

No. 18: Sentencing trends for obtaining a financial advantage by deception in the higher courts of Victoria, 2001-02 to 2005-06

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of obtaining a financial advantage by deception and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2001-02 and 2005-06³.

A person who, through deceptive conduct, dishonestly obtains any financial advantage for him or herself or for another person is guilty of obtaining financial advantage by deception⁴.

Obtaining financial advantage by deception is an indictable offence⁵ which carries a maximum penalty of 10 years' imprisonment⁶ and/or fine of 1200 penalty units⁷. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

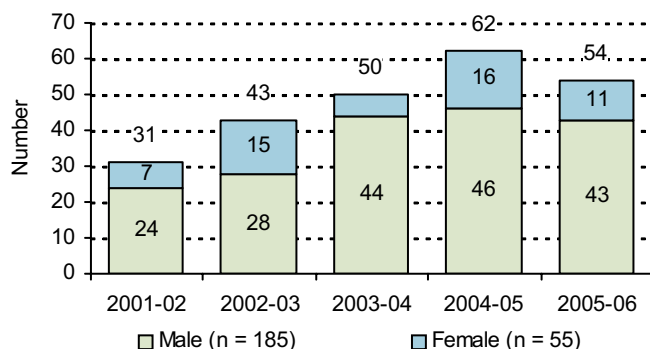
Of all the people sentenced for the principal offence of obtaining a financial advantage by deception, 17.0% were heard in the higher courts⁸. The remaining cases were heard in the Children's and Magistrates' Court⁹. The information presented in this report relates only to those sentencing outcomes handed down in the County Court.

People sentenced

Figure 1 shows the number of people sentenced for obtaining a financial advantage by deception for the period 2001-02 to 2005-06. As shown, 240 people were sentenced for obtaining a financial advantage by deception over the five year period. There were 54 people sentenced for this offence in 2005-06, down by 8 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (77.1% or 185 of 240 people), including 43 of the 54 people sentenced in 2005-06.

Figure 1: The number of people sentenced for obtaining a financial advantage by deception by gender, 2001-02 to 2005-06



Sentence types and trends

Figure 2 shows the total number of people sentenced for obtaining a financial advantage by deception and the number who received a custodial sentence¹⁰. Over the five year period, 44% of people were given a custodial sentence. This peaked at 53% (23 of 43) in 2002-03 after a low of 39% (12 of 31) in 2001-02. In 2005-06, 43% of people sentenced (23 of 54) were given a custodial sentence.

Figure 2: The number of people sentenced for obtaining a financial advantage by deception and the number who received a custodial sentence, 2001-02 to 2005-06

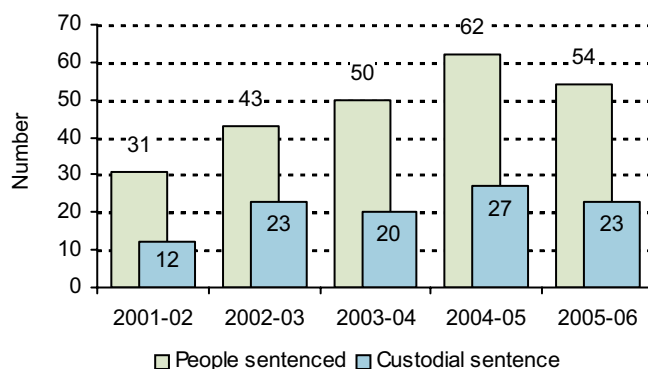
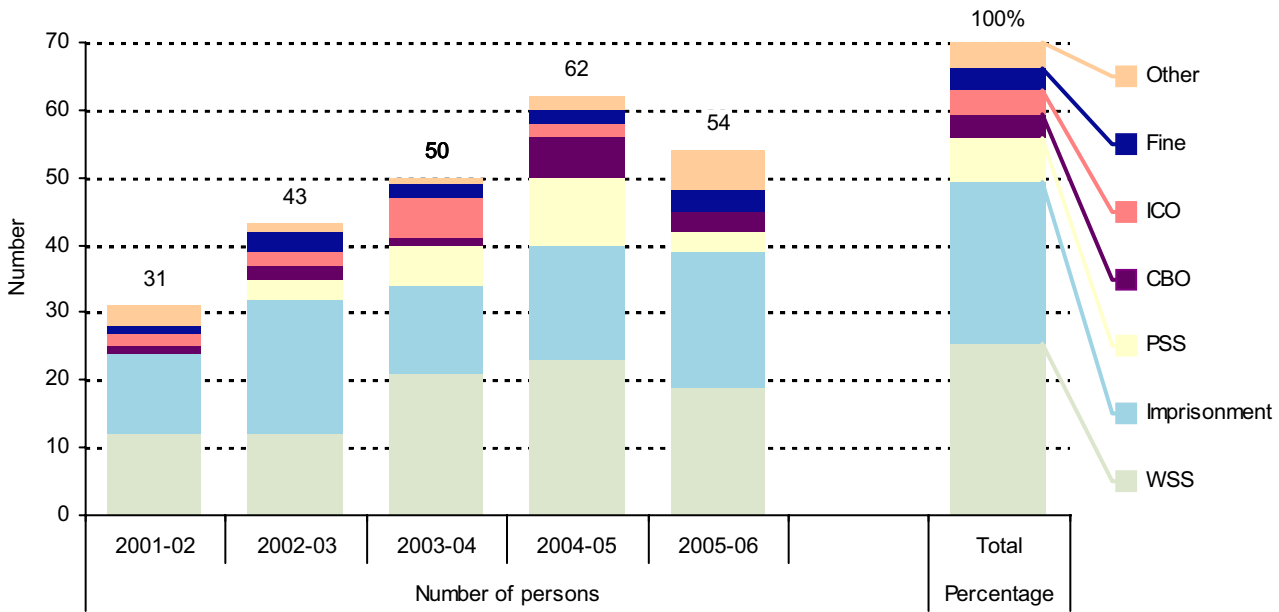


Figure 3 and Table 1 show the number of people sentenced for obtaining a financial advantage by deception from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, around one third of the people sentenced for obtaining a financial advantage by deception received a wholly suspended sentence of imprisonment (36% or 87 of 240 people), while 34% received a period of imprisonment and 9% received a partially suspended sentence of imprisonment.

The number of people who received a period of imprisonment fluctuated ranging from 12 people in 2001-02 to 20 people in both 2002-03 and 2005-06. The number of people who were given a wholly suspended sentence of imprisonment also fluctuated, ranging from 12 people in 2001-02 and 2002-03 to 23 people in 2004-05.

Figure 3: The number of people sentenced for obtaining a financial advantage by deception by sentence type, 2001-02 to 2005-06



Note: WSS refers to wholly suspended sentence of imprisonment, PSS refers to partially suspended sentence of imprisonment, CBO refers to community based order and ICO refers to intensive correction order. Other includes adjourned undertaking without conviction, adjourned undertaking with conviction, mix (wholly suspended sentence & fine), non-custodial supervision order, mix (imprisonment & community based order) and mix (fine & adjourned undertaking).

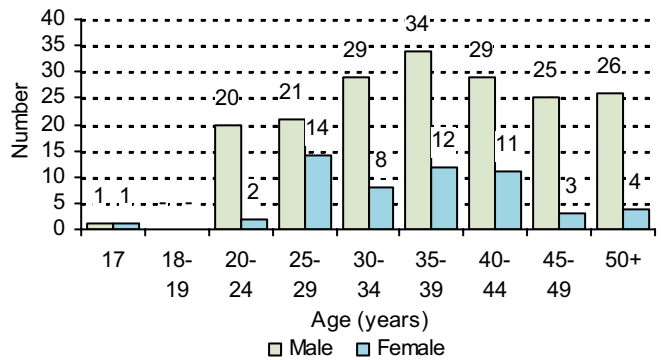
Table 1: The number and percentage of people sentenced for obtaining a financial advantage by deception by sentence type, 2001-02 to 2005-06

Sentence type	01-02	02-03	03-04	04-05	05-06
Wholly suspended sentence	12 39%	12 28%	21 42%	23 37%	19 35%
Imprisonment	12 39%	20 47%	13 26%	17 27%	20 37%
Partially suspended sentence	0	3 7%	6 12%	10 16%	3 6%
Community based order	1 3%	2 5%	1 2%	6 10%	3 6%
Intensive correction order	2 6%	2 5%	6 12%	2 3%	0
Fine	1 3%	3 7%	2 4%	2 3%	3 6%
Adjourned undertaking without conviction	0	0	0	0	5 9%
Adjourned undertaking with conviction	1 3%	1 2%	0	0	1 2%
Mix (wholly suspended sentence & fine)	2 6%	0	0	0	0
Non-custodial supervision order	0	0	0	1 2%	0
Mix (imprisonment & community based order)	0	0	1 2%	0	0
Mix (fine & adjourned undertaking)	0	0	0	1 2%	0
People sentenced	31	43	50	62	54

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for obtaining a financial advantage by deception grouped by their age¹¹ between 2001-02 and 2005-06. The average age of people sentenced for obtaining a financial advantage by deception was thirty-seven years and five months. Men sentenced over this period were much older than women (an average age of thirty-eight years for men compared to thirty-five years and two months for women). One male and one female juvenile were sentenced over this period.

Figure 4: The number of people sentenced for obtaining a financial advantage by deception by gender and age, 2001-02 to 2005-06



Sentence types by gender

Figure 5 and Table 2 show the types of sentence imposed for obtaining a financial advantage by deception grouped by gender. As shown, a higher percentage of men received a period of imprisonment (36.8% compared to 25.5% of women) and a fine (5.4% compared to 1.8%).

Conversely, a higher percentage of women received a community based order (12.7% compared to 3.2% of men), an adjourned undertaking with conviction (3.6% compared to 0.5%), a partially suspended sentence of imprisonment (10.9% compared to 8.6%) and a mixed sentence of a fine and adjourned undertaking (1.8% compared to no men).

Figure 5: The percentage of people sentenced for obtaining a financial advantage by deception by sentence type and gender, 2001-02 to 2005-06

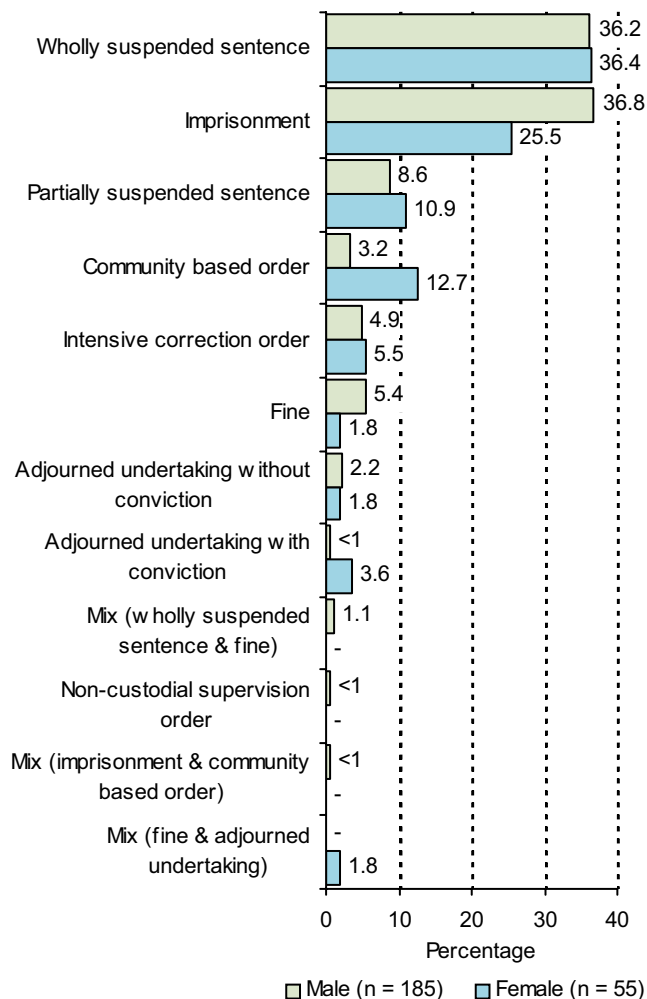


Table 2: The number and percentage breakdown of people sentenced for obtaining a financial advantage by deception by gender, 2001-02 to 2005-06

Sentence type	Male	Female	Total
Wholly suspended sentence	67	20	87
Imprisonment	68	14	82
Partially suspended sentence	16	6	22
Community based order	6	7	13
Intensive correction order	9	3	12
Fine	10	1	11
Adjourned undertaking w without conviction	4	1	5
Adjourned undertaking w ith conviction	1	2	3
Mix (w holly suspended sentence & fine)	2	0	2
Non-custodial supervision order	1	0	1
Mix (imprisonment & community based order)	1	0	1
Mix (fine & adjourned undertaking)	0	1	1
People sentenced	185	55	240

Sentence types by age

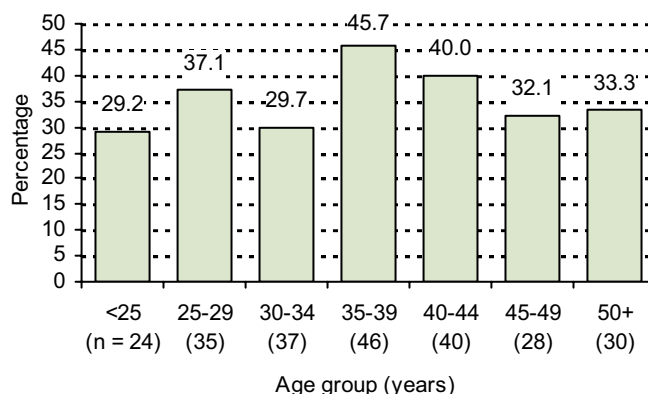
As shown in the table above, the four most common sentence types were wholly suspended sentences of imprisonment, imprisonment, partially suspended sentences of imprisonment and community based orders. The following analysis examines these sentence types by the offender's age group.

Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 35-39 years old (46% or 21 of the 46 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 25 years (29% or seven of the 24 people in this age group).

Figure 6: The percentage of people who were sentenced to a wholly suspended sentence of imprisonment for obtaining a financial advantage by deception by age group, 2001-02 to 2005-06

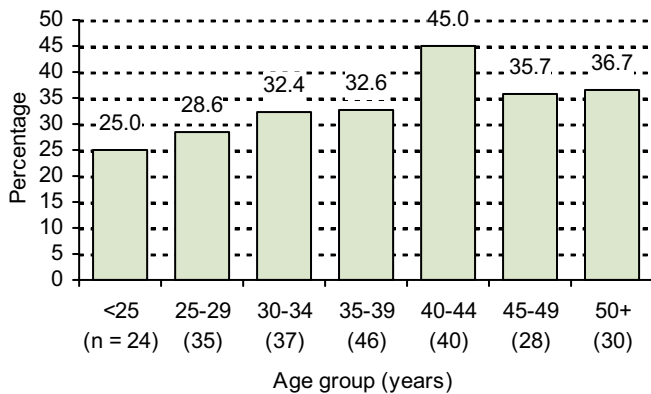


Imprisonment

Sentences of imprisonment were most likely to be given to people aged 40-44 years old (45% or 18 of the 40 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 25 years (25% or six of the 24 people in this age group).

Figure 7: The percentage of people who were sentenced to a period of imprisonment for obtaining a financial advantage by deception by age group, 2001-02 to 2005-06

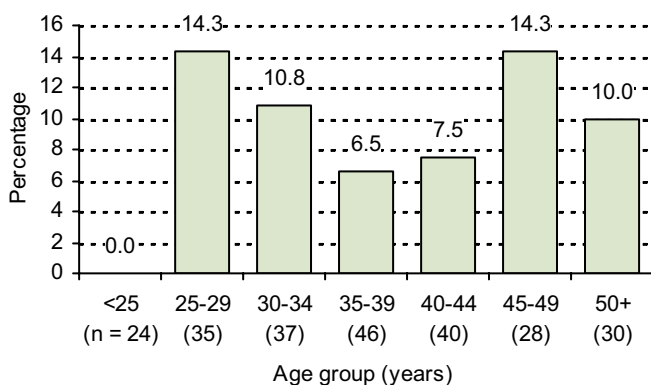


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 45-49 years old (14% or four of the 28 people in this age group).

Conversely, none of the 24 people aged under 25 years received a partially suspended sentence of imprisonment.

Figure 8: The percentage of people who were sentenced to a partially suspended sentence of imprisonment for obtaining a financial advantage by deception by age group, 2001-02 to 2005-06

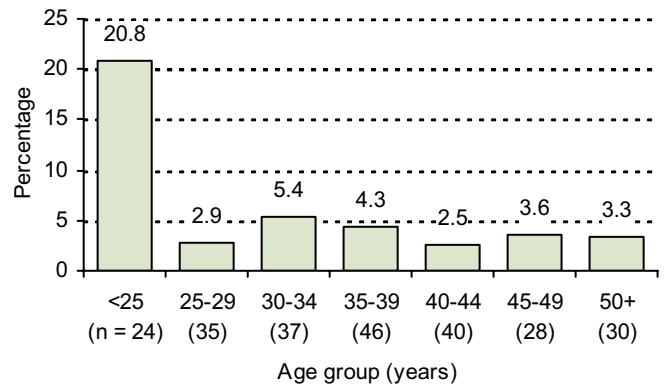


Community based orders

Community based orders were most likely to be given to people aged under 25 years (21% or five of the 24 people in this age group).

Conversely, community based orders were least common for those aged 40-44 years old (3% or one of the 40 people in this age group).

Figure 9: The percentage of people who were sentenced to a community based order for obtaining a financial advantage by deception by age group, 2001-02 to 2005-06



Principal and total effective sentences

There are two methods for describing sentence types and lengths - the principal sentence and the total effective sentence.

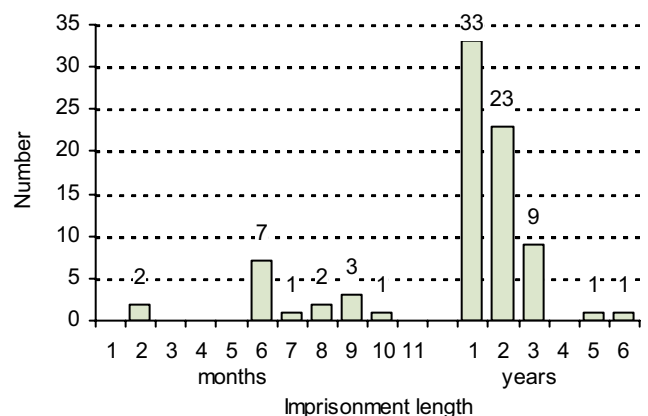
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for obtaining a financial advantage by deception must be considered in this broader context. The following sections analyse the use of imprisonment for obtaining a financial advantage by deception over 2001-02 to 2005-06.

Principal sentence of imprisonment

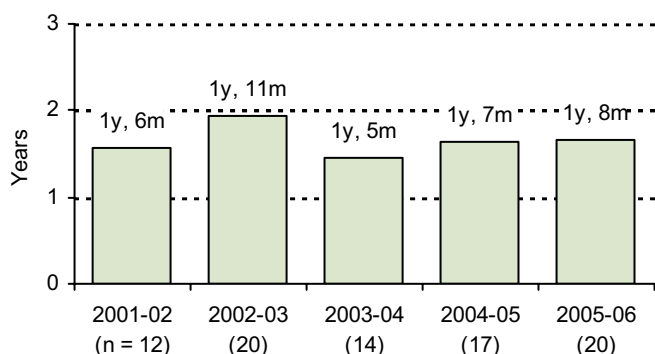
Figure 10 shows the number of people sentenced to imprisonment for obtaining a financial advantage by deception between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 2 months to six years, while the median length of imprisonment was 1 year (meaning that half of the imprisonment terms were shorter than 1 year and half were longer).

Figure 10: The number of people sentenced to imprisonment for obtaining a financial advantage by deception by length of imprisonment term, 2001-02 to 2005-06



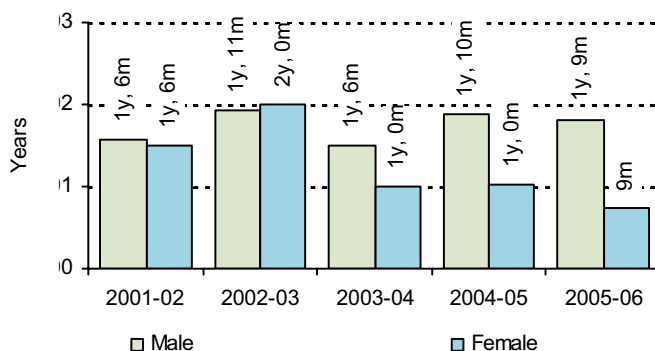
As shown in Figure 11, the average length of imprisonment term imposed on people sentenced for obtaining a financial advantage by deception ranged from one year and five months in 2003-04 to one year and eleven months in 2002-03.

Figure 11: The average length of imprisonment term imposed on people sentenced for obtaining a financial advantage by deception, 2001-02 to 2005-06



From 2001-02 to 2005-06, the majority of the people who received a term of imprisonment for obtaining a financial advantage by deception were men (69 people or 83.1%). Figure 12 shows that over the five year period, men also received a longer average term of imprisonment (one year and nine months compared to one year and three months for women).

Figure 12: The average period of imprisonment imposed on people sentenced for obtaining a financial advantage by deception by gender, 2001-02 to 2005-06

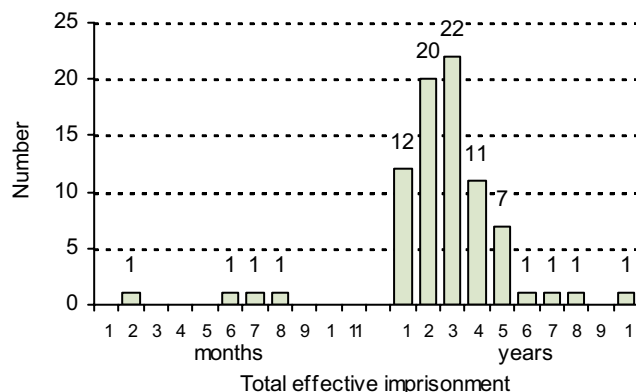


Total effective sentence of imprisonment

There were 80 people given a total effective sentence of imprisonment¹². Figure 13 shows the number of people sentenced to imprisonment for obtaining a financial advantage by deception between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from two months to ten years¹³, while the median total effective length of imprisonment was three years (meaning that half of the total effective sentence lengths were below three years and half were above).

The most common total effective imprisonment length was 3 years (22 people).

Figure 13: The number of people sentenced to imprisonment for obtaining a financial advantage by deception by total effective length of imprisonment term, 2001-02 to 2005-06



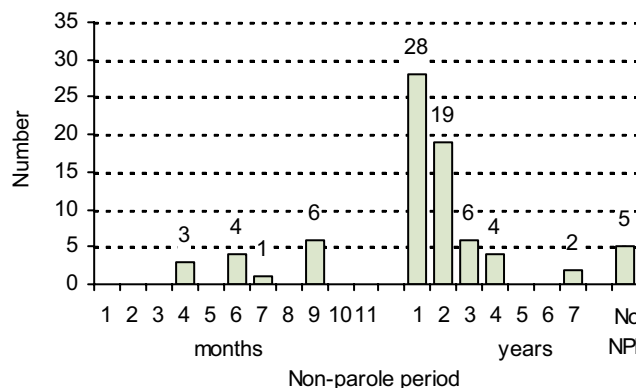
Non-parole period

When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under s.11(4) of the *Sentencing Act 1991 (Vic)*, if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In some cases, the non-parole period will be lengthier than the individual principal sentence for obtaining a financial advantage by deception. Sentences and non-parole periods must be considered in this broader context.

Of the 80 people who were sentenced to imprisonment for obtaining a financial advantage by deception, 76 were eligible for parole¹⁴. Of these people, 73 were given a non-parole period (96%)¹⁵. Figure 14 shows the number of people sentenced to imprisonment for obtaining a financial advantage by deception between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from four months to seven years and six months, while the median length of the non-parole period was one year and eight months (meaning that half of the non-parole periods were below one year and eight months and half were above).

Figure 14: The number of people sentenced to imprisonment for obtaining a financial advantage by deception by length of non-parole period, 2001-02 to 2005-06



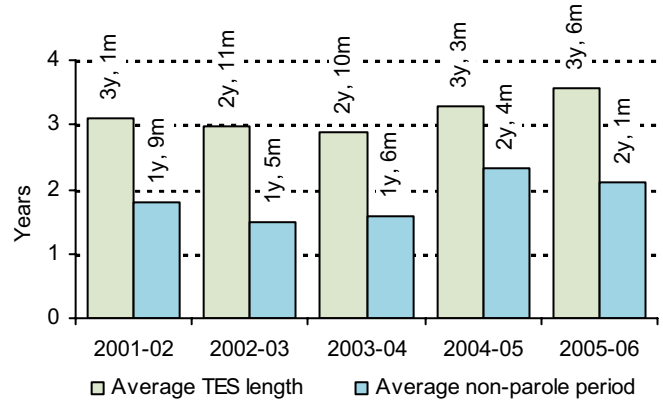
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Figure 15: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for obtaining a financial advantage by deception, 2001-02 to 2005-06

Total effective sentences of imprisonment and non-parole periods

Figure 15 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2001-02 to 2005-06¹⁶.

From 2001-02 to 2005-06, the average length of total effective sentence for all people ranged from two years and ten months in 2003-04 to three years and six months in 2005-06. Over the same period, the average length of non-parole period ranged from one year and five months in 2002-03 to two years and four months in 2004-05.

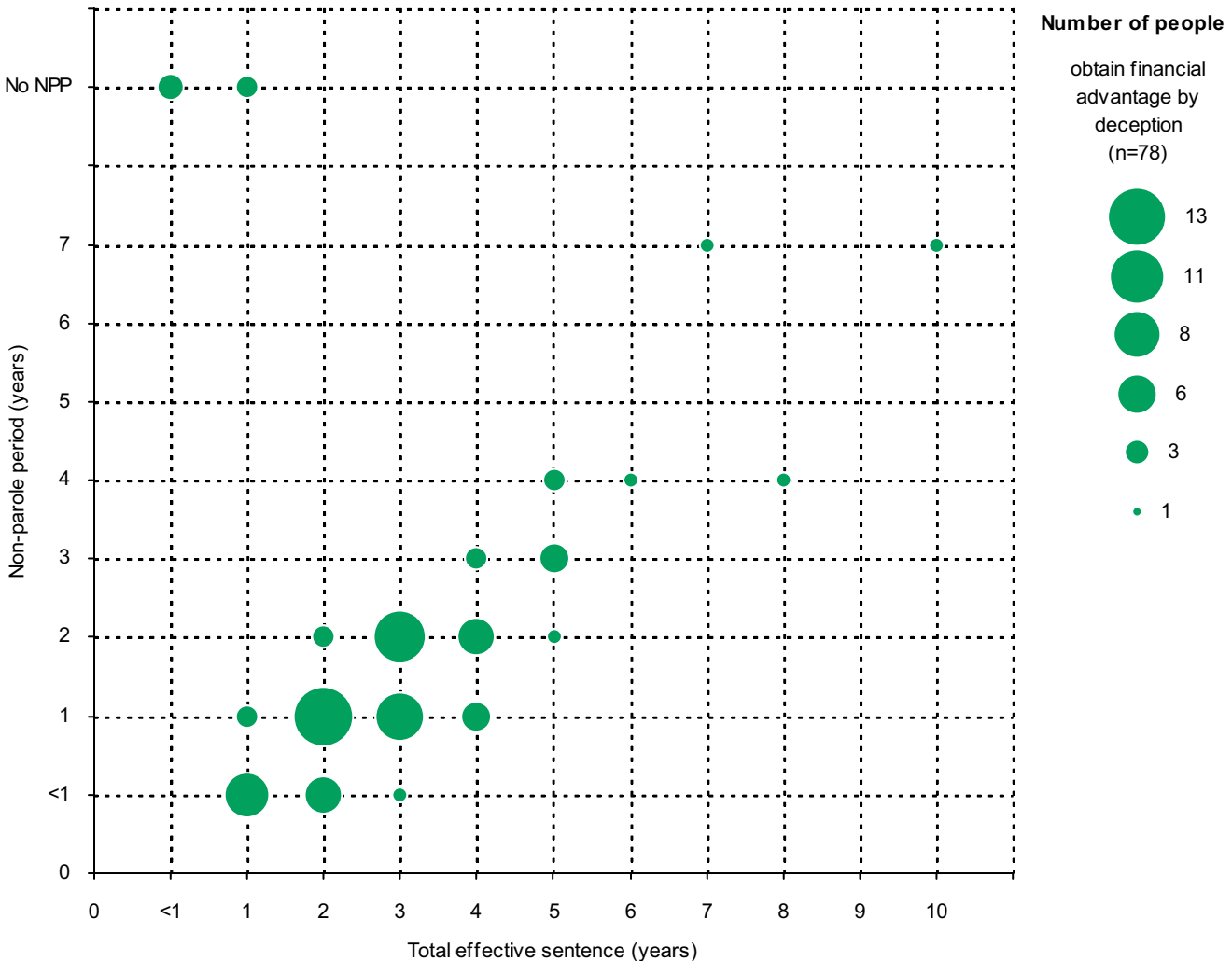


Total effective sentence of imprisonment by non-parole period

While Figure 13 and Figure 14 present the lengths of the total effective sentences and non-parole periods separately, Figure 16 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for obtaining a financial advantage by deception for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination¹⁷. As shown, the most common combination of imprisonment length and non-parole period imposed was two years with a non-parole period of one year (13 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from two months with no non-parole period to ten years with a non-parole period of seven years.

Figure 16: The number of people sentenced to imprisonment for obtaining a financial advantage by deception by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06¹⁸



Note: No NPP refers to no non-parole period.

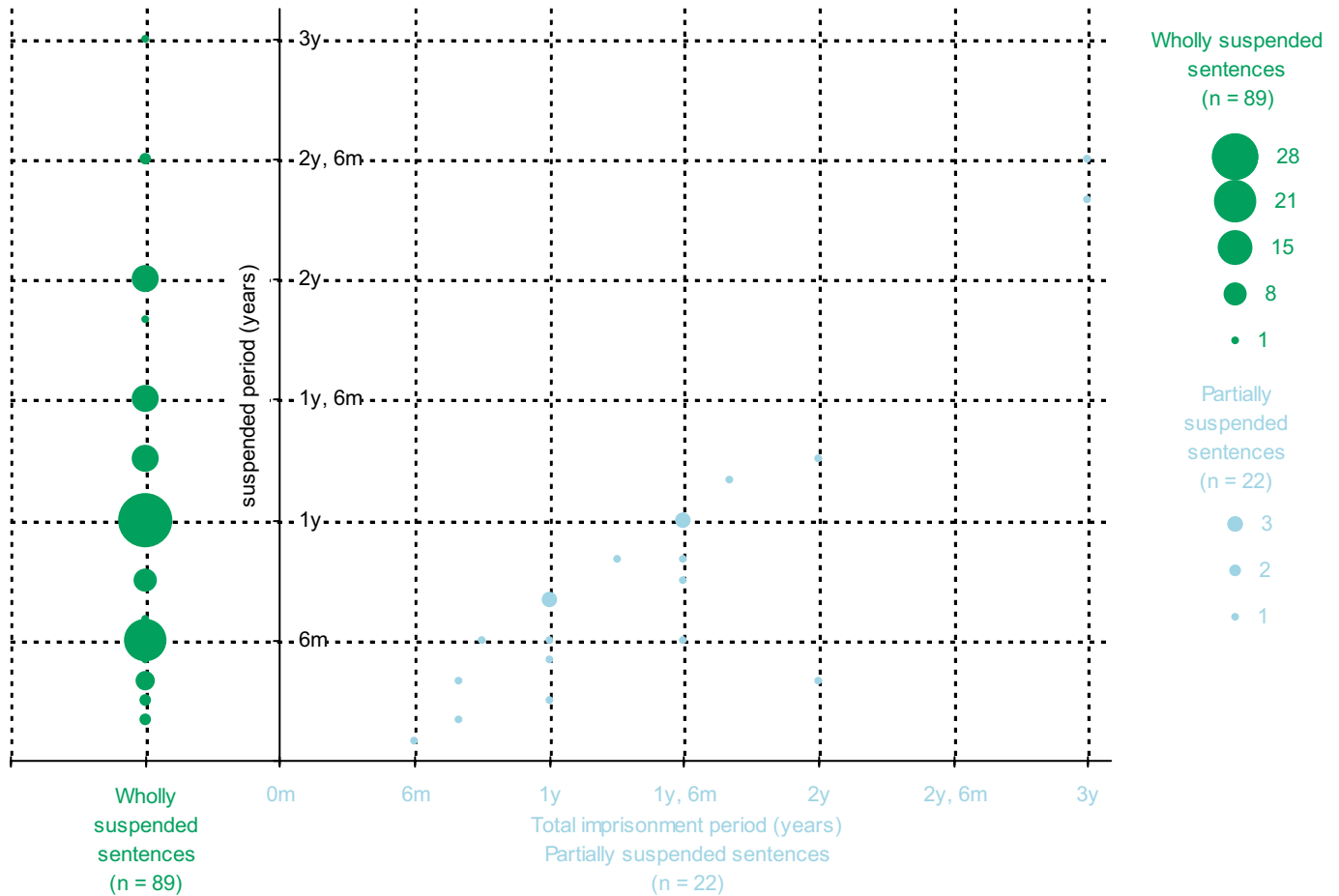
Suspended sentences of imprisonment

There were 111 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 89 people had their prison sentence wholly suspended and 22 received a partially suspended sentence of imprisonment. Figure 17 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the blue 'bubbles' to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or partially suspended prison term.

Wholly suspended sentence lengths ranged from two months to three years. The most common wholly suspended sentence length was one year (28 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combinations were one year with eight months suspended and one year and six months with one year suspended (3 people each - as represented by the two largest blue 'bubbles' on the chart).

Figure 17: The number of people given a wholly or partially suspended sentence of imprisonment by sentence type and length, 2001-02 to 2005-06

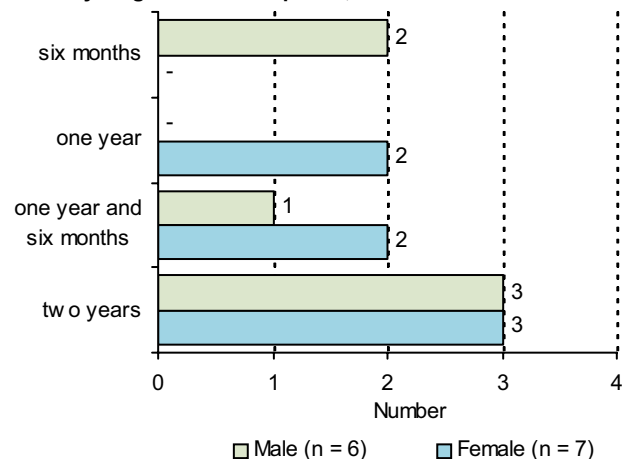


Community based orders

There were 13 people given a community based order as their total effective sentence.

The length of community based orders for obtaining a financial advantage by deception ranged from six months to two years, while the median length was one year and six months (meaning that half of the lengths were shorter than or equal to one year and six months and half were longer than or equal to one year and six months). The most common length of community based order was two years (6 people).

Figure 18: The number of people sentenced to a community based order for obtaining a financial advantage by deception by length of order imposed, 2001-02 to 2005-06



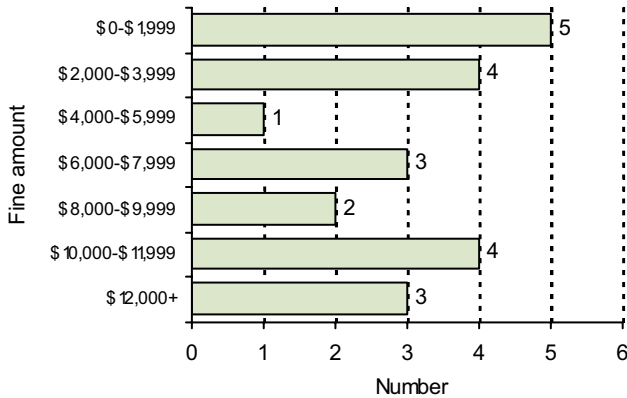
Fines

This analysis includes all fines that were imposed for cases where obtaining a financial advantage by deception was the principal offence. Fines were imposed on 22 people.

The fine amount imposed ranged from \$20 to \$55,000, with a median of \$6,000 (meaning that half of the values fell below \$6,000 and half of the values were above \$6,000).

The average fine amount was \$7,874. The average fine amount imposed against the 18 males was \$8,707, much higher than the average fine for the 4 females (\$4,125).

Figure 19: The number of people who received a fine for obtaining a financial advantage by deception by fine amount, 2001-02 to 2005-06



Summary

Between 2001-02 and 2005-06, 240 people were sentenced for obtaining a financial advantage by deception in the higher courts. Over this period, the majority of those sentenced were men (77%), while 51% were between the age of 30 and 45 years.

Around one third of the people sentenced for obtaining a financial advantage by deception received a wholly suspended sentence of imprisonment (36%), while 34% received a period of imprisonment and 9% received a partially suspended sentence of imprisonment.

Men were more likely than women to be sentenced to a period of imprisonment. Conversely, women were more likely to be sentenced to a community based order.

Wholly suspended sentences of imprisonment were more common for those aged between 35 and 40 years of age and imprisonment was more common for those aged between 40 and 45 years of age.

Imprisonment lengths ranged from two months with no non-parole period to ten years with a non-parole period of seven years. The most common sentence of imprisonment was two years with a one year non-parole period.

The most common partially suspended sentence lengths were one year with eight months suspended and one year and six months with one year suspended, while the most common wholly suspended sentence length was one year.

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of obtaining a financial advantage by deception in the County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for obtaining a financial advantage by deception who received a more serious sentence for another offence forming part of the same presentment. For example, in 2005-06, 120 people were sentenced for obtaining a financial advantage by deception. Obtaining a financial advantage by deception was the principal offence for 54 of the 120 people.
- 2 The information source for sentencing outcomes for obtaining a financial advantage by deception only contains information on age and gender characteristics. No other demographic analysis is possible.
- 3 The statistical information presented here was provided by Court Services, Department of Justice (Vic). This report describes sentencing trends for obtaining a financial advantage by deception since 2001-02. Court Services advises that sentencing data from the higher courts prior to 2000-01 may be unreliable due to changed data collection processes and counting rules.
- 4 *Crimes Act 1958* (Vic) s 82.
- 5 If the value of the property stolen is less than \$25,000 or the property is a motor vehicle, an offence under this section may be dealt with in the Magistrates' Court. See *Magistrates' Court Act 1989* (Vic) Schedule 4.
- 6 *Crimes Act 1958* (Vic) s 82(1).
- 7 Obtaining property by deception carries a maximum fine of 1200 penalty units and each penalty unit is worth \$107.43, Victorian Government Gazette, 6 April 2006.
- 8 Obtaining a financial advantage by deception was the 12th most common principal offence that resulted in a person being sentenced in the higher courts over 2001-02 to 2005-06.
- 9 Data for sentencing outcomes in the Magistrates' Court are not currently available for detailed analysis.
- 10 Custodial sentence includes imprisonment, partially suspended sentence and mix (imprisonment & community based order).
- 11 Age is as at the time of sentencing.
- 12 Of the 83 people who were given a principal sentence of imprisonment, 80 were also given a total effective sentence of imprisonment. There were three people who were given imprisonment as the principal sentence for obtaining a financial advantage by deception and a partially suspended sentence as a total effective sentence.
- 13 In 2005-06, a man aged 36 was sentenced to ten years' imprisonment with a non-parole period of seven years.
- 14 Four people were not eligible for parole because they were given a total effective sentence length of less than one year.
- 15 One person was not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to this case. The non-parole period for this person is excluded from the analysis. A non-parole period was not set for two people who were eligible for a non-parole period.
- 16 Due to the low number of women (11) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.
- 17 Sentence lengths that are longer than one year are rounded to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
- 18 This graph includes the 78 people who were given a total effective sentence and a non-parole period that related to this case only.

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