

Sentencing Snapshot

Sentencing trends in
the higher courts of
Victoria
2008–09 to 2012–13

August 2014
No. 163

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 2008–09 and 2012–13.³ Except where otherwise noted, the data represent sentences imposed at first instance.

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 depends 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 offence¹¹ in 0.8% of cases sentenced in the higher courts between 2008–09 and 2012–13.

People sentenced

From 2008–09 to 2012–13, 81 people were sentenced in the higher courts for a principal offence of trafficking in a large commercial quantity of drugs. These people are the focus of this Snapshot. Sufficient information was not available to determine the number of people who were sentenced for trafficking in a large commercial quantity of drugs in instances where another offence was the principal offence.

Figure 1 shows the number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by gender. Over the five years depicted, all but one of the people sentenced were men (98.8% or 80 of the 81 people), including 18 of the 19 people sentenced in 2012–13.

Figure 1: The number of people sentenced for trafficking in a large commercial quantity of drugs by gender, 2008–09 to 2012–13



Sentence types and trends

Figure 2 shows the total number of people sentenced for trafficking in a large commercial quantity of drugs and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.¹² Over the five-year period, 96% of people were given an immediate custodial sentence. This peaked at 100% in 2010–11 and 2011–12 after a low of 91.7% (11 of 12 people) in 2008–09.

Table 1 shows the number of people sentenced for trafficking in a large commercial quantity of drugs from 2008–09 to 2012–13 by the types of sentences imposed.

Over the five-year period, the majority of people sentenced for trafficking in a large commercial quantity of drugs received a period of imprisonment (95% or 77 of 81 people).

The number of people receiving a sentence of imprisonment was lowest during 2011–12 (10 people) and highest during 2009–10 (20 people). The percentage receiving imprisonment was lowest during 2008–09 (11 of 12 people or 92%) and highest during 2011–12 (all 10 people sentenced that year or 100%).

Table 1: The number and percentage of people sentenced for trafficking in a large commercial quantity of drugs by sentence type, 2008–09 to 2012–13

Sentence type	2008–09	2009–10	2010–11	2011–12	2012–13	Total
Imprisonment	11 (92%)	20 (95%)	18 (95%)	10 (100%)	18 (95%)	77 (95%)
Wholly suspended sentence	1 (8%)	1 (5%)	0 (–)	0 (–)	1 (5%)	3 (4%)
Partially suspended sentence	0 (–)	0 (–)	1 (5%)	0 (–)	0 (–)	1 (1%)
People sentenced	12	21	19	10	19	81

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 age¹³ between 2008–09 and 2012–13. The average (mean) age of people sentenced for trafficking in a large commercial quantity of drugs was 36 years and 10 months. There were no juveniles sentenced over this period.¹⁴

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, 2008–09 to 2012–13

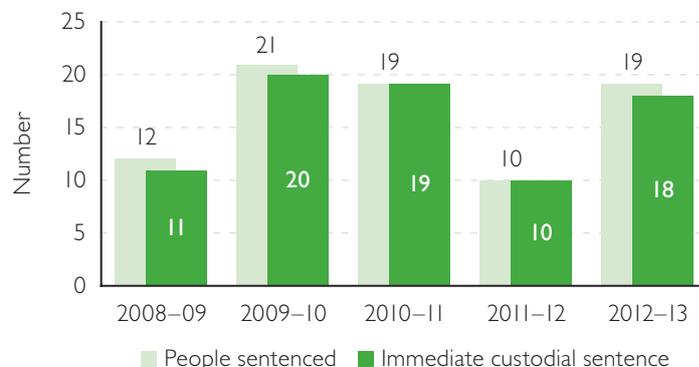
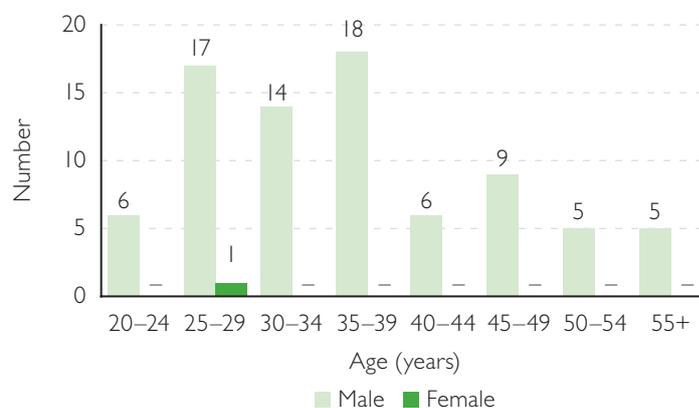


Figure 3: The number of people sentenced for trafficking in a large commercial quantity of drugs by gender and age, 2008–09 to 2012–13



Sentence types by gender

Table 2 shows the types of sentence imposed for trafficking in a large commercial quantity of drugs grouped by gender. Both men and women were very likely to receive sentences of imprisonment for this offence, compared with any other type of sentence.

Table 2: The number and percentage of people sentenced for trafficking in a large commercial quantity of drugs by sentence type and gender, 2008–09 to 2012–13

Sentence type	Male	Female
Imprisonment	76 (95%)	1 (100%)
Wholly suspended sentence	3 (4%)	0 (–)
Partially suspended sentence	1 (1%)	0 (–)
People sentenced	80	1

Sentence types by age

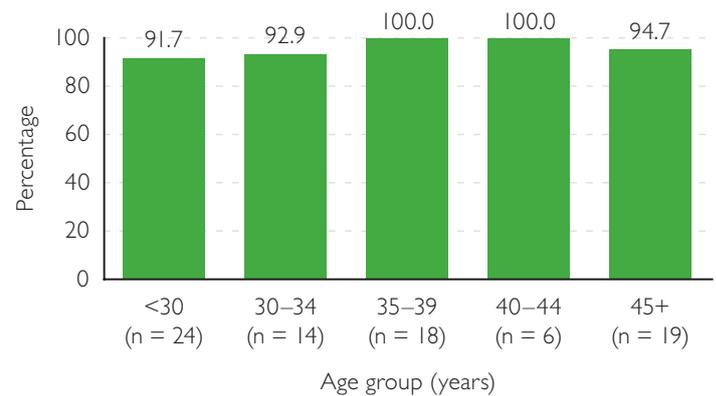
As shown in Table 1, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offender's age group.

Imprisonment

As shown in Figure 4, sentences of imprisonment were most likely to be given to people aged between 35 and 44 years (100% of the 24 people in these age groups).

Conversely, sentences of imprisonment were less common for those aged under 30 years, although they were still given to a high percentage of people in this age group (92% or 22 of the 24 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for trafficking in a large commercial quantity of drugs by age group, 2008–09 to 2012–13



Principal and total effective sentences

Two methods for describing sentence types and lengths are examined in this section. One relates to the principal sentence and examines sentences for the offence at a charge level. The other relates to the total effective sentence and examines sentences for the offence at a case level.

The principal sentence is the individual sentence imposed for the charge that is the principal offence.¹⁵

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

In many cases, the total effective sentence imposed on a person will be longer than the individual principal sentence. Principal sentences for trafficking in a large commercial quantity of drugs must be considered in this broader context. The following sections analyse the use of imprisonment for trafficking in a large commercial quantity of drugs from 2008–09 to 2012–13.

Principal sentence of imprisonment

A total of 77 people received a principal sentence of imprisonment for trafficking in a large commercial quantity of drugs between 2008–09 and 2012–13.

Figure 5 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2008–09 and 2012–13 by the length of the imprisonment term. Imprisonment terms ranged from 3 years to 20 years, 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 range of imprisonment length was 8 years to less than 9 years (15 people).

As shown in Figure 6, the average (mean) length of imprisonment term imposed on people sentenced for trafficking in a large commercial quantity of drugs ranged from 6 years and 5 months in 2011–12 to 8 years and 7 months in 2009–10.

From 2008–09 to 2012–13, almost all the people who received a term of imprisonment for trafficking in a large commercial quantity of drugs were men (75 people or 98.7%). Due to the small number of women who received imprisonment as a principal sentence for this offence (1), data on average imprisonment length by gender are not shown.

Figure 5: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of imprisonment term, 2008–09 to 2012–13

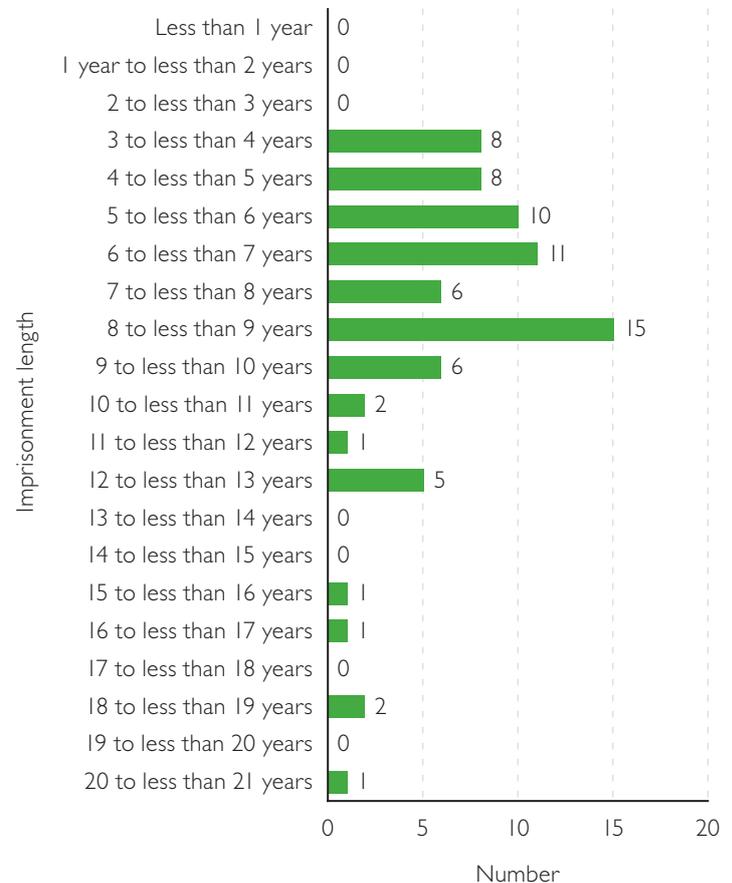
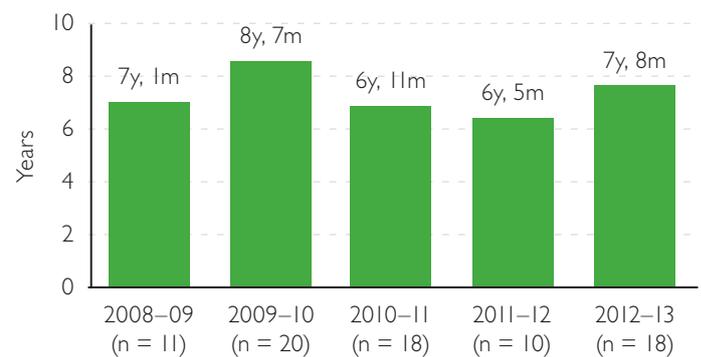


Figure 6: The average length of imprisonment term imposed on people sentenced for trafficking in a large commercial quantity of drugs, 2008–09 to 2012–13



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 7 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 20 people (24.7%) sentenced for the single offence of trafficking in a large commercial quantity of drugs. The average (mean) number of offences per person sentenced for trafficking in a large commercial quantity of drugs was 3.57.

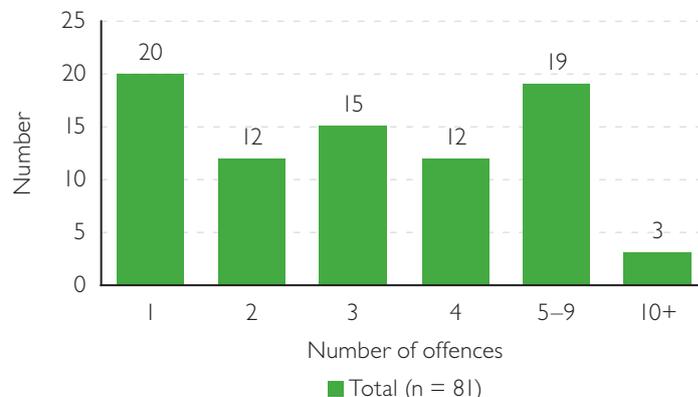
While Figure 7 presents the number of sentenced offences for those sentenced for trafficking in a large commercial quantity of drugs, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 22 of the total 81 people (27.2%) also received sentences for possessing a drug of dependence. On average, they were sentenced for 1.77 counts of possess a drug of dependence.

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, 2008–09 to 2012–13

Offence	Number	%	Average
1 Trafficking in a large commercial quantity of drugs	81	100.0	1.84*
2 Possess a drug of dependence	22	27.2	1.77
3 Deal with property suspected of being proceeds of crime	14	17.3	1.29
4 Knowingly deal with proceeds of crime	7	8.6	1.00
5 Possess prohibited weapon without exemption	5	6.2	1.20
6 Possess substance/material to traffick in a drug of dependence	4	4.9	1.50
7 Handling stolen goods	3	3.7	2.33
8 Prohibited person possess unregistered firearm	3	3.7	1.67
9 Obtain financial advantage by deception	2	2.5	3.50
10 Theft	2	2.5	2.00
People sentenced	81	100.0	3.57

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

Figure 7: 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, 2008–09 to 2012–13

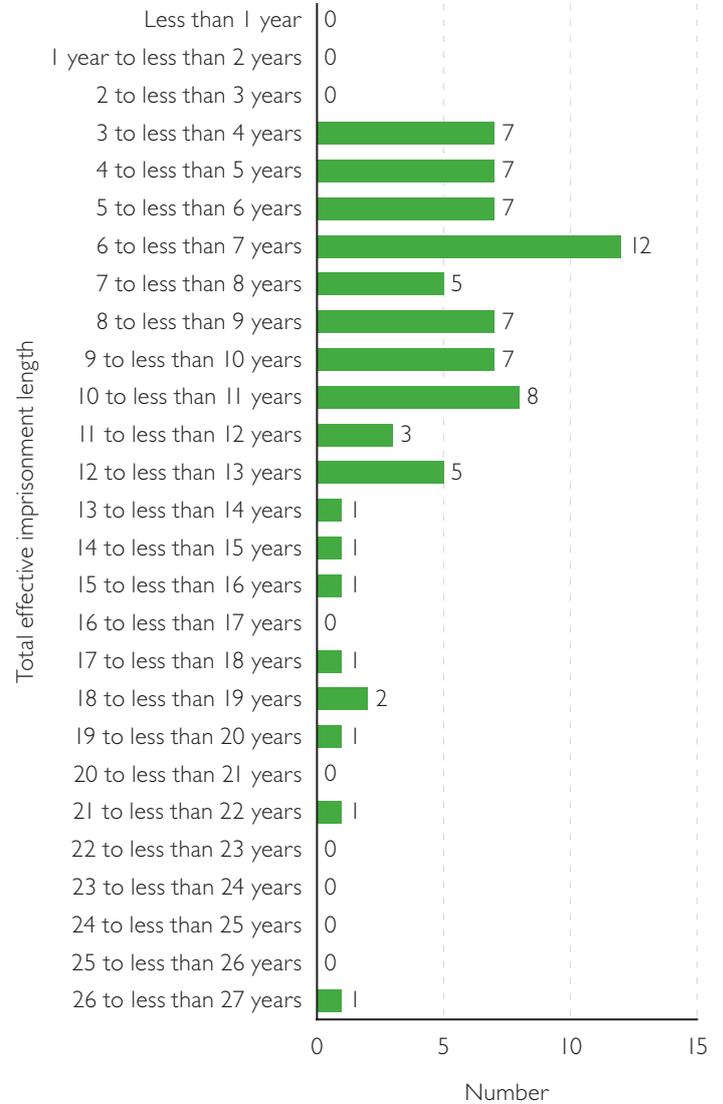


Total effective sentence of imprisonment

There were 77 people given a total effective sentence of imprisonment.¹⁶ Figure 8 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2008–09 and 2012–13 by length of total effective sentence. The length of total effective sentences ranged from 3 years to 26 years, while the median total effective length of imprisonment was 8 years (meaning that half of the total effective sentence lengths were below 8 years and half were above).

The most common range of total effective imprisonment length was 6 years to less than 7 years (12 people).

Figure 8: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of total effective imprisonment term, 2008–09 to 2012–13



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.

All 77 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs were eligible to have a non-parole period fixed. Of these people, 71 were given a non-parole period (92.2%).¹⁷ Figure 9 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs between 2008–09 and 2012–13 by length of non-parole period. Non-parole periods ranged from 1 year to 18 years, while the median length of the non-parole period was 5 years (meaning that half of the non-parole periods were below 5 years and half were above).

The most common range of non-parole period imposed was 4 years to less than 5 years (11 people).

Total effective sentences of imprisonment and non-parole periods

Figure 10 presents the average (mean) length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people from 2008–09 to 2012–13.

From 2008–09 to 2012–13, the average length of total effective sentences for all people ranged from 6 years and 11 months in 2011–12 to 10 years and 2 months in 2009–10. Over the same period, the average length of non-parole periods ranged from 4 years and 3 months in 2011–12 to 6 years and 11 months in 2009–10.

Due to the small number of women who received a total effective sentence of imprisonment and a non-parole period, data on average total effective sentence length and non-parole period by gender are not shown.

Figure 9: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of non-parole period, 2008–09 to 2012–13

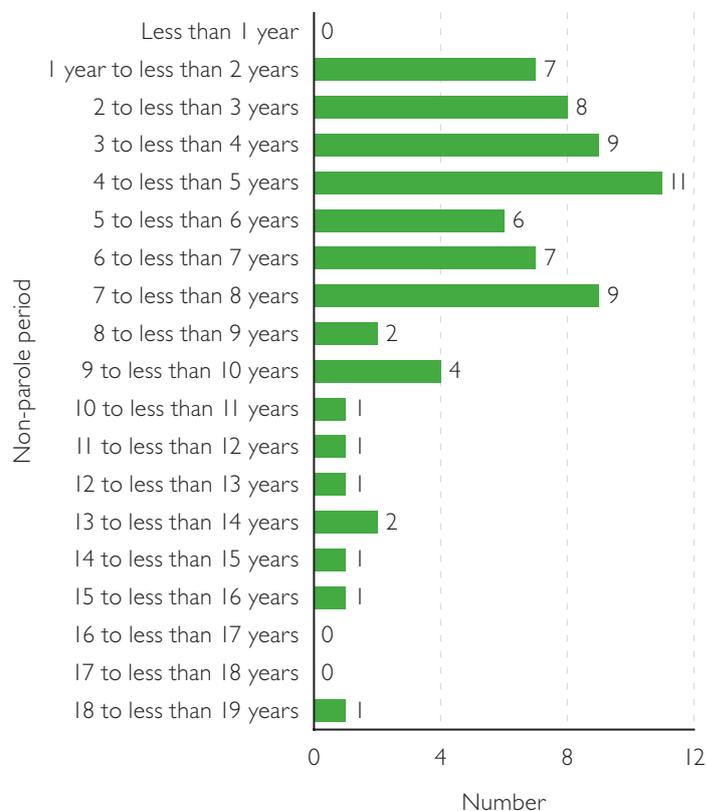
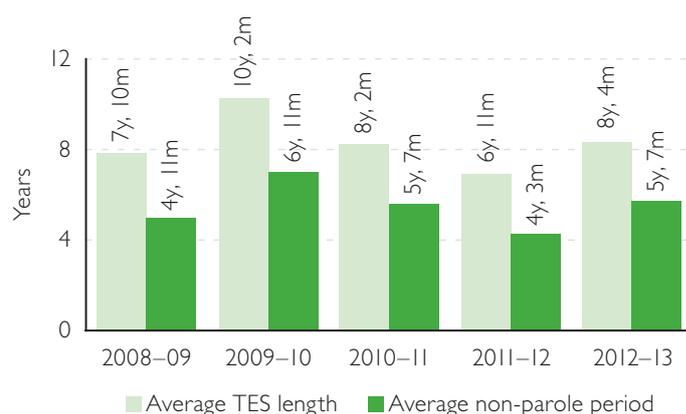


Figure 10: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for trafficking in a large commercial quantity of drugs, 2008–09 to 2012–13



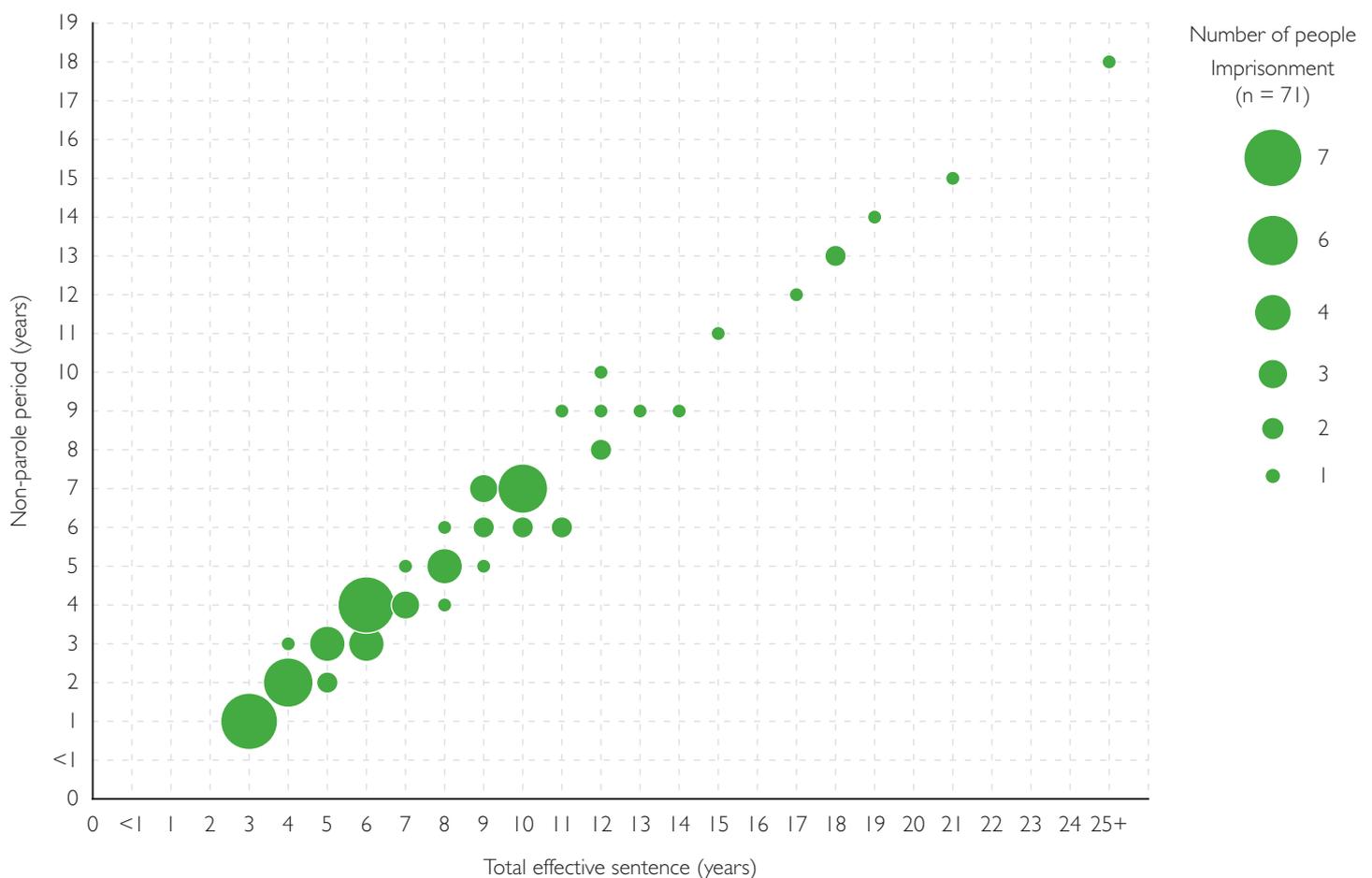
Total effective sentence of imprisonment by non-parole period

While Figures 8 and 9 present the lengths of the total effective sentences and non-parole periods separately, Figure 11 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 11.

As shown, the most common combination of imprisonment length and non-parole period imposed was 3 years with a non-parole period of 1 year and also 6 years with a non-parole period of 4 years (7 people each – as represented by the two largest 'bubbles' on the chart). The length of imprisonment ranged from 3 years with a non-parole period of 1 year to 26 years with a non-parole period of 18 years.

Figure 11: 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, 2008–09 to 2012–13



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

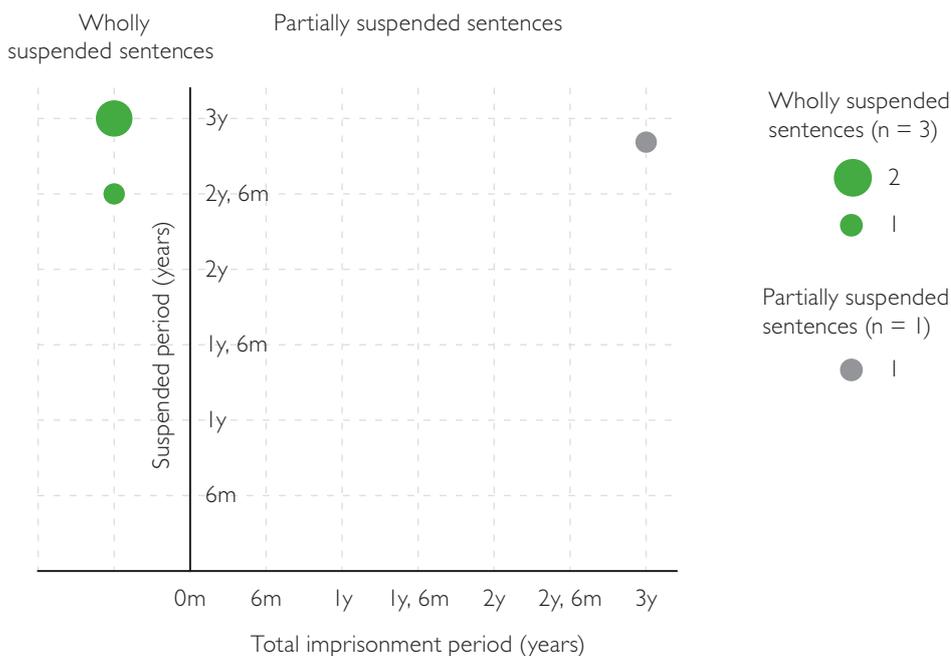
Suspended sentences of imprisonment

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 person received a partially suspended sentence of imprisonment. Figure 12 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 12.

Wholly suspended sentence lengths ranged from 2 years and 6 months to 3 years. The most common wholly suspended sentence length was 3 years (2 people – as represented by the largest green 'bubble' on the chart).

One person received a partially suspended sentence of 3 years' imprisonment with 2 years, 10 months and 3 days suspended.

Figure 12: 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, 2008–09 to 2012–13



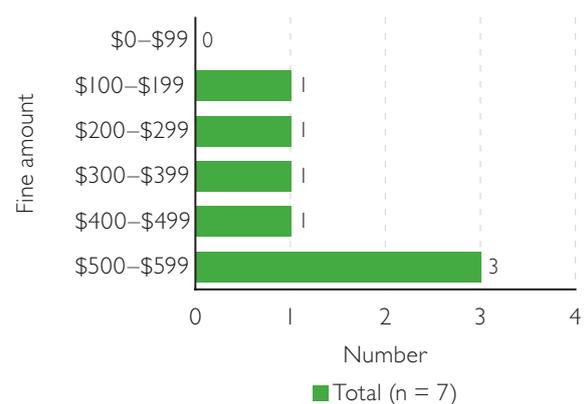
Fines

This analysis includes all fines that were imposed for cases where trafficking in a large commercial quantity of drugs was the principal offence. Fines were imposed on 7 people.

As shown in Figure 13, fine amounts ranged from \$100 to \$500, with a median of \$400 (meaning that half of the values fell below \$400 and half of the values were above \$400).

The average (mean) fine amount was \$364. Fines were only given to men.

Figure 13: The number of people who received a fine for trafficking in a large commercial quantity of drugs by fine amount, 2008–09 to 2012–13



Appeals

A sentence imposed on a person may be appealed¹⁸ 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.

To June 2013, 1 person sentenced for a principal offence of trafficking in a large commercial quantity of drugs in the period 2008–09 to 2012–13 had successfully appealed their conviction. This person originally received a total effective sentence of 21 years' imprisonment with a non-parole period of 15 years but was allowed a retrial on their principal proven offence (they were still found guilty on other charges). Thus, the number of people sentenced for a principal offence of trafficking in a large commercial quantity of drugs is reduced to 80 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 13 people. Nine of these appeals were made by the person sentenced and resulted in a sentence reduction, while the remaining 4 appeals were made by the Crown and resulted in a more severe sentence.

The total effective sentence that decreased the most was originally a total effective sentence of 17 years with a non-parole period of 12 years. This was reduced to 11 years and 3 months with a non-parole period of 8 years and 3 months after an appeal.

The total effective sentence that increased the most after an appeal from the Crown was originally a total effective sentence of 5 years and 3 months' imprisonment with a non-parole period of 3 years and 6 months. After a successful appeal, the total effective sentence had increased to 7 years and 9 months' imprisonment with a non-parole period of 5 years and 3 months.

The principal sentences of imprisonment also changed for 9 people as a result of appeals, including 4 appeals from the Crown and 5 appeals from the defendant. The case with the largest increase was originally sentenced to 4 years' imprisonment, which changed to 6 years and 6 months. The case with the largest decrease was originally sentenced to 12 years' imprisonment, which also changed to 6 years and 6 months after an appeal.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was unchanged at 26 years with a non-parole period of 18 years, while the adjusted longest principal sentence of imprisonment was also unchanged at 20 years.

Summary

Between 2008–09 and 2012–13, 81 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 (99%), while 80% aged between 25 and 49 years.

The majority of people sentenced for trafficking in a large commercial quantity of drugs received a period of imprisonment (95%) with very few people being given other sentences.

Imprisonment was most common for people aged 35 to 44 years or older, although the majority of people from other age groups also received imprisonment.

Each of the 81 people was sentenced for an average (mean) of 3.57 offences, including 1.84 offences of trafficking in a large commercial quantity of drugs. The most common offence finalised in conjunction with trafficking in a large commercial quantity of drugs was possessing a drug of dependence (27.2% 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 8 years, while the median principal imprisonment length was 7 years.

Total effective imprisonment lengths ranged from 3 years with a non-parole period of 1 year to 26 years with a non-parole period of 18 years. The two most common sentences of imprisonment was 3 years' imprisonment with a non-parole period of 1 year and 6 years' imprisonment with a non-parole period of 4 years.

The only partially suspended sentence given was for 3 years' imprisonment with 2 years, 10 months, and 3 days suspended, while the most common wholly suspended sentence length was 3 years (2 people).

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 longest total effective imprisonment length was unchanged at 26 years with a non-parole period of 18 years and the longest principal sentence of imprisonment was also unchanged at 20 years.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of trafficking in a large commercial quantity of drugs in the County and Supreme Courts of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis therefore excludes 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 81 people sentenced in the County and Supreme Courts of Victoria from 2008–09 to 2012–13.

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. 131, which describes sentencing trends for trafficking in a large commercial quantity of drugs between 2006–07 and 2010–11.

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 751 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 2008–09 to 2012–13. Sentencing remarks were located for 660 cases (87.9%). The drug quantities for all 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's website <www.ocpc.vic.gov.au>.
11. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.

12. Immediate custodial sentence includes imprisonment and partially suspended sentences
13. Age is at the time of sentencing.
14. 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.
15. Refer to endnote 11.
16. All 77 people who were given a principal sentence of imprisonment were also given a total effective sentence of imprisonment.
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 isolate 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. 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.edu.au>.

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