Calculating the Baseline Offence Median

Report

The Sentencing Advisory Council bridges the gap between the community, the courts, and the government by informing, educating, and advising on sentencing issues.

The Sentencing Advisory Council is an independent statutory body established in 2004 under amendments to the *Sentencing Act 1991*. The functions of the Council are to:

- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council's written views on the giving, or review, of a guideline judgment.

Council members come from a broad spectrum of professional and community backgrounds. Under the *Sentencing Act 1991*, Council members must be appointed under eight profile areas:

- two people with broad experience in community issues affecting the courts
- one senior academic
- one highly experienced defence lawyer
- one highly experienced prosecution lawyer
- one member of a victim of crime support or advocacy group
- one person involved in the management of a victim of crime support or advocacy group who is a victim of crime or a representative of victims of crime
- one member of the police force of the rank of senior sergeant or below who is actively engaged in criminal law enforcement duties
- the remainder must have experience in the operation of the criminal justice system.

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Report

Sentencing Advisory Council
September 2014

10TH
ANNIVERSARY
2004·2014

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Abbreviations

IMP	Imprisonment
WSS	Wholly suspended sentence
PSS	Partially suspended sentence
YJCO	Youth justice centre order
RTO	Residential treatment order
Mix (IMP & CBO)	A mixed sentence involving imprisonment and a community-based order
CBO	Community-based order
CCO	Community correction order
Mix (Fine & ADU)	A mixed sentence involving a fine and an adjourned undertaking

Glossary

Baseline offence	An offence for which a baseline sentence has been prescribed under the *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic).
Baseline median	A median calculated according to the counting rules under the *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) and further assumptions detailed in this report.
Baseline sentence	The sentence that parliament intends as the median sentence for sentences imposed for the relevant baseline offence.
Case	A collection of one or more charges against a person sentenced at the one hearing.
Charge	A single proven allegation of an offence.
Head sentence	The length of a sentence for an individual charge. For example, in a case with one charge, if a court sentences an offender to four years' imprisonment with a non-parole period of three years, the head sentence is four years. In a case with one charge, the head sentence is also the total effective sentence.

Median	The median is the middle value in a set or a distribution of values. For example, in the following set of values:
	1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7
	4 is the median value. It represents a statistical midpoint, where half of the values (1, 2, 2, 3, 3) are below the median, and half of the values (5, 5, 6, 6, 7) are above the median. If a set has an even number of values, the two middle values (sometimes defined as the lower median and the upper median) are averaged to find the median.
Principal proven offence (PPO)	If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
Reference period	The period of time for which sentences will be examined in calculating the baseline medians. In this report the reference period is 2008–09 to 2012–13.
Suspended sentence (*Sentencing Act 1991* (Vic) ss 27–31)	A term of imprisonment that is suspended (i.e. not activated), wholly or in part, for a specified period (the 'operational period') subject to the condition to be of good behaviour (i.e. not reoffend). Suspended sentences have been abolished in Victoria and cannot be imposed for any offence committed on or after 1 September 2014.
Total effective sentence	In a case involving a single charge, the sentence imposed for that charge; in a case involving multiple charges, the sentence resulting from orders of concurrency and/or cumulation for each sentencing order for each charge in the case.
Youth justice centre order (*Sentencing Act 1991* (Vic) ss 32–35)	A sentence requiring a young offender (15 to 21 years old) to be detained in a youth justice centre. A youth justice centre order may be imposed for a maximum of two years in the Magistrates' Court and for three years in the County and Supreme Courts.

1. Executive summary

1.1   This report has been prepared to assist the courts and those working in the criminal justice system to understand the operation of baseline medians as set out in the *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) ('the Act') and some of the implications for current sentencing practices.

1.2   The Act provides that the baseline sentence represents '*the sentence that Parliament intends to be the median sentence for sentences imposed for that offence*'.[1] Courts must sentence baseline offences in a manner that is compatible with this intention.

1.3   The Act proposes some counting rules that differ from the method the Council has used to calculate current sentencing trends to date. The Act presents its own definition of the 'median sentence'. Most importantly, this definition (which, to distinguish, we have labelled the 'baseline median') includes non-custodial as well as custodial sentences.

1.4   This report shows that, when using the counting rules prescribed under the Act, current median sentences for the six baseline offences fall below the baseline sentences prescribed under the Act (Table 1).

Table 1:   **The difference between baseline medians now and the median established under the Act**

Offence	2008–09 to 2012–13 baseline median	Baseline sentence under the Act	Difference between 2008–09 to 2012–13 baseline median and baseline sentence
Culpable driving causing death	5 years and 6 months	9 years	3 years and 6 months
Incest	4 years	10 years	6 years
Persistent sexual abuse of a child under 16	6 years	10 years	4 years
Sexual penetration of a child under 12	3 years	10 years	7 years
Trafficking in a large commercial quantity of a drug of dependence	6 years and 6 months	14 years	7 years and 6 months
Murder	20 years	25 years	5 years

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1.   *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) s 5.

1.5   Table 2 shows how long (in years) and how many charges are required before the five-year baseline medians (2008–09 to 2012–13) stabilise for each offence. This is of relevance when considering how to evaluate the baseline sentencing scheme in the future.

Table 2:   Time (years) and the number of charges required for the baseline median to stabilise

Offence	Time period for the five-year baseline median to stabilise	Number of charges required for the median to stabilise
Culpable driving causing death	5 years	70 charges
Incest	5 years	617 charges
Persistent sexual abuse of a child under 16	4 years	40 charges
Sexual penetration of a child under 12	5 years	136 charges
Trafficking in a large commercial quantity of a drug of dependence	4 years	76 charges
Murder	2 years	52 charges

1.6   Finally, this report demonstrates why it will be difficult to predict sentencing distributions over time and that the prescribed baseline sentence median can be achieved even if the courts impose:

- non-imprisonment sentences for baseline offences; and/or
- imprisonment sentences that diverge from the prescribed baseline sentence.

2. Baselines, medians, and the purpose of this report

2.1   This report examines the method of calculation of a median sentence under the *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic). Using the results of cases sentenced between 2008–09 and 2012–13 (the reference period), this baseline median method is used to calculate the medians for the six offences prescribed as baseline offences under that Act.

2.2   This report is intended to provide greater clarity in relation to:

- the method of calculation of the median sentence under the Act;
- the differences between the method of calculation of the median sentence under the Act and the method of calculation of the median in the Council's Sentencing Snapshots, which have previously been the primary source of aggregate sentencing data for the County and Supreme Courts;
- the effect of the number of charges being examined and the reference period when determining a median sentence for an offence; and
- the statistical issues to consider when applying the median sentence under the Act in sentencing decisions.

2.3   The analysis in this report displays the range of sentences imposed for charges of baseline offences, and their sentence lengths, over the five-year reference period from 2008–09 to 2012–13, using the counting rules under the Act. Summary statistics present the range of terms imposed and the median for each individual year and for a range of years. The median sentence lengths are shown to change between years to varying levels across the six offences.

2.4   The intent of this report is to provide information regarding the implications of the Act for current sentencing practices.

Prior work on Baselines undertaken by the Council

2.5   In 2012, the Council published its *Baseline Sentencing: Report*, which contained the Council's response to the Attorney-General's request for advice on a baseline sentencing scheme.

2.6   The Council provided specific recommendations on a baseline sentencing model, a baseline sentencing procedure, and exclusions from the baseline sentencing scheme, as well as a recommended baseline level (dependent on the recommended baseline sentencing model) for each baseline offence. The Council also noted that further refinement and consideration of how the baseline sentencing scheme would operate in practice were required.

Sentencing Amendment (Baseline Sentences) Act 2014 (Vic)

2.7   Parliament passed the Act on 5 August 2014. The Attorney-General has indicated that the Act will commence on 2 November 2014 by proclamation.

2.8   The baseline sentencing scheme contained in the Act is different from the scheme recommended by the Council.

Baseline offences

2.9   The Act introduces a baseline sentencing scheme that will apply to the sentencing of the six offences in Table 3.

Table 3:   **Baseline offences and median sentence lengths in the Act**

Offence	Baseline median sentence
Culpable driving causing death	9 years
Incest with a child (including de facto child, lineal descendant, or step child)	10 years
Persistent sexual abuse of a child under 16	10 years
Sexual penetration of a child under 12	10 years
Trafficking in a large commercial quantity of a drug of dependence	14 years
Murder	25 years

Baseline sentence

2.10   The Act provides that the baseline sentence represents 'the sentence that Parliament intends to be the median sentence for sentences imposed for that offence'.[2] The 'sentence that Parliament intends to be the median' refers to the sentence imposed on a charge of a baseline offence. In other words, courts must impose a head sentence that is compatible with this intention for each individual charge of a baseline offence within a case.

2.11   For the avoidance of doubt, the baseline sentence does not refer to the total effective sentence; nor does it refer to the non-parole period imposed for a case involving at least one charge of a baseline offence.

2.12   The Act does not prescribe any amendments regarding cumulation or concurrency, or the manner in which a court is to determine the total effective sentence for a case with multiple charges and at least one charge of a baseline offence. Consequently, the principle of totality will continue to apply to the setting of a total effective sentence. In other words, the court must apply concurrency and/or cumulation of sentences to ensure that the total effective sentence for a case (including a case with multiple charges and at least one charge of a baseline offence) is just and appropriate given the overall criminality of the offending behaviour.

2.13   The non-parole period for a case involving at least one charge of a baseline offence is to be determined according to a formula provided in section 8 of the Act.

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2.   *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) s 5.

Baseline sentencing

2.14 When determining the sentence for a charge of a baseline offence, the court must consider the baseline sentence prescribed for the baseline offence.

2.15 The baseline sentence represents the sentence that parliament intends the median sentence for that offence to be. Consequently, the court must compare the nature and characteristics of the charge of the baseline offence before the court with the nature and characteristics of a charge of the baseline offence that currently receives the median sentence.

2.16 Where the nature and characteristics of the charge of the baseline offence before the court are:

- equal to the nature and characteristics of the charge of the baseline offence that currently receives the median sentence, the court is expected to impose the baseline sentence; or
- more serious than the nature and characteristics of the charge of the baseline offence that currently receives the median sentence, the court is expected to impose a sentence that is greater than the baseline sentence; or
- less serious than the nature and characteristics of the charge of the baseline offence that currently receives the median sentence, the court is expected to impose a sentence that is less than the baseline sentence.

2.17 When imposing a sentence for a charge of a baseline offence, the court must provide reasons why it has imposed a sentence that is equal to, greater than, or less than the baseline sentence.[3]

2.18 The court must consider the baseline sentence whenever it sentences a charge of a baseline offence, including when imposing a non-custodial sentence. However, the baseline sentence does not apply to the sentencing of baseline offences:

- heard and determined summarily; or
- committed by an offender who was under the age of 18 at the time of offending.

Medians, baseline medians, and Snapshot medians

What is a median?

2.19 The 'median' is the numerical value separating the lower half of a distribution of values from the higher half of the distribution. It is a measure of central tendency. It is neither the most frequently occurring value (described as the 'mode') nor the average ('mean').

2.20 For example, in the following set of values:

1, 2, 3, 3, 3, 4, 5, 5, 6, 6, 9

the *mode* is 3 (being the most frequently occurring value) and the *mean* is 4.27 (the average value, calculated by summing all of the values and dividing by the number of scores in the distribution). The *median* value is 4, as half of the values (1, 2, 3, 3, 3) are below the median, and half of the values (5, 5, 6, 6, 9) are above the median.

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3. *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) s 5.

2.21   The median is a value that lies in the middle of a set of values when ordered sequentially. Half of the values are above the median, and half of the values are below the median. Medians may not be represented by actual values in the set of values. This will happen when there is an even number of values in the set and there exists no true middle value. For example, in the following set of values:

1, 2, 3, 3, 5, 6, 6, 9

the median value is also 4. In this example, the median is the mean of the two middle values, 3 and 5.

2.22   It is also possible for the median value to be simultaneously the minimum value in a set of scores (median = 4):

4, 4, 4, 4, 4, 4, 5, 6, 6, 9

2.23   Finally, the median value can also be simultaneously the maximum value in a set of scores (median = 4):

1, 1, 2, 3, 4, 4, 4, 4, 4, 4

Baseline medians

2.24   As explained previously, the baseline sentence represents the median sentence that parliament intends to be imposed for a charge of a baseline offence.

2.25   Section 5 of the Act provides how a median sentence is to be calculated for the purposes of the Act ('baseline median'):

> A reference in section 5A to a median sentence for sentences imposed for an offence is to a median where—
> (a) both custodial and non-custodial sentences are considered, other than sentences imposed—
>   (i) on an offender for an offence committed when he or she was under the age of 18; or
>   (ii) for an offence heard and determined summarily; and
> (b) if a total effective sentence is imposed in respect of 2 or more sentences, at least one of which is for a relevant offence, the term of the individual sentence for any such relevant offence is treated as the term of the sentence for that offence; and
> (c) the length of that part of a partially suspended term of imprisonment that is not held in suspense is treated as the term of the sentence; and
> (d) a wholly suspended term of imprisonment is treated as a non-custodial sentence; and
> (e) a non-custodial sentence is treated as a term of imprisonment of zero months.[4]

2.26   The analysis of baseline medians in this report has incorporated these counting rules from the Act along with additional counting rules, described below.

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4.   *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) s 5.

Baseline medians are not the same as the Council's Snapshot medians

2.27   The way in which a median is to be calculated for the purposes of the Act is different from the way in which the median is calculated for the Council's Sentencing Snapshots series.

2.28   Depending on the specific offence involved, the Snapshots present the median in two different ways:

- the median length of imprisonment for the principal sentence of the offence; and
- where possible,[5] the median length of imprisonment for all charges that received imprisonment.

2.29   The Act is silent about the duration over which the baseline median is calculated. To maintain consistency with Snapshot calculations, a five-year period has been selected for analysis within this report.

2.30   These Snapshot calculations for the median differ from the baseline median calculation according to the Act for the following reasons:

- the Snapshot median imprisonment lengths only include imprisonment terms. In contrast, the baseline medians include all relevant sentences imposed for that offence, and weight non-imprisonment sentences with a 0-value. The Act requires wholly suspended sentences and other non-custodial sentences to count zero towards the median, while partially suspended terms count the 'part to serve' portion towards the median;[6]
- the Snapshot median excludes life sentences from the calculation. The Act does not specify how to include life sentences in the median calculation. The time served by an offender receiving a life sentence will vary. In the analysis, life sentences are assigned values of 30 years (1.5 years greater than the longest non-life sentence imposed in the reference period). This does not skew the median, but ensures the longest sentences are incorporated into the median calculation; and
- the Snapshots also include sentences imposed on juvenile offenders. The median calculations for baseline offences under the Act will not.

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5.   Snapshots do not present the statistics for all charges of incest, sexual penetration of a child, and drug trafficking due to the number of charges that cannot be adequately categorised by information from sentencing remarks. These unverified charges may include the offence as principal proven offences on which Snapshots are based, and therefore the analysis of all charges of these offences is not conducted. Court records of charges of persistent sexual abuse of a child under 16 are not crosschecked with sentencing remarks due to the offence's clear definition and no overlap with a similar offence. In some cases, an extraordinary sentence type or length may prompt crosschecking of an offence's sentencing remarks. However, this is the regular process only for incest, drug trafficking, and sexual penetration of a child offences.

6.   The partially suspended sentence portion is assigned at the case level for the total effective sentence, not at the charge level (in a case with multiple charges). In the current calculations, for cases with multiple charges and a total effective partially suspended sentence, the charge-level imprisonment term (part to serve) is derived by: (a) calculating the ratio between the total effective sentence and the part to serve; and (b) multiplying each charge-level sentence by the overall ratio to calculate the charge-level part to serve. For example, a case with 2 charges each of 2 years and a total effective sentence of 3 years and a 2 year part to serve results in a ratio of 0.67, and a charge-level part to serve of 16 months.

2.31   These points from [2.30] are summarised in Table 4.

Table 4:   **Differences between Snapshot and baseline counting rules**

Counting rule component	Snapshot	Baseline
Non-imprisonment terms	Excluded from imprisonment analysis	Included in imprisonment analysis with a 0-value
Partially suspended terms	Excluded from imprisonment analysis, with wholly and partially suspended sentences examined separately	Included in imprisonment analysis, with the 'part-to-serve' portion considered to be the imprisonment duration
Life sentences	Excluded from imprisonment analysis	Not specified in the Act. Assumed to have a value 1.5 years greater than the longest non-life sentence in the reference period
Sentences imposed on juveniles under 18 years	Included in the imprisonment analysis if immediately custodial[a]	Excluded from the analysis

a. For Snapshot purposes, immediate custodial sentences include imprisonment, partially suspended sentences, youth justice centre orders, mix (imprisonment and community-based orders), mix (imprisonment and community correction orders), custodial supervision orders, and aggregate imprisonment. Some defendants who were under the age of 18 at the time of committing the alleged offence and who were not 19 years or older at the time proceedings commenced may have been dealt with in the Children's Court of Victoria.

Caveats with the data presented within this report

2.32   The baseline report considers the first instance of all sentences for baseline offences between 2008–09 and 2012–13. Thus, appeals for any of the charges used in the analysis are not taken into account. In contrast, Sentencing Snapshots include the effects of appeal results on the distribution if the maximum sentence (by sentence type) is changed.

2.33   Due to incomplete offence information regarding some baseline offences on the conviction returns, a further classification exercise has been undertaken to determine the specific offence types for charges of sexual penetration of a child under 10/12, incest, and trafficking in a large commercial quantity of a drug of dependence. This involved reading the sentencing remarks for the particular cases and determining the ages of victims, the relationships between victims and offenders, or the quantities of drugs, depending on the baseline offence.

2.34   Snapshots for incest and sexual penetration of a child under 10/12 exclude cases for which sentencing remarks are unavailable. Snapshots for trafficking in a large commercial quantity of a drug of dependence include cases for which sentencing remarks are unavailable because the sentences imposed fall within statutory limits for the relevant offence and are assumed to have been recorded correctly.

2.35   For this report, charges for sexual penetration of a child under 10/12, incest, and trafficking in a large commercial quantity of a drug of dependence offences are included if the higher courts' returns record the relevant offence and sentencing remarks are unavailable.

3. Baseline current sentencing practices

3.1   This section of the report applies the counting rules set out in the Act (including the assumptions, as discussed above) to sentencing outcomes for the six baseline offences in the reference period.

3.2   Data are presented for each offence summarising:

- the overall sentencing patterns;
- the naturally occurring variations (in median, lowest value, and highest value) in charge outcomes over time, reflecting the variation in the severity of charges from one year to the next;
- the current sentencing practices according to the baseline counting rules and in comparison with previously published sentencing trends (as captured by median, minimum, and maximum sentence durations); and
- the impact of sample size on the measurement of these sentencing practices.

3.3   Two main types of figures are used to present these findings, both requiring some additional explanation to assist with interpretation. These are:

- box plots; and
- stacked bar figures.

3.4   Box plots display the minimum value, the range for the middle 50% of the values in the distribution, the median value, and the maximum value. Figure 1 shows a labelled example using data for charges of murder in 2012–13.

3.5   Figure 1 demonstrates that the 28 charge-level sentences imposed for murder in 2012–13 ranged from a minimum of 8 years to a maximum of life imprisonment, with 50% of the sentences falling between 17 years (25th percentile) and 22 years (75th percentile), and a median sentence length of 19 years and 6 months.

Figure 1:   Sample box plot showing 2012–13 murder charges
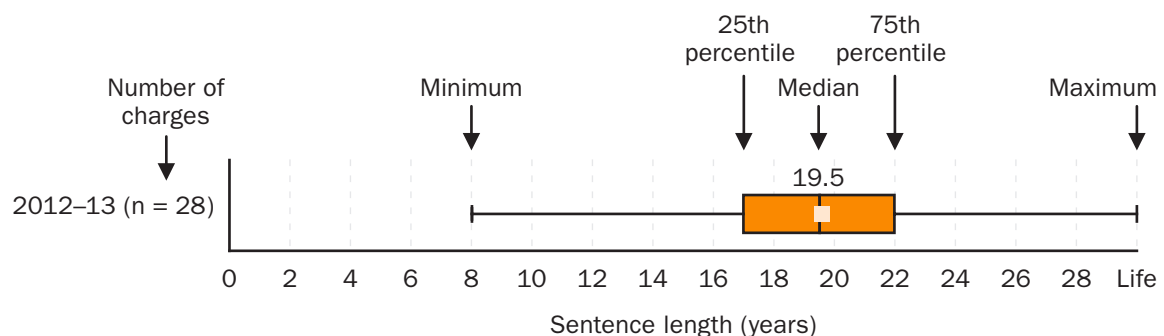
3.6   Stacked bar figures display the percentage of charge-level sentences imposed by sentence length (in years) (see Figure 2 for a labelled example using 2011–12 to 2012–13 murder charge data). The intent here is to simultaneously demonstrate the relative sentencing frequencies across the whole reference period, while also displaying the relative within-year sentencing patterns.

3.7   Figure 2 displays the overall sentencing patterns for the 52 murder charges sentenced between 2011–12 and 2012–13, with a shortest sentence of between 8 and 9 years (2% of all charge-level sentences, rounded to 0 decimal places) and a longest sentence of life imprisonment (10% of all charge-level sentences). The percentage of charge-level sentences can be converted to the number of charges by multiplying the total number of charges (see the figure title) by the percentage as a decimal: for example, $52 \times 0.02 = 1$ charge. The most frequently imposed sentence overall was between 20 and 21 years (17% of all charge-level sentences). In addition to this, the shortest sentence imposed in 2012–13 was between 8 and 9 years, while the shortest sentence imposed in 2011–12 was between 15 and 16 years. Life sentences were imposed in both years.

3.8   These box plots and stacked bar figures are used throughout the remainder of the report, with figures displaying five years of data in all cases.

3.9   The figures throughout this report have been designed with consistent axis scales and labels for ease of comparison between the six baseline offences.

Figure 2: Sample stacked bar figure showing 2011–12 to 2012–13 murder charges (%) by sentence length (years) (n = 52)
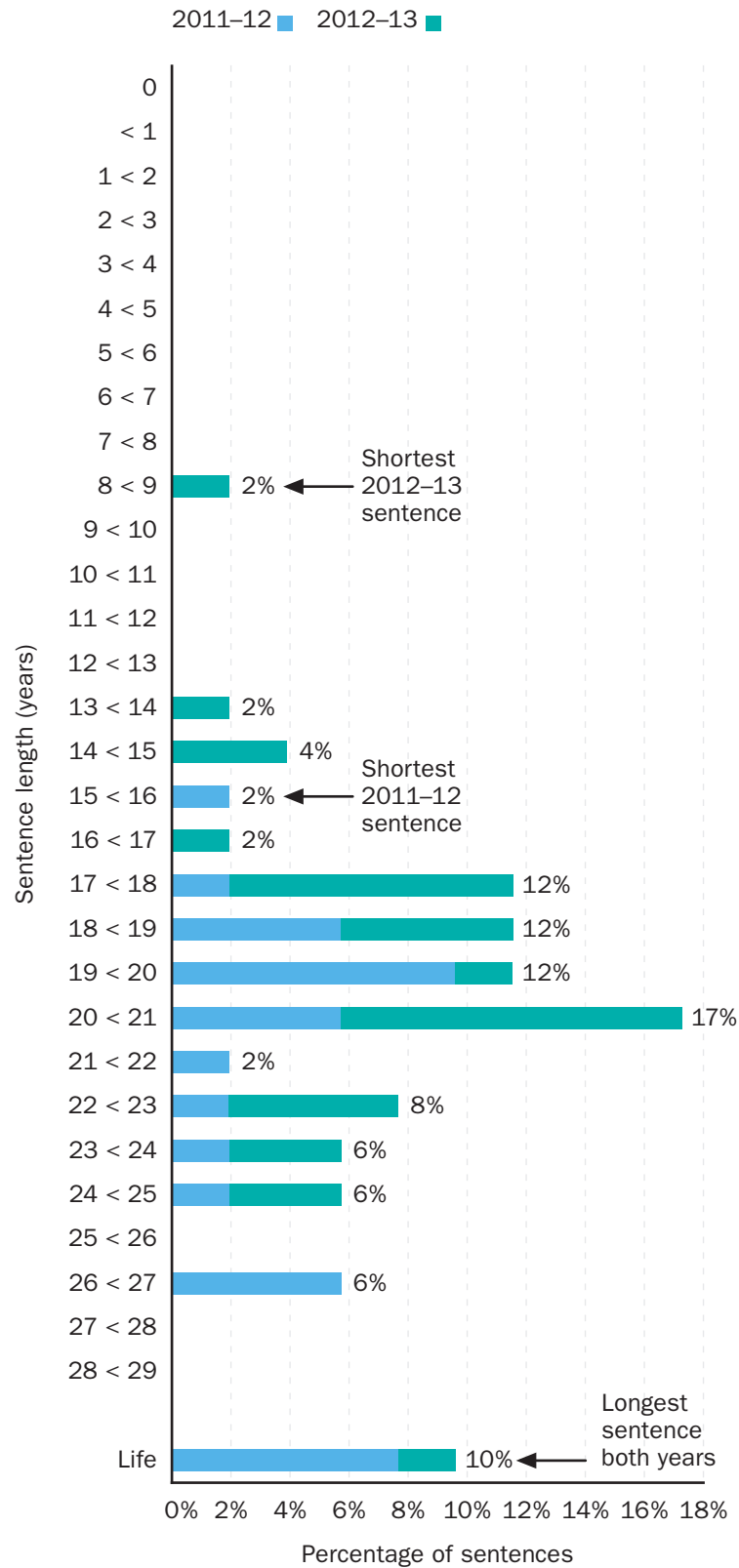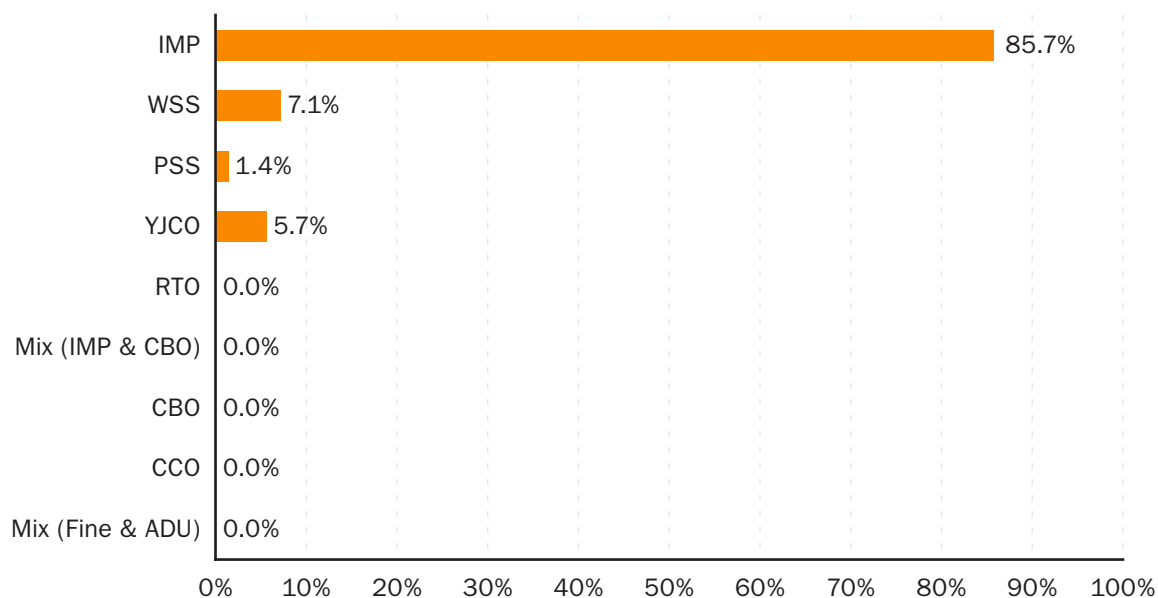
Culpable driving causing death

### Overall sentencing patterns for culpable driving causing death

3.10   During the reference period, 70 charges of culpable driving causing death were sentenced in Victoria. Figure 3 displays the relative sentences imposed for these charges. This demonstrates that 86% of culpable driving causing death charges were sentenced to a period of imprisonment.

3.11   Figure 4 displays the distribution of sentence lengths for culpable driving causing death charges, calculated using the baseline counting rules. Overall, 5 charges (7%) resulted in sentence lengths of 0 according to the baseline counting rules. During this period, the longest sentence imposed for a charge of culpable driving causing death was 10 years and 6 months (1 charge).

Figure 3: **Culpable driving causing death charges (%) by sentence type, 2008–09 to 2012–13 (n = 70 charges)**[7]
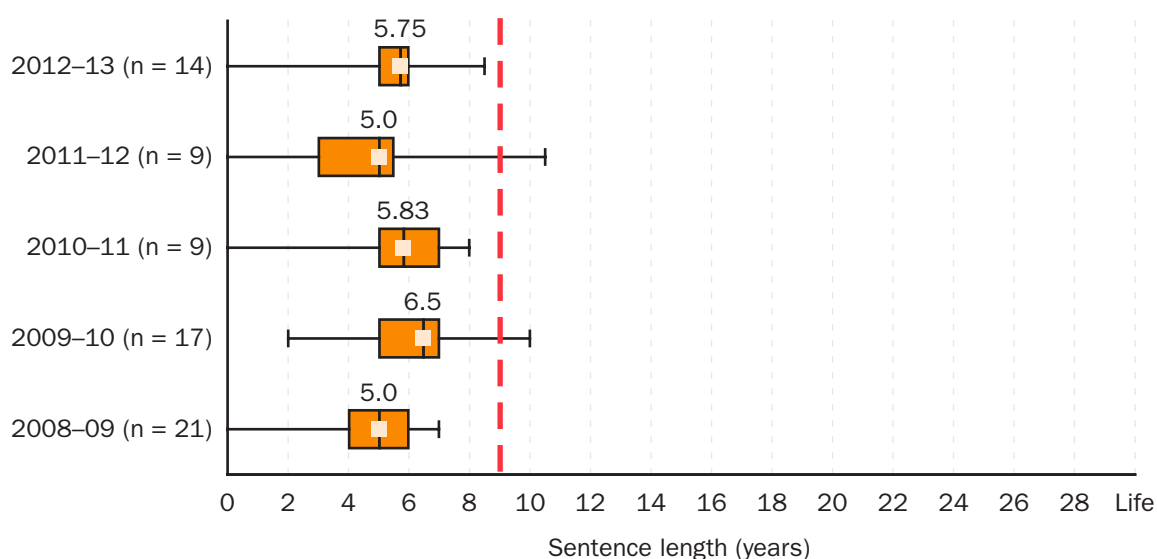

Figure 4: Culpable driving causing death charges (%) by sentence length (years) under baseline counting rules, 2008–09 to 2012–13 (n = 70 charges)
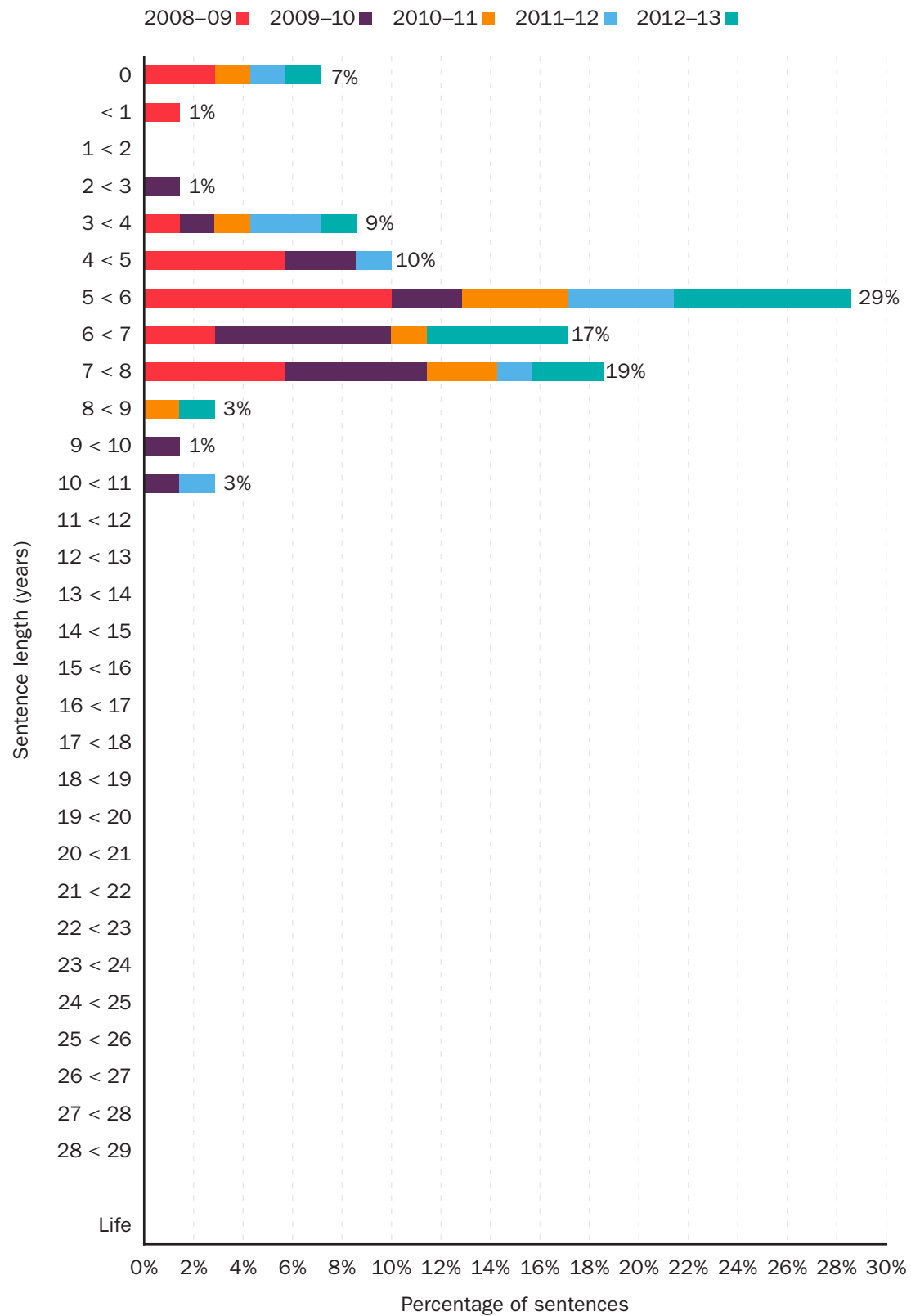
Variation in sentencing outcomes for culpable driving causing death by year

3.12   Figure 5 displays box plots of the relative distributions of sentence durations imposed for culpable driving causing death across the five-year reference period. Using the baseline counting rules, the median sentence ranged from 5 years to 6 years and 6 months, and in every year except 2009–10 there were sentences imposed that produced a 0-value under the baseline counting rules. The broken red vertical line displays the 9 year baseline sentence.

Figure 5:   Box plots (minimum, median, and inter-quartile range) for culpable driving causing death charges sentence lengths (years) under baseline counting rules, 2008–09 to 2012–13 (n = 70 charges)

Current sentencing practices for culpable driving causing death

3.13   Table 5 displays the overall current sentencing practices for culpable driving causing death. This table demonstrates the published median, minimum, and maximum sentences from the Council's Sentencing Snapshots series (see discussion of the counting rules for these publications in Table 4) along with the same values according to the baseline counting rules.

Table 5:   Current sentencing practices for culpable driving causing death as a function of Snapshot and baseline counting rules

Counting rule	Counting level	Time period	Count	Minimum	Median	Maximum
Snapshot	Charge	2007–08 to 2011–12	72 charges	2 years –	5 years 6 months	10 years 6 months
	TES	2007–08 to 2011–12	64 cases	3 years 6 months	6 years –	13 years –
Baseline	Charge	2008–09 to 2012–13	70 charges	0 years –	5 years 6 months	10 years 6 months

3.14   Table 5 reflects the relationship between cases and charges, while also demonstrating the high-level influence of the variation in counting rules across these methodologies. From the Snapshots, for the 64 cases receiving a total effective sentence of imprisonment for culpable driving causing death, the median sentence is 6 years, which compares with the charge-level median of 5 years and 6 months. Using the baseline counting rules, the median charge-level sentence is 5 years and 6 months.

3.15   The current median sentence for culpable driving causing death calculated using the baseline median methodology is 3 years and 6 months lower than the baseline set under the Act (see Table 3 and Figure 5).

Measuring sentencing trends for culpable driving causing death as a function of the number of charges examined

3.16   Figure 6 displays the relative sentencing trends for culpable driving causing death as a function of the number of charges examined. Descriptive statistics (for example, medians and ranges) are influenced by the number of charges examined, with a small number of charges having a greater risk of large variability.

3.17   Working backwards in time from the most recent year of available data, Figure 6 demonstrates the descriptive statistics for the sentencing patterns for culpable driving causing death as a function of the number of charges examined in 1 year (2012–13, n = 14 charges), 2 years, 3 years, 4 years, and 5 years (2008–09 to 2012–13, n = 70 charges).

3.18   When analysed in this way, the median alters as the number of charges being examined increases from 14 (2012–13, median = 5 years and 9 months) to 23 (2011–12 to 2012–13, median = 5 years and 6 months). The median continues to vary as the number of cases being examined increases. Regardless of the number of charges examined, the minimum sentence value (according to the baseline counting rule) is constant throughout the reference period.

Figure 6:   Box plots (minimum, median, and inter-quartile range) for culpable driving causing death charges sentence lengths (years) under baseline counting rules as a function of the number of charges being examined
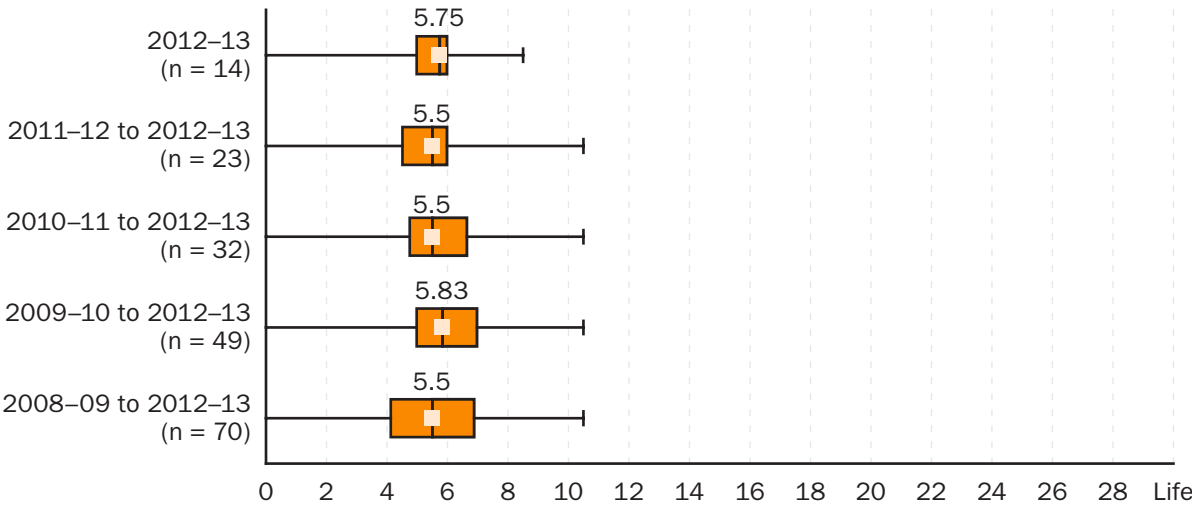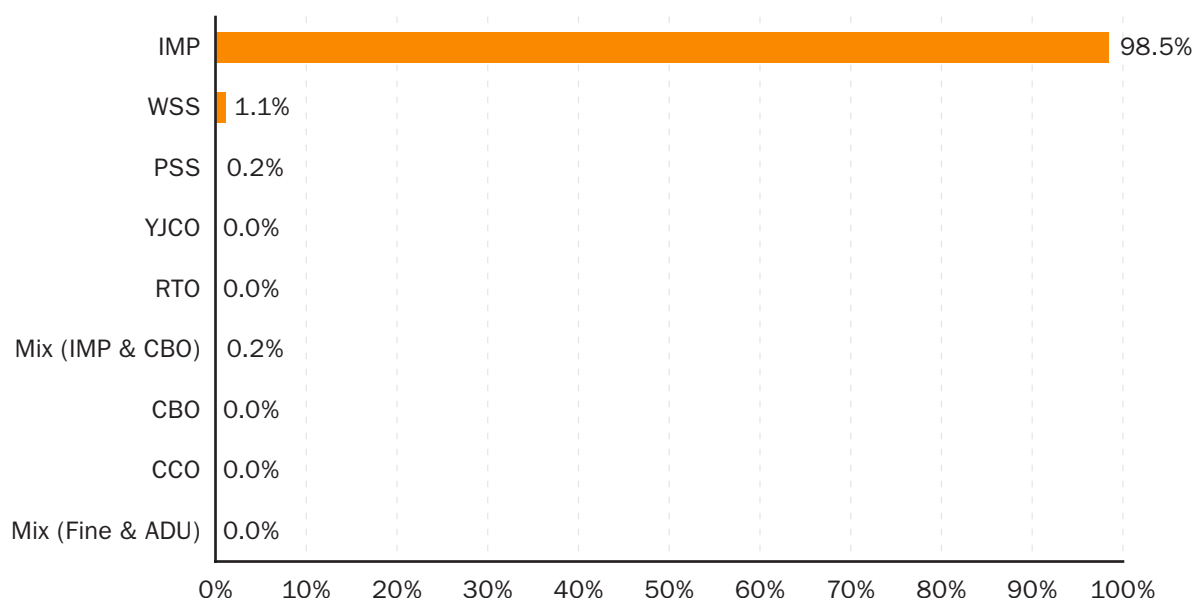
Incest

Overall sentencing patterns for incest

3.19   During the reference period, 617 charges of incest were sentenced in Victoria.[8] Figure 7 displays the relative sentences imposed for these charges. This demonstrates that 98% of incest charges were sentenced to a period of imprisonment.

3.20   Figure 8 displays the distribution of sentence lengths for incest charges, calculated using the baseline counting rules. Overall, 4 charges (1.1%) resulted in sentence lengths of 0 according to the baseline counting rules. During this period, the longest sentence imposed for a charge of incest was 12 years (1 charge).

Figure 7: **Incest charges (%) by sentence type, 2008–09 to 2012–13 (n = 617 charges)[9]**

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8.   Of the 747 charges of incest (statutory references 6231.44.1, 6231.44.2, 6231.44.3, 6231.44.4) recorded between 2008–09 and 2012–13, 617 of these were found to be for incest by parent/step-parent/de facto (with other offender relationships and missing records making up the remainder of charges). For the 617 relevant charges, 73 (11.8%) sentencing remarks were unavailable for crosschecking. Despite this, all 617 relevant charges were retained for analysis, as per the earlier discussion of data caveats.

9.   See Abbreviations for details about each sentence type.

Figure 8: Incest charges (%) by sentence length (years) under baseline counting rules, 2008–09 to 2012–13 (n = 617 charges)
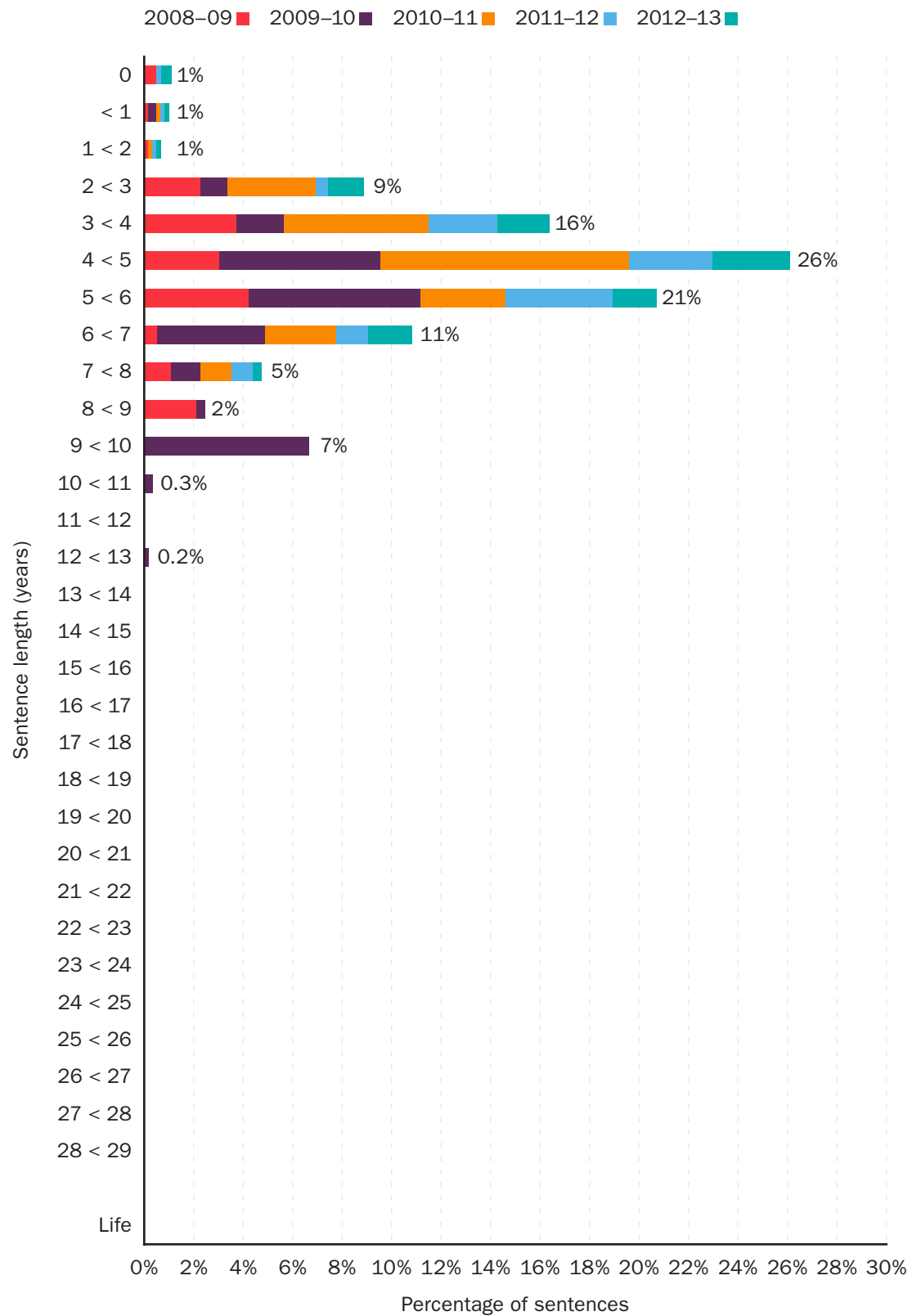
Variation in sentencing outcomes for incest by year

3.21   Figure 9 displays box plots of the relative distributions of sentence durations imposed for incest across the five-year reference period. Using the baseline counting rules, the median sentence ranged from 4 years to 5 years, and in three of the five years there were sentences imposed that produced a 0-value under the baseline counting rules. The broken red vertical line displays the 10 year baseline sentence.

Figure 9:   Box plots (minimum, median, and inter-quartile range) for incest charges sentence lengths (years) under baseline counting rules, 2008–09 to 2012–13 (n = 617 charges)
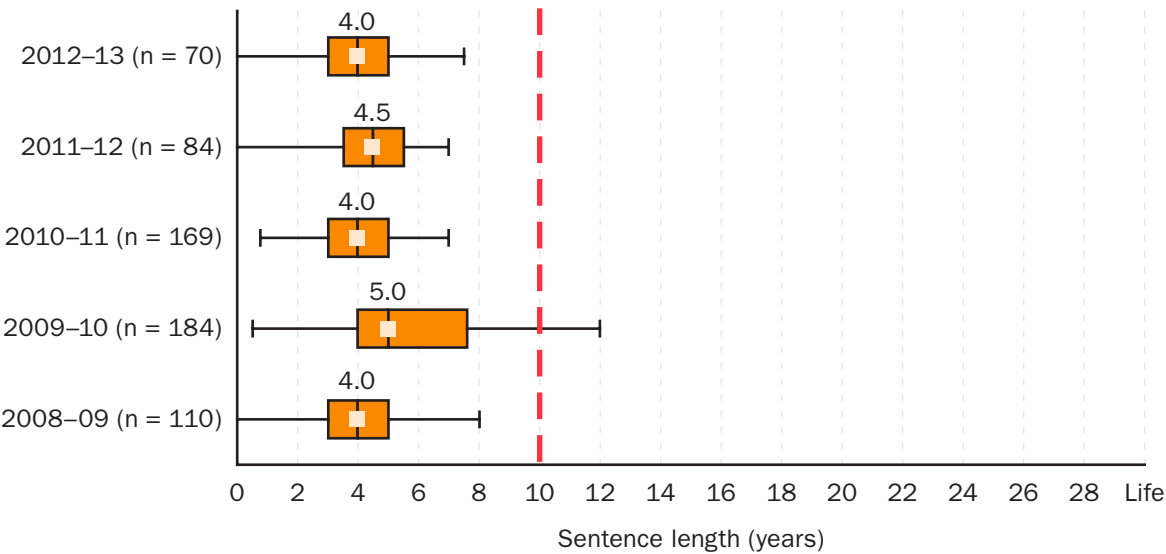
Current sentencing practices for incest

3.22   Table 6 displays the overall current sentencing practices for incest. This table demonstrates the published median, minimum, and maximum sentences from the Council's Sentencing Snapshots series (see discussion of the counting rules for these publications in Table 4) along with the same values according to the baseline counting rules.

**Table 6:**   Current sentencing practices for incest as a function of Snapshot and baseline counting rules

Counting rule	Counting level	Time period	Count	Minimum	Median	Maximum
Snapshot	Charge	2008–09 to 2012–13	137 PPO	− 3 months	4 years 9 months	12 years −
	TES	2008–09 to 2012–13	137 cases	− 3 months	7 years 6 months	22 years 5 months
Baseline	Charge	2008–09 to 2012–13	617 charges	− 0 months	4 years −	12 years −

3.23   Table 6 reflects the relationship between cases and charges, while also demonstrating the high-level influence of the variation in counting rules across these methodologies. From the Snapshots, for the 137 cases receiving a total effective sentence of imprisonment for incest, the median sentence is 7 years and 6 months, which compares with the PPO charge-level median of 4 years and 9 months. Using the baseline counting rules, the median charge-level sentence is 4 years.

3.24   The current median sentence for incest calculated using the baseline median methodology is 6 years lower than the baseline set under the Act (see Table 3 and Figure 9).

Measuring sentencing trends for incest as a function of the number of charges examined

3.25   Figure 10 displays the relative sentencing trends for incest as a function of the number of charges examined. Descriptive statistics (for example, medians and ranges) are influenced by the number of charges examined, with a small number of charges having a greater risk of large variability.

3.26   Working backwards in time from the most recent year of available data, Figure 10 demonstrates the descriptive statistics for the sentencing patterns for incest as a function of the number of charges examined in 1 year (2012–13, n = 70 charges), 2 years, 3 years, 4 years, and 5 years (2008–09 to 2012–13, n = 617 charges).

3.27   When analysed in this way, the median alters as the number of charges being examined increases from 323 (2010–11 to 2012–13, median = 4 years) to 507 (2009–10 to 2012–13, median = 4 years and 6 months), and then reduces again when the number of charges increases to 617 (for the full reference period, median = 4 years). The minimum sentence (according to the baseline counting rule) is constant throughout the reference period. The maximum sentence increases as the number of charges examined increases from 323 to 507.

Figure 10: Box plots (minimum, median, and inter-quartile range) for incest charges sentence lengths (years) under baseline counting rules as a function of the number of charges being examined
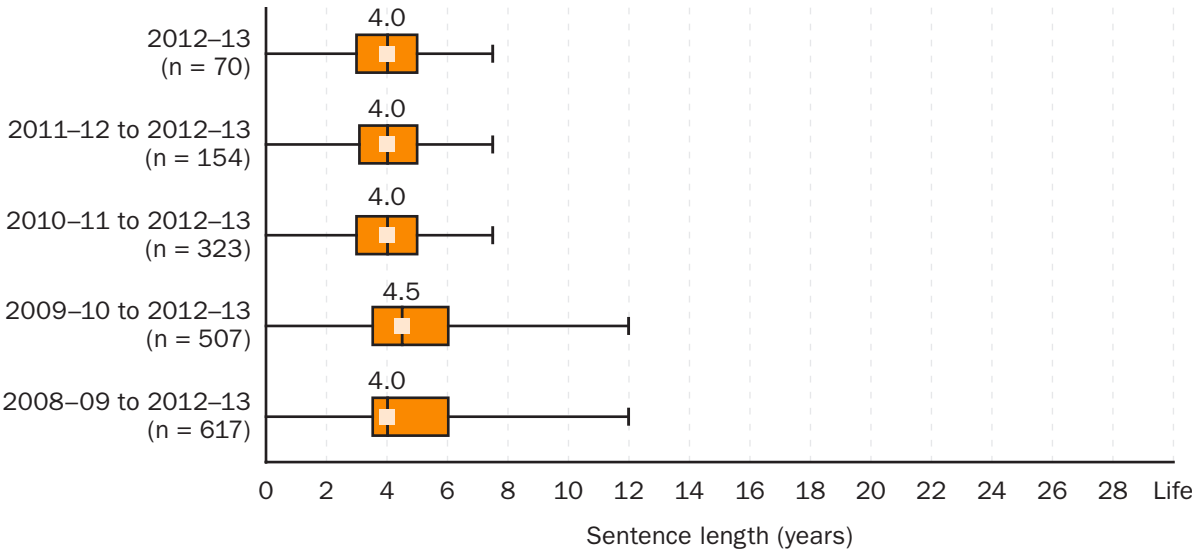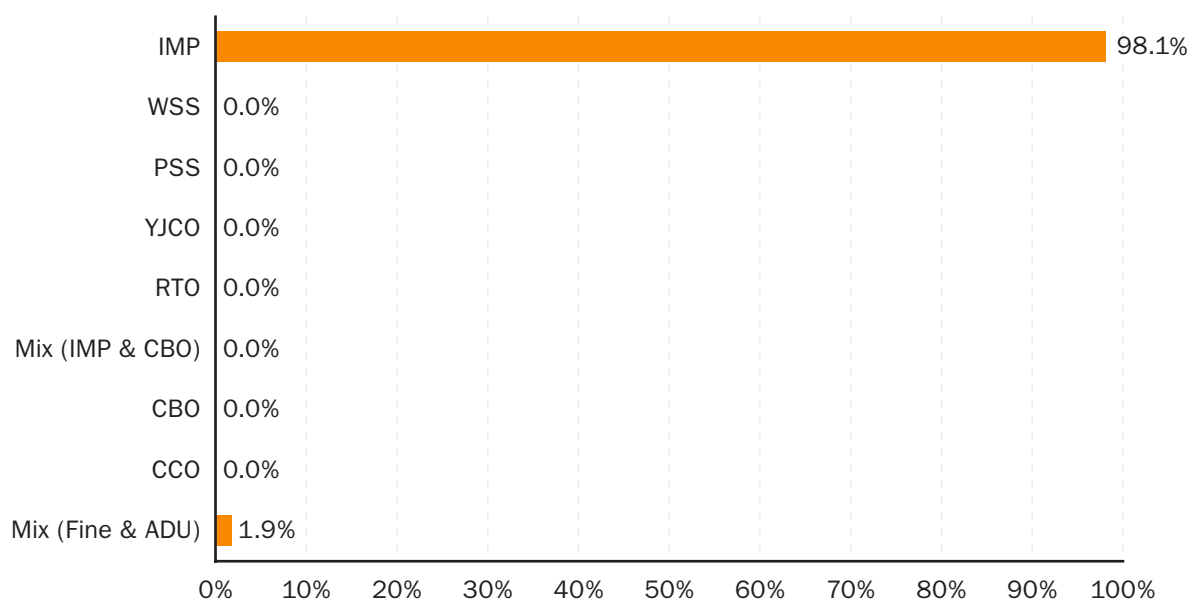
Persistent sexual abuse of a child under 16

Overall sentencing patterns for persistent sexual abuse of a child under 16

3.28   During the reference period, 53 charges of persistent sexual abuse of a child under 16 were sentenced in Victoria.[10] Figure 11 displays the relative sentences imposed for these charges. This demonstrates that 98% of persistent sexual abuse of a child under 16 charges were sentenced to a period of imprisonment.

3.29   Figure 12 displays the distribution of sentence lengths for persistent sexual abuse of a child under 16 charges, calculated using the baseline counting rules. Overall, 1 charge (1.9%) resulted in sentence lengths of 0 according to the baseline counting rules. During this period, the longest sentence imposed for a charge of persistent sexual abuse of a child under 16 was 12 years (2 charges).
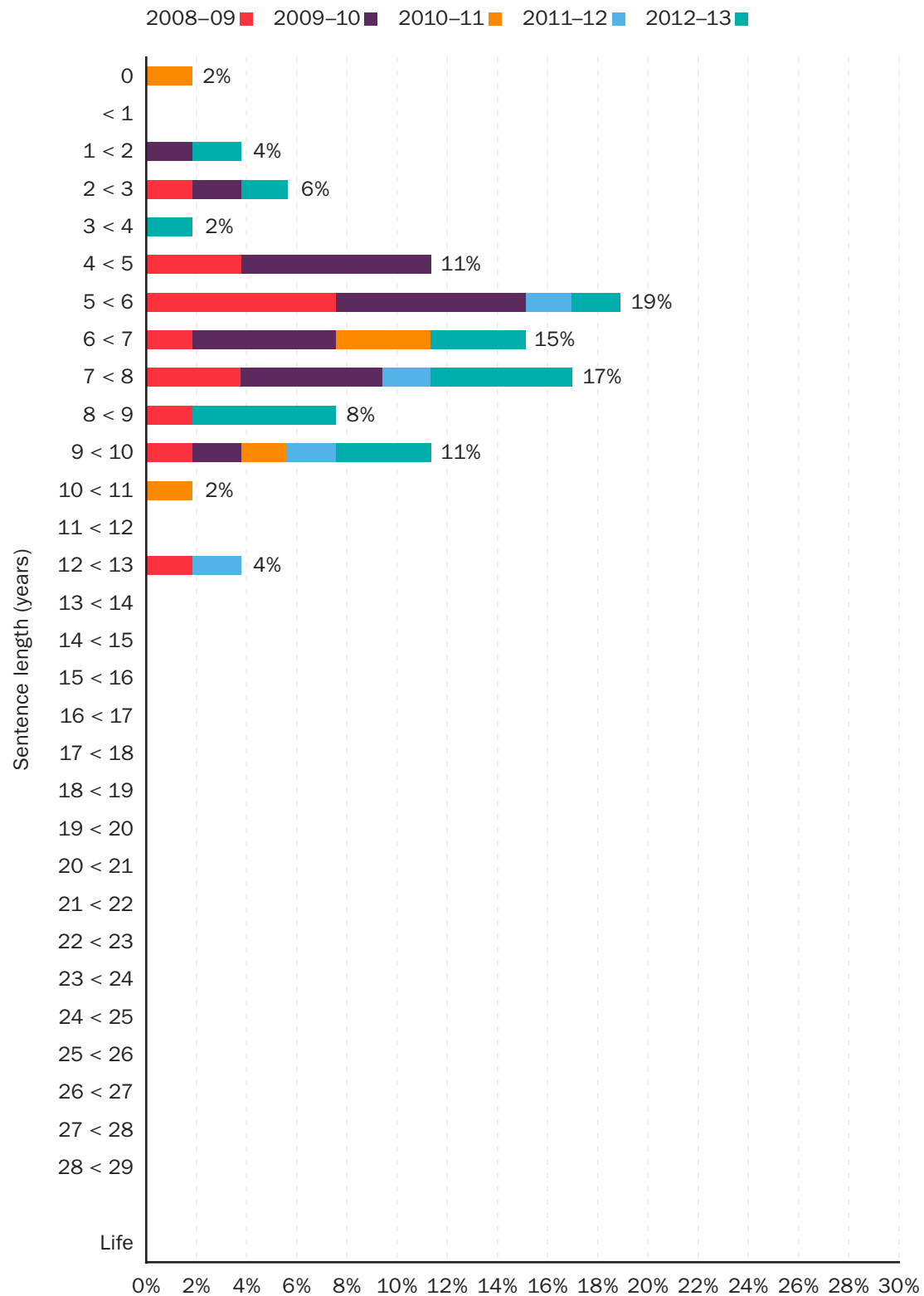
Figure 11: **Persistent sexual abuse of a child under 16 charges (%) by sentence type, 2008–09 to 2012–13 (n = 53 charges)[11]**
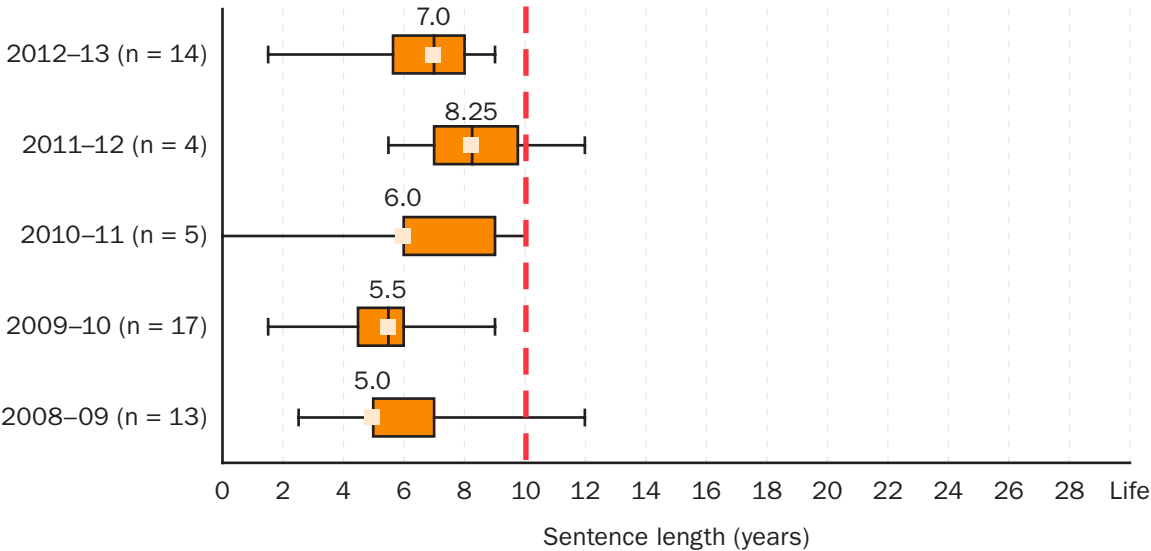

Figure 12: Persistent sexual abuse of a child under 16 charges (%) by sentence length (years) under baseline counting rules, 2008–09 to 2012–13 (n = 53 charges)

Variation in sentencing outcomes for persistent sexual abuse of a child under 16 by year

3.30   Figure 13 displays box plots of the relative distributions of sentence durations imposed for persistent sexual abuse of a child under 16 across the five-year reference period. Using the baseline counting rules, the median sentence ranged from 5 years to 8 years and 3 months, and in one of the five years there was a sentence imposed that produced a 0-value under the baseline counting rules. The broken red vertical line displays the 10 year baseline sentence.

Figure 13: Box plots (minimum, median, and inter-quartile range) for persistent sexual abuse of a child under 16 charges sentence lengths (years) under baseline counting rules, 2008–09 to 2012–13 (n = 53 charges)

Current sentencing practices for persistent sexual abuse of a child under 16

3.31   Table 7 displays the overall current sentencing practices for persistent sexual abuse of a child under 16. This table demonstrates the published median, minimum, and maximum sentences from the Council's Sentencing Snapshots series (see discussion of the counting rules for these publications in Table 4) along with the same values according to the baseline counting rules.

Table 7: Current sentencing practices for persistent sexual abuse of a child under 16 as a function of Snapshot and baseline counting rules

Counting rule	Counting level	Time period	Count	Minimum	Median	Maximum
Snapshot	Charge	2007–08 to 2011–12	53 charges	1 year 6 months	6 years −	12 years −
	TES	2007–08 to 2011–12	39 cases	2 years 6 months	7 years −	14 years −
Baseline	Charge	2008–09 to 2012–13	53 charges	− 0 months	6 years −	12 years −

3.32   Table 7 reflects the relationship between cases and charges, while also demonstrating the high-level influence of the variation in counting rules across these methodologies. From the Snapshots, for the 39 cases receiving a total effective sentence of imprisonment for persistent sexual abuse of a child under 16, the median sentence is 7 years, which compares with the charge-level median of 6 years. Using the baseline counting rules, the median charge-level sentence is 6 years.

3.33   The current median sentence for persistent sexual abuse of a child under 16 calculated using the baseline median methodology is 4 years lower than the baseline set under the Act (see Table 3 and Figure 13).

Measuring sentencing trends for persistent sexual abuse of a child under 16 as a function of the number of charges examined

3.34   Figure 14 displays the relative sentencing trends for persistent sexual abuse of a child under 16 as a function of the number of cases examined. Descriptive statistics (for example, medians and ranges) are influenced by the number of charges examined, with a small number of charges having a greater risk of large variability.

3.35   Working backwards in time from the most recent year of available data, Figure 14 demonstrates the descriptive statistics for the sentencing patterns for persistent sexual abuse of a child under 16 as a function of the number of charges examined in 1 year (2012–13, n = 14 charges), 2 years, 3 years, 4 years, and 5 years (2008–09 to 2012–13, n = 53 charges).

3.36   When analysed in this way, the median alters as the number of charges being examined increases from 14 (2012–13, median = 7 years) to 40 (2009–10 to 2012–13, median = 6 years). The increased number of charges also results in a reduction in the shortest imposed sentence (from 18 to 23 charges) and an increase in the longest sentence for these charges (from 14 to 18 charges).

Figure 14: Box plots (minimum, median, and inter-quartile range) for persistent sexual abuse of a child under 16 charges sentence lengths (years) under baseline counting rules as a function of the number of charges being examined
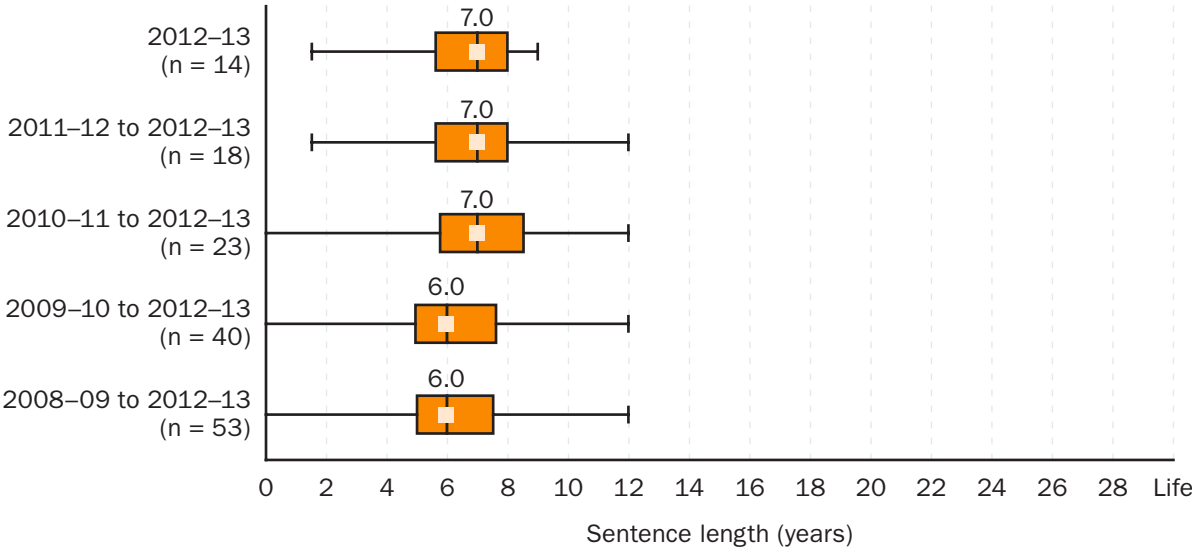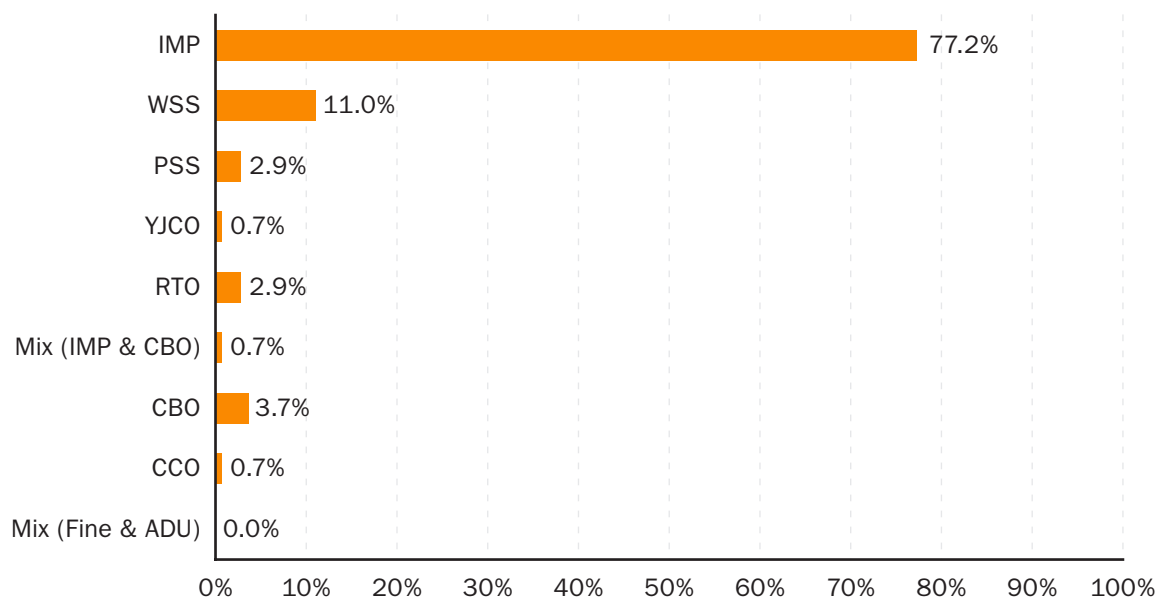
Sexual penetration of a child under 12

Overall sentencing patterns for sexual penetration of a child under 12

3.37   During the reference period, 136 charges of sexual penetration of a child under 12 were sentenced in Victoria.[12] Figure 15 displays the relative sentences imposed for these charges. This demonstrates that 77% of sexual penetration of a child under 12 charges were sentenced to a period of imprisonment.

3.38   Figure 16 displays the distribution of sentence lengths imposed for sexual penetration of a child under 12, calculated using the baseline counting rules. Overall, 20 charges (14.7%) resulted in a sentence length of 0 according to the baseline counting rules. During this period, the longest sentence imposed for a charge of sexual penetration of a child under 12 was 7 years and 6 months (3 charges).
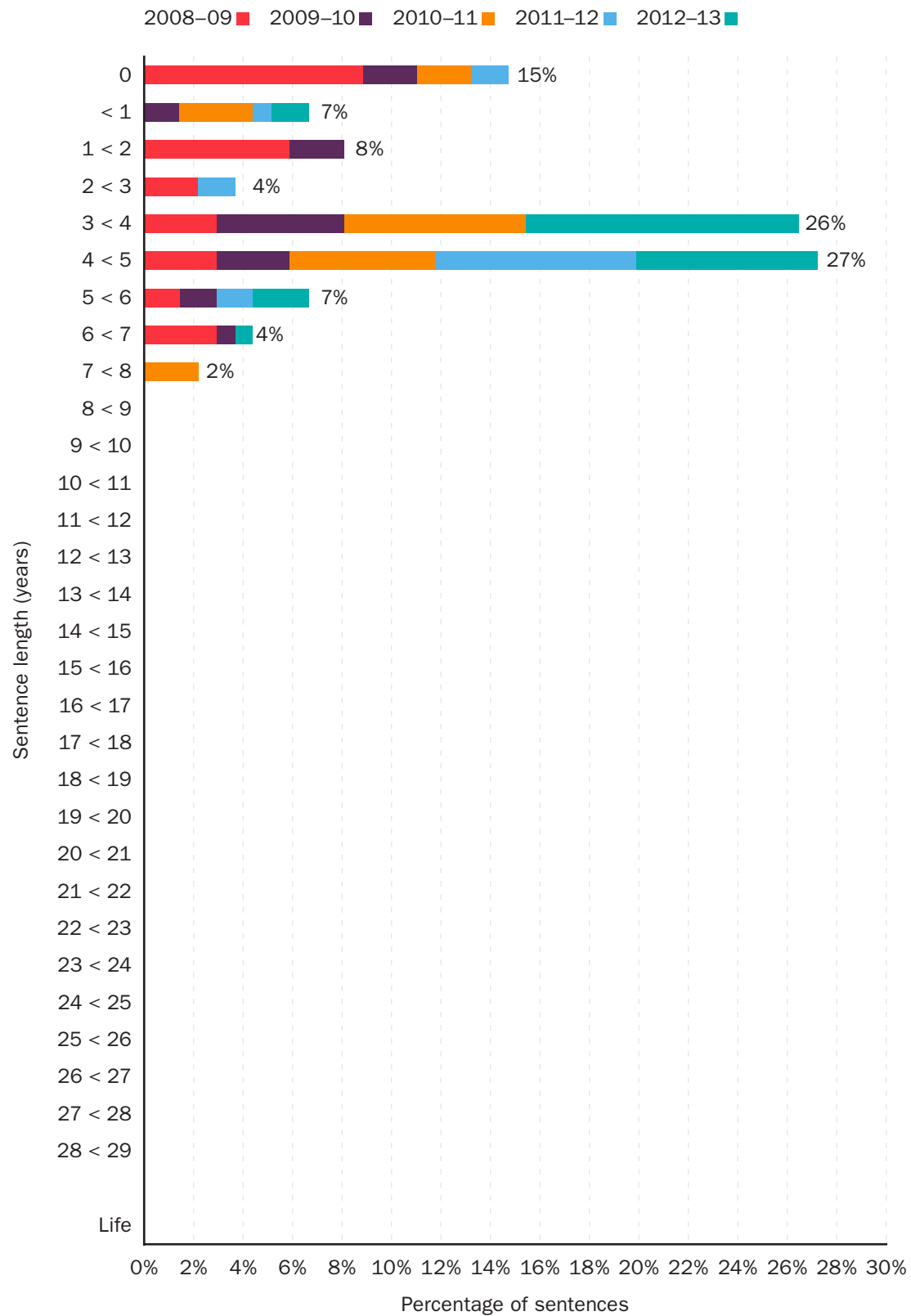
Figure 15: Sexual penetration of a child under 12 charges (%) by sentence type, 2008–09 to 2012–13 (n = 136 charges)[13]
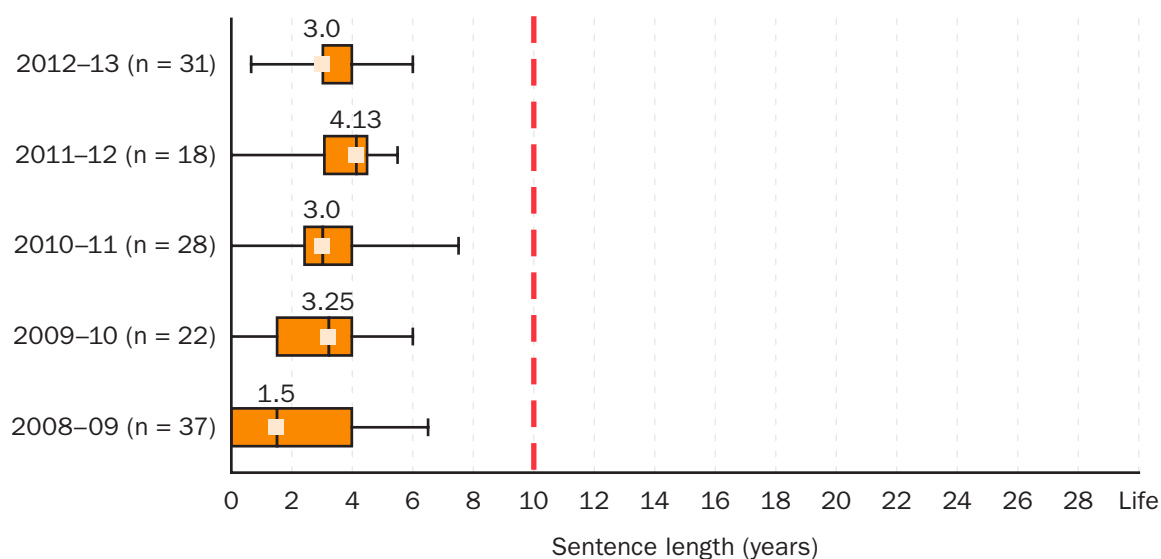
Figure 16: Sexual penetration of a child under 12 charges (%) by sentence length (years) under baseline counting rules, 2008–09 to 2012–13 (n = 136 charges)

Variation in sentencing outcomes for sexual penetration of a child under 12 by year

3.39   Figure 17 displays box plots of the relative distributions of sentence durations imposed for sexual penetration of a child under 12 across the five-year reference period. Using the baseline counting rules, the median sentence ranged from 1 year and 6 months to 4 years and 1.5 months, and in four of the five years there was a sentence imposed that produced a 0-value under the baseline counting rules. The broken red vertical line displays the 10 year baseline sentence.

Figure 17: Box plots (minimum, median, and inter-quartile range) for sexual penetration of a child under 12 charges sentence lengths (years) under baseline counting rules, 2008–09 to 2012–13 (n = 136 charges)

Current sentencing practices for sexual penetration of a child under 12

3.40   Table 8 displays the overall current sentencing practices for sexual penetration of a child under 12. This table demonstrates the published median, minimum, and maximum sentences from the Council's Sentencing Snapshots series (see discussion of the counting rules for these publications in Table 4) along with the same values according to the baseline counting rules.

Table 8: Current sentencing practices for sexual penetration of a child under 12 as a function of Snapshot and baseline counting rules

Counting rule	Counting level	Time period	Count	Minimum	Median	Maximum
Snapshot	Charge	2007–08 to 2011–12	55 PPO	− 3 months	4 years −	7 years 6 months
	TES	2007–08 to 2011–12	55 cases	− 3 months	5 years 6 months	18 years −
Baseline	Charge	2008–09 to 2012–13	136 charges	− 0 months	3 years −	7 years 6 months

3.41   Table 8 reflects the relationship between cases and charges, while also demonstrating the high-level influence of the variation in counting rules across these methodologies. From the Snapshots, for the 55 cases receiving a total effective sentence of imprisonment for sexual penetration of a child under 12, the median sentence is 5 years and 6 months, which compares with the PPO charge-level median of 4 years. According to the baseline counting rules, the median charge-level sentence is 3 years.

3.42   The current median for sexual penetration of a child under 12 calculated using the baseline median methodology is 7 years lower than the baseline set under the Act (see Table 3 and Figure 17).

Measuring sentencing trends for sexual penetration of a child under 12 as a function of the number of charges examined

3.43   Figure 18 displays the relative sentencing trends for sexual penetration of a child under 12 as a function of the number of charges examined. Descriptive statistics (for example, medians and ranges) are influenced by the number of charges examined, with a small number of charges having a greater risk of large variability.

3.44   Working backwards in time from the most recent year of available data, Figure 18 demonstrates the descriptive statistics for the sentencing patterns for sexual penetration of a child under 12 as a function of the number of charges examined in 1 year (2012–13, n = 31 charges), 2 years, 3 years, 4 years, and 5 years (2008–09 to 2012–13, n = 136 charges).

3.45   When analysed in this way, the median alters as the number of charges being examined increases from 31 (2012–13, median = 3 years) to 49 (2011–12 to 2012–13, median = 4 years), and then again when the number of charges is 77 (2010–11 to 2012–13, median = 3 years and 6 months), and finally changes again when the full reference period is considered (median = 3 years). The increased number of charges also results in a reduction to the shortest sentence imposed (reducing to a 0-value in 2011–12) and an increase in the longest sentence for these charges (increasing to 7 years and 6 months in 2010–11).

Figure 18: Box plots (minimum, median, and inter-quartile range) for sexual penetration of a child under 12 charges sentence lengths (years) under baseline counting rules as a function of the number of charges being examined
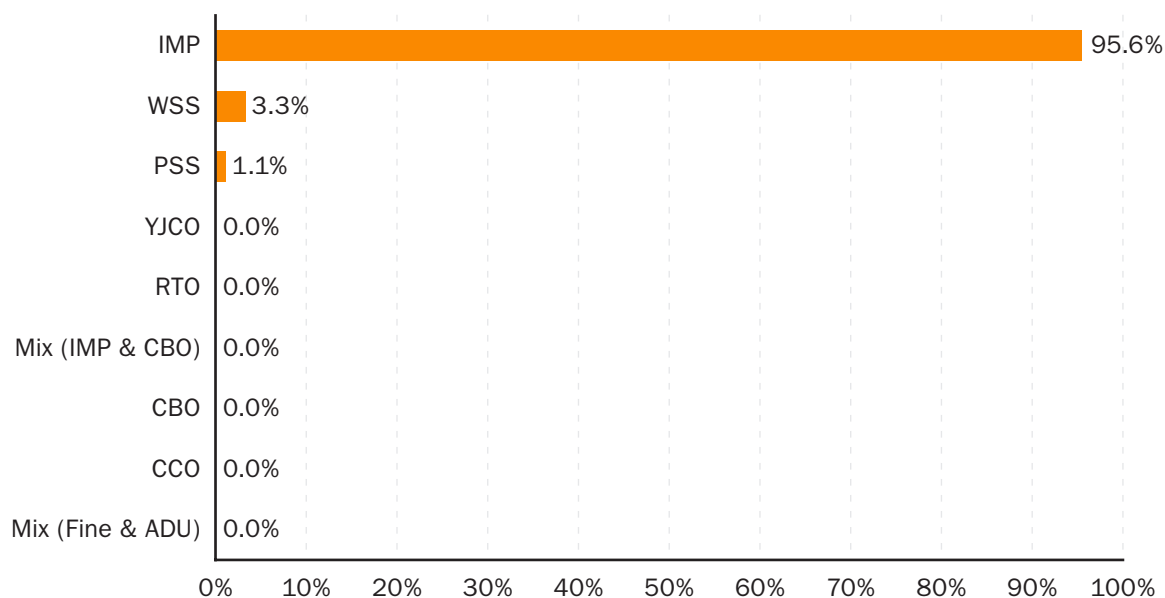

Sentence length (years)
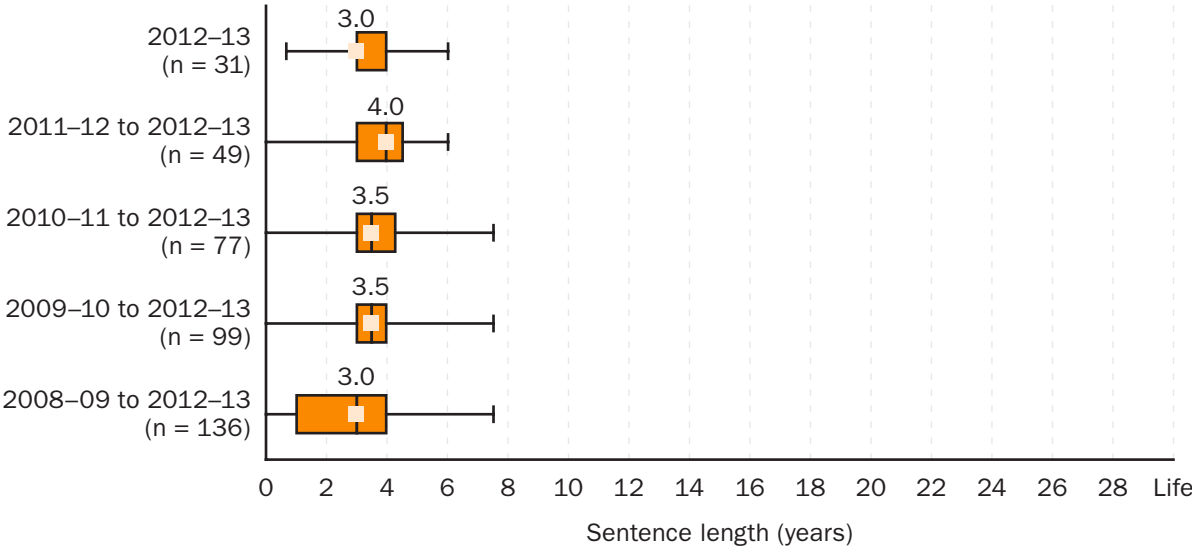
Trafficking in a large commercial quantity of a drug of dependence

Overall sentencing patterns for trafficking in a large commercial quantity of a drug of dependence

3.46   During the reference period, 90 charges of trafficking in a large commercial quantity of a drug of dependence were sentenced in Victoria.[14] Figure 19 displays the relative sentences imposed for these charges. This demonstrates that 96% of trafficking in a large commercial quantity of a drug of dependence charges were sentenced to a period of imprisonment.

3.47   Figure 20 displays the distribution of sentence lengths for trafficking in a large commercial quantity of a drug of dependence charges, calculated using the baseline counting rules. Overall, 3 charges (3.3%) resulted in sentence lengths of 0 according to the baseline counting rules. During this period, the longest sentence imposed for a charge of trafficking in a large commercial quantity of a drug of dependence was 20 years (1 charge).
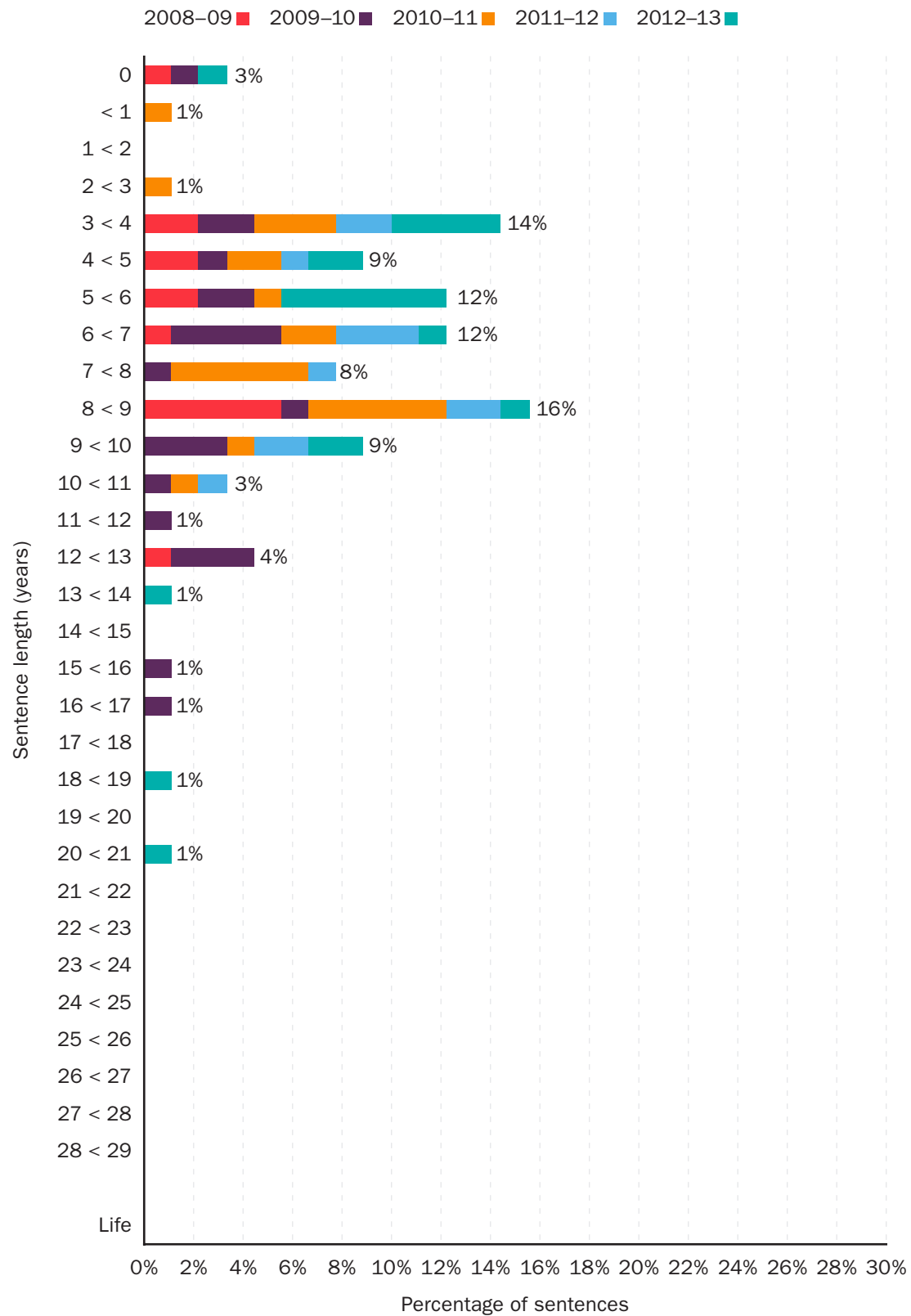
Figure 19: **Trafficking in a large commercial quantity of a drug of dependence charges (%) by sentence type, 2008–09 to 2012–13 (n = 90 charges)[15]**
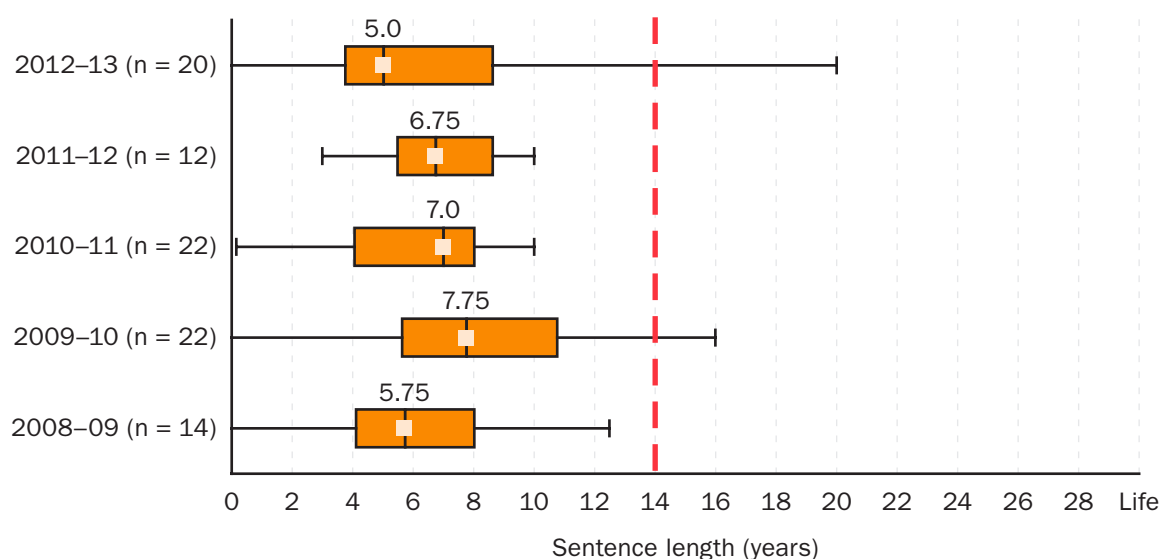

Figure 20: Trafficking in a large commercial quantity of a drug of dependence charges (%) by sentence length (years) under baseline counting rules, 2008–09 to 2012–13 (n = 90 charges)

Variation in sentencing outcomes for trafficking in a large commercial quantity of a drug of dependence by year

3.48   Figure 21 displays box plots of the relative distributions of sentence durations imposed for trafficking in a large commercial quantity of a drug of dependence across the five-year reference period. Using the baseline counting rules, the median sentence ranged from 5 years to 7 years and 9 months, and in three of the five years there were sentences imposed that produced a 0-value under the baseline counting rules. The broken red vertical line displays the 14 year baseline sentence.

Figure 21: Box plots (minimum, median, and inter-quartile range) for trafficking in a large commercial quantity of a drug of dependence charges sentence lengths (years) under baseline counting rules, 2008–09 to 2012–13 (n = 90 charges)

Current sentencing practices for trafficking in a large commercial quantity of a drug of dependence

3.49   Table 9 displays the overall current sentencing practices for trafficking in a large commercial quantity of a drug of dependence. This table demonstrates the published median, minimum, and maximum sentences from the Council's Sentencing Snapshots series (see discussion of the counting rules for these publications in Table 4) along with the same values according to the baseline counting rules.

Table 9:   Current sentencing practices for trafficking in a large commercial quantity of a drug of dependence as a function of Snapshot and baseline counting rules

Counting rule	Counting level	Time period	Count	Minimum	Median	Maximum
Snapshot	Charge	2008–09 to 2012–13	77 PPO	3 years –	7 years –	20 years –
	TES	2008–09 to 2012–13	77 cases	3 years –	8 years –	26 years –
Baseline	Charge	2008–09 to 2012–13	90 charges	– 0 months	6 years 6 months	20 years –

3.50   Table 9 reflects the relationship between cases and charges, while also demonstrating the high-level influence of the variation in counting rules across these methodologies. From the Snapshots, for the 77 cases receiving a total effective sentence of imprisonment for trafficking in a large commercial quantity of a drug of dependence, the median sentence is 8 years, which compares with the PPO charge-level median of 7 years. According to the baseline counting rules, the median charge-level sentence is 6 years and 6 months.

3.51   The current median sentence for trafficking in a large commercial quantity of a drug of dependence calculated using the baseline median methodology is 7 years and 6 months lower than the baseline set under the Act (see Table 3 and Figure 21).

Measuring sentencing trends for trafficking in a large commercial quantity of a drug of dependence as a function of the number of charges examined

3.52   Figure 22 displays the relative sentencing trends for trafficking in a large commercial quantity of a drug of dependence as a function of the number of charges being examined. Descriptive statistics (for example, medians and ranges) are influenced by the number of charges examined, with a small number of charges having a greater risk of large variability.

3.53   Working backwards in time from the most recent year of available data, Figure 22 demonstrates the descriptive statistics for the sentencing patterns for trafficking in a large commercial quantity of a drug of dependence as a function of the number of charges examined in 1 year (2012–13, n = 20 charges), 2 years, 3 years, 4 years, and 5 years (2008–09 to 2012–13, n = 90 charges).

3.54   When analysed in this way, the median alters as the number of charges being examined increases from 20 (2012–13, median = 5 years) to 32 (2011–12 to 2012–13, median = 5 years and 9 months) to 54 (2010–11 to 2012–13, median = 6 years and 3 months), and then again when the number of charges is 76 (2009–10 to 2012–13, median = 6 years and 6 months). In this instance, the increased number of charges does not influence the shortest and longest sentences imposed, as these were imposed in the first year of observation (2012–13).

Figure 22: Box plots (minimum, median, and inter-quartile range) for trafficking in a large commercial quantity of a drug of dependence charges sentence lengths (years) under baseline counting rules as a function of the number of charges being examined
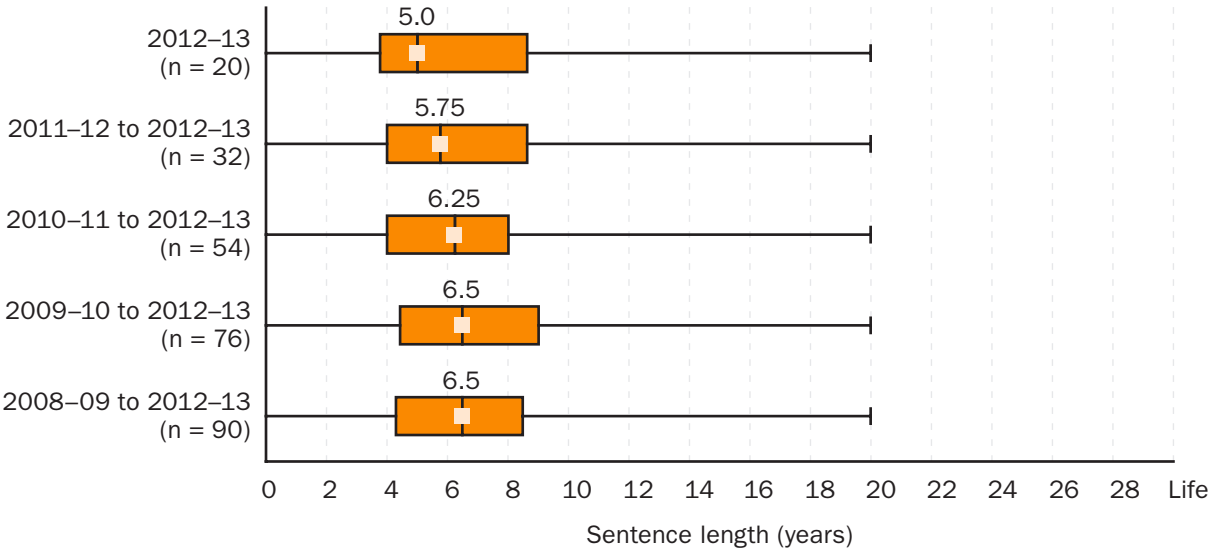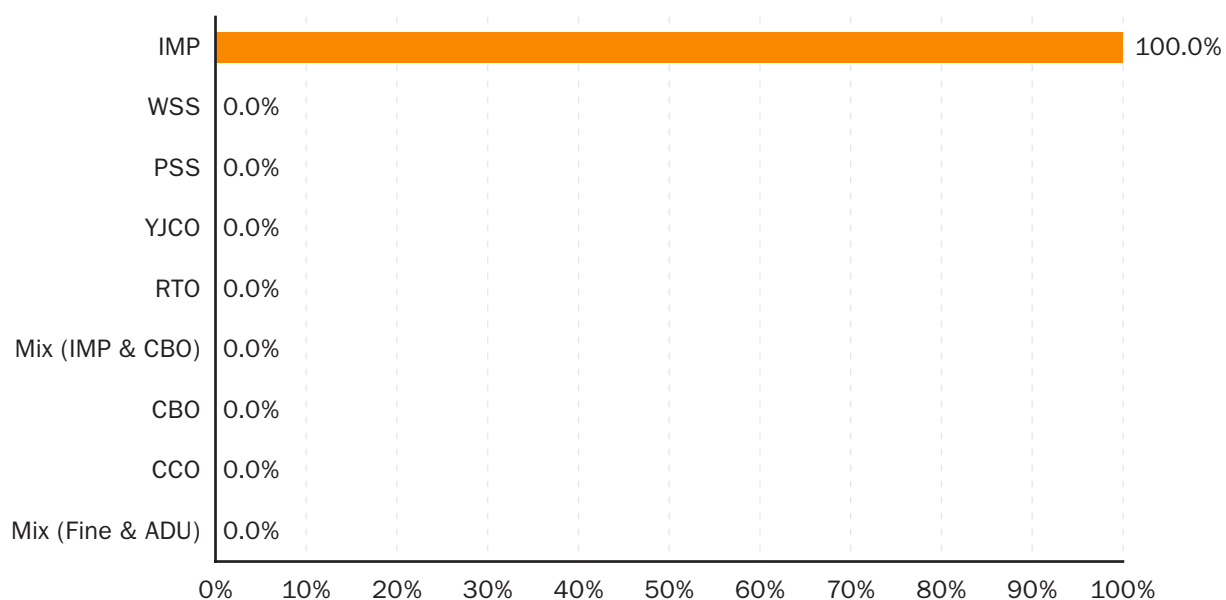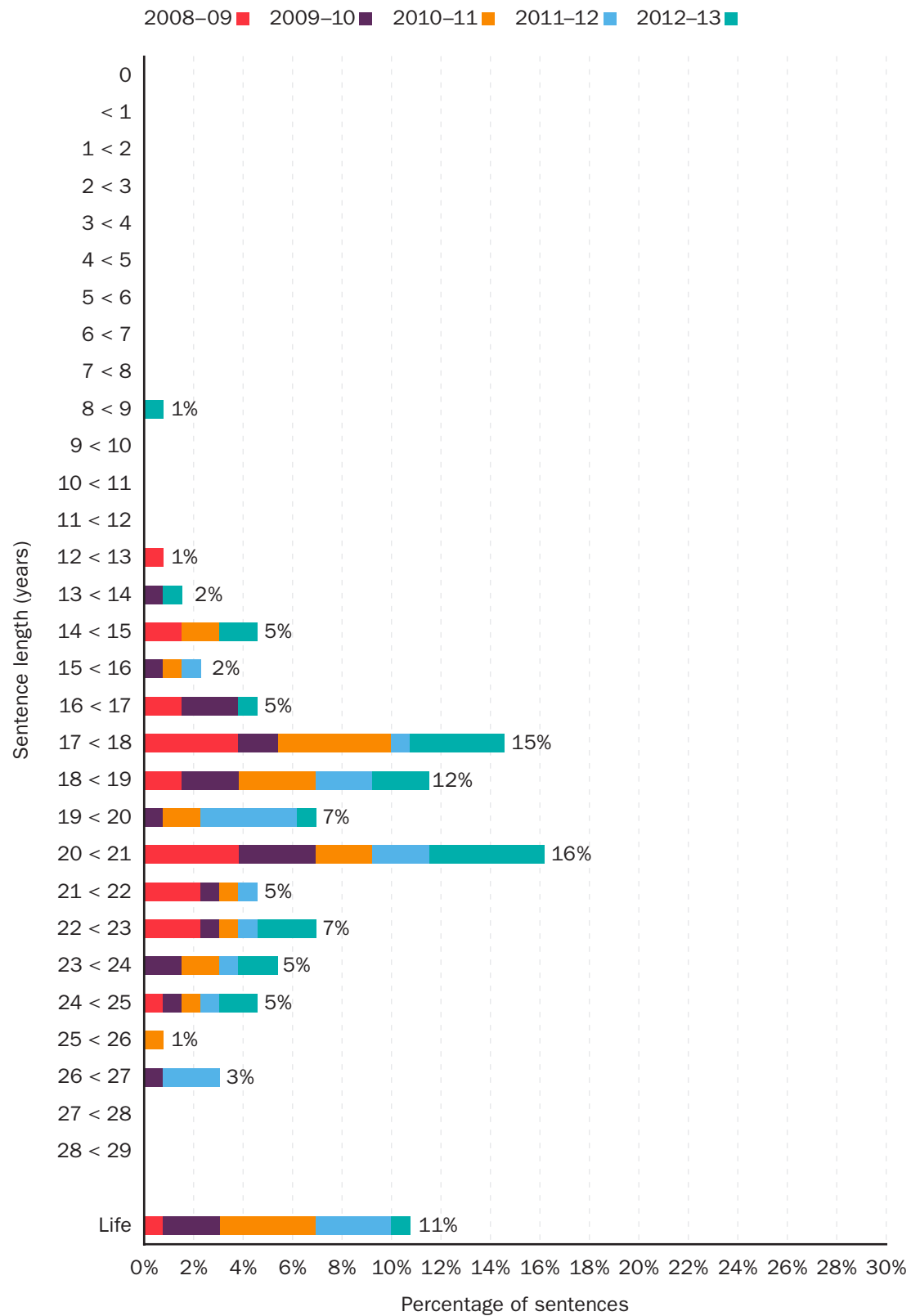
Murder

Overall sentencing patterns for murder

3.55   During the reference period, 130 charges of murder were sentenced in Victoria. Figure 23 displays the relative sentences imposed for these charges. This demonstrates that 100% of murder charges were sentenced to a period of imprisonment.

3.56   Figure 24 displays the distribution of sentence lengths for murder charges, calculated using the baseline counting rules. Overall, 14 charges (11%) resulted in life sentences during the reference period. The longest non-life sentence imposed for a charge of murder was 26 years (4 charges) and the shortest imprisonment term imposed was 8 years (1 charge).

Figure 23: **Murder charges (%) by sentence type, 2008–09 to 2012–13 (n = 130 charges)[16]**

Sentence type	Percentage
IMP	100.0%
WSS	0.0%
PSS	0.0%
YJCO	0.0%
RTO	0.0%
Mix (IMP & CBO)	0.0%
CBO	0.0%
CCO	0.0%
Mix (Fine & ADU)	0.0%

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16. See Abbreviations for details about each sentence type.

Figure 24: Murder charges (%) by sentence length (years) under baseline counting rules, 2008–09 to 2012–13 (n = 130 charges)

Variation in sentencing outcomes for murder by year

3.57   Figure 25 displays box plots of the relative distributions of sentence durations imposed for murder across the five-year reference period. Across this period, at least one charge of murder was sentenced to life imprisonment each year. Using the baseline counting rules, the median sentence ranged from 19 years to 20 years, and the lowest sentence ranged from 8 years to 15 years. The broken red vertical line displays the 25 year baseline sentence.

Figure 25: Box plots (minimum, median, and inter-quartile range) for murder charges sentence lengths (years) under baseline counting rules, 2008–09 to 2012–13 (n = 130 charges)
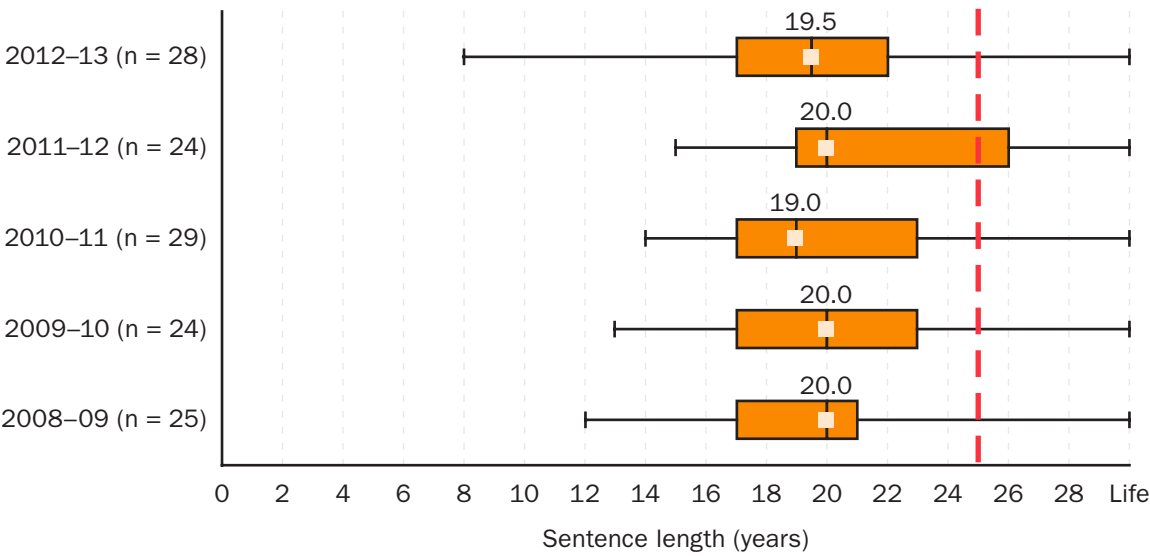
Current sentencing practices for murder

3.58   Table 10 displays the overall current sentencing practices for murder. This table demonstrates the published median, minimum, and maximum sentences from the Council's Sentencing Snapshots series (see discussion of the counting rules for these publications in Table 4) along with the same values according to the baseline counting rules.

Table 10: Current sentencing practices for murder as a function of Snapshot and baseline counting rules

Counting rule	Counting level	Time period	Count	Minimum	Median	Maximum
Snapshot	Charge	2007–08 to 2011–12	128 charges	8 years −	19 years −	Life −
	TES	2007–08 to 2011–12	119 cases	10 years 6 months	20 years −	Life −
Baseline	Charge	2008–09 to 2012–13	130 charges	8 years −	20 years −	Life −

3.59   Table 10 reflects the relationship between cases and charges, while also demonstrating the high-level influence of the variation in counting rules across these methodologies. From the Snapshots, for the 119 cases receiving a total effective sentence of imprisonment for murder, the median non-life sentence is 20 years, which compares with the charge-level non-life median of 19 years. Using the baseline counting rules, the median charge-level sentence is 20 years.

3.60   The current median sentence for murder calculated using the baseline median methodology is 5 years lower than the baseline set under the Act (see Table 3 and Figure 25).

Measuring sentencing trends for murder as a function of the number of charges examined

3.61   Figure 26 displays the relative sentencing trends for murder as a function of the number of charges examined. Descriptive statistics (for example, medians and ranges) are influenced by the number of charges examined, with a small number of charges having a greater risk of large variability.

3.62   Working backwards in time from the most recent year of available data, Figure 26 demonstrates the descriptive statistics for the sentencing patterns for murder as a function of the number of charges examined in 1 year (2012–13, n = 28 charges), 2 years, 3 years, 4 years, and 5 years (2008–09 to 2012–13, n = 130 charges).

3.63   When analysed in this way, the median alters as the number of charges being examined increases from 28 (2012–13, median = 19 years and 6 months) to 52 (2011–12 to 2012–13, median = 20 years). Regardless of the number of charges examined, shortest and longest sentences for murder charges are constant throughout the reference period as these were imposed in the first year of observation (2012–13).

Figure 26: Box plots (minimum, median, and inter-quartile range) for murder charges sentence lengths (years) under baseline counting rules as a function of the number of charges being examined
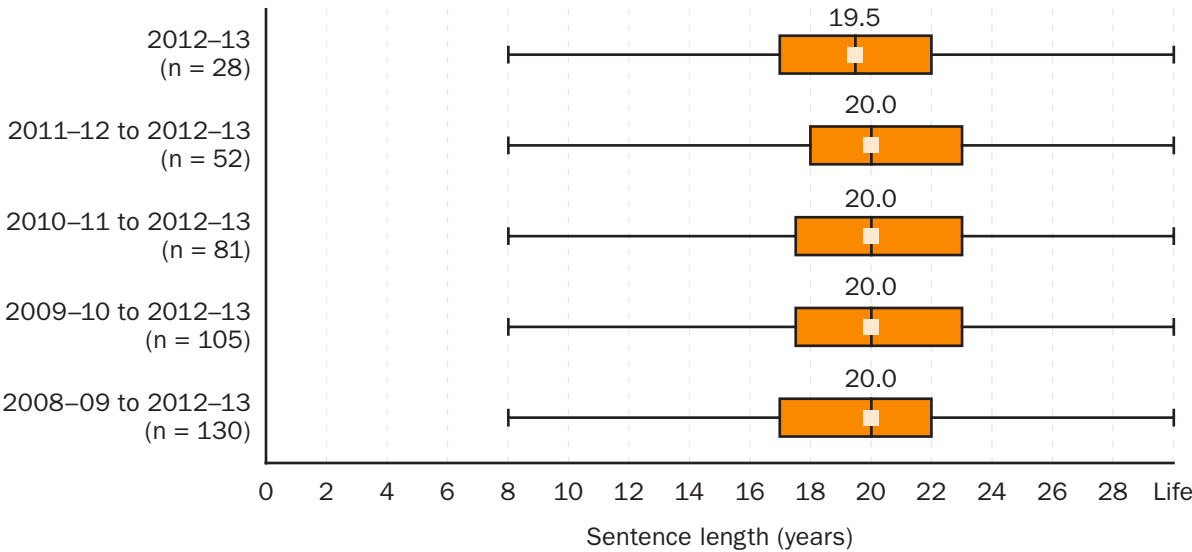
# 4. Statistical uncertainties about applying the Act to sentencing

4.1   The analysis presented above demonstrates that the current median sentences for the six baseline offences fall below those prescribed under the Act. However, there are two main reasons for the uncertainty regarding what the new sentencing distributions for these baseline offences will be after the implementation of the baseline sentencing scheme:

- the application of baseline sentencing where multiple baseline charges are involved in a case; and
- the broader application of the median baseline sentencing by the judiciary.

4.2   The first issue the courts will encounter relates to the sentencing of multiple baseline offences within a single case. As discussed at [2.12], the Act does not prescribe any amendments regarding cumulation or concurrency, or the manner in which a court is to determine the total effective sentence for a case with multiple charges involving at least one charge of a baseline offence.

4.3   A court is therefore likely to determine the sentence for a baseline offence mindful of the need to order concurrency and/or cumulation of that sentence with other sentences (depending on the charges and the circumstances of the case) in accordance with the principle of totality.

4.4   The second issue relates to how the courts will interpret and apply a baseline median and what sentencing patterns will emerge. To demonstrate the importance of this issue Figures 27 to 29 display some hypothetical distributions of sentences for culpable driving causing death, using the baseline median. These figures all have the same number of charges as Figure 4 and all of them have a median sentence length of 9 years. The black line in each figure represents the shape of the distribution of sentences as displayed in Figure 4 (reflecting current sentencing practices). The red line with square markers and percentage values represents the hypothetical distribution following the implementation of the Act. In principle, this issue is captured by the examples discussed at [2.19]–[2.23] previously.

4.5   Figure 27 assumes that all sentences will increase by the difference between the current median for culpable driving causing death (5 years and 6 months) and the baseline sentence median (9 years) – an increase of 3 years and 6 months. This distribution no longer has any sentences other than imprisonment.

Figure 27: Hypothetical sentencing distribution 1 for culpable driving causing death charges (%) by sentence length (years) under baseline counting rules (n = 70 charges)
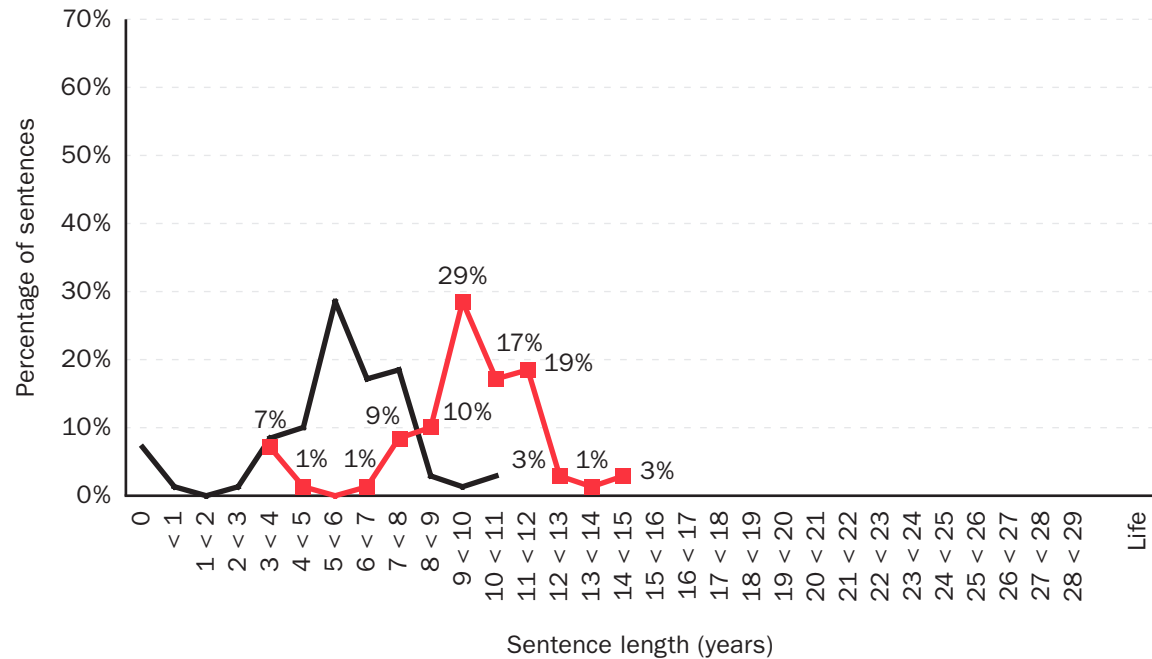

4.6   Figure 28 assumes that the non-imprisonment sentences remain, and all of the other sentences increase by a relative amount to produce the nine-year baseline sentence median. Given the relatively small number of 0-value sentences (7%) in this instance, aside from the non-imprisonment sentences, the overall distribution looks very similar to the hypothetical pattern displayed in Figure 27. This distribution may arise if courts form the view that some instances of this offence do not warrant imprisonment.

Figure 28: Hypothetical sentencing distribution 2 for culpable driving causing death charges (%) by sentence length (years) under baseline counting rules (n = 70 charges)
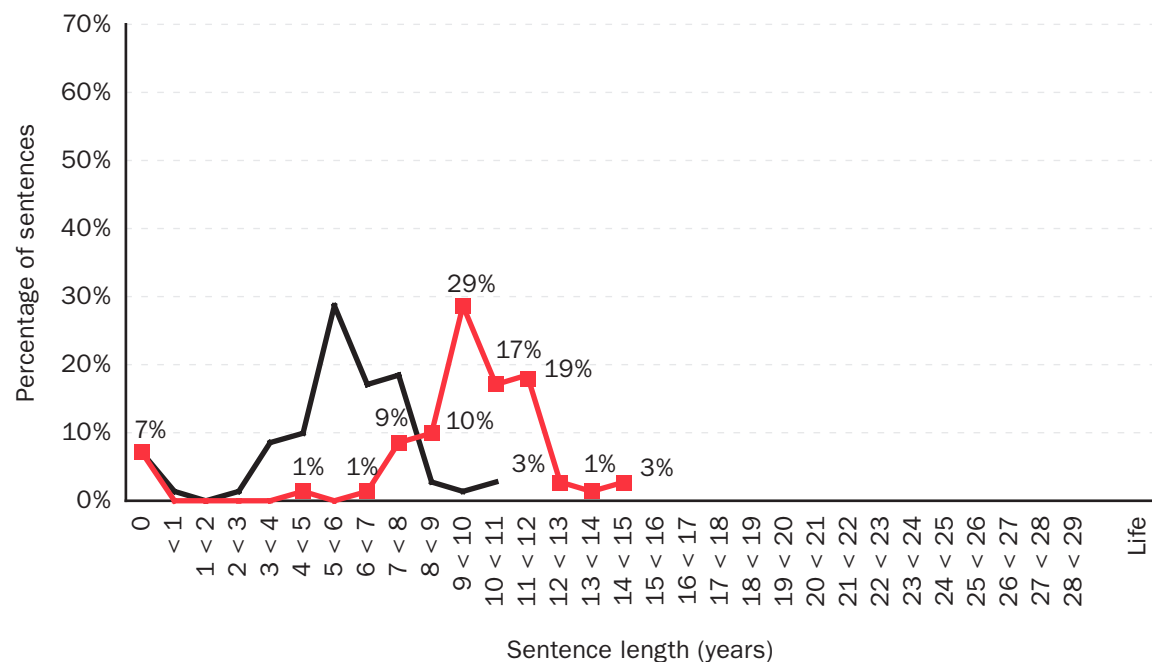
4.7   Figure 29 assumes that non-imprisonment sentences remain, the half of the distribution below the median increases by approximately 3 years and 6 months, and the longer duration sentences increase by a lesser amount, resulting in a clustering of the top 50% of sentences closer to the baseline sentence median. This distribution may arise if the courts form the view that the baseline median is sufficiently punitive and sentence to the prescribed median with only a small number of very serious examples attracting a sentence above the prescribed median.

4.8   These distributions represent just three examples of the many possible distributions with a median sentence of 9 years. It is difficult to predict which distribution will emerge over time.

4.9   These examples also demonstrate that the baseline sentence median can be achieved even if the courts impose:

- non-imprisonment sentences for baseline offences; and/or
- imprisonment sentences that diverge from the prescribed median.

Figure 29: Hypothetical sentencing distribution 3 for culpable driving causing death charges (%) by sentence length (years) under baseline counting rules (n = 70 charges)
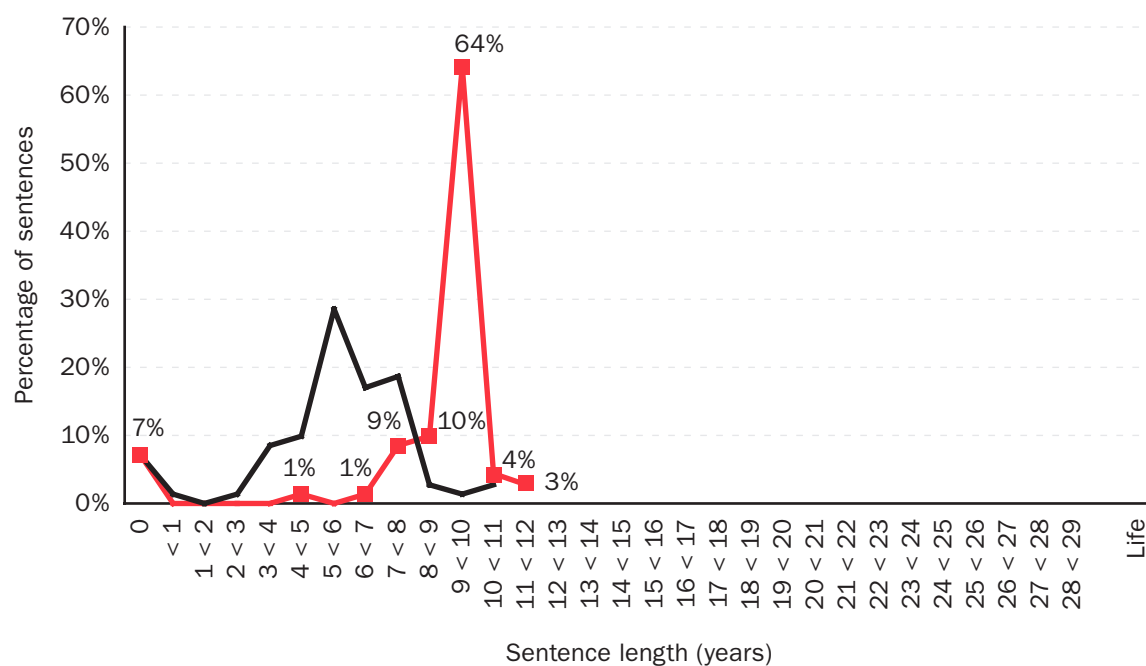
5. Discussion and conclusions

5.1   The assumptions underlying the calculation of baseline medians under the Act are different from those used previously in the Council's published offence data, including data in the Council's Sentencing Snapshots.

5.2   Comparing the median sentence lengths for the six baseline offences with the baseline sentence for each offence under the Act (see Table 1 at [1.4]) demonstrates that the medians for these offences will need to increase by between 3 years and 6 months and 7 years and 6 months.

5.3   This report has demonstrated how the median sentence for an offence will vary according to the period analysed, based on the number of charges of that offence sentenced each year. Sentencing patterns vary for each baseline offence, Table 2 at [1.5] displaying how long and how many charges are required for the five-year baseline median to stabilise.

5.4   It is difficult to extrapolate from these findings to predict what the new sentencing distribution will be following the implementation of the Act for two main reasons:

- the Act does not provide guidance on how multiple baseline sentences, concurrency, and cumulation will affect the total effective sentence; and
- from a statistical perspective, it is unclear how the courts will interpret and apply a baseline median and what sentencing patterns will emerge.

5.5   Imprisonment durations that result in a median equal to the baseline sentence can occur even if the courts impose non-custodial sentences, or imprisonment sentences that diverge from the prescribed median.

5.6   This report is intended to assist in the understanding of how baseline medians will affect current sentencing practices. It also highlights how medians can vary over time and the difficulty that this may present in evaluating the baseline sentencing scheme in the future.

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Legislation

Sentencing Amendment (Baseline Sentences) Act 2014 (Vic)

Sentencing Act 1991 (Vic)