

Recent Trends in Arrests for Drug Driving

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Aim: In 2015 the NSW government announced it would significantly increase the number of roadside drug tests conducted. This paper examines the impact of increased drug driving detections on the New South Wales Criminal Courts.

Method: Descriptive analysis of drug driving matters finalised in court from January 2007 to June 2016.

Results: Over the 24 months to June 2016, the number of drug driving charges finalised in court increased by 320% (up from 2,331 in 2014/15 to 9,808 in 2015/16). The overwhelming majority of persons found guilty of drug driving offences were males (79.3%) and persons aged between 18 and 39 years (72.4%). The rate of prosecution was twice as high in Regional NSW compared to the state average (180 per 100,000 compared to 93 per 100,000).

Almost all drug driving charges brought to court are proven. The most common penalties imposed are fines and Section 10 bonds (i.e. no conviction recorded), however approximately 80 per cent of persons found guilty also received a period of mandatory licence disqualification in addition to their principal penalty. The number of offenders previously found guilty of drug driving and now being found guilty of driving while disqualified more than tripled (from 133 to 542) in the 12 months to June 2016 compared with the 12 months to June 2015.

Conclusion: As a result of the NSW Police Force conducting more mobile roadside drug tests, the number of persons charged and consequently found guilty of drug driving has rapidly increased since 2015. This has had a significant impact on the workload of the Local Court. The drug driving increase also has the potential to increase the Corrections NSW workload due to a corresponding increase in convictions for driving while disqualified, which often attract sentences involving imprisonment or community supervision.

Keywords: drug driving, mobile roadside drug testing, MDT, driving, illicit drugs, driving

Background

The NSW Police Force has always had the legislative authority to charge drivers for driving under the influence of illicit drugs. However, until 2006, police had to rely on the appearance or behaviour of a person as evidence on which to base a charge of driving under the influence of a drug.¹ In 2006, legislative changes under the *Road Transport Legislation Amendment (Drug Testing) Act 2006* made it an offence to drive a motor vehicle with an illicit drug present in a driver's oral fluid, blood or urine. Under the new laws it is no longer necessary to prove that the driver is impaired. Indeed, unlike the situation with drink-driving—where there are statutory blood alcohol limits—there is no statutory drug concentration threshold

governing the offence of drug driving. Any driver found to have a proscribed drug in their oral fluid, blood or urine is deemed to have committed the offence. The 2006 amendments also gave police new powers to conduct random oral fluid testing and mobile roadside drug testing (MDT) of drivers for traces of proscribed drugs.

Since starting to test for cannabis, speed and ecstasy on the roadside in 2007, the NSW Police Force has conducted an average of 32,000 roadside tests annually (Centre for Road Safety, June 2015).² However, in 2015 the NSW Government announced a significant expansion of the roadside drug testing program. On 1 December 2015 the Mobile Drug Testing campaign was launched and it was announced that the NSW

Government would triple “Mobile Drug Testing to 97,000 tests each year by 2017” (Transport for NSW media release, 2015).³ Minister for Roads, Duncan Gay, said the Government was “throwing millions” at the issue after one in 10 oral roadside drug tests came back positive in 2015, compared to around one in 300 positive breath tests for alcohol (Sydney Morning Herald, January 24 2016).⁴

Since this announcement, the level of police enforcement for drug driving has substantially increased. As a result, questions have arisen about the appropriateness of drug driving legislation which does not require impairment.⁵ Concerns have also been raised about the flow on effect of increased enforcement of drug driving on the workload of the criminal justice system, including extra demand / pressure on the Local Court.⁶

The specific questions addressed by the report are as follows:

1. What are the trends in drug driving detections?
2. What proportion of the Local Court workload relates to drug driving offences and has this changed over the last 5 years?
3. What are the common court outcomes for drug driving offences?
4. Who are the offenders and what are their offending histories?
5. What penalties do courts impose on those convicted of these offences?
6. Is there any relationship between the mandatory licence disqualification for offenders convicted of drug driving offences and subsequent driving while disqualified charges?

Method

The data for this brief were drawn from two sources:

1. the Bureau of Crime Statistics and Research’s (BOCSAR) Criminal Courts database; and
2. BOCSAR’s Re-offending Database, ROD (for further explanation of ROD, see Hua & Fitzgerald, 2006).

This report defines drug driving in line with the Road Transport Act 2013 (from July 1 2013) and the Road Transport (Safety and Traffic Management) Act 1999 prior to July 1 2013. There are two sub-categories of drug driving offences, differentiated by the type of drug detected:

- drive with the presence of cannabis, speed/ice or MDMA/ecstasy in oral fluid, blood or urine; and
- drive with the presence of morphine or cocaine in blood or urine.

1. What are the trends in drug driving offences?

Figure 1 shows the number of finalised charges in NSW Criminal Courts for drug driving offences from January 2007 to June 2016. The graph shows that from the introduction of the drug driving legislation in December 2006 to 2013, the number of charges finalised in court remained fairly consistent at around 40 per month. From 2013 to 2014 the number of charges gradually increased to almost 100 charges per month before

rapidly rising to almost 466 charges each month in 2015, reaching a peak of 1,035 in February 2016. In the 24 months to June 2016, the number of drug driving charges finalised in NSW Criminal Courts has increased by 320 per cent.

2. What impact has this increase had on the workload of the Local Court?

Given the increase in finalised charges shown in Figure 1, we next look at what impact this growth has had on the workload of the Local Court (see Figure 2). In the 12 months to June 2016, 287,439 individual charges were finalised in the Local Court, up 11 per cent from the previous 12 month period (an additional 27,584 charges). The increase in drug driving matters over the same period (an additional 7,464 charges) accounts for 27% of the overall increase in Local Court charges between 2014/15 and 2015/16. In 2015/16 drug driving offences were ranked as the twelfth most common matter finalised in the Local Court (9,786 finalised charges or 3.4% of all Local Court charges). This pattern is in stark contrast to 2011/12, when drug driving offences ranked 50th in terms of the volume of charges finalised (639 finalised charges or 0.3% of all Local Court charges).

3. What are the common court outcomes for drug driving offences?

Figure 3 shows the conviction rate of drug driving offences compared with the overall conviction rate. Almost all (98.3%) drug driving charges heard in court are proven (i.e. the offender is found guilty). The conviction rate for these offences is considerably higher than the overall conviction rate for the Local Court (80.6%; see Figure 3), but comparable to drink driving offences (98.1%).

Table 1 provides a more detailed breakdown of court outcomes for finalised drug driving offences over the five years to June 2016. As previously mentioned, the overwhelming majority of drug driving charges are proven (98.3%). Of the unproven charges, only 1.1 per cent were dismissed under sections 32 or 33 of the Mental Health (Forensic Provisions) Act, while less than one per cent were withdrawn by the prosecution. Only eight charges (0.1%) in the 12 months to June 2016 were found not proven after the defendant contested the charge by pleading not-guilty (i.e. the offender was found not guilty after a defended hearing).

4. Who are the offenders and what are their offending histories?

Table 2 shows the age and gender of those found guilty of drug driving as their principal offence and their age at the time of court finalisation. The denominator for the percentages in the table is all persons found guilty of drug driving in the 12 months to June 2016. For example, 0.6 per cent of all persons found guilty of drug driving during this period were males under the age of 18. It can be seen from the middle and bottom rows of the table that the overwhelming majority of drug driving offenders are male (79.3%) and aged between 18 and 39 years (72.4%), with an average age of 33.0 years. The age distribution of males and females is fairly similar, as is the average age for women (33.2 years).

Figure 1. Number of charges finalised in NSW Criminal Courts for drug driving offences by month: Jan 2007 to Jun 2016

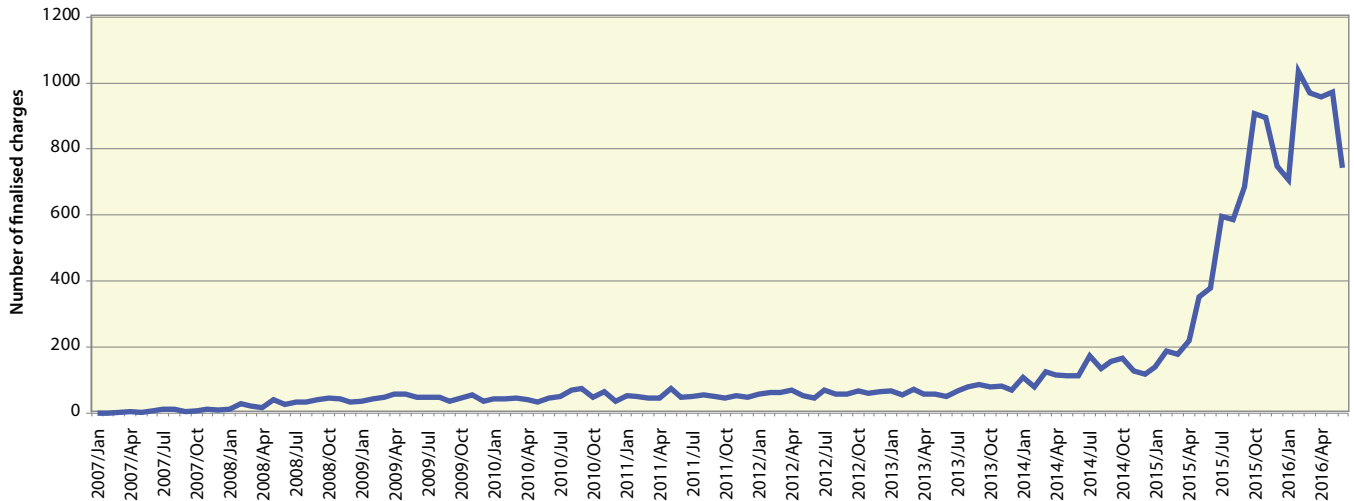


Figure 2. Number of charges finalised in the Local Court: those involving drug driving versus the rest

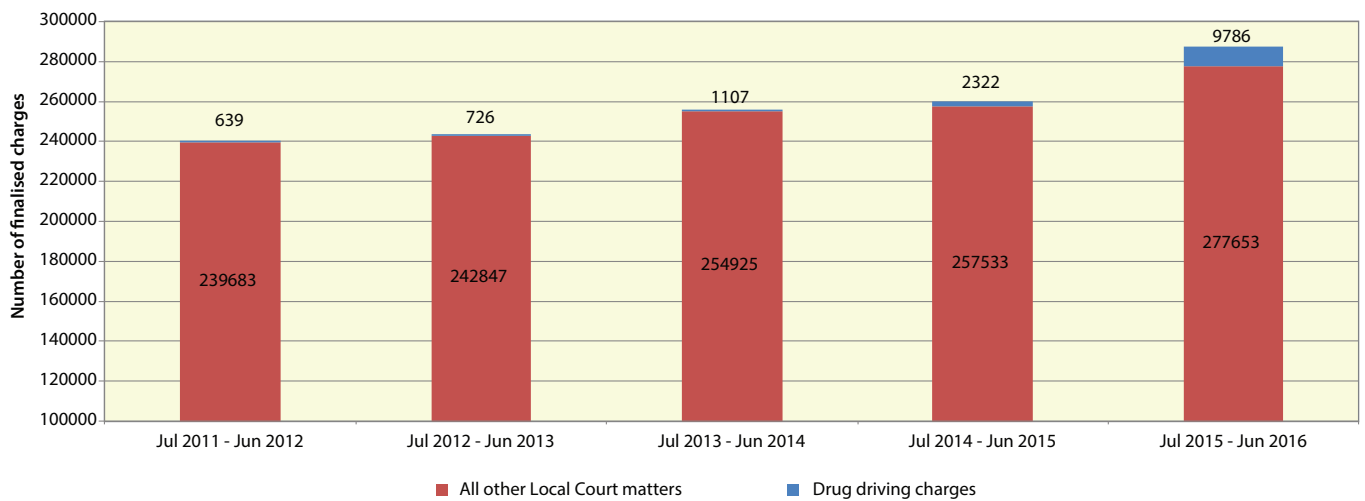


Figure 3. Conviction rates for drug driving, drink driving and general offending

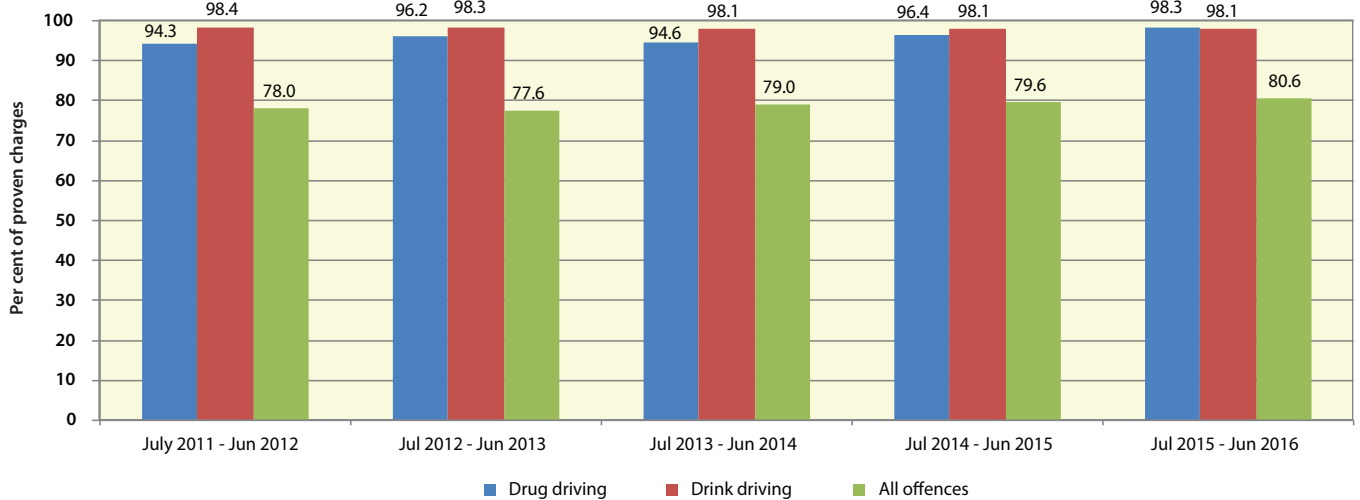


Table 1. Court outcomes for finalised drug driving charges: July 2011 to June 2016

Court outcome	Jul 2011 - Jun 2012	Jul 2012 - Jun 2013	Jul 2013 - Jun 2014	Jul 2014 - Jun 2015	Jul 2015 - Jun 2016
Guilty	94.3%	96.2%	94.6%	96.5%	98.3%
Not Guilty at defended hearing	0.5%	0.5%	0.2%	0.2%	0.1%
Withdrawn by prosecution	1.1%	0.4%	0.2%	0.5%	0.3%
Otherwise disposed of	0.5%	0.4%	0.3%	0.3%	0.2%
Dismissed due to mental illness/health	3.7%	2.5%	4.7%	2.6%	1.1%
Total (%)	100.0%	100.0%	100.0%	100.0%	100.0%
Total (No.)	644	732	1117	2331	9808

Table 2. Age and gender of persons found guilty of drug driving, July 2015 to June 2016

Age of persons found guilty	Male		Female		Total	
	No.	%	No.	%	No.	%
Under 18	44	0.6%	4	0.1%	48	0.6%
18-24	1652	20.9%	347	4.4%	1999	25.3%
25-29	1089	13.8%	320	4.1%	1409	17.8%
30-39	1783	22.6%	534	6.8%	2317	29.3%
40-49	1171	14.8%	328	4.2%	1499	19.0%
50-59	448	5.7%	92	1.2%	540	6.8%
60+	76	1.0%	7	0.1%	83	1.1%
Total	6263	79.3%	1632	20.7%	7895	100.0%

Figure 4. Rate of drug driving convictions by Statistical Area of residence, July 2015 to June 2016

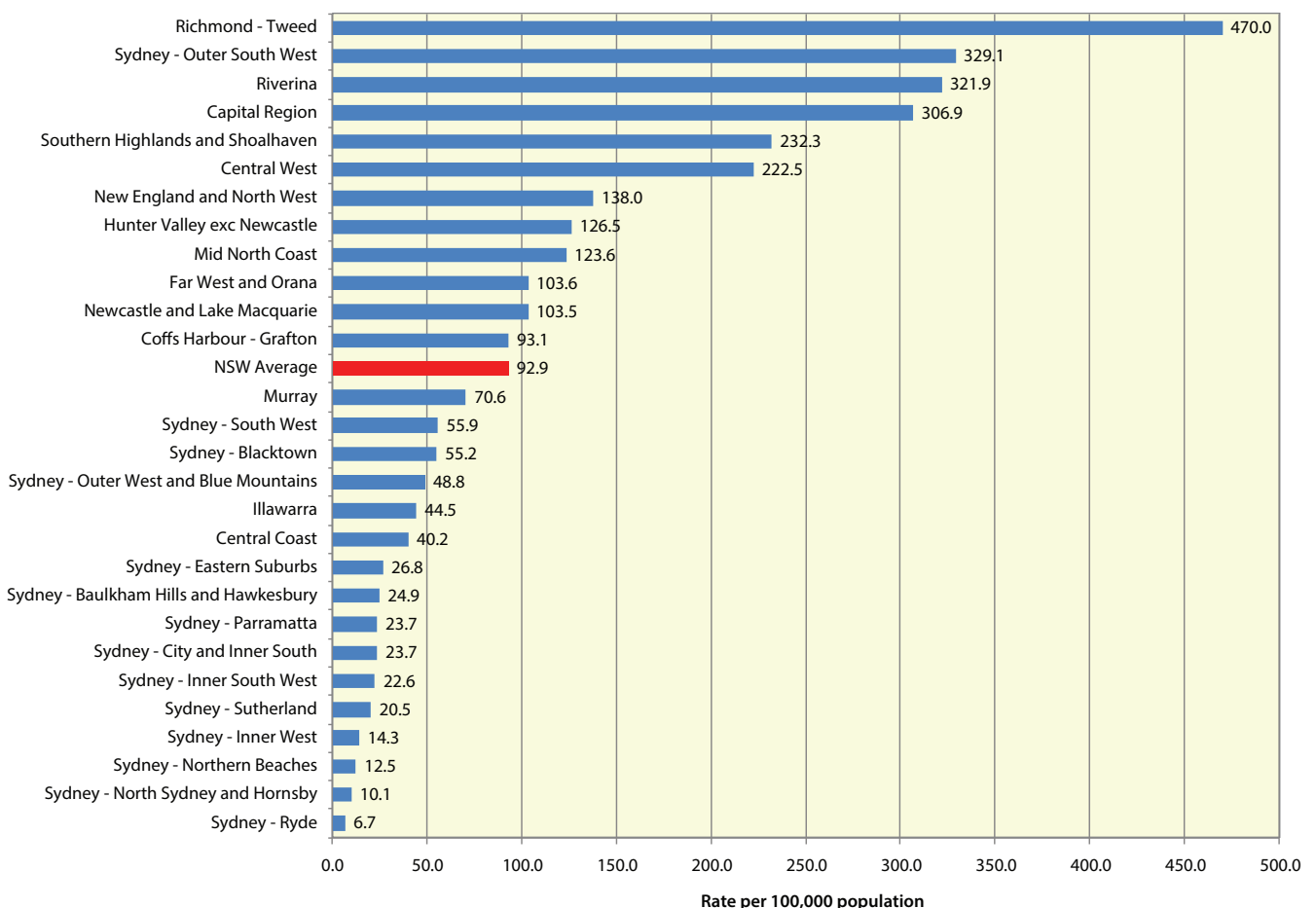


Figure 5. Number and type of proven court appearances in preceding five years for offenders convicted of at least one drug driving offence, NSW, 2015

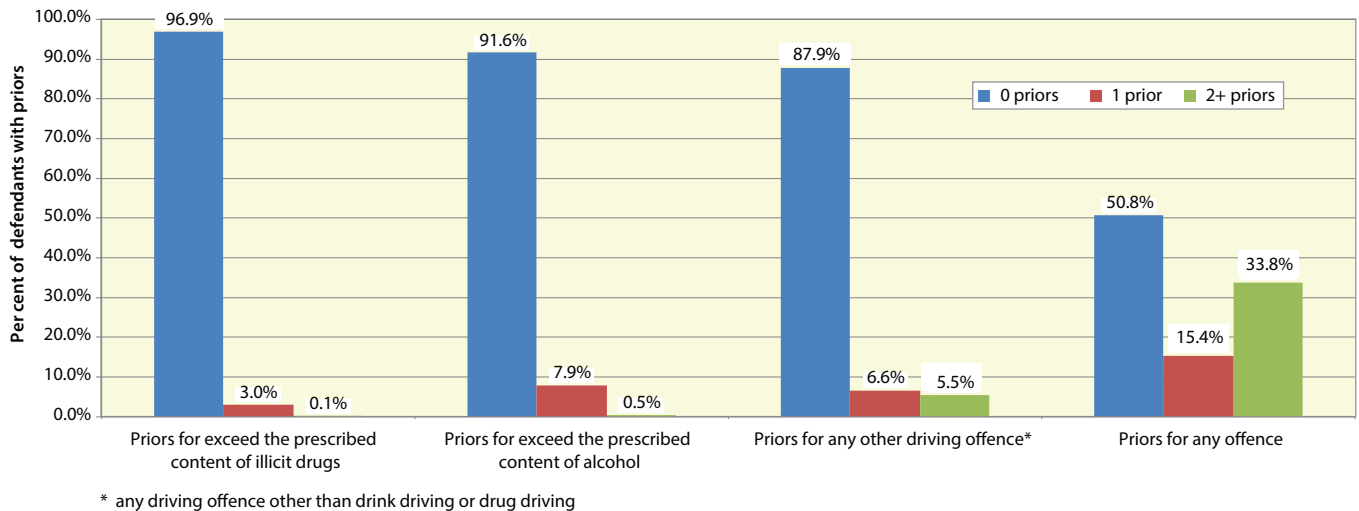


Figure 4 shows the rate of persons found guilty of drug driving as their principal offence per 100,000 population, broken down by Statistical Area of Residence. The NSW average rate of persons convicted of drug driving in the 12 months to June 2016 was 93 persons per 100,000 population. The rate in Regional NSW is twice the state average, with 180 persons found guilty per 100,000 population. In fact, the top six Statistical Areas have a rate between two and five times the NSW average. Of the areas above the State average, all but one (Outer South West Sydney) were located in Regional NSW.

Prior offending

In 2015, a total of 5,096 persons had a court appearance involving at least one proven drug driving offence. Figure 5 shows the number and type of prior convictions among this group in the five years preceding their drug driving offence. The figure shows the proportion of the group with a prior conviction for drug driving, drink driving, other driving offences and any offence. Not surprisingly, only a small proportion of offenders (3.1%) had a proven court appearance for a prior drug driving offence in the preceding five years. A slightly higher proportion of offenders (8.4%) had a prior proven court appearance for a drink driving offence and a further 12 per cent (12.1%) had a proven court appearance for any prior driving offence in the preceding five years.

Overall, approximately half (49.2%) of the offenders with a drug driving court appearance in 2015 had proven court appearances (of some type) in the preceding five years, with a third having two or more prior proven court appearances.

5. What penalties do courts impose on those convicted of these drug driving offences?

Table 3 shows the principal penalty imposed on those offenders found guilty of drug driving. Almost two-thirds of offenders (62.5%) received a fine. The average fine amount was \$495 (\$472 for a first offence and \$649 for a second or subsequent offence). The second most common penalty imposed for a drug driving offence was a section 10 non-conviction bond (30.7%). It is important to point out that offenders receiving a section 10 bond (i.e. those who have no conviction recorded) are not subject to an automatic licence disqualification period. The most serious penalty imposed among those in the sample was a community service order but this was very uncommon. Imprisonment is not an available penalty for drug driving.

Offenders convicted of a drug driving offence are subject to an automatic six month licence disqualification for a first offence and a 12 month disqualification for a second/subsequent offence.⁷ On average, in the 12 months to June 2016, approximately 80 per cent of people found guilty of drug driving had their driver's licence suspended (as a secondary penalty to the penalties listed in Table 3).

Table 3. Principal penalty imposed on persons found guilty of drug driving, July 2015 to June 2016

Principal penalty	No.	%	Average penalty
Community Service Order	4	0.1%	98 hours
Bond with supervision	8	0.1%	11.6 months
Bond without supervision	27	0.3%	11.7 months
Fine	4934	62.5%	\$495
Nominal Penalty	170	2.2%	NA
Section 10 bond without conviction	2424	30.7%	12.4 months
Section 10 no conviction recorded	327	4.1%	NA
Other penalty	1	0.0%	NA
Total	7,895	100.0%	NA

Table 4. Length of the licence disqualification period imposed, July 2015 to June 2016

Length of licence disqualification [^]	No.	%
1-<3 months	2	0.0
3-<6 months	3,121	47.8
6-<9 months	2,815	43.1
9-<12 months	80	1.2
12-<15 months	487	7.5
15+ months	29	0.4
Total	6,534	100.0%

[^] 1361 proven offenders had no conviction recorded and thereby avoided the mandatory licence disqualification.

Table 4 shows the number of offenders who received a period of licence disqualification and the length of the disqualification period imposed. It shows that the vast majority (approx. 91%) of offenders received a licence disqualification period of between 3 and 9 months.

6. Is there a relationship between licence disqualification for drug driving offenders and subsequent driving while disqualified charges?

The final question is whether more offenders being subject to mandatory licence disqualification periods results in more offenders returning to court with a subsequent driving while disqualified charge. In the 12 months to June 2016, 15,151 offenders appeared before the court charged with driving whilst disqualified (of which 14,312 or 91.5% were found guilty).

Table 5 shows the principal penalty imposed on persons found guilty of driving whilst disqualified in the 12 months to June 2015 and in the 12 months to June 2016. The table is restricted to those who had their licence disqualified for drug driving in the previous 12 months.

The first point to note about the table is that the number of persons found guilty of driving while disqualified after having had their licence disqualified for drug driving more than quadrupled in two years (from 133 in the 12 months to June 2015 to 542 in the 12 months to June 2016). The total number of people convicted of disqualified driving increased by 1,633 between 2014/15 and 2015/16. Drug drivers accounted for 25 per cent of this increase. The second point to note is that the number going to prison for driving while disqualified (after having had their licence disqualified for drug driving) has more than quadrupled (from 5 to 23). Indeed, the penalties imposed for driving whilst disqualified offences are frequently more serious than the original penalty imposed for the drug driving charge. For instance, of the 542 drug driving offenders subsequently found guilty of driving whilst disqualified, 23 (4.2%) received a sentence of imprisonment, three (0.6%) received an Intensive Correction Order and 35 (6.5%) received a suspended sentence. While the most common penalty imposed was still a fine (244 offenders or 45.0%), two out of five re-offenders received a subsequent penalty more serious than a fine. Only 11 per cent of drug driving offenders subsequently found guilty of driving whilst disqualified received a bond without conviction under section 10(1)(b) of the Crimes (Sentencing Procedure) Act 1999.

Table 5. Number of offenders found guilty of driving whilst disqualified in the 12 months to June 2016 that also had a proven appearance for drug driving in the previous 12 months by penalty

Principal penalty	Jul 2014 to Jun 2015		Jul 2015 to Jun 2016	
	No.	%	No.	%
Imprisonment	5	3.8%	23	4.2%
Intensive Correction Order	0	0.0%	3	0.6%
Suspended sentence with supervision	3	2.3%	17	3.1%
Suspended sentence without supervision	10	7.5%	18	3.3%
Community service order	9	6.8%	21	3.9%
Bond with supervision	3	2.3%	31	5.7%
Bond without supervision	17	12.8%	107	19.7%
Fine	60	45.1%	244	45.0%
Nominal sentence	2	1.5%	5	0.9%
Bond without conviction	20	15.0%	60	11.1%
No conviction recorded	4	3.0%	13	2.4%
Total offenders found guilty of driving whilst disqualified with proven drug driving offence	133	100.0%	542	100.0%
Total offenders found guilty of driving whilst disqualified	12,679	-	14,312	-

Summary

Since the NSW Government announced plans in December 2015 to triple roadside drug testing to about 100,000 tests a year, the number of drug driving charges finalised in court has increased by 320 per cent (up from 2,331 in 2014/15 to 9,808 in 2015/16). Since the increase in drug driving convictions coincides directly with a promise to increase enforcement of this offence, it seems likely that the increase in charges is a reflection of increased law enforcement activity rather than an increase in actual drug driving.

The rapid increase in drug driving detections has the potential to significantly increase the workload of the Local Court. Between 2014/15 and 2015/16 the total number of charges finalised in the Local Court increased by 11 per cent. The extra 7,464 drug driving charges finalised in 2015/16 accounted for 27% of this increase.

The overwhelming majority of drug driving charges are proven (98.3%). Offenders found guilty tend to be male (79.3%), aged between 18 and 44 years (85.5%) and reside in Regional NSW. The high rate of drug driving detections in Regional NSW could be because more tests are conducted in those areas (i.e. greater enforcement), because drug driving is more common in those areas or a combination of the two. This question could be resolved by considering the number of roadside or mobile drug tests conducted by police by region plus the proportion of these tests that are positive.

The increase in prosecutions means that more offenders are subject to the sanctions available to the court. The penalties handed down for drug driving, being generally fines and section 10 non-conviction bonds, are not serious when considered against other offences. However, approximately 80 per cent of persons found guilty also received a period of mandatory licence disqualification in addition to their principal penalty. The licence disqualification potentially exposes offenders to further court sanctions should they continue to drive. As the number of offenders receiving a period of licence disqualification for drug driving has increased, the number of these offenders subsequently found guilty of driving whilst disqualified has also increased.

Unlike drug driving itself, conviction for *driving while disqualified* can be punished quite severely (e.g. with a custodial penalty, a suspended sentence or an Intensive Correction Order). The volume of drug driving offenders receiving such penalties for subsequent disqualified driving offences in 2015/16 was small but has increased considerably (from 18 offenders in 2014/15 up to 61 in 2015/16). If those numbers continue to increase the rise in drug driving detections has the potential to increase the Corrections NSW workload due to the requirement for more prison beds and more offender supervision.

Notes

- 1 Section 112 of the Road Transport Act 2013, previously section 12 of the Road Transport (Safety and Traffic Management) Act 1999
- 2 Drug driving – Fact sheet, Centre for Road Safety Transport for NSW <http://roadsafety.transport.nsw.gov.au/downloads/drug-driving-f.pdf>
- 3 Transport for NSW media release 1 December 2015, <http://www.transport.nsw.gov.au/newsroom/media-releases/new-drug-driving-campaign-launched-mdt-theres-no-escaping-it>.
- 4 'Questions raised over fairness of drug-driving charges as arrests double', Sydney Morning Herald, 24 January 2016, <http://www.smh.com.au/nsw/questions-raised-over-fairness-over-drug-driving-charges-as-arrests-double-20160121-gmatbo.html>
- 5 See for instance the following press articles: 'Editorial: High numbers of drug positives', Newcastle Herald, 1 January 2016; <http://www.theherald.com.au/story/3635093/drug-driving-positives-pose-a-test-for-society/>; '100,00 NSW residents to be targeted in 'wasteful, unfair' roadside drug testing, SMH 4 October 2015, <http://www.smh.com.au/national/health/hundred-thousand-nsw-residents-to-be-targeted-for-wasteful-unfair-roadside-drug-testing-20151003-gk0gyo.html>. 'Questions Raised over fairness of drug-driving charges as arrests double', SMH, 24 January 2016; <http://www.smh.com.au/nsw/questions-raised-over-fairness-over-drug-driving-charges-as-arrests-double-20160121-gmatbo.html>. 'Roadside Drug Driving tests mysterious and uncertain', magistrate says', SMH, 2 February 2016, <http://www.smh.com.au/nsw/roadside-drug-driving-tests-mysterious-and-uncertain-magistrate-says-20160202-gmjus2.html>
- 6 See for instance David Shoebridge, Greens member of the NSW parliament, 'War in Drugs by other means – the roadside testing story', <http://davidshoebridge.org.au/2016/02/15/nsw-police-continue-to-wage-war/> and the Local Court of New South Wales Annual Review 2015, <http://www.localcourt.justice.nsw.gov.au/Documents/2015%20Annual%20Review%20web-access.pdf>
- 7 Driving disqualification is a secondary penalty that is applied alongside a principal penalty such as a fine. There are no driving disqualification penalties listed in Table 3 as that table only shows the most significant penalty. If no conviction is recorded the court is not obliged to hand down a mandatory driving disqualification.