

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2004–05 to 2008–09

June 2010
No. 99

Incest

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of incest and details the age and gender² of people sentenced for this offence in the County Court of Victoria³ between 2004–05 and 2008–09.⁴

A person who engages in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child is guilty of incest. Similarly, a person who takes part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant (or the step-child) of his or her de facto spouse is guilty of incest.⁵ Incest is an indictable offence and is triable before a judge and jury in the County or Supreme Court. The maximum penalty for this offence is 25 years' imprisonment.⁶

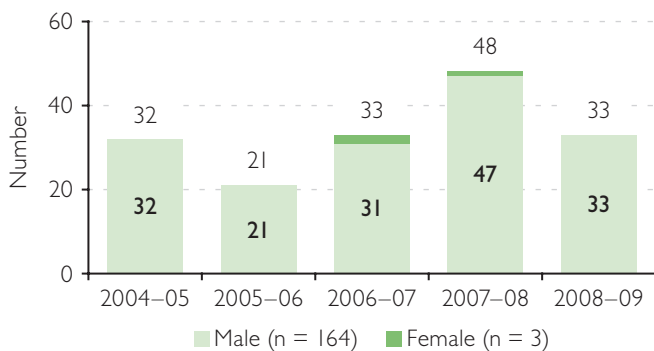
Incest was the principal offence in 1.6% of cases sentenced in the higher courts between 2004–05 and 2008–09.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of incest for the period 2004–05 to 2008–09. As shown, 167 people were sentenced for incest over the five-year period. There were 33 people sentenced for this offence in 2008–09, down by 15 people from the previous year.⁷

Over the five years depicted, the majority of those sentenced were men (98.2% or 164 of 167 people), including all of the 33 people sentenced in 2008–09.

Figure 1: The number of people sentenced for incest by gender, 2004–05 to 2008–09



Sentence types and trends

Figure 2 shows the total number of people sentenced for incest 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.⁸ Over the five-year period, 95% of people were given an immediate custodial sentence. This peaked at 100% (21 of 21) in 2005–06 after a low of 94% (30 of 32) in 2004–05. In 2008–09, 94% of people sentenced (31 of 33) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for incest and the number who received an immediate custodial sentence, 2004–05 to 2008–09

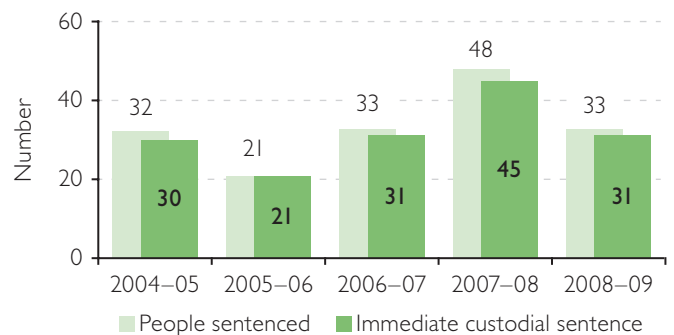


Table 1 shows the number of people sentenced for incest from 2004–05 to 2008–09 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for incest received a period of imprisonment (92% or 153 of 167 people).

The number of people given a sentence of imprisonment was highest in 2007–08 (45 people) and lowest in 2005–06 (19 people). In terms of percentage, imprisonment rates were equal-highest in 2004–05 and 2007–08 (94% each) and lowest in 2006–07 (88%).

A small number and percentage of people each year were given sentences other than imprisonment.

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for incest grouped by their age¹⁰ between 2004–05 and 2008–09. The average age of people sentenced for incest was 49 years. There were no juveniles sentenced over this period.

Figure 3: The number of people sentenced for incest by gender and age, 2004–05 to 2008–09

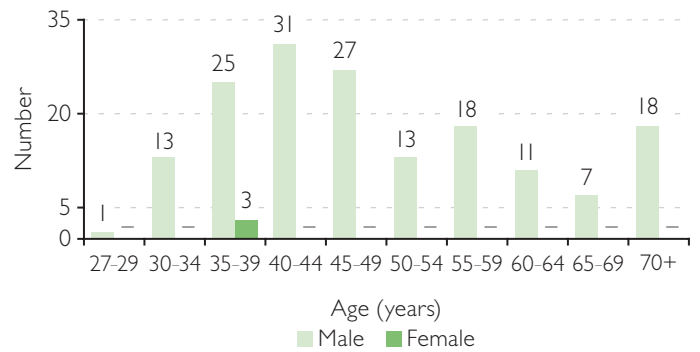


Table 1: The number and percentage of people sentenced for incest by sentence type, 2004–05 to 2008–09

Sentence type	2004–05	2005–06	2006–07	2007–08	2008–09
Imprisonment	30 (94%)	19 (90%)	29 (88%)	45 (94%)	30 (91%)
Wholly suspended sentence ⁹	2 (6%)	0 (–)	2 (6%)	2 (4%)	2 (6%)
Partially suspended sentence	0 (–)	2 (10%)	2 (6%)	0 (–)	0 (–)
Mix (imprisonment and community-based order)	0 (–)	0 (–)	0 (–)	0 (–)	1 (3%)
Adjourned undertaking with conviction	0 (–)	0 (–)	0 (–)	1 (2%)	0 (–)
People sentenced	32	21	33	48	33

Sentence types by gender

Figure 4 and Table 2 show the types of sentences imposed for incest grouped by gender. As shown, a large majority of offenders were sentenced to imprisonment (92%) including all 3 female offenders. Of the 164 male offenders sentenced for incest during this period, only 14 received a sentence other than imprisonment.

Figure 4: The percentage of people sentenced for incest by sentence type and gender, 2004–05 to 2008–09

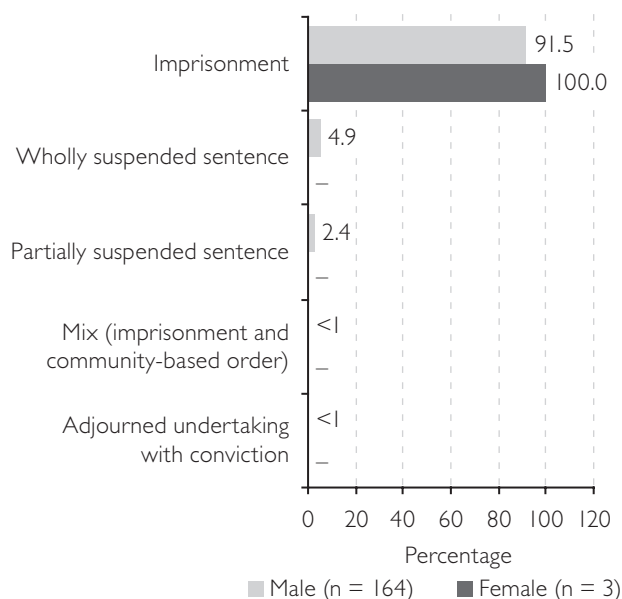


Table 2: The number and percentage of people sentenced for incest by gender, 2004–05 to 2008–09

Sentence type	Male	Female	Total
Imprisonment	150 (91%)	3 (100%)	153 (92%)
Wholly suspended sentence	8 (5%)	0 (–)	8 (5%)
Partially suspended sentence	4 (2%)	0 (–)	4 (2%)
Mix (imprisonment and community-based order)	1 (<1%)	0 (–)	1 (<1%)
Adjourned undertaking with conviction	1 (<1%)	0 (–)	1 (<1%)
People sentenced	164	3	167

Sentence types by age

As shown in Table 2, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offender's age group.

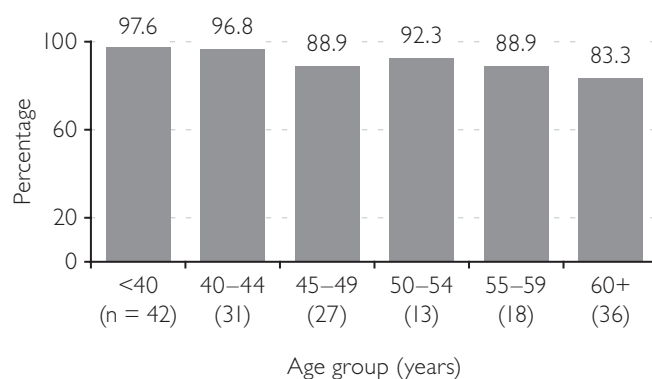
Imprisonment

Sentences of imprisonment were most likely to be given to people aged under 40 years (98% or 41 of the 42 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 60 years and older (83% or 30 of the 36 people in this age group).

Overall, a high percentage of offenders (83% or higher) were sentenced to imprisonment across all age groups.

Figure 5: The percentage of people who received a period of imprisonment for incest by age group, 2004–05 to 2008–09



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.

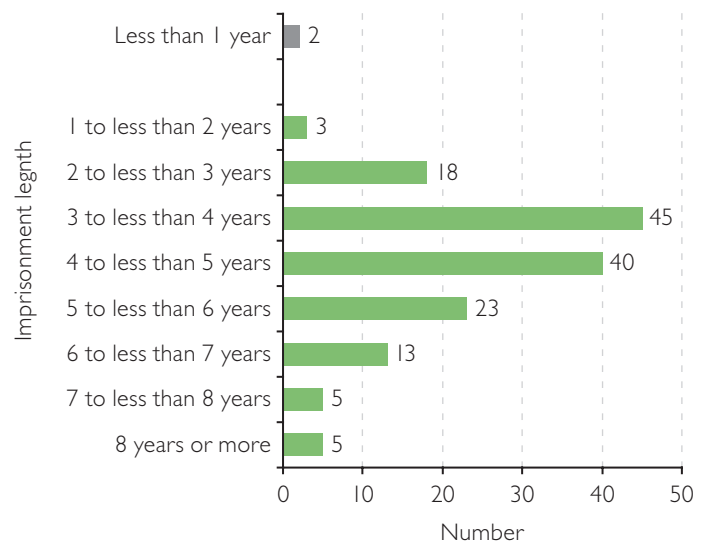
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for incest must be considered in this broader context. The following sections analyse the use of imprisonment for incest over 2004–05 to 2008–09.

Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for incest between 2004–05 and 2008–09 by the length of the imprisonment term. Imprisonment terms ranged from 3 months¹¹ to 8 years, while the median length of imprisonment was 4 years (meaning that half of the imprisonment terms were shorter than 4 years and half were longer).

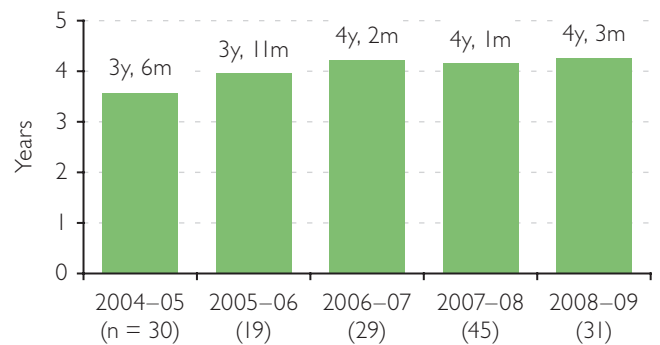
The most common length of imprisonment imposed was 3 years (45 people).

Figure 6: The number of people sentenced to imprisonment for incest by length of imprisonment term, 2004–05 to 2008–09



As shown in Figure 7, the average length of imprisonment term imposed on people sentenced for incest ranged from 3 years and 6 months in 2004–05 to 4 years and 3 months in 2008–09.

Figure 7: The average length of imprisonment term imposed on people sentenced for incest, 2004–05 to 2008–09



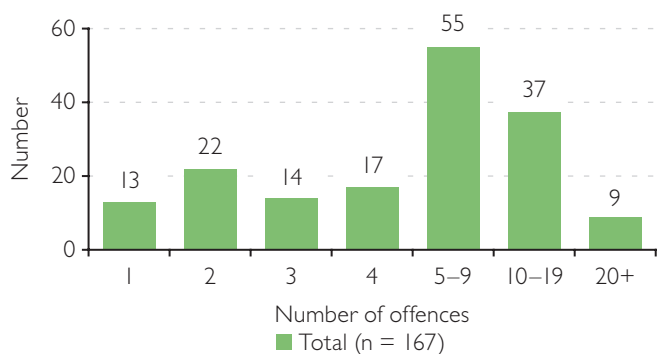
From 2004–05 to 2008–09, the majority of those people who received a term of imprisonment for incest were men (151 people or 98.1%).

Other offences finalised at the same hearing

Often people prosecuted for incest 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 incest.

Figure 8 shows the number of people sentenced for the principal offence of incest by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 43, while the median was 6 offences. There were 13 people (7.8%) sentenced for the single offence of incest alone. The average number of offences per person sentenced for incest was 7.75.¹²

Figure 8: The number of people sentenced for the principal offence of incest by the number of sentenced offences per person, 2004–05 to 2008–09



While Figure 8 presents the number of sentenced offences for those sentenced for incest, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 90 of the total 167 people (53.9%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 3.57 counts of indecent act with a child under 16.

Table 3: The number and percentage of people sentenced for the principal offence of incest by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2008–09

Offence	No.	%	Avg.
1 Incest*	167	100.0	3.66
2 Indecent act with, or in the presence of, a child under 16	90	53.9	3.57
3 Indecent assault	42	25.1	4.74
4 Attempted incest	14	8.4	1.29
5 Sexual penetration of a child under 16	10	6.0	5.50
6 Gross indecency with, or in the presence of, a child under 16	9	5.4	1.67
7 Possess child pornography	8	4.8	1.00
8 Gross indecency with, or in the presence of, a girl under 16	6	3.6	2.00
9 Produce child pornography	5	3.0	1.60
10 Common law assault	4	2.4	1.25
People sentenced	167	100.0	7.75

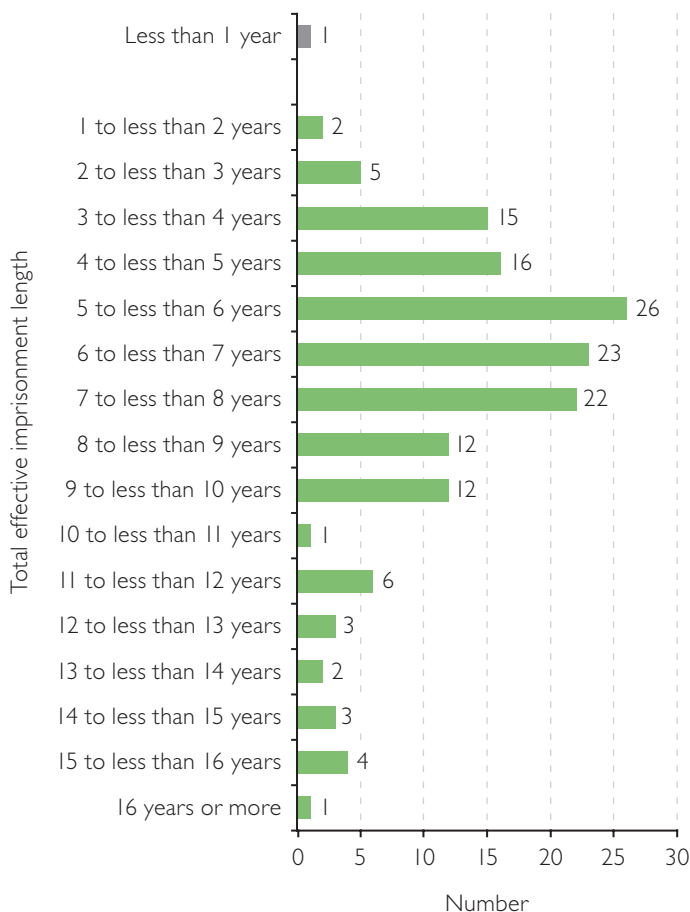
*May include offences of incest under the *Crimes Act 1958* (Vic) s 44(3) and 44(4) which are excluded from principal proven offence statistics.

Total effective sentence of imprisonment

There were 154 people given a total effective sentence of imprisonment.¹³ Figure 9 shows the number of people sentenced to imprisonment for incest between 2004–05 and 2008–09 by the length of their total effective sentence. The length of total effective sentences ranged from 3 months¹⁴ to 16 years and 6 months, while the median total effective length of imprisonment was 6 years, 3 months and 15 days (meaning that half of the total effective sentence lengths were below 6 years, 3 months and 15 days and half were above).

The most common total effective imprisonment length was 5 years (26 people).

Figure 9: The number of people sentenced to imprisonment for incest by total effective length of imprisonment term, 2004–05 to 2008–09



Non-parole period

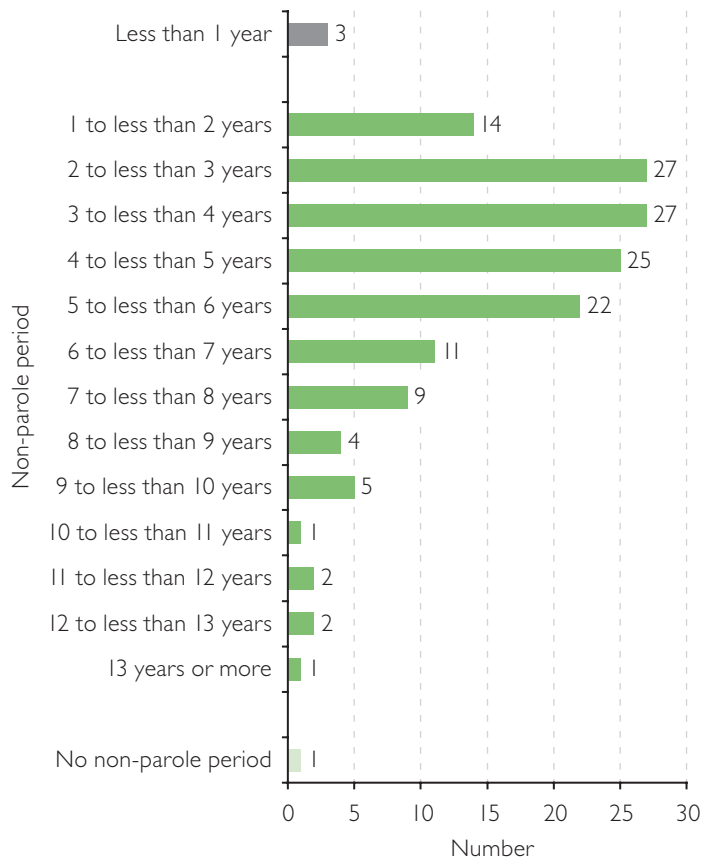
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 many cases, the non-parole period will be longer than the individual principal sentence for incest. Sentences and non-parole periods must be considered in this broader context.

Of the 154 people who were sentenced to imprisonment for incest, 153 were eligible to have a non-parole period fixed.¹⁵ All of these 153 people were given a non-parole period (100%). Figure 10 shows the number of people sentenced to imprisonment for incest between 2004–05 and 2008–09 by the length of their non-parole period. Non-parole periods ranged from 6 months to 13 years, while the median length of the non-parole period was 4 years (meaning that half of the non-parole periods were below 4 years and half were above).

The two most common non-parole periods imposed were 2 and 3 years (27 people each).

Figure 10: The number of people sentenced to imprisonment for incest by length of non-parole period, 2004–05 to 2008–09

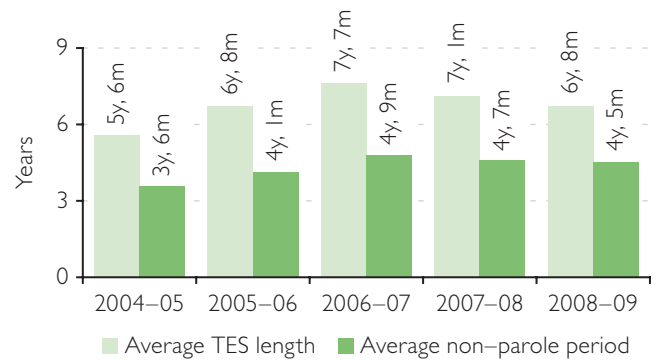


Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people.

From 2004–05 to 2008–09, the average length of total effective sentences for all people ranged from 5 years and 6 months in 2004–05 to 7 years and 7 months in 2006–07. Over the same period, the average length of non-parole periods ranged from 3 years and 6 months in 2004–05 to 4 years and 9 months in 2006–07.

Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for incest, 2004–05 to 2008–09

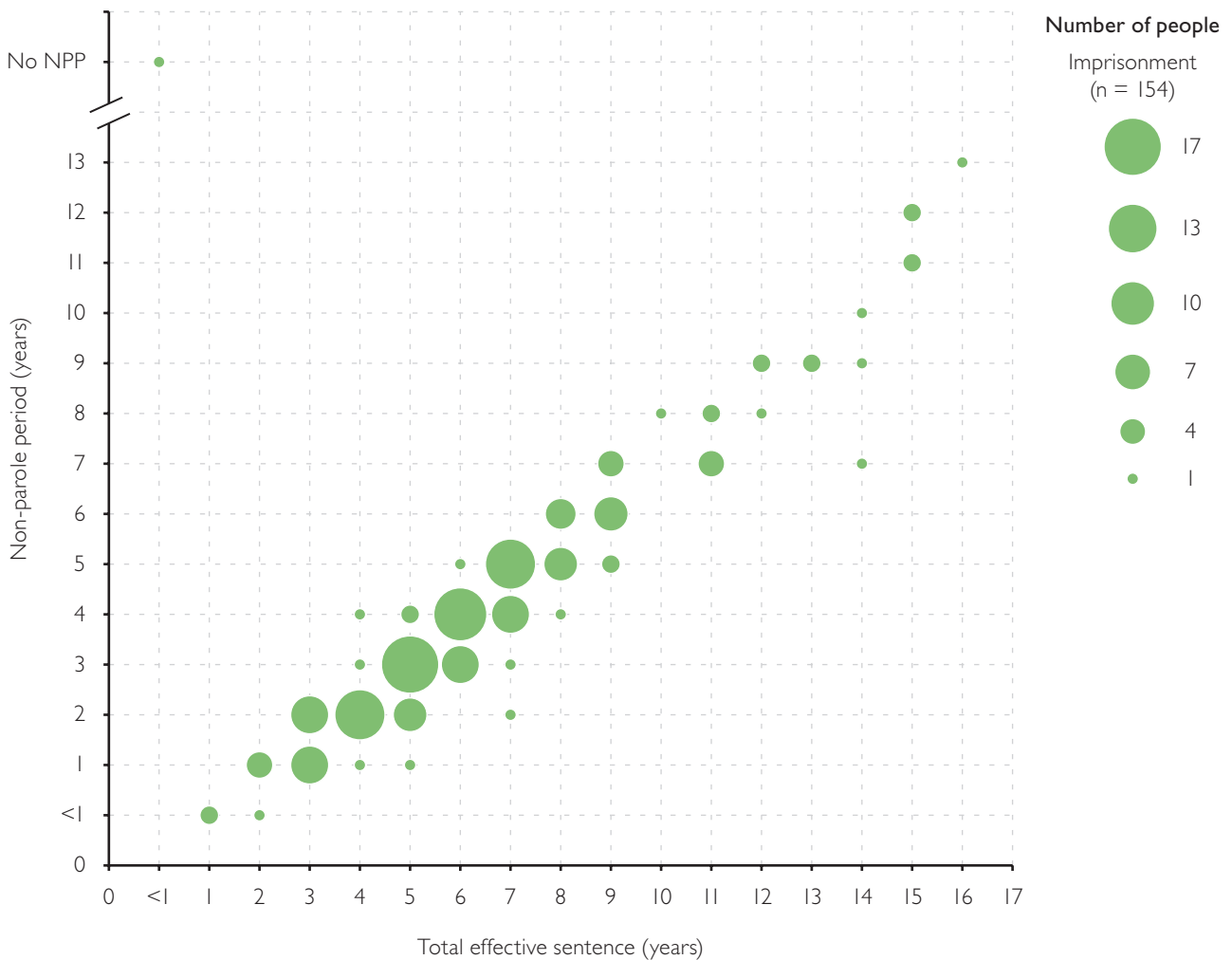


Total effective sentence of imprisonment by non-parole period

While Figures 9 and 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for incest 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.¹⁶ As shown, the most common combination of imprisonment length and non-parole period imposed was 5 years with a non-parole period of 3 years (17 people—as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from 3 months¹⁷ with no non-parole period to 16 years and 6 months with a non-parole period of 13 years.

Figure 12: The number of people sentenced to imprisonment for incest by the total effective sentence and the non-parole period imposed, 2004–05 to 2008–09



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

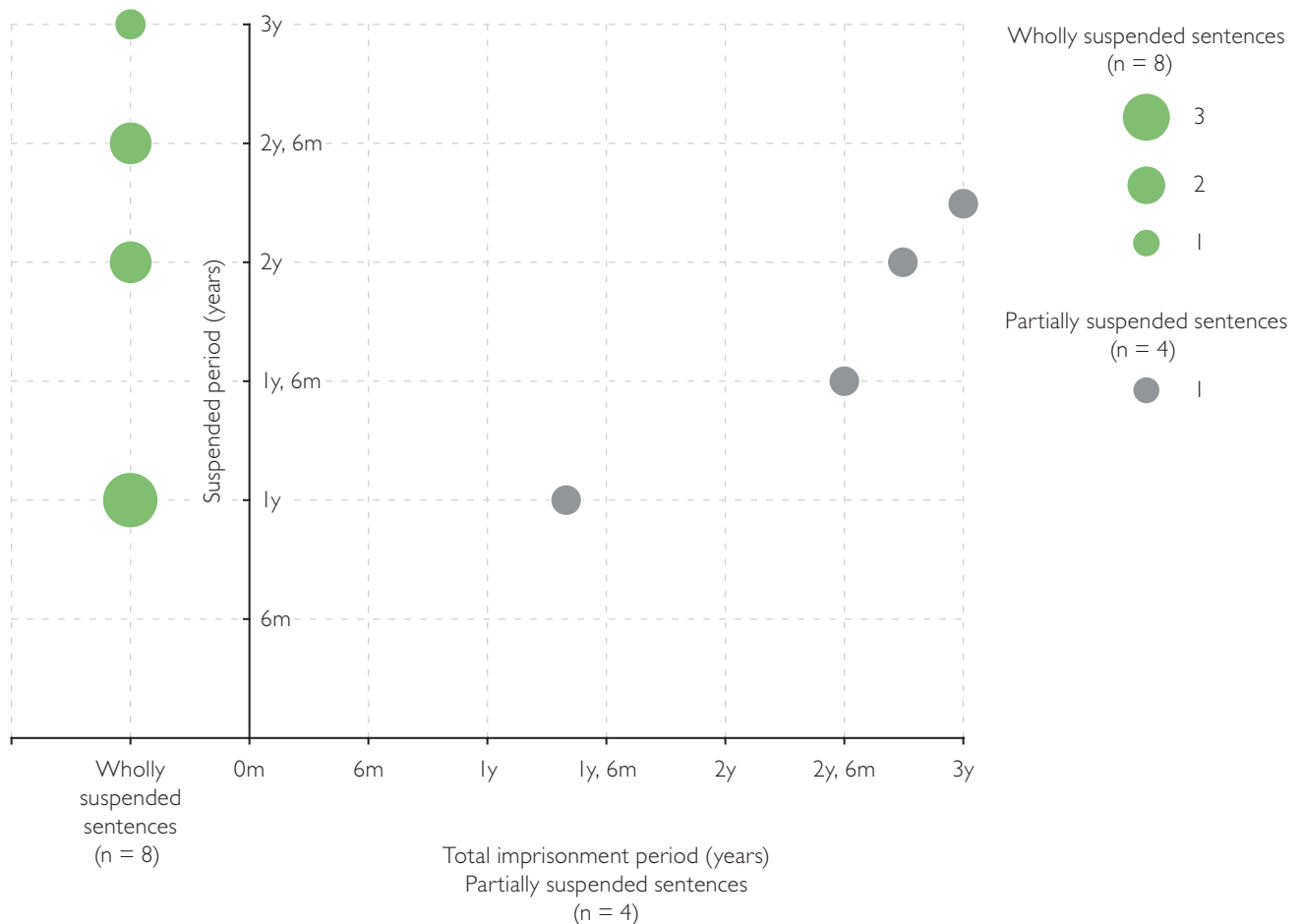
Suspended sentences of imprisonment

There were 12 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 8 people had their prison sentence wholly suspended and 4 received a partially suspended sentence of imprisonment. Figure 13 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 partially suspended prison term.

Wholly suspended sentence lengths ranged from 1 year to 3 years. The most common wholly suspended sentence length was 1 year (3 people—as represented by the largest green 'bubble' on the chart).

Partially suspended sentence lengths ranged from 1 year and 4 months with 1 year suspended,¹⁸ to 3 years with 2 years and 3 months suspended. Each combination of imprisonment length and suspended period was distributed equally among the people given partially suspended sentences (1 person each).

Figure 13: The number of people given a wholly or partially suspended sentence of imprisonment for incest by sentence type and length, 2004–05 to 2008–09



Summary

Between 2004–05 and 2008–09, 167 people were sentenced for incest in the higher courts. Over this period, the majority of those sentenced were men (98%), while 51% were between the age of 35 and 49 years.

The majority of the people sentenced for incest received a period of imprisonment (92%) with very few people receiving any other type of sentence.

Imprisonment was most common for offenders aged below 40 years, although all age groups had a high percentage of offenders receiving a sentence of imprisonment (83% or more).

Each of the 167 people was sentenced for an average of 7.75 offences, including 3.66 offences of incest. The most common offence finalised in conjunction with incest was committing indecent acts with, or in the presence of, a child under 16 (53.9% of all cases). The number and range of offences for which people with a principal offence of incest 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 6 years, 3 months and 15 days, while the median principal imprisonment length was 4 years.

Total effective imprisonment lengths ranged from 3 months with no non-parole period to 16 years and 6 months with a non-parole period of 13 years. The most common sentence of imprisonment was 5 years with a non-parole period of 3 years.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of incest 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 incest who received a more serious sentence for another offence forming part of the same presentment. There were 196 people sentenced from 2004–05 to 2008–09 for 703 offences of incest, including for offences of incest which fall under section 44(3) and 44(4) of the *Crimes Act 1958* (Vic). Incest was the principal proven offence for 167 of these people.

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.
2. The information source for sentencing outcomes for incest only contains information on age and gender characteristics. No other demographic analysis is possible.
3. There were no sentencing outcomes for the principal offence of incest in the Supreme Court during the period of 2004–05 to 2008–09.
4. The source data for the statistical information presented in this Snapshot were provided by Court Statistical Services, 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 incest offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. Of the 167 conviction returns that had incest as the principal proven offence in the five-year period, 161 sentencing remarks were located. These sentencing remarks enabled the classification of incest into the sub-sections of the act. The remaining 6 cases were not known but included within the analysis as they were highly likely to be incest cases that would be within the scope of this Snapshot. An additional 8 cases, separate from the 167, were known to be out of scope and excluded from the analysis.
5. *Crimes Act 1958* (Vic) s 44(1) and s 44(2). Section 44(3) and 44(4) are different types of incest that have a statutory maximum penalty of five years' imprisonment. Those offences are excluded from this report.
6. This report contains statistics for people sentenced in the period 2004–05 to 2008–09. As of 1 September 1997, the statutory maximum penalty for incest was increased to 25 years. It is possible that some people who were sentenced for incest during 2004–05 to 2008–09 committed their offences prior to 1 September 1997, when the statutory maximum penalty was different.
7. On 1 October 2005, the County Court began a new Sexual Offences List in order to make the trial process more efficient for cases involving sex offences. This may have contributed to the increased number of people being sentenced for sex offences in the subsequent two years.
8. Immediate custodial sentence includes imprisonment, partially suspended sentence and mix (imprisonment and community-based order).
9. Incest is defined as a 'serious' offence for the purposes of section 27(2B) of the *Sentencing Act 1991* (Vic), except where both the offender and victim were at least 18 at the time of offending and both consented to the sexual act, as discussed in section 3(1A) of the *Sentencing Act 1991* (Vic). Section 27(2B) provides that a court may impose a wholly suspended sentence for serious offences committed on or after 1 November 2006 only if there are found to be exceptional circumstances.
10. Age is as at the time of sentencing.
11. Two people, in unrelated cases, were given a principal sentence of imprisonment of less than 12 months. One person was sentenced in 2005–06 to 5 months' imprisonment for the principal proven offence of incest but after being sentenced for all his charges, received a total effective sentence of nearly 3 years. The second person was sentenced in 2008–09 to 3 months' imprisonment for his principal proven offence along with a two-year community-based order for one of his other offences. The judge took into account that the offender 'undertook almost immediate intensive counselling. You have at no stage sought to deny your actions or your responsibility for them ... I am satisfied as to your genuine desire to rehabilitate yourself'.
12. It is likely that the very high number of offences per person sentenced for incest is due to the fact that each separate act of sexual penetration in incest cases is counted as a discrete offence.
13. All of the 154 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
14. Refer fn 11.
15. One person was not eligible for parole because they were given a total effective sentence length of less than one year. Refer fn 11 for this person.
16. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
17. Refer fn 11.
18. In 2005–06, a 54 year-old man was sentenced for two counts of incest with his stepdaughter who was aged between 19 and 29 years during the period of offending. The court was also told that 'this was an unusual incest case in that you had legal sexual relations with your victim prior to your marriage to her mother'. He was given a partially suspended sentence of 1 year and 4 months' imprisonment with 1 year suspended.

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