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Sentencing drink-drivers: The use of dismissals and conditional discharges

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The imposition of a mandatory period of licence disqualification does not apply to charges for driving a motor vehicle with more than the prescribed concentration of blood alcohol (PCA) that are dismissed or conditionally discharged under section 10 of the Crimes (Sentencing Procedure) Act (1999) or which, prior to 1999, had been similarly dealt with under section 556A of the NSW Crimes Act (1900). This study shows that the use of dismissals and conditional discharges for PCA offences has increased sharply over the last ten years, across each of the three PCA offence ranges. The rate of use of dismissals and conditional discharges in relation to PCA offences, however, varies markedly across Local Courts. Multivariate logistic regression modeling shows that this variation persists even after allowance has been made for the simultaneous effects of age, gender, PCA offence type, whether or not the offender had a prior conviction for a PCA offence and whether or not the sentencing court had the option of referring an offender to a traffic offender program.

INTRODUCTION

It is an offence under the Road Transport (Safety and Traffic Management) Act (1999) to drive a motor vehicle with more than the prescribed concentration of blood alcohol. There are three main subcategories of 'prescribed concentration of alcohol' (PCA) offence. These are, respectively, low, middle and high range PCA offences,[1] differentiated according to the blood alcohol concentration found in the alleged offender. PCA offences are serious offences. Under the Road Transport (General) Act (1999), conviction for any PCA offence carries with it an automatic period of licence disqualification in addition to any other penalty the law allows and a court may see fit to impose. Studies of licence disqualification provide clear evidence of its effectiveness in reducing the risk of re-offending by drink drivers.[2]

Although conviction for a PCA offence automatically leads to licence disqualification, it is possible to be found guilty and yet avoid licence disqualification. Section 10 of the Crimes (Sentencing Procedure) Act (1999) permits a court, in certain circumstances,[3] to find a person guilty and yet direct that the relevant charge be dismissed or the offender conditionally discharged. In the case of PCA offences this means that the compulsory licence disqualification provisions under the Road Transport (General) Act do not apply. Section 10(1)(a) permits unconditional dismissal of the charge. Section 10(1)(b) permits a court to discharge a person on condition that they enter into a good behaviour bond for a term not exceeding two years. More recently a new subsection has been added (section 10(1)(c)) to the Act, which permits a court to discharge a person on condition that they enter into an agreement to participate in an intervention program and comply with any intervention plan arising out of the program.

Section 10 is intended for cases where a person is found guilty but the court either considers it inexpedient to inflict anything other than a 'nominal' punishment on the offender or, alternatively, considers it more expedient to release the offender on a good behaviour bond. It should be noted that, under existing case law, an offence does not have to be trivial in order to be dealt with by way of conditional discharge.[4] The current legislation replaces earlier provisions in the Crimes Act (sections 556A(1)(a) and 556A(1)(b),

now repealed), which had a similar intention and effect. In deciding whether to dismiss a charge a court is obliged to have regard to the person's character, antecedents, age, health and mental condition, the trivial nature of the offence and whether there were extenuating circumstances in which the offence was committed. Under both the current and previous legislation a court may also consider any other matter it thinks proper. One matter that is often considered under this heading is whether an offender has completed a Traffic Offender Program (TOP). The precise form of these programs varies from court to court but all involve some form of driver safety education. Two TOPs have now been evaluated (at Mt. Penang and Blacktown) and the results of that evaluation provide reason to believe that some TOPs may be effective in reducing the risk of reconviction for drink driving.[5]

Over the last decade there has been a rapid growth in the frequency with which PCA offences have been dismissed or conditionally discharged, and a corresponding decline in the proportion of proven PCA offences resulting in licence disqualification. The growth in use of dismissals and conditional discharges has been very uneven, with some courts becoming much more likely to deal with PCA offences in this manner and other courts only rarely doing so. It is possible that this discrepancy between courts in the use of dismissals and conditional discharges stems from variation in the characteristics of the cases with which they deal. Some courts, for example, may deal with a lower proportion of cases where the offender has a prior record for drink driving. More frequent use of dismissals and conditional discharges might also be expected where a Local Court has the option of referring a convicted offender to a TOP than where no such program exists. The purpose of this bulletin is to describe the growth in the use of dismissals and conditional discharges for PCA offences and assess the contribution that various factors make to the frequency of their use.

TRENDS IN OFFENCES AND PENALTIES FOR PCA OFFENCES (1993-2002)

Figure 1 shows the total annual number of persons found guilty of a PCA offence in NSW Local Courts over the ten years from 1993 to 2002. The number of persons has remained quite stable at an annual average of approximately 19,000 cases. For eight of the past ten years the annual total number of people charged with a PCA offence and dealt with by a Local Court has remained within 10 per cent of this average.

Figures 2, 3 and 4 show trends in licence disqualification and in the use of dismissals and conditional discharges by people convicted of a low (Figure 2), middle (Figure 3) or high range (Figure 4) PCA offence. Outcomes involving section 10(1)(c) of the Crimes (Sentencing Procedure) Act (1999) are not shown because the section was not enacted until 2003.

Figure 1: Trends in the number of PCA offenders in NSW Local Courts (1993-2002)

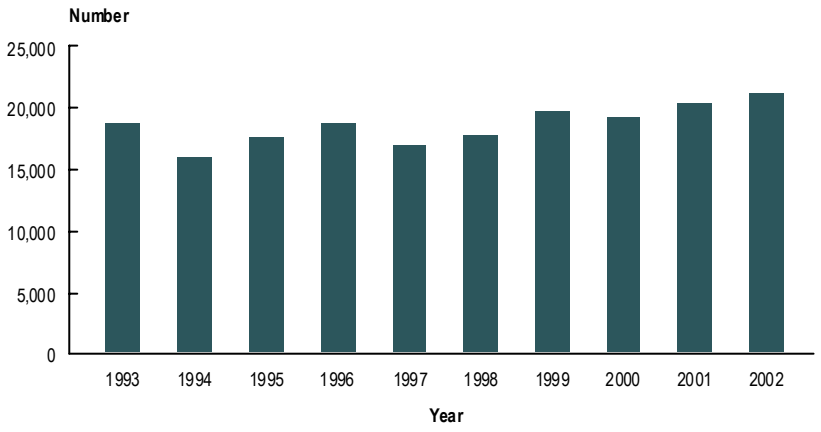
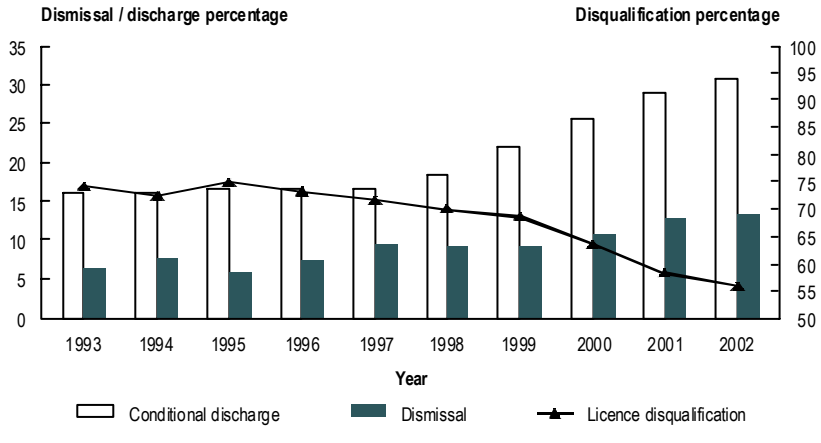


Figure 2: Trends in dismissals, discharges and licence disqualification for low range PCA offences (1993-2002)



The upward trend in the use of dismissals and conditional discharges evident in all three figures is highly significant and consistent over all three categories of PCA offence.[6] The corresponding downward trend in licence disqualification is also highly significant.[7] If we combine dismissals with conditional discharges, the overall percentage of PCA cases dealt with under these provisions between 1993 and 2002 has risen by 22 percentage points for low range PCA offences, 12 percentage points for middle range PCA offences and five percentage points for high range PCA offences. Over the same period, the percentage of cases where an offender's licence was disqualified fell by about 18 percentage points for low range PCA offences, 12 percentage points for middle range PCA offences and five percentage points for high-range PCA offences. There is thus a close quantitative relationship between the fall in licence disqualification and the rise in dismissals and conditional discharges.

Figure 3: Trends in dismissals, discharges and licence disqualification for middle range PCA offences (1993-2002)

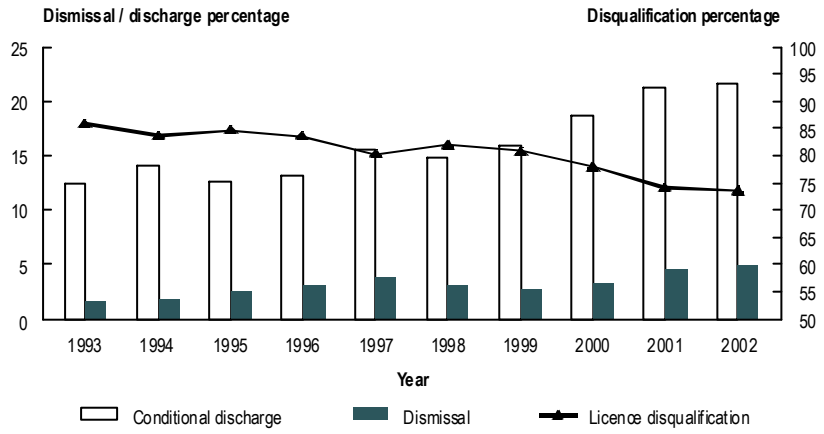
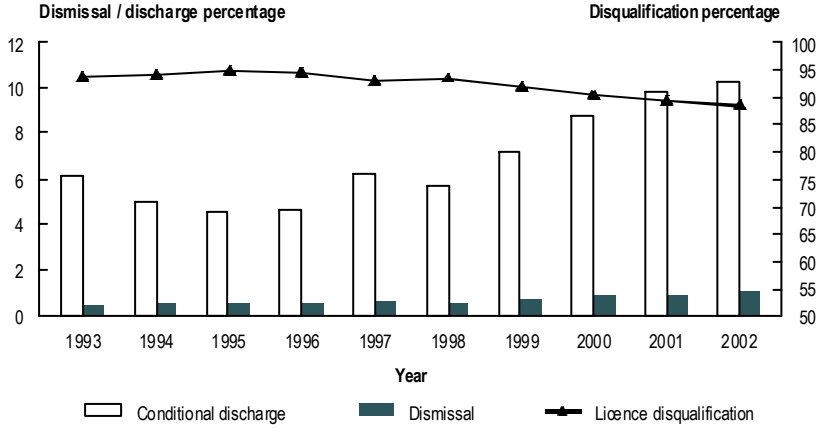


Figure 4: Trends in dismissals, discharges and licence disqualification for high range PCA offences (1993-2002)



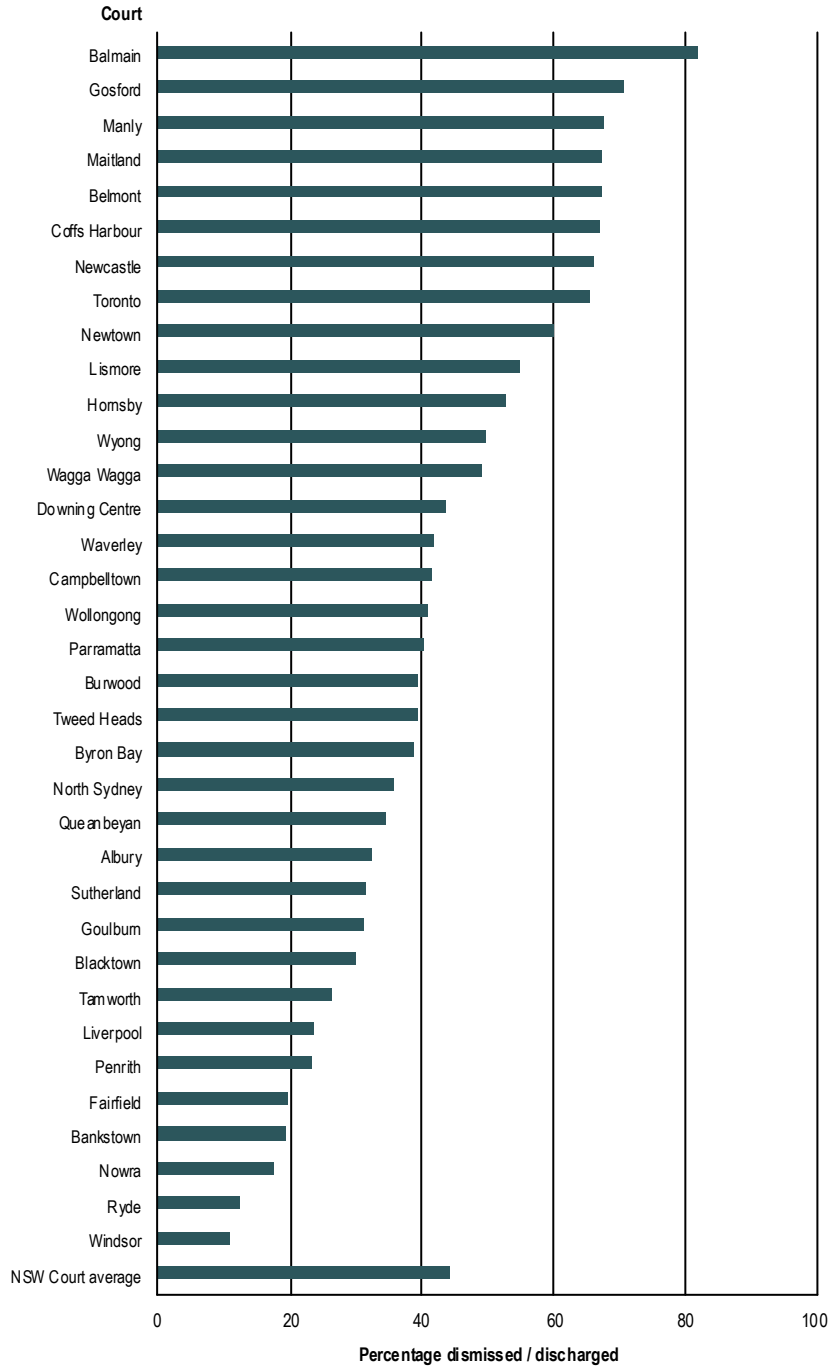
VARIATIONS BETWEEN COURTS IN PCA OUTCOMES IN 2002

The increase in the use of dismissals and conditional discharges has not been uniform across all courts and in this section we describe the extent of the variation. For statistical reasons, the comparisons that follow have been restricted to courts that dealt with at least 48 PCA cases in the relevant PCA range during 2002.

During 2002, charges against approximately 21,000 PCA offenders across the three ranges were proven in NSW Local Courts. A little over half of these cases were middle range offences and the remaining half were split almost equally between the low and high range PCA categories. Figure 5 shows the variation between courts in the percentage of low range PCA offenders receiving a dismissal or conditional discharge. The final bar in this and the two succeeding graphs (labelled 'NSW Court Average') shows the overall percentage of offenders across all NSW Local Courts receiving a dismissal or conditional discharge.

In 2002, NSW courts found 4,825 persons guilty of low range PCA. Overall, about 43 per cent of persons whose principal offence was low range PCA received a dismissal or conditional discharge. It is obvious, however, that there is substantial variation between Local Courts in the use of dismissals and conditional discharges. The chances of a low range PCA offender in the Balmain Local Court receiving a dismissal or conditional discharge, for example, are more than 7.5 times higher than in the Windsor Local Court. If the variation around the average value were determined by chance alone we would expect more than 30 of the 35 courts to have a rate somewhere between 34 per cent and 54 per cent. In fact, only about 12 of the 35 courts fall within these bounds, indicating that the variation between courts in the percentage of proven offenders receiving a dismissal or conditional discharge could not have come about by chance.

Figure 5: Low range PCA dismissal / discharge rate (%) by Local Court, 2002



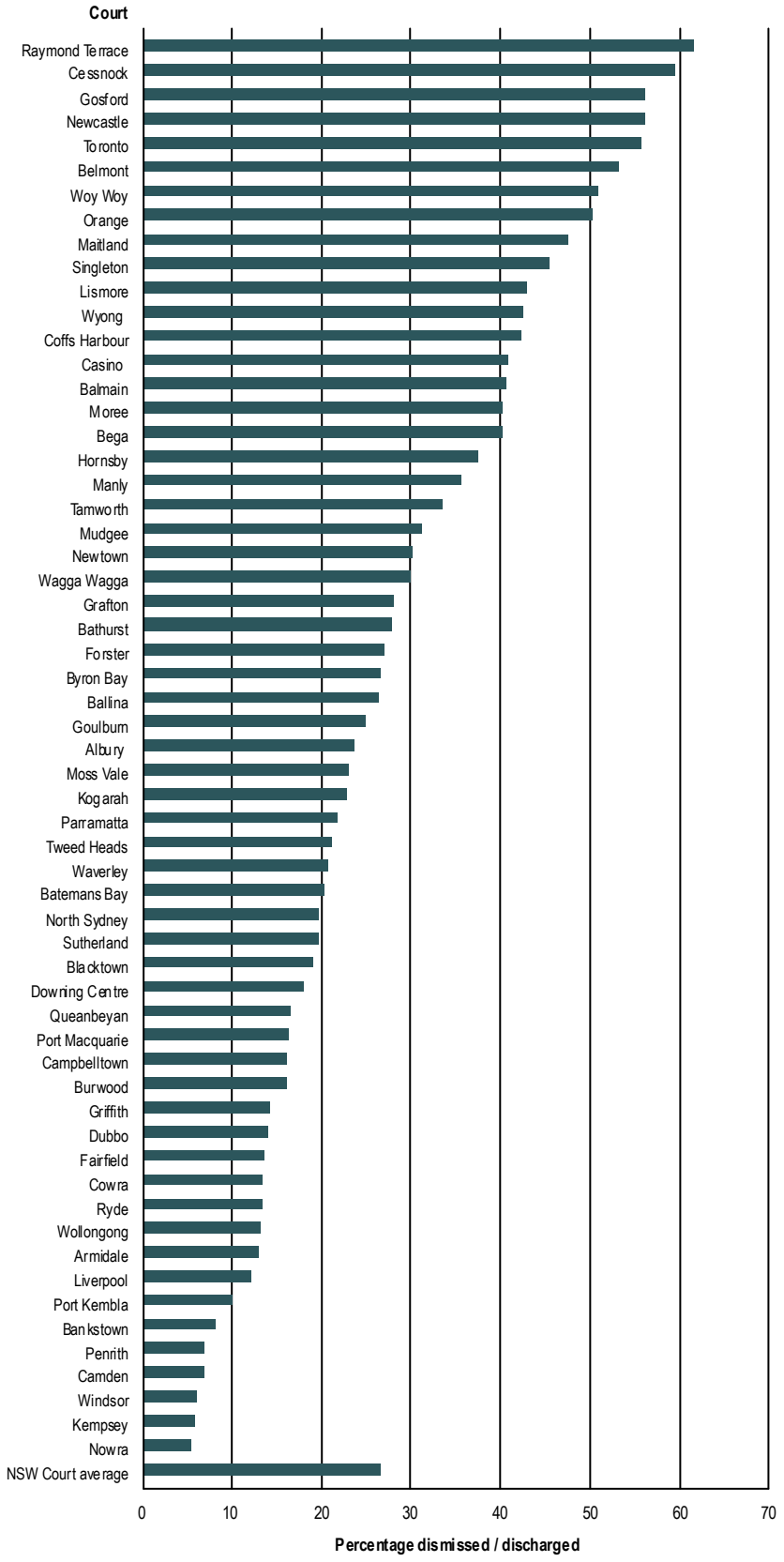
In 2002, NSW courts found 11,453 persons guilty of a middle range PCA offence. Figure 6 shows the variation between courts in the percentage of persons found guilty of middle range PCA offence who received a dismissal or conditional discharge.

Overall, about 27 per cent of middle range PCA offenders received a dismissal or conditional discharge. As one would expect, this is smaller than the percentage receiving dismissals and conditional discharges for low range PCA offences. However, the variation between courts in use of dismissals and conditional discharges for middle range PCA offences is even higher than that for low range PCA offences. The chances of a dismissal or conditional discharge in Raymond Terrace Local Court, for example, are more than 11 times higher than in Nowra Local Court. If the variation around the average value had been determined by chance alone we would expect more than 55 of the 59 courts to have a rate somewhere between 19 per cent and 34 per cent. In fact fewer than 20 of the 59 courts shown in Figure 6 remain within those bounds, indicating that the variation could not have come about by chance alone.

In 2002, 4,842 persons were found guilty of high range PCA in NSW Local Courts. Figure 7 shows the variation between courts in the percentage of high range PCA offenders receiving dismissals or conditional discharges.

The overall percentage of high range PCA offenders receiving a dismissal or conditional discharge across all Local Courts in 2002 was around 11 per cent, as one might expect, lower than that observed for low range and middle range PCA offences. As with the use of dismissals and conditional discharges in dealing with low and middle range PCA offences, however, there is marked variation between courts in its use for high range PCA offences. In Kempsey, Windsor, Nowra and Wollongong Local Courts, for example, no high range PCA offenders received a dismissal or conditional discharge during the period under study. In Newcastle Local Court, by contrast, more than 45 per cent of the high-range PCA cases during the period under examination were dealt with by one of these methods. If the variation around the average value (11%) was determined by chance alone we would expect more than 28 of the 31 courts in Figure 7 to have a rate somewhere between five per cent and 18 per cent. In fact only 19 of the 31 courts fall within those bounds. Even for high range PCA offences, then, the variation in dismissals and conditional discharges exceeds that which would be expected by chance.

Figure 6: Middle range PCA dismissal / discharge rate (%) by Local Court, 2002



BI-VARIATE COMPARISONS OF FACTORS INFLUENCING PCA OUTCOMES

Taken at face value, Figures 5 to 7 suggest that substantial disparity exists between Local Courts in their use of dismissals and conditional discharges when dealing with PCA offenders. This disparity cannot be attributed to variation in the seriousness of the offences with which different courts deal because substantial variation in the use of dismissals and conditional discharges can be found even within each PCA range. However it could be attributable to other relevant sentencing factors, such as the prior PCA record of the offender, his or her gender, or his or her age, and whether or not the sentencing court had a TOP available to it. In this section we examine the bi-variate relationship between use of dismissals and conditional discharges and five sentence-relevant factors, namely, offence seriousness (i.e. low, middle or high range PCA), offender's age, offender's gender, offender's prior PCA record and whether or not the court had a TOP available to it.

Table 1 shows the likelihood of a dismissal or conditional discharge as a function of offence seriousness. The final column of this table (and of Tables 2, 3 and 4, below) shows the number of offenders on which the percentages are based. Note that the data presented in this section show PCA offenders found guilty in the NSW Local Courts in 2002.[8]

In more than 1 in 10 high range PCA cases, the charges are either dismissed or the offender is released on a conditional discharge. As would be expected, though, the more serious the offence (in terms of PCA level), the lower the percentage of cases dealt with without conviction. The differences are statistically significant (χ^2 = 1209.2, d.f., = 2, $p < 0.001$).

Table 2 shows the likelihood of a PCA offender receiving a dismissal or conditional discharge broken down by gender.

Figure 7: High range PCA dismissal / discharge rate (%) by Local Court, 2002

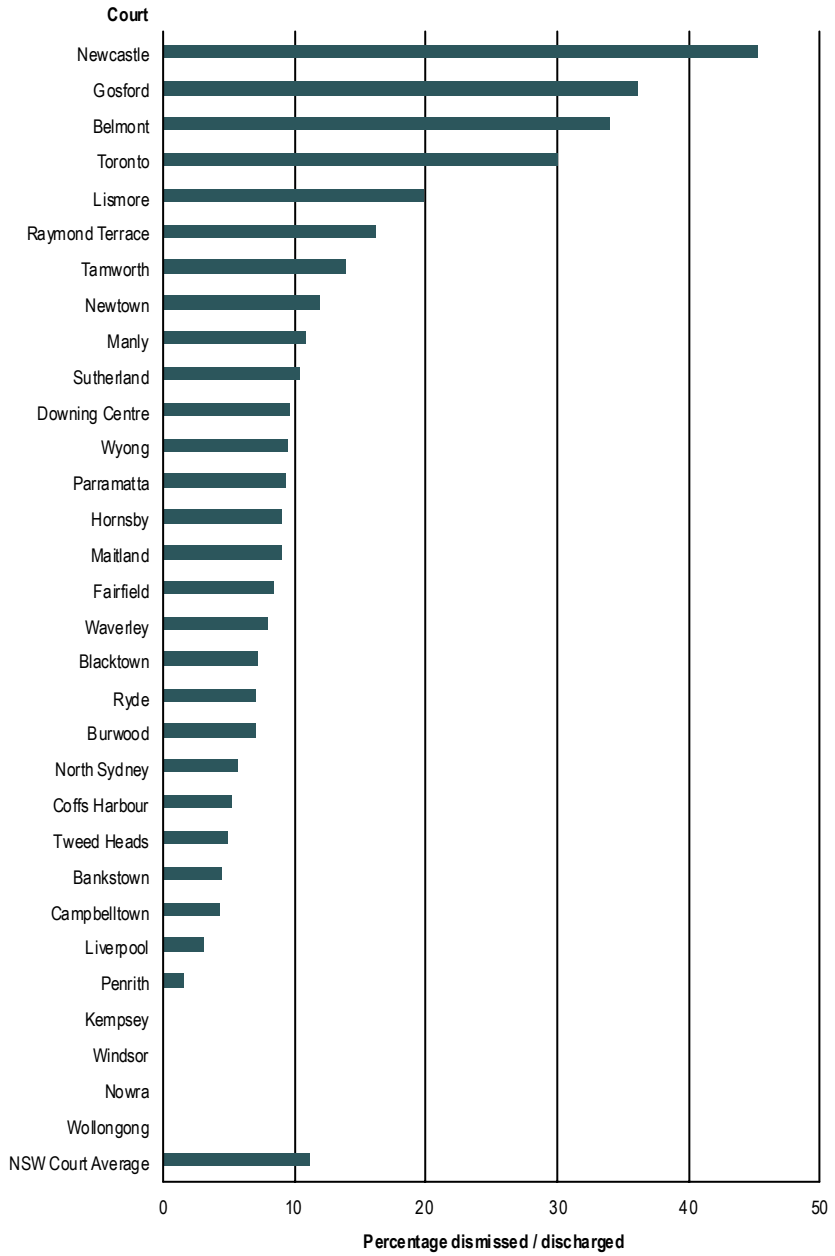


Table 1: Dismissal/conditional discharge rate (%) for proven PCA offenders by offence seriousness, 2002

	Court outcome		
PCA range	***Convicted***	***Dismissed/discharged***	***N***
Low	59.6	40.4	5,265
Mid	75.2	24.8	12,287
High	89.0	11.0	5,225

Source: NSW Bureau of Crime Statistics and Research Re-offending Database

Table 2 indicates that males are significantly less likely to have their case dismissed/conditionally discharged than females. Once again, the differences are statistically significant (χ^2 = 360.8, d.f., = 1, $p < 0.0001$).

Table 3 shows the likelihood of a dismissal or conditional discharge broken down by the age of the offender.

The likelihood of a dismissal or conditional discharge clearly increases with the age of the offender, particularly once the offender is over the age of 49. The differences are statistically significant (χ^2 = 756.6, d.f., = 3, $p < 0.0001$).

Table 4 shows the likelihood of a dismissal or conditional discharge, broken down according to whether the offender had been convicted of a PCA offence in the five years prior to their conviction in 2002.

Those with a prior conviction for a PCA offence are approximately 12 times less likely to receive a dismissal or conditional discharge than those with no prior PCA conviction in the previous five years. The differences are significant (χ^2 = 1138, d.f., = 1, $p < 0.0001$).

Finally, Table 5 shows the likelihood of dismissal or conditional discharge as a function of whether or not the sentencing court had a TOP associated with it.

Inspection of Table 5 shows that defendants convicted of a PCA offence in a court that has a TOP associated with it are slightly more likely to receive a dismissal or conditional discharge than defendants convicted in courts where access to such a program does not exist. The difference, though statistically significant (χ^2 = 33.1, d.f., = 1, $p < 0.0001$), is relatively small.

In summary, Tables 1 to 5 show that the seriousness of the PCA offence, whether or not the court has access to a TOP, and the offender's age, gender and prior PCA record are all associated with the likelihood of a dismissal or conditional

Table 2: Dismissal/conditional discharge rate (%) for proven PCA offenders by gender of offender, 2002

	Court outcome		
Gender	*Convicted*	*Dismissed/discharged*	*N*
Male	77.1	22.9	19,122
Female	62.2	37.8	3,655

Source: NSW Bureau of Crime Statistics and Research Re-offending Database

Table 3: Dismissal/conditional discharge rate (%) for proven PCA offenders by age of offender, 2002

	Court outcome		
PCA range	*Convicted*	*Dismissed/discharged*	*N*
Under 25	81.7	18.3	6,002
25-34	78.7	21.3	7,333
35-49	72.0	28.0	6,696
50+	55.9	44.1	2,746

Source: NSW Bureau of Crime Statistics and Research Re-offending Database

Table 4: Dismissal/conditional discharge rate (%) for PCA offenders by prior PCA record of offender, 2002

	Court outcome		
Prior PCA offence	*Convicted*	*Dismissed/discharged*	*N*
Yes	97.6	2.4	3,487
No	70.6	29.4	19,290

Source: NSW Bureau of Crime Statistics and Research Re-offending Database

Table 5: Dismissal/conditional discharge rate (%) for PCA offenders by whether or not the sentencing court could refer offenders to a traffic offender program (TOP), 2002

	Court outcome		
TOP available	*Convicted*	*Dismissed/discharged*	*N*
Yes	73.1	26.9	11,352
No	76.4	23.6	11,425

Source: NSW Bureau of Crime Statistics and Research Re-offending Database

discharge. We cannot assume that the profile of PCA offences coming before each Local Court in NSW is identical in terms of each of these factors. Indeed, it is obvious that, at least in terms of their access to TOP, some courts do differ from others. To see whether the discrepancies seen in Figures 5 to 7 are artefacts of differences between courts in sentence-relevant factors, therefore, we need to control for the influence of these factors. The next section addresses this issue.

MULTIVARIATE ANALYSIS OF FACTORS INFLUENCING PCA OUTCOMES

To control for the influence of the factors examined in Tables 1 to 5, we use multivariate logistic regression.[9] Rather than examine all NSW Local Courts we concentrate on a sample of 15 Local Courts chosen at random from among the 34 courts that dealt with 200 or more proven PCA offenders in 2001.[10] We then construct a logistic regression model which predicts the likelihood of a dismissal or conditional discharge on the basis of information about the court in which an offender is sentenced, on the one hand, and the offender's age, gender, offence seriousness and prior PCA record (as indexed by whether they have been convicted of a PCA offence in the 5 years prior to the present conviction), on the other. Rather than enter TOP as a variable in the analysis, we control for its influence by conducting separate analyses of the effects of court, age, gender, offence seriousness and prior PCA record in courts that have TOP and in courts which do not.[11] Of the 15 courts chosen for analysis, nine had a TOP and six did not. Table 6 shows the results of the logistic regression analysis for the courts that had access to a TOP. For convenience of exposition the courts are numbered. The names of the individual courts are given in the Appendix.

The column on the far left of the table lists each of the contrasts whose differential effects on the likelihood of a dismissal or conditional discharge are being estimated. Thus the first row shows the effect on the odds of a dismissal or conditional discharge associated with being dealt with by Court 47, as opposed to Court 50 (Court 50 was chosen as the basis for comparison because it has the lowest rate of dismissals/conditional discharges among the courts included in this analysis). The column headed 'Significance' indicates whether the comparison was statistically significant. All significant results have been printed in bold. The column headed 'Odds Ratio' shows the estimated odds of a dismissal or conditional discharge for the first listed item as compared with the second listed item in column one. The final column shows the confidence interval surrounding the odds ratio estimates.

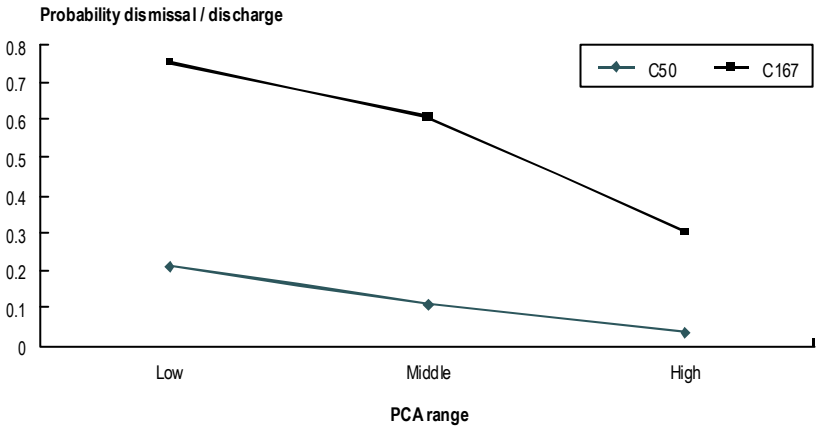
The first point to note in Table 6 is that all the court contrasts are significant. Thus a strong 'court effect' exists among courts which have access to a TOP, even after controlling for age, gender, offence seriousness and prior PCA record. Among the significant contrasts, the most important is clearly the prior record of the offender. The odds of an offender without any prior conviction for a PCA offence in the past five years being dealt with by dismissal or discharge are much higher than the odds for someone who has been convicted of a PCA offence over this period. This is to be expected. What is more surprising is that the court which deals with an offender sometimes has a much larger effect on the odds of a dismissal or conditional discharge than the charge (low, medium or high range PCA offence) on which a person is convicted. The odds ratio associated with being dealt with in Court 167 as against Court 50, for example, is nearly twice as high as the odds ratio associated with the contrast between being convicted of a low range and being convicted of a high range PCA offence.

Table 6: Model for use of dismissal/conditional discharge in courts with TOP

Parameter	*Significance*	*Odds ratio*	*Confidence interval (95%)*
C47 v C50	**.0223**	1.311	1.039 – 1.654
C31 v C50	**.0190**	1.341	1.050 – 1.714
C170 v C50	**<.0001**	1.576	1.125 – 1.979
C226 v C50	**<.0001**	2.088	1.621 – 2.690
C250 v C50	**<.0001**	4.538	3.629 – 5.625
C62 v C50	**<.0001**	4.403	3.460 – 5.602
C167 v C50	**<.0001**	13.095	10.602 – 16.175
C211 v C50	**<.0001**	12.766	9.969 – 16.346
Female v Male	**<.0001**	1.980	1.741 – 2.238
25-34 v under 25	.2032	0.922	0.813 – 1.045
35-49 v under 25	**.0002**	1.276	1.123 – 1.450
50+ v under 25	**<.0001**	3.610	3.068 – 4.248
Middle v High PCA	**<.0001**	3.286	2.864 – 3.770
Low v High PCA	**<.0001**	7.001	5.985 – 8.188
No prior PCA v Prior PCA	**<.0001**	39.874	28.657 – 55.483

***Source**: NSW Bureau of Crime Statistics and Research Re-offending Database*

Figure 8: Probability of a dismissal / discharge by PCA range*, (TOP courts C50 and C167)



* males aged 25-34 without a prior PCA conviction

This point is easier to see if we convert the odds ratios to estimates of relative risk. Figure 8 shows how changes in the seriousness of a PCA offence and changes in the sentencing court influence the likelihood of receiving a dismissal or conditional discharge in a court that has access to a TOP. For the purposes of illustration, the calculations are based on the assumption that the offender is male, aged 25-34 and has no prior PCA conviction.[12] The courts being compared are those with the highest relative odds ratio in Table 6.

As can be seen from Figure 8, the likelihood of a proven offender receiving a dismissal or conditional discharge is higher for both courts where the offender is guilty of a low range as against a high range PCA offence. However the more striking difference is that which exists between courts 50 and 167 in the way they deal with offenders guilty of the same PCA offence. Male offenders, aged 25-34 with no prior PCA conviction who are guilty of a low range PCA offence in Court 167 are about 3.5 times more likely to receive a dismissal or conditional discharge than similar offenders guilty of the same offence in Court 50. Male offenders, aged 25-34 with no prior PCA conviction who are found guilty of a high range PCA offence in Court 167 are more than eight times more likely to receive a dismissal or conditional discharge than similar offenders found guilty of the same offence in Court 50. To put the point another way, offenders found guilty of a high range PCA offence in Court 167 are more likely to be dealt with by dismissal or conditional discharge than offenders found guilty of a low range PCA offence in Court 50.

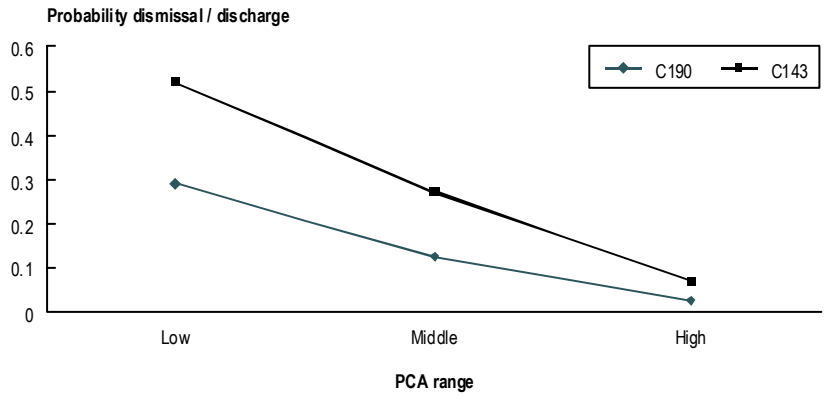
Now consider the influence of the sentencing court on PCA outcomes where there is no TOP. Table 7 shows the results of an analysis of the effects of court, age, gender, offence seriousness and prior PCA record on the likelihood of a dismissal or conditional discharge, for the six courts in our sample of 15 where there was no TOP available.

Table 7: Model for use of dismissal/conditional discharge in courts without TOP

Parameter	*Significance*	*Odds ratio*	*Confidence interval (95%)*
C183 v C190	.3800	1.111	0.879 – 1.404
C235 v C190	.4884	1.089	0.855 – 1.387
C48 v C190	**<.0436**	1.324	1.008 – 1.740
C117 v C190	**<.0031**	1.442	1.131 – 1.837
C143 v C190	**<.0001**	2.621	2.093 – 3.283
Female v Male	**<.0001**	2.392	2.126 – 2.691
25-34 v under 25	**<.0001**	2.169	1.869 – 2.518
35-49 v under 25	**<.0001**	4.499	3.863 – 5.240
50+ v under 25	**<.0001**	8.911	7.439 –10.675
Middle v High PCA	**<.0001**	4.809	3.992 – 5.794
Low v High PCA	**<.0001**	13.804	11.345 –16.797
No prior PCA v Prior PCA	**<.0001**	13.529	9.648 –18.970

***Source**: NSW Bureau of Crime Statistics and Research Re-offending Database*

Figure 9: Probability of a dismissal/discharge by PCA range*, (non-TOP courts C190 and C143)



* males aged 25-34 without a prior PCA conviction

Once again, there is clear evidence of a court effect even in the presence of controls for age, gender, offence seriousness and prior PCA record. The odds of an offender receiving a dismissal or conditional discharge in Court 143, for example, are more than 2.6 times higher than the odds of this in Court 190. A comparison of the relevant odds ratios in Tables 6 and 7, however, suggests that the court effects on the likelihood of a dismissal or conditional discharge are less pronounced among offenders dealt with in non-TOP courts than among offenders dealt with in TOP courts. Two of the court contrasts in Table 7 are not significant (Court 183 v Court 190 and Court 235 v Court 190). The effects of offence seriousness are also larger, while the effects of a prior PCA conviction, though still significant, are clearly smaller.

A clearer picture of these effects can be seen in Figure 9, which shows how changes in the seriousness of a PCA offence and changes in the sentencing court affect the likelihood of offenders receiving a dismissal or conditional discharge in a court that does not have access to a TOP. As with Figure 8, the calculations are based on the assumption that the offender is male, aged 25-34 and has no prior PCA conviction. The courts being compared are those with the highest relative odds ratio in Table 7 (i.e. courts 190 and 143).

Figure 9 confirms the impression gained from Table 7 that the differences between Court 190 and Court 143 are less pronounced at each PCA range level than the corresponding difference between Court 50 and Court 167 in Figure 8. Persons found guilty in Court 143 are better off overall than offenders found guilty in Court 190. However, whereas the court effects in TOP courts were sometimes larger than the offence seriousness effects, there is no evidence of a similar effect in courts that do not have access to TOP.

CONCLUSION

The number of drink-drivers avoiding licence disqualification because their proven charge is dismissed or they are conditionally discharged has increased markedly over the last few years. The growth in the use of section 10, however, has been much greater in some courts than in others. This has led to considerable disparity between courts in the rate at which defendants in PCA cases are dismissed or released on conditional discharge. Chance factors alone cannot explain the overall increase in the use of dismissals and conditional discharges or the differences between courts in its use. Nor can those differences be explained in terms of whether or not a court has access to a TOP, the seriousness of the PCA offences coming before it or the age, gender and prior PCA record of offenders with which it deals.

It is not clear why the use of dismissals and conditional discharges under section 10 of the Crimes (Sentencing Procedure) Act (1999) has increased or why there is substantial variation between courts in their use of the provision, even after we have controlled for differences between courts in the profile of offences and offenders coming before them. It is possible that some or all of the variation between TOP courts in the use of section 10 stems from differences between them in the number of TOP places available but this explanation has no relevance to the problem of disparity in the use of section 10 among non-TOP courts. Differences in the use of section 10 among these courts might conceivably be attributable to differences in the background characteristics (e.g. family circumstance, community ties etc.) of offenders coming before different courts. There is no data ready to hand that could be used to test this possibility. However even if some form of systematic variation does exist in background characteristics of PCA offenders coming before different courts (other than that which we have controlled for), it is hard to see how differences in such background characteristics could be used to justify differences as large as those shown in Figures 8 and 9 in the chances of a dismissal or conditional discharge.

Although there is no data on which to test it, a likely explanation for the variation between courts in the use of Section 10 is that magistrates differ greatly in their assessment of the seriousness of PCA offences and/or in their views about the fairness of mandatory licence disqualification in certain circumstances. Mandatory sentence policies, it should be noted, have a history of producing unintended and unexpected effects. In 1995, for example, the Governor of Connecticut introduced a new law allowing for a 30-day licence suspension for drivers caught speeding. Following the introduction of the new law (which was widely viewed as unfair), the number of arrests for speeding and the conviction rate for speeding fell dramatically.[13] Similar untoward effects have been found in studies of the effects of mandatory prison penalties for driving offences.[14] In fact judicial officers have often been found to resist attempts by legislatures to restrict their sentencing discretion.[15]

Whatever its cause, it is hard to see how the current level of variation in the use of dismissals and conditional discharges for PCA offences can be justified. It may be that some of this disparity is reduced on appeal. It would be better to try and prevent the problem, however, than to address it through appellate review. One obvious solution to the problem would be to provide magistrates with greater guidance on the appropriate use of dismissals and conditional discharges, either through specific education programs, more specific legislative guidance and/or through the issuing of a sentencing guideline judgement by the NSW Court of Criminal Appeal. Any guidance provided to magistrates on sentencing of drink-drivers, however, should be consistent with what we know about the relative merits of TOPs and licence disqualification as strategies for reducing the incidence of drink driving. In this context it is worth observing that, while there is some evidence that participation in some forms of rehabilitation reduces recidivism amongst drink-drivers,[16] there is far more evidence at present in relation to the deterrent efficacy of licence disqualification.[17] It is also worth noting that, even though two TOPs have been evaluated with positive results, there is no formal accreditation process associated with the establishment of a TOP. Individual programs, therefore, may differ markedly in what they entail. It is unclear, therefore, whether the positive results obtained in relation to the Mt. Penang and Blacktown programs can be generalised to other TOPs across the State. The recent development of a NSW Sober Driver Program by the NSW Roads and Traffic Authority will bring greater uniformity of approach to the rehabilitation of drink drivers. It remains to be seen, however, whether the NSW Sober Driver Program is more effective than licence disqualification in reducing recidivism amongst drink drivers.

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NOTES

1 Low range PCA:
0.05<= blood alcohol concentration <0.08
Mid range PCA:
0.08<= blood alcohol concentration <0.15
High range PCA:
blood alcohol concentration >= 0.15

2 Ross, H.L. 1976, 'The Neutralisation of Severe Penalties: Some Traffic Law Studies, *Law and Society*, spring, pp. 403-412.

3 The relevant principles for the use of section 10 and its predecessor, section 556A of the Crimes Act are to be found in Cobiac v Liddy (1969) 119 CLR 257 (see, in particular Windeyer J. at 269, R v Ingrassia (1997), 41 NSWLR 447 and R v Paris (2001), NSWCCA 323 (et al).

4 See R v Paris [2000], NSWCCA 83, R v Piccin (No.2), [2001] NSWCCA 323, Cobiac v Liddy (supra) et al.

5 Saffron D., Wallington N. and Chevalier A. 1999, 'NSW Traffic Offenders Programs: evaluation', in *Proceedings of Road Safety Research Policing and Education Conference*, vol. 1, Australian Transport Safety Bureau, Canberra, pp. 509-516.

6 The ordinary least squares slope coefficients for dismissals/conditional discharges all show highly significant positive trends (p<.001) and indicate a respective 2.53,1.33 and 0.66 annual percentage *increase* for low, middle and high range PCA offences over the period 1993 to 2002.

7 The ordinary least squares slope coefficients for license disqualifications were all negative and highly significant (p<.001), indicating a 2.05,1.32 and 0.65 annual percentage *decrease* respectively for low middle and high range PCA offences over the period 1993 to 2002.

8 The data in the bi-variate comparisons and multivariate regression were derived from the Bureau of Crime Statistics and Research's Re-offending Database and differ slightly from data sourced from the NSW Local Courts database. Data from both sources represent persons with a proven PCA offence. However, data from the Re-offending database does not necessarily represent principal offence. Persons with multiple PCA charges are considered just once for a single one of their PCA charges.

9 Multivariate logistic regression estimated (in this report) by the method of maximum likelihood is consistent and asymptotically efficient for large samples. See for example Hill, C., Griffiths, W., & Judge, G. (1997) 'Undergraduate Econometrics', John Wiley & Sons, Inc, p. 202.

10 The analysis that follows is based on all PCA cases dealt with in these 15 courts over the years 2000, 2001 and 2002. This yielded 22,601 PCA cases, including 6,139 dismissals/conditional discharges and 638 cases which were later excluded from the models due to missing data. The sample represents approximately 35 per cent of the PCA offences dealt with in NSW Local Courts 2000-2002.

11 The combined sample results (15 Local Courts) are not included in the report. However they show very similar results to the TOP model (Table 6) in terms of ranges of odds ratios. Only two of the 15 courts were not found to be significantly different to the base Court and all other estimates were found to be highly significant (p<.001). The loss of efficiency in moving from one model with 22,000 cases to two separate models each with 11,000 cases was not considered a problem given the large sample sizes. The TOP effect could not be tested together with all the 15 courts since the variable in question is a linear combination of a subset of the Courts' dummy variables.

12 We express things in this way because the relative risk of a section 10 dismissal as we move from one court to another depends upon characteristics of the offence and offender under consideration. To illustrate the court effect, therefore, we must first select a set of base characteristics.

13 Ross, H.L. 1976, 'The Neutralisation of Severe Penalties: Some Traffic Law Studies, *Law and Society*, spring, pp. 403-412. See also: Ross, H.L. & Foley, J.P., 1987, 'Judicial Disobedience of the Mandate to Imprison Drunk Drivers', *Law and Society Review*, 21(2), pp. 315-323.

14 See Ross, H.L. & Foley, J.P., 1987, 'Judicial Disobedience of the Mandate to Imprison Drunk Drivers', *Law and Society Review*, 21(2), pp. 315-323.

15 Cohen, J. & Tonry, M. 183, 'Sentencing Reforms and Their Impacts', in Blumstein, A., Cohen, J., Martin, S. & Tonry, M. (eds.), *Research on Sentencing: The Search for Reform*, volume 11, National Academy Press, Washington, D.C., pp. 305-459.

16 Wells-Parker, E., Bangert-Drowns, R., McMillen, R. & Williams, M. 1995, 'Final results from a meta-analysis of remedial interventions with drink/drive offenders', *Addiction*, 90, pp. 907-926.

17 See, for example, Blomberg, R. D., Preusser, D. F. & Ulmer, R. G. 1987, *Deterrent Effects of Mandatory Licence Suspension for DWI Conviction*, no. DOT - HS-807-138, National Technical Information Service, Springfield, Virginia; Mann, R. E., Vingilis, E. R., Gavin, D., Adlaf, E. & Anglin, L. 1991, 'Sentence severity and the drinking driver; relationships with traffic safety outcomes', *Accident, Analysis and Prevention*, vol. 23, no. 6, pp. 483-491; Nichols, J. L. & Ross, H. L. 1990, 'The effectiveness of legal sanctions in dealing with drinking drivers', *Alcohol, Drugs and Driving*, vol. 6, no. 2, pp. 33-60; Peck, R. C. 1991, 'The general and specific deterrent effects of DUI sanctions: A review of California's experience', *Alcohol, Drugs and Driving*, vol. 7, no. 1, pp. 13-42; Siskind, V. 1996, 'Does license disqualification reduce reoffence rates?', *Accident, Analysis and Prevention*, vol. 28, no. 4, pp. 519-524; and DeYoung, D. J. 1997, 'An evaluation of the effectiveness of alcohol treatment, driver license actions and jail terms in reducing drunk driving recidivism in California', *Addiction*, vol. 92, no. 8, pp. 989-997.

APPENDIX

Local Courts used in the multivariate logistic analysis

TOP Courts

C31	Blacktown
C47	Burwood
C50	Campbelltown
C62	Coffs Harbour
C167	Newcastle
C170	North Sydney
C211	Toronto
C226	Wagga Wagga
C250	Wyong

Non TOP Courts

C48	Byron Bay
C117	Hornsby
C143	Manly
C183	Downing Centre
C190	Queanbeyan
C235	Waverley

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