

No. 40: Sentencing trends for causing serious injury recklessly in the higher courts of Victoria, 2002-03 to 2006-07

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of causing serious injury recklessly and details the age and gender² of people sentenced for this offence in the County and Supreme Courts of Victoria between 2002-03 and 2006-07³.

A person who recklessly causes serious injury to another person without lawful excuse is guilty of this offence⁴. Recklessness requires foresight on the part of the accused of the probability that injury will occur as a consequence of his or her actions⁵. 'Injury' includes unconsciousness, hysteria, pain and any substantial impairment of bodily function. 'Serious injury' includes a combination of injuries. These definitions are not exhaustive⁶.

Causing serious injury recklessly is an indictable offence which carries a maximum penalty of 15 years' imprisonment and/ or a fine of 1200 penalty units⁷. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

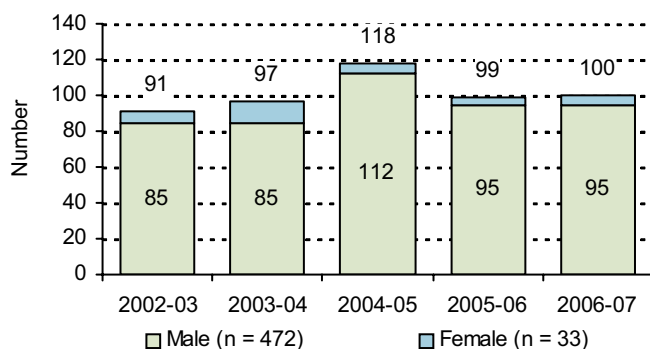
Of all people sentenced for the principal offence of causing serious injury recklessly, 22.2% had their cases heard in the higher courts. The remaining cases were heard in the Children's and Magistrates' Court⁸. Causing serious injury recklessly was the principal offence in 4.9% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for causing serious injury recklessly for the period 2002-03 to 2006-07. As shown, 505 people were sentenced for causing serious injury recklessly over the five year period. There were 100 people sentenced for this offence in 2006-07, up by 1 person from the previous year.

Over the five years depicted, the majority of those sentenced were men (93.5% or 472 of the 505 people), including 95 of the 100 people sentenced in 2006-07.

Figure 1: The number of people sentenced for causing serious injury recklessly by gender, 2002-03 to 2006-07



Sentence types and trends

Figure 2 shows the total number of people sentenced for causing serious injury recklessly and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention⁹. Over the five year period, 48% of people were given a custodial sentence. This peaked at 56% (56 of 100) in 2006-07 after a low of 41% (48 of 118) in 2004-05.

Figure 2: The number of people sentenced for causing serious injury recklessly and the number who received a custodial sentence, 2002-03 to 2006-07

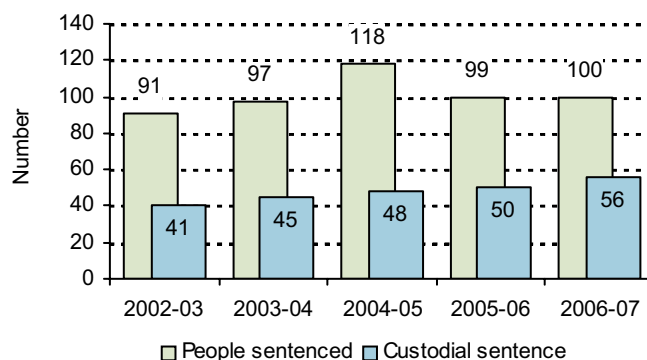
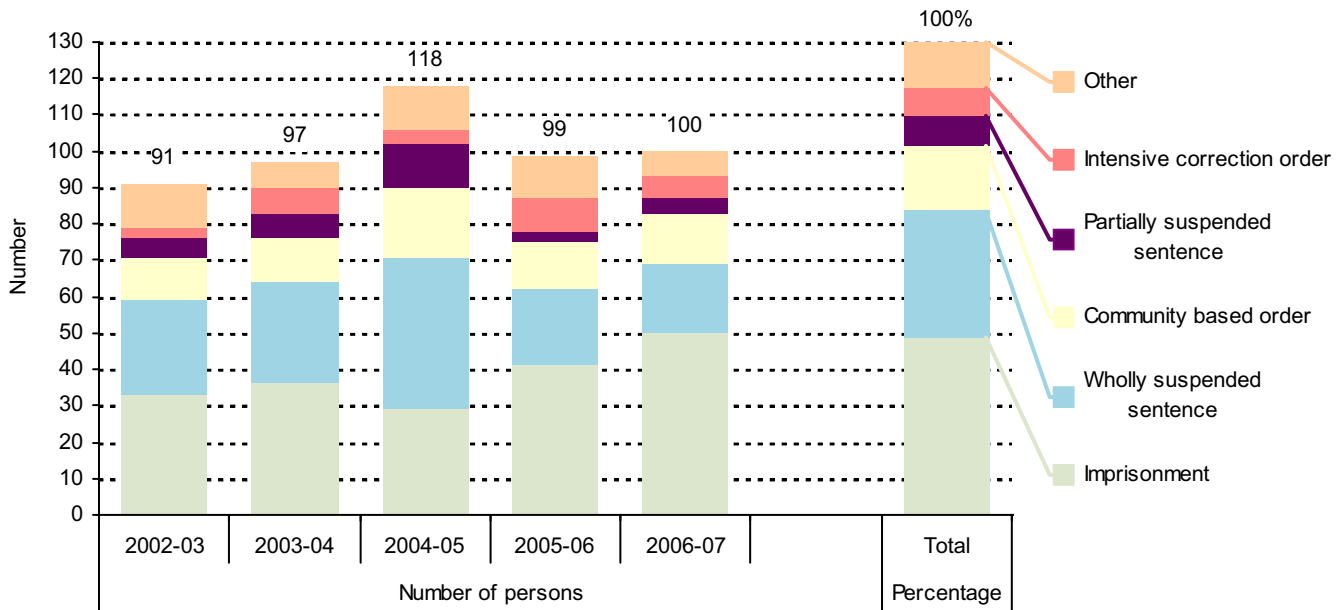


Figure 3 and Table 1 show the number of people sentenced for causing serious injury recklessly from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, around four in ten people sentenced for causing serious injury recklessly received a period of imprisonment (37% or 189 of 505 people), while 27% received a wholly suspended sentence of imprisonment and 14% received a community based order.

The percentage of people who received a sentence of imprisonment increased over the past 3 years from 25% in 2004-05 to 50% in 2006-07. Over the same period the use of both wholly and partially suspended sentences has decreased (from 36% and 10%, respectively, in 2004-05 to 19% and 4% in 2006-07).

Figure 3: The number of people sentenced for causing serious injury recklessly by sentence type, 2002-03 to 2006-07



Other includes youth training centre order, mix (wholly suspended sentence & fine), adjourned undertaking without conviction, fine, non-custodial supervision order, mix (community based order & fine), adjourned undertaking with conviction, restricted involuntary treatment order (hospital order), combined custody and treatment order, mix (imprisonment & community based order) and aggregate wholly suspended sentence.

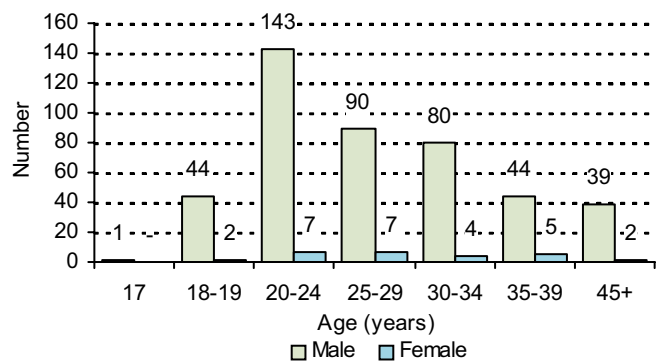
Table 1: The number and percentage of people sentenced for causing serious injury recklessly by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Imprisonment	33	36	29	41	50
	36%	37%	25%	41%	50%
Wholly suspended sentence	26	28	42	21	19
	29%	29%	36%	21%	19%
Community based order	12	12	19	13	14
	13%	12%	16%	13%	14%
Partially suspended sentence	5	7	12	3	4
	5%	7%	10%	3%	4%
Intensive correction order	3	7	4	9	6
	3%	7%	3%	9%	6%
Youth training centre order	2	2	6	5	2
	2%	2%	5%	5%	2%
Mix (wholly suspended sentence & fine)	3	0	0	2	2
	3%	-	-	2%	2%
Adjourned undertaking without conviction	0	2	2	1	1
	-	2%	2%	1%	1%
Fine	3	0	0	1	1
	3%	-	-	1%	1%
Non-custodial supervision order	2	0	0	1	0
	2%	-	-	1%	-
Mix (community based order & fine)	0	1	2	0	0
	-	1%	2%	-	-
Adjourned undertaking with conviction	1	1	0	1	0
	1%	1%	-	1%	-
Restricted involuntary treatment order (hospital order)	0	1	1	0	0
	-	1%	<1%	-	-
Combined custody and treatment order	1	0	1	0	0
	1%	-	<1%	-	-
Mix (imprisonment & community based order)	0	0	0	1	0
	-	-	-	1%	-
Aggregate wholly suspended sentence	0	0	0	0	1
	-	-	-	-	1%
People sentenced	91	97	118	99	100

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for causing serious injury recklessly grouped by their age¹⁰ between 2002-03 and 2006-07. The average age of people sentenced for causing serious injury recklessly was twenty-nine years and three months. Women sentenced over this period were much older than men (an average age of thirty-one years and nine months for women compared to twenty-nine years and one month for men). One male juvenile was sentenced over this period.

Figure 4: The number of people sentenced for causing serious injury recklessly by gender and age, 2002-03 to 2006-07



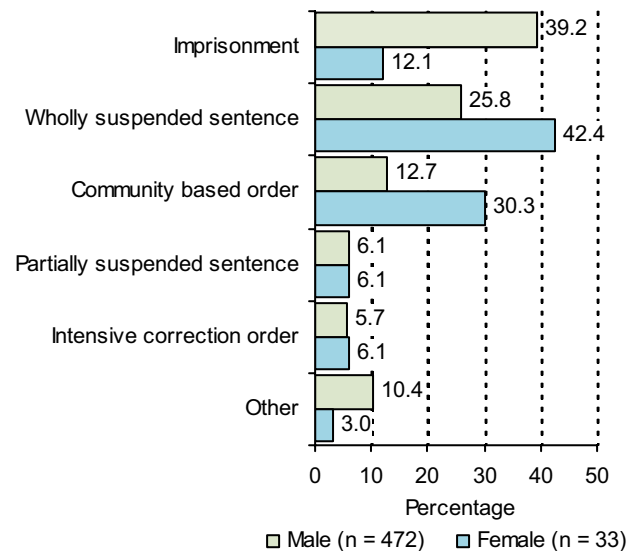
Sentence types by gender

Figure 5 and Figure 2 show the types of sentence imposed for causing serious injury recklessly grouped by gender. As shown, a higher percentage of men received a period of imprisonment (39.2% compared to 12.1% of women). Conversely, a higher percentage of women received a community based order (30.3% compared to 12.7% of men) and a wholly suspended sentence of imprisonment (42.4% compared to 25.8%).

Table 2: The number and percentage breakdown of people sentenced for causing serious injury recklessly by gender, 2002-03 to 2006-07

Sentence type	Male	Female	Total
Imprisonment	185 39%	4 12%	189 37%
Wholly suspended sentence	122 26%	14 42%	136 27%
Community based order	60 13%	10 30%	70 14%
Partially suspended sentence	29 6%	2 6%	31 6%
Intensive correction order	27 6%	2 6%	29 6%
Youth training centre order	17 4%	0 -	17 3%
Mix (wholly suspended sentence & fine)	7 1%	0 -	7 1%
Adjourned undertaking without conviction	6 1%	0 -	6 1%
Fine	5 1%	0 -	5 <1%
Non-custodial supervision order	3 <1%	0 -	3 <1%
Mix (community based order & fine)	3 <1%	0 -	3 <1%
Adjourned undertaking with conviction	3 <1%	0 -	3 <1%
Restricted involuntary treatment order (hospital order)	1 <1%	1 3%	2 <1%
Combined custody and treatment order	2 <1%	0 -	2 <1%
Mix (imprisonment & community based order)	1 <1%	0 -	1 <1%
Aggregate wholly suspended sentence	1 <1%	0 -	1 <1%
People sentenced	472	33	505

Figure 5: The percentage of people sentenced for causing serious injury recklessly by sentence type and gender, 2002-03 to 2006-07



Other includes youth training centre order, mix (wss & fine), adjourned undertaking without conviction, fine, non-custodial supervision order, mix (community based order & fine), adjourned undertaking with conviction, restricted involuntary treatment order, combined custody and treatment order, mix (imprisonment & community based order) and aggregate wholly suspended sentence.

Sentence types by age

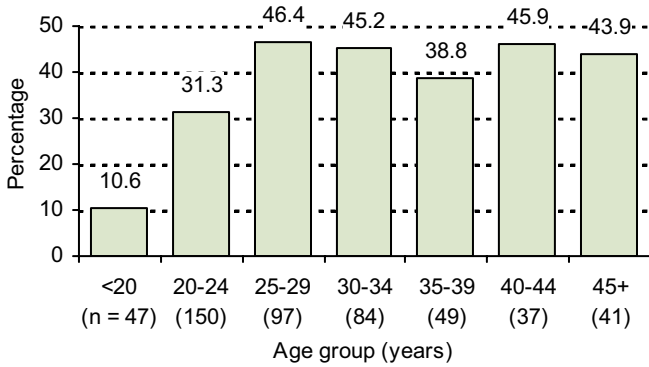
As shown in the table above, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, community based orders and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 25-29 years old (46% or 45 of the 97 people in this age group) followed by people aged 40-44 years old (46% or 17 of the 37 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 20 years (11% or five of the 47 people in this age group).

Figure 6: The percentage of people who received a period of imprisonment for causing serious injury recklessly by age group, 2002-03 to 2006-07

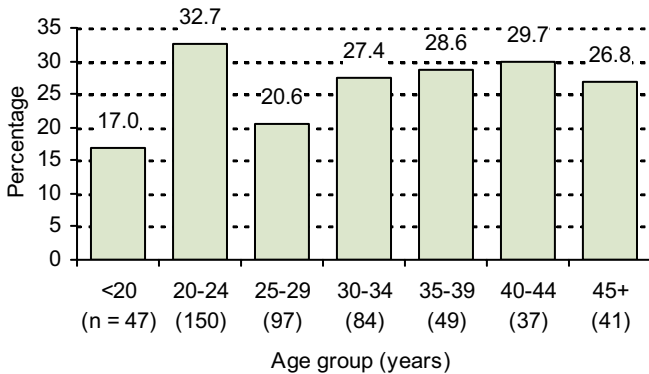


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 20-24 years old (33% or 49 of the 150 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 20 years (17% or eight of the 47 people in this age group).

Figure 7: The percentage of people who received a wholly suspended sentence of imprisonment for causing serious injury recklessly by age group, 2002-03 to 2006-07

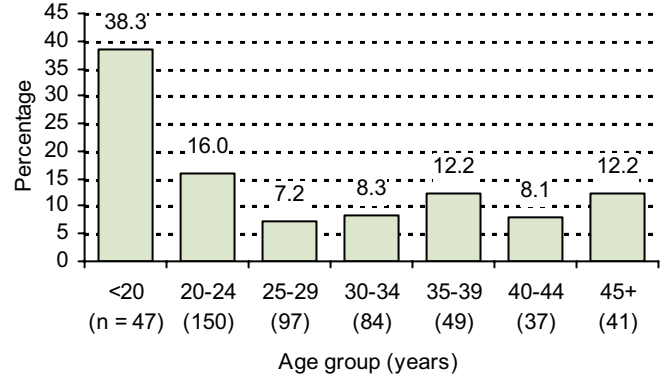


Community based orders

Community based orders were most likely to be given to people aged under 20 years (38% or 18 of the 47 people in this age group).

Conversely, community based orders were least common for those aged 25-29 years old (7% or seven of the 97 people in this age group).

Figure 8: The percentage of people who received a community based order for causing serious injury recklessly by age group, 2002-03 to 2006-07

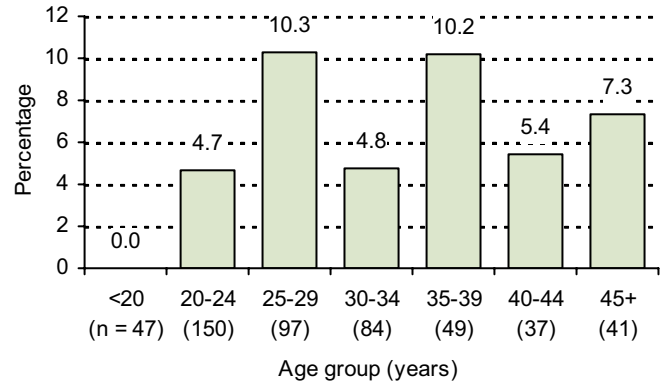


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 25-29 years old (10% or 10 of the 97 people in this age group) followed by people aged 35-39 years old (10% or five of the 49 people in this age group).

Conversely, none of the 47 people aged under 20 years received a partially suspended sentence of imprisonment.

Figure 9: The percentage of people who received a partially suspended sentence of imprisonment for causing serious injury recklessly by age group, 2002-03 to 2006-07



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.

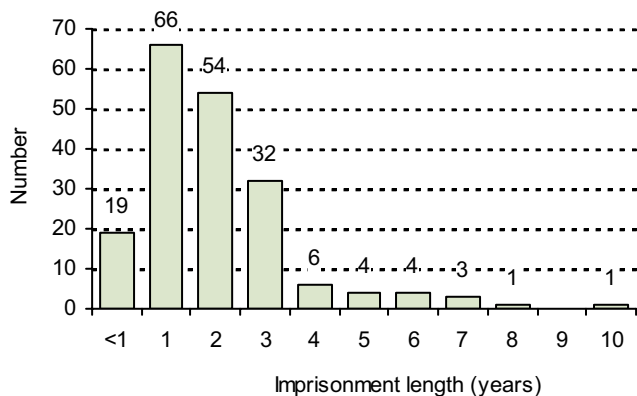
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for causing serious injury recklessly must be considered in this broader context. The following sections analyse the use of imprisonment for causing serious injury recklessly over 2002-03 to 2006-07.

Principal sentence of imprisonment

Figure 10 shows the number of people sentenced to imprisonment for causing serious injury recklessly between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 2 months to ten years, while the median length of imprisonment was two years (meaning that half of the imprisonment terms were shorter than two years and half were longer).

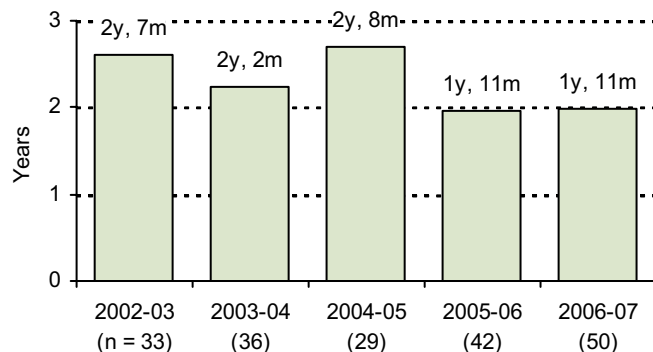
The most common length of imprisonment imposed was 1 year (66 people).

Figure 10: The number of people sentenced to imprisonment for causing serious injury recklessly by length of imprisonment term, 2002-03 to 2006-07



As shown in Figure 11, the average length of imprisonment term imposed on people sentenced for causing serious injury recklessly ranged from one year and eleven months in 2005-06 and 2006-07 to two years and eight months in 2004-05.

Figure 11: The average length of imprisonment term imposed on people sentenced for causing serious injury recklessly, 2002-03 to 2006-07



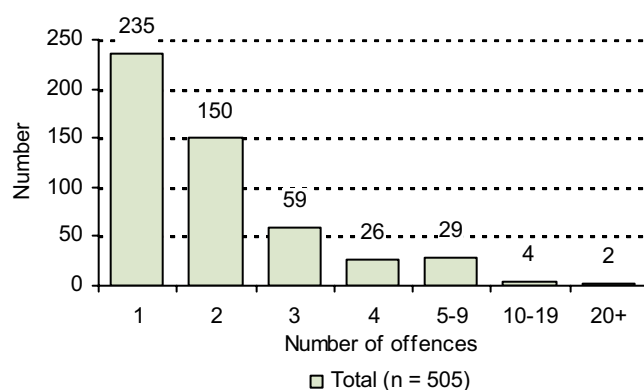
From 2002-03 to 2006-07, the majority of those people who received a term of imprisonment for causing serious injury recklessly were men (186 people or 97.9%).

Other offences finalised at the same hearing

Often people prosecuted for causing serious injury recklessly face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of causing serious injury recklessly.

Figure 12 shows the number of people sentenced for the principal offence of causing serious injury recklessly by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 31, while the median was 2 offences. There were 235 people (46.5%) sentenced for the single offence of causing serious injury recklessly alone. The average number of offences per person sentenced for causing serious injury recklessly was 2.19.

Figure 12: The number of people sentenced for the principal offence of causing serious injury recklessly by the number of sentenced offences per person, 2002-03 to 2006-07



While Figure 12 presents the number of sentenced offences for those sentenced for causing serious injury recklessly, Figure 13 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 71 of the total 505 people (14.1%) also received sentences for affray. On average, they were sentenced for 1 count of affray.

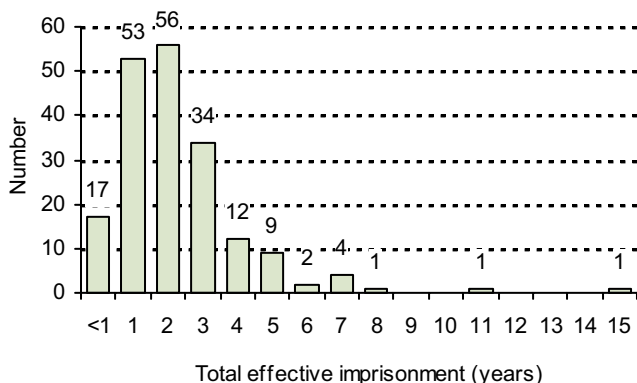
Figure 13: The number and percentage of people sentenced for the principal offence of causing serious injury recklessly by the most common offences that were sentenced and the average number of those offences that were sentenced, 2002-03 to 2006-07

Offence	No.	%	Avg.
1 causing serious injury recklessly	505	100.0	1.07
2 affray	71	14.1	1.00
3 causing injury	48	9.5	1.06
4 theft	30	5.9	1.77
5 intentionally destroy/damage property (criminal damage)	26	5.1	1.31
6 aggravated burglary	26	5.1	1.08
7 making a threat to kill	22	4.4	1.27
8 common law assault	19	3.8	1.21
9 robbery	18	3.6	3.17
10 false imprisonment	14	2.8	1.07
People sentenced	505	100.0	2.19

Total effective sentence of imprisonment

There were 190 people given a total effective sentence of imprisonment¹¹. Figure 14 shows the number of people sentenced to imprisonment for causing serious injury recklessly between 2002-03 and 2006-07 by the length of their total effective sentence. The length of total effective sentences ranged from two months and fifteen days to fifteen years¹², while the median total effective length of imprisonment was two years (meaning that half of the total effective sentence lengths were below two years and half were above).

Figure 14: The number of people sentenced to imprisonment for causing serious injury recklessly by total effective length of imprisonment term, 2002-03 to 2006-07



Non-parole period

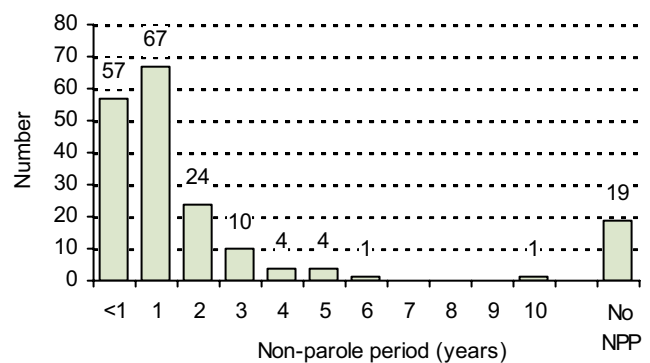
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

will be lengthier than the individual principal sentence for causing serious injury recklessly. Sentences and non-parole periods must be considered in this broader context.

Of the 190 people who were sentenced to imprisonment for causing serious injury recklessly, 173 were eligible to have a non-parole period fixed¹³. Of these people, 168 were given a non-parole period (97%)¹⁴. Figure 15 shows the number of people sentenced to imprisonment for causing serious injury recklessly between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from three months to ten years, while the median length of the non-parole period was one year (meaning that half of the non-parole periods were below one year and half were above).

Figure 15: The number of people sentenced to imprisonment for causing serious injury recklessly by length of non-parole period, 2002-03 to 2006-07



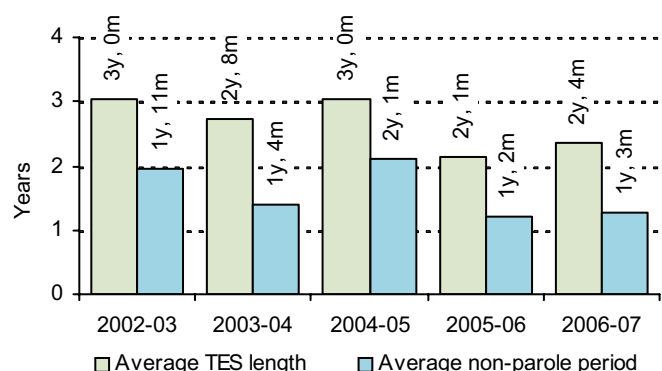
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective sentences of imprisonment and non-parole periods

Figure 16 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2002-03 to 2006-07¹⁵.

From 2002-03 to 2006-07, the average length of total effective sentence for all people ranged from two years and one month in 2005-06 to three years in 2002-03 and 2004-05. Over the same period, the average length of non-parole period ranged from one year and two months in 2005-06 to two years and one month in 2004-05.

Figure 16: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for causing serious injury recklessly, 2002-03 to 2006-07

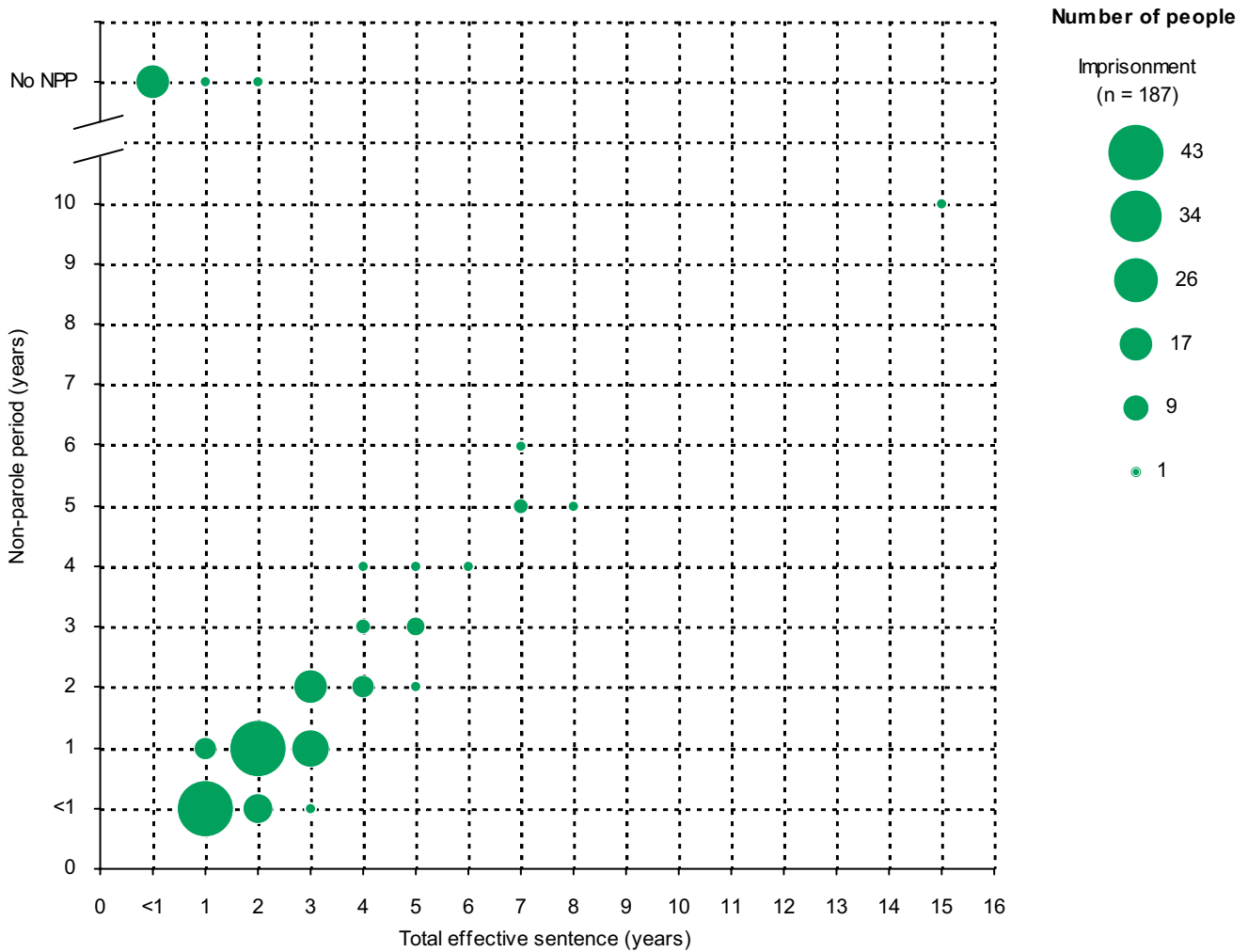


Total effective sentence of imprisonment by non-parole period

While Figure 14 and Figure 15 present the lengths of the total effective sentences and non-parole periods separately, Figure 17 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for causing serious injury recklessly 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 combination¹⁶. As shown, the most common combination of imprisonment length and non-parole period imposed was one year with a non-parole period of less than one year (43 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from two months and fifteen days with no non-parole period to fifteen years with a non-parole period of ten years¹⁷.

Figure 17: The number of people sentenced to imprisonment for causing serious injury recklessly by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07¹⁸



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

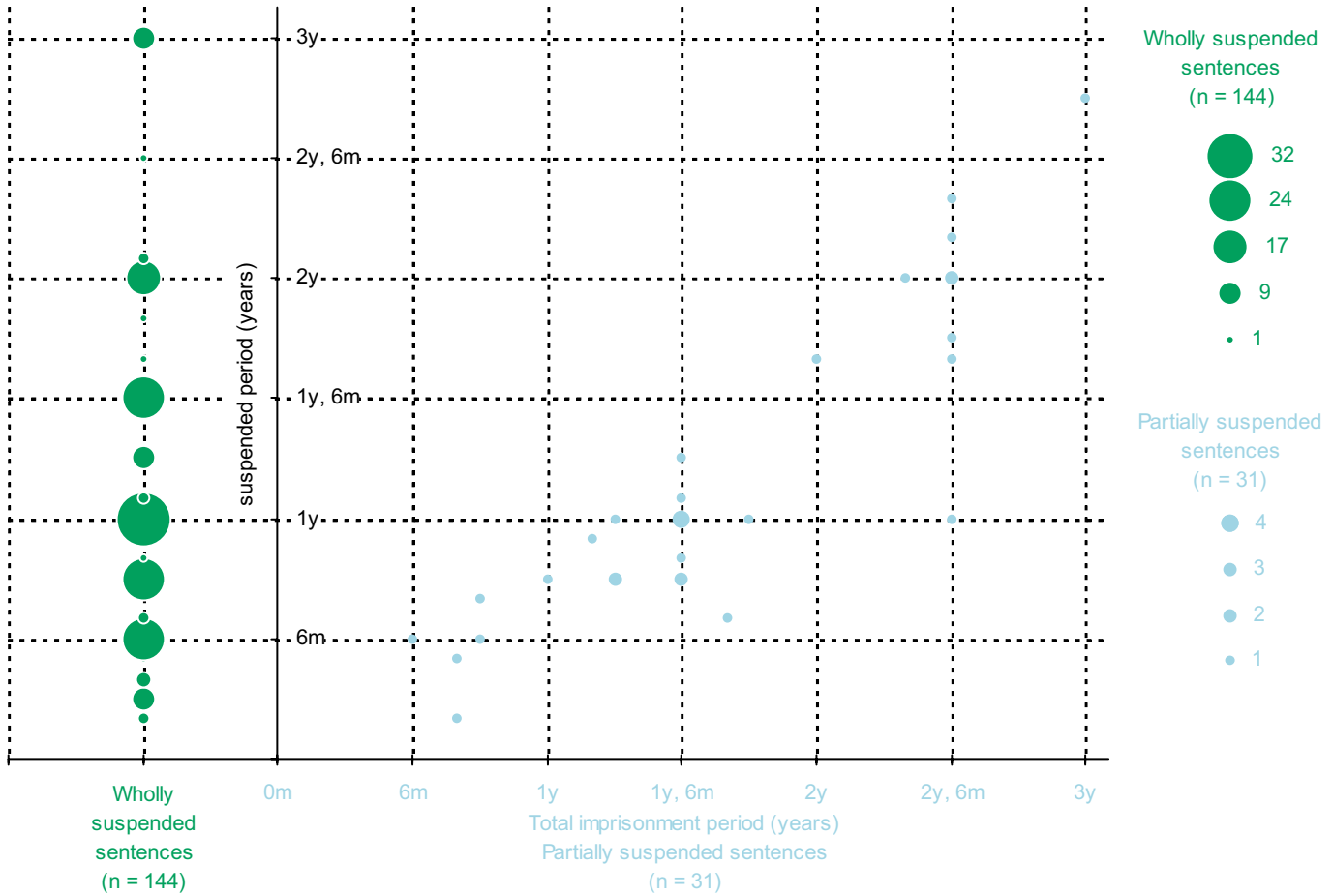
Suspended sentences of imprisonment

There were 175 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 144 people had their prison sentence wholly suspended and 31 received a partially suspended sentence of imprisonment. Figure 18 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 (32 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combination was one year and six months with one year suspended (4 people - as represented by the largest blue 'bubble' on the chart).

Figure 18: The number of people given a wholly or partially suspended sentence of imprisonment for causing serious injury recklessly by sentence type and length, 2002-03 to 2006-07

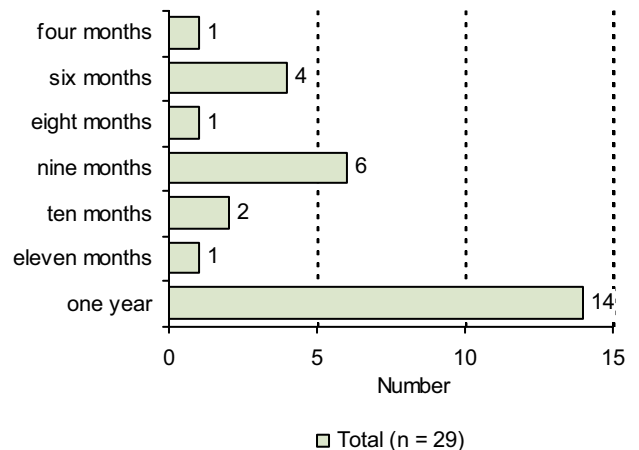


Intensive correction orders

There were 29 people given an intensive correction order as their total effective sentence.

The length of intensive correction orders for causing serious injury recklessly ranged from four months to one year, while the median length was eleven months (meaning that half of the lengths were shorter than or equal to eleven months and half were longer than or equal to eleven months). The most common length of intensive correction order was one year (14 people).

Figure 19: The number of people sentenced to an intensive correction order for causing serious injury recklessly by length of order imposed, 2002-03 to 2006-07

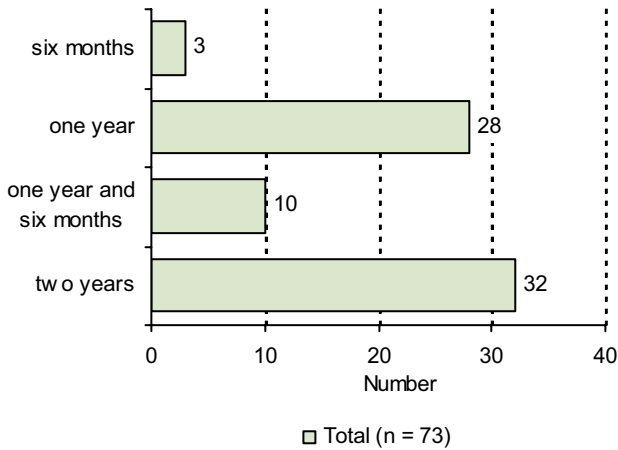


Community based orders

There were 73 people given a community based order as their total effective sentence.

The length of community based orders for causing serious injury recklessly 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 (32 people).

Figure 20: The number of people sentenced to a community based order for causing serious injury recklessly by length of order imposed, 2002-03 to 2006-07



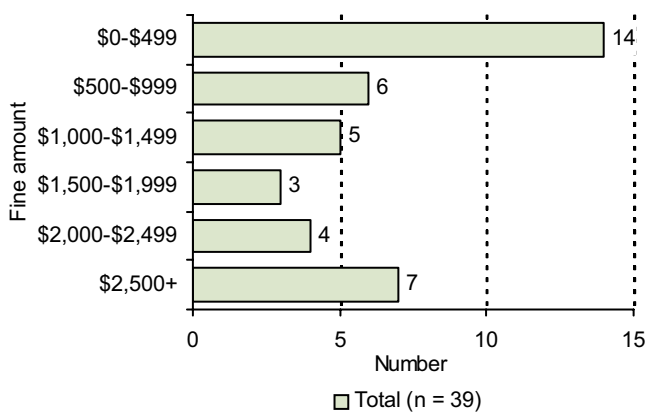
Fines

This analysis includes all fines that were imposed for cases where causing serious injury recklessly was the principal offence. Fines were imposed on 39 people.

The fine amount imposed ranged from \$100 to \$7,000, with a median of \$800 (meaning that half of the values fell below \$800 and half of the values were above \$800).

The average fine amount was \$1,390. Fines were only imposed against men.

Figure 21: The number of people who received a fine for causing serious injury recklessly by fine amount, 2002-03 to 2006-07



Summary

Between 2002-03 and 2006-07, 505 people were sentenced for causing serious injury recklessly in the higher courts. Over this period, the majority of those sentenced were men (94%), while 49% were between the age of 20 and 30 years.

Around four in ten people sentenced for causing serious injury recklessly received a period of imprisonment (37%), while 27% received a wholly suspended sentence of imprisonment and 14% received a community based order.

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 or a wholly suspended sentence of imprisonment.

Imprisonment was more common for those aged older than 25 years of age, wholly suspended sentences of imprisonment were more common for those aged between 20 and 45 years of age and community based orders were more common for those younger than 20 years of age.

Each of the 505 people was sentenced for an average of 2.19 offences, including 1.07 offences of causing serious injury recklessly. The most common offence finalised in conjunction with causing serious injury recklessly was affray (14.1% of all cases). The median total effective imprisonment length and the median principal imprisonment length were both two years.

Total effective imprisonment lengths ranged from two months and fifteen days with no non-parole period to fifteen years with a non-parole period of ten years. The most common sentence of imprisonment was one year with a less than one year non-parole period.

The most common wholly suspended sentence length was one year. The most common length of community based order was two years.

1 This report presents sentencing outcomes for people sentenced for the principal offence of causing serious injury recklessly in the County and Supreme Courts 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 causing serious injury recklessly who received a more serious sentence for another offence forming part of the same presentment. There were 646 people sentenced from 2002-03 to 2006-07 for 697 offences of causing serious injury recklessly. Causing serious injury recklessly was the principal proven offence for 505 of these people.

This Sentencing Snapshot is an update of Sentencing Snapshot No.13, which described the sentencing trends for causing serious injury recklessly in Victoria between 2000-01 and 2004-05. This report is available for download from the Sentencing Advisory Council website (www.sentencingcouncil.vic.gov.au)

2 The information source for sentencing outcomes for causing serious injury recklessly 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). While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.

4 *Crimes Act 1958* s.17.

5 *R v Campbell* [1997] 2 VR 585. See also *R v Crabbe* (1995) 156 CLR 464; *R v Nuri* [1990] VR 641.

6 *Crimes Act 1958* s.15.

7 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.

8 Data for sentencing outcomes in the Magistrates' Court are not currently available for detailed analysis.

9 Custodial sentence includes imprisonment, partially suspended sentence, youth training centre order, combined custody and treatment order and mix (imprisonment & community based order).

10 Age is as at the time of sentencing.

11 All of the 190 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.

12 In 2002-03, a man aged 42 years was sentenced for one count of causing serious injury recklessly and one count of attempted armed robbery. He received a total effective sentence of 15 years' imprisonment with a non-parole period of ten years.

13 17 people were not eligible for parole because they were given a total effective sentence length of less than one year.

14 Three people were 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 these cases. The non-parole periods for these people are excluded from the analysis. A non-parole period was not set for two people who were eligible for a non-parole period.

15 Due to the low number of women (4) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.

16 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.

17 Refer fn 12.

18 This graph includes the 187 people who were given a total effective sentence and a non-parole period that related to this case only.

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“Sentencing Snapshots” form a series that presents summary information on sentencing trends in Victoria. Current issues in the series are:

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