Submission

To

the Sentencing Advisory Council

study of driving whilst disqualified or suspended

This submission was prepared by Elisha Marriott on behalf of the Springvale Monash Legal Service.

Inquires to Dave Taylor (Director, Springvale Monash Legal Service) on:

9562 3144 or dave.taylor@law.monash.edu.au
Introduction

Springvale Monash Legal Service (“SMLS”) has operated within the City of Greater Dandenong since the early 1970’s. Since that time, SMLS has partnered with Monash University Law Faculty, to provide a clinical legal education program whereby law students assist clients under the supervision of qualified legal practitioners.

The Springvale / Dandenong community is extremely diverse, with a large proportion from diverse cultural and linguistic backgrounds and low socio-economic circumstances.

The philosophy of the legal service is to ensure members of the community receive information and assistance to manage their own legal needs but given the high proportion of clients have limited access to the legal system for a number of reasons, including language barriers, lack of formal education, lack of financial resources, many of the matters are taken on as cases to ensure the client receives as fair an outcome as possible. Despite this, there is still an ethos of assisting the community through legal education to be able to understand the law and legal processes to maximise the community’s ability to live lawful and meaningful lives, where they are able to contribute to their community.

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This paper is in response to an evident problem in the number of road users who continue to drive despite being disqualified, suggesting that licence disqualification is an ineffective sentence and alternative measures should be considered and implemented.

This paper attempts to identify that licence disqualification is ineffective as it fails to address the underlying behavioural attitudes held by motor vehicle offenders, thus having little impact on reducing recidivism rates or ensuring
safety on our roads. A Monash University Accident Research Centre study ‘suggests that many banned drivers are in denial about the risk they pose to the community and that is a major concern’ given that statistics indicate that disqualified drivers are significantly more likely to be involved in fatal accidents.¹

The dangers associated with driving while disqualified accompanied by the denial of disqualified drivers in recognising these dangers, along with society’s acceptance of this dangerous behaviour, strongly indicates that an approach which attempts to change the attitudes of both motor vehicle offenders and the general community would be more beneficial than licence disqualification.

Therefore, this paper recommends the implementation of a diversion program to offences where licence disqualification is currently being employed, so that motor vehicle offenders instead are to participate in useful rehabilitation programs that address their misconceptions and dangerous attitudes.

**Overview of paper**

In considering the ineffectiveness of licence disqualification and the possibility of implementing a diversion program, an outline and analysis of the current Victorian laws relating to licence disqualification is first examined. This involves noting the underlying objectives and purposes of sentencing under the *Sentencing Act 1991* (Vic) and then determining whether those objectives are represented in licence disqualification sentences. While acknowledging the benefits of licence disqualification, this paper suggests that the sentence does not achieve the objectives of sentencing and is thus ineffective.

This paper therefore then considers the possibility of introducing an alternative sentencing scheme through the implementation of a diversion program which aims at addressing the underlying reasons for committing a motor vehicle offence and attempts to achieve behavioural change. An

overview of the currently operating Criminal Justice Diversion Program is provided and followed by an analysis of its effectiveness.

After highlighting both the benefits and flaws of the Criminal Justice Diversion Program, the paper considers the possibility and effectiveness of a diversion program to driving offences which would otherwise result in licence disqualification. Recommended amendments to the current legislation are provided, along with suggestions for possible diversion programs. Three possible programs are considered; a drink/drug driving program, a speeding program, and a general driving improvement/education program.

In considering the potential features of these possible programs, currently existing programs worldwide were researched and examined. The paper’s final recommended features focus on programs from the UK, the US, and Queensland. The potential benefits and limitations of these recommended programs are then examined.

In examining the feasibility of the recommendations raised in this paper, two questionnaires were produced which consisted of several questions regarding the effectiveness of licence disqualification and the potential benefit of implementing a diversion program. One questionnaire was aimed at persons who have had their licence disqualified and 8 disqualified drivers were interviewed. The other questionnaire was targeted at other relevant/interested persons. A police officer from the Traffic Management Unit, an officer from the Road Safety Awareness and Information Unit, and Belinda Clark, a researcher at the Monash University Accident and Research Centre were consulted. Their responses can be found throughout this paper.

**The risks associated with driving while disqualified**

To demonstrate the serious risks that disqualified drivers represent on our roads, and the ineffectiveness of licence disqualification as a penalty, here are some relevant statistics to keep in mind:
- about 50,000 Victorians each year are disqualified from driving;\textsuperscript{2}
- studies involving motor vehicle offenders admitting to driving while disqualified range from 30\% to 70\%;\textsuperscript{3}
- disqualified drivers are up to four times more likely to be involved in fatal crashes than licensed drivers;\textsuperscript{4}
- 75\% of those convicted of disqualified driving were at the same time also convicted of at least one other traffic offence;\textsuperscript{5}
- disqualified drivers who are involved in crashes are three times more likely to also be drink driving;\textsuperscript{6}
- 29\% of drivers/motorcyclists killed in 2007 were drink driving;\textsuperscript{7} and
- more than a third of traffic related disqualifications are for drink driving.\textsuperscript{8}

Current Victorian law relating to licence disqualification and its effectiveness

Under section 28(1) of the \textit{Road Safety Act 1986} (Vic) the court has the power to cancel, suspend or vary licences and permits if the court ‘convicts a person of, or is satisfied that a person is guilty of, an offence against this Act or of any other offence in connection with the driving of a motor vehicle’. Section 28(b) provides that this power is at the court’s discretion, subject to

\textsuperscript{2} Ibid.
\textsuperscript{3} Clark, B and Bobevski, I, \textit{Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study} (Report, Monash University Accident and Research Centre, 2008), px.
\textsuperscript{4} Ibid.
\textsuperscript{5} Sentencing Advisory Council, \textit{Driving While Disqualified or Suspended} (Information Paper, Sentencing Advisory Council, 2007), p3.
\textsuperscript{6} Sentencing Advisory Council, \textit{Driving While Disqualified or Suspended} (Discussion Paper, Sentencing Advisory Council, 2008), p32.
\textsuperscript{8} Clark, B and Bobevski, I, \textit{Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study} (Report, Monash University Accident and Research Centre, 2008), px.
paragraph (a) relating to excessive speeding and other offences under the Act which oblige the court to suspend a licence. These other offences which require mandatory licence disqualification relate generally to offences involving alcohol or drugs under section 49 and dangerous driving under section 64.

Other penalties employed by this Act include:
- loss of demerit points
- fine
- imprisonment

Before considering the effectiveness of licence disqualification as a penalty to driving offences, it is first worth noting the underlying objectives and purposes of sentencing generally.

According to section 5 of the Sentencing Act 1991 (Vic), the purposes of sentencing are as follows:
- to punish the offender to an extent and in a manner that is just in all of the circumstances;
- to deter the offender or others from committing offences of the same or a similar character;
- to establish conditions that the court considers will enable the offender’s rehabilitation;
- to make it clear that the court denounces or condemns the offender’s behaviour; and
- to protect the community from the offender.

Further, the Act provides a list of factors which the Court must take into account when determining a sentence. These factors are:
- the maximum penalty prescribed for the offence by legislation;
- current sentencing practices;
- the nature and seriousness of the offence;
- the offender’s culpability and degree of responsibility for the offence – here, the court may consider the offender’s:
- the impact of the offence on any victim of the offence;
- the personal circumstances of a victim of the offence;
- any injury, loss or damage resulting directly from the offence;
- whether the offender pleaded guilty to the offence;
- the offender’s previous character – here, under section 6 of the Act, the court may consider:
  - the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender;
  - the general reputation of the offender;
  - any significant contributions made by the offender to the community; and
- the presence of any aggravating or mitigating factors concerning the offender or of any other relevant circumstances.

The court’s determination must reflect these purposes and considerations so that the sentence imposed is the preferred sentence for achieving these purposes. When dealing with young offenders (defined under section 3 of the Sentencing Act 1991 (Vic) as a person under the age of 21), ‘rehabilitation is the principal consideration in sentencing’.

The question to consider now is how well these principles are represented in licence disqualification sentences relating to driving offences.

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9 Department of Justice, ‘Sentencing’,

In theory, and it is important to emphasise the point in theory, licence disqualification punishes and removes particular drivers off the roads for certain periods of time. It has been noted through a range of studies ‘that the effectiveness of licence actions is primarily derived from their ability to incapacitate or, at least, restrict offenders from driving’.\textsuperscript{11} Furthermore, ‘for many people, loss of driving licence is a severe punishment’\textsuperscript{12} which suggests that licence disqualification can act as a general deterrent. According to Barry Watson in an AARB Research Conference, ‘licence actions, such as licence suspension/disqualification, are very effective’ and ‘in terms of general deterrence, they are the only sanctions that have been consistently associated with reductions in community-wide drink driving behaviour’.\textsuperscript{13} In relation to drink driving, a study by Homel ‘found that relatively long periods of licence disqualification were associated with lower drink driving re-offence rates’.\textsuperscript{14}

Regardless of the abovementioned benefits attributed to a punishment of licence disqualification, there exists fatal flaws which consequently call for alternative measures to be taken when sentencing motor vehicle offenders.

Principally, licence disqualification does not, in itself, remove motor vehicle offenders from the roads. And as noted by an RACV report, as licence disqualification does not prevent offenders from driving unlicensed, this can ‘hinder any benefits licence sanctions provide as a...countermeasure’.\textsuperscript{15} Numerous sources of statistics evidence that an overwhelming number of motor vehicle offenders who have had their licence disqualified nevertheless continue to drive. For example, while only two of the eight disqualified drivers interviewed for this paper admitted to driving while disqualified, a study

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\textsuperscript{14} Ibid, p70.
\textsuperscript{15} RACV, \textit{Drink Driver Rehabilitation and Education in Victoria Summary Report} (Report, RACV, 2005), p2.
\end{flushleft}
undertaken by the Monash University Accident Research Centre (MUARC) found that approximately 60% of the people they questioned had driven while disqualified and also noted that ‘many studies have found reasonably high rates of self-reported disqualified driving, ranging from 30% to 70%’.\textsuperscript{16} Figures obtained from the NSW Bureau of Crime Statistics and Research show that in 2001, 18,680 people were found to have committed the offence of disqualified driving.\textsuperscript{17} Also, ‘in Victoria, in 2003 one in four drink drivers who had previously committed a drink driving offence were driving without a valid licence at the time of the new offence’.\textsuperscript{18} It is important to keep in mind, however, that these figures only represent the number of drivers caught driving while disqualified and a common belief held among surveyed disqualified drivers in studies has been a low detection rate of the offence.\textsuperscript{19}

Furthermore, even where a motor vehicle offender obeys his/her licence disqualification, there is the possibility that the inability to drive still causes little practical effect. Disqualified drivers often rely on family and friends and, where convenient, public transport to get around. Five of the eight interviewed disqualified drivers for this paper all commented that while they felt disadvantaged by the disqualification, they all relied on family and friends to get around. As noted by one interviewee, ‘my loss of licence has not punished me, but my family, who is willing to help me out and drive me’. The punishment of committing a driving offence therefore often shifts to those around the motor vehicle offender, instead of the offender directly.

Importantly, studies investigating the attitudes of motor vehicle offenders have demonstrated the ineffectiveness licence disqualification has in addressing the underlying beliefs and misconceptions held by these offenders. For

\textsuperscript{16} Clark, B and Bobevski, I, \textit{Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study} (Report, Monash University Accident and Research Centre, 2008), px.
\textsuperscript{17} Ibid, p15.
\textsuperscript{19} Clark, B and Bobevski, I, \textit{Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study} (Report, Monash University Accident and Research Centre, 2008), pix.
example, when questioning a group of disqualified drivers, the MUARC study found that:

‘Driving under disqualification was often associated with not considering one’s driving behaviour to be dangerous, [and] judging one’s disqualification to be unfair….Denial that one’s driving behaviours may present a danger on the road appeared to be especially salient in participants’ account of disqualified driving’.20

In this paper’s study, when asked whether the interviewees deserved to have their licence disqualified, the majority believed it was harsh and unfair and responses included: ‘it was only the first time I had been caught’, ‘I did not get asked why I was speeding’, and ‘there were plenty of my friends who continued to drink and drive and I felt I was just unfortunate to be in the wrong place at the wrong time’. These responses support MUARC’s findings that licence disqualification fails to identify to these motor vehicle offenders that their behaviour is dangerous and needs to be addressed.

The MUARC study also found that the most prevalent response to the question of what is the biggest risk when driving without a licence was ‘getting caught again and having to face harsher penalties’.21 This should also be considered in light of two common perceptions by disqualified drivers; that there is a very low risk of detection and that maximum penalties for re-offending are rarely applied.22 It is a concern that causing a serious or fatal accident was not considered as a risk while driving disqualified. This clearly identifies that motor vehicle offenders are unaware of the potential risk which they create when on the road. This belief is contrary, however, to an array of statistics and studies. For example, a study undertaken by the Federal Office of Road Safety in 1997 found that:

20 Ibid, pxii.
21 Ibid, p50.
22 Ibid, pix.
‘unlicensed drivers (including both disqualified and never held a licence) were characterised by higher levels of irresponsible road use, more commonly speeding or driving too fast for road conditions, more commonly not wearing a seat belt or being unhelmeted, and being about seven times more likely to be at fault compared to licensed drivers involved in fatal crashes’.  

It can thus be noted that licence disqualification fails to achieve several of the purposes of sentencing as identified by the Sentencing Act 1991 (Vic), particularly in relation to motor vehicle offender’s who continue to drive while disqualified.

- Disqualification does not adequately or equally punish the offender as it has no practical effect or detriment to those who disobey the sentence or to those who have easy alternative means of transport.
- Disqualification does not deter the offender from re-offending as studies have sometimes shown that some offenders view it as a lenient sentence, and further, the offence of disqualified driving itself has a perceived low detection rate.
- Disqualification does not allow for, nor attempts to address, the offender’s rehabilitation. Those who disobey the sentence, evidenced by their continuation to drive, clearly see no harm in their driving behaviour. By failing to address the underlying issues of the offence, disqualification consequently fails in identifying to the offender why their behaviour is dangerous.
- Disqualification does not protect the community from the offender as he/she still has the ability to remain on the roads when it has been acknowledged by the court that his/her driving is a threat to the safety of the community.

As recognised by MUARC’s study, ‘whether the intent behind the current sanctions is deterrence or reform, the reality that the majority of these

23 Ibid, p16.
participants are continuing to drive on public roads and are overrepresented in crash statistics highlights the importance of aiming for long-term attitude and behaviour change'.

Therefore, the objective of this paper is to recommend a sentencing scheme that aims at achieving behavioural change in an attempt to prevent the occurrence of re-offending. It is purported that this can be achieved through the implementation of a diversion program regarding driving offences that would usually result in licence disqualification.

**The Criminal Justice Diversion Program**

There undoubtedly exists several strategies that could be implemented to improve the effectiveness of licence disqualification, the obvious example being greater detection and perception of detection of driving while disqualified. However, as abovementioned, the underlying problem rests with a lack of behavioural change by motor vehicle offenders. Incorporating specific diversion programs into the sentencing of driving offences will hopefully address this underlying problem. Before considering the effectiveness of replacing licence disqualification with a diversion program and suggesting how such a program is to be implemented, it is first necessary to outline the Criminal Justice Diversion Program that is currently operating, and analyse its effectiveness.

According to the Magistrates’ Court website, the Criminal Justice Diversion Program ‘provides mainly first time offenders with the opportunity to avoid a criminal record by undertaking conditions that will benefit the offender, victim and the community as a whole’.

The program operates under section 128A of the *Magistrates’ Court Act 1989* (Vic) and, in brief, enables defendants who

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24 Ibid, p103.

satisfy the criteria to have their proceeding adjourned so as to participate in and complete a diversion program.\(^{26}\)

Section 128A(2) stipulates that a diversion program will only be available if the following criteria are satisfied:

- the proceeding is for a summary offence or an indictable offence triable summarily;
- the defendant admits to the offence;
- the Court believes a diversion program to be appropriate in the circumstances; and
- both the prosecution and the defendant consent to a diversion program.

Section 128A(4) specifies that if the defendant satisfactorily completes the program there will be no finding of guilt and no plea to the charge. Additionally, the offence cannot be alleged as a prior and will not be available to employers.

If the defendant fails to satisfactorily complete the program, the matter will be referred back to the Mention Court of the Magistrates Court as if it were being listed for the first time. In this situation, the court will remove all information pertaining to the Diversion from the defendant’s file.\(^{27}\)

It is worthwhile noting the supposed benefits of such a diversion program, as identified by the Magistrates’ Court’s website:

- ensuring that appropriate restitution is made to the victim of the offence;
- tendering an apology to the victim either by letter or in person;
- preventing re-offending;
- avoiding an accessible criminal record;

\(^{26}\) Magistrates’ Court Act 1989 (Vic) S128A(2).

\(^{27}\) Magistrates Court of Victoria, ‘Criminal Justice Diversion Program’,
- assisting the offender’s rehabilitation;
- utilising community resources for appropriate counselling and/or treatment; and
- assisting local community projects with voluntary work and donations.

In formulating an appropriate diversion program so that it best achieves the needs of the defendant, prior to the appearance, a ‘Diversion Coordinator will interview [the defendant] to identify the major issues in the case and to formulate a suggested outcome’. 28 This is then passed on to the Magistrate.

As it currently stands, the program is not available under section 128A(1) to:

(a) an offence punishable by a minimum or fixed sentence or penalty, including cancellation or suspension of a licence or permit to drive a motor vehicle but not including the incurring of demerit points under the Road Safety Act 1986 or regulations made under that Act; or

(b) an offence under section 49(1) of the Road Safety Act 1986 not referred to in paragraph (a).

The effect of this provision is that a diversion program is not available to driving offences involving alcohol or other drugs, dangerous driving under section 64, and ‘excessive speed’ speeding offences under section 28(1)(a). This paper suggests that the legislation should be amended so that these offences can be incorporated into the Diversion Program scheme to enable a more effective and individualised approach to motor vehicle related offending behaviour.

28 Magistrates Court of Victoria, ‘Criminal Justice Diversion Program’,
The Benefits

The major justification for employing a diversion program is the belief that the law will best be complied with in the future through the rehabilitation of an offender, rather than ordinary punitive punishment. It has been suggested that the program provides an ‘opportunity to divert from the Criminal Justice System those for whom greater harm is caused by the appearance itself’ and should be available ‘for those whom early intervention might bring about positive lifestyle changes and thereby reduce the prospect of re-offending’.\(^{29}\)

The program’s effectiveness thus relies on low recidivism rates and a change of attitudes by participants.

In a discussion paper by the SMLS it was found that the program produced a low recidivism rate with only 3.5-7% of offenders who re-offend after completing the program.\(^ {30}\)

Importantly, diversion incorporates the notion of therapeutic jurisprudence which is concerned with ‘humanising the law and concerning itself with the human, emotional, psychological side of the law and the legal process’.\(^ {31}\) Therapeutic jurisprudence is based primarily on the notion of ‘offender rehabilitation and addressing issues underlying legal disputes’.\(^ {32}\) This characteristic of diversion is particularly appealing when attempting to develop a strategy that addresses the attitudes and detrimental behaviours of motor vehicle offenders. While it is argued that diversion programs apply therapeutic jurisprudence in a more limited manner than other methods such as problem-solving courts,\(^ {33}\) it nonetheless plays an important role in reaching the goals of diversion.


\(^{33}\) Ibid.
Further, as the Program requires the involvement of community agencies in order to run specific programs, diversion can help address underlying societal values, not simply the offender.\textsuperscript{34} In order to effectively alter the behaviours and attitudes of an offender, and also those of others who may hold the same beliefs, it is crucial that society in general is seen to disapprove of their behaviour.

Also, the SMLS has noted that diversion produces an ‘increased level of respect for, and compliance with, an order of the Court’ and ‘is able to break the cycle of disregard for the law and re-offending that sometimes comes with being involved in the criminal justice system’.\textsuperscript{35} This is also particularly relevant to combating driving offences as it has been previously noted above that one of the major beliefs held by disqualified driving offenders is that the punishment was unjust and harsh and this thus provides offenders with justifications for not complying with the punishment. For example, interviewees for this paper commented that licence disqualification ‘just makes people more angry which therefore leads to more rule breaking’ and is ‘so overboard’. One interviewee went as far as to say that they had ‘lost all faith in the police for their lack of understanding and compassion’. As diversion programs are seen to target the offenders’ needs, it would be expected that the rate of compliance to be significantly higher.\textsuperscript{36}

\textbf{The Downfalls}

Despite the abovementioned benefits of diversion, it must be noted that there exists some weaknesses.

\textsuperscript{35} Ibid.
First, Diversion requires participants to pay the costs associated with the program. This therefore makes diversion inappropriate for offenders who are unable to afford the expenses required and also potentially to those offenders who may feel that they are being forced to pay for something that they do not wish to participate in and thus form an immediate resistance towards the program.

The inconsistency of the use and application of diversion programs is also a concern to the effectiveness of the programs. As it currently stands, consent from the police Informant is mandatory in order to participate in Diversion, which has been criticised as police exercise too much discretion resulting in a lack of parity in the application of Diversion. Following this, Magistrates’ exercise their discretion in sentencing an offender to diversion and also with the stipulations that the offender is to undertake within the designated period. This can be seen to be a significant flaw as it was noted by MUARC that one reason why disqualified drivers continued to drive was because they believed that ‘a good lawyer would protect them from harsher penalties’ and viewed ‘magistrates’ warnings of future jail sentences as ‘scare tactics’.

Participants in that study ‘suggested that it might be useful for Magistrates to clearly outline what the next level of punishment would be or to have handouts that outline associated stages of convictions and punishments’. However, it has been noted by a number of lawyers at the SMLS that Magistrates regularly inform offenders that a harsher punishment will follow if they are to re-offend.

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39 Clark, B and Bobevski, I, *Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study* (Report, Monash University Accident and Research Centre, 2008), p96.
40 Ibid, p79.
The Proposed Programs

It is now appropriate to consider the possibility and effectiveness of implementing diversion programs to driving offences which would otherwise result in licence disqualification. The analysis will outline the legislation amendments required, identify appropriate programs based on research of existing programs worldwide, and consider the potential benefits/limitations of implementing such programs.

Amendments to the current legislation

Section 128A(1) of the *Magistrates’ Court Act 1989* (Vic) currently consists of two limitations to the application of diversion:

(a) it must not be an offence with a minimum or fixed sentence of penalty, including cancellation or suspension of driver’s licence or permit but not including demerit point penalties;

(b) it must not be an offence under S49(1) of the *Road Safety Act 1986* (Vic).

Section 128A(1)(a) and (b) should be removed so that diversion is available as a sentencing option for all driving offences which currently incur mandatory licence cancellation or suspension. Please note that this paper does not argue for a Diversion scheme to be introduced as an option in serious cases whereby dangerous driving has resulted in serious injury or a fatality, although some of the treatment programs discussed below could still be made available to these offenders.

It may be worth considering, as a deterrent, that section 128 should include a provision which states that if an offender has undertaken a diversion program and subsequently re-offends after its successful completion, the Magistrate should take into account the Court’s previous attempt in rehabilitating the offender when imposing a penalty. Of course, this would be mitigated by the time passed since completion of Diversion and any other relevant factors.
Also, section 128 should specify that a diversion program is only available once per offender, unless special circumstances are evident.

The Programs

It was found in the study undertaken by MUARC that the three largest offences that resulted in licence disqualification were drink driving, excessive speeding and accumulation of demerit points. Due to this finding, this report considers the adoption of three possible programs available for motor vehicle offenders:

1. a drink/drug driving program;
2. an excessive speeding program; and
3. a general driving improvement/education program.

These programs could be developed as options for the Court for use in a diversion program whereby offending of this nature would have otherwise resulted in a mandatory loss of licence.

It should be noted that below, reference will be made to programs and sentencing options currently running in other states and countries. It is crucial to consider the differences in the legislation between various jurisdictions when considering the viability of their implementation in Victoria.

⇒ Drink/Drug Driving Program:

While there currently is a Victorian drink driving program, it has been suggested that the program is not without its flaws. It is therefore necessary to identify these flaws and to consider how it can be improved by looking to and incorporating positive features of other programs. Although this section relies predominantly on information relating to drink driving programs, it relates equally to drug driving.

In 2005, RACV published a ‘Drink Driver Rehabilitation and Education in Victoria Summary Report’ in which it suggested that the current Victorian drink
driver program does not follow best practice, instead focusing on education and assessment.\textsuperscript{41} It criticised the program on a number of issues:

- It does not appear to systematically address the treatment of alcohol dependence;
- It deals with hard core and low level drink driving offenders through the same program and therefore fails to ‘meet the specific needs of different groups of drink drivers, where for some alcohol dependence is a significant problem’;\textsuperscript{42}
- It ‘assumes that people drink and drive due to a lack of information, resulting in poor decision making’;\textsuperscript{43}
- It fails to monitor offenders.

The RACV report recommended that any successful drink driving program should possess the following characteristics:

- ‘targets both traffic and health-related outcomes’, which has been recommended by international research;\textsuperscript{44}
- ‘incorporate[s] a combination of intervention modes including education/information, lifestyle change strategies, and probationary contact and supervision’ as this has ‘consistently been shown to be more effective than other evaluated modes for reducing drink driving recidivism’;\textsuperscript{45}
- acknowledges that ‘drink driving offenders are a diverse group of individuals requiring a flexible and multi strategy response for their effective management and rehabilitation’;\textsuperscript{46} and
- is evidence-based.

\textsuperscript{41} RACV, \textit{Drink Driver Rehabilitation and Education in Victoria Summary Report} (Report, RACV, 2005), p3.
\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid.
MUARC has identified that when dealing with drink driving offenders, ‘such programs must also deal with the substance abuse behaviour itself, as well as driving behaviour’. For example, an existing drink driving program has identified its key objectives as both controlling drinking and separating drinking from driving. As noted by MUARC:

‘A recent report on drink driving rehabilitation in Victoria (Sheehan et al, 2005) concluded that the best practice drink driver rehabilitation programs are evidence-based, and incorporate educational aspects, together with lifestyle change strategies, and probationary contact and supervision’.

A drink driving program conducted by the Queensland Corrective Services Commission is worth highlighting. The Commission opted to initiate a reward based program which ‘offered magistrates the opportunity of changing offending behaviour by way of combination of punishment and reward’. ‘The purpose of the program is to separate the irresponsible drivers from those who can be taught to be responsible drivers’. The specifics of the program are as follows:

- the offender is placed on probation for a period of three years;
- runs for a duration of six and a half months, with attendance one night per week;
- requires the offender to contribute to the financial cost of the program, being $160;
- onus is placed on the offender to manage his/her own affairs;

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47 Clark, B and Bobevski, I, *Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study* (Report, Monash University Accident and Research Centre, 2008), p93.
48 Sheehan, M, Davey, J and Schonfeld C, *Drink Driving Rehabilitation as the Stimulus for Change in a Rural Community* (Research and Analysis Report, Department of Social and Preventive Medicine, 1992).
49 Clark, B and Bobevski, I, *Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study* (Report, Monash University Accident and Research Centre, 2008), p93.
51 Ibid, p3.
- successful completion supports an application to the court for the lifting of the driving disqualification;
- program failure results in the return of the motor offender to court;
- involves ‘diverse organisations which have a vested interest in drink driving problems’; and
- is an integrated and coordinated unit with a cohesive plan.

A positive feature of the Queensland program that could be adopted is the use of community organisations. Akin to the Queensland program, Victoria should consider implementing a program that relies upon the expertise of community organisations that are involved in a ‘variety of fields related to driving behaviour and road safety’.\textsuperscript{52} These organisations should be given ‘the opportunity of dealing directly with drink driving offenders and given the freedom to design and run their own program’.\textsuperscript{53} For example, the Queensland program consists of a first aid course run by the Queensland Ambulance Transport Brigade, a defensive driving course by the Transport Department, a police discussion group, a lecture on road engineering and road safety by the Royal Automobile Club of Queensland, and a program on the cost of drink driving to the community by the Insurance Council of Australia.

However, as noted above, it is also essential to deal with the substance abuse itself and not simply the driving aspect of the crime. Therefore, other organisations that specifically attempt to help combat alcohol or drug abuse should also be involved in the program. As noted by several participants in the MUARC study, it would also be worthwhile to have road accident victims and victim groups address offenders to stress the likely grim outcomes of drink driving. Further, including ex-offenders in the program would be highly beneficial. While victims are able to demonstrate the potential results of drink/drug driving, ex-offenders are more likely to have held the same beliefs and attitudes as the motor vehicle offenders. Sharing such a commonality

\textsuperscript{52} Ibid, p5.
\textsuperscript{53} Ibid, p5.
enables offenders to relate to ex-offenders which will assist these offenders in recognising and accepting a need for change.

Not only does the use of community organisations provide a level of expertise to the program and provide the motor vehicle offender with valuable insight, but it instils in the offender a sense of community disapproval which will aid the offender in realising the need for behavioural change. Further, employing pre-existing programs by organisations may prove to be cost effective.54

Having a program which runs over a long period of time should also be adopted. As suggested in the Queensland report, ‘it is highly questionable to believe one can change five, ten, fifteen, thirty years of drinking behaviour over a period of eight weeks’.55 However, having a program run for a period which would likely be longer than that for the loss of licence may cause issues with attendance, cost and resource allocation.

Also, a common point made by several researchers has been the necessity to ensure that available programs are ‘specifically tailored by reference to the type of offender’.56 For example, a report on diversion programs for drug and drug-related offenders in Australia noted the existence of specialised programs for certain drug or drug-related offenders. They included diversion for use/possession of cannabis, use/possession of other illicit drugs, and non-specific drug or drug-related offences which focuses on the youth. The report stressed the importance of the existence of multiple programs in ‘improving the effectiveness of diversionary programs’.57

Another interesting feature worth considering which has been employed by another drink driving program, coincidently in Queensland once again, is the

54 Ibid, p5.
55 Ibid, p5.
56 Sentencing Advisory Council, Driving While Disqualified or Suspended (Discussion Paper, Sentencing Advisory Council, 2008), p42.
running of the program through a local TAFE College.\textsuperscript{58} The justification for doing so has been identified as ‘rais[ing] the issue of drink driving and its aftermath to the young persons who make up the majority of TAFE students’.\textsuperscript{59} Such an initiative could produce positive outcomes as it has the potential to address not only the direct participants, but also those who are likely to hold similar attitudes towards drink driving. This is an important step towards addressing the underlying societal issues regarding acceptable driving behaviours, and any program introduced in Victoria should consider implementing this feature.

Finally, it is important to determine who should fund such a program. If a user-pays system was adopted, it may cause some to feel resentful for being obliged to pay for a program they do not want to complete in the first place. Although the Victorian Road Safety Committee has noted that such motor vehicle offenders ‘should be reminded that programs should be seen as an investment in their future with the potential for considerable financial rewards in reduced accident likelihood and associated insurance costs and less chance of committing traffic offences.’\textsuperscript{60} Also, the cost of the program should simply be seen as an alternative to receiving a fine. At the same time, this paper acknowledges that where the program may be highly beneficial for a particular motor vehicle offender, that offender may not have the finances to pay for the program and thus unable to undertake the program, limited their access to justice due to financial reasons. This would consequently prevent the offender from accessing the program and adversely impact on the likelihood of their sentence adequately affecting their offending behaviour. Therefore, having participants means tested in order to determine the cost to the participant should also be considered.

\textsuperscript{58} Sheehan, M; Davey, J and Schonfeld C, \textit{Drink Driving Rehabilitation as the Stimulus for Change in a Rural Community} (Research and Analysis Report, Department of Social and Preventive Medicine, 1992).

\textsuperscript{59} Ibid.

\textsuperscript{60} Road Safety Committee, \textit{Inquiry into the Demerit Points Scheme} (Report, RSC, 1994), at 7.6.
⇒ Speeding program:

A program that targets speeding offenders will be significantly different to that of a drink/drug driving program as the reasons behind speeding and the general public perception of speeding varies greatly from that of drink/drug driving. As discussed above, it would be useful to consider the length of the program and also to involve relevant community groups and organisations in the delivery of the program.

Firstly, any adopted program can concentrate on addressing the driving behaviour of the motor vehicle offender without having to first address an offender’s substance abuse. A program will thus need to focus on addressing embedded attitudes and misconceptions that offenders, and also the public, have in regards to speeding.

Secondly, ‘drivers often justify speeding on the basis that they are ‘ordinary, safe speeding drivers’ and that speed limits are unrealistic’. 61

Thirdly, the underlying reasons for speeding differ to that of drink/drug driving. A research paper examining ‘drivers with repeated speeding violation convictions’ found that there exists a ‘fairly consistent set of traits associated with deliberate risk-taking and particularly speeding’. 62 It identified such traits as including ‘high confidence, need for control, status and power, assertiveness and aggression, mild social deviance and low conformity’. 63 Any successful program will need to have capacity to specifically target these issues.

Finally, and importantly, speeding is seen to be more acceptable by the public than drink/drug driving and is less perceived as a crime, at least in regards to

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63 Ibid.
For example, an interviewee for this paper who was caught speeding argued that licence disqualification was too extreme as she ‘was not drink driving’ and is ‘totally law abiding’. According to ROSPA in the UK, ‘those who drink and drive are seen as behaving in a dangerous, anti-social and selfish manner with little regard for the safety of other people’ whereas those who speed are not seen in the same light. A comment by the same disqualified driver adequately supports this point, stating that ‘drink driving is different, but for speeding it is extreme’. Also, a Community Attitude Survey by the Australian Transport Safety Bureau found that, when asked how fast people should be allowed to travel in a 60km/h speed zone, ‘69% of the community were of the view that speeds in excess of the 60km/h limit should be tolerated without penalty’. ROSPA suggests that ‘it is essential that the dangers caused by driving at inappropriate speeds are clearly explained and demonstrated…to work towards a general public acceptance and ownership of the problem of illegal and inappropriate speed’. Another interviewee for this paper suggested that speeding must be portrayed as ‘embarrassing and socially unimpressive’. This could be achieved by creating a program that involves the participation of relevant community organisations, as noted above in regards to drink/drug driving programs, so that offenders become aware that speeding is seen as unacceptable by the community.

Currently, no program exists in Australia specifically dealing with speeding offenders. However, a National Speed Awareness Course has been established in the UK and its implementation in Australia is in the process of being considered. These courses currently only apply to first time offenders who:

- have been recommended by police;
- consent to undertaking the program;

65 Ibid.
66 Pennay, D, Community Attitudes to Road Safety (ATSB Research and Analysis Report, ATSB, 2006), p34.
have not previously completed the course in the last three years; and

- are caught travelling over the speed limit by no more than approximately 16km/h and therefore does not apply to excessive speeding.\(^68\)

Undertaking the course is an alternative to incurring demerit points.\(^69\)

The National Speed Awareness Course is ‘designed to explore the possible reasons why drivers have exceeded speed limits and to try to prevent future recurrence’.\(^70\) The objectives of the Course have been identified as follows:

- ‘[to] develop correct attitudes and behaviour;
- to identify the benefits of compliance with National Speed Limit requirements;
- [to] ensure drivers leave the course having gained the correct attitudes and beliefs towards the misuse of speed;
- to recognise different speed limit areas;
- [to] identify the consequences of speeding – identifying the benefits and disbenefits of speeding;
- [to] recognise absolute personal responsibility for speed;
- to develop practical skills to reaffirm their attitude towards driving at the correct speed subject to the circumstances; [and]
- to facilitate the clients with an opportunity to examine their attitude towards hazard perception with a view to behavioural change in practical driving’.\(^71\)

The Course involves ‘using driving simulators to improve a person’s ability to spot hazards and judge speed, useful tips on how to avoid speeding in the


\(^{69}\) UKnetguide, ‘Speed Awareness Courses’, http://www.uknetguide.co.uk/Motoring/Article/Speed_Awareness_Courses.html (accessed July 4, 2008).


\(^{71}\) Ibid.
future’, and forcing drivers to ‘confront the potentially fatal consequences of going too fast’.  

Noted by the UK RAC Foundation, research has indicated that ‘these courses have a favourable effect in changing the driving behaviour and perception of speed’. Specifically, ‘a study by Staffordshire University of the course…found that issuing a penalty notice had no impact on driving habits but attending the course resulted in an 8km/h reduction in average speed’.

Despite only applying to those who have been caught speeding marginally over the limit, the RAC Foundation has recommended that it should also ‘be offered to habitual offenders and motorists caught doing high speeds’. While the Foundation recognises the benefits of the course in targeting first time offenders ‘who have inadvertently strayed above the speed limit’, it argues that the course should ‘be offered to those whose attendance would produce the biggest gain in accident reduction’; that is, those who speed excessively or inappropriately. The Foundation believes that excessive speeding can be addressed by implementing several measures, ‘including driver education, a review of speed limits to ensure realistic limits, and better signing of speed limits including interactive warning signs’ and that ‘every driver caught speeding should be offered a speed awareness course at least once’.

⇒ General driving improvement/education program:

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74 UKnetguide, ‘Speed Awareness Courses’, http://www.uknetguide.co.uk/Motoring/Article/Speed_Awareness_Courses.html (accessed July 4, 2008).
76 Ibid.
77 Ibid.
78 Ibid.
There exists a vast number of educational driving programs that attempt to address general driving behaviour and improve driving skills of traffic offenders, and it has been suggested by MUARC that ‘evidence based education programs aimed at being a catalyst for responsibility and consequence ownership may be a successful addition to the existing sanction regime’. Such programs may be useful where a motor vehicle offender would usually be facing licence disqualification due to a loss of demerit points where drink/drug driving or speeding has not been the major contributor for the loss of points.

There currently exists a National Driver Improvement Scheme in the UK which offers a driver improvement course instead of a fine and penalty points to offenders who have been ‘Driving Without Due Care and Attention or Driving Without Reasonable Consideration to Other Road Users’. The Scheme is a response to studies which ‘have shown that where a driver has been involved in such a crash, they are more likely to be involved in similar incidents in the future than someone who has not’. The Course therefore ‘seeks to improve the knowledge and skill of drivers to reduce the chance of them being involved in similar incidents in the future’ and ‘involves a mixture of driving theory, utilising the latest researched thinking on ‘low-risk’ driving techniques, combined with modern training methods in practical on-road driving’.

The National Driver Improvement Scheme has been identified as best-practice by Her Majesty’s Inspector of Constabulary and ‘evidence published from a two year research programme….produced by Exeter University suggests that attendance on the Driver Improvement Course does have a

79 Clark, B and Bobevski, I, Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study (Report, Monash University Accident and Research Centre, 2008), p103.
82 Ibid.
positive effect on a client’s driving behaviour’.\textsuperscript{84} Any program to be developed here should thus highly consider implementing the UK Scheme’s methods and features.

Also, in 1994, in response to a study by the Victorian Road Safety Committee, VicRoads suggested a possible format for a driver improvement course, which included the following recommendations:\textsuperscript{85}

- it should target specific groups of motor vehicle offenders;
- it should target the undesirable behaviour and present alternatives;
- it should involve guided/group discussion rather than a lecture approach;
- it should be a user-pays program; and
- it should be a long-term program as once-only, short-duration programs are unlikely to be effective.

These recommendations should also be considered, several of which have already been recommended above in regards to drink/drug driving programs and speeding programs.

It was also recommended in the MUARC study that ‘to increase the impact of the overall message regarding dangerous driving, inviting road accident victims to address disqualified drivers at education programs’ should be included.\textsuperscript{86} Two disqualified drivers interviewed for this paper also suggested that it would be beneficial if a program involved showing videos of serious accidents and opening offenders’ eyes to the horrific potential outcomes. This suggestion of forcing motor vehicle offenders to face the potential grim outcomes of their behaviours has been adopted in the US by the ThinkFirst Traffic Offenders Program. The Program has been identified as ‘an innovative, day-long experiential program designed to educate young high-

\textsuperscript{85} Road Safety Committee, \textit{Inquiry into the Demerit Points Scheme} (Report, RSC, 1994), at 7.6.
\textsuperscript{86} Clark, B and Bobevski, I, \textit{Disqualified Drivers in Victoria: Literature Review and In-dept Focus Group Study} (Report, Monash University Accident and Research Centre, 2008), p103.
risk drivers about the consequences of motor vehicle trauma’. 87 Driving offenders are forced to ‘follow the same path they would have taken had they been seriously injured in a crash’ as the program attempts to ‘demonstrate the physical, emotional, financial and societal costs of injury’. 88 This is achieved by undertaking ‘an eye-opening tour of the University Hospital Trauma Center’ and then listening to ‘young survivors of trauma explain firsthand what it’s like to survive a car crash and live with a disability’. 89 Employing this so-called ‘scare tactic’ may reach those motor vehicle offenders who are unwilling to change their disregard for the safety of the community, but are willing to change their driving behaviour to protect themselves. Such a method would be beneficial in any diversion program.

The potential benefits/limitations of these recommended programs

As noted by the Sentencing Advisory Council, ‘at present, where it exists at all, driver education is only required as a part of the re-licensing process rather than as part of the sanction’. 90 By incorporating such programs into sentencing, this would ‘ensure that those drivers who may choose to remain outside the system would still get some benefit from these educative programs’. 91

A report by the Australian Transport Safety Bureau that examined a drink driving rehabilitation program compared the behaviour and attitudes of a group that participated in the program (UTL) with a group that did not (Control). The report found that ‘a significant change in self-reported drink driving was seen, with offenders in the UTL group reducing their reported

88 Ibid.
89 Ibid.
91 Sentencing Advisory Council, Driving While Disqualified or Suspended (Discussion Paper, Sentencing Advisory Council, 2008), p41.
level of drink driving to below that of the Control group'. 92 UTL offenders ‘were significantly more likely to report intending to avoid drink driving, especially through changes in their driving behaviours, and to have engaged in fewer instances of drink driving’.93 Also, an interviewee for this paper who decided to undertake a drink driving program after having their license disqualified commented that the program was far more effective in preventing re-offending and that had it not been for the program they probably would have continued to drink drive. Another disqualified driver commented that the drink driving program assisted them in ‘understanding tolerance, and drink driving in general’.

In examining the viability of introducing a driver improvement program into Victoria, the Victorian Road Safety Committee highlighted a study of a program that ‘produced graduates with 20% less collisions than a matched group’94 and another 12 hour advanced course for frequent offenders that produced a ‘16% reduction in subsequent accidents after six months and still 9% better than the no-treatment control group after two years’.95

When those interviewed for this paper were asked whether they believed a diversion program would be beneficial, six of the eight participants believed that it would. Reasons included a need to ‘get to the root of the problem’ rather than providing just a temporary solution, to learn how to stay focused to prevent speeding and to learn of the potential consequences.

At the same time, however, the survey by the Australian Transport Safety Bureau on Community Attitudes noted that while there was a reported appreciation of the dangers of speeding, this was ‘not necessarily reflected in the driving behaviour’ and this therefore questions the effectiveness of any

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93 Ibid, px.
94 Road Safety Committee, Inquiry into the Demerit Points Scheme (Report, RSC, 1994), at 7.5.
95 Ibid.
program that targets education and raising awareness.\textsuperscript{96} The same point was noted in regards to young offenders by a US paper, ‘A Review of the Literature on Remediation Programs for At-Risk Drivers’, which stated that ‘though driver education programs can successfully teach driver skills and impact knowledge…attitudes seem to be largely unaffected by such programs – and attitudes strongly influence how driving skills and knowledge are put to use’.\textsuperscript{97}

The National Awareness Course appears to be such a program that relies upon education and raising awareness and incorporating additional measures such as the scare tactics employed by the US Think First Offenders Program should be considered. Researcher Belinda Clark from MUARC noted, however, that chronic offenders often have the ability to become desensitised to the results of serious crashes, but at the same time suggested that it could be beneficial for those borderline offenders.

Further, while acknowledging that ‘some driver improvement programs…targeted at some people, within certain contexts, may be effective accident and traffic violation countermeasures’,\textsuperscript{98} it has been noted by VicRoads that such programs are limited in their effect, as:

‘The psychotherapeutic techniques used are those generally effective with people who are strongly motivated to change their behaviour, and with people who are well educated, articulate, and have some capacity for self-insight. Unless that motivation is present, or can be created, there is little chance of the program having lasting effects. It is doubtful that the average traffic offender, even in the case of repeat offenders, will be strongly motivated to change their behaviour as in the majority of cases driver experience with illegal behaviour (especially speed) is

\textsuperscript{96} Penney, D, \textit{Community Attitudes to Road Safety} (ATSB Research and Analysis Report, ATSB, 2006), p51.
\textsuperscript{97} Curtis, C and Meehan, G, \textit{A Review of the Literature on Remediation Programs for At-Risk Drivers} (Submitted to the Law Courts Education Society of British Columbia, 2003), p4.
\textsuperscript{98} Road Safety Committee, \textit{Inquiry into the Demerit Points Scheme} (Report, RSC, 1994), at 7.6.
that it is safe and provides other positive consequences (eg getting there quicker).99

This was also noted by a police officer from the Road Safety Awareness and Information Unit who was of the opinion that while diversion programs may be effective, the problem that the criminal justice system faces is that offenders respond differently to different punishments. This is evidenced by the response of one interviewed driver who argued that a program would not be beneficial as ‘it would just get laughed at’ and people would ‘take it as a joke and learn nothing’. However, the benefit of diversion is in its flexibility, being that it can be adapted to the criminogenic and personal needs and views of the offender in order to best combat their offending behaviour. Therefore, the courts would have better capacity to address individual motivations for driving offences by taking them into account when developing the Diversion plan.

However, while there indeed are limitations to the abovementioned programs, it should be kept in mind that research has generally indicated an improvement in driver behaviour. This paper does not believe it possible prevent all motor vehicle offending as there will always be portion of the community who will continue to break these laws. Indeed, this paper adheres to the principle of harm minimisation, accepting that there will always be a level of motor vehicle related crime irrespective of the strategies implemented by the state. Hence, we argue that diversion programs have the ability to alter the attitudes and behaviours of a reasonable number of drivers, and at the very least more so than the current penalty of licence disqualification. It would also reduce the imposition of licence cancellation on the motor vehicle offender and subsequently their family, and reduce the number of people further charged with driving while disqualified.

99 Ibid, at 7.5.
Final Recommendations

⇒ Remove the limitations of S128A(1) of the *Magistrates’ Court Act 1989* (Vic) so that diversion is available as a sentencing option for all driving offences which currently incur mandatory licence cancellation or suspension.
⇒ Develop a set of guidelines for Magistrates to ensure consistency in the implementation of a diversion scheme for driving offences which currently incur mandatory licence cancellation or suspension.
⇒ Design programs that are adequately tailored at changing offender attitude.
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