

SENTENCING  
SPOTLIGHT ON...

offence and sentencing trends:  
Magistrates Courts  
of Queensland



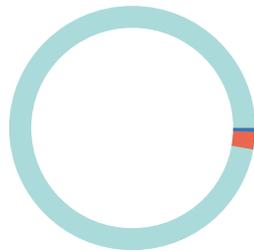
Queensland Sentencing  
Advisory Council  
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# Sentencing Spotlight on... offence and sentencing trends: Magistrates Courts of Queensland

Summary of offences 2005–06 to 2016–17



**711,069**  
adult offenders  
sentenced



Magistrates Court **97.2%**  
District Court **2.3%**  
Supreme Court **0.5%**  
of sentencing



Traffic and Vehicle  
**highest number**  
of offences



Vehicle registration  
offences  
**232,744**



**170,360**  
offenders caught  
drink driving



**11.3%**  
offenders  
given custodial penalty

Source: Department of Justice and Attorney-General's Queensland Wide Inter-linked Courts (QWIC) database, as maintained by the Queensland Government Statistician's Office (QGSO).

# Introduction

This *Sentencing Spotlight* presents descriptive statistical information about offences and penalty outcomes for sentencing events involving adult offenders finalised in the Magistrates Courts of Queensland over the period 1 July 2005 to 30 June 2017.<sup>1</sup> It includes offence information and penalty outcomes for offenders sentenced in Queensland for both State and Commonwealth offences.

Over the 12-year reporting period, 97 per cent of all sentencing events involving adult offenders were dealt with in the Magistrates Courts. The proportion of sentencing events taking place in the Magistrates Courts reflects the courts' criminal jurisdiction. The higher courts dealt with approximately three per cent of all sentencing events in Queensland over the reporting period, dealing with a smaller number of cases involving more serious offences.

## Key concepts and exclusions

The data in this *Sentencing Spotlight* relates only to sentencing events in the Magistrates Courts for adult offenders. All matters dealt with in the Supreme and District Courts and offenders sentenced as children under the Youth Justice Act 1992 (Qld) are not considered. For more information on the results for the higher courts see the complementary publication in this series *Sentencing Spotlight on offence and sentencing trends: Queensland Supreme and District Courts*. In this *Sentencing Spotlight*:<sup>2</sup>

- **Offenders** are unique adults sentenced during the reporting period. Offenders sentenced as children are excluded from this analysis.
- **Sentencing** events are court appearances relating to a single offender at which a sentence was imposed for one or more offences. Multiple sentencing events may be recorded for an offender over the 12-year reporting period relating to different offences or charges.
- **Offences** are proven charges that resulted in a penalty being imposed. Each sentencing event relates to at least one offence. One offence per event is flagged as the most serious offence (MSO).<sup>3</sup>
- **Penalties** are imposed on sentence for an offence. Each offence may record zero, one or multiple penalty types (e.g. probation and community service). Only offences with at least one penalty are included in this *Sentencing Spotlight*. If an offence had multiple penalties, only one penalty is counted as the most serious penalty. In some events a single, global penalty was applied for multiple offences. For such events the global penalty is considered one penalty for penalty counts presented in this *Sentencing Spotlight*, while each offence is counted separately for offence counts.<sup>4</sup>

The data excludes:

- action taken on breach of a suspended sentence<sup>5</sup>
- penalties that are orders for restitution or compensation, disqualification from holding or obtaining a driver licence<sup>6</sup>, or the person was sentenced to the 'rising of the court'<sup>7</sup>
- offences for which no penalty was recorded, or where all penalties for that offence were excluded above
- events for which no offences in the event remained in scope after the exclusions listed in this section were applied.

As this *Sentencing Spotlight* focuses on presenting aggregate level information on offence and sentencing trends, it does not include information about the profile of offenders or detailed information about penalty outcomes for specific offence types. Disaggregated offence-specific information is located in other publications under the *Sentencing Spotlight* series as this spotlight presents descriptive data only.<sup>8</sup> Examining explanations for observable trends is beyond the scope of this publication.

## Summary of 'in scope' elements

Table 1 below summarises the number of in-scope offenders, events, offences and penalties within the 12-year reporting period. All exclusionary criteria detailed above has been applied to the numbers of in-scope elements presented in Table 1.

Over the reporting period, in the Magistrates Courts, there were 711,069 adult offenders associated with over 1.7 million events, 3.3 million offences and 3.8 million penalties. Of these, almost all offenders, events and offences remained in-scope while approximately 75 per cent of penalties remained in-scope. All analyses in this *Sentencing Spotlight* relate to the in-scope offenders, events, offences and penalties.

Where an offence is excluded, the event containing it may still be in-scope. This has a small impact on the calculation of offences per event.

**Table 1: Count of in-scope elements, Queensland Magistrates Courts, 2005–06 to 2016–17**

Court Level	Adult offenders	Sentencing events	Offences	Penalties
Magistrates	709,670 (98.7%)	1,753,033 (97.2%)	3,288,166 (93.5%)	2,859,798 (93.1%)
District	35,557 (4.9%)	41,264 (2.3%)	180,110 (5.1%)	173,325 (5.6%)
Supreme	8,528 (1.2%)	9,094 (0.5%)	46,663 (1.3%)	39,618 (1.3%)

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017

## Offence classification

Offences are categorised according to the Australian Standard Offence Classification – Queensland Extension (QASOC). The classification involves four discrete levels each varying in their respective descriptive detail. This *Sentencing Spotlight* uses level 1 (the most aggregated level) for summarising all data, and level 4 (the lowest, most detailed, level) for identifying common offences.

For more information on this classification scheme, visit the [Queensland Government Statistician's Office website](#).

## Criminal jurisdiction of the Magistrates Courts

Table 2 summarises the in-scope elements by court level, confirming that the overwhelming majority of offenders (98.7%), sentencing events (97.2%) and offences (93.5%) are dealt with in the Magistrates Courts, the lowest tier in the Queensland court system. The District Court is the second tier of the Queensland court system and the Supreme Court of Queensland is the highest court level. For ease of reference, these two tiers of Queensland's court system are referred to as the 'higher courts'. These higher courts deal with much lower number of offenders, sentencing events and offences, although these generally involve more serious offences.

Magistrates Courts have jurisdictional limits on their sentencing powers. Whereas the higher courts can impose sentences up to and including the maximum statutory penalty, the maximum penalty that Magistrates Courts can impose is three years' imprisonment (or four years in the case of a drug and alcohol treatment order). There is a general rule that all offences in Queensland's Criminal Code which have a maximum penalty of not more than three years must be heard and decided in the Magistrates Court.<sup>10</sup>

There are particular offences (which often have a maximum penalty of higher than three years) which must also be dealt with in Magistrates Courts (with its three-year sentence ceiling), unless certain 'relevant circumstances' exist which make the offence more serious. In that case, the charge must be finalised in a higher court.<sup>11</sup> For instance, fraud must usually be dealt with by a Magistrates Court. However, if the value of the fraud is \$30,000 or more and the person does not plead guilty, the charge must be committed to the District Court.

Magistrates Courts must abstain from sentencing general offences with a maximum penalty of three years' imprisonment or less, or particular offences as described above which do not have a 'relevant circumstance' if the court is satisfied, on an application made by the person charged, that it should do so because of exceptional circumstances (e.g, there is an important issue of law involved).<sup>12</sup> If a Magistrates Court abstains from sentencing a person, the court proceedings are conducted as a committal proceeding. This means the charge or charges are transferred to the District or Supreme Court.<sup>13</sup>

In addition to offences that must be dealt with by a Magistrates Court, some offences must be dealt with by a Magistrate if the prosecution elects for them to be dealt with in this way (for example, serious assaults),<sup>14</sup> or unless the person charged elects to be tried by a jury in a higher court.<sup>15</sup>

In all cases, a Magistrates Court must abstain from sentencing an offender for any indictable (serious) offence if satisfied the person may not be adequately punished, taking into account the limits on the courts' jurisdiction, or if an offence charged includes a serious organised crime circumstance of aggravation.<sup>16</sup> If the court makes this determination, it results in the charges being committed to a higher court to be dealt with.

Magistrates Courts can generally sentence drug offences under the *Drugs Misuses Act 1986* (Qld) which carry a maximum penalty of not more than 15 years' imprisonment (again, with its sentence ceiling of three years).<sup>17</sup> Such drug charges can only be sentenced in the Magistrates Court if the prosecution so chooses.<sup>18</sup> If the Magistrate forms the opinion that the charge ought to be prosecuted in a higher court, the charge will instead be transferred to that court.<sup>19</sup> Magistrates Courts can sentence for drug possession, and this jurisdiction was extended in 2010 to include forms of possession which carry a maximum penalty exceeding 15 years' imprisonment, provided that the prosecution does not allege that the possession was for a commercial purpose.<sup>20</sup>

Magistrates Courts cannot sentence the most serious drug offences, such as any form of trafficking or most forms of supply or production (except supply or production of 'schedule 2' drugs such as cannabis if these offences are not 'aggravated').<sup>21</sup> Other specific charges under the *Criminal Code* (Qld) which the Magistrates Court can never sentence include grievous bodily harm and rape (which are generally heard in the District Court)<sup>22</sup> and murder and manslaughter (which can only be heard in the Supreme Court).

It is possible for Magistrates Court level charges to be joined with higher court charges<sup>23</sup> because the charges are related to more serious charges for the same defendant which are before the higher court.

**Table 2: Count of elements, by court level, Queensland 2005–06 to 2016–17**

Court Level	Adult offenders	Sentencing events	Offences	Penalties
Magistrates	709,670 (98.7%)	1,753,033 (97.2%)	3,288,166 (93.5%)	2,859,798 (93.1%)
District	35,557 (4.9%)	41,264 (2.3%)	180,110 (5.1%)	173,325 (5.6%)
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Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017

Note: Offenders may appear in multiple court levels during the reporting period, so percentages of adult offenders add to more than 100 per cent.

## Factors influencing sentencing practices and trends

Over the reporting period, legislative changes and other reforms affecting the criminal jurisdiction of Queensland courts and sentencing occurred. Appendix 1 lists some of these changes and the shortened forms used to refer to these changes in this *Sentencing Spotlight*. For example, 'PDLR' is used to refer to the repeal, and subsequent reintroduction, of the principle of prison/detention as a last resort under Queensland sentencing legislation. An approximate date of commencement of these changes is identified in particular figures presented in this *Sentencing Spotlight* to contextualise observed patterns.

In addition to changes to legislation, a number of other factors may affect the types of offences before the courts for sentencing and sentencing trends over time. These factors include, but are not limited to, changing crime patterns, improved detection methods for particular offence types, shifts in operational law enforcement priorities, agency resourcing levels, and administrative data recording practices. Sentencing guidance issued by appellate courts may also influence sentencing practices.

Some caution should be exercised in attributing causes for any apparent changes in offence or sentencing trends as, in most cases, there are likely to be multiple factors associated with any observed changes.

## Offences in the Magistrates Courts

### Counts per offence

Table 3 shows the counts of offenders, events, offences, penalties and MSOs associated with each offence type. Substantial overlap occurs within the offender and event elements, so the percentages for each add to more than 100. Figure 1 and Figure 2 show the total offence and MSO counts over time, by offence type.

Traffic and vehicle offences (QASOC level 1) were by far the most common, accounting for almost a third of all sentenced offences, penalties and MSOs in the Magistrates Courts. Traffic offences were also related to the most offenders and events, with 61.9 per cent of all unique offenders sentenced for a Traffic offence at some point in the reporting period. Offences against justice procedures were the second most common across all elements, being a sentenced offence for 26.5 per cent of all sentenced offenders and accounting for 18.8 per cent of all sentenced offences.

Figure 1 shows, however, that the percentage share of sentenced offences has shifted over time, with Offences against justice procedures becoming more common than Traffic and vehicle regulatory offences towards the end of the reporting period. Figure 1 also shows the growth in sentenced Illicit drug offences from about 10 per cent of all sentenced offences in November 2010 to approximately 17 per cent by June 2017.

Figure 2 shows MSO offence type counts over time and reveals that Traffic and vehicle regulatory offences were the most common MSO across the reporting period. Increases in Offences against justice procedures and Illicit drug offence MSOs and reductions in Public order offences (MSO) are also observable in Figure 2.

**Table 3: Offenders, events, offences, penalties and MSOs by offence type (QASOC Level 1), Queensland Magistrates Courts, 2005–06 to 2016–17**

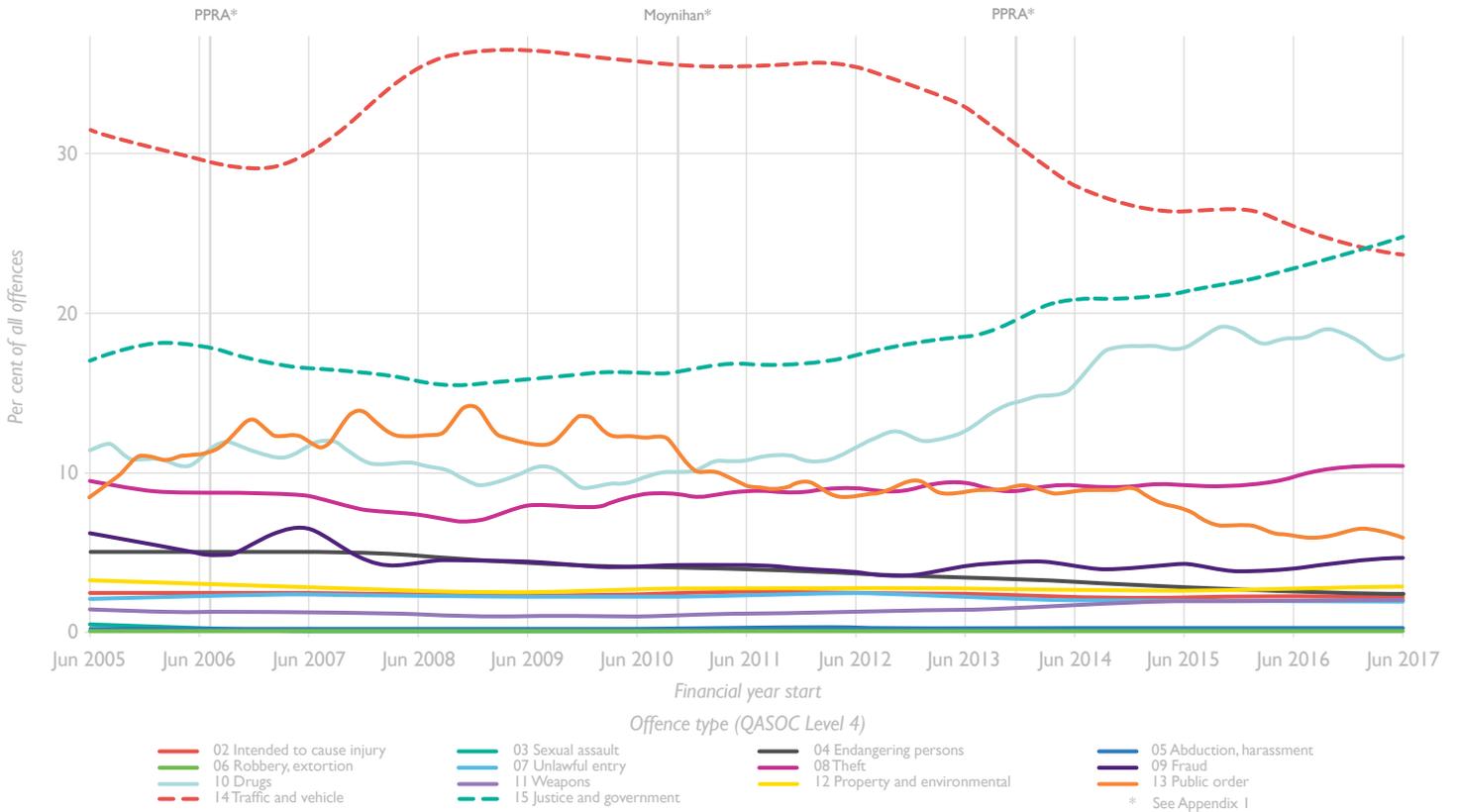
Offence (QASOC Level 1)	Offenders	Events	Offences	Penalties	MSOs
Acts intended to cause injury	50,455 (7.1%)	61,994 (3.5%)	73,787 (2.2%)	73,227 (2.6%)	58,026 (3.3%)
Sexual assault and related offences	1,465 (0.2%)	1,514 (0.1%)	2,705 (0.1%)	2,643 (0.1%)	1,410 (0.1%)
Dangerous or negligent acts endangering persons	104,766 (14.8%)	119,088 (6.7%)	124,100 (3.8%)	123,606 (4.3%)	111,676 (6.3%)
Abduction, harassment and other offences against person	4,784 (0.7%)	5,123 (0.3%)	6,411 (0.2%)	6,168 (0.2%)	3,664 (0.2%)
Robbery, extortion and related offences	173 (0%)	173 (0%)	192 (0%)	169 (0%)	109 (0%)
Unlawful entry with intent/ burglary, break and enter	22,565 (3.2%)	32,338 (1.8%)	66,922 (2%)	63,894 (2.2%)	27,601 (1.6%)
Theft and related offences	97,574 (13.7%)	172,249 (9.8%)	287,603 (8.7%)	256,096 (9%)	127,553 (7.2%)
Fraud, deception and related offences	36,472 (5.1%)	42,879 (2.4%)	135,783 (4.1%)	114,950 (4%)	34,750 (2%)
Illicit drug offences	125,376 (17.7%)	228,091 (12.9%)	439,188 (13.3%)	322,515 (11.3%)	171,558 (9.7%)
Prohibited and regulated weapons and explosives offences	31,464 (4.4%)	37,689 (2.1%)	46,853 (1.4%)	35,529 (1.2%)	27,883 (1.6%)
Property damage and environmental pollution	46,054 (6.5%)	58,051 (3.3%)	81,826 (2.5%)	70,918 (2.5%)	37,744 (2.1%)
Public order offences	158,680 (22.4%)	286,469 (16.2%)	326,044 (9.9%)	301,333 (10.5%)	230,816 (13.1%)
Traffic and vehicle regulatory offences	439,533 (61.9%)	723,732 (41%)	1,051,189 (31.8%)	962,061 (33.6%)	656,679 (37.2%)
Offences against justice procedures, government security and operations	187,853 (26.5%)	405,764 (23%)	623,041 (18.8%)	498,488 (17.4%)	258,955 (14.7%)

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Notes

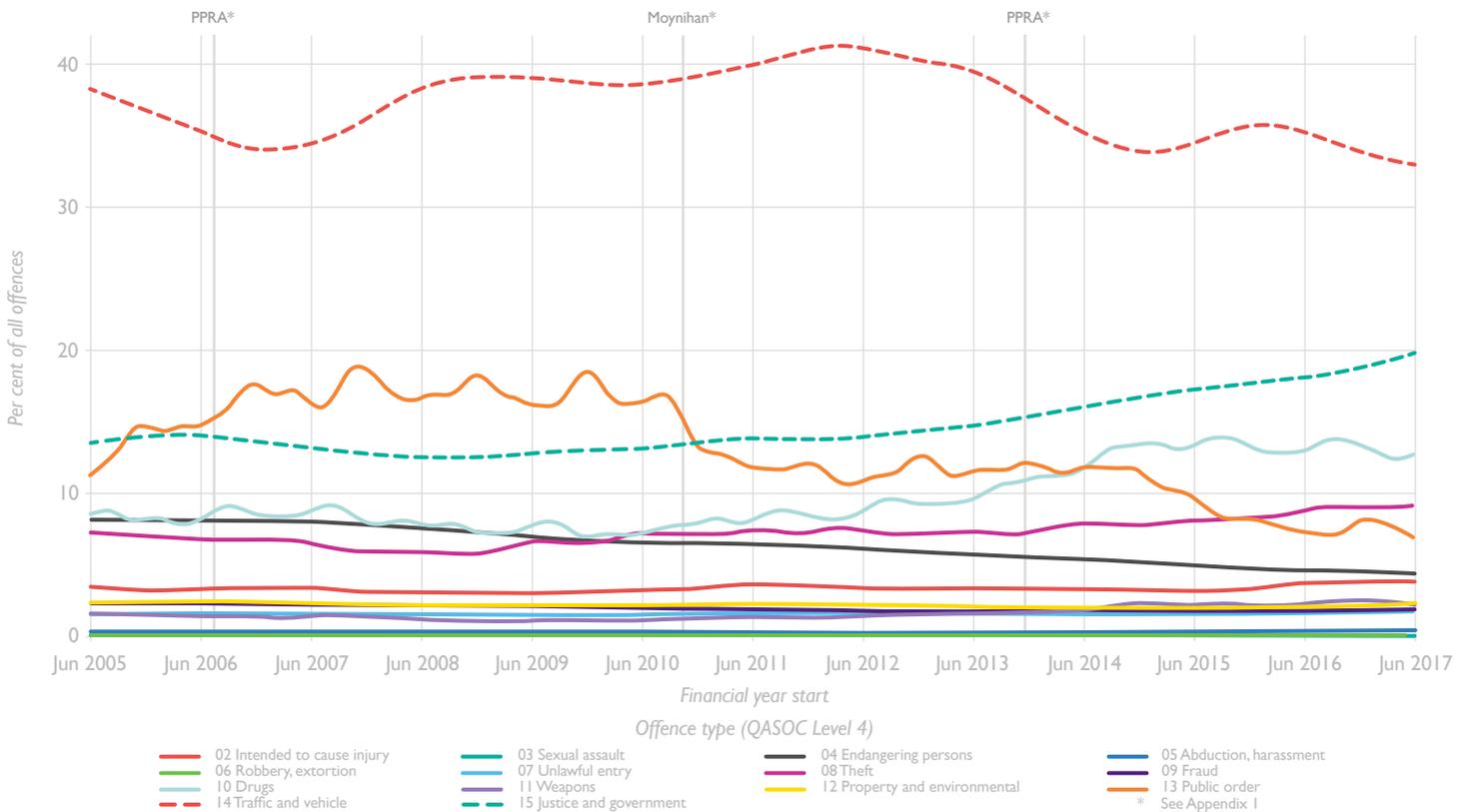
1. Some offenders and events relate to multiple offence types, therefore percentages in these columns add to more than 100 per cent.
2. The offence types 'miscellaneous' and 'cannot be assigned' have been excluded. As a result the percentages for offences, penalties and MSOs each add to slightly less than 100 per cent.

**Figure 1: QASOC Level 1 offences, change in percentage share over time, Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

**Figure 2: QASOC Level 1 MSOs, change in percentage share over time, Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

## Most common offences

The tables and figures presented below depict the most common offences (QASOC level 4) sentenced in Magistrates Courts. Two results are presented; the first reflects a count of all offences in each sentencing event, while the second reflects a count of the MSOs for each event. The tables show the top ten offences across the entire reporting period, while the figures show percentage share, across time, for offences that were in the top five of any financial year.

Table 4 shows the most common offences were Vehicle registration offences, followed by Resist arrest and Drink driving. Figure 3 shows that this has changed over time:

- Vehicle registration offences represented over 10 per cent of sentenced offences from October 2008 to July 2013, but were much less common outside those periods.

- Drink driving was the most common offence at the beginning of the reporting period, constituting 8.5 per cent of all offences, but dropped to 3.5 per cent by the end of the reporting period.
- Resist arrest remained relatively stable at 7.5 per cent of all offences across time, and was one of the top four offence types each year.
- Possess illicit drugs increased from 5 to 7.5 per cent of offences to become the most common offence at the end of the reporting period.

Table 5 and Figure 4 show similar trends for MSOs, except that Vehicle registration offences were less likely to be MSOs.

Figure 4 also depicts the introduction of the offence of Drug driving in October 2007, and its growth to become the third most common MSO towards the end of the reporting period.<sup>24</sup>

**Table 4: Top 10 most common offences, Queensland Magistrates Courts, 2005–06 to 2016–17**

Offence (QASOC level 4)	Count	Percent	Unique offenders
Vehicle registration offences	232,744	7.0	84,571
Resist arrest, incite, hinder, obstruct police	229,002	6.9	127,338
Drink driving – exceed general alcohol limit	212,421	6.4	177,032
Offensive behaviour (remainder) <sup>*25</sup>	203,521	6.2	120,588
Possess illicit drugs	193,812	5.9	102,741
Possession of drug utensils	155,767	4.7	82,215
Driving without a licence	141,576	4.3	98,236
Driving under disqualification	133,678	4.0	77,481
Theft (except motor vehicles)	104,427	3.2	41,221
Breach of bail – failure to appear	104,122	3.1	49,124

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

\*'Offensive behaviour (remainder)' includes offensive behaviour not classified elsewhere. It is predominately unclassified public nuisance offences, but also includes urinating in a public place, failing to leave a licensed premises, and committing a public nuisance in or near a licensed premises.

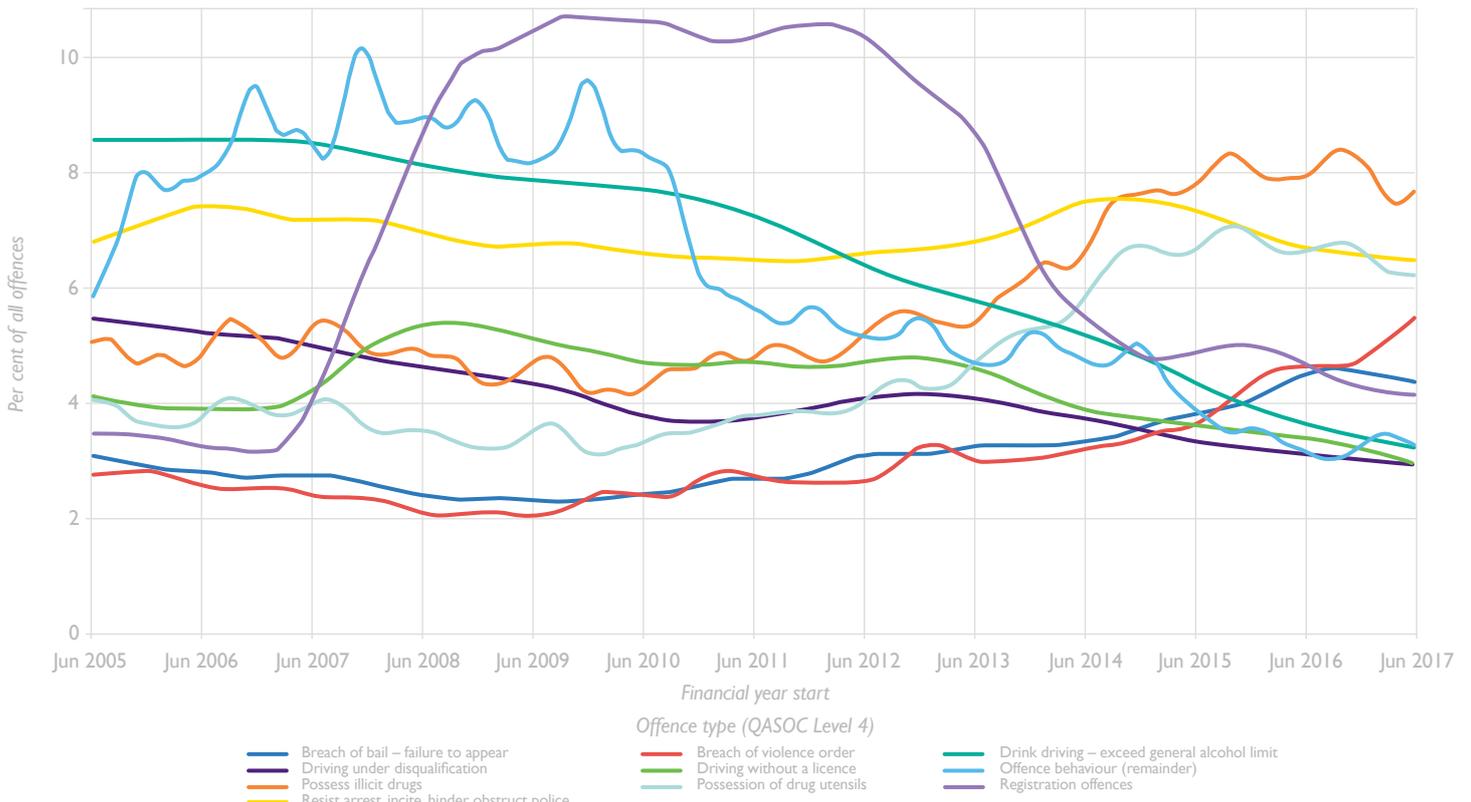
**Table 5: Top 10 prevalent MSOs, Queensland Magistrates Courts, 2005–06 to 2016–17**

Offence (QASOC level 4)	Count	Percent	Unique offenders
Drink driving – exceed general alcohol limit	199,182	11.3	170,360
Offensive behaviour (remainder) <sup>*26</sup>	151,756	8.6	105,055
Possess illicit drugs	107,779	6.1	77,217
Driving under disqualification	96,693	5.5	66,899
Driving without a licence	94,797	5.4	74,229
Resist arrest, incite, hinder, obstruct police	88,198	5.0	72,605
Drive under the influence of alcohol or other substance	64,354	3.6	56,876
Breach of violence order	56,867	3.2	35,751
Driving under suspension	52,763	3.0	47,765
Vehicle registration offences	51,513	2.9	47,068

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

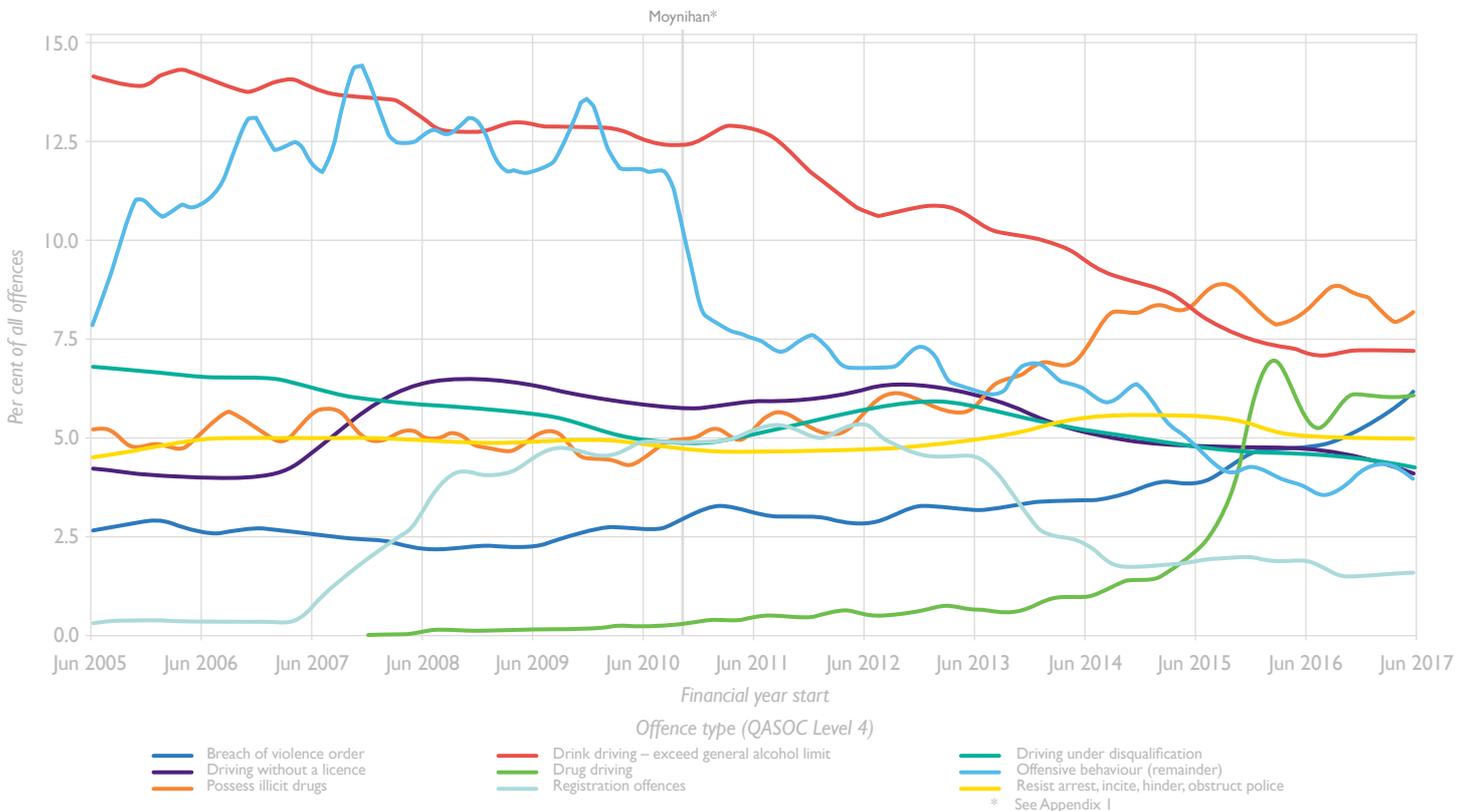
\*'Offensive behaviour (remainder)' includes offensive behaviour not classified elsewhere. It predominately consists of unclassified public nuisance offences, but also includes urinating in a public place, failing to leave a licensed premises, and committing a public nuisance in or near a licensed premises.

**Figure 3: Offences ever ranked in top five most common offences in a year by percentage share, Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician’s Office, Queensland Treasury – Courts Database, extracted October 2017.

**Figure 4: MSOs ever ranked in top five prevalent MSOs in a year by percentage share, Queensland higher courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician’s Office, Queensland Treasury – Courts Database, extracted October 2017.

## Offence combinations

Sentencing events may involve sentencing for multiple offences. Figure 5 shows how often each offence type is sentenced in the same court event as other offence types, including offences of the same type. A darker shade of blue indicates a larger proportion of offences. The table is designed to be read from the horizontal axis first. For example, 18 per cent of all sentencing events with an Intended to cause injury offence also had at least one Public order offence.

The darkish diagonal line from bottom left to top right depicts sentencing events involving two or more counts of the same offence type. Such events are particularly marked in the case of Drugs (49.8%) and Fraud (43.9%).

The dark vertical line associated with Robbery/extortion offences indicates a high percentage of events in which people sentenced for these offences were also sentenced for other offences at the same sentencing event, including Acts intended to cause injury (27.2%), Theft (38.7%), Public order offences (28.9%) and Justice/government offences (43.9%).

The darkish horizontal lines for Justice/government offences indicate that many other offences had Justice/government offences sentenced as part of the same court event. A large proportion of events with Acts intended to cause injury (33.4%), Abduction, harassment and other offences against the person (28.4%), Robbery/extortion (43.9%), Unlawful entry (34.6%) and Property damage and environmental offences (32.6%), had a Justice/government offence sentenced as part of the same court event.

**Figure 5: Offence combinations by offence type (QASOC Level 1), Queensland Magistrates Courts, 2005–06 to 2016–17**

Justice and government	33.4	17.5	10.8	28.4	43.9	34.6	21	18.5	18.9	23.2	32.6	23.4	7.2	24.2
Traffic and vehicle	6	2.8	29.5	6.9	15.6	14.1	10.4	10.3	9.4	12.5	8	3.1	25.7	12.9
Public order	18	12.2	3.3	11.1	28.9	15.8	8.3	4.4	5.8	10.9	23.2	10.4	1.2	16.5
Property and environmental	12.3	4.2	2	10.9	20.8	15.3	4.8	2.9	2.3	4.3	15.2	4.7	0.6	4.7
Weapons	2.3	1.3	1.5	4.5	4.6	4.9	3.6	2.9	6	16.4	2.8	1.4	0.7	2.2
Drugs	6.8	5.8	4.4	9	18.5	20.1	15.3	12.8	49.8	36.3	8.9	4.6	3	10.6
Fraud	1.2	1.1	0.7	2.4	8.7	12.7	9.9	43.9	2.4	3.3	2.1	0.7	0.6	2
Theft	8.4	6.7	4	8.3	38.7	44.2	24.6	39.7	11.5	16.6	14.1	5	2.5	8.9
Unlawful entry	4.3	4	1.3	4.9	19.1	36	8.3	9.6	2.9	4.2	8.5	1.8	0.6	2.8
Robbery, extortion	0.1	0.1	0	0.3	13.3	0.1	0	0	0	0	0.1	0	0	0
Abduction, harassment	1.3	1.2	0.2	18.7	7.5	0.8	0.2	0.3	0.2	0.6	1	0.2	0	0.4
Endangering persons	3.3	1.4	5.2	4.7	9.8	4.8	2.7	1.9	2.3	4.7	4.2	1.4	4.8	3.2
Sexual assault	0.2	29.2	0	0.4	0.6	0.2	0.1	0	0	0.1	0.1	0.1	0	0.1
Intended to cause injury	18.1	9.2	1.7	15.7	27.2	8.3	3	1.8	1.8	3.8	13.1	3.9	0.5	5.1
	Intended to cause injury	Sexual assault	Endangering persons	Abduction, harassment	Robbery, extortion	Unlawful entry	Theft	Fraud	Drugs	Weapons	Property and environmental	Public order	Traffic and vehicle	Justice and government

X% of sentencing events with this offence...

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Table 6 lists, for each offence type (QASOC Level 1), how many offences, offence types, penalties and penalty types were in the same sentencing event. Robbery/extortion and Unlawful entry offences were the most likely to be sentenced in events with multiple offences and events with multiple offence types. These two offence types were also the most likely offences to be sentenced in events with multiple penalties and events with multiple penalty types. However, multiple penalty types in one sentencing event were not common, with all offence types having a median of one penalty type per event.

**Table 6: Offence count and penalty count by offence type, Queensland Magistrates Courts, 2005–06 to 2016–17**

Offence (QASOC Level 1)	Event offences		Event offence types (QASOC Level 1)		Event penalties		Event penalty types	
	Average	Median	Average	Median	Average	Median	Average	Median
Intended to cause injury	3.1	2	2	2	2.6	1	1.3	1
Sexual assault	3.3	2	1.7	1	2.8	1	1.3	1
Endangering persons	2.2	1	1.6	1	2	1	1.1	1
Abduction, harassment	3.6	2	2.1	2	2.9	1	1.4	1
Robbery, extortion	7.1	4	3.5	3	5.2	3	1.7	1
Unlawful entry	6.9	4	2.8	2	5.9	3	1.5	1
Theft	3.8	2	1.9	1	3.1	1	1.2	1
Fraud	6	2	2.1	2	5	2	1.3	1
Drugs	3.3	2	1.7	1	2.4	1	1.2	1
Weapons	4.3	2	2.2	2	3.1	1	1.3	1
Property and environmental	3.9	2	2.2	2	3.2	1	1.3	1
Public order	2	1	1.5	1	1.8	1	1.1	1
Traffic and vehicle	1.8	1	1.2	1	1.7	1	1.1	1
Justice and government	2.9	2	1.7	1	2.3	1	1.2	1

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Table 7 shows the number of offences, offence types, penalties and penalty types per event were significantly lower in the Magistrates Courts than in the higher courts. This pattern is consistent across all offence types except Robbery/extortion, which had more offences and penalties per event in the Magistrates Courts than in the higher courts. The largest differences between court types was evident in events with Traffic or Public order offences. Events with Traffic offences averaged 1.8 offences and 1.7 penalties in Magistrates Courts, compared to 16 offences and 13.8 penalties in the higher courts. Events with Public order offences averaged 2.0 offences and 1.8 penalties in Magistrates Courts, compared to 10.4 offences and 9.2 penalties in the higher courts.

For more information on the results for the higher courts see the complementary publication *Sentencing Spotlight on offence and sentencing trends: Queensland Supreme and District Courts*.

**Table 7: Offence count and penalty count by court type, 2005–06 to 2016–17**

Offence (QASOC Level 1)	Event offences		Event offence types (QASOC Level 1)		Event penalties		Event penalty types	
	Average	Median	Average	Median	Average	Median	Average	Median
Magistrates Courts	1.9	1	1.2	1	1.6	1	1.1	1
Higher Courts	4.5	2	1.7	1	4.2	2	1.4	1

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

## Penalties and sentencing

### Penalty types: overview

The *Penalties and Sentences Act 1992* (Qld) sets out the penalty types available to the Magistrates Courts for sentencing adult offenders.

Penalties are generally classified as either custodial or non-custodial. Custodial orders include imprisonment, intensive correction orders (ICOs) and suspended sentences of imprisonment. Non-custodial orders include community service orders, probation, fines and recognisance orders/good behaviour bonds.

Table 8 shows the count of offenders, events, offences, penalties and MSOs by penalty type. Substantial overlap occurs within the offender and event elements therefore the percentages for each add to more than 100.

**Table 8: Count of offenders, events, offences, penalties and MSOs by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**

Penalty	Offenders	Events	Offences	Penalties	MSOs
<b>Custodial penalties</b>					
Imprisonment	34,051 (4.8%)	72,231 (4.1%)	295,493 (8.9%)	295,517 (10.3%)	71,395 (4%)
Partially suspended sentence	4,376 (0.6%)	4,586 (0.3%)	14,562 (0.4%)	14,564 (0.5%)	4,422 (0.3%)
Wholly suspended sentence	38,141 (5.4%)	50,219 (2.8%)	107,705 (3.3%)	107,757 (3.8%)	47,958 (2.7%)
Intensive correction order	3,574 (0.5%)	3,745 (0.2%)	13,056 (0.4%)	13,063 (0.5%)	3,731 (0.2%)
<b>Non-custodial penalties</b>					
Community service	31,995 (4.5%)	37,971 (2.2%)	107,743 (3.3%)	70,190 (2.5%)	36,246 (2.1%)
Probation	71,306 (10%)	93,093 (5.3%)	248,749 (7.5%)	172,066 (6%)	74,594 (4.2%)
Fine	643,196 (90.6%)	1,412,951 (80%)	2,155,565 (65.2%)	1,899,444 (66.4%)	1,365,078 (77.3%)
Recognisance	112,431 (15.8%)	125,253 (7.1%)	191,781 (5.8%)	160,090 (5.6%)	110,318 (6.2%)
Convicted not further punished	70,426 (9.9%)	102,941 (5.8%)	171,625 (5.2%)	127,107 (4.4%)	52,216 (3%)

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Note: As offenders and events may relate to multiple penalty types, percentages add to more than 100 per cent.

Table 9 summarises the frequency and average outcome by penalty type. Penalty outcome is measured in hours for community service, dollars for fines, and years for other penalty types. Imprisonment includes sentences imposed for fixed term only, and therefore excludes life sentences (of which 266 were recorded over the 12-year reporting period).

**Table 9: Summary of penalty range and severity by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**

Penalty	Count	%	Average	Median	Min	Max	Quartile 1	Quartile 3	Interquartile range
<b>Custodial penalties</b>									
Imprisonment	295,517	10.3	0.6 yrs	0.5 yrs	1 day	4 yrs	0.2 yr	0.8 yr	0.7 yr
Partially suspended sentence	14,564	0.5	0.8 yrs	0.6 yrs	2 days	4 yrs	0.3 yr	1.0 yr	0.7 yr
Wholly suspended sentence	107,757	3.8	0.4 yrs	0.3 yrs	1 day	12 yrs	0.2 yr	0.5 yr	0.3 yr
Intensive correction order	13,063	0.5	0.7 yrs	0.8 yrs	3 days	3 yrs	0.5 yr	1.0 yr	0.5 yr
<b>Non-custodial penalties</b>									
Community service	70,190	2.5	101.6 hrs	90 hrs	1 hour	604 hrs	60 hrs	140 hrs	80 hrs
Probation	172,066	6.0	1.3 yrs	1.0 yr	1 day	3 yrs	1.0 yr	1.5 yrs	0.5 yr
Fine	1,899,444	\$66.4	\$733	\$376	\$0.1	\$700k	\$225	\$600	\$375
Recognisance	160,090	5.6	0.7 yrs	0.5 yrs	1 day	25 yrs	0.3 yr	1.0 yr	0.7 yr
Convicted not further punished	127,107	4.4							

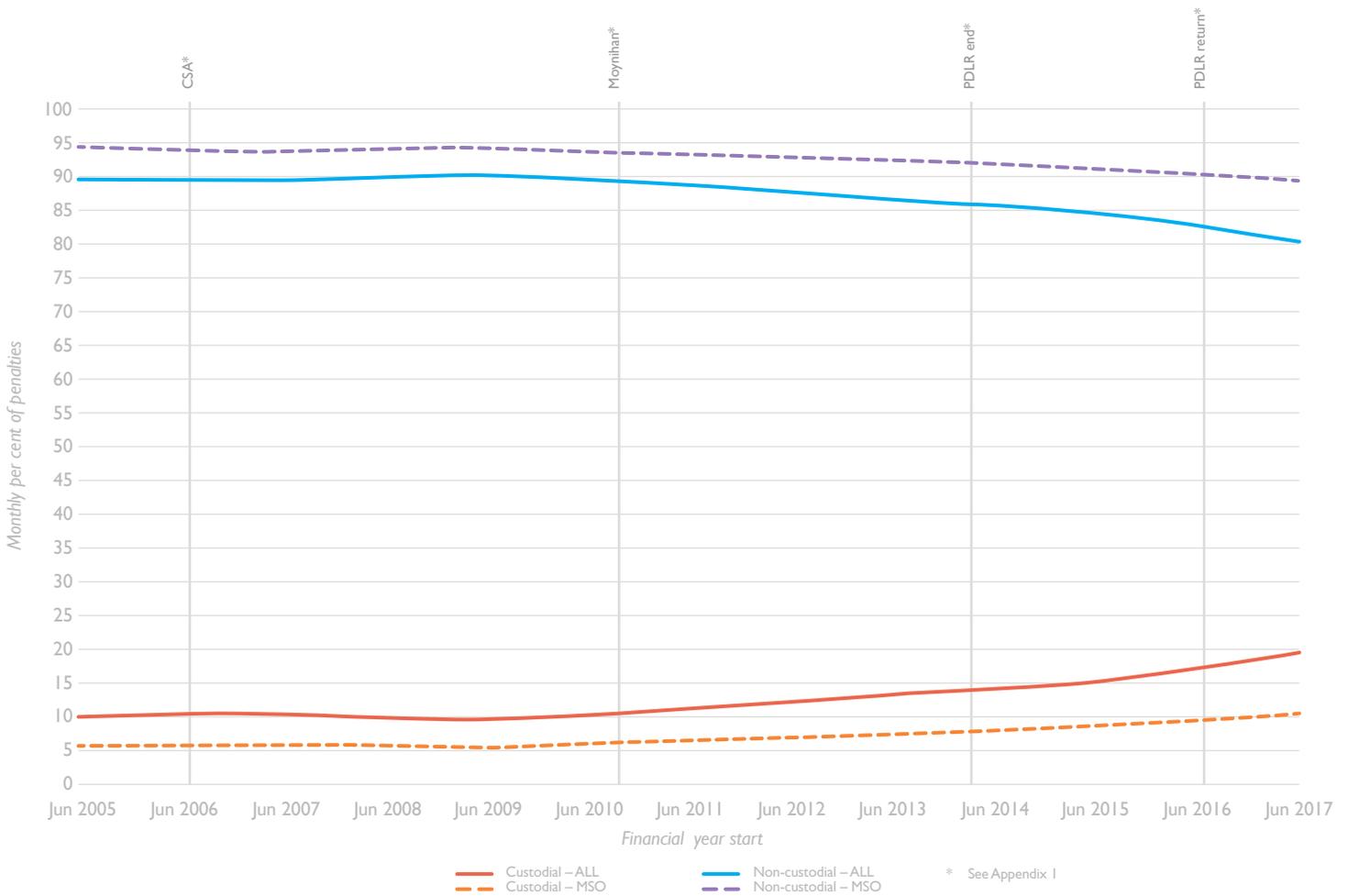
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

## Custodial vs non-custodial

As discussed in the section ‘Factors influencing sentencing practices and trends’, several factors influence sentencing practices of the Magistrates Courts and sentencing trends. These factors include but are not limited to the profile of offences dealt with by the Magistrates Courts in any given year, the relative seriousness of these offences, legislative changes and appellate court guidance. Significant legislative reforms are identified by the vertical green lines in the figures below.

Figure 6 shows the imposition of custodial and non-custodial penalties by the Queensland Magistrates Courts over time. There are two sets of lines; dashed lines represent percentage by MSO while solid lines depict percentage by all offences. Across both MSO and all offences, the proportional share of custodial as opposed to non-custodial penalties was largely stable until June 2010. After that period the non-custodial proportion of penalties decreased over the remainder of the reporting period — from 94 per cent to 89 per cent of MSO penalties and from 90 per cent to 81 per cent of all penalties.

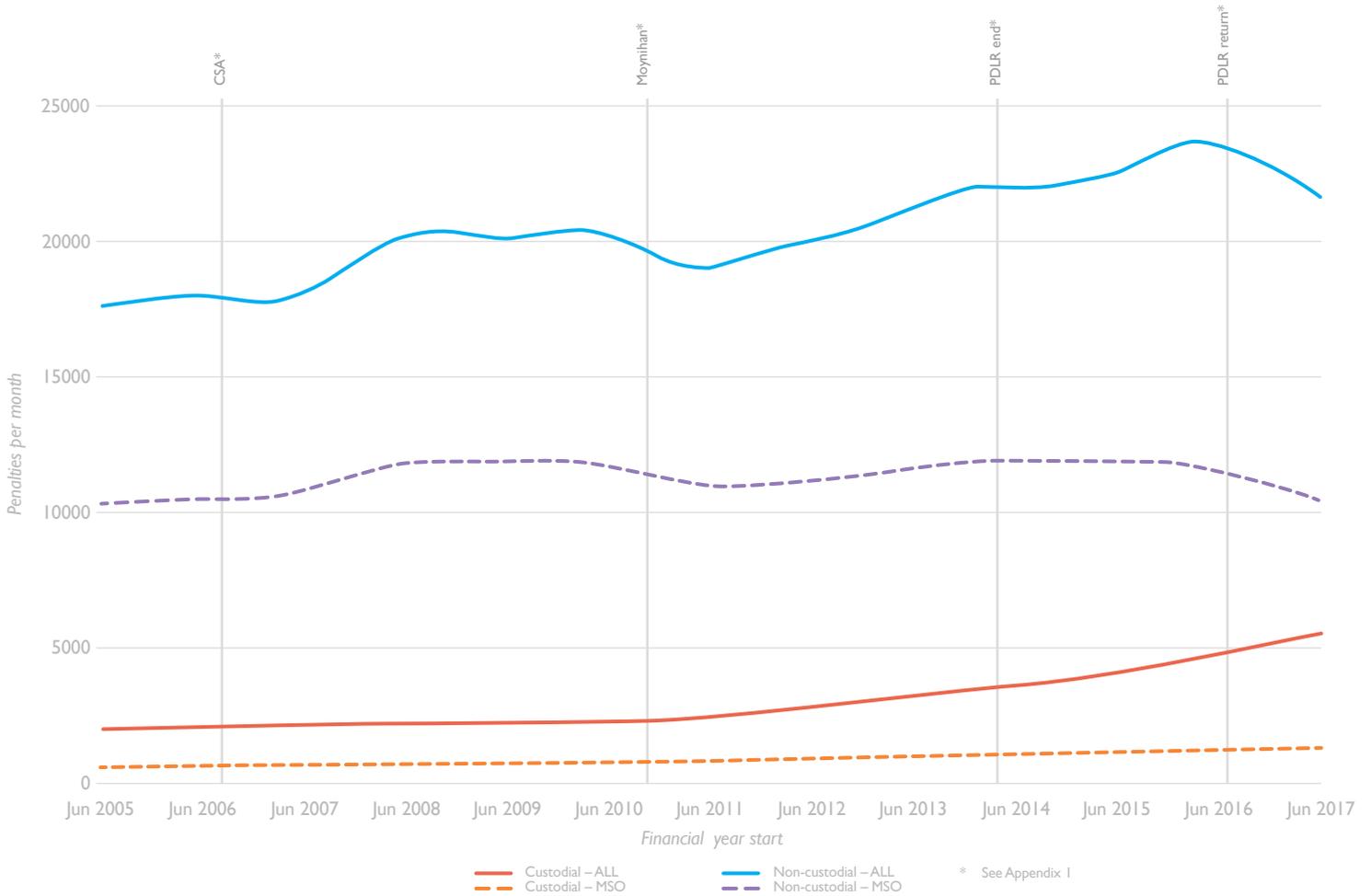
**Figure 6: Use of custodial vs non-custodial penalties by percentage of penalty outcomes, Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician’s Office, Queensland Treasury – Courts Database, extracted October 2017.

Figure 7 depicts custodial and non-custodial penalties by number as opposed to percentage as in Figure 6. Figure 7 shows that for MSOs the number of penalties, both custodial and non-custodial, has been relatively stable across the entire reporting period, although a small numerical, but large proportional, increase in MSO custodial penalties is observed (from approximately 500 to 1000 per month). All custodial penalties (not just MSO penalties) increased steadily since mid-2010 from about 2500 per month to more than 5000 per month by June 2017.

**Figure 7: Use of custodial vs non-custodial penalties, by count of penalty outcomes, Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician’s Office, Queensland Treasury – Courts Database, extracted October 2017.

### Order combinations

Queensland’s sentencing framework enables penalties to be combined in different ways. If terms of imprisonment (including ICOs)<sup>27</sup> are to be imposed for multiple offences, separate terms must be imposed for each.<sup>28</sup> Imprisonment and probation can only be combined for one charge where legislatively permitted (actual imprisonment of one year or less, immediately followed by a period of probation in the community of between nine months and three years).<sup>29</sup> More options exist when more than one charge is involved, and the court can impose suspended imprisonment and a community based order on different charges.<sup>30</sup>

Courts retain more flexibility when imposing fines, probation and community service. A single fine can be imposed for two or more offences founded on the same facts — or that form, or are part of a series of offences of the same or a similar kind.<sup>31</sup> A court may make one or more community service orders for an offender convicted of two or more offences.<sup>32</sup> The same rule applies for probation orders.<sup>33</sup> A court can impose both a community service order and a probation order for one offence.<sup>34</sup>

Figure 8 shows how often each penalty type was imposed at the same sentencing event as another penalty type. Darker blue indicates a greater proportion. For example, 20.7 per cent of sentencing events involving imprisonment also involved a fine being imposed. Note however, that the reverse figure is different, only 4.6 per cent of sentencing events involving a fine also involved imprisonment.

The diagonal effect from bottom left to top right is a result of multiple penalties of the same type being imposed at the one sentencing event, this is particularly true for imprisonment (61.9%) and ICOs (56.8%). The dark horizontal line visible for fines indicates that fines were combined with many other penalty types. Many events with a penalty of imprisonment (20.7%), partially suspended sentences (22.4%), wholly suspended sentences (29.6%) and ICOs (22.9%) also involved a fine being imposed.

Other clear combinations include sentencing events involving imprisonment and partially suspended sentences that also involve a sentence of convicted not further punished (26.8% and 25.8% respectively), and the 27 per cent of events involving both community service and probation orders. Please note, where a single order was made for two or more offences, for example, a single fine or probation order was imposed as the penalty outcome for multiple offences, this order is counted as one penalty.

Figure 8: Sentencing orders issued at the same court event, Queensland Magistrates Courts, 2005–06 to 2016–17

...also had a penalty of this type

Convicted not further punished	26.8	25.8	13.6	14.8	6.9	8.9	1.5	2.2	11
Recognisance	0.5	6.8	3.2	0.9	1.5	1.5	0.8	17.1	2.7
Fine	20.7	22.4	29.6	22.9	14.5	17.2	20.1	9.1	20.1
Probation	5.9	8	9	2.9	27	24.1	1.1	1.1	8
Community service	1	0.9	2	1.1	24.1	11	0.4	0.5	2.5
Intensive correction order	0.1	0.3	0.3	56.8	0.1	0.1	0.1	0	0.5
Wholly suspended	2.7	5.4	36.8	3.9	2.6	4.8	4.8	1.3	6.6
Partially suspended	1.3	48.2	0.5	0.4	0.1	0.4	0.4	0.2	1.1
Imprisonment	61.9	20.4	3.9	1.8	1.9	4.6	4.6	0.3	18.8
	Imprisonment	Partially suspended	Wholly suspended	Intensive correction order	Community service	Probation	Fine	Recognisance	Convicted not further punished

X% of sentencing events with this penalty...

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Table 10 shows for events that included each penalty type, how many total offences, offence types, penalties and penalty types were involved in that sentencing event. Imprisonment and partially suspended sentences were the penalties most likely to be part of an event involving multiple offences and multiple offence types. These two penalty types were also the most likely to be combined with another penalty, or penalty type.

Recognisance orders and fines were the least likely to be combined with another penalty, or penalty type, in the same sentencing event. These two penalty types were also the least likely to be part of a sentencing event with multiple offences or offence types, typically involving just one offence per event.

**Table 10: Offence count and penalty count for court events involving adult offenders by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**

Penalty	Event offences		Event offence types (QASOC Level 1)		Event penalties		Event penalty types	
	Average	Median	Average	Median	Average	Median	Average	Median
Imprisonment	5.6	3	2.3	2	5.2	3	1.6	1
Partially suspended	5.6	3	2.2	2	5.3	3	1.9	2
Wholly suspended	3.6	2	1.8	1	3.3	2	1.6	1
Intensive correction order	4.6	3	2	2	4.5	2	1.5	1
Community service	3.6	2	1.7	1	3.1	2	1.5	1
Probation	4	2	1.9	1	2.9	2	1.5	1
Fine	1.7	1	1.2	1	1.5	1	1.1	1
Recognisance	1.8	1	1.2	1	1.5	1	1.1	1
Convicted not further punished	4	2	1.9	1	3.3	2	1.6	1

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October .

Earlier, Table 7 showed that the number of offences, offence types, penalties and penalty types per event were significantly lower in the Magistrates Courts than in the higher courts. The largest differences between court types was associated with events with the penalties of convicted not further punished and recognisance orders. Sentencing events with a penalty of convicted not further punished averaged 4 offences and 3.3 penalties in Magistrates Courts as compared to 8.9 offences and 7.4 penalties in the higher courts. Sentencing events with a recognisance order penalty averaged 1.8 offences and 1.5 penalties in the Magistrates Courts as compared to 4.0 offences and 4.4 penalties in the higher courts.

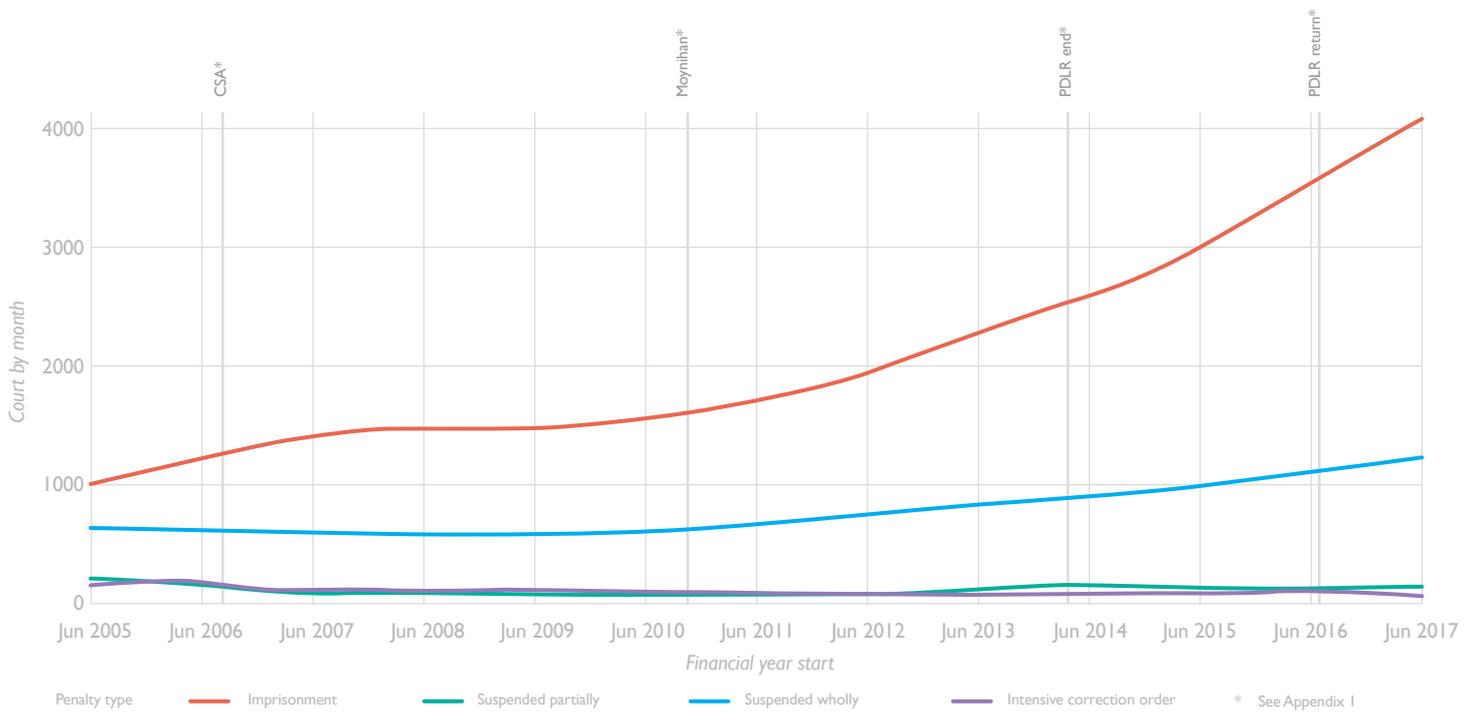
ICOs displayed an opposite pattern, with events involving ICOs averaging 4.6 offences and 4.5 penalties in Magistrates Courts as compared to 2.9 offences and 2.9 penalties in the higher courts.

For more information on the results for the higher courts see the complementary publication in this *Sentencing Spotlight* series, *Offence and sentencing trends: Queensland Higher Courts*.

### Custodial sentences

Figure 9 shows imprisonment was by far the most commonly used form of custodial penalty — the most used across each year, and increasing over the entire reporting period. Partially suspended sentences were the second most common penalty type, while ICOs and wholly suspended sentences were used far less often at any point over the reporting period.

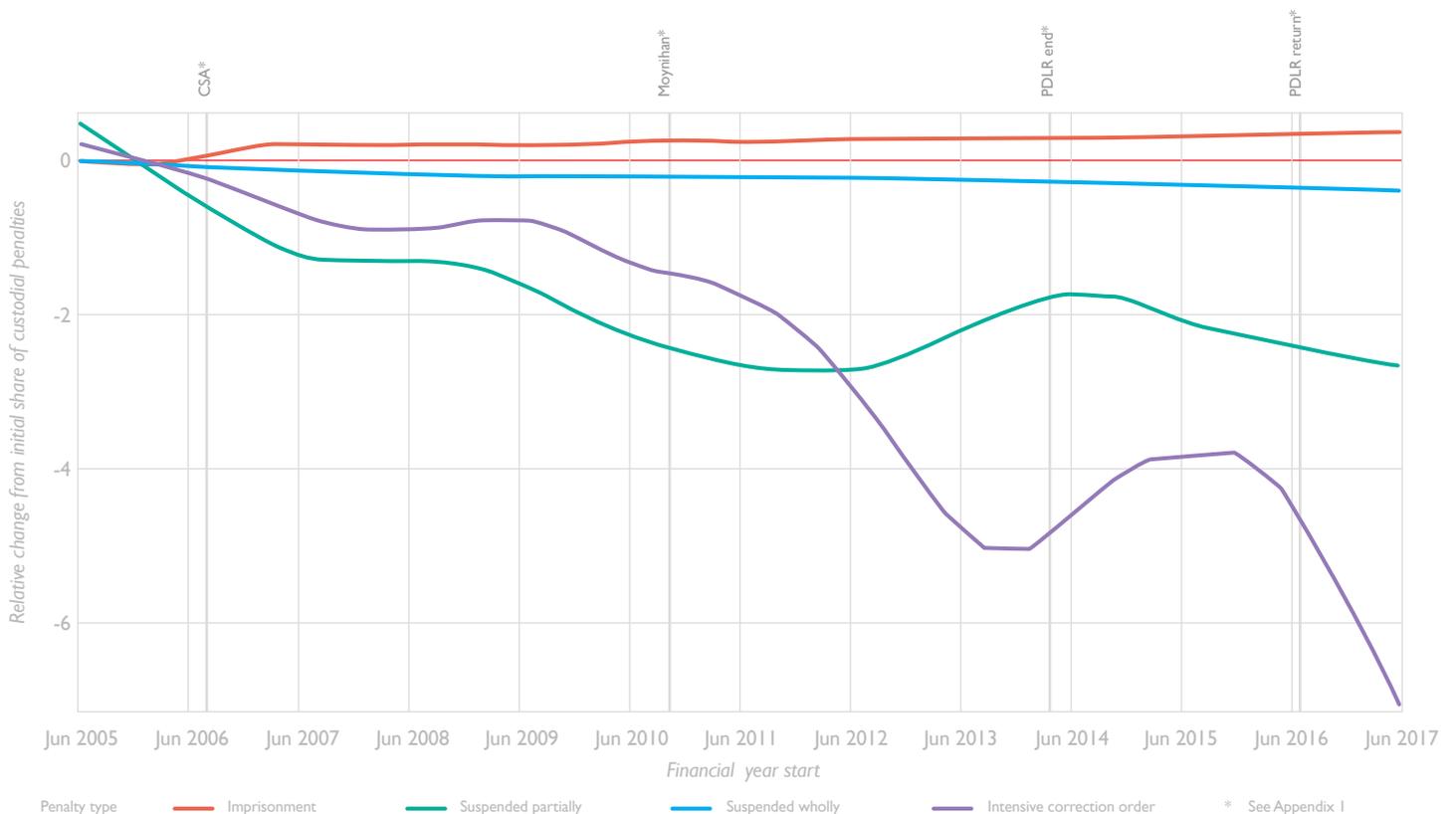
**Figure 9: Number of custodial penalties imposed on adult offenders by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Figure 10 shows the relative change in percentage share of custodial orders since 2005–06. Imprisonment as a proportion has grown slightly over the reporting period, with partially suspended sentences, as a proportion, decreasing by an equivalent amount. Wholly suspended sentences and ICOs showed much greater decreases, although from already very low starting points.

**Figure 10: Percentage change in share of custodial penalties imposed on adult offenders by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**

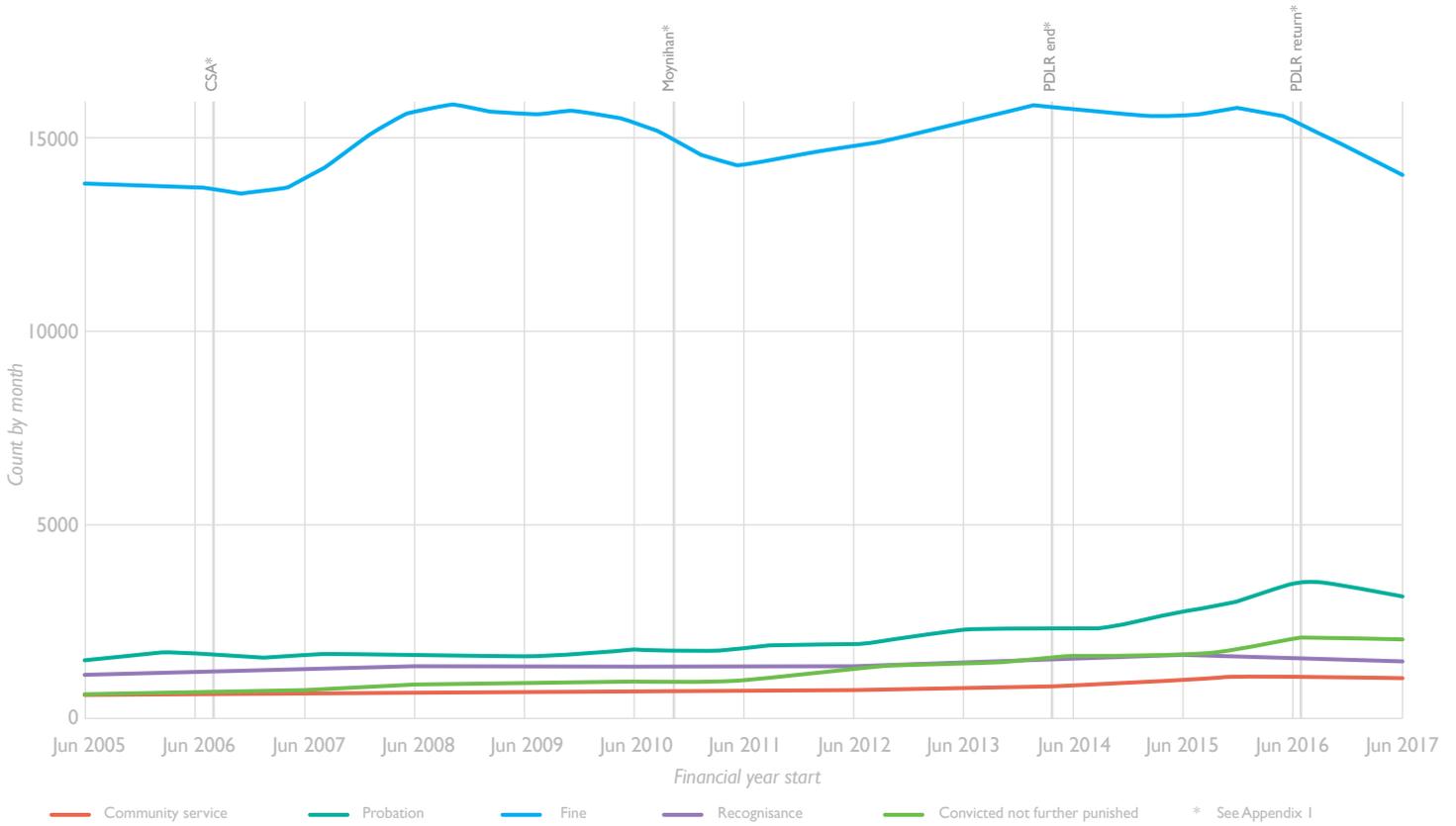


Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October.

## Non-custodial sentences

Figure 11 shows that fines were by far the most commonly used form of non-custodial penalty. Fines were also the most common penalty used across all penalty types. Figure 11 and Figure 12 show that the penalties types of probation and convicted not further punished have increased in number and proportion across time, though from a low initial baseline in 2005–06.

**Figure 11: Number of non-custodial penalties imposed on adult offenders by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**

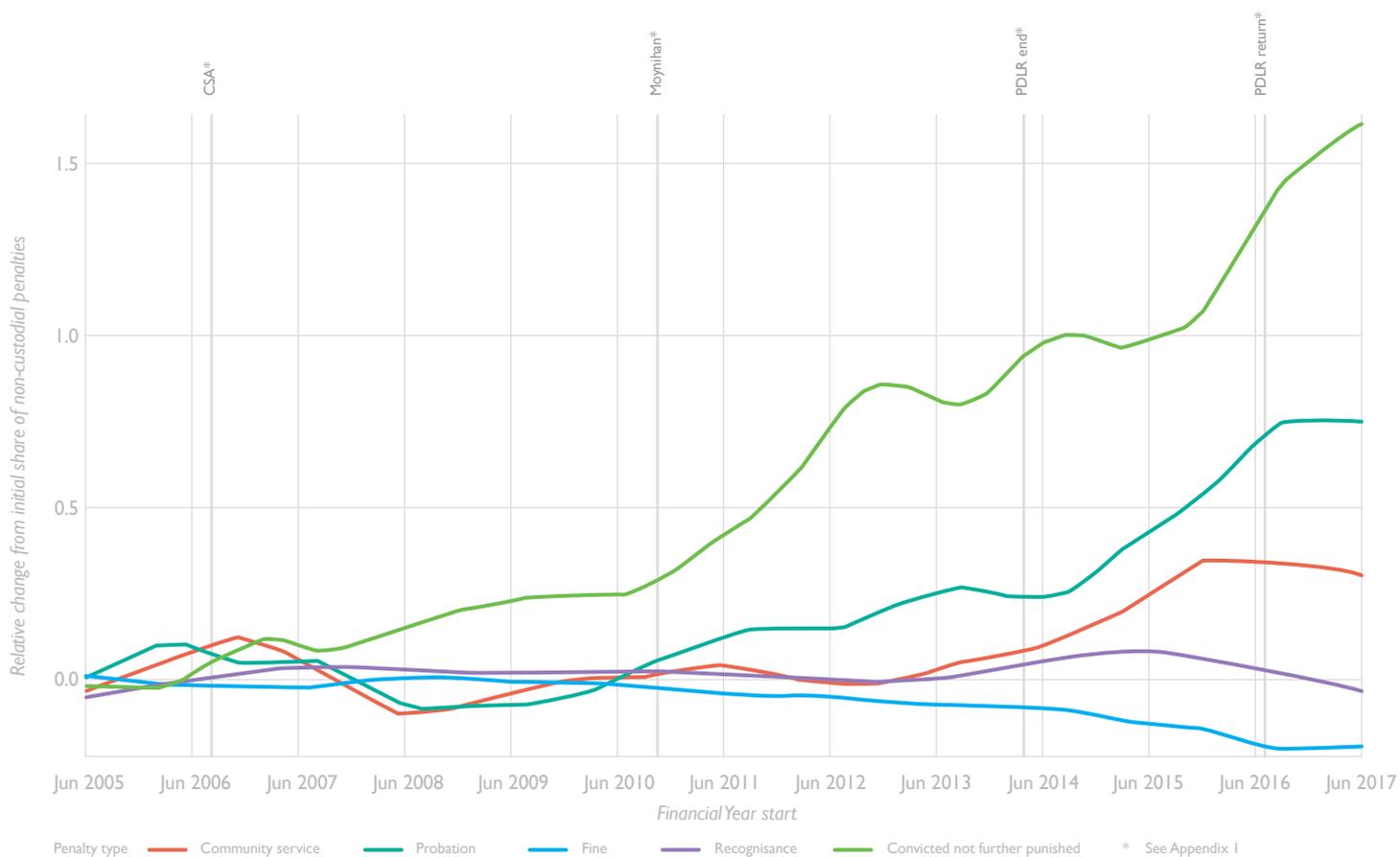


Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

An increase in convicted not further punished is also identifiable in Figure 12, which shows the change in share of all non-custodial penalties, by penalty type, relative to the 2005–06 baseline. Figure 12 also depicts a sharp rise and fall in the use of recognisance orders from 2009–10 to 2013–14. While the totals involved are not large, the movements are significant, with actual counts of 409, 627, 769, 460 and 262 being recorded across the five year period.

The sharp drops in percentage share from June 2015 are not due to a sudden decrease in the use of these penalty types, but rather a result of the significant increase in convicted not further punished visible in Figure 11.

**Figure 12: Percentage change in share of custodial penalties by penalty type, Queensland Magistrates Courts, 2005–06 to 2016–17**

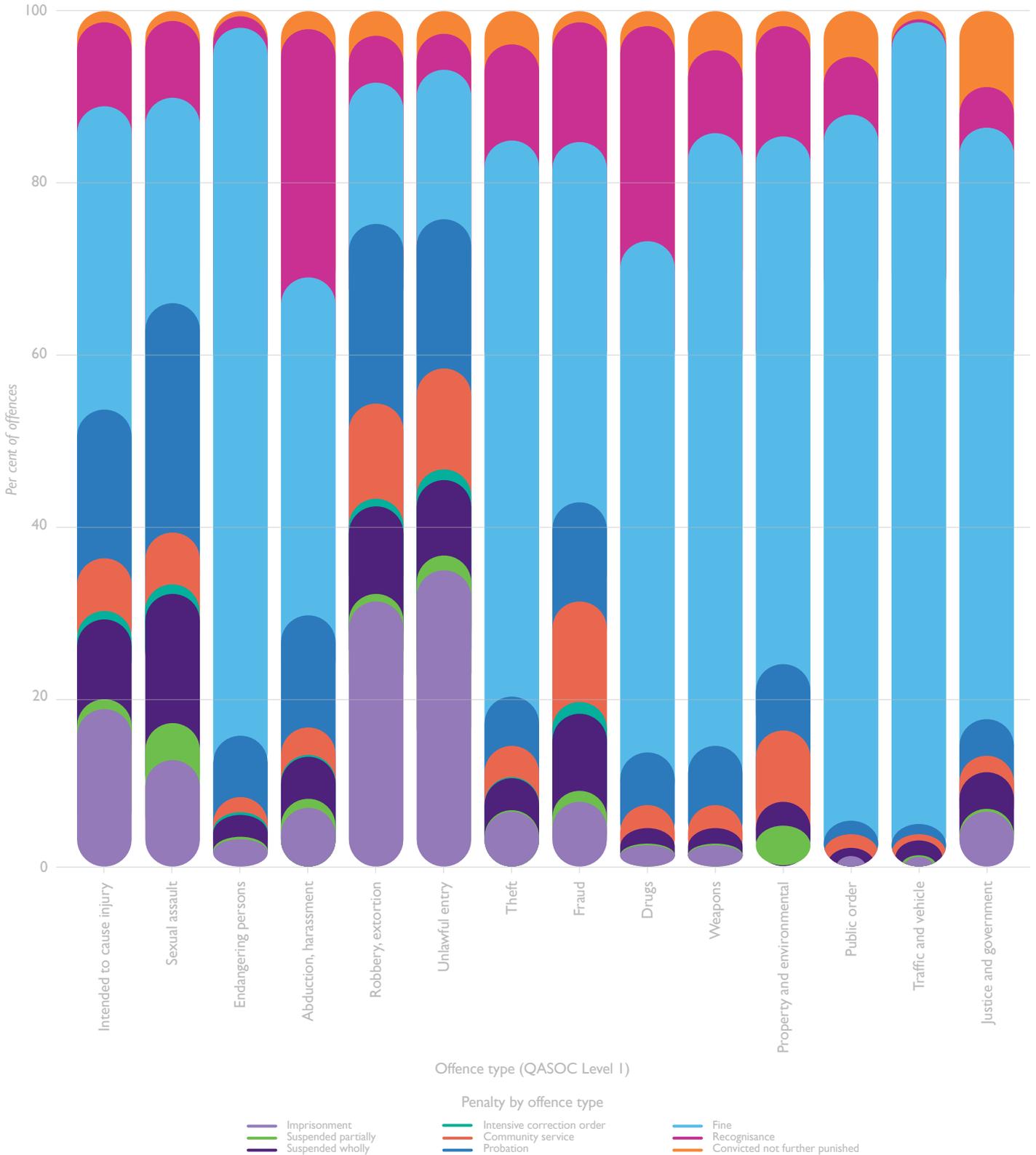


Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

## Penalties by offence type

Figure 13 and Table 11 provide a snapshot of the penalties imposed for each MSO type. Fines represent the most common penalty for all offence types except Robbery, Unlawful entry and Sexual Assault (QASOC Level 1). For Robbery and Unlawful entry offence types, imprisonment represented the most common penalty. For Sexual assault, probation represented the most common penalty, though fines represent only a slightly smaller proportion of penalties imposed.

**Figure 13: Penalty types by MSO (QASOC Level 1), Queensland Magistrates Courts, 2005–06 to 2016–17**



Source: Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

Table 11: Penalty types by MSO (QASOC Level 1), Queensland Magistrates Courts, 2005–06 to 2016–17

Custodial penalties							
Offence (QASOC Level 1)	Acts intended to cause injury	Sexual assault	Acts endangering persons	Abduction, harassment	Robbery, extortion	Unlawful entry	Theft
Imprisonment	10,754 (18.5%)	176 (12.5%)	3,756 (3.4%)	258 (7%)	34 (31.2%)	9,598 (34.8%)	8,300 (6.5%)
Partially suspended sentence	682 (1.2%)	62 (4.4%)	343 (0.3%)	35 (1%)	1 (0.9%)	468 (1.7%)	303 (0.2%)
Wholly suspended sentence	5,370 (9.3%)	210 (14.9%)	2,737 (2.5%)	181 (4.9%)	11 (10.1%)	2,457 (8.9%)	4,733 (3.7%)
Intensive correction order	619 (1.1%)	19 (1.3%)	418 (0.4%)	12 (0.3%)	1 (0.9%)	329 (1.2%)	254 (0.2%)
Offence (QASOC Level 1)	Fraud	Drugs	Weapons	Property and enviro.	Public order	Traffic and vehicle	Justice and gvt
Imprisonment	2,604 (7.5%)	4,648 (2.7%)	754 (2.7%)	1,809 (4.8%)	2,947 (1.3%)	8,468 (1.3%)	17,198 (6.6%)
Partially suspended sentence	495 (1.4%)	131 (0.1%)	39 (0.1%)	64 (0.2%)	122 (0.1%)	894 (0.1%)	773 (0.3%)
Wholly suspended sentence	3,103 (8.9%)	3,878 (2.3%)	449 (1.6%)	997 (2.6%)	2,204 (1%)	10,642 (1.6%)	10,893 (4.2%)
Intensive correction order	490 (1.4%)	234 (0.1%)	(1.6%)	10,893 (4.2%)	68 (0%)	818 (0.1%)	339 (0.1%)
Non-custodial penalties							
Offence (QASOC Level 1)	Acts intended to cause injury	Sexual assault	Acts endangering persons	Abduction, harassment	Robbery, extortion	Unlawful entry	Theft
Community service	3,573 (6.2%)	85 (6%)	1,948 (1.7%)	115 (3.1%)	12 (11%)	3,210 (11.6%)	4,451 (3.5%)
Probation	10,070 (17.4%)	378 (26.8%)	8,044 (7.2%)	479 (13.1%)	23 (21.1%)	4,859 (17.6%)	7,418 (5.8%)
Fine	20,590 (35.5%)	340 (24.1%)	92,458 (82.8%)	1,445 (39.4%)	18 (16.5%)	4,816 (17.4%)	82,997 (65.1%)
Recognisance	5,781 (10%)	127 (9%)	1,407 (1.3%)	1,067 (29.1%)	6 (5.5%)	1,170 (4.2%)	14,470 (11.3%)
Convicted not further punished	587 (1%)	13 (0.9%)	565 (0.5%)	72 (2%)	3 (2.8%)	694 (2.5%)	4,627 (3.6%)
Offence (QASOC Level 1)	Fraud	Drugs	Weapons	Property and enviro.	Public order	Traffic and vehicle	Justice and gvt
Community service	4,063 (11.7%)	2,977 (1.7%)	712 (2.6%)	3,035 (8%)	3,533 (1.5%)	4,224 (0.6%)	4214 (1.6%)
Probation	4,017 (11.6%)	11,109 (6.5%)	1,976 (7.1%)	2,987 (7.9%)	3,636 (1.6%)	7,527 (1.1%)	11,713 (4.5%)
Fine	14,659 (42.2%)	102,554 (59.8%)	19,928 (71.5%)	23,276 (61.7%)	190,545 (82.6%)	616,949 (93.9%)	178,994 (69.1%)
Recognisance	4,878 (14%)	43,079 (25.1%)	2,734 (9.8%)	4,866 (12.9%)	15,458 (6.7%)	2,090 (0.3%)	12,210 (4.7%)
Convicted not further punished	441 (1.3%)	2,948 (1.7%)	1,250 (4.5%)	628 (1.7%)	12,303 (5.3%)	5,067 (0.8%)	2,2621 (8.7%)

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted October 2017.

## Appendix I

### Significant Queensland legislative changes, 2005–2017

Short name	Details	Change 1	Change 2
PPRA [Police Powers and Responsibilities Act]	<p>A legislative scheme for impounding and forfeiting vehicles used in stipulated 'hooning' type offences was inserted into the <i>Police Powers and Responsibilities Act 2000 (Qld)</i> in 2002.<sup>35</sup> This came into effect on 4 November 2002.</p> <p>It allowed a police officer to apply in defined circumstances to a court for impoundment (or forfeiture) of a vehicle used in the commission of a separate 'prescribed offence' (dangerous operation of a motor vehicle, careless driving, racing and speed trials on road, and wilfully starting or driving a vehicle in a way that makes unnecessary noise or smoke, if the offence was committed in circumstances involving a speed trial, race between vehicles or burnout).</p> <p>The power to impound depended on police commencing proceedings for the offence by either a notice to appear or arrest. Issuing a complaint and summons or traffic infringement notice meant that impoundment or forfeiture could not be sought.</p> <p>Amendments in 2003 clarified the ability to take action against alleged repeat offenders.<sup>36</sup> Further amendments which came into effect in July 2006 widened the scheme to motorbikes driven on places other than roads in certain circumstances regarding noise issues.<sup>37</sup></p> <p>This scheme was replaced by two new schemes effective from 1 November 2013.<sup>38</sup> They added further relevant offences. In contrast to the previous scheme, a person is also taken to be charged if they are served with an infringement notice for the relevant offence. This means that charges can be diverted from court if the person elects to pay the fine in the infringement notice.<sup>39</sup> The legislation also removed the requirement of an application to court for impoundment, and made forfeiture automatic upon the relevant conviction.</p>	Amendments effective 4/11/2002, 3/12/2003 and 1/07/2006	Commenced 1/11/2013
CSA [Corrective Services Act]	<i>Corrective Services Act 2006 (Qld)</i> , and its parole regime and accompanying insertion of Part 9, Division 3 of the <i>Penalties and Sentences Act 1992 (Qld)</i> . This included the introduction of court ordered parole in Queensland.	Commenced 28/08/2006	
Moynihan	In 2010, legislative amendments referred to as the 'Moynihan reforms' changed the jurisdictions of the Magistrates, District and Supreme Courts. <sup>40</sup> They expanded the Magistrates Courts' jurisdiction to determine indictable offences in the <i>Criminal Code (Qld)</i> and <i>Drugs Misuse Act 1986 (Qld)</i> and increased the District Court's general criminal jurisdiction from offences with a maximum penalty of 14 years or less, to those with a maximum of 20 years or less. <sup>41</sup>	Commenced 1/11/2010	

Short name	Details	Change 1	Change 2
PDLR [prison/detention last resort]	Under section 9(2)(a) of the <i>Penalties and Sentences Act 1992</i> (Qld), in sentencing an offender, courts must have regard to the principles that a sentence of imprisonment should only be imposed as a last resort and that sentence allowing the person to stay in the community is preferable. <sup>42</sup> There are legislative exceptions to these principles that apply to offences involving violence, child sexual offending and child exploitation material (where this sentencing principle had already been excluded).	Removed 28/03/2014	Reintroduced 1/07/2016
Mandatory community service orders for prescribed offences committed in public places while intoxicated	Under section 108B of the <i>Penalties and Sentences Act 1992</i> (Qld) a court which convicts an offender of a 'prescribed offence' <sup>43</sup> with a specific circumstance of aggravation, must make a community service order, whether or not it also makes another order. The circumstance of aggravation is that the offender committed the offence in a public place whilst adversely affected by an intoxicating substance. The court can decline to make a community service order if satisfied the offender could not comply with the order because of any physical, intellectual or psychiatric disability.	Commenced 1/12/2014	
Domestic violence	Under s 9(10A) of the <i>Penalties and Sentences Act 1992</i> (Qld), a court sentencing for a domestic violence offence (as defined under section 1 of the Criminal Code) must treat the fact that it is a domestic violence offence as an aggravating factor, unless it considers it is not reasonable because of the exceptional circumstances of the case.	Applies to offences committed on or after 5/05/2016	

# Endnotes

- <sup>1</sup> The data is sourced from the Department of Justice and Attorney-General's Queensland Wide Inter-linked Courts (QWIC) database, as maintained by the Queensland Government Statistician (GovStats). For more information, see the *Sentencing Spotlight technical information paper* available on the Council's website [www.sentencingcouncil.qld.gov.au/research/sentencing-spotlight](http://www.sentencingcouncil.qld.gov.au/research/sentencing-spotlight)
- <sup>2</sup> More information about data sources, limitations and counting rules can be found in the *Sentencing Spotlight technical information paper* available on the Council's website.
- <sup>3</sup> See the *Sentencing Spotlight technical information paper* for information about MSO and how the MSO per sentencing event is determined and counted for the purposes of the Council's *Sentencing Spotlight* series.
- <sup>4</sup> As to a global penalty for multiple offences, imprisonment and probation can only be combined for one charge under the confines of legislation (actual imprisonment of one year or less, immediately followed by a period of probation in the community of between nine months and three years): *Penalties and Sentences Act 1992 (Qld)* s 92. A single fine can be imposed for two or more offences founded on the same facts or that form, or are part of, a series of offences of the same or a similar kind: *Penalties and Sentences Act 1992 (Qld)* s 49. A court may make one or more community service orders for an offender convicted of two or more offences: *Penalties and Sentences Act 1992 (Qld)* s 107. The same rule applies for probation orders: *Penalties and Sentences Act 1992 (Qld)* s 97. A court can impose both a community service order and a probation order for one offence: *Penalties and Sentences Act 1992 (Qld)* s 109.
- <sup>5</sup> A suspended sentence can only be breached if the person subject to it is convicted of an offence punishable by imprisonment during the operational period of the order; but the breach of the order in and of itself does not constitute a separate 'offence' for which the person can be sentenced: *Penalties and Sentences Act 1992 (Qld)* sections 146 and 147 (cf sections 123, 125, 125 and 127 regarding breach of community based orders, including intensive correction orders). There were only 75 recorded in the Magistrates Courts, 73 of which were recorded as 'convicted not further punished'. These breaches were excluded from the data analysis on the basis that the recording of these actions on breach is for recording purposes only and does not constitute a true penalty outcome or sentence. See further *R v Skinner* [2001] 1 Qd R 322, 324-325.
- <sup>6</sup> These orders are commonly referred to as 'ancillary orders' and are in addition to any other sentence imposed. See, for example, *Penalties and Sentences Act 1992 (Qld)* s 35(2) which provides that orders for restitution and compensation may be made 'in addition to any other sentence to which the offender is liable'. Courts have recognised that restitution and compensation orders are additional to an independent sentencing option. They are not a form of punishment, despite being part of the 'sentence' or judgment: *R v Ferrari* [1997] 2 Qd R 472, 477 (McPherson JA). Where these orders were the only penalty recorded for an offence, that offence was excluded from analysis.
- <sup>7</sup> Over the reporting period, there were 5650 'rising of the court' penalties imposed by the Magistrates Courts, 0.17 per cent of all penalties imposed on adult offenders.
- <sup>8</sup> See <[www.sentencingcouncil.qld.gov.au/research/sentencing-spotlight](http://www.sentencingcouncil.qld.gov.au/research/sentencing-spotlight)>.
- <sup>9</sup> *Criminal Code (Qld)* s 552H. The same applies regarding all drug offences – see *Drugs Misuses Act 1986 (Qld)* ss 13(4) and 14(3).
- <sup>10</sup> *Criminal Code (Qld)* s 552BA.
- <sup>11</sup> These are called 'excluded offences' – see *Criminal Code (Qld)* ss 552BA(4)(iii) and 552BB.
- <sup>12</sup> *Criminal Code (Qld)* s 552D(2).
- <sup>13</sup> *Criminal Code (Qld)* s 552D.
- <sup>14</sup> *Criminal Code (Qld)* s 552A.
- <sup>15</sup> *Criminal Code (Qld)* s 552B.
- <sup>16</sup> *Criminal Code (Qld)* s 552D. As to a serious organised crime circumstance of aggravation, which creates a statutory mandatory penalty that applies to offenders who commit certain serious offences, see *Penalties and Sentences Act 1992 (Qld)* sections 161Q and 161R.
- <sup>17</sup> *Drugs Misuses Act 1986 (Qld)* s 13(4) and s 14(3). It cannot sentence a drug offence with a serious organised crime circumstance of aggravation, which creates a statutory mandatory penalty that applies to offenders who commit certain serious offences, see *Penalties and Sentences Act 1992 (Qld)* sections 161Q and 161R.
- <sup>18</sup> *Drugs Misuses Act 1986 (Qld)* s 118(2).
- <sup>19</sup> *Drugs Misuses Act 1986 (Qld)* s 118(4).
- <sup>20</sup> *Drugs Misuses Act 1986 (Qld)* s 14, which was inserted by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 (Qld)* s 62. The Office of the Director of Public Prosecutions for Queensland, Director's Guidelines (30 June 2017) 16-17 provide context to the term 'commercial purpose': 'the Crown should allege a commercial purpose when, on the whole of the evidence, it can reasonably be inferred that the defendant did not possess the drug for their own personal use...there will be cases where "personal use" can include small-scale social sharing in circumstances where there is limited scope and repetition, but this principle should not be allowed to be used to mask cases where the "sharing" spills over into the generation of financial or equivalent advantage'.
- <sup>21</sup> See *Drugs Misuses Act 1986 (Qld)* s 6(1)(f) and s 6(2) regarding supply of a dangerous drug and s 8(1)(e) regarding production of a dangerous drug.
- <sup>22</sup> The District Court generally deals with offences with a maximum penalty of 20 years imprisonment or less, although the court can also deal with a number of offences that carry a maximum life sentence — see *District Court of Queensland Act 1967 (Qld)* s 61.

- <sup>23</sup> See Criminal Code (Qld) s 651 and *Penalties and Sentences Act 1992 (Qld)* s 189.
- <sup>24</sup> A new s 79(2AA) 'Offence of driving etc. while relevant drug is present in blood or saliva' was introduced into the *Transport Operations (Road Use Management) Act 1995 (Qld)* by the *Transport Legislation and Another Act Amendment Act 2007 (Qld)*, s 55. It commenced on 30 October 2007. Amendments introduced a legislative scheme allowing Queensland police to test drivers for certain drugs and to prosecute those drivers who have a presence of those drugs in their saliva or blood: Explanatory Notes, *Transport Legislation and Another Act Amendment Bill 2006*, 3, 4, 7, 27.
- <sup>25</sup> This offence category is defined as "behaviour of a non-verbal kind which is likely to be considered offensive by another person not elsewhere classified in Group 1313" (Riot and affray): Queensland Government, Office of Economic and Statistical Research, *Australian Standard Offence Classification (Queensland Extension) (2008)* 88.
- <sup>26</sup> See n 25 above.
- <sup>27</sup> *R v CAI* [2008] QCA 359, 3 (Muir JA).
- <sup>28</sup> *R v Crofts* [1999] Qd R 386, 387.
- <sup>29</sup> *Penalties and Sentences Act 1992 (Qld)* s 92.
- <sup>30</sup> See *R v Hood* [2005] 2 Qd R 54.
- <sup>31</sup> *Penalties and Sentences Act 1992 (Qld)* s 49.
- <sup>32</sup> *Penalties and Sentences Act 1992 (Qld)* s 107.
- <sup>33</sup> *Penalties and Sentences Act 1992 (Qld)* s 97.
- <sup>34</sup> *Penalties and Sentences Act 1992 (Qld)* s 109.
- <sup>35</sup> Inserted by the *Police Powers and Responsibilities and Another Act Amendment Act 2002 (Qld)* which created a new chapter 2, part 6, division 2 in the *Police Powers and Responsibilities Act 2000 (Qld)*.
- <sup>36</sup> Inserted by the *Police Powers and Responsibilities and Other Legislation Amendment Act 2003 (Qld)*, effective from 3 December 2003.
- <sup>37</sup> Inserted by the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005 (Qld)*, effective from 1 July 2006.
- <sup>38</sup> Inserted by the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013 (Qld)*.
- <sup>39</sup> Charges which can be the subject of infringement notices are set out in the *State Penalties Enforcement Regulation 2014 (Qld)*.
- <sup>40</sup> *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 (Qld)* — assent on 13 August 2010 — provisions including various changes to the criminal law jurisdiction commenced 1 November 2010.
- <sup>41</sup> Explanatory Notes, *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010*, 1.
- <sup>42</sup> *Penalties and Sentences Act 1992 (Qld)* s 9(2). Removed by the *Youth Justice and Other Legislation Amendment Act 2014 (Qld)* (assent 28 March 2014) and reintroduced by the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016 (Qld)* (assent 27 June 2016).
- <sup>43</sup> Prescribed offences are affray, grievous bodily harm, wounding, common assault, assault occasioning bodily harm or serious assault (of a police or public officer) under the *Criminal Code (Qld)*; and assaulting or obstructing a police officer under the *Police Powers and Responsibilities Act 2000 (Qld)*.

# Notes

# Notes



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