

Sentencing Snapshot

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

June 2010
No. 104

Cultivating a commercial quantity of narcotic plants

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of cultivating a commercial quantity of narcotic plants 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 offences in relation to the cultivation of a narcotic plant that distinguishes between large commercial, commercial and less than commercial quantities of the illegal plant.⁴

A person who sows the seed of a narcotic plant or grows, tends or nurtures a narcotic plant without being authorised or licensed to do so is guilty of cultivation of a narcotic plant.⁵ The maximum penalties that apply vary depending on the quantity of the plant involved, as well as the purpose for which the plant was cultivated.

This Snapshot examines the offence of cultivating a commercial quantity of narcotic plants.⁶ The amount that constitutes a commercial quantity depends on the type of plant.⁷ In relation to cannabis, which is the most common narcotic plant involved in these offences, a commercial quantity is 25 kg or 100 plants.⁸ Different types of plants can also be combined in order to achieve a commercial quantity.⁹

Cultivation of a commercial quantity of a narcotic plant is an indictable offence that earns a maximum penalty of 25 years' imprisonment¹⁰ and/or a fine of up to 3000 penalty units.¹¹ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

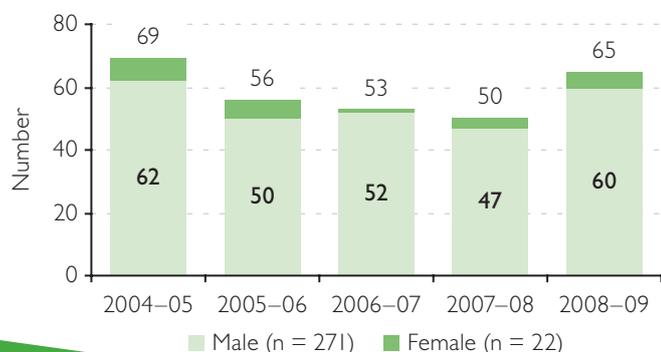
Cultivating a commercial quantity of narcotic plants was the principal offence in 2.8% of cases sentenced in the higher courts between 2004–05 and 2008–09.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants for the period 2004–05 to 2008–09. As shown, 293 people were sentenced for cultivating a commercial quantity of narcotic plants over the five-year period. There were 65 people sentenced for this offence in 2008–09, up by 15 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (92.5% or 271 of the 293 people), including 60 of the 65 people sentenced in 2008–09.

Figure 1: The number of people sentenced for cultivating a commercial quantity of narcotic plants by gender, 2004–05 to 2008–09



Sentence types and trends

Figure 2 shows the total number of people sentenced for cultivating a commercial quantity of narcotic plants 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, 68% of people were given an immediate custodial sentence. This peaked at 81% (43 of 53) in 2006–07 after a low of 59% (41 of 69) in 2004–05. In 2008–09, 69% of people sentenced (45 of 65) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for cultivating a commercial quantity of narcotic plants and the number who received an immediate custodial sentence, 2004–05 to 2008–09

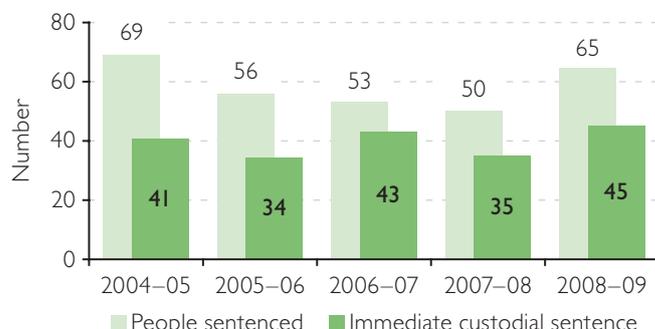


Table 1 shows the number of people sentenced for cultivating a commercial quantity of narcotic plants from 2004–05 to 2008–09 by the types of sentences imposed.

Over the five-year period, around 4 in 10 people sentenced for cultivating a commercial quantity of narcotic plants received a period of imprisonment (44% or 129 of 293 people), while 29% received a wholly suspended sentence of imprisonment¹³ and 23% received a partially suspended sentence of imprisonment.

The number and percentage of people given imprisonment were smallest during 2004–05 (18 of 69 people, or 26%) and highest during 2006–07 (34 of 53 people, or 64%).

The number and percentage of people given wholly suspended sentences of imprisonment were lowest during 2006–07 (7 of 53 people, or 13%) and highest during 2004–05 (25 of 69 people, or 36%). Both 2004–05 and 2005–06 had the equally highest percentages of people being given wholly suspended sentences (36% each).

The number and percentage of people given a partially suspended sentence of imprisonment were lowest in 2006–07 (8 of 53 people, or 15%) and highest in 2004–05 (22 of 69 people, or 32%). The number of people given a partially suspended sentence was equal lowest in both 2006–07 and 2007–08 (8 people each).

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for cultivating a commercial quantity of narcotic plants grouped by their age¹⁴ between 2004–05 and 2008–09. The average age of people sentenced for cultivating a commercial quantity of narcotic plants was 39 years and 5 months. Women sentenced over this period were older than men (an average age of 41 years for women compared to 39 years and 4 months for men). There were no juveniles sentenced over this period.¹⁵

Figure 3: The number of people sentenced for cultivating a commercial quantity of narcotic plants by gender and age, 2004–05 to 2008–09

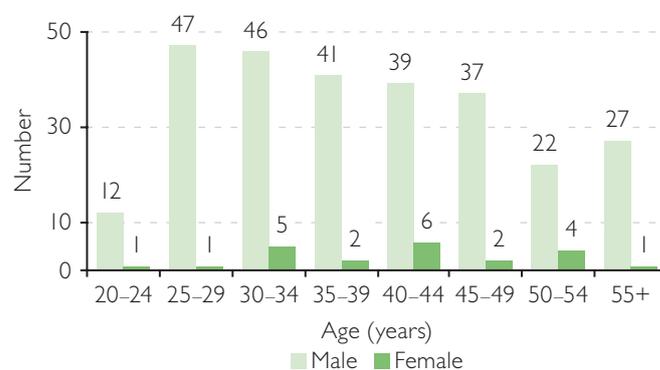


Table 1: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type, 2004–05 to 2008–09

Sentence type	2004–05	2005–06	2006–07	2007–08	2008–09
Imprisonment	18 (26%)	20 (36%)	34 (64%)	27 (54%)	30 (46%)
Wholly suspended sentence	25 (36%)	20 (36%)	7 (13%)	13 (26%)	19 (29%)
Partially suspended sentence	22 (32%)	14 (25%)	8 (15%)	8 (16%)	14 (22%)
Mix (wholly suspended sentence and fine)	2 (3%)	0 (–)	1 (2%)	0 (–)	1 (2%)
Intensive correction order	0 (–)	1 (2%)	1 (2%)	2 (4%)	0 (–)
Mix (partially suspended sentence and fine)	1 (1%)	0 (–)	0 (–)	0 (–)	0 (–)
Aggregate wholly suspended sentence	0 (–)	0 (–)	1 (2%)	0 (–)	0 (–)
Aggregate partially suspended sentence	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)
Aggregate imprisonment	0 (–)	0 (–)	1 (2%)	0 (–)	0 (–)
Adjourned undertaking without conviction	1 (1%)	0 (–)	0 (–)	0 (–)	0 (–)
Adjourned undertaking with conviction	0 (–)	1 (2%)	0 (–)	0 (–)	0 (–)
People sentenced	69	56	53	50	65

Sentence types by gender

Figure 4 and Table 2 show the types of sentences imposed for cultivating a commercial quantity of narcotic plants grouped by gender. As shown, a higher percentage of men received a period of imprisonment (46.1% compared to 18.2% of women) and a partially suspended sentence of imprisonment (23.2% compared to 13.6%). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (54.5% compared to 26.6% of men), an adjourned undertaking without conviction (4.5% compared to no men), an intensive correction order (4.5% compared to 1.1%) and a mixed sentence of a wholly suspended sentence and fine (4.5% compared to 1.1%).

Figure 4: The percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type and gender, 2004–05 to 2008–09

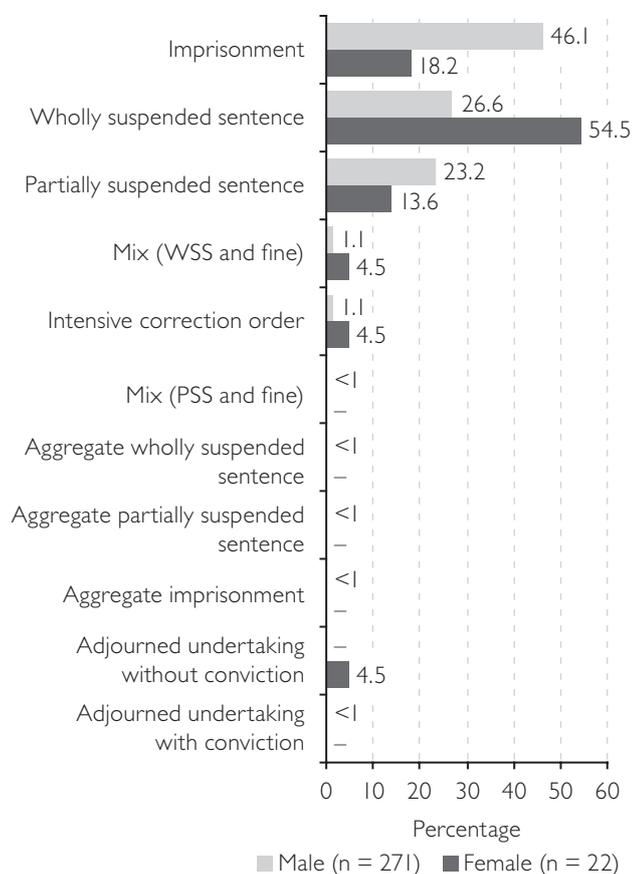


Table 2: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by gender, 2004–05 to 2008–09

Sentence type	Male	Female	Total
Imprisonment	125 (46%)	4 (18%)	129 (44%)
Wholly suspended sentence	72 (27%)	12 (55%)	84 (29%)
Partially suspended sentence	63 (23%)	3 (14%)	66 (23%)
Mix (wholly suspended sentence and fine)	3 (1%)	1 (5%)	4 (1%)
Intensive correction order	3 (1%)	1 (5%)	4 (1%)
Mix (partially suspended sentence and fine)	1 (<1%)	0 (–)	1 (<1%)
Aggregate wholly suspended sentence	1 (<1%)	0 (–)	1 (<1%)
Aggregate partially suspended sentence	1 (<1%)	0 (–)	1 (<1%)
Aggregate imprisonment	1 (<1%)	0 (–)	1 (<1%)
Adjourned undertaking without conviction	0 (–)	1 (5%)	1 (<1%)
Adjourned undertaking with conviction	1 (<1%)	0 (–)	1 (<1%)
People sentenced	271	22	293

Sentence types by age

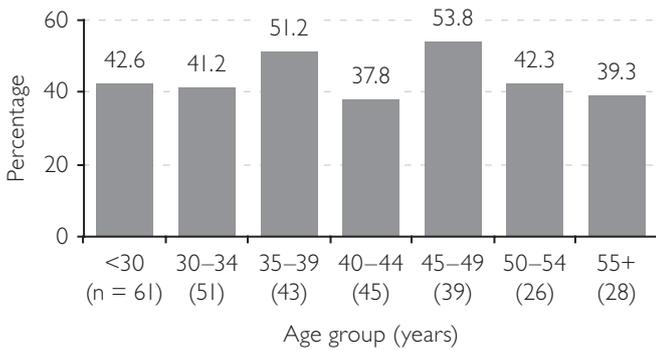
As shown in Table 2, the three most common sentence types were imprisonment, wholly suspended sentences of imprisonment and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 45–49 years (54% or 21 of the 39 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 40–44 years (38% or 17 of the 45 people in this age group).

Figure 5: The percentage of people who received a period of imprisonment for cultivating a commercial quantity of narcotic plants by age group, 2004–05 to 2008–09

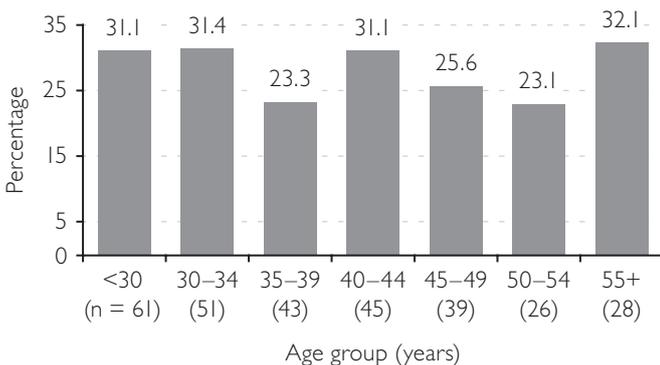


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 55 years and older (32% or 9 of the 28 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 50–54 years (23% or 6 of the 26 people in this age group).

Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants by age group, 2004–05 to 2008–09

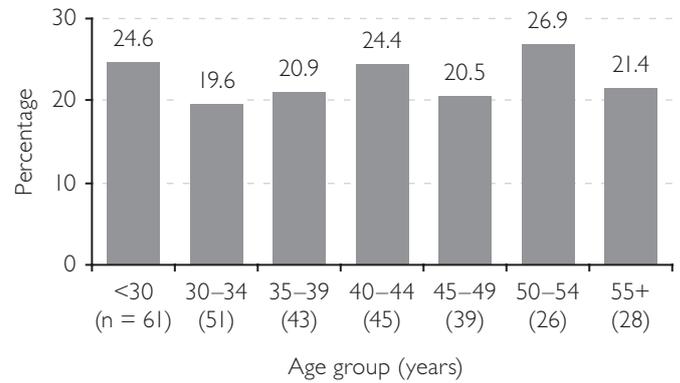


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 50–54 years (27% or 7 of the 26 people in this age group).

Conversely, partially suspended sentences of imprisonment were least common for those aged 30–34 years (20% or 10 of the 51 people in this age group).

Figure 7: The percentage of people who received a partially suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants 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.

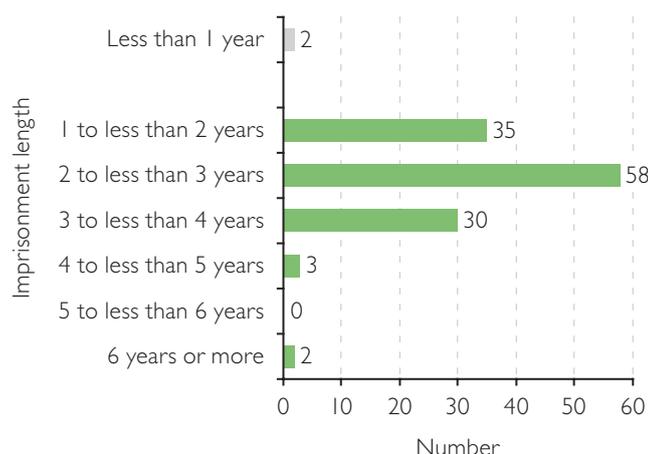
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for cultivating a commercial quantity of narcotic plants must be considered in this broader context. The following sections analyse the use of imprisonment for cultivating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

Principal sentence of imprisonment

Figure 8 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2004–05 and 2008–09 by the length of the imprisonment term. Imprisonment terms ranged from 6 months to 6 years, while the median length of imprisonment was 2 years and 4 months (meaning that half of the imprisonment terms were shorter than 2 years and 4 months and half were longer).

The most common length of imprisonment imposed was 2 years (58 people).

Figure 8: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of imprisonment term, 2004–05 to 2008–09



As shown in Figure 9, the average length of imprisonment term imposed on people sentenced for cultivating a commercial quantity of narcotic plants ranged from 2 years and 1 month in 2007–08 to 2 years and 7 months in 2004–05.

Figure 9: The average length of imprisonment term imposed on people sentenced for cultivating a commercial quantity of narcotic plants, 2004–05 to 2008–09



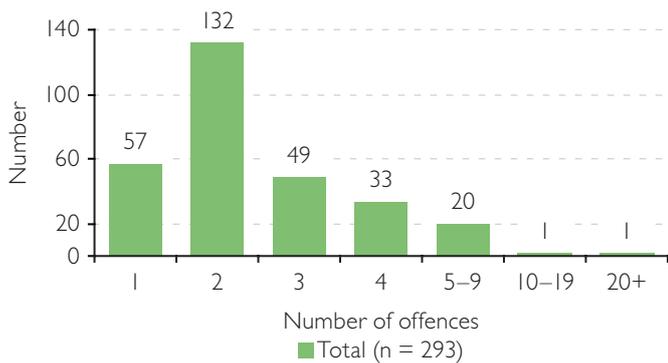
From 2004–05 to 2008–09, the majority of those people who received a term of imprisonment for cultivating a commercial quantity of narcotic plants were men (126 people or 96.9%). Over the five-year period, men received a longer average term of imprisonment (2 years and 4 months compared to 1 year and 9 months for women).

Other offences finalised at the same hearing

Often people prosecuted for cultivating a commercial quantity of narcotic plants face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of cultivating a commercial quantity of narcotic plants.

Figure 10 shows the number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 34, while the median was 2 offences. There were 57 people (19.5%) sentenced for the single offence of cultivating a commercial quantity of narcotic plants alone. The average number of offences per person sentenced for cultivating a commercial quantity of narcotic plants was 2.63.

Figure 10: The number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the number of sentenced offences per person, 2004–05 to 2008–09



While Figure 10 presents the number of sentenced offences for those sentenced for cultivating a commercial quantity of narcotic plants, 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, 201 of the total 293 people (68.6%) also received sentences for theft. On average, they were sentenced for 1.19 counts of theft.

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

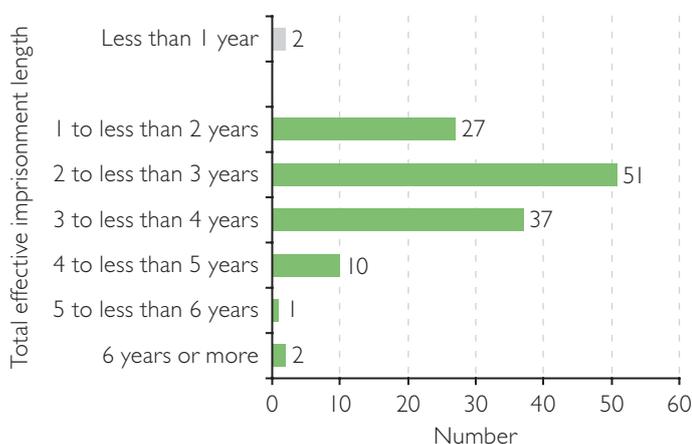
Offence	No.	%	Avg.
1 Cultivating a commercial quantity of narcotic plants	293	100.0	1.09
2 Theft	201	68.6	1.19
3 Cultivate a non-commercial quantity of narcotic plants	59	20.1	1.08
4 Possess a drug of dependence	52	17.7	1.21
5 Drug trafficking in a non-commercial quantity	29	9.9	1.03
6 Intentionally destroy/damage property (criminal damage)	11	3.8	1.09
7 Handling stolen goods	8	2.7	1.13
8 Use a drug of dependence	8	2.7	1.00
9 Possess the proceeds of crime	4	1.4	1.25
10 Unlicensed person storing ammunition or firearms in an insecure manner	3	1.0	1.67
People sentenced	293	100.0	2.63

Total effective sentence of imprisonment

There were 130 people given a total effective sentence of imprisonment.¹⁶ Figure 11 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2004–05 and 2008–09 by the length of their total effective sentence. The length of total effective sentences ranged from 6 months to 6 years, while the median total effective length of imprisonment was 2 years, 6 months and 15 days (meaning that half of the total effective sentence lengths were below 2 years, 6 months and 15 days and half were above).

The most common total effective imprisonment length was 2 years (51 people).

Figure 11: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants 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.

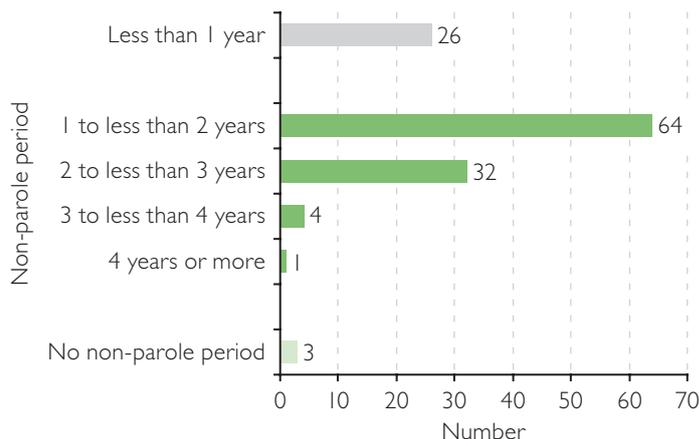
Under section 11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be longer than the individual principal sentence for cultivating a commercial quantity of narcotic plants. Sentences and non-parole periods must be considered in this broader context.

Of the 130 people who were sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, 128 were eligible to have a non-parole period fixed.¹⁷ Of these people, 127 were given a non-parole period (99%). Figure 12 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2004–05 and 2008–09 by the length of their non-parole period.

Non-parole periods ranged from 4 months to 4 years, while the median length of the non-parole period was 1 year and 4 months (meaning that half of the non-parole periods were below 1 year and 4 months and half were above).

The most common non-parole period imposed was 1 year (64 people).

Figure 12: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of non-parole period, 2004–05 to 2008–09

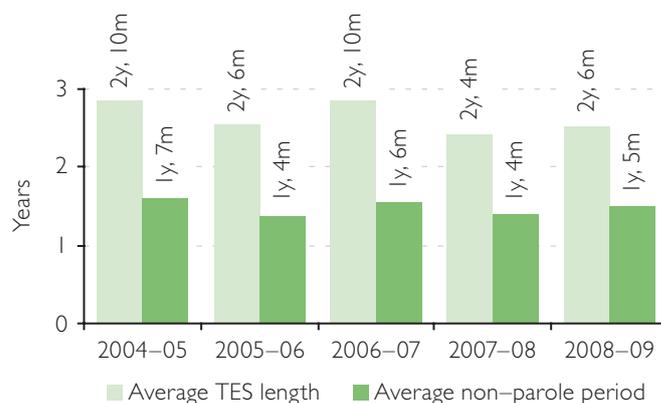


Total effective sentences of imprisonment and non-parole periods

Figure 13 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.

From 2004–05 to 2008–09, the average length of total effective sentences for all people ranged from 2 years and 4 months in 2007–08 to 2 years and 10 months in 2004–05 and 2006–07. Over the same period, the average length of non-parole periods ranged from 1 year and 4 months in 2005–06 and 2007–08 to 1 year and 7 months in 2004–05.

Figure 13: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, 2004–05 to 2008–09

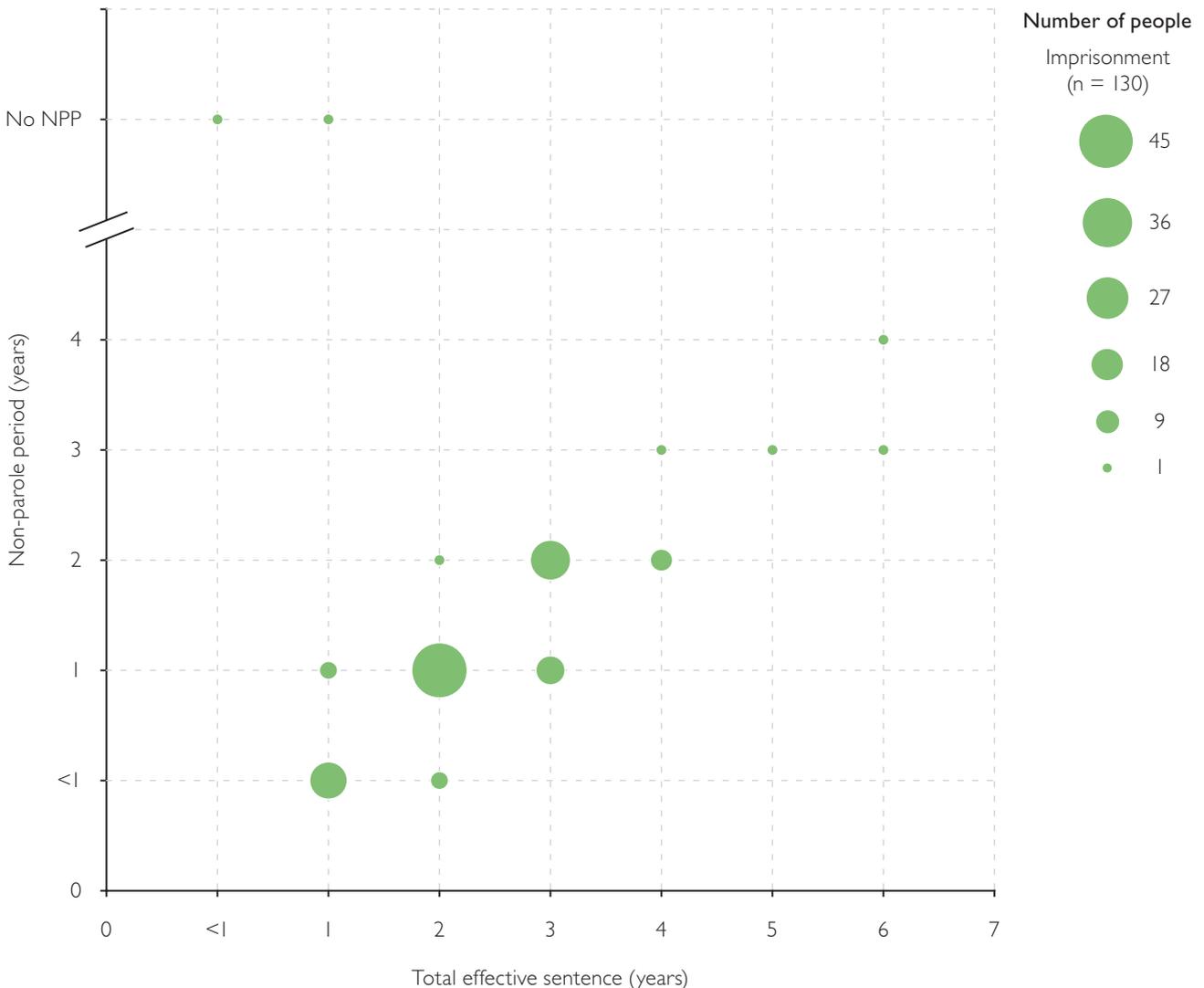


Total effective sentence of imprisonment by non-parole period

While Figures 11 and 12 present the lengths of the total effective sentences and non-parole periods separately, Figure 14 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for cultivating a commercial quantity of narcotic plants for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the 'bubble' reflects the number of people who received that particular combination.¹⁸ As shown, the most common combination of imprisonment length and non-parole period imposed was 2 years with a non-parole period of 1 year (45 people—as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from 6 months with no non-parole period to 6 years with a non-parole period of 4 years.

Figure 14: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by the total effective sentence and the non-parole period imposed, 2004–05 to 2008–09



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

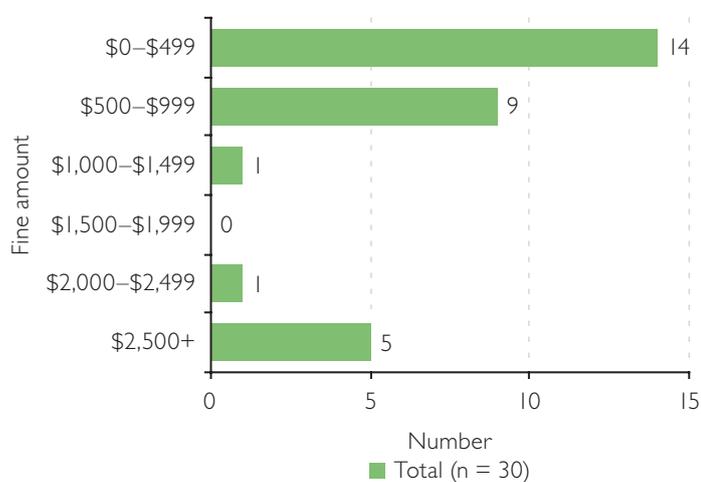
Fines

This analysis includes all fines that were imposed for cases where cultivating a commercial quantity of narcotic plants was the principal offence. Fines were imposed on 30 people.

The fine amount imposed ranged from \$100 to \$10,000, with a median of \$500 (meaning that half of the values fell below \$500 and half of the values were above \$500).

The average fine amount was \$1,730. The average fine amount imposed against the 27 males was \$1,822, much higher than the average fine for the 3 females (\$900).

Figure 16: The number of people who received a fine for cultivating a commercial quantity of narcotic plants by fine amount, 2004–05 to 2008–09



Summary

Between 2004–05 and 2008–09, 293 people were sentenced for cultivating a commercial quantity of narcotic plants in the higher courts. Over this period, the majority of those sentenced were men (93%), while 64% were between the age of 25 and 44 years.

Around 4 in 10 people sentenced for cultivating a commercial quantity of narcotic plants received a period of imprisonment (44%), while 29% received a wholly suspended sentence of imprisonment and 23% received a partially suspended sentence of imprisonment.

Men were more likely than women to be sentenced to a period of imprisonment or a partially suspended sentence of imprisonment. Conversely, women were more likely to be sentenced to a wholly suspended sentence of imprisonment.

Imprisonment was most common for those aged between 45 and 49 years of age, wholly suspended sentences of imprisonment were more common for those older than 55 years of age and partially suspended sentences of imprisonment were most common for those aged 50 to 54 years.

Each of the 293 people was sentenced for an average of 2.63 offences, including 1.09 offences of cultivating a commercial quantity of narcotic plants. The most common offence finalised in conjunction with cultivating a commercial quantity of narcotic plants was theft (68.6% of all cases). The number and range of offences for which people with a principal offence of cultivating a commercial quantity of narcotic plants 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 2 years, 6 months and 15 days, while the median principal imprisonment length was 2 years and 4 months.

Total effective imprisonment lengths ranged from 6 months with no non-parole period to 6 years with a non-parole period of 4 years. The most common sentence of imprisonment was 2 years with a 1 year non-parole period.

The most common partially suspended sentence lengths were 1 year and 6 months with 1 year suspended, 2 years with 1 year and 6 months suspended and 2 years and 6 months with 1 year and 3 months suspended, while the most common wholly suspended sentence length was 2 years.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants who received a more serious sentence for another offence forming part of the same presentment. There were 494 people sentenced from 2004–05 to 2008–09 for 544 offences of cultivating narcotic plants, including for cultivating non-commercial, commercial and large commercial quantities. Cultivating a commercial quantity of narcotic plants was the principal proven offence for 293 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 cultivating a commercial quantity of narcotic plants 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 cultivation 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 391 cases that had cultivation of narcotic plants (s 72, s 72A or s 72B of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)) as the principal proven offence over the five-year period 2004–05 to 2008–09. Sentencing remarks were located for 331 cases (84.7%). 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 72–72B.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
6. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72A.
7. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
8. *Drugs, Poisons and Controlled Substances Act 1981* (Vic), Schedule 11, Part 2.
9. See 'aggregate commercial quantity'; *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
10. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72A.
11. 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>.
12. Immediate custodial sentence includes imprisonment, partially suspended sentence, mix (partially suspended sentence and fine), aggregate partially suspended sentence and aggregate imprisonment.
13. Cultivating a commercial quantity of narcotic plants 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. All of the 130 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
17. A total of 2 people were not eligible for parole because they were given a total effective sentence length of less than one year.
18. 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.

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

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