

No. 46: Sentencing trends for trafficking in a large 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 large commercial quantity of drugs 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 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 large commercial quantity of a drug (or drugs) of dependence to an adult⁶. The amount of the drug that constitutes a large 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 life imprisonment⁹ and/or a fine of up to 5000 penalty units¹⁰. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

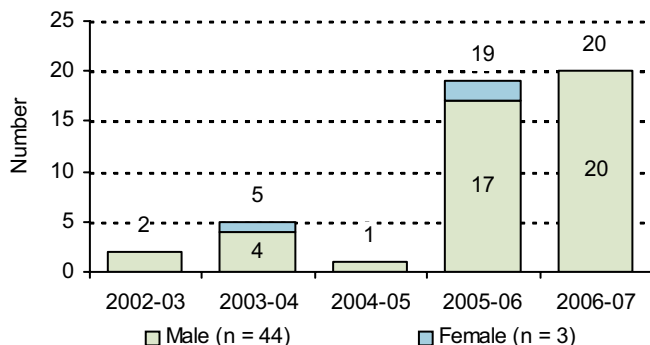
Drug trafficking in a large commercial quantity was the principal offence in 0.5% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for drug trafficking in a large commercial quantity for the period 2002-03 to 2006-07. As shown, 47 people were sentenced for drug trafficking in a large commercial quantity over the five year period. There were 20 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 (93.6% or 44 of 47 people), including all of the 20 people sentenced in 2006-07.

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



The increase in the number of people sentenced may be a result of legislative changes that took effect in 2002 that differentiated the offence of drug trafficking based on the quantity of the substance(s) involved¹¹.

Sentence types and trends

Figure 2 shows the total number of people sentenced for drug trafficking in a large commercial quantity and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention¹². Over the five year period, all but one person was given a custodial sentence.

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

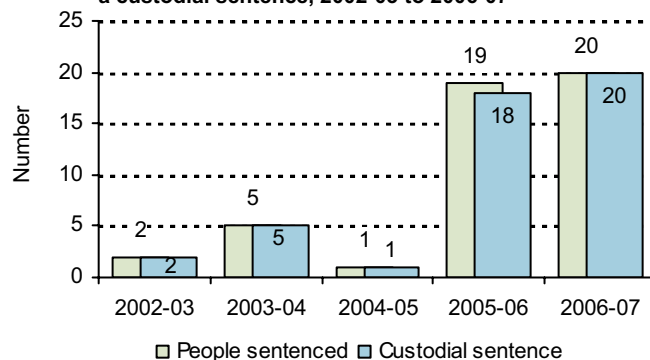


Figure 3 and Table 1 show the number of people sentenced for drug trafficking in a large commercial quantity from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, the majority of the people sentenced for drug trafficking in a large commercial quantity received a period of imprisonment (87% or 41 of 47 people). In 2005-06, four people received a mixed sentence of imprisonment and a fine. Over the five year period, there was one person who received a wholly suspended sentence¹³.

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

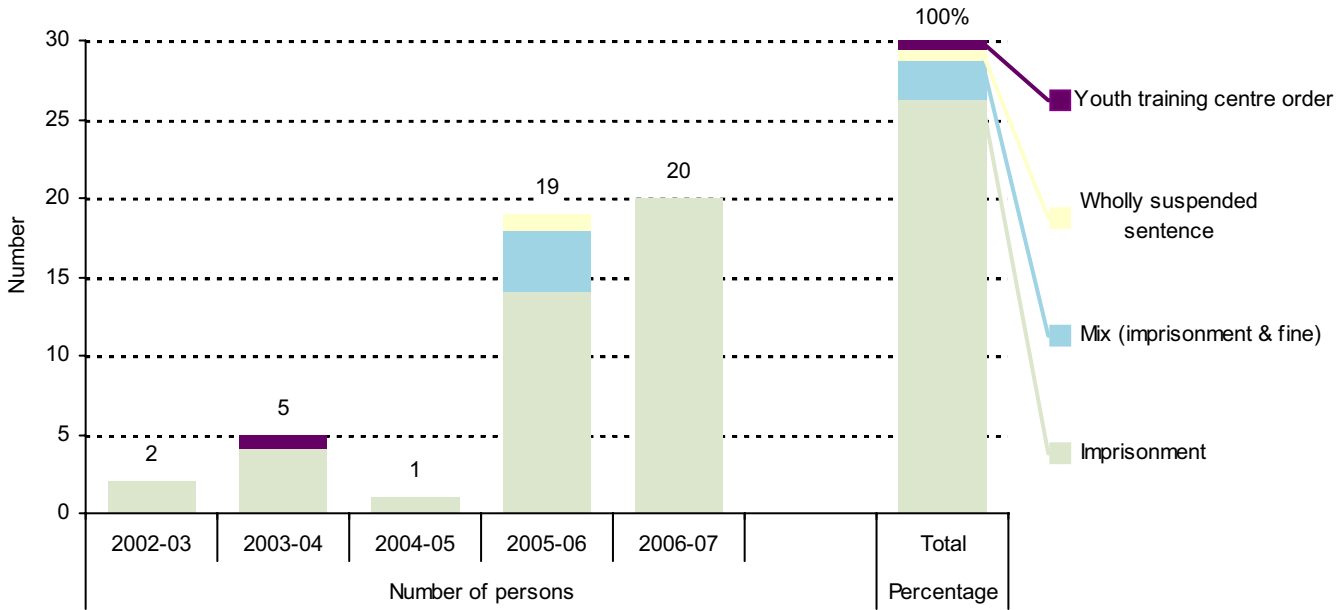


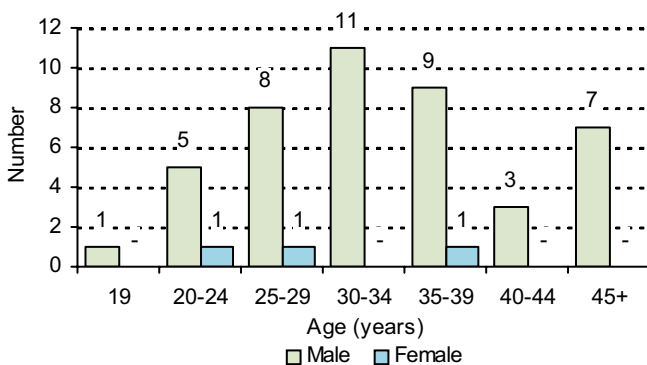
Table 1: The number and percentage of people sentenced for drug trafficking in a large commercial quantity by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Imprisonment	2	4	1	14	20
	100%	80%	100%	74%	100%
Mix (imprisonment & fine)	0	0	0	4	0
	-	-	-	21%	-
Wholly suspended sentence	0	0	0	1	0
	-	-	-	5%	-
Youth training centre order	0	1	0	0	0
	-	20%	-	-	-
People sentenced	2	5	1	19	20

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for drug trafficking in a large commercial quantity grouped by their age¹² between 2002-03 and 2006-07. The average age of people sentenced for drug trafficking in a large commercial quantity was thirty-four years and one month. There were no juveniles sentenced over this period.

Figure 4: The number of people sentenced for drug trafficking in a large commercial quantity by gender and age, 2002-03 to 2006-07



Sentence types by gender

Table 2 shows the types of sentence imposed for drug trafficking in a large commercial quantity grouped by gender. As shown, a higher percentage of men received a period of imprisonment (90.9% compared to 33.3% of women). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (33.3% compared to no men).

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

Sentence type	Male	Female	Total
Imprisonment	40	1	41
	91%	33%	87%
Mix (imprisonment & fine)	4	0	4
	9%	-	9%
Youth training centre order	0	1	1
	-	33%	2%
Wholly suspended sentence	0	1	1
	-	33%	2%
People sentenced	44	3	47

Sentence types by age

As shown in the table above, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35-39 years old (100% or 10 of the 10 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 30 years (81% or 13 of the 16 people in this age group).

Principal and total effective sentences

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

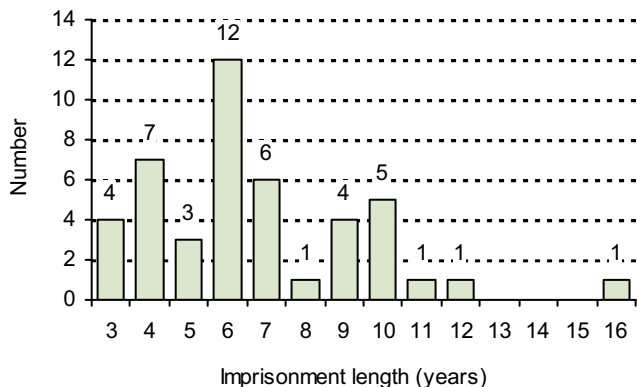
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether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

Principal sentence of imprisonment

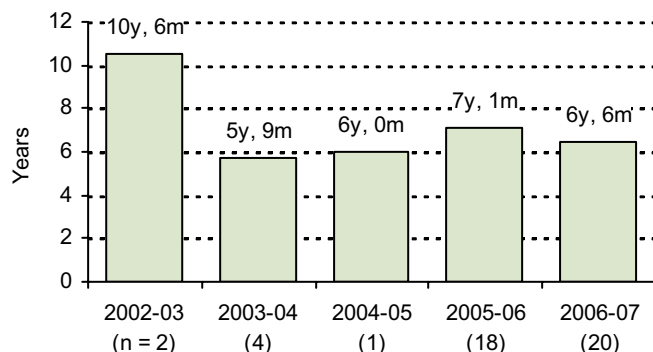
Figure 5 shows the number of people sentenced to imprisonment for drug trafficking in a large commercial quantity between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 3 years to sixteen years, while the median length of imprisonment was six years (meaning that half of the imprisonment terms were shorter than six years and half were longer).

Figure 5: The number of people sentenced to imprisonment for drug trafficking in a large commercial quantity by length of imprisonment term, 2002-03 to 2006-07



As shown in Figure 6, the average length of imprisonment term imposed on people sentenced for drug trafficking in a large commercial quantity ranged from five years and nine months in 2003-04 to ten years and six months in 2002-03.

Figure 6: The average length of imprisonment term imposed on people sentenced for drug trafficking in a large commercial quantity, 2002-03 to 2006-07

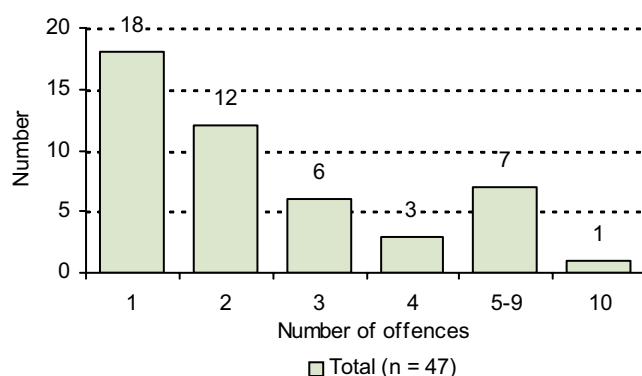


Other offences finalised at the same hearing

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

Figure 7 shows the number of people sentenced for the principal offence of drug trafficking in a large commercial quantity by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 10, while the median was 2 offences. There were 18 people (38.3%) sentenced for the single offence of drug trafficking in a large commercial quantity alone. The average number of offences per person sentenced for drug trafficking in a large commercial quantity was 2.81.

Figure 7: The number of people sentenced for the principal offence of drug trafficking in a large commercial quantity by the number of sentenced offences per person, 2002-03 to 2006-07



While Figure 7 presents the number of sentenced offences for those sentenced for drug trafficking in a large commercial quantity, Figure 8 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, 12 of the total 47 people (25.5%) also received sentences for possessing a drug of dependence. On average, they were sentenced for 1.42 counts of possessing a drug of dependence.

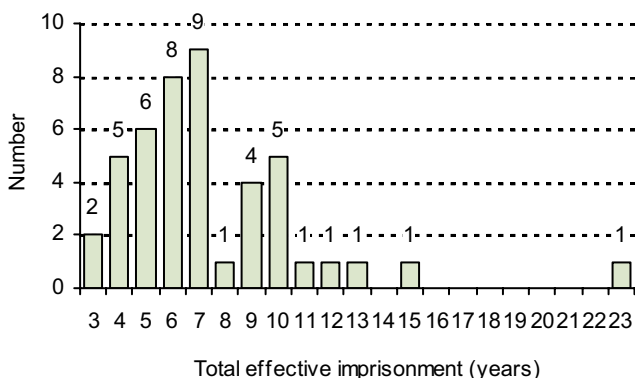
Figure 8: The number and percentage of people sentenced for the principal offence of drug trafficking in a large commercial quantity by the most common offences that were sentenced and the average number of those offences that were sentenced, 2002-03 to 2006-07

Offence	No.	%	Avg.
1 drug trafficking in a large commercial quantity	47	100.0	1.89
2 possess a drug of dependence	12	25.5	1.42
3 money laundering	3	6.4	1.00
4 deal with property suspected of being proceeds of crime	3	6.4	1.00
5 conceal property suspected of being then proceeds of crime	2	4.3	2.00
6 theft	2	4.3	1.50
7 conspire to cultivate a drug of dependence	2	4.3	1.50
8 non prohibited person in possession of an unlicensed handgun	2	4.3	1.00
9 prohibited imports into Australia	1	2.1	1.00
10 prohibited person possess unregistered firearm	1	2.1	1.00
People sentenced	47	100.0	2.81

Total effective sentence of imprisonment

There were 45 people given a total effective sentence of imprisonment¹³. Figure 9 shows the number of people sentenced to imprisonment for drug trafficking in a large commercial quantity between 2002-03 and 2006-07 by the length of their total effective sentence. The length of total effective sentences ranged from three years and six months to twenty-three years¹⁴, while the median total effective length of imprisonment was seven years (meaning that half of the total effective sentence lengths were below seven years and half were above).

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



Non-parole period

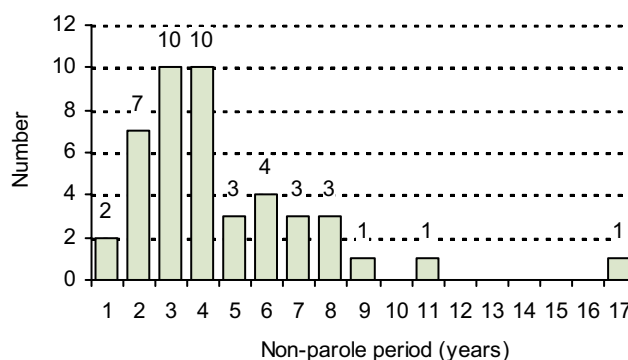
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

Of the 45 people who were sentenced to imprisonment for drug trafficking in a large commercial quantity, all were given a non-parole period. Figure 10 shows the number of people sentenced to imprisonment for drug trafficking in a large commercial quantity between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from one year and one month to seventeen years, while the median length of the non-parole period was four years and three months (meaning that half of the non-parole periods were below four years and three months and half were above).

Figure 10: The number of people sentenced to imprisonment for drug trafficking in a large commercial quantity by length of non-parole period, 2002-03 to 2006-07

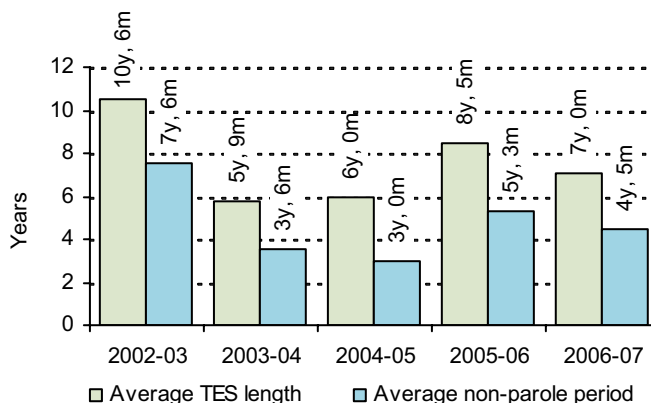


Total effective sentences of imprisonment and non-parole periods

Figure 11 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 five years and nine months in 2003-04 to ten years and six months in 2002-03. Over the same period, the average length of non-parole period ranged from three years in 2004-05 to seven years and six months in 2002-03.

Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for drug trafficking in a large commercial quantity, 2002-03 to 2006-07

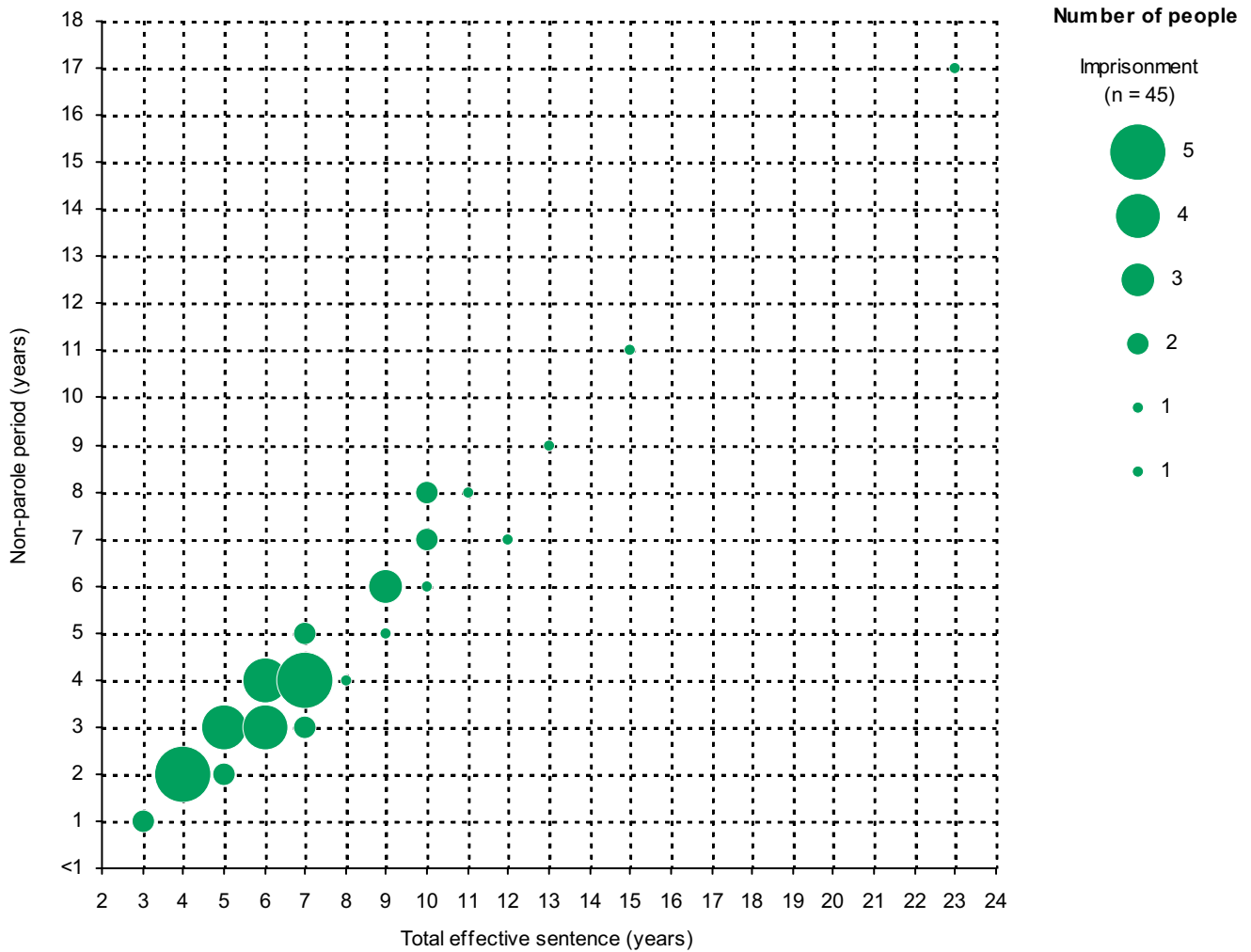


Total effective sentence of imprisonment by non-parole period

While Figure 9 and Figure 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 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 large 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 seven years with a non-parole period of four years (5 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from three years and six months with a non-parole period of one year and one month to twenty-three years with a non-parole period of seventeen years¹⁷.

Figure 12: The number of people sentenced to imprisonment for drug trafficking in a large commercial quantity by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07¹⁸



Summary

Between 2002-03 and 2006-07, 47 people were sentenced for drug trafficking in a large commercial quantity in the higher courts. Over this period, the majority of those sentenced were men (94%), while 64% were between the age of 25 and 40 years.

The majority of the people sentenced for drug trafficking in a large commercial quantity received a period of imprisonment (87%), while 9% received a mixed sentence of imprisonment and a fine.

Each of the 47 people was sentenced for an average of 2.81 offences, including 1.89 offences of drug trafficking in a large commercial quantity. The most common offence finalised in conjunction with drug trafficking in a large commercial quantity was possessing a drug of dependence (25.5% of all cases). The number and range of offences for which people with a principal offence of drug trafficking in a large 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 seven years, while the median principal imprisonment length was six years.

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

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of drug trafficking in a large commercial quantity 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 drug trafficking in a large 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 large 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.

Of the 858 cases, 47 were deemed to be the offence of drug trafficking in a large-commercial quantity (s.71 *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.71.
- 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 Section 5 of the *Drugs, Poisons and Controlled Substances (Amendment) Act 2001* (Vic) came into effect on 1 January 2002. These changes differentiated the offence of trafficking in a drug(s) of dependence based on the quantity of the substance(s) involved, and specified different penalties for the different offences. The amendments apply only to offences that are alleged to have been committed on or after that date. This factor, together with the extended investigation periods required for this offence, is likely to explain the delayed effect of those amendments.
- 12 Custodial sentence includes imprisonment, mix (imprisonment & fine) and youth training centre order.
- 13 In 2005-06, a woman aged 26 years was sentenced to a wholly suspended sentence of imprisonment for one count of drug trafficking in a large commercial quantity. The judge stated that she was young, impressionable, drug-addicted and had no prior convictions. The judge also stated that she was emotionally dependent upon and obtained drugs that she needed to support her habit from the co-accused. Conversely, the co-accused was regarded by the judge as the principal offender in a large scale manufacturing and trafficking network. He was sentenced to the longest imprisonment term of any offender over the five year period (Refer fn. 16).
- 14 Age is as at the time of sentencing.
- 15 All of the 45 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 16 In 2005-06, a man aged 39 years was sentenced for ten offences including three counts of drug trafficking in a large commercial quantity, three counts of drug trafficking in a commercial quantity and three counts of drug trafficking in a non-commercial quantity. He was sentenced to a total effective sentence of 23 years' imprisonment with a non-parole period of 17 years.

- 17 Due to the low number of women (1) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.
- 18 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.
- 19 Refer fn. 16.
- 20 This graph includes the 45 people who were given a total effective sentence and a non-parole period that related to this case only.

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Sentencing trends in the higher courts, 1998-99 to 2003-04

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- No. 5 Manslaughter
- No. 6 Culpable driving causing death

Sentencing trends in the higher courts, 1999-00 to 2003-04

- No. 7 Rape

Sentencing trends in the higher courts, 2000-01 to 2004-05

- No. 8 Robbery
- No. 9 Armed robbery
- No. 10 Burglary
- No. 11 Aggravated burglary
- No. 12 Causing serious injury intentionally
- No. 13 Causing serious injury recklessly
- No. 14 Causing injury
- No. 15 Affray

Sentencing trends in the higher courts, 2001-02 to 2005-06

- No. 16 Handling stolen goods
- No. 17 Theft
- No. 18 Obtaining financial advantage by deception
- No. 19 Obtaining property by deception
- No. 20 Arson
- No. 21 Attempted murder
- No. 23 Indecent assault
- No. 24 Indecent act with a child under aged 16
- No. 25 Maintain a sexual relationship with a child aged under 16
- No. 26 Rape
- No. 27 Murder
- No. 28 Manslaughter
- No. 29 Culpable driving causing death
- No. 30 Make threat to kill
- No. 31 Sexual penetration of a child aged between 10 and 16
- No. 32 Sexual penetration of a child under care
- No. 33 Sexual penetration of a child aged under 10

Sentencing trends in the higher courts, 2002-03 to 2006-07

- No. 34 Robbery
- No. 35 Armed robbery
- No. 36 Attempted armed robbery
- No. 37 Burglary
- No. 38 Aggravated burglary
- No. 39 Causing serious injury intentionally
- No. 40 Causing serious injury recklessly
- No. 41 Causing injury
- No. 42 Affray
- No. 43 Incest
- No. 44 Trafficking in a non-commercial quantity of drugs
- No. 45 Trafficking in a commercial quantity of drugs
- No. 46 Trafficking in a large commercial quantity of drugs
- No. 47 Cultivating narcotic plants
- No. 48 Cultivating a commercial quantity of narcotic plants

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