

Sentencing Snapshot

Sentencing trends for rape in Victoria



Introduction

This *Sentencing Snapshot* describes sentencing outcomes for the offence of rape¹, and details of the age and gender of persons sentenced for this offence² in the Supreme and County Court of Victoria between 1999/2000 and 2003/04.³

Rape involves an act of sexual penetration without consent. It includes oral, anal and vaginal penetration and may be committed by, and against, both men and women.⁴ However, rape is overwhelmingly committed by men against women. The term "sentenced for rape" includes persons who plead guilty and those sentenced after a trial. Under the *Crimes Act 1958* (Vic), rape carries a maximum penalty of 25 years' imprisonment.⁵

Sentencing for this offence takes into account a number of factors including the particular circumstances of the offence and offender, the impact of the offence on the victim and a variety of legal principles. Under s.5(1) of the *Sentencing Act 1991* (Vic) there are a number of purposes for which a sentence can be imposed, including to punish an offender, to provide for an offender's rehabilitation, to deter the offender from re-offending, to denounce the offence and to protect the community. If the person is a 'serious sexual offender',⁶ the court must regard protection of the community as the principal purpose for which the sentence is imposed⁷ and there is a presumption that

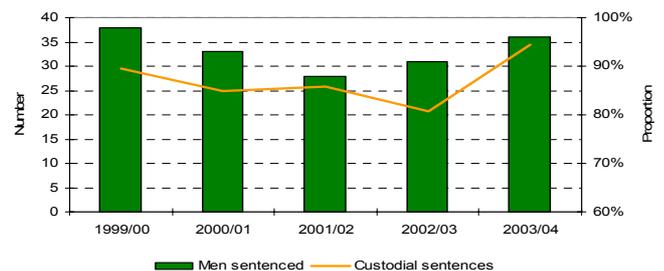
sentences are served cumulatively.⁸

In general, the principle of proportionality prevents the court from imposing a sentence that is disproportionate to the gravity of the offence. However, in the case of a 'serious sexual offender' who has committed a sexual offence, the principle of proportionality does not apply.⁹ The courts are not bound to impose proportionate sentences and may impose more than proportionate sentences in order to protect the community. A court also has the power to sentence a person to an indefinite period of imprisonment where their past history of offending and other factors indicate that he or she is highly likely to re-offend and presents a serious danger to the community.¹⁰

People sentenced

All 166 people sentenced for rape between 1999/2000 and 2003/04 were male. Figure 1 shows the number of men sentenced for rape and the proportion that received a custodial sentence¹¹ over this period (87%).

Figure 1: Men sentenced for rape and proportion receiving a custodial sentence 1999/2000 to 2003/04 (Victoria)



As Figure 1 shows, the number of men sentenced for rape fell from 38 in 1999/00 to 28 in 2001/02, and then increased to 36 in 2003/04.

Between 1999/00 and 2002/03, the proportion of men attracting a custodial sentence fell from 89% to 81% but then increased to reach a high of 94% in 2003/04.

Sentence types

Figure 2 and Table 1 show the number of men sentenced for rape between 1999/2000 and 2003/04, according to

¹ In accordance with national practices, this report presents sentencing outcomes for people sentenced for the *principal offence* of rape in the Supreme and County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis therefore will exclude people sentenced for rape who received a more serious sentence for another offence forming part of the same presentment. For example, in 2003/04 62 people were sentenced for rape. Rape was the principal offence for 36 of the 62 people.

² Where a person is sentenced for multiple counts of rape (that form part of the same presentment) the person is only reported once. The sentencing information presented relates to the sentence handed down in the first instance and does not reflect changes to sentencing outcomes as a result of an appeal.

³ The statistical information presented here was provided by Court Services, Department of Justice (Vic). Court Services advises that sentencing information from the higher courts only contains information on age and gender characteristics, and that prior to the reference period sentencing information was not recorded in sufficient detail to enable the Council to undertake a detailed analysis of earlier trends.

⁴ s.38(1) *Crimes Act 1958* (Vic)

⁵ s.38(1) *Crimes Act 1958* (Vic)

⁶ Part 2A *Sentencing Act 1991* (Vic) defines a serious sexual offender as an offender (other than a person aged under 21 years at time of sentencing) who has been convicted of 2 or more sexual offences or one sexual offence and one violent offence, for which the person was sentenced to a term of imprisonment or detention.

⁷ s.6D(a) *Sentencing Act 1991* (Vic)

⁸ s.6E *Sentencing Act 1991* (Vic)

⁹ s.6D(b) *Sentencing Act 1991* (Vic)

¹⁰ Under s.18B *Sentencing Act 1991* (Vic) the court may impose an indefinite sentence for adult offenders who are proved, to a high degree of probability, to be a serious danger to the community and who have been convicted of specified 'serious offences' such as rape.

¹¹ This includes immediate imprisonment, combined custody and treatment orders, hospital orders, hospital security orders, detention in youth training centres and partially suspended sentences of imprisonment.

the type of sentence imposed.

Figure 2: Men sentenced for rape by sentence type, 1999/2000 to 2003/04 (Victoria)

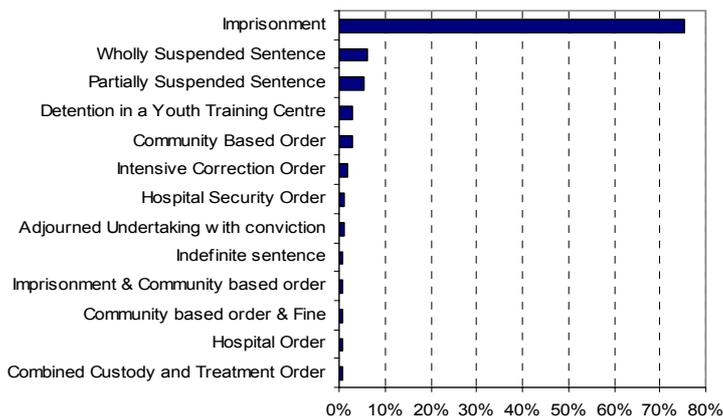


Table 1: Men sentenced for rape by sentence type, 1999/2000 to 2003/04 (Victoria)¹²

Sentence type	99/00	00/01	01/02	02/03	03/04	Total
Imprisonment	28 74%	23 70%	22 79%	24 77%	28 78%	125 75%
Wholly suspended sentence	1 3%	2 6%	2 7%	4 13%	1 3%	10 6%
Partially suspended sentence	3 8%	2 6%	- 0%	- 0%	4 11%	9 5%
Youth training centre	1 3%	- 0%	2 7%	- 0%	2 6%	5 3%
Community based order	1 3%	1 3%	2 7%	1 3%	- 0%	5 3%
Intensive correction order	1 3%	1 3%	- 0%	- 0%	1 3%	3 2%
Hospital security order ¹³	- 0%	2 6%	- 0%	- 0%	- 0%	2 1%
Adjourned undertaking with conviction	- 0%	1 3%	- 0%	1 3%	- 0%	2 1%
Indefinite sentence ¹⁴	- 0%	- 0%	- 0%	1 3%	- 0%	1 1%
Imprisonment and Community based order	- 0%	1 3%	- 0%	- 0%	- 0%	1 1%
Community based order and Fine	1 3%	- 0%	- 0%	- 0%	- 0%	1 1%
Hospital order ¹⁵	1 3%	- 0%	- 0%	- 0%	- 0%	1 1%
Combined custody and treatment order	1 3%	- 0%	- 0%	- 0%	- 0%	1 1%
Total persons sentenced	38	33	28	31	36	166

¹² Figures do not sum to one hundred due to rounding.

¹³ Under s.93 *Sentencing Act 1991* (Vic), if a person is found guilty and appears to be mentally ill, the court can order the person be sentenced to a hospital order or hospital security order. A *hospital security order* is a sentencing order of the court where a person is admitted and detained in an approved mental health service as a security patient for a specified period of time.

A *hospital order* is an order the court can make instead of passing sentence under which a person is admitted to and detained in an approved mental health service as an involuntary patient for an indefinite period.

¹⁴ Refer fn.10

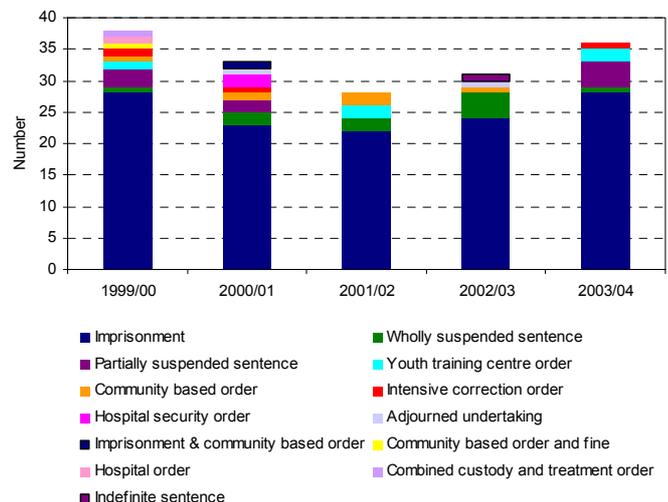
¹⁵ Refer fn.13. As a result of amendments to the *Sentencing Act 1991* (Vic) (not yet in operation) it will no longer be possible for a court to order a person to be admitted as an involuntary patient for serious offences, such as rape.

Between 1999/00 and 2003/04, 77% of men sentenced for rape attracted a sentence of immediate imprisonment¹⁶ (127 out of 166 people) including one man sentenced to imprisonment for an indefinite term. Over this period 23% (39 out of 166) of men sentenced for rape received a sentence other than immediate imprisonment including (refer Figure 2 and Table 1):

- wholly suspended sentences (6% or 10 men)
- partially suspended sentences (5% or 9 men)
- detention in youth training centres (3% or 5 men)
- community based orders (3% or 5 men)
- intensive correction orders (2% or 3 men)
- hospital security orders (1% or 2 men)
- adjourned undertakings with conviction (1% or 2 men)
- hospital orders (1 man)
- combined custody and treatment orders (1 man).

Figure 3 shows the number of men sentenced for rape according to the type of sentence imposed for each year between 1999/00 and 2003/04.

Figure 3: Men sentenced for rape by sentence type, 1999/2000 to 2003/04 (Victoria)



As Table 1 and Figure 3 illustrate, the courts have increasingly imposed immediate gaol terms for rape in recent years. The proportion of men sentenced to immediate imprisonment increased from 70% to 79% between 2000/01 and 2001/02, and has remained around this level since.

Between 1999/00 and 2002/03, the higher courts increasingly ordered full rather than partial suspension of gaol terms for rape. Over this period:

- the proportion of wholly suspended sentences increased from 3% to 13%.
- the proportion of partially suspended sentences decreased from 8% to 0%.

However, in 2003/04 this trend reversed and the court ordered more partially than wholly suspended sentences of imprisonment for rape.

¹⁶ Included in this total is one man sentenced to 6 weeks' imprisonment and a 2 year community based order upon release (the man served 6 weeks in custody prior to sentencing and the court ordered this time served to be time reckoned).

Principal and total effective sentences

There are two methods for describing sentence types and lengths - the principal sentence and the total effective sentence.

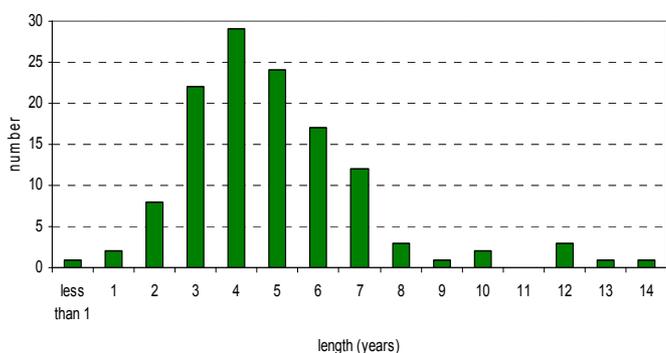
The *principal sentence* is the individual sentence imposed for a single charge. In most cases, people prosecuted for rape face multiple charges either for rape or for a range of related offences (such as burglary or kidnapping) which are finalised at the same hearing. When imposing a sentence for multiple 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 rape must be considered in this broader context.

Principal sentences of imprisonment

Figure 4 shows the number of men sentenced to immediate imprisonment for rape between 1999/2000 and 2003/04, by the length of the principal sentence of imprisonment imposed.¹⁷ This figure shows the range of principal imprisonment lengths imposed for rape because each bar measures the number of men (left axis) sentenced to imprisonment for that length of time (bottom axis).

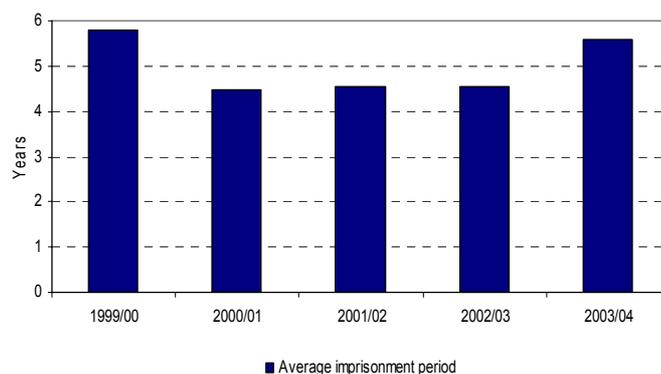
Figure 4: Men sentenced to imprisonment for rape by the length of the principal sentence of imprisonment, 1999/2000 to 2003/04 (Victoria)



As Figure 4 illustrates, principal imprisonment terms ranged from 6 weeks to 14 years' imprisonment.¹⁸ The average principal imprisonment sentence over this period was 5 years and 1 month.

Figure 5 shows the average principal imprisonment length for rape for each year between 1999/2000 and 2003/04.

Figure 5: Men sentenced to imprisonment for rape by average principal imprisonment term, 1999/2000 to 2003/04 (Victoria)

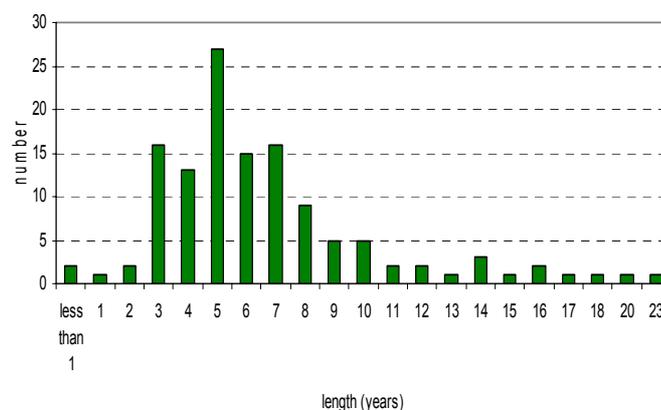


As Figure 5 illustrates, the average imprisonment sentence for rape fell from 5 years and 9 months in 1999/00 to 4 years and 6 months in 2000/01. In 2003/04, the average imprisonment period for rape increased to 5 years and 7 months.

Total effective sentences of imprisonment

Figure 6 shows the number of men sentenced to immediate imprisonment for rape between 1999/2000 and 2003/04, by the length of the total effective sentence of imprisonment imposed.¹⁹

Figure 6: Men sentenced to imprisonment for rape by the length of the total effective sentence of imprisonment, 1999/2000 to 2003/04 (Victoria)



As Figure 6 illustrates, total effective sentences of imprisonment for rape ranged from 6 weeks to 22 years and 9 months.²⁰ The highest *principal sentence* of imprisonment for rape was 14 years (see Figure 4) and the highest *total effective sentence* of imprisonment was 22 years and 9 months (see Figure 6) – a difference of more than 8 years.

The average *total effective sentence* of imprisonment for rape was 6 years and 10 months. Compared to the average *principal sentence* of imprisonment for rape (5 years and 1 month), the average total effective sentence of imprisonment for rape was 1 year and 9 months longer.

Of the 126 men sentenced to imprisonment for rape over

¹⁷ The analysis presented here excludes a 34 year old man sentenced to imprisonment for an indefinite term for rape. Qualitative sentences are excluded from this analysis because they cannot be used to calculate and compare averages or ranges.

¹⁸ Refer fn.16. A 31 year old man was sentenced to 14 years' imprisonment with a non-parole period of 12 years.

¹⁹ Refer fn.17.

²⁰ Refer fn.16. A 33 year old man was sentenced to 22 years and 9 months' imprisonment with a non-parole period of 18 years.

the reference period,²¹ the difference between the total effective and principal sentence imposed varied between no difference to 15 years and 9 months. For example:

- A 33 year old man, whose principal sentence for rape was 7 years, received a total effective sentence of 22 years and 9 months' imprisonment - a difference of more than 15 years.
- A 51 year old man, whose principal sentence for rape was 8 years' imprisonment, received a total effective sentence of 16 years and 3 months' imprisonment – a difference of more than 8 years.

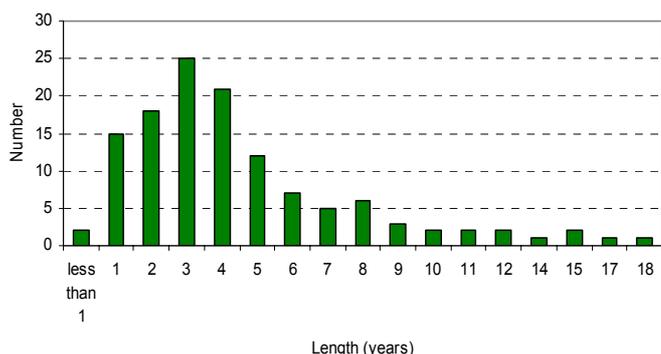
Non-parole periods

Where a person is sentenced to a term of immediate imprisonment of 1 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 in prison before becoming eligible to apply 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 lengthier than the individual principal sentence for rape. Sentences and non-parole periods for rape must be considered in this broader context.

Between 1999/2000 and 2003/04, the court fixed a non-parole period for 99% (125 out of 126) of men sentenced to imprisonment for rape.²² Figure 7 shows the length of non-parole periods handed down for rape between 1999/2000 and 2003/04.

Figure 7: Men sentenced to imprisonment for rape by length of the non-parole period, 1999/2000 to 2003/04 (Victoria)

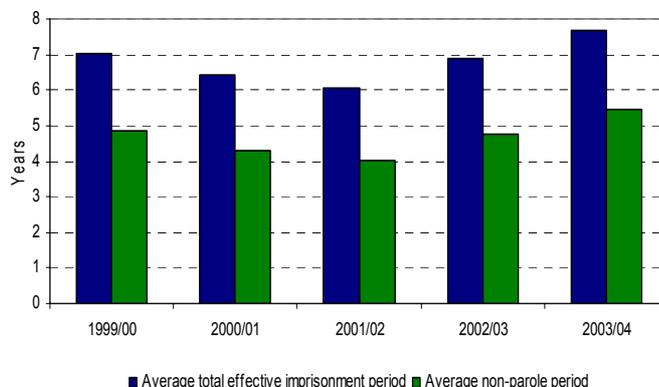


As Figure 7 illustrates, non-parole periods ranged from 6 months to 18 years. The average non-parole period was 4 years and 9 months (compared to an average total effective

imprisonment period of 6 years and 10 months).²³

Figure 8 compares the length of the average total effective sentence of imprisonment and the average non-parole period for rape for each year between 1999/00 and 2003/04.²⁴

Figure 8: Men sentenced to imprisonment for rape by average total effective imprisonment period and average non-parole period, 1999/2000 to 2003/04 (Victoria)

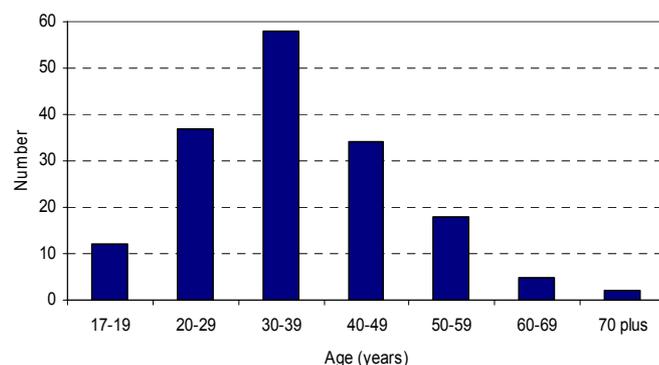


As Figure 8 shows, the average total effective imprisonment period for rape fell from 7 years (with an average non-parole period of 4 years and 10 months) in 1999/00 to 6 years and 1 month (with an average non-parole period of 4 years) in 2001/02. Since then, the average total effective imprisonment period for rape has increased to 7 years and 8 months (with an average non-parole period of 5 years and 5 months) in 2003/04.

Age

Figure 9 shows men sentenced for rape between 1999/00 to 2003/04 by their age at time of sentencing.

Figure 9: Men sentenced for rape by age at time of sentencing, 1999/2000 to 2003/04 (Victoria)



Over this period, most men sentenced for rape were aged between 30 and 39 years with an average age of 36 years.

²¹ Refer fn.17.

²² A 20 year old man sentenced to 6 weeks' imprisonment and a 2 year community based order following release was not given a non-parole period because pursuant to s.11 *Sentencing Act 1991 (Vic)* the court has no power to order a non-parole period for imprisonment terms of under 1 year.

The analysis presented here excludes a 34 year old man sentenced to imprisonment for an indefinite term for rape because pursuant to s.18A(4) *Sentencing Act 1991 (Vic)* people sentenced to an indefinite term of imprisonment are not eligible for parole.

²³ Refer fn.17. Qualitative sentences are excluded from this analysis because they cannot be used to calculate and compare average imprisonment and non-parole periods.

²⁴ Refer fn.23.

Compensation for victims

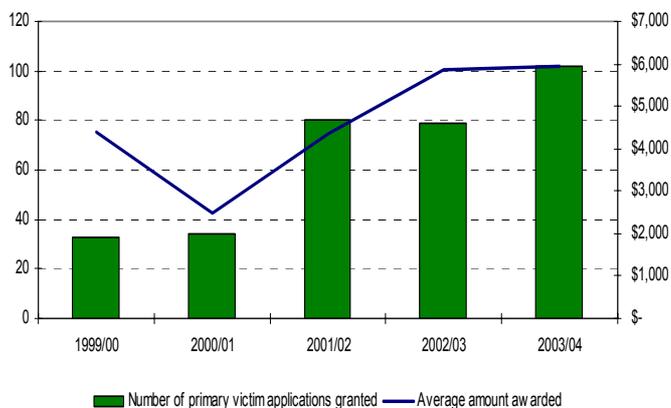
Under the *Victims of Crime Assistance Act 1996 (Vic)*, a person who is the primary victim²⁵ of rape can apply for assistance from the Victims of Crime Assistance Tribunal (VOCAT).

Between 1999/00 and 2003/04, VOCAT granted \$1.65 million to primary victims of rape in response to 328 applications for compensation.²⁶ The average amount of compensation awarded for authorised expenses, authorised future expenses, loss of earnings and special financial assistance was \$5,030.

The amount and types of compensation available to primary victims of crime were broadened by the Victorian Parliament in 2000.²⁷ 'Special financial assistance' was introduced to pay certain victims of crime limited financial assistance as a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, the act of violence suffered by them as victims of crime. The maximum amount allowed depends on the type of crime. Victims of rape can apply for the highest possible amount of special financial assistance, \$7,500. As a result of these legislative amendments, the number of applications lodged and the average amount awarded has changed in recent years.

Figure 10 shows the number of awards granted and the average amount of the award between 1999/00 and 2003/04.

Figure 10: VOCAT applications granted for victims of rape 1999/2000 to 2003/04 (Victoria)



As Figure 10 shows, the number of awards granted to primary victims of rape each year increased from 33 to 102 over the reference period. The sharp rise in the number of awards granted by the Tribunal from 34 in 2000/01 to 80 in 2001/02 reflects legislative amendments to introduce

²⁵ A primary victim is a person who is injured as a direct result of an act of violence committed against him or her. In order to apply for assistance, the act of violence must have occurred in Victoria, must be punishable on conviction by imprisonment and must have directly resulted in injury or death to one or more persons. The act of violence does not have to result in a prosecution or conviction. Therefore, the number of applications for compensation and people sentenced for rape will differ.

²⁶ An application must be lodged with the Tribunal within two years of the date of the act of violence occurring. However, the Tribunal may still consider hearing the application for assistance despite it being filed out of time. Therefore, applications for compensation made between 1999/00 to 2003/04 will relate to rape incidents that occurred outside the reference period.

²⁷ In 2000, s.8(1) *Victims of Crime Assistance Act 1996 (Vic)* was amended to entitle primary victims of crime to special financial assistance.

special financial assistance.

Figure 10 illustrates that the average amount awarded to victims of rape has more than doubled over the reference period, increasing from \$2,490 (2000/01) to \$5,958 (2003/04). This increase also reflects the legislative amendments made in 2000.

Conclusion

Between 1999/00 and 2003/04, 166 men were sentenced for rape and the majority (87%) received a custodial sentence including immediate imprisonment, combined custody and treatment orders, hospital orders, hospital security orders, detention in youth training centres and partially suspended sentences of imprisonment.

Over the reference period, the courts have increasingly sentenced men to immediate imprisonment for rape and for longer periods. The average total effective sentence of imprisonment increased from 7 years to 7 years and 8 months, and the average non-parole period increased from 4 years and 10 months to 5 years and 5 months.

The VOCAT has received and granted an increasing number of applications for compensation for victims of rape in recent years. Since 2000, the number of awards made by VOCAT each year to victims of rape rose dramatically from 33 to 102, and the average award amount more than doubled reaching \$5,958.