

Sexual assault

Sentencing trends in the higher courts of Victoria 2019–20 to 2023–24

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual assault² in the County and Supreme Courts of Victoria (the higher courts) from 2019–20 to 2023–24.³ The data in this Snapshot incorporates adjustments made by the Court of Appeal to sentence or conviction as at June 2024. Detailed data on sexual assault and other offences is also available on [SACStat](#).

A person who intentionally sexually touches another person without the other person's consent is guilty of the offence of sexual assault. Sexual assault is an indictable offence that carries a maximum

penalty of 10 years' imprisonment and/or a fine of 1,200 penalty units.⁴ Sexual assault can be tried summarily in the Magistrates' Court.⁵

This Snapshot focuses on cases where sexual assault was the principal offence, that is, sexual assault was the offence that received the most severe sentence in the case.⁶

Sexual assault was the principal offence in 1.0% of cases sentenced in the higher courts between 2019–20 and 2023–24.

Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic, particularly in the 2020–21 and 2021–22 financial years.

For instance:

- the number of people sentenced in the period after March 2020 may be lower than in other years because the pandemic caused delays in court proceedings
- court backlogs may have led to prioritisation of more serious cases in that period and therefore higher imprisonment rates than in other years

- prison sentences may be shorter during that period than in other 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.

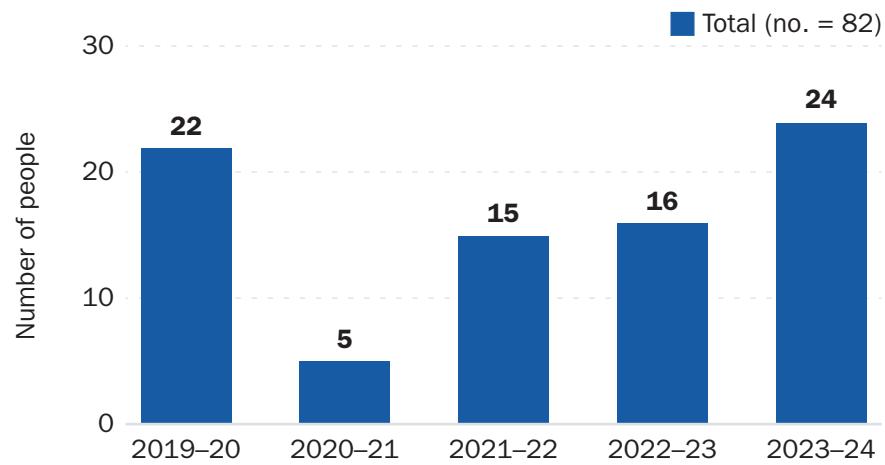
People sentenced

From 2019–20 to 2023–24, 82 people were sentenced in the higher courts for a principal offence of sexual assault.

Figure 1 shows the number of people sentenced for the principal offence of sexual assault by financial year. There were 24 people sentenced for this offence in 2023–24, up from 16 in the previous year. The number of people sentenced was highest in 2023–24 (24 people) and lowest in 2020–21 (5 people).

There were 4 people who received a non-custodial supervision order for the principal offence of sexual assault during the five-year period. No people received a custodial supervision order.⁷

Figure 1: The number of people sentenced for sexual assault, by financial year

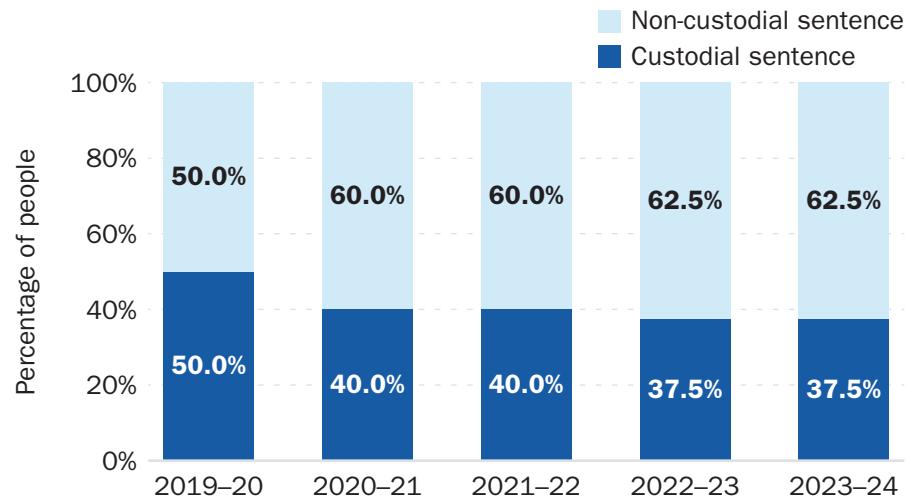


Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or non-custodial sentence for the principal offence of sexual assault. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁸ Over the five-year period, 41.5% of people sentenced for the principal offence of sexual assault were given an immediate custodial sentence. The annual rate of immediate custodial sentences ranged from 50.0% in 2019–20 to 37.5% in 2022–23 and 2023–24.

Table 1 (page 3) shows the principal sentence types imposed for sexual assault from 2019–20 to 2023–24. The *principal sentence* is the most serious sentence imposed for the principal offence in a case.⁹

Figure 2: The percentage of people who received an immediate custodial sentence or non-custodial sentence for sexual assault, by financial year



Over the five-year period, an equal number of people sentenced for sexual assault received a principal sentence of imprisonment as received a principal sentence of a community correction order (41.5% each, or 34 of 82 people). The remaining people received an adjourned undertaking (9.8% or 8 people), a wholly suspended sentence (3.7% or 3 people) or a fine (3.7% or 3 people).

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

Sentence type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
Imprisonment	11 (50.0%)	2 (40.0%)	6 (40.0%)	6 (37.5%)	9 (37.5%)	34 (41.5%)
Community correction order	8 (36.4%)	3 (60.0%)	3 (20.0%)	9 (56.3%)	11 (45.8%)	34 (41.5%)
Wholly suspended sentence	2 (9.1%)	0 (0.0%)	1 (6.7%)	0 (0.0%)	0 (0.0%)	3 (3.7%)
Fine	0 (0.0%)	0 (0.0%)	1 (6.7%)	0 (0.0%)	2 (8.3%)	3 (3.7%)
Adjourned undertaking	1 (4.5%)	0 (0.0%)	4 (26.7%)	1 (6.3%)	2 (8.3%)	8 (9.8%)
Total	22	5	15	16	24	82

Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the principal offence of sexual assault from 2019–20 to 2023–24.

The *principal sentence* is the most serious sentence imposed for the principal offence in a case 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 34 principal sentences of imprisonment for sexual assault. Table 2 shows that of these, 29 (85.3%) were non-aggregate imprisonment terms, that is, the imprisonment terms were not part of an aggregate sentence, and 5 (14.7%) were aggregate imprisonment terms.¹⁰ There were 13 people who received a combined order of imprisonment with a community correction order and 1 person who received an adjourned undertaking in addition to an imprisonment term.

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

Imprisonment type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
Imprisonment	7 (70.0%)	2 (100.0%)	4 (66.7%)	4 (66.7%)	2 (40.0%)	19 (65.5%)
Imprisonment and community correction order	3 (30.0%)	0 (0.0%)	2 (33.3%)	1 (16.7%)	3 (60.0%)	9 (31.0%)
Imprisonment and adjourned undertaking	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (16.7%)	0 (0.0%)	1 (3.4%)
Total non-aggregate imprisonment	10 (90.9%)	2 (100.0%)	6 (100.0%)	6 (100.0%)	5 (55.6%)	29 (85.3%)
Aggregate imprisonment	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (25.0%)	1 (20.0%)
Aggregate imprisonment and community correction order	1 (100.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (75.0%)	4 (80.0%)
Total aggregate imprisonment	1 (9.1%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (44.4%)	5 (14.7%)
Total people sentenced to imprisonment	11	2	6	6	9	34

Figure 3 shows the imprisonment lengths for the principal offence of sexual assault for the 29 non-aggregate imprisonment terms. Imprisonment lengths ranged from 1 month to 4 years and 3 months,¹¹ while the median imprisonment length was 1 year and 2 months.

The most common range of imprisonment lengths was 1 to less than 2 years (13 principal sentences).

Figure 4 shows that the average imprisonment length imposed on people sentenced for sexual assault ranged from 1 year and 4 months in 2020–21 and 2023–24 to 2 years in 2021–22. Over the five-year period, the average imprisonment length for sexual assault was 1 year and 7 months. Given the low number of cases each year, caution is required in interpreting these averages.

Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where sexual assault was the principal offence and an imprisonment term was imposed. Total effective sentences ranged from 1 month¹² to 8 years and 5 months,¹³ while the median total effective sentence was 1 year and 4 months.

The most common range of total effective sentences was 1 to less than 2 years (12 people).

Note that it was not possible to determine the total effective sentence for 1 person.¹⁴

Figure 3: The number of principal sentences of imprisonment for sexual assault, by range of imprisonment lengths, 2019–20 to 2023–24

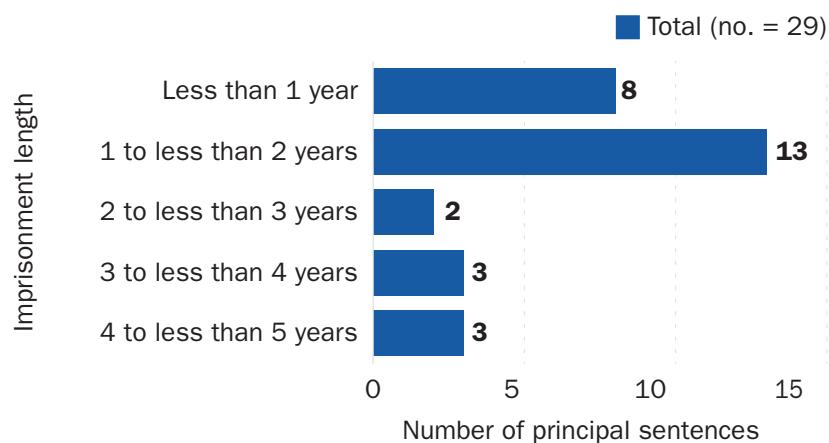


Figure 4: The average imprisonment length imposed for sexual assault, by financial year

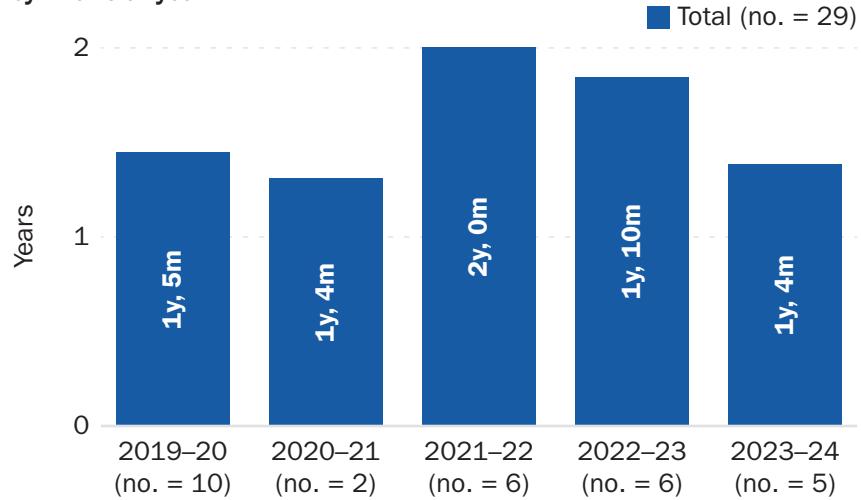
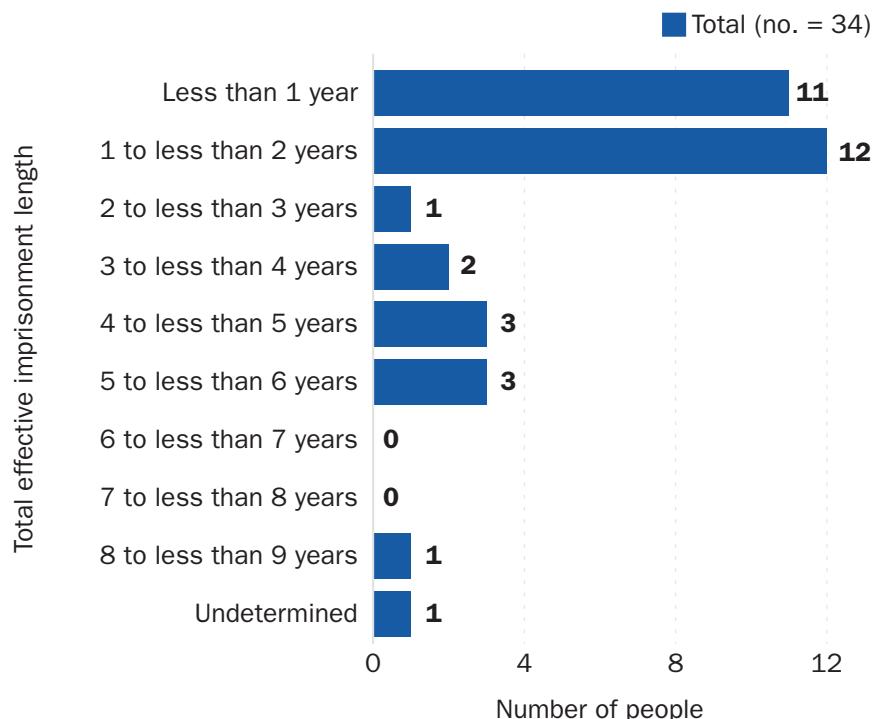


Figure 5: The number of people sentenced to imprisonment for sexual assault, by range of total effective sentences, 2019–20 to 2023–24



Non-parole periods

If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year 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.

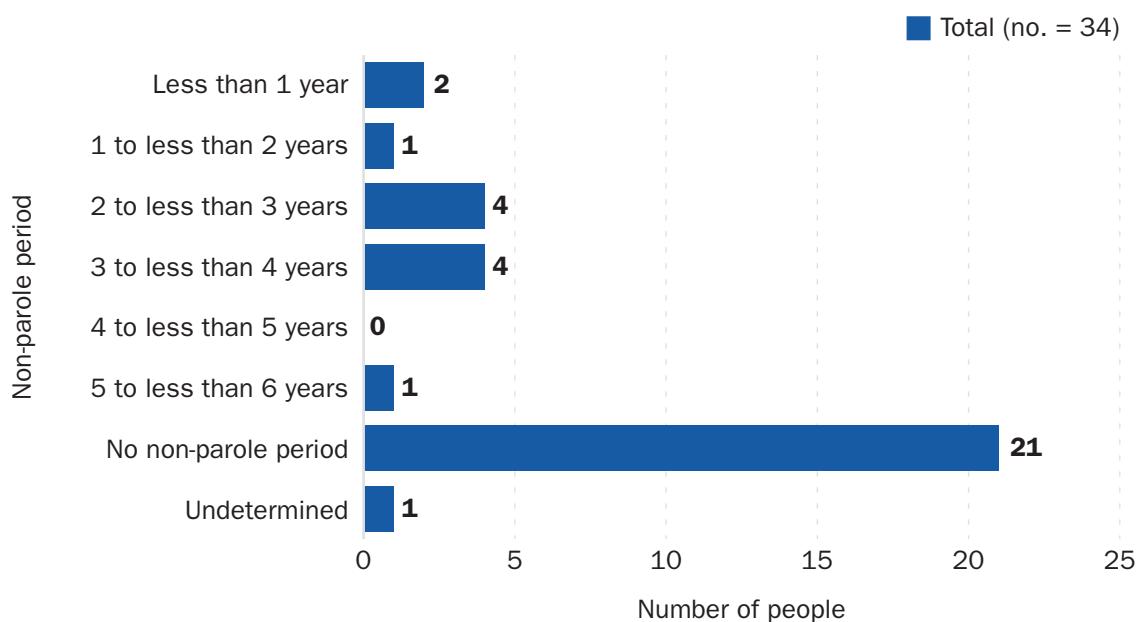
Of the 34 people who were sentenced to imprisonment for sexual assault, 23 were eligible

to have a non-parole period fixed.¹⁵ Of these 23 people, 13 were given a non-parole period.¹⁶ Note that it was not possible to determine the non-parole period for 1 person.¹⁷

Figure 6 shows the lengths of these non-parole periods. In the 12 cases where a non-parole period was imposed, non-parole periods ranged from 7 months to 5 years and 3 months, while the median non-parole period was 2 years and 9 months.

The most common ranges of non-parole periods were 2 to less than 3 years and 3 to less than 4 years (4 people each).

Figure 6: The number of people sentenced to imprisonment for sexual assault, by range of non-parole periods, 2019–20 to 2023–24



Other offences finalised at the same hearing

Sometimes people prosecuted for sexual assault 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 sexual assault.

Figure 7 shows the number of people sentenced for the principal offence of sexual assault by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 22, and the median was 2 offences.

Figure 7: The number of people sentenced for the principal offence of sexual assault, by the number of sentenced offences per person, 2019–20 to 2023–24

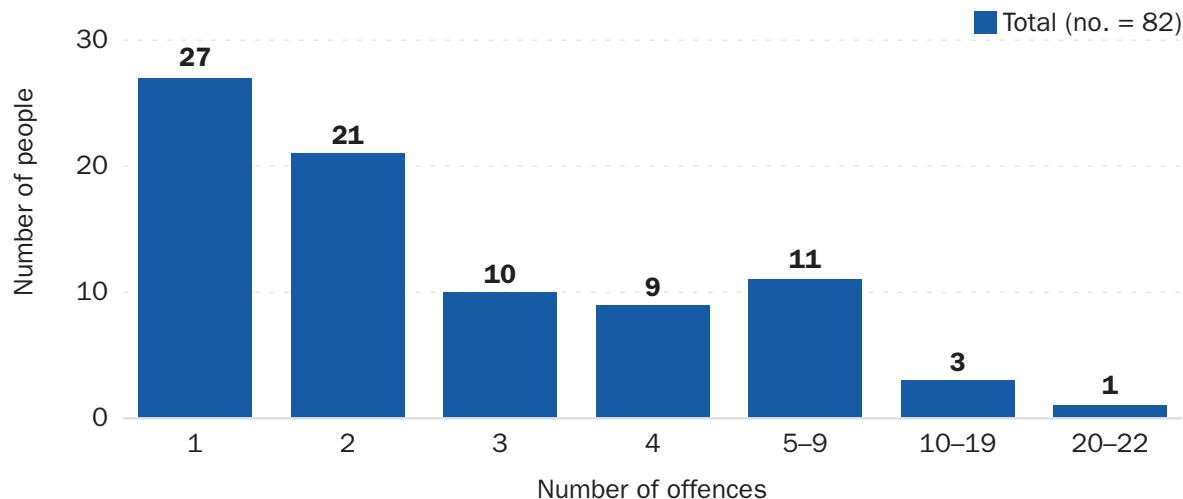


Table 3: The number and percentage of people sentenced for the principal offence of sexual assault, by the most common offences that were sentenced alongside sexual assault, 2019–20 to 2023–24

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
Sexual assault	82	100.0%	1.5
Common law assault	8	9.8%	1.3
Theft	5	6.1%	1.6
Commit an indictable offence while on bail	4	4.9%	2.8
Registrable sex offender fail to comply with reporting obligations	4	4.9%	2.8
Aggravated burglary	3	3.7%	1.3
Persistent contravention of a family violence intervention order or safety notice	3	3.7%	1.3
Possess a drug of dependence	3	3.7%	1.3
Make threat to kill	3	3.7%	1.0
Make threat to inflict serious injury	2	2.4%	2.0
Total	82	100.0%	2.9

Summary

From 2019–20 to 2023–24, 82 people were sentenced in the higher courts for the principal offence of sexual assault. Of those 82 people, 34 (41.5%) received a principal sentence of imprisonment, 34 (41.5%) received a community correction order, 8 (9.8%) received an adjourned undertaking, 3 (3.7%) received a wholly suspended sentence and 3 (3.7%) received a fine.

Total effective sentences of imprisonment ranged from 1 month to 8 years and 5 months, and

non-parole periods ranged from 7 months to 5 years and 3 months. The median total effective sentence was 1 year and 4 months, while the median non-parole period (in the 12 cases where one was imposed) was 2 years and 9 months.

On average, people sentenced for the principal offence of sexual assault were sentenced for 2.9 offences each, with a maximum of 22 offences.

Further data on this offence is available on [SACStat](#).

Endnotes

- 1 This Sentencing Snapshot is an update of [Sentencing Snapshot no. 280](#), which describes sentencing trends for sexual assault between 2017–18 and 2021–22.
- 2 *Crimes Act 1958 (Vic)* s 40. Prior to 1 July 2015, the offence was located in section 39 of the *Crimes Act 1958 (Vic)* and was called ‘indecent assault’. This Snapshot includes both versions of this offence if the offence was sentenced during the five-year reference period. This Snapshot does not include the offence of sexual assault of a child aged under 16: *Crimes Act 1958 (Vic)* s 49D.
- 3 Data on first-instance sentencing outcomes presented in this Snapshot was obtained from the Data and Insights 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 on the Council’s website. Penalty units are set annually and published in the Victorian Government Gazette.
- 5 *Criminal Procedure Act 2009 (Vic)* s 28.
- 6 If a person is sentenced for a case with a single charge, that offence is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence that attracted the most serious sentence according to the sentencing hierarchy.
- 7 Custodial and non-custodial supervision orders are not sentencing orders as they are imposed in cases where the accused is found unfit to stand trial or not guilty because of mental impairment. However, custodial and non-custodial supervision orders are mentioned in this Snapshot as they are an important form of disposition of criminal charges.
- 8 Immediate custodial sentences for sexual assault were all imprisonment.
- 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 principal sentence.
- 10 A court may impose an *aggregate sentence* of imprisonment on multiple charges sentenced at the same time. An aggregate sentence is a single imprisonment term, but the sentences imposed on the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
- 11 Sentencing remarks are not publicly available for the case with a sentence of 4 years and 3 months’ imprisonment for the principal offence of sexual assault. The next longest prison sentence for the principal offence of sexual assault was 4 years: *DPP v Saiin* [2022] VCC 558; *DPP v Leveni* [2022] VCC 224.
- 12 Sentencing remarks are not publicly available for the case with the 1-month total effective sentence of imprisonment. The next shortest total effective sentence was 3 months: *DPP v Harris (a pseudonym)* [2023] VCC 20.
- 13 The case resulting in a total effective sentence of 8 years and 5 months was *DPP v Leveni* [2022] VCC 224.
- 14 There was 1 person who was given a new total effective sentence that related to more than 1 case (they were already serving a prison sentence at the time). It was not possible to separately determine the total effective sentence for the case where sexual assault was the principal offence: *DPP v Bates (a pseudonym)* [2022] VCC 250.
- 15 There were 11 people who were not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.
- 16 There were 10 people who were eligible to have a non-parole period fixed but did not receive one, meaning that their sentence was between 1 year and less than 2 years.
- 17 There was 1 person who was given a non-parole period that related to more than 1 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.

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Disclaimer: The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots is accurate at the time of publishing.

Annexure

The role of statistics in sentencing

Why are statistics relevant to sentencing?

Courts apply an **instinctive synthesis** approach to sentencing, meaning that they take a range of considerations into account in deciding an appropriate sentence in a case.¹

One of the factors that courts must consider is **current sentencing practices**, the aim being to achieve consistency and promote the principle of equality before the law.²

The Court of Appeal has said that current sentencing practices will usually involve consideration of both ‘relevant **sentencing statistics** ... and ... sentencing decisions in comparable cases’.³

How should statistics be treated as a sentencing factor?

Sentencing statistics can be used in a myriad of ways to inform the sentencing exercise. As just some examples, sentencing statistics can highlight the range of recent sentences for an offence,⁴ the median imprisonment length for an offence,⁵ changes

in sentencing practices over time,⁶ the apparent clustering of sentencing outcomes for an offence based on particular factors in a case,⁷ and – especially for sentence appeals – recent outlier sentences, that is, the least and most severe sentences for an offence.⁸

In using statistics in sentencing, there are a number of important principles:

1. Sentencing statistics primarily offer a ‘rough cross-check’.⁹
2. Sentencing statistics are just one consideration among many, not a ‘controlling factor’.¹⁰
3. Sentencing statistics ‘do not set the metes and bounds’ of what a permissible sentence is.¹¹
4. Sentencing statistics are most useful when coupled with comparable cases.¹²

The ‘inherent limitations’ of sentencing statistics and comparable cases

Courts have often said that sentencing statistics have ‘inherent limitations’,¹³ because ‘the many details which would explain the reasons for a particular sentence are omitted from the data’.¹⁴

1 *Markarian v The Queen* [2005] HCA 25.

2 *Sentencing Act 1991* (Vic) s 5(2)(b); *Wong v The Queen* [2001] HCA 64 [65], [89].

3 *DPP v CPD* [2009] VSCA 114 [78] (emphasis added).

4 See, for example, *ED v The Queen* [2011] VSCA 397 [90]; *DPP v Sismanoglou* [2016] VSCA 87 [46].

5 See, for example, *WCB v The Queen* [2010] VSCA 230 [63].

6 See, for example, *R v Lucas* [2021] VSC 81 [212]–[214].

7 See, for example, *Nguyen v The Queen* [2016] VSCA 198 [83]–[86].

8 See, for example, *Ashdown v the Queen* [2011] VSCA 408 [12]–[16].

9 *Russell v The Queen* [2011] VSCA 147 [61]; *Short v The Queen* [2016] VSCA 210 [59].

10 *DPP v Dalgliesh (a pseudonym)* [2017] HCA 41 [68]. See also *Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 [44].

11 *Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 [43]–[44]; *DPP v OJA* [2007] VSCA 129 [30].

12 *Davy v The Queen* [2011] VSCA 98 [42]; *Baroch & Anor v The Queen* [2022] VSCA 90 [32].

13 See, for example, *R v Bangard* [2005] VSCA 313 [39]; *R v AB (No 2)* [2008] VSCA 39 [42].

14 *DPP v Dawes* [2023] VCC 2378 [91].

‘Your counsel referred me to recent sentencing statistics ... for the offence of sexual assault which reflect that non-custodial dispositions are not uncommon for offences of this nature, either in the Magistrates’ Court or in the higher courts’

DPP v Lumsden [2023] VCC 212

Statistics cannot tell the court whether the offenders in the data pleaded guilty, had prior criminal histories, assisted authorities, used a weapon, or other important factual circumstances.

However, trying to rely exclusively on comparable cases also has limitations.¹⁵ The cases reviewed may not be truly representative of broader sentencing practices, whereas sentencing statistics more exhaustively represent the entire range of sentencing practices. Comparable cases are also rarely available in the summary jurisdiction, meaning that Magistrates’ Court data is usually the only source of information about current sentencing practices in that jurisdiction.

Where can you find sentencing statistics?

One of the Council’s statutory functions is ‘to provide statistical information on sentencing’:¹⁶

- our **Sentencing Snapshots** provide five years of higher courts data on the types and lengths of sentences for 18 common or high-profile principal offences¹⁷
- our **SACStat** database of sentencing statistics provides five years of higher courts data and three years of Magistrates’ Court data on the types and lengths of sentences imposed for hundreds of distinct offences¹⁸
- our **statistical reports** include in-depth analyses of sentencing practices.¹⁹

¹⁵ *Hudson v The Queen* [2010] VSCA 332, [29]–[31] (“Like” cases can only, at best, provide a general guide or impression as to the appropriate range of sentences ... [and] can only provide limited assistance to this Court). See also *Russell v The Queen* [2011] VSCA 147 [4].

¹⁶ Sentencing Act 1991 (Vic) s 108C(1)(b).

¹⁷ Sentencing Snapshots are available at <https://www.sentencingcouncil.vic.gov.au/snapshots-by-date>.

¹⁸ SACStat is available at <https://www.sacstat.vic.gov.au>.

¹⁹ See, for example, our various **statistical profiles** and reports on **current sentencing practices**.