

SENTENCING  
SPOTLIGHT ON...

# dangerous operation of a vehicle causing death



Queensland Sentencing  
Advisory Council  
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# Sentencing Spotlight on... dangerous operation of a vehicle causing death

This *Sentencing Spotlight* examines sentencing outcomes for dangerous operation of a vehicle causing death offences under s 328A(4) of the Criminal Code (Qld) finalised in Queensland courts between 1 July 2005 and 30 June 2017.

## Summary of offences 2005–06 to 2016–17



**363**  
offenders



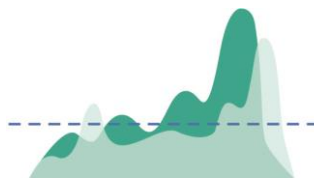
**33.5%**  
affected by alcohol/drugs



**82.0%**  
male



**8.9%**  
Aboriginal and/or  
Torres Strait Islander



Average age  
**32 years**



**8.0%**  
aged  
17 and under



**88.6%**  
pleaded guilty



**5.2 years**  
average imprisonment



**99.4%**  
custodial penalty



**52.8%**  
no previous criminal  
history



**0**  
repeat offenders

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).

# Dangerous operation of a vehicle causing death

Section 328A(4) of the Criminal Code (Qld) provides that 'A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime'. This *Sentencing Spotlight* excludes dangerous operation offences that caused grievous bodily harm.

## The penalty for dangerous operation of a vehicle causing death

Section 328A(4) currently provides that a person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of another person is liable to a maximum penalty of 10 years' imprisonment.<sup>1</sup>

To operate a vehicle dangerously, there must be some feature which subjects the public to risk beyond the risk ordinarily associated with driving a vehicle, including driving by a person who may, on occasions, drive with less than due care and attention. If the manner of driving is dangerous in all of the circumstances to other road users, it does not matter whether the driver is deliberately reckless, careless, momentarily inattentive or even doing their incompetent best.<sup>2</sup>

The maximum penalty is 14 years if one of four circumstances of aggravation listed in the section are charged. That is, the offender:

- is adversely affected by an intoxicating substance;
- is excessively speeding (more than 40 km/h over the speed limit);
- is taking part in an unlawful race or unlawful speed trial; or
- knows, or ought reasonably know, the other person has been killed or injured, and the offender leaves the scene of the incident, other than to obtain medical or other help for the other person, before a police officer arrives.

These are called circumstances of aggravation. They are an important part of this *Sentencing Spotlight* because their presence makes the offender's conduct more serious. This phrase is used repeatedly in this *Sentencing Spotlight* and refers only to these four circumstances, and not other types of aggravating factors, such as a lack of remorse or relevant prior criminal history.

The four current statutory circumstances of aggravation were added, and maximum penalties amended, on 20 March 2007.<sup>3</sup>

Generally, in sentencing an offender under section 9(2)(a) of the *Penalties and Sentences Act 1992* (Qld) (PSA), a court must have regard to the principles that imprisonment should only be imposed as a last resort, and a sentence that allows the offender to stay in the community is preferable.

However, these principles do not apply for any offence that resulted in physical harm to another person or involved violence against another person. In such cases, a court must have primary regard to factors such as the risk of further harm to the community, and the personal circumstances of any victim of the offence.<sup>4</sup>

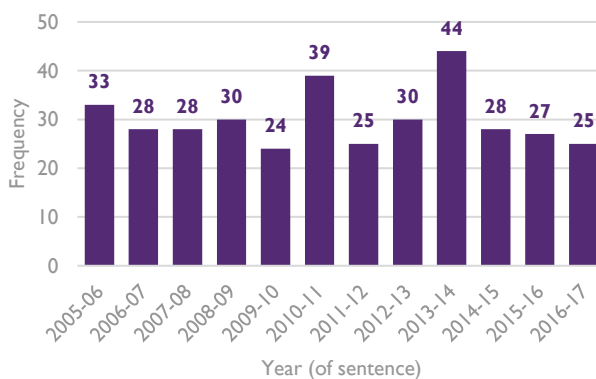
From 18 June 2018, amendments to another existing offence - careless driving of motor vehicles - increased maximum penalties that apply if death or grievous bodily harm are caused. The data in this *Sentencing Spotlight* pre-dates these changes and does not apply to this other offence.<sup>5</sup>

## Number of offenders

A total of 363 offenders were sentenced for dangerous operation of a vehicle causing death between 2005–06 and 2016–17. For 361 (99.4%) of those offenders, dangerous operation of a vehicle causing death was their most serious offence (MSO). For the remaining 2 offenders (0.6%), this was not their MSO (their MSOs were manslaughter and dishonest conversion (fraud)).

This *Sentencing Spotlight* focuses primarily on offenders sentenced for dangerous operation of a vehicle causing death as their MSO. Figure 1 shows the number of finalised offenders sentenced for dangerous operation of a vehicle causing death (MSO) during the 12-year data period, by financial year, showing the number is relatively stable.

**Figure 1: Number of offenders sentenced for dangerous operation of a vehicle causing death (MSO), 2005–06 to 2016–17**

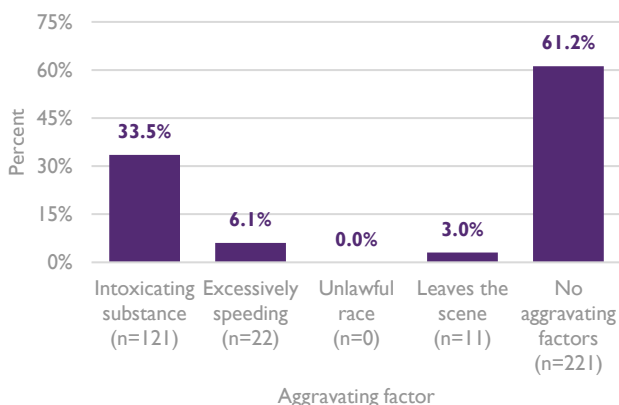


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted October 2017.

As discussed earlier, dangerous operation of a vehicle causing death can be divided further depending on whether aggravating circumstances formed part of the offence.

Of the 361 offenders sentenced for dangerous operation of a vehicle causing death (MSO), a third (33.5%, n=121) had the aggravating circumstance of being adversely affected by an intoxicating substance. Excessive speeding was the second most common factor with 6.1% of offenders (n=22), followed by 3.0% of offenders (n=11) leaving the scene of the incident. No offenders were sentenced for the aggravating circumstance of participation in an unlawful race as their MSO. The majority of offenders (61.2%, n=221) did not have any aggravating circumstances present.

**Figure 2: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by the presence of aggravating circumstances, 2005–06 to 2016–17**

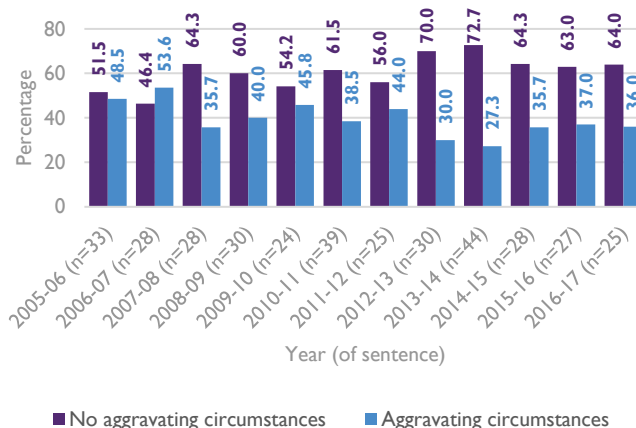


Note: Totals do not add to 100% as some offenders were sentenced for multiple aggravating factors on the one offence.

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

The proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) with aggravating circumstances fluctuates widely across the 12-year data period. In 2006–07 more offenders with aggravating circumstances were sentenced than without (53.6% and 46.4% respectively), yet in 2013–14 less than a third of sentenced offenders had aggravating circumstances – see Figure 3.

**Figure 3: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by year and presence of aggravating circumstances, 2005–06 to 2016–17**



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

## Offender characteristics

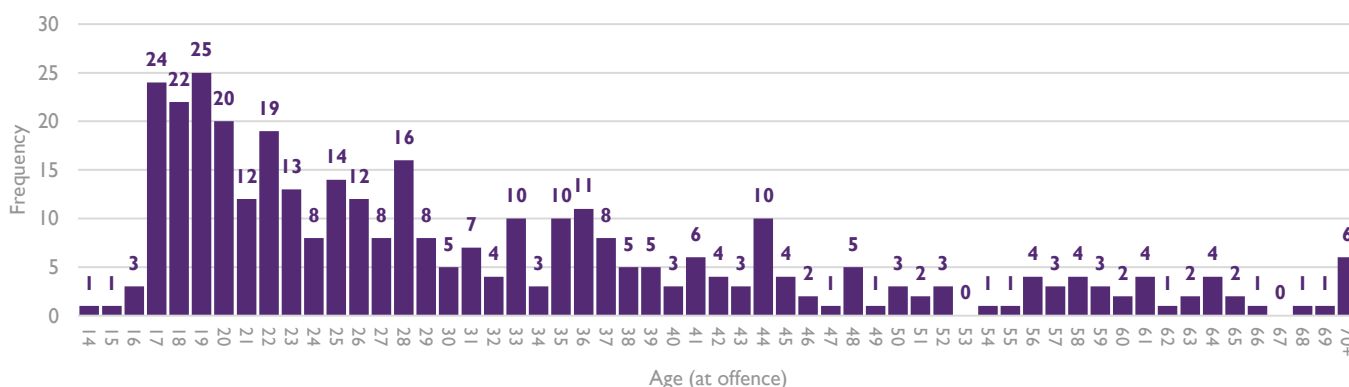
This section compares the age, gender and Aboriginal and/or Torres Strait Islander status of all offenders sentenced for dangerous operation of a vehicle causing death (MSO) over the period from 2005–06 to 2016–17.

### Age

At the time of the offence, the average age of all offenders sentenced for dangerous operation of a vehicle causing death (MSO) was 32.2 years (with a median of 27.8 years) with ages ranging between 14 and 80 years. Figure 4 shows age at the time of offence.

The proportion of offenders sentenced for a dangerous operation of a vehicle causing death (MSO) with aggravating circumstances was relatively stable among offenders aged between 20 and 44 years, with the 25 to 29 years age group having the largest proportion of offenders with aggravating circumstances (50%) – see Figure 5.

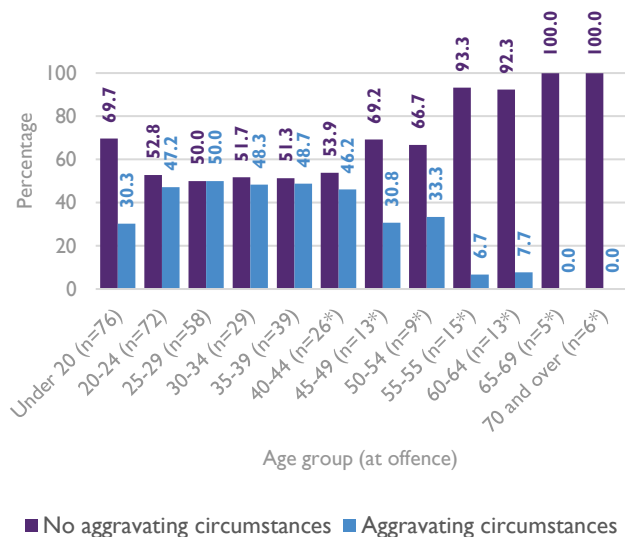
**Figure 4: Number of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by age at offence, 2005–06 to 2016–17**



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

On average, offenders sentenced for dangerous operation of a vehicle causing death with aggravating circumstances were significantly younger (29.4 years) than offenders without aggravating circumstances (34.1 years).<sup>6</sup>

**Figure 5: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by age at offence and presence of aggravating circumstances, 2005–06 to 2016–17**



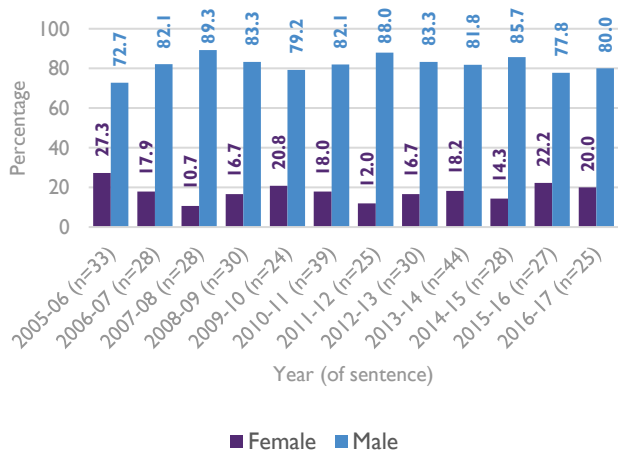
\* Caution: Small sample sizes.

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

## Gender

During the 12-year data period, the majority of offenders sentenced for dangerous operation of a vehicle causing death (MSO) in Queensland were male (82.0%). The overall number of offenders sentenced (both male and female) fluctuated across the period. The proportion of female offenders peaked in 2005–06 at 27.3%, while the proportion of male offenders peaked in 2007–08 at 89.3% (see Figure 6).

**Figure 6: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by gender and year of sentence, 2005–06 to 2016–17**

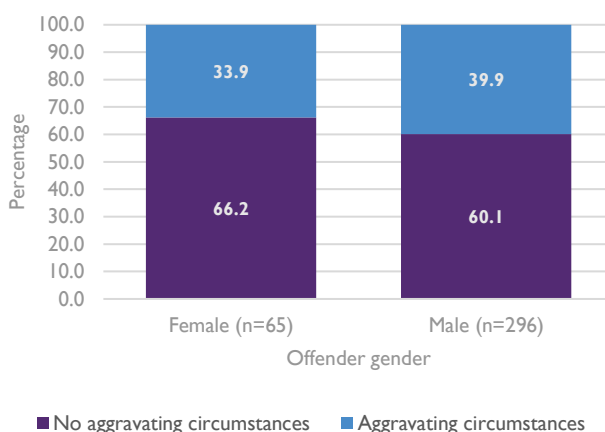


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted October 2017.

On average, female offenders sentenced for dangerous operation of a vehicle causing death (MSO) were slightly older than male offenders. The average age at time of the offence was 34.7 years for female offenders, compared to 31.7 years for male offenders.<sup>7</sup>

Both male and female offenders were significantly more likely to not have aggravating circumstances (60.1% and 66.2% respectively) than to have aggravating circumstances – see Figure 7. The proportion of male offenders with aggravating circumstances was slightly higher (39.9%) than that for female offenders (33.9%), however this difference was not significant.

**Figure 7: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by gender and presence of aggravating circumstances, 2005–06 to 2016–17**



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



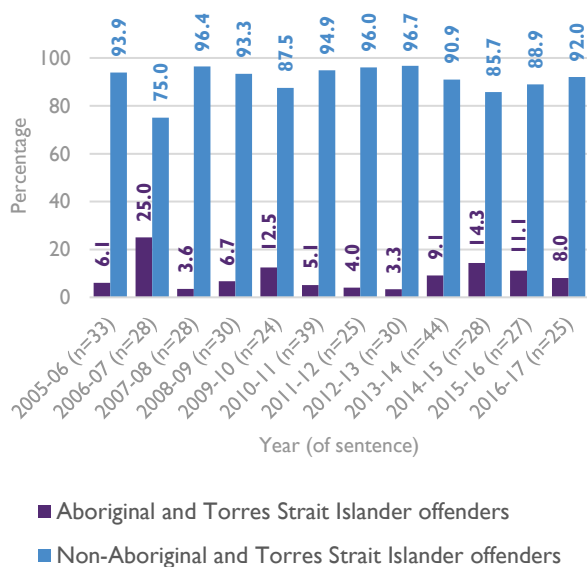
## Aboriginal and/or Torres Strait Islander people

Although people who identify as Aboriginal and/or Torres Strait Islander represent approximately 3.8% of Queensland's population aged 10 years and over,<sup>8</sup> they accounted for 8.9% of all offenders sentenced for dangerous operation of a vehicle causing death (MSO) during the 12-year data period. Overall, there were 32 offenders who identified as being Aboriginal and/or Torres Strait Islander.

Little difference was identified between age at time of offence for Aboriginal and/or Torres Strait Islander offenders (30.5 years) and non-Aboriginal and/or Torres Strait Islander offenders (32.4 years).<sup>9</sup> When considering Aboriginal and/or Torres Strait Islander status by gender, of the 296 male offenders sentenced for dangerous operation of a vehicle causing death (MSO), Aboriginal and/or Torres Strait Islander offenders accounted for 8.5% (n=25). In comparison, of the 65 female offenders, Aboriginal and/or Torres Strait Islander female offenders accounted for 10.8% (n=7).

As noted previously, the overall number of offenders sentenced for dangerous operation of a vehicle causing death (MSO) fluctuated from 2005–06 to 2016–17. Proportionally, the percentage of Aboriginal and/or Torres Strait Islander offenders sentenced also fluctuated across this period, as shown in Figure 8. The proportion of Aboriginal and/or Torres Strait Islander offenders sentenced was highest in 2006–07 at 25.0% and lowest in 2012–13 at 3.3%.

**Figure 8: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by Aboriginal and/or Torres Strait Islander status and year of sentence, 2005–06 to 2016–17**

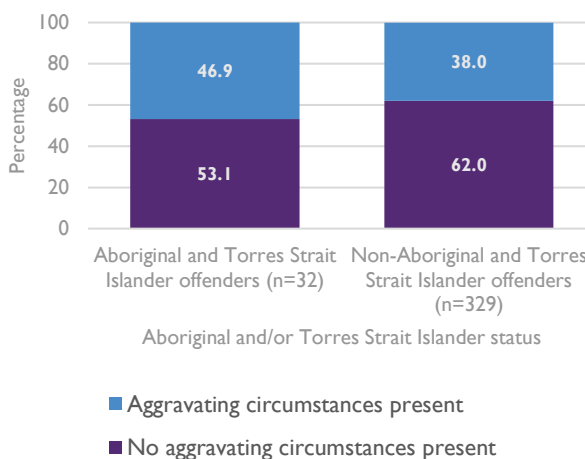


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted October 2017.

Figure 9 illustrates that the proportion of Aboriginal and/or Torres Strait Islander offenders sentenced for dangerous

operation of a vehicle causing death with aggravating circumstances was slightly higher than that of non-Aboriginal and/or Torres Strait Islander offenders (46.9% and 38.0% respectively), however this difference was not significant. Aboriginal and/or Torres Strait Islander offenders were equally likely to have aggravating circumstances as not; whereas, non-Aboriginal and/or Torres Strait Islander offenders were less likely to have aggravating circumstances.

**Figure 9: Proportion of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by Aboriginal and/or Torres Strait Islander status and presence of aggravating circumstances, 2005–06 to 2016–17**



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

## Young offenders

A total of five young offenders were sentenced in the Childrens Court of Queensland for dangerous operation of a vehicle causing death (MSO) over the 12-year data period.<sup>10</sup> The average age at time of sentencing for young offenders was 18.1 years (with a median of 17.8 years). All young offenders were male and all except one were non-Aboriginal and/or Torres Strait Islander.

Of the five young offenders, three had aggravating circumstances affecting their dangerous operation of a vehicle causing death (MSO).

## Sentencing court

Dangerous operation of a vehicle causing death can only be sentenced in higher courts (almost always the District Court).<sup>11</sup> Almost all matters were finalised in the District Court (97.8%) with three offenders sentenced in the Supreme Court (0.8%). Of the 361 offenders sentenced for dangerous operation of a vehicle causing death (MSO), five (1.4%) were young offenders sentenced in the Childrens Court of Queensland.

**Table 1: Plea type of offenders sentenced for dangerous operation of a vehicle causing death (MSO) by gender, Aboriginal and/or Torres Strait Islander status and age at sentence, 2005–06 to 2016–17**

Offender type	N	Guilty plea		Not guilty plea	
		n	%	n	%
Female	65	58	89.2	7	10.8
Male	296	262	88.5	34	11.5
Aboriginal and/or Torres Strait Islander	32	28	87.5	4	12.5
Non-Aboriginal and/or Torres Strait Islander	329	292	88.8	37	11.3
Under 20 years	39	36	92.3	3	7.7
20-29 years	145	139	95.9	6	4.1
30-39 years	80	69	86.3	11	13.8
40-49 years	43	36	83.7	7	16.3
50-59 years	21	13	61.9	8	38.1
60 years and over	33	27	81.8	6	18.2
<b>Total</b>	<b>361</b>	<b>320</b>	<b>88.6</b>	<b>41</b>	<b>11.4</b>

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

## Type of plea

Most offenders (88.6%) sentenced for dangerous operation of a vehicle causing death (MSO) pleaded guilty, either initially or at a subsequent date. Only 11.4% pleaded not guilty.

No differences in plea type were seen based on gender or Aboriginal and/or Torres Strait Islander status – see Table 1. Offenders aged 50 to 59 at sentence were the least likely to enter a guilty plea (61.9%) and were the most likely to plead not guilty (38.1%). Offenders aged under 30 at sentence were the most likely to plead guilty (under 20 years=92.3%, 20-29 years= 95.9%).

## Other offences

### Associated offences

Some offenders sentenced for dangerous operation of a vehicle causing death (MSO) were also sentenced for other offences at the same court event. Of the 361 sentenced offenders, 70.6% only had the dangerous operation of a vehicle causing death offence sentenced in their court event; 15.0% had one additional offence, and 14.4% had more than one.

The number of sentenced offences per offender per court event ranged from one to 35, with an average of 1.9 sentenced offences per event (median=1.0 sentenced offences). Of the 106 offenders sentenced for dangerous operation of a vehicle causing death who were sentenced for additional offences, the majority were sentenced for between one and three additional offences.

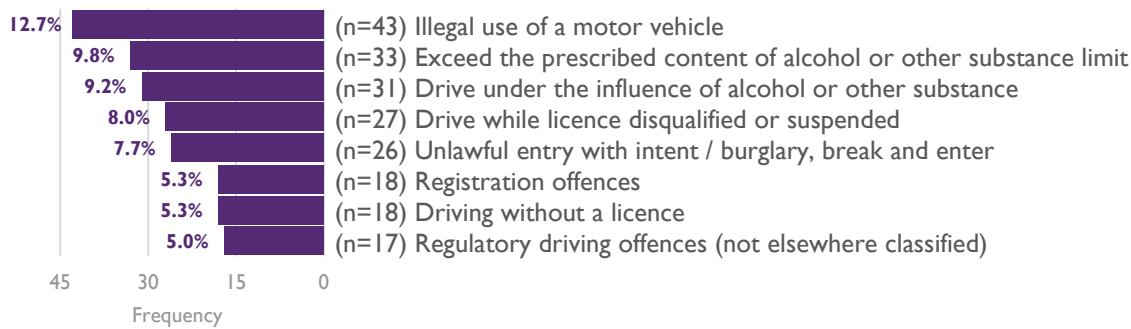
Female offenders were slightly more likely to be sentenced only for a dangerous operation of a vehicle causing death offence than male offenders, and had a significantly lower average number of offences sentenced. On average, Aboriginal and/or Torres Strait Islander offenders had a significantly higher number of offences sentenced than non-Aboriginal and/or Torres Strait Islander offenders.

**Table 2: Number of sentenced offences per court event, by gender, and Aboriginal and/or Torres Strait Islander status, and presence of aggravating circumstances, 2005–06 to 2016–17**

Offender type	N	Single offence (%)	2 to 4 offences (%)	5 to 10 offences (%)	11 + offences (%)	Number of offences			
						Avg	Median	Min	Max
Female	65	86.2	10.8	3.1	0.0	1.3	1.0	1	5
Male	296	67.2	27.0	3.0	2.7	2.1	1.0	1	35
Aboriginal and/or Torres Strait Islander	32	59.4	21.9	12.5	6.3	3.0	1.0	1	17
Non-Aboriginal and/or Torres Strait Islander	329	71.7	24.3	2.1	1.8	1.8	1.0	1	35
No aggravating circumstances	221	79.6	16.3	1.8	2.3	1.8	1	1	35
With aggravating circumstances	140	56.4	36.4	5.0	2.1	2.2	1	1	27
<b>Total</b>	<b>361</b>	<b>70.6</b>	<b>24.1</b>	<b>3.1</b>	<b>2.2</b>	<b>1.9</b>	<b>1.0</b>	<b>1</b>	<b>35</b>

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

**Figure 10: Top eight associated offences sentenced with a dangerous operation of a vehicle causing death (MSO), 2005–06 to 2016–17**



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

Overall, seven of the top eight most common associated offences were related to driving and/or vehicle offences (see Figure 10).

There was little difference when considering gender, Aboriginal and/or Torres Strait Islander status and whether aggravating circumstances were present in the dangerous driving offence; a driving and/or vehicle offence was the most common associated offence across all sub-groups.

## Repeat offenders

The 361 court events from 2005–06 to 2016–17 with dangerous operation of a vehicle causing death involved 361 unique offenders. This means no offenders were sentenced on more than one occasion across the 12-year data period for dangerous operation of a vehicle causing death.

## Prior offending

Offenders sentenced between 2010–11 and 2016–17 for dangerous operation of a vehicle causing death (MSO) were examined in detail to determine whether the offenders had been sentenced for an offence of any kind in the previous five years, including criminal offences and traffic offences sentenced in a court. Offenders sentenced prior to 2010–11 were excluded from this analysis as five years of prior sentencing data was not available. Young offenders sentenced for dangerous operation of a vehicle causing death (MSO) were also excluded from this analysis.

Of the 216 unique offenders, 115 (53.2%) recorded no additional court events in the five years prior to the sentencing of their dangerous operation of a vehicle causing death (MSO). The number of prior sentenced court events in the preceding five financial years range from one to 15. The average number of prior court events was 1.4, with a median of 0.0 prior events. On average, offenders sentenced for dangerous operation of a vehicle causing death with no aggravating circumstances had significantly fewer prior sentenced events (1.1) than those with aggravating circumstances (2.2) – see Table 3.

**Table 3: Number of prior sentenced court events for offenders sentenced for dangerous operation of a vehicle causing death (MSO), by gender, Aboriginal and/or Torres Strait Islander status, and presence of aggravating circumstances, 2010–11 to 2016–17**

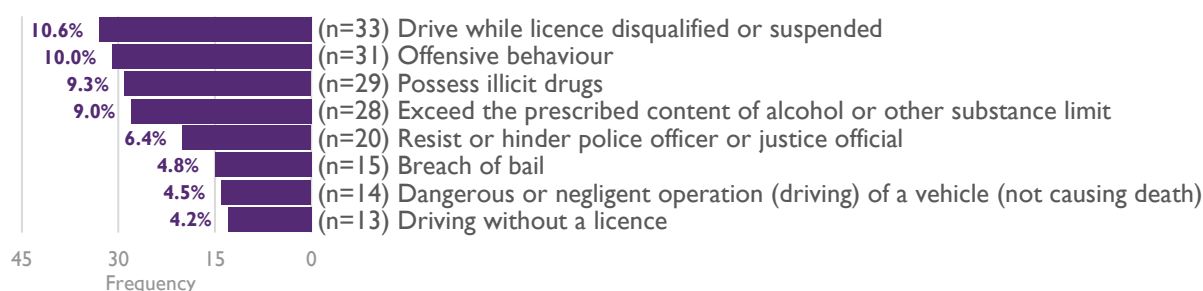
Offender Type	N	No prior offences (%)	1–4 prior offences (%)	5+ prior offences (%)	Number of prior court events			
					Avg	Median	Min	Max
Female	38	68.4	26.3	5.3	0.9	0.0	0.0	9.0
Male	178	50.0	39.9	10.1	1.5	1.0	0.0	15.0
Aboriginal and/or Torres Strait Islander	17	23.5	58.8	17.6	3.1	2.0	0.0	15.0
Non-Aboriginal and/or Torres Strait Islander	199	55.8	35.7	8.5	1.3	0.0	0.0	10.0
No aggravating circumstances	142	63.4	31.7	4.9	1.1	0.0	0.0	15.0
With aggravating circumstances	74	33.8	48.6	17.6	2.1	1.5	0.0	9.0
<b>Total</b>	<b>216</b>	<b>53.2</b>	<b>37.5</b>	<b>9.3</b>	<b>1.4</b>	<b>0.0</b>	<b>0.0</b>	<b>15.0</b>

Note: Totals may not add to 100% due to rounding.

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



**Figure 11: Top eight prior court event MSO of offenders sentenced for dangerous operation of a vehicle causing death (MSO), 2010–11 to 2016–17 (101 offenders, 311 sentenced events)**



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

There were 101 offenders with prior sentenced events; these offenders were collectively involved in 311 prior sentenced events. The most common prior MSO was driving while their licence was disqualified or suspended (33, 10.6%) – see Figure 11. Four of the top eight MSO for prior sentenced events were driving and vehicle related offences.

There was little difference in the types of prior offences when considering gender, Aboriginal and/or Torres Strait Islander status and whether aggravating circumstances were present in the dangerous driving offence. However, there was some variation in the most common prior offence – see Table 4. Offensive behaviour was the most common prior offence for males, and for offenders sentenced without aggravating circumstances.

## Penalties and sentencing

No mandatory imprisonment penalty exists for dangerous operation of a vehicle causing death in Queensland. Courts retain wide discretion for deciding the types of penalties imposed for such offences, with aggravating and mitigating factors required to be taken into consideration.

From 2005–06 to 2016–17, 99.4% of sentenced offenders who had a dangerous operation of a vehicle causing death offence (MSO) received a custodial penalty. Only two offenders received a non-custodial penalty; of those, one

**Table 4: The most common prior offence for offenders sentenced for dangerous operation of a vehicle causing death (MSO), by gender, Aboriginal and/or Torres Strait Islander status, and presence of aggravating circumstances, 2010–11 to 2016–17**

Offender Type	N	Most common prior offence
Female*	12	<ul style="list-style-type: none"> <li>Dangerous or negligent operation (driving) of a vehicle (n=4).</li> <li>Possess illicit drugs (n=4).</li> <li>Theft from retail premises (n=4).</li> </ul>
Male	89	<ul style="list-style-type: none"> <li>Offensive behaviour (n=31).</li> </ul>
Aboriginal and/or Torres Strait Islander*	12	<ul style="list-style-type: none"> <li>Driving while licence disqualified or suspended (n=7).</li> </ul>
Non-Aboriginal and/or Torres Strait Islander	89	<ul style="list-style-type: none"> <li>Exceeding the limit of alcohol or other substances (n=28).</li> </ul>
With aggravating circumstances	49	<ul style="list-style-type: none"> <li>Driving while licence disqualified or suspended (n=19).</li> </ul>
No aggravating circumstances	52	<ul style="list-style-type: none"> <li>Offensive behaviour (n=14).</li> </ul>
<b>Total</b>	<b>101</b>	<b>Driving while licence disqualified or suspended (n=33).</b>

\* Caution: Small sample sizes.

Note: For some subgroups, there were multiple offences which ranked equal as the most common prior offence.

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

offender received a \$1000 fine and 12-month driver licence disqualification, while the other offender received an absolute driver licence disqualification.<sup>12</sup>

For the five young offenders sentenced for dangerous operation of a vehicle causing death (MSO), all received a custodial sentence. Three received detention sentences, ranging from 1.5 years to 4 years, and one received an immediate release order, having already served 420 days in detention. One offender was sentenced in the Childrens Court of Queensland, but sentenced as an adult. In this case, as the offender was aged 16 at the time of the offence but 19 at the time of sentence, they received a 1.5 year prison sentence.

For the two offenders sentenced for a dangerous operation of a vehicle causing death offence which was not their MSO, one received seven years' imprisonment and an absolute disqualification, to be served concurrently with the nine-year sentence for the manslaughter MSO. The other offender received a two-year disqualification as well as three years' imprisonment, to be served cumulatively on multiple cumulative sentences imposed for fraud (with the fraud offences totalling 10 years' imprisonment).

Three offenders also received penalties in addition to the custodial penalty and the driver licence disqualification. One received 200 hours of community service, one received a \$1500 fine, and the other received a \$2000 fine.

## Note

Due to the small number of offenders sentenced as a young person (n=5) and offenders receiving a non-custodial penalty (n=2), the remainder of this *Sentencing Spotlight* will only consider offenders sentenced as an adult who received a custodial penalty (n=354).

## Penalty type

There are three types of custodial penalties which will be discussed in this section: imprisonment, partially suspended sentences, and wholly suspended sentences.<sup>13</sup> For more details on types of sentencing orders, see the Queensland Sentencing Guide.<sup>14</sup>

Offenders sentenced for dangerous operation of a vehicle causing death with aggravating circumstances were significantly more likely to receive imprisonment (56.6%), than offenders without aggravating circumstances (19.7%) – see Figure 12.

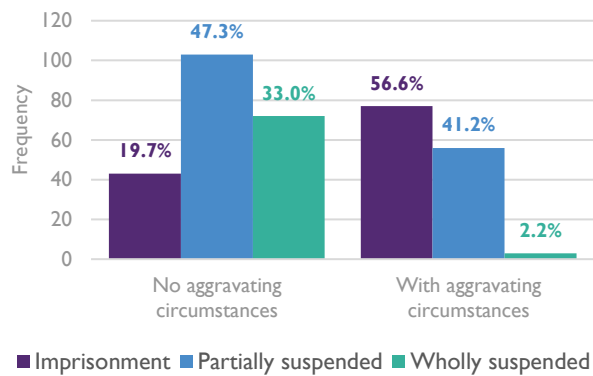
A partially suspended sentence was the most common penalty imposed (44.9%) for dangerous operation of a vehicle causing death (MSO) – see Table 5. Imprisonment was the most common penalty in cases with aggravating circumstances (56.6%). Partially suspended sentences were the most common penalty for cases without aggravating circumstances.

Female offenders were significantly more likely to be given a wholly suspended sentence (39.1%) than male offenders (17.2%), while male offenders were significantly more likely to receive an imprisonment sentence (36.9% male; 20.3% female).

Aboriginal and/or Torres Strait Islander offenders were significantly more likely to receive an imprisonment

sentence (54.8%) and less likely to receive a wholly suspended sentence (9.7%) than non-Aboriginal and/or Torres Strait Islander offenders (31.9% imprisonment; 22.3% wholly suspended).

**Figure 12: Custodial penalties for dangerous operation of a vehicle causing death (MSO) by presence of aggravating circumstances, 2005–06 to 2016–17**



Note: excludes non-custodial penalties and offenders sentenced as a juvenile.

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

**Table 5: Custodial penalties for dangerous operation of a vehicle causing death (MSO) by gender, Aboriginal and/or Torres Strait Islander status, and presence of aggravating circumstances, 2005–06 to 2016–17**

Offender Type	N	Imprisonment (n, % of subgroup)	Partially suspended (n, % of subgroup)	Wholly suspended (n, % of subgroup)
Female	64	13 (20.3%)	26 (40.6%)	25 (39.1%)
Male	290	107 (36.9%)	133 (45.9%)	50 (17.2%)
Aboriginal and/or Torres Strait Islander	31	17 (54.8%)	11 (35.5%)	3 (9.7%)
Non-Aboriginal and/or Torres Strait Islander	323	103 (31.9%)	148 (45.8%)	72 (22.3%)
No aggravating circumstances	218	43 (19.7%)	103 (47.3%)	72 (33.0%)
With aggravating circumstances	136	77 (56.6%)	56 (41.2%)	3 (2.2%)
<b>Total</b>	<b>354</b>	<b>120 (33.9%)</b>	<b>159 (44.9%)</b>	<b>75 (21.2%)</b>

Note: excludes non-custodial penalties and offenders sentenced as a juvenile.

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

## Length of sentence

For offenders who were sentenced to imprisonment for dangerous operation of a vehicle causing death (MSO), the average sentence was 5.2 years (median=6.0 years). The longest sentences of imprisonment had a length of 9.0 years and were given to male offenders, and non-Aboriginal and/or Torres Strait Islander offenders. The shortest sentences of imprisonment were for a length of 1.5 years. Aboriginal and/or Torres Strait Islander offenders had longer sentences of imprisonment at 5.7 years, compared to non-Aboriginal and/or Torres Strait Islander offenders (5.2 years), and male offenders had slightly longer sentences of imprisonment (5.3 years) compared to female offenders (5.1 years), although these differences were not significant.

The average partially suspended sentence was 3.3 years (median=3.0 years) for offenders sentenced for dangerous operation of a vehicle causing death. The longest partially suspended sentence was 5.0 years, which is the maximum period permissible for suspended sentences. The shortest partially suspended sentences had a length of 1.5 years, although the minimum sentence for Aboriginal and/or Torres Strait Islander offenders was higher at 2.5 years. Aboriginal and/or Torres Strait Islander offenders had longer partially suspended sentences at 3.8 years, compared to non-Aboriginal and/or Torres Strait Islander offenders (3.2 years). The average partially suspended sentence was slightly lower for females (3.1 years) than for males (3.3 years). These differences were not significant.

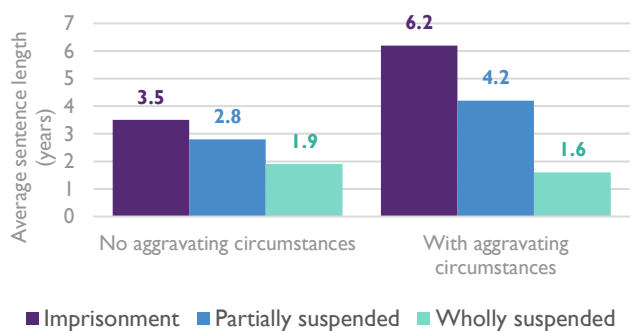
Of those who received a partially suspended sentence, the average time served before release was 0.9 years. The average time served before release for a partially suspended sentence was significantly longer for offenders with aggravating circumstances at 1.2 years than those without (0.7 years).

Wholly suspended sentences had an average length of 1.9 years (median=2.0 years). The longest wholly suspended sentences had a length of 4.0 years, and the shortest

sentences were 0.5 years in duration. Aboriginal and/or Torres Strait Islander offenders had shorter wholly suspended sentences at 1.6 years, compared to non-Aboriginal and/or Torres Strait Islander offenders (1.9 years). Both male and female offenders received wholly suspended sentences with an average length of 1.9 years.

The average imprisonment sentence for dangerous operation of a vehicle causing death with aggravating circumstances (6.2 years) was significantly longer than cases without aggravating circumstances (3.5 years) – see Figure 13. Similar results were seen for partially suspended sentences, with aggravating circumstances attracting an average sentence of 4.2 years, significantly longer than cases without aggravating circumstances (2.8 years). These differences were expected due to the higher maximum sentence for dangerous operation of a vehicle causing death with aggravating circumstances.

**Figure 13: Custodial sentence lengths for dangerous operation of a vehicle causing death (MSO), by presence of aggravating circumstances, 2005–06 to 2016–17**



Notes: Maximum period permissible for suspended sentences (wholly or partially) is five years. Excludes offenders sentenced as a juvenile  
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted October 2017

**Table 6: Sentence lengths for dangerous operation of a vehicle causing death (MSO), by gender, Aboriginal and/or Torres Strait Islander status, and presence of aggravating circumstances, 2005–06 to 2016–17**

Offender Type	Imprisonment (years)					Partially suspended (years)					Wholly suspended (years)				
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
Female*	13	5.1	6.0	1.5	8.0	26	3.1	3.0	1.5	5.0	25	1.9	2.0	1.5	4.0
Male	107	5.3	6.0	1.5	9.0	133	3.3	3.0	1.5	5.0	50	1.9	2.0	0.5	3.0
Aboriginal and/or Torres Strait Islander*	17	5.7	6.0	1.5	8.0	11	3.8	4.0	2.5	5.0	3	1.6	1.5	1.3	2.0
Non-Aboriginal and/or Torres Strait Islander	103	5.2	5.5	1.5	9.0	148	3.2	3.0	1.5	5.0	72	1.9	2.0	0.5	4.0
No aggravating circumstances	43	3.5	3.0	1.5	8.0	103	2.8	2.5	1.5	5.0	72	1.9	2.0	0.5	4.0
With aggravating circumstances	77	6.2	6.0	1.5	9.0	56	4.2	4.5	1.5	5.0	3	1.7	1.5	1.5	2.0
<b>Total</b>	<b>120</b>	<b>5.2</b>	<b>6.0</b>	<b>1.5</b>	<b>9.0</b>	<b>159</b>	<b>3.3</b>	<b>3.0</b>	<b>1.5</b>	<b>5.0</b>	<b>75</b>	<b>1.9</b>	<b>2.0</b>	<b>0.5</b>	<b>4.0</b>

\* Caution: Small sample sizes.

Notes: Maximum period permissible for suspended sentences (wholly or partially) is five years. Excludes offenders sentenced as a juvenile  
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted October 2017.

## Licence disqualification

A mandatory-minimum period of disqualification from holding or obtaining a driver licence applies in addition to, and separately from, the penalty imposed by a court. The legislation states that 'the person is disqualified by the conviction and without any specific order'. During the 12-year data period the relevant disqualification period was six months. On 18 June 2018, this was doubled to 12 months.<sup>15</sup> Courts can, and could throughout the data period, increase the disqualification up to and including an 'absolute' disqualification.<sup>16</sup>

The term 'disqualified absolutely' is not defined but means indefinitely, because it is distinct from 'a specified period'. It is not the same as 'life' though, because the legislation allows a person who was disqualified absolutely or for

more than two years, to apply to the court for it to be removed, after serving two years of the disqualification. The court can either remove the disqualification (from the date it specifies in its order) or refuse the application. If it refuses, the person cannot reapply within one year.<sup>17</sup>

As it is mandatory, all of the 361 offenders sentenced for dangerous operation of a vehicle (MSO) received a driver licence disqualification,<sup>18</sup> and 20.5% (n=74) of those received an absolute disqualification – see Table 7. Aboriginal and/or Torres Strait Islander offenders were more likely to receive an absolute disqualification than non-Aboriginal and/or Torres Strait Islander offenders. Offenders with aggravating circumstances were more likely to receive an absolute disqualification than offenders without aggravating circumstances.

**Table 7: Licence disqualification type for dangerous operation of a vehicle causing death (MSO), 2005–06 to 2016–17**

Offender Type	N	Absolute licence disqualification (n, % of subgroup)	Specified disqualification length (n, % of subgroup)
Female	65	8 (12.3%)	57 (87.7%)
Male	296	66 (22.3%)	230 (77.7%)
Aboriginal and/or Torres Strait Islander	32	11 (34.4%)	21 (65.6%)
Non-Aboriginal and/or Torres Strait Islander	329	63 (19.1%)	266 (80.9%)
No aggravating circumstances	221	24 (10.9%)	197 (89.1%)
With aggravating circumstances	140	50 (35.7%)	90 (64.3%)
<b>TOTAL</b>	<b>361</b>	<b>74 (20.5%)</b>	<b>287 (79.5%)</b>

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

Where a disqualification length was specified (i.e. not absolute), the average disqualification length was 2.7 years (median=2.8 years) – see Table 8. The average licence disqualification length was significantly longer for offenders with aggravating circumstances (3.4 years) than for offenders without (2.4 years). No differences in disqualification length were seen by gender or Aboriginal and/or Torres Strait Islander status. All sub-groups had a maximum licence disqualification of five years.

**Table 8: Length of licence disqualification for dangerous operation of a vehicle causing death (MSO) (years), by gender, Aboriginal and/or Torres Strait Islander status, and presence of aggravating circumstances, 2005–06 to 2016–17**

Offender Type	Specified disqualification length (years)				
	N	Average	Median	Min	Max
Female	57	2.6	3.0	0.5	5.0
Male	230	2.7	2.5	0.5	5.0
Aboriginal and/or Torres Strait Islander*	21	2.7	3.0	0.5	5.0
Non-Aboriginal and/or Torres Strait Islander	266	2.7	2.6	0.5	5.0
No aggravating circumstances	197	2.4	2.0	0.5	5.0
With aggravating circumstances	90	3.4	3.0	0.5	5.0
<b>TOTAL</b>	<b>287</b>	<b>2.7</b>	<b>2.8</b>	<b>0.5</b>	<b>5.0</b>

\* Caution: Small sample sizes.

Note: Absolute licence disqualifications have been excluded from this analysis.

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

# Endnotes

<sup>1</sup> An offender could potentially instead be charged with, and convicted of, the more serious offence of manslaughter. It carries a maximum penalty of life imprisonment. For manslaughter, a very high degree of criminal negligence has to be proved, meaning such offences are generally at the high end of offence seriousness involving a high degree of offender culpability/criminality. The decision as to whether a person is initially charged with manslaughter instead of dangerous driving causing death is made by police; and ultimately determined by the Director of Public Prosecutions, who decides which charge should be put before the trial or sentencing court. Manslaughter is beyond the scope of this sentencing spotlight but for further detail on that offence generally, see the Council's *Sentencing Spotlight on... manslaughter* at <[https://www.sentencingcouncil.qld.gov.au/\\_\\_data/assets/pdf\\_file/0011/518177/Sentencing-Spotlight-on-manslaughter-July-2017.pdf](https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0011/518177/Sentencing-Spotlight-on-manslaughter-July-2017.pdf)>

<sup>2</sup> See Queensland Supreme and District Courts, 'Dangerous Operation of a Vehicle s 328A', *Criminal Directions Benchbook* (March 2017 amendments) 129.2 citing *R v Jiminez* (1992) 173 CLR 572, 579, 583; *R v McBride* (1966) 115 CLR 44, 50-51.

<sup>3</sup> By the *Criminal Code and Civil Liability Amendment Act 2007* (Qld) s 4. From 2005-2006 until 20 March 2007, the maximum penalty for dangerous operation of a vehicle causing death was 7 years' imprisonment, or 10 years if the offender was adversely affected by an intoxicating substance, or 14 years if the intoxicating substance was alcohol and the blood-alcohol concentration was equal to or exceeded 150 mg per 100ml of blood.

<sup>4</sup> *Penalties and Sentences Act 1992* (Qld), s 9(2A), and (3).

<sup>5</sup> See the *Transport Operations (Road Use Management) Act 1995* (Qld) s 83, as amended by the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (Qld), s 49. This amendment commenced after the 12-year data period relevant to this *Sentencing Spotlight*. The offence involves a person driving a motor vehicle, on a road or elsewhere, without due care and attention or without reasonable consideration for other persons using the road or place. The maximum penalty until 18 June 2018 was 40 penalty units or 6 months' imprisonment. This remains unchanged in the amended section, but new penalties were introduced where the person causes death or grievous bodily harm to another (80 penalty units or 1 year's imprisonment) or does so and was an unlicensed driver (160 penalty units or 2 years' imprisonment). Where death or grievous bodily harm is caused, there is also a mandatory minimum driver licence disqualification of 6 months. The offences of careless driving or manslaughter could be charged instead of dangerous operation of a motor vehicle causing death, depending on the circumstances of the case and the decisions of investigating police and prosecutors. The same amending legislation also inserted new penalties regarding duties of drivers in incidents that result in death or grievous bodily harm to a person (duties of remaining at or near the scene and exhibiting proper respect for the person's body and taking whatever steps are reasonably practicable to have the body removed to an appropriate place; maximum penalty 120 penalty units or 3 years' imprisonment): *Transport Operations (Road Use Management) Act 1995* (Qld) s 92(1)(c), as inserted by the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (Qld), s 51.

<sup>6</sup> Median: offenders without aggravating circumstances= 27.9 years; offenders with aggravating circumstances= 27.8 years.

<sup>7</sup> Median age: female= 31.5 years, male= 27.4 years.

<sup>8</sup> As at 30 June 2015. See Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015, available at <<http://www.qgso.qld.gov.au/subjects/demography/atsi-people/tables/pop-est-indigenous-status/index.php>> accessed 4 August 2017.

<sup>9</sup> Median age: Aboriginal and/or Torres Strait Islander= 25.8 years, non-Aboriginal and/or Torres Strait Islander= 28.2 years.

<sup>10</sup> Sentencing laws are different for children and the *Youth Justice Act 1992* (Qld) (YJA) applies rather than the *Penalties and Sentences Act 1992* (Qld) which applies to the sentencing of adult offenders. For more information, see <https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-child-offenders>. The equivalent of imprisonment for a child is detention. The YJA sets different maximum detention periods for children depending on the level of the sentencing court and seriousness of the offence. The maximum sentence available to higher courts is generally lower than that applicable to adults. Relevant ages for children and criminal responsibility have changed. Until 12 February 2018, children aged between 10 and 16 were sentenced as children. From 12 February 2018, 17 year olds have also been treated as children.

<sup>11</sup> *Criminal Code* (Qld) s 3(3) and contrast s 552B(1)(e).

<sup>12</sup> This case may have had extenuating circumstances, but this could not be confirmed in the court data from QGSO.

<sup>13</sup> 'Imprisonment' refers to a non-suspended prison sentence, with either a parole release or eligibility date. Suspended sentences are periods of imprisonment of five years or less which are suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period of time (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence).

<sup>14</sup> The Queensland Sentencing Advisory Council's *Queensland Sentencing Guide* is available at: [https://www.sentencingcouncil.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/572161/queensland-sentencing-guide.pdf](https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/queensland-sentencing-guide.pdf)

<sup>15</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 86(3), (3A) as amended by the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (Qld), s 50.

<sup>16</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 86(5).

<sup>17</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 131(2), (2AA), (2C), (2D).

<sup>18</sup> Two offenders were sentenced for dangerous operation of a vehicle where the vehicle was a boat. In such circumstances, a court may also order that the person be disqualified from holding or obtaining a marine licence – *Transport Operations (Marine Safety) Act 1994* (Qld) s 202A. However, this is not included in the available data.





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