

Sentencing outcomes for possession of drugs in the Magistrates' Court of Victoria

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Summary

This report provides an overview of the sentencing outcomes imposed for drug possession in the Magistrates' Court. The report compares outcomes for amphetamines, cannabis, heroin, ecstasy and 'other' (type of drug). It brings together the analyses presented in each of the four Sentencing Snapshots on drug possession in the Magistrates' Court.¹

The Magistrates' Court sentenced 5,147 people for the principal offence of possessing a drug of dependence between 2004–05 and 2007–08. The most common drug involved was cannabis (2,808 people or 54.6%) followed by amphetamines (1,054 people or 20.5%), heroin (792 people or 15.4%) and finally ecstasy (238 people or 4.6%).² The remaining 250 people (4.9%) were sentenced for possessing an other type of drug.

Over this period, the majority of those sentenced were men (4,280 people or 83.5%). The age of people sentenced for possessing a drug of dependence ranged from 17 to 79 years, with the median age being 30 years. This was consistent for the differing types of drugs, with the exception of ecstasy, where the median age was 24 years.

Most people sentenced for possessing a drug of dependence received a non-custodial sentence (93.4%), such as a fine (59.5%) or an adjourned undertaking (25.3%). Less than one in twenty people were sentenced to a term of imprisonment (3.2% or 163 people).

Individuals sentenced for possession of heroin tended to receive more severe sentence types, with 17.0% receiving some form of custodial sentence. Conversely, only 1.8% of individuals sentenced for possession of cannabis received a custodial outcome.

As well as being younger, people sentenced for possessing ecstasy were mostly male (88.2%), were more likely to be sentenced for possessing other types of drugs at the same time (24.4% amphetamines, 18.9% cannabis, 11.8% other) and were more likely to receive a larger fine (median \$500 compared with \$500 for amphetamines, \$400 for other, \$300 for heroin and \$300 for cannabis).

Introduction

This report describes sentencing outcomes³ for the offence of possession of a drug of dependence and compares the sentencing outcomes for five different categories of drugs (amphetamines, cannabis, heroin, ecstasy and other).

A person who possesses amphetamines, cannabis (or tetrahydrocannabinol), heroin, ecstasy (MDMA), or an other drug of dependence without legal authority is guilty of an indictable offence.⁴

If the court is satisfied on the balance of probabilities that the offence was not committed for any purpose related to trafficking, the maximum penalty is 30 penalty units, one year's imprisonment⁵ or both. In any other case, the maximum penalty is 400 penalty units, 5 years' imprisonment or both.⁶

In the case of possessing cannabis, if the court is satisfied that the quantity of cannabis is small (as defined under section 3 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)) and was not intended for any purpose related to trafficking, the maximum penalty is 5 penalty units.⁷

This offence may be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. Generally, this occurs when the offence is considered as being less serious. If it is tried summarily the offence will be heard before a magistrate rather than a judge and jury. It carries a maximum penalty of 2 years' imprisonment and/or 240 penalty units, unless the possession was not for the purposes of trafficking, in which case the limit of one year and/or 30 penalty units applies.

Approximately 95% of matters where possessing a drug of dependence was the principal proven offence were heard in the Magistrate's Court.⁸

Trends

Drug possession was the principal offence in 1.9% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

In 2007–08, 1,244 people were sentenced for the principal proven offence of possessing a drug of dependence. This is a slight increase from the previous year (1,236), though this is down from 2004–05 and 2005–06.

Figure 1: The number of people sentenced for possession of a drug of dependence, 2004–05 to 2007–08

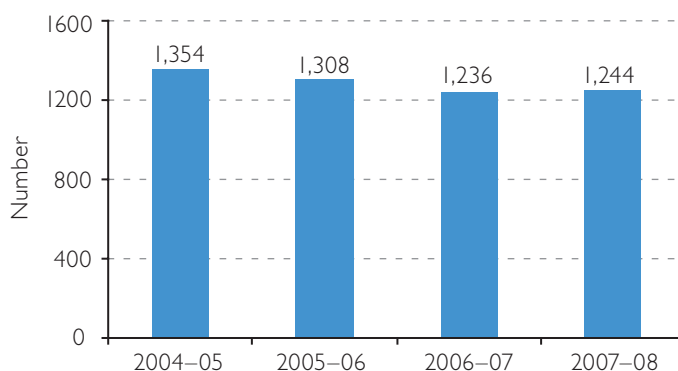
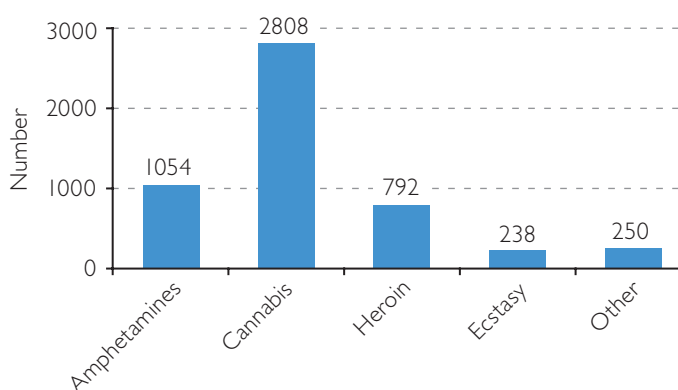


Figure 2 shows the total number of people sentenced for each of the five drug classes over the four-year period. As can be seen below, cannabis made up the greatest proportion of the drug types involved (54.6%), followed by amphetamines (20.5%), heroin (15.4%), other⁹ (4.9%) and ecstasy (4.6%).

Figure 2: The number of people sentenced for possession of a drug of dependence by type of drug, 2004–05 to 2007–08



From 2004–05 to 2007–08, the number of people sentenced for each type of possession remained largely consistent. This is demonstrated in Figure 3. However, between 2006–07 and 2007–08, there was a drop in the number of people sentenced for possession of heroin and a rise in the number of people sentenced for possession of amphetamines.¹⁰

People sentenced

Over the four-year period, the majority of those sentenced were men (4,293 people or 83.5%). The age of people sentenced for possession of a drug of dependence ranged from 17 years to 79 years, while the median age was 30 years (meaning that half of the people were aged 30 years or younger and half were 30 years or older). Women sentenced tended to be older than men (a median age of 32 years compared to 30 years).¹¹

Table 1 shows the number of people sentenced for each type of drug possession by their age and gender. Overall, women made

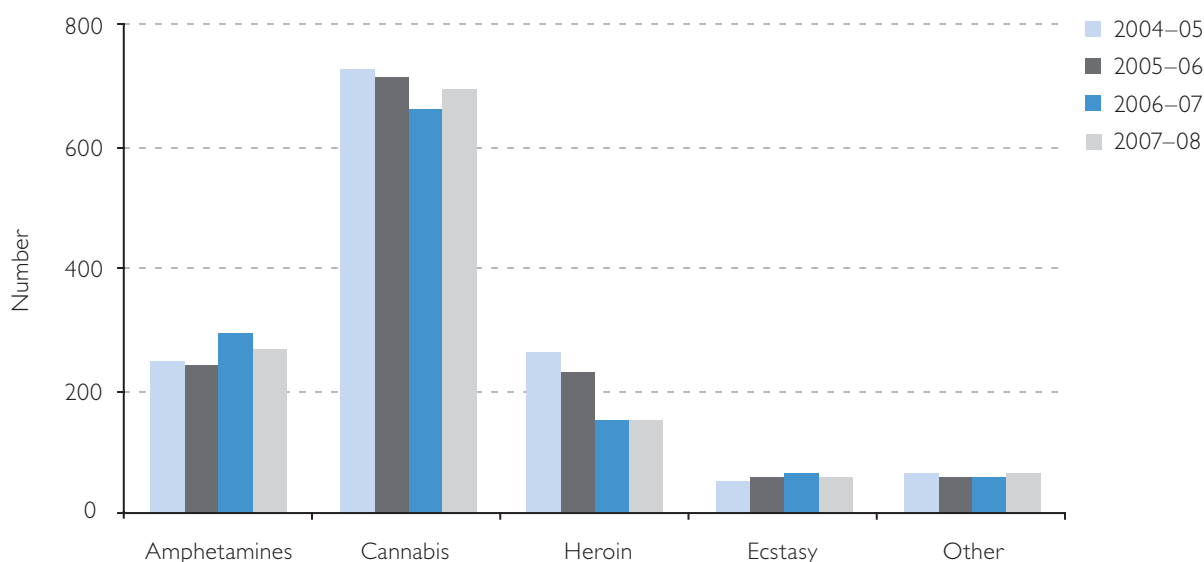
up less than one sixth of all people sentenced for possession of a drug of dependence and were most represented in the possession of heroin category, where they accounted for 18.8% of all people sentenced, followed closely by possession of cannabis at 18.0%. For possession of ecstasy, women were least represented and accounted for 11.8% of people sentenced.

The median ages of people sentenced for possession of a drug of dependence were all between 29 and 31 years, with the exception of possession of ecstasy, which was much lower at 24 years.

Table 1: The number and percentage of people sentenced for each type of possession by age and gender, 2004–05 to 2007–08

	Amphetamines	Cannabis	Heroin	Ecstasy	Other	Total
All people						
Number sentenced	1,054	2,799	791	238	250	5,126
Median age	31	31	30	24	29	30
Males						
Number sentenced	918	2,303	642	210	216	4,280
Percentage	87.4%	82.0%	81.2%	88.2%	86.4%	83.5%
Median age	31	30.5	30	24	29	30
Females						
Number sentenced	133	505	149	28	34	849
Percentage	12.6%	18.0%	18.8%	11.8%	13.6%	16.5%
Median age	31	34	29	26.6	26	32

Figure 3: The number of people sentenced for each possession of a drug of dependence category, 2004–05 to 2007–08



Overview of sentencing outcomes

Figure 4 and Table 2 show the outcomes for people sentenced for each type of possession from 2004–05 to 2007–08. Over the four-year period, the majority of those sentenced for possession of a drug of dependence received a non-custodial sentence (4,801 people or 93.4%), including 3,057 people who received a fine (59.5%), 1,301 people who received an adjourned undertaking (25.3%) and 360 people who received a community-based order (7.0%).

As can be seen in Figure 4, the sentences imposed varied according to the type of possession charged. Possession of heroin, or possession of an other drug were the most likely to receive an immediate custodial sentence (9.2% and 9.0% respectively). The median length of imprisonment for both groups was one month.

Possession of cannabis was the least likely category to receive an immediate custodial sentence at 0.8% or 23 people.

Non-custodial sentences were the most common outcome for all categories of possession of a drug of dependence. They accounted for 93.4% of all sentencing outcomes or 4,801 people.

The majority of non-custodial sentences were fines (59.5% or 3,057 people), however adjourned undertakings also accounted for a substantial proportion of individuals sentenced at 25.3% overall, or 1,301 people.

Adjourned undertakings¹² were the third most common sentencing type, consisting of slightly more than a quarter of all sentencing outcomes (25.3%, or 1,301 people). A higher percentage of those sentenced for possession of ecstasy received adjourned undertakings (38.2%) compared to possession of an other drug (27%), possession of cannabis (26.7%), possession of amphetamines (21.3%) and possession of heroin (21.2%).

Figure 4: The percentage of people sentenced for each possession of a drug of dependence category by type of sentence, 2004–05 to 2007–08

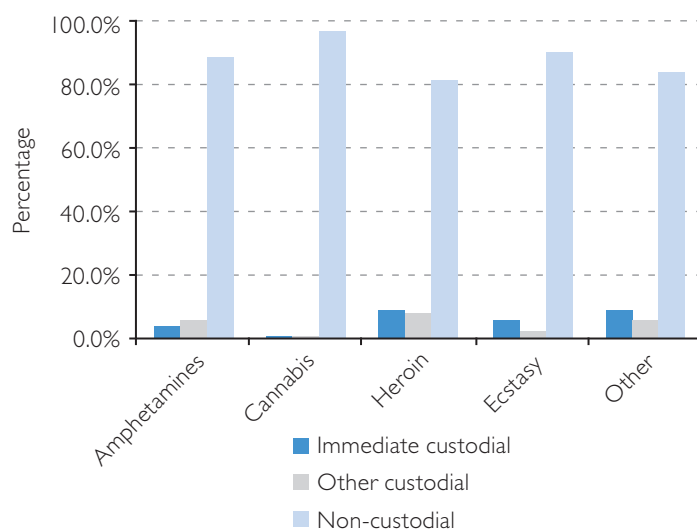


Table 2: The number and percentage of people sentenced for each type of drug by sentence type, 2004–05 to 2007–08

	Amphetamines		Cannabis		Heroin		Ecstasy		Other		Total	
Immediate custodial	42	4.0%	23	0.8%	73	9.2%	13	5.5%	22	9%	173	3.4%
Imprisonment	39	3.7%	21	0.7%	70	8.8%	12	5.0%	21	8.4%	163	3.2%
Partially suspended sentence	3	0.3%	1	0%	3	0.4%	0	0.0%	1	0.4%	8	0.2%
Youth justice centre order	0	0.0%	1	0%	0	0.0%	1	0.4%	0	0%	2	0.0%
Other custodial	58	5.5%	28	1.0%	62	7.8%	6	2.5%	14	5.6%	168	3.3%
Drug treatment order	2	0.2%	1	0%	6	0.8%	0	0.0%	2	0.8%	11	0.2%
Wholly suspended sentence	49	4.6%	19	0.7%	47	5.9%	3	1.3%	9	3.6%	127	2.5%
Intensive correction order	7	0.7%	8	0.3%	9	1.1%	3	1.3%	3	1.2%	30	0.6%
Non-custodial	954	90.5%	2,757	98.2%	657	83.0%	219	92.0%	214	85.6%	4,801	93.4%
Community-based order	88	8.3%	155	5.5%	82	10.4%	16	6.7%	19	7.6%	360	7.0%
Fine	637	60.4%	1,797	64.0%	387	48.9%	111	46.6%	125	50.0%	3,057	59.5%
Adjourned undertaking	224	21.3%	751	26.7%	168	21.2%	91	38.2%	67	26.8%	1,301	25.3%
Convicted and discharged	3	0.3%	37	1.3%	15	1.9%	0	0.0%	1	0.4%	56	1.1%
Dismissed	2	0.2%	17	0.6%	5	0.6%	1	0.4%	2	0.8%	27	0.5%
People sentenced	1,054	100.0%	2,808	100.0%	792	100.0%	238	100.0%	250	100%	5,142	100.0%
Criminal justice diversion program	173		274		50		69		29		595	
Total dispositions	1,227		3,082		842		307		279		5,737	

An additional 595 people participated in the criminal justice diversion program.¹³ The use of this diversion program differed according to the type of possession. The program was used more frequently for ecstasy possession (22.5% of dispositions) and for possession of amphetamines (14.0% of dispositions).¹⁴

Drug treatment orders were utilised extremely infrequently (11 people or 0.2%) over the four-year period. This is because drug treatment orders have stringent conditions attached to eligibility and can only be imposed where the offence is dealt with at the Drug Court division of the Magistrates' Court.

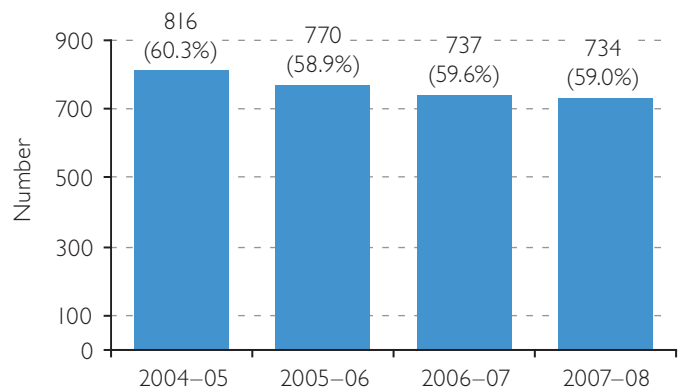
While recording a conviction is mandatory for people sentenced to a custodial order, a magistrate may use discretion when deciding whether to record a conviction for people who receive a non-custodial order.¹⁵ Of the people sentenced for possession of a drug of dependence in 2006–07 and 2007–08, a conviction was recorded for 81.8% of the 159 people who received a community-based order, 79.9% of the 1,471 people who received a fine and 12.3% of the 632 who received an adjourned undertaking. Overall, 63.4% of people sentenced had a conviction recorded in 2006–07 and 2007–08.

Fines

In the period of 2004–05 to 2007–08, there were 3,057 people who received a fine for possession of a drug of dependence. This represented 59.5% of all people sentenced for this offence.

Figure 5 shows the total number and percentage of people who received a fine as the principal sentence for possessing a drug of dependence. This has remained relatively consistent over the past four years, with fines making up between 58.9% and 60.3% of total sentencing outcomes.

Figure 5: The total number and percentage of people who received a fine for possession of a drug of dependence, 2004–05 to 2007–08

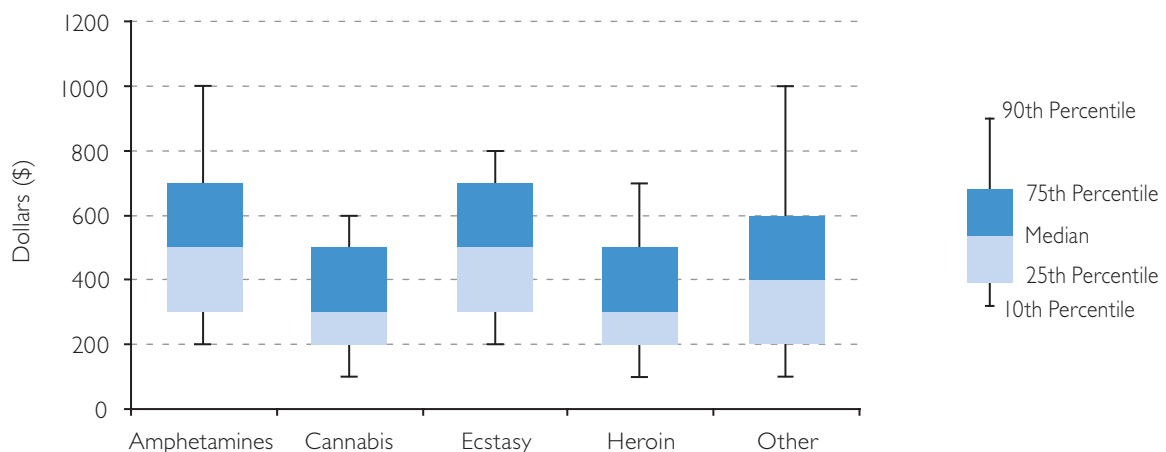


The amount of fines on average for each of the drug classes is illustrated below in Figure 6. Overall, fines for possession of a drug of dependence ranged from \$15 to \$4,000 with a median of \$300.

As can be seen in Figure 6,¹⁶ fines were relatively consistent across the different classes of drugs. Possession of heroin and possession of cannabis attracted the lowest value in fines with a median of \$300.

People sentenced for possession of ecstasy and amphetamines received the highest fine, both of which had median fine amounts of \$500.

Figure 6: The range of fine amounts for each possession of a drug of dependence category, 2004–05 to 2007–08



Multiple possession

Not all individuals were sentenced for a single type of drug possession; many also received sentences for other classes of drugs at the same time. Figure 7, illustrated below, shows the percentage of people for each principal sentence who were also charged with possession of a drug of dependence from a different class.

As can be seen below, individuals sentenced for the possession of ecstasy were also amongst the most likely to be sentenced for possession of other classes of drugs. Almost a quarter (24.4%) were also sentenced for possessing amphetamines, 18.9% for possessing cannabis and a further 11.8% for possessing an other drug of dependence.

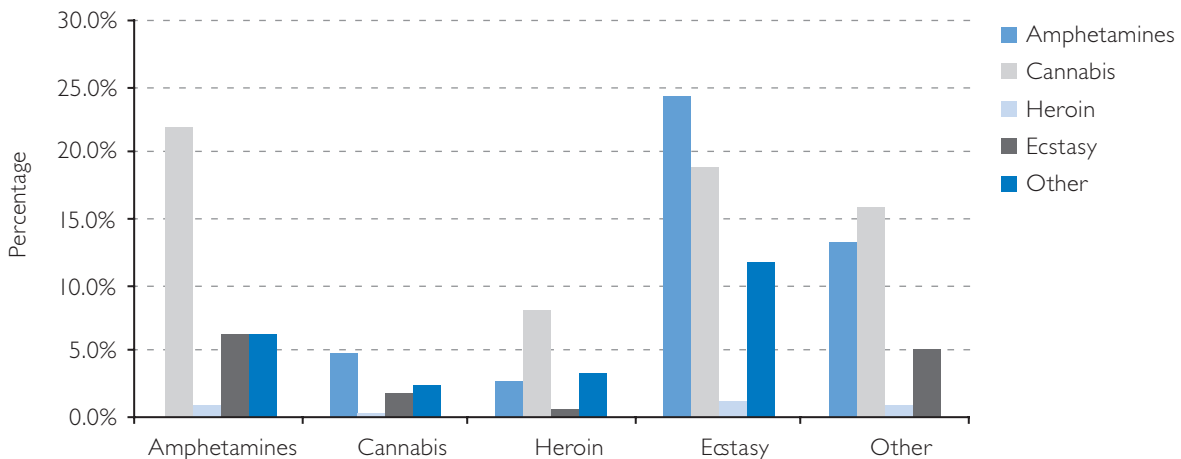
Individuals sentenced for the possession of amphetamines also showed a relatively high propensity to be sentenced for possessing other drug types at the same time. Of these, cannabis was the most common co-occurring drug type, with 21.8% of individuals sentenced for amphetamine possession also sentenced for cannabis possession, followed by other (6.3%), ecstasy (6.2%) and heroin (0.8%).

Of those sentenced for possession of an other drug of dependence, 16.0% were also sentenced for cannabis, 13.2% for amphetamines, 5.2% for ecstasy and 0.8% for heroin.

People sentenced for possessing heroin were less likely to be sentenced for other forms of other drug possession at the same time. A total of 8.1% were also sentenced for possessing cannabis, 3.4% for other, 2.8% for possessing amphetamines and 0.6% for possessing ecstasy.

While individuals sentenced for amphetamines, ecstasy and an other drug were also commonly sentenced for possession of cannabis at the same time, people whose principal proven offence was possession of cannabis did not show this trend. Indeed, they were the least likely to be sentenced for other types of possession, with 4.7% sentenced for amphetamines, 2.3% for other, 1.4% for ecstasy and 0.8% for heroin.

Figure 7: The percentage of people sentenced for possession of each drug category by co-occurring drug possession categories, 2004–05 to 2007–08



Endnotes

- 1 See Sentencing Snapshots No. 64 to No. 67. These Snapshots cover the offences of possessing amphetamines, possessing cannabis, possessing heroin and possessing ecstasy.
- 2 The number of people sentenced excludes those who participated in the criminal justice diversion program.
- 3 The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of possess a drug of dependence in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for possess a drug of dependence who received a more serious sentence for another offence on the same charge sheet.
- 4 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73(1).
- 5 Under section 113 of the *Sentencing Act 1991* (Vic) this general maximum term is prescribed for indictable offences triable summarily. Though section 113 does not specifically state the maximum number of penalty units that can be imposed for an indictable offence triable summarily, section 109(3)(a) sets the proportion between maximum term of imprisonment and the maximum fine.
- 6 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website at <www.ocpc.vic.gov.au>. During the period 2004–05 to 2007–08, the value of the penalty unit increased from \$102.25 to \$110.12.
- 7 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73(1).
- 8 A small number of cases were sentenced in the Children's Court and higher courts.
- 9 The 'other' drug of dependence category arises primarily from the type of drug not being specified on the charge sheet when being entered into the Courtlink database. It also includes possession of a number of other less common proscribed substances such as cocaine.
- 10 Information published by the Illicit Drug Reporting System (IDRS) indicates that heroin and methamphetamine use has decreased or remained relatively stable in most areas since 2006. It should be noted that the IDRS data do not report amphetamines as a whole, but describe speed and the methamphetamine ice as a combined category. For more information see J. Stafford, N. Sindicich and L. Burns, *An overview of the 2008 IDRS: The Injecting Drug User Survey preliminary findings*, Drug Trends Bulletin, December 2008 (Sydney: National Drug and Alcohol Research Centre, University of New South Wales, 2008).
- 11 The age was unknown for 13 men sentenced for possessing a drug of dependence (0.3%). These cases were excluded from all age analyses included in this report.
- 12 Adjourned undertakings will have conditions attached, which in the case of sentences for possession of a drug of dependence may involve a drug awareness program, treatment or counselling. Data on the conditions attached to each sentence were not available at the time of publication.
- 13 The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and a diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.
- 14 Conditions common in diversion programs for drug offences were donations to charity (79.4% of participants), undertaking a drug awareness program (35.3% of participants) and writing a letter of gratitude to informants (22.3%). See G. Fisher, *The Criminal Justice Diversion Program in Victoria: A Statistical Profile* (Melbourne: Sentencing Advisory Council 2008), for more information relating to criminal justice diversion programs in Victoria.
- 15 *Sentencing Act 1991* (Vic) ss 7, 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social well being or on his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).
- 16 The minimum and maximum values were replaced with the 10th and 90th percentiles respectively. This was to minimise the influence of extreme outliers, that while representative of the maximum fine, were imposed infrequently.

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