

Sentencing Snapshot

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

August 2012
No. 131

**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 2006–07 and 2010–11.³ 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.

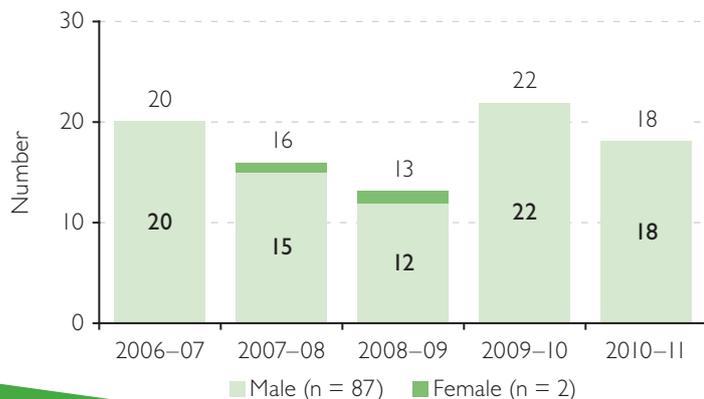
This report examines the offence of trafficking in a large commercial quantity of a drug (or drugs) of dependence to an adult.⁶ The amount of the drug that constitutes a large commercial quantity will depend on the type of drug involved.⁷ Different types of drugs can be combined in order to achieve a 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 5,000 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 0.9% 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 large commercial quantity of drugs for the period 2006–07 to 2010–11. As shown, 89 people were sentenced for trafficking in a large commercial quantity of drugs over the five-year period. There were 18 people sentenced for this offence in 2010–11, down by 4 people from the previous year. Over the five years depicted, the majority of people sentenced were men (97.8% or 87 of 89 people), including all of the people sentenced in 2010–11.

Figure 1: The number of people sentenced for trafficking in a large 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 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.¹¹ Over the five-year period, 97% of people were given an immediate custodial sentence. The percentage of custodial sentences was lowest in 2008–09 (92%, or 12 of 13 people) and highest during both 2006–07 and 2010–11 (100% each).

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, 2006–07 to 2010–11

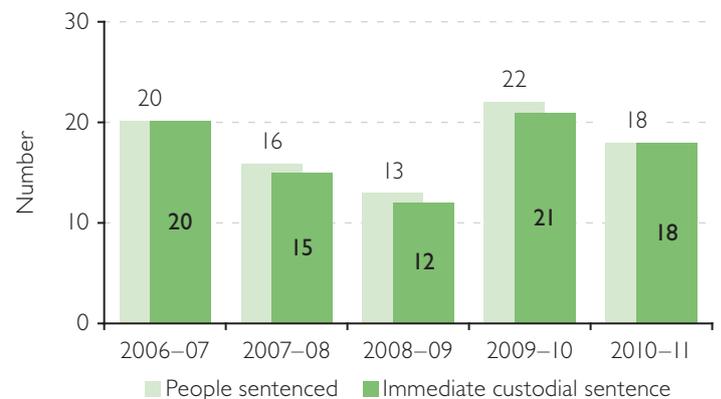


Table 1 shows the number of people sentenced for trafficking in a large commercial quantity of drugs from 2006–07 to 2010–11 by the types of sentences imposed.

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 (96% or 85 of 89 people).

The number and percentage of people receiving a sentence of imprisonment were lowest during 2008–09 (12 of 13 people, or 92%). The number of people receiving imprisonment was highest during 2009–10 (21 people) while the percentage was highest during 2006–07 (20 of 20 people, or 100%).

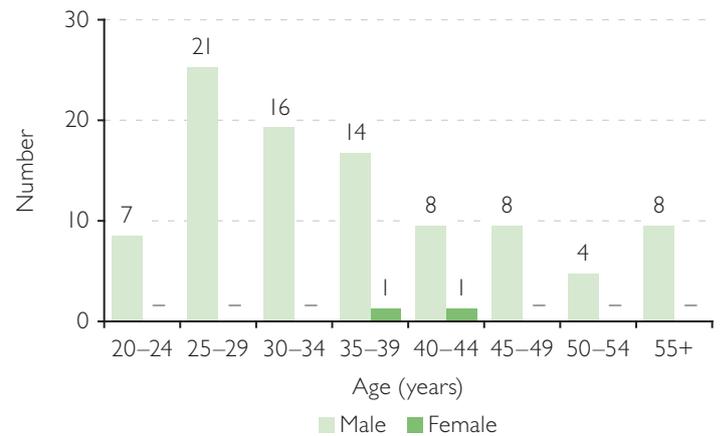
Table 1: The number and percentage of people sentenced for trafficking in a large commercial quantity of drugs by sentence type, 2006–07 to 2010–11

Sentence type	2006–07	2007–08	2008–09	2009–10	2010–11
Imprisonment	20 (100%)	15 (94%)	12 (92%)	21 (95%)	17 (94%)
Wholly suspended sentence	0 (–)	1 (6%)	1 (8%)	1 (5%)	0 (–)
Partially suspended sentence	0 (–)	0 (–)	0 (–)	0 (–)	1 (6%)
People sentenced	20	16	13	22	18

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 age¹² between 2006–07 and 2010–11. The average age of people sentenced for trafficking in a large commercial quantity of drugs was 36 years and 9 months. There were no juveniles sentenced over this period.¹³

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



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, the vast majority of both men and women sentenced were given a term of imprisonment.

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

Sentence type	Male	Female	Total
Imprisonment	83 (95%)	2 (100%)	85 (96%)
Wholly suspended sentence	3 (3%)	0 (—)	3 (3%)
Partially suspended sentence	1 (1%)	0 (—)	1 (1%)
People sentenced	87	2	89

Sentence types by age

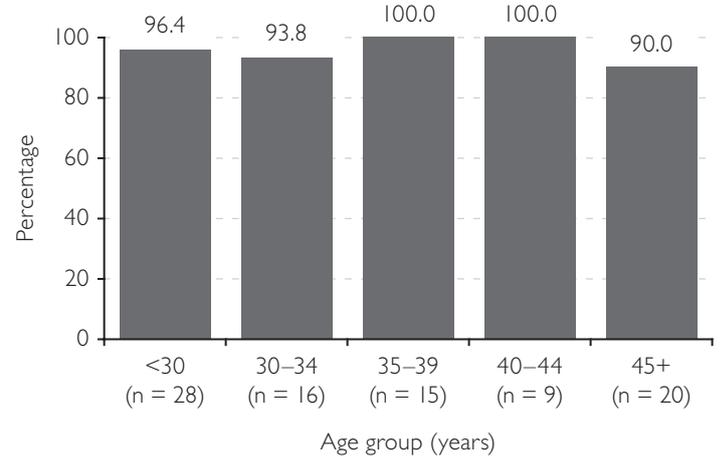
As shown in Table 2, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offender's age group.¹⁴

Imprisonment

As shown in Figure 5, sentences of imprisonment were most likely to be given to people aged between 35 and 44 years (100% of people in this age group).

Sentences of imprisonment were very common for all other age groups, although people aged 45 and over were least likely to receive them (90%, or 18 of the 20 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, 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.

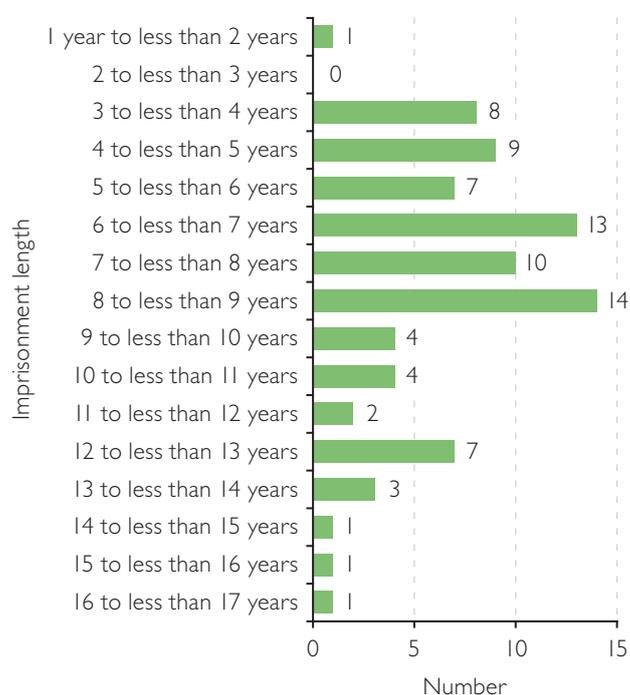
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for trafficking in a large commercial quantity of drugs must be considered in this broader context. The following sections analyse the use of imprisonment for the offence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

Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2006–07 and 2010–11 by the length of the imprisonment term. Imprisonment terms ranged from 1 year and 3 months to 16 years (13 years and 6 months after adjusting for appeals), while the median length of imprisonment was 7 years (meaning that half of the imprisonment terms were shorter than 7 years and half were longer).

The most common length of imprisonment imposed was 8 years or less than 9 years (14 people).

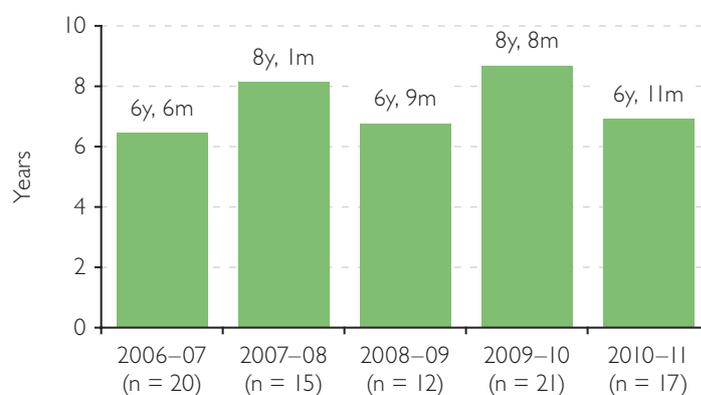
Figure 6: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of imprisonment term, 2006–07 to 2010–11



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 and 6 months in 2006–07 to 8 years and 8 months in 2009–10.

From 2006–07 to 2010–11, the majority of people who received a term of imprisonment for trafficking in a large commercial quantity of drugs were men (83 people or 97.6%). Over the five-year period, the 2 women imprisoned for this offence received a longer average term compared with men (8 years and 3 months for women compared with 7 years and 5 months for men).

Figure 7: The average length of imprisonment term imposed on people sentenced for trafficking in a large commercial quantity of drugs, 2006–07 to 2010–11

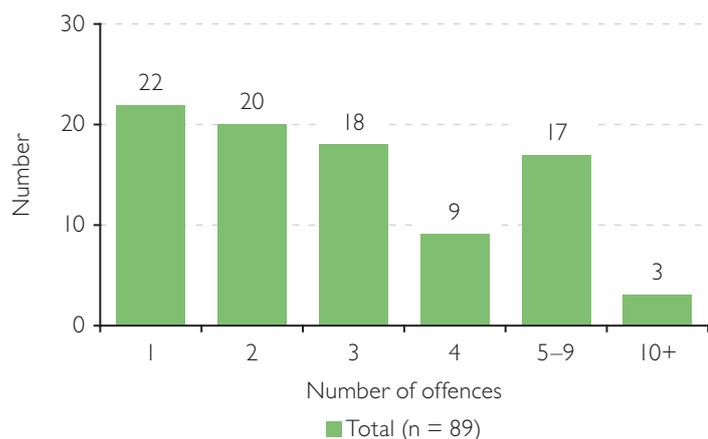


Other offences finalised at the same hearing

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 13, while the median was 3 offences. There were 22 people (24.7%) sentenced for the single offence of trafficking in a large commercial quantity of drugs. The average number of offences per person sentenced for trafficking in a large commercial quantity of drugs was 3.33.

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, 2006–07 to 2010–11



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 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 22 of the total 89 people (24.7%) also received sentences for possessing drugs of dependence. On average, they were sentenced for 1.73 counts of drug possession.

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, 2006–07 to 2010–11

Offence	No.	%	Avg.
1 Drug trafficking in a large commercial quantity	89	100.0	2.00*
2 Possess a drug of dependence	22	24.7	1.73
3 Deal with property suspected of being proceeds of crime	7	7.9	1.14
4 Possess document/equipment for trafficking in a drug of dependence	6	6.7	1.33
5 Possess prohibited weapon without exemption	5	5.6	1.20
6 Money laundering	4	4.5	1.00
7 Knowingly deal with proceeds of crime	3	3.4	1.33
8 Possess unregistered general category handgun	3	3.4	1.00
9 Obtain financial advantage by deception	2	2.2	2.50
10 Prohibited person possess unregistered firearm	2	2.2	2.50
People sentenced	89	100.0	3.33

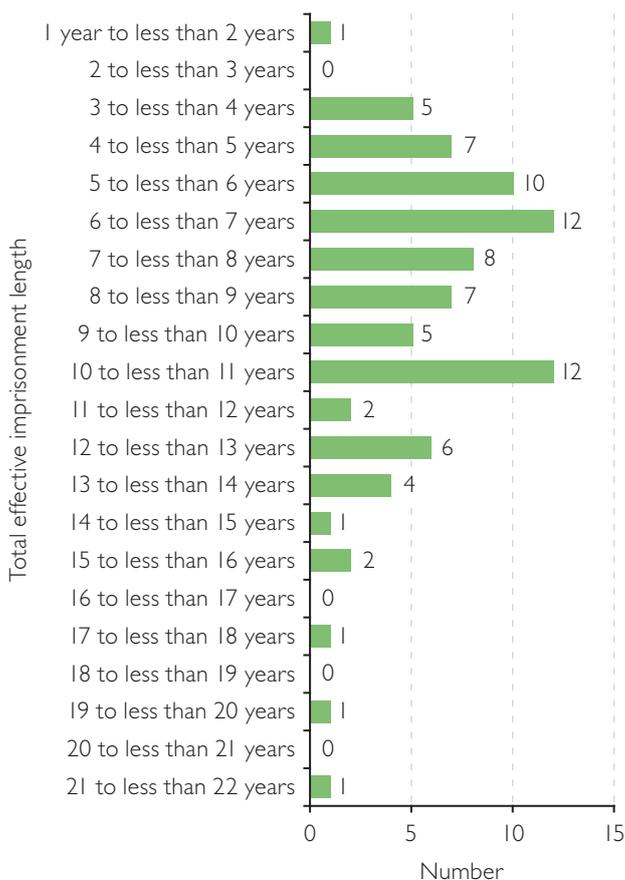
*May contain offences of drug trafficking in varying quantities (non-commercial, commercial or large commercial).

Total effective sentence of imprisonment

There were 85 people given a total effective sentence of imprisonment.¹⁵ Figure 9 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2006–07 and 2010–11 by length of total effective sentence. The length of total effective sentences ranged from 1 year and 6 months to 21 years (16 years and 3 months after adjusting for appeals¹⁶), while the median total effective length of imprisonment was 7 years and 10 months (meaning that half of the total effective sentence lengths were below 7 years and 10 months and half were above). After adjusting for appeals, the median total effective sentence length decreased slightly to 7 years.

The two most common total effective imprisonment lengths were a period of 6 years to less than 7 years and 10 years to less than 11 years (12 people each).

Figure 9: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of total effective imprisonment term, 2006–07 to 2010–11



Non-parole period

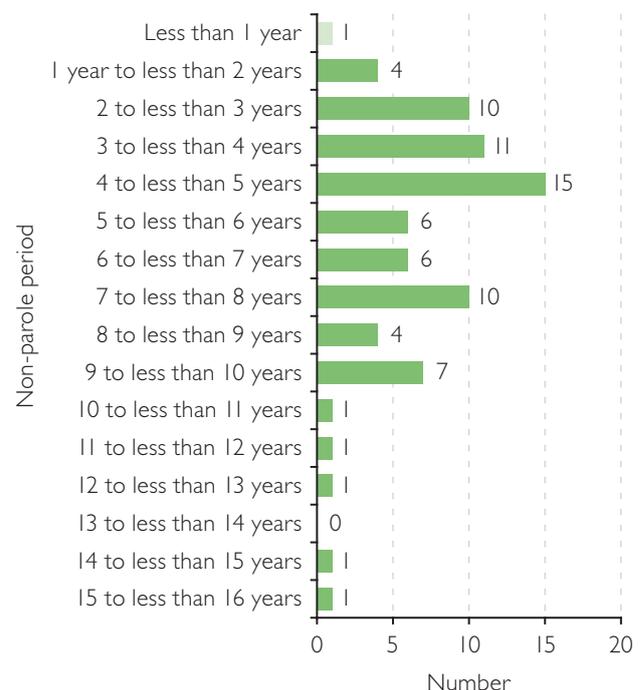
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

Of the 85 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs, all were eligible to have a non-parole period fixed. Of these people, 79 were given a non-parole period (93%).¹⁷ Figure 10 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2006–07 and 2010–11 by length of non-parole period. Non-parole periods ranged from 9 months to 15 years (12 years and 6 months after adjusting for appeals), while the median length of the non-parole period was 4 years and 6 months (meaning that half of the non-parole periods were below 4 years and 6 months and half were above).

The most common non-parole period imposed was 4 years to less than 5 years (15 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, 2006–07 to 2010–11

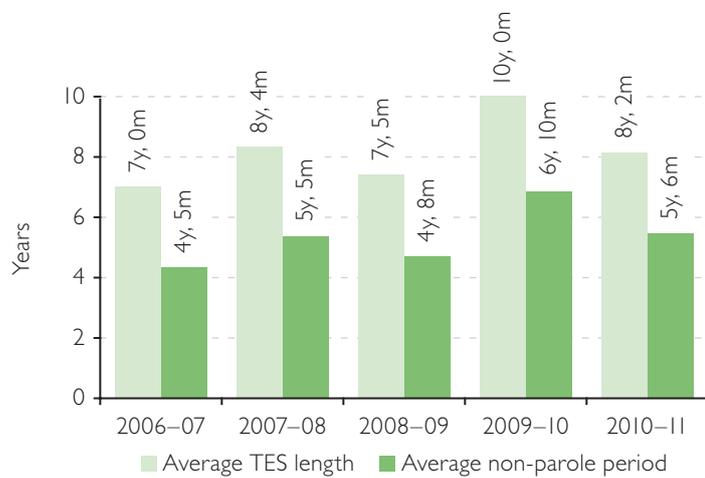


Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people from 2006–07 to 2010–11.

From 2006–07 to 2010–11, the average length of total effective sentences for all people ranged from 7 years in 2006–07 to 10 years in 2009–10. Over the same period, the average length of non-parole periods ranged from 4 years and 5 months in 2006–07 to 6 years and 10 months in 2009–10.

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, 2006–07 to 2010–11



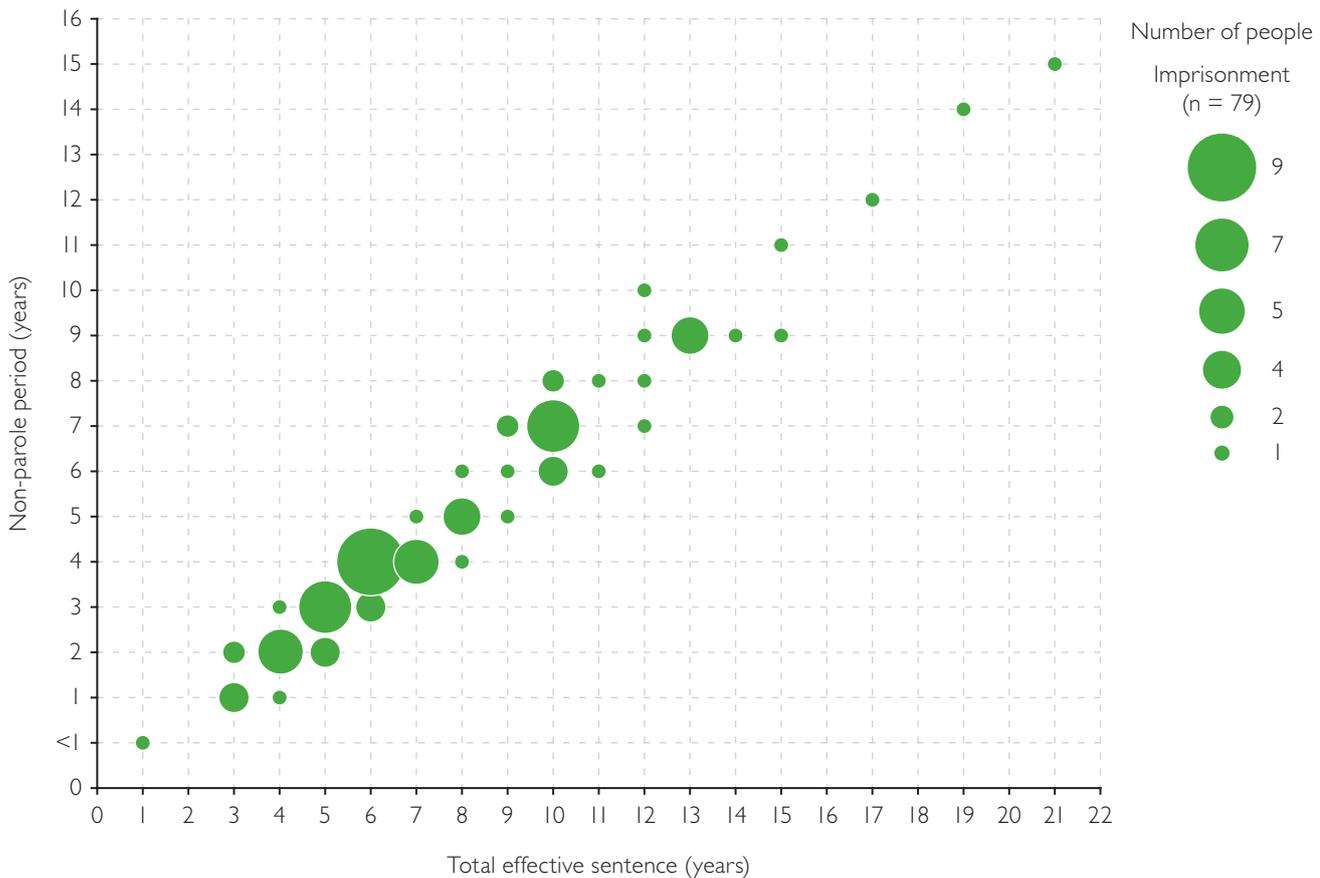
Total effective sentence of imprisonment by non-parole period

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. 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 12.

As shown, the most common combination of imprisonment length and non-parole period imposed was 6 years with a non-parole period of 4 years (9 people – as represented by the largest bubble on the chart). The length of imprisonment ranged from 1 year and 6 months with a non-parole period of 9 months to 21 years with a non-parole period of 15 years. After adjusting for appeals, the longest total effective imprisonment length was changed to 16 years and 3 months' imprisonment with a non-parole period of 12 years and 6 months.¹⁸

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, 2006–07 to 2010–11



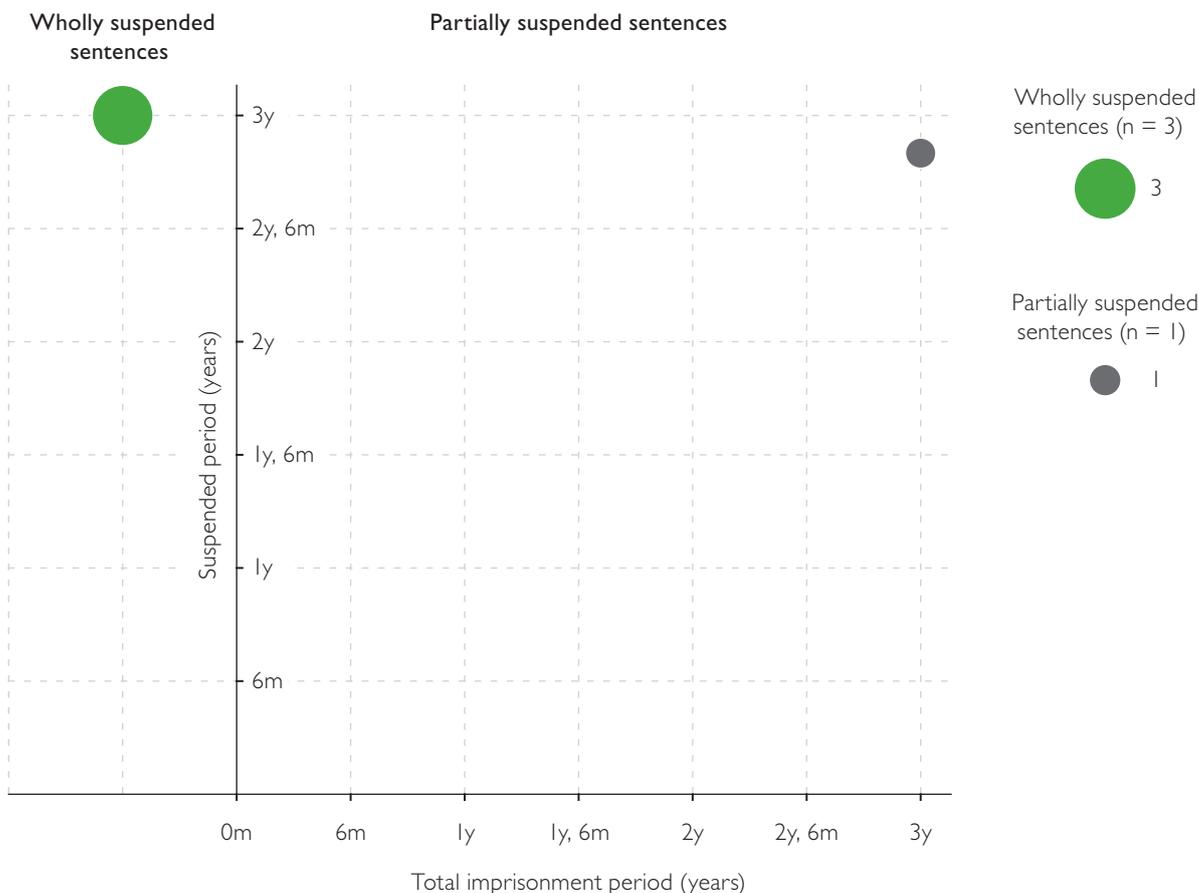
Suspended sentences of imprisonment

There were 4 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 3 people had their prison sentence wholly suspended and 1 received a partially suspended sentence of imprisonment. Figure 13 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 13.

All of the cases given a wholly suspended sentence received a sentence length of 3 years (3 people – as represented by the green bubble on the chart).

The case that received a partially suspended sentence was given 3 years imprisonment with 2 years, 10 months and 3 days suspended (1 person – as represented by the grey bubble on the chart).

Figure 13: The number of people given a wholly or partially suspended sentence of imprisonment for trafficking in a large commercial quantity of drugs by sentence type and length, 2006–07 to 2010–11



Appeals

A sentence imposed on a person may be appealed¹⁹ 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 large commercial quantity of drugs in the period 2006–07 to 2010–11 successfully appealed against their conviction. This person was granted a retrial on his charge of trafficking in a large commercial quantity but was still found guilty on other charges and resentenced accordingly. Thus, the number of people sentenced from 2006–07 to 2010–11 for a principal offence of trafficking in a large commercial quantity of drugs is reduced to 88 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 12 people. Nine of these appeals were made by the person sentenced and resulted in a sentence reduction.

The total effective sentence length that decreased the most as a result of a successful appeal was a case that originally received a total effective sentence of imprisonment of 21 years with a non-parole period of 15 years. On appeal against conviction, the charge of trafficking in a large commercial quantity was quashed. The remaining charges were resentenced to 8 years and 6 months' imprisonment with a non-parole period of 6 years and 3 months.

Three successful appeals were made by the Crown and resulted in an increase in the length of total effective sentences of imprisonment. The case that was affected the most as a result of a Crown appeal was originally given a total effective sentence of 5 years and 3 months' imprisonment with a non-parole period of 3 years and 6 months. On appeal, the case was resentenced to 7 years and 9 months' imprisonment with a non-parole period of 5 years and 3 months.

The principal sentence changed for 10 people as a result of a successful appeal. The case in which the principal sentence of imprisonment decreased the most as a result of an appeal was originally given a sentence of 12 years' imprisonment, but this was changed to 6 years and 6 months' imprisonment on appeal. Conversely, the case in which the principal sentence of imprisonment increased the most was originally given a sentence of 4 years' imprisonment, but this was changed to 6 years and 6 months on appeal.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term changed from 21 years' imprisonment to 16 years and 3 months' imprisonment.²⁰ The adjusted median total effective imprisonment length also decreased from 7 years and 10 months to 7 years. The adjusted longest non-parole period changed from 15 years down to 12 years and 6 months, but the median adjusted non-parole period remained at 4 years and 6 months.

The adjusted longest principal sentence of imprisonment changed from 16 years to 13 years and 6 months. The adjusted median principal sentence of imprisonment remained at 7 years.

Summary

Between 2006–07 and 2010–11, 89 people were sentenced for trafficking in a large commercial quantity of drugs in the higher courts. Over this period, the majority of people sentenced were men (98%), while 69% were between the ages of 25 and 44 years.

The majority of the people sentenced for trafficking in a large commercial quantity of drugs received a period of imprisonment (96%).

Sentences of imprisonment were most common for people aged between 35 and 44 years, 100% of whom received a sentence of imprisonment.

Each of the 89 people was sentenced for an average of 3.33 offences, including 2 offences of drug trafficking. The most common offence finalised in conjunction with trafficking in a large commercial quantity of drugs was possessing drugs of dependence (24.7% 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 and 10 months, while the median principal imprisonment length was 7 years.

Total effective imprisonment lengths ranged from 1 year and 6 months with a non-parole period of 9 months to 21 years with a non-parole period of 15 years. The most common sentence of imprisonment was 6 years with a non-parole period of 4 years.

A small number of people were able to successfully appeal against their conviction or sentence. When the results of the appeal outcomes are incorporated into the original sentencing data, the highest total effective imprisonment length changed from 21 years to 16 years and 3 months and the highest non-parole period changed from 15 years down to 12 years and 6 months. The highest principal imprisonment length changed from 16 years to 13 years and 6 months. The median total effective sentence length had also changed, from 7 years and 10 months to 7 years. The median non-parole period and the principal sentence length of imprisonment were not affected as a result of appeals.

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 or indictment. Trafficking in a large commercial quantity of drugs was the principal proven offence for 89 people sentenced in the County and Supreme Courts of Victoria during 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. 102, which describes sentencing trends for trafficking in a large commercial quantity of drugs between 2004–05 and 2008–09.

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 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) ss 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. Immediate custodial sentence includes imprisonment and partially suspended sentences.
12. Age is at the time of sentencing. One person was excluded from Figure 3 because their age was unknown.
13. 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.
14. One person was excluded from Figure 5 because their age was unknown.
15. All of the 85 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
16. The longest total effective sentence before adjusting for appeals was 21 years and after adjusting for appeals was 16 years and 3 months. The decrease in the longest total effective sentence after adjusting for appeals was due to each of the original total effective sentences of imprisonment of 17 years or more being quashed due to a successful appeal against conviction or being successfully appealed and given a lower sentence.
17. Six people 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.
18. Refer to endnote 16.
19. 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>.
20. Refer to endnote 16.

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

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