

Discussion paper on the possible impact of the abolishment of suspended sentences

Summary

1. All Australian jurisdictions imposed fully suspended sentences in 2012-13. (Paragraph 17)
2. Fully suspended sentences are more likely to be imposed in Tasmanian courts than in equivalent courts (Higher, Magistrates, Children's) in other jurisdictions. (Paragraph 17)
3. With the exception of SA all other Australian Higher Courts are more likely to impose an immediate custodial sentence than Tasmania. SA is the only jurisdiction recorded as imposing a sentence of custody in the community on a significant number of defendants. (Paragraph 18)
4. The Tasmanian Supreme Court is the least likely to impose a non-custodial sentence of all higher courts in Australia. This may be due to the Tasmanian sentencing legislation which provides for a suspended sentence of imprisonment having a non-custodial (Probation or CSO) condition. (Paragraph 18)
5. The Tasmanian Magistrates Court is less likely to impose a non-custodial sentence than any other Magistrates Court with the exception of NT. (Paragraph 19)
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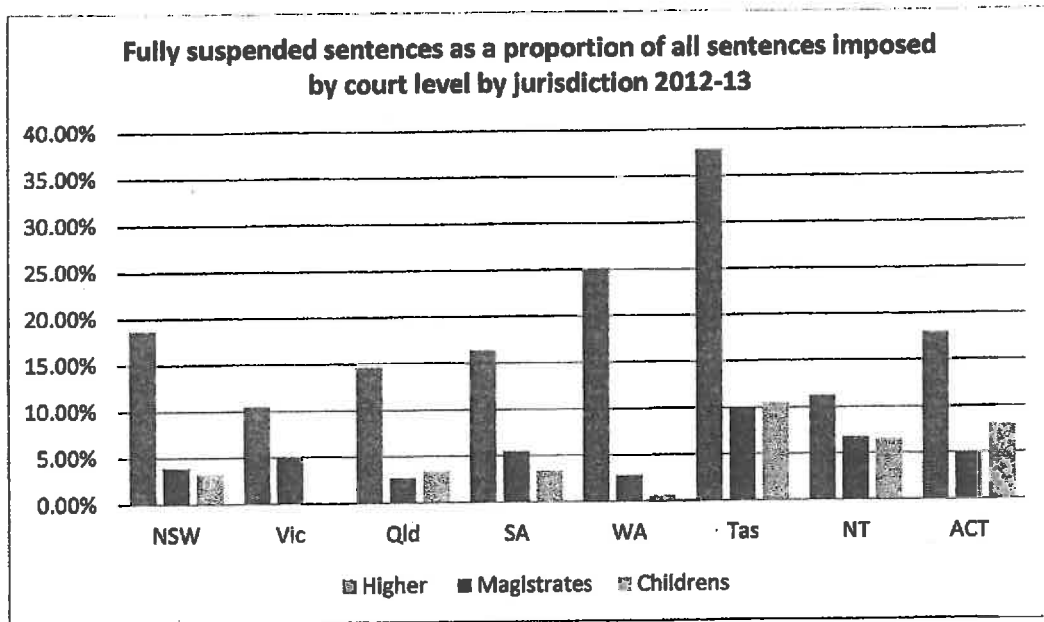
Background:

12. The incoming government's policy is to 'ensure that our community can once again feel safe and that sentencing reflects the gravity of the crime committed by progressively phasing out the use of suspended sentences.'
13. This paper draws on the recently published data from Criminal Courts Australia 2012-13 and more detailed related data collected in the Magistrates Court.
14. The detailed data from the Magistrates Court allows analysis at the statutory offence level (ABS data is aggregated to the Australian and New Zealand Standard Offences Code (ANZSOC). It also allows analysis using two experimental attributes. The first, previous guilty finding, uses linkage via a statistical linkage key to identify whether the person has previously had a guilty finding in the Magistrates Court. The second, return to court, uses linkage via the statistical linkage key to identify whether a person has returned to court charged with an alleged offence committed within two years of the previous finalisation. The second dataset is limited to finalisations that occurred at least two years before the current date.
15. The analysis includes the following:
 - a. A comparison of Tasmania's use of suspended sentences with other states and territories
 - b. A worst case scenario of the impact on the prison population if suspended sentences were abolished and the courts imposed a sentence of imprisonment instead of a suspended or partially suspended sentence.
 - c. More detailed analysis of when suspended sentences are imposed and likelihood of returning to court.

Suspended Sentences – Comparison with Other States and Territories:

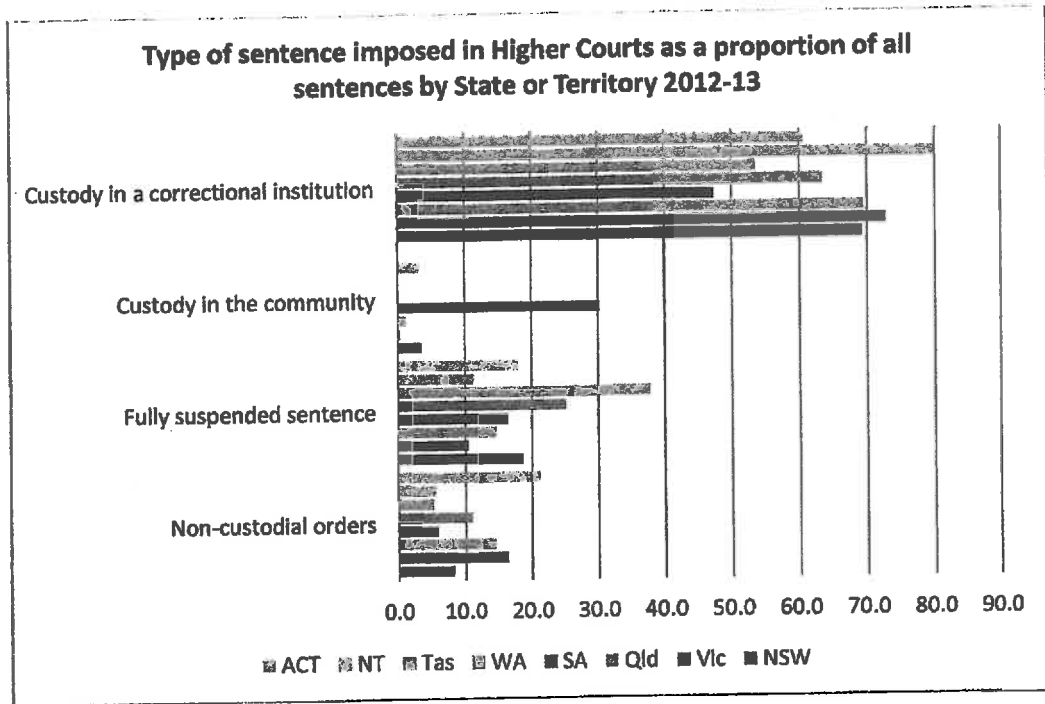
16. All States and Territories reported the use of fully suspended sentences as a sentencing option in 2012-13. The only jurisdiction not imposing suspended sentences was the Victorian Children's Court (Chart 1).
17. Tasmanian courts were more likely to impose a suspended sentence of imprisonment than any other jurisdiction. Suspended sentences were most likely to be imposed in the Tasmanian Supreme Court. (Chart 1)

Chart 1



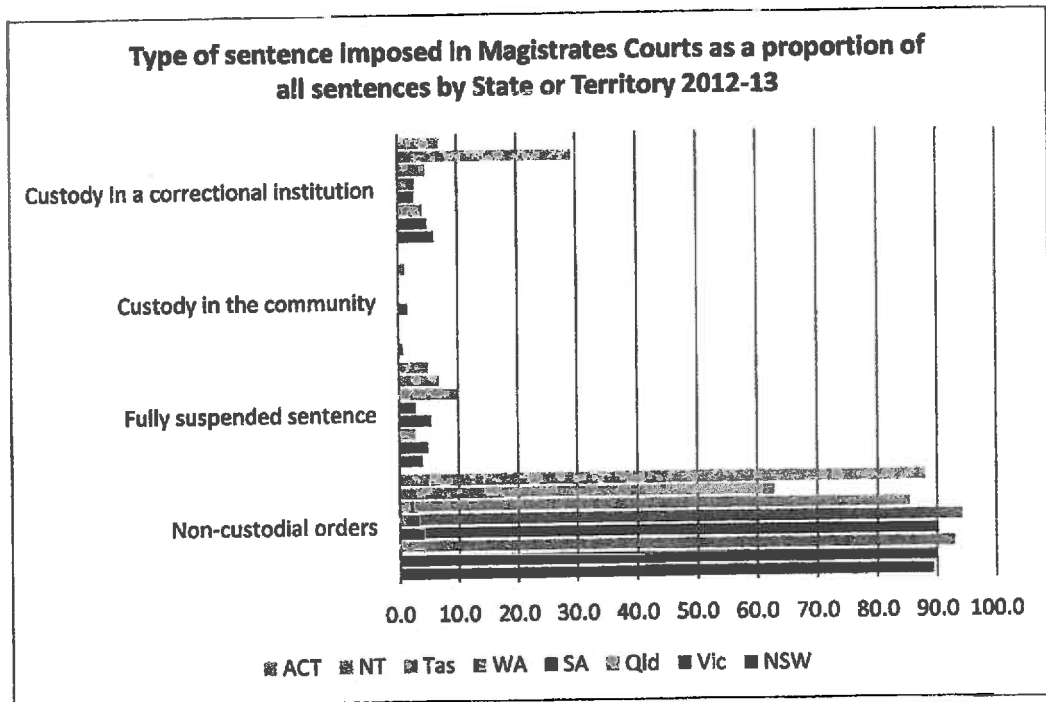
18. The Tasmanian Supreme Court is the least likely to impose a non-custodial sentence of all higher courts in Australia. This may be due to the Tasmanian sentencing legislation which provides for a suspended sentence of imprisonment having a non-custodial (Probation or CSO) condition.

Chart 2



19. The Tasmanian Magistrates Court is less likely to impose a non-custodial sentence than any other State or Territory with the exception of NT. Conversely it is the second most likely to impose a custodial sentence (including suspended sentences).

Chart 3



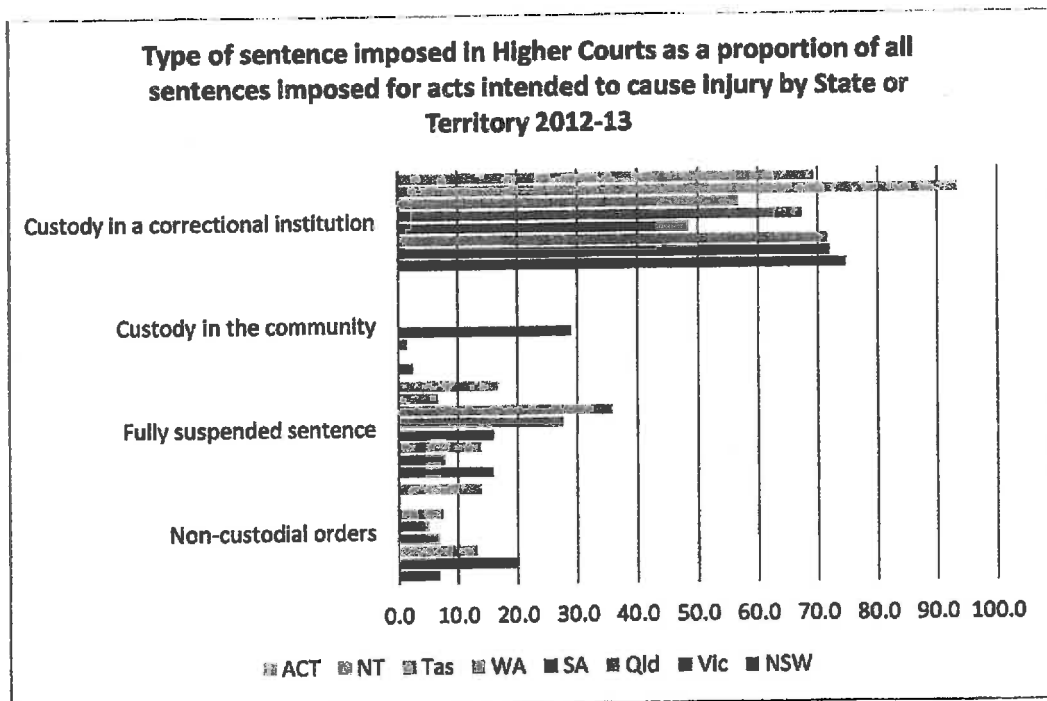
20. The incoming government's strategy is to target serious offences that cause death or injury, aggravated and armed robbery, sexual offences, arson and serious drug offences.

21. In 2012-13 the Tasmanian Supreme Court imposed 130 fully suspended sentences of imprisonment as a principal sentence. Illicit drug offences (44) and Acts intended to cause injury (29) where the ANSOC offence groups which accounted for the majority of these sentences. No wholly suspended sentences where imposed for the category Homicide and related offences.

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23. The chart below compares sentencing in higher courts for offences classified as acts intended to cause injury.

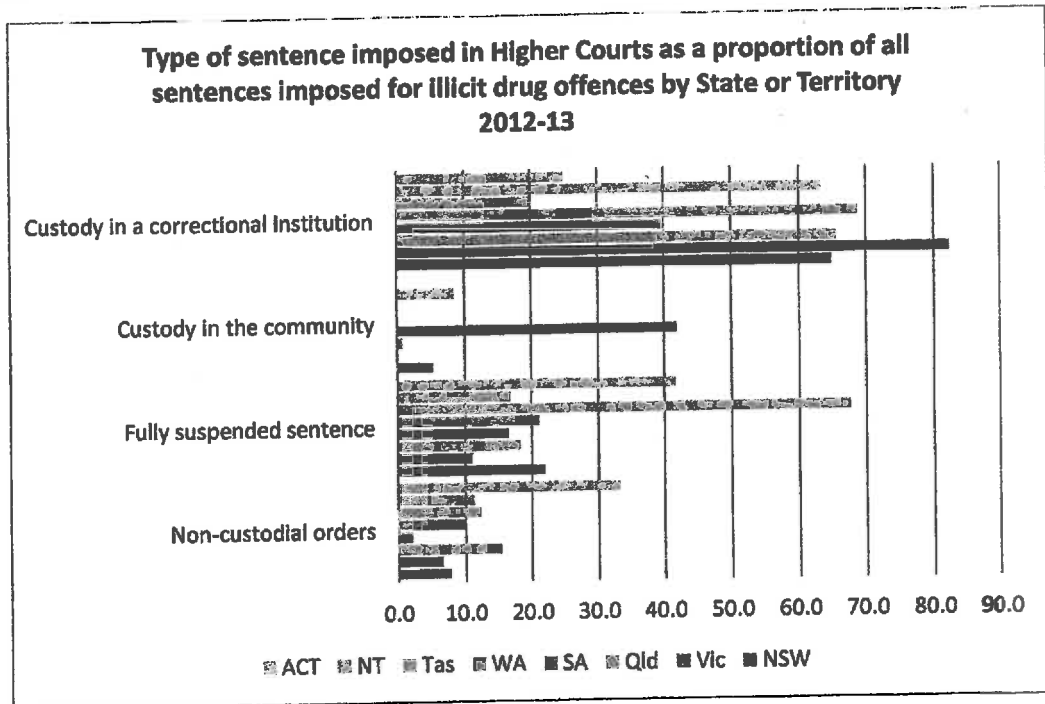
Chart 4



24. The Tasmanian court is more likely to impose a fully suspended sentence for acts intended to cause injury than other jurisdictions. Only one jurisdiction (SA) makes significant use of custody in community as a sentence for acts intended to cause injury.

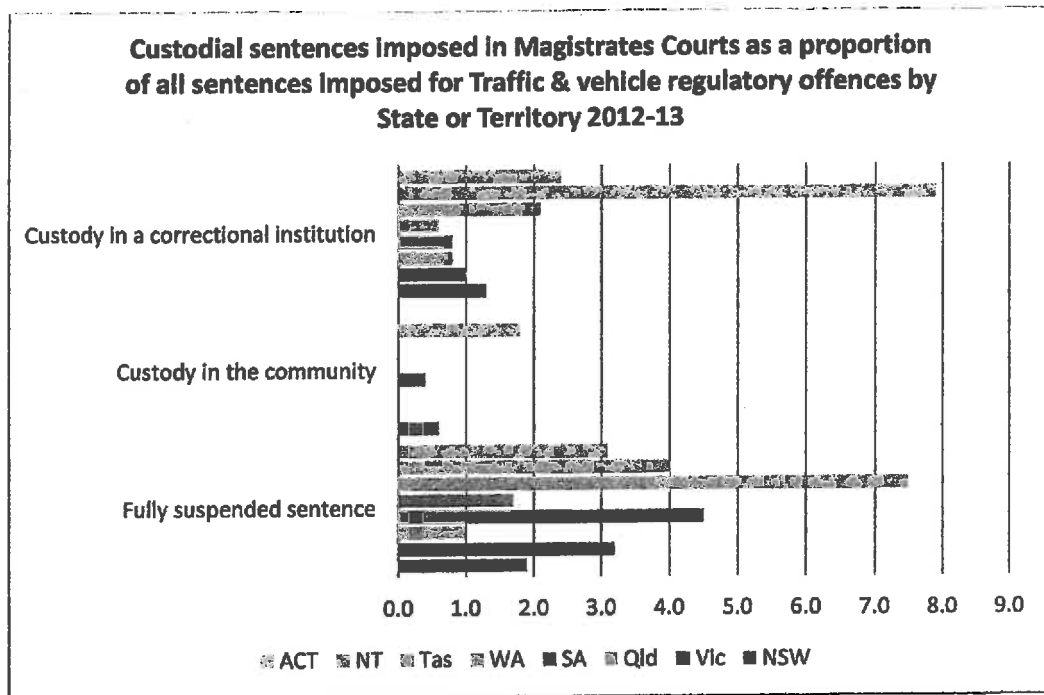
25. The Tasmanian court is the most likely to impose a fully suspended sentence for illicit drug offences than other jurisdictions. Only one jurisdiction (SA) makes significant use of custody in community as a sentence for illicit drug offences.

Chart 5



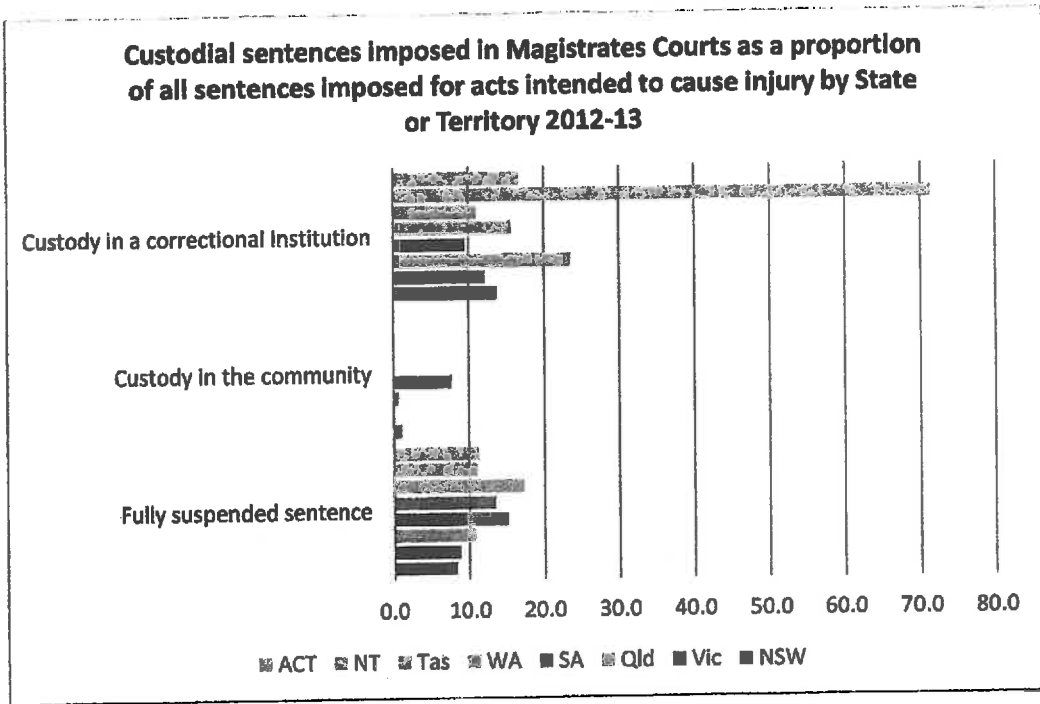
26. The Tasmanian Magistrates Court imposed 1,125 fully suspended sentences as a most serious penalty in 2012-13. Traffic & vehicle regulatory offences (403) and Acts intended to cause injury (201) were the ANZSOC offences groups which accounted for the majority of these sentences.

Chart 6



27. The Tasmanian Court was almost twice as likely to impose a fully suspended sentence for traffic and vehicle regulatory offences than any other jurisdiction. The Court was the second most likely (9.6% of all proven guilty defendants) to impose a custodial sentence (where a custodial sentence is one of: Custody in a correctional institution, Custody in the community, or Fully suspended sentence).
28. When broken down further two offences make up the overwhelming majority of Traffic and Vehicle regulatory offences. They are Drive while licence disqualified, cancelled or suspended and exceed the prescribed content of alcohol or other substance. This raises the question as to whether a custodial sentence is appropriate for this type of offence.
29. For acts intended to cause injury the use of custodial sentences was much more in line with other jurisdictions than for traffic and vehicle regulatory offences.

Chart 7



Worst case scenario impact on prison population

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More detailed analysis of suspended sentences in Magistrates Court

47. Through CRIMES we have available more detailed data on defendants and sentences imposed in the Magistrates Court. I have used this data to provide an example of the more detailed analysis I refer to in 29 above. The analysis is broken into two components. The first is factors which lead to the imposition of a suspended sentence. The second is factors having an impact on the outcome, in the form of return to court.

48. Four principal offence types contribute 69% of the potential prisoner years (using the second method of calculation above) imposed by the Magistrates Court for wholly suspended sentences. They are: Traffic And Vehicle Regulatory Offences (85 prisoner years), acts intended to cause injury (42 prisoner years), Unlawful Entry With Intent/Burglary, Break And Enter (34 prisoner years), and Theft and related offences (26 prisoner years).

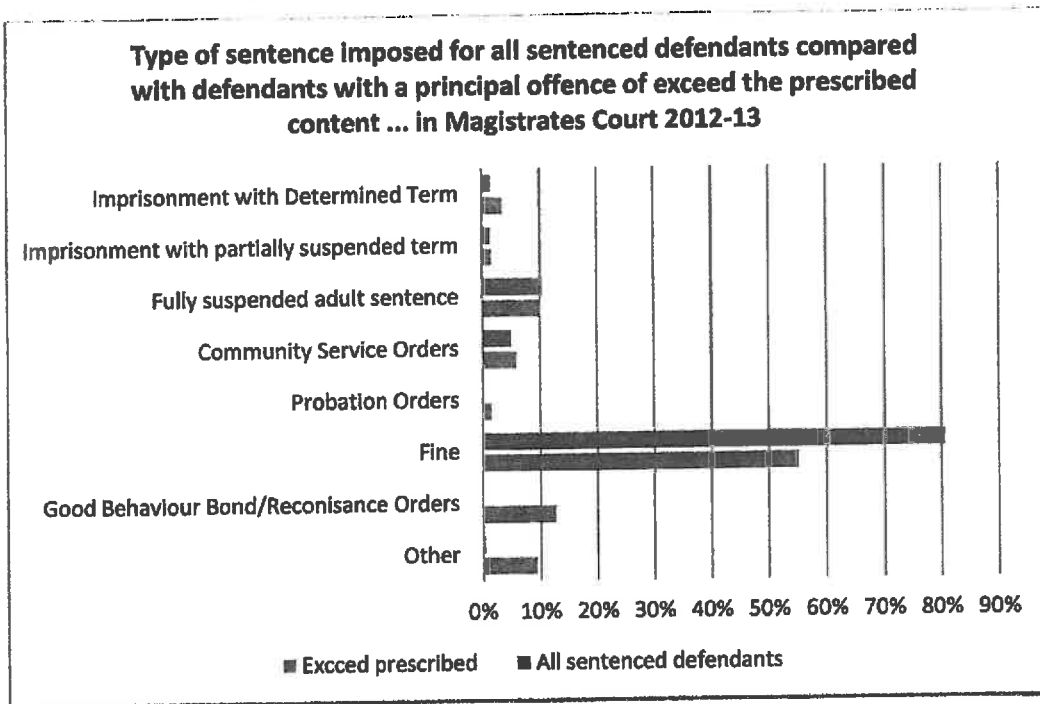
49. Within the Traffic And Vehicle Regulatory Offences category two offence groups are prevalent: Exceed the prescribed content of alcohol or other substance limit (61 prisoner years) and Drive while licence disqualified cancelled or suspended (20 prisoner years).

50. The following will focus on two a single principal offence types, exceed the prescribed content of alcohol or other substance limit.

Factors impacting on the imposition of a suspended sentence

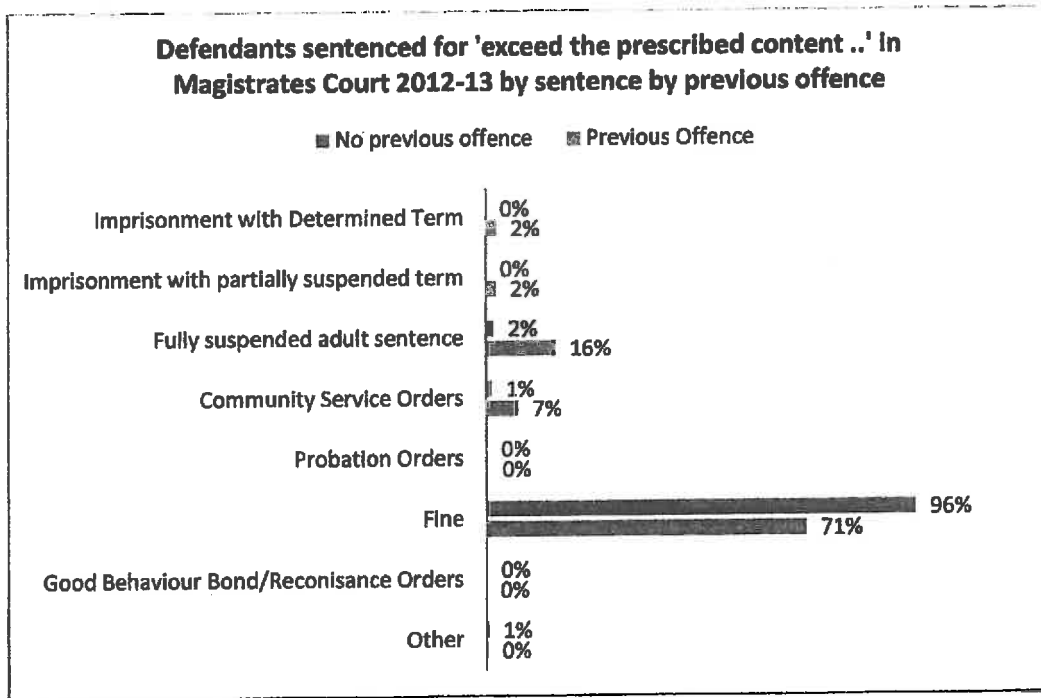
51. The chart below compares sentencing outcomes for all defendants sentenced in the Magistrates Court in 2012-13 with those sentenced for exceed the prescribed content of alcohol or other substance limit.

Chart 8



52. Magistrates may take into account a wide range of factors when imposing a sentence. Age of the defendant and prior record are two examples.
53. Using data from the Magistrates Court it is possible to examine previous records for a defendant and identify whether the defendants has previously been found guilty create a in the court.
54. The chart below shows that there appears to be a strong correlation between an offender having a record of previous guilty finding in the Magistrates Court and the imposition of a custodial sentence (including wholly and partially suspended custodial sentences).

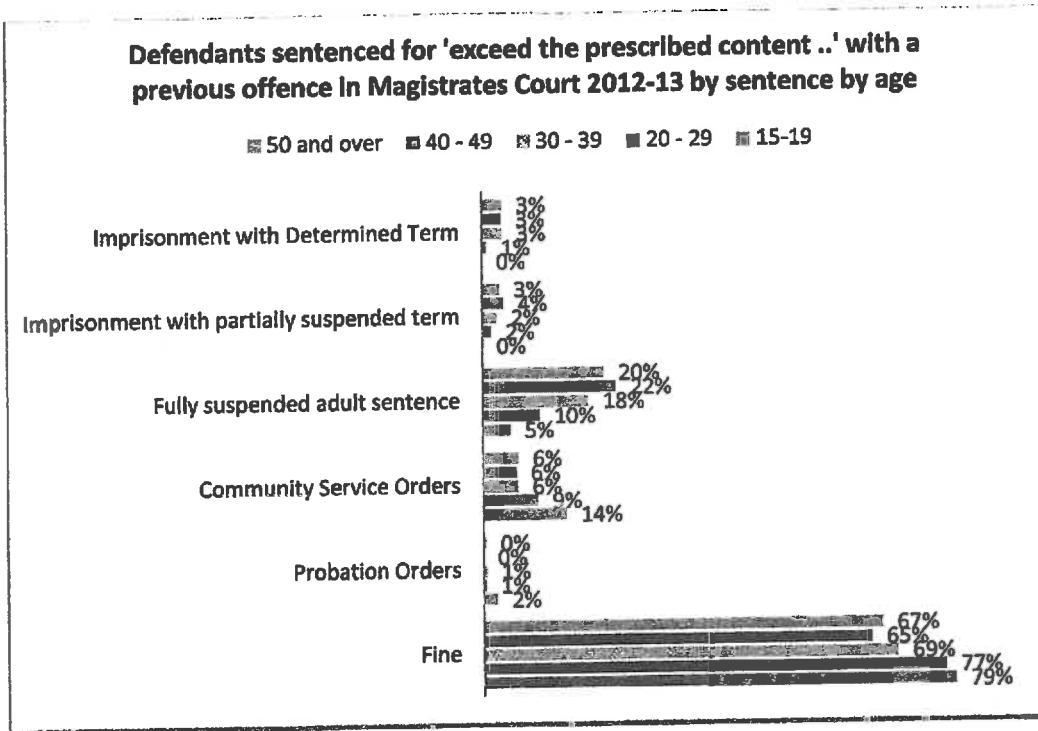
Chart 9



55. Defendants with a previous offence are eight time more likely to receive a suspended sentence of imprisonment. A suspended term of imprisonment is always more likely to be imposed than a CSO or probation order (although it is not uncommon to impose a CSO or probation order as a condition of a suspended sentence).

56. Another factor which may affect the sentence imposed is the age of the defendant.

Chart 10



57. Older defendants are the most likely to receive suspended sentences, with 26% of defendants aged between 40 and 49 and having a prior offence receiving suspended sentences.

Return to Court

58. Reducing reoffending is one of the primary aims of the justice system.

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64. Research into reoffending shows that the likelihood of reoffending reduces with age. The experimental data on return to court for the Magistrates Court shows a similar pattern.

Table 4

Age at Finalisation	Proportion returning to court
15-19	61%
20-24	55%
25-29	53%
30-34	49%
35-39	46%
40-44	40%
45-49	31%
50-54	25%
55-64	20%
65 years and overs	11%

65. Research also shows that reoffending related to the gender of the defendants. This pattern is again confirmed by the Magistrates' Court data.

Table 5

Gender	Proportion returning to court
Female	39%
Male	50%

66. Another reoffending factor is previous offending. The Magistrates Court data shows a strong relationship between a previous guilty finding and return to court.

Table 6

Previous guilty finding	Proportion Returning to court
No Previous Gulty Finding	24%
Previous Gulty Finding	56%

67. Return to court is also related to the type of principal offence as shown in the chart below.

Table 7

Principal Offence	Proportion returning to court
02: Acts Intended To Cause Injury	54%
04: Dangerous Or Negligent Acts Endangering Persons	48%
07: Unlawful Entry With Intent/Burglary, Break And Enter	72%
08: Theft And Related Offences	56%
09: Fraud, Deception And Related Offences	41%
10: Illicit Drug Offences	53%
11: Prohibited And Regulated Weapons And Explosives Offences	37%
12: Property Damage And Environmental Pollution	56%
13: Public Order Offences	49%
14: Traffic And Vehicle Regulatory Offences	40%
15: Offences Against Justice Procedures, Government Security And Government Operations	58%
16: Miscellaneous Offences	40%

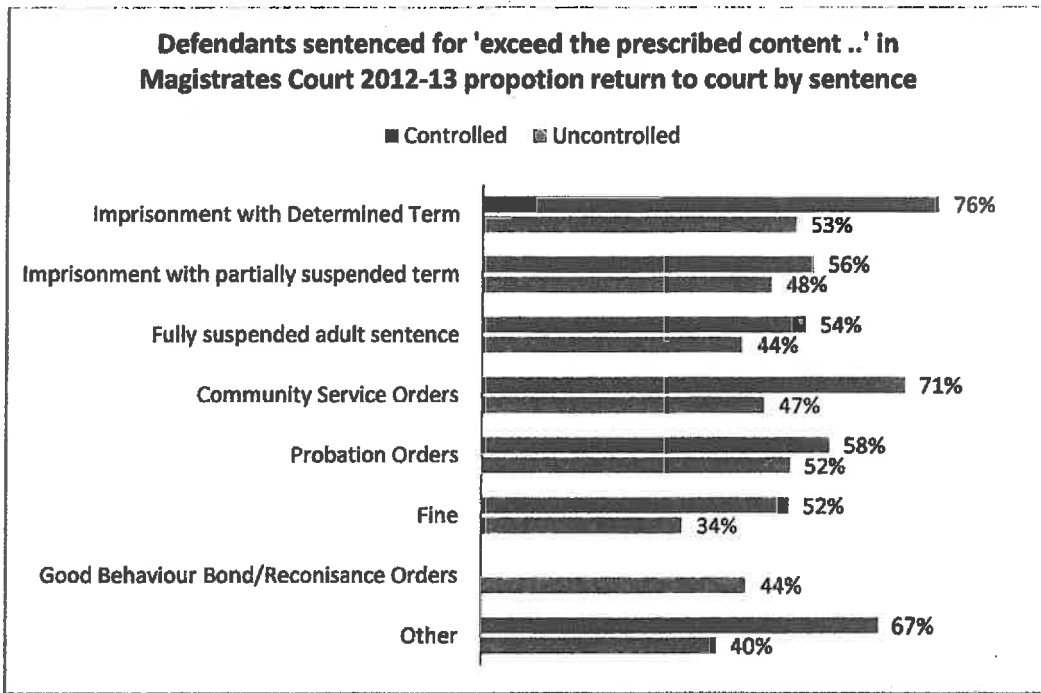
68. The type of sentence imposed is related to the likelihood of re-offending as shown in the table below.

Table 8

Principal Sentence	Proportion returning to court
Other	49%
Good Behaviour Bond/Recognisance Orders	39%
Fine	44%
Probation Orders	62%
Community Service Orders	63%
Fully suspended adult sentence	60%
Imprisonment with partially suspended term	67%
Imprisonment with Determined Term	73%

69. From this table it appears as though the likelihood of reoffending correlates to the severity of the sentence imposed. There are two factors at play. The first is the effectiveness of the sentence as an individual deterrent. If this were the only factor we could conclude that the Good Behaviour Bond/Recognisance Orders is the most effective deterrent and Imprisonment with Determined Term is likely to increase the likelihood of reoffending. The second is the judgement of the judicial officer as to the likelihood of the offender reoffending. The results shown above can then be interpreted as showing that defendants who are likely to reoffend receive more serious sentences.

Chart 11



70. The Magistrates' Court data allows analysis of the time between sentencing and the offender allegedly committing their next offence. 52% of those who return to court within two years allegedly committed their next offence within 6 months, 15% within one month.

