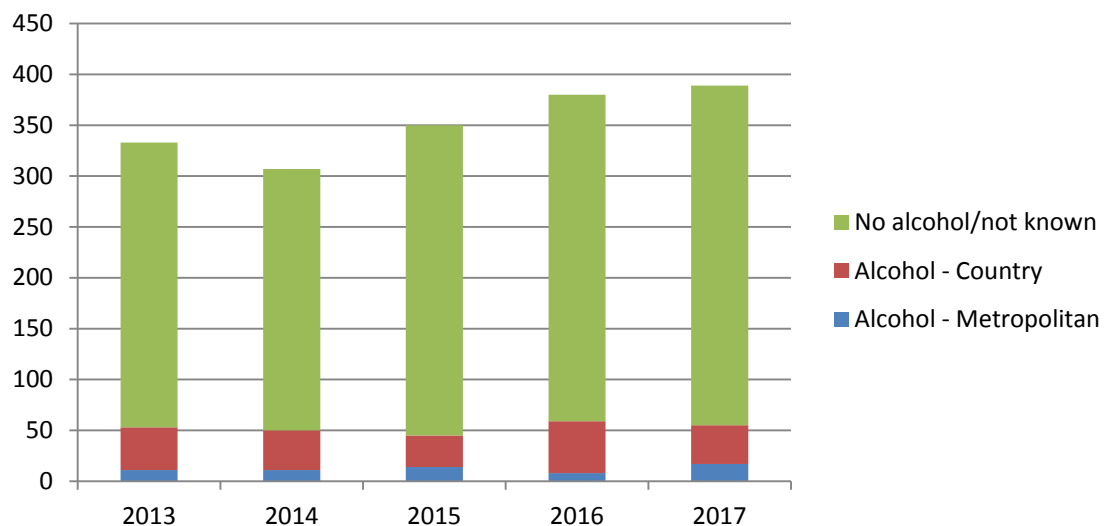


Source: Transport for NSW, Centre for Road Safety, Crash and casualty statistics (updated 11 October 2018).

### Alcohol

- 1.18 Figure 1.7 shows road deaths where alcohol was a known factor. In 2017, alcohol was a factor in 55 road deaths (14%). Of these deaths, 17 took place in metropolitan areas and 38 took place in country areas.

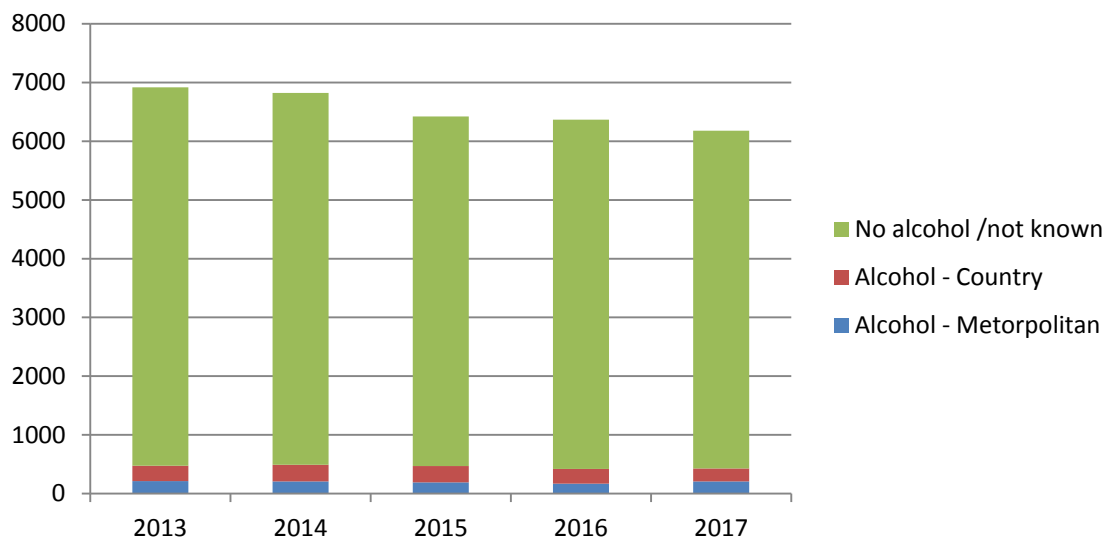
Figure 1.7: Road deaths – alcohol, 2013-2017



Source: Transport for NSW, Centre for Road Safety, Crash and casualty statistics (updated 11 October 2018).

- 1.19 Figure 1.8 shows serious injuries to road users where alcohol was a known factor. In 2017, alcohol was a factor in 429 serious injuries (7%). Of these injuries, 208 took place in metropolitan areas and 221 took place in country areas.

Figure 1.8: Serious injuries to road users – alcohol, 2013-2017



Source: Transport for NSW, Centre for Road Safety, Crash and casualty statistics (updated 11 October 2018).

### Driver distraction

1.20 The National Road Safety Strategy 2011–2020 cites driver distraction as a significant contributor to crash casualties. However, there is currently insufficient data on the roles that particular forms of driver distraction play in crashes.<sup>6</sup>

1.21 Some recent inquiries have pointed to the increasing use of digital mobile devices as a potential source of distraction for drivers.<sup>7</sup> There is also research that suggests a significant risk of vehicle accidents connected with mobile telephone use (both handheld and hands-free), even before the advent of touch screens.<sup>8</sup> However, as the Joint Standing Committee on Road Safety has observed, “[r]eliable measurement of the role of distraction in road safety statistics is problematic”.<sup>9</sup> The Committee has recommended strategies to alleviate this problem.<sup>10</sup>

### Presence of drugs

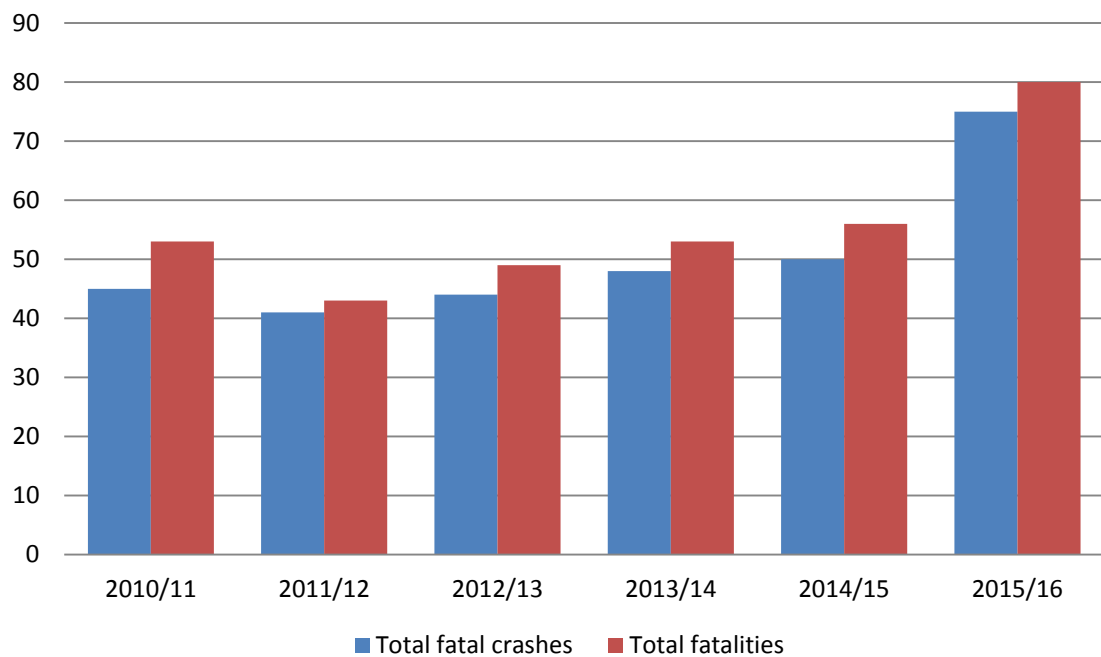
1.22 According to data produced by the Centre for Road Safety, over the six financial years from 2010/11 to 2015/16, there were 303 fatal crashes, resulting in 334 deaths, which involved at least one driver with cannabis, “speed” (amphetamines/ice) or ecstasy in their system. The annual figures are set out in Figure 1.9. These deaths represented at least 16% of all deaths in the period. The 80 deaths in 2015/16 represented 20% of all deaths in that financial year. Part of

6. Australia, *Inquiry into the National Road Safety Strategy 2011–2020* (2018) 26.  
 7. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Report on Driver and Road User Distraction*, Report 2/55 (2013) [2.15].  
 8. K Young, M Regan, M Hammer, *Driver Distraction: A Review of the Literature*, Report No 206 (Monash University Accident Research Centre, 2003) 3–10.  
 9. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Report on Driver and Road User Distraction*, Report 2/55 (2013) [2.47]  
 10. See, eg, Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Report on Driver and Road User Distraction*, Report 2/55 (2013) rec 1, rec 2.



the increase, however, may be attributed to enhanced drug testing in late 2014, which enabled more accurate identification of the presence of cannabis.<sup>11</sup>

**Figure 1.9: Fatal crashes involving a motor vehicle controller with an illicit drug, 2010/11-2015/16**



*Note: "Illicit drug" refers only to cannabis, speed (amphetamines/ice) and ecstasy.*

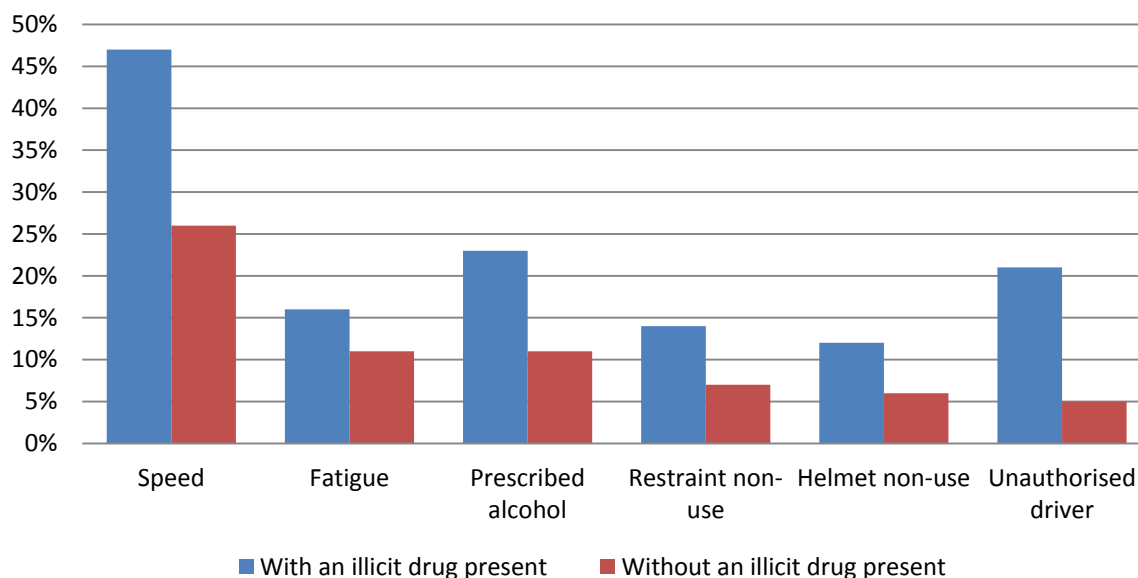
*Source: Transport for NSW, Centre for Road Safety, Drug Driving Trauma Trends, Report (2017) 4.*

- 1.23 The Centre for Road Safety data also shows that other risky behaviours are over-represented among drivers with illicit drugs present who are involved in a fatal collision.<sup>12</sup> This relationship is set out in Figure 1.10.

11. Transport for NSW, Centre for Road Safety, *Drug Driving Trauma Trends*, Report (2017) 4.

12. Transport for NSW, Centre for Road Safety, *Drug Driving Trauma Trends*, Report (2017) 11.

Figure 1.10: Percentage of motor vehicle controllers with/without an illicit drug involved in a fatal crash, 2010/11-2015/16, behaviour factors



Note: "Illicit drug" refers only to cannabis, speed (amphetamines/ice) and ecstasy.

Source: Transport for NSW, Centre for Road Safety, Drug Driving Trauma Trends, Report (2017) 12.

## Demographic and offending profile of driving offenders who cause death or injury

- 1.24 At our request, the NSW Bureau of Crime statistics and Research ("BOCSAR") undertook an analysis of demographic, relevant offence ("index offence") and prior offending characteristics for driving offenders who caused death or injury in 2016. The analysis looked at current driving offences causing injury or death (and their historic equivalents).<sup>13</sup> We are looking at these particular offences (which are detailed in the first half of Chapter 2)<sup>14</sup> because they were the focus of the recent public concern about repeat traffic offenders.
- 1.25 The results, which are set out in the following tables, are compared with the results where the index offence is a serious assault offence, rather than a relevant traffic offence. Broadly, they show a different offender profile and a relationship between traffic offending and other offending behaviour that suggests that the offending of some drivers may be the result of more general criminogenic factors or anti-social attitudes.

### Demographic characteristics

- 1.26 Table 1.2 sets out the demographic characteristics of driving offenders who cause death or injury and serious assault offenders. We draw attention to the following differences between the two groups:

13. *Crimes Act 1900* (NSW) s 52A, s 53; *Road Transport Act 2013* (NSW) s 117(1)(a) and (b), s 145(1); *Traffic Act 1909* (NSW) s 4(3), s 8C(1); *Road Transport (Safety and Traffic Management) Act 1999* (NSW) s 42(1).

14. [2.6]-[2.20].

- The age ranges are more mixed, with almost a quarter of the driving offenders being aged 55 years or more (compared with 3.8% of serious assault offenders). Almost one third of serious assault offenders are aged 24 years or under (compared with 20.8% of driving offenders).
- The socio economic indexes for areas (“SEIFA”) of residence are more evenly distributed for driving offences. The highest proportion of serious assault offenders is in the most disadvantaged quartile (quartile 1), and the lowest proportion is in the least disadvantaged quartile (quartile 4).
- When compared with serious assault offenders, a greater proportion of driving offenders live in inner metropolitan regions and a lesser proportion live in outer regional, remote or very remote regions.

**Table 1.2: Demographic characteristics for people with at least one of the proven specified offences in 2016 in any NSW court**

Demographic characteristics		Driving offences involving harm		Serious assault offence	
		No	%	No	%
Age	<=24	80	20.8	2,645	32.8
	25-34	90	23.4	2,399	29.8
	35-44	70	18.2	1,694	21.0
	45-54	47	12.2	973	12.1
	55+	94	24.4	305	3.8
	Missing	4	1.0	41	0.5
Gender	Female	107	27.8	1,681	20.9
	Male	278	72.2	6,376	79.1
Aboriginal status	Non-Aboriginal person	142	36.9	5,878	73.0
	Aboriginal person	8	2.1	1,749	21.7
	Unknown	235	61.0	430	5.3
SEIFA of residence	Quartile 1	82	21.3	2,386	29.6
	Quartile 2	86	22.3	2,227	27.6
	Quartile 3	100	26.0	1,692	21.0
	Quartile 4	87	22.6	941	11.7
	Missing	30	7.8	811	10.1

## CP Repeat traffic offenders

Demographic characteristics		Driving offences involving harm		Serious assault offence	
		No	%	No	%
ARIA of residence	Inner metro	265	68.8	4,618	57.3
	Inner regional	81	21.0	1,845	22.9
	Outer regional/remote/very remote	10	2.6	789	9.8
	Missing	29	7.5	805	10.0

Source: NSW Bureau of Crime Statistics and Research request No 18-16506.

### Offence characteristics

1.27 Table 1.3 sets out the characteristics of relevant driving offences and serious assault offences. We draw attention to the following differences between the two groups:

- Slightly more than one quarter of driving offenders faced one or more concurrent offences, whereas almost two thirds of serious assault offenders faced one or more concurrent offences.
- The most significant differences between sentencing outcomes were that a much lower proportion of driving offences received a sentence of imprisonment and a much higher proportion of driving offences received a fine.

Table 1.3: Index offence characteristics for person with at least one of the proven specified offences in 2016 in any NSW court

Index offence characteristics		Driving offences involving harm		Serious assault offence	
		No	%	No	%
Concurrent offences	0	287	74.5	2,845	35.3
	1	48	12.5	1,740	21.6
	2	50	13.0	3,472	43.1
Principal penalty	Imprisonment	54	14.0	2,209	27.4
	ICO	19	4.9	256	3.2
	Suspended sentence	39	10.1	965	12.0
	CSO	27	7.0	545	6.8
	Bond	111	28.8	2,806	34.8
	Fine	73	19.0	402	5.0
	No conviction recorded	53	13.8	511	6.3
	Other	9	2.3	363	4.5

Source: NSW Bureau of Crime Statistics and Research request No 18-16506.

### Prior offending characteristics

1.28 Table 1.4 sets out the prior offending characteristics of driving offenders who cause death or injury and serious assault offenders. We draw attention to the following differences between the two groups:

- Slightly more than 80% of driving offenders had not appeared before a court in the previous 5 years, compared with 41.5% of serious assault offenders.
- In the previous 5 years, a greater proportion of serious assault offenders had one or more:
  - proven driving offences
  - proven offences of drive while disqualified or suspended
  - proven PCA offences.

1.29 This suggests that there is a stronger relationship between driving offences and serious assault than there is between driving offences generally and driving offences that result in harm.

Table 1.4: Prior offending characteristics for persons with at least one of the proven specified offences in 2016 in any NSW court

Prior offending characteristics		Driving offences involving harm		Serious assault offence	
		No	%	No	%
Total court appearances (5 years)	0	309	80.3	3,346	41.5
	1	24	6.2	1,492	18.5
	2	17	4.4	967	12.0
	3+	35	9.1	2,252	28.0
Total appearances with any proven driving offence (5 years)	0	351	91.2	6,005	74.5
	1	16	4.2	1,309	16.2
	2	16	4.2	488	6.1
	3+	2	0.5	255	3.2
Total appearances with any proven drive whilst disqualified or suspended (5 years)	0	369	95.8	7,151	88.8
	1	7	1.8	583	7.2
	2	8	2.1	219	2.7
	3+	1	0.3	104	1.3
Total appearances with any proven dangerous or negligent acts ANZSOC 04 (5 years)	0	374	97.1	7,616	94.5
	1+	11	2.9	441	5.5
Total appearances with any proven negligent driving offence* (5 years)	0	384	99.7	8,044	99.8
	1+	1	0.3	13	0.2
Total appearances with any proven PCA offence (5 years)	0	368	96.6	7,126	88.4
	1	13	2.5	813	10.1
	2	4	0.9	110	1.4
	3+	0	0.0	8	0.1

Source: NSW Bureau of Crime Statistics and Research request No 18-16506.

## Reoffending

- 1.30 BOCSAR also found that only 7.6% of the driving offenders faced any new charge within 12 months of the index offence. This compares with 29.7% of the serious assault offenders.<sup>15</sup>

15. NSW Bureau of Crime Statistics and Research request No 18-16506.

## Repeat offending

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- 1.31 The terms of reference link repeat offending to offences that pose an ongoing risk to the community. There is a relationship between repetition and risk, but, as we discuss below, not all repeat offending necessarily gives rise to the risk we are concerned with. Our focus is on those offences that pose an ongoing risk of harm to the community.
- 1.32 The current system already imposes sanctions on people who commit more than one specified traffic offence. For example, the special penalties and interventions in the *Road Transport Act 2013* (NSW) (“*Road Transport Act*”) apply to repeat offenders in a variety of ways, some of them not involving the courts. The first two of those listed here are discussed in terms of the relevant specific intervention in Chapters 5 and 6:
- suspension for accumulation of demerit points for a variety of traffic offences and subsequent disqualification for driving while suspended<sup>16</sup>
  - a mandatory alcohol interlock order for a second or subsequent offence for an alcohol related major offence,<sup>17</sup> and
  - harsher maximum sentences for certain second or subsequent offences classified as “major offences”.
- 1.33 Because the harsher maximum sentences for second or subsequent major offences involve all of the available sentencing options at general law, we discuss them in the following section.

### Sentencing for a “second or subsequent offence”

- 1.34 Some driving offences described in Chapter 2 carry harsher penalties for second or subsequent offences.
- 1.35 Under the *Road Transport Act 2013* (NSW), unless otherwise specified, an offence is a second or subsequent offence if, within the previous 5 years, the offender committed an offence against the same provision or a former corresponding provision, or “an equivalent offence”.<sup>18</sup>
- 1.36 The category of “equivalent offence” allows a broad range of prior offending behaviour to count as a relevant prior offence and, therefore, make the new offence subject to the higher penalty levels. An equivalent offence can include a “major offence” where the new offence is one of the:
- safety and traffic management offences under Chapter 5 of the *Road Transport Act 2013* (NSW), including drink driving and drug driving offences, and dangerous driving, or

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16. [5.10]-[5.30], [5.38], [5.75].

17. [6.7].

18. *Road Transport Act 2013* (NSW) s 9(2).

## CP Repeat traffic offenders

- the unauthorised driving offences of driving without a licence or driving while suspended or disqualified, or driving after licence refusal or cancellation, if the previous offence is one of the other unauthorised driving offences.<sup>19</sup>
- 1.37 Major offence means any of the following crimes or offences (or equivalent major offences under previous acts):<sup>20</sup>
- an offence in respect of the death of or bodily harm to another person caused by or arising out of the offender's use of a motor vehicle for which the offender is convicted of:
    - the crime of murder or manslaughter, or
    - an offence of wounding or grievous bodily harm with intent, reckless grievous bodily harm, causing injuries by furious driving, causing grievous bodily harm by unlawful or negligent act or omission, or any other offence under the *Crimes Act 1900* (NSW) ("*Crimes Act*")<sup>21</sup>
  - an offence of predatory driving, not stopping in a police pursuit, or failing to stop and assist after a crash<sup>22</sup>
  - an offence of driving or attempting to drive with a PCA<sup>23</sup>
  - an offence of driving or attempting to drive with certain drugs, driving or attempting to drive under the influence of alcohol or any other drug, driving furiously, recklessly, at speed or in a manner dangerous to the public, menacing driving, and failing to stop and assist after a crash causing injury<sup>24</sup>
  - an offence of negligent driving causing death or grievous bodily harm<sup>25</sup>
  - an offence of refusing or failing to submit to a breath analysis, refusing or failing to provide or preventing sample taking, or wilfully introducing or altering the concentration or amount of alcohol or other drugs,<sup>26</sup> or
  - an offence of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any of the above offences.
- 1.38 This means that, for many of the offences outlined in Chapter 2, the prior offending behaviour can be part of a list of serious driving offences. Therefore, the figures for second or subsequent offences for many of these offences indicate a level of serious repeat traffic offending within a five-year period.
- 1.39 Despite the fact that "any other offence under the *Crimes Act*" may be a relevant offence if it involves death or harm arising from the use of a motor vehicle, a number of driving offences under the *Crimes Act* are expressly identified. However, some driving offences in the *Crimes Act* are not expressly identified, such as

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19. *Road Transport Act 2013* (NSW) s 9(5).

20. *Road Transport Act 2013* (NSW) s 4(1) definition of "major offence"; *Road Transport (General) Act 2005* (NSW); *Road Transport (General) Act 1999* (NSW); and *Traffic Act 1909* (NSW).

21. *Crimes Act 1900* (NSW) s 33, s 35, s 53–54.

22. *Crimes Act 1900* (NSW) s 51A, s 51B, s 52AB.

23. *Road Transport Act 2013* (NSW) s 110(1), (2), (3)(a) or (b), (4)(a) or (b) or (5)(a) and (b).

24. *Road Transport Act 2013* (NSW) s 111, s 112(1)(a) or (b), s 117(2), s 118, s 146.

25. *Road Transport Act 2013* (NSW) s 117(1)(a)–(b).

26. *Road Transport Act 2013* (NSW) sch 3 cl 16(1)(b), cl 17–18.



dangerous driving causing death or grievous bodily harm, and aggravated dangerous driving.<sup>27</sup> Also, while PCA offences are accommodated (including ones now subject to a penalty notice for a first offence),<sup>28</sup> the high range speeding offences that are almost entirely dealt with by penalty notice<sup>29</sup> are not currently included in the definition of “major offence”.

- 1.40 Any definition of repeat offending attached to harsher penalties or more restrictive supervision would need to include system protection offences, such as those of refusing to supply a breath sample or otherwise avoiding detection. This would be to prevent drivers resorting to such behaviour to avoid being classified as a serious traffic offender.

### Question 1.1: Identifying repeat offending

- (1) Is the current list of offences that make up repeat offending for the purposes of the *Road Transport Act 2013* (NSW) appropriate?
- (2) If not, what changes should be made to this list of offences?
- (3) What other ways are there to identify repeat traffic offending that gives rise to an ongoing risk of harm to the community?

## Our approach

- 1.41 This Consultation Paper details the complexity of the law’s response to repeat traffic offenders. We have set out the framework for dealing with all traffic offenders (including repeat traffic offenders) so that readers can see the complexity and inconsistency of the existing system.
- 1.42 Some of the existing provisions are not generally known or well understood. Many of the arrangements have not been subject to evaluation (as noted in Chapter 6). Many preliminary submissions suggest approaches to repeat offending that are already available in certain circumstances.
- 1.43 There are two main sources for dealing with repeat traffic offenders:
- Sentencing law and other responses of general application, as set out in the *Crimes (Sentencing Procedure) Act 1999* (NSW), the *Fines Act 1996* (NSW) and case law (Chapter 3 and 4), and
  - Special penalties and interventions, chiefly set out in the *Road Transport Act 2013* (NSW) (Chapter 5 and 6).
- 1.44 The two main responses from each source are the subject of separate chapters - fines and penalty notices (Chapter 4) and suspension and disqualification (Chapter 5).
- 1.45 An example of the complexity of the system can be seen in the fact that there are at least three different ways in which a driver who exceeds the speed limit by more

27. *Crimes Act 1900* (NSW) s 52A.

28. *Road Transport Act 2013* (NSW) proposed s 9(2A): *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (NSW) sch 1[4] (not yet commenced).

29. *Road Rules 2014* (NSW) r 10-2(3), r 10-2(5).

## CP Repeat traffic offenders

than 45km/h may have their licence suspended, and one way in which they may be disqualified from driving. As already noted, the offences required to establish repeat offending are different in different situations.

- 1.46 The complexity of the current system is perhaps not surprising, since the *Road Transport Act 2013* (NSW) is the product of incremental changes originally made to the *Traffic Act 1909* (NSW) and to successor acts, the *Road Transport (General) Act 2005* (NSW) and the *Road Transport (General) Act 1999* (NSW).
- 1.47 The overarching question is: How do we stop repeat traffic offending? A related question is: How do we achieve community safety? Once drivers are in the system as traffic offenders, one of the aims must be to prevent reoffending.

### What offenders?

- 1.48 As Chapter 2 illustrates, a large amount of risky behaviour is occurring on our roads. Traffic offending is dealt with in large volumes by the Local Court as well as through penalty notices and demerit points. This may weigh against identifying and tailoring responses to many individual repeat offences.
- 1.49 For the most part, the existing system, including demerit points, works as an adequate deterrent for the vast majority of the population. Chapter 2 identifies a relatively small number of “second or subsequent” offenders for major offences under the *Road Transport Act*. Within this group, there is a small number of “problem” offenders who pose an ongoing risk to safety.
- 1.50 Whether the sentencing principles, options and other interventions discussed in this paper are applied to repeat traffic offenders or first time offenders, their effectiveness is measured in their ability to prevent further offending. Investigating some of the sentencing options available to courts will inevitably involve an assessment of their effectiveness generally as well as their particular effectiveness for repeat offenders. The aim of the system should be to stop repeat offending – ideally by intervening before an offender becomes a repeat offender.
- 1.51 We are potentially dealing with more than one type of repeat offender. One preliminary submission observes:
- Some repeat traffic offenders will be dedicated career criminals, others will be persons who are otherwise law-abiding but who repeatedly disobey traffic rules and yet others will be persons disadvantaged by their socio-economic status, and/or by their location and/or by their options. It is important that the different classes of offender are recognised and catered for by the available sentencing options and intervention programs.<sup>30</sup>
- 1.52 Another issue is whether “second or subsequent” is too blunt a measure, and whether there needs to be further differentiation between second and subsequent offenders; for example, identifying drivers who have committed a third, or fourth offence (or more).<sup>31</sup>
- 1.53 The challenge is to identify repeat traffic offenders within the high risk areas, choose a point to intervene in their offending history, and manage them effectively.

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30. NSW, Director of Public Prosecutions, *Preliminary Submission PTR16*, 1.

31. NSW, Director of Public Prosecutions, *Preliminary Submission PTR16*, 1. See also M Lonergan, *Preliminary Submission PTR12*, 3–4.

## What interventions?

- 1.54 Given the volumes of offending for some traffic offences, in the sentencing space there is an inevitable reliance on fines (either court-imposed or through a penalty notice) and unsupervised bonds. While these may deter the general population from further offending, these are not effective responses for the more problematic traffic offenders.
- 1.55 However, harsher penalties and other responses may also not be effective. For example, in Tasmania, the Law Reform Institute observed, in relation to repeat drink driving offenders:
- Stakeholders highlighted that the progressively harsher criminal justice response (such as increased penalties and mandatory penalties) does not appear to be effective for a cohort of recidivist drink drivers and expressed the view that these offenders should be considered as offenders with chronic health issues that require a more therapeutic response.<sup>32</sup>
- 1.56 Likewise, the repealed habitual traffic offenders scheme may have been misconceived, in that it added an extra 5 years disqualification for people who met the definition of a repeat offender. A recent BOCSAR study says the disqualification reforms, which removed lengthy (punitive) periods of disqualification for drivers, have not increased death or injury on the road.<sup>33</sup> One question is whether effective program participation would be a better requirement for those who meet the former definition of habitual traffic offender.
- 1.57 Another preliminary submission raises concerns about vulnerable populations that may be impacted by more punitive approaches to repeat traffic offenders:
- In our own inquiries, we have received expressions of concern about how to improve road safety without disadvantaging vulnerable populations – particularly remote indigenous communities.
- Given these concerns, we recommend that lateral approaches to sentencing options be considered. These need to take the circumstances of the recidivist offender into account. This does not mean leniency. It does mean encouraging a range of intervention programs that achieve behaviour change through established effective mechanisms suitable for the particular offender.<sup>34</sup>
- 1.58 Chapter 7 deals with communities that may require special attention because of the negative impact that existing regulation and enforcement has on them. These include Aboriginal people,<sup>35</sup> young people and people living in remote and regional communities.
- 1.59 A lasting impact on the behaviour of the target group is required. There are hints of this approach in the current regime – with, for example, the requirement to resit the driving knowledge test when a driver uses up their demerit points allowance twice in

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32. Tasmania, Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers*, Issues Paper 23 (2017) [1.1.3].

33. S Poynton and F Leung, *Early Indicators of the Impacts of the NSW Driver Licence Disqualification Reforms*, Bureau Brief No 135 (NSW Bureau of Crime Statistics and Research, 2018) 5.

34. Amy Gillett Foundation, *Preliminary Submission PTR15*, 4.

35. While we generally refer to “Aboriginal people” in this paper we are referring to both Aboriginal people and Torres Strait Islanders.

## CP Repeat traffic offenders

a given period.<sup>36</sup> Another example is the newly introduced program requirements that Roads and Maritime Services may impose on drivers convicted of alcohol or drug-related driving offences.<sup>37</sup>

1.60 Sentencing reforms that commenced on 24 September 2018 have changed the structure of penalties in NSW.<sup>38</sup> The reforms abolished the options of home detention, suspended sentence, intensive correction order (the old version), community service order, s 9 good behaviour bond, and conditional discharge under s 10, each with varying levels of supervision and, often, inadequate provision for other interventions such as course attendance. They have been replaced by a simpler hierarchy of sentencing options which involve supervision in the community:

- intensive correction order (the new version)
- community correction order
- conditional release order.

Each of the new options allows some form of course or program attendance as an option. These new options are available for all offences, including traffic offences. This should be borne in mind when considering the adequacy of the sentencing responses to each of the offences outlined in Chapter 2.

1.61 Preliminary submissions raise a number of options involving specialist courses,<sup>39</sup> including intensive residential programs as diversionary options.<sup>40</sup> A review of young drivers by the NSW Auditor-General suggested that psychological testing be investigated for provisional drivers returning from disqualification or suspension.<sup>41</sup> One preliminary submission suggests similar forms of psychiatric assessment for repeat offenders, ending with detention in a special facility to treat serious repeat offenders.<sup>42</sup> Another submission refers to the need for alternative interventions “based on effective behaviour change principles from conditioning through to cognitive behavioural therapy” backed up by rigorous development and evaluation.<sup>43</sup> A multi-disciplinary or inter-disciplinary approach may be called for.

1.62 The question of the content of courses therefore becomes important. We discuss the content of courses below in the context of road safety education and other initiatives.<sup>44</sup> There is also a question of what the courses should address. Should they be aimed at low level offending or address more complex criminogenic factors (including anti-social behaviour) that may be involved in repeat driving offences?

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36. *Road Transport Act 2013* (NSW) s 43A(1). See [5.26]-[5.28].

37. *Road Transport Act 2013* (NSW) s 215C: *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (NSW) sch 1[16] (not yet commenced). See [6.108].

38. *Crimes (Sentencing Procedure) Act 1999* (NSW) as amended by *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) sch 1.

39. M Bloor, *Preliminary submission PTR13*, 1; Juvenile Justice NSW, *Preliminary Submission PTR18*, 2–3.

40. Confidential, *Preliminary Submission PTR14*, 1.

41. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 22–23.

42. M Lonergan, *Preliminary Submission PTR12*, 3–4.

43. Amy Gillett Foundation, *Preliminary Submission PTR15*, 4.

44. See [1.69]-[1.78].

- 1.63 It has been suggested to us that the cost of delivering courses will more than offset the costs of future incarceration, if the programs are successful in reducing repeat offending.<sup>45</sup>
- 1.64 An alternative approach could be to have a system of extended supervision of high risk traffic offenders like the regimes that now apply to serious violence offenders and serious sex offenders.<sup>46</sup> Currently, a driver convicted of manslaughter by unlawful and dangerous act may be subject to the high risk offenders regime.<sup>47</sup> It is not clear that any other traffic offence would meet the definition of a serious violence offence, which requires that the offender's conduct cause death or grievous bodily harm and that the offender intend to cause or be reckless as to causing death or grievous bodily harm.<sup>48</sup>
- 1.65 In the interests of swift, certain and fair responses, there may also be more scope for alternative interventions by police.<sup>49</sup> Some of these interventions are already available in NSW – for example, police confiscation of vehicles or licence plates<sup>50</sup> and police issuing of immediate licence suspension notices in relation to serious charges or high risk conduct (such as middle and high range PCA and high range speeding).<sup>51</sup>

### Question 1.2: Dealing with repeat driving offenders

Considering the existing and possible sentencing and other available responses to repeat driving offenders (outlined in Chapters 4-6):

- (1) What options are appropriate for sentencing repeat driving offenders who may pose an ongoing risk to the community?
- (2) What sorts of offenders should they target?
- (3) What changes could be made to the law to make it more effective in dealing with repeat driving offenders who may pose an ongoing risk to the community?

## Other approaches to the problem of repeat traffic offending

- 1.66 The NSW Road Safety Strategy 2012–2021 is underpinned by a safe system approach that focuses on the need for safer roads, safer vehicles, and safer speeds as well as safer road users. Repeat driving offenders are part of a much wider group of road users that includes all drivers, passengers, pedestrians and cyclists.<sup>52</sup> Sentencing is only one approach to modifying the behaviour of repeat driving offenders.
- 1.67 There are many other approaches that can be taken to ensure a safer driving environment. The Inquiry into the National Road Safety Strategy has observed that

45. See, eg, Juvenile Justice, *Preliminary Submission PTR18*, 3.

46. *Crimes (High Risk Offenders) Act 2006* (NSW).

47. See *R v Chandler (No 2)* [2017] NSWSC 1758 [153].

48. *Crimes (High Risk Offenders) Act 2006* (NSW) s 5A(1).

49. Amy Gillett Foundation, *Preliminary Submission PTR15*, 4.

50. *Road Transport Act 2013* (NSW) s 239.

51. *Road Transport Act 2013* (NSW) s 224(1)–(2).

52. Transport for NSW, *NSW Road Safety Strategy 2012–2021* (2012) 20–31.

## CP Repeat traffic offenders

“[c]ommunity debates on safety tend to focus on road user performance and infrastructure investment issues rather than an expectation that all possible options within the system be holistically explored”.<sup>53</sup>

- 1.68 The following matters have come to our attention as part of our preliminary consideration of the issues confronting the sentencing of repeat traffic offenders. Some may be relevant to sentencing options discussed later in this paper. For example, some of the lessons learned about road safety education of high school students may be relevant to improving offender intervention programs,<sup>54</sup> and some of the developments in intelligent speed adaptation technology may be relevant to imposing speed inhibitor conditions.<sup>55</sup> However, others, such as infrastructure investment and provision of public transport, are generally outside our terms of reference and our areas of expertise as a sentencing council.

### Road safety education and other initiatives

- 1.69 Road safety education is delivered in many contexts. It can be delivered as part of driver training. It can also be delivered in the context of sentencing, either as a diversion before conviction or sentence, or as an intervention as part of a sentencing option. The programs that are delivered outside the criminal justice system may reduce the possibility that a person will offend at all. Such programs may also have lessons for education delivered in the criminal justice context.
- 1.70 One preliminary submission suggests rolling out driving programs through schools.<sup>56</sup> The NSW Centre for Road Safety has cautioned against reliance on some versions of such programs. It has observed that extensive evaluations of driver education and training delivered through schools (particularly in the US) found that, while they imparted basic car control skills and road law knowledge, they did not reduce casualties or traffic violations. In some cases, they increased the number of provisional drivers and had a negative impact on road safety. The Centre notes that there may be some scope, based on findings in the preventative health field, to have programs designed to improve cognitive skills and build resilience that may improve a young person’s ability to deal with high risk situations. However, it warns that further evaluation needs to take place before encouraging such programs as a road safety initiative.<sup>57</sup>
- 1.71 National road trauma data shows a 29% reduction in deaths among 15–24-year-olds in the 5 years to 2012 (a greater reduction than for any other age group), attributed largely to the introduction of graduated licensing schemes in all states and territories.<sup>58</sup> Effective graduated licensing schemes are said to address and

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53. Australia, *Inquiry into the National Road Safety Strategy 2011–2020* (2018) 28.

54. [6.91]–[6.116].

55. [6.59]–[6.77].

56. M Loneragan, *Preliminary submission PTR12*, 1.

57. Transport for NSW, Centre for Road Safety, *Australian Graduated Licensing Scheme: Policy Framework* (2014) 27. See also T M Senserrick and A F Williams, *Summary of Literature of the Effective Components of Graduated Driver Licensing Systems*, Research Report AP-R476-15 (Austroads, 2015) [5.5.5]; Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [3.74]–[3.82]; Royal Automobile Club of Victoria Ltd, *The Effectiveness of Driver Training/Education as a Road Safety Measure* (2016) 3–4.

58. Australia, Bureau of Infrastructure, Transport and Regional Economics, *Young Adult Road Safety – A Statistical Picture*. Information Sheet 51 (2013) 6–7.

overcome the key reasons why young people are over-represented in road trauma data, including:

- a lack of driving experience
- poor ability to anticipate and deal with hazards
- failure to recognise and assess risk, and
- a tendency to be over-confident.<sup>59</sup>

1.72 An Austroads summary of literature about the effective components of graduated driver licensing systems found emerging research that suggests “education programs to improve cognitive skill deficits, to build resilience and to involve parents had potential to reduce crashes”.<sup>60</sup> However, it also noted that these programs had not yet been adequately evaluated.<sup>61</sup>

1.73 In NSW, the graduated licensing scheme involves:

- **Learner driver licence** held for at least 12 months, under which a driver, aged 16–25 years, must undertake 120 hours (or equivalent) of supervised driving
- **Provisional P1 driver licence** held for at least 12 months, under which a driver is subject to various restrictions as to speed, demerit points and PCA, and must pass a hazard perception test to move to the next stage
- **Provisional P2 driver licence** held for at least 24 months, under which a driver is subject to less stringent restrictions and must pass a driving qualification test to hold an unrestricted licence.<sup>62</sup>

1.74 One preliminary submission supports interventions based on effective behaviour change principles.<sup>63</sup>

1.75 An example of a promising program that is about awareness, not just technical knowledge, is the RYDA Program delivered by Road Safety Education. It draws on insights not only from driving experts, but also experts in the field of psychology and education. The program involves a series of workshops for secondary students that focus on cognition development, building and increasing social competency and resilience and motivating low risk behaviour. They aim to challenge students to change the way they think about road safety and lay the foundation for safe road use. Each year, the program is delivered to over 50,000 secondary students from more than 650 participating schools.<sup>64</sup>

1.76 Most education and training in this field has a particular focus on young people. Lifelong learning is not much catered for except for population level education campaigns when, for example, new road rules are introduced. The Joint Select

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59. Transport for NSW, Centre for Road Safety, *Australian Graduated Licensing Scheme: Policy Framework* (2014) 10.

60. T M Senserrick and A F Williams, *Summary of Literature of the Effective Components of Graduated Driver Licensing Systems*, Research Report AP-R476-15 (Austroads, 2015) ii.

61. See T M Senserrick and A F Williams, *Summary of Literature of the Effective Components of Graduated Driver Licensing Systems*, Research Report AP-R476-15 (Austroads, 2015) [5.5.5].

62. *Road Transport (Driver Licensing) Regulation 2017* (NSW) pt 3.

63. Amy Gillett Foundation, *Preliminary Submission PTR15*, 4.

64. Road Safety Education, “RYDA” <[www.rse.org.au/programs/ryda](http://www.rse.org.au/programs/ryda)> (retrieved 14 November 2018).

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Committee on Road Safety recently noted that there are limited opportunities for driver education between receiving a licence and the retesting requirements that apply once a driver turns 85 years old.<sup>65</sup> However, the Committee also noted evidence that mandatory retesting of driver knowledge would have little impact on road safety and would not address factors that impact on safe driving such as experience, attitude and risk management.<sup>66</sup>

- 1.77 For elderly drivers, there is some evidence to suggest that “driving-specific” cognitive training programs have the potential to be successful.<sup>67</sup>
- 1.78 The observations about the need to change driver attitudes to risk and risk management are equally relevant to programs that are delivered to repeat driving offenders.

## Situational responses

- 1.79 Situational responses to risk can include improving detection in known offending hotspots as well as improving road infrastructure.
- 1.80 The Inquiry into the National Road Safety Strategy has recently identified average speed detection (or point to point) systems as being “under-used” and having “great potential for expanded operations”, pointing to some success from the deployment of average speed cameras on the trunk road network in Scotland.<sup>68</sup> A study of 25 average speed cameras in the UK found that their installation resulted in a 36% reduction in the mean rate of fatal and serious crashes.<sup>69</sup>
- 1.81 Average speed detection is currently used for heavy vehicles in NSW. While the system is capable of expansion to regular drivers, it has, to date, only been applied to heavy vehicles.<sup>70</sup>
- 1.82 Improving road infrastructure is also a key target. Based on a business case developed by the International Road Assessment Programme, the Inquiry into the National Road Safety Strategy has estimated that Australia could reduce fatal and serious injuries by more than 30% by “improving road infrastructure to achieve more than 75% of travel on 3-star or better roads for all road users”.<sup>71</sup>

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65. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [3.3].

66. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [3.6]–[3.13].

67. D Mayhew, R Robertson and W Vanlaar, *Computer-Based Cognitive Training Programs for Older Drivers: What Research Tells Us* (Traffic Injury Research Foundation, 2014) 2, 15.

68. Australia, *Inquiry into the National Road Safety Strategy 2011–2020* (2018) 45, 60.

69. R Owen, G Ursachi and R Allsop, *The Effectiveness of Average Speed Cameras in Great Britain* (RAC Foundation, 2016) v, [6.1.2], [6.3].

70. Transport for NSW, *Average Speed Enforcement for Heavy Vehicles*, Fact Sheet (Roads and Maritime Services NSW, 2017) 1.

71. Australia, *Inquiry into the National Road Safety Strategy 2011–2020* (2018) 16.



## Technology

- 1.83 Technology may be used to ensure or encourage compliance with driving laws. Some preliminary submissions raise the potential for technology to ensure compliance.<sup>72</sup> For example, using it to identify who is entitled to drive a car.<sup>73</sup>
- 1.84 An example of using technology to encourage compliance can be seen in intelligent speed adaptation (“ISA”) technology such as the Speed Adviser smartphone app, which is available to drivers who are not learners, or provisional drivers, and which provides spoken and visual warnings when a driver exceeds the speed limit.<sup>74</sup>
- 1.85 A cost benefit analysis of introducing ISA systems in Australia, based on the effects of different types of ISA in a UK trial, found that fitting:
- an advisory ISA device (that uses only audio and visual signals to warn drivers that they are travelling over the speed limit) to all vehicles would reduce injury crashes by 8% and save \$1.2b per year
  - a supportive ISA device (that prevents the vehicle from breaking the speed limit, but that can be overridden) to all vehicles would reduce injury crashes by 15% and save \$2.2b per year, and
  - a limiting ISA device (that prevent the vehicle from breaking the speed limit, but cannot be overridden) to all vehicles would reduce injury crashes by 26% and save \$3.7b per year.<sup>75</sup>
- 1.86 The economic analysis (considering installation costs of ISA systems) showed that ISA can be a cost effective way to reduce injury crashes.<sup>76</sup>
- 1.87 We consider ISA systems further, as part of a sentencing option, in Chapter 6.<sup>77</sup>

## Public transport

- 1.88 Providing public transport, particularly at key times and in key places, can help avoid offending behaviour by offering alternative transport options.
- 1.89 For example, in the wake of proposals for tougher drink driving laws in Ireland, including disqualification where that had previously not been available, the National Transport Authority introduced late night bus services as part of the Local Link service which is run under the Rural Transport Programme.<sup>78</sup>

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72. Amy Gillett Foundation, *Preliminary Submission PTR15*, 6; Pedestrian Council of Australia, *Preliminary Submission PTR19*, 3.

73. Pedestrian Council of Australia, *Preliminary Submission PTR19*, 3.

74. Transport for NSW, Centre for Road Safety, “Speed Adviser” <[www.roadsafety.transport.nsw.gov.au/speeding/speedadviser/index.html](http://www.roadsafety.transport.nsw.gov.au/speeding/speedadviser/index.html)> (retrieved 15 November 2018).

75. S Doecke and J Woolley, “Cost Benefit Analysis of Intelligent Speed Assist” (University of Adelaide, 2010) iii. See also Australia, *Inquiry into the National Road Safety Strategy 2011–2020* (2018) 22.

76. S Doecke and J Woolley, “Cost Benefit Analysis of Intelligent Speed Assist” (University of Adelaide, 2010) iii. See also Australia, *Inquiry into the National Road Safety Strategy 2011–2020* (2018) 15.

77. [6.59]–[6.77].

78. K Doyle and M Donnelly, “Revealed: The 50 bus routes under new “drink link” plan for rural Ireland” *Farm Ireland*, 8 May 2018 <[www.independent.ie](http://www.independent.ie)>; Ireland, National Transport Authority,

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- 1.90 In NSW, the Joint Standing Committee on Road Safety's inquiry into driver education, training and road safety, received submissions to the effect that:

the lack of alternative transport options in many parts of New South Wales compounds the disadvantage suffered by drivers of all ages. As a result, people are forced to seek a driver licence.<sup>79</sup>

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"Rural Transport Programme" <[www.nationaltransport.ie/public-transport-services/rural-transport-programme/](http://www.nationaltransport.ie/public-transport-services/rural-transport-programme/)> (retrieved 15 November 2018).

79. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.3]. See also NSW, Legislative Assembly Committee on Community Services, *Access to Transport for Seniors and Disadvantaged People in Rural and Regional NSW*, Report 1/56 (2016).

## 2. Driving offences involving harm or a high risk of harm

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### In brief

This chapter identifies driving offences that result in death or injury or that involve a high risk of harm, including offences involving speeding, alcohol and drugs, fatigue and otherwise unsafe activities. Many of these offences occur in large volumes. Some tend to be dealt with by way of penalty notice and demerit points. The majority, when dealt with by the courts, result in a fine.

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- 2.1 There are hundreds of traffic offences in NSW law, and the policy behind most of those offences includes ensuring safer driving and safer roads. This chapter focuses on those offences that criminalise driving that results in death or injury, and driving that involves a high risk of harm. In identifying those offences involving a high risk of harm, we have taken into account the data on the principal factors involved in road accidents outlined in Chapter 1.<sup>1</sup>
- 2.2 The majority of the offences listed below fall within the definition of “major offence” under the *Road Transport Act 2013* (NSW),<sup>2</sup> discussed in Chapter 1. Those that are not a “major offence” include the high range speeding offences, the serious fatigue offences, unauthorised racing offences, negligent driving (which does not cause death or grievous bodily harm), and using a mobile telephone while driving. This latter group includes a mix of penalty notice offences and court only matters. Some involve too great a volume of offenders (for example, mobile telephone use and speeding) to be dealt with by any means other than penalty notice, at least in the first instance.
- 2.3 Traffic offences currently make up a large part of the work of the NSW Local Court. The Judicial Commission of NSW’s list of the 20 most common statutory offences (principal offence only) dealt with by the Local Court in 2015 includes 10 driving-related offences:
- Mid-range prescribed concentration of alcohol (“PCA”) (7,085 cases)

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1. [1.12]-[1.23].

2. *Road Transport Act 2013* (NSW) s 4(1) definition of “major offence”.

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- Low-range PCA (6,338 cases)
- Drive with prescribed illicit drug (4,952 cases)
- Drive while disqualified (4,917 cases)
- Drive while suspended (3,311 cases)
- High-range PCA (2,717 cases)
- Never licensed (2,555 cases)
- Drive while suspended - Fines Act (1,810 cases)
- Drive without being licenced (1,587 cases)
- Special-range PCA (1,004 cases)

These amount to 34.4% of all cases in the Local Court in 2015. All, in one way or another, involve activities that carry some form of risk.

- 2.4 The information set out in the following section is intended to give readers an overview of the volume of such offences that come before the courts for sentencing, and the most common sentencing outcomes for each, as well as the volume of penalty notices, where these may also be issued. The majority of the offences we consider in this chapter, when dealt with by the courts, result in a fine. A good behaviour bond without supervision is also a common outcome.
- 2.5 An overarching question is whether the current sentencing options and sentencing patterns are appropriate to the offences, and sufficient to deter further driving offences. If the answer is that the options or outcomes are inappropriate, this prompts the further question of what changes should be made. In the case of sentencing outcomes, another question is how any changes should be achieved. Options include through legislative change to sentencing principles, new guideline judgments, or development of the common law.

## Driving offences resulting in harm

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- 2.6 The driving offences that result in harm to a person range in seriousness, depending on the degree of negligence and the degree of harm involved. The Local Court deals with the less serious matters summarily, while the higher courts (the District and Supreme Courts) deal with the more serious matters “on indictment”.<sup>3</sup> As set out below, murder and manslaughter are the most serious in the spectrum of seriousness and can only be dealt with by the higher courts. Next on the spectrum are dangerous driving offences under the *Crimes Act 1900* (NSW) that cause death or grievous bodily harm<sup>4</sup> (which are indictable offences that may be tried summarily in certain circumstances), followed by furious, reckless and negligent driving causing death or injury under the *Road Transport Act 2013* (NSW)<sup>5</sup> (which may only be tried summarily).
- 2.7 The NSW Court of Criminal Appeal (“CCA”) has observed:

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3. The jurisdiction of the Children’s Court is discussed in [7.19]-[7.20].
  4. *Crimes Act 1900* (NSW) s 52A.
  5. *Road Transport Act 2013* (NSW) s 117(1)(a)–(b).

As the law presently stands, there is a rational, logical and cohesive hierarchy of offences concerned with the infliction of death or serious injury by the use of a motor vehicle. The offences range from negligent driving causing grievous bodily harm ... through the driving offences in the *Crimes Act* to manslaughter by gross criminal negligence. All of these offences involve varying degrees of negligence, however the actual conduct may be described, ranging from a lack of care and proceeding through dangerousness to culpable negligence.<sup>6</sup>

- 2.8 The offences of dangerous driving were originally introduced as less serious alternatives to the crimes of murder, manslaughter and causing grievous bodily harm, in part because juries did not convict for those crimes in a driving context.<sup>7</sup>
- 2.9 Generally speaking, relatively small numbers of offenders are sentenced for these offences as a principal offence. The annual average number of such offenders dealt with by the NSW higher courts (in the period January 2008 – December 2017) is around 55, just under half of whom (46%) are sentenced for dangerous driving causing death. In the Local Court of NSW, the annual average (in the period October 2013 – September 2017) is around 270 such offenders, the vast majority of whom (77%) are sentenced for negligent driving causing grievous bodily harm.

### Offences resulting in death

- 2.10 This section sets out the offences where driving results in death.

#### *Manslaughter*

- 2.11 While there are some cases where an offender has been convicted of murder after using a motor vehicle to kill someone deliberately,<sup>8</sup> manslaughter is generally the most serious charge available when a person is killed as a result of an offender's driving.
- 2.12 The Judicial Commission of NSW does not collate a sub-category of sentencing statistics for "motor car manslaughter".<sup>9</sup> However, its statistics for manslaughter record when licence disqualifications are also imposed, which must occur when a court convicts an offender of manslaughter arising from the use of a motor vehicle.<sup>10</sup>
- 2.13 In the 10 years from 2008–2017, the NSW higher courts have disqualified six offenders whom they also sentenced for manslaughter.<sup>11</sup> All six were sentenced to imprisonment with terms ranging from 7 years (with a non-parole period of 4 years) to 16 years (with a non-parole period of 12 years).<sup>12</sup>

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6. *R v Borkowski* [2009] NSWCCA 102, 195 A Crim R 152 [56]. See also *R v Buttsworth* [1983] 1 NSWLR 658.

7. *Attorney-General v Bindoff* (1953) 53 SR (NSW) 489, 490.

8. See, eg, *R v Holton* [2002] NSWSC 775; *R v Holton* [2004] NSWCCA 214.

9. *R v Cameron* [2005] NSWCCA 359, 157 A Crim R 70 [32].

10. *Road Transport Act 2013* (NSW) s 205, s 4(1) definition of "major offence" (a)(i).

11. There is at least one case in 2008–2017 where an offender has been sentenced for driving-related manslaughter but a period of disqualification was not imposed: *R v Chandler (No 2)* [2017] NSWSC 1758. In that case the Supreme Court imposed a head sentence of 19 years imprisonment for the principal offence with a non-parole period of 13 years.

12. See Table B.1.

### *Driving offences resulting in death*

2.14 The driving offences causing death are:

- **Dangerous driving causing death.** A driver is guilty of dangerous driving causing death when their vehicle is involved in an impact that causes the death of another person and the driver is driving:
  - (a) under the influence of intoxicating liquor or of a drug, or
  - (b) at a speed dangerous to another person or persons, or
  - (c) in a manner dangerous to another person or persons.<sup>13</sup>
- **Aggravated dangerous driving causing death.** A driver is guilty of aggravated dangerous driving causing death if their vehicle is involved in an impact that causes the death of another person and:<sup>14</sup>
  - a PCA of 0.15 (or more) was present in the driver's breath or blood
  - the driver was driving at more than 45 km/h over the speed limit
  - the driver was escaping pursuit by a police officer, or
  - the driver's ability was very substantially impaired because they were under the influence of a drug (other than intoxicating liquor) or a combination of drugs (which may include intoxicating liquor).<sup>15</sup>
- **Negligent driving causing death.** A person must not drive a motor vehicle on a road negligently where the driving causes death.<sup>16</sup>

2.15 Table 2.1 sets out the maximum penalties and the most common sentencing outcomes for these offences. Details about the number of all penalties imposed are in Appendix B.<sup>17</sup> Between 2008 and 2017, all cases of aggravated dangerous driving causing death, and the majority of cases of dangerous driving causing death, attracted a prison sentence. Imprisonment was rarely imposed for the summary offence of negligent driving causing death. A s 9 good behaviour bond without supervision was the most frequently imposed penalty for that offence.

2.16 The existing dangerous driving provisions were introduced in 1994,<sup>18</sup> substantially increasing the 5 years maximum penalty for what was then referred to as “culpable driving”. In 1997, the CCA noted the effective doubling of the penalty that previously applied and observed:

The courts are required to give effect to the increased maximum sentences provided by moving the previous sentencing patterns in a sharply upward manner.<sup>19</sup>

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13. *Crimes Act 1900* (NSW) s 52A(1).

14. *Crimes Act 1900* (NSW) s 52A(2).

15. *Crimes Act 1900* (NSW) s 52A(7).

16. *Road Transport Act 2013* (NSW) s 117(1)(a).

17. Figure B.1-B.2.

18. *Crimes (Dangerous Driving Offences) Amendment Act 1994* (NSW) sch 1.

19. *R v Musumeci* (Unreported, NSWCCA, 30 October 1997) 4 (Hunt CJ at CL).

Table 2.1: Maximum penalties and sentencing outcomes for driving offences resulting in death

Offence		Maximum penalty	Sentencing outcome
Dangerous driving causing death (Indictable offence)		10 years imprisonment	Higher Courts Jan 2008 – Dec 2017 256 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (63%)</li> <li>▪ suspended sentence (21%)</li> </ul> See Figure B.1.
Aggravated dangerous driving causing death (Indictable offence)		14 years imprisonment	Higher Courts Jan 2008 – Dec 2017 56 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (100%)</li> </ul>
Negligent driving causing death (Summary offence)	First offence	18 months imprisonment and/or \$3,300 (30 penalty units)	Local Court Apr 2014 – Mar 2018 100 offenders <ul style="list-style-type: none"> <li>▪ s 9 bond without supervision (46%)</li> <li>▪ suspended sentence (24%)</li> </ul> See Figure B.2.
	Second or subsequent offence	2 years imprisonment and/or \$5,500 (50 penalty units)	Local Court Apr 2014 – Mar 2018 1 offender <ul style="list-style-type: none"> <li>▪ intensive correction order (100%)</li> </ul>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

### Question 2.1: Driving offences resulting in death

- (1) Are the maximum penalties for driving offences resulting in death appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for driving offences resulting in death appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

## Offences resulting in injury

2.17 This section sets out the driving offences that result in injury, usually arising from dangerous or negligent driving. There is also a relatively small number of offences that are not specific to driving, but that, like manslaughter, can be committed using a motor vehicle:

- use of a weapon (the motor vehicle) to resist arrest,<sup>20</sup> and

20. *Crimes Act 1900* (NSW) s 33. See *R v Perez* (Unreported, NSWCCA, 11 December 1991) 21 (Kirby P).

## CP Repeat traffic offenders

- causing grievous bodily harm with intent, or by unlawful or negligent act or omission, or recklessly.<sup>21</sup>
- 2.18 Because they are offences under the *Crimes Act 1900* (NSW) and can involve bodily injury, they fall within the definition of “major offence” for the purposes of the *Road Transport Act 2013* (NSW).<sup>22</sup> There are also some offences involving a motor vehicle that do not necessarily result in death or bodily injury; for example, ram raids<sup>23</sup> and car jacking.<sup>24</sup>
- 2.19 The specific driving offences that include injury as an element of the offence are:
- **Dangerous driving causing grievous bodily harm.** A driver is guilty if their vehicle is involved in an impact that causes another person grievous bodily harm and the driver is driving:
    - (a) under the influence of intoxicating liquor or of a drug, or
    - (b) at a speed dangerous to another person or persons, or
    - (c) in a manner dangerous to another person or persons.<sup>25</sup>
  - **Aggravated dangerous driving causing grievous bodily harm.** A driver is guilty if their vehicle is involved in an impact that causes another person grievous bodily harm and:<sup>26</sup>
    - a prescribed concentration of alcohol of 0.15 was present in the driver's breath or blood
    - the driver was driving at more than 45 km/h over the speed limit
    - the driver was escaping pursuit by a police officer, or
    - the driver's ability was very substantially impaired because they were under the influence of a drug (other than intoxicating liquor) or a combination of drugs (which may include intoxicating liquor).<sup>27</sup>
  - **Bodily harm by furious driving, etc.** A person, while on horseback, or in charge of any carriage or other vehicle, must not cause bodily harm to another by “wanton or furious riding, or driving, or racing, or other misconduct, or by wilful neglect”.<sup>28</sup>
  - **Negligent driving causing grievous bodily harm.** A person must not drive a motor vehicle on a road negligently where the driving causes another person grievous bodily harm.<sup>29</sup>

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21. *Crimes Act 1900* (NSW) s 33, s 35(2), s 54.

22. *Road Transport Act 2013* (NSW) s 4(1) definition of “major offence” (a)(ii).

23. *Crimes Act 1900* (NSW) s 112, s 113. See, eg, *Fayad v R* [2017] NSWCCA 81.

24. *Crimes Act 1900* (NSW) s 154C.

25. *Crimes Act 1900* (NSW) s 52A(3).

26. *Crimes Act 1900* (NSW) s 52A(4).

27. *Crimes Act 1900* (NSW) s 52A(7), s 52A(9) definition of “prescribed concentration of alcohol”.

28. *Crimes Act 1900* (NSW) s 53. See *Kerr v R* [2016] NSWCCA 218.

29. *Road Transport Act 2013* (NSW) s 117(1)(b).



2.20 Table 2.2 sets out the maximum penalty and an overview of the most common sentencing outcomes for each of these offences. Details about the number of all penalties imposed are in Appendix B.<sup>30</sup> Between 2008 and 2017, the great majority of cases of aggravated dangerous driving causing grievous bodily harm attracted a prison sentence (whether tried in the Local Court or in the higher courts). Likewise, a prison sentence was imposed in the majority of cases of dangerous driving causing grievous bodily harm that were tried in the higher courts. Imprisonment was less frequently imposed in all other cases. The more likely outcome for these other cases was a penalty unlikely to provide an intervention to change or prevent offending behaviour, such as a suspended sentence, fine or bond without supervision.

**Table 2.2: Maximum penalty and sentencing outcomes for driving offences resulting in injury**

Offence	Maximum penalty	Sentencing outcome
<b>Dangerous driving causing grievous bodily harm</b> (Indictable offence that may be tried summarily)	7 years imprisonment	Higher Courts Jan 2008 – Dec 2017 150 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (63%)</li> <li>▪ suspended sentence (17%)</li> <li>▪ intensive correction order (13%)</li> </ul> <i>See Figure B.4.</i>
		Local Court Oct 2013 – Sep 2017 121 offenders <ul style="list-style-type: none"> <li>▪ s 9 bond without supervision (23%)</li> <li>▪ suspended sentence (21%)</li> <li>▪ imprisonment (20%)</li> </ul> <i>See Figure B.3</i>
<b>Aggravated dangerous driving causing grievous bodily harm</b> (Indictable offence that may be tried summarily)	11 years imprisonment	Higher Courts Jan 2008 – Dec 2017 90 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (82%)</li> </ul> <i>See Figure B.5.</i>
		Local Court Apr 2014 – Mar 2018 10 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (80%)</li> </ul> <i>See Table B.2.</i>

30. Figure B.3-B.7; Table B.2.

## CP Repeat traffic offenders

Offence		Maximum penalty	Sentencing outcome
Bodily harm by furious driving, etc (Indictable offence that may be tried summarily)		2 years imprisonment	Higher Courts Jan 2008 – Dec 2017 1 offender <ul style="list-style-type: none"> <li>▪ s 10 conditional discharge (100%)</li> </ul>
			Local Court Apr 2014 – Mar 2018 76 offenders <ul style="list-style-type: none"> <li>▪ suspended sentence (24%)</li> <li>▪ imprisonment (17%)</li> <li>▪ s 9 bond without supervision (16%)</li> </ul> <i>See Figure B.6.</i>
Negligent driving causing grievous bodily harm (Summary offence)	First offence	9 months imprisonment and/or \$2,200 (20 penalty units)	Local Court Apr 2014 – Mar 2018 919 offenders <ul style="list-style-type: none"> <li>▪ s 9 bond without supervision (33%)</li> <li>▪ fine only (28%)</li> <li>▪ s 10 conditional discharge (24%)</li> </ul> <i>See Figure B.7.</i>
	Second or subsequent offence	12 months imprisonment and/or \$3,300 (30 penalty units)	Local Court Apr 2014 – Mar 2018 3 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (33%)</li> <li>▪ s 9 bond without supervision (33%)</li> <li>▪ s 10 dismissal (33%)</li> </ul>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

### Question 2.2: Driving offences resulting in injury

- (1) Are the maximum penalties for driving offences causing injury appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for driving offences causing injury appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

## Offences carrying a high risk of harm

2.21 In the remainder of this chapter, we identify driving offences other than those causing death or injury that carry a high risk of harm and ask whether the maximum penalty and sentencing outcomes for each are adequate. The offences we have selected are:

- exceeding the speed limit by more than 45km/h and by more than 30km/h

- alcohol and drug offences, including driving under the influence of alcohol or any other drug, driving with a high range or middle range PCA, and driving with the presence of any other drug
  - severe and critical risk breaches of maximum work hours and minimum rest periods for drivers of fatigue-regulated heavy vehicles, and
  - offences relating to other unsafe activities including predatory driving, police pursuits, menacing driving, reckless, furious or dangerous driving, unauthorised racing and related activities, negligent driving, and using a mobile telephone while driving.
- 2.22 We have chosen these offences in light of the data outlined in Chapter 1, which identifies speed, alcohol and fatigue as the top three causes of road deaths and injuries.<sup>31</sup> Many of the dangerous driving offences outlined above have elements, or aggravating elements that involve these causes, such as being under the influence of alcohol or drugs, driving with a high range PCA, driving at dangerous speeds, driving at more than 45km/h over the speed limit, racing, and escaping pursuit by a police officer.
- 2.23 Speeding, negligent driving and using a mobile telephone while driving occur in high volumes, and are currently dealt with almost entirely by way of penalty notice. Recent amendments will allow a penalty notice to be given to an offender who drives with the presence of “any other drug” in their system if it is their “first offence”. The amendments will also allow a penalty notice to be given to a first-time offender who drives with a low range PCA. These proposed arrangements raise the question of whether some of the existing penalty notice offences should also distinguish between a “first offence” and a “second or subsequent offence”.

### Question 2.3: Identifying other offences that carry a high risk of harm

- (1) What other driving offences should be considered in the group of offences carrying a high risk of harm?
- (2) Are the maximum penalties for these other offences appropriate? If not, what should they be?
- (3) Are the sentencing outcomes for these other offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

## Speeding

- 2.24 While NSW law contains a wide range of speeding offences, we have chosen to focus on those where a driver exceeds the speed limit by more than 30km/h.<sup>32</sup>
- 2.25 These offences principally attract penalty notices and demerit points. When dealt with by the Local Court, they attract a fine as a maximum penalty and automatic disqualification upon conviction.

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31. See [1.12]-[1.19].

32. *Road Rules 2014* (NSW) r 10-2(3), r 10-2(5).

## CP Repeat traffic offenders

### *When tried in the Local Court*

- 2.26 Speeding offences are tried in the Local Court in at least three circumstances:
- where the driver who is issued a penalty notice for speeding chooses to have the matter heard in court<sup>33</sup>
  - where the driver appeals an immediate licence suspension notice issued by a police officer because the driver was exceeding the speed limit by more than 45km/h or, in the case of a holder of a learner or provisional licence, was exceeding the speed limit by more than 30km/h,<sup>34</sup> and
  - where a driver is formally charged with the speeding offence.
- 2.27 Table 2.3 sets out the maximum fines and minimum disqualification periods that apply when someone exceeds the speed limit by more than 30km/h and is sentenced in the Local Court.

**Table 2.3: Maximum penalties for high range speeding when sentenced in the Local Court**

Amount over the speed limit	Non-heavy vehicle or coach	Heavy vehicle or coach
More than 45km/h	\$3300 (30 penalty units) 6 months disqualification	\$5500 (50 penalty units) 6 months disqualification
More than 30km/h	\$2200 (20 penalty units) 3 months disqualification	

*Source: Road Rules 2014 (NSW) r 10-2(3) and (5).*

- 2.28 In the four years between April 2014 and March 2018, the Local Court sentenced:
- 875 offenders for exceeding the speed limit by more than 45km/h as a principal offence – the most common penalty was a fine (80%) followed by a s 10 conditional discharge (16%),<sup>35</sup> and
  - 2400 offenders for exceeding the speed limit by more than 30km/h as a principal offence – the most common penalty was a fine (60%) followed by a s 10 conditional discharge (28%).<sup>36</sup>
- 2.29 In the 4 years between 2014 and 2017, the Local Court imposed:
- 630 fines for exceeding the speed limit by more than 45km/h – 39% were up to \$1000, 36% were between \$1001 and \$2000, and 25% were \$2001-\$3000, and
  - 1312 fines for exceeding the speed limit by more than 30km/h – 62% were \$501-\$1000, and 32% were up to \$500.<sup>37</sup>

33. *Road Transport Act 2013* (NSW) s 195(2).

34. *Road Transport Act 2013* (NSW) s 224(1)(c), s 267, s 268(5)–(6). See [5.5]-[5.9].

35. Figure B.8.

36. Figure B.9.

37. Table B.3.

*When dealt with through a penalty notice*

2.30 Table 2.4 sets out the penalty notice amounts for individuals and demerit points applied when offenders exceed the speed limit by more than 30km/h. On long weekends, the demerit points are doubled.

Table 2.4: Penalties for exceeding speed limit by more than 30km/h and 45km/h when dealt with by penalty notice

Amount over the speed limit	Non-heavy vehicle or coach	Non-heavy vehicle or coach (school zone)	Heavy vehicle or coach	Heavy vehicle or coach (school zone)
More than 45 km/h	\$2435 (level 14A) 6 demerit points	\$2585 (level 15A) 7 demerit points	\$3691 (level 16A) 6 demerit points	\$3821 (level 17A) 7 demerit points
More than 30 km/h	\$903 (level 9A) 5 demerit points	\$1139 (level 10A) 6 demerit points	\$1414 (level 11A) 5 demerit points	\$1493 (level 12A) 6 demerit points

Source: *Road Rules 2014 (NSW) r 20*.

2.31 In 2017–18, 3,101 penalty notices were issued for exceeding the speed limit by more than 45km/h, and 13,940 penalty notices were issued for exceeding the speed limit by more than 30km/h.<sup>38</sup>

2.32 When corporations are taken to have committed an offence (for example, a camera recorded offence where a company vehicle is identified but not a driver), the penalty amount is 5 times that for an individual.<sup>39</sup>

2.33 In the case of camera detected speeding, it can be difficult to ensure that the person who was driving the vehicle is the person who is penalised. This is especially true where the responsible person for a vehicle is a corporation. When issued with a penalty notice for camera detected speeding, the responsible person must nominate who was in charge of the vehicle when the offence occurred.<sup>40</sup> Despite this, a number of corporate penalties are recorded in Revenue NSW’s data relating to penalty notices for speeding. For example, in 2017, 47 corporate penalties are recorded for camera detected speeds of more than 30km/h over the speed limit and 135 corporate penalties are recorded for camera detected speeds of more than 45km/h over the speed limit. In such cases, corporations may be effectively paying an increased penalty amount rather than nominating an individual who may be subject to the demerit point system and, in some cases, subject to a suspension notice. It raises the question of whether this practice, encourages unsafe behaviour by removing an element of personal responsibility.

38. Table B.4.

39. *Road Transport (General) Regulation 2013* (NSW) cl 122(2); *Road Transport Act 2013* (NSW) s 184(2).

40. *Road Transport Act 2013* (NSW) s 186, s 188(1).

**Question 2.4: Speeding offences**

- (1) Are the maximum penalties for high range speeding offences appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for high range speeding offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

**Alcohol and drugs**

- 2.34 A number of driving offences criminalise someone driving under the influence of alcohol or other drugs, or having certain illicit drugs present in their system, or having a certain PCA.
- 2.35 Four such offences that arguably involve a serious risk of harm are:
- driving under the influence of alcohol or any other drug<sup>41</sup>
  - driving with a high range PCA<sup>42</sup>
  - driving with a middle range PCA,<sup>43</sup> and
  - driving with the presence of certain other drugs.<sup>44</sup>
- 2.36 The PCA ranges are:
- **low range PCA:** a concentration of 0.05 grams or more, but less than 0.08 grams, of alcohol in 210 litres of breath or 100 millilitres of blood
  - **middle range PCA:** a concentration of 0.08 grams or more, but less than 0.15 grams, of alcohol in 210 litres of breath or 100 millilitres of blood
  - **high range PCA:** a concentration of 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.<sup>45</sup>
- 2.37 The crash risk associated with a 0.15 reading (high range) is 25 times that associated with a zero reading.<sup>46</sup>
- 2.38 In relation to driving with the presence of any other drug, a person must not drive a motor vehicle while there is present in their system any prescribed illicit drug<sup>47</sup> or morphine taken for non-medical purposes.<sup>48</sup> Currently, the Local Court must deal with all charges for this offence.

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41. *Road Transport Act 2013* (NSW) s 112(1)(a).

42. *Road Transport Act 2013* (NSW) s 110(5)(a).

43. *Road Transport Act 2013* (NSW) s 110(4)(a).

44. *Road Transport Act 2013* (NSW) s 111.

45. *Road Transport Act 2013* (NSW) s 108.

46. NSW, Roads and Traffic Authority, *Drink Driving: Problem Definition and Countermeasure Summary* (2000) 2.

47. *Road Transport Act 2013* (NSW) s 111(1)(a).

48. *Road Transport Act 2013* (NSW) s 111(3)(a).

- 2.39 A recent NSW Bureau of Crime Statistics and Research study reported on trends in arrests for drug driving. The study found that:
- In the 24 months to June 2016, the number of driving charges finalised in court increased by 320% (up from 2,331 in 2014/15 to 9,808 in 2015/16). This has a significant impact on the workload of the Local Court, accounting for 27% the overall increase in Local Court charges in the same period.
  - Almost all (98.3%) of the charges brought to court result in a finding of guilt. It is similar to the 98.1% conviction rate for drink driving. The overall conviction rate for the Local Court is 80.6%.
  - In 2015/16, the prosecution rate in Regional NSW was twice as high as the state average (180 per 100,000 compared to 93 per 100,000).
  - Of the 5096 people who had a court appearance involving at least one proven drug driving offence in 2015, in the previous 5 years:
    - 96.9% had no prior proven drug driving offence (only 3.1% had one proven drug driving offence,
    - 91.6% had no prior proven offence of exceeding the prescribed concentration of alcohol (7.9% had one proven PCA offence)
    - 87.9% had no prior proven driving offence (not including drug or alcohol) (6.6% had one proven driving offence and 5.5% had two or more proven driving offences), and
    - 50.8% had no prior offences of any sort (15.4% had one prior offence and 33.8% had two or more prior offences).
  - In 2015/16, the most common penalties were a fine (62.5%) and a s 10 non-conviction bond (30.7%). The average fine amount was \$472 for a first offence and \$649 for a subsequent offence.
  - About 80% of people found guilty also received a period of mandatory licence disqualification. Of these, 91% received a licence disqualification period of between 3 and 9 months.
  - The annual number of drug driving offenders now being found guilty of driving while disqualified more than tripled from 133 in 2014/15 to 542 in 2015/16. This accounted for 25% of the increase in the total number of convictions for disqualified driving between 2014/15 and 2015/16. This outcome has the potential to increase the workload of Corrections NSW since these convictions often attract sentences involving imprisonment or supervision.<sup>49</sup>
- 2.40 Partly as a result of this evaluation, amendments have been passed so that driving with a low range PCA or with the presence of any other drug, where it is a “first offence”, will be dealt with by penalty notice. The courts will only deal with second or subsequent offences.<sup>50</sup>

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49. S Ramsey and J Fitzgerald, *Recent Trends in Arrests for Drug Driving*, Bureau Brief No 125 (NSW Bureau of Crime Statistics and Research, 2017).

50. *Road Transport Act 2013* (NSW) s 9(2A) (not yet commenced); *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (NSW) sch 1[4].

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2.41 Table 2.5 sets out the penalties and the most common sentencing outcomes for the various offences. Details about the number of all penalties imposed are in Appendix B.<sup>51</sup> The most common penalty for the majority of offences is a fine. Other common penalties include a s 9 good behaviour bond or suspended sentence. Arguably, none of these penalties involve interventions that significantly alter offending behaviour.

**Table 2.5: Maximum penalties and sentencing outcomes for driving offences involving alcohol or drugs**

Offence		Maximum penalty	Sentencing outcome
Driving under the influence of alcohol or any other drug	First offence	18 months imprisonment and/or \$3,300 (30 penalty units); automatic 3 years disqualification (min 12 months)	Local Court Apr 2014–Mar 2018 2871 offenders <ul style="list-style-type: none"> <li>▪ fine only (53%)</li> <li>▪ s 9 bond without supervision (16%)</li> <li>▪ s 9 bond with supervision (9%)</li> </ul> <i>See Figure B.10.</i>
	Second or subsequent offence	2 years imprisonment and/or \$5,500 (50 penalty units); automatic 5 years disqualification (min 2 years)	Local Court Apr 2014–Mar 2018 364 offenders <ul style="list-style-type: none"> <li>▪ s 9 bond without supervision (23%)</li> <li>▪ fine only (23%)</li> <li>▪ s 9 bond with supervision (15%)</li> </ul> <i>See Figure B.11.</i>
Driving with high range prescribed concentration of alcohol	First offence	18 months imprisonment and/or \$3,300 (30 penalty units) automatic 3 years disqualification (min 12 months)	Local Court Jan 2014–Dec 2017 9052 offenders <ul style="list-style-type: none"> <li>▪ fine only (34%)</li> <li>▪ s 9 bond without supervision (27%)</li> <li>▪ community service order (13%)</li> </ul> <i>See Figure B.14.</i>
	Second or subsequent offence	2 years imprisonment and/or \$5,500 (50 penalty units) automatic 5 years disqualification (min 2 years)	Local Court Jan 2014–Dec 2017 1826 offenders <ul style="list-style-type: none"> <li>▪ suspended sentence (22%)</li> <li>▪ imprisonment (19%)</li> <li>▪ community service order (16%)</li> </ul> <i>See Figure B.15.</i>

51. Figure B.10-B.13.



Offence		Maximum penalty	Sentencing outcome
Driving with middle range prescribed concentration of alcohol	First offence	9 months imprisonment and/or \$2,200 (20 penalty units) automatic 12 months disqualification (min 6 months)	Local Court Jan 2014 – Dec 2017 24,135 offenders <ul style="list-style-type: none"> <li>▪ fine only (66%)</li> <li>▪ s 10 conditional discharge (17%)</li> <li>▪ s 9 bond without supervision (10%)</li> </ul> See Figure B.16.
	Second or subsequent offence	12 months imprisonment and/or \$3,300 (30 penalty units) automatic 3 years disqualification (min 12 months)	Local Court Jan 2014 – Dec 2017 3,576 offenders <ul style="list-style-type: none"> <li>▪ fine only (34%)</li> <li>▪ s 9 bond without supervision (24%)</li> <li>▪ community service order (12%)</li> </ul> See Figure B.17.
Driving with presence of any other drug	First offence	\$1,100 (10 penalty units) automatic 6 months disqualification (min 3 months)	Local Court Jan 2014 – Dec 2017 19,393 offenders <ul style="list-style-type: none"> <li>▪ fine only (62%)</li> <li>▪ s 10 conditional discharge (32%)</li> </ul> See Figure B.18.
	Second or subsequent offence	\$2,200 (20 penalty units) automatic 12 months disqualification (min 6 months)	Local Court Jan 2014 – Dec 2017 2,789 offenders <ul style="list-style-type: none"> <li>▪ fine only (86%)</li> <li>▪ s 10 conditional discharge (7%)</li> </ul> See Figure B.19.

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

### Question 2.5: Alcohol and drug-related driving offences

- (1) Are the maximum penalties for alcohol and drug related driving offences appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for alcohol and drug related driving offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

## Fatigue

2.42 As noted in Chapter 1, fatigue is one of the major causes of road injuries and deaths. There is no system for detecting and regulating fatigue in drivers of regular

vehicles. However, there is a system that aims to reduce fatigue in drivers of fatigue-regulated heavy vehicles<sup>52</sup> by regulating maximum work hours and minimum rest periods. The offences are targeted at the drivers, however the *Heavy Vehicle National Law* also imposes a primary duty on each party in the chain of responsibility for a heavy vehicle to “ensure, so far as is reasonably practicable, the safety of the party’s transport activities relating to the vehicle”.<sup>53</sup> There is a range of penalties for breach of this duty. The most serious breach – recklessly engaging in conduct that “exposes an individual to a risk of death or serious injury or illness” – attracts a maximum penalty of \$300,000 or 5 years imprisonment, or both, for an individual, and \$3m for a corporation.<sup>54</sup>

- 2.43 A driver of a fatigue-regulated heavy vehicle commits an offence if, in any period stated in the driver’s standard hours, the driver works for more than the maximum work time allowed or rests for less than the minimum rest time provided for.<sup>55</sup>
- 2.44 Penalties are ranked according to increasing severity of risk. The working hours and rest hours that a driver must observe are governed by regulation.<sup>56</sup> Minor and substantial risk breaches may be dealt with by way of penalty notice. Severe and critical risk breaches must be dealt with by the courts.
- 2.45 Table 2.6 sets out the penalties available for the two most serious fatigue related offences. Table 2.6 also sets out the most common sentencing outcomes for the offences. Details about the number of all penalties imposed are in Appendix B.<sup>57</sup>

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52. *Heavy Vehicle National Law* (NSW) s 7, s 5 definition of “fatigue-regulated bus”.

53. *Heavy Vehicle National Law* (NSW) s 26C(1).

54. *Heavy Vehicle National Law* (NSW) s 26F. See also s 26G and s 26H.

55. *Heavy Vehicle National Law* (NSW) s 250, s 251, s 254, s 256, s 258, s 260.

56. *Heavy Vehicle (Fatigue Management) National Regulation* (NSW) sch 1, sch 2, sch 5.

57. Table B.5-B.6.

Table 2.6: Maximum penalties and sentencing outcomes for work/rest time infringements

Offence	Maximum penalty	Most common sentencing outcome
Severe risk breach	\$11,000 3 demerit points	Local Court Apr 2014 – Mar 2018 902 offenders <ul style="list-style-type: none"> <li>▪ fine only (77%)</li> <li>▪ s 10 dismissal (17%)</li> </ul> See Table B.5.
Critical risk breach	\$16,510 4 demerit points	Local Court Apr 2014 – Mar 2018 3,278 offenders <ul style="list-style-type: none"> <li>▪ fine only (81%)</li> <li>▪ s 10 dismissal (13%)</li> </ul> See Table B.5.

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

### Question 2.6: Fatigue related driving offences

- (1) Are the maximum penalties for fatigue related driving offences appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for fatigue related driving offences appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

### Other unsafe activities

2.46 Other driving offences that arguably involve a high risk of harm include, in order of seriousness of penalty:

- predatory driving<sup>58</sup>
- police pursuits<sup>59</sup>
- menacing driving<sup>60</sup>
- reckless, furious or dangerous driving<sup>61</sup>
- unauthorised racing and related activities<sup>62</sup>

58. *Crimes Act 1900* (NSW) s 51A(1).

59. *Crimes Act 1900* (NSW) s 51B.

60. *Road Transport Act 2013* (NSW) s 118.

61. *Road Transport Act 2013* (NSW) s 117(2).

62. *Road Transport Act 2013* (NSW) s 115, s 116.

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- negligent driving,<sup>63</sup> and
- using a mobile telephone while driving.<sup>64</sup>

2.47 Table 2.7 sets out the maximum penalties and the most common sentencing outcomes for each of these offences. Details about the number of all penalties imposed are in Appendix B.<sup>65</sup>

**Table 2.7: Maximum penalty and sentencing outcome for certain driving offences carrying a high risk of harm**

Offence		Maximum penalty	Sentencing outcome
<b>Predatory driving</b> (Indictable offence triable summarily) <i>Crimes Act 1900 (NSW) s 51A(1)</i>		5 years imprisonment	Higher Courts Jan 2008 – Dec 2017 0 offenders
		first offence: automatic 3 years disqualification (min 12 months)  second or subsequent offence: automatic 5 years disqualification (min 2 years)	Local Court Apr 2014 – Mar 2018 27 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (48%)</li> <li>▪ suspended sentence (22%)</li> </ul> <i>See Figure B.25.</i>
<b>Police pursuits</b> (Indictable offence triable summarily) <i>Crimes Act 1900 (NSW) s 51B</i>	First offence	3 years imprisonment	Higher Courts Mar 2010 – Dec 2017 11 offenders
		3 years automatic licence disqualification (min 12 months)	<ul style="list-style-type: none"> <li>▪ imprisonment (100%)</li> </ul>
			Local Court Apr 2014 – Mar 2018 1465 offenders <ul style="list-style-type: none"> <li>▪ Imprisonment (51%)</li> <li>▪ suspended sentence (14%)</li> </ul> <i>See Figure B.26.</i>
	Second or subsequent offence	5 years imprisonment	Higher Courts Mar 2010 – Dec 2017 6 offenders
		5 years automatic licence disqualification (min 2 years)	<ul style="list-style-type: none"> <li>▪ imprisonment (100%)</li> </ul>
			Children's Court Apr 2014 – Mar 2018 157 offenders <ul style="list-style-type: none"> <li>▪ Control order (27%)</li> <li>▪ Probation (25%)</li> </ul>

63. *Road Transport Act 2013 (NSW) s 117(1)*. A person drives negligently if they drive in a manner that departs from the standard of care for other road users that is expected of the ordinary prudent driver in the circumstances: *Director of Public Prosecutions (NSW) v Yeo* [2008] NSWSC 953; 188 A Crim R 82 [27]; *R v Buttsworth* (1983) 1 NSWLR 658.

64. *Road Rules 2014 (NSW) r 300, r 300–1*.

65. Figure B.22-B.33; Table B.7-B.10.

## Driving offences involving harm or a high risk of harm Ch 2

Offence		Maximum penalty	Sentencing outcome
			Local Court Apr 2014 – Mar 2018 163 offenders <ul style="list-style-type: none"> <li>▪ imprisonment (88%)</li> <li>▪ suspended sentence (6%)</li> </ul> See Figure B.27.
			Children's Court Apr 2014 – Mar 2018 17 offenders <ul style="list-style-type: none"> <li>▪ control order (71%)</li> <li>▪ community service order (18%)</li> </ul>
<b>Menacing driving – intent to menace</b> (Summary offence) <i>Road Transport Act 2013 (NSW) s 118(1)</i>	First offence	18 months imprisonment and/or \$3,300 (30 penalty units) 3 years automatic licence disqualification (min 12 months)	Local Court Apr 2014 – Mar 2018 114 offenders <ul style="list-style-type: none"> <li>▪ s 9 bond without supervision (26%)</li> <li>▪ community service order (17%)</li> </ul> See Table B.8.
	Second or subsequent offence	2 years imprisonment and/or \$5,500 (50 penalty units) 5 years automatic licence disqualification (min 2 years)	Local Court Apr 2014 – Mar 2018 0 offenders
<b>Menacing driving – possibility of menace</b> (Summary offence) <i>Road Transport Act 2013 (NSW) s 118(2)</i>	First offence	12 months imprisonment and/or \$2,200 (20 penalty units) 3 years automatic licence disqualification (min 12 months)	Local Court Apr 2014 – Mar 2018 136 offenders <ul style="list-style-type: none"> <li>▪ fine only (32%)</li> <li>▪ s 9 bond without supervision (24%)</li> </ul> See Table B.8.
	Second or subsequent offence	18 months imprisonment and/or \$3,300 (30 penalty units) 5 years automatic licence disqualification (min 2 years)	Local Court Apr 2014 – Mar 2018 0 offenders
<b>Reckless, furious or dangerous driving</b> (Summary offence) <i>Road Transport Act 2013 (NSW) s 117(2)</i>	First offence	9 months imprisonment and/or \$2,200 (20 penalty units) 3 years automatic licence disqualification (min 12 months)	Local Court Apr 2014 – Mar 2018 1776 offenders <ul style="list-style-type: none"> <li>▪ fine only (33%)</li> <li>▪ s 9 bond without supervision (26%)</li> </ul> See Figure B.31.

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Offence		Maximum penalty	Sentencing outcome
	Second or subsequent offence	12 months imprisonment and/or \$3,300 (30 penalty units) 5 years automatic licence disqualification (min 2 years)	Local Court Apr 2014 – Mar 2018 140 offenders <ul style="list-style-type: none"> <li>imprisonment (36%)</li> <li>suspended sentence (18%)</li> </ul> <i>See Figure B.32.</i>
<b>Aggravated road and drag racing etc</b>  (Summary offence)  <i>Road Transport Act 2013 (NSW) s 116(2)</i>	First offence	\$3,300 (30 penalty units) Automatic 12 month disqualification or as court orders	Local Court Apr 2014 – Mar 2018 278 offenders <ul style="list-style-type: none"> <li>fine only (80%)</li> <li>s 10 conditional discharge (18%)</li> </ul> <i>See Table B.7.</i>
	Second or subsequent offence	9 months imprisonment and/or \$3,300 (30 penalty units) Automatic 12 month disqualification or as court orders	Local Court Apr 2014 – Mar 2018 11 offenders <i>See Table B.7.</i>
<b>Racing, attempts on speed records and other speed trials</b>  <i>Road Transport Act 2013 (NSW) s 115</i>	First offence	\$3,300 (30 penalty units) Automatic 12 month disqualification or as court orders	Local Court Apr 2014 – Mar 2018 143 offenders <ul style="list-style-type: none"> <li>fine only (85%)</li> <li>conditional discharge s 10 (10%)</li> </ul> <i>See Figure B.22.</i>
	Second or subsequent offence	9 months imprisonment and/or \$3,300 (30 penalty units) Automatic 12 month disqualification or as court orders	Local Court Apr 2014 – Mar 2018 1 offender <ul style="list-style-type: none"> <li>fine only (100%)</li> </ul>
<b>Using mobile telephone while driving</b>  <i>Road Rules 2014 (NSW) r 300, r 300-1</i>	Court imposed (summary offence)	\$2,200 (20 penalty units)	Local Court Apr 2014 – Mar 2018 2589 offenders <ul style="list-style-type: none"> <li>fine only (62%)</li> <li>s 10 dismissal (21%)</li> </ul> <i>See Table B.9.</i>
	Penalty notice	\$337 (level 5 penalty) 5 demerit points	Jul 2017 – Jun 2018 41,169 penalty notices <i>See Figure B.33.</i>
		\$448 (level 6 penalty) – school zone 5 demerit points	Jul 2017 – Jun 2018 647 penalty notices <i>See Figure B.33.</i>

Offence		Maximum penalty	Sentencing outcome
Road and drag racing etc <i>Road Transport Act 2013 (NSW)</i> s 116(1)	Court imposed (summary offence)	\$1,100 (10 penalty units)	Apr 2014 – Mar 2018 226 offenders <ul style="list-style-type: none"> <li>▪ fine only (85%)</li> <li>▪ conditional discharge s 10 (9%)</li> </ul> <i>See Figure B.23.</i>
	Penalty notice	\$673 (level 8 penalty)	Jul 2016 – Jun 2017 877 penalty notices <i>See Figure B.24.</i>
Negligent driving <i>Road Transport Act 2013 (NSW)</i> s 117(1)(c)	Court imposed (summary offence)	\$1,100 (10 penalty units)	Local Court Apr 2014 – Mar 2018 3104 offenders <ul style="list-style-type: none"> <li>▪ fine only (77%)</li> <li>▪ s 10 dismissal (11%)</li> </ul> <i>See Figure B.29.</i>
	Penalty notice	\$448 (level 6 penalty) 3 demerit points	Jul 2016-Jun 2017 6,224 penalty notices <i>See Figure B.28.</i>

Source: *Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

- 2.48 Mobile telephone use that leads to death or injury may be charged under one of the offences of dangerous or negligent driving, for example, dangerous driving causing death.<sup>66</sup> In such cases, it is open to the court to attribute a high degree of moral culpability to mobile telephone use. The CCA has observed:

It is an activity deliberately undertaken and it is an activity which is highly dangerous. The fact that many young people misguidedly engage in such an activity while driving does not reduce the moral culpability of the conduct. On the contrary, as his Honour appreciated, it is a further justification for why general deterrence was so important in this matter.<sup>67</sup>

- 2.49 The standard demerit points that apply to mobile telephone use were increased in September 2018 from 4 to 5 demerit points.<sup>68</sup>

### Question 2.7: Driving offences carrying a high risk of harm

- (1) Are the maximum penalties for driving offences carrying a high risk of harm appropriate? If not, what should they be?
- (2) Are the sentencing outcomes for driving offences carrying a high risk of harm appropriate? Bearing in mind the availability of new sentencing orders, what should the sentencing outcomes be, and how could they be achieved?

66. *WW v R* [2012] NSWCCA 165.

67. *WW v R* [2012] NSWCCA 165 [81].

68. *Road Transport (Driver Licensing) Regulation 2017 (NSW)* sch 1 r 300, as amended by *Road Transport (Driver Licensing) Amendment (Demerit Points) Regulation 2018 (NSW)* cl 3.





### 3. Sentencing principles

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#### **In brief**

In addition to the general principles that the courts must apply when sentencing all offenders, there are a number of specific considerations that apply to repeat traffic offenders. These include: the guidelines contained in guideline judgments on dangerous driving and high range prescribed concentration of alcohol; and, for some driving offences, particular objective and subjective circumstances. There are also sentencing principles that specifically relate to repeat offending.

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- 3.1 This chapter examines the principles relevant to the sentencing of traffic offenders. We explore the key considerations a court will take into account, including the objective circumstances of the offence, the subjective circumstances of the offender, and repeat offending.

## General approach to sentencing

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- 3.2 When sentencing a traffic offender, a court must consider and be guided by the same general principles that apply to all offenders:
- the purposes of sentencing: adequate punishment, deterrence, community protection, rehabilitation, accountability, denunciation, and recognition of harm to the victim and the community<sup>1</sup>
  - the principles of sentencing, including proportionality,<sup>2</sup> parity,<sup>3</sup> sentencing offenders only for the offence for which they are convicted,<sup>4</sup> and totality<sup>5</sup>
  - the requirement that a court “must *not* sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate”<sup>6</sup>
  - the factors that courts should take into account, including the aggravating and mitigating circumstances set out in s 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (“CSPA”)
  - the “guideposts” of the maximum penalty for the offence and, where relevant, the standard non-parole period (“SNPP”)<sup>7</sup>
  - the requirement, where the court sets a sentence consisting of a non-parole period and an additional term, that the non-parole period should be 75% of the head sentence unless there are special circumstances,<sup>8</sup> and
  - the “discounting provisions” of the CSPA relating to guilty pleas, pre-trial and trial co-operation and assistance to the authorities.<sup>9</sup>
- 3.3 The sentence imposed is the result of the court taking into account all of the relevant considerations through a process of “instinctive synthesis”.<sup>10</sup> In doing so, the court has a wide discretion. The process of “instinctive synthesis” is fundamental to the way in which courts balance the various purposes, principles, and factors relevant to sentencing.

## Guideline judgments on driving offences

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- 3.4 Guideline judgments are judgments containing guidelines that courts are to take into account when sentencing offenders.

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1. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 3A.
  2. *Veen v R [No 1]* (1979) 143 CLR 458; *Veen v R [No 2]* (1988) 164 CLR 465; *Hoare v R* (1989) 167 CLR 348, 354.
  3. *Lowe v R* (1984) 154 CLR 606; *Green v R* [2011] HCA 49; 244 CLR 462 [28].
  4. *R v De Simoni* (1981) 147 CLR 383, 389 (Gibbs CJ).
  5. *Mill v R* (1988) 166 CLR 59, 63; *Postiglione v R* (1997) 189 CLR 295, 304 (Dawson and Gaudron JJ).
  6. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(1) (emphasis added).
  7. The SNPP scheme is set out in *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A. It applies to the offence categories listed in the table to the Division.
  8. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 44.
  9. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 22, s 22A, s 23.
  10. *Markarian v R* [2005] HCA 25, 228 CLR 357.

- 3.5 Guideline judgments can come about in two ways: if the Attorney General applies to the Court of Criminal Appeal (“CCA”) for one, or if the CCA issues one on its own motion. The CCA can then review or vary those judgments.<sup>11</sup> While courts are to “take into account” guidelines when sentencing an offender,<sup>12</sup> they operate as a “check”, or “sounding board”, and not as a “rule” or “presumption”.<sup>13</sup> However, where a guideline is not applied, the court is expected to give reasons for departing from it.<sup>14</sup>
- 3.6 The CCA has not handed down a guideline judgment since 2004. However, two of the CCA’s guideline judgments are driving-related and still applicable: one for dangerous driving,<sup>15</sup> and one for driving with a high range prescribed concentration of alcohol (“PCA”).<sup>16</sup>

### The dangerous driving guideline

- 3.7 The guideline judgment on dangerous driving is about sentencing for the offence of dangerous driving under s 52A of the *Crimes Act 1900* (NSW). It reformulates an earlier guideline judgment on the same subject.<sup>17</sup>

### The typical case

- 3.8 The CCA formulated the guideline with respect to the characteristics of a “typical case” under s 52A:
- (i) Young offender.
  - (ii) Of good character with no or limited prior convictions.
  - (iii) Death or permanent injury to a single person.
  - (iv) The victim is a stranger.
  - (v) No or limited injury to the driver or the driver’s intimates.
  - (vi) Genuine remorse.
  - (vii) Plea of guilty of limited utilitarian value.<sup>18</sup>
- 3.9 These factors are “indicative of a typical case” and are not intended to operate as a checklist.<sup>19</sup>

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11. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 37, s 37A, s 37B.

12. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 36.

13. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [113].

14. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [73], [114].

15. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 reformulating *R v Jurisic* (1998) 45 NSWLR 209.

16. *Attorney General’s Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 3 of 2002)* [2004] NSWCCA 303, 61 NSWLR 305.

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

18. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [204].

19. *R v Berg* [2004] NSWCCA 300 [21].

## CP Repeat traffic offenders

### *The guideline*

3.10 The guideline has two limbs. In a typical case:

- **A custodial sentence will usually be appropriate** unless the offender has a low level of moral culpability, as in the case of momentary inattention or misjudgement.<sup>20</sup>
- **Where the offender's moral culpability is high**, a full time custodial head sentence of less than three years (in the case of death) and two years (in the case of grievous bodily harm) would not generally be appropriate.<sup>21</sup>

### *Aggravating factors*

3.11 The CCA set out a list of aggravating factors:

- (i) Extent and nature of the injuries inflicted.
- (ii) Number of people put at risk.
- (iii) Degree of speed.
- (iv) Degree of intoxication or of substance abuse.
- (v) Erratic driving or aggressive driving.
- (vi) Competitive driving or showing off.
- (vii) Length of the journey during which others were exposed to risk.
- (viii) Ignoring of warnings.
- (ix) Escaping police pursuit.
- (x) Degree of sleep deprivation.
- (xi) Failing to stop.<sup>22</sup>

3.12 The CCA observed that items (iii)-(xi) are:

frequently recurring elements which directly impinge on the moral culpability of the offender at the time of the offence. Individually, but more often in some combination, they may indicate that the moral culpability is high. One way of expressing such a conclusion is to ask whether the combination of circumstances are such that it can be said that the offender has abandoned responsibility for his or her own conduct. That is not the only way of expressing such a conclusion.<sup>23</sup>

3.13 The CCA further observed that:

- a lower sentence will be appropriate in the case of a low level of moral culpability

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20. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [214].

21. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [229].

22. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [216]–[217].

23. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [228].

- in the case of an aggravated dangerous driving offence, an appropriate increment is required to reflect the higher maximum penalty, and “what will generally be a higher level of moral culpability”, and
  - an appropriate increment will also be required for other factors, such as the number of victims.<sup>24</sup>
- 3.14 Each one of the aggravating facts set out for the offence<sup>25</sup> “represent[s] a very significant increase in the criminality from the non-aggravated form of the offence”.<sup>26</sup> The list is illustrative only, not definitive.<sup>27</sup>

### *Impact of the guideline judgment*

- 3.15 In 2002, the Judicial Commission of NSW (“Judicial Commission”) evaluated the impact of the earlier guideline judgment on sentencing for dangerous driving.<sup>28</sup> The study compared sentencing patterns for the cases decided three years before the guideline judgment and those decided three years after. The study found greater consistency in the sentences handed down after the guideline judgment and a clear increase in the severity of penalties imposed. The study also found a noticeable drop in the number of prosecution appeals against inadequate sentences.<sup>29</sup>
- 3.16 However, in a judgment delivered this year, the CCA observed that a survey of case law suggests continuing discrepancies in sentencing for offences arising from fatal driving accidents, requiring the Court to “give guidance in order to achieve a higher level of consistency”.<sup>30</sup>

### *The high range prescribed concentration of alcohol guideline*

- 3.17 The guideline judgment on high range PCA<sup>31</sup> is about the offence of driving with a high range PCA under s 9(4) of the *Road Transport (Safety and Traffic Management) Act 1999* (NSW). Section 9(4) has since been repealed and replaced by s 110(5) of the *Road Transport Act 2013* (NSW). A high range PCA is set at 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.<sup>32</sup>

### *The typical case*

- 3.18 The CCA identified the typical or “ordinary” case as one where:
- (i) the offender drove to avoid personal inconvenience or because the offender did not believe that he or she was sufficiently affected by alcohol;

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24. *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252 [230]–[231].

25. *Crimes Act 1900* (NSW) s 52A(7).

26. *R v McMillan* [2005] NSWCCA 28 [50].

27. *R v Errington* [1999] NSWCCA 18 [19].

28. L Barnes, P Poletti and I Potas, *Sentencing Dangerous Drivers in New South Wales: Impact of the Jurisic Guidelines on Sentencing Practice*, Research Monograph No 21 (Judicial Commission of NSW, 2002).

29. L Barnes, P Poletti and I Potas, *Sentencing Dangerous Drivers in New South Wales: Impact of the Jurisic Guidelines on Sentencing Practice*, Research Monograph No 21 (Judicial Commission of NSW, 2002) 33-34.

30. *R v Shashati* [2018] NSWCCA 167 [60].

31. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305.

32. *Road Transport Act 2013* (NSW) s 108.

## CP Repeat traffic offenders

- (ii) the offender was detected by a random breath test;
- (iii) the offender has prior good character;
- (iv) the offender has nil, or a minor, traffic record;
- (v) the offender's licence was suspended on detection;
- (vi) the offender pleaded guilty;
- (vii) there is little or no risk of re-offending; and
- (viii) the offender would be significantly inconvenienced by loss of licence.<sup>33</sup>

3.19 In relation to **prior good character**, the Court noted that the fact that a driver is of otherwise good character is less relevant than it might be for other offences, because of the prevalence of such offending by people of good character and the importance of general deterrence.<sup>34</sup>

### *The guidelines*

3.20 The CCA adopted the following guidelines:

- (2) In an ordinary case of an offence of high range PCA:
  - (i) an order under s 10 of the *Sentencing Act* will rarely be appropriate;
  - (ii) a conviction cannot be avoided only because the offender has attended, or will attend, a driver's education or awareness course;
  - (iii) the automatic disqualification period will be appropriate unless there is a good reason to reduce the period of disqualification;
  - (iv) a good reason under (iii) may include:
    - (a) the nature of the offender's employment;
    - (b) the absence of any viable alternative transport;
    - (c) sickness or infirmity of the offender or another person.
- (3) In an ordinary case of a second or subsequent high range PCA offence:
  - (i) an order under s 9 of the *Sentencing Act* will rarely be appropriate;
  - (ii) an order under s 10 of the *Sentencing Act* would very rarely be appropriate;
  - (iii) where the prior offence was a high range PCA, any sentence of less severity than a community service order would generally be inappropriate.

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33. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [146].

34. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [118]-[119].

- (5) In a case where the moral culpability of a high range PCA offender is increased:
- (i) an order under s 9 or s 10 of the *Crimes (Sentencing Procedure) Act* would very rarely be appropriate;
  - (ii) where a number of factors of aggravation are present to a significant degree, a sentence of any less severity than imprisonment of some kind, including a suspended sentence, would generally be inappropriate.
- (6) In a case where the moral culpability of the offender of a second or subsequent high range PCA offence is increased:
- (i) a sentence of any less severity than imprisonment of some kind would generally be inappropriate;
  - (ii) where any number of aggravating factors are present to a significant degree or where the prior offence is a high range PCA offence, a sentence of less severity than full-time imprisonment would generally be inappropriate.<sup>35</sup>

3.21 In relation to **involvement in a driver education program**,<sup>36</sup> the Court noted that, in general, the offence was so serious, and the criminality typically so high, that participation in a program cannot be seen as an alternative to punishment. The Court observed that punishment for high range PCA is concerned principally with denunciation and general deterrence: “[F]or the typical offender recidivism is not a concern of the court”.<sup>37</sup>

3.22 In relation to the system of **automatic licence disqualification**,<sup>38</sup> the Court noted that the courts are “too ready” to reduce the automatic period and to choose the minimum period. The court should express “sufficient and appropriate” reasons for reducing the automatic period.<sup>39</sup>

3.23 The judgment acknowledged that a lengthy disqualification period could create hardship or inconvenience to offenders, particularly those in country areas or other places without adequate public transport. The judgment also acknowledged that disqualification could impact upon a person’s ability to maintain or obtain employment. Despite these considerations, the Court concluded that the courts had a duty to treat the offence as “a criminal offence that Parliament considers to be one of the most serious summary offences”.<sup>40</sup> We discuss the impact of disqualification on rural and regional offenders in Chapter 7.

3.24 The judgment acknowledged the evidence that supports the propositions that:

- there is no relationship between length of disqualification and probability of reconviction, and
- very long periods of disqualification may tempt offenders to drive again regardless,

35. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [146].

36. Referred to in item (2)(ii) (above).

37. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [121]–[122].

38. Referred to in item (2)(iii) (above).

39. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [127].

40. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [128].

## CP Repeat traffic offenders

but concluded “this is a matter for Parliament and not the courts”.<sup>41</sup>

3.25 Since this judgment was handed down, the introduction of alcohol interlock orders has had the effect of reducing the length of disqualification periods for high range PCA offenders.<sup>42</sup>

3.26 In relation to **s 10 orders**, the judgment observed that it was “impossible and inappropriate” to set out the situations where a s 10 order might be warranted. One example, however, was “where the driver becomes compelled by an urgent and unforeseen circumstance to drive a motor vehicle, say, to take a person to hospital”.<sup>43</sup>

### *Aggravating factors*

3.27 The Court said the moral culpability of a high range PCA offender is increased by:

- (i) the degree of intoxication above 0.15;
- (ii) erratic or aggressive driving;
- (iii) a collision between the vehicle and any other object;
- (iv) competitive driving or showing off;
- (v) the length of the journey at which others are exposed to risk;
- (vi) the number of persons actually put at risk by the driving.<sup>44</sup>

### *Impact of the guideline judgment*

3.28 In 2005, the Judicial Commission examined the impact of the guideline judgment on sentencing outcomes. The study examined sentencing patterns before and after the guideline judgment. It found a drop in the use of s 10 orders for high range PCA offences from 5.6% to 2.2%.<sup>45</sup> It also found a substantial fall in the use of penalties less severe than a community service order, particularly fines (dropping from 57.3% to 48.6%),<sup>46</sup> and a significant increase in the length of disqualification periods.<sup>47</sup> The study found an increase in severity appeals to the District Court.<sup>48</sup>

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41. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [129].

42. *Road Transport Act 2013* (NSW) pt 7.4 div 2.

43. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [131].

44. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [146].

45. P Poletti, *Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW*, Sentencing Trends and Issues No 35 (Judicial Commission of NSW, 2005) 18.

46. P Poletti, *Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW*, Sentencing Trends and Issues No 35 (Judicial Commission of NSW, 2005) 6.

47. P Poletti, *Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW*, Sentencing Trends and Issues No 35 (Judicial Commission of NSW, 2005) 7.

48. P Poletti, *Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW*, Sentencing Trends and Issues No 35 (Judicial Commission of NSW, 2005) 12.



- 3.29 A NSW Bureau of Crime Statistics and Research study, covering the period 2004–2006, found the use of s 10 orders declined by 71% for high range PCA offences and by 30% for middle range PCA offences.<sup>49</sup>

### Question 3.1: Guideline judgments

- (1) Do the guideline judgments on dangerous driving and high range prescribed concentration of alcohol continue to be appropriate?
- (2) If not, how should they be changed?
- (3) What other driving offences could be subject to guideline judgments?
- (4) What should those guidelines contain?

## Particular considerations for driving offences

- 3.30 In addition to general sentencing principles, there are a number of considerations the court will take into account in particular when an offence is driving related. The list of considerations set out below is mostly drawn from CCA judgments. The considerations, therefore, tend to relate to more serious matters that are tried on indictment – usually offences of dangerous driving or aggravated dangerous driving causing grievous bodily harm or death.

### The public nature of driving offences

- 3.31 In relation to dangerous driving, the CCA has made a number of statements about the public nature of such offences, and what this means for a judge approaching the sentencing task. For example:

Everyone is involved as a driver, passenger or pedestrian with what goes on on the highways and streets of this State. It is a very public crime. The public are entitled to have sentences imposed that make it perfectly clear that conduct of this kind in an environment in which so many of the public are involved in their daily affairs, will be appropriately punished.<sup>50</sup>

## Objective circumstances

### *Nature of injuries caused*

- 3.32 In relation to dangerous driving offences, the CCA has observed that the nature of the injuries inflicted can be an aggravating factor. This is reflected in the fact that the maximum penalty differs depending on whether the driving results in death or injury.<sup>51</sup>

49. S d'Apice, *The Impact of the High Range PCA Guideline Judgement on Sentencing for High Range PCA Offences in NSW*, Crime and Justice Bulletin No 123 (NSW Bureau of Crime Statistics and Research, 2008) fig 1, fig 6.

50. *R v Scott* [1999] NSWCCA 233 [17]. See also *Murnin v R* (Unreported, NSWCCA, 16 August 1985) 3–4; *R v McIntyre* (1988) 38 A Crim R 135, 138; *R v Hall* [2001] NSWCCA 202 [65]; *R v AB* [2011] NSWCCA 229 [101].

51. *Gonzalez v R* [2006] NSWCCA 4 [22]; *R v Dutton* [2005] NSWCCA 248 [27].

## CP Repeat traffic offenders

- 3.33 The result of the driving will be a “major consideration” in determining the degree to which retribution and general deterrence will influence the sentence. This is so “notwithstanding that the extent of the injury suffered is to some degree completely outside the control of the driver and may simply be a matter of chance”.<sup>52</sup> This is not to suggest that the quality of the offending driving is not also “a very significant matter”.<sup>53</sup>

### *Speeding*

- 3.34 A consideration of speed is not limited to considering how far above the speed limit a person was driving. Context is important. For example, a court, in determining the objective seriousness of an offence of dangerous driving, was entitled to take into account the fact that the offender was driving at 70km/h in the vicinity of a group of cyclists.<sup>54</sup>

### *Street racing*

- 3.35 In an inadequacy appeal to the CCA in relation to two counts of manslaughter arising from the offender racing two other vehicles on a highway, it was observed that the case was:

more serious than other motor manslaughter cases to which the Court's attention was taken because it involved three vehicles all being driven dangerously in a joint enterprise and, hence, the potential dangerousness to others in the vicinity was increased dramatically from a case involving the dangerous driving of a single vehicle. In my opinion that fact alone takes this offence well beyond the seriousness of the criminality considered in *R v Cameron*.<sup>55</sup>

### *Passenger was under 16 years of age*

- 3.36 One of the aggravating factors under the *Crimes (Sentencing Procedure) Act 1999* (NSW) that a court must take into account when determining the appropriate sentence for an offence is that the offence was a prescribed traffic offence and a child under 16 years of age was a passenger in the offender's vehicle.<sup>56</sup>
- 3.37 The prescribed traffic offences include those involving drugs and alcohol, police pursuits, and dangerous driving and aggravated dangerous causing death or grievous bodily harm while under the influence of alcohol or drugs, or while escaping a police pursuit.<sup>57</sup>
- 3.38 The factor was inserted in 2011<sup>58</sup> in response to “considerable community concern about people who commit serious traffic offences with a child in their vehicle” and in

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52. *R v Dutton* [2005] NSWCCA 248 [26].

53. *R v Dutton* [2005] NSWCCA 248 [27].

54. *Kerr v R* [2016] NSWCCA 218 [96]-[97].

55. *R v Borkowski* [2009] NSWCCA 102, 195 A Crim R 1 [59]. *R v Cameron* [2005] NSWCCA 359, 157 A Crim R 70.

56. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(p).

57. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(6) definition of “prescribed traffic offence”.

58. *Crimes (Sentencing Procedure) Amendment (Children in Vehicles) Act 2011* (NSW) sch 1[1] inserting *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(p).

the wake of what was claimed to be inappropriate sentences handed down by the courts in such cases. The aim was to deter such behaviour.<sup>59</sup>

- 3.39 The use of this provision has not been subject to appellate review. There has also been no evaluation of its impact on sentencing patterns.
- 3.40 The definition of “prescribed traffic offence” does not apply to speeding or other forms of dangerous or negligent driving. Amendments recently passed by Parliament will effectively remove from the list driving with a low range PCA as a first offence, unless it is dealt with by the courts rather than by penalty notice.<sup>60</sup>

### *Victims’ conduct*

- 3.41 CCA has rejected the idea that the conduct of a victim can be used to mitigate a driver’s criminal behaviour in putting members of the public and passengers at risk.<sup>61</sup>
- 3.42 For example, a court cannot take into account as mitigation that a passenger:
- had her arm out the window of the car when she sustained her injury (regardless of the awareness of the driver)<sup>62</sup>
  - did not use a seat belt,<sup>63</sup> or
  - was intoxicated and knew that the driver was grossly intoxicated.<sup>64</sup>
- 3.43 In response to a trial judge’s finding that a victim was “in a sense partly responsible for her own misfortune”, the CCA observed that such a consideration:
- is misconceived, erroneous in law and totally irrelevant. Not only can contributory negligence or anything akin to it, by whatever name it is called, have no place in the criminal law, but it cannot in my view be a mitigating factor. [The offence of dangerous driving] is designed to protect, not only passengers in the offender’s motor vehicle, but other road users as well; and the fact that the person injured was also affected by alcohol and did not dissuade the offender from driving, in my view, cannot go to mitigation.<sup>65</sup>
- 3.44 While the conduct of a victim cannot be taken into account in mitigation, the CCA has observed that “the culpability of the victim will usually be relevant to the assessment of the seriousness of the offender’s conduct, and therefore to the offender’s culpability”.<sup>66</sup> There are cases where the evidence has been found to support a conclusion that the offender’s culpability was minimal. One example is a case where the offender (with a blood alcohol reading of 0.122) was convicted of

59. NSW, *Parliamentary Debates*, Legislative Council, 20 October 2011, 6836.

60. *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (NSW) sch 1[4] not yet commenced.

61. *R v Dutton* [2005] NSWCCA 248 [35]; *R v Errington* [1999] NSWCCA 18 [27]–[28]. See also *R v Berg* [2004] NSWCCA 300 [26].

62. *R v Dutton* [2005] NSWCCA 248 [35].

63. *R v Berg* [2004] NSWCCA 300 [26].

64. *R v Errington* [1999] NSWCCA 18 [27]–[28].

65. *R v Errington* [1999] NSWCCA 18 [27]–[28].

66. *R v Janceski* [2005] NSWCCA 288 [29].

dangerous driving causing grievous bodily harm, but the victim had made an unsafe right hand turn across the offender's path.<sup>67</sup>

### *Momentary inattention*

3.45 The CCA has confirmed that, in accordance with the dangerous driving guideline judgment, a non-custodial sentence for a dangerous driving offence is "almost invariably confined to cases involving momentary inattention or misjudgement".<sup>68</sup>

3.46 However, the CCA has also observed that dangerous driving offences:

are not divided into those of momentary inattention and those of abandonment of responsibility. Those are the two extremes. There are shades and gradations of moral culpability in different instances of the offence, and it is proper for the courts to recognise a continuum, rather than a dichotomy, when assessing moral culpability.<sup>69</sup>

### **Question 3.2: Objective circumstances**

(1) Are the sentencing principles that relate to objective circumstances appropriate for dealing with repeat driving offenders?

(2) If not, what changes should be made and how could they be achieved?

## Subjective circumstances

### *Prior good character*

3.47 The courts have held that prior good character is less relevant for dangerous driving because people of good character often commit such offences and general deterrence is important.<sup>70</sup>

3.48 In a 1997 prosecution appeal against a sentence of periodic detention for dangerous driving causing death, Justice Hunt observed in relation to a young person of good character that, even though such an offender is unlikely to re-offend and has "outstanding prospects of rehabilitation":

The need for public deterrence will usually outweigh the fact that the particular offender has already learned his or her lesson. Also, retribution remains an important purpose which the sentence must serve.<sup>71</sup>

### *Impact on offender of death of, or injury to, victim*

3.49 There is authority that suggests the effect of a death in an accident on the offender (such as real and continuing psychiatric illness) and self-punishment (such as a self-inflicted sense of shame and guilt) are often highly relevant factors.<sup>72</sup> However,

67. *R v Whelan* [2004] NSWCCA 379 [12], [27]. See *R v Janceski* [2005] NSWCCA 288 [27].

68. *Pisciuneri v R* [2007] NSWCCA 265 [75].

69. *R v Khatter* [2000] NSWCCA 32 [31].

70. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [118]. See also *R v Price* [2004] NSWCCA 186 [45].

71. *R v Musumeci* (Unreported, NSWCCA, 30 October 1997) 7 (Hunt CJ at CL).

72. *R v Dhanhoa* [2000] NSWCCA 257 [34].

the weight given to such factors will depend on the circumstances. The CCA has cautioned:

Where the facts reveal gross moral culpability judges should be wary of attaching too much weight to considerations of self punishment. Genuine remorse and self punishment do not compensate for or balance out gross moral culpability.<sup>73</sup>

3.50 In that case, serious objective factors of excessive alcohol consumption, excessive speed and violent and erratic driving, received greater weight than the offender's "major depression and post traumatic stress disorder and the effect upon him of the accident and his close friend's death".<sup>74</sup>

3.51 In another case, the CCA observed that the offender's "long-term (if not lifetime) disregard for driver licensing laws" made personal deterrence a "critical consideration" and concluded that the offender's:

feelings of shame, guilt and self punishment, could not remove the need for a significant element on sentence for personal deterrence and retribution. In addition, general deterrence remained as an important consideration on sentence.<sup>75</sup>

3.52 While a close relationship with the deceased might provide some indication of the depth of the offender's self-punishment, the consideration may also extend to cases where the victim was not known to the offender. The CCA has observed that "leniency does not derive from the mere fact that the deceased was not a stranger, but from the consequential quality and depth of the remorse and shock".<sup>76</sup>

### *The offender's injuries*

3.53 The CCA has noted that the fact that the serious injuries arose from a collision for which the offender is responsible should not alter the practice of sentencing courts to take into account the offender's physical condition.<sup>77</sup> Therefore, the courts may take into account serious injuries that the offender has received,<sup>78</sup> as well as any serious continuing disability that may make prison more burdensome.<sup>79</sup>

#### **Question 3.3: Subjective circumstances**

- (1) Are the sentencing principles that relate to subjective circumstances appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

73. *R v Koosmen* [2004] NSWCCA 359 [32]. See also *R v AB* [2011] NSWCCA 229 [115]–[116]; *R v Wright* [2013] NSWCCA 82 [61]; *R v Elkassir* [2013] NSWCCA 181 [63].

74. *R v Koosmen* [2004] NSWCCA 359 [33]–[34].

75. *R v AB* [2011] NSWCCA 229 [116].

76. *Hughes v R* [2008] NSWCCA 48, 185 A Crim R 155 [23] (citation omitted). See also *R v Wright* [2013] NSWCCA 82 [62].

77. *R v Wright* [2013] NSWCCA 82 [60].

78. See, eg, *Rosenthal v R* [2008] NSWCCA 149 [20].

79. Following the principles in *R v Vachalec* [1981] 1 NSWLR 351, 353.

### Other considerations

#### *Hierarchy of offences giving rise to death*

- 3.54 The CCA has made clear on a number of occasions that manslaughter is a markedly more serious offence than that of dangerous driving causing death, even in its aggravated form.<sup>80</sup>
- 3.55 Although the distinction between manslaughter and dangerous driving causing death may be a fine one, in some cases, the courts should be careful to sentence an offender only for the crime of which they have been convicted.<sup>81</sup> The CCA has emphasised that, despite the sometimes fine distinctions:

sentences imposed in motor/manlaughter cases do not set an upper limit for offences of aggravated dangerous driving causing death. The upper limit is fixed by the maximum penalty of 14 years imprisonment, which remains a yardstick when assessing a sentence appropriate to the objective and subjective circumstances of the offence.<sup>82</sup>

- 3.56 The CCA has also observed that, while manslaughter is “notorious” for the range of conduct covered and the width of the sentencing discretion exercised in relation to it, in the case of driving-related manslaughter, the courts should take into account the fact that manslaughter stands at “the very pinnacle” of a structure of offences dealing with causing death through driving. In particular, there is a less serious offence of dangerous driving causing death that carries a maximum penalty of 14 years. However:

it does not follow that the sentence for manslaughter must exceed the maximum for the less serious offence or that the sentence for manslaughter is in some way calculated using the maximum sentence for the other offence.<sup>83</sup>

#### *Avoiding double counting*

- 3.57 “Double counting” is a term used to describe a number of sentencing outcomes where the penalty is increased because a factor relevant to sentencing is taken into account more than once.
- 3.58 The courts must take care to avoid double counting. There is some subtlety involved in the CCA’s approach to avoiding double counting, which involves balancing between such factors as the elements of the offence, the aggravating circumstances identified in the *Crimes (Sentencing Procedure) Act 1999* (NSW), and the aggravating factors identified in the guideline judgments.<sup>84</sup>
- 3.59 For example, one of the aggravating factors under the *Crimes (Sentencing Procedure) Act 1999* (NSW) is that the offence was committed without regard to public safety.<sup>85</sup> However, the Act also expressly states that a court is not to have additional regard to such a factor if it is an element of the offence.<sup>86</sup> Accordingly, the

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80. *R v Cameron* [2005] NSWCCA 359, 157 A Crim R 70 [28].

81. *R v Cameron* [2005] NSWCCA 359, 157 A Crim R 70 [27]; *R v Vukic* [2003] NSWCCA 13 [10]; *R v Wright* [2013] NSWCCA 82 [82].

82. *R v Wright* [2013] NSWCCA 82 [83].

83. *R v Borkowski* [2009] NSWCCA 102, 195 A Crim R 1 [58].

84. See NSW Law Reform Commission, *Sentencing*, Report 139 (2013) [4.32]–[4.33].

85. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(i).

86. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2).

CCA has observed that a court could not take that aggravating factor into account for a dangerous driving offence.<sup>87</sup>

- 3.60 Likewise, the CCA has observed that there might be an element of double counting if a court were to take into account both the public safety aggravating factor, and the factors mentioned in the dangerous driving guideline judgment relating to the danger posed to members of the public.<sup>88</sup>
- 3.61 In another CCA case, one judge observed that the definition of a particular element of an offence may be based on the policy of avoiding consequences that, in general terms, fall within the list of aggravating factors. Therefore, as a matter of principle, the characteristics of an element of an offence should not be treated as aggravating factors if they “merely reflect the policy underlying the offence”.<sup>89</sup> So, it is possible that, while a drink driving offence does not explicitly contain an element that the offence was committed without regard to public safety, it might also preclude the court having regard to that aggravating factor. The CCA noted such an offence, particularly where the driver has a blood alcohol reading of more than 0.15, “is premised on the fact that to drive in such a condition is dangerous to other persons on the road”.<sup>90</sup>
- 3.62 In an ordinary case of dangerous driving, acting without regard for public safety should generally not be treated as an aggravating factor in its own right “unless”, as one CCA judge put it, “the circumstances of the case involve some unusually heinous behaviour, or inebriation above the statutory precondition”,<sup>91</sup> or, as another put it, the conduct “may be so egregious that it transcends that which would be regarded as an inherent characteristic of the offence”.<sup>92</sup> Therefore, in a case involving dangerous driving causing death (where the circumstance of aggravation was a prescribed concentration of alcohol of 0.15 or more), the CCA found no error in a sentencing judge referring in general terms to the offender’s degree of intoxication as an aggravating factor identified in the guideline judgment for dangerous driving:

The fact that the offender had a reading that was 30 per cent higher than the reading that would have made him liable for the aggravated offence was a highly relevant matter. *Whyte* accepts that generally the level of intoxication is an aggravating factor and, in my view, there is nothing ... that prohibited his Honour taking that particular reading into account.<sup>93</sup>

### *Multiple victims: Concurrency and accumulation*

- 3.63 A question of concurrency and accumulation of sentences arises in some cases where the one action by the offender, for example, dangerous driving, causes injury or death to a number of people, and where separate charges are laid in relation to each victim. In such cases, the CCA has held that:

separate sentences should usually be fixed which are made partly concurrent and partly cumulative, each such sentence being appropriate to the existence of

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87. *R v McMillan* [2005] NSWCCA 28 [39].

88. *R v McMillan* [2005] NSWCCA 28 [38].

89. *Elyard v R* [2006] NSWCCA 43 [9]-[10].

90. *R v McMillan* [2005] NSWCCA 28 [38].

91. *Elyard v R* [2006] NSWCCA 43 [10].

92. *Elyard v R* [2006] NSWCCA 43 [43].

93. *R v Berg* [2004] NSWCCA 300 [25]. See also *R v Whyte* [2002] NSWCCA 343, 55 NSWLR 252.

only one victim and the aggregate of the sentences reflecting the fact that there are multiple victims resulting from the same action by the offender. The extent to which there should be an overlap in the partial accumulation will depend on what is required to represent the totality of the criminality involved in the one act of the offender.<sup>94</sup>

### Question 3.4: Other considerations

- (1) Are the other considerations listed in paragraphs [3.52] – [3.61] appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

## Sentencing principles relating to repeat offending

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3.64 There are two ways in which prior offending conduct can be taken into account in sentencing an offender:

- If an offender has prior convictions, this is considered an aggravating factor under s 21A(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- Prior convictions can also be considered as part of an offender's subjective circumstances.

### Prior convictions as an aggravating factor

3.65 Under the *Crimes (Sentencing Procedure) Act 1999* (NSW), one of the aggravating factors to be taken into account in determining the appropriate sentence for an offence is that the offender "has a record of previous convictions".<sup>95</sup> The CCA has said this factor must be used "in the ways authorised expressly in *Veen No 2*".<sup>96</sup> *Veen No 2*, which was delivered by the High Court in 1998, relevantly states:

[T]he antecedent criminal history of an offender is a factor which may be taken into account in determining the sentence to be imposed, but it cannot be given such weight as to lead to the imposition of a penalty which is disproportionate to the gravity of the instant offence. ... The antecedent criminal history is relevant, however, to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. In the latter case, retribution, deterrence and protection of society may all indicate that a more severe penalty is warranted. It is legitimate to take account of the antecedent criminal history when it illuminates the moral culpability of the offender in the instant case, or shows his dangerous propensity or shows a need to impose condign punishment to deter the offender and other offenders from committing further offences of a like kind.<sup>97</sup>

3.66 The courts have read down the requirement to take into account an offender's record of previous convictions to ensure that it is only used within the boundaries of

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94. *R v Janceski* [2005] NSWCCA 288 [23]. See also *R v MMK* [2006] NSWCCA 272, 164 A Crim R 481 [13]; *Kerr v R* [2016] NSWCCA 218 [109].

95. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(d).

96. *R v McNaughton* [2006] NSWCCA 242, 66 NSWLR 566 [32].

97. *Veen v R (No 2)* (1988) 164 CLR 465, 477.



a proportionate sentence. The principle of proportionality requires that the objective circumstances of the offence (which do not include prior convictions) set the upper boundaries of a proportionate sentence.<sup>98</sup>

- 3.67 In such cases, it is largely a matter for the sentencing judge to decide whether a criminal record can be taken into account.<sup>99</sup> For example, in a recent appeal, the CCA noted in relation to a police pursuit that:

Against the background of the applicant’s previous driving convictions and his continuing disobedience to the law, particularly in driving related matters, a very substantial penalty was warranted to ensure that the sentencing objectives of punishment, deterrence and the protection of society were fulfilled.<sup>100</sup>

- 3.68 The threshold for invoking this factor in the way envisaged by *Veen* is relatively high. In one CCA case, the references to “dangerous propensity” and illuminating the offender’s moral culpability were noted in support of the conclusion that “*Veen* is not ... intended to apply to every case where an offender has some criminal history, even of a like kind to that under consideration in the sentencing exercise”.<sup>101</sup> For example, the CCA has said that the fact that a driver was disqualified at the time of the offence is not relevant to assessing abandonment of responsibility, adding, however, “[o]f course, they are matters relevant to sentence generally as they bear on the issue of deterrence, both personal and general”.<sup>102</sup>

#### *Offending that does not result in a conviction*

- 3.69 However, there are some problems with the provision in the *Crimes (Sentencing Procedure) Act 1999* (NSW) insofar as it refers to a “record of previous convictions”. These problems have particular relevance to offenders with a history of driving offences.
- 3.70 As noted in Chapter 2, a number of offenders guilty of driving offences receive a non-conviction order under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) and a number of offences that involve serious risk of death or injury are dealt with by way of penalty notice. It can be argued that neither of these gives rise to a “record of previous convictions”.
- 3.71 The CCA has observed that, as a penal provision, the provision referring to a “record of previous convictions” should be construed strictly and beneficially towards those against whom it operates to exclude reference to an offence for which the offender has received a non-conviction order.<sup>103</sup> The NSW Law Reform Commission, in its review of sentencing, noted particular problems with the current provision, preferring a reference to a person’s “offending history” rather than “record of previous convictions”.<sup>104</sup>
- 3.72 However, the CCA has sometimes left open the possibility that an offending history that is not part of a record of previous convictions (such as speeding penalties or

98. *R v McNaughton* [2006] NSWCCA 242, 66 NSWLR 566 [24].

99. *R v Borkowski* [2009] NSWCCA 102; 195 A Crim R 1 [47]; *Kerr v R* [2016] NSWCCA 218 [70]; *Gonzalez v R* [2006] NSWCCA 4 [7], [11], [29]; *Stanyard v R* [2013] NSWCCA 134 [25]–[26].

100. *Westaway v R* [2016] NSWCCA 281 [24]. See also *R v Berg* [2004] NSWCCA 300 [29].

101. *R v Price* [2005] NSWCCA 285 [38]. See also *Frigiani v R* [2007] NSWCCA 81 [26].

102. *Rosenthal v R* [2008] NSWCCA 149 [17].

103. *R v Price* [2005] NSWCCA 285 [36], [40].

104. NSW Law Reform Commission, *Sentencing*, Report 139 (2013) [4.73].

undetermined charges for PCA) could indicate an attitude of disobedience to the law, and require increased weight to be given to considerations of retribution and deterrence in accordance with *Veen*.<sup>105</sup>

### Offending as part of an offender's subjective circumstances

- 3.73 Previous offending behaviour (whether resulting in a conviction or not, or meeting the requirements of *Veen*) can be taken into account as part of an offender's subjective circumstances.<sup>106</sup> There is authority that such matters clearly should not be taken into account in determining objective features of the offence, such as abandonment of responsibility or high moral culpability.<sup>107</sup>
- 3.74 The High Court has approved the use of past offending for this purpose:
- Imposing a sentence heavier than otherwise would have been passed is not to sentence the first person again for offences of which he or she was earlier convicted or to sentence that offender for the offences admitted but not charged. It is to do no more than give effect to the well-established principle (in this case established by statute) that the character and antecedents of the offender are, to the extent that they are relevant and known to the sentencing court, to be taken into account in fixing the sentence to be passed. Taking all aspects, both positive and negative, of an offender's known character and antecedents into account in sentencing for an offence is not to punish the offender again for those earlier matters; it is to take proper account of matters which are relevant to fixing the sentence under consideration.<sup>108</sup>
- 3.75 There are a number of examples where, as part of a consideration of subjective circumstances, the offender's past driving history did not justify leniency, or required an element of personal deterrence in the sentence.<sup>109</sup>
- 3.76 There are some cases where the offender has had no relevant record of convictions, but, for example, has a record of traffic infringements that could be taken into account as part of the offender's subjective circumstances.<sup>110</sup> In one case, the trial judge considered that the offender's traffic infringement record distinguished him from the typical case of a young offender with good character with limited or no prior convictions.<sup>111</sup> In another case, it was suggested that (outside of a *Veen* situation) a record of prior offending might give rise to a need to "incorporate in the sentence a component that reflected personal deterrence".<sup>112</sup>

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105. *R v Nguyen* [2008] NSWCCA 113 [51].

106. *R v Borkowski* [2009] NSWCCA 102, 195 A Crim R 1 [47]; *Frigiani v R* [2007] NSWCCA 81 [23]; *Kerr v R* [2016] NSWCCA 218 [68]–[70].

107. *Rosenthal v R* [2008] NSWCCA 149 [16]–[17].

108. *Weininger v R* [2003] HCA 14, 212 CLR 629 [32].

109. See, eg, *Black v R* [2010] NSWCCA 321 [9], [33]; *R v AB* [2011] NSWCCA 229 [116]; *R v Harris* [2015] NSWCCA 81 [62]. See also *Tsakonas v R* [2009] NSWCCA 258, 197 A Crim R 581 [38]–[39], [44].

110. See, eg, *Stanyard v R* [2013] NSWCCA 134 [25]–[26]; *R v Hennessy* [2013] NSWDC 314 [16]; *R v Read* [2010] NSWCCA 78 [14]–[17], [46].

111. *Stanyard v R* [2013] NSWCCA 134 [26].

112. *R v Price* [2005] NSWCCA 285 [39].

### Court's attitude to recidivism

- 3.77 The CCA attitude is generally that, for the “typical offender”, recidivism is “not a concern of the court”. In particular, the court has noted that where an escalated penalty is available for second or subsequent driving offences, such as high range PCA:

Parliament has already provided a higher penalty where the offender might be considered as a risk of re-offending by reason of the commission of a previous offence.<sup>113</sup>

#### **Question 3.5: Repeat offending**

- (1) Are the sentencing principles relating to repeat offending appropriate for dealing with repeat driving offenders?
- (2) If not, what changes should be made and how could they be achieved?

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113. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [122].



## 4. Fines and penalty notices

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### In brief

Fines and penalty notices are the most frequent responses to driving offences. However, there are some doubts about their effectiveness in deterring offending. Of particular concern is the fact that the enforcement of fines and penalty notices for all offences (not just driving offences), resulting in cancellation or suspension of a licence or disqualification from driving, can lead to further offences of unauthorised driving.

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- 4.1 Fines and penalty notices have a particular relevance to driving offences because, as demonstrated in Chapter 2, they are very frequently applied. They are also relevant because a driver's licence may be suspended as part of the enforcement of outstanding fines and penalty notices.

### Fines

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- 4.2 The fine is the most frequently imposed penalty in the Local Court across all offence types, and was the most serious penalty imposed for the principal offence of a matter in 41% of all cases in the Local Court in 2012.<sup>1</sup> Despite their prevalence, there is little case law on the sentencing principles relevant to fines, as most of them are imposed in the summary jurisdiction, and/or are not often subject to review on appeal.
- 4.3 The power to impose fines in NSW may either be found in any offence provision that specifies a fine as a possible penalty or in the provisions of the *Crimes (Sentencing Procedure) Act 1999 (NSW)*<sup>2</sup> ("CSPA"), when imprisonment is specified but a fine amount is not. When a fine amount is not specified:
- after an indictable offence has been tried on indictment, the court can impose on an individual a maximum fine of 1,000 penalty units (\$110,000),<sup>3</sup> or 2,000 penalty units (\$220,000) in the case of a corporation<sup>4</sup>
  - after an indictable offence has been dealt with summarily, the Local Court may impose a maximum fine of 100 penalty units (\$11,000).<sup>5</sup>

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1. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2012).

2. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 2 div 4.

3. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 15.

4. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 16(a).

## CP Repeat traffic offenders

- 4.4 Under the *Road Transport Act 2013* (NSW) (“*Road Transport Act*”), when corporations are taken to have committed a camera-detected offence, the fine amount is five times that for an individual.<sup>6</sup>
- 4.5 Under general sentencing principles, a fine must reflect the seriousness of offence. A court, when setting the amount of a fine, must also consider:
- such information about the offender’s means as is reasonably and practically available, and
  - such other matters as, in the court’s opinion, are relevant to fixing the amount.<sup>7</sup>
- 4.6 There are cases where the Supreme Court, in exercising its summary jurisdiction in relation to heavy vehicle regulation, has considered whether companies and contractors are able to pay fines.<sup>8</sup>
- 4.7 In a rare case, the District Court considered the issue in relation to an offence of negligent driving causing grievous bodily harm. The Court confirmed the Local Court’s decision to impose a suspended sentence, in part because the offender’s limited capacity to pay made the fine an inappropriate penalty.<sup>9</sup>
- 4.8 The question of fines was raised when the CCA heard an application for a guideline judgment on the offence of driving with a high range prescribed concentration of alcohol (“PCA”). One submission to the Court was that it would be difficult to reach any conclusion about the appropriateness of fines, because “the amount of a fine could not be considered in isolation from the impact of the penalty upon the particular offender”. It was further submitted that because the court must take into account an offender’s ability to pay, “there cannot be a mathematical relationship between the maximum penalty under the [*Road Transport*] Act and the mean fine imposed by the courts”.<sup>10</sup> The Attorney General conceded that it is difficult to draw any conclusions about the adequacy of fines imposed for the offence by having regard to “mere statistics” without knowing more, for example, about the ability of people in a particular area to pay a fine.<sup>11</sup>
- 4.9 In this application, the CCA also appeared to accept that, in deciding the amount of a fine, it might be appropriate to consider that the offender could be out of work for a time, because of the imposition of a period of licence disqualification.<sup>12</sup>

## Penalty notices

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- 4.10 As we noted in Chapter 2, some traffic offences can be dealt with by way of a penalty notice. A penalty notice amount is fixed by regulation and is imposed administratively. This is different to a court-imposed fine, which the court may set in

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5. *Criminal Procedure Act 1986* (NSW) s 267(5); *Crimes (Sentencing Procedure) Act 1999* (NSW) s 16(b).

6. *Road Transport Act 2013* (NSW) s 184(2).

7. *Fines Act 1996* (NSW) s 6; *Rahme v R* (1989) 43 A Crim R 81, 87-89.

8. See, eg, *Palfrey v Spiteri* [2014] NSWSC 842 [92]-[95]; *Kemp v Air Liquide Australia Ltd* [2014] NSWSC 1200 [37].

9. *Director of Public Prosecutions v Levy* [2016] NSWDC 147 [46].

10. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303 [68].

11. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303 [83].

12. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303 [113].

its discretion at sentencing, subject to any statutory maximum amounts or jurisdictional limits set out above.

- 4.11 When a person engages in conduct classified as a penalty notice offence, they will receive a penalty notice issued by relevant administrative officers requiring payment by the due date. This could be, for example, the police, appointed Roads and Maritime Services (“RMS”) officers or Revenue NSW officers.<sup>13</sup>
- 4.12 The person served with a penalty notice may, instead of paying, choose to have the matter determined by a court. A person is not liable for any further proceedings for the alleged offence once they have paid the prescribed penalty amount.<sup>14</sup>
- 4.13 Penalty notices are far more common than court imposed fines. In 2017, courts in NSW imposed a total of 45,844 fines for all offences.<sup>15</sup> In the same period, 728,927 penalty notices were issued for speeding offences alone.<sup>16</sup>

### Penalty notice offences

- 4.14 Various road transport related statutes and regulations determine which offences are penalty notice offences.<sup>17</sup>
- 4.15 There are over 600 traffic related penalty notice offences.<sup>18</sup> The severity of a penalty notice is usually, but not always, proportionate to the road safety risk of the prohibited action.
- 4.16 There are several thousand non-traffic related offences that are part of the penalty notice system.<sup>19</sup>

### Penalty notice procedures

- 4.17 When a penalty notice offence is committed, the relevant authority may give:
  - an official caution, or
  - a penalty notice.<sup>20</sup>
- 4.18 If a penalty notice is issued, the recipient must, within the specified time, do one of the following:
  - **Pay the penalty amount.**
  - **Apply for a review of the penalty notice:** A person may request a review, for example, if the notice was wrongly issued or if they want leniency.<sup>21</sup>

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13. *Fines Act 1996* (NSW) s 4(1), s 22(2); *Road Transport Act 2013* (NSW) s 166(1).

14. *Road Transport Act 2013* (NSW) s 197(1).

15. NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Courts Statistics January 2013-December 2017* (2018) Table 5.

16. Revenue NSW, *Speeding and Red Light Camera Offences* (accessed 26 September 2018); Revenue NSW, *Police Issued Speeding Offences* (accessed 26 September 2018).

17. *Road Transport Act 2013* (NSW) s 195(1).

18. See, eg, *Road Transport Act 2013* (NSW) s 195(1); *Road Transport (General) Regulation 2013* (NSW) sch 5.

19. NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [1.7].

20. *Fines Act 1996* (NSW) s 19(1)(a1), s 19A(1).

## CP Repeat traffic offenders

- **Nominate another person as responsible for the offence:** If the penalty notice recipient is not responsible for the offence, they can “nominate” or provide to the appropriate/authorised officer, the name of the driver who actually committed the offence.<sup>22</sup> This is only possible for certain offences including various parking and camera recorded speeding offences.<sup>23</sup>
- **Have the matter dealt with by a court:** A person may choose to take the matter to court to deny wrongdoing or if they want the court to consider extenuating circumstances. The person can take the matter to court at any time before the due date, even if they have already paid the penalty amount.<sup>24</sup>

## Enforcement of fines and penalty notices

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- 4.19 The *Fines Act 1996* (NSW) sets out the procedures for enforcing fines and penalty notices.<sup>25</sup>
- 4.20 The State Debt Recovery Office (part of the Revenue NSW) is the agency responsible for enforcement. Fine mitigation measures, such as work and development orders<sup>26</sup> and time to pay arrangements<sup>27</sup> are available.

## Licence suspension for fine default

- 4.21 Where the person is required to pay the notice and fails to do so after receiving subsequent notices or extension periods, RMS must, at the direction of the Commissioner of Fines Administration, suspend an adult fine defaulter’s driver licence, even if the penalty notice (or fine) was unrelated to any traffic offence.<sup>28</sup>
- 4.22 If the amount remains outstanding for 6 months after the suspension period started, RMS may be required to cancel the licence.<sup>29</sup> If RMS cannot cancel the fine defaulter’s licence (for example, if the licence has expired or if the fine defaulter has no licence), RMS may instead cancel the registration of the fine defaulter’s registered vehicle(s).<sup>30</sup>
- 4.23 Driving with a suspended licence due to fine default can result in:
- a maximum penalty of 30 penalty units (first offence), or
  - 50 penalty units and/or 6 month imprisonment (second or subsequent offence),<sup>31</sup> and

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21. *Fines Act 1996* (NSW) s 24A.

22. *Fines Act 1996* (NSW) s 38(1)(a).

23. *Fines Act 1996* (NSW) s 38(4)(a), s 38(4)(b1). See also *Road Transport Act 2013* (NSW) s 186, s 188(1).

24. *Fines Act 1996* (NSW) s 36(1A). See also *Road Transport Act 2013* (NSW) s 195(2).

25. *Fines Act 1996* (NSW) s 12-17, pt 4.

26. *Fines Act 1996* (NSW) s 99A-99K.

27. *Fines Act 1996* (NSW) s 100.

28. *Fines Act 1996* (NSW) s 19(1)(d), s 65-66.

29. *Fines Act 1996* (NSW) s 66(2).

30. *Fines Act 1996* (NSW) s 67.

31. *Road Transport Act 2013* (NSW) s 54(5).



- an automatic disqualification period of 3 month (first offence) or 12 month (second or subsequent offence).<sup>32</sup>
- 4.24 When determining the length of a fine default-related disqualification, the court “must take into account the effect the ... period of disqualification will have on the person’s employment and the person’s ability to pay the outstanding fine”.<sup>33</sup>
- 4.25 Generally, RMS must refuse to deal with a suspended or disqualified fine defaulter, unless the Commissioner of Fines Administration otherwise directs. Among other things, RMS will not issue or renew the fine defaulter’s licence or allow the defaulter to undertake a driver licence test.<sup>34</sup>
- 4.26 A person’s licence cannot be suspended if they were under 18 years of age when a non-traffic related offence was committed.<sup>35</sup> Further, a visitor driver’s privilege can only be suspended if the fine defaulter fails to pay two or more fines relating to traffic offences and if other requirements are met.<sup>36</sup>

## Issues arising

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- 4.27 There are a number of issues arising from the system of imposing and enforcing fines and penalty notices. These range from questions about the effectiveness of a fine as a deterrent, to questions about whether the existing enforcement procedures are needlessly increasing the number of unauthorised drivers. There is some evidence that monetary penalties may generally be an ineffective deterrent. However, this may depend on the particular offence. In one survey, only 32% of respondents felt deterred from speeding by fines, while 76% felt deterred by an immediate licence suspension.<sup>37</sup>
- 4.28 There is also evidence to suggest that imposing more severe penalty amounts is unlikely to increase deterrence. One survey of 2,222 people who had previously been fined for a parking or traffic offence found that over 80% were likely or almost certain to pay a future speeding fine of \$254. However, only 69% were likely to pay a speeding fine of \$436, and only 31% were likely to pay a speeding fine of \$2,252.<sup>38</sup>
- 4.29 While licence sanctions generally result in offenders paying fines, it may also contribute to the number of unauthorised drivers.<sup>39</sup> For example, there is evidence to suggest that higher penalties increase the default risk of unemployed people.<sup>40</sup>

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32. *Road Transport Act 2013* (NSW) s 205A.

33. *Road Transport Act 2013* (NSW) s 54(6).

34. *Fines Act 1996* (NSW) s 68(1)-(2).

35. *Fines Act 1996* (NSW) s 65(3)(b).

36. *Fines Act 1996* (NSW) s 65(3A).

37. NSW Government, *Submission by NSW Government in response to the Parliamentary Joint Standing Committee on Road Safety (Staysafe) Inquiry into Speed Zoning and its Impact on the Demerit Points Scheme*, Submission No 30 (2014) 21.

38. N Donnelly, S Poynton and D Weatherburn, *Willingness to pay a fine*, Crime and Justice Bulletin No 195 (NSW Bureau of Crime Statistics and Research, 2016) 9.

39. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.62]-[3.73].

40. N Donnelly, S Poynton and D Weatherburn, *Willingness to pay a fine*, Crime and Justice Bulletin No 195 (NSW Bureau of Crime Statistics and Research, 2016) 9-10.

## CP Repeat traffic offenders

We consider further issues surrounding unauthorised driving at the end of Chapter 5.<sup>41</sup>

- 4.30 Some programs are available to assist people with outstanding fines. For example, the Work Development Program allows certain fine defaulters to work off their debts. Such schemes have been found to reduce re-offending and secondary offending, and increase engagement in services and treatment.<sup>42</sup>

### Question 4.1: Fines and penalty notices

- (1) How effective are fines in dealing with repeat traffic offenders?
- (2) How effective are penalty notices in dealing with repeat traffic offenders?

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41. [5.75]-[5.84].

42. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.91].

## 5. Suspension, disqualification and unauthorised driving

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### In brief

The two main responses to driving offences in NSW are licence suspension and driver disqualification. Both prevent people from driving lawfully for a specified period. In order to drive again, a disqualified driver must apply for a new licence at the end of the disqualification period. Disqualified drivers are often considered to be repeat traffic offenders. However, there are a number of ways that a person can become a disqualified driver, Not all of the paths to disqualification necessarily involve committing driving offences or behaviour that endangers the community.

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5.1 The first part of this Chapter looks at the two main responses to driving offences in NSW – suspension of a driver licence and disqualification from driving for certain offences. Driving while disqualified or suspended is often considered an indicator of repeat traffic offending and is incorporated in the scheme of increased penalties for second or subsequent offences under the *Road Transport Act 2013* (NSW).<sup>1</sup>

5.2 Disqualification and suspension make it legally impossible for a person to drive for a specified period. Disqualification requires a person to reapply for a licence, whereas

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1. *Road Transport Act 2013* (NSW) s 9(5). See [1.34]-[1.40].

suspension simply makes a licence ineffective for a period - a driver need only reapply if their licence expires during that period. An obvious risk with both disqualification and suspension penalties is that they can lead to people committing the serious offence of unauthorised driving. This is more of a risk for some people than others; for example, people who do not have alternative transport options. The remainder of this Chapter looks at all circumstances in which a person may drive without authorisation and the offences that relate to these activities.

- 5.3 Concerns about the inflexible operation of driver disqualification provisions date back almost to their introduction in 1937.<sup>2</sup>

### Licence suspension

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- 5.4 In the following paragraphs we describe three (of many) paths to licence suspension for driving offences to illustrate the range of circumstances that can lead to a suspension.

#### Immediate licence suspension

- 5.5 In certain circumstances, within 48 hours of a penalty notice being issued or the driver being charged, a police officer may issue an immediate suspension notice. The circumstances are:<sup>3</sup>

- the driver has been charged with one of a number of specified offences including: causing death or grievous bodily harm by using a motor vehicle, and reckless or dangerous driving<sup>4</sup>
- the driver has been charged with driving with a middle or high range prescribed concentration of alcohol (“PCA”), driving under the influence of alcohol or any other drug, participating in various unauthorised races or speed trials, or committing various testing or sample taking offences<sup>5</sup>
- it appears to police that the driver has exceeded the speed limit by more than 45km/h or by more than 30km/h in the case of a learner or provisional driver (and the offence is not a camera recorded offence), and
- it appears to police that the driver was a learner driver not accompanied by a supervising driver.<sup>6</sup>

- 5.6 In 2017, there were 14,419 police-issued suspensions.<sup>7</sup>

- 5.7 The suspension period takes effect from the issue of the notice or from a specified date until either:

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2. *Motor Traffic Act 1909* (NSW) s 10(3A) inserted by *Motor Traffic (Amendment) Act 1937* (NSW) s 5(1)(g). See, eg, “Current Topics: Motor Traffic – Suspension of Licences” (1947) 21 *Australian Law Journal* 3, 3.

3. *Road Transport Act 2013* (NSW) s 224(1)–(2).

4. *Crimes Act 1900* (NSW) s 33(1), s 35(2), s 52A, s 54.

5. *Road Transport Act 2013* (NSW) s 110(4)–(5), s 112(1), s 115, s 116(2), sch 3 cl 16(1)(b), cl 17(1)(a1), cl 17(2), cl 18(1)(a)–(b), cl 18(1)(e).

6. *Road Transport Act 2013* (NSW) s 224(1)(c)–(d).

7. NSW Roads and Maritime Services, *Monthly Trend in Licence Suspensions and Cancellations (All Licence Holders)* table 3.1.1 (accessed 28 September 2018).

- a court hears and determines the charge or the charge is withdrawn,<sup>8</sup> or
  - where a penalty notice is issued:
    - 6 months has elapsed for a driver who exceeded the speed limit by more than 45km/h, or
    - 3 months has elapsed for a learner or provisional driver who exceeded the speed limit by 45km/h or less but more than 30km/h, or for a learner driver who was not accompanied by a supervising driver.<sup>9</sup>
- 5.8 A driver issued with such a notice may appeal it to the Local Court. The appeal must be made before the court hears and determines the charge that gave rise to the suspension or that charge has been withdrawn.<sup>10</sup>
- 5.9 A court that finds a charge proved for one of these offences (or a related offence) must, when sentencing, take into account the suspension period when deciding on any disqualification period.<sup>11</sup>

### Suspension for accumulation of demerit points

- 5.10 The NSW demerit points system is part of a national scheme. Under this system, a driver incurs demerit points for certain offences relating to driving or using motor vehicles.<sup>12</sup> Depending on the circumstances, accumulating sufficient demerit points within a particular period results in the suspension of the driver's licence, or their eligibility to apply for a licence.

#### *Demerit point offences*

- 5.11 Over 600 offences attract demerit points. Many (but not all) of these prohibit some behaviour or action dangerous to road safety such as speeding, negligent driving, disobeying traffic lights and signs or driving with defective brakes.<sup>13</sup>
- 5.12 Generally, more serious offences such as negligent driving causing grievous bodily harm or death, driving under the influence of drugs or alcohol and drag racing, are dealt with through disqualification rather than the demerit point system.
- 5.13 There are also a number of demerit point offences with little or no connection to road safety. For example: emitting an offensive noise out of a vehicle's sound system, and failing to give way to animals.<sup>14</sup> Other offences have a more complicated relationship with road safety. While illegal parking offences such as the unauthorised use of a disability parking space (loss of 1 demerit point)<sup>15</sup> is unrelated to road safety, other parking offences such as stopping in an intersection (loss of

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8. *Road Transport Act 2013* (NSW) s 224(4)(a).

9. *Road Transport Act 2013* (NSW) s 224(4).

10. *Road Transport Act 2013* (NSW) s 268(6).

11. *Road Transport Act 2013* (NSW) s 206B.

12. *Road Transport Act 2013* (NSW) s 32; see *Road Transport (Driver Licensing) Regulation 2017* (NSW) sch 1–2.

13. *Road Transport (Driver Licensing) Regulation 2017* (NSW) sch 1–2.

14. See *Road Transport (Driver Licensing) Regulation 2017* (NSW) sch 1–2.

15. *Road Transport (Driver Licensing) Regulation 2017* (NSW) sch 2; *Road Rules 2014* (NSW) r 203(1).

## CP Repeat traffic offenders

2 demerit points)<sup>16</sup> have an obvious connection to preventing dangerous traffic situations.

### *Consequences of reaching or exceeding the demerit point threshold*

- 5.14 The demerit point threshold varies depending on licence type:
- unrestricted licences – 13 points
  - professional drivers – 14 points
  - provisional P2 licences – 7 points
  - provisional P1 and learner licences – 4 points.<sup>17</sup>
- 5.15 NSW has mutual recognition provisions that apply demerit points to interstate and foreign drivers who have visitor driver privileges.<sup>18</sup> We invite submissions on whether these arrangements are effective in preventing repeat traffic offending among visitor drivers.
- 5.16 Once a driver incurs the threshold number of demerit points within a three-year period, they may be subject to a suspension, or ineligibility (which precludes a person from being issued with a new licence).<sup>19</sup>
- 5.17 Provisional and learner drivers may also have their licences cancelled. A person with a cancelled licence must apply for a new licence before they can drive again.<sup>20</sup> However, no licences have been cancelled as a result of reaching the demerit threshold in at least 10 years.<sup>21</sup>
- 5.18 A person convicted of a graffiti offence may be issued with a graffiti licence order effective for up to 6 months.<sup>22</sup> A graffiti licence order has a threshold of 4 demerit points.<sup>23</sup> The graffiti licence order operates to replace the ordinary demerit point threshold applicable to an unrestricted licence.<sup>24</sup> Once the graffiti licence threshold is reached, the licence holder will be suspended from driving.<sup>25</sup>
- 5.19 In 2017, there were 54,425 suspensions because of accumulated demerit points.<sup>26</sup>
- 5.20 The maximum penalty for driving while suspended or with a cancelled licence is:
- for a first offence: 30 penalty units and/or 6 months imprisonment, and

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16. *Road Transport (Driver Licensing) Regulation 2017* (NSW) sch 2; *Road Rules 2014* (NSW) r 170(1).

17. *Road Transport Act 2013* (NSW) s 4(1) definition of “threshold number of demerit points”.

18. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 96(4)(n); *Road Transport Act 2013* (NSW) s 29.

19. *Road Transport Act 2013* (NSW) s 33(1), s 35, s 39, s 41.

20. N Angelov and M Britts, *Traffic Law NSW* (Thomson Reuters, 17th ed, 2017) 413, 588.

21. NSW Roads and Maritime Services, *Monthly Trend in Licence Suspensions and Cancellations (All Licence Holders)* table 3.1.1 (accessed 26 October 2018).

22. *Graffiti Control Act 2008* (NSW) s 13B(2), s 13C(1)(b), s 13E.

23. *Graffiti Control Act 2008* (NSW) s 13C(2), s 13E(2).

24. *Graffiti Control Act 2008* (NSW) s 13C(2).

25. *Road Transport Act 2013* (NSW) s 38(1).

26. NSW Roads and Maritime Services, *Monthly Trend in Licence Suspensions and Cancellations (All Licence Holders)* table 3.1.1 (accessed 28 September 2018).

- for any subsequent offence: 50 penalty units or 12 months imprisonment.<sup>27</sup>

In all cases, the offender is automatically disqualified from driving.<sup>28</sup>

- 5.21 RMS may issue a notice of ineligibility for a period of between 3-5 months instead of a suspension where it is more appropriate or if a suspension would be unreasonable.<sup>29</sup>
- 5.22 A provisional P2 licence holder may have their provisional licence period extended by 6 months each time they receive a notice of suspension or ineligibility.<sup>30</sup>

### *Good behaviour period*

- 5.23 Instead of being subject to a period of ineligibility or suspension, an unrestricted licence holder can choose to undertake a 12-month good behaviour period.<sup>31</sup> During the period they can continue to drive, but with a 2 demerit point threshold. A driver who reaches this threshold will be suspended or ineligible for twice the period of suspension or ineligibility that would have applied had the person not undertaken a good behaviour period.<sup>32</sup>
- 5.24 The good behaviour period is not available to holders of learner or provisional licences. However a learner or provisional driver who receives a notice of suspension, cancellation, or ineligibility upon incurring the threshold number of demerit points,<sup>33</sup> may appeal the decision in the Local Court.<sup>34</sup>
- 5.25 Figure 5.1 shows that, in recent years, a comparatively small portion of suspended drivers has elected to complete a good behaviour period.

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27. *Road Transport Act 2013* (NSW) s 54(3)–(4).

28. *Road Transport Act 2013* (NSW) s 205A.

29. *Road Transport Act 2013* (NSW) s 33(2), s 35(1), s 35(4).

30. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 35A.

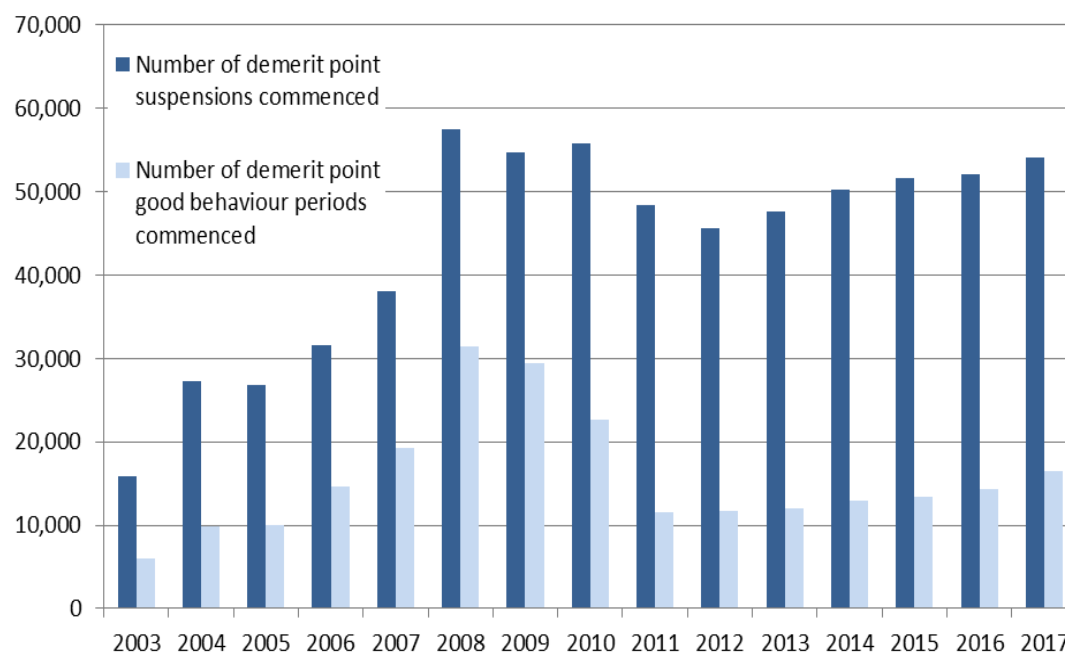
31. *Road Transport Act 2013* (NSW) s 36(1)(a)–(b).

32. *Road Transport Act 2013* (NSW) s 36(4).

33. *Road Transport Act 2013* (NSW) s 40(1), s 41(1).

34. *Road Transport Act 2013* (NSW) s 267, s 266(1) definition of “appealable decision” (d).

Figure 5.1: Number of demerit point suspensions and good behaviour periods 2015–2017



*Note: Figure does not include good behaviour periods resulting from ineligibility.*

*Source: NSW Roads and Maritime Services, Monthly Trend in Licence Suspensions and Cancellations (All Licence Holders) (Suspensions and Cancellations Commencing during Month) table 3.1.1.*

### *Tests and courses for repeated accumulation of demerit points*

- 5.26 An unrestricted licence holder who has exceeded their demerit limit twice within 5 years may be required to take a driver knowledge test and/or education course.<sup>35</sup> A provisional licence holder who exceeds their demerit limit twice at any stage may have to undertake a knowledge test.<sup>36</sup>
- 5.27 Failure to complete a knowledge test or education course will result in a suspension (or an extended suspension if the licence is already suspended) until the test or education course has been completed to RMS's satisfaction.<sup>37</sup>
- 5.28 In 2017, 1,010 people who met this criterion sat the Class C knowledge test. Of these, 324 failed the test.<sup>38</sup>

### *Effectiveness of demerit point system in reducing recidivism*

- 5.29 Several studies have doubted the effectiveness of the demerit point system in reducing repeat traffic offences. On one view, incurring demerit points causes behavioural changes for normal compliant citizens. Nearly 50% of offenders will not

35. *Road Transport Act 2013* (NSW) s 43A(1).

36. *Road Transport Act 2013* (NSW) s 43A(2).

37. *Road Transport Act 2013* (NSW) s 43A(6)–(7); *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 128.

38. Information supplied by Transport for NSW, Centre for Road Safety, 17 August 2018.



re-offend within five years.<sup>39</sup> An earlier survey found less successful results with 65% of participants reporting they had made no behavioural changes after incurring demerit points.<sup>40</sup> It appears demerit points have little influence on a driver's compliance with traffic law unless the demerit threshold is almost reached and the risk of licence loss becomes likely.<sup>41</sup>

- 5.30 Further, although demerit point suspensions encourage people to obey traffic laws, they are seen as particularly onerous for professional drivers and people who require a licence to undertake or access employment or to support their family.<sup>42</sup>

### Administrative suspension of licences (for speeding)

- 5.31 When a driver pays a penalty notice amount for exceeding the speed limit by more than 30km/h, or has not paid the amount but the time for electing to take the matter to court has lapsed, RMS may suspend or cancel that driver's licence. RMS may specify the period for which the licence will be suspended or the period during which the driver may not reapply for a licence (in the case of cancellation).<sup>43</sup>
- 5.32 RMS currently imposes periods of 6 months (for more than 45km/h) and 3 months (for more than 30km/h) to align with the default disqualification periods for drivers convicted of these offences.<sup>44</sup> In 2017, there were 5,147 suspensions for excessive speed.<sup>45</sup>
- 5.33 Amendments recently passed by Parliament will extend this form of suspension (not exceeding 3 months) to offences of driving with a low range prescribed concentration of alcohol and of driving with the presence of any other drug.<sup>46</sup>

#### Question 5.1: Licence suspension

- (1) Does the system of licence suspension for driving offences adequately deal with repeat traffic offenders?
- (2) How could the current system be adjusted to deal with repeat traffic offenders more effectively?

39. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Speed Zoning and its Impact on the Demerit Points Scheme*, Report 4/55 (2014) 51 [5.10].

40. B Clarke, "Strategies for Managing Recidivist Speeding", Fact Sheet No 10 (Curtin-Monash Accident Research Centre, 2011) 3.

41. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Speed Zoning and its Impact on the Demerit Points Scheme*, Report 4/55 (2014) 60; B Clarke, "Strategies for Managing Recidivist Speeding", Fact Sheet No 10 (Curtin-Monash Accident Research Centre, 2011) 4.

42. Parliament of NSW, Joint Standing Committee on Road Safety, *Speed Zoning and its Impact on the Demerit Points Scheme*, Report 4/55 (2014) 64.

43. *Road Transport Act 2013* (NSW) s 59; *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 67.

44. See Appendix C table C.4.

45. NSW Roads and Maritime Services, *Monthly Trend in Licence Suspensions and Cancellations (All Licence Holders)* table 3.1.1 (accessed 28 September 2018).

46. *Road Transport Act 2013* (NSW) s 59(1) and s 59(4A); *Road Transport Legislation Amendment (Penalties and other Sanctions) Act 2018* (NSW) sch 1[6]–[7] (not yet commenced).

## Disqualification

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- 5.34 Whereas a cancellation or suspension applies to the particular *licence*, a disqualification is imposed on the *person*.<sup>47</sup> A disqualified person cannot hold or apply for any driver licence during the disqualification period.<sup>48</sup> Any licence held by a disqualified person is permanently cancelled and loses effect.<sup>49</sup> Once a disqualification period expires, the person may apply for a new licence.
- 5.35 A disqualification arises after a court conviction for a road transport offence.<sup>50</sup> Upon conviction for a relevant offence, a licence disqualification may be:
- automatically imposed, or
  - ordered by the court.<sup>51</sup>
- 5.36 In 2017, there were 20,140 disqualifications following a court conviction.<sup>52</sup>
- 5.37 Driving while disqualified is subject to the following maximum penalties:
- for a first offence: 30 penalty units and/or 6 months imprisonment, or
  - for any subsequent offence: 50 penalty units and/or 12 months imprisonment.<sup>53</sup>

## Automatic disqualification

- 5.38 Automatic disqualification occurs when a person is convicted of certain prescribed offences:
- major offences<sup>54</sup>
  - unauthorised driving offences<sup>55</sup>
  - speeding or road racing offences<sup>56</sup>
- 5.39 Learner licence holders may also be automatically disqualified for driving without an appropriate supervisor.<sup>57</sup>
- 5.40 The length of an automatic disqualification depends on the type of offence and if the person has previously been convicted of a major offence. The disqualification period may range from a few months to a few years. Generally, the court can increase the automatic disqualification period but cannot impose a period shorter than a

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47. N Angelov and M Britts, *Traffic Law NSW* (Thomson Reuters, 17th ed, 2017) [54.300].

48. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 53(3).

49. *Road Transport Act 2013* (NSW) s 207.

50. *Road Transport Act 2013* (NSW) s 204–205A.

51. *Road Transport Act 2013* (NSW) s 204(1), s 205(1).

52. NSW Roads and Maritime Services, *Monthly Trend in Licence Suspensions and Cancellations (All Licence Holders)* table 3.1.1 (accessed 28 September 2018).

53. *Road Transport Act 2013* (NSW) s 54(1).

54. *Road Transport Act 2013* (NSW) s 4(1) definition of “major offence”. See table C.1 and table C.2.

55. *Road Transport Act 2013* (NSW) s 205A. See table C.3.

56. *Road Rules 2014* (NSW) r 10-2; *Road Transport Act 2013* (NSW) s 115(4). See table C.4.

57. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 15(3). See table C.4.

prescribed minimum. The automatic and discretionary periods for each offence are set out in Appendix C.

- 5.41 If the offender has also received a suspension, the combined total period of suspension and disqualification cannot be shorter than the minimum disqualification period.<sup>58</sup> The court may also not impose an indefinite period of disqualification.<sup>59</sup>
- 5.42 If a person has committed an offence that also attracts a term of imprisonment, the disqualification period is extended by the length of imprisonment (excluding the parole period).<sup>60</sup> The court may make any order in relation to the disqualification extension period.<sup>61</sup>

### *Courts' approach to automatic licence disqualification*

- 5.43 The CCA has noted that the automatic period of disqualification prescribed for a particular offence is merely the default period that operates upon conviction unless some other order is made and it should not be treated as if it were the maximum period of disqualification.<sup>62</sup>
- 5.44 In relation to the prescribed minimum, a CCA judgment has observed that the courts have been “too ready” to reduce the automatic period to the minimum period:

There should be sufficient and appropriate reasons for reducing the automatic period ... before such a step is taken. Those reasons should take into account the scheme of the Act and the significance of Parliament's view that the automatic period is the period of disqualification to apply in the usual case.

This means that there will almost invariably be hardship, or at least inconvenience, caused to the offender deprived of his or her licence for such a lengthy period as Parliament has prescribed.<sup>63</sup>

- 5.45 The CCA has also observed that the purpose of licence disqualification is to protect the public.<sup>64</sup>
- 5.46 In one recent case involving dangerous driving causing grievous bodily harm, the sentencing judge reduced an automatic disqualification of 3 years to 18 months on the basis that “the effect of disqualification on a person living in a ‘country setting’ was greater than those in the metropolitan areas who had access to public transport”. The CCA held on appeal that such a reason could never justify a period below the automatic period for the offender in question: “[t]he prospect of the [offender] driving a motor vehicle represents an unacceptable danger to both metropolitan and country drivers and pedestrians”.<sup>65</sup>
- 5.47 However, in cases where a person drives while their licence is suspended or cancelled for non-payment of fines, there is an express requirement that the

58. *Road Transport Act 2013* (NSW) s 206B.

59. *Gardner v R* [2003] NSWCCA 199 [2], [5]; *Hei Hei v R* [2009] NSWCCA 87 [40]-[42].

60. *Road Transport Act 2013* (NSW) s 206A.

61. *Road Transport Act 2013* (NSW) s 206A(5).

62. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [126].

63. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305 [127]-[128]. See also *Meakin v DPP* [2011] NSWCA 373 [85]-[86].

64. *R v Greaves* [2014] NSWCCA 194 [70]; *R v Veatufunga* [2007] NSWCCA 54 [40]; *Hei Hei v R* [2009] NSWCCA 87 [37].

65. *R v Greaves* [2014] NSWCCA 194 [70].

sentencing court, when deciding the period of disqualification, “must take into account the effect the penalty or period of disqualification will have on the person’s employment and the person’s ability to pay the outstanding fine that caused the person’s driver licence to be suspended or cancelled”.<sup>66</sup>

### *Avoiding automatic disqualification: s 10 orders*

- 5.48 Making a non-conviction order under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) is a way courts can avoid imposing automatic disqualification on a proved offender. The possibility of using a non-conviction order to avoid automatic disqualification was first acknowledged by the CCA in 1947.<sup>67</sup>
- 5.49 Under s 10 a court that finds a person guilty of an offence, may, without proceeding to conviction:
- dismiss the charge
  - discharge the offender under a conditional release order (formerly a good behaviour bond), or
  - discharge the offender on condition that they agree to participate in an intervention program.
- 5.50 A 2004 study by BOCSAR showed that the use of dismissals and conditional discharges for prescribed concentration of alcohol (“PCA”) offences had increased sharply over the previous 10 years. The study also noted marked variations across particular Local Court locations.<sup>68</sup>
- 5.51 Following the guideline judgment on high range PCA offences in 2004,<sup>69</sup> there was an immediate drop in the use of s 10 orders for high range PCA offences from 5.6% to 2.2%.<sup>70</sup> A BOCSAR study, covering the period 2004–2006 found the use of s 10 orders declined by 71% for high range PCA offences and by 30% for middle range PCA offences.<sup>71</sup>
- 5.52 However, figures in a more recent BOCSAR study show a gradual increase in the proportion of all traffic offences receiving bonds without conviction (from 12.9% in January 2004 to 19.9% in September 2015).<sup>72</sup> The study suggested it was possible that courts were imposing bonds without conviction where a fine would previously have been imposed.<sup>73</sup>

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66. *Road Transport Act 2013* (NSW) s 54(6).

67. *Re Stubbs* (1947) 47 SR (NSW) 329.

68. S Moffat, D Weatherburn and J Fitzgerald, *Sentencing Drink-Drivers: The Use of Dismissals and Conditional Discharges*, Crime and Justice Bulletin No 81 (NSW Bureau of Crime Statistics and Research, 2004) 3-4.

69. *Attorney General's Application No 3 of 2002* [2004] NSWCCA 303, 61 NSWLR 305.

70. P Poletti, *Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW*, Sentencing Trends and Issues No 35 (Judicial Commission of NSW, 2005) 18.

71. S d'Apice, *The Impact of the High Range PCA Guideline Judgment on Sentencing for High Range PCA Offences in NSW*, Crime and Justice Bulletin No 123 (NSW Bureau of Crime Statistics and Research, 2008) 7.

72. H Thorburn and S Poynton, *Trends in Conditional Discharges in NSW Local Courts: 2004–2015*, Crime and Justice Bulletin No 196 (NSW Bureau of Crimes Statistics and Research, 2016) 3–4.

73. H Thorburn and S Poynton, *Trends in Conditional Discharges in NSW Local Courts: 2004–2015*, Crime and Justice Bulletin No 196 (NSW Bureau of Crimes Statistics and Research, 2016) 8–9.

- 5.53 It has been suggested that the courts can use s 10 to impose a form of restricted licence, by ordering, as a condition of the discharge, that the offender be restricted to driving in certain circumstances, for example, for employment purposes only.<sup>74</sup> This approach can be compared with the more formalised restricted licences for disqualified drivers in Queensland – where a driver who is subject to disqualification may apply to the court for a restricted licence. A restricted licence must limit the driver’s use of the licence to specified circumstances directly connected with the driver’s means of earning his or her livelihood. The restrictions may include the class of vehicle that may be driven, the purpose for which the vehicle may be driven and the times at which the vehicle may be driven.<sup>75</sup>
- 5.54 In a 2011 Report, we considered that there would be significant advantages to making a “good behaviour licence” available for a court to impose instead of disqualification in situations where it might otherwise impose a s 10 order. While the conditions of a good behaviour licence could potentially be imposed as part of a s 9 good behaviour bond, such bonds are not available for fine only offences. We therefore proposed a good behaviour licence be available for a court to apply at its discretion upon conviction as an alternative to licence disqualification for PCA offences. The licence would remain in force for the duration of the automatic disqualification period. Following the approach to the good behaviour period in the case of demerit points outlined above, the licence would be subject to the offender electing to have it imposed and subject to the condition that, if the licence is breached, the offender will be disqualified for twice the period that would otherwise have applied.<sup>76</sup>
- 5.55 Statutory restrictions have been placed on the availability of s 10 for some driving offences. Section 10 cannot apply if a person has been charged with an applicable offence and has, in the previous 5 years, received the benefit of s 10 with respect to another applicable offence.<sup>77</sup> The applicable offences are: alcohol and drug-related driving offences, menacing driving, failing to stop and assist, negligent driving causing death or grievous bodily harm, and furious driving.
- 5.56 Some stakeholders support further restrictions on the ability of courts to dismiss or discharge traffic offenders without conviction.<sup>78</sup> Another option is to make disqualification apply to all cases where an offender is found guilty rather than only those cases where a conviction is entered.

### Court-ordered disqualification

- 5.57 A court also has discretion to disqualify a driver when it convicts them for a road transport legislation offence.<sup>79</sup> The disqualification period is determined by the court.<sup>80</sup>

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74. Austroads, *The Forrest Review: Driver Licensing and Barriers to Indigenous Economic Participation*, Research Report AP-R537-17 (2017) 26.

75. *Transport Operations (Road Use Management) Act 1995* (Qld) s 87.

76. NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [5.27]–[5.34].

77. *Road Transport Act 2013* (NSW) s 203. Previously *Road Transport (General) Act 2005* (NSW) s 187(6).

78. Pedestrian Council of Australia, *Preliminary Submission PTR19*, 4.

79. *Road Transport Act 2013* (NSW) s 204(6). Offences under “road transport legislation” do not include offences under the *Motor Vehicles Taxation Act 1988* (NSW), regulations made under that Act, *Road Transport Act 2013* (NSW) sch 2 and any statutory rules made for the purpose of sch 2.

### Removal of licence disqualification

5.58 An offender may seek to have a licence disqualification removed by:

- applying to the Local Court, or
- applying for the exercise of the Royal prerogative of mercy.

#### *Local Court*

5.59 Since amendments were passed last year,<sup>81</sup> a person disqualified for two or more years may apply to the Local Court to have their disqualification removed.

5.60 However, a person cannot apply to remove their disqualification if they have ever been convicted of:

- murder or manslaughter caused by the use of a motor vehicle
- causing of death or grievous bodily harm or wounding by use of motor vehicle
- predatory driving
- police pursuit
- negligent driving causing death or grievous bodily harm, or
- intentional menacing driving; failing to stop and assist after vehicle impact causing death or grievous bodily harm.<sup>82</sup>

5.61 The Court may remove the disqualification if:

- the person has not been convicted of any offences during the relevant prescribed offence-free period, or
- the court thinks it appropriate to remove the disqualification.<sup>83</sup>

5.62 The relevant offence-free period varies depending on the offence committed and may be between 2 and 4 years.<sup>84</sup> The relevant periods are set out in Appendix C.<sup>85</sup>

5.63 A disqualification imposed under a mandatory interlock order cannot be removed.<sup>86</sup>

#### *Royal prerogative*

5.64 Driving offenders may also seek the exercise of the Royal prerogative of mercy. In the period from 30 January 2017 until the introduction of the licence disqualification reforms on 28 October 2017, 23 petitions for remission of licence disqualifications

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80. *Road Transport Act 2013* (NSW) s 204(1)–(2).

81. *Road Transport Act 2013* (NSW) pt 7.4 div 3A inserted by *Road Transport Amendment (Driver Licence Disqualification) Act 2017* (NSW) sch 1[15].

82. *Road Transport Act 2013* (NSW) s 221D(1).

83. *Road Transport Act 2013* (NSW) s 221B(1).

84. *Road Transport Act 2013* (NSW) s 221A definition of “relevant offence-free period”.

85. Appendix C table C.5.

86. *Road Transport Act 2013* (NSW) s 221D(2).

were considered. The prerogative was exercised with respect to 8 of them. No remissions have been granted since the licence disqualification reforms.<sup>87</sup>

### Re-obtaining a licence after removal or expiry of disqualification period

- 5.65 A disqualified driver applying for a new licence may have to undertake driver tests.<sup>88</sup> If the disqualification period is:
- more than 12 months, the applicant must pass the Driver Knowledge Test
  - more than 2 years, the applicant must pass both the Driver Knowledge Test and the driving test.<sup>89</sup>
- 5.66 RMS has general powers to impose licence conditions such as those normally applied to provisional licence holders if, for example, it believes it would be in the interests of road safety.<sup>90</sup>

### Effectiveness of licence disqualifications in preventing repeat offences

- 5.67 In 2015, driving while disqualified was the sixth most common offence in the Local Court and was the fifth most common in 2010.<sup>91</sup>
- 5.68 Driving while disqualified has a higher crash risk than all other subgroups of the “driving while under licence restrictions” category.<sup>92</sup> In NSW between July 2011 and June 2013, 869 collisions involved drivers with licence restrictions with 56.3% involving disqualified drivers.<sup>93</sup> Disqualified drivers represent less than a quarter of active licence sanctions in NSW.
- 5.69 Studies suggest that licence disqualification is effective, for example, in reducing the risk of re-offending by drink drivers.<sup>94</sup> However, studies have also found:
- Lengthy disqualification periods are a weak deterrent. Generally, a person disqualified for a long period is more likely to commit a subsequent traffic offence.<sup>95</sup> This is not necessarily true for all types of offending. In one study, offenders who received the longest period of disqualification for a PCA offence were four times more likely to commit a non-PCA offence in the next five years

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87. Information supplied by NSW, Office of General Counsel, 24 September 2018.

88. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 54(2)(a).

89. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe) *Driver Education, Training and Road Safety*, Report 3/56 (2017) [3.14].

90. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 57(3)–(4).

91. A Jamieson, B Baylock and P Poletti, *Common Offences in the NSW Local Court: 2015*, Sentencing Trends and Issues No 46 (Judicial Commission of NSW, 2017) 10 table 1.

92. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 1.

93. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 1.

94. L Trimboli and N Smith, *Drink-Driving and Recidivism in NSW*, Crime and Justice Bulletin No 135 (NSW Bureau of Crime Statistics and Research, 2009) 2.

95. S Moffat and S Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences*, Crime and Justice Bulletin No 106 (NSW Bureau of Crime Statistics and Research, 2007) 9–10; NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) vii, [4.10].

but were the least likely commit a subsequent PCA offence. Other contributing factors must be considered alongside the length of disqualification.<sup>96</sup>

- Disqualifications are particularly onerous to certain groups of people including professional drivers, people requiring a licence for family dependency or employment reasons,<sup>97</sup> and people living in remote areas.<sup>98</sup>

### Effect of recent licence disqualification reforms

5.70 The current licence disqualification scheme, which commenced on 28 October 2017, replaced an earlier scheme that was widely criticised for its adverse impacts on the community.<sup>99</sup>

5.71 The reforms:

- replaced mandatory disqualification periods with shorter automatic periods (and minimum periods)<sup>100</sup>
- allow the disqualification periods for unauthorised driving offences to be served concurrently rather than consecutively
- abolished imprisonment for a first offence of driving while suspended due to fine default and significantly reduced terms of imprisonment for other unauthorised driving offences<sup>101</sup>
- allow offenders to apply to have their disqualifications lifted after a period of time<sup>102</sup>
- abolished the habitual traffic offenders scheme,<sup>103</sup> which added to all other disqualification periods, a further 5 year disqualification for those who committed 3 eligible offences.

5.72 A recent BOCSAR study into the impact of the reforms has found that the reforms have led to a:

- 56% reduction in licence disqualification periods
- 24% reduction in average prison sentences imposed for unauthorised driving
- 19% reduction in the monthly number of people in prison whose most serious offence was unauthorised driving.

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96. N Smith and L Trimboli, *Drink-Driving and Recidivism in NSW*, Crime and Justice Bulletin No 135 (NSW Bureau of Crime Statistics and Research, 2009) 13.

97. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Speed Zoning and its Impact on the Demerit Points Scheme*, Report 4/55 (2014) 64.

98. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) vii, [3.2].

99. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) ch 3.

100. See [5.38]-[5.47] above.

101. See [5.81] below.

102. See [5.58]-[5.63] above.

103. *Road Transport Act 2013* (NSW) s 216–221 repealed by *Road Transport Amendment (Driver Licence Disqualification) Act 2017* (NSW) sch 1[14].



- 5.73 The study observed no significant change in the proportion of offenders receiving a licence disqualification from the court or in the proportion receiving a custodial sentence.
- 5.74 An analysis of monthly road crashes between November 2012 and January 2018 indicated that the more lenient penalties have had no immediate adverse impact on road deaths or injuries involving unauthorised drivers or those involving authorised drivers.<sup>104</sup>

### Question 5.2: Licence suspension

- (1) Does the system of licence suspension for driving offences adequately deal with repeat traffic offenders?
- (2) How could the current system be adjusted to deal with repeat traffic offenders more effectively?

## Unauthorised driving

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- 5.75 There are seven offences that make up the category of unauthorised driving:
- drive without being licenced<sup>105</sup>
  - drive without being licenced for at least 5 years<sup>106</sup>
  - drive while suspended under the *Fines Act 1996 (NSW)*<sup>107</sup>
  - drive while cancelled under the *Fines Act 1996 (NSW)*<sup>108</sup>
  - drive while suspended<sup>109</sup>
  - drive while disqualified,<sup>110</sup> and
  - drive after licence refused or cancelled.<sup>111</sup>
- 5.76 Unauthorised driving is often used as a means of identifying repeat traffic offenders. However, at least some unauthorised driving indicates lawlessness but not necessarily dangerousness. Some unauthorised drivers may be self-evidently dangerous if their suspension arose from a high range speed offence or their disqualification arose from high-range PCA, but they may not necessarily be dangerous drivers if they are suspended because of failure to pay fines, or because their licence expired, or because of demerit points accumulation for more minor traffic infringements.

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104. S Poynton and F Leung, *Early Indicators of the Impacts of the NSW Driver Licence Disqualification Reforms*, Bureau Brief No 135 (NSW Bureau of Crimes Statistics and Research, 2018).

105. *Road Transport Act 2013 (NSW)* s 53(1)(a).

106. *Road Transport Act 2013 (NSW)* s 53(3), s 53(5).

107. *Road Transport Act 2013 (NSW)* s 54(5)(a)(i).

108. *Road Transport Act 2013 (NSW)* s 54(5)(b)(i).

109. *Road Transport Act 2013 (NSW)* s 54(3)(a).

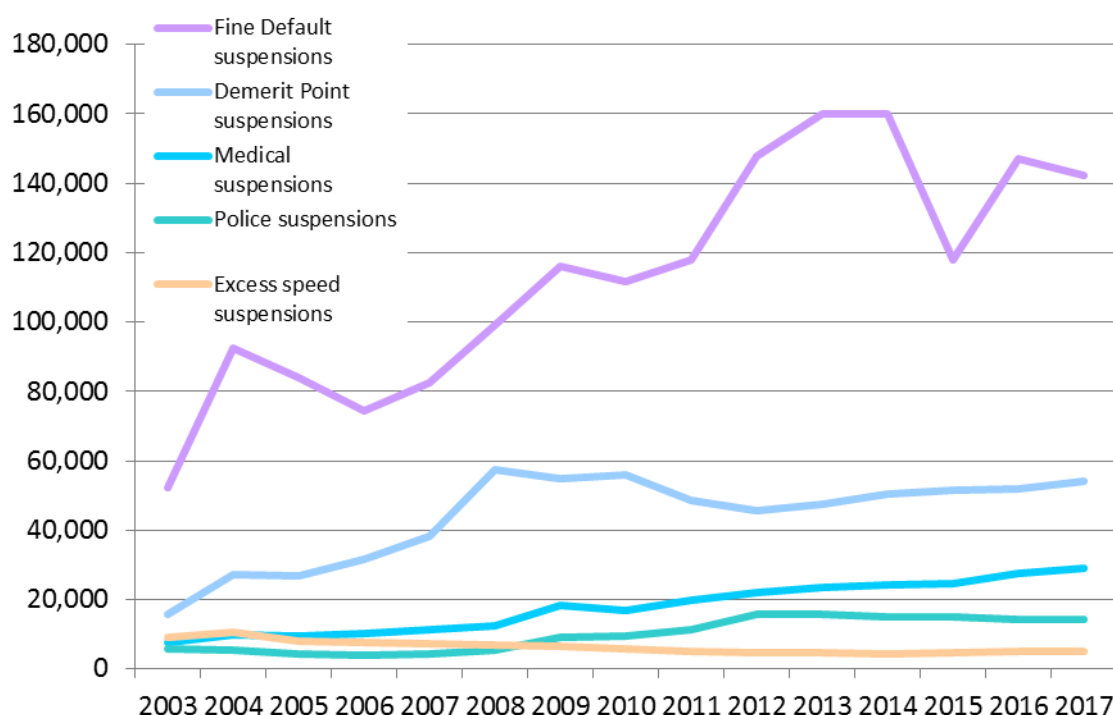
110. *Road Transport Act 2013 (NSW)* s 54(1)(a).

111. *Road Transport Act 2013 (NSW)* s 54(4)(a).

## CP Repeat traffic offenders

- 5.77 It has been suggested that people who drive following licence disqualification have a higher crash risk than other unauthorised drivers. For example, of the 869 collisions involving unauthorised drivers in the 2 years between 1 July 2011 and 30 June 2013, 56% had been disqualified, yet disqualified drivers represented less than a quarter of active licence sanctions in NSW.<sup>112</sup> The Joint Standing Committee on Road Safety has noted suggestions that greater efforts may be required to obtain the necessary data to identify and target the unlicensed drivers who are involved in casualty crashes.<sup>113</sup>
- 5.78 According to RMS statistics, set out in Figure 5.2, there are more fine default suspensions than any other subgroup of licence suspensions. The general upwards trend in the number of people convicted of driving while on licence restrictions as a result of fine defaults has also been observed by a 2015 BOCSAR study.<sup>114</sup> However, these figures do not distinguish between court imposed fines and penalty notice fines and whether the fines or penalty notice amounts were incurred for driving offences.

Figure 5.2: Yearly trends in licence suspensions by all licence holders



Source: NSW Roads and Maritime Services, Monthly Trend in Licence Suspensions and Cancellations by All Licence Holders (accessed 28 September 2018).

- 5.79 The 2015 BOCSAR study looked at the characteristics of offenders charged with three broad categories of unauthorised driving in the year from 1 April 2013 to 31 March 2014:

112. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 1.

113. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [1.20].

114. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 4–5.

- driving while disqualified by a court (3,400 offenders, 38%)
- driving while suspended or cancelled under the *Fines Act 1996* (NSW) (2,035 offenders, 23%), and
- driving while under other licence sanctions (3,439 offenders, 39%).<sup>115</sup>

5.80 The study found that, when compared with the other categories of unauthorised driving, the “driving while disqualified” offenders had a higher proportion of prior offences for all offence types. Also, a much higher proportion of these offenders:

- were aged under 18 at their first court appearance for a proven offence
- were given a prison sentence in the past 5 years, and
- had more than three court appearances with a proven offence in the past 5 years.<sup>116</sup>

This was consistent with the strong connection between driving while disqualified and other non-traffic offending identified in other Australian and overseas studies.<sup>117</sup>

### Penalties for unauthorised driving

#### *Court imposed penalties*

5.81 Table 5.1 sets out the penalties available to sentencing courts for the various forms of unauthorised driving. Penalties for fine-related licence sanctions are arguably disproportionate. Many drivers are suspended or disqualified without necessarily having committed any traffic related or serious road safety offences.<sup>118</sup> Yet penalties for unauthorised driving may be equivalent to or more severe than offences for dangerous driving conduct such as PCA offences.<sup>119</sup>

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115. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 5.

116. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 7.

117. P Nelson, *Driving while Disqualified*, Bureau Brief No 103 (NSW Bureau of Crime Statistics and Research, 2015) 1–2.

118. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.66].

119. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.97].

Table 5.1: Penalties for unauthorised driving

Drive...	First offence	Second or subsequent offence
Without licence s 53(1)(a)	\$2,200 (20 penalty units)	
Without licence 5+ years s 53(3)	\$2,200 (20 penalty units)	6 months imprisonment and/or \$3,300 (30 penalty units) 3-12 month licence disqualification
While suspended under <i>Fines Act</i> s 54(5)(a)(i)	\$3,300 (30 penalty units) 1-3 months licence disqualification	6 months imprisonment and/or \$5,500 (50 penalty units) 3-12 month licence disqualification
While cancelled under <i>Fines Act</i> s 54(5)(b)(i)	\$3,300 (30 penalty units) 1-3 month licence disqualification	6 months imprisonment and/or \$5,500 (50 penalty units) 3-12 month licence disqualification
While suspended s 54(3)(a)	6 months imprisonment and/or \$3,300 (30 penalty units) 3-6 month licence disqualification	12 months imprisonment and/or \$5,500 (50 penalty units) 6-12 month licence disqualification
While disqualified s 54(1)(a)	6 months imprisonment and/or \$3,300 (30 penalty units) 3-6 month licence disqualification	12 months imprisonment and/or \$5,500 (50 penalty units) 6-12 month licence disqualification
After licence refusal/ cancellation s 54(4)(a)	6 months imprisonment and/or \$3,300 (30 penalty units) 3-6 month licence disqualification	12 months imprisonment and/or \$5,500 (50 penalty units) 6-12 month licence disqualification

Source: *Road Transport Act 2013* (NSW).

- 5.82 Table 5.2 sets out the penalties imposed by the Local Court of NSW for unauthorised driving in the four years between April 2014 and March 2018. The fine is generally the most used penalty for all categories of offender, except for driving while disqualified (2nd or subsequent offence) for which a greater proportion of offenders received imprisonment or a suspended sentence. The offences with the highest volume of offenders are drive while suspended (first offence) and drive while disqualified (second or subsequent offence). The proportion of serious penalties imposed for drive while disqualified for a second or subsequent offence may reflect past driving offences as well as other prior offences. These figures would appear to be consistent with the finding of the 2015 BOCSAR study.

Table 5.2: Penalties imposed by the Local Court of NSW for unauthorised driving as a principal offence, April 2014–March 2018

Penalty	Without licence		Without licence 5+yrs		Suspended Fines Act		Cancelled Fines Act		Suspended		Disqualified		Refused/cancelled	
	1st	2nd+	1st	2nd+	1st	2nd+	1st	2nd+	1st	2nd+	1st	2nd+	1st	2nd+
Imprisonment				33 1%	10 <1%	5 1%			39 <1%	34 3%	393 5%	2696 20%	12 <1%	15 2%
Home detention				1 <1%	1 <1%				2 <1%		23 <1%	134 1%		1 <1%
Intensive correction order				2 <1%	1 <1%	2 <1%			15 <1%	10 1%	98 1%	712 5%	1 <1%	2 <1%
Suspended sentence				45 1%	9 <1%	5 1%			75 1%	43 3%	515 6%	2112 16%	23 1%	20 2%
Community service order	1 <1%	4 <1%		33 1%	12 <1%	6 1%			97 1%	49 4%	497 6%	1481 11%	18 1%	14 2%
Bond s 9 (supervised)		4 <1%	6 <1%	42 1%	14 <1%	6 1%			95 1%	36 3%	329 4%	598 5%	24 1%	24 3%
Bond s 9 (unsupervised)	8 <1%	17 1%	15 <1%	273 9%	116 1%	44 7%			800 6%	246 19%	1651 22%	2436 18%	137 6%	112 13%
Fine only	3835 75%	1136 88%	4878 72%	2098 70%	4422 58%	394 64%	18 100	4 75%	7392 58%	710 54%	3083 42%	2305 17%	1333 55%	408 47%
Rising of the court												1 <1%		
Conviction only s 10A	182 4%	33 2%	285 4%	77 3%	141 2%	18 3%			210 2%	21 2%	93 1%	117 1%	40 2%	12 1%
Conditional discharge s 10	345 7%	57 4%	522 8%	261 9%	1859 24%	101 16%		2 25%	3464 27%	153 12%	624 8%	535 4%	604 25%	201 23%
Dismissal s 10	746 15%	42 3%	1038 15%	127 4%	1032 13%	31 5%			508 4%	21 2%	91 1%	69 <1%	250 10%	51 6%
TOTAL	5117	1293	6744	2992	7617	612	18	6	12697	1323	7397	13196	2442	860

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

### Penalty notice offences

5.83 Driving without a licence may also be dealt with by way of penalty notice. Table 5.3 sets out the penalties imposed when driving without a licence is dealt with by way of penalty notice. In many of the categories, the unlicensed driver may hold a licence, but not one appropriate to the type of vehicle being driven, or may hold a licence from another state or territory that has become inoperative because of continuous residence in NSW, or may hold an expired licence.

Table 5.3: Penalties for driving without a licence when dealt with by penalty notice

Category of unlicensed driving	Frequency	Penalty
(a) licenced under the Act but unlicensed for the class of vehicle driven (one requiring a Class C, Class R, Class LR or Class MR licence)	1st offence, or 1st offence within last 5 years	\$561 (level 7)
	subsequent offence within last 5 years	\$860 (level 9)
(b) licenced under the Act but unlicensed for the class of vehicle driven (requiring a Class HR, Class HC or Class MC licence)	1st offence, or 1st offence within last 5 years	\$673 (level 8)
	subsequent offence within last 5 years	\$1346 (level 11)
(c) where the driver held a licence issued in another State or Territory, but had resided continuously in NSW during the previous 3 months:	1st offence, or 1st offence within last 5 years	\$561 (level 7)
	subsequent offence within last 5 years	\$860 (level 9)
(d) where the driver held a licence under the Act that had expired less than 2 years before:	1st offence, or 1st offence within last 5 years	\$561 (level 7)
	subsequent offence within last 5 years	\$860 (level 9)
(e) where the driver held a licence under the Act that had expired 2 years or more before:	1st offence, or 1st offence within last 5 years	\$673 (level 8)
	Second or subsequent offence within last 5 years	\$1346 (level 11)
(f) where the driver has not been licensed for at least 5 years	1st offence only	\$860 (level 9)

Source: Road Transport (General) Regulation 2013 (NSW) sch 5

5.84 Table 5.4 sets out the number of penalty notices issued in the financial years 2013–14 to 2016–17 for driving without a licence. By far the most common offence was driving with a licence that expired less than 2 years before.

Table 5.4: Penalty notices issued for driving without a licence, 2013–14 – 2016–17

Category		2013-2014	2014-2015	2015-2016	2016-2017
Unlicensed for Class - Class C/R/LR/MR	first offence	1485	1264	1312	1490
	prior offence	152	112	128	140
Unlicensed for Class - Class HR/HC/MC	first offence	75	68	70	79
	prior offence	10	2	3	6
Resident 3 months not obtain NSW licence	first offence	732	837	883	888
	prior offence	50	36	37	47
Licence expired less than 2 years before	first offence	10037	9909	9803	9071
	prior offence	469	530	531	560

Category		2013-2014	2014-2015	2015-2016	2016-2017
Licence expired 2 years or more before	first offence	415	442	456	560
	prior offence	67	86	90	110
Driver not licenced for at least 5 years	first offence only	307	185	150	179

Source: Revenue NSW.

### Question 5.3: Penalties for unauthorised driving

- (1) Does the current system of penalties for unauthorised driving help prevent repeat driving offences?
- (2) What changes could be made to help the system prevent repeat driving offences more effectively?





## 6. Special penalties and interventions for driving offences

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### In brief

There are a number of special penalties and interventions for driving offences that are designed to address specific types of offender behaviour. These include ignition interlock programs, vehicle sanctions, intelligent speed adaptation systems, specialist courts and court lists, prevention courses, stricter penalties and intensive supervision programs. We describe the programs operating both in NSW and other jurisdictions, and consider whether they can be effective in dealing with repeat traffic offenders.

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- 6.1 This chapter examines a selection of initiatives to address repeat traffic offending in NSW and other jurisdictions. Strategies include interlock programs, stricter penalties, specialist traffic courts or lists, educational courses, vehicle sanctions, and intelligent speed assistance technology.
- 6.2 The current penalties and other interventions in NSW are a combination of automatic and discretionary actions in response to particular offending behaviour. The apparent aims of the various options vary considerably. Some emphasise prevention, some intervention and rehabilitation and some punishment and retribution.
- 6.3 Studies in other jurisdictions demonstrate that interlock programs and intelligent speed assistance technology are particularly effective in addressing dangerous forms of repeat offending, in particular drink driving and speeding.

### Ignition interlock programs

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- 6.4 An interlock is an electronic breath test device linked to the ignition system of the vehicle. If the interlock detects more than a certain concentration of alcohol in a breath sample, the vehicle will not start.<sup>1</sup>
- 6.5 Ignition interlock programs are commonly used to reduce repeat drink driving throughout the United States (US), United Kingdom (UK) and Europe.

### NSW - mandatory alcohol interlock program

- 6.6 In NSW, courts can impose restrictions on certain serious or repeat drink driving offenders. The restrictions fall into two periods:
- a disqualification period, when they are disqualified from holding a licence, and
  - an interlock period, when they may obtain an “interlock licence” that allows them to drive a vehicle fitted with an interlock device that requires the driver to have a zero blood alcohol concentration (“BAC”).<sup>2</sup>
- 6.7 The minimum disqualification period depends on the particular offence committed and whether it was a first, second or subsequent offence for an alcohol-related

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1. *Road Transport Act 2013* (NSW) s 44 definition of “interlock device”.

2. *Road Transport Act 2013* (NSW) s 211, s 209(1) definition of “interlock driver licence”; *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 83(3); NSW, Roads and Maritime Services *Alcohol Interlock Program: Guide for Magistrates, Legal Practitioners and Police Prosecutors* (2015) 2, 8; NSW, Roads and Maritime Services, “Mandatory Alcohol Interlock Program”, Factsheet (2015) 2.

major offence.<sup>3</sup> These periods are set out in Appendix D.<sup>4</sup> The court may impose a disqualification period longer than the prescribed minimum.<sup>5</sup> The minimum length of the interlock period also depends on the offence committed and may be extended (but not reduced) by court order.<sup>6</sup> The minimum interlock periods are set out in Appendix D.<sup>7</sup>

- 6.8 During the interlock period, the driver must submit to a breath test before starting the vehicle. Random breath tests are also administered throughout the journey.<sup>8</sup> Once a person successfully completes the interlock period, they can obtain a licence without interlock conditions.<sup>9</sup>
- 6.9 A court will impose a mandatory interlock order if the offender:
- is convicted of a “mandatory interlock offence” (a high range or middle range alcohol offence or offence of driving under the influence of alcohol or any other drug, or repeat alcohol offence),<sup>10</sup> or
  - was disqualified after being convicted for a “prescribed dangerous driving offence” (such as driving under influence of alcohol and causing death).<sup>11</sup>
- 6.10 In certain circumstances, the court may instead issue an interlock exemption order.<sup>12</sup> An offender who has received such an order can switch into the interlock program if there has been a change in their circumstances.<sup>13</sup>
- 6.11 As at 12 October 2018, 15,957 interlock orders had been made since the scheme was introduced in February 2015.<sup>14</sup> An evaluation of the NSW mandatory interlock program commenced in June 2016.<sup>15</sup> It has has been completed but has not yet been released.

### *The interlock period*

- 6.12 An interlock licence holder is subject to certain requirements. For example, the licence holder must undergo medical consultations, must maintain the interlock device in the manner prescribed and cannot use a breath sample provided by another person.<sup>16</sup> Depending on which requirement is breached, Roads and Maritime Services (“RMS”) may:

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3. *Road Transport Act 2013* (NSW) s 211(1)(a).

4. See Appendix D table D.1.

5. *Road Transport Act 2013* (NSW) s 211(1)(a)(i)-(ii).

6. *Road Transport Act 2013* (NSW) s 211(1)(b).

7. Appendix D table D.1.

8. NSW, Roads and Maritime Services, *Alcohol Interlock Program: Participant Guide* (2015) 6.

9. *Road Transport Act 2013* (NSW) s 215(2)(c).

10. *Road Transport Act 2013* (NSW) s 210(a), s 209(1) definition of “mandatory interlock offence”. See appendix D table D.1.

11. See appendix D table D.3.

12. *Road Transport Act 2013* (NSW) s 210(b), s 212. See [6.17]-[6.20].

13. *Road Transport Act 2013* (NSW) s 213.

14. Information supplied by Transport for NSW, Centre for Road Safety (29 October 2018).

15. NSW, Roads and Maritime Services, “Mandatory Alcohol Interlock Program” (18 May 2018) <[www.rms.nsw.gov.au/roads/safety-rules/demerits-offences/drug-alcohol/interlock-program.html](http://www.rms.nsw.gov.au/roads/safety-rules/demerits-offences/drug-alcohol/interlock-program.html)> (retrieved 31 October 2018).

16. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 85(1).

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- extend the interlock period by 3 months<sup>17</sup> or
- suspend the interlock licence until further notice.<sup>18</sup>

A period of suspension does not count towards completion of an interlock period.<sup>19</sup>

- 6.13 A person who fails a breath test in the last 6 months of the interlock period must undertake a Fitness to Drive medical assessment. Depending on the medical practitioner's recommendation, the interlock period might be extended by 6 months.<sup>20</sup>
- 6.14 When a person does not obtain or ceases to hold an interlock licence (for example, if their licence is cancelled or they are disqualified), they are treated as being disqualified from holding anything other than an interlock licence or learner licence for 5 years from the day of conviction.<sup>21</sup> A person can re-join the interlock program by successfully obtaining an interlock licence.<sup>22</sup>
- 6.15 A person will be removed from the interlock program if they are convicted of a major offence during the interlock period.<sup>23</sup>
- 6.16 If a police officer reasonably suspects that a vehicle with an interlock device has been used in contravention of any requirements, they can seize the vehicle from the driver.<sup>24</sup>

### *Interlock exemption*

- 6.17 If the court makes an interlock exemption order, the offender is not required to complete an interlock period. However, they must still undergo a disqualification period.<sup>25</sup>
- 6.18 A court may make an interlock exemption order if the offender:
- does not have access to a vehicle to install an interlock, or
  - cannot provide satisfactory breath samples because of a medical condition.<sup>26</sup>
- 6.19 The court cannot make an exemption order merely because the offender:
- could not afford to install or maintain an interlock device (although financial assistance is available), or
  - needs to drive for employment, or

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17. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 85(4).

18. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 85(5).

19. *Road Transport Act 2013* (NSW) s 215A(3).

20. NSW, Roads and Maritime Services, *Alcohol Interlock Program: Guide for Magistrates, Legal Practitioners and Police Prosecutors* (2015) 8; *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 86(2).

21. *Road Transport Act 2013* (NSW) s 211(1)(b); NSW, Roads and Maritime Services, *Alcohol Interlock Program: Participant Guide* (2015) 7.

22. NSW, Roads and Maritime Services, *Alcohol Interlock Program: Participant Guide* (2015) 7.

23. *Road Transport Act 2013* (NSW) s 215(2)(a).

24. *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 93(2).

25. *Road Transport Act 2013* (NSW) s 212(2).

26. *Road Transport Act 2013* (NSW) s 212(3).

- the registered operator of a vehicle refuses to allow an interlock to be installed.<sup>27</sup>
- 6.20 RMS may require a person who has received an exemption order to undertake a drink driving education program (the Sober Driver Program) before they can apply for a new licence.<sup>28</sup>

### Maryland (US) - Ignition Interlock Program

- 6.21 The Maryland Ignition Interlock Program has been active since 1989. In addition to breath testing for ignition, this interlock program, like the NSW program, also requires random breath testing at points on the journey. The program focusses on drivers with repeat drink driving offences, allowing their licences to be reinstated if they voluntarily enrol in the program.<sup>29</sup>
- 6.22 The device generates a progress report every 30 days and sends it to authorities. These reports detail such things as when the driver unsuccessfully attempts to start the car or refuses to take random tests while driving. Each violation extends the program by one month. After four violations, the driver's licence is cancelled.

### Evaluations of different interlock programs

- 6.23 Studies of the Maryland Ignition Interlock Program in 1999<sup>30</sup> and 2011<sup>31</sup> found that it was highly successful in preventing repeat offending. The 1999 study found that the program reduced repeat offending by 64%, looking at a statistically valid test group as compared to a control group.<sup>32</sup> The 2011 study found a 36% reduction in repeat offending during the two-year interlock period.<sup>33</sup> The reason for the difference between these figures is unclear. Other studies support the conclusion that interlock programs are effective, reducing recidivism by up to 90%.<sup>34</sup>
- 6.24 The 2011 study also found that the effects of the program persisted even after removal of the interlock device, with traffic violations remaining 26% lower in the two years after removal.<sup>35</sup> A 2017 review of interlock arrangements in Nova Scotia

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27. *Road Transport Act 2013* (NSW) s 212(5).

28. *Road Transport Act 2013* (NSW) s 212(6); *Road Transport (Driver Licensing) Regulation 2017* (NSW) cl 94(1).

29. United States, National Institute of Justice, Crime Solutions, "Program Profile: Maryland Ignition Interlock Program" (8 June 2011) <[www.crimesolutions.gov/ProgramDetails.aspx?ID=63](http://www.crimesolutions.gov/ProgramDetails.aspx?ID=63)> (retrieved 1 November 2018).

30. K H Beck and others, "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland" (1999) 89 *American Journal of Public Health* 1696.

31. W J Rauch and others, "Effects of Administrative Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses" (2011) 7 *Journal of Experimental Criminology* 127.

32. K H Beck and others, "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland" (1999) 89 *American Journal of Public Health* 1696, 1698.

33. W J Rauch and others, "Effects of Administrative Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses" (2011) 7 *Journal of Experimental Criminology* 127, 135.

34. W G M Vanlaar, M M Hing and R D Robertson, "An Evaluation of Nova Scotia's Alcohol Ignition Interlock Program" (2017) 100 *Accident Analysis and Prevention* 44, 50.

35. W J Rauch and others, "Effects of Administrative Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses" (2011) 7 *Journal of Experimental Criminology* 127, 139.

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similarly found that it reduced post-program reoffending as much as 79%, as compared with the control group.<sup>36</sup>

- 6.25 A 2017 study in New Zealand found that interlock programs are most effective when they are mandatory and combined with rehabilitation programs, expanded eligibility, and reduced installation and maintenance costs.<sup>37</sup>
- 6.26 However, other research has pointed to findings that drink driving behaviour tends to return after an interlock period ends, and suggests there is a need to combine interlock programs with interventions that are more likely to foster long-term behavioural change.<sup>38</sup> It has also been noted that most of the evidence about the effectiveness of overseas interlock programs relates to voluntary systems and that these may not be directly relevant to mandatory interlock systems.<sup>39</sup>
- 6.27 While studies have shown a dramatic effect on alcohol related recidivism, the impact of interlock devices on fatal accidents has received less attention. It is often assumed that, given the number of accidents attributable to drink driving, removing some drink drivers from the roads will lead to a reduction in fatalities. However, there are few studies that demonstrate this effect. One US study, in 2016, found that interlock programs reduced fatal accidents by 15%.<sup>40</sup>

## Issues

- 6.28 The user is generally required to pay to install and maintain the devices, making it difficult for some people to access programs.<sup>41</sup>
- 6.29 Interlock programs may not address offending patterns for those who do not own their own vehicles<sup>42</sup> or who also have access to vehicles that are not their own.
- 6.30 One preliminary submission proposes a voluntary interlock scheme for drivers who have received longer periods of disqualification for drug and alcohol related offences, but have not committed a mandatory interlock offence. Such an approach might help reduce reoffending by drivers who may drive while disqualified because of the need to meet employment, education and family obligations.<sup>43</sup>

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36. W G M Vanlaar, M M Hing and R D Robertson, "An Evaluation of Nova Scotia's Alcohol Ignition Interlock Program" (2017) 100 *Accident Analysis and Prevention* 44, 50.

37. C Chester and H Roberts, "Improving the Effectiveness of Alcohol Interlocks in New Zealand" (2017) 64 *Probation Journal* 286, 291.

38. K Terer and R Brown, *Effective Drink Driving Prevention and Enforcement Strategies: Approaches to Improving Practice* Trends and Issues in Crime and Criminal Justice No 472 (Australian Institute of Criminology, 2014) 6; M Fitzharris and others, *Options to Extend Coverage of Alcohol Interlock Programs*, Austroads Research Report AP-R495-15 (2015) iii.

39. M Fitzharris and others, *Options to Extend Coverage of Alcohol Interlock Programs*, Austroads Research Report AP-R495-15 (2015) iii.

40. E J Kaufman and D J Wiebe, "Impact of State Ignition Interlock Laws on Alcohol-Involved Crash Deaths in the United States" (2016) 106 *American Journal of Public Health* 865, 867.

41. C Chester and H Roberts, "Improving the Effectiveness of Alcohol Interlocks in New Zealand" (2017) 64 *Probation Journal* 286, 289; E J Kaufman and D J Wiebe, "Impact of State Ignition Interlock Laws on Alcohol-Involved Crash Deaths in the United States" (2016) 106 *American Journal of Public Health* 865, 869; NSW, Roads and Maritime Services, *Alcohol Interlock Program: Participant Guide* (2015) 3.

42. D J DeYoung, "An Evaluation of the Implementation of Ignition Interlock in California" (2002) 33 *Journal of Safety Research* 472, 480.

43. Chief Magistrate of NSW, *Preliminary Submission PTR17*, 1–2.

**Question 6.1: Ignition interlock programs**

- (1) Is the NSW mandatory alcohol interlock program effective in dealing with repeat traffic offending? If so, why? If not, why not?
- (2) What changes could be made to the NSW mandatory alcohol interlock program to reduce repeat traffic offending?

## Vehicle sanctions

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- 6.31 Each Australian State and Territory has legislation allowing courts and/or police to impose sanctions on a person's vehicle for certain offences.<sup>44</sup> Typically, these sanctions vary in seriousness and include confiscation, impounding, forfeiture and number-plate confiscation, and can result in vehicle crushing, sale, or crash testing. Broadly, the schemes can involve:
- the police acting if they reasonably believe that particular offences have been or are being committed, or
  - the courts imposing a sanction at sentencing.
- 6.32 In NSW, court sanctioned forfeiture is automatic on repeat offending, unless the court orders otherwise. If forfeited cars have low monetary value or are not sold at auction, authorities can use them for crash testing.<sup>45</sup>

### NSW - police seizure of vehicles or confiscation of number plates

- 6.33 Police officers have the discretion to impose a range of sanctions including number-plate confiscation and seizing or taking a vehicle.<sup>46</sup> The Commissioner of Police may impound a seized vehicle. A vehicle or number-plate is impounded or confiscated for 3–6 months depending on whether the offending operator is disqualified and has committed a sanctionable offence.<sup>47</sup> The aim of such powers would appear to be to prevent certain offenders from reoffending at least with respect to “sanctionable offences” (below).
- 6.34 Instead of immediately seizing a vehicle or confiscating a number-plate, the police can instead give the “offending operator” a production notice requiring the vehicle or number-plate to be brought to a police officer at a specified location within five working days.<sup>48</sup> An offending operator is a person who is both the driver and registered owner of the vehicle.<sup>49</sup> A person who fails to comply with a production

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44. See: *Police Powers and Responsibilities Act 2000* (Qld) ch 4 pt 1–2; *Police Offences Act 1935* (Tas) pt 4A div 2; *Road Safety Act 1986* (Vic) pt 6A; *Road Traffic Act 1974* (WA) pt 5 div 4; *Traffic Act* (NT) pt 5A; *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* (SA); *Road Transport Act 2013* (NSW) pt 7.6; *Road Transport (Safety and Traffic Management) Act 1999* (ACT) pt 2 div 2.3.

45. *Road Transport Act 2013* (NSW) s 252(5)–(6).

46. *Road Transport Act 2013* (NSW) s 239.

47. *Road Transport Act 2013* (NSW) s 248(1)–(2).

48. *Road Transport Act 2013* (NSW) s 239(1)(b), s 239(d)–(e), s 240(1).

49. *Road Transport Act 2013* (NSW) s 237.

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notice, without reasonable excuse, is liable to a maximum penalty of \$3,300 (30 penalty units) and suspension of their vehicle registration.<sup>50</sup>

- 6.35 Table 6.1 sets out the number of vehicles and number-plates seized by police in the period 2014-2017.

Table 6.1: Vehicles and number-plates seized by NSW police, 2014-2017

Year	Vehicles seized	Number-plates seized
2014	71	583
2015	55	664
2016	43	571
2017	37	588

Source: NSW Police Force, information supplied 18 September 2018.

### Sanctionable offences

- 6.36 These vehicle sanctions may be imposed if the police officer “reasonably believes” that within the past 10 days, the offending operator has committed a sanctionable offence. Sanctionable offences include:<sup>51</sup>

- high range speed offences (non-camera recorded offences of exceeding the speed limit by more than 45km/h)
- offences relating to police pursuits,<sup>52</sup> and
- various racing and road racing-related offences.<sup>53</sup>

- 6.37 Among other things, a police officer can also seize a vehicle or confiscate number-plates if they have a reasonable belief that the vehicle is or has been driven:

- by any person during a number-plate confiscation period
- by an offending operator who has failed to comply with a production notice
- by any person charged with a number-plate offence such as tampering with a number-plate confiscation notice attached to a vehicle or using an altered number-plate during a confiscation period
- by a disqualified offending operator exceeding the speed limit by more than 30km/h
- by an offending operator who has been convicted of driving while disqualified or without a licence on more than two occasions.<sup>54</sup>

50. *Road Transport Act 2013* (NSW) s 243.

51. *Road Transport Act 2013* (NSW) s 237(1) definitions of “sanctionable offence” and “high range speed offence”.

52. *Crimes Act 1900* (NSW) s 51B.

53. *Road Transport Act 2013* (NSW) s 115, s 116(2).



- 6.38 RMS may suspend or cancel a vehicle's registration if the registered operator continues to allow or fail to prevent their vehicle from being used to commit offences or from being used by a disqualified driver.<sup>55</sup>

### *Release of impounded vehicle or confiscated number-plate*

- 6.39 The operating offender can apply to release their number-plate or vehicle before the confiscation period has expired. The impoundment or confiscation must be for at least five working days before the Local Court can make an early release order. When determining whether such order should be given, the court may consider:

- any extreme hardship to a person who is not the registered operator, and
- the safety of the public and the public interest in preventing the continued use of a vehicle for sanctionable offences.<sup>56</sup>

- 6.40 Despite the court order, the vehicle or number-plate does not have to be released if the offender has not fully paid for any outstanding towing or storage fees.<sup>57</sup>

### NSW Court ordered forfeiture of vehicles

- 6.41 When an offender is convicted of certain crimes, a court may order the forfeiture of their vehicle if:

- the offending operator is convicted of a repeat offence of failing to comply with a production notice,<sup>58</sup> or a repeat sanctionable offence,<sup>59</sup> or
- the vehicle has been used in relation to a number-plate offence.<sup>60</sup>

- 6.42 A forfeited vehicle may be:

- sold by public auction or tender, or
- disposed of if it has no monetary value or cannot be sold, or
- released to Transport for NSW for educational programs or crash testing.<sup>61</sup>

- 6.43 If a forfeiture would cause extreme hardship to the offending operator or other persons, the court may commute the forfeiture into a period of impoundment, or number-plate confiscation.<sup>62</sup> Financial loss, or the need of a vehicle for employment, is not considered "extreme hardship".<sup>63</sup>

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54. *Road Transport Act 2013* (NSW) s 238.

55. S Lasker, *Driver Disqualification Reforms: Duty and Panel Lawyers Handbook* (Legal Aid NSW, 2017) 28.

56. *Road Transport Act 2013* (NSW) s 249(3).

57. *Road Transport Act 2013* (NSW) s 250(1)–(3).

58. *Road Transport Act 2013* (NSW) s 243(5).

59. *Road Transport Act 2013* (NSW) s 245(1).

60. *Road Transport Act 2013* (NSW) s 245(2).

61. *Road Transport Act 2013* (NSW) s 252.

62. *Road Transport Act 2013* (NSW) s 246(1).

63. *Road Transport Act 2013* (NSW) s 246(2).

## New Zealand – Vehicle Confiscation Program

- 6.44 Legislation in New Zealand obliges police officers to seize and impound a person's vehicle for 28 days if they have reasonable grounds to believe that the person has committed certain driving offences (for example, street racing, driving without a licence, or high range drink driving).<sup>64</sup> Impounding may ultimately result in the sale of a vehicle if fines or storage costs remain unpaid.<sup>65</sup>
- 6.45 For certain specified driving offences, a court may, after conviction, order vehicle confiscation.<sup>66</sup> The court must (subject to hardship provisions) order vehicle confiscation on conviction for subsequent serious driving offences.<sup>67</sup> Where a third party owns the vehicle, the court may make a confiscation order if the owner has received written warning and continued to permit the offender to use their vehicle, even if they were not involved in the commission of the offence.<sup>68</sup> There are also provisions to prohibit an offender acquiring a new interest in a motor vehicle for 12 months.<sup>69</sup>
- 6.46 New Zealand also specifically targets street racing and other “hoon” behaviour by allowing a court to confiscate and destroy vehicles after a third illegal street racing offence.<sup>70</sup>
- 6.47 For all impounding or confiscation schemes, the law specifies how the proceeds of any sale of a vehicle are to be applied.<sup>71</sup> Once costs, fines, levies, fees and charges have been paid, any funds remaining are paid to the offender.

## South Australia – Vehicle confiscation and crushing program

- 6.48 In 2010, South Australia introduced anti-hoon laws that allow courts to order forfeiture and eventual disposal of the vehicle by sale or crushing.<sup>72</sup>
- 6.49 Offences that attract forfeiture include serious offences causing harm, as well as misuse of a motor vehicle (for example, spinning wheels), excessive speed, and reckless or dangerous driving.<sup>73</sup> By 2015, South Australia had impounded over 33,000 vehicles, including 430 that were permanently confiscated.<sup>74</sup>
- 6.50 Administratively, police also have the power to impound a vehicle or install wheel clamps if they are going to charge the owner with a one of the prescribed serious offences.<sup>75</sup>

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64. *Land Transport Act 1998* (NZ) s 96.

65. *Summary Proceedings Act 1957* (NZ) s 100P.

66. *Sentencing Act 2002* (NZ) s 128.

67. *Sentencing Act 2002* (NZ) s 129.

68. *Sentencing Act 2002* (NZ) s 128(2)(b).

69. *Sentencing Act 2002* (NZ) s 136.

70. *Sentencing Act 2002* (NZ) s 129A.

71. *Summary Proceedings Act 1957* (NZ) s 100R; *Sentencing Act 2002* (NZ) s 137.

72. *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* (SA) s 12, s 20 amended by *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Amendment Act 2009* (SA).

73. *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Regulations 2007* (SA) cl 4.

74. D Nankervis, “South Australia Police Impound 33,000 Vehicles in Five Years”, *The Advertiser* (Adelaide), 13 February 2015.

75. *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* (SA) s 5(1).

## Evaluations of vehicle sanction programs

- 6.51 There has been little research into the impact of the New Zealand program on patterns of offending. Anecdotal evidence suggests that the laws are having unintended impacts on third parties. In one case, the purchaser of a car who had no notice of the outstanding confiscation order had his car confiscated and no order supporting his claim for return of the purchase price.<sup>76</sup> In another case, a repeat drink driver had his car confiscated even though his partner jointly owned it.<sup>77</sup> This left his partner without a car while he was in prison, meaning that she had no way of taking her three children to and from school and kindergarten.
- 6.52 There has also been little research into the impacts of the South Australian laws. The Traffic Support Branch has said that the steady decrease in the number of forfeited vehicles did not necessarily demonstrate changes in offender behaviour.<sup>78</sup>
- 6.53 Research into equivalent Victorian legislation suggests that car crushing is an ineffective preventative method for deliberate offending. Convicted dangerous drivers stated that they would simply turn to driving lower cost cars when engaging in “hoon” behaviour.<sup>79</sup>
- 6.54 Studies of impounding legislation in the US found that impounding vehicles resulted in a 25% reduction in the probability of accidents for first time offenders and a 38% reduction for repeat offenders.<sup>80</sup> It is important to note, however, that this legislation did not target hoon behaviour, but rather drink driving and driving while disqualified. It is not clear whether these results are comparable in the context of hoon driving.

## Issues

- 6.55 There is no evidence that vehicle crushing has any more of a deterrent effect than that of impounding or confiscating vehicles.
- 6.56 The transportation, storage and disposal of vehicles present practical and financial challenges, particularly in built-up areas. Strategies to minimise these issues include adopting a user-pays system as well as non-storage options like licence plate confiscation, or wheel-clamping the vehicle on the owner’s premises.<sup>81</sup>
- 6.57 In a user-pays system, the high cost of storage means that impounding may become de facto forfeiture, with those unable to pay storage fees forced to sell their vehicles.

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76. J Eder, “Drink-Driver’s Car to be Confiscated from New Owner”, *The Marlborough Express*, 12 December 2017.

77. L Humphreys, “Vehicle Confiscation Warning”, *Taranaki Daily News*, 21 January 2011.

78. D Nankervis, “South Australia Police Impound 33,000 Vehicles in Five Years”, *The Advertiser* (Adelaide), 13 February 2015.

79. B Clark and others, “‘Hooning’ around: A Focus Group Exploration into the Effectiveness of Vehicle Impoundment Legislation” (Paper presented at 2011 Australasian Road Safety Research, Policing and Education Conference, Perth, 6–9 November 2011) 8–9.

80. D J DeYoung, “An Evaluation of the Specific Deterrent Effects of Vehicle Impoundment on Suspended, Revoked and Unlicensed Drivers in California” (1999) 31 *Accident Analysis and Prevention* 31, 50.

81. US Department of Transportation, National Highway Traffic Safety Administration, *Update of Vehicle Sanction Laws and Their Application* (2008) vol 2, 5; Pedestrian Council of Australia, “PCA Calls on all State and Territory Governments to Emulate the NZ System and Introduce Vehicle Impoundments for Unlicensed Drivers” (Media Release, 23 August 2004).

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- 6.58 Some preliminary submissions raise the possibility of selling cars and applying the profits in road safety programs, or otherwise for the benefit of victims or community groups.<sup>82</sup> The New Zealand system of giving any remaining funds back to the owner of the vehicle is said to address concerns about unduly punishing owners of high value vehicles.<sup>83</sup>

### Question 6.2: Vehicle sanctions

- (1) Is the system of vehicle sanctions in NSW effective in dealing with repeat offending? If so, why? If not, why not?
- (2) What changes could be made to the system of vehicle sanctions to reduce repeat offending?

## Intelligent speed adaptation systems

- 6.59 Intelligent Speed Adaptation (“ISA”) devices can be installed in a vehicle to manage speed. There are two forms of ISA device:
- **Speed limiters** that physically prevent the car from exceeding the speed limit, often subject to a safety override.
  - **Speed monitors** that alert the driver when they exceed the speed limit but do not prevent speeding altogether. In 2014, Transport for NSW released an iPhone app called “Speed Advisor” that uses the phone’s inbuilt GPS to alert drivers when they are speeding.<sup>84</sup>
- 6.60 A report by the NSW Joint Standing Committee on Road Safety previously recommended introducing user-pays, compulsory ISA devices for repeat traffic offenders.<sup>85</sup>

## New South Wales

- 6.61 NSW has two provisions for speed limiters, but only the one relating to heavy vehicles is operational.

### *Speed inhibitor conditions*

- 6.62 The *Road Transport Act 2013* (NSW) contains a provision that allows speed inhibitor conditions, preventing a vehicle from travelling over 60km/h, to be imposed when a driver is convicted of driving at a speed dangerous to the public or any other

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82. Enough is Enough, *Preliminary Submission PTR2*, 1; Pedestrian Council of Australia, *Preliminary Submission PTR19*, 3.

83. Pedestrian Council of Australia, “PCA Calls on all State and Territory Governments to Emulate the NZ System and Introduce Vehicle Impoundments for Unlicensed Drivers” (Media Release, 23 August 2004).

84. Transport for NSW, Centre for Road Safety, “Speed Adviser” (29 November 2016) <[www.roadsafety.transport.nsw.gov.au/speeding/speedadviser/index.html](http://www.roadsafety.transport.nsw.gov.au/speeding/speedadviser/index.html)> (retrieved 5 November 2018).

85. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Speed Zoning and its Impact on the Demerit Points Scheme*, Report 4/55 (2014) rec 13, 47.

prescribed speeding offence.<sup>86</sup> Regulations are required for the provision to be effective and none are currently in place.

- 6.63 This provision is the successor of one first inserted in the *Motor Traffic Act 1909* (NSW) in 1937. It originally allowed for regulations to provide that a person's licence may be subject to a condition limiting the person to driving a motor vehicle "to which is affixed a sealed device which will prevent the engine from propelling the vehicle at a speed in excess of thirty miles per hour".<sup>87</sup> The 30-mile limit was changed to 60km in 1974.<sup>88</sup> The 60km/h limit (adjusted slightly at the time of metric conversion) comes from an era when speed limits, and the capacity of motor vehicles, were vastly different to what they are today.

#### *Heavy vehicle speed limiters*

- 6.64 Some heavy vehicles are required to install speed limiters – for example, motor lorries exceeding 12 tonnes and public passenger buses exceeding 5 tonnes manufactured on or after 1 January 1991.<sup>89</sup> A heavy vehicle with a speed limiter cannot accelerate past 100km/h.<sup>90</sup> If a heavy vehicle is non-compliant with speed limiter conditions, the responsible person for the vehicle (if an individual) is liable for 30 penalty units or (if a corporation) 150 penalty units.<sup>91</sup>

#### *Trial of intelligent speed adaptation systems in NSW*

- 6.65 In 2009–10, NSW undertook a trial of ISA systems. The ISA systems effectively reduced speeding for 89% of participating drivers,<sup>92</sup> including for repeat and deliberate speeders.<sup>93</sup> The trial results also showed, through mathematical modelling, that the ISA systems could lead to a 19% reduction in fatalities and serious injury accidents.<sup>94</sup>

#### *Netherlands – Speedlock Trial*

- 6.66 In 2010, the Dutch Government conducted a trial of ISA technology for speeders. The test included use of both speed limiters ("Speedlocks") and speed alerts/monitors ("Speedmonitors").<sup>95</sup> These devices send data back to authorities about speeding behaviour.

86. *Road Transport Act 2013* (NSW) s 204(4), s 204(6) definition of "speed inhibitor condition".

87. *Motor Traffic Act 1909* (NSW) s 10(3B) inserted by *Motor Traffic (Amendment) Act 1937* (NSW) s 5(1)(g).

88. *Motor Traffic and Transport (Amendment) Act 1974* (NSW) s 3(b).

89. *Road Transport (General) Regulation 2013* (NSW) cl 56.

90. *Road Transport Act 2013* (NSW) s 160 definition of "speed limiter compliant".

91. *Road Transport Act 2013* (NSW) s 162(1).

92. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), Parliament of NSW, *Speed Zoning and its Impact on the Demerit Points Scheme* (2014) 44 [4.47].

93. K Creef and others, "Road Safety Benefits of Intelligent Speed Adaptation for Australia" (Paper presented at Australasian Road Safety Research, Policing and Education Conference, Perth, 6–9 November 2011) 5.

94. Transport for NSW, Centre for Road Safety, "Intelligent Speed Adaptation" (21 September 2016) <[www.roadsafety.transport.nsw.gov.au/research/roadsafetytechnology/isa/index.html](http://www.roadsafety.transport.nsw.gov.au/research/roadsafetytechnology/isa/index.html)> (retrieved 5 November 2018).

95. J W G M van der Pas and others, "Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial" (2014) 72 *Accident Analysis and Prevention* 78, 79.

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- 6.67 The trial included 51 participants with most between the ages of 25 and 55, well educated, and male.<sup>96</sup> The study attempted to attract as many “serious speed offenders” as possible. Offenders who had exceeded the speed limit by more than 50km/h on one occasion, or exceeded the speed limit by between 20–50km/h for 4% of their total driving kilometres, were “serious offenders”.<sup>97</sup> Of the 51 participants, 23 were serious offenders.<sup>98</sup>

## Evaluations of intelligent speed adaption systems

- 6.68 A study of the Dutch trial found ISAs to be highly effective in reducing speeding behaviour with both speedlocks and speedmonitors. In urban or built-up areas, speedlocks reduced speeding by 79.6%, while speedmonitors were responsible for a 67.3% reduction overall.<sup>99</sup> To determine this, the study looked at changes in the number of kilometres travelled over the speed limit as a percentage of total kilometres travelled. The impact of these devices was less dramatic on serious offenders, but still had a significant effect. Speedlocks reduced speeding by 66.4%, while speedmonitors accounted for a 63.6% reduction. Serious offenders extensively used the override button in inappropriate circumstances.<sup>100</sup>
- 6.69 The study of the Dutch trial found that the effects of both ISA technologies were not lasting, and that participants returned to speeding once the devices were inactive.<sup>101</sup> Speedmonitor participants however, did speed slightly less than they did before testing.<sup>102</sup>
- 6.70 There is limited research on speed limiter technologies in Australia. Nonetheless, there are concerns that not being able to accelerate while overtaking may lead to more head-on collisions.<sup>103</sup>
- 6.71 A Malaysian study of ISAs found that other benefits included that participants felt safer while driving, and their driving behaviour generally improved.<sup>104</sup> Most participants in the Malaysian study were willing to purchase the system after completing the trial.<sup>105</sup>
- 6.72 Victoria conducted a similar trial involving 39 recidivist speeders using only speed monitoring systems. An evaluation of that trial found that ISAs reduced mean

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96. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 80.

97. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 81.

98. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 81.

99. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 83.

100. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 88.

101. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 91.

102. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 84-86.

103. M A Regan, K Young and N Haworth, *A Review of Literature and Trials of Intelligent Speed Adaption Devices for Light and Heavy Vehicles*, AP-R327 (Austroads, 2003) 9–10.

104. S Ghadiri and others, “Intelligent Speed Adaptation: Preliminary Results of On-Road Study in Penang, Malaysia” (2013) 36 *IATSS Research* 106, 110–111.

105. S Ghadiri and others, “Intelligent Speed Adaptation: Preliminary Results of On-Road Study in Penang, Malaysia” (2013) 36 *IATSS Research* 106, 111.

speed, time spent over the speed limit, and time to return to the speed limit.<sup>106</sup> The study estimated that ISAs would likely reduce fatal accidents by 180 over a period of 5 years.<sup>107</sup> A third of participants said they would be willing to buy one of these devices if the price was between \$50 and \$300.

- 6.73 A study of the Victorian trial confirmed the Dutch findings that the benefits associated with ISAs are not lasting, and that drivers quickly return to their previous behaviour.<sup>108</sup> Other studies have also noted that ISA systems were ineffective in causing permanent speeding behaviour change after they were removed.<sup>109</sup>

## Issues

- 6.74 ISA technology presents several challenges in the NSW context including the costs for users and the practical limitation of mapping the speed limits across all of NSW.
- 6.75 Standalone ISA systems can be expensive. Speed limiting devices cost between \$650 and \$1800 per unit.<sup>110</sup> A user-pays model may put these programs out of reach for many. ISA speed monitor integration with navigation systems (for example, an iPhone app) may be a more cost effective approach.
- 6.76 Accuracy in speed limit mapping presents several challenges. First, there are the practical issues around mapping speed limits over a region as large as NSW. In the Dutch study, initial accuracy was as low as 70%, but as users reported incorrect speed limits, this improved to as high as 95%.<sup>111</sup> Further, the NSW government may have already mapped much of NSW through the development of the “Speed Advisor” app.
- 6.77 The second issue relating to inaccuracies is that participants in the Victorian study reported that inaccurate warnings and glitches frustrated them so much that they would not purchase a device unless they were more reliable.<sup>112</sup> This presents challenges if the use of ISAs is voluntary for repeat offenders.

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106. K Young and other, *Repeat Speeders Trial*, Final Evaluation Report (Monash University Accident Research Centre, 2013) 107.

107. K Young and other, *Repeat Speeders Trial*, Final Evaluation Report (Monash University Accident Research Centre, 2013) 109.

108. K Young and other, *Repeat Speeders Trial*, Final Evaluation Report (Monash University Accident Research Centre, 2013) 100.

109. Parliament of NSW, Joint Standing Committee on Road Safety (Staysafe), *Speed Zoning and its Impact on the Demerit Points Scheme* (2014) 44 [4.49] citing M A Regan and others, *On-Road Evaluation of Intelligent Speed Adaptation, Following Distance Warning and Seatbelt Reminder Systems: Final Results of the TAC SafeCar Project* (Monash University, 2006) 202.

110. S Doecke and J E Woolley, *Cost Benefit Analysis of Intelligent Speed Assist* (University of Adelaide Centre for Automotive Safety Research, 2010) 26.

111. J W G M van der Pas and others, “Intelligent Speed Assistance for Serious Speeders: The Results of the Dutch Speedlock Trial” (2014) 72 *Accident Analysis and Prevention* 78, 80.

112. K Young and other, *Repeat Speeders Trial*, Final Evaluation Report (Monash University Accident Research Centre, 2013) 110.

**Question 6.3: Intelligent speed adaptation systems**

- (1) Would a system of intelligent speed assistance technology be effective in dealing with repeat traffic offending? If so, why? If not, why not?
- (2) What system of intelligent speed assistance technology could be introduced in NSW to deal with repeat traffic offending?

## Specialist traffic courts or lists

- 6.78 Traffic courts or lists provide a specialist setting designed to deal with traffic offences. The purpose of such courts and lists is to address the cause of offending (particularly drug and alcohol-related causes) and assist with court-mandated treatment.<sup>113</sup> They are modelled on drug courts. Such specialist courts are particularly useful where traditional methods have proven ineffective. Participation is usually voluntary and takes place in a post-conviction setting.
- 6.79 Traffic courts can incorporate therapeutic elements that go beyond punishment, including mandatory check-ins, education, counselling, and alcohol abuse support groups. Supervision is a key element of specialist courts and continual monitoring ensures compliance with orders.<sup>114</sup>

## United States – Driving while impaired (DWI) Courts

- 6.80 States in the US first implemented driving while impaired (“DWI”) courts in 1995. There are now more than 600 of these courts, sometimes also referred to as “DUI courts”, across the country.
- 6.81 DWI courts operate after conviction.<sup>115</sup> To be referred to one, the offence must generally involve high range drink driving (BAC greater than 0.15) or repeat offending.
- 6.82 In Rio Hondo, California, the DWI Court has the power to order 12 hours of educational sessions, 52 hours of group counselling, check-ins twice a week, and mandatory Alcoholics Anonymous sessions.<sup>116</sup>

## Evaluations of specialist traffic courts

- 6.83 Studies in the US have found that these courts have mixed effectiveness. A 2007 study of the Rio Hondo court found that offenders processed through DWI courts were as likely to reoffend as those processed through regular courts.<sup>117</sup>

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113. E Richardson, *A Driving While Intoxicated/Suspended Court List for Victoria*, Background Paper (Monash University, 2013) 14.

114. E Richardson, *A Driving While Intoxicated/Suspended Court List for Victoria*, Background Paper (Monash University, 2013) 13, 14.

115. J M MacDonald and others, “The Efficacy of the Rio Hondo DUI Court: A 2-Year Field Experiment” (2007) 31 *Evaluation Review* 4, 8.

116. J M MacDonald and others, “The Efficacy of the Rio Hondo DUI Court: A 2-Year Field Experiment” (2007) 31 *Evaluation Review* 4, 9–10.

117. J M MacDonald and others, “The Efficacy of the Rio Hondo DUI Court: A 2-Year Field Experiment” (2007) 31 *Evaluation Review* 4, 16.



- 6.84 A 2017 study of DWI courts in the US supported this conclusion, finding no difference in the reoffending rate of offenders processed through DWI courts as opposed to regular courts.<sup>118</sup> DWI court offenders were, however, significantly less likely than non-participants to receive another DWI charge.<sup>119</sup> These offenders were more likely to be charged with non-DWI driving offences.<sup>120</sup>
- 6.85 A key difference between the US and Australian context is that the US laws impose significantly higher mandatory minimum penalties. The 2007 study of the Rio Hondo DWI court identified these mandatory minimums as reducing the incentives for participation.<sup>121</sup> It is unclear whether these courts would be more effective without strict mandatory minimum sentences.

### Proposals in Australia

- 6.86 The Victorian Sentencing Advisory Council has proposed specialist driving lists for complex traffic issues and repeat drink drivers who voluntarily enter the program.<sup>122</sup> The rationale behind specialist lists is that they employ magistrates with expertise in the area.<sup>123</sup> Further, it allows the court to take a more supervisory and problem solving approach.<sup>124</sup>
- 6.87 The Tasmanian Sentencing Council has also proposed a drink driving court for repeat offenders but has given few details of how the list or court might function.<sup>125</sup>

### Issues

- 6.88 Quality studies on specialist DWI courts are lacking.<sup>126</sup> It is therefore difficult to assess with certainty whether specialist traffic courts or lists would be effective in reducing repeat offending, especially in a NSW context.
- 6.89 In Chapter 2, we note that half of the 20 most common statutory offences dealt with by the Local Court in 2015 were driving-related offences, amounting to 34% of all Local Court cases.<sup>127</sup> Consideration could be given to limiting eligibility to specialist

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118. A J Myer and M D Makarios, "Understanding the Impact of a DUI Court through Treatment Integrity: A Mixed-Methods Approach" (2017) 56 *Journal of Offender Rehabilitation* 252, 264.

119. A J Myer and M D Makarios, "Understanding the Impact of a DUI Court through Treatment Integrity: A Mixed-Methods Approach" (2017) 56 *Journal of Offender Rehabilitation* 252, 264–265.

120. A J Myer and M D Makarios, "Understanding the Impact of a DUI Court through Treatment Integrity: A Mixed-Methods Approach" (2017) 56 *Journal of Offender Rehabilitation* 252, 264.

121. J M MacDonald and others, "The Efficacy of the Rio Hondo DUI Court: A 2-Year Field Experiment" (2007) 31 *Evaluation Review* 4, 8.

122. S Farrow, A Hoel and F Stewart, *Driving While Disqualified or Suspended: Report* (Victoria, Sentencing Advisory Council, 2009) rec 10, [3.111].

123. S Farrow, A Hoel and F Stewart, *Driving While Disqualified or Suspended: Report* (Victoria, Sentencing Advisory Council, 2009) [3.105].

124. S Farrow, A Hoel and F Stewart, *Driving While Disqualified or Suspended: Report* (Victoria, Sentencing Advisory Council, 2009) [3.105].

125. R Bradfield, *Sentencing of Driving Offences that Result in Death or Injury*, Final Report No 8 (Tasmanian Sentencing Advisory Council, 2017) 106–107. See also Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers*, Final Report No 24 (2018) [3.2.1]–[3.2.10].

126. E Richardson, *A Driving While Intoxicated/Suspended Court List for Victoria*, Background Paper (Monash University, 2013) 14.

127. See [2.3].

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courts to high-risk offenders, to prevent non-serious offences overloading those courts. Even then, the variety of criminogenic factors related to different offenders and different offences could make it difficult to identify suitable offenders for any specialist court.

- 6.90 The therapeutic nature of specialist courts and the extended monitoring they require presents costs challenges. The process of engaging justice officials to monitor offenders may involve significant cost. The counselling and rehabilitation sessions are also likely to be expensive. Even when specialist courts, like the Drug Court in NSW, are considered successful, they often deal with relatively small volumes and in limited locations.<sup>128</sup> The problem of limited locations could be overcome, to an extent, by using technology such as audio-visual links. If programs were user-pay, this would create significant accessibility issues for low-income offenders.

### Question 6.4: Specialist traffic courts or lists

- (1) Would a specialist traffic court or list be effective in dealing with repeat traffic offending? If so, why? If not, why not?
- (2) What type of specialist traffic court or list could be introduced in NSW to deal with repeat traffic offending?

## Prevention courses

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- 6.91 In some jurisdictions, traffic offenders can take courses to reduce the penalties they face. Enrolment is generally voluntary. These courses fall into two classes:
- accident prevention courses, which focus on defensive driving techniques and collision avoidance, and
  - recidivist prevention courses, which target the roots of offending behaviour.<sup>129</sup>
- 6.92 In NSW, there are two existing systems and one proposed system for delivering courses to driving offenders:
- the Traffic Offender Intervention Program (“TOIP”) which an offender may enter before sentencing
  - the Sober Driver Program, which is delivered to offenders under an interlock exemption order and offenders under Community Corrections supervision, and
  - an “alcohol or other drug education program”, which RMS may require a driver to complete if they have committed a driving offence involving drugs or alcohol.

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128. See, eg, C Jones, *Intensive Judicial Supervision and Drug Court Outcomes: Interim Findings from a Randomised Controlled Trial*, Crime and Justice Bulletin No 152 (NSW Bureau of Crime Statistics and Research, 2011); D Weatherburn and others, *The NSW Drug Court: A Re-Evaluation of its Effectiveness*, Crime and Justice Bulletin No 121 (NSW Bureau of Crime Statistics and Research, 2008).

129. A McKnight and A Tippetts, “Accident Prevention Versus Recidivism Prevention Courses for Repeat Traffic Offenders” (1997) 29 *Accident Analysis and Prevention* 25, 25–26.

## NSW - Traffic Offender Intervention Program

- 6.93 The TOIP delivers a community based recidivist prevention course that aims to encourage safe driving behaviour by developing an offender's knowledge, skills and attitude.<sup>130</sup>
- 6.94 Before sentencing for a road traffic offence, a court may make an order referring a traffic offender to undertake a TOIP course.<sup>131</sup> The offender may agree to this as a condition of deferral of sentence.<sup>132</sup>
- 6.95 In deciding if the offender is suitable for the program, the court may consider:
- the nature of the offence committed and any extenuating circumstances
  - the offence's impact on the community and victim, and
  - any conviction history or previous participation in an approved traffic offender program.<sup>133</sup>
- 6.96 There is a register of approved course providers. The following course providers were operating at a variety of locations in NSW in October 2018:
- Police Citizens Youth Club NSW
  - Road Sense Traffic Offender Intervention Program
  - SAVE Traffic Offender Program
  - Blacktown Traffic Offenders Program
  - SMART Driver Program
  - ASPIRE Traffic Offender Course, and
  - Traffic Offenders Rehabilitation Program.
- 6.97 Attendance is taken into account at sentencing. Failure to comply with course requirements may affect the sentence received.<sup>134</sup>
- 6.98 There are particular problems with assessing TOIP's impact. First, some evaluations relate only to process, and measure course completions rather than effectiveness in prevention. Those that do deal with reoffending rates have been unable to identify an adequate comparison group.
- 6.99 A 2013 study found that, in 2011, 17.9% of offenders charged with traffic related offences participated in TOIP. The completion rate was around 85% each year in 2009–2011.<sup>135</sup>

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130. *Criminal Procedure Regulation 2017* (NSW) cl 100.

131. *Criminal Procedure Regulation 2017* (NSW) cl 97(1) definition of "program participation order", cl 101.

132. *Criminal Procedure Regulation 2017* (NSW) cl 98(1)(c).

133. *Criminal Procedure Regulation 2017* (NSW) cl 99(2).

134. *Criminal Procedure Regulation 2017* (NSW) cl 98(1)(d).

135. NSW Department of Attorney General and Justice, *Traffic Offender Intervention Program 2009–2011* (2013) 3, 4.

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- 6.100 A study of the Blacktown Traffic Offender Program from 1994–2011 found insufficient evidence to say offenders who completed a TOIP course were less likely to re-offend compared to offenders who did not undertake one.<sup>136</sup> This was chiefly because of difficulties in constructing an appropriate comparison group. While unable to evaluate such programs' effectiveness in reducing repeat offending, the study proceeded on the basis that it would be useful for program administrators and policy makers to know how many traffic offender program participants reoffend, and the nature of that reoffending. The study also aimed to identify, for more intensive interventions, offenders with characteristics that increase the likelihood of repeat offending. The study found that 15% of participants committed a new offence in the two years after they commenced the Blacktown Traffic Offender Program and 10.5% committed a further traffic offence.<sup>137</sup>
- 6.101 There is criticism that TOIP does not address individual offending behaviour because it uses the one general curriculum regardless of the cause of offending.<sup>138</sup>
- 6.102 Some concerns have been expressed that the program has been condensed to a one-day workshop. One preliminary submission observes that “repetition is the more successful approach to behavioural change”, pointing to the behavioural change programs offered by Corrective Services NSW that extend over 10–12 weeks.<sup>139</sup> However, we understand that there may be problems with the delivery of programs extending over more than one day in remote and regional areas.

### NSW – Sober driver program

- 6.103 The Sober Driver Program is a 3-day (20 hour total) therapeutic course that seeks to change the “attitudes and behaviours of repeat and high risk drink drive offenders”.<sup>140</sup>
- 6.104 Offenders are required to complete the program if they are under one of the following court-imposed orders:
- an interlock exemption order, and/or
  - a Community Corrections supervisory order arising from a drink driving offence.<sup>141</sup>
- 6.105 A person under a supervisory order is eligible for the program if they satisfy certain risk criteria and have committed:
- a repeat drink driving offence within 5 years of a previous offence, or

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136. P Rourke and C Jones, *Risk of Reconviction Among Offenders who Commence the Blacktown Traffic Offender Program*, Bureau Brief No 81 (NSW Bureau of Crime Statistics and Research, 2012) 2.

137. P Rourke and C Jones, *Risk of Reconviction Among Offenders who Commence the Blacktown Traffic Offender Program*, Bureau Brief No 81 (NSW Bureau of Crime Statistics and Research, 2012) 7.

138. I Faulks, *Addressing Issues of Driver Distraction in Traffic Offender Management* (Safety and Policy Analysis International, 2012) 2.

139. Enough is Enough, *Preliminary Submission PTR2*, 1.

140. NSW, Roads and Maritime Services, “Sober Driver Program” <[www.oep.chandlermaclod.com/SDP/SDP.asp](http://www.oep.chandlermaclod.com/SDP/SDP.asp)> (retrieved 15 November).

141. NSW Government, “Program Participants CSNSW Sober Driver Program” <[www.soberdriverprogram.nsw.gov.au/Pages/program-participants/csnsw-sdp.aspx](http://www.soberdriverprogram.nsw.gov.au/Pages/program-participants/csnsw-sdp.aspx)> (retrieved 15 November 2018).

- a single serious drink driving offence, such as high range prescribed concentration of alcohol (“PCA”).<sup>142</sup>
- 6.106 A Community Corrections Sober Driver Program is completed through Corrective Services NSW without cost to the participant.<sup>143</sup> An offender completing the Program through Managed Training Services as part of an interlock exemption order must pay the program cost of \$700.<sup>144</sup> Financial assistance covering the full amount of the program is available for people experiencing financial hardship.<sup>145</sup>
- 6.107 Studies have found that the Community Corrections program is effective in reducing repeat drink driving offences, with participants almost half as likely as non-participants to drink drive again – an effect that lasted for up to 5.5 years.<sup>146</sup>

### NSW - Alcohol or drug education programs

- 6.108 Under recently passed amendments, RMS may require a person to undertake a specified alcohol or other drug education program if they have been convicted of an alcohol or drug-related driving offence,<sup>147</sup> or have committed such an offence and been dealt with by penalty notice. A person’s licence suspension or cancellation or other licence ineligibility will be extended until such time as RMS is satisfied that the person has undertaken, and passed the program. These amendments have not yet commenced.<sup>148</sup>

### United Kingdom – National Speed Awareness Course

- 6.109 The National Speed Awareness Course in the UK targets low-range speeding drivers, and allows them to complete a short course rather than accepting demerit points and a fine.<sup>149</sup> Drivers who exceed the speed limit by not more than 10% plus 9 miles per hour, and who have not completed the course in the previous three years, are eligible.<sup>150</sup>

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142. NSW Government, “Program Participants CSNSW Sober Driver Program” <[www.soberdriverprogram.nsw.gov.au/Pages/program-participants/csnsw-sdp.aspx](http://www.soberdriverprogram.nsw.gov.au/Pages/program-participants/csnsw-sdp.aspx)> (retrieved 15 November 2018).

143. Corrective Services NSW, *Sober Driver Program: A Guide for Magistrates, Legal Practitioners and Police Prosecutors* (2016) 6.

144. NSW, Roads and Maritime Services, “Sober Driver Program” <[www.oep.chandlermacleod.com/SDP/SDP.asp](http://www.oep.chandlermacleod.com/SDP/SDP.asp)> (retrieved 15 November 2018).

145. NSW, Roads and Maritime Services, *Sober Driver Program*, Fact Sheet <[www.oep.chandlermacleod.com/Outlines/SDP\\_Fact\\_Sheet.pdf](http://www.oep.chandlermacleod.com/Outlines/SDP_Fact_Sheet.pdf)> (retrieved 15 November 2018).

146. E Mazurski, D Withaneachi and S Kelly, “The NSW Sober Driver Program: Recidivism Rates and Program Parameters” (Paper presented at the Australasian Road Safety Research, Policing and Education Conference, Perth, 2011) 9. K L Mills and others, “An Outcome Evaluation of the New South Wales Sober Driver Programme: A Remedial Programme for Recidivist Drink Drivers” (2008) 65 *Drug and Alcohol Review* 27.

147. Under *Road Transport Act 2013* (NSW) s 110, s 111 and s 112.

148. *Road Transport Act 2013* (NSW) s 215C: *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (NSW) sch 1[16] (not yet commenced).

149. TTC Group, “National Speed Awareness Course” <[www.ttc-uk.com/police-referred-courses/national-speed-awareness-course/](http://www.ttc-uk.com/police-referred-courses/national-speed-awareness-course/)> (retrieved 15 November 2018).

150. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 8.

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- 6.110 The course addresses behavioural factors that increase risks of offending including the driver's views about and attitudes to risk and consequences.<sup>151</sup> The course combines presentations and interactive learning in a classroom setting.<sup>152</sup>
- 6.111 A 2018 study compared the 1.4 million participants against drivers eligible for the course who elected not to participate. It found that, in the three years following the course, participants were consistently less likely to reoffend than if they had not completed the course. Six months after completion, participants had a 5% chance of reoffending, compared with 7% if they had not participated. This difference persisted at the 36-month mark (21% as compared with 23%).<sup>153</sup> However, the study also found that drivers with past motoring convictions (whether they agreed to take part in the course or not) were 23% more likely than drivers without a previous conviction to be observed reoffending within 6 months of a course offer. This group was consistently more likely to reoffend up to 3 years after a course offer.<sup>154</sup>
- 6.112 The study found that the course had no discernible effect on collision rates.<sup>155</sup> This was likely due to the infrequency of collisions and the small sample size. The course was, however, correlated with a reduction in the risk of an injury collision of 14%.<sup>156</sup>

## General evaluations

- 6.113 A 1997 comparison of courses in the US found that offenders participating in recidivism-focussed courses were 8% less likely to reoffend and 17% less likely to be involved in a collision than offenders participating in accident prevention courses.<sup>157</sup> Differences in the reoffending rate did not persist beyond 12 months, and the study did not consider collision rates in the second year.<sup>158</sup>
- 6.114 The 1997 study also found that offenders who did not participate in either program and instead had their licences suspended or revoked had significantly better outcomes over 12 months. Non-participants were 25% less likely to reoffend and 51% less likely to be involved in an accident.<sup>159</sup> The study did not comment on any lasting effects of non-participation.

## Issues

- 6.115 If a user pays model is adopted, the courses may be inaccessible to some people. The cost of running such a course is significantly higher than issuing penalty

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151. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 9.

152. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 9.

153. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 16-17.

154. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 20.

155. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 26-27.

156. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 26-27.

157. A J McKnight and A S Tippetts, "Accident Prevention Versus Recidivism Prevention Courses for Repeat Traffic Offenders" (1997) 29 *Accident Analysis and Prevention* 25, 28.

158. A J McKnight and A S Tippetts, "Accident Prevention Versus Recidivism Prevention Courses for Repeat Traffic Offenders" (1997) 29 *Accident Analysis and Prevention* 25, 28.

159. A J McKnight and A S Tippetts, "Accident Prevention Versus Recidivism Prevention Courses for Repeat Traffic Offenders" (1997) 29 *Accident Analysis and Prevention* 25, 29.

notices. However, there are cost savings associated with reduced levels of injury and reoffending.<sup>160</sup> The UK study estimated that the government would recoup the costs of the course over three years.<sup>161</sup>

- 6.116 Drivers attending the Speed Awareness Course in the UK have had insurers increase their premiums when they disclosed that they had attended the course.<sup>162</sup> Such an outcome may understandably reduce the incentive to participate.

#### Question 6.5: Prevention courses

- (1) How effective are the various prevention courses for traffic offenders in NSW?
- (2) What could be done to make existing courses more effective in reducing recidivist traffic offending?
- (3) What further courses could be introduced to help reduce recidivist traffic offending? In what circumstances could they be most effectively deployed?

### Stricter penalties

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- 6.117 Stricter penalties encompass a broad range of responses, including introducing mandatory minimum fines, further suspensions or disqualifications, imprisonment and increasing maximum penalties.

#### Arizona (US) - DUI Laws

- 6.118 In 1982, Arizona introduced the harshest drink driving laws of any American state. It took a no tolerance approach to drink driving, including mandatory minimum jail sentences for drink driving offences in the first instance.<sup>163</sup>
- 6.119 The first instance of a “standard” drink driving offence (BAC between 0.08 and 0.15) attracts:
- a mandatory minimum of 10 days in jail
  - a fine and additional assessments amounting to US\$1,250
  - mandatory counselling
  - a 90-day licence suspension, and
  - 12 months in an interlock program.<sup>164</sup>

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160. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 29–30.

161. Ipsos MORI, *Impact Evaluation of the National Speed Awareness Course*, Final Report (2018) 30.

162. M Brignall, “Beware Admiral’s Policy When it Comes to Speed Awareness Courses” (21 August 2017) *The Guardian* (online) <[www.theguardian.com/money/2017/aug/21/admiral-car-insurance-speed-awareness-course](http://www.theguardian.com/money/2017/aug/21/admiral-car-insurance-speed-awareness-course)> (retrieved 15 November 2018).

163. S G West and others, “An Evaluation of Arizona’s July 1982 Drunk Driving Law: Effects on the City of Phoenix” (1989) 19 *Journal of Applied Social Psychology* 1212, 1214.

164. *Arizona Revised Statutes* #28-1381(l).

## CP Repeat traffic offenders

- 6.120 A second standard offence attracts:
- a mandatory minimum of 90 days in jail (home detention possible)
  - a fine and additional assessments amounting to \$3,000
  - mandatory counselling, a one-year licence revocation
  - 12 months enrolment in an interlock program, and
  - 30 hours of community service.<sup>165</sup>
- 6.121 Higher range offences (BAC above 0.15) attract a mandatory minimum sentence of 30 days in the first instance.<sup>166</sup>

### Evaluations

- 6.122 A 1989 study of Arizona's mandatory minimum sentences found that the laws led to an immediate reduction in the number of alcohol related road deaths (7.44 per month).<sup>167</sup> However, these effects were not lasting and eventually returned towards the baseline – 20 months later only 10% of the original reduction remained.<sup>168</sup> Studies on the implementation of harsher penalties elsewhere in the US mirrored these results.<sup>169</sup>
- 6.123 Australian research has found no correlation between the size of fines or length of disqualification periods and a reduction in the probability of reoffending.<sup>170</sup> In fact, longer disqualification periods positively correlated with reoffending in speeding cases.<sup>171</sup>

### Issues

- 6.124 Harsher penalties may give rise to criminogenic factors such as large debts, inability to work, secondary offending and, ultimately, incarceration.<sup>172</sup> These risks are particularly high for Aboriginal people.<sup>173</sup>

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165. *Arizona Revised Statutes* #28-1381(K).

166. *Arizona Revised Statutes* #28-1382 (D)(1).

167. S G West and others, "An Evaluation of Arizona's July 1982 Drunk Driving Law: Effects on the City of Phoenix" (1989) 19 *Journal of Applied Social Psychology* 1212, 1232.

168. S G West and others, "An Evaluation of Arizona's July 1982 Drunk Driving Law: Effects on the City of Phoenix" (1989) 19 *Journal of Applied Social Psychology* 1212, 1232.

169. S G West and others, "An Evaluation of Arizona's July 1982 Drunk Driving Law: Effects on the City of Phoenix" (1989) 19 *Journal of Applied Social Psychology* 1212, 1232–1233.

170. S Moffatt and S Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences*, Crime and Justice Bulletin No 106 (NSW Bureau of Crime Statistics and Research, 2007) 9.

171. S Moffatt and S Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences*, Crime and Justice Bulletin No 106 (NSW Bureau of Crime Statistics and Research, 2007) 9-10.

172. NSW Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-Imposed Fines and Penalty Notices*, Interim Report (2006) [2.50]–[2.53], [2.63]; J Quilter and R Hogg, "The Hidden Punitiveness of Fines" (2018) 7 *International Journal for Crime, Justice and Social Democracy* 9, 23.

173. Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper No 84 (2017) [6.34]–[6.37].



- 6.125 Mandatory minimum jail terms for low range driving offences could significantly increase the prison population and impose a large financial burden if eligibility is not sufficiently restricted.

**Question 6.6: Stricter penalties**

- (1) Should stricter penalties be introduced for repeat traffic offenders?
- (2) If so, what offences should be subject to these stricter penalties?

## Intensive supervision programs

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- 6.126 Intensive supervision programs vary in their features but can involve a wide range of strategies, including mandatory interlock, counselling, alcohol and/or drug groups, random urine analysis, and regular check-ins with authorities.

### NSW - Intensive supervision

- 6.127 A sentencing court may, as part of an order (either an intensive correction order, community correction order or conditional release order), impose requirements including that an offender participate in a rehabilitation program or receive treatment, abstain from alcohol and/or drugs, or be subject to supervision.<sup>174</sup> Under such an order, the court may require an eligible person to undertake the Sober Driver Program,<sup>175</sup> as has previously been the courts' practice for good behaviour bonds, community service orders and intensive correction orders.<sup>176</sup>

### Wisconsin (US) – Safe Streets Treatment Option Program

- 6.128 The Safe Streets Treatment Option Program (“SSTOP”) is a program for repeat drink drivers in Outagamie County, Wisconsin, which was introduced in 2010. Enrolment in the program is voluntary and encouraged by reduced jail times. The program runs for one year, and aims to maximise rehabilitation and reduce reoffending by intensive supervision, education and treatment while keeping people employed and in the community.<sup>177</sup>
- 6.129 To be eligible for the program, a person must have committed a second or third offence and live in Outagamie County. Participants are referred to relevant services including drug and alcohol counselling, domestic abuse groups, anger management groups, and other support mechanisms. Case managers are assigned to

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174. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 73A(2), s 89(2), s 99(2).

175. See [6.103]-[6.107].

176. NSW Government, “Program Participants CSNSW Sober Driver Program” <[www.soberdriverprogram.nsw.gov.au/Pages/program-participants/csnew-sdp.aspx](http://www.soberdriverprogram.nsw.gov.au/Pages/program-participants/csnew-sdp.aspx)> (retrieved 15 November 2018).

177. T L Freiburger and A M Sheeran, “Evaluation of Safe Streets Treatment Option to Reduce Recidivism Among Repeat Drunk Driving Offenders” (2018) *Criminal Justice Policy Review* 1, 5, 11.

participants to ensure compliance through monthly check-ins. Most participants also attend a victim impact panel.<sup>178</sup>

### Evaluations

- 6.130 A 2018 study found that the SSTOP was effective in reducing repeat offending. Crucially, it lowered three key indicators that the researchers measured: likelihood of repeated incarceration, subsequent drink driving charges, and convictions of any kind.<sup>179</sup>
- 6.131 The study did, however, find that there were no significant differences between participants and non-participants in relation to “new charges”, despite the lower rate of reoffending. The authors suggest that this discrepancy may be the result of prosecutors taking a positive view of offenders who have voluntarily enrolled in the SSTOP.<sup>180</sup>
- 6.132 A limitation of this research was that it was confined to a single county in Wisconsin, which may affect the ability to extrapolate these results elsewhere.<sup>181</sup>
- 6.133 A 2006 study of a similarly intensive three-year program that includes sale of the offender’s vehicle, zero alcohol consumption, and mandated alcohol abuse groups, also found positive results.<sup>182</sup> That study found that the program led to a 48% decrease in drink driving recidivism over a four-year period. The program was also correlated with a 54% reduction in rearrests for driving on a revoked or suspended licence, and a 39% reduction for all other traffic violations over the same period.<sup>183</sup>

#### Question 6.7: Intensive supervision programs

How could the intensive supervision of repeat traffic offenders be improved?

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178. T L Freiburger and A M Sheeran, “Evaluation of Safe Streets Treatment Option to Reduce Recidivism Among Repeat Drunk Driving Offenders” (2018) *Criminal Justice Policy Review* 1, 5-6.

179. T L Freiburger and A M Sheeran, “Evaluation of Safe Streets Treatment Option to Reduce Recidivism Among Repeat Drunk Driving Offenders” (2018) *Criminal Justice Policy Review* 1, 11.

180. T L Freiburger and A M Sheeran, “Evaluation of Safe Streets Treatment Option to Reduce Recidivism Among Repeat Drunk Driving Offenders” (2018) *Criminal Justice Policy Review* 1, 11–12.

181. T L Freiburger and A M Sheeran, “Evaluation of Safe Streets Treatment Option to Reduce Recidivism Among Repeat Drunk Driving Offenders” (2018) *Criminal Justice Policy Review* 1, 13.

182. S C Lapham and others, “Impaired-Driving Recidivism Among Repeat Offenders Following an Intensive Court-Based Intervention” (2006) 38 *Accident Analysis and Prevention* 162, 163.

183. S C Lapham and others, “Impaired-Driving Recidivism Among Repeat Offenders Following an Intensive Court-Based Intervention” (2006) 38 *Accident Analysis and Prevention* 162, 166.

## 7. Communities requiring special attention

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### In brief

There are a number of communities that are disproportionately impacted by traffic laws, in particular those that result in licence suspension or driver disqualification. These communities include remote and regional communities, young people, and Aboriginal people. We ask what changes should be made to traffic law so that it works effectively for these communities.

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- 7.1 Preliminary submissions to this review raise issues about the disproportionate impact of our traffic laws on particular communities. These communities include remote and regional communities, young people, and Aboriginal people. The impact of the laws is compounded when individuals fall within more than one such community; for example, young Aboriginal people living in remote areas.
- 7.2 Members of these groups have been identified as having a relatively higher risk of committing further traffic offences. A 2012 NSW Bureau of Crimes Statistics and Research study of a sample of 9,633 participants in the Blacktown Traffic Offender Program found that, after adjusting for all other variables in a logistic regression model, the following characteristics were associated with an increased risk of committing a new traffic offence:
- being aged between 16 and 20 years
  - living in a disadvantaged area
  - having one or more convictions for violence, theft, drug offences and traffic offences in the 5 years before the index (relevant) offence

## CP Repeat traffic offenders

- having more concurrent offences, and
- being an Aboriginal person<sup>1</sup> (“but only in so far as having unknown Indigenous status was associated with lower odds of reconviction”).<sup>2</sup>

7.3 In particular, there is concern about the impact of the regulation of unauthorised driving and the driver disqualification regime. The Legislative Assembly Law and Safety Committee has previously considered the impact of disqualification on vulnerable communities, especially the impact on individuals living in regional, rural and remote areas, Aboriginal communities, and young people.<sup>3</sup> Reforms to the *Road Transport Act 2013* (NSW), introduced late in 2017,<sup>4</sup> are likely to result in shorter, but still lengthy, periods of disqualification.

7.4 In the past decade, the NSW Auditor-General has published performance audits on improving road safety for young drivers,<sup>5</sup> and improving legal and safe driving among Aboriginal people.<sup>6</sup> The Auditor-General has said that a driver licence improves mobility, as well as access to health care, family, cultural and recreational activities, and general wellbeing.<sup>7</sup> In this sense, having a licence is a protective factor against a person offending. Conversely, not having access to transport can be criminogenic (that is, likely to cause criminal behaviour).

7.5 One preliminary submission says that care needs to be taken, when devising initiatives, to account for the needs of various communities:

Deterrence initiatives need to clearly identify offenders, such as Aboriginal juveniles or offenders in country locations, and the reasons leading to their reoffending, such as a lack of access to licenced drivers and therefore lessons that would enable them to obtain licences, and a lack of transport/entertainment options.<sup>8</sup>

### Question 7.1: Communities requiring special attention

What communities, in addition to those listed in Chapter 7, might require special attention when dealing with driving offences?

## Remote and regional communities

7.6 The link between driving and employment is stronger in remote and regional communities. In 2011, 74% of NSW residents who travelled to work used a car. In

1. While we generally refer to “Aboriginal people” in this paper we are referring to both Aboriginal people and Torres Strait Islanders.
2. P Rourke and C Jones, *Risk of Reconviction Among Offenders who Commence the Blacktown Traffic Offender Program*, Bureau Brief No 81 (NSW Bureau of Crime Statistics and Research, 2012) 6.
3. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.21]-[3.61].
4. *Road Transport Amendment (Driver Licence Disqualification) Act 2017* (NSW) sch 1.
5. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011).
6. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013).
7. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013) 2.
8. NSW, Director of Public Prosecutions, *Preliminary Submission PTR16*, 2.

remote and regional areas the figure was 87%, most likely due to a lack of alternative transport options.<sup>9</sup>

- 7.7 The Legislative Assembly's Committee on Law and Safety noted the higher proportion of disqualified drivers in regional NSW compared with metropolitan areas. The higher rates were attributable, in part, to the higher chance of detection in small communities, but also to the greater need to drive in rural areas in order to access work and essential services:

In regional areas, public transport options may be limited, expensive or inconvenient. Long distances, without being able to drive, can make it impossible to get to work, school, university, difficult to buy food for the family, take children to school, see a doctor, or visit family and friends.<sup>10</sup>

- 7.8 In addition, rural and regional drivers often lack access to training, supervision, and licensing services.<sup>11</sup>
- 7.9 This potentially gives rise to a higher rate of "secondary offending".<sup>12</sup> Secondary offending occurs where a person continues to drive after licence suspension, leading to disqualification.<sup>13</sup> Generally, secondary offending occurs where the person needs to drive to reach essential services or work.<sup>14</sup>
- 7.10 While young people in regional and remote areas are more reliant on motor vehicles for transport than those in metropolitan areas, they have significantly less access to driver training and education.<sup>15</sup> In regional and remote areas, the consequences of not having a licence are potentially greater, leading to social isolation, unemployment, and negative health outcomes.<sup>16</sup> Further, people in remote and regional areas generally lack access to public transport, especially at night. This may be linked with an increase in the incidence of drink driving in these areas.<sup>17</sup>

### Approach of the courts

- 7.11 The courts have been inconsistent at times in their approach to recognising the problems of remote and regional communities.

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9. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013) 2.

10. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.37].

11. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.65].

12. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.31]-[3.37].

13. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.33].

14. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.34].

15. NSW, Joint Standing Committee on Road Safety (Staysafe), *Report on Young Driver Safety and Education Programs*, Report 1/54 (2008) [4.1].

16. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.37].

17. NSW, Joint Standing Committee on Road Safety (Staysafe), *Report on Young Driver Safety and Education Programs*, Report 1/54 (2008) [4.15].

## CP Repeat traffic offenders

- 7.12 In one example in the District Court, the judge, when sentencing an offender to a term of imprisonment, was careful to impose a “modest” period of disqualification so as to avoid a significant impact on an offender’s rehabilitation prospects:

I presume [the offender] will return to the Orange area. I presume he will seek to obtain work in the mining industry. I presume he will do everything he can to support his family. If he does not have a licence, he will not be able to do that and that can further impede his capacity for rehabilitation.<sup>18</sup>

- 7.13 This is contrary to Court of Criminal Appeal (“CCA”) authority that takes the view that the automatic disqualification period should generally apply in most cases, including in relation to drivers who live and work in remote and regional communities.<sup>19</sup>
- 7.14 One preliminary submission suggests that the absence of public transport in remote and regional areas should provide a greater incentive for drivers to obey the law and avoid suspension/disqualification.<sup>20</sup>

### Question 7.2: Remote and regional communities

What changes should be made so that traffic law operates effectively for people in remote and regional communities?

## Young people

- 7.15 Transport accidents are a leading cause of death and injury for young people. In NSW, 14% of all young people aged 15–24 years who died in 2017 were car occupants injured in transport accidents; the highest percentage of any age group.<sup>21</sup> The introduction and refinement of graduated licensing schemes across Australia has reduced the number of 15–24 year olds killed on the roads, however more needs to be done.<sup>22</sup> Juvenile Justice has advised that, in the past 12 months, it has been supervising 179 young people involved with traffic offences – including dangerous driving, motor vehicle theft and driving without a licence. The young people were undergoing community-based supervision or detained in custody under a control order. In both situations, caseworkers delivered a cognitive behavioural program to challenge offending behaviours.<sup>23</sup>

## Approach of courts to sentencing young people

- 7.16 The courts will generally not allow the fact that an offender was under 18 years of age to mitigate a sentence for a serious driving offence. This is different from the approach that courts usually take to young offenders, where the purposes of retribution and general deterrence are given less weight in favour of rehabilitation.<sup>24</sup>

18. *R v Ferry* [2014] NSWDC 64 [18].

19. See [3.22]-[3.24]

20. N Smith, *Preliminary Submission PTR11*, 1.

21. Australian Bureau of Statistics, *Causes of Death, New South Wales, 2017*, 3303.0 (2018) table 2.3.

22. See [1.71]-[1.73].

23. Juvenile Justice, *Preliminary Submission PTR18*, 1.

24. In accordance with *Children (Criminal Proceedings) Act 1987* (NSW) s 6.

The CCA has observed the general rule that youth can only operate in mitigation of a sentence fully in cases where “the circumstances of a particular juvenile offender, and the circumstances of a particular offence, indicate that general deterrence and retribution ought to play a lesser role”.<sup>25</sup>

- 7.17 In one case involving dangerous driving causing death, the CCA rejected evidence about the immaturity of 17-year-old males as irrelevant, noting that:

If a young male is old enough to be licensed to drive a motor vehicle, he is to be assumed to be mature enough to comply with its conditions and the traffic rules.<sup>26</sup>

- 7.18 In similar case, the CCA observed that the fact that young men may have little appreciation of their own mortality, may be constitutionally incapable of taking responsibility or may see themselves as invincible, is “a significant reason” to give prominence to general deterrence.<sup>27</sup> Further, the CCA added:

Inexperience and immaturity, in persons aged 17 years and over, cannot operate as mitigating factors where the offender commits grave driving offences, with fatal consequences.<sup>28</sup>

### Jurisdiction of the Children’s Court

- 7.19 The Children’s Court does not have jurisdiction over the majority of traffic offences. Summary traffic offences arising under the road transport legislation are excluded from the Children’s Court jurisdiction unless:

- the traffic offence arose out of the same circumstances as another offence charged before the Children’s Court, or
- the person, at the time of the offence, was not old enough to obtain a licence or permit to drive a motor vehicle.<sup>29</sup>

- 7.20 Only the more serious, indictable offences arising under the *Crimes Act 1900* (NSW) (“*Crimes Act*”) fall within the Children’s Court’s jurisdiction.<sup>30</sup> Table 7.1 shows that the Children’s Court deals with the police pursuit offence (first offence) most frequently of all the *Crimes Act* driving offences.

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25. *SBF v R* [2009] NSWCCA 231; 198 A Crim R 219 [143]; *IE v R* [2008] NSWCCA 70; 183 A Crim R 150 [16].

26. *TG v R* [2010] NSWCCA 28 [33].

27. *SBF v R* [2009] NSWCCA 231; 198 A Crim R 219 [151].

28. *SBF v R* [2009] NSWCCA 231; 198 A Crim R 219 [151].

29. *Children (Criminal Proceedings) Act 1987* (NSW) s 28(2).

30. *Children (Criminal Proceedings) Act 1987* (NSW) s 3 definition of “traffic offence”.

Table 7.1: *Crimes Act 1900* (NSW) principal driving offences dealt with by the Children’s Court, April 2014-March 2018

Offence	Number
Police pursuit (first offence): s 51B(1)	157
Police pursuit (second or subsequent offence): s 51B(1)	17
Dangerous driving causing death: s 52A(1)	4
Dangerous driving causing GBH: s 52A(3)	13
Aggravated dangerous driving causing GBH: s 52A(4)	4
Injuries by furious driving etc: s 53	6

Source: Judicial Commission of NSW, *Judicial Information Research System, Sentencing Statistics*.

### Performance audit report

- 7.21 A 2011 performance audit report observed the significant reduction in crash and fatality rates for young people, which coincided with the introduction of the current graduated licensing system.<sup>31</sup> However, the report noted that crash and fatality rates involving young drivers remain disproportionately high, and most of the reduction in fatalities had occurred in metropolitan areas.<sup>32</sup>
- 7.22 The audit performance report also noted that a graduated licensing system would not change the behaviour of the “small minority of young people who drive recklessly” unless they “perceive a real risk of being caught and penalised”.<sup>33</sup> The report observed:

The high-risk behaviour of some young drivers contributes to the relatively high crash rate. The most common behavioural factor for young drivers is speeding and around 80 per cent of those killed are male. Provisional drivers constitute around seven per cent of licensees but are responsible for 18 per cent of speeding infringements greater than 30km/h and 22 per cent of speeding infringements in excess of 45km/h. Some young drivers rapidly accumulate demerit points and those who commit traffic offences, especially speeding fines, have a significantly higher risk of subsequent crash involvement. ...

Excessive alcohol consumption can also be a problem for young drivers. The highest percentage of alcohol related fatal crashes in Australia are in the 21 to 29 years age group. In NSW, people under 26 years of age comprise 39 per cent of drink drivers involved in fatal crashes (2005–2009 data).<sup>34</sup>

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31. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 10.

32. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 10–11.

33. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 13.

34. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 21.



- 7.23 In the report's view, there was a need for "additional programs and sanctions" for these drivers.<sup>35</sup> Some sanctions and programs already available at the time of the report included specific penalties for Provisional 1 drivers, lower thresholds for demerit points, and the Sober Driver Program.<sup>36</sup>
- 7.24 The report suggested that the government should consider compulsory in-vehicle monitoring through intelligent speed adaptation systems<sup>37</sup> for both young and older serious and repeat speeding offenders, pointing to their effectiveness in improving driver compliance with speed limits and reducing crashes.<sup>38</sup>
- 7.25 The report also suggested that consideration should be given to further sanctions for serious and repeat offenders, including:
- heavier fines, suspensions and/or restrictions for provisional drivers caught speeding or drink driving with passengers in the car
  - psychological testing for provisional drivers returning from disqualification/suspension
  - compulsory participation in a traffic offenders program and/or a sober driver program for suspended provisional drivers, including training courses and alcohol interlock programs
  - doubling the length of the second suspension during the provisional licence phase, and
  - penalising passengers (as well as provisional drivers) for breaches of passenger restrictions including overloading.<sup>39</sup>

### Suggestions for reform

- 7.26 Juvenile Justice, in its preliminary submission, highlights the need for an early intervention for young people to gain a licence lawfully and thereby reduce future traffic offending.<sup>40</sup> It draws attention to the Driving Change program.<sup>41</sup>
- 7.27 The Shopfront Youth Legal Centre submitted to the Legislative Assembly's Committee on Law and Safety that the Children's Court should be able to deal with all driving offences committed by young people, so that they can be dealt with in a manner "proportionate to their circumstances".<sup>42</sup>

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35. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 13.

36. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 22.

37. [6.59]-[6.77].

38. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 22.

39. NSW Auditor-General, *Improving Road Safety: Young Drivers*, Performance Audit Report (2011) 22.

40. Juvenile Justice, *Preliminary Submission PTR18*, 2.

41. [7.42]-[7.45].

42. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.53].

## CP Repeat traffic offenders

- 7.28 The Shopfront Youth Legal Centre also submitted that mandatory disqualification should not apply to children, and that courts should retain discretion over whether to order disqualification for a young person, as well as the disqualification period.<sup>43</sup>
- 7.29 Juvenile Justice suggests that current programs could be part of a young offender's supervision and that, for example, specific places could be reserved for young offenders in the Safer Drivers Course. The costs of the course compares favourably with the daily cost of keeping detainees in custody.<sup>44</sup>
- 7.30 One preliminary submission suggests introducing a school based driver education program in order to affect behaviour and attitudes before a person may drive.<sup>45</sup>

### Question 7.3: Young people

What changes should be made so that traffic law operates effectively for young people?

## Aboriginal people

- 7.31 Aboriginal people are under-represented among NSW drivers. Transport for NSW reports that, in 2014, Aboriginal people made up 2% of the eligible driver population but represented only 0.5% of all licensed drivers.<sup>46</sup>
- 7.32 Many factors contribute to this underrepresentation, including access to proof of identity documents, literacy or language issues, costs and fees associated with licencing, access to service providers in regional and remote areas, and unresolved state debts leading to licence sanctions.<sup>47</sup> Another significant barrier to licencing for Aboriginal drivers is access to learner driver supervisors to reach the required 120 hours of supervised driving.<sup>48</sup>
- 7.33 Unlicensed driving is the most common offence faced by Aboriginal people in regional areas, making up 80% of the traffic charges faced.<sup>49</sup> These unlicensed driving offences can then have the additional effect of making them ineligible for employment opportunities.<sup>50</sup>
- 7.34 A 2014 analysis in the NSW Aboriginal Road Safety Action Plan of the profile of Aboriginal licence holders compared with non-Aboriginal licence holders in NSW also found that:

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43. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.52].

44. Juvenile Justice, *Preliminary Submission PTR18*, 2-3.

45. M Lonergan, *Preliminary Submission PTR12*, 1.

46. Transport for NSW, *NSW Aboriginal Road Safety Action Plan 2014–2017* (2014) 12.

47. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.9].

48. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.9].

49. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.27].

50. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.30].

- their average age was 34 years (46 years for non-Aboriginal people)
  - 43% held a learner or provisional licence (13% for non-Aboriginal people), partly due to the high proportion of young people in the Aboriginal population, but also possibly due to difficulties in progressing through the graduated licensing scheme
  - there were 3.7 Aboriginal unrestricted licence holders to every Aboriginal learner licence holder (15.7 non-Aboriginal licence holders to every non-Aboriginal learner licence holder)
  - they are significantly less likely to own a vehicle of any type
  - they are substantially less likely to have passed the driver knowledge test at the first attempt
  - they are more likely to pass the practical driving test
  - they are nearly three times more likely to have had a driver sanction imposed offence in the last three years, and
  - they are three times more likely to have their driver licences suspended for fine default and 10 times more likely to have a court imposed licence disqualification.<sup>51</sup>
- 7.35 Further, 12% of Aboriginal drivers found guilty of a traffic offence receive a jail sentence as compared with 5% for non-Aboriginal drivers.<sup>52</sup> More than 14% of those sentenced for unauthorised driving, and almost a third of those imprisoned for unauthorised driving identified as Aboriginal.<sup>53</sup>
- 7.36 This data illustrates a lack of access to private transport compared with the rest of the community. In remote and regional communities, a lack of public transport can have a particular impact on access to community services and health care.<sup>54</sup> It can also put people at risk because a motor vehicle might be the only available transport.
- 7.37 The NSW Legislative Assembly's Committee on Law and Safety has observed that the disproportionate effects of unauthorised driving sanctions are particularly acute for Aboriginal communities.<sup>55</sup>
- 7.38 Table 7.2 shows the number of Aboriginal men and women, on 30 June 2016, serving sentences of imprisonment whose most serious offence was a traffic or vehicle regulatory offence, or the dangerous or negligent operation of a vehicle. Compared with all driving offenders, the figures show a generally higher proportion of Aboriginal offenders serving sentences for driving offences.

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51. Transport for NSW, *NSW Aboriginal Road Safety Action Plan 2014-2017* (2014) 12.

52. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.14].

53. NSW, *Parliamentary Debates*, Legislative Assembly, 12 September 2017, 37.

54. See, eg, NSW, Legislative Assembly Committee on Community Services, *Access to Transport for Seniors and Disadvantaged People in Rural and Regional NSW*, Report 1/56 (2016) [3.39]–[3.41], [3.44].

55. NSW Legislative Assembly, Committee on Law and Safety, *Driver Licence Disqualification Reform*, Report 3/55 (2013) [3.38].

Table 7.2: Sentenced offenders whose most serious offence was a driving offence, 30 June 2016

Offences	All offenders	Male Aboriginal offenders	Female Aboriginal offenders
Traffic and vehicle regulatory offences	325 (2.6%)	86 (3.2%)	8 (2.6%)
Dangerous or negligent operation of a vehicle	293 (2.3%)	74 (2.7%)	9 (2.9%)
All offences	12623	2726	309

Source: S Corben, NSW Inmate Census 2016: Summary of Characteristics, *Statistical Publication No 45 (Corrective Services NSW, 2017)* 6, 22.

- 7.39 In 2017, the Joint Standing Committee on Road Safety found that the criminal justice system has a serious impact on Aboriginal driving offenders but that these issues were outside the scope of its review.<sup>56</sup> Further, the committee recommended a review to formulate a scheme to reduce Aboriginal driving offending and incarceration rates.<sup>57</sup>

### Existing programs

- 7.40 The government has funded driver licensing access programs aimed at Aboriginal communities.

#### *Learning to drive handbook*

- 7.41 In 2016, Austroads published *Learning to Drive*, a handbook, written in plain English, designed to improve licensing outcomes for Aboriginal people living in remote communities. It has also been employed in urban communities and migrant communities.

#### *Driving Change program*

- 7.42 Driving Change, a licensing support program that works with Aboriginal communities at a number of locations around NSW, aims to ensure that more Aboriginal people can obtain and keep a driver licence. The program can help with:

- Getting your birth certificate
- Finding information about how to get your license
- Booking your L's test
- Preparing for L's tests and learning road rules
- Finding driving instructors

56. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.36].

57. NSW, Joint Standing Committee on Road Safety (Staysafe), *Driver Education, Training and Road Safety*, Report 3/56 (2017) [4.42] rec 17.

- Completing log book hours
  - Booking a P's test
  - Preparing for a P's test
  - Help setting up payment plans with State Debt for fines
  - Find alternative ways to pay fines and lift suspensions.<sup>58</sup>
- 7.43 In 2016, the Legislative Assembly Committee on Community Services considered that the program should be continued, noting, “[a]ccess to private transport is critical to rural and remote Aboriginal Communities, and to reducing the disadvantage experienced by many people in these communities”.<sup>59</sup> The Committee recommended that Transport for NSW, subject to evaluation, should expand the program “to provide more opportunities for Aboriginal people in rural and regional communities”.<sup>60</sup>
- 7.44 A process evaluation of 984 clients at 11 sites showed that the 247 people who had supervised driving practice were 2.4 times more likely to get an independent licence. In addition, people who received high levels of case management were 1.8 times more likely to progress to an independent licence than those who received low levels of case management.<sup>61</sup> The impact of supervised driving practice is particularly important since over half the program participants lived in a household that had no licensed driver.
- 7.45 Juvenile Justice suggests that there should be an exploration of the feasibility of using the Driving Change program alongside the cognitive behaviour interventions and intensive case management provided by Juvenile Justice staff or as part of a diversionary program.<sup>62</sup>

### *Driver Licensing Access Program*

- 7.46 The Driver Licensing Access Program is funded from the Community Road Safety Fund and delivered by Roads and Maritime Services on behalf of Transport for NSW. It aims to help Aboriginal people and others “get and keep their driver licence and remain safe and legal drivers”.<sup>63</sup>
- 7.47 The Program engages service providers across NSW to deliver a range of “driver licensing access services and culturally appropriate support and resources” including:
- Literacy, numeracy and computer skills

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58. “Driving Change: Licensing Support Program” (2018) <[www.drivingchange.com.au/](http://www.drivingchange.com.au/)> (retrieved 7 November 2018).

59. NSW, Legislative Assembly Committee on Community Services, *Access to Transport for Seniors and Disadvantaged People in Rural and Regional NSW*, Report 1/56 (2016) [3.50].

60. NSW, Legislative Assembly Committee on Community Services, *Access to Transport for Seniors and Disadvantaged People in Rural and Regional NSW*, Report 1/56 (2016) rec 10.

61. P Cullen and others, “Communities Driving Change: Evaluation of an Aboriginal Driver Licensing Programme in Australia” (2017) *Health Promotion International* 1, 4.

62. Juvenile Justice, *Preliminary Submission PTR18*, 2.

63. NSW, Roads and Maritime Services, “Driver Licensing Access Program” (28 February 2018) <[www.rms.nsw.gov.au/roads/licence/driver/driver-licence-access-program/index.html](http://www.rms.nsw.gov.au/roads/licence/driver/driver-licence-access-program/index.html)> (retrieved 7 November 2018).

## CP Repeat traffic offenders

- Licensing enrolment support
  - Learner driver mentoring and supervision
  - Access to roadworthy vehicles
  - Debt negotiation and management
  - Road safety education and coaching.<sup>64</sup>
- 7.48 The service providers also mentor individuals through the licensing system, facilitate employment through driving skills and community networking, and help people to access other driver licensing and road safety programs.

### Proposals for reform

- 7.49 Over the past 30 years, a number of reviews have made relevant findings and recommendations— all of them relatively consistent.

#### *Royal Commission into Aboriginal Deaths in Custody (1991)*

- 7.50 The Royal Commission into Aboriginal Deaths in Custody identified motor vehicle offences as one of the categories of offences which have a “quite unnecessary effect on recidivism”. The Commission considered that it must be possible “to devise programs which would reduce, at the outset, the incidence of people failing to obtain a driving licence”. Given the “very serious extent” of road traffic deaths and injuries on outback roads, the Commission considered that “a program of driver education (whether administered in or out of prison) would also be a very sensible community investment”.<sup>65</sup>
- 7.51 The Commission recommended that offenders should be able to perform community service work by “pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending”.<sup>66</sup> The Commission also recommended:

That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organisations, programs be designed to reduce that incidence of offending.<sup>67</sup>

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64. NSW, Roads and Maritime Services, “Driver Licensing Access Program” (28 February 2018) <[www.rms.nsw.gov.au/roads/licence/driver/driver-licence-access-program/index.html](http://www.rms.nsw.gov.au/roads/licence/driver/driver-licence-access-program/index.html)> (retrieved 7 November 2018).

65. Australia, *Royal Commission into Aboriginal Deaths in Custody*, National Report (1991) vol 3 [22.3.11].

66. Australia, *Royal Commission into Aboriginal Deaths in Custody*, National Report (1991) vol 3 rec 94.

67. Australia, *Royal Commission into Aboriginal Deaths in Custody*, National Report (1991) vol 3 rec 95.

*Auditor-General's performance audit report (2013)*

- 7.52 In 2013, the NSW Auditor-General released a performance audit report on improving legal and safe driving among Aboriginal people.<sup>68</sup>
- 7.53 The Audit Office identified a number of barriers that Aboriginal people encounter when trying to obtain a driver licence, including:
- a critical shortage of supervising drivers for learners – non-Aboriginal learner drivers have 4.6 times more access to supervising drivers than Aboriginal learner drivers;
  - poorer literacy and numeracy skills which contribute to lower pass rates for the driver knowledge test, with 57% of Aboriginal people passing on their first attempt, compared with 74% of non-Aboriginal people
  - the lack of birth certificates as proof of identity to obtain a licence, and
  - the layout, location and hours of operation of motor registries.<sup>69</sup>
- 7.54 The Auditor-General also found:
- Aboriginal peoples' driver licences are suspended for fine default at over three times the rate of non-Aboriginal people<sup>70</sup>, and
  - in 2011, 12% of Aboriginal people found guilty of a driver licence offence were imprisoned, compared with 5% of non-Aboriginal people.<sup>71</sup>
- 7.55 The Auditor-General made the following recommendations:
1. The NSW Government should support Aboriginal people to get a driver licence by:
    - a) improving access to a birth certificate
    - b) assisting Aboriginal people pass the driver knowledge test
    - c) assisting Aboriginal people complete supervised driving hours
    - d) improving the access and quality of driver licensing programs
  2. The NSW Government should support Aboriginal people to retain or regain a driver licence by:
    - a) expanding and promoting Work and Development Orders
    - b) developing and promoting diversionary and sentencing options for "driver licence" offenders.<sup>72</sup>

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68. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013).

69. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013) 3.

70. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013) 3.

71. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013) 4.

### *Austroads projects*

- 7.56 Austroads is the peak organisation of Australasian road transport and traffic agencies. It has a number of recent and ongoing projects aimed at driver licensing for Aboriginal people. These deal with many of the issues identified in the Auditor-General's report.
- 7.57 In 2017, Austroads released *The Forrest Review: Driver Licensing and Barriers to Indigenous Economic Participation*. This review noted that good behaviour licences (in the case of demerit point loss) and time to pay options for fines that allow people to continue to drive are offered relatively uniformly across Australia.<sup>73</sup> The report finds that there may be scope for State and Territory Governments to raise awareness and improve access to these options for Aboriginal people.<sup>74</sup>
- 7.58 The review also noted that some Australian jurisdictions offer conditional licences to drivers for whom a court-ordered suspension or disqualification would cause hardship, such as loss of employment. These conditional licences are sometimes referred to as "locked licences". The review recommends that all Australian jurisdictions "introduce a consistent approach to issuing 'provisional' locked licences for people who are unable to drive due to unpaid fines or other traffic infringements, so that they can get and keep a job by being able to drive".<sup>75</sup> This recommendation aims to address barriers to employment experienced by Aboriginal people whose driver licences are sanctioned because of unpaid fines.
- 7.59 Austroads has a current project aimed at improving driver licensing programs for Aboriginal road users. This project recognises that access to driver licensing can affect employment and education opportunities, social and economic participation and access to services. This project will identify barriers that prevent Aboriginal people and others from getting and keeping a driver licence. It will link and share information that will help improve access to driver licensing.<sup>76</sup>

#### **Question 7.4: Aboriginal people**

What changes should be made so that traffic law operates effectively for Aboriginal people?

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72. NSW Auditor-General, *Improving Legal and Safe Driving Among Aboriginal People*, Performance Audit Report (2013) 5.

73. A Masterman, *The Forrest Review: Driver Licensing and Barriers to Indigenous Economic Participation*, Research Report AP-R537-17 (Austroads, 2017) 9.

74. A Masterman, *The Forrest Review: Driver Licensing and Barriers to Indigenous Economic Participation*, Research Report AP-R537-17 (Austroads, 2017) 9.

75. A Masterman, *The Forrest Review: Driver Licensing and Barriers to Indigenous Economic Participation*, Research Report AP-R537-17 (Austroads, 2017) rec 15.

76. Austroads, "Improving Driver Licensing Programs for Indigenous Road Users and Transitioning Learnings to Other User Groups, Project No SRL6042" (2018) <[www.austroads.com.au/projects/project?id=SRL6042](http://www.austroads.com.au/projects/project?id=SRL6042)> (retrieved 7 November 2018).



## Appendix A: Preliminary submissions

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PTR01	Kevin Saul (27 April 2018)
PTR02	Enough is Enough (8 May 2018)
PTR03	Nan Cowling (18 May 2018)
PTR04	Max Bancroft (18 May 2018)
PTR05	Mark Ehrman (18 May 2018)
PTR06	Sally Page (18 May 2018)
PTR07	Melia Sutton (18 May 2018)
PTR08	Helen Manning (18 May 2018)
PTR09	(Confidential) (19 May 2018)
PTR10	(Name withheld) (20 May 2018)
PTR11	Nathan Smith (21 May 2018)
PTR12	Mark Lonergan (24 May 2018)
PTR13	Margaret Bloor (28 May 2018)
PTR14	(Confidential) (6 June 2018)
PTR15	Amy Gillett Foundation (8 June 2018)
PTR16	NSW Director of Public Prosecutions (12 June 2018)
PTR17	Chief Magistrate of the NSW Local Court (13 June 2018)
PTR18	Juvenile Justice NSW (25 June 2018)
PTR19	Pedestrian Council of Australia (30 June 2018)



## Appendix B: Offences data

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## Manslaughter

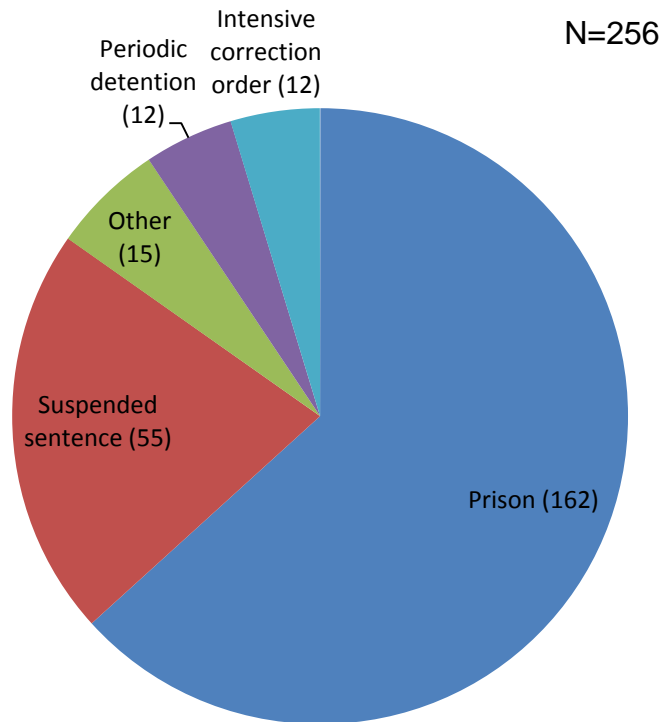
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Table B.1: Sentences imposed (with licence disqualification) by NSW higher courts for manslaughter as a principal offence, January 2008-December 2017

Sentence date	Full term	Non-parole period	Disqualification
18-Jul-2017	16 years	12 years	3 years
12-Sep-2014	10 years	7 years 6 months	9 years
8-Feb-2013	9 years	6 years	10 years
26-Mar-2010	8 years 3 months	4 years 9 months	8 years
3-Jul-2017	8 years	5 years 6 months	3 years
29-Feb-2012	7 years	4 years	5 years

## Dangerous driving causing death

Figure B.1: Penalties imposed by NSW higher courts for dangerous driving causing death as a principal offence, January 2008-December 2017

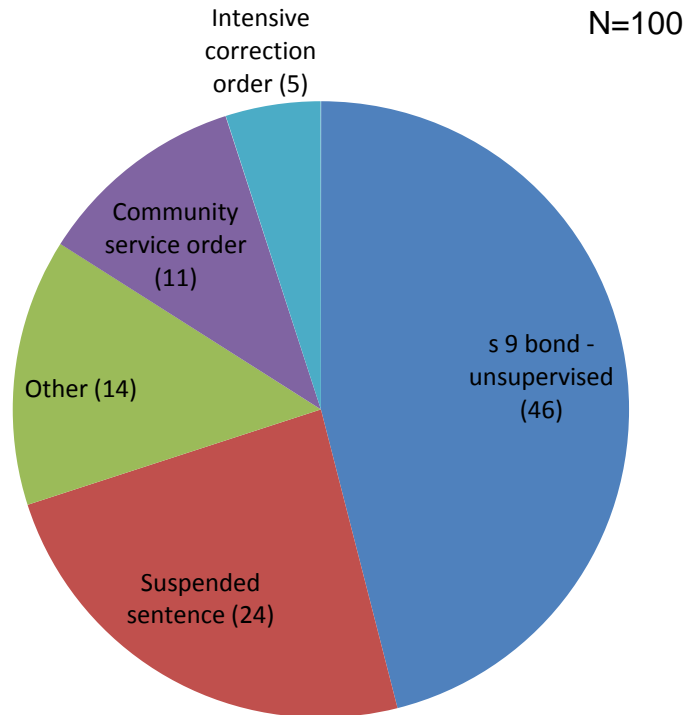


*Other: Home detention (2); Community service order (5); s 9 bond (8)*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

## Negligent driving causing death

Figure B.2: Penalties imposed by the Local Court of NSW for negligent driving causing death as a principal offence (first offence) April 2014- March 2018

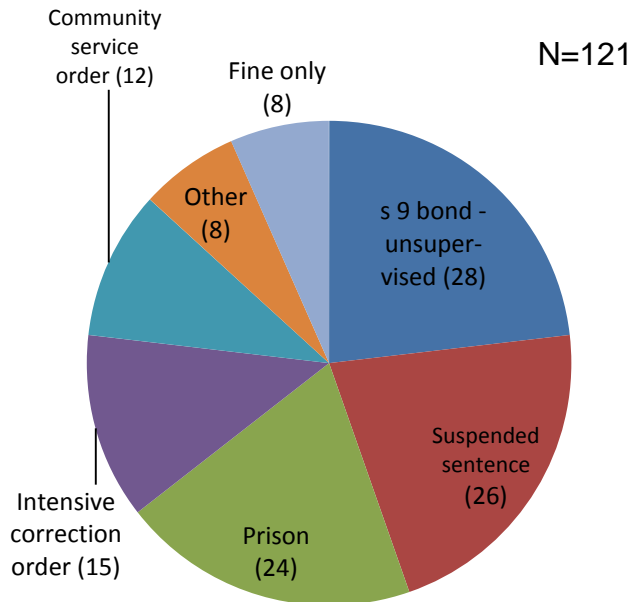


*Other: Imprisonment (2); Home detention (2); s 9 bond - supervised (3); Fine only (2); Conviction only (2); s 10 bond (3).*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

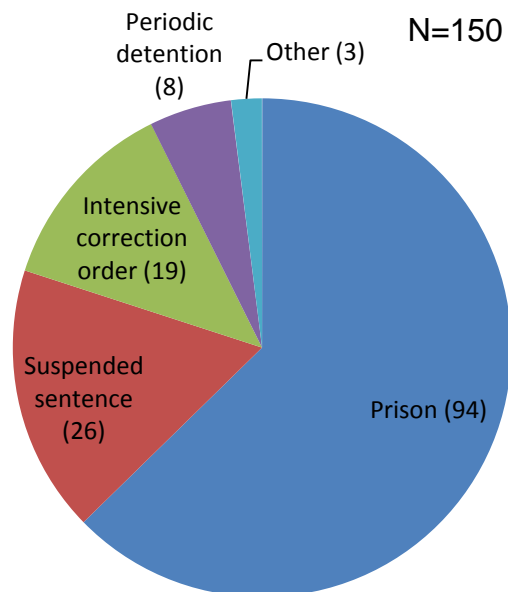
## Dangerous driving causing grievous bodily harm

Figure B.3: Penalties imposed by the Local Court of NSW for dangerous driving causing grievous bodily harm as a principal offence, April 2014-March 2018



*Other: Home detention (3); s 9 bond - supervised (3); Conviction only s 10A (1); s 10 bond (1)*  
 Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B.4: Penalties imposed by NSW higher courts for dangerous driving causing grievous bodily harm as a principal offence, January 2008-December 2017



*Other: Home detention (2); s 9 bond - unsupervised (1)*  
 Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

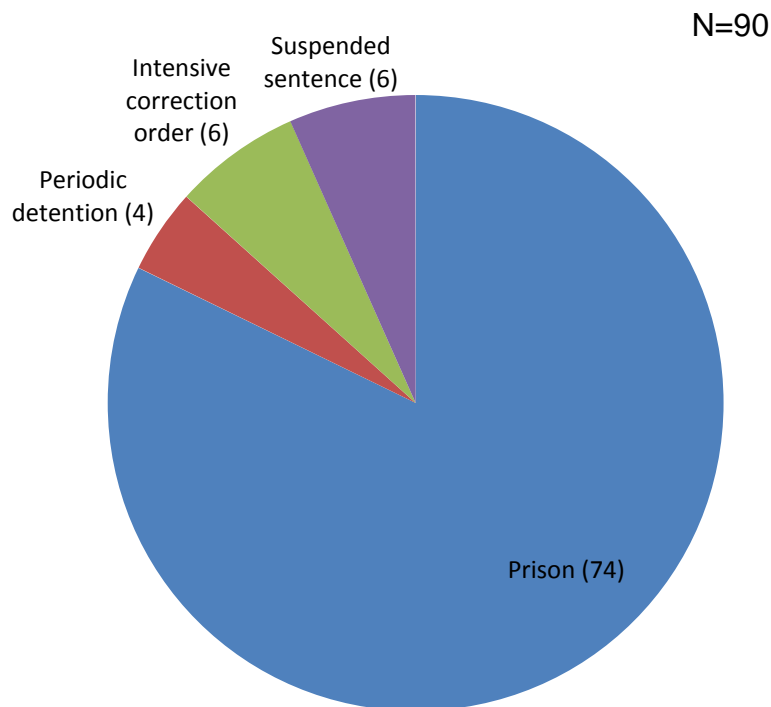
## Aggravated dangerous driving causing grievous bodily harm

Table B.2: Penalties imposed by the Local Court of NSW for aggravated dangerous driving causing grievous bodily harm as a principal offence, April 2014-March 2018

Penalty	Number			
	Prescribed concentration of alcohol	45+ kmph over limit	Escape police pursuit	Other drug
Imprisonment	4	3	1	0
Home detention	0	0	0	0
Intensive correction order	1	0	0	0
Suspended sentence	0	0	0	1
<b>Total</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>1</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

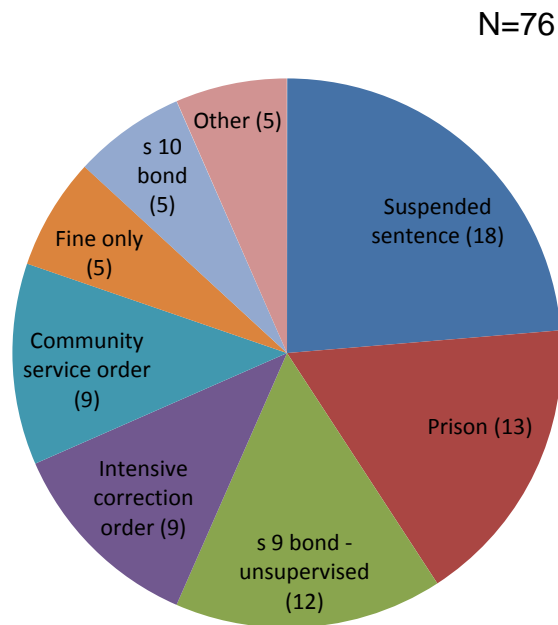
Figure B.5: Penalties imposed by NSW higher courts for aggravated dangerous driving causing grievous bodily harm as a principal offence, January 2008-December 2017



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## Bodily harm by furious driving

Figure B.6: Penalties imposed by the Local Court of NSW for bodily harm by furious driving, etc as a principal offence, April 2014-March 2018



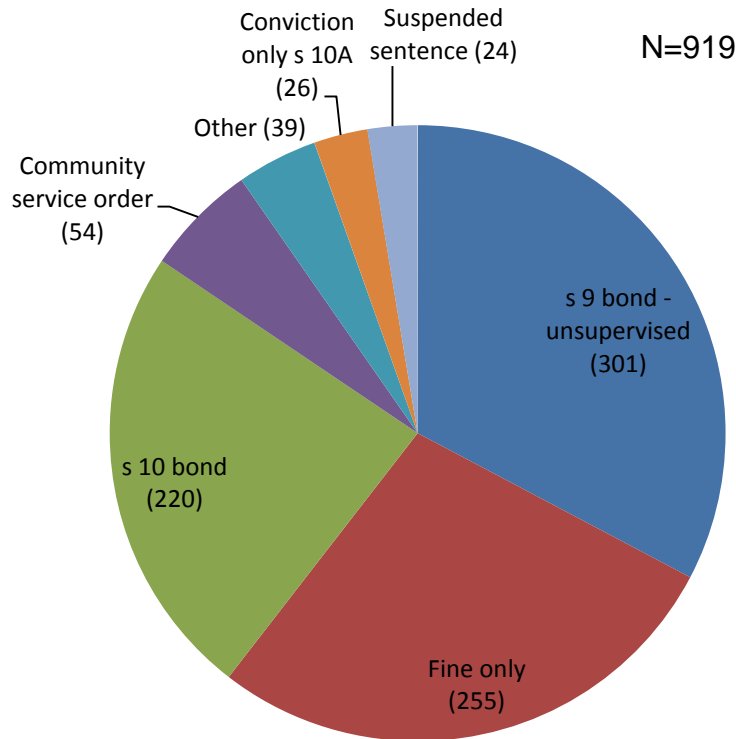
*Other: s 9 bond - supervised (4); Home detention (1).*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*



## Negligent driving causing grievous bodily harm

Figure B.7: Penalties imposed by Local Court of NSW for negligent driving causing grievous bodily harm as a principal offence (first offence) April 2014-March 2018

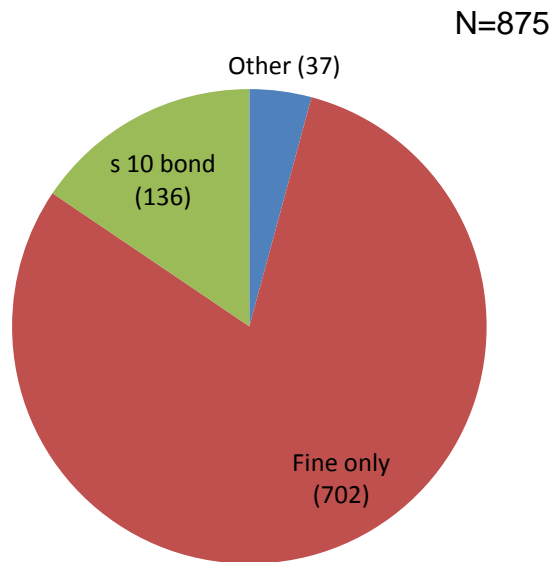


*Other: Imprisonment (10); Home detention (2); Intensive correction order (3); s 9 bond - supervised (13); Dismissal - no conviction (11)*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

## Speeding

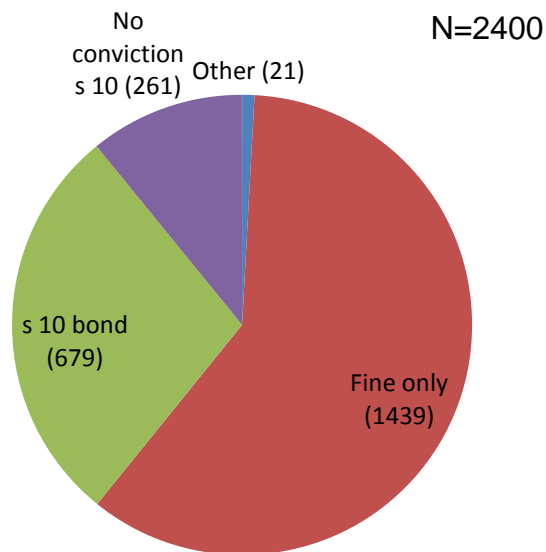
Figure B.8: Penalties imposed by Local Court of NSW for exceeding speed limit by more than 45km/h as a principal offence, April 2014-March 2018



*Other:* Conviction only s 10A (9); Dismissal s 10 (26). 2 s 9 bonds were either recorded in error or were beyond jurisdiction for the offence.

*Source:* Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B9: Penalties imposed by Local Court of NSW for exceeding speed limit by more than 30km/h as a principal offence, April 2014-March 2018



*Other:* Conviction only s 10A (20). One s 9 bond was either recorded in error or was beyond jurisdiction for the offence.

*Source:* Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

**Table B.3: Fine amounts imposed by the Local Court of NSW for exceeding the speed limit by more than 30km/h as a principal offence, January 2014-December 2017**

Fine amount	more than 45km/h					more than 30km/h			
	Not a heavy vehicle or coach	Heavy vehicle or coach	Not a heavy vehicle or coach (school zone)	Total	Percentage of fines imposed	Motor vehicle	Motor vehicle (school zone)	Total	Percentage of fines imposed
Up to \$500	62	0	1	63	10%	414	8	422	32.2%
\$501-\$1000	177	4	0	181	29%	805	8	813	61.9%
\$1001-\$2000	222	2	2	226	36%	62	8	70	5.3%
\$2001-\$3000	157	0	3	160	25%	2	0	2	0.2%
\$5000<	0	0	0	0	0%	5	0	5	0.4%
<b>Total</b>	<b>618</b>	<b>6</b>	<b>6</b>	<b>630</b>	<b>100%</b>		<b>24</b>	<b>1312</b>	<b>100%</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Note that the amounts above \$5000 in relation to offences of exceeding the speed limit by more than 30km/h were imposed on corporations.

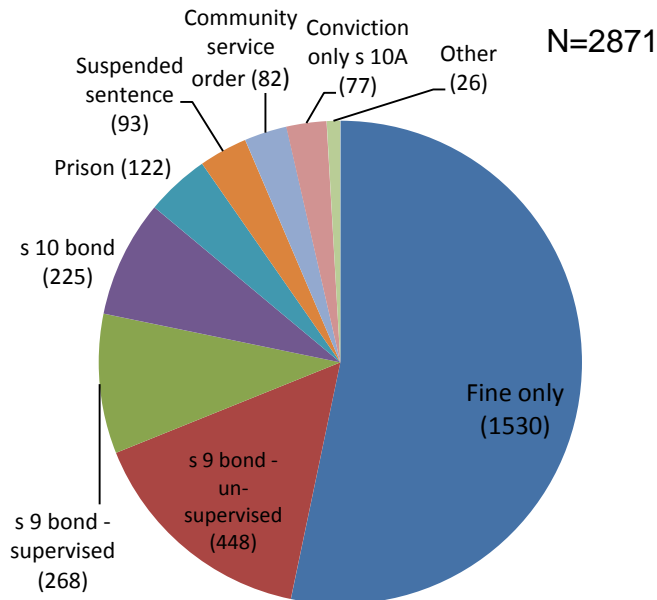
**Table B.4: Penalty notices issued for exceeding the speed limit by more than 30km/h**

Financial year	More than 45km/h			More than 30km/h		
	Police detected	Camera detected	Total	Police detected	Camera detected	Total
2013-2014	2180	436	2616	10017	1833	11850
2014-2015	2201	485	2686	9911	2079	11990
2015-2016	2484	540	3024	11210	2441	13651
2016-2017	2458	672	3130	11526	2782	14308
2017-2018	2342	759	3101	10856	3084	13940

Source: Revenue NSW

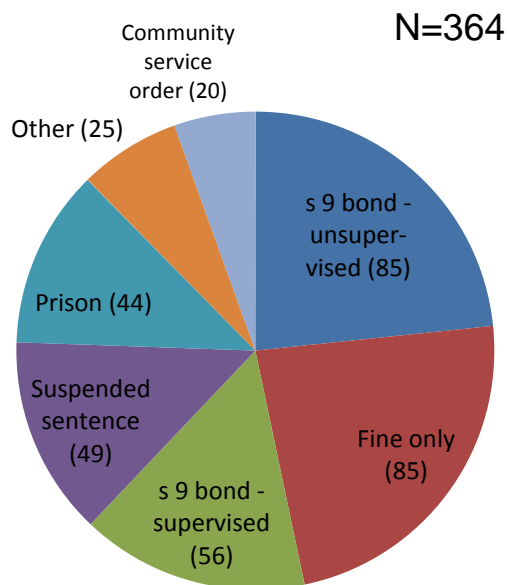
## Driving under the influence

Figure B.10: Penalties imposed by Local Court of NSW for driving under the influence of alcohol or any other drug as a principal offence (first offence) April 2014-March 2018



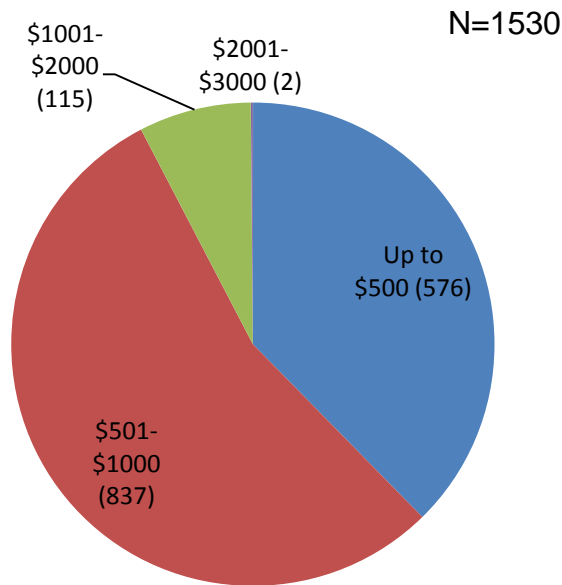
Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B.11: Penalties imposed by Local Court of NSW for driving under the influence of alcohol or any other drug as a principal offence (second or subsequent offence) April 2014-March 2018



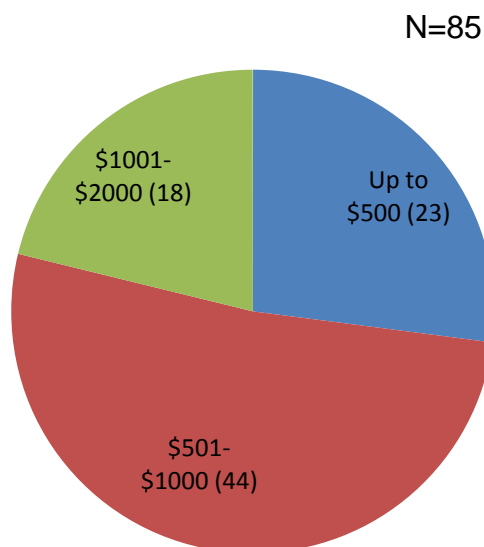
Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B.12: Fine amounts imposed by Local Court of NSW for driving under the influence of alcohol or any other drug as a principal offence (first offence) April 2014-March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

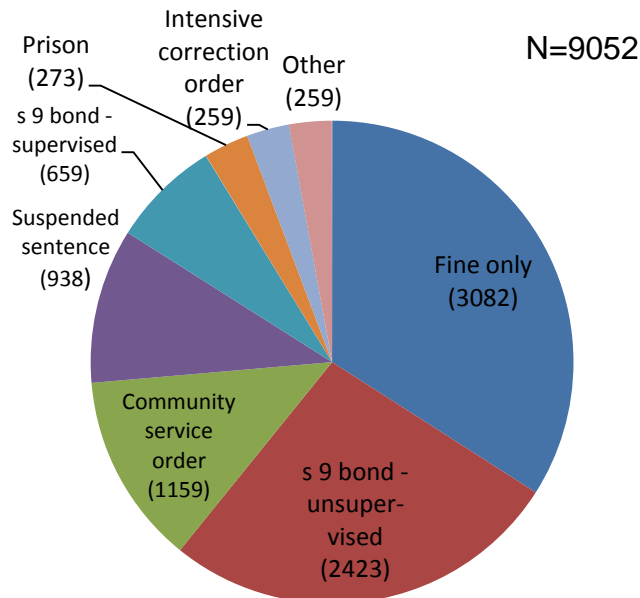
Figure B.13: Fine amounts imposed by Local Court of NSW for driving under the influence of alcohol or any other drug as a principal offence (second or subsequent offence) April 2014-March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

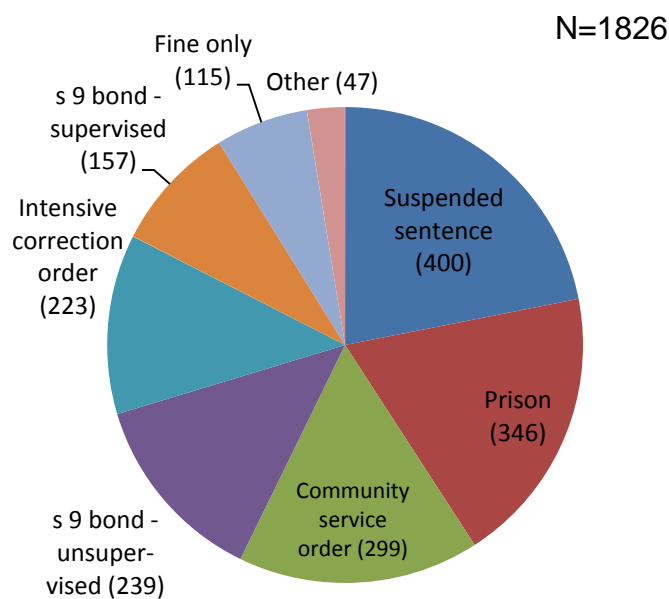
## Driving with a prescribed concentration of alcohol

Figure B.14: Penalties imposed by the Local Court of NSW for driving with high range PCA as a principal offence (first offence) January 2014-December 2017



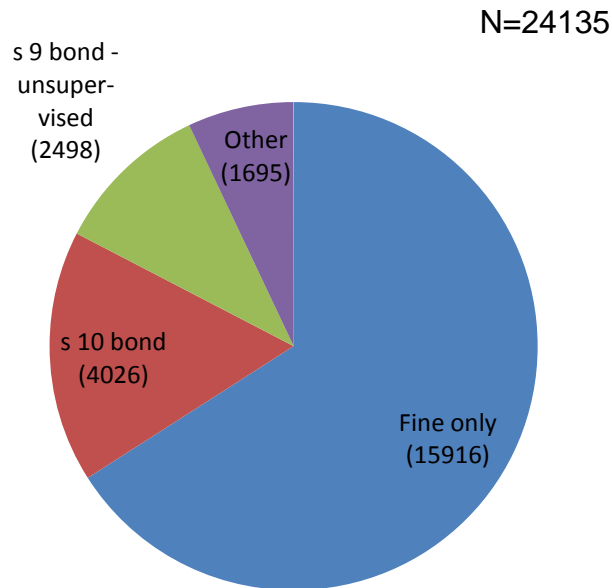
*Other: Conditional discharge s 10 (145); Conviction only s 10A (58); Home detention (51); Dismissal s 10 (5).*  
*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

Figure B.15: Penalties imposed by the Local Court of NSW for driving with high range PCA as a principal offence (second or subsequent offence) January 2014-December 2017



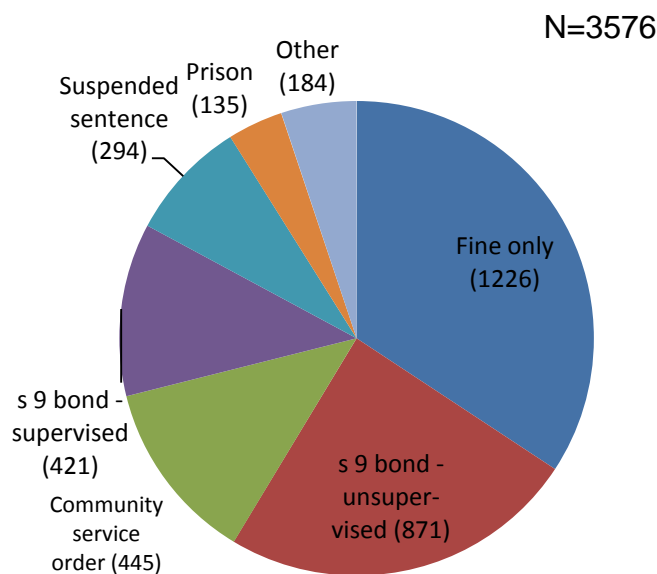
*Other: Home detention (43); Conviction only s 10A (2); Conditional discharge s 10(2).*  
*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

Figure B.16: Penalties imposed by the Local Court of NSW for driving with middle range PCA as a principal offence (first offence) January 2014-December 2017



*Other: s 9 bond - supervised (558); Community service order (438); Conviction only s 10A (232); Suspended sentence (229); Imprisonment (84); No charge s 10 (84); Intensive correction order (56); Home detention (14).*  
 Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

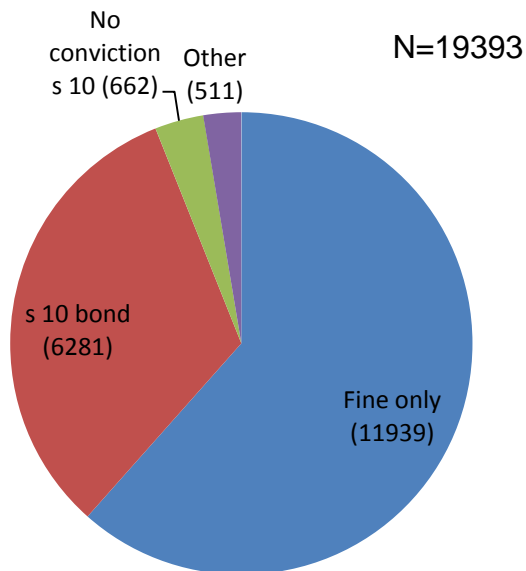
Figure B.17: Penalties imposed by Local Court of NSW for driving with middle range PCA as a principal offence (second or subsequent offence) January 2014-December 2017



*Other: Intensive correction order (78); s 10 bond (71); Home detention (18); Conviction only s 10A (14); No conviction s 10 (2); Raising of the court (1).*  
 Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## Driving with presence of any other drug

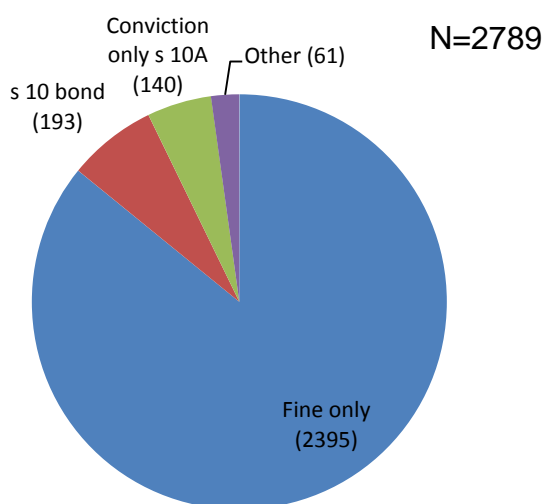
Figure B.18: Penalties imposed by Local Court of NSW for driving with presence of prescribed drug as a principal offence (first offence) April 2014-March 2018



*Other: Conviction only s 10A (422). 86 s 9 bonds and 3 community service orders were either recorded in error or were beyond jurisdiction for the offence.*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

Figure B.19: Penalties imposed by Local Court of NSW for driving with presence of prescribed drug as a principal offence (second or subsequent offence) April 2014-March 2018

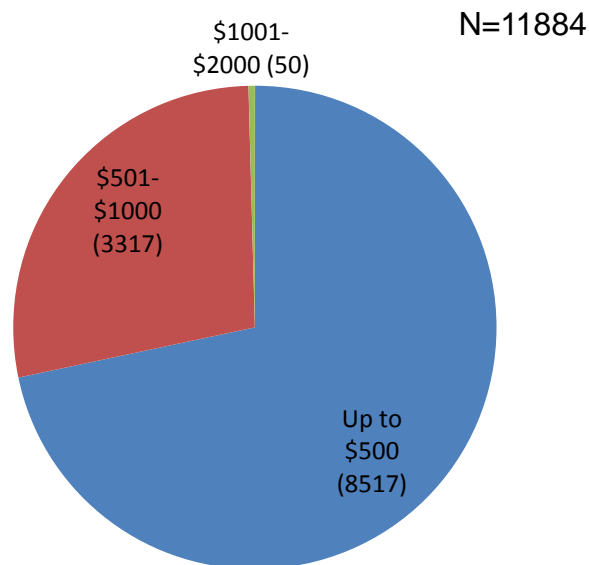


*Other: Dismissal s 10 (5). 53 s 9 bonds and 3 community service orders were either recorded in error or were beyond jurisdiction for the offence.*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics..*

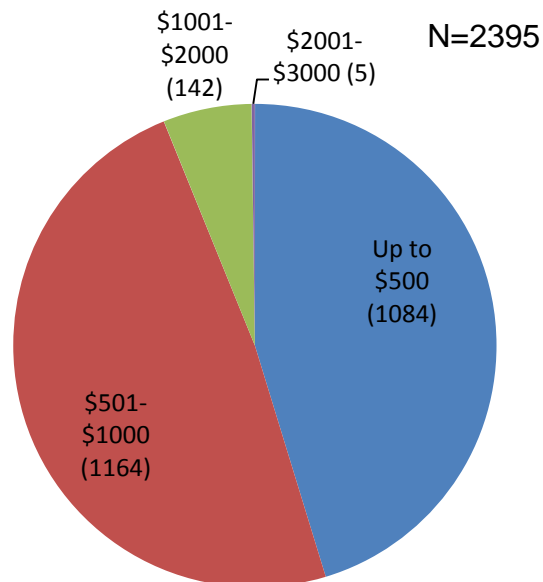


Figure B.20: Fines imposed by Local Court of NSW for driving with presence of prescribed drug as a principal offence (first offence) April 2014-March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B.21: Fines imposed by Local Court of NSW for driving with presence of prescribed drug as a principal offence (second or subsequent offence) April 2014-March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## Fatigue

**Table B.5: Penalties imposed by the Local Court of NSW for work/rest time infringements as a principal offence, April 2014-March 2018**

Penalty	Severe risk breach		Critical risk breach	
	No	%	No	%
Fine only	691	77%	2652	81%
s 10A	19	2%	51	2%
s 10 Bond	39	4%	142	4%
s 10 Dismissal	153	17%	433	13%
<b>Total</b>	<b>902</b>	<b>100%</b>	<b>3278</b>	<b>100%</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

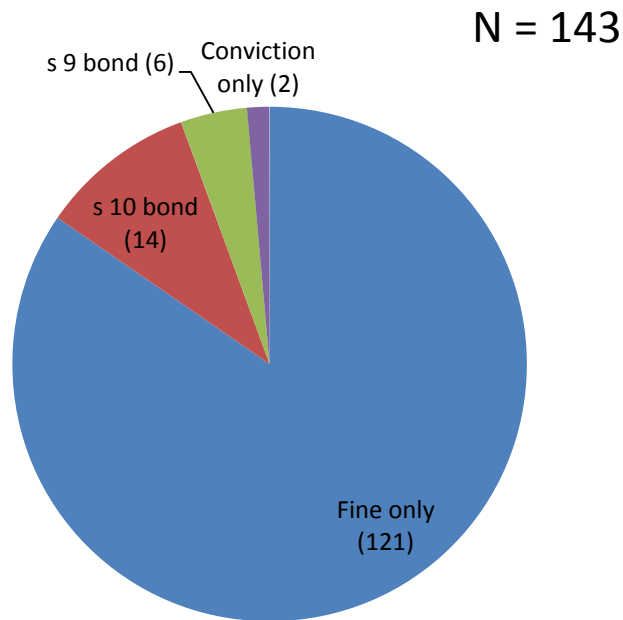
**Table B.6: Fines imposed by the Local Court of NSW for work/rest time infringements as a principal offence, April 2014-March 2018**

Fine amount	Severe risk breach		Critical risk breach	
	No	%	No	%
Up to \$500	213	31%	752	28%
\$501-\$1000	267	39%	1003	38%
\$1001-\$2000	164	24%	650	24%
\$2001-\$3000	25	4%	171	6%
\$3001-\$4000	7	1%	29	1%
\$4001-\$5000	2	<1%	31	1%
\$5001-\$6000	2	<1%	6	<1%
\$6001-\$7000	0	-	3	<1%
\$7001-\$8000	1	<1%	1	<1%
\$8001-\$9000	0	-	1	<1%
\$9001-\$10,000	0	-	4	<1%
\$10,001-\$12,500	0	-	1	<1%
<b>TOTAL</b>	<b>681</b>	<b>100%</b>	<b>2652</b>	<b>100%</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

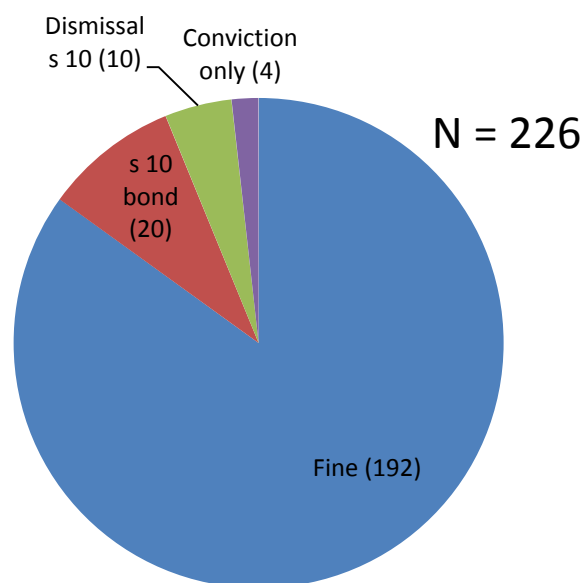
## Racing and other activities

Figure B.22: Penalties imposed by the Local Court of NSW for racing offences as a principal offence (first offence) April 2014 – March 2018



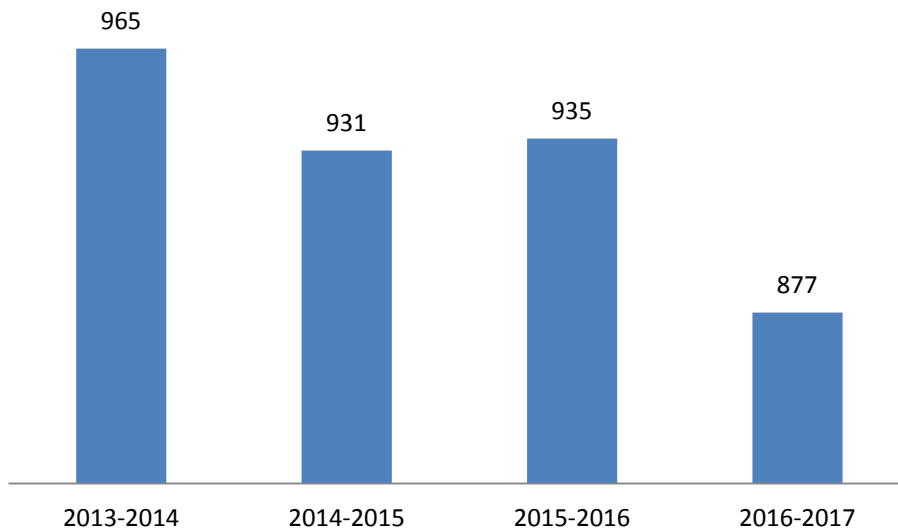
Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B.23: Penalties imposed by the Local Court of NSW for drag racing as a principal offence, April 2014-March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

Figure B.24: Penalty notices issued for drag racing, 2013-14 – 2016-17



Source: Revenue NSW

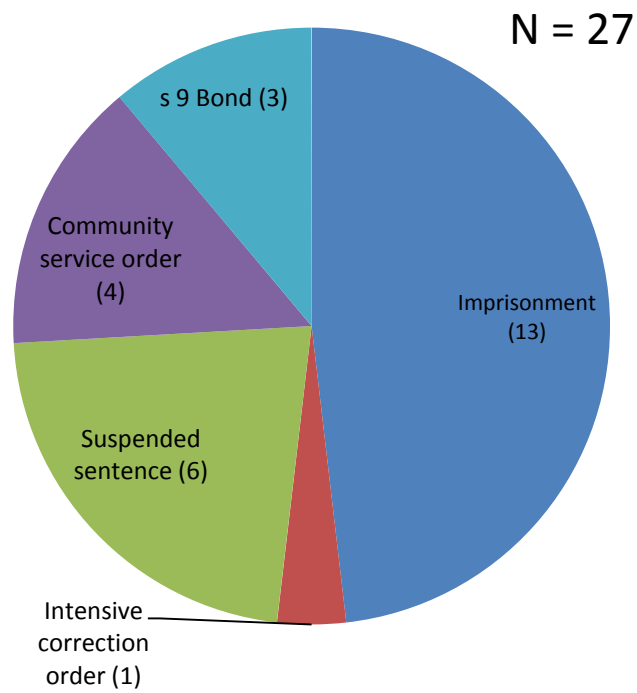
Table B.7: Penalties imposed by the Local Court of NSW for aggravated road and drag racing offences as a principal offence, April 2014-March 2018

Penalty	(2)(a) Operate vehicle with oil/petrol etc under tyre(s)		(2)(b) Prolong, sustain etc loss of traction		(2)(c) Repeatedly operate vehicle in prohibited way		(2)(d) Interfere with person's enjoyment or risk safety		Total	
	1st offence	2nd+ offence	1st offence	2nd+ offence	1st offence	2nd+ offence	1st offence	2nd+ offence	1st offence	2nd+ offence
Suspended sentence	0	0	0	1 (11%)	0	0	0	0	0	1 (9%)
Community service order	0	0	0	2 (22%)	0	0	0	1 (100%)	0	3 (27%)
Bond s 9	0	0	0	3 (33%)	0	1 (100%)	0	0	0	4 (36%)
Fine	3 (100%)	0	164 (75%)	2 (22%)	7 (78%)	0	45 (94%)	0	219 (79%)	2 (18%)
Conviction only s 10A	0	0	5 (2%)	0	0	0	1 (2%)	0	6 (2%)	0
s 10 bond	0	0	46 (21%)	1 (11%)	2 (22%)	0	2 (4%)	0	50 (18%)	1 (9%)
s 10 dismissal	0	0	3 (1%)	0	0	0	0	0	3 (1%)	0
<b>TOTAL</b>	<b>3</b>	<b>0</b>	<b>218</b>	<b>9</b>	<b>9</b>	<b>1</b>	<b>48</b>	<b>1</b>	<b>278</b>	<b>11</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics

## Predatory driving

Figure B.25: Penalties imposed by the Local Court of NSW for predatory driving as a principal offence, April 2014-March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## Menacing driving

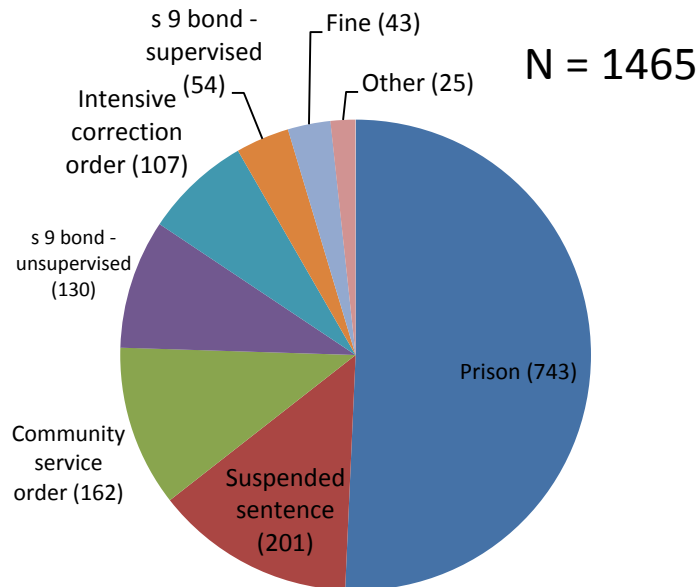
Table B.8: Penalties imposed by the Local Court of NSW for menacing driving as a principal offence, April 2014-March 2018

Penalty	Intent to menace: s 118(1)		Possibility of menace: s 118(2)	
	1st offence	2nd+ offence	1st offence	2nd+ offence
Imprisonment	7 (6%)	1 (20%)	11 (8%)	1 (17%)
Home detention	1 (1%)	0	0	0
Intensive correction order	11 (10%)	1 (20%)	3 (2%)	1 (17%)
Suspended sentence	17 (15%)	1 (20%)	12 (8%)	1 (17%)
Community service order	19 (17%)	0	13 (9%)	1 (17%)
Bond s 9 (supervised)	4 (3%)	1 (20%)	6 (4%)	0
Bond s 9 (unsupervised)	30 (26%)	1 (20%)	33 (24%)	1 (17%)
Fine only	16 (14%)	0	43 (32%)	1 (17%)
Conviction only s 10A	0	0	1 (1%)	0
Bond s 10	9 (8%)	0	14 (10%)	0
<b>TOTAL</b>	<b>114</b>	<b>5</b>	<b>136</b>	<b>6</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## Police pursuits

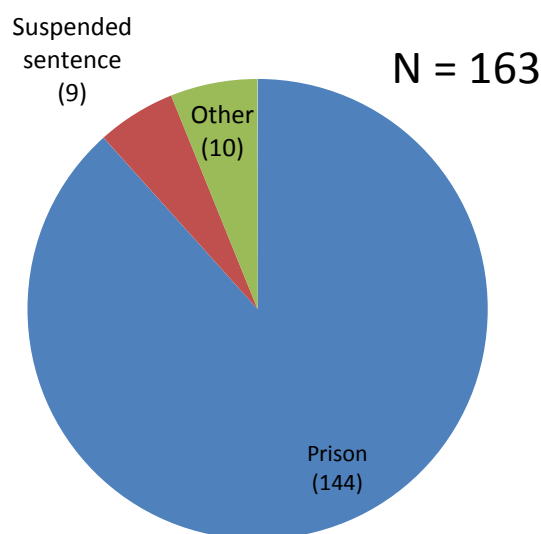
Figure B.26: Penalties imposed by the Local Court of NSW for police pursuits as a principal offence (first offence) April 2014-March 2018



*Other: home detention (13); s 10 bond (7); conviction only (4); s 10 dismissal (1)*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

Figure B.27: Penalties imposed by the Local Court of NSW for police pursuits as a principal offence (second or subsequent offence) April 2014-March 2018

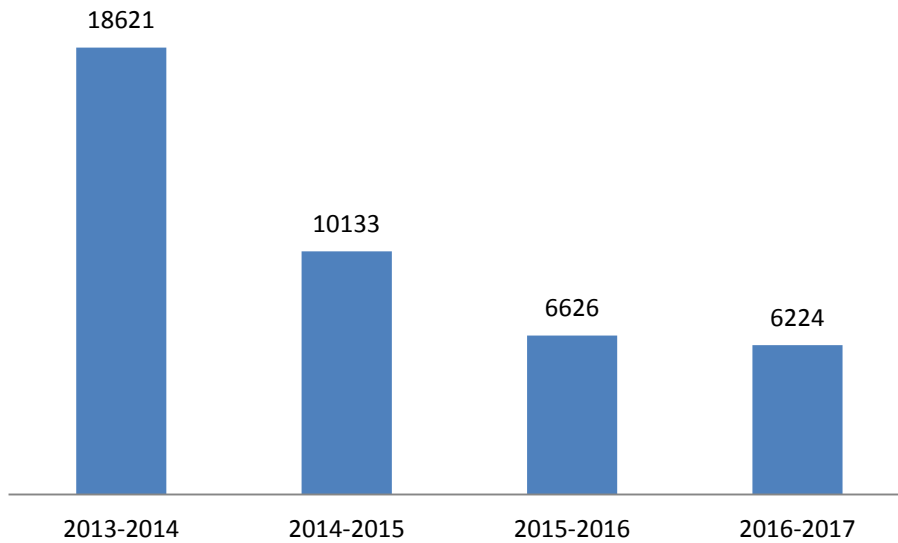


*Other: Intensive correction order (4); Community service order (4); s 9 bond – unsupervised (1); Fine (1).*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.*

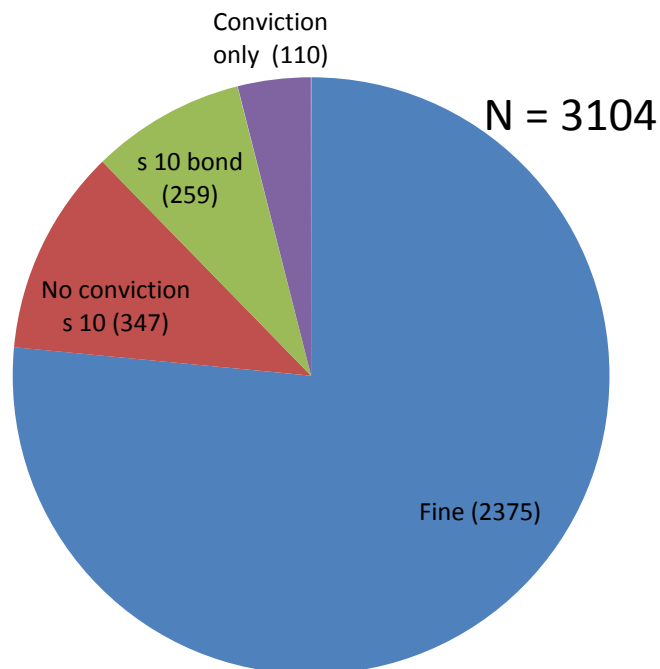
## Negligent driving

Figure B.28: Penalty notices issued for negligent driving 2013-14 – 2016-17



Source: Revenue NSW

Figure B.29: Penalties imposed by the Local Court of NSW for negligent driving, April 2014-March 2018

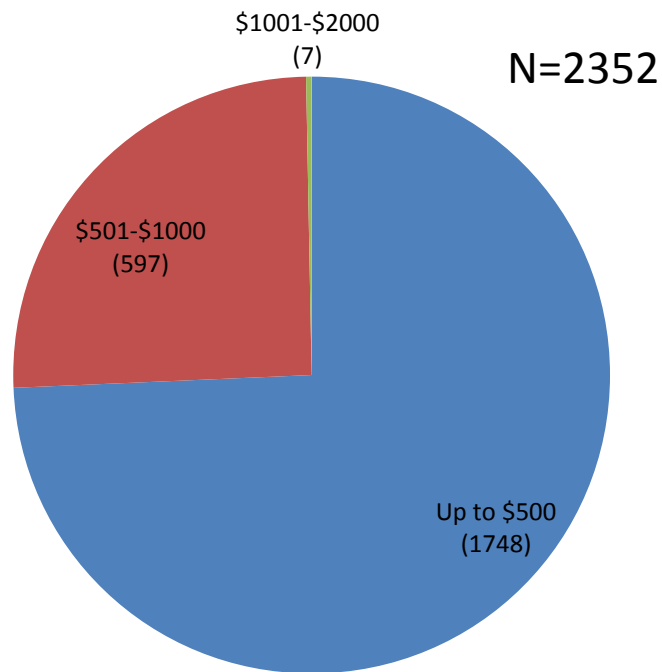


Other: Conviction only s 10A (110); s 9 bond (13)

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics



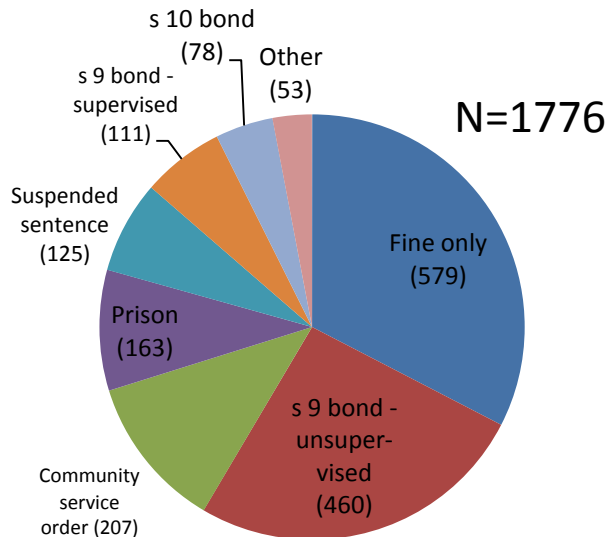
Figure B.30: Fines imposed for negligent driving as the principal offence, Local Court of NSW, April 2014- March 2018



Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## Reckless, furious or dangerous driving

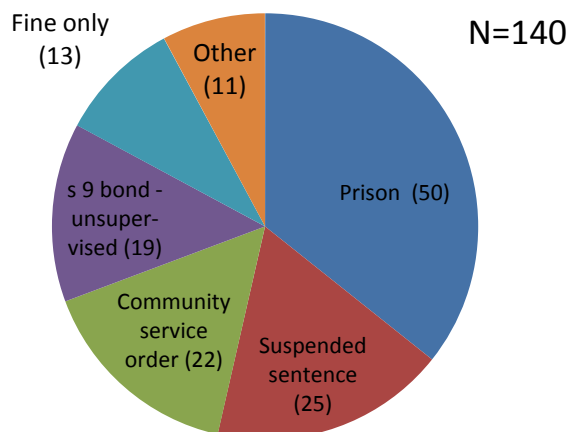
Figure B.31: Penalties imposed by the Local Court of NSW for reckless, furious or dangerous driving as a principal offence (first offence) April 2014-March 2018



*Other: Intensive correction order (32); Conviction only (17); Home detention (2); s 10 dismissal (2)*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics*

Figure B.32: Penalties imposed by the Local Court of NSW for reckless, furious or dangerous driving as a principal offence (second or subsequent offence) April 2014-March 2018



*Other: Intensive correction order (5); s 9 bond – supervised (4); Home detention (1); s 10 bond(1)*

*Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics*

## Using mobile telephone while driving

Table B.9: Penalties imposed by the Local Court of NSW for mobile telephone use as a principal offence

Penalty	Driver (April 2014-March 2018)		Learner or provisional licence holder (December 2016- March 2018)
	Not school zone	School zone	
Fine only	1470 (62%)	42 (69%)	90 (55%)
Conviction only s 10A	58 (2%)	1 (2%)	3 (2%)
Bond s 10	342 (14%)	4 (7%)	35 (21%)
Dismissal s10	494 (21%)	11 (18%)	36 (22%)
<b>TOTAL</b>	<b>2364</b>	<b>61</b>	<b>164</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

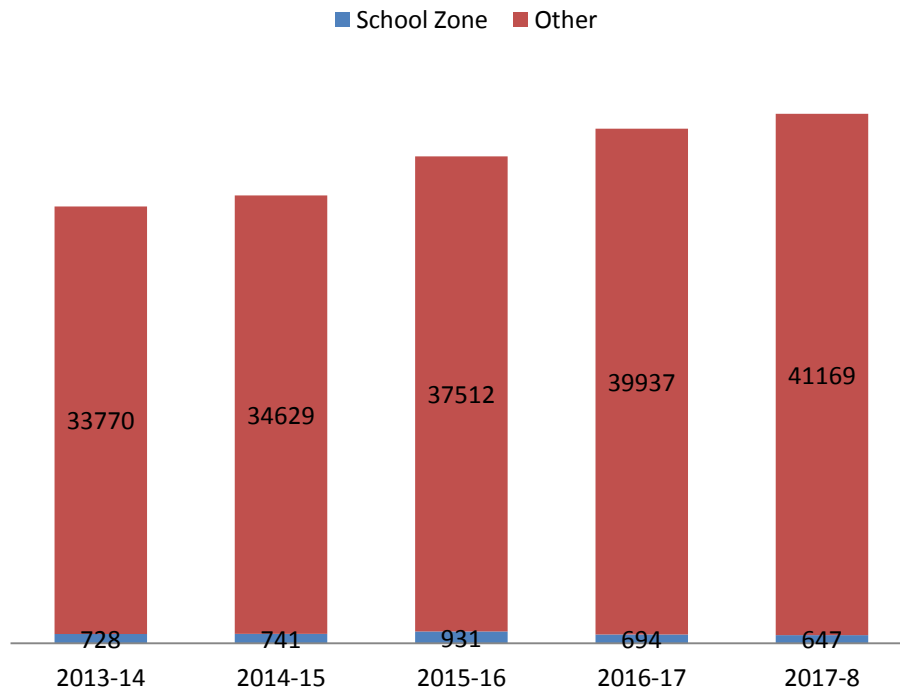
Table B.10: Fine amounts imposed by Local Court of NSW for mobile telephone use as a principal offence

Amount	Driver		Learner or provisional licence holder
	Not school zone	School zone	
Up to \$500	1339 (92%)	36 (86%)	85 (94%)
\$501-\$1000	122 (8%)	6 (14%)	5 (6%)
\$1001-\$2000	9 (1%)	0	0
<b>TOTAL</b>	<b>1470</b>	<b>42</b>	<b>90</b>

Source: Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

## CP Repeat traffic offenders

Figure B.33: Penalty notices issued for mobile telephone use while driving 2013-14 – 2017-18



Source: Revenue NSW.

## Appendix C: Automatic disqualification periods

Table C.1: Automatic disqualification for certain major offences - *Road Transport Act 2013* (NSW) s 205

Offence under <i>Road Transport Act 2013</i> (NSW)	Automatic disqualification period (no previous major offence)	Automatic disqualification period (previous major offence)
Novice drivers PCA offence s 110(1)	6 months Court may impose a longer period of disqualification OR a shorter period not less than 3 months	12 months Court may impose a longer period of disqualification OR a shorter period not less than 6 months
Special range PCA offence s 110(2)	6 months Court may impose a longer period of disqualification OR a shorter period not less than 3 months	12 months Court may impose a longer period of disqualification OR a shorter period not less than 6 months
Low range PCA offence s 110(3)	6 months Court may impose a longer period of disqualification OR a shorter period not less than 3 months	12 months Court may impose a longer period of disqualification OR a shorter period not less than 6 months
DUI offence s 111(1)	6 months Court may impose a longer period of disqualification OR a shorter period not less than 3 months	12 months Court may impose a longer period of disqualification OR a shorter period not less than 6 months
DUI – morphine s 111(3)	6 months Court may impose a longer period of disqualification OR a shorter period not less than 3 months	12 months Court may impose a longer period of disqualification OR a shorter period not less than 6 months
Middle range PCA offence s 110(4)	12 month Court may impose a longer period of disqualification OR a shorter period not less than 6 months	3 years Court may impose a longer period of disqualification OR a shorter period not less than 12 months
Refusing/failing to give blood sample sch 3 cl 17(1)(a)	3 years Court may impose a longer period of disqualification OR a shorter period not less than 6 months	5 years Court may impose a longer period of disqualification OR a shorter period not less than 12 months
Refusing/failing to provide oral fluid sample sch 3 cl 17(1)(b)	3 years Court may impose a longer period of disqualification OR a shorter period not less than 6 months	5 years Court may impose a longer period of disqualification OR a shorter period not less than 12 months

## CP Repeat traffic offenders

Offence under <i>Road Transport Act 2013</i> (NSW)	Automatic disqualification period (no previous major offence)	Automatic disqualification period (previous major offence)
Refusing/failing to provide urine sample cl 17(1)(c)	3 years Court may impose a longer period of disqualification OR a shorter period not less than 6 months	5 years Court may impose a longer period of disqualification OR a shorter period not less than 12 months
Wilfully introducing or altering concentration or amount of alcohol or other drugs sch 3 cl 18	3 years Court may impose a longer period of disqualification OR a shorter period not less than 6 months	5 years Court may impose a longer period of disqualification OR a shorter period not less than 12 months
for any other offence" s 205(1)(d) (see Table C.2 – major offences)	3 years Court may impose a longer period of disqualification OR a shorter period not less than 12 months	5 years Court may impose a longer period of disqualification OR a shorter period not less than 2 months

**Table C.2: Automatic disqualification for other Major offences not included in Table C.1- *Road Transport Act 2013* (NSW) s 205**

Major offence means:	Automatic disqualification period (no previous major offence)	Automatic disqualification period (previous major offence)
Causing of death arising out of the use of a motor vehicle, for which the offender is convicted of murder or manslaughter [para (a)(i)]	3 years Court may impose a shorter period not less than 12 months	5 years Court may impose a shorter period not less than 2 years
Causing of death or bodily harm arising out of the use of a motor vehicle, for which the offender is convicted of: <ul style="list-style-type: none"> <li>▪ wounding or grievous bodily harm with intent (<i>Crimes Act 1900</i> (NSW) s 33)</li> <li>▪ reckless grievous bodily harm or wounding (<i>Crimes Act 1900</i> (NSW) s 35)</li> <li>▪ injuries by furious driving (<i>Crimes Act 1900</i> (NSW) s 53); or</li> <li>▪ causing grievous bodily harm(<i>Crimes Act 1900</i> (NSW) s 54); or</li> <li>▪ any other provision of the <i>Crimes Act 1900</i> (NSW)</li> </ul> [para (a)(ii)]	3 years Court may impose a shorter period not less than 12 months	5 years Court may impose a shorter period not less than 2 years
Offence under <i>Crimes Act 1900</i> (NSW) for: <ul style="list-style-type: none"> <li>▪ predatory driving (s 51A)</li> <li>▪ police pursuits (s 51B)</li> <li>▪ failing to stop and assist after vehicle impact causing bodily harm (s 52AB)</li> </ul> [para (b)]	3 years Court may impose a shorter period not less than 12 months	5 years Court may impose a shorter period not less than 2 years

Major offence means:	Automatic disqualification period (no previous major offence)	Automatic disqualification period (previous major offence)
<p>Offences involving drugs or alcohol under <i>Road Transport Act 2013</i> (NSW):</p> <ul style="list-style-type: none"> <li>▪ high range PCA [s 110(4)(a) or (b)]</li> <li>▪ presence of prescribed drugs [s 111]</li> <li>▪ use or attempted use of vehicle under influence of drugs [s 112(1)(a) or (b)]</li> <li>▪ refusal or failure to submit to breath analysis, according to police officer's direction [sch 2 cl 16(1)(b)]</li> <li>▪ refusal or failure to provide samples or preventing sample taking when required to do so by police officer [sch 2 cl 17]</li> <li>▪ wilful introduction or alteration of concentration or amount of alcohol or other drugs' [sch 2 cl 18]</li> </ul> <p>[para (c), (d), (f)]</p>	<p>3 years</p> <p>Court may impose a shorter period not less than 12 months</p>	<p>5 years</p> <p>Court may impose a shorter period not less than 2 years</p>
<p>Other offences under the <i>Road Transport Act 2013</i> (NSW):</p> <ul style="list-style-type: none"> <li>▪ driving negligently occasioning death or grievous bodily harm [s 146]</li> <li>▪ driving furiously, recklessly or at a speed or in a manner dangerous to the public [s 117(2)]</li> <li>▪ menacing driving [<i>Road Transport Act 2013</i> (NSW) [s 118]</li> <li>▪ failing to stop and assist after impact causing injury [s 146]</li> <li>▪ offences of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, certain offences [see s 4(1) definition of "major offence" (a)-(f)]</li> <li>▪ any other crime or offence that was a 'major offence' under previous transports acts and traffic acts, at the time it was committed, [s 4(1) definition of "major offence" (g)]</li> </ul> <p>[para (e), (g)-(h)]</p>	<p>3 years</p> <p>Court may impose a shorter period not less than 12 months</p>	<p>5 years</p> <p>Court may impose a shorter period not less than 2 years</p>

Source: *Road Transport Act 2013* (NSW) s 4(1) – definition of major offence

## CP Repeat traffic offenders

Table C.3: Automatic disqualification for unauthorised driving offences - *Road Transport Act 2013 (NSW) s 205A*

Unauthorised Driving Offence <i>Road Transport Act 2013 (NSW)</i>	Default period of disqualification	Minimum period of disqualification (Court may not impose a shorter period)
Driving while never licenced (second or subsequent offence) s 53(3)	12 months Court may impose a longer period of disqualification	3 months
Driving while licence disqualified s 54(1)	6 months 12 month for second or subsequent offence Court may impose a longer period of disqualification	3 months
Driving while licence suspended s 54(3)	6 months 12 month for second or subsequent offence Court may impose a longer period of disqualification	3 months
Driving while licence refused or cancelled s 54(4)	6 months 12 month for second or subsequent offence) Court may impose a longer period of disqualification	3 months 6 month for second or subsequent offence
Driving while licence suspended or cancelled for non-payment of fines s 54(5)	3 months 12 month for second or subsequent offence Court may impose a longer period of disqualification	1 month 3 month for second or subsequent offence



Table C.4: Automatic disqualification for other offences

Offence	Default disqualification period	Court order
Exceeding speed limit by more than 30km/h <i>Road Rules 2014 (NSW) r 10-2(5)(b)</i>	3 months	Court may impose a longer period than the default automatic disqualification period
Exceeding speed limit by more than 45km/h <i>Road Rules 2014 (NSW) r 10-2(3)(b)</i>	6 months	The court may impose a longer period of disqualification.  Court can only reduce the default disqualification period if the offender has also received a suspension period and the total of the suspension period and disqualification period is not shorter than 6 months
Organising, promoting or taking part in road race, speed record and other trials <i>Road Transport Act 2013 (NSW) s 115(5)</i>	12 months	Court may impose a longer or shorter period of disqualification
Engaging in other conduct associated with road/drag racing and related offences <i>Road Transport Act 2013 (NSW) s 116(7)</i>	12 months	Court may impose a longer or shorter period of disqualification
Learner licence holder driving without appropriate supervisor <i>Road Transport (Driver Licencing) Regulation 2017 (NSW) cl 15(1),(3)-(4)</i>	12 months	Court may impose a longer period of disqualification  Court can only reduce the default disqualification period if the offender has also received a suspension period and the total of the suspension period and disqualification period is not shorter than 6 months

Table C.5: Offence Free Period - *Road Transport Act 2013 (NSW) s 221A*

Offence	Relevant offence free period
Major offence (see Table C.1 and C.2)	4 years
Exceeding speed limit by more than 30km/h	4 years
Road racing related offences <i>Road Transport Act 2013 (NSW) s 115(1)</i>	4 years
Burnouts and related offences <i>Road Transport Act 2013 (NSW) s 116(2)</i>	4 years
Driving furiously, recklessly, or at speed/in manner dangerous to public <i>Road Transport Act 2013 (NSW) s 117(2)</i>	4 years
Other offences as prescribed by statutory rules	4 years
Person declared as habitual offender before provisions repealed	2 years
Any other offence	2 years



## Appendix D: Mandatory interlock offences

Table D.1: Mandatory interlock offences

Offence under <i>Road Transport Act 2013</i> (NSW)		Minimum disqualification period	Maximum disqualification period	Minimum interlock period
<b>Novice range PCA offence</b> s 110(1)(a) or (b)	second or subsequent (within a 5 year period) offence to an alcohol-related major offence  (see Table D.2 for 'alcohol related major offence')	1 month	3 months	12 months
<b>Special range PCA offence</b> s 110(2)(a), (b) or (c)	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	1 month	3 months	12 months
<b>Low range PCA offence</b> s 110(3)(a), (b) or (c)	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	1 month	3 months	12 months
<b>Middle range PCA offence</b> s 110(4)(a), (b) or (c)	first offence for any other alcohol-related major offence	3 months	6 months	12 months
	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	6 months	9 months	24 months
<b>High range PCA offence</b> s 110(5)(a), (b) or (c)	first offence for any other alcohol-related major offence	6 months	9 months	24 months
	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	9 months	12 months	48 months
<b>Driving under the influence of alcohol or other drugs</b> s 112(1)(a), (b) or (c)	first offence for any other alcohol-related major offence	6 months	9 months	24 months
	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	9 months	12 months	48 months
<b>Failure or refusal to submit breath test</b> sch 3 cl 16(1)(b)	first offence for any other alcohol-related major offence	6 months	9 months	24 months
	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	9 months	12 months	48 months
<b>Failure or refusal to submit to the taking of a blood sample</b> sch 3 cl 17(1)(a1)	first offence for any other alcohol-related major offence	6 months	9 months	24 months
	second or subsequent (within a 5 year period) offence to an alcohol-related major offence	9 months	12 months	48 months
<b>Any other offence prescribed by the statutory rules</b> s 209(1)				

Road Transport Act 2013 (NSW) s 209(1) and s 211(2).

Table D.2: Alcohol-related major offence - *Road Transport Act 2013 (NSW) s 209(1)*

Alcohol-related major offence	Road Transport Act 2013 (NSW)
Novice range PCA offences	s 110(1)(a) or (b)
Special range PCA offences	s 110(2)(a), (b) or (c)
Low range PCA offences	s 110(3)(a), (b) or (c)
Middle range PCA offences	s 110(4)(a), (b) or (c)
High range PCA offences	s 110(5)(a), (b) or (c)
Offences for driving under influence of alcohol or other drugs	s 112(1)(a), (b) or (c)
Failure or refusal to submit breath test	Sch 3 cl 16(1)(b)
Failure or refusal to 'submit to the taking of a blood sample'	Sch 3 cl 17(1)(a1)
Any other alcohol-related offence from former corresponding Division	s 209(1)

Table D.3: Prescribed dangerous driving offence - *Road Transport Act 2013 (NSW) s 1214(4)*

Dangerous driving offence under <i>Crimes Act 1900</i> (NSW)	Minimum interlock period
Dangerous driving causing death while driver was under the influence of intoxicating liquor s 52A(1)(a)	36 months
Dangerous driving causing grievous bodily harm while driver was under the influence of intoxicating liquor s 52A(3)(a)	36 months
Aggravated dangerous driving causing death where the prescribed concentration of alcohol was present in driver's breath or blood s 52A(2)	36 months
Aggravated dangerous driving causing grievous bodily harm where the prescribed concentration of alcohol was present in driver's breath or blood s 52A(4)	36 months