

Sentencing Snapshot

Sentencing trends
in the Magistrates'
Court of Victoria
2004–05 to 2007–08

December 2008
No. 61

Causing serious injury recklessly

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of causing serious injury recklessly and details the age and gender² of people sentenced for this offence in the Magistrates' Court of Victoria between 2004–05 and 2007–08.

A person who recklessly causes serious injury to another person without lawful excuse is guilty of this offence.³ Recklessness requires foresight on the part of the accused of the probability that injury will occur as a consequence of his or her actions.⁴ 'Injury' includes unconsciousness, hysteria, pain and any substantial impairment of bodily function. 'Serious injury' includes a combination of injuries. These definitions are not exhaustive.⁵

Causing serious injury recklessly is an indictable offence which carries a maximum penalty of 15 years' imprisonment and/or a fine of 1200 penalty units.⁶ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

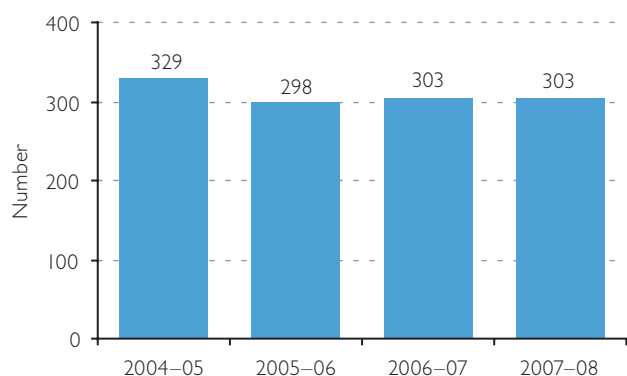
This offence may be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. This tends to occur where the offence is seen by the court as being less serious in nature. Where an offence is tried summarily, the matter will be heard before a magistrate rather than a judge and a jury. Where causing serious injury recklessly is heard summarily, it carries a maximum penalty of 2 years' imprisonment and/or a fine of 240 penalty units.⁷

Causing serious injury recklessly was the principal offence in 0.4% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

People sentenced

Over the four-year period, the Magistrates' Court sentenced 1,233 people for the principal offence of causing serious injury recklessly. In 2007–08, there were 303 people who were sentenced for the principal proven offence of causing serious injury recklessly.⁸ This remained relatively stable with the previous two years.

Figure 1: The number of people sentenced for causing serious injury recklessly, 2004–05 to 2007–08



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for causing serious injury recklessly during 2004–05 to 2007–08. Over the four-year period, around four in ten of those sentenced for causing serious injury recklessly received a non-custodial sentence (536 people or 43.5%), including 237 people who

received a community-based order (19.2%) and 212 people who received a fine (17.2%).

There were also 426 people who received a non-immediate custodial sentence (34.5%), including 255 people who received a wholly suspended sentence (20.7%) and 171 people who received an intensive correction order (13.9%).

An additional 25 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).⁹

Table 1: The number and percentage of people sentenced for causing serious injury recklessly by sentence type, 2004–05 to 2007–08

Sentence Type	Total	%
Immediate custodial	271	22.0
Imprisonment	177	14.4
Partially suspended sentence	76	6.2
Combined custody and treatment order	1	0.1
Youth justice centre order	17	1.4
Other custodial	426	34.5
Wholly suspended sentence	255	20.7
Intensive correction order	171	13.9
Non-custodial	536	43.5
Community-based order	237	19.2
Fine	212	17.2
Adjourned undertaking	87	7.1
People sentenced	1,233	100.0
Criminal justice diversion program	25	
Total dispositions	1,258	

Record of conviction

While recording a conviction is mandatory for people sentenced to a custodial order, a magistrate may use discretion when deciding whether to record a conviction for people who receive a non-custodial order.¹⁰ In 2006–07 and 2007–08, a conviction was recorded for 75.9% of the 133 people who received a community-based order, 66.7% of the 90 people who received a fine and 14.6% of the 41 people who received an adjourned undertaking.¹¹ Overall, 84.0% of people sentenced had a conviction recorded in 2006–07 and 2007–08.

Age and gender

Over the four-year period, the majority of those sentenced were men (1,151 people or 93.3%).¹² The age of people sentenced for causing serious injury recklessly ranged from 17 years to 69 years, while the median age was 26 years (meaning that half of the people were aged 26 years or younger and half were 26 years or older). Women sentenced were older than men (a median age of 30 years compared to 26 years).

Sentencing outcomes by gender and age group

Table 2 shows the number and percentage of people who were sentenced for causing serious injury recklessly by sentence type. The first two columns show sentence types by gender, while the next four columns show the sentence types by age group.

A higher percentage of men received immediate custodial sentences (22.8% of men compared to 11.0% of women) and non-immediate custodial sentences (35.0% compared to 28.0%).

Conversely, a higher percentage of women received non-custodial sentences (61.0% of women compared to 42.2% of men).

When examining individual sentence types, a higher percentage of men received intensive correction orders (14.4% compared to 6.1% of women) and sentences of imprisonment (14.8% compared to 8.5%). Conversely, a higher percentage of women received community-based orders (29.3% compared to 18.5% of men) and adjourned undertakings (12.2% compared to 6.7%).

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence. Conversely, a higher percentage of younger people received a non-custodial sentence, including a community-based order and a fine.

Figure 2: The number of people sentenced for causing serious injury recklessly by gender and age, 2004–05 to 2007–08

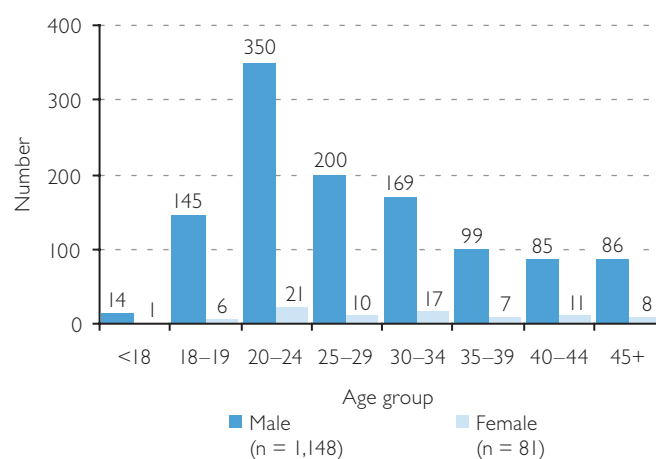


Table 2: The number and percentage of people sentenced for causing serious injury recklessly by sentence type, gender and age group, 2004–05 to 2007–08

Sentencing outcome	Gender		Age group				All People
	Male	Female	<18	18–24	25–39	40+	
Immediate custodial	262 (22.8%)	9 (11.0%)	5 (33.3%)	86 (16.5%)	143 (28.5%)	35 (18.4%)	271 (22.0%)
Imprisonment	170 (14.8%)	7 (8.5%)	0 –	53 (10.2%)	98 (19.5%)	25 (13.2%)	177 (14.4%)
Partially suspended sentence	74 (6.4%)	2 (2.4%)	1 (6.7%)	20 (3.8%)	44 (8.8%)	10 (5.3%)	76 (6.2%)
Combined custody and treatment order	1 (<0.1%)	0 –	0 –	0 –	1 (0.2%)	0 –	1 (<0.1%)
Youth justice centre order	17 (1.5%)	0 –	4 (26.7%)	13 (2.5%)	0 –	0 –	17 (1.4%)
Other custodial	403 (35.0%)	23 (28.0%)	1 (6.7%)	161 (30.8%)	191 (38.0%)	73 (38.4%)	426 (34.5%)
Wholly suspended sentence	237 (20.6%)	18 (22.0%)	0 –	84 (16.1%)	115 (22.9%)	56 (29.5%)	255 (20.7%)
Intensive correction order	166 (14.4%)	5 (6.1%)	1 (6.7%)	77 (14.8%)	76 (15.1%)	17 (8.9%)	171 (13.9%)
Non-custodial	486 (42.2%)	50 (61.0%)	9 (60.0%)	275 (52.7%)	168 (33.5%)	82 (43.2%)	536 (43.5%)
Community-based order	213 (18.5%)	24 (29.3%)	5 (33.3%)	127 (24.3%)	72 (14.3%)	33 (17.4%)	237 (19.2%)
Fine	196 (17.0%)	16 (19.5%)	3 (20.0%)	104 (19.9%)	71 (14.1%)	32 (16.8%)	212 (17.2%)
Adjourned undertaking	77 (6.7%)	10 (12.2%)	1 (6.7%)	44 (8.4%)	25 (5.0%)	17 (8.9%)	87 (7.1%)
People sentenced	1,151 (100.0%)	82 (100.0%)	15 (100.0%)	522 (100.0%)	502 (100.0%)	190 (100.0%)	1,233 (100.0%)

Sentencing outcomes by year

Table 3 shows the number and percentage of people sentenced each year from 2004–05 to 2007–08 for causing serious injury recklessly by the type of sentence imposed.

The number and percentage of people who received an immediate custodial sentence remained relatively stable over the four years (ranging from 65 to 70 people and 21.3% to 23.1%).

The number and percentage of people who received a non-immediate custodial sentence increased from 109 people and 33.1% in 2004–05 to 112 people and 37.0% in 2007–08. The number and percentage of people who received a non-custodial sentence decreased from 150 people and 45.6% in 2004–05 to 125 people and 41.3% in 2007–08.

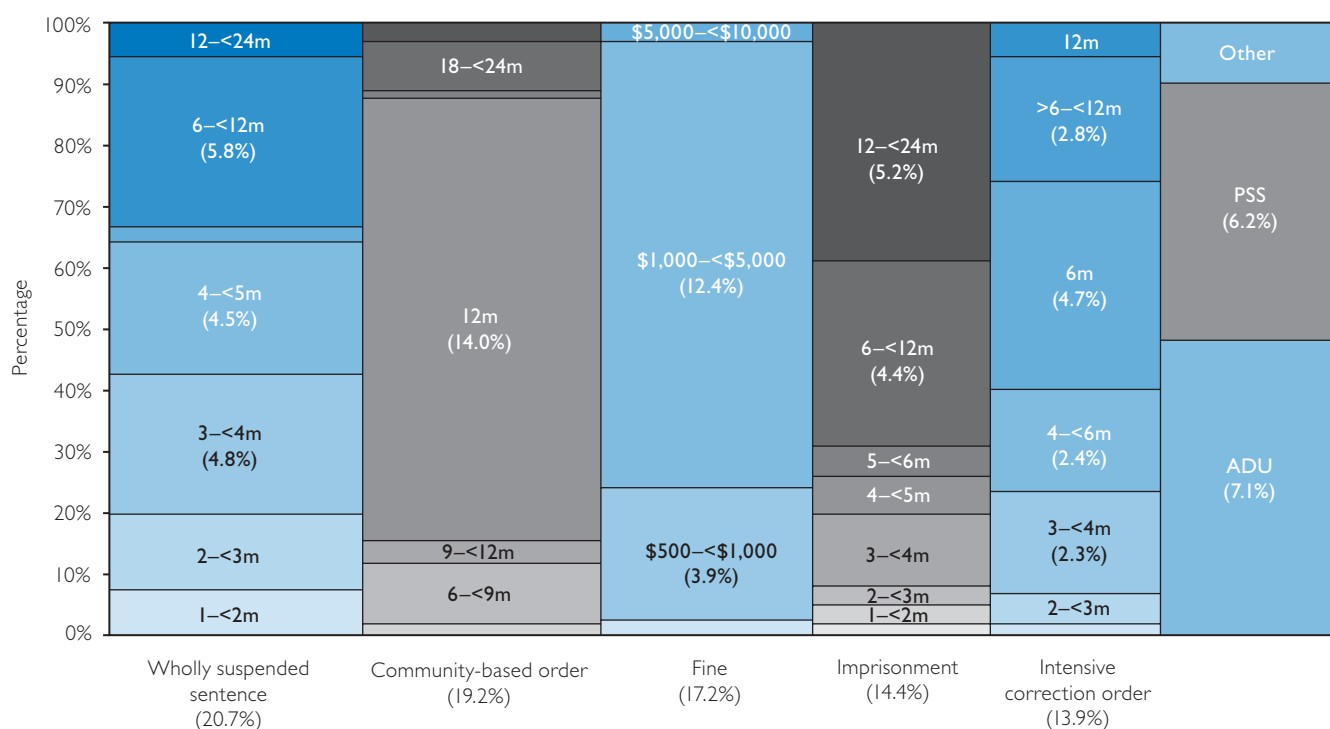
Sentencing map

Figure 3 presents both the sentencing outcome and the quantum for that outcome for people sentenced for causing serious injury recklessly. For example, 20.7% of people sentenced received a wholly suspended sentence including 5.8% who received a wholly suspended sentence of 6 to 12 months. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

Table 3: The number and percentage of people sentenced for causing serious injury recklessly by sentence type and year, 2004–05 to 2007–08¹³

Sentence Type	2004–05	2005–06	2006–07	2007–08
Immediate custodial	70 (21.3%)	65 (21.8%)	70 (23.1%)	66 (21.8%)
Imprisonment	47 (14.3%)	42 (14.1%)	44 (14.5%)	44 (14.5%)
Partially suspended sentence	18 (5.5%)	20 (6.7%)	19 (6.3%)	19 (6.3%)
Combined custody and treatment order	0 –	1 (0.3%)	0 –	0 –
Youth justice centre order	5 (1.5%)	2 (0.7%)	7 (2.3%)	3 (1.0%)
Other custodial	109 (33.1%)	111 (37.2%)	94 (31.0%)	112 (37.0%)
Wholly suspended sentence	65 (19.8%)	74 (24.8%)	50 (16.5%)	66 (21.8%)
Intensive correction order	44 (13.4%)	37 (12.4%)	44 (14.5%)	46 (15.2%)
Non-custodial	150 (45.6%)	122 (40.9%)	139 (45.9%)	125 (41.3%)
Community-based order	56 (17.0%)	48 (16.1%)	73 (24.1%)	60 (19.8%)
Fine	66 (20.1%)	56 (18.8%)	47 (15.5%)	43 (14.2%)
Adjourned undertaking	28 (8.5%)	18 (6.0%)	19 (6.3%)	22 (7.3%)
People sentenced	329	298	303	303

Figure 3: Sentencing map: The percentage of people sentenced for causing serious injury recklessly by sentencing outcomes and sentencing quanta, 2004–05 to 2007–08¹⁴



Note: ADU refers to adjourned undertaking and PSS refers to partially suspended sentence. Other includes youth justice centre order and combined custody and treatment order.

Principal sentence

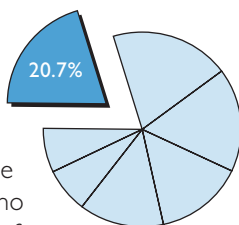
This section examines the use of the five most common principal sentencing outcomes for this offence.¹⁵ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided.¹⁶ Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.¹⁷

The five most common sentences imposed for causing serious injury recklessly are wholly suspended sentence, community-based order, fine, imprisonment and intensive correction order.

Wholly suspended sentence

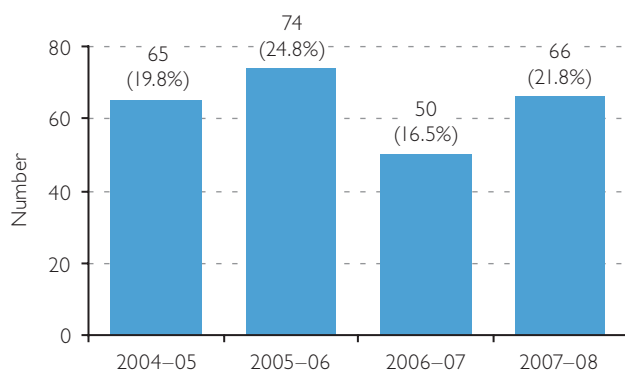
Trends

There were 255 people who received a wholly suspended sentence for causing serious injury recklessly. This represented 20.7% of all people sentenced for this offence. Figure 4 shows the trends in the number and percentage of people who received a wholly suspended sentence for causing serious injury recklessly.



In 2007–08, 66 people received a wholly suspended sentence for the principal proven offence of causing serious injury recklessly. This has increased over the past year from 50 people in 2006–07, after decreasing substantially the previous year. Also, the proportion of people who received a wholly suspended sentence for causing serious injury recklessly increased over the past year from 16.5% to 21.8%.

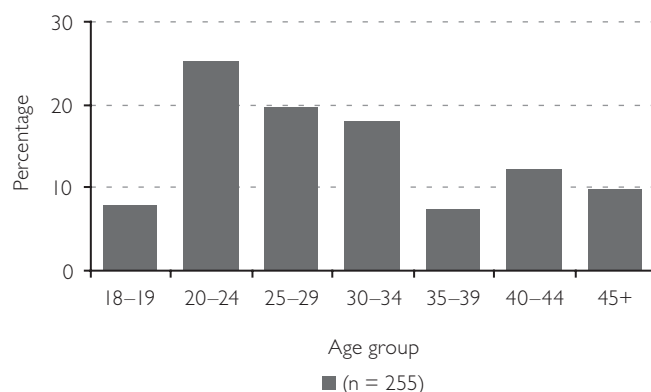
Figure 4: The number and percentage of people who received a wholly suspended sentence for causing serious injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 255 people who received a wholly suspended sentence, 92.9% were men. Figure 5 shows the age groups of people who received a wholly suspended sentence for causing serious injury recklessly. The median age of these people was 29 years.

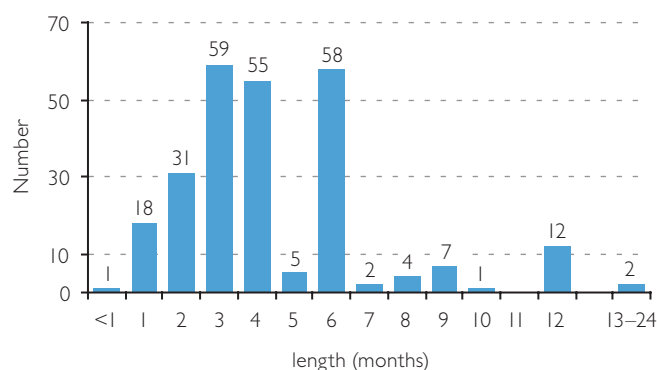
Figure 5: The percentage of people who received a wholly suspended sentence for causing serious injury recklessly by age, 2004–05 to 2007–08



Length of sentence

Figure 6 shows the number of people who received a wholly suspended sentence for causing serious injury recklessly by the length of the sentence. While the length of wholly suspended sentences ranged from thirteen days to two years, the median was four months (meaning that half were shorter than four months and half were longer than four months). Aggregate wholly suspended sentences were imposed for 22.0% of people who received a wholly suspended sentence.¹⁸

Figure 6: The number of people who received a wholly suspended sentence for causing serious injury recklessly by the length of order, 2004–05 to 2007–08



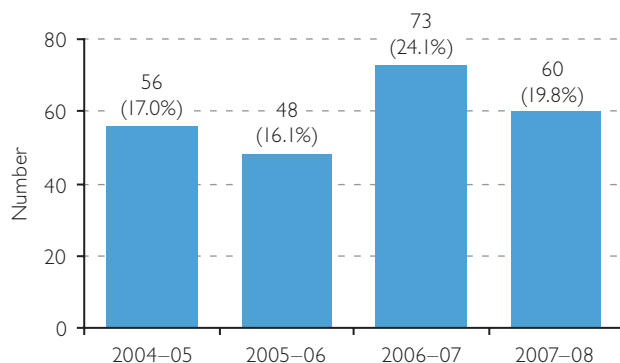
Community-based order

Trends

There were 237 people who received a community-based order for causing serious injury recklessly. This represented 19.2% of all people sentenced for this offence. Of the 133 people who received a community-based order in 2006–07 and 2007–08, 75.9% also had a conviction recorded (101 people). Figure 7 shows the trends in the number and percentage of people who received a community-based order for causing serious injury recklessly.

In 2007–08, 60 people received a community-based order for the principal proven offence of causing serious injury recklessly. This has decreased over the past year from 73 people in 2006–07, after increasing the previous year. Also, the proportion of people who received a community-based order for causing serious injury recklessly decreased over the past year from 24.1% to 19.8%.

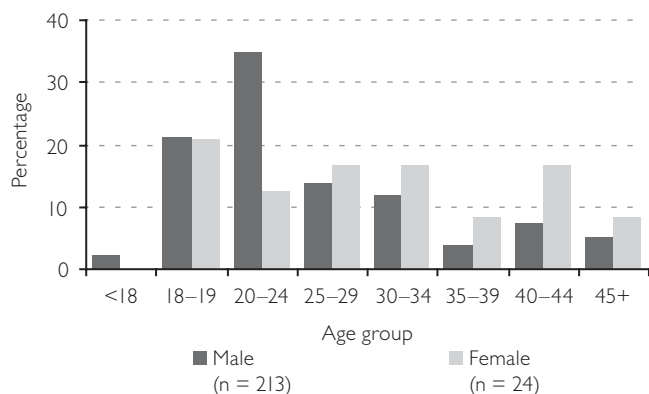
Figure 7: The number and percentage of people who received a community-based order for causing serious injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 237 people who received a community-based order, 89.9% were men. Figure 8 shows the age groups of people who received a community-based order for causing serious injury recklessly by gender. The median age of these people was 23 years, while women were much older than their male counterparts (a median age of 30 years and six months compared to 23 years).

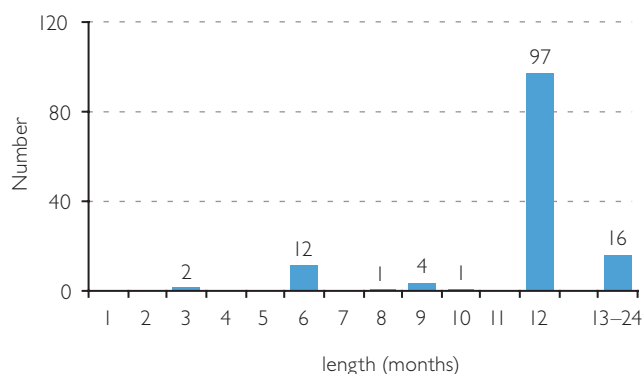
Figure 8: The percentage of people who received a community-based order for causing serious injury recklessly by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 9 shows the number of people who received a community-based order for causing serious injury recklessly by the length of the sentence. While the length of community-based orders ranged from three months to two years, the majority were for 12 months (72.9%).

Figure 9: The number of people who received a community-based order for causing serious injury recklessly by the length of order, 2006–07 and 2007–08



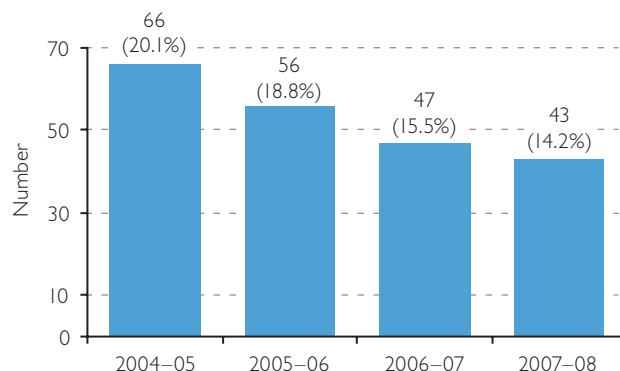
Fine

Trends

There were 212 people who received a fine for causing serious injury recklessly. This represented 17.2% of all people sentenced for this offence. Of the 90 people who received a fine in 2006–07 and 2007–08, 66.7% also had a conviction recorded (60 people). Figure 10 shows the trends in the number and percentage of people who received a fine for causing serious injury recklessly.

In 2007–08, 43 people received a fine for the principal proven offence of causing serious injury recklessly. This has decreased each of the past three years from 66 people in 2004–05. Also, the proportion of people who received a fine for causing serious injury recklessly decreased each of the past three years from 20.1% in 2004–05 to 14.2% in 2007–08.

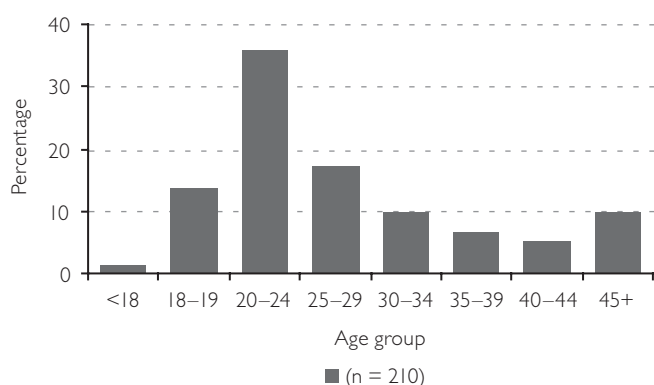
Figure 10: The number and percentage of people who received a fine for causing serious injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 212 people who received a fine, 92.5% were men. Figure 11 shows the age groups of people who received a fine for causing serious injury recklessly. The median age of these people was 24 years.

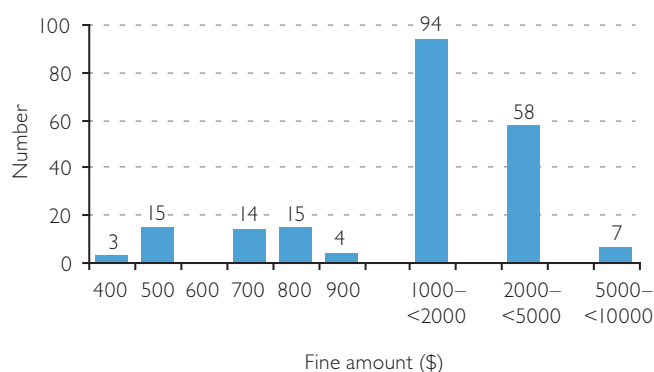
Figure 11: The percentage of people who received a fine for causing serious injury recklessly by age, 2004–05 to 2007–08



Fine Amount

Figure 12 shows the number of people who received a fine for causing serious injury recklessly by the amount of the fine. While the amount of the fine ranged from \$350 to \$7,500, the median was \$1,000. Aggregate fines were imposed for 21.2% of people who received a fine.¹⁹

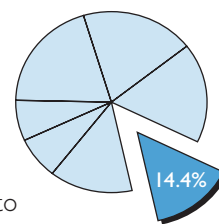
Figure 12: The number of people who received a fine for causing serious injury recklessly by the amount of the fine, 2004–05 to 2007–08



Imprisonment

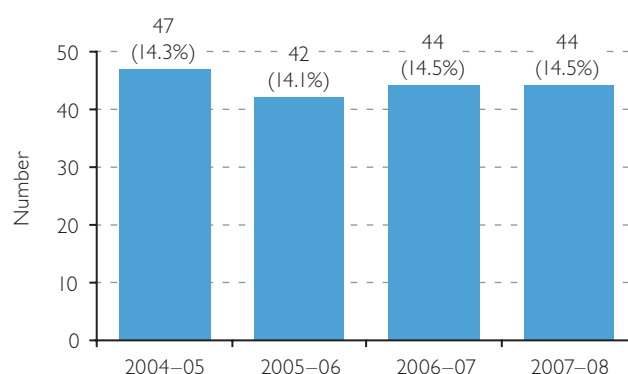
Trends

There were 177 people who were sentenced to imprisonment for causing serious injury recklessly. This represented 14.4% of all people sentenced for this offence. Figure 13 shows the trends in the number and percentage of people who were sentenced to imprisonment for causing serious injury recklessly.



In 2007–08, 44 people were sentenced to imprisonment for the principal proven offence of causing serious injury recklessly. This has remained relatively stable over the past three years, after decreasing the previous year. Also, the proportion of people who were sentenced to imprisonment for causing serious injury recklessly remained relatively stable over the past four years ranging from 14.1% in 2005–06 to 14.5% in 2006–07 and 2007–08.

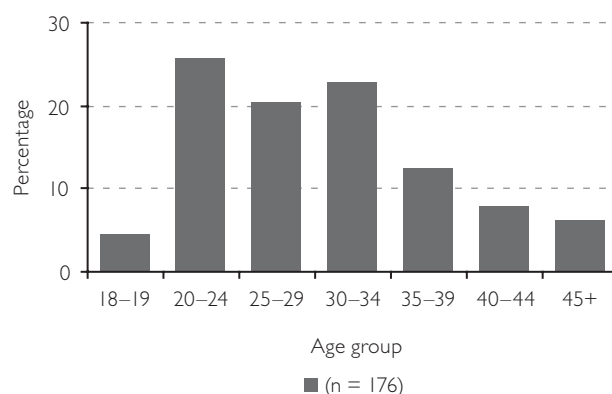
Figure 13: The number and percentage of people who were sentenced to imprisonment for causing serious injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 177 people who received a period of imprisonment, 96.0% were men. Figure 14 shows the age groups of people who were sentenced to imprisonment for causing serious injury recklessly. The median age of these people was 29 years.

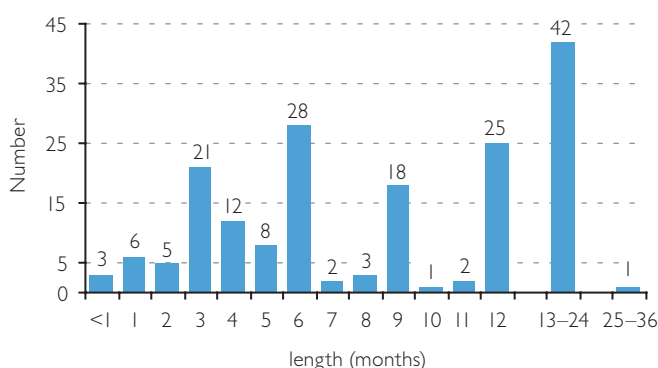
Figure 14: The percentage of people who were sentenced to imprisonment for causing serious injury recklessly by age, 2004–05 to 2007–08



Length of sentence

Figure 15 shows the number of people who were sentenced to imprisonment for causing serious injury recklessly by the length of the sentence. While the length of imprisonment ranged from seven days to two years and six months, the median was nine months (meaning that half were shorter than nine months and half were longer than nine months). Aggregate periods of imprisonment were imposed for 37.9% of people who were sentenced to imprisonment.²⁰

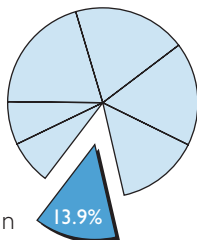
Figure 15: The number of people who were sentenced to imprisonment for causing serious injury recklessly by the length of order, 2004–05 to 2007–08



Intensive correction order

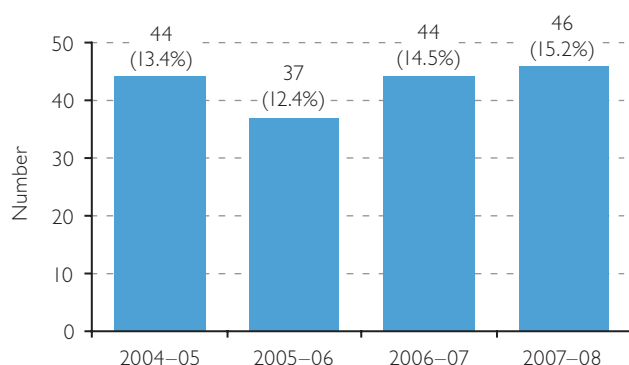
Trends

There were 171 people who received an intensive correction order for causing serious injury recklessly. This represented 13.9% of all people sentenced for this offence. Figure 16 shows the trends in the number and percentage of people who received an intensive correction order for causing serious injury recklessly.



In 2007–08, 46 people received an intensive correction order for the principal proven offence of causing serious injury recklessly. This has remained relatively stable over the past two years, after increasing the previous year. Also, the proportion of people who received an intensive correction order for causing serious injury recklessly remained relatively stable over the past two years ranging from 14.5% in 2006–07 to 15.2% in 2007–08.

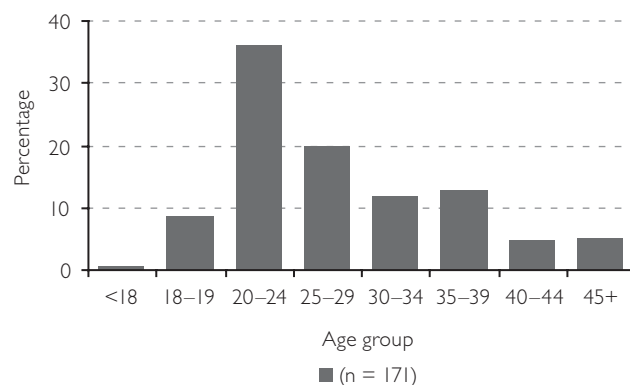
Figure 16: The number and percentage of people who received an intensive correction order for causing serious injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 171 people who received an intensive correction order, 97.1% were men. Figure 17 shows the age groups of people who received an intensive correction order for causing serious injury recklessly. The median age of these people was 25 years.

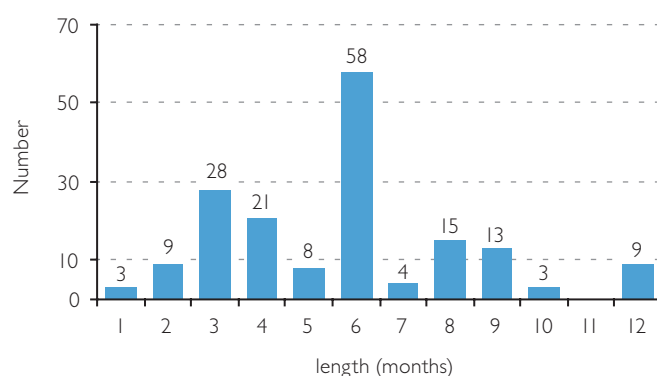
Figure 17: The percentage of people who received an intensive correction order for causing serious injury recklessly by age, 2004–05 to 2007–08



Length of sentence

Figure 18 shows the number of people who received an intensive correction order for causing serious injury recklessly by the length of the sentence. While the length of intensive correction orders ranged from one month to one year, the most common length was 6 months (33.9%). Aggregate intensive correction orders were imposed for 33.9% of people who received an intensive correction order.²¹

Figure 18: The number of people who received an intensive correction order for causing serious injury recklessly by the length of order, 2004–05 to 2007–08

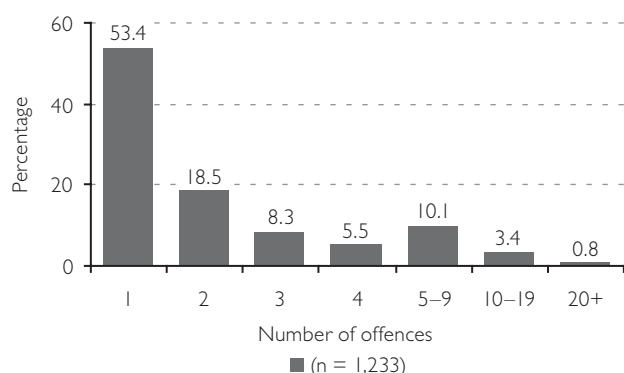


Other offences finalised at the same hearing

Often people prosecuted for causing serious injury recklessly 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 causing serious injury recklessly.

Figure 19 shows the number of people sentenced for the principal offence of causing serious injury recklessly by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 43. There were 659 people (53.4%) sentenced for the single offence of causing serious injury recklessly alone. A much higher percentage of women were sentenced for a single offence only (63.4% compared to 52.7% of men). The average number of offences per person sentenced for causing serious injury recklessly was 2.68.

Figure 19: The percentage of cases where causing serious injury recklessly was the principal offence by the number of offences where a sentence was imposed in that case, 2004–05 to 2007–08



While Figure 19 presents the number of sentenced offences for those sentenced for causing serious injury recklessly, Table 4 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 144 of the total 1,233 people (11.7%) also received sentences for unlawful assault. On average, they were sentenced for 1.27 charges of unlawful assault. The first row indicates that the average number of charges of causing serious injury recklessly sentenced per person was 1.03.

Table 4: The number and percentage of people sentenced for the principal offence of causing serious injury recklessly by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2007–08

Offence	No.	%	Avg.
1 causing serious injury recklessly	1,233	100.0	1.03
2 unlawful assault	144	11.7	1.27
3 causing injury	119	9.7	1.33
4 aggravated assault	94	7.6	1.23
5 theft	93	7.5	2.65
6 criminal damage	84	6.8	1.24
7 failing to appear on bail	80	6.5	1.35
8 breach of intervention order	58	4.7	1.50
9 assault police	53	4.3	1.70
10 make threat to kill	44	3.6	1.18
People sentenced	1,233	100.0	2.68

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of causing serious injury recklessly. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.²²

Table 5 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004–05 to 2007–08 where the principal proven offence was causing serious injury recklessly, by the other sentence types also imposed in the case. For example, of the 406 people who received a fine as part of their total effective sentence, 24.9% also received a wholly suspended sentence.

Common sentence types imposed in conjunction with another sentence type include:

- a fine with a wholly suspended sentence (38.5% of the 262 people who received a wholly suspended sentence);
- a fine with a partially suspended sentence (19.7% of the 76 people); and
- a fine with an imprisonment term (18.2% of the 192 people).

Table 5: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004–05 to 2007–08

	Fine	WSS	CBO	Imp.	ICO	PSS
Fine	100%	38.5%	11.0%	18.2%	11.6%	19.7%
WSS	24.9%	100%	11.0%	0.5%	2.3%	2.6%
CBO	7.6%	11.8%	100%	2.6%	1.7%	6.6%
Imp.	8.6%	0.4%	1.8%	100%	0.6%	19.7%
ICO	4.9%	1.5%	1.1%	0.5%	100%	0.0%
PSS	3.7%	0.8%	1.8%	7.8%	0.0%	100%
Total	406	262	281	192	172	76

Note: WSS refers to wholly suspended sentence, CBO refers to community-based order, Imp. refers to imprisonment, ICO refers to intensive correction order and PSS refers to partially suspended sentence.

Total effective sentence of imprisonment and non-parole period

The total effective sentence of imprisonment aggregates the sentences of imprisonment imposed for each charge in a case and takes into account whether the court orders sentences to be served concurrently (at the same time) or cumulatively. 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 the court does not set a non-parole period, the person must serve the entirety of the imprisonment term.

There were 87 people given a total effective sentence of imprisonment in 2006–07 and 2007–08.²³ There were 44 people eligible for a non-parole period in 2006–07 and 2007–08, of whom 42 were given a non-parole period. This makes up 48.3% of all those who were given a total effective sentence of imprisonment.

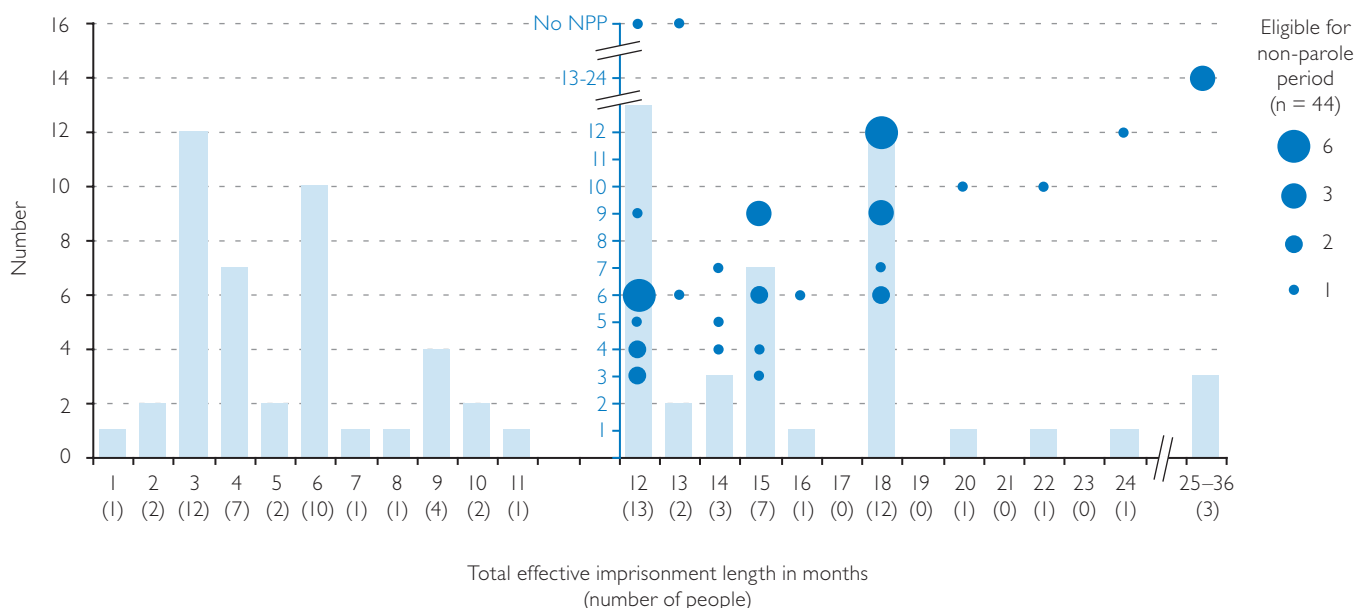
Figure 20 shows the number of people sentenced to imprisonment for causing serious injury recklessly during 2006–07 and 2007–08 by the length of their total effective sentence.

The right side of the graph also shows the length of non-parole periods for people who were sentenced to a period of 12 months' imprisonment or more. 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.²⁴

Total effective imprisonment lengths ranged from one month to two years and nine months, while the most common length was 12 months (13 people).

For people who were sentenced to a term of imprisonment of 12 months or longer, the most common combinations of imprisonment length and non-parole period were one year and six months with a non-parole period of one year, and one year with a non-parole period of six months (6 people each) – as represented by the largest bubbles on the chart). The longest total effective sentence imposed was two years and nine months with a non-parole period of one year and six months.

Figure 20: The number of people sentenced to imprisonment for causing serious injury recklessly by the total effective sentence length and the non-parole period imposed, 2006–07 and 2007–08



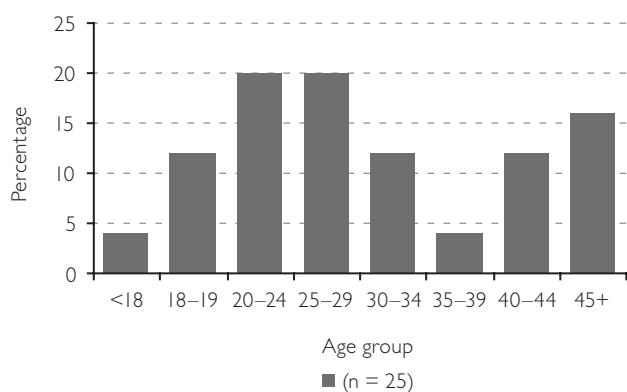
Criminal justice diversion plan²⁵

Although the criminal justice diversion plan is not a sentencing outcome, it is a dispositional process that does help to reflect the work of the courts. Over the four-year period, there were 25 people who were given a criminal justice diversion plan.

Age and gender

Of the 25 people who were referred to the criminal justice diversion program, 80.0% were men. Figure 21 shows the age groups of people who were referred to the criminal justice diversion program for causing serious injury recklessly. The median age of these people was 29 years.

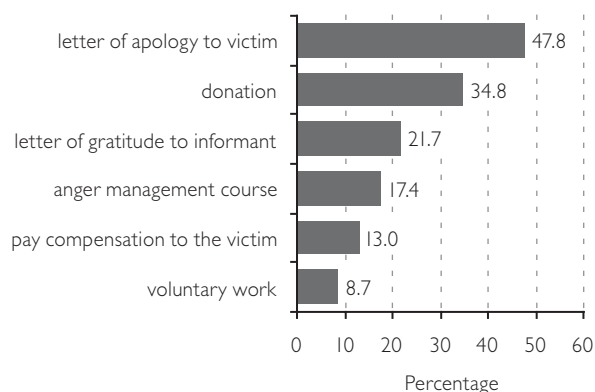
Figure 21: The percentage of people who were referred to the criminal justice diversion program for causing serious injury recklessly by age, 2004–05 to 2007–08



Conditions

Figure 22 shows the percentage of people who received a criminal justice diversion plan for causing serious injury recklessly by the types of conditions set. People can be given more than one condition on a diversion plan. As shown, the most common condition listed for diversion plans was a letter of apology to the victim (47.8% of people).

Figure 22: The percentage of conditions set for people who received a criminal justice diversion plan for causing serious injury recklessly, 2004–05 to 2007–08



Summary

The Magistrates' Court sentenced 1,233 people for the principal offence of causing serious injury recklessly between 2004–05 and 2007–08. Over this period, the majority of those sentenced were men (1,151 people or 93.3%), while 30% were aged between 20 and 25 years.

Around four in ten people sentenced for causing serious injury recklessly received a non-custodial sentence (536 people or 43.5%), including 237 people who received a community-based order (19.2%) and 212 people who received a fine (17.2%). A conviction was recorded with the principal sentence for 84.0% of people sentenced.

Men were more likely to receive intensive correction orders and sentences of imprisonment. Conversely, women were more likely to receive community-based orders and adjourned undertakings.

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence. Conversely, a higher percentage of younger people received a non-custodial sentence, including a community-based order and a fine.

Each of the 1,233 people was sentenced for an average of 2.68 offences, including 1.03 offences of causing serious injury recklessly. The most common offence finalised in conjunction with causing serious injury recklessly was unlawful assault (11.7% of all cases).

Common sentence types imposed in conjunction with another sentence type included a fine with a wholly suspended sentence (38.5% of the 262 people who received a wholly suspended sentence), a fine with a partially suspended sentence (19.7% of the 76 people) and a fine with an imprisonment term (18.2% of the 192 people).

Lengths of total effective sentences ranged from one month to two years and nine months with a non-parole period of one year and six months. The most common length was 12 months (13 people).

¹ The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of causing serious injury recklessly in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for causing serious injury recklessly who received a more serious sentence for another offence on the same charge sheet.

² The data used for analysis in this report contain information on age and gender characteristics. Indigenous status was unknown for 56.5% of people sentenced over this period. Therefore no analyses are presented on Indigenous status.

³ *Crimes Act 1958* s 17.

⁴ *R v Campbell* [1997] 2 VR 585. See also *R v Crabbe* (1995) 156 CLR 464; *R v Nuri* [1990] VR 641.

⁵ *Crimes Act 1958* s 15.

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).

⁷ Under section 113 of the *Sentencing Act 1991* (Vic) this general maximum term is prescribed for indictable offences triable summarily. Though section 113 does not specifically state the maximum number of penalty units that can be imposed for an indictable offence triable summarily, section 109(3)(a) sets the proportion between the maximum term of imprisonment and the maximum fine.

⁸ The number of people sentenced excludes those who participated in the criminal justice diversion program.

Only the people who had charges that were dismissed in 2006–07 and 2007–08 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (s 360(1)(a) *Children, Youth and Families Act 2005* (Vic)) or 'dismissed' (s 76 *Sentencing Act 1991* (Vic)). The charges that were dismissed in 2004–05 and 2005–06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the four-year period could be an under-representation. However, in 2007–08, no people had charges that were dismissed pursuant to this legislation.

⁹ The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and a diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.

¹⁰ *Sentencing Act 1991* (Vic) s 7 and s 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social well being or on his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).

¹¹ Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004–05 and 2005–06.

¹² The age was unknown for 3 men and 1 woman sentenced for causing serious injury recklessly (0.3%). These people are excluded from all age analyses in this report.

¹³ Refer fn. 8.

¹⁴ Aggregate sentence lengths are shown for people who received an aggregate sentence. Data for sentence lengths of community-based orders are only available for 2006–07 and 2007–08.

¹⁵ The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.

¹⁶ Where there are sufficient numbers of both males and females sentenced for each sentencing outcome, the age groups are shown by gender. Otherwise the age groups are shown independent of gender. Also, the age was unknown for 4 people sentenced for causing serious injury recklessly. These people are excluded from these analyses.

¹⁷ Aggregate sentence lengths are shown for people who received an aggregate sentence. Fine amounts lower than \$1,000 are rounded up to the nearest \$100, while fine amounts equal to or over \$1,000 are grouped into categories. Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006–07 and 2007–08.

¹⁸ The length of non-aggregate wholly suspended sentences ranged from thirteen days to one year, with a median of four months, while the length of aggregate wholly suspended sentences ranged from one month to two years, with a median of six months.

¹⁹ The amount of non-aggregate fines ranged from \$350 to \$7,500, with a median of \$1,000, while the amount of aggregate fines ranged from \$500 to \$7,000, with a median of \$1,000.

²⁰ The length of non-aggregate periods of imprisonment ranged from seven days to two years, with a median of seven months and fifteen days, while the length of aggregate periods of imprisonment ranged from one month to two years and six months, with a median of nine months.

²¹ The length of non-aggregate intensive correction orders ranged from one month to one year, with a median of six months, while the length of aggregate intensive correction orders ranged from one month to one year, with a median of six months.

²² While a total of 192 people were sentenced to at least one period of imprisonment in the case, 177 people had imprisonment listed against their principal proven offence. There were 15 people sentenced to a period of imprisonment, but who received a partially suspended sentence of imprisonment for the principal proven offence.

Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.

²³ Total effective imprisonment lengths and non-parole periods are only available for 2006–07 and 2007–08.

²⁴ Non-parole periods are rounded down to the nearest month, while non-parole periods greater than one year are grouped into categories of years.

²⁵ The data analysed in this section were compiled by merging the sentencing outcomes database with an extract from the criminal justice diversion plan database. Of the 25 people who were placed on the diversion program for this offence, 23 were matched to and had conditions listed in the criminal justice diversion plan database (92.0%).

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

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- 61 Causing serious injury recklessly
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- 57 Burglary
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- 54 Theft from a shop
- 53 Theft from a motor vehicle
- 52 Theft of a motor vehicle

Sentencing trends in the Magistrates' Court, 2004–05 to 2006–07

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- 49 Indecent Assault

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- 47 Cultivating narcotic plants
- 46 Trafficking in a large commercial quantity of drugs
- 45 Trafficking in a commercial quantity of drugs
- 44 Trafficking in a non-commercial quantity of drugs
- 43 Incest
- 42 Affray
- 41 Causing injury intentionally or recklessly
- 40 Causing serious injury recklessly
- 39 Causing serious injury intentionally
- 38 Aggravated burglary
- 37 Burglary
- 36 Attempted armed robbery
- 35 Armed robbery
- 34 Robbery

Sentencing trends in the higher courts, 2001–02 to 2005–06

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- 32 Sexual penetration of a child aged 10 to 16 under the care, supervision or authority of the offender
- 31 Sexual penetration of a child aged between 10 and 16
- 30 Making a threat to kill
- 29 Culpable driving causing death
- 28 Manslaughter
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- 26 Rape
- 25 Maintaining a sexual relationship with a child aged under 16
- 24 Indecent act with a child aged under 16
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- 18 Obtaining financial advantage by deception
- 17 Theft
- 16 Handling stolen goods

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

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ISSN 1832–6153

Authorised by the Sentencing Advisory Council, Level 4, 436 Lonsdale Street, Melbourne.

Printed by BigPrint, 50 Lonsdale Street, Melbourne.

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