

Sentencing trends in
the higher courts of
Victoria
2016–17 to 2020–21

April 2022
No. 272

Theft

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of theft² in the County and Supreme Courts of Victoria (the higher courts) from 2016–17 to 2020–21.³ Adjustments made by the Court of Appeal to sentence or conviction as at June 2021 have been incorporated into the data in this Snapshot.

Detailed data on theft and other offences is available on [Sentencing Advisory Council Statistics \(SACStat\)](#).

A person who dishonestly appropriates any property belonging to another person with the intention of permanently depriving that person of the property is guilty of theft. Theft is an indictable offence that carries a maximum penalty of 10 years' imprisonment and/or a fine of 1,200 penalty units.⁴ It can be dealt with summarily in the Magistrates' Court if certain criteria are met.⁵

This Snapshot focuses on cases where theft was the principal offence, that is, cases where theft was the offence that received the most severe sentence.⁶

Theft was the principal offence in 1.6% of cases sentenced in the higher courts between 2016–17 and 2020–21.

Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic. For instance:

- the number of people sentenced since March 2020 may be lower than in previous years because the pandemic caused delays in court proceedings;
- court backlogs may have led to prioritisation of more serious cases and therefore higher imprisonment rates than in previous years;
- prison sentences may be shorter than in previous years to reflect the combined effect of:
 - a. guilty pleas having an 'augmented mitigatory effect' (*Worboyes v The Queen* [2021] VSCA 169) because they help to relieve the strain on the justice system; and
 - b. the experience of prison being more burdensome due to increased stress on prisoners and their families and changes in custodial conditions.

People sentenced

From 2016–17 to 2020–21, 133 people were sentenced in the higher courts for a principal offence of theft.

Figure 1 shows the number of people sentenced for the principal offence of theft by financial year. The number of people sentenced was highest in 2016–17 (31 people) and lowest in 2017–18 (19 people).

Sentence types and trends

Figure 2 shows the proportion of people who received a custodial or non-custodial sentence for the principal offence of theft.

A *custodial sentence* involves at least some element of immediate imprisonment or detention.⁷ The rate of custodial sentences was lowest in 2017–18 (52.6%) and highest in 2021–21 (92.0%). Over the five-year period, 79.7% of people were given a custodial sentence.

Table 1 shows the principal sentence imposed for the principal offence of theft from 2016–17 to 2020–21.⁸ The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.⁹ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished for offences committed after a certain date.¹⁰ Changes to community correction orders may have also influenced sentencing trends over the five years covered by this Snapshot.¹¹

Over the five-year period, around three out of four people sentenced for theft as the principal offence received a principal sentence of imprisonment (75.9% or 101 of 133 people). The rate of imprisonment sentences was highest in 2020–21 (92.0%) and lowest in 2017–18 (47.4%).

Figure 1: The number of people sentenced for theft by financial year

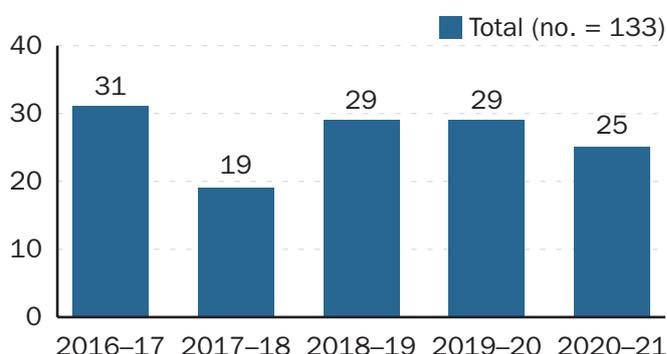


Figure 2: The percentage of people who received a custodial sentence and non-custodial sentence for theft by financial year

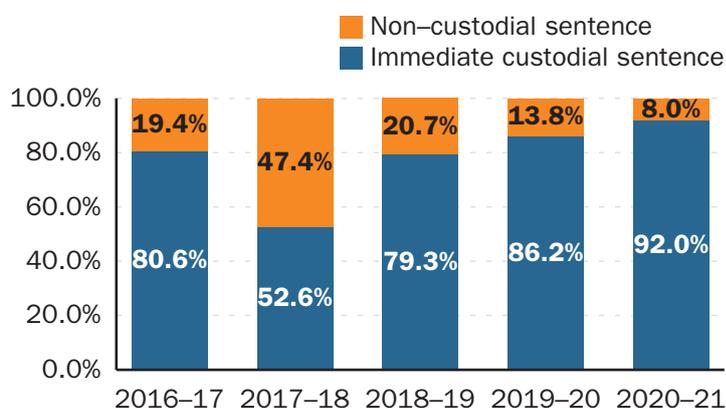


Table 1: The number and percentage of people sentenced for theft by principal sentence type and financial year

| Sentence type | 2016–17 | 2017–18 | 2018–19 | 2019–20 | 2020–21 | Total (2016–17 to 2020–21) |
|-------------------------------|------------|-----------|------------|------------|------------|----------------------------|
| Imprisonment | 23 (74.2%) | 9 (47.4%) | 22 (75.9%) | 24 (82.8%) | 23 (92.0%) | 101 (75.9%) |
| Community correction order | 2 (6.5%) | 8 (42.1%) | 4 (13.8%) | 2 (6.9%) | 1 (4.0%) | 17 (12.8%) |
| Fine | 2 (6.5%) | 1 (5.3%) | 0 (0.0%) | 2 (6.9%) | 0 (0.0%) | 5 (3.8%) |
| Youth justice centre order | 1 (3.2%) | 0 (0.0%) | 0 (0.0%) | 0 (0.0%) | 0 (0.0%) | 1 (0.8%) |
| Other | 3 (9.7%) | 1 (5.3%) | 3 (10.3%) | 1 (3.4%) | 1 (4.0%) | 9 (6.8%) |
| Total people sentenced | 31 | 19 | 29 | 29 | 25 | 133 |

Principal and total effective sentences of imprisonment

The principal sentence describes sentences for the offence at a *charge* level (as described in the previous section). The total effective sentence describes sentences at a *case* level.

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

Therefore, where a case involves multiple charges, the total effective sentence imposed on a person is sometimes longer than the principal sentence. Principal sentences for theft must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of theft from 2016–17 to 2020–21.

Principal sentence of imprisonment

Table 2 shows that a total of 101 people received a principal sentence of imprisonment for theft. Of these, 69 (68.3%) received a non-aggregate term of imprisonment and 32 (31.7%) received an aggregate term.¹² There were 25 people who received a community correction order in addition to their term of imprisonment.

Table 2: The number and percentage of people sentenced to imprisonment for theft by sentence type and financial year

| Type of imprisonment sentence | 2016–17 | 2017–18 | 2018–19 | 2019–20 | 2020–21 | Total (2016–17 to 2020–21) |
|---|-------------------|------------------|-------------------|-------------------|-------------------|----------------------------|
| Imprisonment | 10 (43.5%) | 4 (44.4%) | 13 (59.1%) | 14 (58.3%) | 15 (65.2%) | 56 (55.4%) |
| Mix (imprisonment and community correction order) | 9 (39.1%) | 0 (0.0%) | 0 (0.0%) | 1 (4.2%) | 3 (13.0%) | 13 (12.9%) |
| Total non-aggregate imprisonment | 19 (82.6%) | 4 (44.4%) | 13 (59.1%) | 15 (62.5%) | 18 (78.3%) | 69 (68.3%) |
| Aggregate imprisonment | 4 (17.4%) | 3 (33.3%) | 4 (18.2%) | 7 (29.2%) | 2 (8.7%) | 20 (19.8%) |
| Mix (aggregate imprisonment and community correction order) | 0 (0.0%) | 2 (22.2%) | 5 (22.7%) | 2 (8.3%) | 3 (13.0%) | 12 (11.9%) |
| Total aggregate imprisonment | 4 (17.4%) | 5 (55.6%) | 9 (40.9%) | 9 (37.5%) | 5 (21.7%) | 32 (31.7%) |
| Total people sentenced to imprisonment | 23 | 9 | 22 | 24 | 23 | 101 |

Figure 3 shows the length of imprisonment for the 69 people who received a non-aggregate term. Imprisonment terms ranged from 8 days to 4 years and 9 months,¹³ while the median length of imprisonment was 1 year and 6 months (meaning that half of the imprisonment terms were below 1 year and 6 months and half were above).

The most common ranges of imprisonment terms was less than 1 year and 1 to less than 2 years (20 people each).

Figure 4 shows the average length of imprisonment imposed on people sentenced for theft. The average imprisonment term increased overall, from 1 year and 5 months in 2016–17 to 2 years and 1 month in 2020–21. Over the five years, the average length of imprisonment for theft was 1 year and 8 months.

Other offences finalised at the same hearing

Sometimes people prosecuted for theft face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of theft.

Figure 5 shows the number of people sentenced for the principal offence of theft by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 53, and the median was 4 offences. There were 24 people (18.0%) sentenced for the single offence of theft. The average number of offences per person was 7.3.

Figure 3: The number of people sentenced to imprisonment for theft by length of imprisonment term, 2016–17 to 2020–21

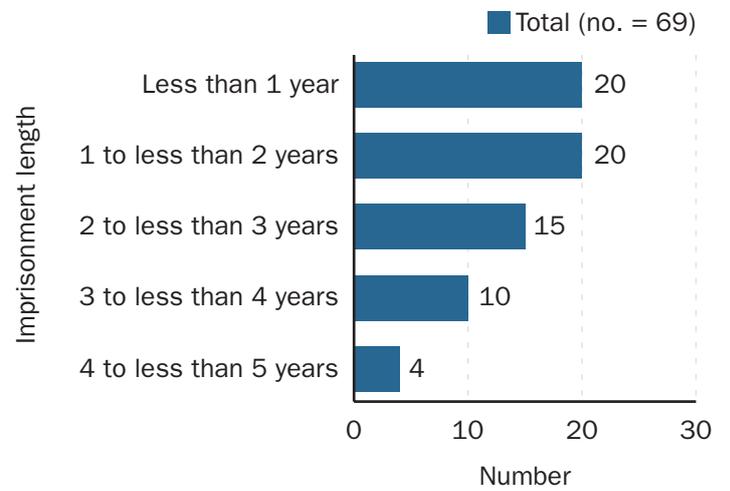


Figure 4: The average length of imprisonment imposed on people sentenced for theft, by financial year

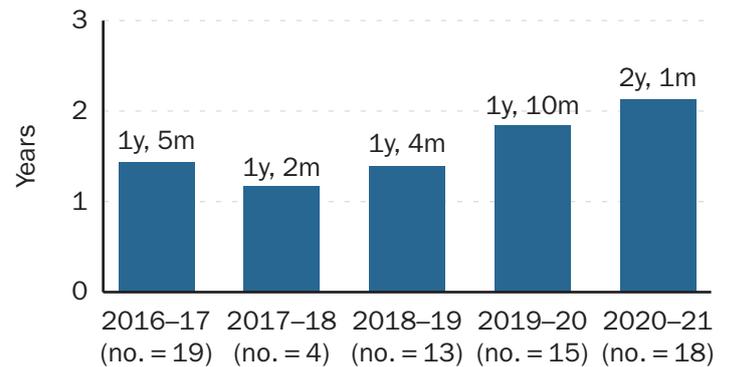


Figure 5: The number of people sentenced for the principal offence of theft by the number of sentenced offences per person, 2016–17 to 2020–21

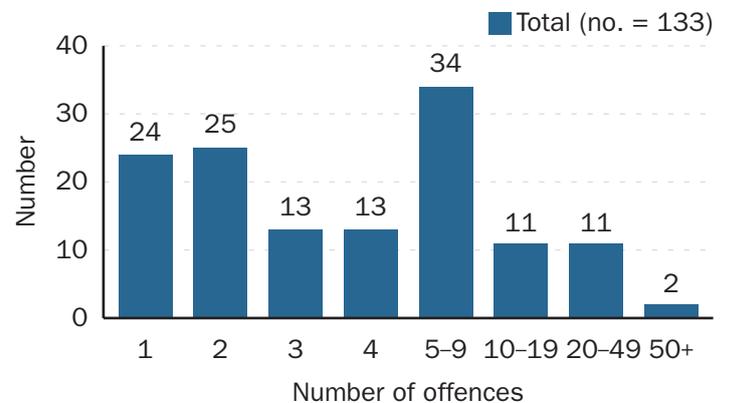


Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for theft. The last column sets out the average number of offences sentenced per person. For example, 10 of the total 133 people (7.5%) were also sentenced for obtain a financial advantage by deception. On average, they were sentenced for 3.7 charges of obtain a financial advantage by deception.

Table 3: The number and percentage of people sentenced for the principal offence of theft by the most common offences that were sentenced and the average number of those offences that were sentenced, 2016–17 to 2020–21

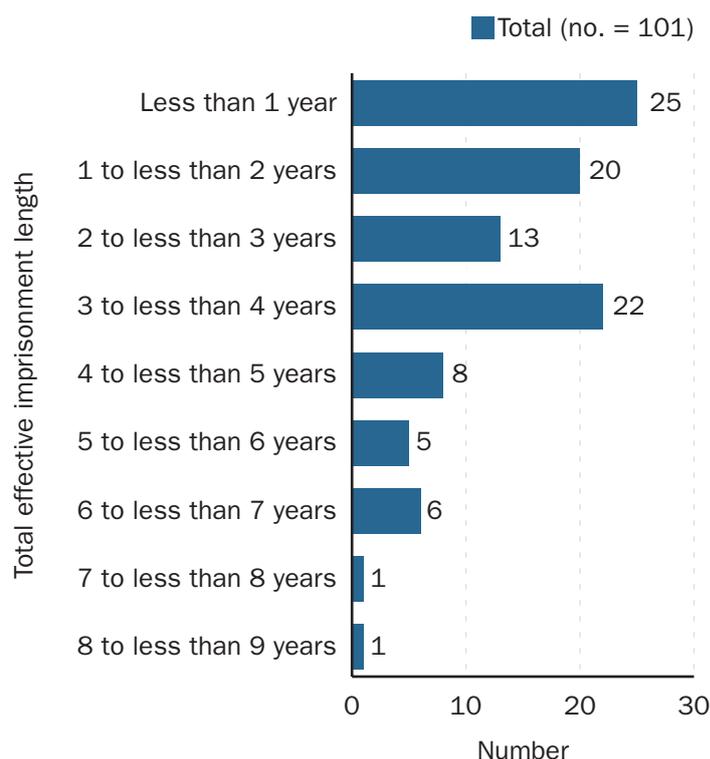
| Offence | Number of cases | Percentage of cases | Average number of proven offences per case |
|---|-----------------|---------------------|--|
| 1. Theft | 133 | 100.0% | 5.3 |
| 2. Commit an indictable offence while on bail | 14 | 10.5% | 1.1 |
| 3. Obtain a financial advantage by deception | 10 | 7.5% | 3.7 |
| 4. Possess a drug of dependence | 10 | 7.5% | 1.4 |
| 5. Handling stolen goods | 9 | 6.8% | 2.4 |
| 6. Burglary | 8 | 6.0% | 2.8 |
| 7. Deal property suspected proceed of crime | 7 | 5.3% | 1.3 |
| 8. Contravene a conduct condition of bail | 4 | 3.0% | 2.0 |
| 9. Intentionally damage property | 4 | 3.0% | 1.3 |
| 10. Possess, use or carry a prohibited weapon without exemption or approval | 4 | 3.0% | 1.0 |
| People sentenced | 133 | 100.0% | 7.3 |

Total effective imprisonment terms

Figure 6 shows the 101 people sentenced to imprisonment for theft by length of their total effective sentence. Total effective sentences ranged from 8 days to 8 years, while the median total effective sentence was 2 years and 3 months (meaning that half of the total effective sentences were below 2 years and 3 months and half were above).

The most common range of total effective sentences was less than 1 year (25 people).

Figure 6: The number of people sentenced to imprisonment for theft by length of total effective sentence, 2016–17 to 2020–21



Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than 1 year, the court cannot impose a non-parole period. For terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For terms of imprisonment of 2 years or more, the court must impose a non-parole period in most circumstances. If the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Of the 101 people sentenced to imprisonment for theft, 76 were eligible to have a non-parole period fixed. Of these people, 62 were given a non-parole period (81.6%).¹⁴

Figure 7 shows the number of people sentenced to imprisonment for theft, by length of non-parole period. Non-parole periods ranged from 9 months to 6 years, while the median non-parole period was 2 years (meaning that half of the non-parole periods were below 2 years and half were above).

The most common range of non-parole periods was 1 to less than 2 years (26 people). The most common outcome was no non-parole period (39 people).

Note that it was not possible to determine the length of the non-parole period for 1 person.¹⁵

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 61 people who were sentenced to imprisonment for theft and for whom the non-parole period could be determined. It shows the average total effective sentence and average non-parole period for these people by financial year.

From 2016–17 to 2020–21, the average total effective sentence ranged from 2 years and 11 months in 2017–18 and 2018–19 to 4 years and 5 months in 2016–17. Over the same period, the average non-parole period ranged from 1 year and 7 months in 2017–18 to 2 years and 9 months in 2016–17.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for theft is available on [SACStat](#).

Figure 7: The number of people sentenced to imprisonment for theft by length of non-parole period, 2016–17 to 2020–21

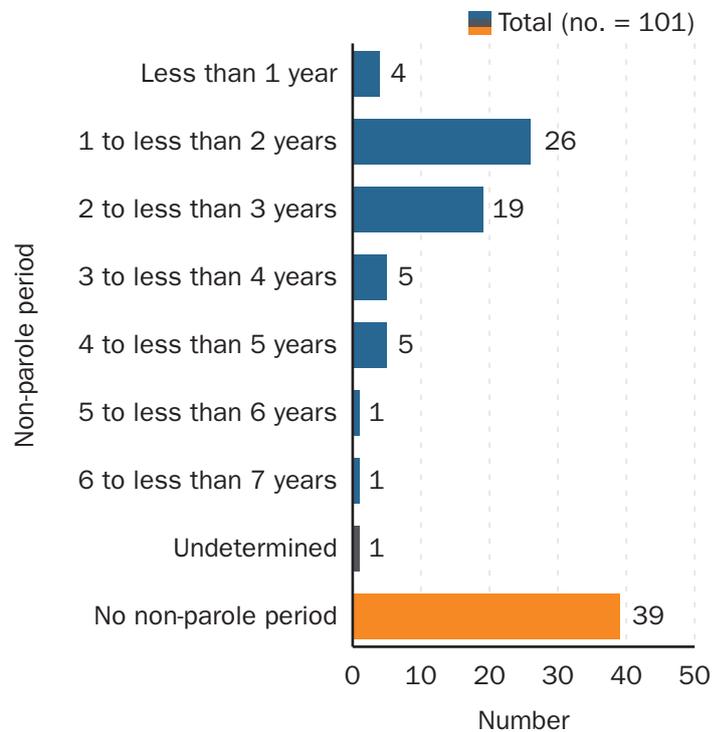
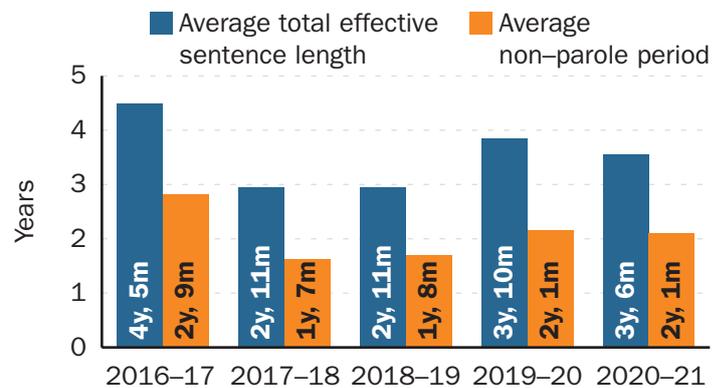


Figure 8: The average total effective sentence and the average non-parole period for people sentenced to imprisonment with a non-parole period for theft by financial year



Summary

From 2016–17 to 2020–21, 133 people were sentenced for theft in the higher courts. Of these people, 101 (75.9%) were given a principal sentence of imprisonment.

The median principal imprisonment length was 1 year and 6 months, while the median total effective sentence was 2 years and 3 months.

Total effective sentences ranged from 8 days to 8 years, and non-parole periods ranged from 9 months to 6 years.

On average, people sentenced for theft were found guilty of 7.3 offences each, with a maximum of 53 offences.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 252, which describes sentencing trends for theft between 2015–16 and 2019–20.
2. *Crimes Act 1958 (Vic)* s 74. This Snapshot excludes offences of theft of a firearm (*Crimes Act 1958 (Vic)* s 74AA), which has a maximum penalty of 15 years.
3. Data on first-instance sentence outcomes presented in this Snapshot was obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes was collected by the Sentencing Advisory Council from the [Australasian Legal Information Institute](#), and was also provided by the Victorian Court of Appeal. 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 Snapshot is accurate, the data is subject to revision.
4. The value of a penalty unit changes each year and can be found in the [Victorian Government Gazette](#) and on the [Victorian legislation website](#).
5. *Criminal Procedure Act 2009 (Vic)* s 28(1)(b)(ii).
6. 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.
7. Custodial sentences are mostly imprisonment but can also include partially suspended sentences, youth justice centre orders, hospital security orders, residential treatment orders, custodial supervision orders, and combined custody and treatment orders.
8. Principal sentence types can include 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 outcomes and in the count of people sentenced. These are not sentencing orders as they are imposed in cases in which the accused is found unfit to stand trial or not guilty because of mental impairment. However, they are included in this Snapshot as they are an important form of disposition of criminal charges.
9. For example, if the principal offence receives a combined order of imprisonment and a community correction order pursuant to section 44 of the *Sentencing Act 1991 (Vic)*, imprisonment is recorded as the most serious sentence type.
10. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
11. For example, initially the maximum term of imprisonment that could be combined with a community correction order was set at 3 months, but it was increased to 2 years in September 2014 and reduced to 1 year in March 2017.
12. A court may impose an *aggregate* sentence of imprisonment on multiple charges sentenced at the same time. These sentences are a single term of imprisonment in which the parts of the term attributable to the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
13. The longest prison sentence for theft was 4 years and 9 months: *DPP v Ede* [2021] VCC 191.

14. Fourteen people were eligible to have a non-parole period fixed but did not receive one. All 14 people had a sentence length between 1 year and less than 2 years.
15. One person was given a non-parole period that related to more than one case (for example, they may have already been serving a prison sentence at the time). It was not possible to separately determine the non-parole periods that related to each individual case.

SACStat Theft

<http://www.sentencingcouncil.vic.gov.au/sacstat/home.html>

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

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ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne.

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