

No. 45: Sentencing trends for trafficking in a commercial quantity of drugs in the higher courts of Victoria, 2002-03 to 2006-07

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of trafficking in a commercial quantity of drugs 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 trafficking offences that distinguishes between large commercial, commercial and less than commercial quantities of illicit drugs⁴.

A person who prepares, manufactures, sells, exchanges, agrees to sell, offers for sale or has in his or her possession for sale, a drug of dependence without being authorised or licensed to do so is guilty of trafficking in a drug of dependence⁵. The maximum penalties that apply vary depending on the nature and quantity of the drug involved, as well as the age of the recipient of the drugs, with higher maximum penalties for supplying to persons aged under 18 years.

This report examines the offence of trafficking in a commercial quantity of a drug (or drugs) of dependence to an adult⁶. The amount of the drug that constitutes a commercial quantity will depend on the type of drug involved⁷. Different types of drugs can be combined in order to achieve a commercial quantity⁸.

This is an indictable offence that carries a maximum penalty of 25 years' imprisonment⁹ and/or a fine of up to 3000 penalty units¹⁰. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

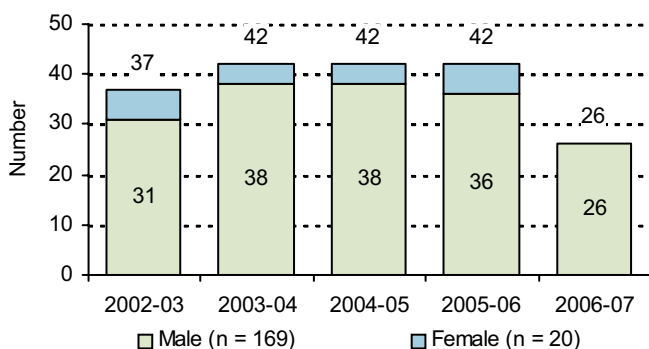
Drug trafficking in a commercial quantity was the principal offence in 1.8% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for drug trafficking in a commercial quantity for the period 2002-03 to 2006-07. As shown, 189 people were sentenced for drug trafficking in a commercial quantity over the five year period. There were 26 people sentenced for this offence in 2006-07, down by 16 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (89.4% or 169 of the 189 people), including all of the 26 people sentenced in 2006-07.

Figure 1: The number of people sentenced for drug trafficking in a commercial quantity by gender, 2002-03 to 2006-07



Sentence types and trends

Figure 2 shows the total number of people sentenced for drug trafficking in a commercial quantity and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention¹¹. Over the five year period, 87%

of people were given a custodial sentence. This peaked at 92% (24 of 26) in 2006-07 after a low of 81% (34 of 42) in 2005-06.

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

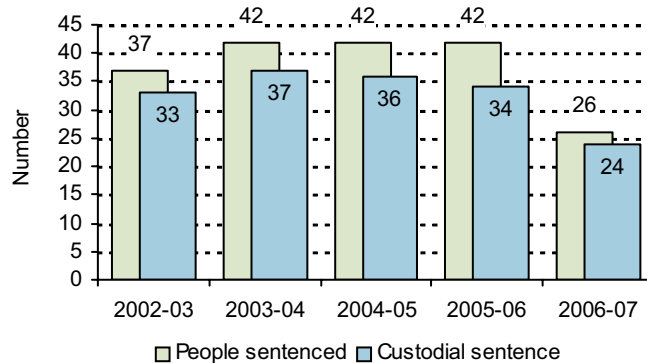


Figure 3 and Table 1 show the number of people sentenced for drug trafficking in a commercial quantity from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, the majority of the people sentenced for drug trafficking in a commercial quantity received a period of imprisonment (79% or 149 of 189 people), while 13% received a wholly suspended sentence of imprisonment.

Imprisonment was the most common sentence type imposed each year, ranging from a low of 64% in 2004-05 to a high of 92% in 2006-07.

Figure 3: The number of people sentenced for drug trafficking in a commercial quantity by sentence type, 2002-03 to 2006-07

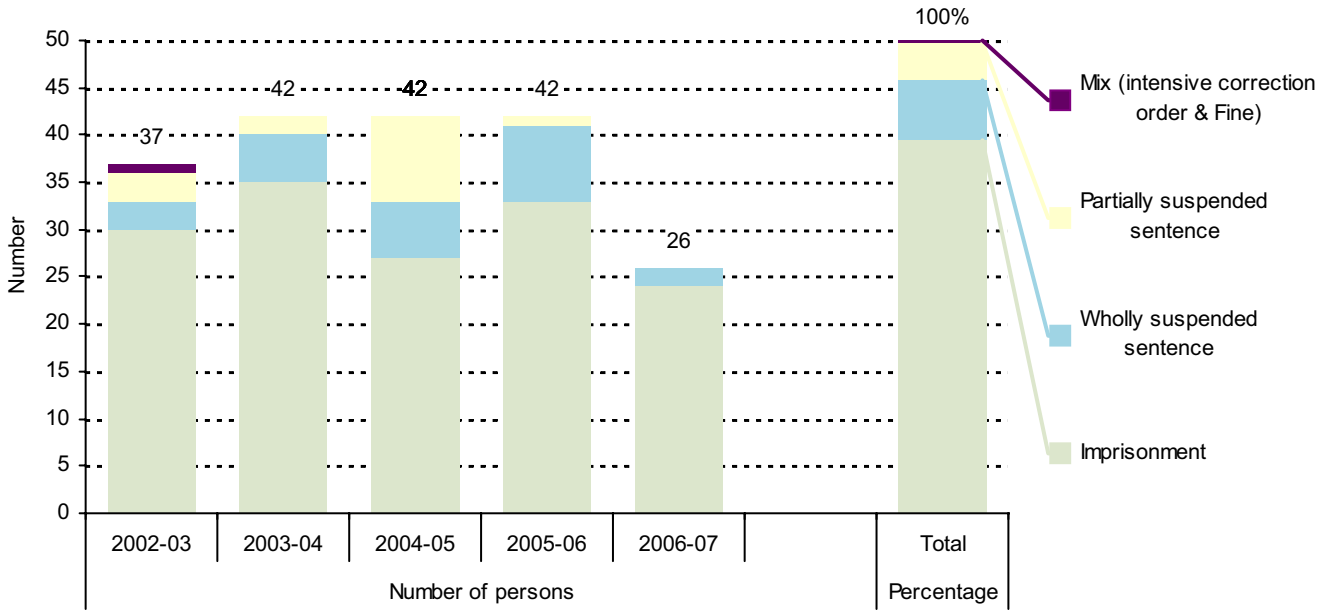


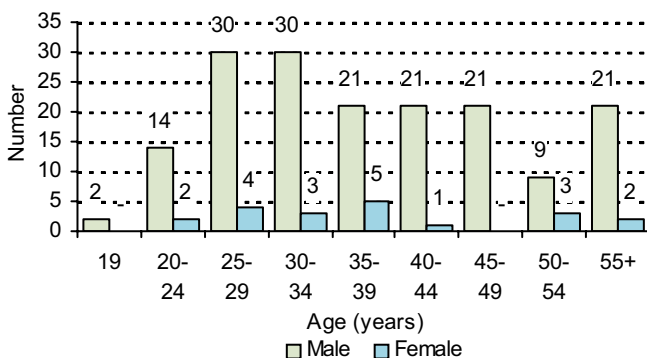
Table 1: The number and percentage of people sentenced for drug trafficking in a commercial quantity by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Imprisonment	30	35	27	33	24
	81%	83%	64%	79%	92%
Wholly suspended sentence	3	5	6	8	2
	8%	12%	14%	19%	8%
Partially suspended sentence	3	2	9	1	0
	8%	5%	21%	2%	-
Mix (intensive correction order & Fine)	1	0	0	0	0
	3%	-	-	-	-
People sentenced	37	42	42	42	26

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for drug trafficking in a commercial quantity grouped by their age¹² between 2002-03 and 2006-07. The average age of people sentenced for drug trafficking in a commercial quantity was thirty-eight years and four months. Men sentenced over this period were older than women (an average age of thirty-eight years and four months for men compared to thirty-seven years and ten months for women). There were no juveniles sentenced over this period.

Figure 4: The number of people sentenced for drug trafficking in a commercial quantity 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 drug trafficking in a commercial quantity grouped by gender. As shown, a higher percentage of men received a period of imprisonment (79.9% compared to 70.0% of women). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (15.0% compared to 12.4%) and a partially suspended sentence of imprisonment (10.0% compared to 7.7%).

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

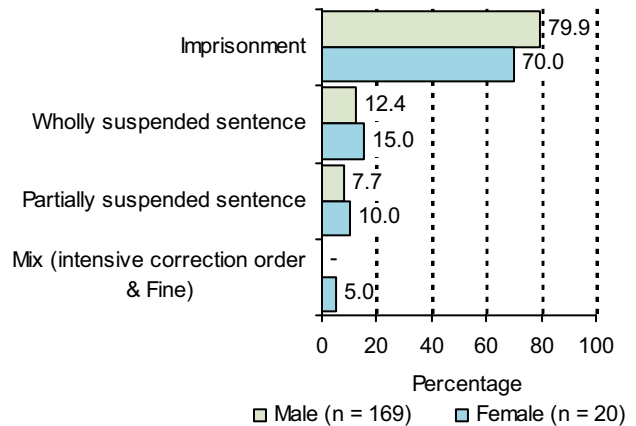


Table 2: The number and percentage of people sentenced for drug trafficking in a commercial quantity by gender, 2002-03 to 2006-07

Sentence type	Male	Female	Total
Imprisonment	135	14	149
Wholly suspended sentence	21	3	24
Partially suspended sentence	13	2	15
Mix (intensive correction order & Fine)	0	1	1
	-	5%	<1%
People sentenced	169	20	189

Sentence types by age

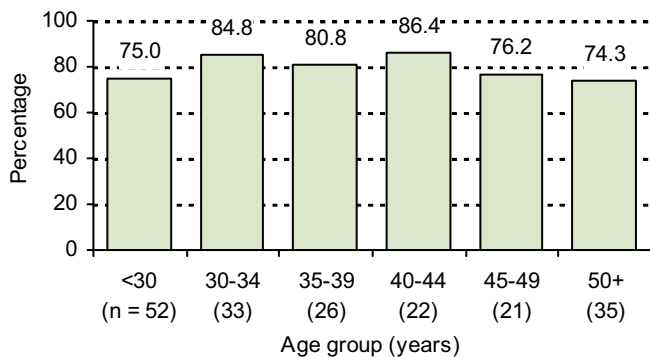
As shown in the table above, the three most common sentence types were imprisonment, wholly suspended sentences of imprisonment and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 40-44 years old (86% or 19 of the 22 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 50 years and older (74% or 26 of the 35 people in this age group).

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

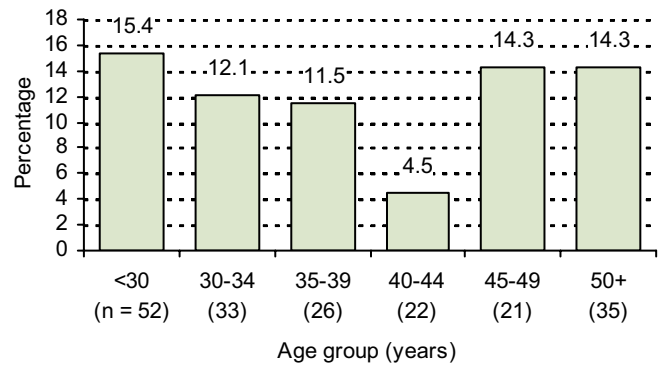


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged under 30 years (15% or eight of the 52 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 40-44 years old (5% or one of the 22 people in this age group).

Figure 7: The percentage of people who received a wholly suspended sentence of imprisonment for drug trafficking in a commercial quantity by age group, 2002-03 to 2006-07

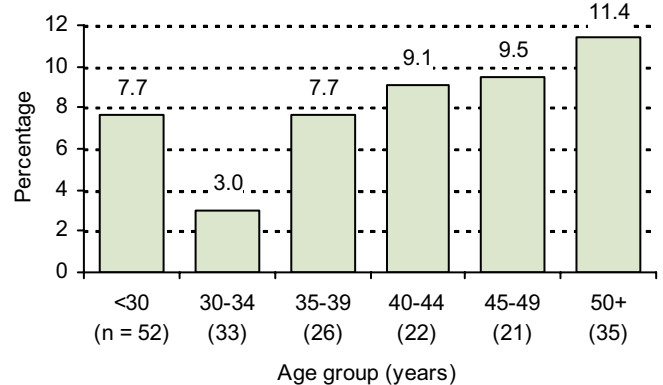


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 50 years and older (11% or four of the 35 people in this age group).

Conversely, partially suspended sentences of imprisonment were least common for those aged 30-34 years old (3% or one of the 33 people in this age group).

Figure 8: The percentage of people who received a partially suspended sentence of imprisonment for drug trafficking in a commercial quantity 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.

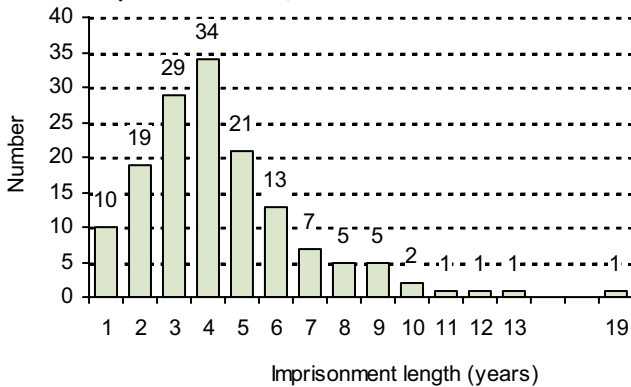
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether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

Principal sentence of imprisonment

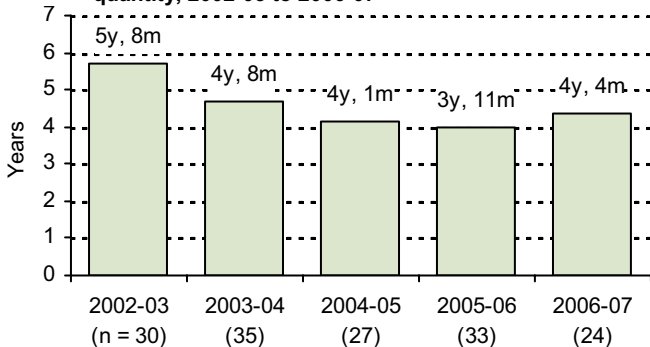
Figure 9 shows the number of people sentenced to imprisonment for drug trafficking in a commercial quantity between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to nineteen years, while the median length of imprisonment was four years (meaning that half of the imprisonment terms were shorter than four years and half were longer).

Figure 9: The number of people sentenced to imprisonment for drug trafficking in a commercial quantity by length of imprisonment term, 2002-03 to 2006-07



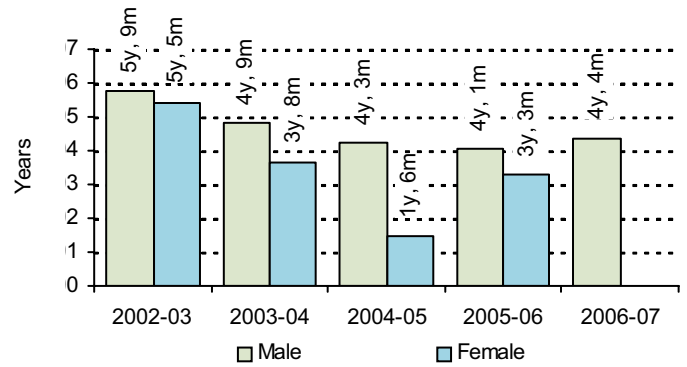
As shown in Figure 10, the average length of imprisonment term imposed on people sentenced for drug trafficking in a commercial quantity ranged from three years and eleven months in 2005-06 to five years and eight months in 2002-03.

Figure 10: The average length of imprisonment term imposed on people sentenced for drug trafficking in a commercial quantity, 2002-03 to 2006-07



From 2002-03 to 2006-07, the majority of those people who received a term of imprisonment for drug trafficking in a commercial quantity were men (135 people or 90.6%). Figure 11 shows that over the five year period, men also received a longer average term of imprisonment (four years and seven months compared to four years for women).

Figure 11: The average period of imprisonment imposed on people sentenced for drug trafficking in a commercial quantity by gender, 2002-03 to 2006-07

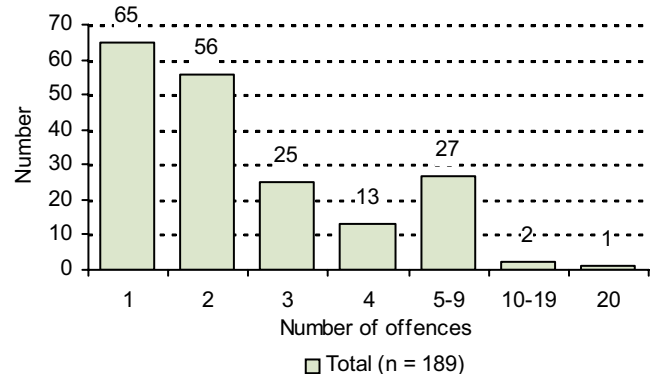


Other offences finalised at the same hearing

Often people prosecuted for drug trafficking in a commercial quantity 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 drug trafficking in a commercial quantity.

Figure 12 shows the number of people sentenced for the principal offence of drug trafficking in a commercial quantity by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 20, while the median was 2 offences. There were 65 people (34.4%) sentenced for the single offence of drug trafficking in a commercial quantity alone. The average number of offences per person sentenced for drug trafficking in a commercial quantity was 2.75.

Figure 12: The number of people sentenced for the principal offence of drug trafficking in a commercial quantity 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 drug trafficking in a commercial quantity, 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, 48 of the total 189 people (25.4%) also received sentences for theft. On average, they were sentenced for 1.71 counts of theft.

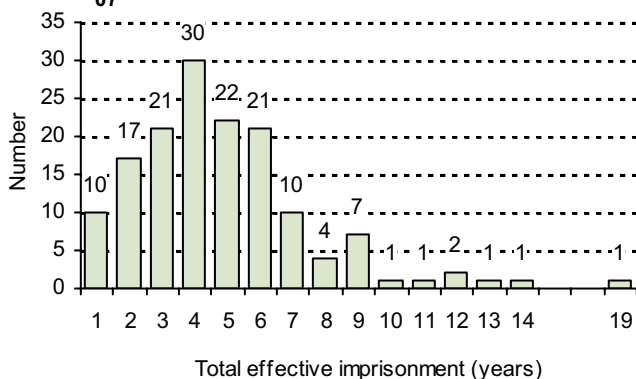
Figure 13: The number and percentage of people sentenced for the principal offence of drug trafficking in a commercial quantity by the most common offences that were sentenced and the average number of those offences that were sentenced, 2002-03 to 2006-07

Offence	No.	%	Avg.
1 drug trafficking in a commercial quantity	189	100.0	1.49
2 theft	48	25.4	1.71
3 possess a drug of dependence	30	15.9	1.43
4 handling stolen goods	10	5.3	2.90
5 cultivate a narcotic plant	10	5.3	1.20
6 intentionally destroy/damage property (criminal damage)	7	3.7	1.71
7 prohibited person in possession of a firearm	4	2.1	1.75
8 cultivating a commercial quantity of narcotic plants	4	2.1	1.25
9 possess document/equipment for trafficking in a drug of dependence	4	2.1	1.00
10 conceal property suspected of being then proceeds of crime	3	1.6	1.33
People sentenced	189	100.0	2.75

Total effective sentence of imprisonment

There were 149 people given a total effective sentence of imprisonment¹³. Figure 14 shows the number of people sentenced to imprisonment for drug trafficking in a commercial quantity 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 two months to nineteen years¹⁴, while the median total effective length of imprisonment was four years and six months (meaning that half of the total effective sentence lengths were below four years and six months and half were above).

Figure 14: The number of people sentenced to imprisonment for drug trafficking in a commercial quantity by total effective length of imprisonment term, 2002-03 to 2006-07



Non-parole period

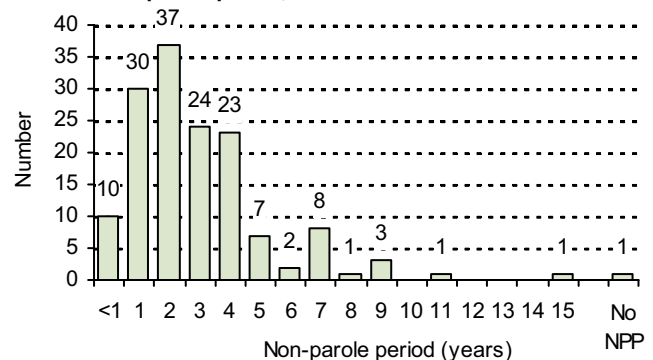
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

Of the 149 people who were sentenced to imprisonment for drug trafficking in a commercial quantity, all were eligible to have a non-parole period fixed. Of these people, 147 were given a non-parole period (99%)¹⁵. Figure 15 shows the number of people sentenced to imprisonment for drug trafficking in a commercial quantity between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from five months to fifteen years, while the median length of the non-parole period was two years and nine months (meaning that half of the non-parole periods were below two years and nine months and half were above).

Figure 15: The number of people sentenced to imprisonment for drug trafficking in a commercial quantity by length of non-parole period, 2002-03 to 2006-07



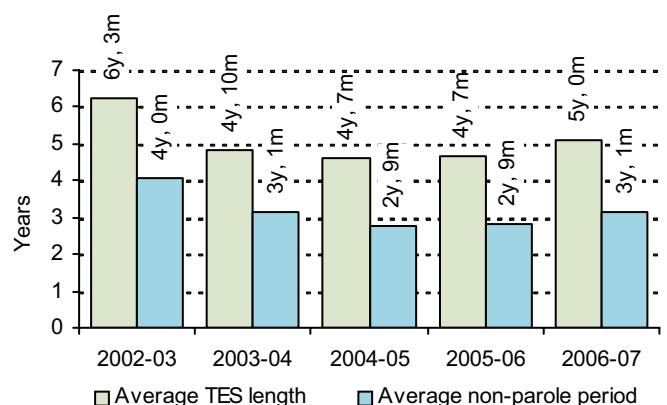
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

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 2006-07.

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

Figure 16: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for drug trafficking in a commercial quantity, 2002-03 to 2006-07

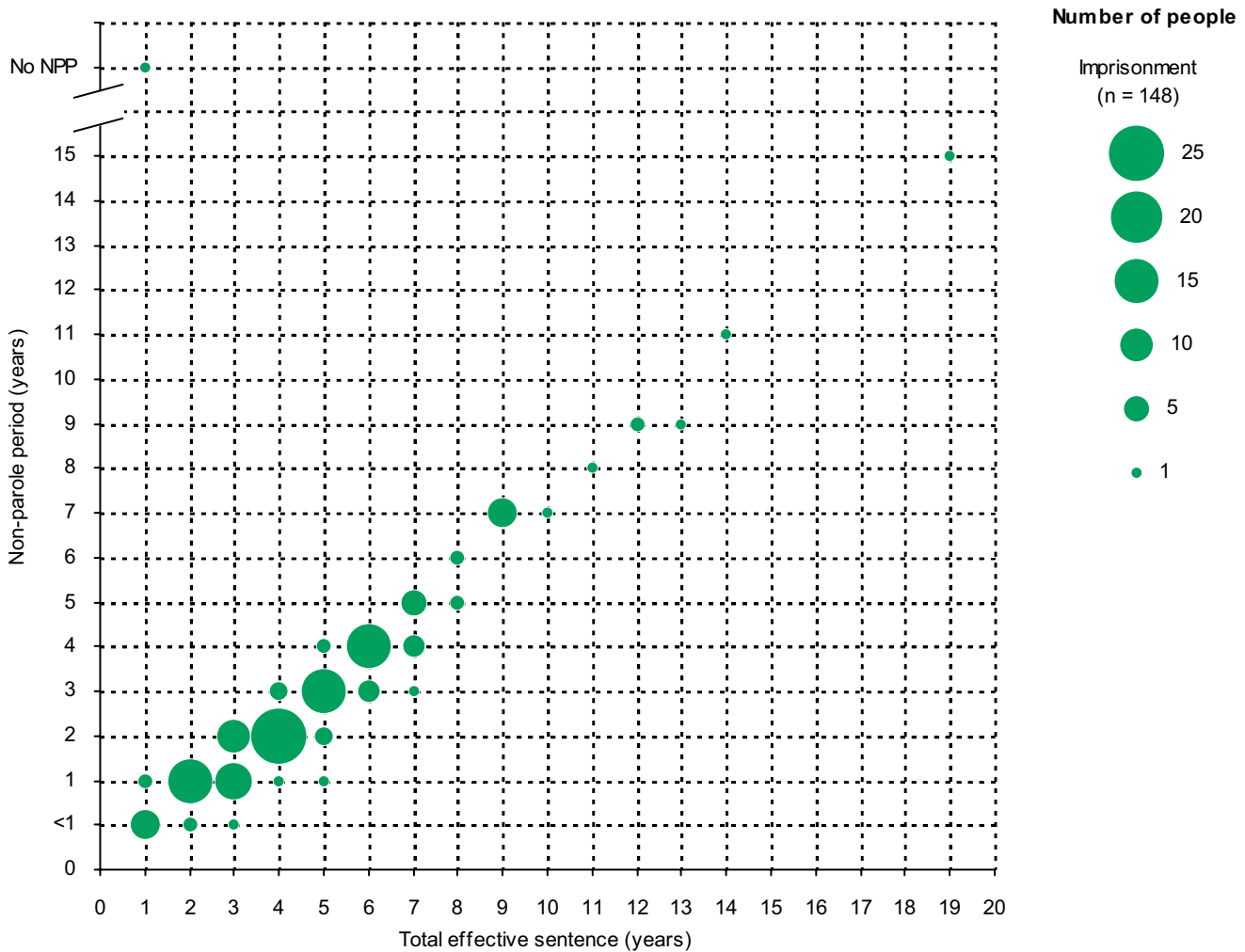


Total effective sentence of imprisonment by non-parole period

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 drug trafficking in a commercial quantity 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 four years with a non-parole period of two years (25 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year and two months with a non-parole period of five months to nineteen years with a non-parole period of fifteen years¹⁷.

Figure 17: The number of people sentenced to imprisonment for drug trafficking in a commercial quantity 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.

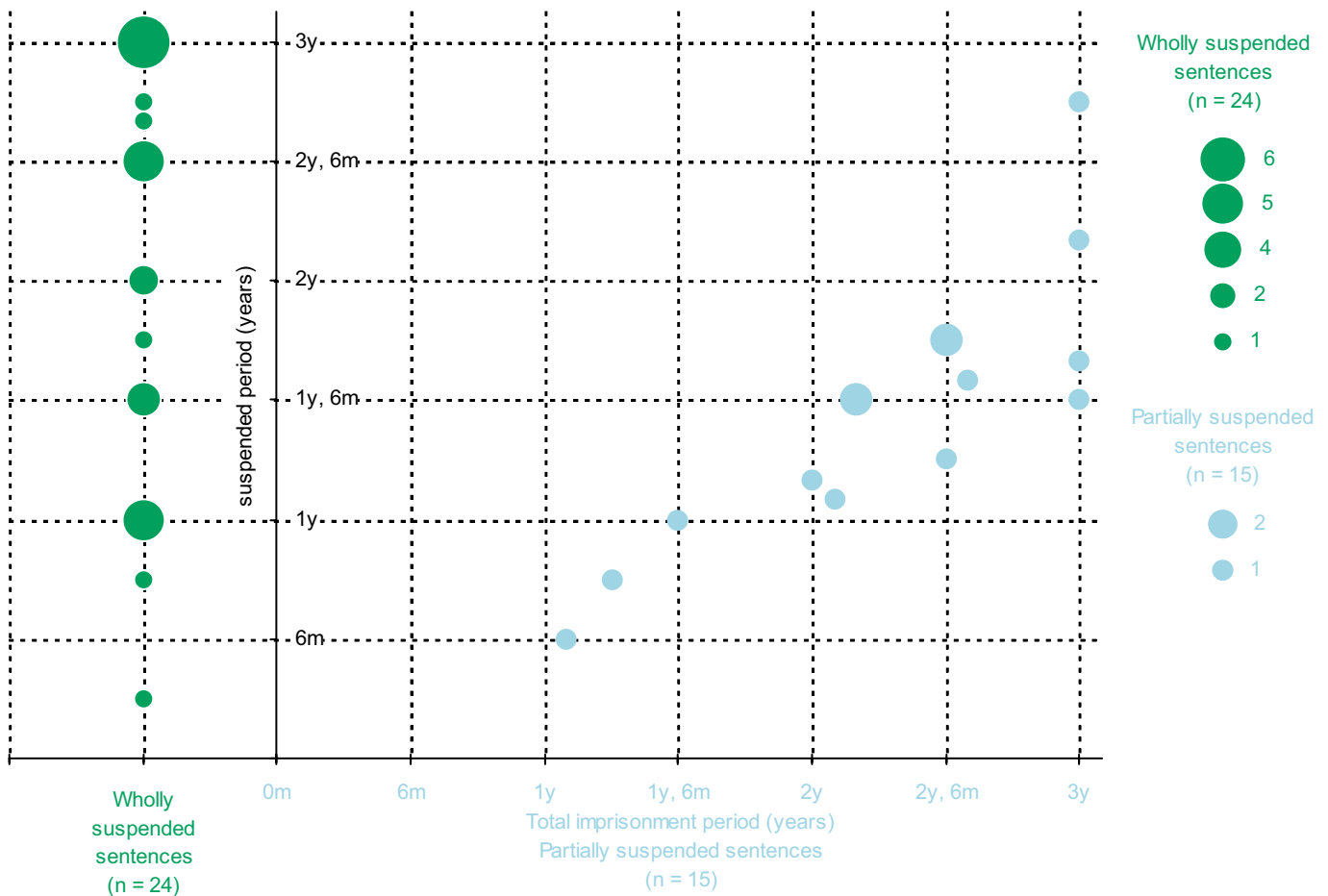
Suspended sentences of imprisonment

There were 39 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 24 people had their prison sentence wholly suspended and 15 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 three months to three years. The most common wholly suspended sentence length was three years (6 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combinations were two years and two months with one year and six months suspended and two years and six months with one year and nine months suspended (2 people each - as represented by the two largest blue 'bubbles' on the chart).

Figure 18: The number of people given a wholly or partially suspended sentence of imprisonment for drug trafficking in a commercial quantity by sentence type and length, 2002-03 to 2006-07

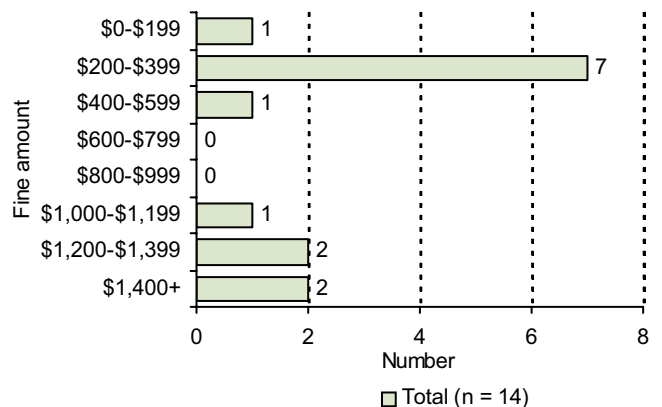


Fines

This analysis includes all fines that were imposed for cases where drug trafficking in a commercial quantity was the principal offence. Fines were imposed on 14 people.

The fine amount imposed ranged from \$100 to \$2,250, with a median of \$250 (meaning that half of the values fell below \$250 and half of the values were above \$250). The average fine amount was \$686.

Figure 19: The number of people who received a fine for drug trafficking in a commercial quantity by fine amount, 2002-03 to 2006-07



Summary

Between 2002-03 and 2006-07, 189 people were sentenced for drug trafficking in a commercial quantity in the higher courts. Over this period, the majority of those sentenced were men (89%), while 49% were between the age of 25 and 40 years.

The majority of the people sentenced for drug trafficking in a commercial quantity received a period of imprisonment (79%), while 13% received a wholly 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 wholly suspended sentence or a partially suspended sentence.

Imprisonment was more common for those aged between 30 and 45 years of age.

Each of the 189 people was sentenced for an average of 2.75 offences, including 1.49 offences of drug trafficking in a commercial quantity. The most common offence finalised in conjunction with drug trafficking in a commercial quantity was theft (25.4% of all cases). The number and range of offences for which people with a principal offence of drug trafficking in a commercial quantity 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 four years and six months, while the median principal imprisonment length was four years.

Total effective imprisonment lengths ranged from one year and two months with a non-parole period of five months to nineteen years with a non-parole period of fifteen years. The most common sentence of imprisonment was four years with a two year non-parole period. The most common wholly suspended sentence length was three years.

Of the 858 cases, 189 were deemed to be the offence of drug trafficking in a commercial quantity (s.71AA *Drugs, Poisons and Controlled Substances Act 1981* (Vic)).

4 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.71 – 71AC.

5 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.71AC and s.70.

6 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.71AA.

7 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.70.

8 See 'aggregate commercial quantity'; *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.70.

9 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s.71AA.

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

11 Custodial sentence includes imprisonment and partially suspended sentence.

12 Age is as at the time of sentencing.

13 All of the 149 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.

14 In 2003-04, a man aged 44 years was sentenced to one count of drug trafficking in a commercial quantity. He received a total effective imprisonment term of 19 years with a non-parole period of 15 years.

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 one person who was eligible for a non-parole period.

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. 14.

18 This graph includes the 148 people who were given a total effective sentence and a non-parole period that related to this case only.

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

2 The information source for sentencing outcomes for drug trafficking in a commercial quantity 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 trafficking 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, commercial, or large commercial. In total, there were 858 cases that had drug trafficking (s.71, s.71AA or s.71AC *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 647 cases (75.4%). 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.

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

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