

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2003–04 to 2007–08

June 2009
No. 80

Indecent assault

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent assault and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2003–04 and 2007–08.³

A person who assaults another person in indecent circumstances and without that person's consent, is guilty of the offence of indecent assault.⁴ Indecent assault carries a maximum penalty of 10 years' imprisonment⁵ and/or a fine of 1200 penalty units.⁶ It is an indictable offence that is triable summarily by the Magistrates' Court, if the Magistrates' Court considers it appropriate and the defendant consents.

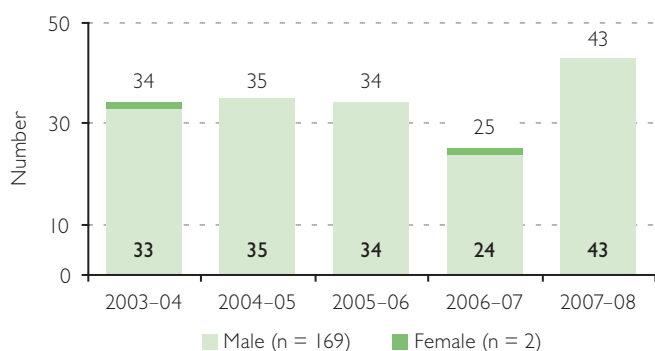
Indecent assault was the principal offence in 1.6% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of indecent assault for the period 2003–04 to 2007–08. As shown, 171 people were sentenced for indecent assault over the five year period. There were 43 people sentenced for this offence in 2007–08, up by 18 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (98.8% or 169 of 171 people), including all of the 43 people sentenced in 2007–08.

Figure 1: The number of people sentenced for indecent assault by gender, 2003–04 to 2007–08



Sentence types and trends

Figure 2 shows the total number of people sentenced for indecent assault 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.⁷ Over the five year period, 41% of people were given an immediate custodial sentence. This peaked at 56% (14 of 25) in 2006–07 before decreasing to 30% (13 of 43) in 2007–08.

Figure 2: The number of people sentenced for indecent assault and the number who received an immediate custodial sentence, 2003–04 to 2007–08

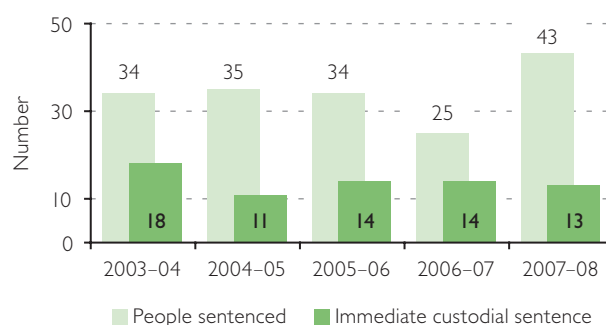


Table 1 shows the number of people sentenced for indecent assault from 2003–04 to 2007–08 by the types of sentence imposed.

Over the five year period, around one third of the people sentenced for indecent assault received a term of imprisonment (31% or 53 of 171 people), while 29% received a wholly suspended sentence of imprisonment,⁸ 9% received a partially suspended sentence of imprisonment and 8% received a community-based order.

Table 1: The number and percentage of people sentenced for indecent assault by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	15 (44%)	9 (26%)	8 (24%)	12 (48%)	9 (21%)
Wholly suspended sentence	8 (24%)	14 (40%)	10 (29%)	5 (20%)	12 (28%)
Partially suspended sentence	3 (9%)	2 (6%)	6 (18%)	2 (8%)	3 (7%)
Community-based order	0 (–)	3 (9%)	7 (21%)	1 (4%)	3 (7%)
Intensive correction order	3 (9%)	3 (9%)	1 (3%)	1 (4%)	2 (5%)
Adjourned undertaking with conviction	3 (9%)	2 (6%)	0 (–)	0 (–)	4 (9%)
Fine	0 (–)	0 (–)	1 (3%)	2 (8%)	3 (7%)
Adjourned undertaking without conviction	0 (–)	1 (3%)	0 (–)	2 (8%)	1 (2%)
Non-custodial supervision order	0 (–)	0 (–)	0 (–)	0 (–)	3 (7%)
Mix (community-based order and fine)	1 (3%)	0 (–)	0 (–)	0 (–)	1 (2%)
Youth supervision order	1 (3%)	0 (–)	0 (–)	0 (–)	0 (–)
Unconditional release	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)
Mix (wholly suspended sentence and fine)	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)
Mix (fine and adjourned undertaking)	0 (–)	0 (–)	1 (3%)	0 (–)	0 (–)
Aggregate imprisonment	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)
People sentenced	34	35	34	25	43

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for indecent assault grouped by their age⁹ between 2003–04 and 2007–08. The average age of people sentenced for indecent assault was forty-seven years. Two male juveniles were sentenced over this period.

Sentence types by gender

Table 2 shows the types of sentence imposed for indecent assault grouped by gender. As shown, nearly one third of men received a period of imprisonment (31.2%) while over one quarter received a wholly suspended sentence of imprisonment (28.8%). The two women received an adjourned undertaking (one without conviction and one with conviction).

Figure 3: The number of people sentenced for indecent assault by gender and age, 2003–04 to 2007–08



Table 2: The number and percentage breakdown of people sentenced for indecent assault by gender, 2003–04 to 2007–08

Sentence type	Male	Female	Total
Imprisonment	53 (31%)	0 (–)	53 (31%)
Wholly suspended sentence	49 (29%)	0 (–)	49 (29%)
Partially suspended sentence	16 (9%)	0 (–)	16 (9%)
Community-based order	14 (8%)	0 (–)	14 (8%)
Intensive correction order	10 (6%)	0 (–)	10 (6%)
Adjourned undertaking with conviction	8 (5%)	1 (50%)	9 (5%)
Fine	6 (4%)	0 (–)	6 (4%)
Adjourned undertaking without conviction	3 (2%)	1 (50%)	4 (2%)
Non-custodial supervision order	3 (2%)	0 (–)	3 (2%)
Mix (community-based order and fine)	2 (1%)	0 (–)	2 (1%)
Youth supervision order	1 (<1%)	0 (–)	1 (<1%)
Unconditional release	1 (<1%)	0 (–)	1 (<1%)
Mix (wholly suspended sentence and fine)	1 (<1%)	0 (–)	1 (<1%)
Mix (fine and adjourned undertaking)	1 (<1%)	0 (–)	1 (<1%)
Aggregate imprisonment	1 (<1%)	0 (–)	1 (<1%)
People sentenced	169	2	171

Sentence types by age

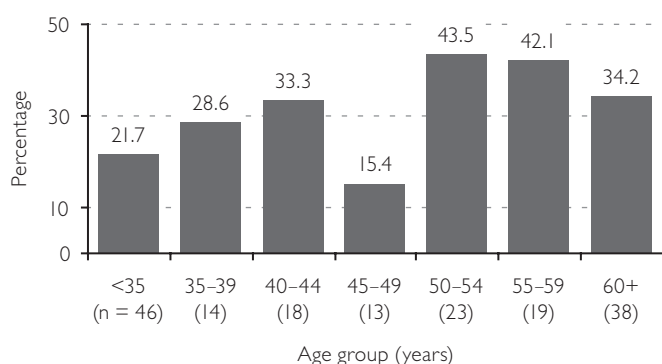
As shown in Table 2, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, partially suspended sentences of imprisonment and community-based orders. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 50–54 years old (43% or 10 of the 23 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 45–49 years old (15% or two of the 13 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for indecent assault by age group, 2003–04 to 2007–08

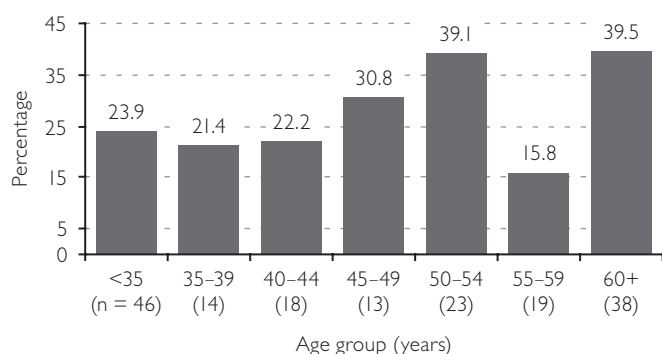


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 60 years and older (39% or 15 of the 38 people in this age group) followed by people aged 50–54 years old (39% or nine of the 23 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 55–59 years old (16% or three of the 19 people in this age group).

Figure 5: The percentage of people who received a wholly suspended sentence of imprisonment for indecent assault by age group, 2003–04 to 2007–08

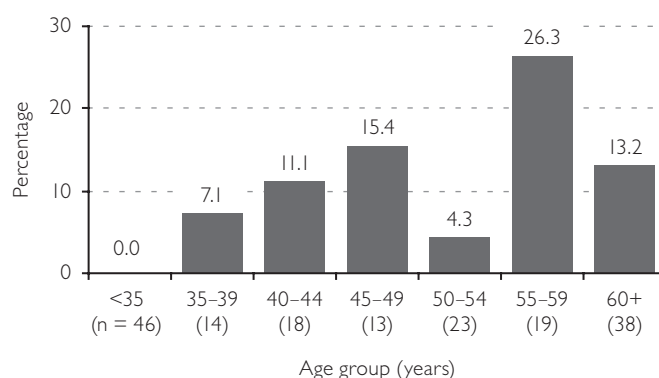


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 55–59 years old (26% or five of the 19 people in this age group).

Conversely, none of the 46 people aged under 35 years received a partially suspended sentence of imprisonment.

Figure 6: The percentage of people who received a partially suspended sentence of imprisonment for indecent assault by age group, 2003–04 to 2007–08

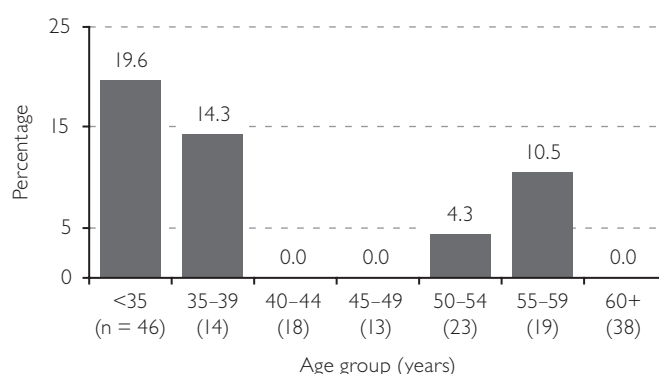


Community-based orders

Community-based orders were most likely to be given to people aged under 35 years (20% or nine of the 46 people in this age group).

Conversely, none of the 18 people aged 40–44 years old, none of the 13 people aged 45–49 years old and none of the 38 people aged 60 years and older received a community-based order.

Figure 7: The percentage of people who received a community-based order for indecent assault by age group, 2003–04 to 2007–08



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 indecent assault must be considered in this broader context. The following sections analyse the use of imprisonment for indecent assault over 2003–04 to 2007–08.

Principal sentence of imprisonment

Figure 8 shows the number of people sentenced to imprisonment for indecent assault between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from 4 months to six years, while the median length of imprisonment was one year and six months (meaning that half of the imprisonment terms were shorter than one year and six months and half were longer).

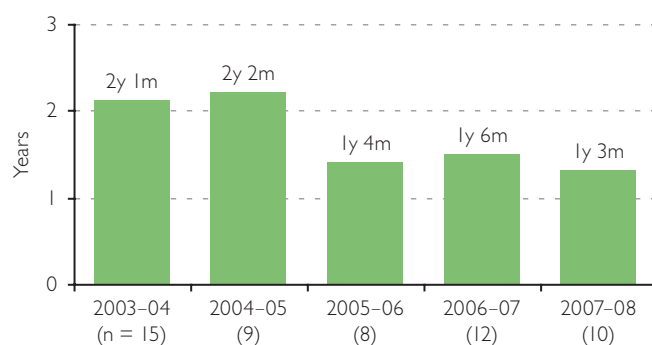
The most common length of imprisonment imposed was 1 year (22 people).

Figure 8: The number of people sentenced to imprisonment for indecent assault by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 9, the average length of imprisonment term imposed on people sentenced for indecent assault ranged from one year and three months in 2007–08 to two years and two months in 2004–05.

Figure 9: The average length of imprisonment term imposed on people sentenced for indecent assault, 2003–04 to 2007–08

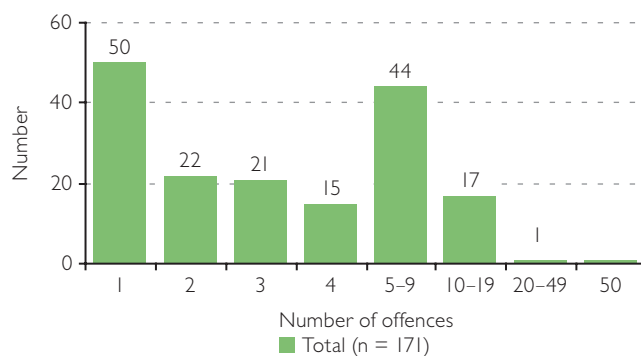


Other offences finalised at the same hearing

Often people prosecuted for indecent assault 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 indecent assault.

Figure 10 shows the number of people sentenced for the principal offence of indecent assault by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 50, while the median was 3 offences. There were 50 people (29.2%) sentenced for the single offence of indecent assault alone. The average number of offences per person sentenced for indecent assault was 4.75.

Figure 10: The number of people sentenced for the principal offence of indecent assault by the number of sentenced offences per person, 2003–04 to 2007–08



While Figure 10 presents the number of sentenced offences for those sentenced for indecent assault, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 14 of the total 171 people (8.2%) also received sentences for common law assault. On average, they were sentenced for 1.29 counts of common law assault.

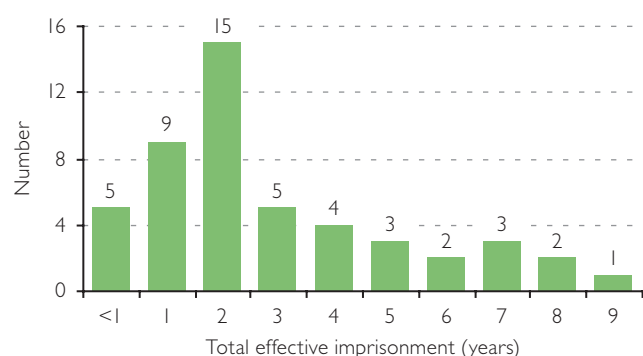
Table 3: The number and percentage of people sentenced for the principal offence of indecent assault by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

Offence	No.	%	Avg.
1 indecent assault	171	100.0	3.37
2 common law assault	14	8.2	1.29
3 false imprisonment	14	8.2	1.14
4 gross indecency with a child	13	7.6	3.69
5 indecent act with a child under 16	7	4.1	3.00
6 gross indecency	7	4.1	2.00
7 causing injury	6	3.5	1.17
8 theft	4	2.3	2.50
9 indecent assault of a male person	3	1.8	5.33
10 Unlawfully/Indecently assault a girl	3	1.8	2.00
People sentenced	171	100.0	4.75

Total effective sentence of imprisonment

There were 49 people given a total effective sentence of imprisonment.¹⁰ Figure 11 shows the number of people sentenced to imprisonment for indecent assault between 2003–04 and 2007–08 by the length of their total effective sentence. The length of total effective sentences ranged from four months to nine years and six months, while the median total effective length of imprisonment was two years and six months (meaning that half of the total effective sentence lengths were below two years and six months and half were above).

Figure 11: The number of people sentenced to imprisonment for indecent assault by total effective length of imprisonment term, 2003–04 to 2007–08



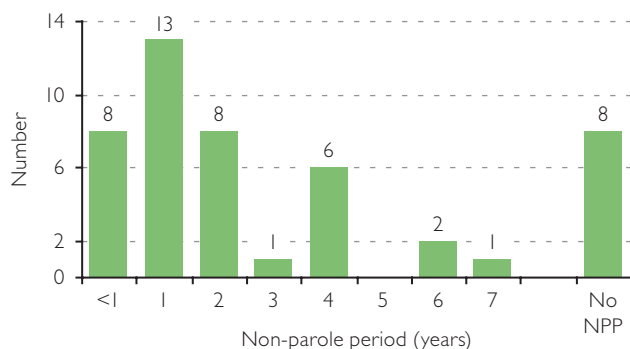
Non-parole period

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 s 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 indecent assault. Sentences and non-parole periods must be considered in this broader context.

Of the 49 people who were sentenced to imprisonment for indecent assault, 44 were eligible to have a non-parole period fixed.¹¹ Of these people, 39 were given a non-parole period (89%).¹² Figure 12 shows the number of people sentenced to imprisonment for indecent assault between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from five months to seven years, while the median length of the non-parole period was one year and eight months (meaning that half of the non-parole periods were below one year and eight months and half were above).

Figure 12: The number of people sentenced to imprisonment for indecent assault by length of non-parole period, 2003–04 to 2007–08



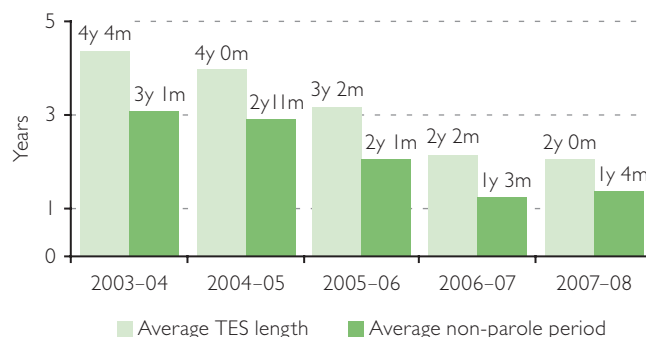
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective sentences of imprisonment and non-parole periods

Figure 13 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people from 2003–04 to 2007–08.¹³

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from two years in 2007–08 to four years and four months in 2003–04. Over the same period, the average length of non-parole periods ranged from one year and three months in 2006–07 to three years and one month in 2003–04.

Figure 13: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for indecent assault, 2003–04 to 2007–08

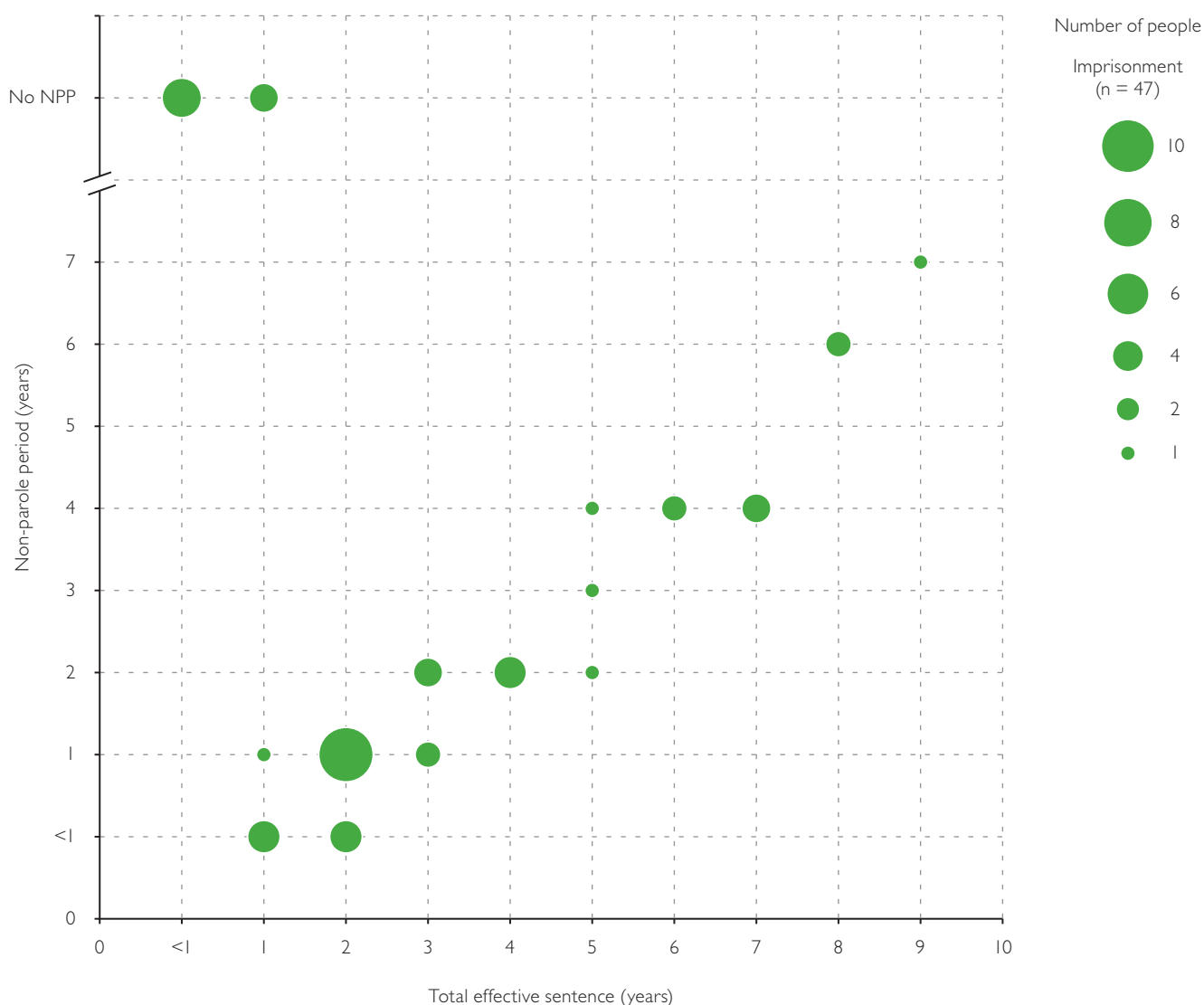


Total effective sentence of imprisonment by non-parole period

While Figures 11 and 12 present the lengths of the total effective sentences and non-parole periods separately, Figure 14 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for indecent assault 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.¹⁴ As shown, the most common combination of imprisonment length and non-parole period imposed was two years with a non-parole period of one year (10 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from four months with no non-parole period to nine years and six months with a non-parole period of seven years.

Figure 14: The number of people sentenced to imprisonment for indecent assault by the total effective sentence and the non-parole period imposed, 2003–04 to 2007–08¹⁵



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

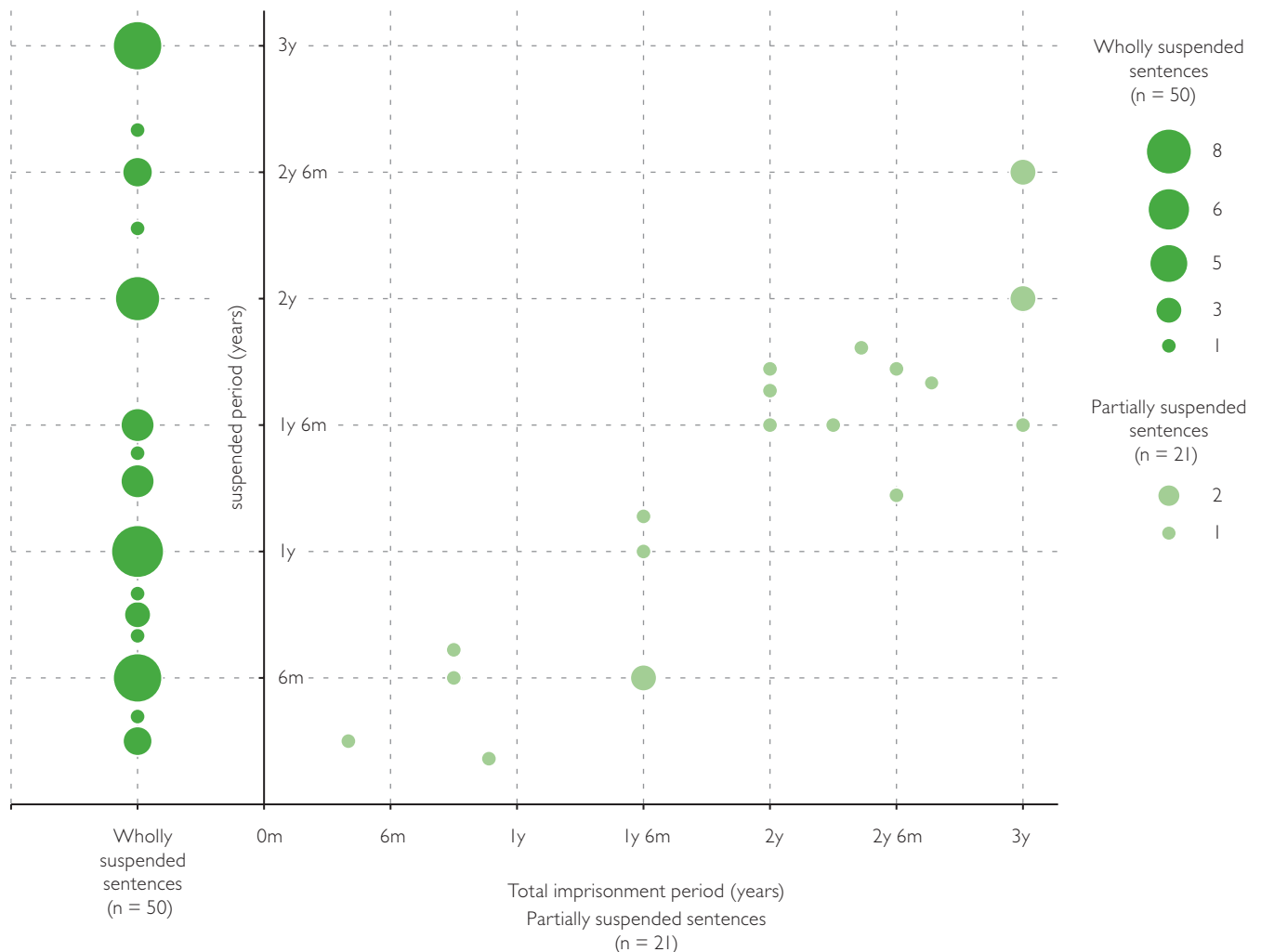
Suspended sentences of imprisonment

There were 71 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 50 people had their prison sentence wholly suspended and 21 received a partially suspended sentence of imprisonment. Figure 15 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 dark green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the light green '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 partially suspended prison term.

Wholly suspended sentence lengths ranged from three months to three years. The most common wholly suspended sentence length was one year (8 people – as represented by the largest dark green 'bubble' on the chart).

The most common partially suspended sentence combinations were one year and six months with six months suspended, three years with two years suspended and three years with two years and six months suspended (2 people each – as represented by the three largest light green 'bubbles' on the chart).

Figure 15: The number of people given a wholly or partially suspended sentence of imprisonment for indecent assault by sentence type and length, 2003–04 to 2007–08

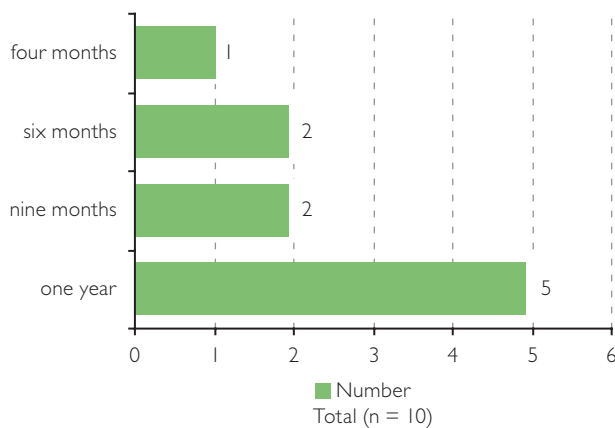


Intensive correction orders

There were 10 people given an intensive correction order as their total effective sentence.

The length of intensive correction orders for indecent assault ranged from four months to one year, while the most common length was one year (5 people).

Figure 16: The number of people sentenced to an intensive correction order for indecent assault by length of order imposed, 2003–04 to 2007–08

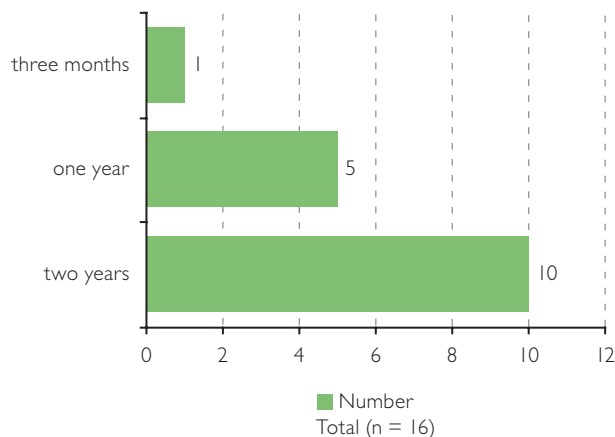


Community-based orders

There were 16 people given a community-based order as their total effective sentence.

The length of community-based orders for indecent assault ranged from three months to two years, while the most common length was two years (10 people).

Figure 17: The number of people sentenced to a community-based order for indecent assault by length of order imposed, 2003–04 to 2007–08



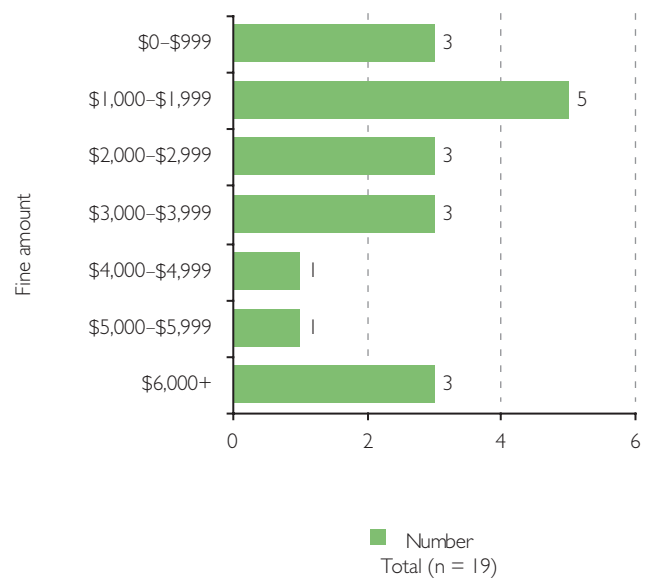
Fines

This analysis includes all fines that were imposed for cases where indecent assault was the principal offence, including fines for other charges sentenced in the same case. Fines were imposed on 19 people.

The fine amount imposed ranged from \$100 to \$55,500,¹⁶ with a median of \$2,000 (meaning that half of the values fell below \$2,000 and half of the values were above \$2,000).

The average fine amount was \$8,037. Fines were only imposed against men.

Figure 18: The number of people who received a fine for indecent assault by fine amount, 2003–04 to 2007–08



Summary

Between 2003–04 and 2007–08, 171 people were sentenced for indecent assault in the higher courts. Over this period, the majority of those sentenced were men (99%), while 25% were between the age of 50 and 60 years.

Around one third of the people sentenced for indecent assault received a period of imprisonment (31%), while 29% received a wholly suspended sentence of imprisonment, 9% received a partially suspended sentence of imprisonment and 8% received a community-based order.

Imprisonment was more common for those aged between 50 and 60 years of age and wholly suspended sentences of imprisonment were more common for those older than 50 years of age.

Each of the 171 people was sentenced for an average of 4.75 offences, including 3.37 offences of indecent assault. The most common offence finalised in conjunction with indecent assault was common law assault (8.2% of all cases). The number and range of offences for which people with a principal offence of indecent assault were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was two years and six months, while the median principal imprisonment length was one year and six months.

Total effective imprisonment lengths ranged from four months with no non-parole period to nine years and six months with a non-parole period of seven years. The most common sentence of imprisonment was two years with a one year non-parole period.

The most common partially suspended sentence lengths were one year and six months with six months suspended, three years with two years suspended and three years with two years and six months suspended, while the most common wholly suspended sentence length was one year. The most common length of community-based order was two years.

1. This report presents sentencing outcomes for people sentenced for the principal offence of indecent assault in the County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for indecent assault who received a more serious sentence for another offence forming part of the same presentment. There were 422 people sentenced from 2003–04 to 2007–08 for 1,293 offences of indecent assault. Indecent assault was the principal proven offence for 171 of these people.

This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this series as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot No. 23, which described sentencing trends for indecent assault between 2001–02 and 2005–06.

2. The information source for sentencing outcomes for indecent assault only contains information on age and gender characteristics. No other demographic analysis is possible.
3. The statistical information presented here was provided by Court Services, Department of Justice (Vic). While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.
4. *Crimes Act 1958* (Vic) s 39(2).
5. *Crimes Act 1958* (Vic) s 39(1).
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. Immediate custodial sentence includes imprisonment, partially suspended sentence and aggregate imprisonment.
8. The *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4(2) amended the *Sentencing Act 1991* (Vic) s 26(2B) to restrict the use of wholly suspended sentences for serious offences to cases involving exceptional circumstances. This legislation commenced on 1 November 2006. There were 17 individuals who received a wholly suspended sentence for the principal proven offence of indecent assault in 2006–07 and 2007–08. All but one of these offenders committed the offences prior to this legislative change.
9. Age is as at the time of sentencing.
10. Of the 54 people who were given a principal sentence of imprisonment, 49 were also given a total effective sentence of imprisonment. There were five people who were given imprisonment as the principal sentence for indecent assault and a partially suspended sentence as a total effective sentence.
11. Five people were not eligible for parole because they were given a total effective sentence length of less than one year.
12. Two 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. A non-parole period was not set for three people who were eligible for a non-parole period.
13. There were no women imprisoned with a non-parole period over the reference period.
14. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
15. This graph includes the 47 people who were given a total effective sentence and a non-parole period that related to this case only.
16. In 2005–06, a 44 year-old male was sentenced for 24 charges, including 20 offences from the *Prostitution Control Act 1994* (Vic) and 4 offences of indecent assault. He received a partially suspended sentence and a total fine of \$55,500.

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

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