

No. 48: Sentencing trends for cultivating a commercial quantity of narcotic plants in the higher courts of Victoria, 2002-03 to 2006-07

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of cultivating a commercial quantity of narcotic plants 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.

The *Drugs, Poisons and Controlled Substances Act 1981* (Vic) provides a set of offences in relation to the cultivation of a narcotic plant that distinguishes between large commercial, commercial and less than commercial quantities of the illegal plant⁴.

A person who sows the seed of a narcotic plant or grows, tends or nurtures a narcotic plant without being authorised or licensed to do so is guilty of cultivation of a narcotic plant⁵. The maximum penalties that apply vary depending on the quantity of the plant involved, as well as the purpose for which the plant was cultivated. The amount that constitutes a commercial quantity depends on the type of plant. In relation to cannabis, which is the most common narcotic plant involved in these offences, a commercial quantity is 25 kg or 100 plants⁶.

Cultivation of a commercial quantity of a narcotic plant is an indictable offence that earns a maximum penalty of 25 years' imprisonment and/or a fine of up to 3000 penalty units⁷. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

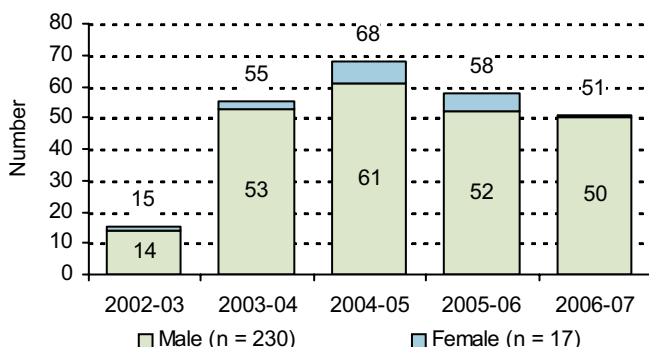
Cultivating a commercial quantity of narcotic plants was the principal offence in 2.4% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for cultivating a commercial quantity of narcotic plants for the period 2002-03 to 2006-07. As shown, 247 people were sentenced for cultivating a commercial quantity of narcotic plants over the five year period. There were 51 people sentenced for this offence in 2006-07, down by 7 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (93.1% or 230 of the 247 people), including 50 of the 51 people sentenced in 2006-07.

Figure 1: The number of people sentenced for cultivating a commercial quantity of narcotic plants by gender, 2002-03 to 2006-07



Sentence types and trends

Figure 2 shows the total number of people sentenced for cultivating a commercial quantity of narcotic plants and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention⁸. Over the five year period, 66%

of people were given a custodial sentence. This peaked at 78% (40 of 51) in 2006-07 after a low of 59% (40 of 68) in 2004-05.

Figure 2: The number of people sentenced for cultivating a commercial quantity of narcotic plants and the number who received a custodial sentence, 2002-03 to 2006-07

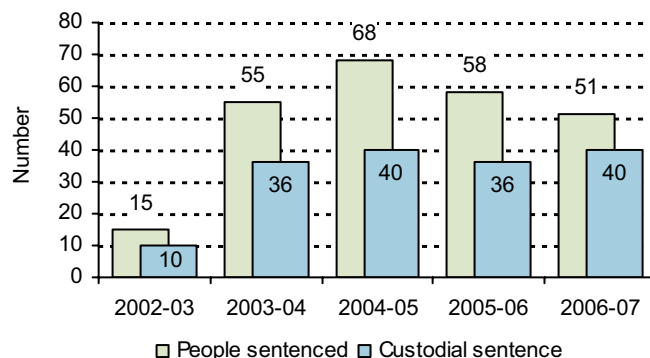
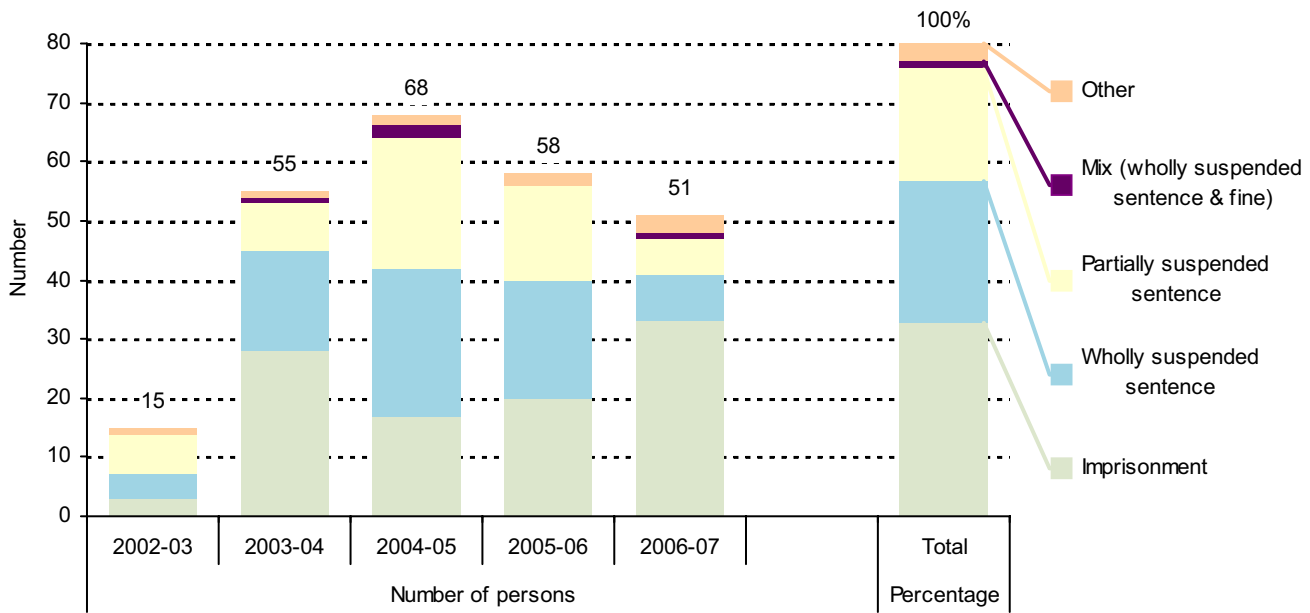


Figure 3 and Table 1 show the number of people sentenced for cultivating a commercial quantity of narcotic plants from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, around four in ten people sentenced for cultivating a commercial quantity of narcotic plants received a period of imprisonment (41% or 101 of 247 people), while 30% received a wholly suspended sentence of imprisonment and 24% received a partially suspended sentence of imprisonment.

From 2005-06 to 2006-07, there was a decrease in the use of wholly suspended sentences (from 34% in 2005-06 to 16% in 2006-07) and partially suspended sentences (from 28% to 12%). Over the same period there was an increase in the use of imprisonment (from 34% in 2005-06 to 65% in 2006-07).

Figure 3: The number of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type, 2002-03 to 2006-07



Other includes intensive correction order, mix (partially suspended sentence & fine), aggregate wholly suspended sentence, aggregate imprisonment, adjourned undertaking without conviction and adjourned undertaking with conviction.

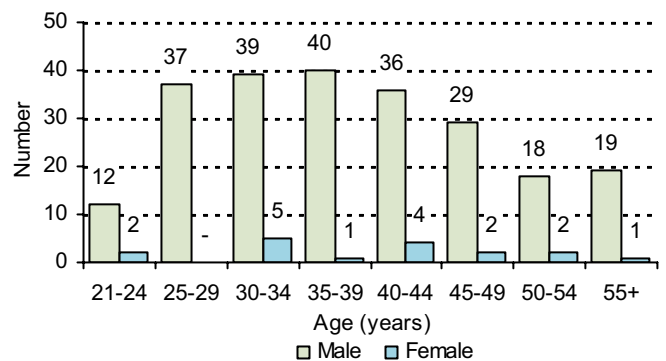
Table 1: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Imprisonment	3	28	17	20	33
	20%	51%	25%	34%	65%
Wholly suspended sentence	4	17	25	20	8
	27%	31%	37%	34%	16%
Partially suspended sentence	7	8	22	16	6
	47%	15%	32%	28%	12%
Mix (wholly suspended sentence & fine)	0	1	2	0	1
	-	2%	3%	-	2%
Intensive correction order	1	1	0	1	1
	7%	2%	-	2%	2%
Mix (partially suspended sentence & fine)	0	0	1	0	0
	-	-	1%	-	-
Aggregate wholly suspended sentence	0	0	0	0	1
	-	-	-	-	2%
Aggregate imprisonment	0	0	0	0	1
	-	-	-	-	2%
Adjourned undertaking without conviction	0	0	1	0	0
	-	-	1%	-	-
Adjourned undertaking with conviction	0	0	0	1	0
	-	-	-	2%	-
People sentenced	15	55	68	58	51

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for cultivating a commercial quantity of narcotic plants grouped by their age⁹ between 2002-03 and 2006-07. The average age of people sentenced for cultivating a commercial quantity of narcotic plants was thirty-eight years and ten months. Women sentenced over this period were older than men (an average age of thirty-nine years and seven months for women compared to thirty-eight years and ten months for men). There were no juveniles sentenced over this period.

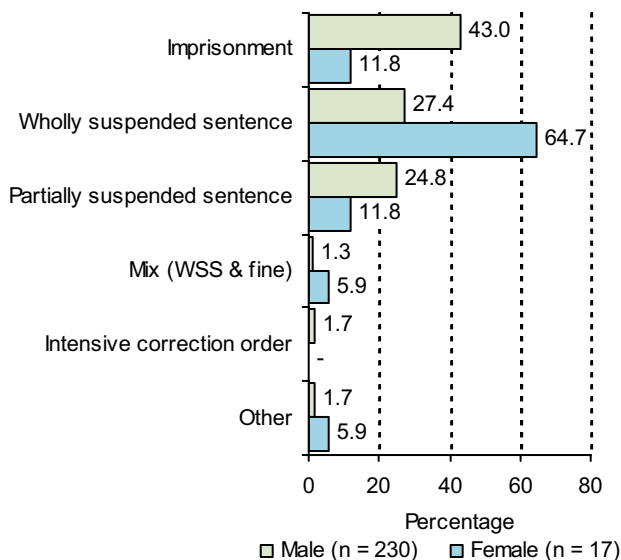
Figure 4: The number of people sentenced for cultivating a commercial quantity of narcotic plants by gender and age, 2002-03 to 2006-07



Sentence types by gender

Figure 5 and Table 2 show the types of sentence imposed for cultivating a commercial quantity of narcotic plants grouped by gender. As shown, a higher percentage of men received a period of imprisonment (43.0% compared to 11.8% of women) and a partially suspended sentence of imprisonment (24.8% compared to 11.8%). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (64.7% compared to 27.4% of men).

Figure 5: The percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type and gender, 2002-03 to 2006-07



Other includes mix (partially suspended sentence & fine), aggregate wholly suspended sentence, aggregate imprisonment, adjourned undertaking without conviction and adjourned undertaking with conviction.

Table 2: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by gender, 2002-03 to 2006-07

Sentence type	Male	Female	Total
Imprisonment	99	2	101
	43%	12%	41%
Wholly suspended sentence	63	11	74
	27%	65%	30%
Partially suspended sentence	57	2	59
	25%	12%	24%
Mix (wholly suspended sentence & fine)	3	1	4
	1%	6%	2%
Intensive correction order	4	0	4
	2%	-	2%
Mix (partially suspended sentence & fine)	1	0	1
	<1%	-	<1%
Aggregate wholly suspended sentence	1	0	1
	<1%	-	<1%
Aggregate imprisonment	1	0	1
	<1%	-	<1%
Adjourned undertaking without conviction	0	1	1
	-	6%	<1%
Adjourned undertaking with conviction	1	0	1
	<1%	-	<1%
People sentenced	230	17	247

Sentence types by age

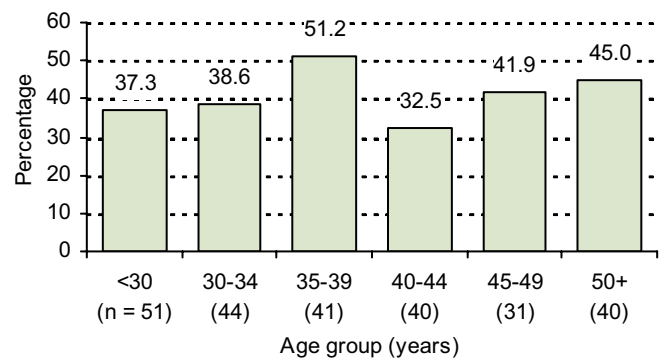
As shown in the table above, the two most common sentence types were imprisonment and wholly suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35-39 years old (51% or 21 of the 41 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 40-44 years old (33% or 13 of the 40 people in this age group).

Figure 6: The percentage of people who received a period of imprisonment for cultivating a commercial quantity of narcotic plants by age group, 2002-03 to 2006-07

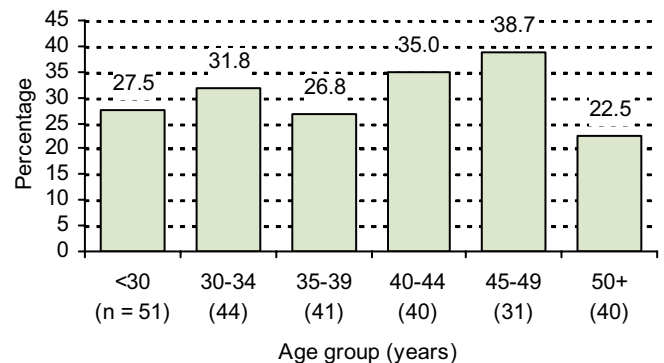


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 45-49 years old (39% or 12 of the 31 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 50 years and older (23% or nine of the 40 people in this age group).

Figure 7: The percentage of people who received a wholly suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants 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.

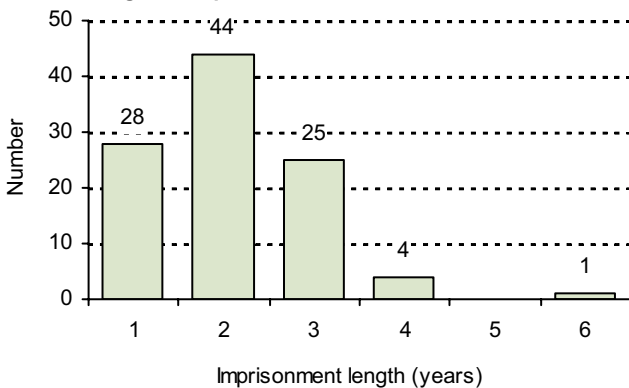
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether 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 cultivating a commercial quantity of narcotic plants must be considered in this broader context. The following sections analyse the use of imprisonment for cultivating a commercial quantity of narcotic plants over 2002-03 to 2006-07.

Principal sentence of imprisonment

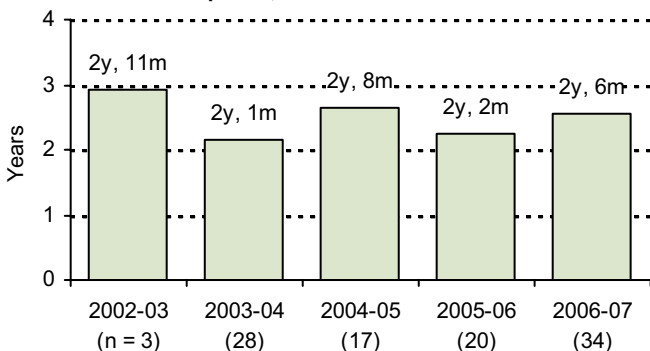
Figure 8 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to six years, while the median length of imprisonment was two years and six months (meaning that half of the imprisonment terms were shorter than two years and six months and half were longer).

Figure 8: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of imprisonment term, 2002-03 to 2006-07



As shown in Figure 9, the average length of imprisonment term imposed on people sentenced for cultivating a commercial quantity of narcotic plants ranged from two years and one month in 2003-04 to two years and eleven months in 2002-03.

Figure 9: The average length of imprisonment term imposed on people sentenced for cultivating a commercial quantity of narcotic plants, 2002-03 to 2006-07

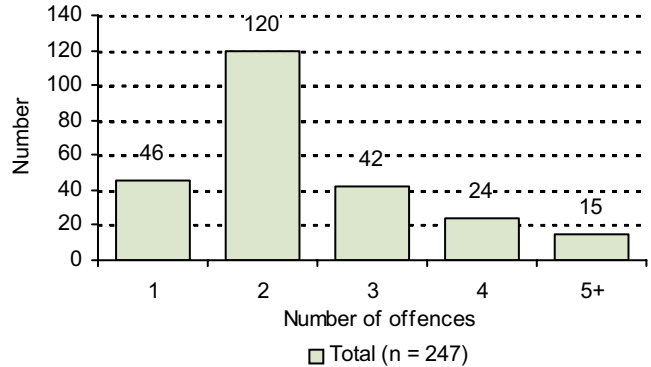


Other offences finalised at the same hearing

Often people prosecuted for cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants.

Figure 10 shows the number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 8, while the median was 2 offences. There were 46 people (18.6%) sentenced for the single offence of cultivating a commercial quantity of narcotic plants alone. The average number of offences per person sentenced for cultivating a commercial quantity of narcotic plants was 2.41.

Figure 10: The number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the number of sentenced offences per person, 2002-03 to 2006-07



While Figure 10 presents the number of sentenced offences for those sentenced for cultivating a commercial quantity of narcotic plants, Figure 11 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, 176 of the total 247 people (71.3%) also received sentences for theft. On average, they were sentenced for 1.14 counts of theft.

Figure 11: The number and percentage of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants	247	100.0	1.07
2 theft	176	71.3	1.14
3 possess a drug of dependence	31	12.6	1.23
4 drug trafficking in a non-commercial quantity	23	9.3	1.04
5 use a drug of dependence	9	3.6	1.00
6 intentionally destroy/damage property (criminal damage)	6	2.4	1.17
7 non prohibited person in possession of an unlicensed handgun	5	2.0	1.20
8 conceal property suspected of being then proceeds of crime	4	1.6	1.25
9 possess firearm	3	1.2	1.00
10 unlicensed person store ammunition in insecure manner	2	0.8	1.50
People sentenced	247	100.0	2.41

Total effective sentence of imprisonment

There were 102 people given a total effective sentence of imprisonment¹⁰. Figure 12 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2002-03 and 2006-07 by the length of their total effective sentence. The length of total effective sentences ranged from one year and one month to six years¹¹, while the median total effective length of imprisonment was two years and six months (meaning that half of the total effective sentence lengths were below two years and six months and half were above).

Figure 12: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by total effective length of imprisonment term, 2002-03 to 2006-07



Non-parole period

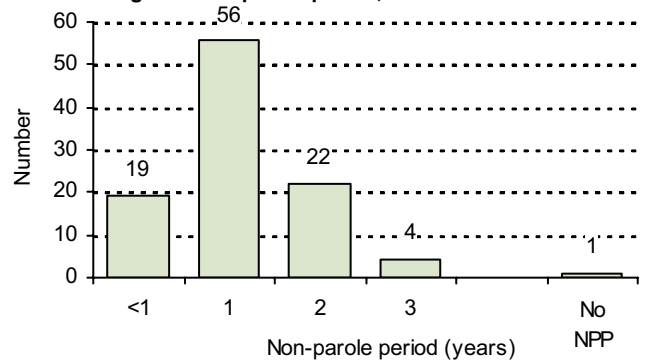
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 cultivating a commercial quantity of narcotic plants. Sentences and non-parole periods must be considered in this broader context.

Of the 102 people who were sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, all were eligible to have a non-parole period fixed. Of these people, 101 were given a non-parole period (99%). Figure 13 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from four months to three years and nine months, while the median length of the non-parole period was one year and three months (meaning that half of the non-parole periods were below one year and three months and half were above).

Figure 13: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of non-parole period, 2002-03 to 2006-07



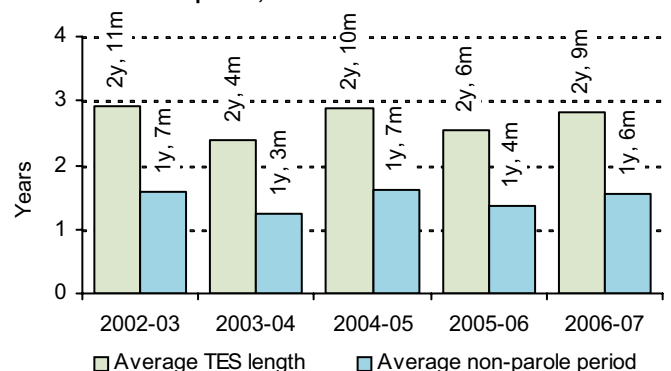
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective sentences of imprisonment and non-parole periods

Figure 14 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 2006-07¹².

From 2002-03 to 2006-07, the average length of total effective sentence for all people ranged from two years and four months in 2003-04 to two years and eleven months in 2002-03. Over the same period, the average length of non-parole period ranged from one year and seven months in 2003-04 to one year and three months in 2002-03 and 2004-05.

Figure 14: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, 2002-03 to 2006-07

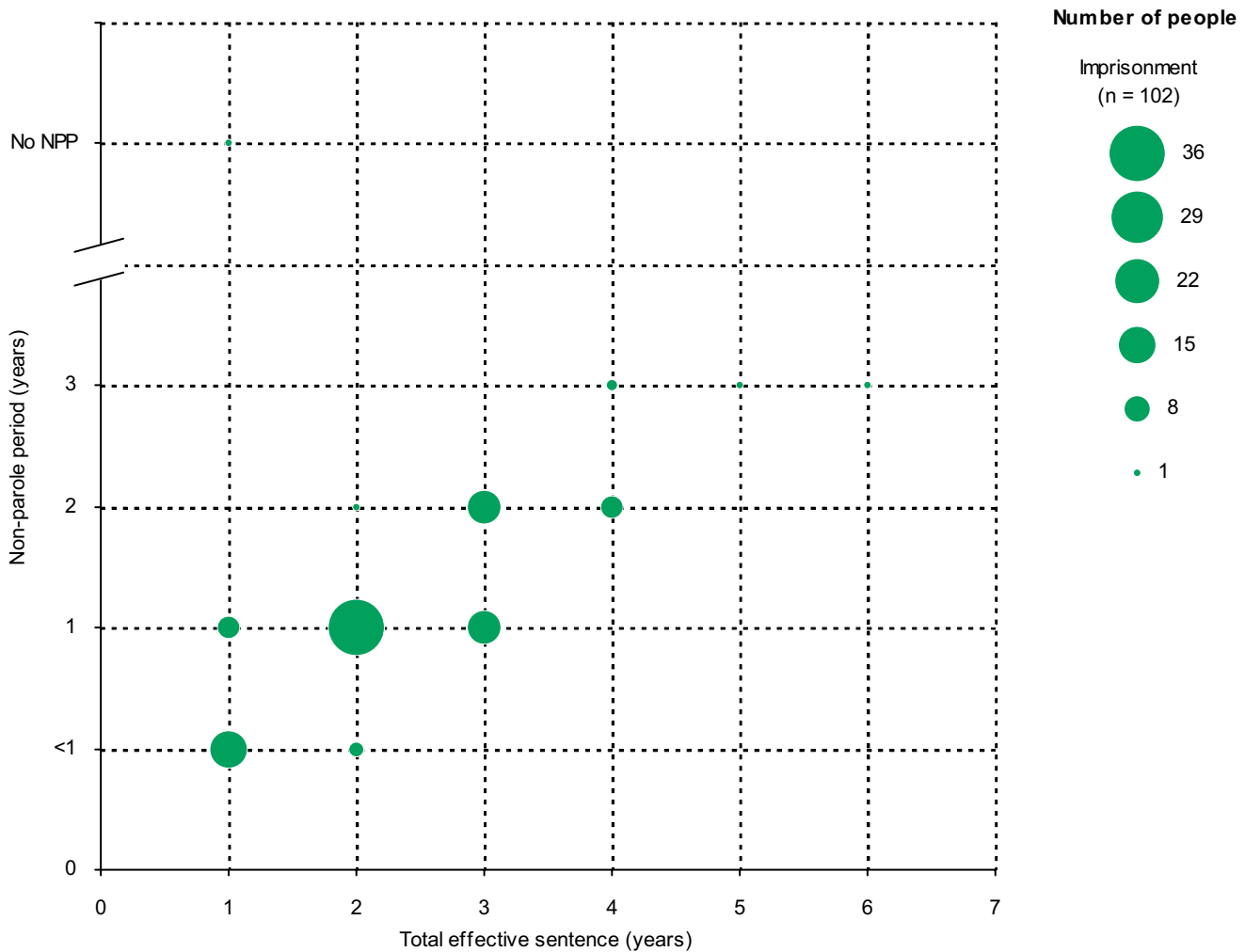


Total effective sentence of imprisonment by non-parole period

While Figure 12 and Figure 13 present the lengths of the total effective sentences and non-parole periods separately, Figure 15 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for cultivating a commercial quantity of narcotic plants 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 combination¹³. 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 (36 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year and one month with a non-parole period of six months to six years with a non-parole period of three years and nine months¹⁴.

Figure 15: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07¹⁵



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

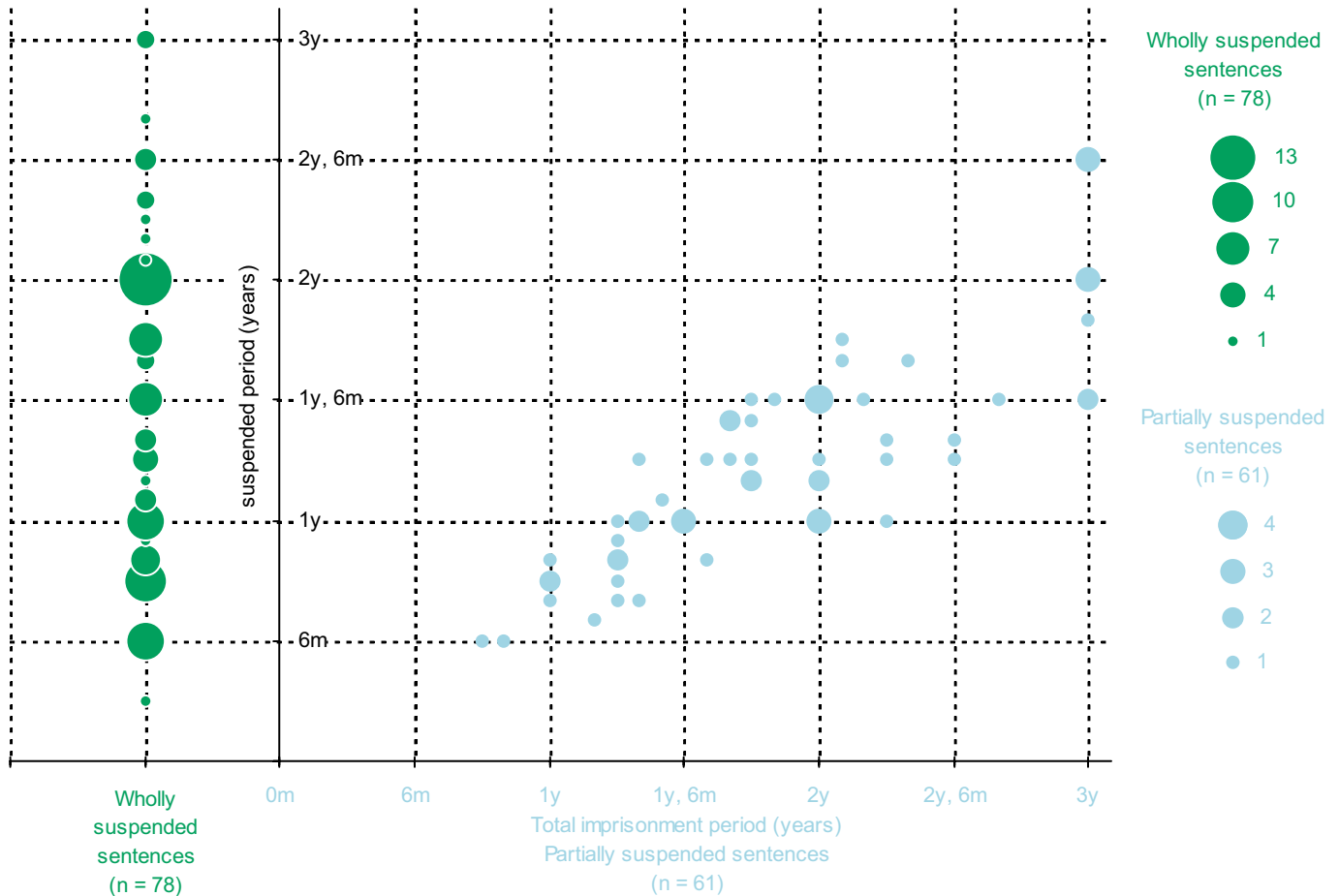
Suspended sentences of imprisonment

There were 139 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 78 people had their prison sentence wholly suspended and 61 received a partially suspended sentence of imprisonment. Figure 16 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 three months to three years. The most common wholly suspended sentence length was two years (13 people - as represented by the largest green 'bubble' on the chart).

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

Figure 16: The number of people given a wholly or partially suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants by sentence type and length, 2002-03 to 2006-07

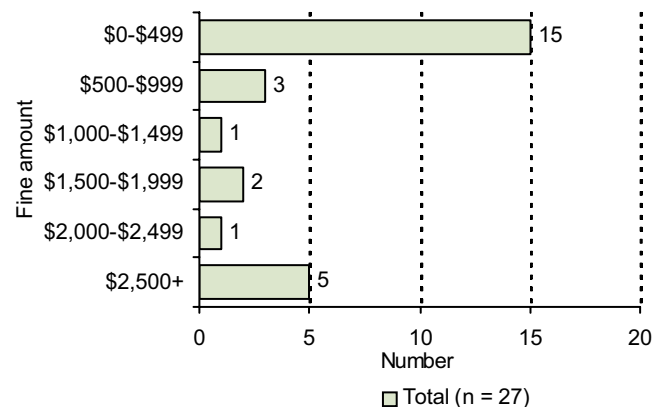


Fines

This analysis includes all fines that were imposed for cases where cultivating a commercial quantity of narcotic plants was the principal offence. Fines were imposed on 27 people.

The fine amount imposed ranged from \$100 to \$10,000, with a median of \$300 (meaning that half of the values fell below \$300 and half of the values were above \$300). The average fine amount was \$1,719.

Figure 17: The number of people who received a fine for cultivating a commercial quantity of narcotic plants by fine amount, 2002-03 to 2006-07



Summary

Between 2002-03 and 2006-07, 247 people were sentenced for cultivating a commercial quantity of narcotic plants in the higher courts. Over this period, the majority of those sentenced were men (93%), while 66% were between the age of 25 and 45 years.

Around four in ten people sentenced for cultivating a commercial quantity of narcotic plants received a period of imprisonment (41%), while 30% received a wholly suspended sentence of imprisonment and 24% received a partially suspended sentence of imprisonment.

Men were more likely than women to be sentenced to a period of imprisonment or a partially suspended sentence of imprisonment. Conversely, women were more likely to be sentenced to a wholly suspended sentence of imprisonment.

Imprisonment was more common for those aged between 35 and 40 years of age and wholly suspended sentences of imprisonment were more common for those aged between 40 and 50 years of age.

Each of the 247 people was sentenced for an average of 2.41 offences, including 1.07 offences of cultivating a commercial quantity of narcotic plants. The most common offence finalised in conjunction with cultivating a commercial quantity of narcotic plants was theft (71.3% of all cases). Both the median total effective imprisonment length and the median principal imprisonment length were two years and six months.

Total effective imprisonment lengths ranged from one year and one month with a non-parole period of six months to six years with a non-parole period of three years and nine months. The most common sentence of imprisonment was two years with a one year non-parole period.

The most common partially suspended sentence length was two years with one year and six months suspended, while the most common wholly suspended sentence length was two years.

1 This report presents sentencing outcomes for people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants who received a more serious sentence for another offence forming part of the same presentment.

2 The information source for sentencing outcomes for cultivating a commercial quantity of narcotic plants 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.

The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding drug cultivating offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. This involved reading the sentencing remarks of the particular cases and determining if the quantity of the drug was non-commercial or commercial. In total, there were 339 cases that had cultivation of narcotic plants (s.72A or s.72B *Drugs, Poisons and Controlled*

Substances Act 1981 (Vic)) as the principal proven offence over the five year period 2002-03 to 2006-07. Sentencing remarks were located for 255 cases (75.2%). The drug quantities for all of these cases were checked and coded into the appropriate category. The remaining cases had sentences that were all within the statutory maximum penalty for the offence and were therefore assumed to have been recorded correctly in the first instance.

Of the 339 cases, 247 were deemed to be the offence of cultivation of a commercial quantity of narcotic plants (s.72A *Drugs, Poisons and Controlled Substances Act 1981* (Vic)).

- 4 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.72-72B.
- 5 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.72B and s.70.
- 6 *Drugs, Poisons and Controlled Substances Act 1981* (Vic), Schedule 11, Part 2.
- 7 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.
- 8 Custodial sentence includes imprisonment, partially suspended sentence, mix (partially suspended sentence & fine) and aggregate imprisonment.
- 9 Age is as at the time of sentencing.
- 10 All of the 102 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 11 In 2005-06, a man aged 55 years was sentenced for one count of cultivating a commercial quantity of narcotic plants. He received a total effective sentence of six years' imprisonment with a non-parole period of three years and nine months.
- 12 Due to the low number of women (2) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.
- 13 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.
- 14 Refer fn. 11.
- 15 This graph includes the 102 people who were given a total effective sentence and a non-parole period that related to this case only.

This "Sentencing Snapshot" is part of a series presenting summary information on sentencing trends in Victoria.

Copies of all the Sentencing Snapshots can be downloaded from our website at

www.sentencingcouncil.vic.gov.au

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