

No. 47: Sentencing trends for cultivating 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 narcotic plants and details the age and gender² of people sentenced for this offence in the County Court 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.

Cultivation of a narcotic plant is an indictable offence that carries a maximum penalty of 15 years' imprisonment and/or a fine of up to 1800 penalty units⁶. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court⁷. In cases where the judge is satisfied on the balance of probabilities that the plant was not cultivated for any purpose related to trafficking, the maximum penalty is reduced to 1 year's imprisonment or 20 penalty units⁸.

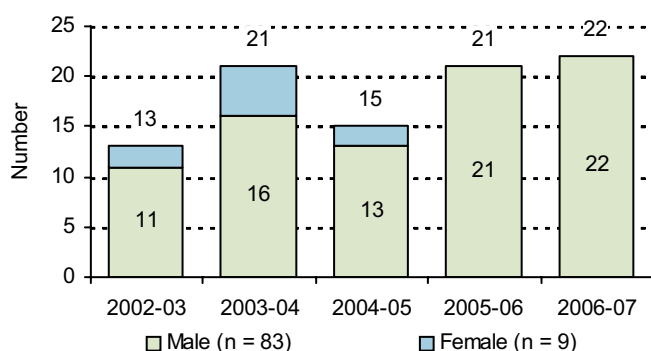
Of all people sentenced for the principal offence of cultivating narcotic plants, 86.0% had their cases heard in the higher courts. The remaining cases were heard in the Magistrates' Court⁹. Cultivating narcotic plants was the principal offence in 0.9% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for cultivating narcotic plants for the period 2002-03 to 2006-07. As shown, 92 people were sentenced for cultivating narcotic plants over the five year period. There were 22 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 (90.2% or 83 of the 92 people), including all of the 22 people sentenced in 2006-07.

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



Sentence types and trends

Figure 2 shows the total number of people sentenced for cultivating narcotic plants and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention¹⁰. Over the five year period, 29% of people were given a custodial sentence. This peaked at 40% (6 of 15) in 2004-05 after a low of 14% (3 of 21) in 2003-04. In 2006-07,

36% of people sentenced (8 of 22) were given a custodial sentence.

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

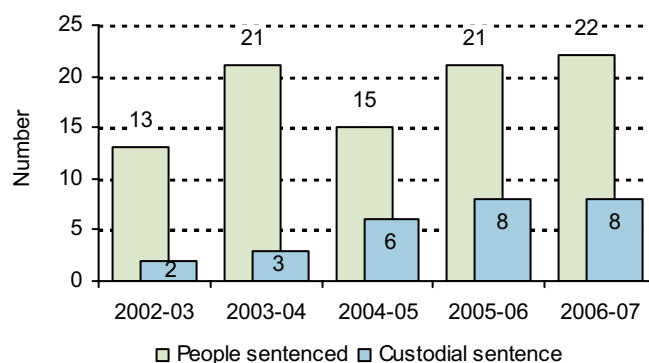
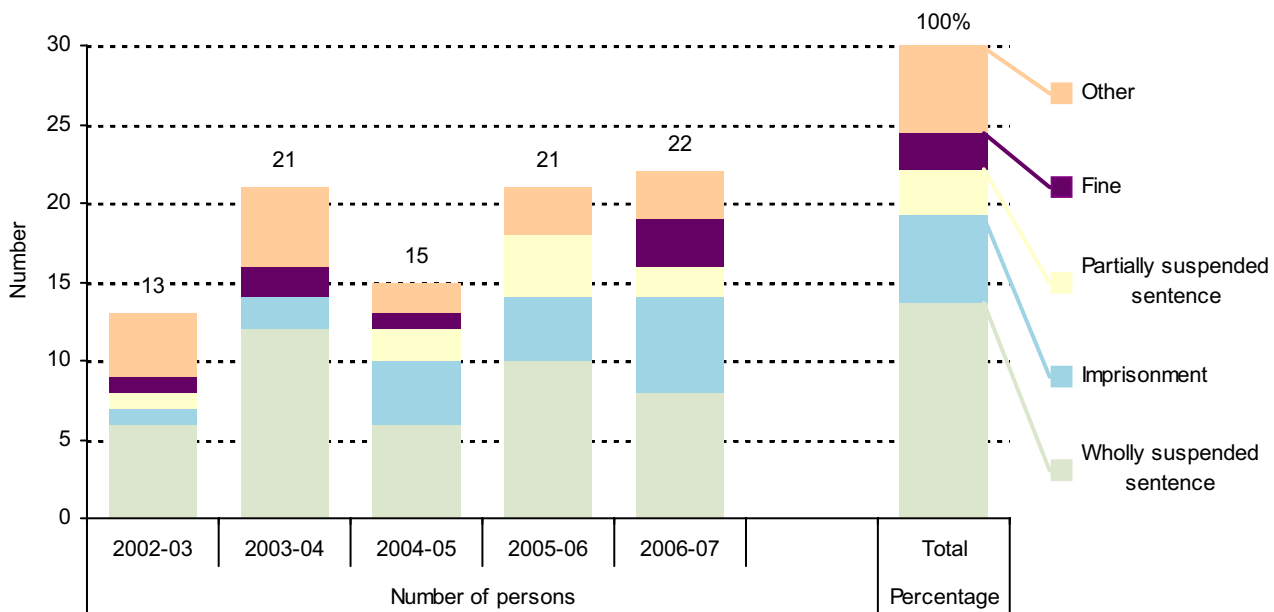


Figure 3 and Table 1 show the number of people sentenced for cultivating narcotic plants from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, around half of the people sentenced for cultivating narcotic plants received a wholly suspended sentence of imprisonment (46% or 42 of 92 people), while 18% received a period of imprisonment and 10% 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 48% in 2005-06 to 36% in 2006-07) and partially suspended sentences (from 19% to 9%). Over the same period there was an increase in the use of imprisonment (from 19% in 2005-06 to 27% in 2006-07).

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



Other includes community based order, adjourned undertaking with conviction, mix (wholly suspended sentence & fine), intensive correction order, unconditional dismissal and combined custody and treatment order.

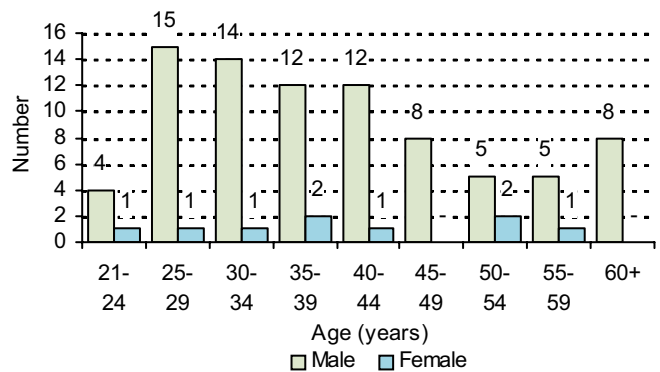
Table 1: The number and percentage of people sentenced for cultivating narcotic plants by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Wholly suspended sentence	6 46%	12 57%	6 40%	10 48%	8 36%
Imprisonment	1 8%	2 10%	4 27%	4 19%	6 27%
Partially suspended sentence	1 8%	0 -	2 13%	4 19%	2 9%
Fine	1 8%	2 10%	1 7%	0 -	3 14%
Community based order	2 15%	2 10%	0 -	1 5%	0 -
Adjourned undertaking with conviction	1 8%	1 5%	0 -	0 -	2 9%
Mix (wholly suspended sentence & fine)	1 8%	0 -	1 7%	1 5%	0 -
Intensive correction order	0 -	1 5%	0 -	1 5%	1 5%
Unconditional dismissal	0 -	0 -	1 7%	0 -	0 -
Combined custody and treatment order	0 -	1 5%	0 -	0 -	0 -
People sentenced	13	21	15	21	22

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for cultivating narcotic plants grouped by their age¹¹ between 2002-03 and 2006-07. The average age of people sentenced for cultivating narcotic plants was forty years and four months. There were no juveniles sentenced over this period.

Figure 4: The number of people sentenced for cultivating 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 narcotic plants grouped by gender. As shown, a higher percentage of men received a period of imprisonment (20.5% compared to no women), a mixed sentence of a wholly suspended sentence and fine (3.6% compared to no women) and an intensive correction order (3.6% compared to no women). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (55.6% compared to 44.6% of men).

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

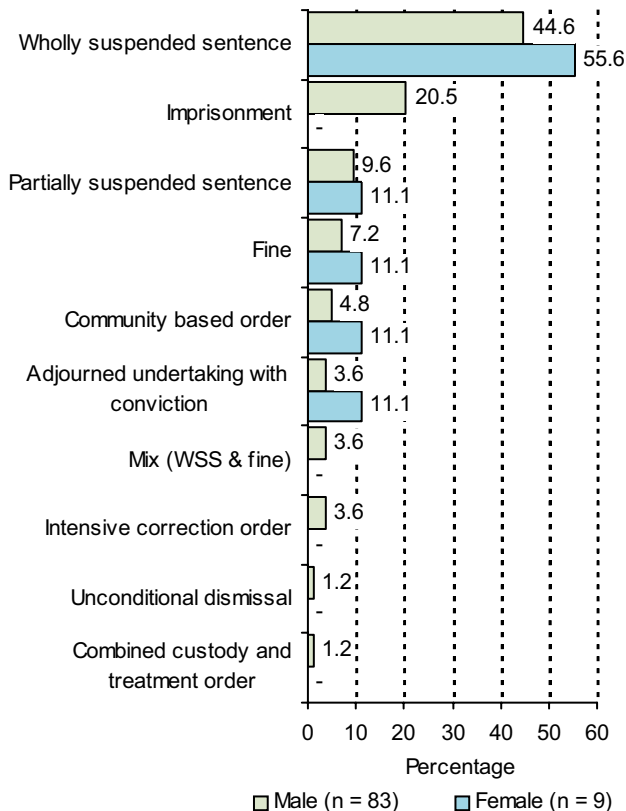


Table 2: The number and percentage of people sentenced for cultivating narcotic plants by gender, 2002-03 to 2006-07

Sentence type	Male	Female	Total
Wholly suspended sentence	37	5	42
	45%	56%	46%
Imprisonment	17	0	17
	20%	-	18%
Partially suspended sentence	8	1	9
	10%	11%	10%
Fine	6	1	7
	7%	11%	8%
Community based order	4	1	5
	5%	11%	5%
Adjourned undertaking with conviction	3	1	4
	4%	11%	4%
Mix (wholly suspended sentence & fine)	3	0	3
	4%	-	3%
Intensive correction order	3	0	3
	4%	-	3%
Unconditional dismissal	1	0	1
	1%	-	1%
Combined custody and treatment order	1	0	1
	1%	-	1%
People sentenced	83	9	92

Sentence types by age

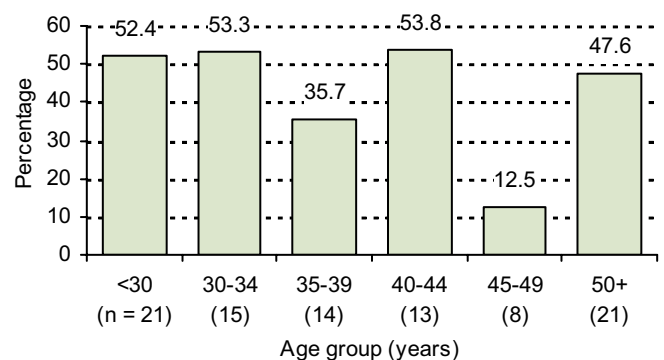
As shown in the table above, the three most common sentence types were wholly suspended sentences of imprisonment, imprisonment and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 40-44 years old (54% or seven of the 13 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 45-49 years old (13% or one of the 8 people in this age group).

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

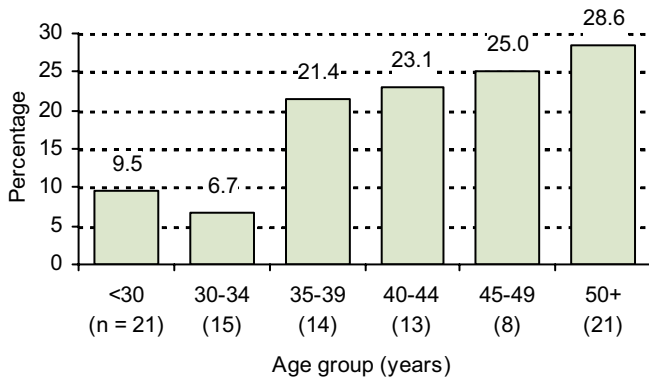


Imprisonment

Sentences of imprisonment were most likely to be given to people aged 50 years and older (29% or six of the 21 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 30-34 years old (7% or one of the 15 people in this age group).

Figure 7: The percentage of people who received a period of imprisonment for cultivating narcotic plants by age group, 2002-03 to 2006-07

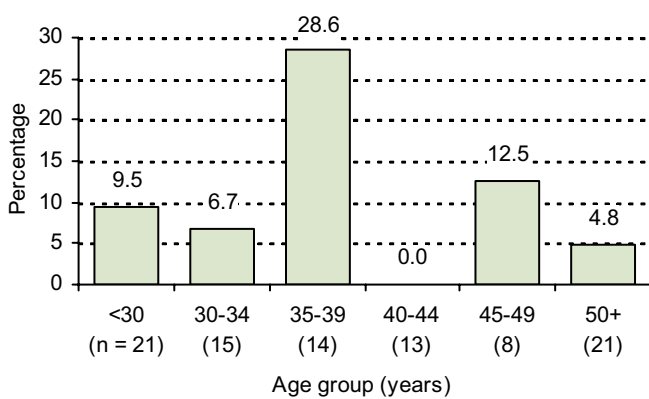


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 35-39 years old (29% or four of the 14 people in this age group).

Conversely, none of the 13 people aged 40-44 years old received a partially suspended sentence of imprisonment.

Figure 8: The percentage of people who received a partially suspended sentence of imprisonment for cultivating 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 narcotic plants must be

considered in this broader context. The following sections analyse the use of imprisonment for cultivating narcotic plants over 2002-03 to 2006-07.

Principal sentence of imprisonment

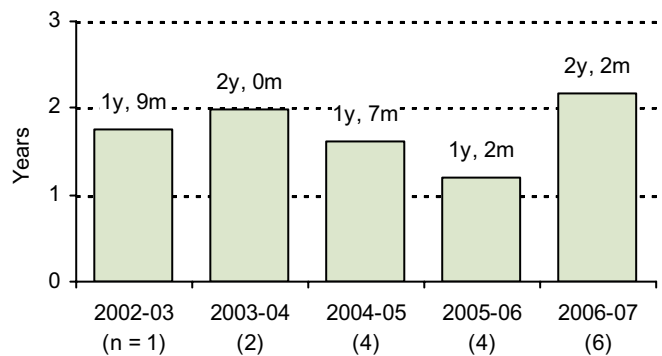
Figure 9 shows the number of people sentenced to imprisonment for cultivating narcotic plants between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 6 months to four years, while the median length of imprisonment was one year, nine months and six days (meaning that half of the imprisonment terms were shorter than one year, nine months and six days and half were longer).

Figure 9: The number of people sentenced to imprisonment for cultivating narcotic plants by length of imprisonment term, 2002-03 to 2006-07



As shown in Figure 10, the average length of imprisonment term imposed on people sentenced for cultivating narcotic plants ranged from one year and two months in 2005-06 to two years and two months in 2006-07.

Figure 10: The average length of imprisonment term imposed on people sentenced for cultivating narcotic plants, 2002-03 to 2006-07



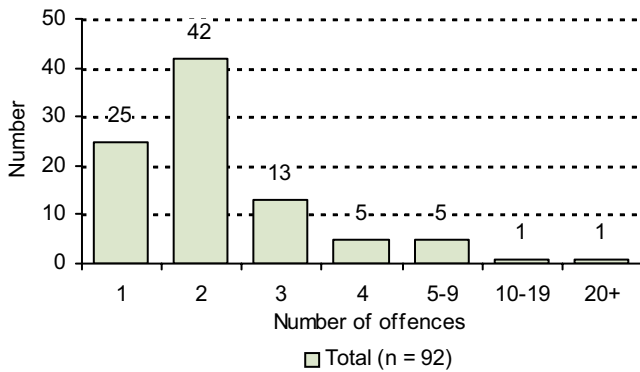
Other offences finalised at the same hearing

Often people prosecuted for cultivating 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 narcotic plants.

Figure 11 shows the number of people sentenced for the principal offence of cultivating narcotic plants by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 30, while the median was 2 offences. There were 25 people (27.2%) sentenced for the single offence of cultivating

narcotic plants alone. The average number of offences per person sentenced for cultivating narcotic plants was 2.58.

Figure 11: The number of people sentenced for the principal offence of cultivating narcotic plants by the number of sentenced offences per person, 2002-03 to 2006-07



While Figure 11 presents the number of sentenced offences for those sentenced for cultivating narcotic plants, Figure 12 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, 49 of the total 92 people (53.3%) also received sentences for theft. On average, they were sentenced for 1.37 counts of theft.

Figure 12: The number and percentage of people sentenced for the principal offence of cultivating 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 cultivate a narcotic plant	92	100.0	1.05
2 theft	49	53.3	1.37
3 possess a drug of dependence	19	20.7	1.05
4 drug trafficking in a non-commercial quantity	7	7.6	1.00
5 burglary	4	4.3	4.75
6 non-prohibited person possess a category a longarm	2	2.2	1.50
7 handling stolen goods	2	2.2	1.00
8 possess cartridge ammunition - unlicensed	2	2.2	1.00
9 stalking	1	1.1	2.00
10 non prohibited person in possession of an unlicensed handgun	1	1.1	2.00
People sentenced	92	100.0	2.58

Total effective sentence of imprisonment

There were 17 people given a total effective sentence of imprisonment¹². Figure 13 shows the number of people sentenced to imprisonment for cultivating 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 seven days to six years¹³, 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 13: The number of people sentenced to imprisonment for cultivating narcotic plants by total effective length of imprisonment term, 2002-03 to 2006-07



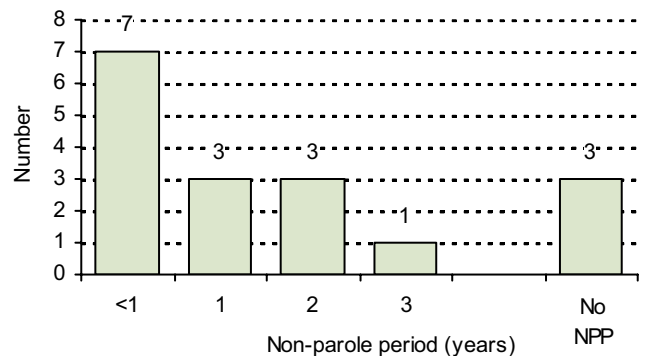
Non-parole period

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 narcotic plants. Sentences and non-parole periods must be considered in this broader context.

Of the 17 people who were sentenced to imprisonment for cultivating narcotic plants, all were eligible to have a non-parole period fixed. Of these people, 14 were given a non-parole period (82%). Figure 14 shows the number of people sentenced to imprisonment for cultivating narcotic plants between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from six months to three years and six months, 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 14: The number of people sentenced to imprisonment for cultivating narcotic plants by length of non-parole period, 2002-03 to 2006-07



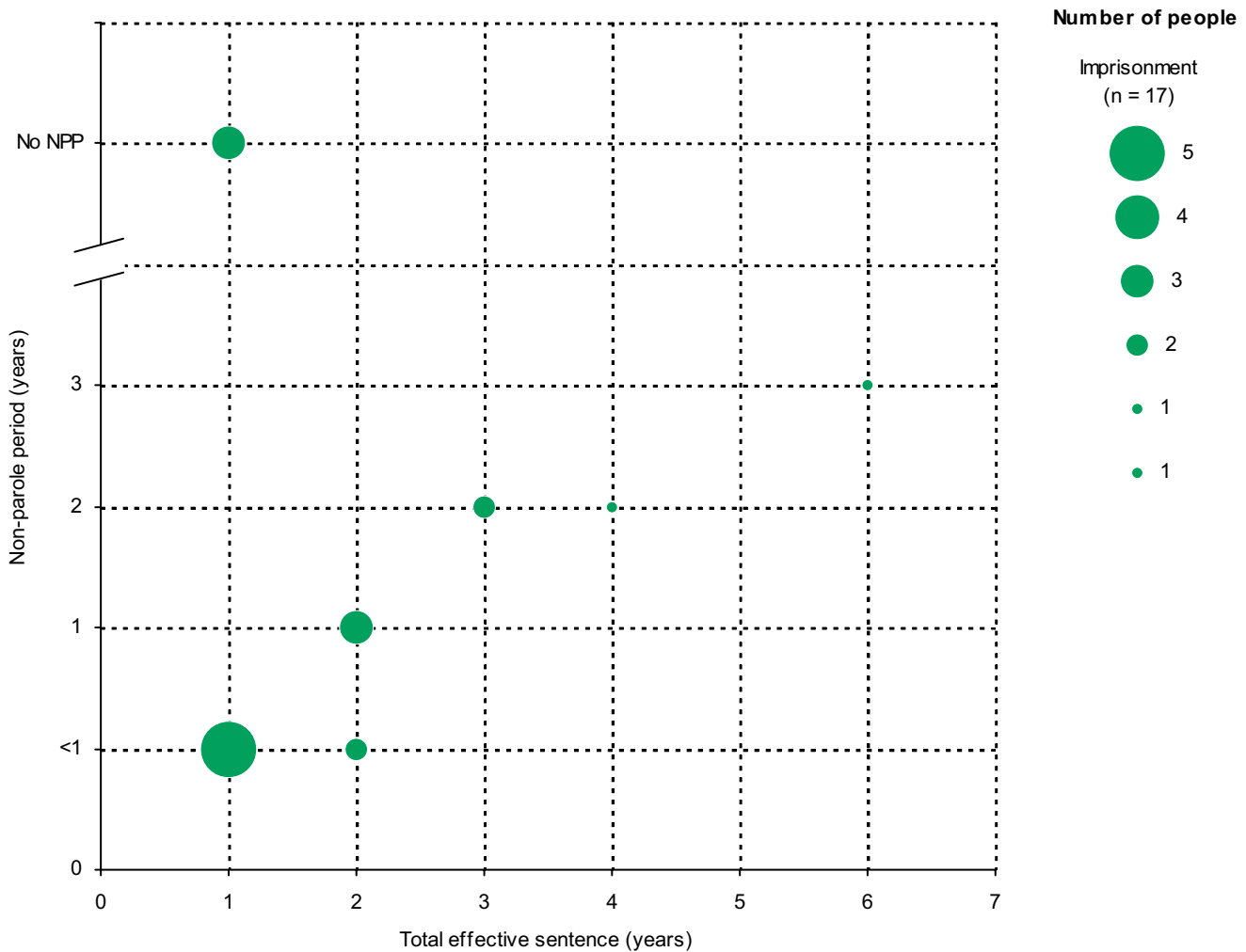
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective 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 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 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 combination¹⁴. 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 (5 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year and seven days with a non-parole period of six months to six years with a non-parole period of three years and six months¹⁵.

Figure 15: The number of people sentenced to imprisonment for cultivating narcotic plants by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07¹⁶



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

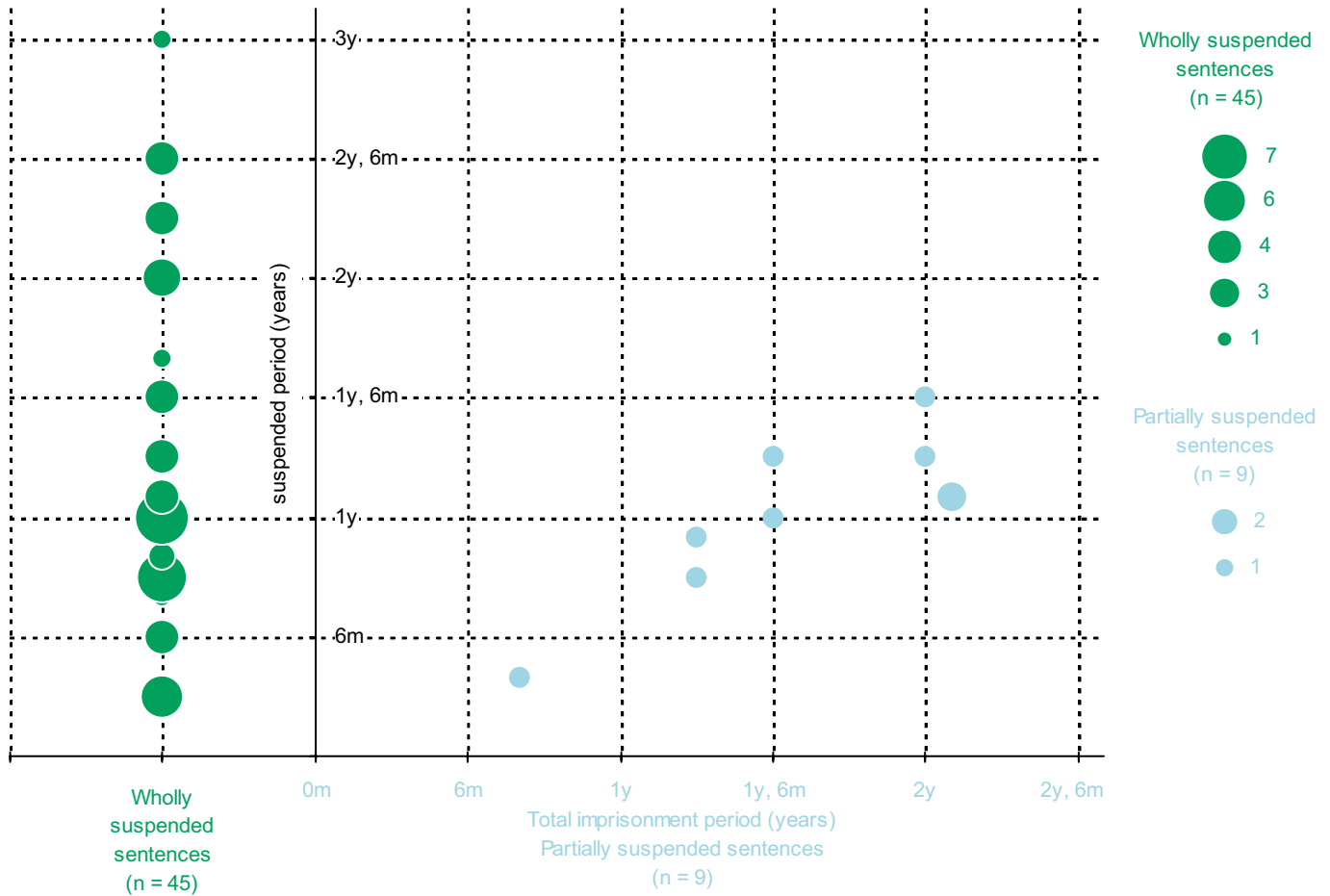
Suspended sentences of imprisonment

There were 54 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 45 people had their prison sentence wholly suspended and 9 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 one year (7 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combination was two years and one month with one year and one month suspended (2 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 narcotic plants by sentence type and length, 2002-03 to 2006-07

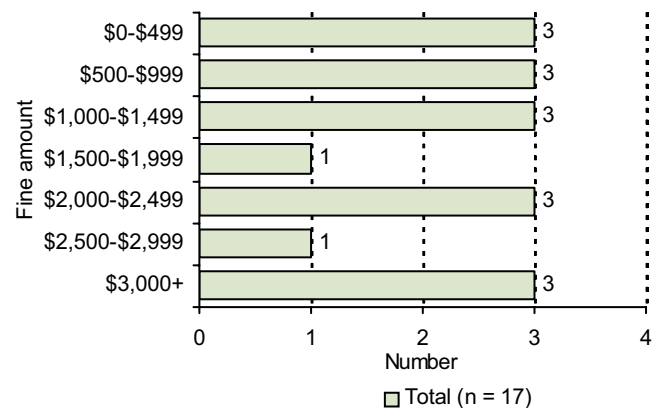


Fines

This analysis includes all fines that were imposed for cases where cultivating narcotic plants was the principal offence. Fines were imposed on 17 people.

The fine amount imposed ranged from \$200 to \$5,000, with a median of \$1,100 (meaning that half of the values fell below \$1,100 and half of the values were above \$1,100). The average fine amount was \$1,725.

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



Summary

Between 2002-03 and 2006-07, 92 people were sentenced for cultivating narcotic plants in the higher courts. Over this period, the majority of those sentenced were men (90%), while 63% were between the age of 25 and 45 years.

Around half of the people sentenced for cultivating narcotic plants received a wholly suspended sentence of imprisonment (46%), while 18% received a period of imprisonment and 10% 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 wholly suspended sentence of imprisonment, an adjourned undertaking with conviction or a community based order.

Wholly suspended sentences of imprisonment were more common for those younger than 45 years of age and imprisonment was more common for those older than 50 years of age.

Each of the 92 people was sentenced for an average of 2.58 offences, including 1.05 offences of cultivating narcotic plants. The most common offence finalised in conjunction with cultivating narcotic plants was theft (53.3% of all cases). The number and range of offences for which people with a principal offence of cultivating narcotic plants were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was two years, while the median principal imprisonment length was one year, nine months and six days.

Total effective imprisonment lengths ranged from one year and seven days with a non-parole period of six months to six years with a non-parole period of three years and six months. The most common sentence of imprisonment was one year with a non-parole period of less than one year.

The most common partially suspended sentence length was two years and one month with one year and one month 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 cultivating narcotic plants 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 cultivating 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 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, 92 were deemed to be the offence of cultivation 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.71AC and s.70.
- 6 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.
- 7 Cultivation of a narcotic plant can be heard summarily in the Magistrates' Court (*Magistrates' Court Act 1989* (Vic), s.53 (1) and Sched. 4).
If this offence is tried in the Magistrates' Court it carries a maximum penalty of 3 years' imprisonment and/or a fine of up to 50 penalty units.
- 8 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.72B(a).
- 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 combined custody and treatment order.
- 11 Age is as at the time of sentencing.
- 12 All of the 17 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 13 In 2005-06, a man aged 27 years was sentenced for 30 offences, including 14 counts of burglary, 14 counts of theft and one count of cultivating narcotic plants. He received a total effective sentence of six years' imprisonment with a non-parole period of three years and six months.
- 14 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.
- 15 Refer fn. 13.
- 16 This graph includes the 17 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.

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