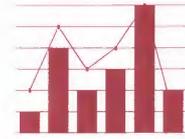


Sentencing Trends

An Analysis of New South Wales Sentencing Statistics



Judicial Commission of New South Wales



Editor: Donna Spears, Research Director

COMMON OFFENCES IN THE LOCAL COURT

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Introduction

This paper describes the sentencing patterns for the twenty most common offences dealt with in the Local Courts of New South Wales during 1992. These twenty offences account for more than three-quarters of the criminal matters dealt with in that jurisdiction as recorded by the NSW Bureau of Crime Statistics and Research. Consequently, this paper may be regarded both as an overview of general sentencing practices in the Local Courts, and as a source of information on the sentencing of particular offences that, because of their wide incidence, are of significant interest to Local Courts, criminal justice agencies, the legislature, and the public at large.

There are a number of reasons for presenting this information in the present format. First, many of these offences lend themselves to comparative treatment. For example, almost a quarter of Local Court cases concern three "prescribed concentration of alcohol" (PCA) offences, which differ only in the level of blood alcohol concentration (and maximum penalty available). Secondly, a number of judicial officers, as well as legal officers in various public sector criminal justice agencies, may benefit from a summary of Local Court sentencing patterns. Finally, by focussing on the more common offences, this study may enable individual magistrates to compare their own sentencing practices with those of the magistracy as a whole.

Some definitions and qualifications

The statistics refer to cases sentenced during the calendar year 1992. It should be noted that the trends which emerge from these figures will reflect overall patterns over the last couple of years. The statistics cover a wide range of offences dealt with in the Local Court, but concentrate on those offences for which an offender is at least liable to a fine of \$500 or more, or to a term of imprisonment. The data is composed of first instance sentencing results – it is not corrected by variations made by higher courts. However, it should be noted that such correction is not statistically significant overall.

The expression "offence" describes the *principal offence* in each case – that is, the offence that receives the most severe penalty. Any other (ie. less serious) offences sentenced in the same hearing are omitted. As well, all cases with *cumulative sentences* have been excluded from this study.

When comparing types of penalty within a particular offence, the expression "average" is used to denote the median, which is the mid-point of a range of penalties. "Vast majority" refers to the middle 80% of penalties, that is "more than most" penalties. A "typical range" refers to the middle 50% of penalties (known to statisticians as the inter quartile range). There is a 50/50 chance of any given result to fall in that range, and equal chance in falling above as below.

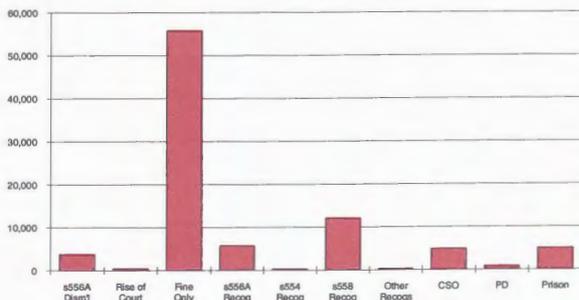
What are the most common offences in the Local Courts?

The following table shows the "top-twenty" common offences dealt with in the Local Court in order of frequency.

Act	Section	Offence	Cases
Traffic Act 1909	s.4E(1F)	PCA - middle range	11,002
Traffic Act	s.4E(1G)	PCA - high range	7,633
Crimes Act 1900 (NSW)	s.61	Common assault	7,421
Crimes Act	s.117	Larceny (ss.476 & 496)	7,219
Drug Misuse and Trafficking Act 1985	s.10(1)	Possessing prohibited drug	5,103
Traffic Act	s.7A(2)(c)	Drive while licence cancelled	4,481
Summary Offences Act 1988	s.4(1)(b)	Offensive language	3,669
Crimes Act	s.195(a)	Malicious destroying or damaging property	3,400
Traffic Act	s.4E(1E)	PCA - low range	3,213
Traffic Act	s.7A(2)(a)	Drive while licence disqualified	2,986
Summary Offences Act	s.4(1)(a)	Offensive behaviour	2,698
Crimes Act	s.59	Assault occasioning ABH	2,135
D.M.T. Act	s.23(1)(a)	Cultivating prohibited plant	1,772
Traffic Act	s.4(1)	Drive speed/manner dangerous	1,553
Crimes Act	s.112	Breaking, entering & stealing	1,494
Crimes Act	s.94	Stealing from the person	1,385
Crimes Act	s.546C	Resisting police	1,151
D.M.T. Act	s.12(1)	Using prohibited drug	873
D.M.T. Act	s.25(1)	Supplying prohibited drug	826
Crimes Act	s.527C	Goods in custody	801

The twenty most frequent offences account for 79.0% of all Local Court cases dealt with during 1992. The three PCA offences alone account for virtually a quarter of all the Local Court cases (24.5%).

An overview of sentencing patterns in Local Courts



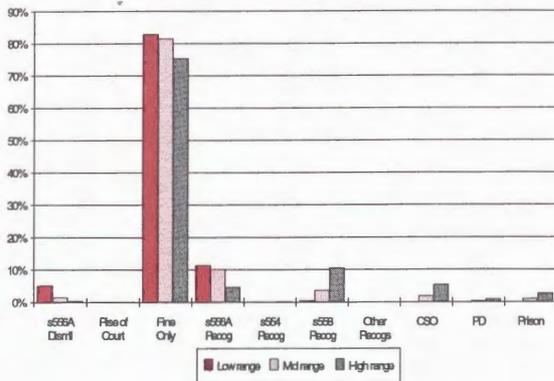
The first graph shows the distribution of penalties for all offences in the Local Courts during 1992. The 10 types of penalty shown in the graph may be grouped as follows:

- The majority of offenders (62.6%) received a *fine only*. Although some common offences dealt with in Local Courts carry a maximum penalty of \$10,000, the vast majority of fines (78.7%) actually fell in the range \$200 to \$500. The average fine was \$300.
- *Recognisances of all types* accounted for 20.6% of offenders, with s.558 recognisances being the most frequent (13.6%) and s.556A the next most frequent (6.4%). Nearly all s.558 recognisances have a term ranging from 12 to 36 months, with an average term of 24 months. As would be expected, s.556A recognisances tend to be shorter, typically ranging from 12 to 24 months with an average of only 12 months.
- *Custodial sentences and their alternatives* (periodic detention and community service orders) were imposed on 12.1% of offenders – 5.6% receiving full-time gaol terms, 5.5% community service orders, and less than 1.0% on periodic detention. The vast majority of gaol sentences (85.0%) were for terms of 6 months or less, and hence were fixed terms. Community service orders tended to fall in the range 50 to 200 hours (84.9%), with the average in the range 50–100 hours.
- Around 4.7% of offenders received a *nominal sentence* (ie either a s.556A dismissal or a sentence to "the rising of the court" – the latter being rare).

Overall, the graph shows the heavy reliance by the Local Courts on fines and bonds. Custodial sentences were relatively infrequent, and nominal penalties even less frequent.

"PCA" offences

Three of the "top twenty" common offences are created pursuant to s.4E of the *Traffic Act* 1909. They are: mid-range, high-range and low-range PCA. Taken together, they account for virtually a quarter of all Local Court cases during 1992.



The most common penalty, regardless of blood alcohol concentration, is a fine.

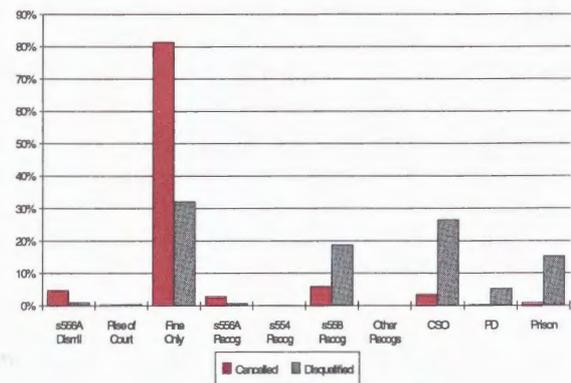
- For low range PCA, the average fine was \$250, and the vast majority (ie. about 80%) fell in the range \$200 to \$400 – in fact, most (65.8%) fell in the range \$200 to \$300.
- For middle range PCA, the average fine was \$400, and the vast majority of cases (ie. about 80%) fell in the range \$300 to \$600 – most (56.8%) were between \$350 and \$500.
- High range PCA fines averaged \$650. The vast majority fell within the range \$400 to \$1,000; a substantial proportion (64.3%) fell within the range \$500 to \$800.

Overall, these figures suggest that magistrates consistently distinguish between the three ranges of blood alcohol concentration. There is also a clear relationship between the seriousness of the offence and the use of more severe penalties – 19.5% of high range PCA cases received a penalty more severe than a fine (ie a recognizance, CSO, periodic detention, or custody), compared to 7.0% of cases for middle range PCA, and less than 1.0% for low range PCA. Nominal penalties (s556A dismissals

and "rise of court") also reflect the relative seriousness of the offences – 5.2% of low range cases, 1.6% of middle range, and only 0.5% of high range PCA cases received such penalties.

Driving without a valid licence

Two "top-twenty" common offences are created pursuant to s.7A(2) of the *Traffic Act* 1909. They are driving while disqualified from holding a licence, and driving while one's licence is cancelled. These two offences accounted for about 3,000 and 4,500 cases respectively in the Local Courts during 1992 – that is, 8.3% of all Local Court cases.



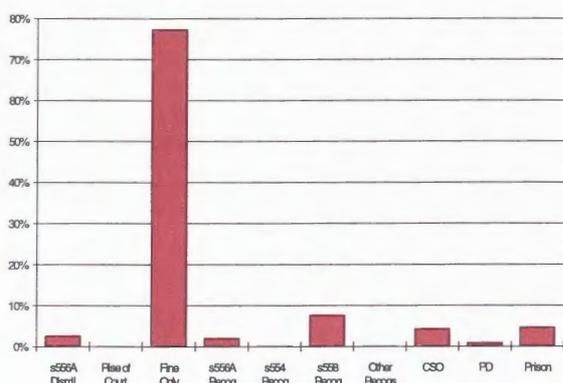
Disqualified drivers were on average given much more severe penalties than drivers with a cancelled licence:

- 47.0% of disqualified drivers received sentences of imprisonment or periodic detention, or a CSO, while only 4.6% of drivers with a cancelled licence received those penalties;
- disqualified drivers were also much more likely to receive a s558 recognizance (18.8%) than were drivers with a cancelled licence (5.9%);
- disqualified drivers were less likely to receive a nominal penalty (1.4%) than were drivers with a cancelled licence (5.0%).
- the vast majority of offenders convicted of driving with a cancelled licence received a fine (81.4%), while only a minority of disqualified drivers (32.0%) received a fine.

The average fine for disqualified drivers was \$500 and the majority (52.9%) were typically in the range \$400 to \$700. For drivers with a cancelled licence, the average fine was \$300, and about two-thirds (66.8%) were typically in the range \$250 to \$500.

Driving in a manner, or at a speed, dangerous

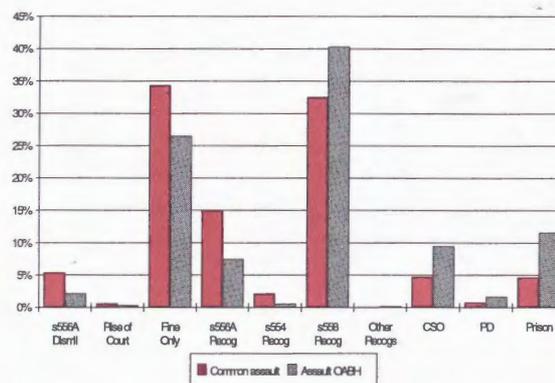
One of the "top-twenty" common offences was driving in a dangerous manner or at a dangerous speed, contrary to s.4 of the *Traffic Act 1909*. It accounted for 1.7% of cases.



The vast majority of dangerous drivers received a fine (77.3%). The average fine was \$500, and the vast majority of fines were within the range of \$150 to \$850 (about 80%) – typically between \$300 and \$700 (57.4%).

Assault-type offences

The *Crimes Act 1900* creates a wide range of offences involving an element of assault. The most frequent of these offences dealt with in the Local Courts are common assault (s 61), and assault occasioning actual bodily harm (s 59).



The relative seriousness of the two offences was clearly reflected in the fact that the most frequent penalty for common assaults was a fine (34.3%), while the most frequently imposed penalty for assault OABH was a s.558 recognizance (40.3%). Magistrates appear to make significant use of custodial sentences or alternatives to custody: 22.7% of assault OABH offenders and 10.1% of common assault offenders received a custodial sentence (including periodic detention), or received a CSO.

Section 556A recognizances are frequently ordered, particularly for common assault (15.0%).

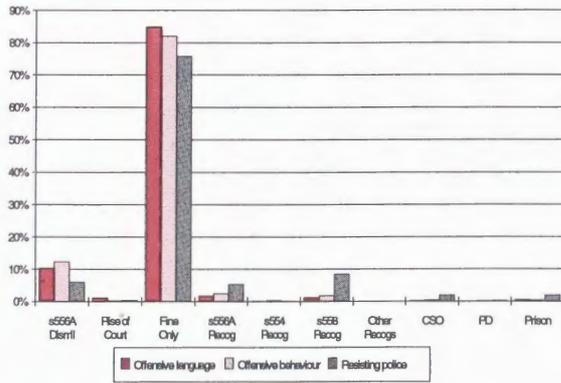
Typical fines for assaults are:

- the average fine for common assault was \$300, with the majority of fines were typically between \$200 and \$500 (69.9%)
- the average fine for assault OABH was \$500. Fines ranged from \$200 to \$1,000 (about 80%) – typically between \$300 and \$750 (56.7%).

Offences against good order

Two of the "top twenty" common offences were offensive language and offensive behaviour, which are both created by s.4 of the *Summary Offences Act 1988*. They accounted for 7.1% of cases during 1992. The other "top twenty" common offence against good order is resisting police (s.546C of the *Crimes Act 1900*) which accounted for 1.3% of Local Court cases dealt with during 1992.

Sentencing Trends

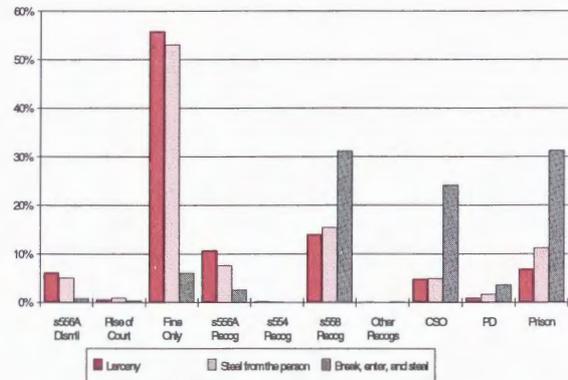


There is a small variation in sentencing practice between offensive behaviour or language on the one hand, and resisting police on the other. Resisting police offenders, on average, received slightly more severe penalties – either a greater likelihood of a recognizance, CSO or a custodial sentence, or a slightly higher average fine.

- For *offensive behaviour* and *offensive language*, the vast majority of offenders received a fine (82–85%), while 11–13% received a nominal sentence (s.556A dismissals are particularly frequent for these offences). Although the maximum penalty available is imprisonment, custodial sentences and their alternatives are seldom used (less than 1.0%). Similarly, recognizances are not common for these offences (only about 1-2% of cases). The pattern of fines for these two offences are similar. The average fine imposed for both offences was \$150. For offensive language, the vast majority of fines (about 80%) were between \$50 and \$280; while for offensive behaviour, the equivalent range was \$80 to \$300.
- For *resisting police*, about three-quarters of offenders received a fine (75.8%). The other significant type of penalty was a recognizance (13.8%). CSOs and custodial sentences were more common for this offence (3.9% of cases) than for the other two offences. The average fine was around \$170, and the vast majority (about 80%) fell in the range \$80 to \$350, typically between \$100 and \$250 (more than 50% of cases).

Larceny related offences

A number of larceny related offences feature in the list of "top-twenty" common offences. They are: larceny (s.117), breaking, entering and stealing (s.112), and stealing from the person (s.94). These offences together accounted for 12.3% of cases during 1992.

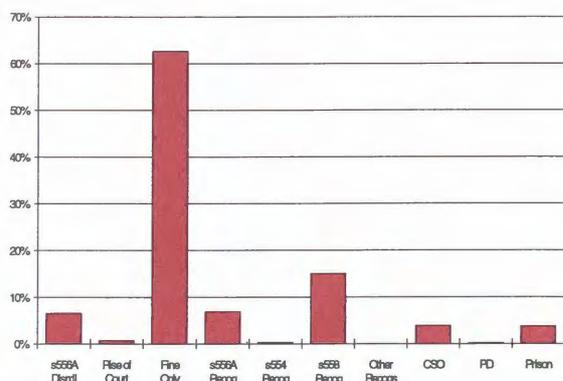


There is a significant difference between the sentencing pattern for Breaking, entering and stealing and the other two offence categories.

- For *Breaking, entering and stealing*, the average penalty is a CSO of more than 100 hours: 59.0% of offenders received a CSO or custodial sentence, and 33.8% entered into a recognizance. The average gaol term was 6 months, and most gaol terms (60.4%) were in the range of 4 to 12 months. Fines are not typical, but the average fine imposed was \$400.
- For *Stealing from the person*, offenders tended to receive more severe penalties than simple larceny. A higher proportion of offenders received custodial sentences or CSOs (17.8% compared to 12.6%). The average fine for stealing from the person was \$250, and the majority of fines fell in the range \$200 to \$400 (59.8%).
- For *Larceny* offenders were more likely to receive s.556A recognizances (10.7%) than were offenders convicted of stealing from the person (7.6%). The fines imposed for larceny were on average \$220, with a typical range between \$150 and \$300 (60.6%).

Maliciously destroying or damaging property

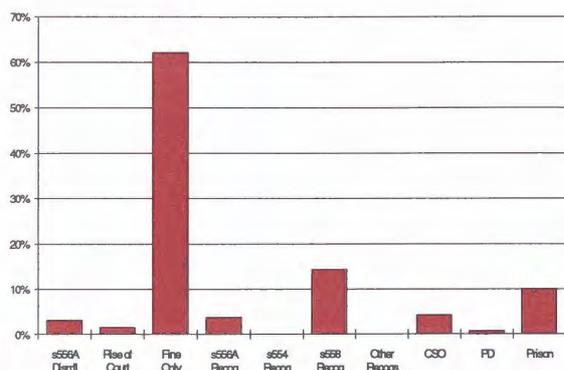
Malicious destroying or damaging property (contrary to s.195 of the *Crimes Act 1900*) is one of the "top-twenty" most common offences in the Local Courts during 1992 accounting for 3.8% of all Local Court cases (exactly 3,400 cases).



The most common penalty was a fine (62.6%). The average fine was \$200, with a typical range from \$150 to \$300 (57.8%). Section s556A dismissals were also a little more frequent (6.5%) than the average for all Local Court cases (4.2%).

Goods in custody

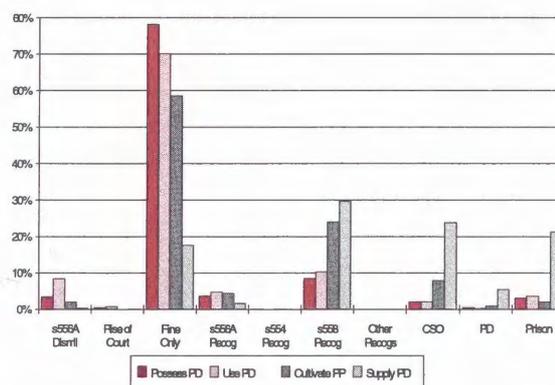
Goods in custody was one of the "top-twenty" most common offences in the Local Courts during 1992, and accounted for about 800 cases in the Local Courts during 1992 – or 0.9% of all cases. It is an offence created pursuant to s 527C of the *Crimes Act 1900*.



While the most common penalty is a fine only (62.2% of cases), a significant proportion of offenders receive a term of imprisonment (10.1%). The average fine was \$300, and most fines (63.4%) ranged between \$200 and \$400.

Drug offences

Four offences in the "top-twenty" most common offences were drug related offences: Possessing a prohibited drug (Possess PD), Using a prohibited drug (Use PD), Cultivating a prohibited plant (Cultivate PP) and Supplying a prohibited drug (Supply PD). Taken together, these offences accounted for 10.4% of the offences dealt with by the Local Court during 1992.



Virtually all cases of cultivating a prohibited plant involved cannabis. However, the proportion of cases involving cannabis was lower for the other common drug offences: 82.5% of cases of possessing a PD; 76.3% of supplying a PD; and only 69.4% of using a PD. Thus the differences in the graph between possessing and using a PD may, in part, reflect the higher proportion of heroin cases in the latter (16.6%, as opposed to only 6.6% for possessing a PD).

In light of this, it is dangerous to further interpret the distribution of penalties, other than to point out the significantly greater severity of penalties for supplying a PD. Just over 50% of offenders convicted of supplying PD received a custodial sentence (including periodic detention) or a CSO. Only 17.6% of offenders received a fine – a markedly different pattern to most other offences dealt with in the Local Court.

Offences and the severity of penalties

The following table lists the "top twenty" most common offences – this time in the order of the severity of the penalties imposed during 1992. This table shows the way in which those who commit the most common offences are dealt with by the Local Courts. The term **Detention** refers to imprisonment, periodic detention and CSOs; **Recog's** refer to all recognizances including s556A; and **Nominal** refers to both "rise of court" and s556A dismissals. The figures in the columns below these headings are the percentage of cases in which such a penalty was imposed.

Offence	Detention	Recog's	Fine Only	Nominal
Break, enter and steal	59.0	33.8	6.0	1.1
Supply prohibited drug	50.6	31.4	17.6	0.5
Drive while disqualified	47.0	19.6	32.0	1.4
Assault OABH	22.7	48.4	26.5	2.4
Steal from the person	17.8	23.1	53.1	6.0
Goods in custody	15.1	18.1	62.2	4.6
Larceny	12.6	24.8	55.8	6.7
<i>AVERAGE for all offences</i>	<i>12.1</i>	<i>20.6</i>	<i>62.6</i>	<i>4.7</i>
Cultivate prohibited plant	10.9	28.5	58.6	2.0
Common assault	10.1	49.6	34.3	6.0
Drive speed/manner dangerous	10.0	10.0	77.3	2.7
PCA high range	8.8	15.3	75.3	0.5
Malicious injury (property)	7.8	22.3	62.6	7.2
Use prohibited drug	5.8	14.9	70.1	9.2
Possess prohibited drug	5.7	12.3	78.1	3.9
Drive while licence cancelled	4.6	8.9	81.4	5.0
Resist police	4.0	13.8	75.8	6.4
PCA middle range	3.2	13.9	81.4	1.6
Offensive behaviour	0.8	4.6	82.0	12.6
Offensive language	0.6	3.0	84.8	11.5
PCA low range	0.0	11.9	82.9	5.2

- As can be seen from the table, the majority of the "top-twenty" common offences received less severe penalties than the average for all offences dealt with in the Local Court (see the row "AVERAGE for all offences").
- The offenders who received the least severe penalties tended to be those convicted of driving offences or offences against good order; those offenders receiving the most severe penalties tended to be those convicted of property offences. Drug offenders tended to receive sentences in the middle of the range.
- Driving while disqualified stands out from the other driving offences – and, indeed, from all the other common *summary* offences – in terms of the severity of sentences imposed. The other two offences at the top of the list are indictable.

The next summary offence after driving while disqualified (in order of penalty severity) was goods in custody, for which a custodial sentence or CSO was imposed in only 15.1% of cases (compared to 47.0% for driving while disqualified).

- Where offences allow a clear comparison (eg the three common PCA offences), the ranges of penalties imposed by Local Courts are largely distinct.

Some conclusions

The most common offences are not necessarily the most serious.

In short, the most common types of offences dealt with by the Local Courts in 1992 were -

- PCA (24.5%)
- larceny type offences (12.3%)
- drug offences (10.4%)
- offences against good order (8.4%)
- driving without a valid licence (8.3%)
- maliciously destroying or damaging property (3.8%)
- driving at speed or manner dangerous (1.4%)
- goods in custody (0.9%)

There were only three "top-twenty" offences for which a custodial sentence was imposed in more than fifty percent of cases dealt with by the Local Courts, namely Breaking, entering and stealing (59%), Supplying a prohibited drug (50.6%) and Driving while disqualified (47%).

This suggests that magistrates are keen to, and in fact do, utilise the range of both custodial and non-custodial sentencing options available to them. They do not seem unduly tied to the imposition of custodial sentences as a matter of course for certain offences which come before them on a regular basis; rather, custodial sentences appear to be reserved for the most serious cases (as defined by available statutory maximum penalty). The offenders sentenced in relation to the offence of driving while disqualified appear to receive sentences in the higher end of available penalties.

The difference in sentencing result between this offence and driving while cancelled, which are *prima facie* similar, can be explained by the additional matter of aggravation necessarily involved in the latter: driving while disqualified involves an act of disobedience to a disqualification and attempting to evade an existing penalty.

Disclaimer

This paper was prepared by officers of the Judicial Commission for the information of the Commission and for the information of judicial officers. The views expressed in the report do not necessarily reflect the views of the Judicial Commission itself but only the views of those officers of the Commission who have prepared this report for the Commission.



Publications in this series

- The Children's Court, Number 1, March 1991.
- The Impact of Truth in Sentencing: Part 1 - The Higher Courts, Number 2, March 1992.
- The Impact of Truth in Sentencing: Part 2 - The Local Courts, Number 3, June 1992.
- Sentencing in the Court of Criminal Appeal, Number 4, February 1993.

Topics for future publications

- Common Offences in the Higher Courts
- Homicide
- Rising of Court
- Dishonesty Offences