

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2006–07 to 2010–11

August 2012
No. 133

Cultivating a commercial quantity of narcotic plants

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of cultivating a commercial quantity of narcotic plants and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2006–07 and 2010–11.³ The *Drugs, Poisons and Controlled Substances Act 1981* (Vic) provides a set of offences in relation to the cultivation of a narcotic plant that distinguishes between large commercial, commercial and less than commercial quantities of the illegal plant.⁴ A person who sows the seed of a narcotic plant or grows, tends or nurtures a narcotic plant without being authorised or licensed to do so is guilty of cultivation of a narcotic plant.⁵ The maximum penalties that apply vary depending on the quantity of the plant involved and the purpose for which the plant was cultivated.

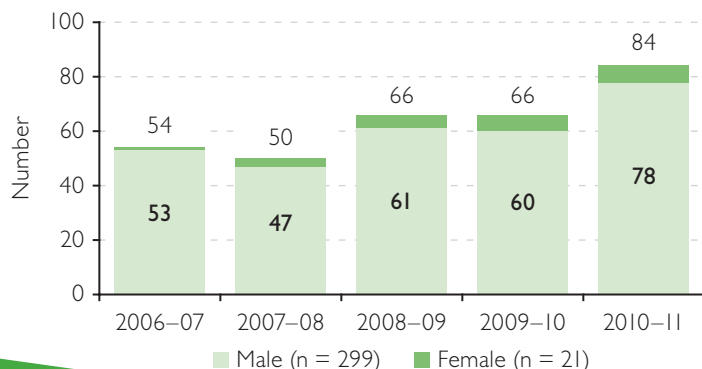
This report examines the offence of cultivating a commercial quantity of narcotic plants.⁶ The amount that constitutes a commercial quantity depends on the type of plant.⁷ In relation to cannabis, which is the most common narcotic plant involved in these offences, a commercial quantity is 25 kg or 100 plants.⁸ Different types of plants can also be combined in order to achieve a commercial quantity.⁹ Cultivation of a commercial quantity of a narcotic plant is an indictable offence that carries a maximum penalty of 25 years' imprisonment¹⁰ and/or a fine of up to 3,000 penalty units.¹¹ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Cultivating a commercial quantity of narcotic plants was the principal offence in 3.1% of cases sentenced in the higher courts between 2006–07 and 2010–11.

As with previous publications in this series, this report presents a snapshot of first instance sentences in the higher courts of Victoria. A section on appeals has been included immediately before the Summary section of this report. Information on sentences that have changed on appeal is also noted in other sections of this report. Unless otherwise noted, the data represent sentences imposed at first instance.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants for the period 2006–07 to 2010–11. As shown, 320 people were sentenced for cultivating a commercial quantity of narcotic plants over the five-year period. There were 84 people sentenced for this offence in 2010–11, up by 18 people from the previous year. Over the five years depicted, the majority of those sentenced were men (93.4% or 299 of the 320 people), including 78 of the 84 people sentenced in 2010–11.

Figure 1: The number of people sentenced for cultivating a commercial quantity of narcotic plants by gender, 2006–07 to 2010–11



Sentence types and trends

Figure 2 shows the total number of people sentenced for cultivating a commercial quantity of narcotic plants 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.¹² Over the five-year period, 75% of people were given an immediate custodial sentence. This peaked at 81% (44 of 54) in 2006–07 before decreasing to 70% (46 of 66) in 2008–09. In 2010–11, 77% of people sentenced (65 of 84) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for cultivating a commercial quantity of narcotic plants and the number who received an immediate custodial sentence, 2006–07 to 2010–11

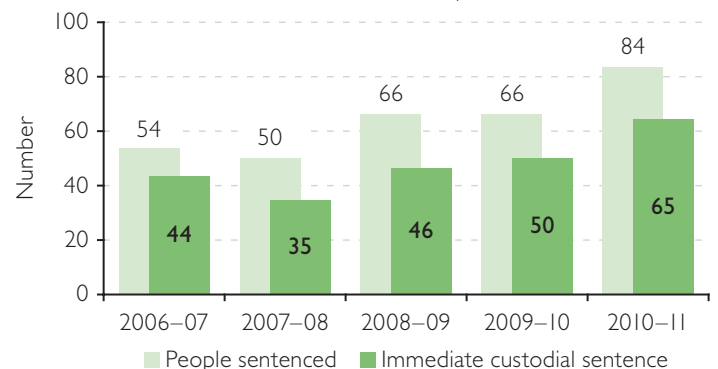


Table 1 shows the number of people sentenced for cultivating a commercial quantity of narcotic plants from 2006–07 to 2010–11 by the types of sentences imposed.

Over the five-year period, half of the people sentenced for cultivating a commercial quantity of narcotic plants received a period of imprisonment (51% or 164 of 320 people), while wholly suspended¹³ and partially suspended sentences of imprisonment were each given to 23% of people sentenced for this principal proven offence.

The number of people given a sentence of imprisonment was lowest during 2007–08 (27 people) and highest during 2010–11 (39 people). The percentage of people receiving a sentence of imprisonment was lowest during 2008–09 (30 of 66 people, or 45%) and highest during 2006–07 (35 of 54 people, or 65%).

The number and percentage of people receiving a wholly suspended sentence of imprisonment were lowest during 2006–07 (7 of 54 people, or 13%). The number of people receiving a wholly suspended sentence was highest during 2008–09 and 2010–11 (19 people each) while the percentage was highest during 2008–09 (19 of 66 people, or 29%).

The number of people receiving a partially suspended sentence of imprisonment was lowest during 2006–07 and 2007–08 (8 people each) while the percentage was lowest during 2006–07 (8 of 54 people, or 15%). The number and percentage of people were highest during 2010–11 (26 of 84 people, or 31%).

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for cultivating a commercial quantity of narcotic plants grouped by their age¹⁴ between 2006–07 and 2010–11. The average age of people sentenced for cultivating a commercial quantity of narcotic plants was 39 years and 8 months. Women sentenced over this period were much older than men (an average age of 45 years and 10 months for women compared with 39 years and 3 months for men). There were no juveniles sentenced over this period.¹⁵

Figure 3: The number of people sentenced for cultivating a commercial quantity of narcotic plants by gender and age, 2006–07 to 2010–11

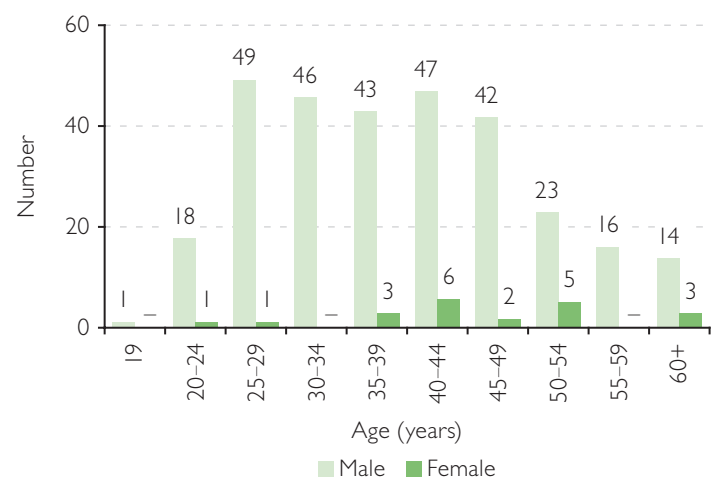


Table 1: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type, 2006–07 to 2010–11

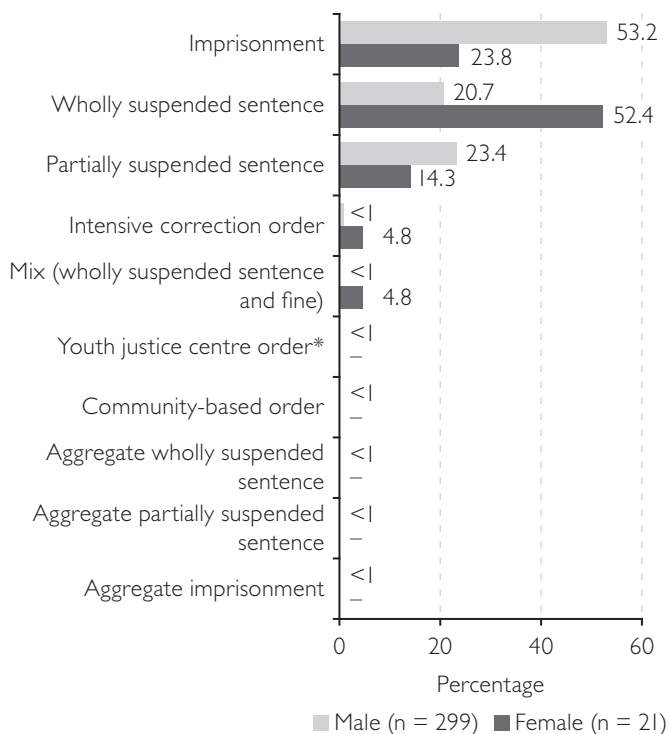
Sentence type	2006–07	2007–08	2008–09	2009–10	2010–11
Imprisonment	35 (65%)	27 (54%)	30 (45%)	33 (50%)	39 (46%)
Wholly suspended sentence	7 (13%)	13 (26%)	19 (29%)	15 (23%)	19 (23%)
Partially suspended sentence	8 (15%)	8 (16%)	15 (23%)	16 (24%)	26 (31%)
Intensive correction order	1 (2%)	2 (4%)	0 (–)	0 (–)	0 (–)
Mix (wholly suspended sentence and fine)	1 (2%)	0 (–)	1 (2%)	0 (–)	0 (–)
Youth justice centre order*	0 (–)	0 (–)	0 (–)	1 (2%)	0 (–)
Community-based order	0 (–)	0 (–)	0 (–)	1 (2%)	0 (–)
Aggregate wholly suspended sentence	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)
Aggregate partially suspended sentence	0 (–)	0 (–)	1 (2%)	0 (–)	0 (–)
Aggregate imprisonment	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)
People sentenced	54	50	66	66	84

*Prior to 23 April 2007, a youth justice centre order was referred to as a youth training centre order.

Sentence types by gender

Figure 4 and Table 2 show the types of sentences imposed for cultivating a commercial quantity of narcotic plants grouped by gender. As shown, a higher percentage of men received a period of imprisonment (53.2% compared with 23.8% of women) and a partially suspended sentence of imprisonment (23.4% compared with 14.3%). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (52.4% compared with 20.7% of men), an intensive correction order (4.8% compared with 0.7%) and a mixed sentence of a wholly suspended sentence and fine (4.8% compared with 0.3%).

Figure 4: The percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type and gender, 2006–07 to 2010–11



*Prior to 23 April 2007, a youth justice centre order was referred to as a youth training centre order.

Table 2: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by sentence type and gender, 2006–07 to 2010–11

Sentence type	Male	Female	Total
Imprisonment	159 (53%)	5 (24%)	164 (51%)
Wholly suspended sentence	62 (21%)	11 (52%)	73 (23%)
Partially suspended sentence	70 (23%)	3 (14%)	73 (23%)
Intensive correction order	2 (<1%)	1 (5%)	3 (<1%)
Mix (wholly suspended sentence and fine)	1 (<1%)	1 (5%)	2 (<1%)
Youth justice centre order*	1 (<1%)	0 (-)	1 (<1%)
Community-based order	1 (<1%)	0 (-)	1 (<1%)
Aggregate wholly suspended sentence	1 (<1%)	0 (-)	1 (<1%)
Aggregate partially suspended sentence	1 (<1%)	0 (-)	1 (<1%)
Aggregate imprisonment	1 (<1%)	0 (-)	1 (<1%)
People sentenced	299	21	320

*Prior to 23 April 2007, a youth justice centre order was referred to as a youth training centre order.

Sentence types by age

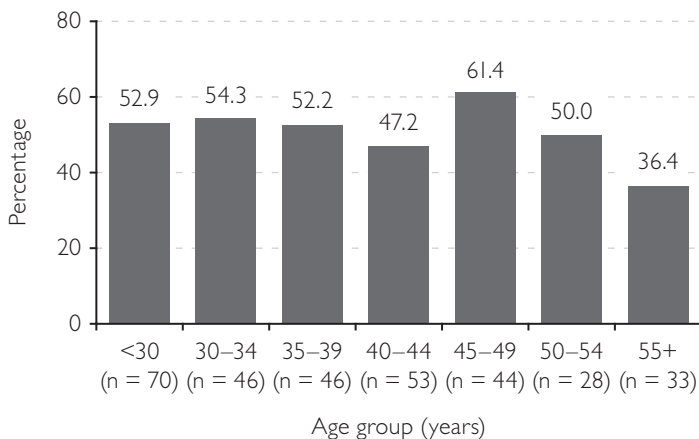
As shown in Table 2, the three most common sentence types were imprisonment, wholly suspended sentences of imprisonment and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

As shown in Figure 5, sentences of imprisonment were most likely to be given to people aged 45–49 years (61% or 27 of the 44 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 55 or older (36% or 12 of the 33 people in this age group).

Figure 5: The percentage of people who received a period of imprisonment for cultivating a commercial quantity of narcotic plants by age group, 2006–07 to 2010–11

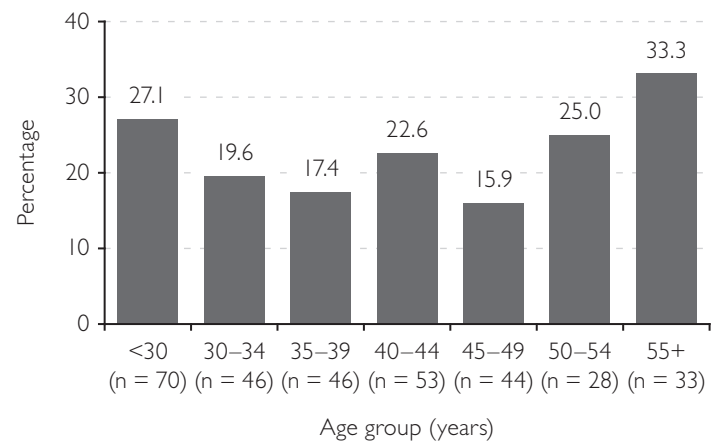


Wholly suspended sentences of imprisonment

As shown in Figure 6, wholly suspended sentences of imprisonment were most likely to be given to people aged 55 years and older (33% or 11 of the 33 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 45–49 years (16% or 7 of the 44 people in this age group).

Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants by age group, 2006–07 to 2010–11

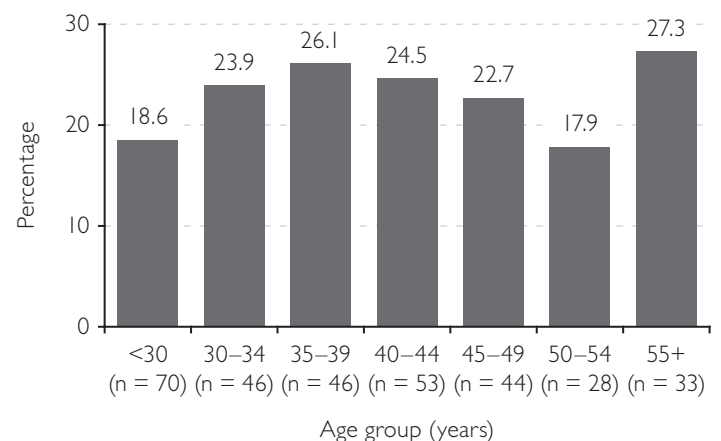


Partially suspended sentences of imprisonment

As shown in Figure 7, partially suspended sentences of imprisonment were most likely to be given to people aged 55 years or older (27%, or 9 of the 33 people in this age group), followed by people aged between 35 and 39 years (26% or 12 of the 46 people in this age group).

Conversely, partially suspended sentences of imprisonment were least common for those aged 50–54 years (18% or 5 of the 28 people in this age group).

Figure 7: The percentage of people who received a partially suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants by age group, 2006–07 to 2010–11



Principal and total effective sentences

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

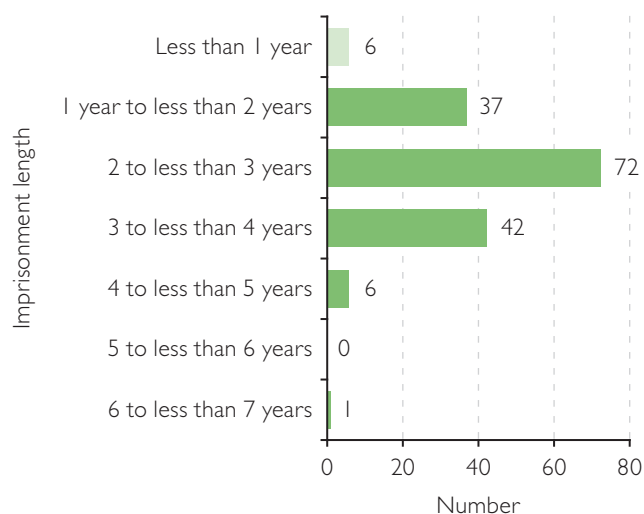
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a *total effective sentence*. The total effective sentence aggregates the principal sentence handed down for each charge and takes into account whether sentences 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 cultivating a commercial quantity of narcotic plants must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of cultivating a commercial quantity of narcotic plants from 2006–07 to 2010–11.

Principal sentence of imprisonment

Figure 8 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2006–07 and 2010–11 by the length of the imprisonment term.¹⁶ Imprisonment terms ranged from 6 months to 6 years (5 years after adjusting for appeals), while the median length of imprisonment was 2 years, 3 months and 15 days (meaning that half of the imprisonment terms were shorter than 2 years, 3 months and 15 days and half were longer). After adjusting for appeals, the median length was slightly reduced to 2 years and 3 months. The most common length of imprisonment imposed was 2 years to less than 3 years (72 people).

Figure 8: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of imprisonment term, 2006–07 to 2010–11

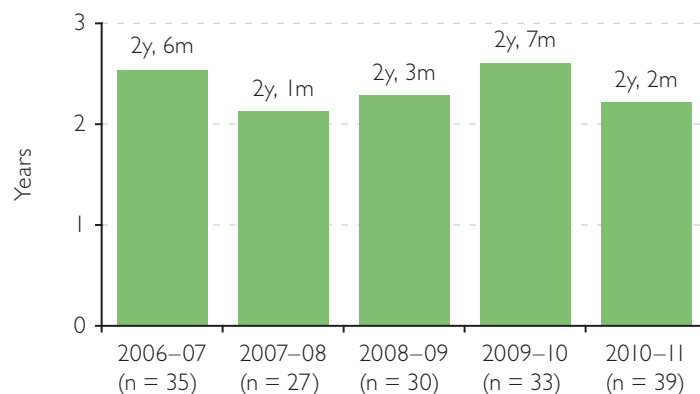


As shown in Figure 9, the average length of imprisonment term imposed on people sentenced for cultivating a commercial quantity of narcotic plants ranged from 2 years and 1 month in 2007–08 to 2 years and 7 months in 2009–10.

From 2006–07 to 2010–11, the majority of people who received a term of imprisonment for cultivating a commercial quantity

of narcotic plants were men (159 people or 97.0%). Over the five-year period, men received an average longer term of imprisonment compared with women (2 years and 4 months for men compared with 1 year and 11 months for the 5 women sentenced to imprisonment).

Figure 9: The average length of imprisonment term imposed on people sentenced for cultivating a commercial quantity of narcotic plants, 2006–07 to 2010–11

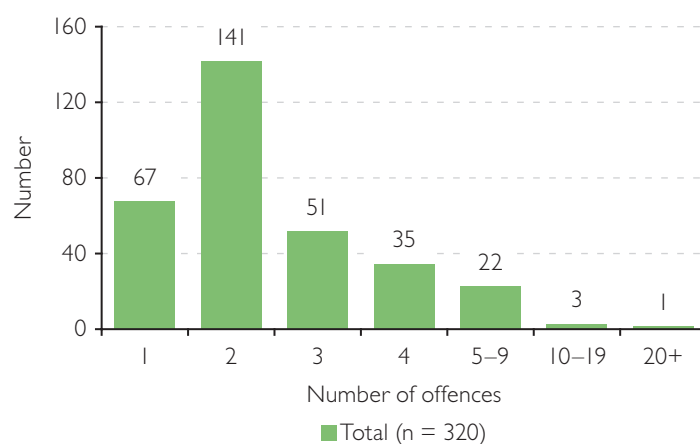


Other offences finalised at the same hearing

Often people prosecuted for cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants.

Figure 10 shows the number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 34, while the median was 2 offences. There were 67 people (20.9%) sentenced for the single offence of cultivating a commercial quantity of narcotic plants. The average number of offences per person sentenced for cultivating a commercial quantity of narcotic plants was 2.67.

Figure 10: The number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the number of sentenced offences per person, 2006–07 to 2010–11



While Figure 10 presents the number of sentenced offences for those sentenced for cultivating a commercial quantity of narcotic plants, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 206 of the total 320 people (64.4%) also received sentences for theft. On average, they were sentenced for 1.21 counts of theft.

Table 3: The number and percentage of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the most common offences that were sentenced and the average number of those offences that were sentenced, 2006–07 to 2010–11

Offence	No.	%	Avg.
1 Cultivating a commercial quantity of narcotic plants	320	100.0	1.11*
2 Theft	206	64.4	1.21
3 Possess a drug of dependence	47	14.7	1.32
4 Drug trafficking*	31	9.7	1.10
5 Intentionally destroy/damage property (criminal damage)	11	3.4	1.09
6 Deal with property suspected of being proceeds of crime	8	2.5	1.38
7 Use a drug of dependence	8	2.5	1.13
8 Handling stolen goods	7	2.2	1.14
9 Possess prohibited weapon without exemption	6	1.9	1.33
10 Use false document to prejudice of other	3	0.9	2.67
People sentenced	320	100.0	2.67

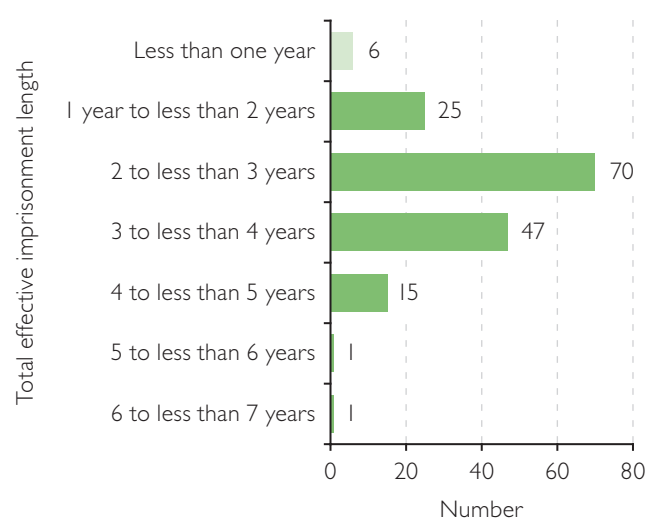
*May contain offences of drug trafficking and cultivation of varying quantities (non-commercial, commercial or large commercial).

Total effective sentence of imprisonment

There were 165 people given a total effective sentence of imprisonment.¹⁷ Figure 11 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2006–07 and 2010–11 by length of total effective sentence. The length of total effective sentences ranged from 6 months to 6 years (5 years after adjusting for appeals), while the median total effective length of imprisonment was 2 years and 6 months (meaning that half of the total effective sentence lengths were below 2 years and 6 months and half were above).

The most common total effective imprisonment length was 2 years to less than 3 years (70 people).

Figure 11: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of total effective imprisonment term, 2006–07 to 2010–11



Non-parole period

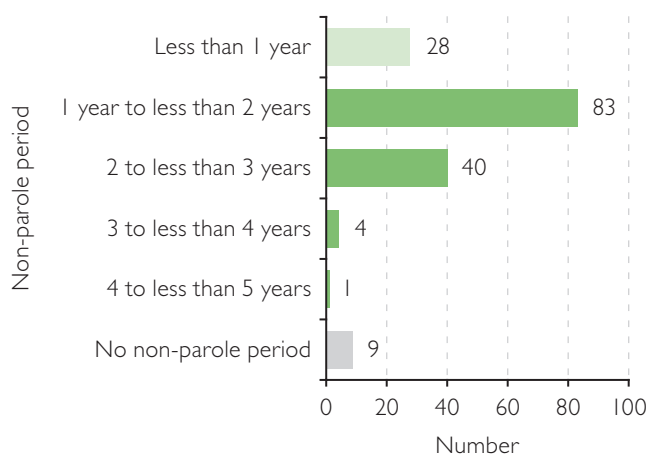
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 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 some cases, the non-parole period may be longer than the individual principal sentence for cultivating a commercial quantity of narcotic plants. Sentences and non-parole periods must be considered in this broader context.

Of the 165 people who were sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, 159 were eligible to have a non-parole period fixed.¹⁸ Of these people, 156 were given a non-parole period (98%). Figure 12 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants between 2006–07 and 2010–11 by length of non-parole period. Non-parole periods ranged from 4 months to 4 years (3 years after adjusting for appeals), while the median length of the non-parole period was 1 year and 6 months (meaning that half of the non-parole periods were below 1 year and 6 months and half were above). After adjusting for appeals, the median non-parole period was slightly reduced to 1 year and 4 months.

The most common non-parole period imposed was 1 year to less than 2 years (83 people).

Figure 12: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of non-parole period, 2006–07 to 2010–11

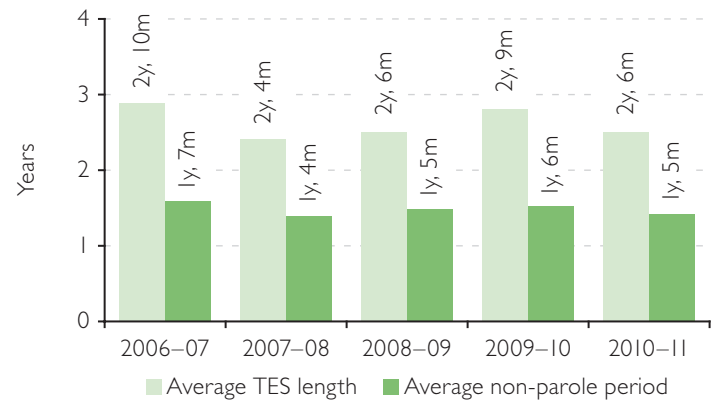


Total effective sentences of imprisonment and non-parole periods

Figure 13 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people from 2006–07 to 2010–11.

From 2006–07 to 2010–11, the average length of total effective sentences for all people ranged from 2 years and 4 months in 2007–08 to 2 years and 10 months in 2006–07. Over the same period, the average length of non-parole periods ranged from 1 year and 4 months in 2007–08 to 1 year and 7 months in 2006–07.

Figure 13: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, 2006–07 to 2010–11



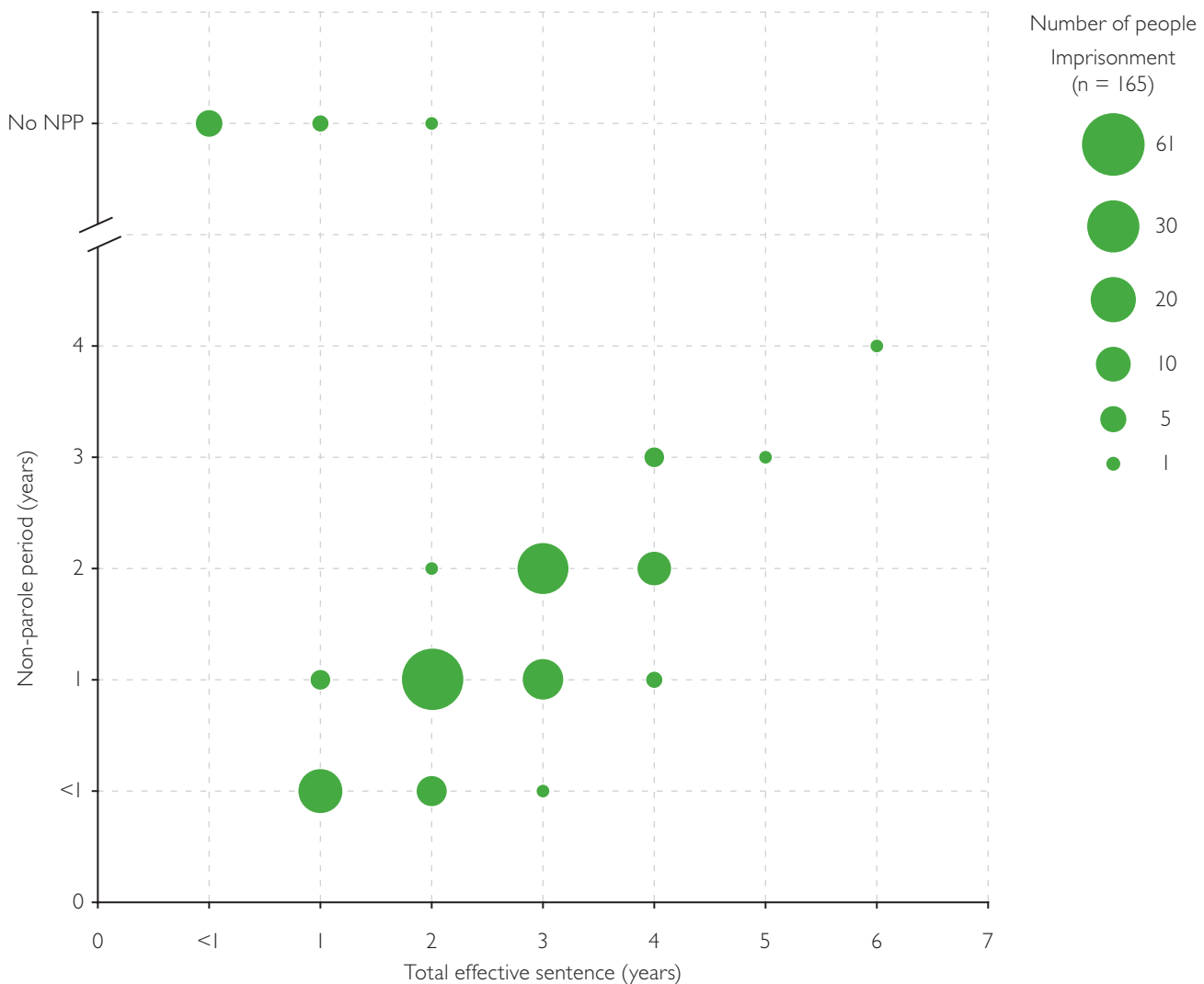
Total effective sentence of imprisonment by non-parole period

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 cultivating a commercial quantity of narcotic plants 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. Sentence lengths and non-parole periods that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths and non-parole periods of less than one year are grouped into the '<1 year' category. For example, a sentence length of 2 years and 6 months would be included as a sentence length of 2 years for the purposes of Figure 14.

As shown, the most common combination of imprisonment length and non-parole period imposed was 2 years with a non-parole period of 1 year (61 people – as represented by the largest bubble on the chart). The length of imprisonment ranged from 6 months with no non-parole period to 6 years with a non-parole period of 4 years (5 years with a non-parole period of 3 years after adjusting for appeals).

Figure 14: The number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by the total effective sentence and the non-parole period imposed, 2006–07 to 2010–11



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

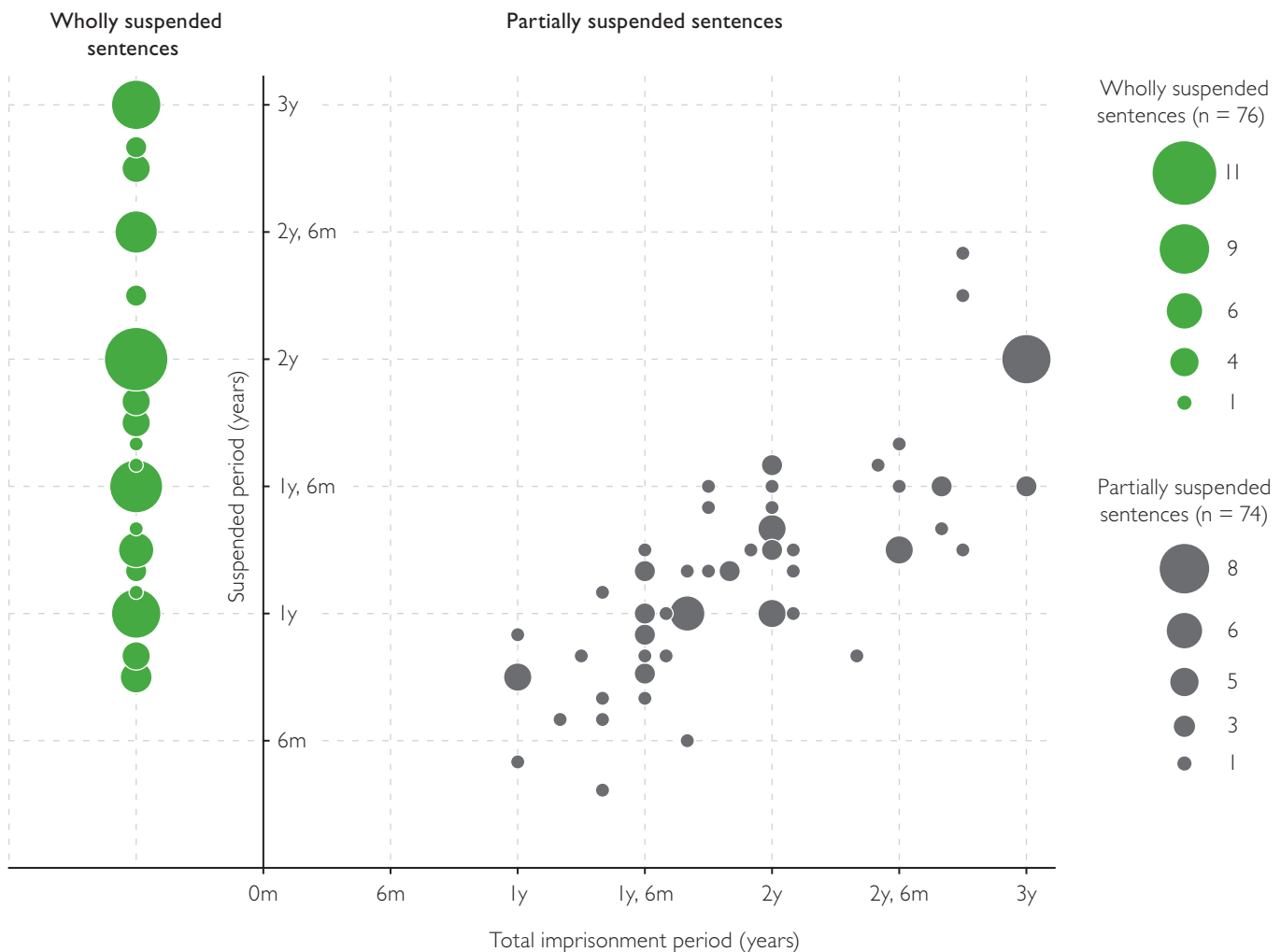
Suspended sentences of imprisonment

There were 150 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 76 people had their prison sentence wholly suspended and 74 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 green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the grey '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 the partially suspended prison term. Imprisonment lengths and suspended periods that end part way through a month are rounded down to the nearest complete month. For example, a wholly suspended sentence of 6 months and 12 days would be included as a sentence length of 6 months for the purposes of Figure 15.

Wholly suspended sentence lengths ranged from 9 months to 3 years. The most common wholly suspended sentence length was 2 years (11 people – as represented by the largest green bubble on the chart).

Partially suspended sentence lengths ranged from 1 year's imprisonment with 5 months suspended to 3 years' imprisonment with 2 years and 15 days suspended. The most common partially suspended sentence combination was 3 years' imprisonment with 2 years suspended (8 people – as represented by the largest grey bubble on the chart).

Figure 15: The number of people given a wholly or partially suspended sentence of imprisonment for cultivating a commercial quantity of narcotic plants by sentence type and length, 2006–07 to 2010–11

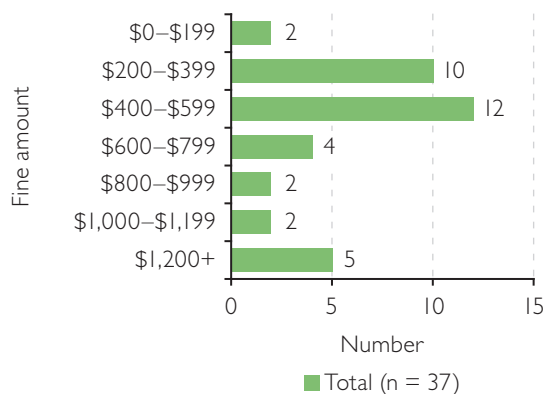


Fines

The distribution of fines is shown in Figure 16. This analysis includes all fines that were imposed for cases where cultivating a commercial quantity of narcotic plants was the principal offence. Fines were imposed on 37 people.

The fine amount imposed ranged from \$100 to \$7,000, with a median of \$500 (meaning that half of the values fell below \$500 and half of the values were above \$500). The average fine amount was \$850. The average fine amount imposed against the 3 females was \$933, higher than the average fine for the 34 males (\$816).

Figure 16: The number of people who received a fine for cultivating a commercial quantity of narcotic plants by fine amount, 2006–07 to 2010–11



Appeals

A sentence imposed on a person may be appealed¹⁹ by that person or by the Crown. A person sentenced may also appeal against their conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

Up to June 2011, 3 people sentenced for a principal offence of cultivating a commercial quantity of narcotic plants in the period 2006–07 to 2010–11 successfully appealed against their convictions. Of these 3 people, 2 were acquitted and 1 was granted a retrial on their principal proven charges. All 3 people were still found guilty of their remaining charges and resentenced accordingly. Thus, the number of people sentenced from 2006–07 to 2010–11 for a principal offence of cultivating a commercial quantity of narcotic plants is reduced to 317 people once appeals are considered.

As a result of successful appeals against sentence, the total effective sentence and/or the non-parole period changed for 15 people. All of these appeals were made by the person sentenced and resulted in a sentence reduction. The total effective sentence that decreased the most as a result of a successful appeal was originally a sentence of 5 years and 9 months' imprisonment, with a non-parole period of 3 years and 9 months. After a successful appeal, this case was resentenced to a total effective sentence of 3 years with a non-parole period of 1 year and 9 months.

An additional 4 people managed to successfully appeal their total effective sentences of imprisonment, which changed to another type of sentence. Of these, 3 people had their total

effective sentences changed from imprisonment to a partially suspended sentence, while the remaining person had their total effective sentence of imprisonment changed to a wholly suspended sentence.

There were no successful appeals made by the Crown for the principal offence of cultivating a commercial quantity of narcotic plants during the period from 2006–07 to 2010–11.

The principal sentence changed for 12 people as a result of a successful appeal. The principal sentence that decreased the most as a result of an appeal was originally 4 years and 6 months' imprisonment, but this was resentenced to 1 year and 3 months' imprisonment on appeal. There were no principal sentences that increased in length as a result of a successful appeal.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was changed from 6 years to 5 years but the adjusted median total effective sentence remained at 2 years and 6 months. The adjusted longest non-parole period also decreased from 4 years to 3 years and the median non-parole period changed from 1 year and 6 months to 1 year and 4 months.

The adjusted longest principal sentence of imprisonment was changed from 6 years to 5 years, and the adjusted median imprisonment term was changed from 2 years, 3 months and 15 days to a slightly lower 2 years and 3 months.

Summary

Between 2006–07 and 2010–11, 320 people were sentenced for cultivating a commercial quantity of narcotic plants in the higher courts. Over this period, the majority of people sentenced were men (93%), while 75% were aged between 20 and 49 years. Half of the people sentenced for cultivating a commercial quantity of narcotic plants received a period of imprisonment (51%), while 23% received a wholly suspended sentence of imprisonment and another 23% received a partially suspended sentence of imprisonment.

Men were more likely than women to be sentenced to a period of imprisonment or a partially suspended sentence of imprisonment. Conversely, women were more likely to be sentenced to a wholly suspended sentence of imprisonment. Imprisonment was more common for those between 45 and 49 years of age, and both wholly and partially suspended sentences of imprisonment were most common for people aged 55 years or older.

Each of the 320 people was sentenced for an average of 2.67 offences, including 1.11 offences of cultivating a commercial quantity of narcotic plants. The most common offence finalised in conjunction with cultivating a commercial quantity of narcotic plants was theft (64.4% of all cases). The number and range of offences for which people with a principal offence of cultivating a commercial quantity of narcotic plants were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 2 years and 6 months, while the median principal imprisonment length was 2 years, 3 months and 15 days.

Total effective imprisonment lengths ranged from 6 months with no non-parole period to 6 years with a non-parole period of 4 years. The most common sentence of imprisonment was 2 years with a non-parole period of 1 year. The most common partially suspended sentence length was 3 years with 2 years suspended, while the most common wholly suspended sentence length was 2 years.

A small number of people were able to successfully appeal against their sentences. When the results of the appeal outcomes are incorporated into the original sentencing data, the range of total effective imprisonment lengths decreased from 6 years' imprisonment to 5 years, while the range of non-parole periods changed from 4 years to 3 years. The median total effective imprisonment length did not change but the median non-parole period changed from 1 year and 6 months to 1 year and 4 months. The longest principal imprisonment sentence length changed from 6 years to 5 years and the median principal imprisonment sentence changed from 2 years, 3 months and 15 days to just 2 years and 3 months.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants who received a more serious sentence for another offence forming part of the same presentment or indictment. Cultivating a commercial quantity of narcotic plants was the principal proven offence for 320 people sentenced in the County Court of Victoria during 2006–07 to 2010–11.

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 report as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 104, which describes sentencing trends for cultivating a commercial quantity of narcotic plants between 2004–05 and 2008–09.

2. The information source for sentencing outcomes for cultivating a commercial quantity of narcotic plants only contains information on age and gender characteristics. No other demographic analysis is possible using this data source.
3. The source data for the statistical information presented in this Snapshot were provided by the Business Intelligence area of the Courts and Tribunals unit within the Department of Justice (Vic). 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 report are accurate, the data are subject to revision.

The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding drug cultivation offences on the conviction returns,

a further classification exercise was undertaken to determine the specific offence types. This involved reading the sentencing remarks of the particular cases and determining if the quantity of the drug was non-commercial, commercial or large commercial. In total, there were 425 cases that had cultivation of narcotic plants (section 72, 72A or 72B of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)) as the principal proven offence over the five-year period from 2006–07 to 2010–11. Sentencing remarks were located for 390 cases (91.8%). The drug quantities for all of these cases were checked and coded into the appropriate category. The remaining cases had sentences that were all within the statutory maximum penalty for the offence and were therefore assumed to have been recorded correctly in the first instance.

4. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 72–72B.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
6. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72A.
7. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
8. *Drugs, Poisons and Controlled Substances Act 1981* (Vic), sch 11, pt 2.
9. See 'aggregate commercial quantity'; *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
10. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72A.
11. 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>.
12. Immediate custodial sentence includes imprisonment, partially suspended sentence, youth justice centre order, aggregate partially suspended sentence and aggregate imprisonment.
13. Cultivating a commercial quantity of narcotic plants is not defined as a 'serious offence' or a 'significant offence' for the purposes of section 27(2B) of the *Sentencing Act 1991* (Vic). Section 27(2B) of the *Sentencing Act 1991* (Vic) states that courts cannot impose a suspended sentence for a 'serious offence' or a 'significant offence' committed on or after 1 May 2011.
14. Age is at the time of sentencing.
15. Some defendants who were under the age of 18 at the time of committing the alleged offence and who were not 19 years or older at the time proceedings commenced may have been dealt with in the Children's Court of Victoria.
16. Data presented in this section do not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Sentence lengths for aggregate sentences of imprisonment apply to the whole case, while Figure 8 only deals with sentences of imprisonment for the principal proven offence of cultivating a commercial quantity of narcotic plants. During the 2006–07 to 2010–11 period, one person received an aggregate form of imprisonment.
17. All of the 164 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence. One additional person was given an aggregate sentence of imprisonment and was included in Figure 11.
18. A total of 6 people were not eligible for parole because they were given a total effective sentence length of less than 1 year.
19. Appeals data were collected by the Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <www.austlii.gov.au>.

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

Sentencing trends in the higher courts, 2006–07 to 2010–11

- 135 Affray
- 134 Incest
- 133 Cultivating a commercial quantity of narcotic plants
- 132 Cultivating a non-commercial quantity of narcotic plants
- 131 Trafficking in a large commercial quantity of drugs
- 130 Trafficking in a commercial quantity of drugs
- 129 Trafficking in a non-commercial quantity of drugs
- 128 Causing injury intentionally
- 127 Causing injury recklessly
- 126 Causing serious injury recklessly
- 125 Causing serious injury intentionally
- 124 Aggravated burglary
- 123 Burglary
- 122 Armed robbery
- 121 Robbery

Sentencing trends in the higher courts, 2005–06 to 2009–10

- 120 Arson
- 119 Sexual penetration of a child aged under 10
- 118 Sexual penetration of a child under care
- 117 Rape
- 116 Maintaining a sexual relationship with a child under 16
- 115 Indecent assault
- 114 Sexual penetration of a child aged between 10 and 16
- 113 Indecent act with a child under 16
- 112 Making a threat to kill
- 111 Culpable driving causing death
- 110 Manslaughter
- 109 Murder
- 108 Obtaining property by deception
- 107 Obtaining a financial advantage by deception
- 106 Theft
- 105 Handling stolen goods

Sentencing trends in the Magistrates' Court, 2004–05 to 2007–08

- 74 Unlicensed driving
- 73 Driving while suspended
- 72 Driving while disqualified
- 71 Trafficking heroin
- 70 Trafficking ecstasy
- 69 Trafficking cannabis
- 68 Trafficking amphetamines
- 67 Possessing heroin
- 66 Possessing ecstasy
- 65 Possessing cannabis
- 64 Possessing amphetamines
- 63 Causing injury recklessly
- 62 Causing injury intentionally
- 61 Causing serious injury recklessly
- 60 Going equipped to steal
- 59 Handling stolen goods
- 58 Aggravated burglary
- 57 Burglary
- 56 Other theft
- 55 Theft of a bicycle
- 54 Theft from a shop
- 53 Theft from a motor vehicle
- 52 Theft of a motor vehicle

Sentencing trends in the Magistrates' Court, 2004–05 to 2006–07

- 51 Knowingly possess child pornography
- 50 Indecent act with a child under 16
- 49 Indecent assault

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