

Sentencing trends in
the higher courts of
Victoria
2017–18 to 2021–22

June 2023
No. 277

Obtaining property by deception

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of obtaining property by deception in the County and Supreme Courts of Victoria (the higher courts) from 2017–18 to 2021–22.² Adjustments made by the Court of Appeal to sentence or conviction as at December 2022 have been incorporated into the data in this Snapshot.

Detailed data on obtaining property by deception and other offences is available on Sentencing Advisory Council Statistics (SACStat).

A person who, by any deception, dishonestly takes property belonging to another person with the intention of permanently depriving that person is guilty of obtaining property by deception. Obtaining property by deception is an indictable offence that carries a maximum penalty of 10 years' imprisonment and/or a fine of up to 1,200 penalty units.³ It can be tried summarily in the Magistrates' Court if certain criteria are met.⁴

This Snapshot focuses on cases where obtaining property by deception was the principal offence, that is, cases where obtaining property by deception was the offence that received the most severe sentence.⁵

Obtaining property by deception was the principal offence in 0.8% of cases sentenced in the higher courts between 2017–18 and 2021–22.

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 2017–18 to 2021–22, 64 people were sentenced in the higher courts for a principal offence of obtaining property by deception.

Figure 1 shows the number of people sentenced for the principal offence of obtaining property by deception by financial year. There were 9 people sentenced for this offence in 2021–22, and 8 were sentenced in the previous year. The number of people sentenced was highest in both 2019–20 and 2017–18 (16 people) and lowest in 2020–21 (8 people).

Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or non-custodial sentence for the principal offence of obtaining property by deception. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁶

Over the five-year period, 71.9% of people were given an immediate custodial sentence. The highest proportion of immediate custodial sentences was in 2021–22 (77.8%), up from a five-year low of 62.5% in the previous year.

Table 1 shows the principal sentence types imposed for obtaining property by deception as a principal offence from 2017–18 to 2021–22. The *principal sentence* is the most serious sentence type imposed for the principal offence.⁷ Over the five-year period, most people sentenced for obtaining property by deception received a principal sentence of imprisonment (70.3%, or 45 of 64 people). The rate of imprisonment sentences fluctuated over the five years, ranging from 62.5% in both 2019–20 and 2020–21 to 77.8% in 2021–22. *Other* principal sentences (7.8%, or 5 people) were 3 wholly suspended sentences of imprisonment, 1 partially suspended sentence of imprisonment and 1 fine.

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

Sentence type	2017–18	2018–19	2019–20	2020–21	2021–22	Total
Imprisonment	12 (75.0%)	11 (73.3%)	10 (62.5%)	5 (62.5%)	7 (77.8%)	45 (70.3%)
Community correction order	3 (18.8%)	4 (26.7%)	4 (25.0%)	2 (25.0%)	1 (11.1%)	14 (21.9%)
Other	1 (6.3%)	0 (0.0%)	2 (12.5%)	1 (12.5%)	1 (11.1%)	5 (7.8%)
Total people sentenced	16	15	16	8	9	64

Figure 1: The number of people sentenced for obtaining property by deception by financial year

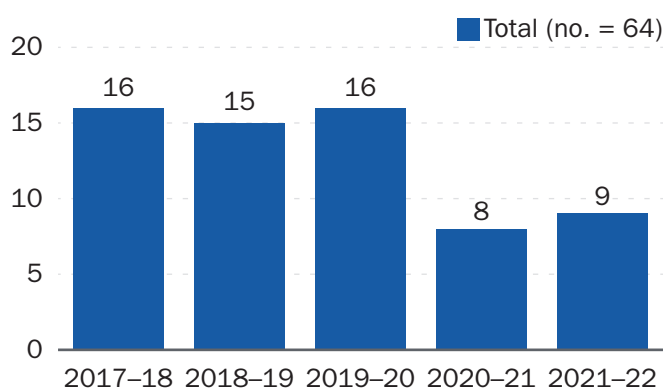
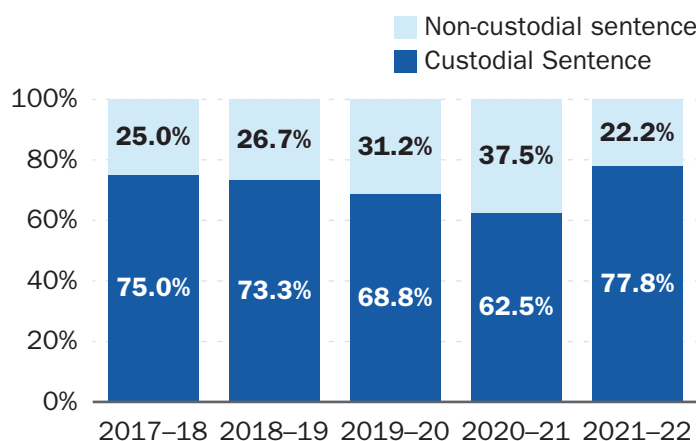


Figure 2: The percentage of people who received an immediate custodial sentence or non-custodial sentence for obtaining property by deception by financial year



Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the offence of obtaining property by deception from 2017–18 to 2021–22.

The principal sentence applies to a single offence at a *charge* level.

The total effective sentence is the sentence imposed for all charges in a case and applies at a *case* level. Where a case involves multiple charges, the total effective sentence will be either the same as or longer than the principal sentence.

Principal sentences of imprisonment

There were 45 people who received a principal sentence of imprisonment for obtaining property by deception. Of these, 32 people (71.1%) received a non-aggregate imprisonment term, that is, the imprisonment term was not part of an aggregate sentence, and 13 people received an aggregate term.⁸ There were 9 people (20.0%) who received a community correction order in addition to their imprisonment term.

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

Type of imprisonment sentence	2017–18	2018–19	2019–20	2020–21	2021–22	Total
Imprisonment	4 (33.3%)	6 (54.5%)	7 (70.0%)	2 (40.0%)	6 (85.7%)	25 (55.6%)
Imprisonment and community correction order (combined)	2 (16.7%)	2 (18.2%)	1 (10.0%)	2 (40.0%)	0 (0.0%)	7 (15.6%)
Total non-aggregate imprisonment	6 (50.0%)	8 (72.7%)	8 (80.0%)	4 (80.0%)	6 (85.7%)	32 (71.1%)
Aggregate imprisonment	5 (41.7%)	3 (27.3%)	1 (10.0%)	1 (20.0%)	1 (14.3%)	11 (24.4%)
Aggregate imprisonment and community correction order (combined)	1 (8.3%)	0 (0.0%)	1 (10.0%)	0 (0.0%)	0 (0.0%)	2 (4.4%)
Total aggregate imprisonment	6 (50.0%)	3 (27.3%)	2 (20.0%)	1 (20.0%)	1 (14.3%)	13 (28.9%)
Total people sentenced to imprisonment	12	11	10	5	7	45

Figure 3 shows the lengths of imprisonment imposed for the principal offence of obtaining property by deception for the 32 people who received a non-aggregate imprisonment term. Imprisonment terms ranged from 3 months to 5 years and 6 months,⁹ while the median length of imprisonment was 1 year and 7 months (meaning that half of the imprisonment terms were below 1 year and 7 months and half were above).

The most common range of imprisonment terms was 1 to less than 2 years (9 people).

Figure 4 shows that the average lengths of imprisonment imposed for obtaining property by deception ranged from 1 year and 9 months in 2018–19 to 2 years and 7 months in 2019–20. Over the five years, the average length of imprisonment for obtaining property by deception was 2 years and 1 month.

Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment imposed on people sentenced to imprisonment for the principal offence of obtaining property by deception. Total effective sentences ranged from 1 month to 9 years and 6 months, while the median total effective sentence was 2 years and 6 months (meaning that half of the total effective sentences were below 2 years and 6 months and half were above).

The most common ranges of total effective sentences were less than 1 year and 2 to less than 3 years (10 people each).

Figure 3: The number of principal sentences of imprisonment for obtaining property by deception, by range of imprisonment lengths, 2017–18 to 2021–22

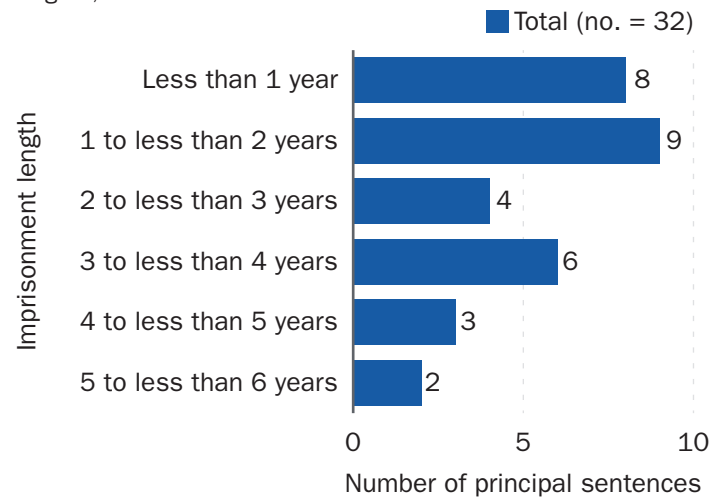


Figure 4: The average length of imprisonment imposed on people sentenced for obtaining property by deception by financial year

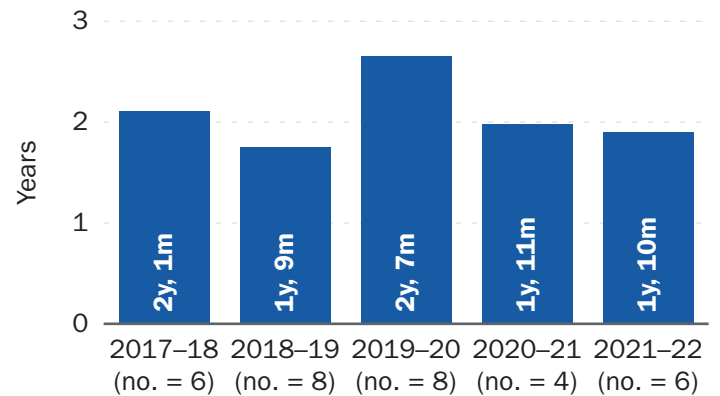
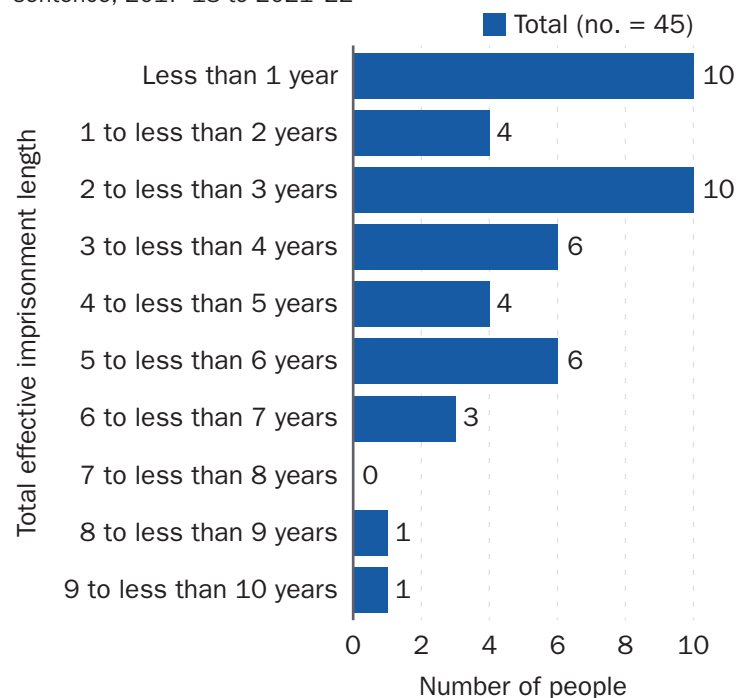


Figure 5: The number of people sentenced to imprisonment for obtaining property by deception by length of total effective sentence, 2017–18 to 2021–22



Non-parole periods

If a person is sentenced to an immediate imprisonment term of less than 1 year, the court cannot impose a non-parole period. For terms between 1 and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms 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 45 people who were sentenced to imprisonment for obtaining property by deception, 10 were not eligible to have a non-parole period imposed because their total effective sentence was less than one year. Of the 35 people who were eligible to have a non-parole period fixed, 33 were given a non-parole period (94.3%).¹⁰

Figure 6 shows the non-parole periods in cases where the principal offence was obtaining property by deception. Non-parole periods ranged from 1 year to 6 years and 6 months, while the median non-parole period was 2 years and 3 months (meaning that half of the non-parole periods were below 2 years and 3 months and half were above). There were 12 people who did not have a non-parole period imposed.

The most common range for non-parole periods was 1 to less than 2 years (13 people).

Average total effective sentences of imprisonment and non-parole periods

Figure 7 shows the average total effective sentences and non-parole periods for the 33 people who were sentenced to imprisonment for obtaining property by deception.

From 2017–18 to 2021–22, the average total effective sentence ranged from 3 years and 3 months in 2017–18 to 4 years and 6 months in 2020–21. Over the same period, the average non-parole period ranged from 2 years in 2017–18 to 2 years and 10 months in 2018–19 and 2020–21.

Figure 6: Number of people sentenced to imprisonment for obtaining property by deception by length of non-parole period, 2017–18 to 2021–22

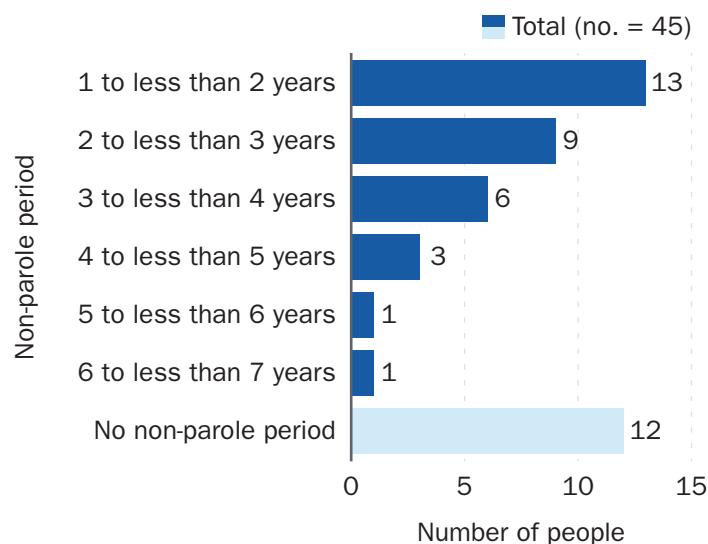
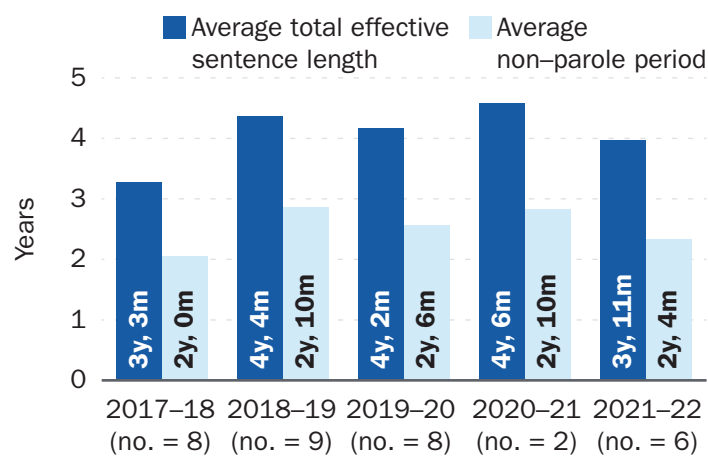


Figure 7: The average total effective sentence and the average non-parole period for people sentenced to imprisonment with a non-parole period for obtaining property by deception by financial year



Other offences finalised at the same hearing

Sometimes people prosecuted for obtaining property by deception 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 obtaining property by deception.

Figure 8 shows the number of people sentenced for the principal offence of obtaining property by deception by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 75,¹¹ while the median was 5 offences. There were 10 people (15.6%) sentenced for the single offence of obtaining property by deception. The average number of offences per person was 9.3.

Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for obtaining property by deception. The last column sets out the average number of offences sentenced per person. For example, 12 of the total 64 people (18.8%) also received sentences for theft. On average, those 12 people were sentenced for 4.1 charges of theft per case.

Figure 8: The number of people sentenced for the principal offence of obtaining property by deception by the number of sentenced offences per person, 2017–18 to 2021–22

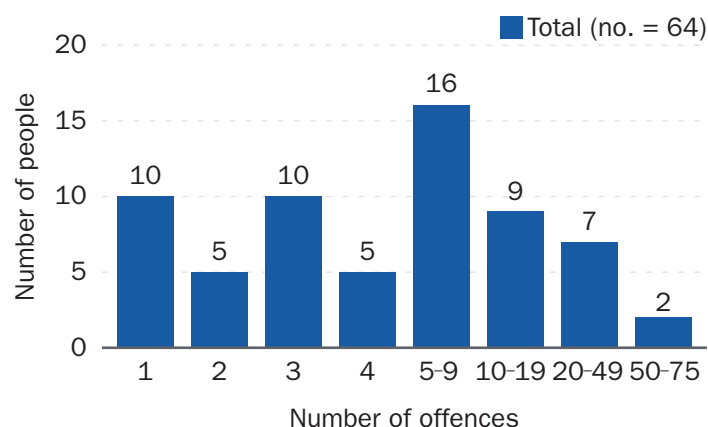


Table 3: The number and percentage of people sentenced for the principal offence of obtaining property by deception by the most common offences that were sentenced and the average number of those offences that were sentenced, 2017–18 to 2021–22

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Obtaining property by deception	64	100.0%	4.4
2. Attempting to obtain property by deception	18	28.1%	2.3
3. Theft	12	18.8%	4.1
4. Obtaining a financial advantage by deception	12	18.8%	3.1
5. Possess identity information to commit or facilitate an indictable offence	9	14.1%	1.6
6. Use a false document to prejudice of other	6	9.4%	1.3
7. Knowingly deal with proceeds of crime	5	7.8%	2.0
8. Deal with property suspected of being proceeds of crime	5	7.8%	1.0
9. Possess a drug of dependence	4	6.3%	1.3
10. Commit indictable offence whilst on bail	4	6.3%	1.0
Total	64	100.0%	9.3

Summary

From 2017–18 to 2021–22, 64 people were sentenced in the higher courts for obtaining property by deception. Of these people, 45 (70.3%) were given a principal sentence of imprisonment.

The median total effective sentence of imprisonment was 2 years and 6 months, while the median principal sentence of imprisonment was 1 year and 7 months. On average, people sentenced for obtaining property by deception were sentenced for 9.3 offences each, with a maximum of 75 offences.

Total effective sentences of imprisonment ranged from 1 month to 9 years and 6 months, and non-parole periods ranged from 1 year to 6 years and 6 months.

Further data on this offence is available on SACStat.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 253, which describes sentencing trends for obtaining property by deception between 2015–16 and 2019–20.
2. Data on first-instance sentencing 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.
3. *Crimes Act 1958* (Vic) s 81. The value of a penalty unit changes each year and can be found on the Council's website. Penalty units are set annually and published in the Victorian Government Gazette. Obtaining property by deception can, in some circumstances when the value is \$50,000 or more, be a continuing criminal enterprise offence. When it is, the maximum penalty doubles to 20 years' imprisonment: *Sentencing Act 1991* (Vic) s 6I, sch 1A.
4. *Criminal Procedure Act 2009* (Vic) s 28, sch 2 cl 4.9.
5. 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.
6. For the principal offence of obtaining property by deception, immediate custodial sentences included imprisonment and partially suspended sentences.
7. For example, if the principal offence receives a sentence of imprisonment combined with a community correction order, imprisonment is the principal sentence.
8. A court may impose an aggregate sentence of imprisonment upon multiple charges sentenced at the same time. These sentences are a single imprisonment term 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.
9. The case in which the second longest principal imprisonment sentence length was imposed is publicly available: *DPP v Eliezer* [2020] VCC 252 (5 years).
10. A non-parole period was not set for 2 people who were eligible for a non-parole period.
11. There were 75 charges sentenced in one case: *DPP v Donnelly* [2019] VCC 152.

SACStat Obtaining property by deception

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

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