

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2004–05 to 2008–09

June 2010
No. 102

Trafficking in a large commercial quantity of drugs

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 and Supreme Courts of Victoria between 2004–05 and 2008–09.³

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 drugs.⁴

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 dependence.⁵ 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 Snapshot examines the offence of trafficking in a large commercial quantity of a drug (or drugs) of dependence to an adult.⁶ The amount of the drug that constitutes a large commercial quantity will depend on the type of drug involved.⁷ Different types of drugs can be combined in order to achieve a large commercial quantity.⁸

Trafficking in a large commercial quantity of drugs is an indictable offence that carries a maximum penalty of life imprisonment⁹ and/or a fine of up to 5000 penalty units.¹⁰ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

Trafficking in a large commercial quantity of drugs was the principal offence in 0.7% of cases sentenced in the higher courts between 2004–05 and 2008–09.

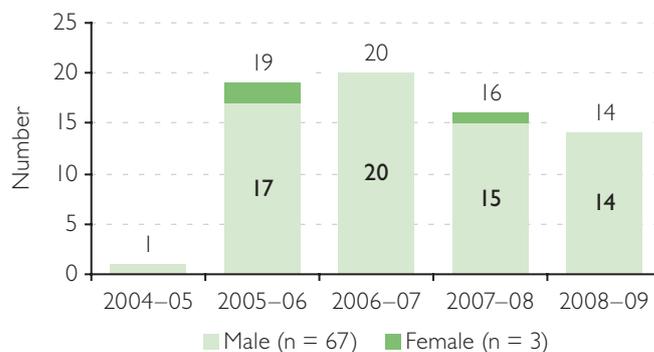
People sentenced

Figure 1 shows the number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs for the period 2004–05 to 2008–09. As shown, 70 people were sentenced for trafficking in a large commercial quantity of drugs over the five-year period. There were 14 people sentenced for this offence in 2008–09, down by 2 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (95.7% or 67 of 70 people), including all of the 14 people sentenced in 2008–09.

The increase in the number of people sentenced from 2005–06 and onwards may be a result of legislative changes that took effect in 2002 which differentiated the offence of drug trafficking based on the quantity of the substances involved.¹¹

Figure 1: The number of people sentenced for trafficking in a large commercial quantity of drugs by gender, 2004–05 to 2008–09



Sentence types and trends

Figure 2 shows the total number of people sentenced for trafficking in a large commercial quantity of drugs and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.¹² Over the five-year period, 96% of people were given an immediate custodial sentence. This peaked at 100% in 2004–05 (1 of 1) and 2006–07 (20 of 20) before decreasing to 93% (13 of 14) in 2008–09.

Figure 2: The number of people sentenced for trafficking in a large commercial quantity of drugs and the number who received an immediate custodial sentence, 2004–05 to 2008–09

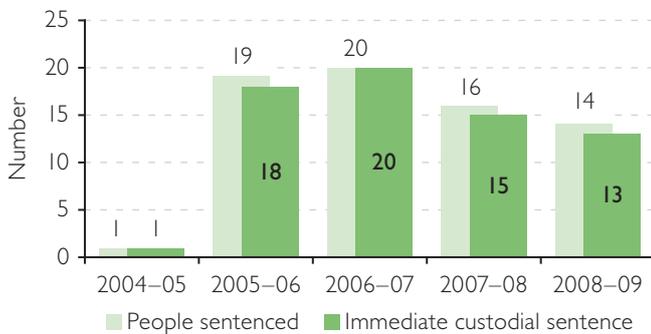


Table 1 shows the number of people sentenced for trafficking in a large commercial quantity of drugs from 2004–05 to 2008–09 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for trafficking in a large commercial quantity of drugs received a period of imprisonment (90% or 63 of 70 people). A small group of people received a mixed sentence involving imprisonment and fines (6% or 4 of 70), or a wholly suspended sentence (4% or 3 of 70).¹³

The number of people sentenced to imprisonment was lowest during 2004–05 (1 person) and highest during 2006–07 (20 people). Both 2004–05 and 2006–07 had the highest percentages of offenders receiving imprisonment (100%), while 2005–06 had the lowest percentages of offenders receiving imprisonment (74%).

A small number and percentage of people each year were given sentences other than imprisonment.

Table 1: The number and percentage of people sentenced for trafficking in a large commercial quantity of drugs by sentence type, 2004–05 to 2008–09

Sentence type	2004–05	2005–06	2006–07	2007–08	2008–09
Imprisonment	1 (100%)	14 (74%)	20 (100%)	15 (94%)	13 (93%)
Mix (imprisonment and fine)	0 (–)	4 (21%)	0 (–)	0 (–)	0 (–)
Wholly suspended sentence	0 (–)	1 (5%)	0 (–)	1 (6%)	1 (7%)
People sentenced	1	19	20	16	14

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for trafficking in a large commercial quantity of drugs grouped by their age between 2004–05 and 2008–09.¹⁴ The average age of people sentenced for trafficking in a large commercial quantity of drugs was 36 years and 3 months. There were no juveniles sentenced over this period.¹⁵

Figure 3: The number of people sentenced for trafficking in a large commercial quantity of drugs by gender and age, 2004–05 to 2008–09



Sentence types by gender

Figure 4 and Table 2 show the types of sentences imposed for trafficking in a large commercial quantity of drugs grouped by gender. As shown, a higher percentage of men received a period of imprisonment (91.0% compared to 66.7% of women) and a mixed sentence of imprisonment and a fine (6.0% compared to no women). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (33.3% compared to 3.0% of men).

Figure 4: The percentage of people sentenced for trafficking in a large commercial quantity of drugs by sentence type and gender, 2004–05 to 2008–09



Table 2: The number and percentage of people sentenced for trafficking in a large commercial quantity of drugs by gender, 2004–05 to 2008–09

Sentence type	Male	Female	Total
Imprisonment	61 (91%)	2 (67%)	63 (90%)
Mix (imprisonment and fine)	4 (6%)	0 (–)	4 (6%)
Wholly suspended sentence	2 (3%)	1 (33%)	3 (4%)
People sentenced	67	3	70

Sentence types by age

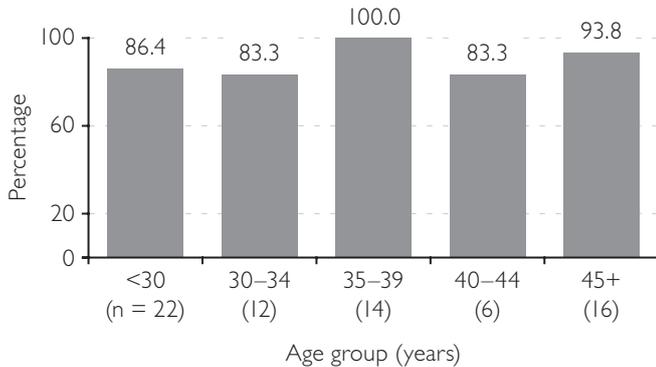
As shown in Table 2, the most common sentence type was imprisonment. The following analysis examines the use of imprisonment by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35–39 years (100% or all of the 14 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 30–34 years (83% or 10 of the 12 people in this age group) and people aged 40–44 years (83% or 5 of the 6 people in this age group).

Figure 5: The percentage of people who received a period of imprisonment for trafficking in a large commercial quantity of drugs by age group, 2004–05 to 2008–09



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.

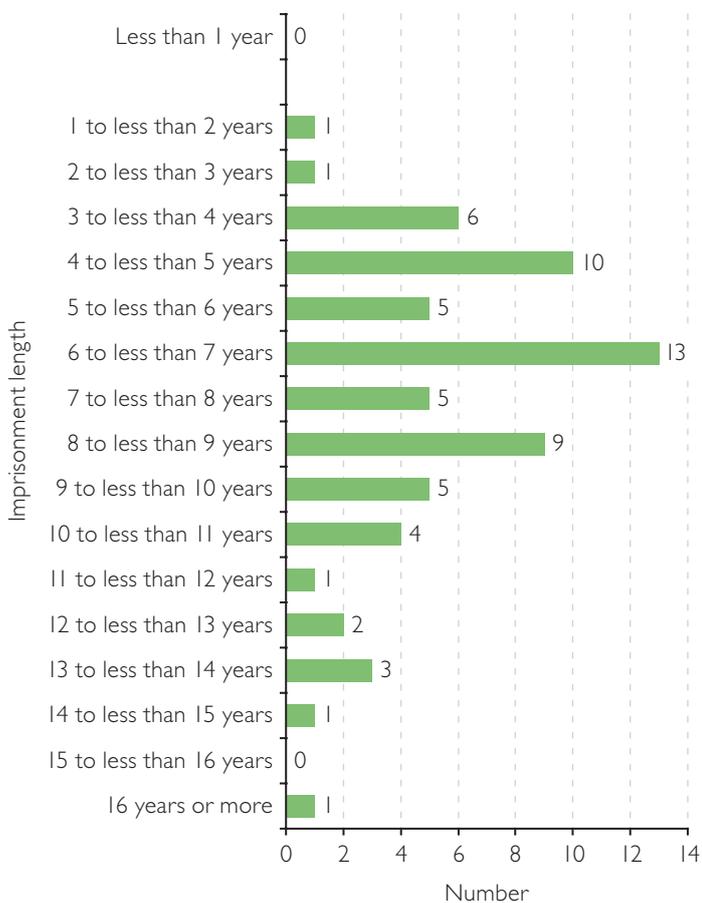
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for trafficking in a large commercial quantity of drugs must be considered in this broader context. The following sections analyse the use of imprisonment for trafficking in a large commercial quantity of drugs over 2004–05 to 2008–09.

Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2004–05 and 2008–09 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to 16 years,¹⁶ while the median length of imprisonment was 6 years and 6 months (meaning that half of the imprisonment terms were shorter than 6 years and 6 months and half were longer).

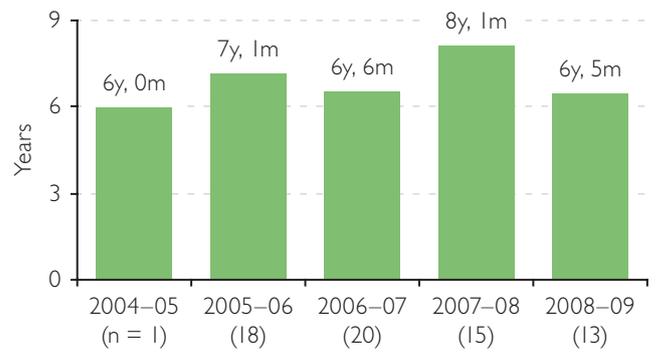
The most common length of imprisonment imposed was 6 years (13 people).

Figure 6: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of imprisonment term, 2004–05 to 2008–09



As shown in Figure 7, the average length of imprisonment term imposed on people sentenced for trafficking in a large commercial quantity of drugs ranged from 6 years in 2004–05 to 8 years and 1 month in 2007–08.

Figure 7: The average length of imprisonment term imposed on people sentenced for trafficking in a large commercial quantity of drugs, 2004–05 to 2008–09



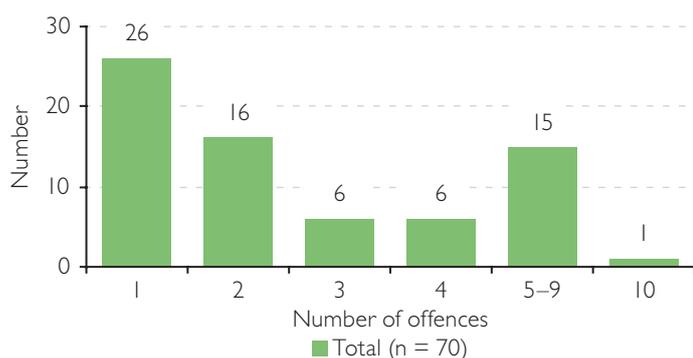
From 2004–05 to 2008–09, the majority of those people who received a term of imprisonment for trafficking in a large commercial quantity of drugs were men (65 people or 97.0%). Over the five-year period, men received a shorter average term of imprisonment (6 years and 11 months compared to 8 years and 9 months for women).

Other offences finalised at the same hearing

Often people prosecuted for trafficking in a large commercial quantity of drugs 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 trafficking in a large commercial quantity of drugs.

Figure 8 shows the number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs 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 26 people (37.1%) sentenced for the single offence of trafficking in a large commercial quantity of drugs alone. The average number of offences per person sentenced for trafficking in a large commercial quantity of drugs was 2.97.

Figure 8: The number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by the number of sentenced offences per person, 2004–05 to 2008–09



While Figure 8 presents the number of sentenced offences for those sentenced for trafficking in a large commercial quantity of drugs, Table 3 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, 23 of the total 70 people (32.9%) also received sentences for drug trafficking in a non-commercial quantity. On average, they were sentenced for 1.83 counts of drug trafficking in a non-commercial quantity.

Table 3: The number and percentage of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2008–09

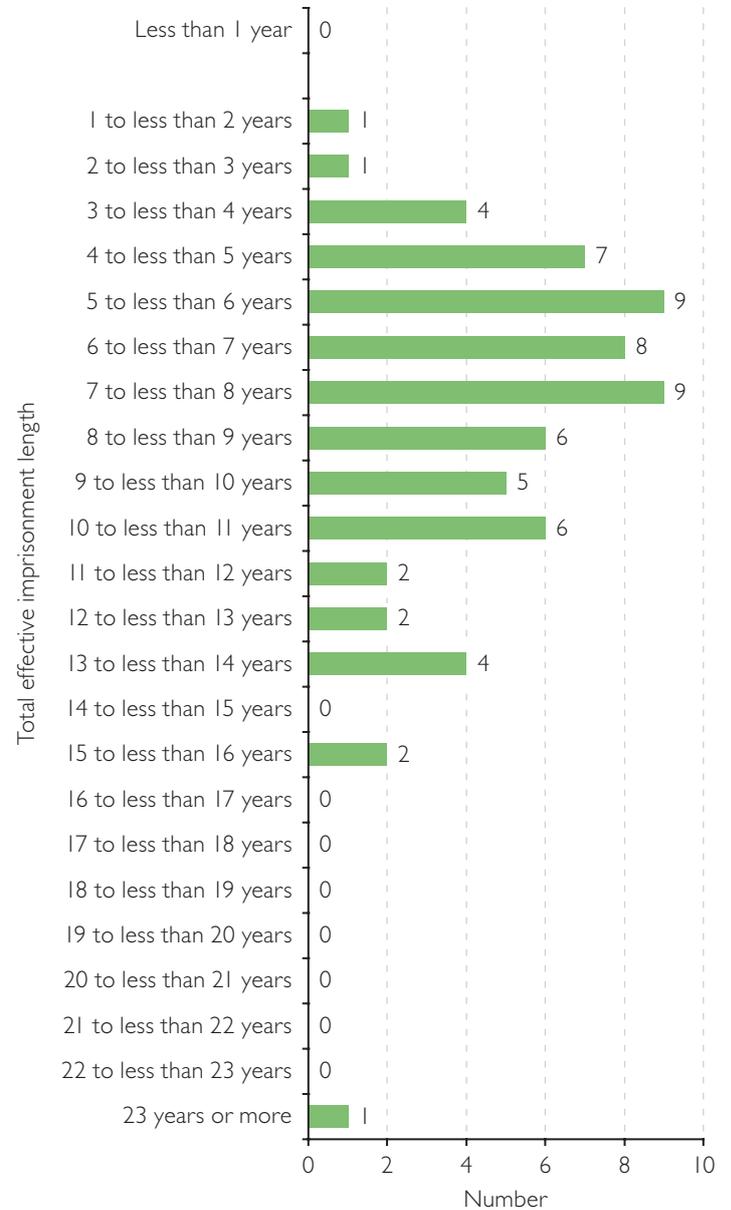
Offence	No.	%	Avg.
1 Drug trafficking in a large commercial quantity	70	100.0	1.86
2 Drug trafficking in a non-commercial quantity	23	32.9	1.83
3 Possess a drug of dependence	18	25.7	1.50
4 Drug trafficking in a commercial quantity	18	25.7	1.17
5 Deal with property suspected of being the proceeds of crime	4	5.7	1.00
6 Money laundering	4	5.7	1.00
7 Possess substance, equipment, documents or materials for cultivating/trafficking in a drug of dependence	4	5.7	1.00
8 Prohibited person possessing unregistered firearm	2	2.9	2.00
9 Possess proceeds of crime	2	2.9	2.00
10 Theft	2	2.9	1.50
People sentenced	70	100.0	2.97

Total effective sentence of imprisonment

There were 67 people given a total effective sentence of imprisonment.¹⁷ Figure 9 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2004–05 and 2008–09 by the length of their total effective sentence. The length of total effective sentences ranged from 1 year and 6 months to 23 years,¹⁸ while the median total effective length of imprisonment was 7 years (meaning that half of the total effective sentence lengths were below 7 years and half were above).

The two most common total effective imprisonment lengths were 5 years and 7 years (9 people each).

Figure 9: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by total effective length of imprisonment term, 2004–05 to 2008–09



Non-parole period

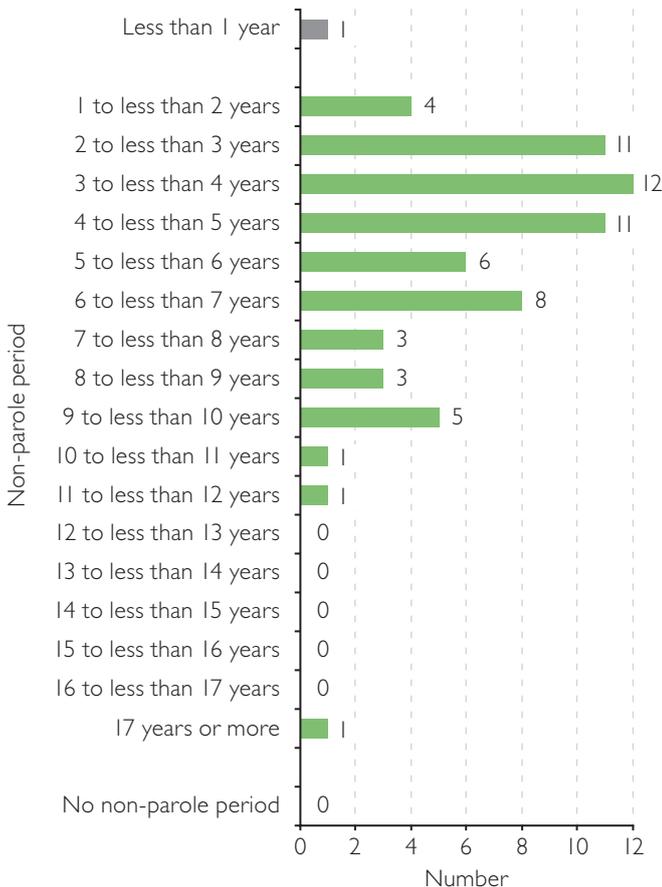
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 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 longer than the individual principal sentence for trafficking in a large commercial quantity of drugs. Sentences and non-parole periods must be considered in this broader context.

Of the 67 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs, all were given a non-parole period. Figure 10 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2004–05 and 2008–09 by the length of their non-parole period. Non-parole periods ranged from 9 months to 17 years,¹⁹ while the median length of the non-parole period was 4 years and 5 months (meaning that half of the non-parole periods were below 4 years and 5 months and half were above).

The most common non-parole period imposed was 3 years (12 people).

Figure 10: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of non-parole period, 2004–05 to 2008–09

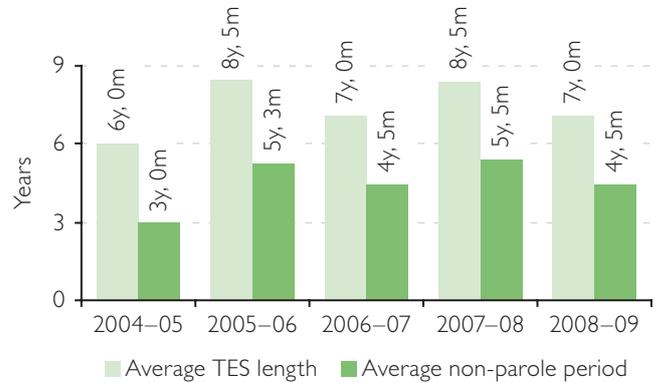


Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people.

From 2004–05 to 2008–09, the average length of total effective sentences for all people ranged from 6 years in 2004–05 to 8 years and 5 months in 2005–06 and 2007–08. Over the same period, the average length of non-parole periods ranged from 3 years in 2004–05 to 5 years and 5 months in 2007–08.

Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for trafficking in a large commercial quantity of drugs, 2004–05 to 2008–09

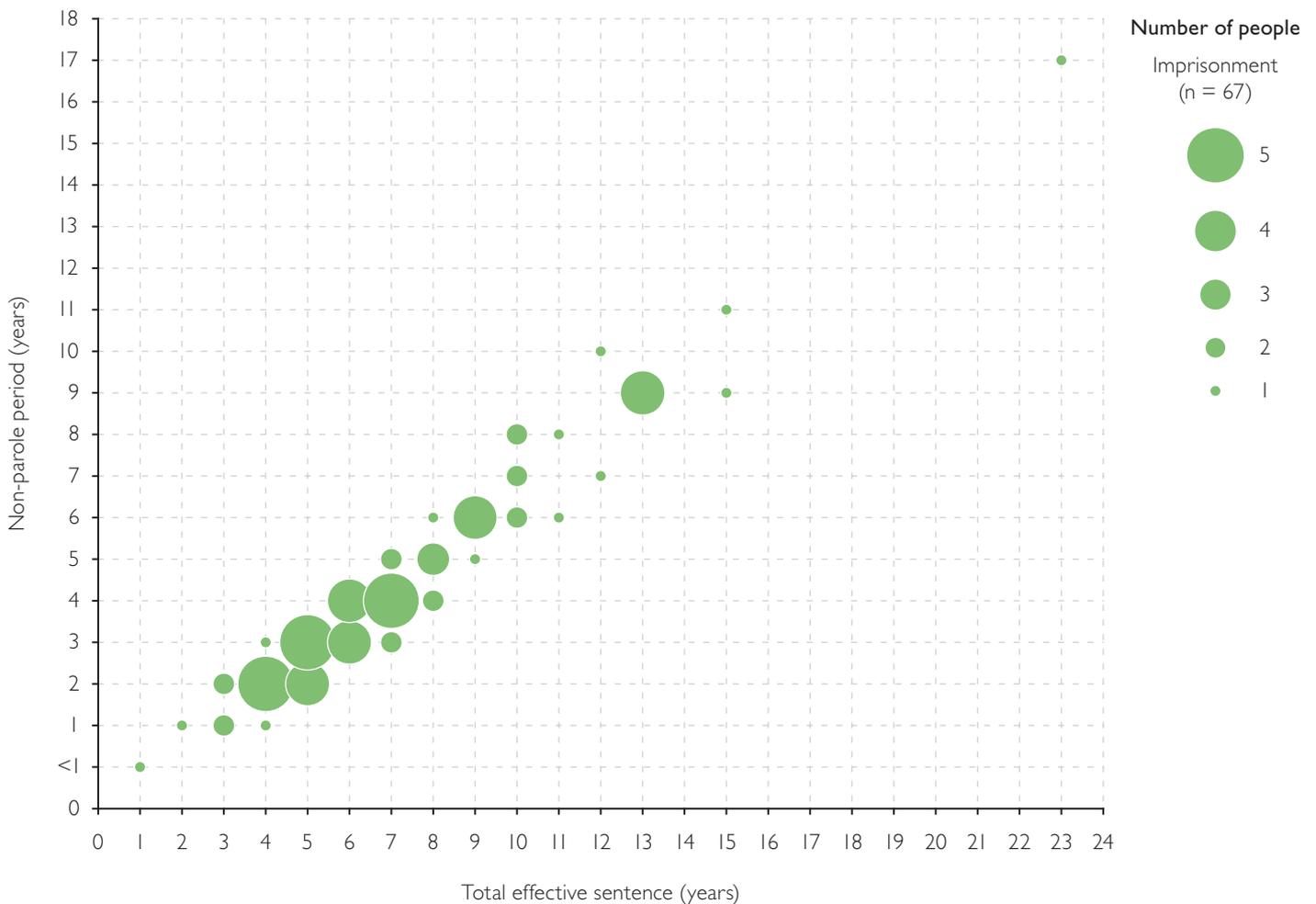


Total effective sentence of imprisonment by non-parole period

While Figures 9 and 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 trafficking in a large commercial quantity of drugs 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 combination.²⁰ As shown, the most common combinations of imprisonment length and non-parole period imposed was 4 years with a non-parole period of 2 years, 5 years with a non-parole period of 3 years and 7 years with a non-parole period of 4 years (5 people each—as represented by the largest 'bubbles' on the chart). The length of imprisonment ranged from 1 year and 6 months with a non-parole period of 9 months to 23 years with a non-parole period of 17 years.²¹

Figure 12: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by the total effective sentence and the non-parole period imposed, 2004–05 to 2008–09



Suspended sentences of imprisonment

There were 3 people given a suspended sentence of imprisonment as their total effective sentence. Of these, all 3 had their prison sentence wholly suspended; no partially suspended sentences were handed out during the five-year period.

Wholly suspended sentence lengths ranged from 2 years and 9 months to 3 years. The most common wholly suspended sentence length was 3 years (2 people).

Summary

Between 2004–05 and 2008–09, 70 people were sentenced for trafficking in a large commercial quantity of drugs in the higher courts. Over this period, the majority of those sentenced were men (96%), while 56% were between the ages of 25 and 39 years.

The majority of the people sentenced for trafficking in a large commercial quantity of drugs received a period of imprisonment (90%). Imprisonment was most common for those offenders aged 35 to 39 years.

Each of the 70 people was sentenced for an average of 2.97 offences, including 1.86 offences of drug trafficking in a large commercial quantity. The most common offence finalised in conjunction with trafficking in a large commercial quantity of drugs was drug trafficking in a non-commercial quantity (32.9% of all cases). The number and range of offences for which people with a principal offence of trafficking in a large commercial quantity of drugs were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 7 years, while the median principal imprisonment length was 6 years and 6 months.

Total effective imprisonment lengths ranged from 1 year and 6 months with a non-parole period of 9 months to 23 years with a non-parole period of 17 years. The most common sentences of imprisonment were 4 years with a non-parole period of 2 years, 5 years with a non-parole period of 3 years, and 7 years with a non-parole period of 4 years.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of trafficking in a large commercial quantity of drugs 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 trafficking in a large commercial quantity of drugs who received a more serious sentence for another offence forming part of the same presentment. There were 957 people sentenced from 2004–05 to 2008–09 for 1,532 offences of trafficking in drugs, including for trafficking in non-commercial, commercial and large commercial quantities and trafficking to children. Trafficking in a large commercial quantity of drugs was the principal proven offence for 70 of these people.

This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.
2. The information source for sentencing outcomes for trafficking in a large commercial quantity of drugs only contains information on age and gender characteristics. No other demographic analysis is possible.
3. The source data for the statistical information presented in this Snapshot were provided by Court Statistical Services, Department of Justice (Vic). The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. 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 835 cases that had drug trafficking (s 71, s 71AA, s 71AB or s 71AC of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)) as the principal proven offence over the five-year period of 2004–05 to 2008–09. Sentencing remarks were located for 724 cases (86.7%). 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.
4. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71–71AC.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) 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 large commercial quantity'; *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
9. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71.
10. 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 <www.ocpc.vic.gov.au>.
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 of dependence based on the quantity of the substances 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. Immediate custodial sentence includes imprisonment and mix (imprisonment and fine).
13. Trafficking in a large commercial quantity of drugs is not defined as a 'serious offence' for the purposes of section 27(2B) of the *Sentencing Act 1991* (Vic). Section 27 (2B) provides that a court may impose a wholly suspended sentence for serious offences committed on or after 1 November 2006 only if there are found to be exceptional circumstances.
14. Age is as at the time of sentencing.
15. Defendants who were under the age of 18 at the time of committing the alleged offence and who were not 19 years or older at the time proceedings commenced may be dealt with in the Children's Court of Victoria.
16. In 2005–06, a 39 year-old man was given a principal sentence of 16 years' imprisonment for trafficking in a large commercial quantity of drugs and a total effective sentence of 23 years' imprisonment with a non-parole period of 17 years. The judge commented that '[y]our prior criminal history demonstrates a long involvement with drug offences and it is clear from all the material that you have been a life long drug user, cultivator, importer and trafficker'. On the current offending the judge commented that '[y]our offences were sophisticated, lucrative and, in my view extremely serious examples of the crime of trafficking in a large commercial quantity of drugs'.
17. All of the 67 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
18. See fn 16.
19. See fn 16.
20. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
21. See fn 16.

Sentencing Snapshots is a series presenting summary information on sentencing trends in Victoria

Sentencing trends in the higher courts, 2004–05 to 2008–09

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