

# Sentencing Snapshot

Sentencing trends  
in the higher courts  
of Victoria  
2006–07 to 2010–11

August 2012  
No. 129

## Trafficking in a non-commercial quantity of drugs

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of trafficking in a non-commercial quantity of drugs and details the age and gender<sup>2</sup> of people sentenced for this offence in the County Court of Victoria between 2006–07 and 2010–11.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.

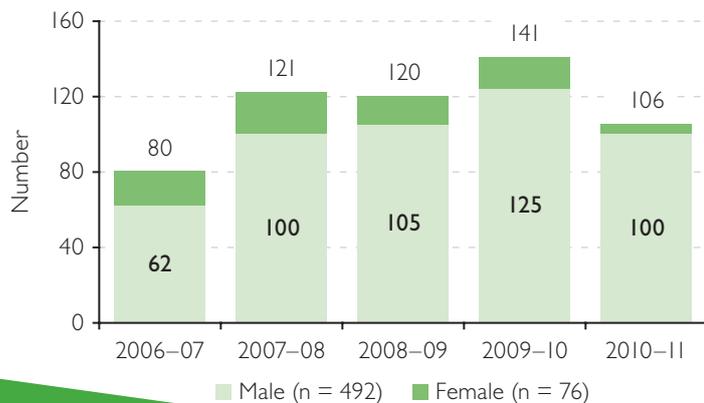
This report examines the offence of trafficking in a drug of dependence to an adult where amounts smaller than a commercial quantity were involved. This is an indictable offence that carries a maximum penalty of 15 years' imprisonment and/or a fine of up to 1,800 penalty units.<sup>6</sup> Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Trafficking in a non-commercial quantity of drugs can also be heard summarily in the Magistrates' Court provided that offending involves a quantity of drugs below a certain amount,<sup>7</sup> the Magistrates' Court considers it appropriate and the defendant consents.<sup>8</sup> Trafficking in a non-commercial quantity of drugs was the principal offence in 5.6% of cases sentenced in the higher courts between 2006–07 and 2010–11.

As with previous publications in this series, this report presents a snapshot of first instance sentences in the higher courts of Victoria. A section on appeals has been included immediately before the Summary section of this report. Information on sentences that have changed on appeal is also noted in other sections of this report. Unless otherwise noted, the data represent sentences imposed at first instance.

### People sentenced

Figure 1 shows the number of people sentenced for the principal offence of trafficking in a non-commercial quantity of drugs for the period 2006–07 to 2010–11. As shown, 568 people were sentenced for trafficking in a non-commercial quantity of drugs over the five-year period. There were 106 people sentenced for this offence in 2010–11, down by 35 people from the previous year. Over the five years depicted, the majority of those sentenced were men (86.6% or 492 of the 568 people), including 100 of the 106 people sentenced in 2010–11.

Figure 1: The number of people sentenced for trafficking in a non-commercial quantity of drugs by gender, 2006–07 to 2010–11



### Sentence types and trends

Figure 2 shows the total number of people sentenced for trafficking in a non-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.<sup>9</sup> Over the five-year period, 61% of people were given an immediate custodial sentence. This peaked at 63% in 2008–09 and 2010–11 after a low of 55% (67 of 121) in 2007–08.

Figure 2: The number of people sentenced for trafficking in a non-commercial quantity of drugs and the number who received an immediate custodial sentence, 2006–07 to 2010–11

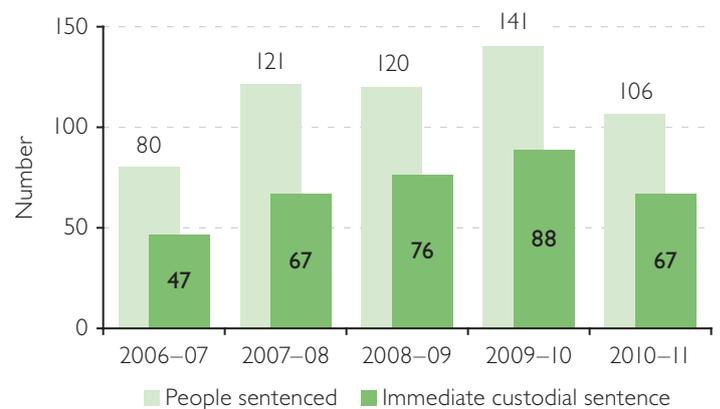


Table 1 shows the number of people sentenced for trafficking in a non-commercial quantity of drugs from 2006–07 to 2010–11 by the types of sentences imposed.

Over the five-year period, around half of the people sentenced for trafficking in a non-commercial quantity of drugs received a period of imprisonment (49% or 277 of 568 people), while 32% received a wholly suspended sentence<sup>10</sup> of imprisonment and 12% received a partially suspended sentence of imprisonment.

The number of people receiving a sentence of imprisonment was lowest during 2006–07 (40 people) and highest during 2009–10 (67 people). The percentage was lowest during 2007–08 (51 of 121 people, or 42%) and highest during 2010–11 (58 of 106 people, or 55%).

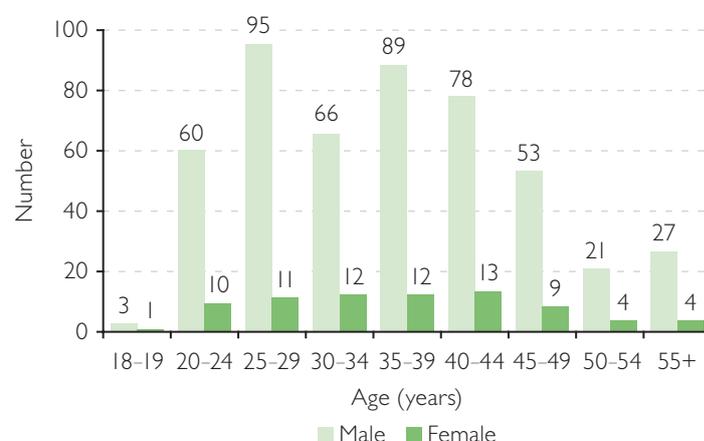
The number of people receiving a wholly suspended sentence of imprisonment was lowest during 2006–07 (25 people) while the percentage was lowest during 2008–09 (35 of 120 people or 29%). Both the number and the percentage of people receiving a wholly suspended sentence were highest during 2009–10 (49 of 141 people, or 35%).

The number of people receiving a partially suspended sentence was lowest during 2006–07 (7 people) and highest during 2009–10 (19 people). The percentage was lowest during 2010–11 (9 of 106 people, or 8%) and highest during 2007–08, 2008–09 and 2009–10 (13% each).

## Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for trafficking in a non-commercial quantity of drugs grouped by their age<sup>11</sup> between 2006–07 and 2010–11. The average age of people sentenced for trafficking in a non-commercial quantity of drugs was 36 years and 1 month. Women sentenced over this period were older than men (an average age of 36 years and 8 months for women compared with just 36 years for men). There were no juveniles sentenced over this period.<sup>12</sup>

**Figure 3:** The number of people sentenced for trafficking in a non-commercial quantity of drugs by gender and age, 2006–07 to 2010–11



**Table 1:** The number and percentage of people sentenced for trafficking in a non-commercial quantity of drugs by sentence type, 2006–07 to 2010–11

Sentence type	2006–07	2007–08	2008–09	2009–10	2010–11
Imprisonment	40 (50%)	51 (42%)	61 (51%)	67 (48%)	58 (55%)
Wholly suspended sentence	25 (31%)	37 (31%)	35 (29%)	49 (35%)	34 (32%)
Partially suspended sentence	7 (9%)	16 (13%)	15 (13%)	19 (13%)	9 (8%)
Community-based order	2 (3%)	6 (5%)	4 (3%)	3 (2%)	1 (<1%)
Intensive correction order	3 (4%)	2 (2%)	4 (3%)	1 (<1%)	3 (3%)
Fine	1 (1%)	4 (3%)	0 (–)	0 (–)	1 (<1%)
Adjourned undertaking without conviction	1 (1%)	1 (<1%)	1 (<1%)	0 (–)	0 (–)
Mix (wholly suspended sentence and fine)	0 (–)	2 (2%)	0 (–)	0 (–)	0 (–)
Youth attendance order	0 (–)	1 (<1%)	0 (–)	0 (–)	0 (–)
Mix (imprisonment and fine)	0 (–)	0 (–)	0 (–)	1 (<1%)	0 (–)
Aggregate imprisonment	0 (–)	0 (–)	0 (–)	1 (<1%)	0 (–)
Aggregate home detention	1 (1%)	0 (–)	0 (–)	0 (–)	0 (–)
Aggregate fine	0 (–)	1 (<1%)	0 (–)	0 (–)	0 (–)
<b>People sentenced</b>	<b>80</b>	<b>121</b>	<b>120</b>	<b>141</b>	<b>106</b>

### Sentence types by gender

Figure 4 and Table 2 show the types of sentences imposed for trafficking in a non-commercial quantity of drugs grouped by gender. As shown, a higher percentage of men received a period of imprisonment (52.8% compared with 22.4% of women). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (50.0% compared with 28.9% of men), a fine (3.9% compared with 0.6%) or a community-based order (5.3% compared with 2.4%).

Figure 4: The percentage of people sentenced for trafficking in a non-commercial quantity of drugs by sentence type and gender, 2006–07 to 2010–11

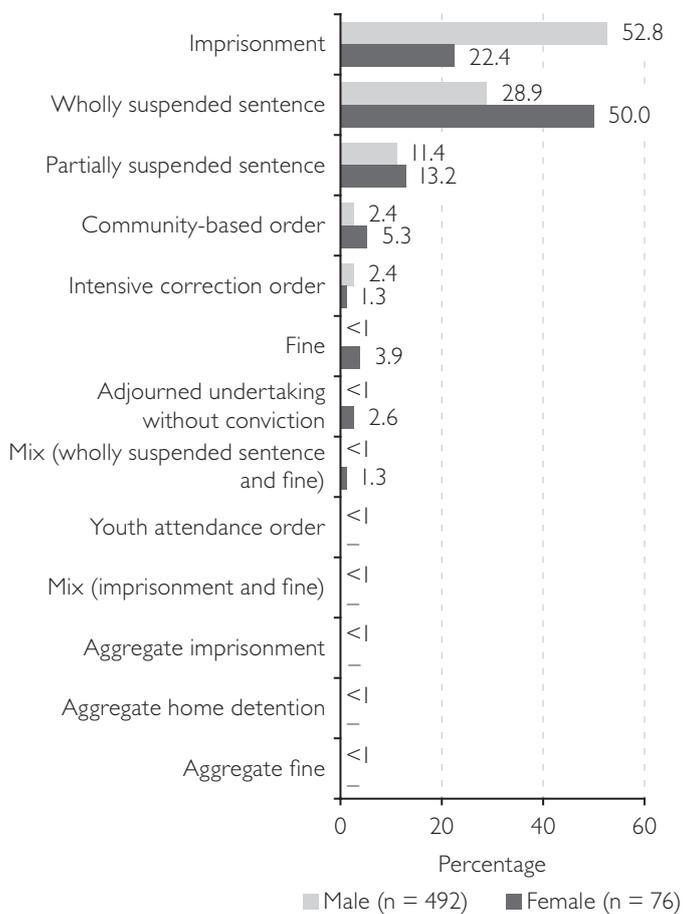


Table 2: The number and percentage of people sentenced for trafficking in a non-commercial quantity of drugs by sentence type and gender, 2006–07 to 2010–11

Sentence type	Male	Female	Total
Imprisonment	260 (53%)	17 (22%)	277 (49%)
Wholly suspended sentence	142 (29%)	38 (50%)	180 (32%)
Partially suspended sentence	56 (11%)	10 (13%)	66 (12%)
Community-based order	12 (2%)	4 (5%)	16 (3%)
Intensive correction order	12 (2%)	1 (1%)	13 (2%)
Fine	3 (<1%)	3 (4%)	6 (1%)
Adjourned undertaking without conviction	1 (<1%)	2 (3%)	3 (<1%)
Mix (wholly suspended sentence and fine)	1 (<1%)	1 (1%)	2 (<1%)
Youth attendance order	1 (<1%)	0 (–)	1 (<1%)
Mix (imprisonment and fine)	1 (<1%)	0 (–)	1 (<1%)
Aggregate imprisonment	1 (<1%)	0 (–)	1 (<1%)
Aggregate home detention	1 (<1%)	0 (–)	1 (<1%)
Aggregate fine	1 (<1%)	0 (–)	1 (<1%)
<b>People sentenced</b>	<b>492</b>	<b>76</b>	<b>568</b>

## Sentence types by age

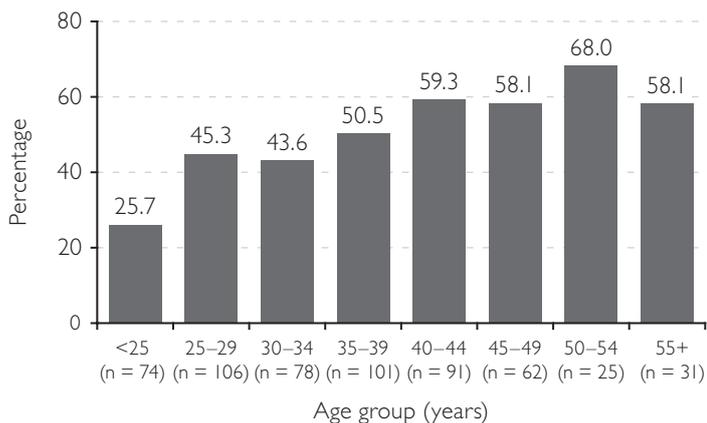
As shown in Table 2, the three most common sentence types were imprisonment, wholly suspended sentences of imprisonment and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

### Imprisonment

As shown in Figure 5, sentences of imprisonment were most likely to be given to people aged 50–54 years (68% or 17 of the 25 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 25 years (26% or 19 of the 74 people in this age group).

**Figure 5:** The percentage of people who received a period of imprisonment for trafficking in a non-commercial quantity of drugs by age group, 2006–07 to 2010–11

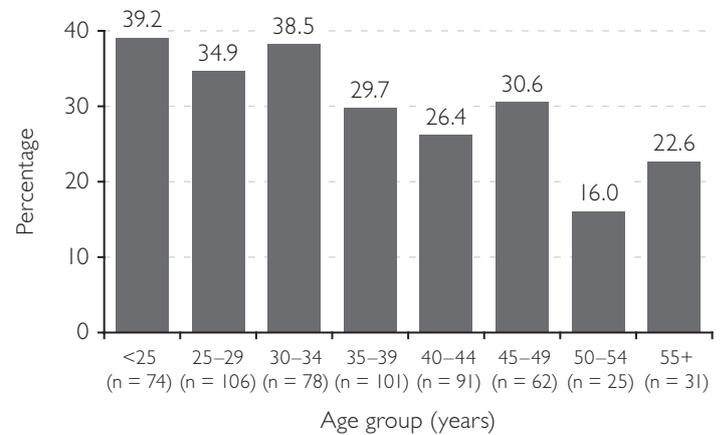


### Wholly suspended sentences of imprisonment

As shown in Figure 6, wholly suspended sentences of imprisonment were most likely to be given to people aged younger than 25 years (39% or 29 of the 74 people in this age group) followed closely by people aged between 30 and 34 years (38% or 30 of the 78 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged between 50 and 54 years (16% or 4 of the 25 people in this age group).

**Figure 6:** The percentage of people who received a wholly suspended sentence of imprisonment for trafficking in a non-commercial quantity of drugs by age group, 2006–07 to 2010–11

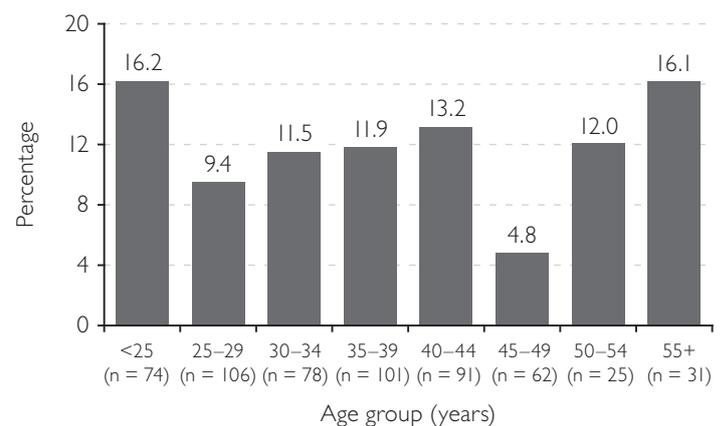


### Partially suspended sentences of imprisonment

As shown in Figure 7, partially suspended sentences of imprisonment were most likely to be given to people younger than 25 years (16% or 12 of the 74 people in this age group) followed closely by people aged 55 or older (16% or 5 of the 31 people in this age group).

Conversely, partially suspended sentences of imprisonment were least common for those aged 45 to 49 (5% or 3 of the 62 people in this age group).

**Figure 7:** The percentage of people who received a partially suspended sentence of imprisonment for trafficking in a non-commercial quantity of drugs by age group, 2006–07 to 2010–11



## 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.

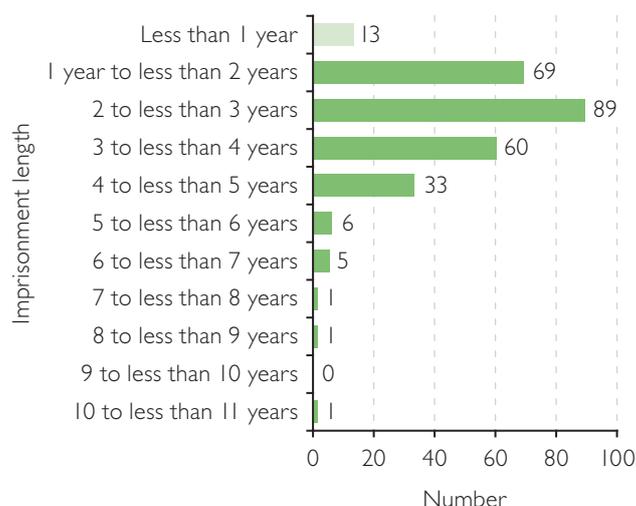
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for trafficking in a non-commercial quantity of drugs must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of trafficking in a non-commercial quantity of drugs from 2006–07 to 2010–11.

### Principal sentence of imprisonment

Figure 8 shows the number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs between 2006–07 and 2010–11 by the length of the imprisonment term.<sup>13</sup> Imprisonment terms ranged from 3 months to 10 years,<sup>14</sup> while the median length of imprisonment was 2 years and 6 months (meaning that half of the imprisonment terms were shorter than 2 years and 6 months and half were longer).

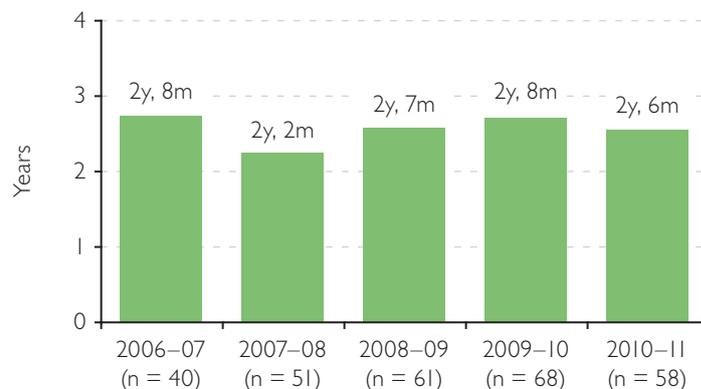
The most common length of imprisonment imposed was 2 years to less than 3 years (89 people).

**Figure 8:** The number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs by length of imprisonment term, 2006–07 to 2010–11



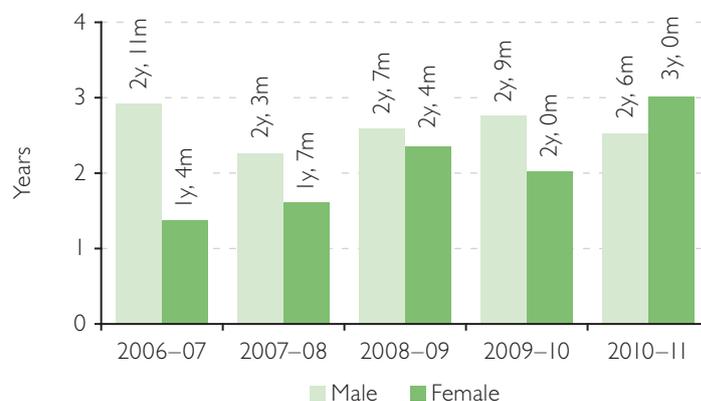
As shown in Figure 9, the average length of imprisonment term imposed on people sentenced for trafficking in a non-commercial quantity of drugs ranged from 2 years and 2 months in 2007–08 to 2 years and 8 months in 2006–07 and 2009–10.

**Figure 9:** The average length of imprisonment term imposed on people sentenced for trafficking in a non-commercial quantity of drugs, 2006–07 to 2010–11



From 2006–07 to 2010–11, the majority of people who received a term of imprisonment for trafficking in a non-commercial quantity of drugs were men (261 people or 93.9%). Figure 10 shows that over the five-year period, the average length of imprisonment for men ranged from 2 years and 3 months in 2007–08 to 2 years and 11 months in 2006–07. The average length of imprisonment for women ranged from 1 year and 4 months in 2006–07 to 3 years in 2010–11.

**Figure 10:** The average period of imprisonment imposed on people sentenced for trafficking in a non-commercial quantity of drugs by gender, 2006–07 to 2010–11



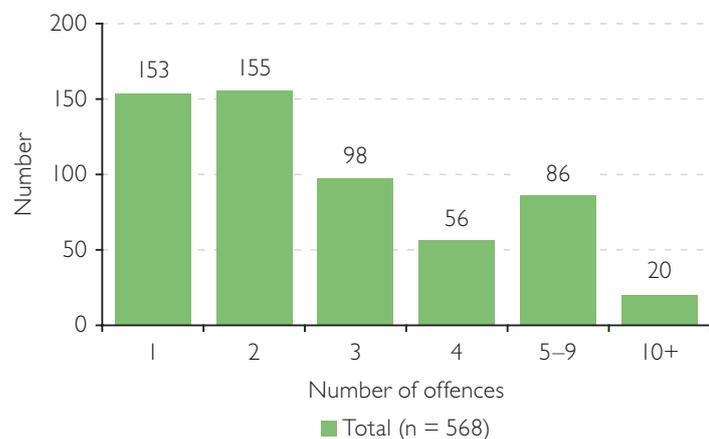
### Other offences finalised at the same hearing

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

Figure 11 (page 6) shows the number of people sentenced for the principal offence of trafficking in a non-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 19, while the median was 2 offences. There were 153 people (26.9%) sentenced for the single offence of trafficking in a non-commercial quantity of drugs.

The average number of offences per person sentenced for trafficking in a non-commercial quantity of drugs was 3.10.

**Figure 11:** The number of people sentenced for the principal offence of trafficking in a non-commercial quantity of drugs by the number of sentenced offences per person, 2006–07 to 2010–11



While Figure 11 presents the number of sentenced offences for those sentenced for trafficking in a non-commercial quantity of drugs, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 188 of the total 568 people (33.1%) also received sentences for possessing a drug of dependence. On average, they were sentenced for 1.62 counts of possess a drug of dependence.

**Table 3:** The number and percentage of people sentenced for the principal offence of trafficking in a non-commercial quantity of drugs by the most common offences that were sentenced and the average number of those offences that were sentenced, 2006–07 to 2010–11

Offence	No.	%	Avg.
<b>1 Drug trafficking in a non-commercial quantity</b>	<b>568</b>	<b>100.0</b>	<b>1.63*</b>
2 Possess a drug of dependence	188	33.1	1.62
3 Deal with property suspected of being proceeds of crime	40	7.0	1.20
4 Handling stolen goods	39	6.9	1.72
5 Theft	27	4.8	1.22
6 Possess document/equipment for trafficking in a drug of dependence	22	3.9	1.09
7 Cultivate a narcotic plant*	18	3.2	1.00
8 Use a drug of dependence	16	2.8	1.88
9 Possess prohibited weapon without exemption	15	2.6	1.60
10 Prohibited person possess unregistered firearm	15	2.6	1.20
<b>People sentenced</b>	<b>568</b>	<b>100.0</b>	<b>3.10</b>

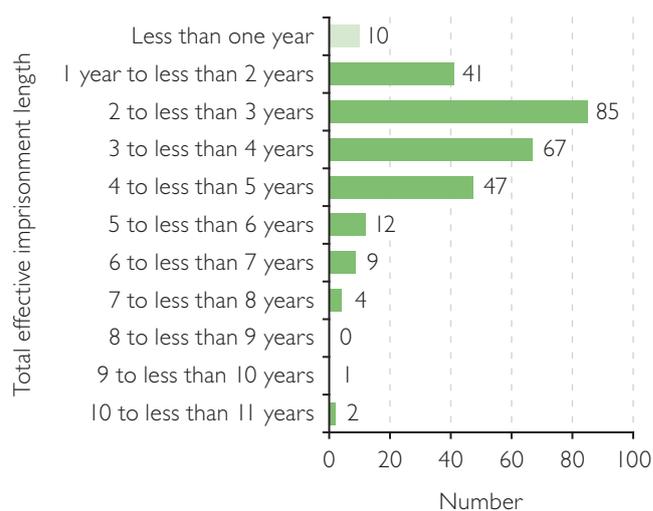
\*May contain offences of drug trafficking and cultivation of varying quantities (non-commercial, commercial or large commercial).

## Total effective sentence of imprisonment

There were 278 people given a total effective sentence of imprisonment.<sup>15</sup> Figure 12 shows the number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs between 2006–07 and 2010–11 by length of total effective sentence. The length of total effective sentences ranged from 3 months to 10 years, while the median total effective length of imprisonment was 3 years (meaning that half of the total effective sentence lengths were below 3 years and half were above). After adjusting for appeals, the median total effective length of imprisonment decreased to 2 years and 9 months.

The most common total effective imprisonment length was 2 years to less than 3 years (85 people).

**Figure 12:** The number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs by length of total effective imprisonment term, 2006–07 to 2010–11



## 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.

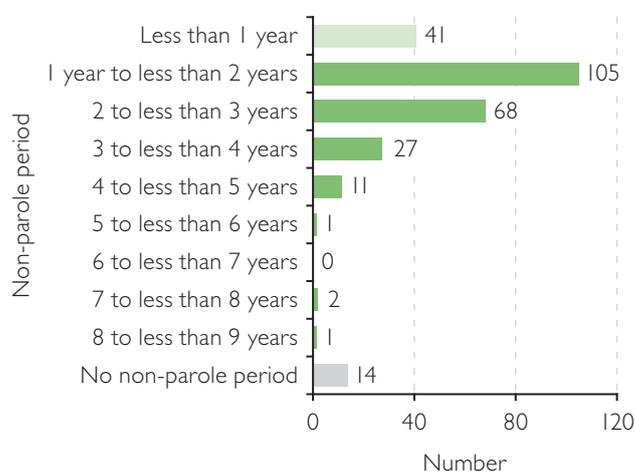
Under section 11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences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

Of the 278 people who were sentenced to imprisonment for trafficking in a non-commercial quantity of drugs, 268 were eligible to have a non-parole period fixed.<sup>16</sup> Of these people,

256 were given a non-parole period (96%).<sup>17</sup> Figure 13 shows the number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs between 2006–07 and 2010–11 by length of non-parole period. Non-parole periods ranged from 3 months to 8 years, while the median length of the non-parole period was 1 year, 7 months and 15 days (meaning that half of the non-parole periods were below 1 year, 7 months and 15 days and half were above). After adjusting for appeals, the median non-parole period decreased slightly to 1 year and 6 months.

The most common non-parole period imposed was 1 year to less than 2 years (105 people).

**Figure 13:** The number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs by length of non-parole period, 2006–07 to 2010–11



#### Total effective sentences of imprisonment and non-parole periods

Figures 14, 15 and 16 present the average length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people (Figure 14), for men (Figure 15) and for women (Figure 16) from 2006–07 to 2010–11.

From 2006–07 to 2010–11, the average length of total effective sentences for all people ranged from 2 years and 9 months in 2007–08 to 3 years and 4 months in 2006–07 (Figure 14). Over the same period, the average length of non-parole periods ranged from 1 year and 7 months in 2007–08 to 2 years and 1 month in 2006–07.

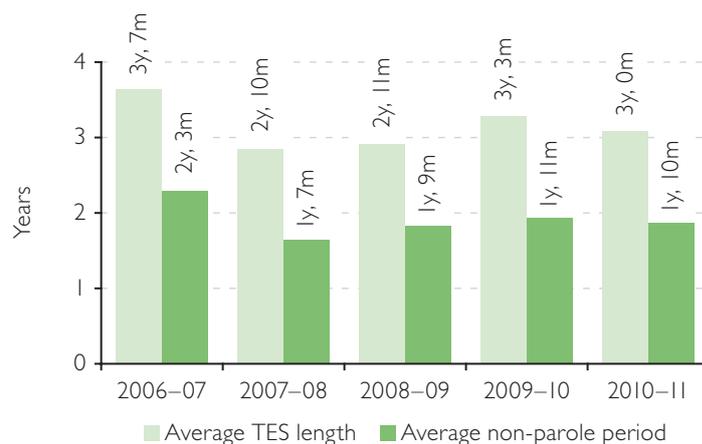
From 2006–07 to 2010–11, the average length of total effective sentences for men ranged from 2 years and 10 months in 2007–08 to 3 years and 7 months in 2006–07 (Figure 15). Over the same period, the average length of non-parole periods for men ranged from 1 year and 7 months in 2007–08 to 2 years and 3 months in 2006–07.

The average length of total effective sentences for women ranged from 1 year and 7 months in 2006–07 and 2007–08 to 3 years and 7 months in 2010–11 (Figure 16). Over the same period, the average length of non-parole periods for women ranged from 9 months in 2007–08 to 2 years in 2010–11.

**Figure 14:** The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs, 2006–07 to 2010–11



**Figure 15:** The average total effective sentence and the average non-parole period imposed on men sentenced to imprisonment for trafficking in a non-commercial quantity of drugs, 2006–07 to 2010–11



**Figure 16:** The average total effective sentence and the average non-parole period imposed on women sentenced to imprisonment for trafficking in a non-commercial quantity of drugs, 2006–07 to 2010–11



### Total effective sentence of imprisonment by non-parole period

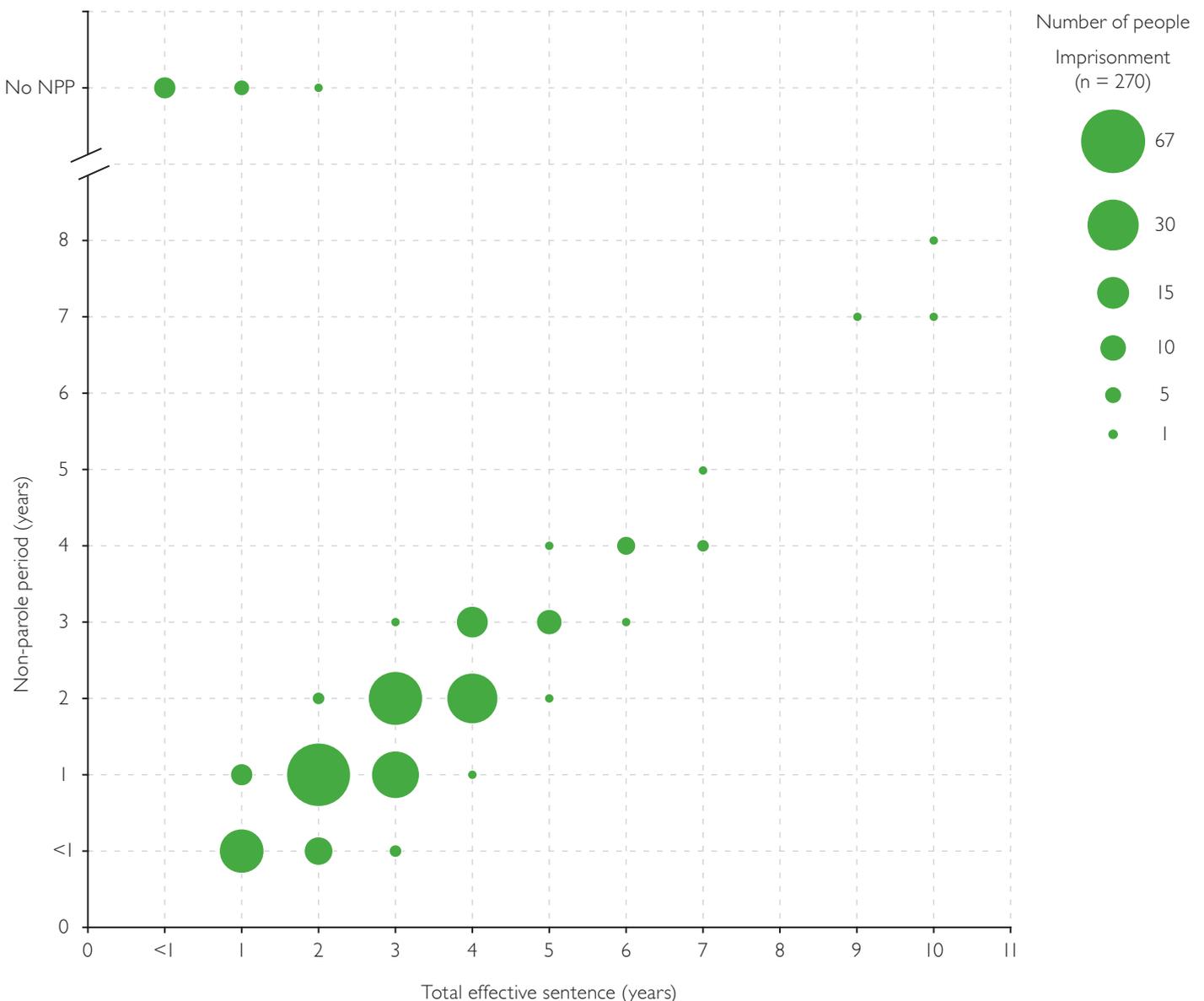
While Figures 12 and 13 present the lengths of the total effective sentences and non-parole periods separately, Figure 17 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for trafficking in a non-commercial quantity 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. Sentence lengths and non-parole periods that are longer than one year are rounded down to the nearest year of imprisonment, while sentence

lengths and non-parole periods of less than one year are grouped into the '<1 year' category. For example, a sentence length of 2 years and 6 months would be included as a sentence length of 2 years for the purposes of Figure 17.

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 (67 people – as represented by the largest bubble on the chart). The length of imprisonment ranged from 3 months with no non-parole period to 10 years with a non-parole period of 8 years.

**Figure 17:** The number of people sentenced to imprisonment for trafficking in a non-commercial quantity of drugs by the total effective sentence and the non-parole period imposed, 2006–07 to 2010–11



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

### Suspended sentences of imprisonment

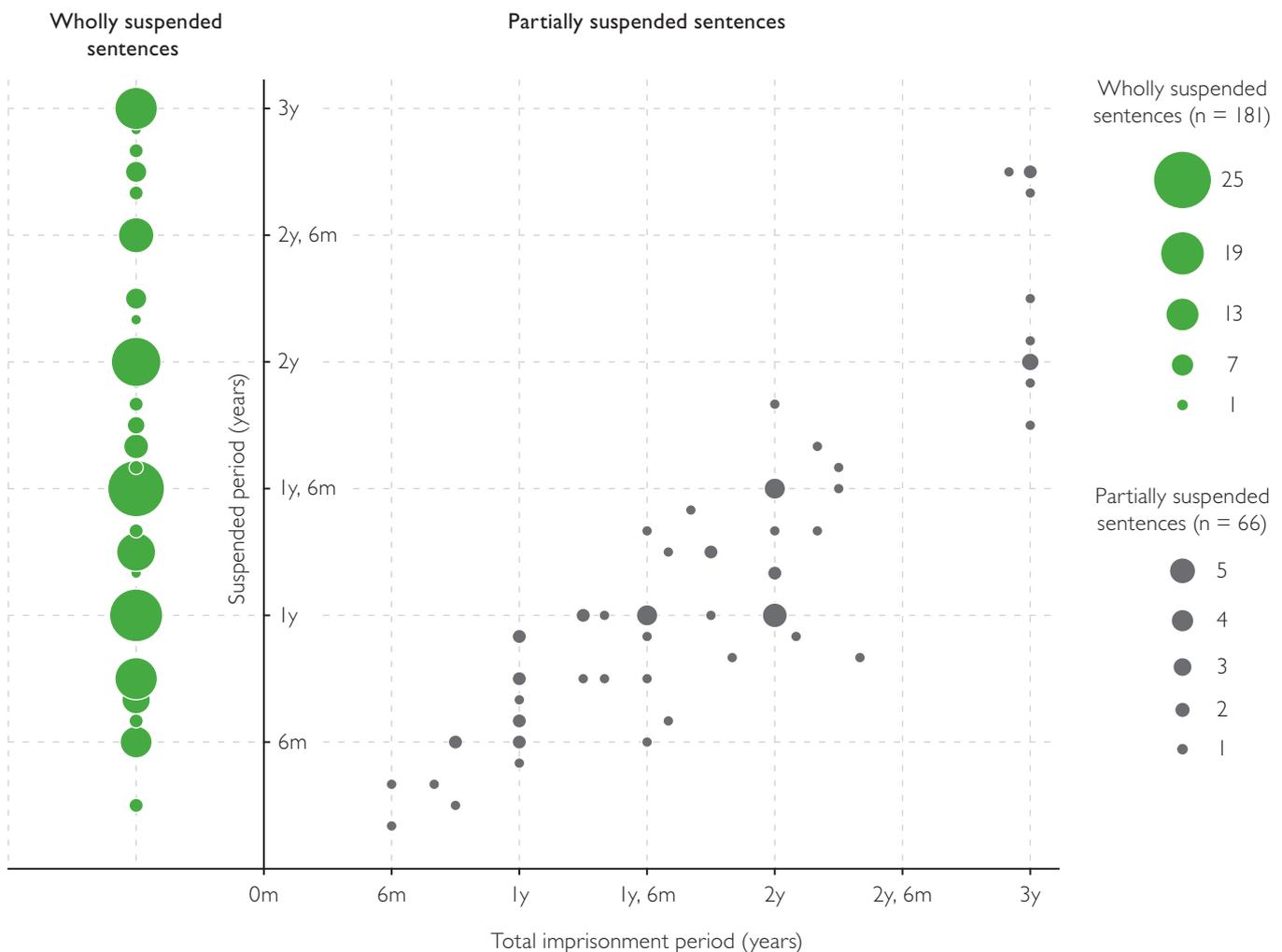
There were 247 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 181 people had their prison sentence wholly suspended and 66 received a partially suspended sentence of imprisonment. Figure 18 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the grey 'bubbles' to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or the partially suspended prison term. Imprisonment lengths and suspended

periods that end part way through a month are rounded down to the nearest complete month. For example, a wholly suspended sentence of 6 months and 12 days would be included as a sentence length of 6 months for the purposes of Figure 18.

Wholly suspended sentence lengths ranged from 3 months to 3 years. The most common wholly suspended sentence length was 1 year and 6 months (25 people – as represented by the largest green bubble on the chart).

Partially suspended sentences ranged from 6 months' imprisonment with 2 months and 25 days suspended to 3 years' imprisonment with 2 years, 10 months and 12 days suspended. The most common partially suspended sentence was 2 years' imprisonment with 1 year suspended (5 people – as represented by the largest grey bubble on the chart).

**Figure 18:** The number of people given a wholly or partially suspended sentence of imprisonment for trafficking in a non-commercial quantity of drugs by sentence type and length, 2006–07 to 2010–11

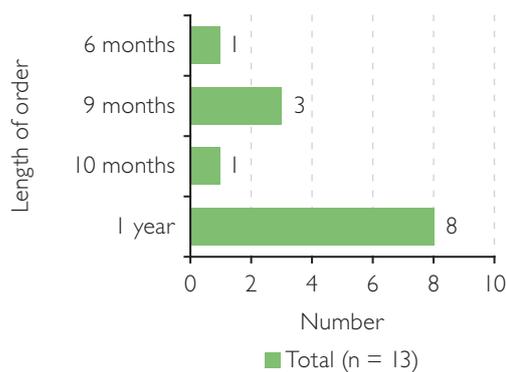


### Intensive correction orders

As Figure 19 shows, there were 13 people given an intensive correction order as their total effective sentence.

The length of intensive correction orders for trafficking in a non-commercial quantity of drugs ranged from 6 months to 1 year, while the most common length was 1 year (8 people).

**Figure 19:** The number of people sentenced to an intensive correction order for trafficking in a non-commercial quantity of drugs by length of order imposed, 2006–07 to 2010–11

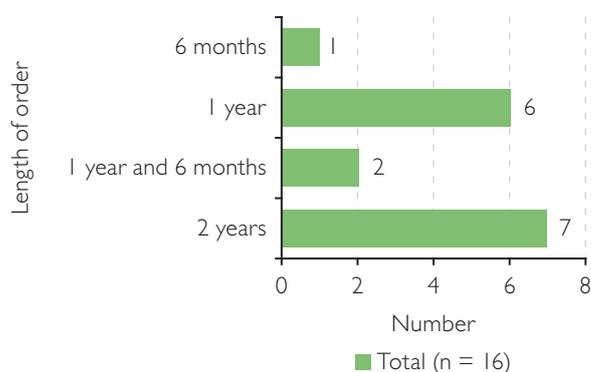


### Community-based orders

As Figure 20 shows, there were 16 people given a community-based order as their total effective sentence.

The length of community-based orders for trafficking in a non-commercial quantity of drugs ranged from 6 months to 2 years, while the most common length was 2 years (7 people).

**Figure 20:** The number of people sentenced to a community-based order for trafficking in a non-commercial quantity of drugs by length of order imposed, 2006–07 to 2010–11



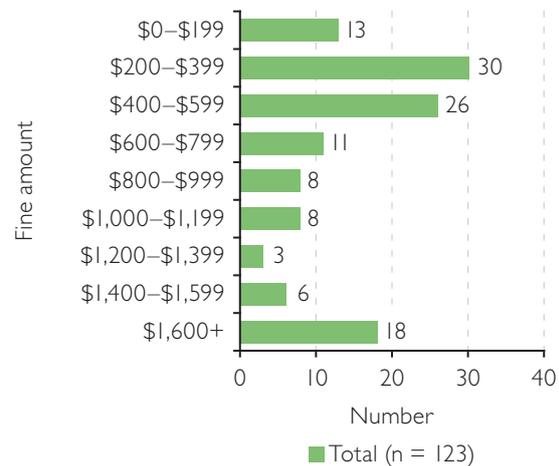
### Fines

This analysis includes all fines that were imposed for cases where trafficking in a non-commercial quantity of drugs was the principal offence. Fines were imposed on 123 people.

As Figure 21 shows, the fine amount imposed ranged from \$100 to \$22,000, 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 \$1,179. The average fine amount imposed against the 107 males was \$1,199, higher than the average fine for the 16 females (\$1,045).

**Figure 21:** The number of people who received a fine for trafficking in a non-commercial quantity of drugs by fine amount, 2006–07 to 2010–11



### Appeals

A sentence imposed on a person may be appealed<sup>18</sup> by that person or by the Crown. A person sentenced may also appeal against their conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

Up to June 2011, one person sentenced for a principal offence of trafficking in a non-commercial quantity of drugs in the period 2006–07 to 2010–11 had successfully appealed their conviction. The person had originally received a total effective imprisonment term of 9 months with no non-parole period but was acquitted on appeal. Thus, the number of people sentenced from 2006–07 to 2010–11 for a principal offence of trafficking in a non-commercial quantity of drugs is reduced to 567 people once appeals are considered.

As a result of successful appeals against sentence, the total effective sentence and/or the non-parole period changed for 26 people. All of these appeals were made by the person sentenced and resulted in a sentence reduction. The case in which the sentence length changed the most as a result of an appeal was originally given a total effective sentence of imprisonment of 7 years with a non-parole period of 5 years, which changed to a total effective sentence of 3 years and 6 months with a non-parole period of 2 years.

There were 4 additional appeals made by the person sentenced during this period, which resulted in a change to both the total effective sentence type and the principal sentence type. Of these, 2 cases were originally sentenced to imprisonment but were changed to partially suspended sentences on appeal, one case was sentenced to imprisonment then changed to a wholly suspended sentence, and one case was sentenced to a partially suspended sentence but was changed to imprisonment on appeal.

One successful appeal was made by the Crown and resulted in an increase in the length of the total effective sentence. This case was originally given a partially suspended sentence of 1 year's imprisonment with 8 months suspended, which changed to 2 years' imprisonment with 1 year suspended on appeal.

The principal sentence decreased for 11 people as a result of a successful appeal. The sentence that decreased the most as a result of an appeal was originally 7 years' imprisonment for the principal charge of trafficking in a non-commercial quantity of drugs. On appeal, the sentence for this charge was changed to 3 years and 6 months. There were no appeals that resulted in an increase in sentence length on the principal proven offence.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was unchanged at 10 years but the median decreased slightly from 3 years to 2 years and 9 months after adjusting for appeals. The adjusted longest non-parole period was unchanged at 8 years but the median non-parole period decreased slightly from 1 year, 7 months and 15 days to 1 year and 6 months.

The adjusted longest principal sentence of imprisonment was unchanged at 10 years, and the adjusted median imprisonment term also remained at 2 years and 6 months.

## Summary

Between 2006–07 and 2010–11, 568 people were sentenced for trafficking in a non-commercial quantity of drugs in the higher courts. Over this period, the majority of people sentenced were men (87%), while 89% were between the ages of 20 and 49.

Around half of the people sentenced for trafficking in a non-commercial quantity of drugs received a period of imprisonment (49%), while 32% received a wholly suspended sentence of imprisonment and 12% received a partially suspended sentence of imprisonment.

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

Imprisonment was more common for those aged between 50 and 54 years, wholly suspended sentences of imprisonment were more common for those younger than 35 years and partially suspended sentences of imprisonment were more common for people aged younger than 25 or older than 54 years.

Each of the 568 people was sentenced for an average of 3.10 offences, including 1.63 offences of drug trafficking. The most common offence finalised in conjunction with drug trafficking was possessing drugs of dependence (33.1% of all cases). The number and range of offences for which people with a principal offence of trafficking in a non-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 3 years (2 years and 9 months after adjusting for appeals), while the median principal imprisonment length was 2 years and 6 months.

Total effective imprisonment lengths ranged from 3 months with no non-parole period to 10 years with a non-parole period of 8 years. The most common sentence of imprisonment was 2 years with a non-parole period of 1 year.

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

A small number of people were able to successfully appeal against their sentences. When the results of the appeal outcomes are incorporated into the original sentencing data, the range of the total effective imprisonment length, the non-parole period and the principal imprisonment sentence length was unchanged. The median total effective sentence of imprisonment decreased slightly from 3 years to 2 years and 9 months after adjusting for appeals, while the median non-parole period decreased from 1 year, 7 months and 15 days to 1 year and 6 months.

## Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of trafficking in a non-commercial quantity of drugs 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 trafficking in a non-commercial quantity of drugs who received a more serious sentence for another offence forming part of the same presentment or indictment. Trafficking in a non-commercial quantity of drugs was the principal proven offence for 568 people sentenced in the County Court of Victoria from 2006–07 to 2010–11.

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.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 100, which describes sentencing trends for trafficking in a non-commercial quantity of drugs between 2004–05 and 2008–09.

2. The information source for sentencing outcomes for trafficking in a non-commercial quantity of drugs only contains information on age and gender characteristics. No other demographic analysis is possible using this data source.
3. The source data for the statistical information presented in this Snapshot were provided by the Business Intelligence area of the Courts and Tribunals unit within the 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 825 cases that had drug trafficking (section 71, 71AA, 71AB or 71AC of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)) as the principal proven offence over the five-year period from 2006–07 to 2010–11. Sentencing remarks were located for 774 cases (93.8%). 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 71AC.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 70, 71AC.
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 <[www.ocpc.vic.gov.au](http://www.ocpc.vic.gov.au)>.
7. Under Schedule 2(6) of the *Criminal Procedure Act 2009* (Vic), offences of trafficking in a drug of dependence can be tried summarily by the Magistrates' Court provided that the quantity of drugs is not considered to be commercial or large commercial. Prior to the *Criminal Procedure Act 2009* (Vic) coming into effect, similar powers were granted under Schedule 4 of the *Magistrates' Court Act 1989* (Vic) allowing the Magistrates' Court to hear this offence summarily.
8. *Criminal Procedure Act 2009* (Vic) s 29. Prior to the *Criminal Procedure Act 2009* (Vic) coming into effect, section 53 of the *Magistrates' Court Act 1989* (Vic) provided similar powers to allow the Magistrates' Court to hear this offence summarily.
9. Immediate custodial sentence includes imprisonment, partially suspended sentence, mix (imprisonment and fine) and aggregate imprisonment.
10. Trafficking in a non-commercial quantity of drugs is not defined as a 'serious offence' or a 'significant offence' for the purposes of section 27(2B) of the *Sentencing Act 1991* (Vic). Section 27(2B) of the *Sentencing Act 1991* (Vic) states that courts cannot impose a suspended sentence for a 'serious offence' or a 'significant offence' committed on or after 1 May 2011.
11. Age is at the time of sentencing.
12. Some 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 have been dealt with in the Children's Court of Victoria.
13. Data presented in this section do not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Sentence lengths for aggregate sentences of imprisonment apply to the whole case, while Figure 8 only deals with sentences of imprisonment for the principal proven offence of trafficking in a non-commercial quantity of drugs. During the 2006–07 to 2010–11 period, one person received an aggregate form of imprisonment.
14. In 2008–09, a 47 year old man was given a sentence of 10 years for the principal charge of trafficking heroin. The judge commented that '[t]he trafficking for which you have been convicted is, albeit over a relatively short period, what can only be described as vigorous'. The judge further stated that the offender's 'prospects of rehabilitation must be regarded as dim and the prospects of your re-offending when you are released must be regarded as very problematic indeed'.
15. Of the 278 people who were given a principal sentence of imprisonment, 277 were also given a total effective sentence of imprisonment. There was one person who was given imprisonment as the principal sentence for trafficking in a non-commercial quantity of drugs and a partially suspended sentence as a total effective sentence. There was one additional person who received an aggregate sentence of imprisonment and who was also included in Figure 12.
16. A total of 10 people were not eligible for parole because they were given a total effective sentence length of less than 1 year. Two of these people were given a non-parole period but it also related to other cases. The non-parole periods for these people were excluded from analysis (refer to endnote 17).
17. Eight people, including 2 people who were sentenced to a total effective sentence of imprisonment of less than 1 year, were not given a non-parole period relating to that case alone but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to these cases. The non-parole periods for these people are excluded from the analysis. A non-parole period was not set for 6 people who were eligible for a non-parole period.
18. Appeals data were collected by the Sentencing Advisory Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <[www.austlii.gov.au](http://www.austlii.gov.au)>.

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