

DRIVER LICENCE DISQUALIFICATION REFORM

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ALS

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Submission to the Inquiry into Driver Licence Disqualification Reform by the Legislative Assembly Committee on Law and Safety

The Aboriginal Legal Service (NSW/ACT) Ltd ('the ALS') contributed significantly to and supports wholly the submissions of the NSW Legal Assistance Forum (NLAF) to the Inquiry into Driver Licence Disqualification Reform.

The ALS is particularly concerned about the role of traffic legislation in NSW in the overrepresentation of Aboriginal people in the criminal justice system. The operation of the driver licence regime not only sees Aboriginal people locked up at disproportionate and disgraceful rates, but also locks Aboriginal people out of participation in mainstream society.

Driver licence offending is met with a significantly punitive response from the courts despite it being on the lowest rungs of criminal offending – neither violent, nor interfering with other's property or rights, nor inherently contrary to public safety. Between 9 and 12% of all terms of imprisonment imposed by Local Courts in NSW since 2008 in relation to offenders' principal offence were for driver licence offences such as driving while disqualified or without a licence.¹ Those offences are to be distinguished from other traffic offending going more directly to road safety such as drink driving or dangerous driving.

The monthly trend in court disqualifications has drastically increased over the last couple of decades in NSW: from 377 in January 1990 to 1 056 in March 2013. By virtue of the mandatory disqualification requirements of the road transport legislation, courts have ordered over 1 000 licence disqualifications each month almost every single month since October 1995.²

¹ For example 694 out of 6901 terms of imprisonment imposed in NSW Local Courts in 2012 for the primary offence were for driver licence offences. Note that the principal offence is defined to be the offence charged which received the most serious penalty. NSW Bureau of Crime Statistics and Research, *Penalties by offence* 'Persons found guilty in Local Court appearances finalised' 2008-2012 <http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_court_stats>.

² There were only eight months between June to December 1996, and in September 2000 in which the number of court-ordered disqualifications did not exceed 1 000. NSW, Roads and Transport Authority, 'Driver and Rider Suspensions and Cancellations' Table 3.1.1 Monthly trend in licence Suspensions and Cancellations (All licence holders) <<http://www.rta.nsw.gov.au/publicationsstatisticsforms/statistics/registrationandlicensing/tables/table311.html>>.

The effect of stringent traffic legislation hits Aboriginal people hard. In 2010 in the Local Courts in NSW, 10 790 people were charged with driving while licence disqualified or suspended, 12% of whom were Aboriginal. In the same year, 6 151 people were charged with driving without a licence, 21% of whom were Aboriginal. These charges resulted in the imposition of 9 548 licence disqualifications by the Local Court, 27% of the total number of licence disqualifications issued that year in the Local Courts. They also resulted in more than 1 000 people serving prison sentences.³ A study by the ALS in western NSW found that 50% of their clients sentenced for the offence of driving while disqualified received a term of imprisonment in the Local Court between 2006 and 2012. The ALS compared the imprisonment rates for the offence of driving while disqualified (which carries a maximum penalty of 18 months' imprisonment for a first offence; or 2 years' imprisonment for a second or subsequent offence) with other offences such as causing grievous bodily harm in company, predatory driving, dangerous driving causing grievous bodily harm, aggravated indecent assault, possessing child pornography which carry much higher maximum penalties (up to 14 years' imprisonment). The study found that the state-wide imprisonment rates for these and other much more serious offences were significantly lower than the rate evidenced for drive while disqualified in the Dubbo region.⁴ The ramifications of licence disqualification for employment, familial responsibilities and participation in broader civic life are significant. Being without a driver's licence in regional and remote parts of the state carries an additional burden given the lack of alternatives and the vast distances between centres.

The over-representation of Aboriginal people in the Local Court charge data for driver licence offences raises questions about whether there is disproportionate detection and prosecution of Aboriginal people. Notably, most traffic crime, especially driver licence offences and vehicle registration and roadworthiness offences do not have a clear victim or complainant. Their detection and prosecution is determined by the approach of the police. The offending is not ordinarily revealed until a vehicle is stopped and checks made on the licence status of the driver. The very nature of driver licence offending permits a broad range of discretionary responses by police. Aboriginal people in small and over-policed remote towns do not enjoy the anonymity of city-dwellers: they are visible not only by the colour of their skin but commonly pursued by local police who recognise them specifically for their disqualified or unlicensed status. The ALS is concerned that the police approach to the detection and prosecution of driver licence offending in regional and remote Aboriginal communities is often more proactive than is appropriate.

Prison is overused for this type of offending and the mandatory disqualification provisions operate so as to unreasonably fetter civic participation. The ALS is concerned that the combined effect of the use of prison for minor traffic offending and the mandatory imposition of driver's licence disqualification periods, is playing a

³ NSW Bureau of Crime Statistics and Research, 'Crime Court Statistics Report' (2010).

⁴ Aboriginal Legal Service (NSW/ACT) Ltd, 'Drive while disqualified: Sentencing in the Dubbo region of NSW 2006-2012', 9 October 2012

<<http://www.alsnswact.org.au/media/BAhbBlshOgZmSSI2MjAxMi8xMC8wOC8yMI8wMF81NV80NV9EV0RfUmVwb3J0X09jdF8yMDEyXzNfLnBkZgY6BkVU>>. A copy of the study is attached to these submissions.

significant role in the creation and perpetuation of a racially-defined criminalised underclass, either locked up or locked out of mainstream society.

ALS Case Examples

In addition, we offer two further ALS case examples in relation to the offence of drive while disqualified which are illustrative of the use of the unwarranted and significant gaol terms for this strictly summary offence; the prohibitive nature of mandatory sentencing in relation to disqualification periods; and the proactive approach of police in western NSW to this minor type of offending.

[1] **Mr L** was sentenced in mid 2012 to a total term of 28 months imprisonment with a non-parole period of 23 months gaol for two drive while disqualified offences committed in Nyngan. Those gaol terms were imposed for Mr L's 6th and 7th convictions for driving while disqualified.

Mr L initially became disqualified for driving without a license. He was not a chronic offender in relation to drink driving or dangerous driving. He had one prior conviction for mid-range drink driving and driving recklessly or in a manner dangerous. The drive while disqualified offences themselves were unremarkable: they did not involve erratic or dangerous driving or an attempt to speed away from police upon detection. Mr L did not cause anyone harm or interfere with anyone else's rights. Resort to the use of personal motor cars is unsurprising in regional and remote parts of the state in which public transport options are limited or non-existent.

The sentences were imposed by two separate Magistrates. The first sentence was a total term of 16 months with a non-parole period of 8 months. The second sentence was wholly accumulated on the first. A sentence of 20 months was imposed with a non-parole period of 15 months. Mr L sold his car after the commission of these offences.

The sentences were reduced on appeal to a total of 18 months with a non-parole period of 11 months, effectively reducing the period in custody by 1 year.

Mr L is disqualified until some time after 2031.

In early 2013, Mr L died in custody before finishing these sentences and before his 40th birthday.

[2] **Mr S** is a 20 year old Aboriginal man from a small town in western NSW. He was sentenced in the Local Court for his first and second offences of drive while disqualified in September 2012. He received a 16-month suspended term of imprisonment for the first offence and a 20-month suspended term of imprisonment for the second offence. He was also fined \$1000 for each offence on top of the terms of imprisonment.

Mr S was only 19 years of age when he committed the offences, both on the same day. In the first instance, police were patrolling and stopped a car randomly. The police recognised Mr S as the driver. There was no erratic or dangerous driving. There was no obvious reason for the police to stop the car. In the second instance,

off-duty police saw Mr S perform a reverse park. The police recognised Mr S and later made checks on his licence status. Upon discovering that he was disqualified, they prosecuted him for the offence.

Mr S has never held a license. He became disqualified in 2011 when the Local Court ordered a 3 year disqualification for his first offence of driving never having been licensed. He has no other traffic record.

Mr S is now facing breach proceedings for the suspended sentences. If revoked, Mr S is facing a possible three-year jail term for those two instances of driving while disqualified.

[3] **Mr C** lives in Condobolin and has never held a license. As a result of being convicted for driving without a license for a second and third occasion, he became disqualified for the automatic accumulative 6-year period. Mr C received a 6 month suspended sentence for his first offence of driving while disqualified and was further disqualified.

Some years later, Mr C attended the Local Court to inquire about the expiry of his disqualification period. He was given information suggesting that his disqualification may have expired. Mr C then attended the RTA to confirm whether his disqualification had expired. He was informed that his disqualification period had expired and was issued a license.

Mr C was then prosecuted for a second offence of driving while disqualified. The prosecution was on the basis that Mr C (who identified himself by his mother's surname) was also known by his father's surname in some official records and the RTA records for that name revealed he was still disqualified.

Mr C was sentenced in September 2012 to 12 months gaol with a non-parole period of 9 months for that second offence of driving while disqualified.

Mr C spent almost a month and a half in Wellington gaol before his appeal was heard. He is essentially illiterate, and started learning to read in gaol pending his appeal.

Mr C's sentence was drastically reduced on appeal to a s10(1)(b) bond without conviction and he was released from custody.

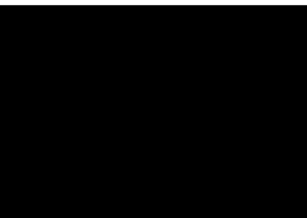
Mr C is now still disqualified until sometime in 2022, a length of time that is crippling in its prohibitive effect on employment opportunities and daily life responsibilities.

In the context of these sentences, it is useful to consider what the Court of Criminal Appeal did in the matter of *Felton v R* [2010] NSWCCA 79 in relation to Mr Felton's 17th offence of drive whilst disqualified. An 18-month term of imprisonment was reduced to six months, and made partially concurrent with other terms of imprisonment.

Mr Felton had traffic priors which included 18 offences of take and drive motor vehicle; 16 offences of drive whilst disqualified; three offences of unlicensed driving; and two offences of driving at a speed dangerous; and dangerous driving.

Oral Testimony

Representatives of the ALS would welcome the opportunity to speak in oral testimony before the Parliamentary Committee on specific Aboriginal issues when hearings take place. We also would like the opportunity to discuss the desperate need for a significant increase in resources to assist Aboriginal people living in regional and remote areas to obtain their driver's licences in the first place. That assistance needs to begin with assistance to obtain birth certificates and include help with accessing licensed drivers and registered cars so as to perform the required number of hours of supervised driving.



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22 July 2013.



ALS

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Drive while disqualified

Sentencing in the Dubbo region of NSW 2006-2012

A study undertaken by ALS
'Western Zone'
9 October 2012

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Drive while disqualified:

Sentencing in the Dubbo region of NSW 2006-2012

Key Figures

Total sample size: 264

Imprisonment count for Drive Whilst Disqualified at ALS Dubbo: 122

Rate of Imprisonment: $122/264 = 46\%$

Rate of Imprisonment (Including Suspended Jail Terms): 66%

NB: 2 cases of the prison cases recorded in this study were Control Order sentences in the Children's Court.

NSW Courts covered by the office of ALS Dubbo during the Survey Period:

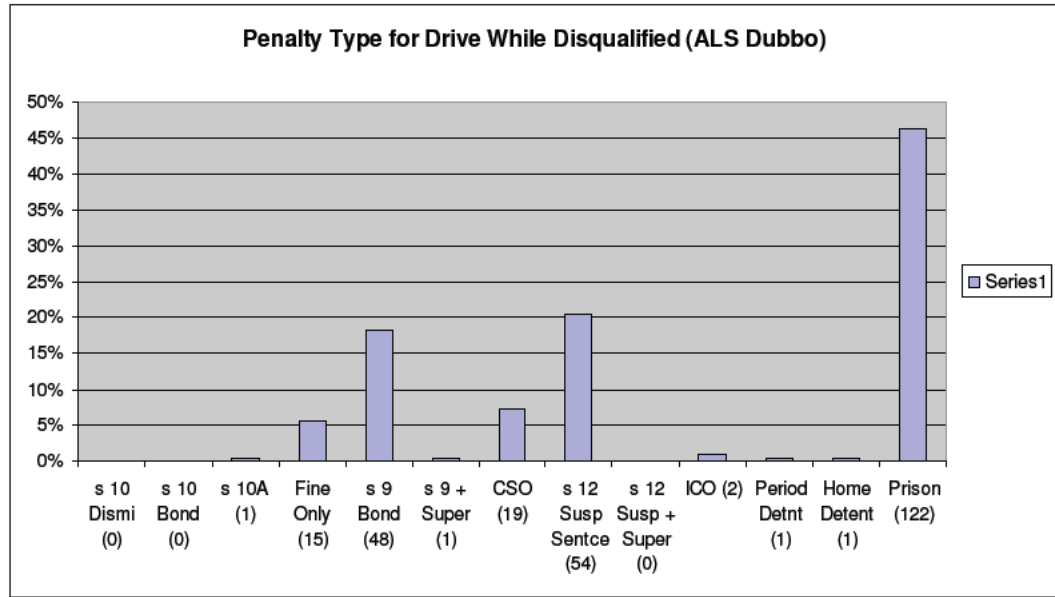
Dubbo	Peak Hill	Forbes
Dunedoo	Nyngan	Parkes
Wellington	Narromine	Mudgee
Warren	Coonabarabran	Gilgandra



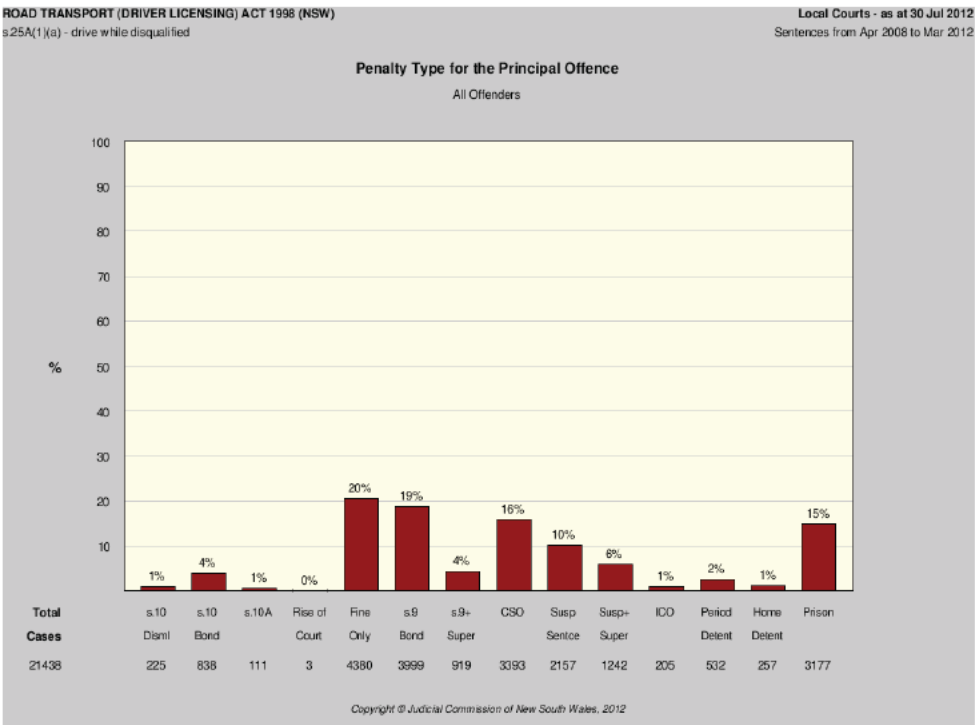
ALS operates through three Zones. This study was undertaken in the Western Zone of NSW.

Penalty type for Drive While Disqualified

Penalty Type for Drive While Disqualified (ALS)



Penalty Type for Drive While Disqualified (JIRS)

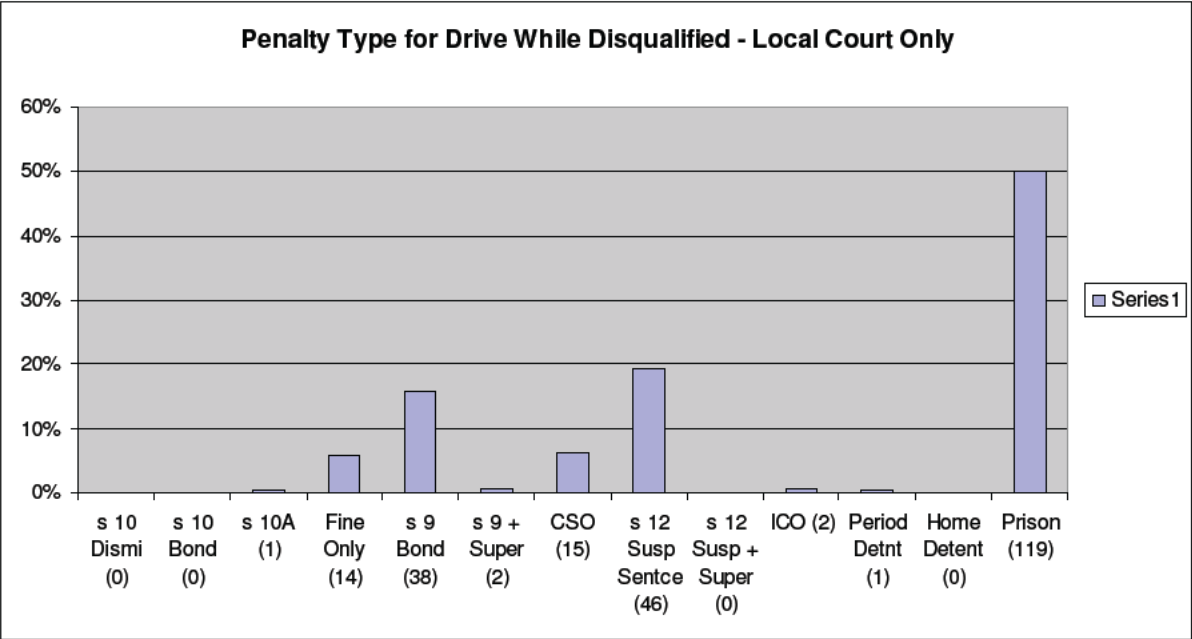


Results for Local Court Only

(District Court Appeal Results excluded)

Local Court sentences alone (excluding all District Court findings, including successful severity appeal results), the percentage of imprisonment was 50%.

Sample size: 238



Terms of Prison Sentence

Of the 122 prison sentences for Drive While Disqualified cases at ALS:
34% were 12 months (compared with 26% for JIRS), and
17% were 18 months (compared with 8% for JIRS).

Significantly, sentences of 12 months and over were imposed on 58% of ALS cases and 46% of JIRS cases.

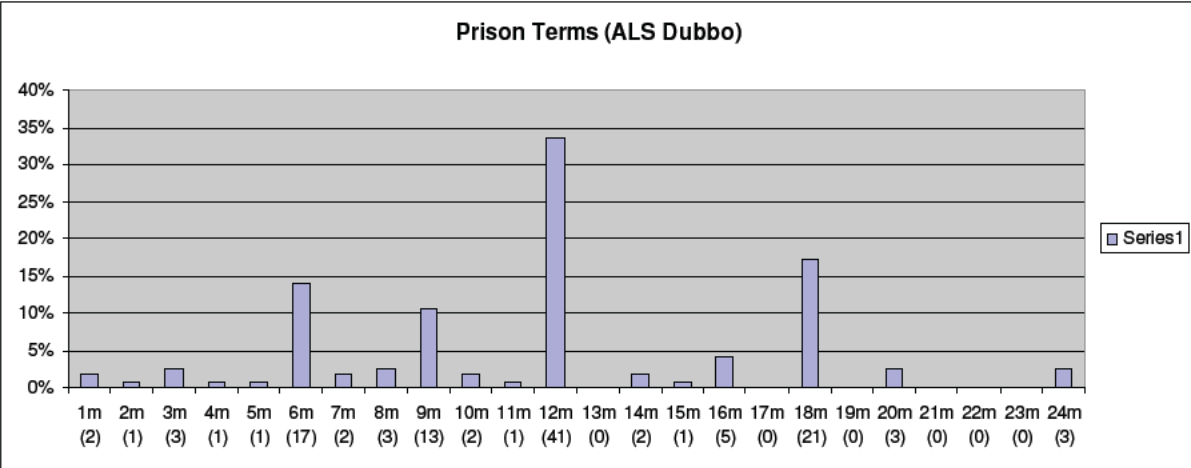
The average of terms of prison sentences were:

ALS: 11.8 months

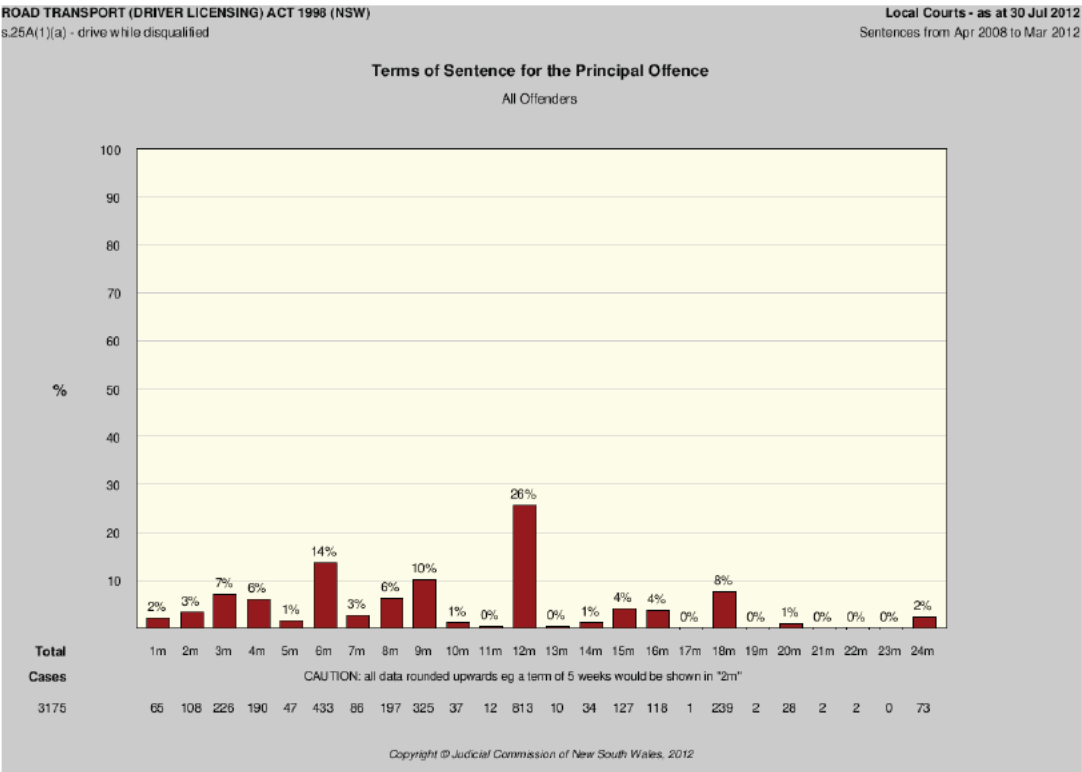
JIRS: 9.8 months

JIRS Midpoint: 9 months

Terms of Prison Sentence for Drive While Disqualified (ALS)



Terms of Prison Sentence for Drive While Disqualified (JIRS)

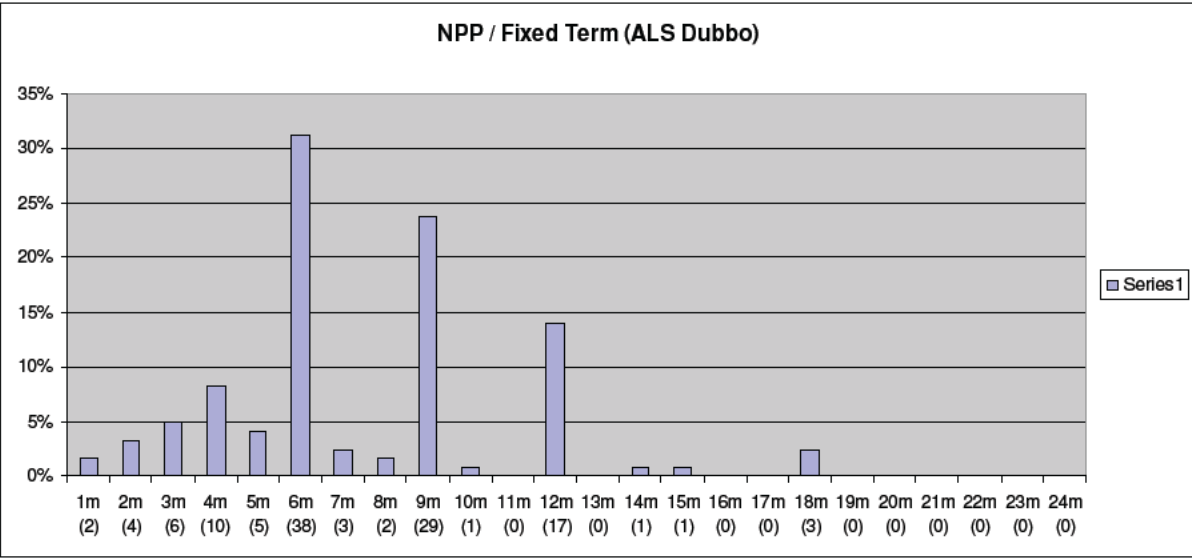


Terms of NPP / Fixed Term Sentence

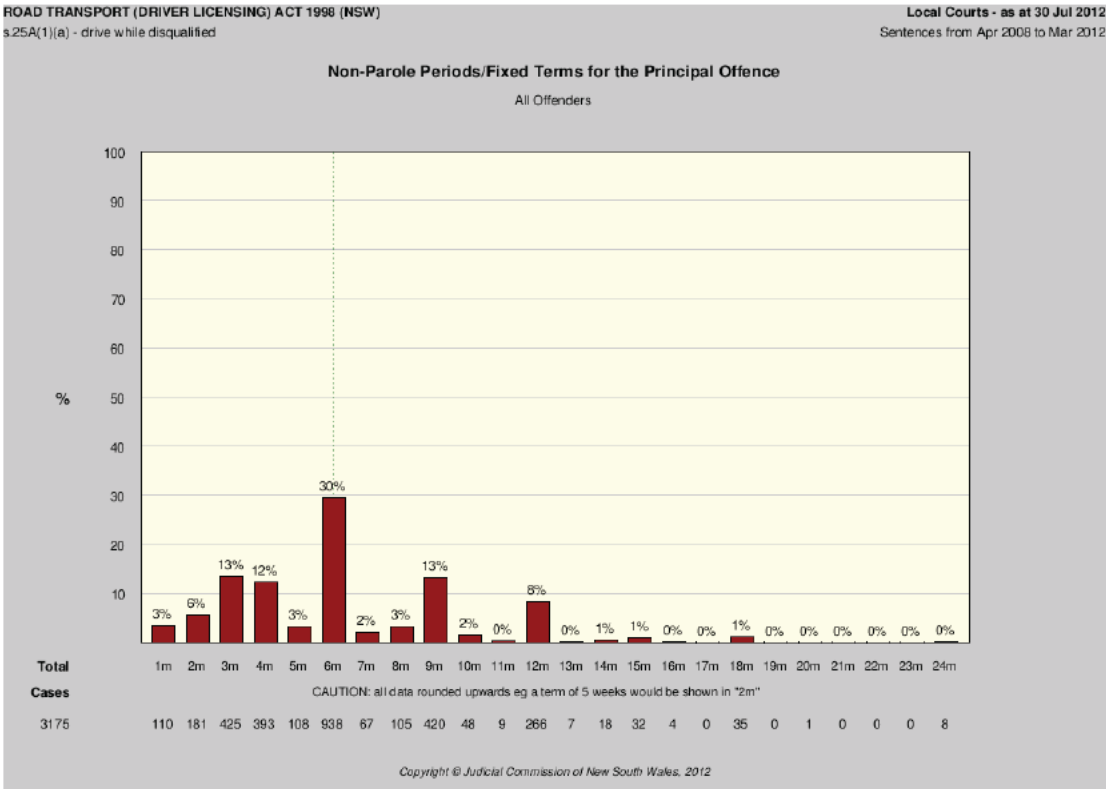
Average for ALS: 7.5 months
Average for JIRS: 6.3 months
Midpoint for JIRS: 6 months

Noted significance in the difference between ALS and JIRS:
24% of ALS got 9 month NPP whereas for JIRS it was 13%; and
14% of ALS got 12 month NPP whereas for JIRS it was 8%

Terms of NPP Sentence for Drive While Disqualified (ALS)



Terms of NPP Sentence for Drive While Disqualified (JIRS)

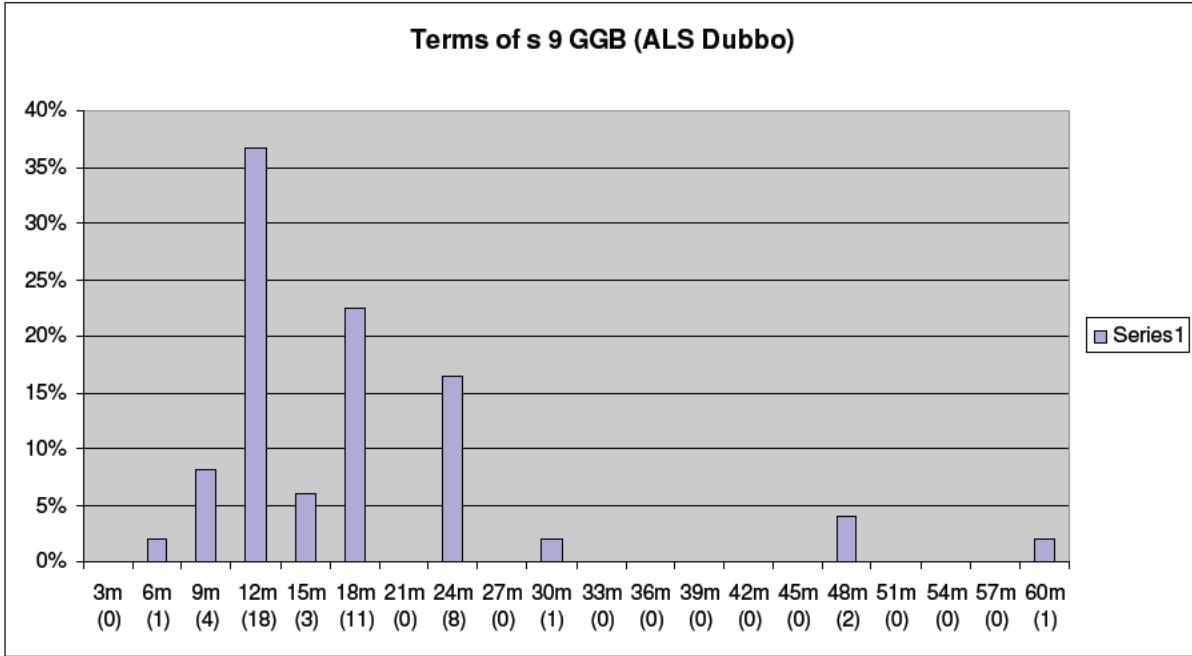


B: 2 cases of all prison stats include 2 COs of the children's court

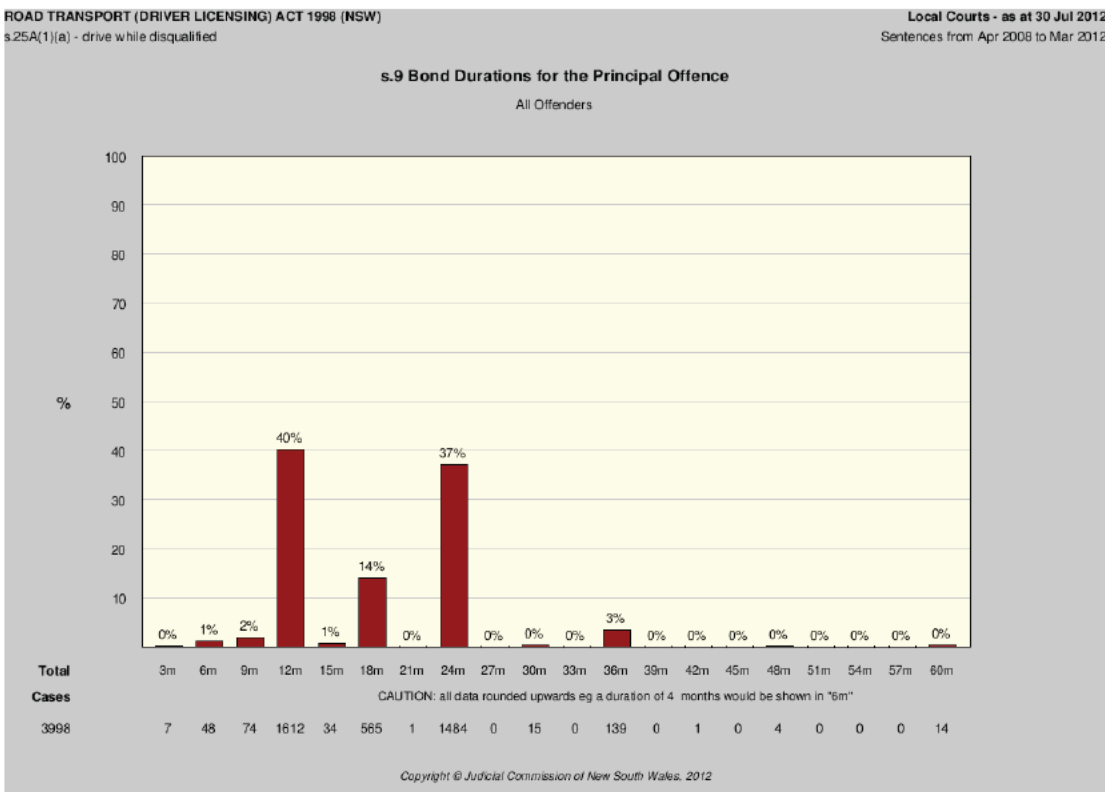
Terms of s 9 Bond Sentence

Total s 9 GBB: 49 entries

Terms of sentence for s 9 bond (ALS)



Terms of sentence for s 9 bond (JIRS)



Comparing ALS Drive While Disqualified Imprisonment Rate (46%) with the imprisonment rate for other Crimes

(as recorded on the JIRS statistical database)

Maximum Penalty for Drive Disqualified – 2 years imprisonment

The following crimes had significantly lower imprisonment rates than the rate evidenced for drive disqualified in the Dubbo region:

- Use offensive weapon with intent to commit offence or resist arrest, maximum penalty 12 years (43%)
- Recklessly Cause grievous Bodily Harm in Company, maximum penalty 14 years (40%)
- Recklessly Cause grievous Bodily Harm, maximum penalty 10 years (34%)
- Reckless Wounding, maximum penalty 7 years (36%)
- Predatory Driving, maximum penalty 5 years (33%)
- Dangerous Driving Causing Grievous Bodily Harm (Involving Liquor or Drugs) maximum penalty 7 years, (10%)
- Dangerous Driving Causing Grievous Bodily Harm (Involving Speeding) maximum penalty 7 years (25%)
- Dangerous Driving Causing Grievous Bodily Harm (Involving Driving Manner Dangerous) maximum penalty 7 years (15%)
- Failing to Stop and Assist after a Vehicle Impact Causing Grievous Bodily Harm maximum penalty 7 years (20%)
- Assault Occasioning Actual Bodily Harm maximum penalty 5 years (16%)
- Aggravated Indecent Assault maximum penalty 7 years (37%)
- Possess Child Pornography maximum penalty 10 years (34%)

The following crimes had imprisonment rates of 50-55%.

- Recklessly wound in company maximum penalty 10 years (53%)
- Aggravated dangerous driving causing grievous bodily harm. – police pursuit maximum penalty 11 years (50%)
- Assault person w/i to commit serious indictable offence maximum penalty 5 years (43%)
- Disseminate/produce/possess child abuse material maximum penalty 10 years (50%)
- Break, enter and steal, maximum penalty 7 years (52%)
- Break, enter with intent to steal maximum penalty 10 years (54%)
- Break, enter with intent to destroy/damage property, maximum penalty 10 years (55%)
- Drive conveyance taken w/o consent of owner, maximum penalty 5 years (51%)

Sentence options not available in certain courts

The following courts do not have available these sentences:

Dubbo:
All available

Parkes:
Home detention

Gilgandra:
MERIT
Court only open on Mondays and Wednesdays to answer enquiries

Warren:
MERIT

Mudgee:
MERIT

Coonabarabran:
MERIT
Home Detention

Wellington:
All available

Narromine:
MERIT

Nyngan:
MERIT

Forbes:
Home detention
ICO

Peak Hill:
MERIT

Intensive Corrections Order (ICO)

The ICOs are available within 200kms of Dubbo, which include all the above courts covered by Dubbo ALS.

All Courts in NSW can request an assessment provided the offender resides within 200 kms of the following areas:

- All Sydney Metropolitan areas
- Newcastle
- Wollongong
- Bathurst
- Dubbo
- Goulburn
- Tamworth
- Wagga Wagga
- Grafton
- Broken Hill

If the offender resides within 200km of Dubbo, the Community Compliance & Monitoring Group (CCMG) will go out to the offender's residence and do an assessment for them.

They may be able to find work for them within their residential area (which means they can participate even without a car), or they may not. Transport is an issue that may affect them, but it is not a determining factor.

Periodic Detention

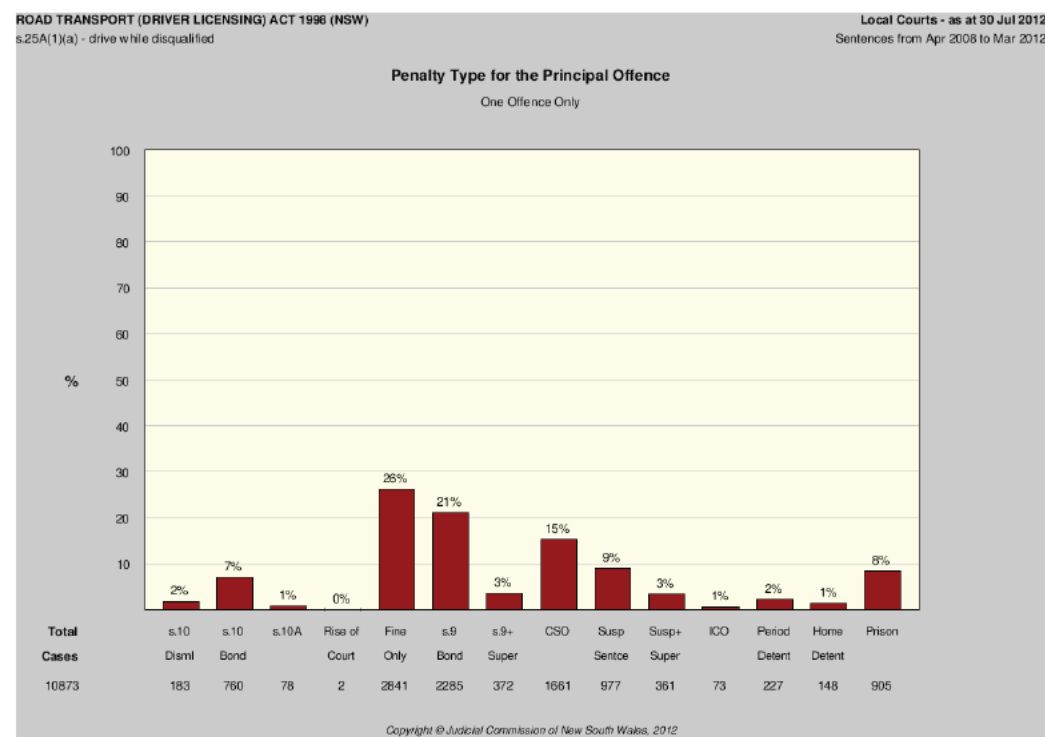
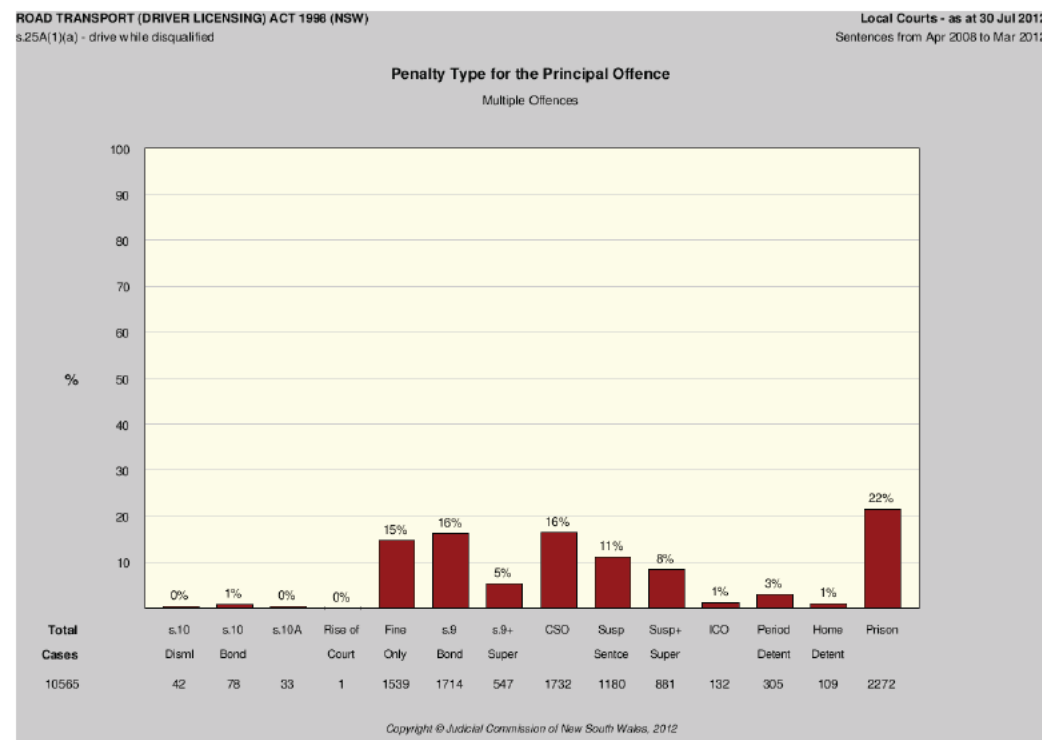
It is no longer available.

When it was available, it was available at Bathurst Correctional Centre and not at Wellington Correctional Centre.

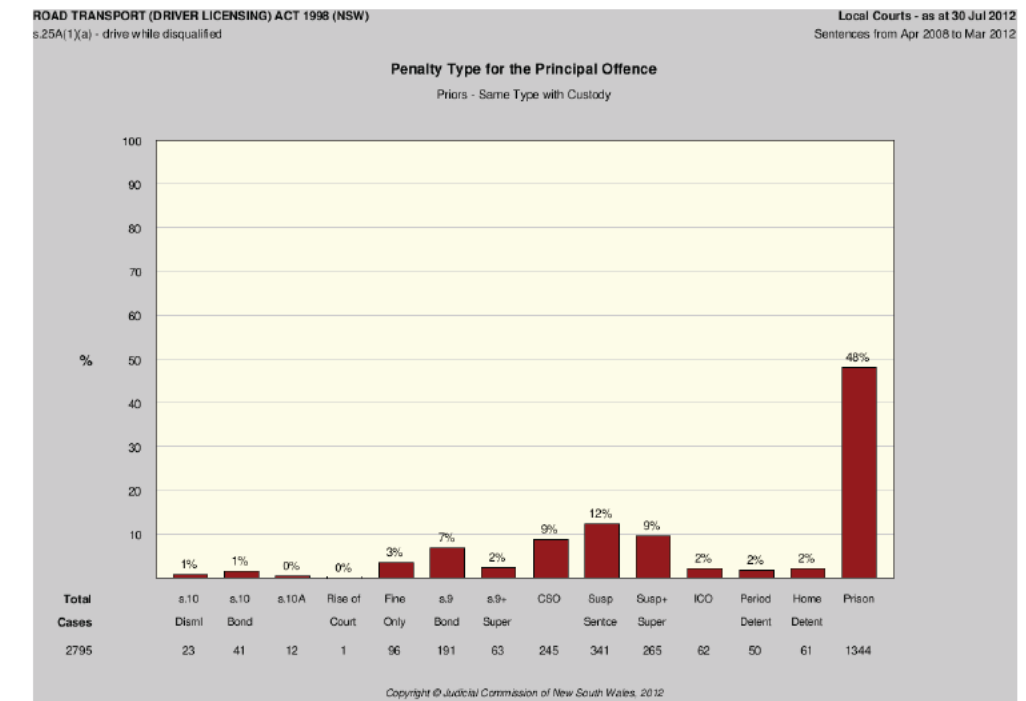
Concluding Remarks and Notes

Some weaknesses of this study are:

- Multiple offences were not calculated separately to one offence only cases.
- The statistics of multiple offences in JIRS was 22% prison. This is still significantly lower than the overall ALS statistics of 46%.
- One offence only in JIRS was 8%.



Prior records were also not considered in this study The JIRS statistics for prior records of same type with custody was: 48%



However note: the only statistic available for prior custodial record was “prior record – same type with custody”.

There are no statistics available for “prior record – different type with custody” which may be the case with many ALS Dubbo clients.

The statistics for “prior record – different type (with/without custody) was only 8%, which means that prior records of a different type does not, in most cases, lead to custodial sentences.

