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Sentencing Drug Offenders

Analysis of sentences imposed in the
higher courts of New South Wales,
1 January 1992 to 31 December 1997



Judicial Commission of New South Wales

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1 JANUARY 1992 TO 31 DECEMBER 1997

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Executive summary

The present study is a continuation of an earlier work which examined the pattern of sentencing drug offenders in the higher courts of New South Wales. Intended as a reference tool, the study analyses the sentences imposed in respect of 4,204 principal drug offences over a period of six years (1 January 1992 to 31 December 1997). Overall, drug offences constituted about one in every five principal offences dealt with by the higher courts.

Commonwealth and State sentences were analysed separately and are considered in Part 1 and Part 2 of the study, respectively. Within these parts, each offence type was subjected to the same analysis.

Commonwealth offences

Commonwealth offences concern the importation of prohibited drugs. These offences are defined under s 233B of the *Customs Act 1901* (Cth). One out of every ten drug offences was a Commonwealth offence.

The drug amounts involved in Commonwealth offences were, more often than not, in the trafficable quantities category (71.3%), with just over one-quarter of the offences involving commercial quantities (28.2%). An analysis by sentence year shows that, while there were some fluctuations, there were consistently more trafficable cases than commercial cases.

The most common drug involved in importation offences was heroin (45.5%), followed by cocaine (31%). Cannabis was involved in 14% of cases. However, while heroin was the most common drug overall, its share has been decreasing over the years and was actually overtaken by cocaine in 1997.

Just over one-third of offenders (35.1%) acted as couriers. Around one-quarter (25.8%) were more than a "bare or mere courier" and 18.9% were the principals in the importing organisation. Most offenders were male (86.8%) and two out of three offenders were over 30 years of age.

About eight out of ten offenders pleaded guilty (82.6%) and an unspecified proportion of these would have co-operated with authorities, resulting in a reduced sentence. Case law shows that discounts for co-operation with authorities generally range from between 20% and 50%. There was a tendency for those prosecuted for the more serious offences to plead not guilty more often than those prosecuted for less serious offences.

Just over seven out of every ten offenders (70.8%) had no prior record of offending; while slightly more than one in eight offenders (12.7%) had prior convictions other than for drugs. The remainder had prior convictions for drug offences (9.6% without prior

imprisonment and 7% with prior imprisonment). Couriers were less likely to have prior convictions than any other group and addicts were more likely to have prior records than non-addicts.

Just over nine out of ten Commonwealth drug offenders (92.8%) were sentenced to a term of imprisonment. The rate of imprisonment fluctuated randomly between 88.5% and 98.5% over the six-year period of the study.

A regression analysis, which took into account some 15 variables relevant to sentence, indicated that the three most important factors influencing whether or not a custodial sentence would be imposed were, in order of importance: the type of offence, the role of the offender and the type of drug involved in the offence. Similarly, the most important variables for determining the length of a custodial sentence, as well as the length of the non-parole period, in order of importance, were: the type of offence, the role of the offender, the drug type and the quantity of drug involved in the offence.

As a consequence of the findings from the statistical analyses, the balance of the study relating to Commonwealth offences focused on the variables identified as most important in explaining the sentences imposed. Table A1 and Table A2 in Appendix A summarise the prison terms and non-parole periods by these variables.

For the offence of importation of a commercial quantity of prohibited drug it was found that all offenders were sentenced to a term of imprisonment. The median head sentence handed down was eight years and eight months and the median non-parole period was five years and three months. The analysis also showed that —

- offences under this section accounted for just over one-quarter of all Commonwealth drug offences (28.2%);
- the most common drug imported in commercial quantities was heroin (37.6%), closely followed by cocaine (34.9%);
- although ecstasy accounted for only 12.8% of cases, this type of drug was more likely to be imported in commercial quantities than any other type of drug (58.3% compared with the average of 28.2%); and
- the presence of secondary drug offences was also an important factor in explaining the length of sentence for this offence.

For the offence of import trafficable quantity with a prior similar offence, offenders received a median head sentence and non-parole period of nine years and six years, respectively. There were only six cases in this category of offence.

For the offence of import trafficable quantity, other than cannabis, it was found that almost all offenders received a prison sentence for this offence (95.5%). The median head sentence handed down was six years and the median non-parole period was four years. Further —

- more than half (57.4%) of all Commonwealth drug offenders were prosecuted for this offence;
- heroin (55.9%) and cocaine (34.2%) were the most common drugs imported; and
- multiple counts of the principal offence and whether the offender was subject to a court order at the time of the offence were also important factors in sentencing for this offence.

For the offence of import trafficable quantity of cannabis it was found that 80% of the 25 offenders were sentenced to a term of imprisonment. However, this was not a

common importation offence. The median head sentence and non-parole period were three years and six months and one year and ten months, respectively.

Similarly, there were not many cases of import trafficable quantity of drug where the offender was not involved in dealing. Fewer than half (47.8%) of the 23 offenders were sentenced to imprisonment. The median head sentence was 12 months and the median non-parole period was eight months.

State offences

State drug offences constituted 90.8% of all drug offences dealt with in the higher courts. They cover a much wider range of offences: supply, cultivation, manufacture and possession.

The most common offences were supply offences (69.8%) prosecuted under s 25 of the *Drug Misuse and Trafficking Act 1985* and offences with respect to prohibited plants (27.8%) prosecuted under s 23 of the Act. Overall the pattern of offences was relatively constant over the study period, although there was a ten per cent increase in the proportion of supply offences in 1996, with a comparable fall in cultivation offences (see Figure 5).

The majority of the State drug offences related to less than commercial quantity (82.5%) followed by commercial quantity (11.2%) and large commercial quantity (6.3%).

State drug offenders tended to be younger than their Commonwealth counterparts. However, the ratio of male to female offenders was about the same and most offenders pleaded guilty (86.9%).

Forty-four per cent of offenders had prior convictions for drug offences and just over one-quarter had no prior convictions at all. When this profile was compared with that of federal drug offenders, it was found that federal offenders were more than twice as likely to be first offenders.

Further, State offenders were more likely to be subject to an order of the court at the time of the offence, to be addicted to drugs, to have secondary drug offences and have other offences taken into account.

When compared with Commonwealth drug offenders, State drug offenders were less likely to be sentenced to a term of imprisonment (45.7% compared with 92.8%). There was extensive use made of special circumstances, with two out of every three persons with a minimum term given less than the required 75% of the full term. The median minimum term was 50% of the head sentence.

A regression analysis which took into account some 17 variables relevant to sentence indicated that the three most important factors influencing the type of penalty that would be imposed were: the type of offence, the role of the offender, the type of drug involved in the offence and the scheduled amount of the drug.

Similarly, the most important variables for determining the length of a custodial sentence, as well as the length of the minimum term, were: the scheduled amount of the drug, the type of drug and the quantity of drug involved in the offence.

As a consequence of the findings from the statistical analyses, the balance of the study focused on the variables identified as most important in explaining the sentences imposed. Tables B2 to B6 in Appendix B summarise the prison sentences and minimum terms by these variables.

For the offence of supply prohibited drug, slightly more than half (54.9%) of the offenders were sentenced to a term of imprisonment. The median head sentence was

30 months and the median minimum term was 16 months. Most supply offences (86.1%) involved less than commercial quantities and the most common drugs supplied were heroin (31.4%), amphetamines (29.3%) and cannabis leaf (22.5%).

For the offence of cultivate prohibited plant, almost one in four offenders (23.5%) received a prison sentence. The most common penalties were recognizances (32.1%) and community service orders (30.2%).

For the offence of manufacturing a prohibited drug just over seven out of ten offenders (71.2%) received a prison sentence. The median head sentence was four years imprisonment and the median minimum term was 26 months. Note, however, that manufacturing offences, which were over-represented in commercial and large commercial cases, constituted only 1.6% of State drug offences. Amphetamine was the most common drug in this category (84.7%).

Only a small number of cases (0.8%) involving possession of prohibited drug were prosecuted under s 10(1) of the *Drug Misuse and Trafficking Act*. The most common drugs for mere possession were amphetamines (32.3%), cannabis leaf (25.8%) and heroin (22.6%). Only 3.2% of these cases resulted in a prison sentence, bonds being the most common penalty (54.8%), followed by fines (22.6%) and community service orders (19.4%).



Introduction

The sentencing of drug offenders is one of the most difficult tasks to be faced by a judicial officer. This is partly because there is no single offence relating to illicit drugs, in fact, there are many kinds of drug offences committed in such a variety of circumstances. For example, offences may relate to importation, supply, cultivation or manufacture; or they may involve possession for personal use. Not only are there many variations in drug offences and in drug offenders, but each type of offence or offence level carries its own statutory maximum penalty. Thus, critically important are considerations relating to the type of drug as well as the quantity of drug involved in the offence, as these will have a direct bearing on the particular offence selected for prosecution and, ultimately, on the penalty that may be imposed.

The complexity of the law in this area is compounded by the fact that the sentencer must contend with the problem of concurrent jurisdiction, drug offences being one of the few crimes which are commonly prosecuted under both Commonwealth and State laws. Even the terminology is different, Commonwealth prison sentences being made up of non-parole and parole periods, whereas New South Wales sentences refer to minimum and additional terms and require a finding of special circumstances if the minimum term of imprisonment is to be reduced to less than three-quarters of the overall sentence.

Then there is the treatment/punishment dilemma, which often makes the determination of sentence in drug cases, both in terms of quantum and kind, particularly difficult. For example, for lower level drug offenders there is often the issue of drug addiction and the extent to which the treatment needs of the offender can be accommodated within an essentially punitive framework. The recent establishment, albeit on a trial basis, of the first New South Wales Drug Court at Parramatta,¹ gives some recognition to the fact that the answers to the drug problem are not all reposed in the more traditional approaches to drug offences and drug related crime.

The sentencer's task is not made any easier by the existence of a large number of variables which, although not unique to drug cases alone, nevertheless are commonly encountered and play a significant part in the sentencing process. Aside from the more usual factors that bear on the objective seriousness of the offence, such as the scale of the offence, drug type and quantity, or personal factors relating to the accused, such as age, prior record and mental/health condition, there are factors such as: the role of the

¹ The Drug Court was set up under the *Drug Court Act 1998 (NSW)* and commenced operation on 5 February 1999. It is to be piloted for a two-year period: see G Murrell, "The Drug Court of New South Wales" (1999) 11 *Judicial Officers' Bulletin* 9.

offender in the commission of the offence, whether the offence was motivated by need or greed and whether, and if so to what extent, the offender provided (and/or promised to provide) assistance to the authorities.

The combination and permutation of factors which go to make up the circumstances of each offence, or even each type of offence, together with the individual characteristics of the offender, make it difficult, if not impossible, to speak meaningfully of an appropriate tariff for drug offences. Indeed, the variations tend to underlie the importance of retaining a broad judicial discretion in this area, so as to ensure that the courts can tailor their sentences to the circumstances of each particular case.

At the same time the courts are duty bound to strive for consistency of approach in sentencing. Accordingly, with the intention of assisting them to achieve such consistency, a thorough analysis of the sentences imposed in drug cases finalised in the higher courts,² including the identification of key variables affecting the sentence, are presented in this monograph.

In 1992 the Judicial Commission of New South Wales published a report on the sentencing of drug offenders in the higher courts of New South Wales. That study examined the patterns in sentencing drug offenders since the commencement of the *Sentencing Act* 1989 until 31 December 1991.³

The present study is a continuation of the previous study, providing an analysis of the patterns in the sentencing of drug offenders during a six year period, from 1 January 1992 to 31 December 1997. Accordingly, in the present study, the aim is to —

- ascertain whether the type and prevalence of drug offences have changed over time;
- examine the patterns and trends in the types of penalties imposed for the various categories of drug offences (for example, incarceration rates and average terms) and determine whether sentences are increasing, decreasing or remaining stable;
- identify the most important factors that affect sentencing;
- consider sentencing statistics in conjunction with particular principles of sentencing; and
- provide judicial officers, practitioners and other persons interested in the sentencing of drug offenders with a valuable reference tool.

2 The term “higher courts” refers to the District and Supreme Courts of New South Wales. For the purposes of this study, only 28 cases were finalised in the Supreme Court.

3 P Poletti and I Potas, *Sentencing Drug Offenders — Analysis of Sentences Imposed in the Higher Courts of New South Wales: 25 September 1989 to 31 December 1991*, 1992, Judicial Commission of New South Wales, Sydney.



Research methodology

Data collection

The Bureau of Crime Statistics and Research (BOCSAR) regularly collects and supplies the Judicial Commission with computerised information relating to the sentences imposed on adult offenders who have been sentenced in the higher courts of New South Wales. The Commission processes the data, retaining only trial and sentence cases which result in a recognised sentencing outcome (imprisonment, fine, recognizance, etc) for a principal offence.

The “principal offence” is the offence attracting the harshest penalty in the group of offences for which an offender has been convicted.⁴ The remaining secondary offences are removed from the data, as are cases which result in the imposition of cumulative sentences.

To ensure the accuracy of the data received from BOCSAR, the Judicial Commission compared this data with files contained in the Supreme and District Court Registries.⁵ The audited data were used not only for the present study but also to ensure the accuracy of drug cases to be loaded into the sentencing statistics component of the Judicial Information Research System (JIRS).⁶

-
- 4 If more than one type of drug offence attracted the same penalty, then the principal offence was selected according to the relative seriousness of the offence, based on the type of drug and the amount of the drug involved in the offence relative to the legislation.
 - 5 Typically, these files contained the following documents –
 - indictments showing Act and section numbers of offences;
 - statement of facts;
 - criminal record reports prepared by the New South Wales Police Service. Where interstate criminal reports were available, these were also studied;
 - psychological and/or psychiatric reports;
 - pre-sentence reports;
 - warrant for sentence forms showing the name and date of the offence(s), the penalty imposed, and any matters on a Form 1 (formerly Form 2);
 - analyst certificates. These were the main source of information for drug type, drug quantity and purity;
 - Crown and defence submissions on sentencing (where available);
 - first instance remarks on sentencing containing objective and subjective factors relating to the case (where available on the court files – usually where the offender appealed the first instance decision or where there was a breach of a recognizance or order of the court);
 - electronic record of interview;
 - statements of witnesses; and
 - court transcripts.
 - 6 JIRS is an extensive, interrelated and hypertext linked series of databases specifically designed to provide judicial officers with information on sentencing law and practice. The sentencing

In general, the information compiled for the purposes of this study related to —

- the type of offence;
- the kind and amount of drugs involved in the offence;
- key offender characteristics thought to influence sentencing, such as age, plea, number of counts and criminal history;
- the offender's role in the offence;
- whether the offender had any secondary drug offences;
- whether the offender was addicted to drugs;
- the type of penalty handed down; and
- other items missing from the original BOCSAR data.

Where appropriate, reference has also been made to the principles of sentencing enunciated in the decisions of the higher courts.

The data

During the six-year period from 1 January 1992 to 31 December 1997, there were 4,382 principal offences involving drugs finalised in the higher courts. From these, 120 court files (or 2.7% of the total number of matters) could not be located at the criminal registries and so were excluded from the analysis.⁷ A further five records (or 0.1%) were incorrectly classified as drug offences and 12 records (or 0.3%) were found to be duplicates of data already identified. These cases were also excluded from the analysis.

In addition, the sentencing data were adjusted to take into account cases which had been altered by decisions of the Court of Criminal Appeal (CCA). Where an appellant was acquitted by the CCA, or a new trial ordered, the cases were removed from the data. There were 41 such records or one per cent of the total number of matters. Similarly, where an appeal against the severity or inadequacy of a sentence was successful and a new penalty was substituted, then the old sentence was removed and replaced by the new penalty. There was a total number of 152 (3.6%) records affected in this way. Court of Criminal Appeal judgments were also used to update or correct information relating to other variables which formed part of this study.

Thus, the final analysis is based on 4,204 principal drug offences.

Overview of the data

Jurisdiction

As drug offences are prosecuted under both State and Commonwealth legislation, they must be considered separately. Commonwealth drug offences are defined in the *Customs Act 1901* (Cth), particularly in s 233B of the Act, and the key penalty provisions are contained in s 235 of the Act. Particular regard must be made to the provisions of s 16G

component of JIRS contains discrete subsets, including information on sentencing statistics, sentencing principles and practice, summaries of judgments and full text of judgments of criminal law cases, as well as legislation. A full description of the sentencing component of JIRS is contained in Potas, Ash, Sagi, Cumines and Marsic, "Informing the Discretion — The Sentencing Information System of the Judicial Commission of New South Wales" (1998) Vol 6 (2) *International Journal of Law and Information Technology* 99–124.

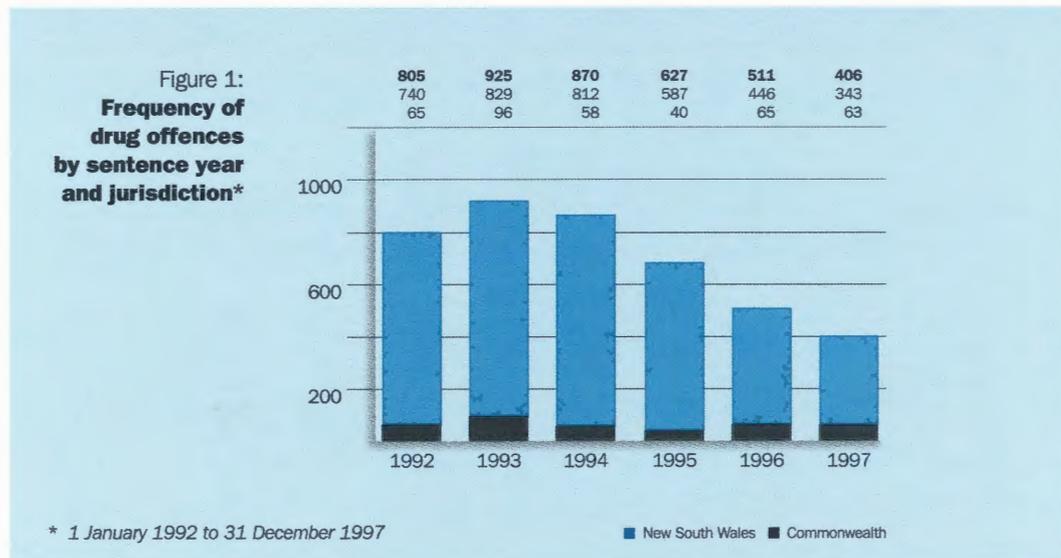
⁷ Many of the court files that could not be located were with the Court of Criminal Appeal (CCA) or had been subpoenaed by another court.

of the *Crimes Act 1914* because the maximum penalties must be adjusted downwards to take into account the fact that no remissions apply to prison sentences imposed in New South Wales. Thus, for example, although the maximum penalty for being knowingly concerned in the importation of a trafficable quantity of an illicit narcotic drug is 25 years imprisonment, a commonly accepted maximum is taken to be something in the order of between sixteen and one-half to 17 years, one-third being the usual accepted reduction compensating for the absence of remissions.⁸

In terms of the frequency of Commonwealth and State offences it was found that the majority of records (3,817 or 90.8%) related to State drug offences, while almost one in ten records (387 or 9.2%) related to Commonwealth drug offences.

Frequency of drug offences

Figure 1 shows the number of drug offences sentenced in the higher courts of New South Wales from 1992 to 1997 in the two jurisdictions. It shows that there were substantially more drug cases finalised in the period prior to 1995 and, in particular, in 1993 and 1994, than in the later years.⁹ It can be seen that, since its peak in 1993, the number of cases in 1997 has reduced by more than half (56.1%) from 925 to 406 drug cases.



There are a number of possible explanations for the higher incidence of drug offences prior to 1995. During the 1980s, the backlog of cases in the District Court was increasing. A number of reforms were introduced in the early 1990s to deal with this problem. These reforms included: the involvement of the Office of the Director of Public Prosecutions (ODPP) in committal proceedings; changes to listing procedures by the District Court; the introduction of early arraignment hearings; the construction of new courts; and the appointment of additional judges.

In addition, in 1993 the "Sentence Indication Hearings Pilot Scheme" was implemented¹⁰ with the primary objective of reducing court backlogs and delays. It was

8 See, for example: *R v Bourel* (unreported, 11 December 1998, NSWCCA, per Hulme J).

9 Chi-square test, $p < .000$.

10 A version of the scheme was originally piloted on a small scale at Parramatta District Court between 1 January and 31 May 1993. In June 1993, the scheme was extended to the Sydney

intended to increase the proportion of guilty pleas and to encourage earlier pleas of guilty. Although this scheme was only to survive for about three years, a study by the Judicial Commission showed that drug offenders made proportionately greater use of the scheme than any other category of offender.¹¹ This may have impacted on the total number of drug cases dealt with by the courts during that period.

A comparison of the frequency of drug offences with the frequency of all offences finalised in the higher courts of New South Wales by year shows that, during the period of operation of the sentence indication scheme, drug sentences constituted up to 25% of all cases, but by 1997 they had fallen to below 18% of all offences.¹²

It should be noted that, over the period of this study, the number of all offences finalised in the higher courts of New South Wales has steadily decreased.¹³ Some of this decrease may be due to amendments in September 1995 to the *Criminal Procedure Act 1986* (NSW),¹⁴ enabling magistrates to hear more serious matters.

District Court and ultimately, in December 1993, the scheme was allowed to operate in all District Courts in New South Wales.

- 11 D Spears, P Poletti and I MacKinnell, *Sentence Indication Hearings Pilot Scheme*, 1994, Judicial Commission of New South Wales, Sydney, p 35.
- 12 Chi-square test, $p < .001$.
- 13 See: J Hickey and S Cumines, *Common Offences in the Higher Courts 1990–1997*, 1998, Judicial Commission of New South Wales, Sydney.
- 14 Part 9A *Criminal Procedures Act 1986*, which commenced on 1 September 1995.



1 Commonwealth offences

1.1 Introduction

During the study period, 387 cases were prosecuted under s 233B of the *Customs Act* 1901 (Cth). Table 1 describes the types of offences that were finalised in the higher courts of New South Wales between 1 January 1992 and 31 December 1997. Most of the matters dealt with (59.7%) involved the actual importation of a prohibited drug into Australia.

Table 1:
Drug offences under s 233B of the *Customs Act* 1901 (Cth)*

Drug Offence	N	%
Import	231	59.7
Knowingly concerned in import	59	15.2
Conspiracy to import	38	9.8
Possess import	44	11.4
Attempt to or aid & abet import	15	3.9
TOTAL	387	100.0

* 1 January 1992 to 31 December 1997

For the sake of simplicity, throughout this report the terms “import” or “import prohibited drug” refer to any drug offence prosecuted under the provisions of s 233B of the *Customs Act*. It should be noted that the legislation does not distinguish between, for example, possessing a prohibited import and importing a prohibited import in terms of statutory maximum penalties.¹⁵

Differences in statutory maximum penalty are based on such factors as the type of drug, the quantity and purity of the drug, prior conviction for drug importation and whether the importation related to the sale of drugs. Table 2 shows the relevant drug offence types and statutory maximum penalties for offences under s 233B of the Act.

Table 3 displays the statutory ranges (in grams) applicable to each drug type and the amount of drug as detailed in Schedule VI of the *Customs Act* 1901. It is important to note that, for drugs such as heroin, cocaine and ecstasy, the amount of drug involved may be based on its calculated purity. Therefore, even though the gross amount seized may lie in a particular statutory range, the quality of the drug may place the offence into a lower range.

15 *R v Kwong Leong Lam* (1991) 53 A Crim R 118.

Table 2:
Drug offence type and associated statutory maximum penalties under the Customs Act 1901 (Cth)*

Offence type	N	%	
Import Prohibited Drug			
Commercial Qty	109	28.2	Life Imprisonment
Trafficable with Prior	6	1.6	Life Imprisonment
Trafficable Qty	222	57.4	\$100,000 and/or 25 years imprisonment
Trafficable Qty (Cannabis)	25	6.5	\$4,000 and/or 10 years imprisonment
Trafficable (Not for Dealing)	23	5.9	\$2,000 and/or 2 years imprisonment
Less than Trafficable	2	0.5	\$2,000 and/or 2 years imprisonment
Total	387	100.0	

* 1 January 1992 to 31 December 1997

Table 3:
Statutory ranges (in grams) by scheduled amount of drug and drug type under the Customs Act 1901 (Cth)

Drug type	Scheduled amount of drug	
	Trafficable quantity (grams)	Commercial quantity (grams)
Heroin	2	1500
Cocaine	2	2000
Amphetamines	2	N/A
Ecstasy	0.5	500
Lysergide (LSD)	0.002	2
Cannabinoids	2	N/A
Cannabis resin	20	50,000
Cannabis leaf	100	100,000

* 1 January 1992 to 31 December 1997

As recently re-stated by Hulme J in *R v Spiteri*,¹⁶ the starting point in considering sentence for a statutory offence is the legislation and, in determining the proper penalty¹⁷ —

“the fundamental consideration is rather the degree by which, having regard to the maximum penalties provided by the Act in question, the [offender’s] conduct would offend against the legislative objective of suppressing the illicit traffic in the prohibited drug.”

1.2 Scheduled amount of drug

It is well established that the quantity of drug is an important consideration in the assessment of seriousness of offence and, as Table 2 shows, the legislature has specified penalties by reference to quantity of drug.¹⁸ The results of our research show that the drug amounts involved in the illegal importation of drugs were, more often than not, in

16 [1999] NSWCCA 3 at [4].

17 [1999] NSWCCA 3 at [4], citing *R v Peel* (1971) 1 NSWLR 247 at 262.

18 In *R v Boural* (unreported, 11 December 1998, NSWCCA) Hulme J observed that quantity of drug was a far more reliable guide to criminality than the value of the drug imported. His Honour also commented that, within the offence category itself, the quantity of drug was also important.

the trafficable quantities category (71.3%), with just over one-quarter of the offences involving commercial quantities (28.2%). An analysis by sentence year shows that, while there were some fluctuations, there were consistently more trafficable cases than commercial cases. There has only been two cases (0.5%) involving less than trafficable quantities during the six-year period of this study.

The structure of the legislation, with its emphasis on the quantity of the drug, leads inevitably to an inference that Parliament had intended that, even within a category, and all other things being equal, the higher the quantity of drug, the higher the penalty.¹⁹ However, the sentences should not be simply proportionate to the quantity of drug involved, as there are always other factors to be taken into account.²⁰ As the scheduled amounts cover a wide range, the study proceeded by splitting each drug amount into a high and low category.

1.3 Drug type

All other things being equal, the type of drug involved in the offence will have a major impact on the sentence that is imposed in a particular case. There is authority for the proposition that offences involving heroin and cocaine be treated equally as the most serious drug types,²¹ while offences involving ecstasy and amphetamines are regarded as middle range drugs.²² The most common drug involved in importation offences was heroin (45.5%), followed by cocaine (31%). Cannabis was involved in 14% of cases. Table 4 displays a more detailed breakdown of the type of drug involved in Commonwealth offences.

Table 4:
Type of drug involved under the *Customs Act 1901 (Cth)**

Drug type	N	%
Heroin	176	45.5
Cocaine	120	31.0
Cannabis resin	45	11.6
Ecstasy	24	6.2
LSD	11	2.8
Cannabis leaf	8	2.1
Amphetamines	2	0.5
Cannabis oil	1	0.3
Total	387	100.0

* 1 January 1992 to 31 December 1997

Figure 2 shows the type of drug involved in Commonwealth offences by sentence year. Although heroin was the most common drug imported in every year until 1997, its share has been decreasing since 1994 and it was overtaken by offences involving cocaine in 1997. Whether cocaine will eventually be the primary drug of concern in importing cases remains to be seen. In addition, other types of drugs have become more prominent. For

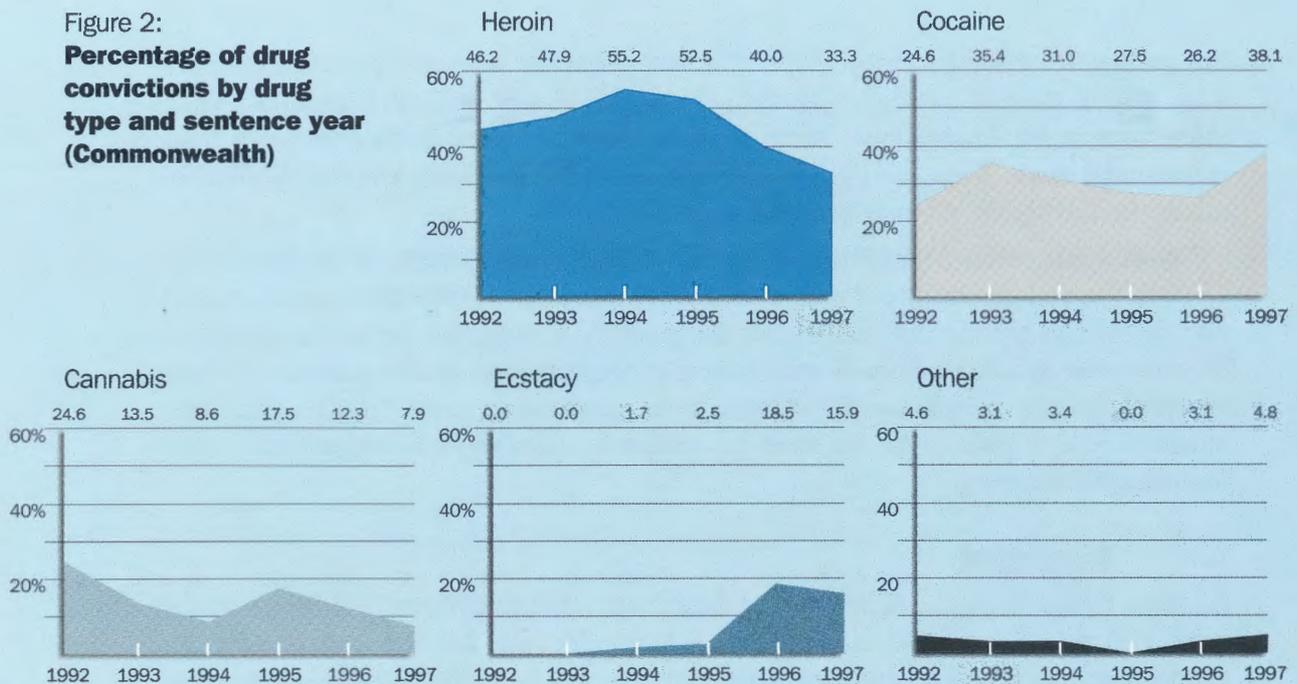
19 See *R v Spiteri* [1999] NSWCCA 3, per Hulme J at [8].

20 Ibid at [11] and also at [37].

21 *R v Laurentiu and Becheru* (1992) 63 A Crim R 402, per Wood J at 414.

22 *R v Bushell* (unreported, 7 August 1998, NSWCCA, per Ireland J); *R v Carey* (1997) 97 A Crim R 552.

Figure 2:
Percentage of drug convictions by drug type and sentence year (Commonwealth)



* 1 January 1992 to 31 December 1997

example, since 1995 there has been a marked increase in the number of matters involving ecstasy. Also, very few cases involve amphetamines, a complete contrast to the patterns found in State offences.

In Figure 2 all forms of cannabis are grouped together and amphetamines and LSD are grouped in “Other.”

1.4 Role of offenders

The cases clearly show that there is a spectrum of culpability in relation to importing drugs and the role of the offender in the commission of the offence. For example, in a large enterprise, the relationship of the offender with the importing organisation may range from being a “bare or mere courier” to the principal of the organisation.²³ However, it has also been observed that the issue is not a simple duality²⁴ and particular care needs to be taken in assessing the offender’s culpability. Another consideration is whether the drug was obtained for personal use or for commercial profit.²⁵ An analysis of the cases has allowed the classification of the role of drug offenders into five groups —

1. Main role or principal.
2. High level role (not principal).
3. Courier.
4. Lower level role (go-betweens or underlings, no part in decision-making).
5. Personal use.

²³ *R v Raz* (unreported, 17 December 1992, NSWCCA, per Hunt CJ at CL); also cited with approval in *R v Olbrich* (unreported, 6 July 1998, NSWCCA, per Spigelman CJ); *R v Bourel* (unreported, 11 December 1998, NSWCCA, per Hulme J).

²⁴ *R v Behar* (unreported, 14 October 1998, NSWCCA).

²⁵ *R v Laurentiu and Becheru* (1992) 63 A Crim R 402, per Wood J at 415.

In practice, it is sometimes difficult to classify the role of the offender.²⁶

MAIN ROLE OR PRINCIPAL

These offenders were the instigators or masterminds of the importation. They were the people responsible for the planning and execution of the offence. This category also includes offenders who were described as the “Australian Principals” in an international drug importing operation or conspiracy.

These offenders may also have taken part in other stages of the importation. For example, they may have personally carried out one or more of the functions normally undertaken by someone else in many large scale operations (see list under “High Level Role”). Principal also refers to persons who acted, or may have acted, alone.

HIGH LEVEL ROLE (NOT PRINCIPAL)

These offenders were not the instigators or masterminds of the importation but, nevertheless, played an extensive and critical role in the operation. They may have —

- invested financially in the scheme;
- arranged for the purchase of the drugs overseas;
- recruited couriers;
- organised travel arrangements; and/or
- arranged for the distribution of drugs within Australia.

Offenders who were possessors/receivers of imported drugs, where the extent of their role was unknown, have been classified as somewhere between a mere courier and a principal and for the purposes of the analysis are included in this middle category. These offenders were usually apprehended while in possession of, or while attempting to possess, prohibited drugs that were intended for distribution. Their activities included —

- collecting drugs from couriers and transporting them — as part of a larger operation, although they may or may not have had knowledge of higher level activities and/or participants; or
- receiving drugs in the mail or accepting delivery of parcels or shipments containing prohibited drugs (but no information was available on the court files to ascertain whether these offenders were part of a larger operation or whether they were in fact acting alone or with others).

COURIER

Offenders in this category — often referred to as a “mere courier” — usually received substantial payments of cash for carrying drugs into Australia. They usually had little or no knowledge of the larger operation and so were not involved in any higher level activities of the kind described above. However, the courts have said that the entire process of distribution depends on the activities of couriers²⁷ and that no particular leniency should be given to them because “without them the trade in narcotics would collapse.”²⁸ Often couriers were not drug addicts and had no prior record of convictions. This is consistent with the observation that drug couriers are often selected precisely

²⁶ *R v Stead* [1999] NSWCCA 41 at [19]–[21].

²⁷ *R v Laurentiu and Becheru* (1992) 63 A Crim R 402, per Kirby P at 405.

²⁸ *R v Muanchukingkan* (1991) 52 A Crim R 354, per Wood J at 356.

because they are “clean skins” and for this reason “the leniency extended to first offenders does not usually benefit [them].”²⁹

LOWER LEVEL ROLE

(GO-BETWEENS OR UNDERLINGS, NO PART IN DECISION MAKING)

These offenders were part of an importing organisation, but at a lower level in the chain of the distribution hierarchy. They were persons with little or no knowledge of the larger operation. Some of their responsibilities included —

- storing prohibited drugs at their residence;
- driving higher level participants to various destinations;
- acting as bodyguards or lookouts;
- unloading containers; and
- delivering/transporting drugs for suppliers.

The courts have observed that every “bit-player” is essential to the trade in drugs and if there were no intermediaries and underlings there would be no top people in the organisation. For this reason it is not always the case that they will receive less severe sentences.³⁰

PERSONAL USE

The least serious category refers to those offenders who imported or received prohibited drugs for their own use. These offenders were often drug dependent and commonly had a criminal record involving drugs.

As Table 5 shows, just over one-third of offenders (35.1%) acted as couriers. Approximately one-quarter (25.8%) were more than a “bare or mere courier” and 18.9% were the principals in the importing organisation.

Table 5:

Role of offenders sentenced under the *Customs Act 1901 (Cth)**

Role	N	%
Principal	73	18.9
High level (other than the principal)	100	25.8
Courier	136	35.1
Lower level participants	53	13.7
Personal use	25	6.5
TOTAL	387	100.0

* 1 January 1992 to 31 December 1997

1.5 Other sentencing factors

1.5.1 Age and gender

The data in the study were analysed in terms of four age categories. It was found that 34% of offenders were aged 31–40 years and approximately three in every ten offenders (31.2%) were aged over 40 years. A similar number of offenders (29.9%) were aged

29 *R v Ferrer-Esis* (1991) 55 A Crim R 231, per Hunt J at 236.

30 *R v Laurentiu and Becheru* (1992) 63 A Crim R 402, per Wood J at 417.

21–30 years and approximately five per cent (4.9%) were under 21 years of age. Thus the data show that two out of every three offenders were aged over 30 years.

On further analysis it was also found that offenders aged over 40 years were over-represented in cases involving commercial quantities of prohibited drugs (43.5%).³¹

When the relationship of age to type of drug was examined it was found that offences involving amphetamines, LSD, cannabis leaf or ecstasy had significantly more offenders aged under 30 years (100%, 90.9%, 62.5% and 58.3%, respectively, compared with 34.8% overall).³²

The vast majority of offenders were male (86.8%); a finding consistent with earlier work.³³

1.5.2 Plea, co-operation and assistance to authorities

Courts are obliged to take into account the fact, where relevant, that the offender has pleaded guilty to the offence³⁴ and there is a considerable amount of case law concerning the degree to which leniency may be afforded to offenders who plead guilty.³⁵ The amount of discount traditionally given for an offender who pleads guilty varies depending on the presence of other factors, such as remorse and co-operation with law enforcement agencies. The effectiveness and value of any information provided is to be taken into account and, even where genuine co-operation is not particularly helpful, a small discount may nonetheless be given.³⁶ While there is no fixed tariff for the amount of discount to be given for assistance, the range is usually between 20% and 50%.³⁷ Indeed, an offender is entitled to a significant discount where statements provided by him or her were full and frank, and the assistance provided is of real value, both potentially and in fact.³⁸

Regrettably, accurate and comprehensive information relating to assistance to authorities could not be collected for this study and, therefore, no statistical analysis relating to this important variable could be undertaken. However, it should be recognised that some of the guilty plea cases will have been affected by discounts due to assistance, including promised assistance, to the authorities.

An examination was made relating to whether or not the offender pleaded guilty to the offence. It was found that approximately eight out of ten offenders pleaded guilty (82.6%). It was also found that offenders were significantly more likely to plead not

31 Chi-square test, $p < .013$.

32 Chi-square test, $p < .000$.

33 P Poletti and I Potas, *op cit* n 3, p 9.

34 *Crimes Act* 1914, s 16A(2)(g).

35 *R v Winchester* (1992) 58 A Crim R 345, per Hunt CJ at CL at 350–351; *R v Meares* (unreported, 3 October 1997, NSWCCA, per Gleeson CJ). Note that a plea of guilty may be mitigatory even though the offender does not otherwise co-operate with the authorities and even though there is no evidence of contrition, *R v El Karhani* (1990) 21 NSWLR 370 at 382.

36 *R v Dimic* (unreported, 3 December 1997, NSWCCA); *R v Barrientos* [1999] NSWCCA 1, per Abadee J at [46].

37 See, for example, *R v Moore & Wiebe* (unreported, 11 August 1992, NSWCCA); *R v Chu* (unreported, 16 October 1998, NSWCCA, per Spigelman CJ at 6–7); *R v Barrientos* [1999] NSWCCA 1, per Abadee J at [47]. Note also that discounts as high as 67% for assistance to authorities have been given. See *R v Dumbrell* (unreported, 9 May 1997, NSWCCA, per Spigelman CJ).

38 *R v Cartwright* (1989) 17 NSWLR 243 at 253. *R v Pang* [1999] NSWCCA 4, per Wood CJ at CL at [12]. As for the appropriate sentence but for that level of assistance: see *R v Pang* at [20].

guilty if the offence involved commercial quantities of prohibited drugs (23.9%).³⁹ Every offender who imported prohibited drugs for their personal use pleaded guilty (100%)⁴⁰ and offenders identified as addicted to drugs also were more likely to plead guilty (92.6%).⁴¹

1.5.3 Prior criminal record

Although prior convictions are matters which the courts traditionally take into account in order to justify a heavier sentence than might otherwise be imposed (provided that the sentence is not disproportionate to the seriousness of the offence),⁴² the courts have held that a lack of such a record has less significance in drug cases than for other types of offences.⁴³ Of particular relevance is the penalty relating to importing trafficable quantities of prohibited drugs. If the offender has a prior similar conviction, the maximum penalty for this offence increases from 25 years to life imprisonment.⁴⁴

Just over seven out of every ten offenders (70.8%) had no prior record of offending. More than one in eight offenders (12.7%) had prior convictions other than for drugs. The remainder had prior convictions for drug offences (9.6% without prior imprisonment and 7% with prior imprisonment).

When the relationship of the role played by the offender was compared with the prior record of the offender it was found that approximately six out of ten principals (58.9%) had no prior convictions, whereas just over eight out of ten couriers (80.1%) were conviction-free. It was also found that offenders with prior convictions for a drug offence, which did not include a term of imprisonment, were three times more likely to have imported drugs for their personal use (28%).⁴⁵ As expected, addicts were more likely to have prior convictions for drug offences (40.4%).⁴⁶

1.5.4 Liberty status

The majority of offenders (94.1%) were enjoying unconditional liberty (not being subject to any legal restrictions) at the time of the offence. A small proportion were on bail or bond (3.4%), on parole (1.8%) or in custody (0.8%) at the time of the offence.

1.5.5 Legal representation

Almost all drug offenders (99.2%) were legally represented in court. Of these, 46.2% were represented by the Legal Aid Commission (includes assignments to private firms). Couriers were more likely to be represented by legal aid (60.7%).⁴⁷

39 Chi-square test, $p < .035$.

40 Chi-square test, $p < .021$.

41 Chi-square test, $p < .006$.

42 See *Veen v The Queen [No 2]* (1988) 164 CLR 465.

43 *R v Ferrer-Esis* (1991) 55 A Crim R 231, per Hunt J at 238; *R v Budiman* (unreported, 8 September 1998, NSWCCA, per Wood CJ at CL). To say that prior good character is of less significance in drug cases than in other cases does not warrant the view that it is of no significance at all: see *R v Barrientos* [1999] NSWCCA 1, per Abadee J at [57].

44 *Customs Act* 1901, s 235(2)(c).

45 Chi-square test, $p < .003$.

46 Chi-square test, $p < .000$.

47 Chi-square test, $p < .001$.

1.5.6 Addiction

Approximately one in four offenders (28.8%) were addicted to prohibited drugs. Addicts were under-represented in cases involving commercial quantities (16.3%).⁴⁸

Offenders who imported prohibited drugs for their personal use were far more likely to be addicted to drugs (68%).⁴⁹ As indicated above, approximately two-thirds of offenders who had prior convictions for drug offences (67.9%) were addicted to prohibited drugs.⁵⁰

1.5.7 Number of counts of the principal offence and secondary drug offences

Most offenders (94.8%) were only sentenced for one count of the principal offence. Compared to other groups, principals were more likely to be sentenced for more than one count of the principal offence (12.3%).⁵¹

Just under one in eight offenders (11.9%) had secondary drug offences, in addition to the principal offence, dealt with at the same court appearance.

1.5.8 Other offences taken into account

Only a small proportion of offenders (3.1%) had outstanding offences listed on a Form 1 that were taken into consideration in the sentencing process.

1.6 Sentencing outcomes

Table 6 shows the types of penalties handed down in the higher courts of New South Wales between 1 January 1992 and 31 December 1997 for Commonwealth drug offences. It can be seen that over nine out of every ten offenders (92.8%) were sentenced to a term of imprisonment. This is consistent with the continuing policy that a custodial sentence should generally be imposed for drug traffickers, except where there are exceptional circumstances.⁵²

Table 6:
Type of penalty under the *Customs Act 1901 (Cth)**

Penalty type	N	%
Prison	359	92.8
Periodic detention	10	2.6
Community service order	6	1.6
s 20 recognizance with supervision	5	1.3
s 20 recognizance without supervision	4	1.0
s 19 recognizance	1	0.3
Fine	1	0.3
Rise of court	1	0.3
TOTAL	387	100.0

* 1 January 1992 to 31 December 1997

48 Chi-square test, $p < .003$.

49 Chi-square test, $p < .000$.

50 Chi-square test, $p < .000$.

51 Chi-square test, $p < .032$.

52 *R v Cacciola* (unreported, 15 October 1998, NSWCCA). But see also: *R v Hawkins* (unreported, 12 September 1991, NSWCCA, per Studdert J).

From 1992 to 1997 the rate of imprisonment varied from 88.5% to 98.5%, although this rate varied randomly from year to year.

1.6.1 Regression analysis

In order to determine which factors were the most likely to predict (influence) the sentencing outcomes for importation offences, a regression analysis was carried out. The analysis considered a total of 15 variables relating to the circumstances of each case. These variables were —

- type of offence;
- type of drug;
- quantity of the drug;
- role of the offender;
- plea;
- prior record;
- prior record of imprisonment;
- the offender's age;
- the offender's sex;
- number of counts of the principal offence;
- any secondary drug offences;
- any Form 1 matters;
- liberty status of the offender at the time of the offence;
- addiction to drugs; and
- legal aid representation.

The impact of these variables on sentencing was examined by reference to the type of penalty imposed, the overall length of imprisonment imposed and the length of the non-parole period. Pratt's measure of relative importance was used to determine which factors were crucial to the regression.⁵³

When the analysis focused on whether or not a full time custodial penalty was likely to be imposed,⁵⁴ it was found that these 15 variables explained about 37% of the variance. However, three variables accounted for almost 90% of the model's effect. In order of importance, these variables were: type of offence (43.2%); role of the offender (25.8%); and type of drug (20.7%). In other words, these three variables alone may explain the selection of imprisonment in the vast majority of cases.

When the analysis focused on overall length of imprisonment,⁵⁵ it was found that these 15 variables explained about 55% of the variance. Four variables emerged (in order of importance) as being the most significant, accounting for just over 80% of the model's effect: type of offence (36.8%); role of the offender (22.8%); drug type (10.8%); and the quantity of drug involved in the offence (9.7%).

53 This measure defines the importance of the predictors (factors) additively, that is, the importance of a set of predictors is the sum of the individual importance of the predictors. See *SPSS Categories Users Manual*.

54 $R^2=0.369$, $F=13.286$, $p<.000$.

55 $R^2=0.553$, $F=25.036$, $p<.000$.

When the overall analysis focused on the length of the non-parole period,⁵⁶ it was found that approximately half (49.5%) of the variance could be explained by the set of variables. The most important variables were the same as for the overall length of imprisonment, accounting for just over 78% of the model's effect: type of offence (34.6%); role of the offender (23.1%); the type of drug (10.6%); and the quantity of drug involved in the offence (9.8%).

Given the importance of these findings the following analysis will, amongst other things, pay particular attention to: the role of the offender, the type of drug and the quantity of drug involved in the offence. These will be analysed in connection with the type of offence because the latter was found to be the most important factor in determining sentencing outcomes.

1.6.2 Type of offence

As expected, there was a significant relationship between the use of imprisonment and the type of offence.⁵⁷ From Figure 3 it can be inferred that offenders with a profit motive, as reflected by the offence type, were more likely to go to gaol. This was universally true for offences involving commercial quantities of drug (100%) or if the offender had a prior conviction for a similar importation offence (100%). On the other hand, less than half (47.8%) of the offenders who imported trafficable quantities for their personal use, and neither of the two offenders who imported less than trafficable quantities for their personal use, received a prison sentence.

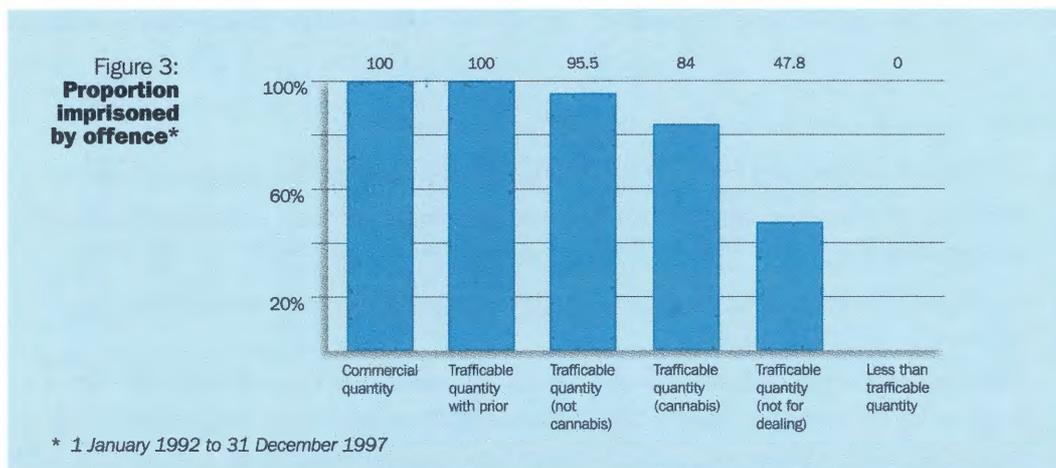


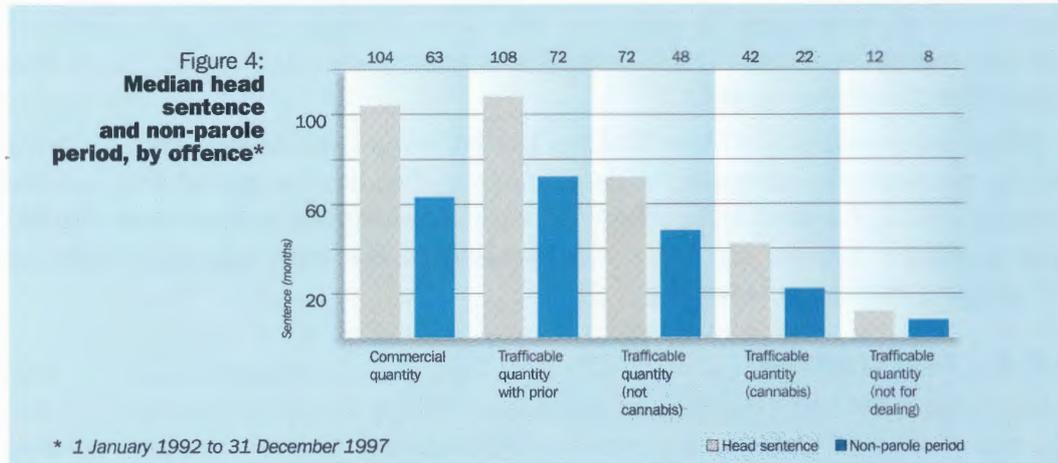
Figure 4 sets out the median⁵⁸ head sentence and non-parole period for each type of offence under s 233B of the *Customs Act 1901*. In accordance with the legislation, offenders sentenced for importing commercial quantities of prohibited drugs or for importing trafficable quantities when they already have a conviction recorded for a similar offence (that is, offences carrying a liability of life imprisonment) received longer head sentences and non-parole periods than did offenders sentenced for importing

56 $R^2=0.495$, $F=20.062$, $p<.000$.

57 Chi-square test, $p<.000$.

58 The "median" is the number that lies at the midpoint of the distribution and was used to describe the average, since it would not be affected by extreme drug quantities or prison terms.

trafficable quantities, especially if the latter did not intend to sell or supply the prohibited drug.⁵⁹



For most offences, the proportion of non-parole periods to head sentences in Figure 4 is in the order of 60% to 66.7%. This is consistent with the findings referred to in the judgments of the courts,⁶⁰ although Spigelman CJ observed in *R v Chu*⁶¹ that there are no fixed ratios and that there is no mathematical formula to be applied in these cases.⁶² Only one category of offence was outside this range; namely, import trafficable quantity of cannabis, where the proportion of the non-parole period to head sentence was lower at 52.4%.

1.6.3 Import commercial quantity of prohibited drug

In summary, the following features appear from an analysis of this category of offence —

- This type of offence accounted for just over one-quarter of all Commonwealth drug offences (28.2%).
- The most common drug imported in commercial quantities was heroin (37.6%), followed by cocaine (34.9%).
- Although ecstasy accounted for only 12.8% of cases, this type of drug was twice as likely to be imported in commercial quantities than any other type of drug (58.3% compared with the average of 28.2%). A possible explanation for such a high proportion of ecstasy cases in this category may be because the qualifying quantity is 500 grams compared with three times this amount for heroin and four times this amount for cocaine.⁶³
- Every offender received a prison sentence for this offence (100%).
- The median head sentence handed down was eight years and eight months and the median non-parole period was five years and three months.

59 Kruskal–Wallis test, $p < .000$.

60 See, for example, *R v Bernier* (unreported, 19 May 1998, NSWCCA).

61 (unreported, 16 October 1998, NSWCCA).

62 See also: *R v Barrientos* [1999] NSWCCA 1, per Abadee J at [23].

63 Note, however, that in our study the average purity of ecstasy was found to be 34% whereas the average purity for heroin was 72% and for cocaine it was 77%.

FURTHER REGRESSION ANALYSIS

When a regression analysis was carried out for this type of offence, four variables proved to be the most important factors affecting the length of prison terms. In order of importance, these were: the role of the offender, the presence of secondary drug offences, the type of drug and the quantity of drug involved in the offence. These same variables applied to both head sentences,⁶⁴ where almost 68% of the variance was explained by the factors in the regression, and non-parole periods,⁶⁵ where almost 65% of the variance was explained by the model.

In the case of head sentences, these variables accounted for just over 85% of the model's effect, with the role of the offender responsible for almost half (47.8%), followed by secondary drug offences (16.9%), the type of drug (10.8%) and the drug quantity (9.8%).

In the case of the non-parole periods, these same four variables accounted for just over 91% of the model's effect, with the role of the offender explaining most (45.2%), followed by secondary drug offences (21.9%), the type of drug (12.1%) and drug quantity (12%).

Given the importance of these findings the following analysis will pay particular attention to: the role of the offender, the type and quantity of drug involved in the offence, as well as secondary drug offences.

ROLE

Table 7 provides a breakdown of the role of offenders who imported commercial quantities of drugs. It shows, consistent with our regression analysis, that role was a most important factor in the sentences imposed, affecting both head sentences⁶⁶ and non-parole periods.⁶⁷ As expected, principals received the longest terms, whereas persons in the lower echelons of the organisation received shorter head sentences and non-parole periods.

Table 7:
**Import commercial quantity of prohibited drugs,
median head sentence and non-parole period by role of offenders***

<i>Role</i>	<i>N</i>	<i>Head sentence[†]</i>	<i>Non-parole period[†]</i>
Principal	17	144	96
High Level	32	117	72
Courier	33	102	63
Lower Level	27	60	36

* 1 January 1992 to 31 December 1997

† Months

64 $R^2=0.677$, $F=13.253$, $p<.000$.

65 $R^2=0.645$, $F=11.635$, $p<.000$.

66 Kruskal-Wallis test, $p<.000$.

67 Kruskal-Wallis test, $p<.000$.

SECONDARY DRUG OFFENCES

If an offender was sentenced in respect of another drug offence, in addition to the principal offence, they received significantly longer head sentences⁶⁸ and non-parole periods⁶⁹ (Table 8).

Table 8:

Import commercial quantity of prohibited drugs, median head sentence and non-parole period by secondary drug offences*

Secondary Drug Offence	N	Head Sentence[†]	Non-Parole Period[†]
Yes	9	168	114
No	100	103	60

* 1 January 1992 to 31 December 1997

† Months

DRUG TYPE

In our regression analysis, type of drug was the third most important factor in explaining sentence length. As Table 9 shows, offenders who imported heroin or cocaine tended to receive longer head sentences and non-parole periods than did offenders who imported ecstasy or cannabis resin. Case law indicates that ecstasy is not to be regarded as seriously as heroin and cocaine and so may provide an explanation for the differences in the sentences imposed for these offences.⁷⁰ Long sentences were imposed in cannabis resin cases because they involved the importation of very large quantities of the drug. The one offender who imported cannabis leaf received the shortest term of imprisonment.

Table 9:

Import commercial quantity of prohibited drugs, median pure weight of the drug, median head sentence and non-parole period by type of drug*

Drug Type	N	Drug quantity	Head sentence[†]	Non-parole period[†]
Heroin	41	3.3kg	108	72
Cocaine	38	4.0kg	107	66
Ecstasy	14	729.1g	90	51
Cannabis resin	15	15 t	96	58
Cannabis leaf	1		60	36

* 1 January 1992 to 31 December 1997

† Months

DRUG QUANTITY

The amount of drugs involved in each case was assigned to either a low or high range. Quantities were considered low if the pure weight of the drug⁷¹ was less than two and

68 Kruskal–Wallis test, $p < .038$.69 Kruskal–Wallis test, $p < .040$.70 *R v Bowers* (1997) 97 A Crim R 461, per Hunt CJ at CL and Ireland J. In Victoria it has been held that it would be unfair to raise the criminality involved in the importation of a commercial quantity of MDMA (ecstasy); that is, equate it with heroin, until such time as the authorities review the status and seriousness of the drug; *R v Carey* (1997) 97 A Crim R 552.

71 The pure weight of the drug only applies to some types of drugs — heroin, cocaine, ecstasy and amphetamines. Purity information relating to cannabis or LSD was unknown. For these drugs, the pure weight actually refers to the gross weight.

one-half times the minimum commercial quantity.⁷² As Table 10 shows, offenders who imported drugs which fell in the high range of commercial quantities received slightly longer head sentences and non-parole periods.

Table 10:
**Import commercial quantity of prohibited drugs,
median head sentence and non-parole period by drug quantity (range)***

Range	N	Head sentence [†]	Non-parole period [†]
Low	56	101	60
High	49	108	72

* 1 January 1992 to 31 December 1997

† Months

Table A2 in Appendix A shows the median pure weight of the drug and the median head sentence and non-parole period for importing commercial quantities of prohibited drugs. The minimum and maximum values are displayed as a range within their respective categories. This table indicates the range of prison sentences imposed, taking into account those factors which our analysis identified as being the most important: the role of the offender, type of drug and drug quantity (range).

1.6.4 Import trafficable quantity of prohibited drug with a prior similar offence

In summary, the following features appear from an analysis of this category of offence —

- This type of offence accounted for a very small proportion of all Commonwealth drug offences (1.6%).
- Four out of six cases in this category involved heroin (66.7%).
- As expected, every offender received a prison sentence for this offence (100%).
- The median head sentence handed down was nine years and the median non-parole period was six years. These terms were slightly higher than those handed down to offenders who imported commercial quantities of prohibited drugs, suggesting that if an offender has been convicted in the past for a similar offence, then he or she is likely to receive a very lengthy term of imprisonment.

The different sentences imposed for the six offenders in Table 11 can be explained by a number of factors. For example, the offender who received the longest term of imprisonment was sentenced for two counts of being knowingly concerned in importing prohibited drugs. The amount of cocaine imported came close to the commercial quantity (1.9kg gross). The offender played a principal role in the offences and he had other matters on a Form 1 taken into account.

72 The reason for selecting this dividing line for low and high ranges at two and one-half times the minimum qualifying commercial quantity was because there is no statutory upper limit and the quantities covered an extremely wide range. Secondly, when an examination was made of the quantities found in the cases, it was a logical and convenient cut-off point for categorising low and high quantities (see Table A1).

Table 11:
**Import trafficable quantity with a prior similar offence,
 median pure weight of the drug and median head sentence and
 non-parole period by type of drug***

<i>Drug Type</i>	<i>N</i>	<i>Drug quantity</i>	<i>Head sentence[†]</i>	<i>Non-parole period[†]</i>
Heroin	4	195.1g	108	66
Cocaine	1		144	108
Ecstasy	1	41.0g	120	90

* 1 January 1992 to 31 December 1997

† Months

The offender who imported ecstasy (Table 11) acted as a courier but was on parole at the time of the offence. The remaining four offenders were sentenced for importing heroin and three of these had an addiction to the drug. The amount of heroin imported was also an important factor in the sentence lengths imposed. In view of the small numbers involved in this type of offence caution needs to be exercised in drawing firm conclusions from these cases.

1.6.5 Import trafficable quantity of prohibited drug (not Cannabis but for dealing)

In summary, the following features appear from an analysis of this category of offence:

- More than half (57.4%) of all Commonwealth drug offences were prosecuted for this type of offence.
- Heroin (55.9%) and cocaine (34.2%) were the most common drugs imported.
- Almost every offender received a prison sentence for this offence (95.5%).
- The median head sentence handed down was six years and the median non-parole period was four years.

FURTHER REGRESSION ANALYSIS

When a regression analysis was carried out for this type of offence, three variables proved to be the most important factors affecting the length of prison terms. In order of importance, these were as follows: the type of drug, the role of the offender and the quantity of drug involved in the offence. These same variables applied to both head sentences,⁷³ where almost 30% of the variance was explained by the model, and non-parole periods,⁷⁴ where 34% of the variance was explained. Whether the offender was sentenced for multiple counts of the principal offence was another important variable impacting on head sentences, while the liberty status of the offender at the time of the offence was an important variable affecting non-parole periods.

In the case of the head sentences, three variables accounted for almost 53% of the model's effect: with drug type responsible for 27.1%; role of the offender (14.5%); and drug quantity (11.2%).

In the case of the non-parole periods, these same variables accounted for almost 55% of the model's effect: with drug type responsible for almost one-third (32.4%); the role of the offender (13.1%); and drug quantity (9.5%).

73 $R^2=0.297$, $F=6.302$, $p<.000$.

74 $R^2=0.340$, $F=7.485$, $p<.000$.

Given the importance of these findings the following analysis will pay particular attention to: the type of drug, the role of the offender and the quantity of drug involved in the offence.

DRUG TYPE

A significant relationship was found between sentence length (head⁷⁵ and non-parole period⁷⁶) and type of drug. As Table 12 shows, offenders who imported cocaine, heroin or ecstasy received longer head sentences and non-parole periods. It should be noted that there was only one case involving amphetamines in this type of offence and the drug quantity was comparatively small.

Table 12:
**Import trafficable quantity of prohibited drugs (not cannabis),
median pure weight of the drug and median head sentence and
non-parole period by type of drug***

Drug type	N	Drug quantity	Head sentence [†]	Non-parole period [†]
Heroin	119	295.8g	72	42
Cocaine	74	832.7g	84	49
Ecstasy	8	154.4g	72	36
Amphetamines	1	39.2g	24	15
LSD	10	1005sq	43	16

* 1 January 1992 to 31 December 1997

† Months

ROLE

The role played by the offender was an excellent predictor of the length of head sentences⁷⁷ and non-parole periods⁷⁸ imposed in this category of offence. As Table 13 indicates, principals were given the longest sentences whereas lower level participants were given the shortest terms.

Table 13:
**Import trafficable quantity of prohibited drugs (not cannabis),
median head sentence and non-parole period by role of offenders***

Role	N	Head sentence [†]	Non-parole period [†]
Principal	41	84	54
High level	55	78	48
Courier	96	72	48
Lower level	20	45	29

* 1 January 1992 to 31 December 1997

† Months

75 Kruskal-Wallis test, $p < .002$.

76 Kruskal-Wallis test, $p < .000$.

77 Kruskal-Wallis test, $p < .000$.

78 Kruskal-Wallis test, $p < .000$.

DRUG QUANTITY

Drug amounts in this category of offence were considered low if the pure weight of the drug was less than half of the maximum trafficable quantity.⁷⁹ A significant difference was found between the length of head sentences⁸⁰ and non-parole periods,⁸¹ in that offenders sentenced for importing drugs in the high range received longer prison sentences (Table 14).

Table 14:

Import trafficable quantity of prohibited drugs (not cannabis), median head sentence and non-parole period by drug quantity (range)*

<i>Range</i>	<i>N</i>	<i>Head sentence[†]</i>	<i>Non-parole period[†]</i>
Low	151	72	42
High	57	84	54

* 1 January 1992 to 31 December 1997

† Months

Table A3 in Appendix A shows the median pure weight of the drug and the median head sentence and non-parole period for importing trafficable quantities of prohibited drugs. The minimum and maximum values are displayed as a range within their respective categories. Table A3 is a useful guide to the range of prison sentences imposed, taking into account those factors which our analysis identified as being the most important: the role of the offender, the type of drug and the drug quantity (range).

1.6.6 Import trafficable quantity of prohibited drug (cannabis — for dealing)

In summary, the following features appear from an analysis of this category of offence —

- This type of offence accounted for a small proportion of all Commonwealth drug offences (25 cases or 6.5%).
- The most common type of cannabis imported was cannabis resin (80%).
- The majority of offenders received a prison sentence for this offence (84%). If not imprisoned, they were sentenced to periodic detention (8%) or given a community service order (8%).
- The median head sentence handed down was three years six months and the median non-parole period was one year ten months, which was substantially shorter than for offences not involving cannabis.

DRUG TYPE

No significant difference was found between sentence length (head and non-parole period) and the type of cannabis imported (Table 15). However, as cannabis in its various forms, other than cannabis resin, is not commonly imported into New South Wales, no firm conclusions should be drawn from these findings.

79 See Table A1.

80 Kruskal–Wallis test, $p < .010$.

81 Kruskal–Wallis test, $p < .025$.

Table 15:
**Import trafficable quantity of prohibited drugs (cannabis),
 median gross weight of the drug and median head sentence and
 non-parole period by type of drug ***

<i>Drug type</i>	<i>N</i>	<i>Drug quantity</i>	<i>Head sentence[†]</i>	<i>Non-parole period[†]</i>
Cannabis oil	1	164.5g	52	36
Cannabis resin	17	2.2kg	42	22
Cannabis leaf	3	1kg	36	6

* 1 January 1992 to 31 December 1997

† Months

ROLE

No significant difference was found between the sentence length and the role of the offender. Once again, numbers in each category are small, but Table 16 does show that lower level offenders received the shortest head sentences and non-parole periods.

Table 16:
**Import trafficable quantity of prohibited drugs (cannabis),
 median head sentence and non-parole period by role of offenders***

<i>Role</i>	<i>N</i>	<i>Head Sentence[†]</i>	<i>Non-Parole Period[†]</i>
Principal	9	48	27
High Level	7	42	18
Courier	3	48	24
Lower Level	2	36	17

* 1 January 1992 to 31 December 1997

† Months

DRUG QUANTITY

Once again, drug amounts were categorised as low or high range, depending on whether the weight of the drug was less than half, or greater than or equal to half, the maximum trafficable quantity.⁸² As Table 17 shows, all but one offender imported low range quantities of cannabis. Nonetheless, the offender who imported a high range quantity received a longer prison sentence.

Table 17:
**Import trafficable quantity of prohibited drugs (cannabis),
 median head sentence and non-parole period by drug quantity (range)***

<i>Range</i>	<i>N</i>	<i>Head sentence[†]</i>	<i>Non-parole period[†]</i>
Low	19	42	22
High	1	60	36

* 1 January 1992 to 31 December 1997

† Months

1.6.7 Import trafficable quantity of prohibited drug (not for dealing)

Section 235(3)(b) of the *Customs Act* 1901 provides, for the purposes of penalty, a distinction between offenders who import a trafficable quantity of prohibited drugs for

82 See Table A1.

their personal use and offenders who import for the purpose of financial gain. If the former, the offence warrants a lesser penalty.⁸³

In summary, the following features appear from an analysis of this category of offence —

- 23 offenders (5.9%) were dealt with under this section.
- The most common drug imported for personal use was cannabis resin (39.1%), followed by heroin (26.1%) and cocaine (21.7%).
- Fewer than half (47.8%) of the offenders received a prison sentence for this offence, which was considerably fewer than for offenders who imported drugs for the purpose of supply, but still considerably more than for offenders who imported drugs for their personal use in less than trafficable quantities.
- The median head sentence handed down was 12 months and the median non-parole period was eight months.
- Other common penalties imposed included community service orders and recognizances (both 17.4%). A term of periodic detention was given in 13% of cases.
- Offenders given community service were ordered to perform between 250 and 400 hours. The median was 325 hours. If given a recognizance, the median length was 36 months (range: 24–48 months) and the median term of periodic detention was 18 months (range: 12–24 months). One offender was fined \$2,000.

DRUG TYPE

An examination of drug type did not reveal any significant relationship between the type of penalty imposed and the type of drug imported for personal use. In regard to custodial terms, the numbers were small and, therefore, no significant variations were found by reference to the type of drug. However, as Table 18 shows, the two offenders who were imprisoned for importing heroin for their personal use received longer sentences than did those offenders who imported cocaine or cannabis resin for their personal use.

Table 18:
Import trafficable quantity of prohibited drugs (not for dealing), median pure weight of the drug and median head sentence and non-parole period by type of drug*

Drug type	N	Drug quantity	Head sentence [†]	Non-parole period [†]
Heroin	2	26.6g	21	12
Cocaine	4	43.5g	12	8
Cannabis resin	5	1.2kg	12	6

* 1 January 1992 to 31 December 1997

† Months

1.6.8 Import less than trafficable quantity of prohibited drug

Only two offenders (0.5%) were sentenced for this offence during the six year period of this study. One offender imported heroin and the other offender imported cannabis resin. Both offenders had imported drugs for their personal use and both received a deferred sentence with supervision for three years under the terms of s 20 of the *Crimes Act 1914* (Cth).

83 *R v Kelly* (1993) 30 NSWLR 64, per Mahoney JA at 68.



2 State offences

2.1 Introduction

As indicated previously, State offences accounted for the vast majority (90.8%) of all drug offences coming before the higher courts.

Compared to Commonwealth offences there was a larger variety of offences under State legislation and the relevant sections, together with the number of cases, are listed in Table 19.

Table 19:
Drug offences under the *Drug Misuse and Trafficking Act 1985 (NSW)**

Section		N	%
Summary offences			
10(1)	Possession of a prohibited drug	32	0.8
Sub-total		32	0.8
Offences with respect to prohibited plants			
23(a)	Cultivate, or knowingly take part in the cultivation of, a prohibited plant	1022	26.8
23(a), 26	Conspiracy to cultivate	7	0.2
23(a), 27	Aid and abet cultivation	3	0.1
23(a), common law	Attempt to cultivate	2	0.1
23(b)	Supplies, or knowingly takes part in the supply of, a prohibited plant	2	0.1
23(c)	Has a prohibited plant in his or her possession	18	0.5
Sub-total		1054	27.6
Manufacture of prohibited drugs			
24	Manufacture prohibited drugs	46	1.2
24, 26	Conspiracy to manufacture	14	0.4
Sub-total		60	1.6
Supply of prohibited drugs			
25, 29	Supply, or deemed supply	2599	68.1
25, 26	Conspiracy to supply	49	1.3
25, 27	Aid and abet supply	18	0.5
25, common law	Attempt to supply	2	0.1
Sub-total		2668	70.0
Total		3814	100.0

* 1 January 1992 to 31 December 1997

Over the study period, from 1 January 1992 to 31 December 1997, there were 3,817 drug sentencing matters finalised in the higher courts of New South Wales that were prosecuted under State legislation. Except for three cases which have been excluded because they fell under the terms of the now repealed *Poisons Act 1966*, all these offences were dealt with under the various provisions of the *Drug Misuse and Trafficking Act 1985*.

With the implementation of the *Drug Misuse and Trafficking (Amendment) Act 1988* various changes were made to the structure of penalties for offences committed after 21 August 1988. These changes involved adding a new category of "large commercial quantity" and altering the amount of prohibited drugs in other categories and the associated maximum statutory penalties. In the present study, 45 offences were committed on or before 21 August 1988 and have been excluded from any further analysis. Thus, the following analysis is based on a total of 3,769 drug sentencing records.

A breakdown of the offences, displaying their respective statutory maximum penalties is presented in Table 20. This is followed by Table 21, which sets out the statutory ranges defined in terms of the type and quantity of drug involved in the offence.

Table 20:

Drug offence category and associated statutory maximum penalties under the *Drug Misuse and Trafficking Act 1985 (NSW)**

<i>Drug offence</i>	<i>Statutory maximum penalty</i>
Summary (s10)	20 pu† and/or 2 years imprisonment
Indictable (s23, s24, s25)	
Less than commercial qty	2000 pu† and/or 15 years imprisonment
Less than commercial qty (cannabis)	2000 pu† and/or 10 years imprisonment
Commercial qty	3500 pu† and/or 20 years imprisonment
Commercial qty (cannabis)	3500 pu† and/or 15 years imprisonment
Large commercial qty	5000 pu† and/or life imprisonment
Large commercial qty (cannabis)	5000 pu† and/or 20 years imprisonment

* On or after 21 August 1988

† Penalty units (pu). At the time of writing, one pu equals \$110. Where an indictable offence is tried summarily the maximum penalty is normally two years with a maximum fine of 50 pu.⁸⁴

84 *Drug Misuse and Trafficking Act 1985*, ss 30 & 31.

Table 21:
Statutory ranges by drug offence type and scheduled amount under the *Drug Misuse and Trafficking Act 1985 (NSW)**

Drug type	Scheduled amounts		
	Traffickable quantity	Commercial quantity	Large commercial quantity
Heroin	3g	250g	1kg
Cocaine	3g	250g	1kg
Amphetamines	3g	250g	1kg
Ecstasy	0.75g	125g	500g
Lysergide (LSD)	15 DDU [†] or 0.003g	2500 DDU [†] or 0.05g	10,000 DDU [†] or 0.2g
Cannabis resin	30g	2.5kg	10kg
Cannabis leaf	300g	25kg	100kg
Cannabis plant	N/A	250 plants	1000 plants
Cannabis oil	5g	500g	2kg

* On or after 21 August 1988

† Discrete dosage unit (DDU).

2.2 Type of offence

The analysis of offence type contained in Table 19 indicated that seven out of ten cases concerned the supply⁸⁵ of prohibited drugs and, therefore, this was by far the most common drug offence dealt with in the higher courts. The policy in sentencing for these offences is based on the application of the principle of general deterrence, as well as the further principle that those who traffic in drugs to any substantial degree, subject to the presence of “exceptional circumstances,” should be sentenced to full time imprisonment.⁸⁶ The Court of Criminal Appeal has warned that there should not be an excessively liberal interpretation of what constitutes “exceptional circumstances” so as to justify the use of non-custodial sentences in such cases.⁸⁷ Thus, even the presence of some strong subjective features, such as being a first offender,⁸⁸ evidence of rehabilitation achievements,⁸⁹ or co-operation with authorities,⁹⁰ has not been sufficient to convince the court that it should make a finding of special circumstances. Nevertheless, suppliers who traffic in drugs primarily to feed their own addiction are regarded to be at the lower end of the criminality spectrum and are often contrasted with offenders who traffic for commercial gain (greed).⁹¹

Where the offender can establish on the balance of probabilities that a substantial quantity of drug is for personal use or for friends, and not for commercial use, then the courts may be prepared to mitigate the penalty.⁹² Street level dealers generally should receive lighter

85 For the purposes of this study, offences prosecuted under s 29 of the *Drug Misuse and Trafficking Act 1985* (Deemed Supply) have been combined with Supply offences. In *R v Sharp* (unreported, 23 March 1993, NSWCCA) the court observed that the difference in gravity between “deemed supply” and “supply” is comparatively slight because “it means little more than that the particular prisoner was apprehended before he was able to carry out his intention to sell or distribute the drugs.”

86 *R v Pilley* (1991) 56 A Crim R 202; *R v Burnett* (1996) A Crim R 76.

87 *R v Cacciola* (unreported, 15 October 1998, NSWCCA, per Priestly JA at 10–11).

88 *R v Clark* (unreported, 12 September 1990, NSWCCA, per Hunt J at 4).

89 *R v Thompson* (unreported, 4 April 1991, NSWCCA).

90 *R v Hawkins* (unreported, 12 September 1991, NSWCCA).

91 *R v Yanice* (1994) 72 A Crim R 234 at 240.

92 *R v Wilson* (unreported, 21 September 1994, NSWCCA); *R v Pilley* (1991) 56 A Crim R 202 at 208.

sentences than wholesalers or intermediaries and the latter group should be sentenced more leniently than persons further up in the hierarchy, all other things being equal.⁹³

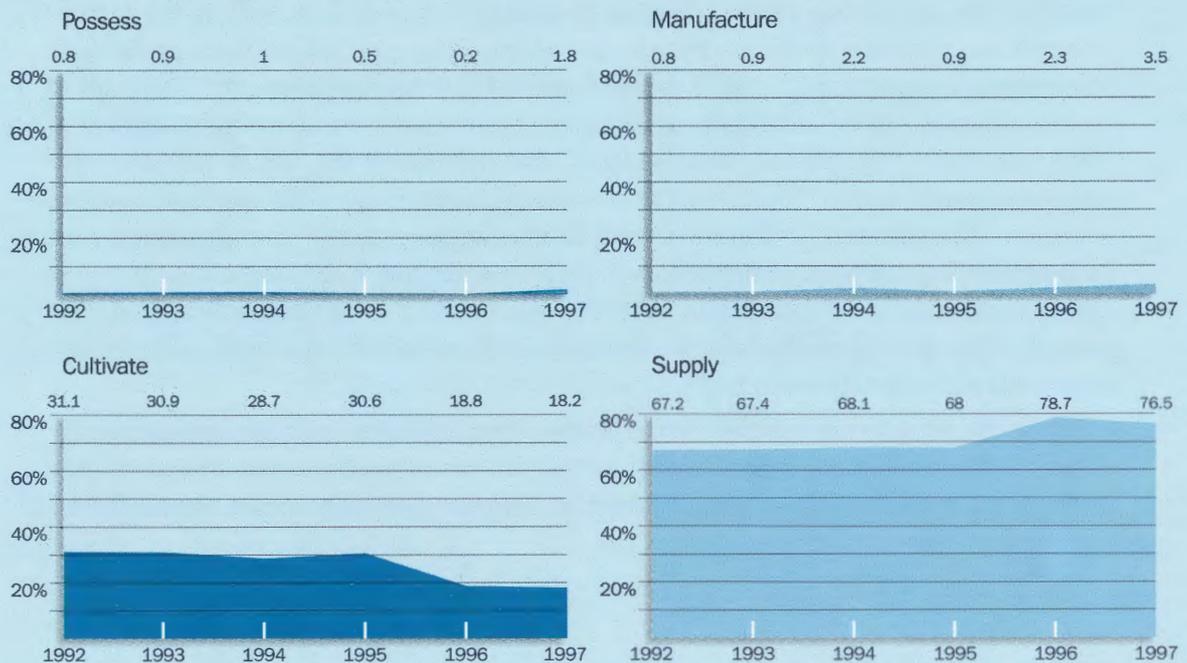
The next most prevalent category of drug offences is offences with respect to prohibited plants (27.8%). For convenience, as this latter category consisted almost entirely of cultivation offences, the term “cultivate” will be used generally to denote these offences.

As in the case of other drug offences, the scale of the operation is a major consideration in assessing criminality. Organised or sophisticated cultivation is regarded most seriously,⁹⁴ and it has been held that hydroponic cultivation of cannabis for profit should generally attract full time imprisonment.⁹⁵

2.2.1 Time series analysis

Figure 5 illustrates the pattern of offending based on the broad categories of State drug offences finalised over the study period. It shows that, in 1996, there was a ten per cent increase in the proportion of supply offences.⁹⁶ Most of this increase was due to the fall in the number of cultivation offences.⁹⁷ Possess and manufacture offences have always accounted for a very small proportion of the total number of State drug matters.

Figure 5:
Offence type by sentence year*



* 1 January 1992 to 31 December 1997

93 *R v Reichel* (1991) 55 A Crim R 112.

94 *R v Tidswell* (unreported, 3 April 1997, NSWCCA); *R v Burnett* (1996) 85 A Crim R 76.

95 *R v Puke* (unreported, 12 September 1997, NSWCCA, per Smart J).

96 Chi-square test, $p < .000$.

97 One possible explanation for the shift in the pattern of cases may be due to the impact of the amendments to the *Criminal Procedure Act 1986* (NSW) in 1995. However, there may be a number of other matters influencing this change but these have not been investigated in this study.

2.3 Scheduled amount of drug

Like Commonwealth legislation, State offences are governed by the quantity of the prohibited drug involved in the offence. These are listed in Schedule 1 of the Act and are summarised in Table 21. An analysis of the data shows that the majority of cases (82.5%) were offences relating to less than commercial quantities of prohibited drugs. About one in ten cases (11.2%) involved commercial quantities; and 6.3% of the cases concerned large commercial quantities. When a time series analysis was performed, no significant variation was found in the proportion of these cases coming before the courts.

On further analysis, possession offences (100%) and supply offences (86.1%) were more likely to involve less than commercial quantities. Manufacture and, to a lesser extent, cultivate offences were over-represented in cases involving commercial (25.4% and 14.7%, respectively) and large commercial quantities (35.6% and 9.8%, respectively).

In order that the analysis be more meaningful, the scheduled amount of drug has been divided into three groups: low, middle and high range. This was found to be desirable because the legislated scheduled amounts cover a wide range.

2.4 Drug type

Obviously, the type of drug has an important influence on the objective seriousness of the offence. The most common drugs involved in State offences were cannabis plants (27.7%), closely followed by heroin (22.4%) and amphetamines (22%). Cannabis leaf was involved in 15.9% of cases. Table 22 displays, in order of prevalence, the types of drug involved in the offences finalised in the higher courts.

Table 22:

Type of drug involved under the *Drug Misuse and Trafficking Act 1985 (NSW)**

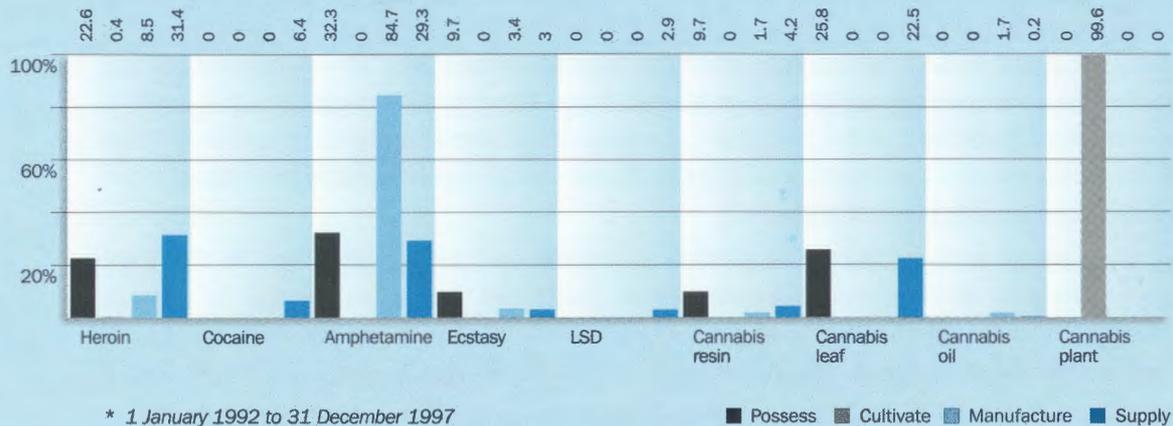
Drug type	N	%
Cannabis plant	1045	27.7
Heroin	843	22.4
Amphetamines	830	22.0
Cannabis leaf	600	15.9
Cocaine	168	4.5
Cannabis resin	115	3.1
Ecstasy	84	2.2
LSD	77	2.0
Cannabis oil	7	0.2
TOTAL	3769	100.0

* 1 January 1992 to 31 December 1997

When the trend in drug types over the period 1992 to 1997 was examined, it revealed that there was a drop in cultivation offences from 1996 (see Figure 5). This meant a fall in cannabis plant cases; and, accordingly, the courts dealt with proportionately more supply cases.

Figure 6 shows the type of drugs involved in State drug offences by the type of offence. It can be seen that practically all prohibited plant offences involved cannabis plants (99.6%). Possession offences mainly involved amphetamines (32.3%), cannabis leaf (25.8%) or heroin (22.6%). Amphetamines were the most common drugs in manufacturing offences (84.7%). Although several types of drugs were supplied, heroin (31.4%), amphetamines (29.3%) and cannabis leaf (22.5%) were the most common drugs.

Figure 6:
Offence type by drug type*



2.5 Role of offenders

As in Commonwealth cases, the role of the offender is a very important consideration in sentencing. Although the courts have said that there is no automatic corresponding reduction in sentence simply because the offender's role may be at a lower level,⁹⁸ it is clear from the analysis of the cases that persons lower in the distribution chain tend to be treated more leniently. On the other hand, the Court of Criminal Appeal has observed that a sentencer should not allow any less important role played by an offender to overshadow the grave objective seriousness of the offence.⁹⁹ This observation must be treated in perspective as the analysis throughout this study shows that role is a vital ingredient in the sentencing of drug offenders.

The classification of role for State offenders is not exactly the same as for Commonwealth offences because many of the activities involved in the offences are different. For example, couriers do not figure largely in State offences, but cultivators do. Hence, the following classification has been developed to describe the differing roles of State offenders —

- **Principal/dealer**

These offenders sold (or intended to sell) prohibited drugs for financial gain. As such, this category includes suppliers, manufacturers and cultivators.

- **Dealer/user**

This group of offenders sold drugs to support their own (and/or their partner's) drug dependency. This category also includes "friends" who pooled their money to buy drugs in bulk.

- **Intermediaries**

Individuals were coded as intermediaries if they —

- worked for a supplier (selling or delivering drugs, etc);
- were responsible for introducing buyers to the suppliers, as in some undercover police operations;

98 *R v Fabian* (1992) 64 A Crim R 365 at 376.

99 *R v Talbot* (unreported, 19 December 1997, NSWCCA).

- provided services, such as equipment, property, money, scientific knowledge or labour (for example, setting up hydroponics systems or doing relevant electrical work);
- acted as couriers (transported drugs interstate);
- stored drugs for the supplier; or
- acted as bodyguards or lookouts.

- **Accomplice**

These offenders were indirectly involved in drug offences. Some of their activities included —

- taking messages regarding drug deals;
- acting as interpreters;
- watering plants; or
- just being aware or having knowledge of the offending behaviour.

- **Personal use**

This category refers to offenders who possessed or manufactured prohibited drugs, or cultivated prohibited plants, for their personal use. This category also includes sharing drugs with a partner or friends, but not on a commercial basis.

As Table 23 shows, approximately four out of every ten offenders (42.5%) were sentenced for selling prohibited drugs (or for intending to sell cultivated plants or manufactured drugs) for financial gain. In over one-third of the cases, the offences were motivated by personal use of prohibited drugs. This proportion includes 23.1% of offenders who had prohibited drugs in their possession, cultivated prohibited plants or manufactured prohibited drugs for their own use; and a further 11% who were selling drugs to support their drug dependency. Further, about two in every ten offenders (18.3%) were described as intermediaries and a small proportion (5.2%) acted as accomplices or accessories in the commission of drug offences.

Table 23:

Role of offenders sentenced under the *Drug Misuse and Trafficking Act 1985 (NSW)**

Role	N	% [†]
Principal/dealer	1509	42.5
Dealer/user	390	11.0
Intermediary	649	18.3
Accomplice/accessory	183	5.2
Personal use	820	23.1
Total‡	3551	100.0

* 1 January 1992 to 31 December 1997

† Percentages are based on known cases.

‡ The offender's role was unknown in 218 cases.

2.6 Other sentencing factors

Thus far the analysis has referred to some important variables which are taken into account for the purposes of sentencing. There are many more factors that must also be considered and they interact in a complex way, making it difficult, if not impossible, to describe with any precision how they are taken into account in an individual case.

Victorian courts often refer to the way in which sentences are derived as a process of instinctive synthesis,¹⁰⁰ and it is not difficult to understand why resort is had to such an explanation. In order to examine the relationships between a large selection of factors considered relevant to sentencing, statistical tests were performed and a matrix produced. The outcome of this analysis simply confirmed that some variables were associated strongly with most other variables, indicating the complexity of the inter-relationships of factors.

In the following sections some further characteristics relating to the offender are presented without attempting to describe the complex relationship each variable may have with one or more of the other variables. Thereafter, regression analyses are employed to determine which factors had the greatest influence on the determination of sentence.

2.6.1 Age and gender

Almost three in every four offenders were aged between 21 and 40 years (37.3% were aged 21 to 30 years and 36.4% were aged 31 to 40 years). Twenty per cent of offenders were aged over 40 years. It is interesting to note that State offenders tended to be younger than Commonwealth offenders.

The majority of offenders (88%) were male, about the same as Commonwealth offenders and consistent with previous findings in these kinds of offences.¹⁰¹

2.6.2 Plea, co-operation and assistance to authorities

Most offenders (86.9%) pleaded guilty; and, when compared with federal drug offenders, were slightly more likely to plead guilty. As previously described at paragraph 1.5.2, there is a considerable amount of case law on the relevance to sentence of guilty pleas, co-operation and assistance to authorities.

Section 439 of the *Crimes Act* 1900 (NSW) provides that a court must take into account the fact that a person pleads guilty or indicates an intention to plead guilty. In such circumstances the court may reduce the otherwise appropriate sentence or, if it does not choose to do so, must state its reasons for declining to do so. Courts are not required to specify how much discount they must provide for this factor, as they often emphasise that sentencing is not amenable to the application of rigid formulas.¹⁰² An early plea attracts greater leniency than a later one.¹⁰³ In practice, particularly in cases involving co-operation or assistance to authorities, it is possible to find the courts specifying discounts of up to 60%.

Even where an offender is caught “red-handed,” the courts may nevertheless give the offender some discount if there are utilitarian benefits, such as saving court time and costs,¹⁰⁴ and saving witnesses the trauma of giving evidence in court.¹⁰⁵ Further, where a guilty plea is accompanied by the presence of genuine contrition, the court may be disposed to mitigate the penalty to a certain extent.¹⁰⁶

100 *R v Williscroft* [1975] VR 292.

101 P Poletti and I Potas, *op cit* n 3, p 15.

102 *R v Winchester* (1992) 58 A Crim R 345; *R v Beavan* (unreported, 22 August 1991, NSWCCA).

103 *R v Holder* [1983] 3 NSWLR 245.

104 *R v Bishop* (unreported, 23 September 1996, NSWCCA, per Hunt CJ at CL).

105 *R v Lawrence* [1980] 1 NSWLR 122 at 108; *R v Ellis* (1986) 6 NSWLR 603 at 604.

106 *R v Taylor* (unreported, 22 November 1996, NSWCCA, per Newman J).

Particularly in drug sentencing matters, it is important to note the significance of the factor of co-operation with authorities, precisely because it can have such a dramatic impact on the sentence imposed by the court.

2.6.3 Prior criminal record

Invariably the prior criminal record of the offender is a matter that courts take into account in sentencing. The common law principle provides that the sentence to be imposed on account of prior record must not lead to a sentence which exceeds the penalty that is proportionate to the gravity of the offence, because to do so would be to punish an offender for past offences.¹⁰⁷ A relevant criminal record may be used to indicate whether the current offence appears to be an uncharacteristic aberration or whether it reflects a continuing disobedience of the law.¹⁰⁸ Unlike the case of importing traffickable quantities of drugs under Commonwealth law, which provides for a higher maximum penalty on the ground that the offender has committed a similar prior offence (see Table 2), there is no comparable provision under State legislation. However, as a general rule, an offender who has a prior record of drug offences can expect to be treated more severely by the courts than an offender who has no prior drug convictions. On the other hand, it should be noted that the courts are not inclined to extend the same degree of leniency to drug offenders who have a hitherto clear record than to other types of offenders.¹⁰⁹

Forty-four per cent of offenders had prior convictions for drug offences (32% without imprisonment, 12% previously imprisoned for a drug offence). The proportion of offenders with prior convictions for offences of a different nature was 28.7%. Just over one-quarter (27.3%) of offenders sentenced in the higher courts had no prior record of offending. When this profile was compared with that of federal drug offenders, it was found that federal offenders were more than twice as likely to be first offenders.

2.6.4 Liberty status

The majority of offenders were on unconditional liberty (not subject to legal restrictions) at the time of the offence. Approximately one in every ten offenders (11.1%) was on bail or bond. A small proportion of offenders were on parole (2.9%) or in custody (0.8%). Again, federal offenders were more likely to be on unconditional liberty at the time of the offence.

2.6.5 Legal representation

Almost all drug offenders (99.2%) were legally represented in court. Of these, 30.7% were either represented by legal aid or by firms funded by legal aid. Federal offenders were more likely to be represented by legal aid than their State counterparts.

2.6.6 Addiction

Often addiction is referred to as an explanation rather than an excuse in the sentencing of drug offenders.¹¹⁰ However, there are instances where the court will mitigate penalty for this factor. In a recent Victorian case, for example, Callaway JA observed that a very

107 *DPP v Ottewell* [1970] AC 642.

108 *Veen v The Queen [No 2]* (1988) 164 CLR 465, per Mason CJ, Brennan, Dawson and Toohey JJ at 477–478.

109 *R v Leroy* [1984] 2 NSWLR 441, per Street CJ at 446–447.

110 *R v Valentini* (1989) 46 A Crim R 23.

significant factor in sentencing is that the offender is engaged in drug trafficking to satisfy a craving, rather than purely for reasons of greed and in callous disregard of serious harm to others.¹¹¹ While each offence depends on its own facts, his Honour also observed that the weight to be given to this factor diminishes, often to a vanishing point, in above street level cases.¹¹²

In the majority of cases (79.8%) it was possible to ascertain whether the offender was addicted to drugs at the time of the offence. Approximately four in every ten (42.5%) offenders were addicted to prohibited drugs and State offenders were more likely to be drug dependent than federal offenders.

2.6.7 Number of counts of the principal offence and secondary drug offences

Most offenders (90.2%) were sentenced for one count of the principal offence. Twenty-two per cent of offenders had other drug offences, in addition to the principal offence, dealt with at the same court appearance. Almost twice as many State offenders than federal offenders had sentences imposed for secondary drug offences.

2.6.8 Other offences taken into account

Section 21 of the *Criminal Procedure Act 1986* allows sentencing judges to take into account outstanding offences on a Form 1 schedule. When this is done the sentencing court is expected to impose a sentence which applies the principle of totality.

Over one-third (36.1%) of offenders had outstanding offences listed on a Form 1 taken into account. In comparison, federal offenders seldom have other matters taken into account during sentencing.

2.7 Sentencing outcomes

It has been seen that Commonwealth drug offenders generally go to prison and sentencing alternatives are seldom used. This may be compared with the pattern of sentences handed down to offenders convicted of State drug offences, where the imposition of alternative sentencing dispositions is far more common. Table 24 sets out the types of penalties handed down to State offenders sentenced in the higher courts between 1 January 1992 to 31 December 1997. It also shows the median penalty length imposed, together with the range for each disposition.

111 *R v Bernath* [1997] 1 VR 271.

112 *Ibid*, see also *R v Botero* (unreported, 24 June 1998, NSWCCA, per Barr J); *R v Selim* (unreported, 19 May 1998, NSWCCA).

Table 24:
Type of penalty under the Drug Misuse and Trafficking Act 1985 (NSW)*

Penalty type [†]		N	%	Penalty length	
				Median	Range
Prison:	• overall sentence	1724	45.7	30 mths	1 mth–24 yrs
	• minimum term			15 mths	1 mth–18 yrs
Home detention:	• overall sentence	8	0.2	16 mths	8–18 mths
	• minimum term			10.5 mths	4–12 mths
Periodic detention		540	14.3	18 mths	3–36 mths
Community service order		718	19.1	300 hours	34–500 hrs
Recognizance with supervision		434	11.5	36 mths	12–60 mths
Recognizance without supervision		308	8.2	36 mths	10–60 mths
Fine		36	1.0	\$1,000	\$100–\$20,000
TOTAL		3768	100.0		

* 1 January 1992 to 31 December 1997.

† One person was sentenced to the rising of the court and has been excluded from the analysis.

In summary, Table 24 shows that almost half (45.7%) of the offenders received a full time prison sentence. The median overall sentence was 30 months and the median minimum sentence was 15 months. Almost one in five offenders (19.1%) were ordered to perform community service. These offenders were ordered to perform between 34 and 500 hours. The median was 300 hours. A similar proportion (19.7%) was given a recognizance. The median period was 36 months, whether supervised by the Probation and Parole Service or unsupervised. Periodic detention was imposed on 540 offenders (14.3%). The median term was 18 months. Only one per cent of offenders were fined as a principal penalty, the median amount being \$1,000. In six per cent of cases fines were also imposed as a secondary penalty, usually in association with a recognizance, the median amount being \$1,500.

For the purpose of comparison, the rest of the analysis groups offenders who were given a home detention order with those who were given a prison sentence. It should also be noted that home detention was introduced in 1997 and, as such, does not figure significantly in the sentences imposed during the currency of this study. Unsupervised and supervised recognizances have also been grouped together, although it was not unusual for drug addicts to be supervised (81.5% compared with 47.3% of non-addicts).¹¹³

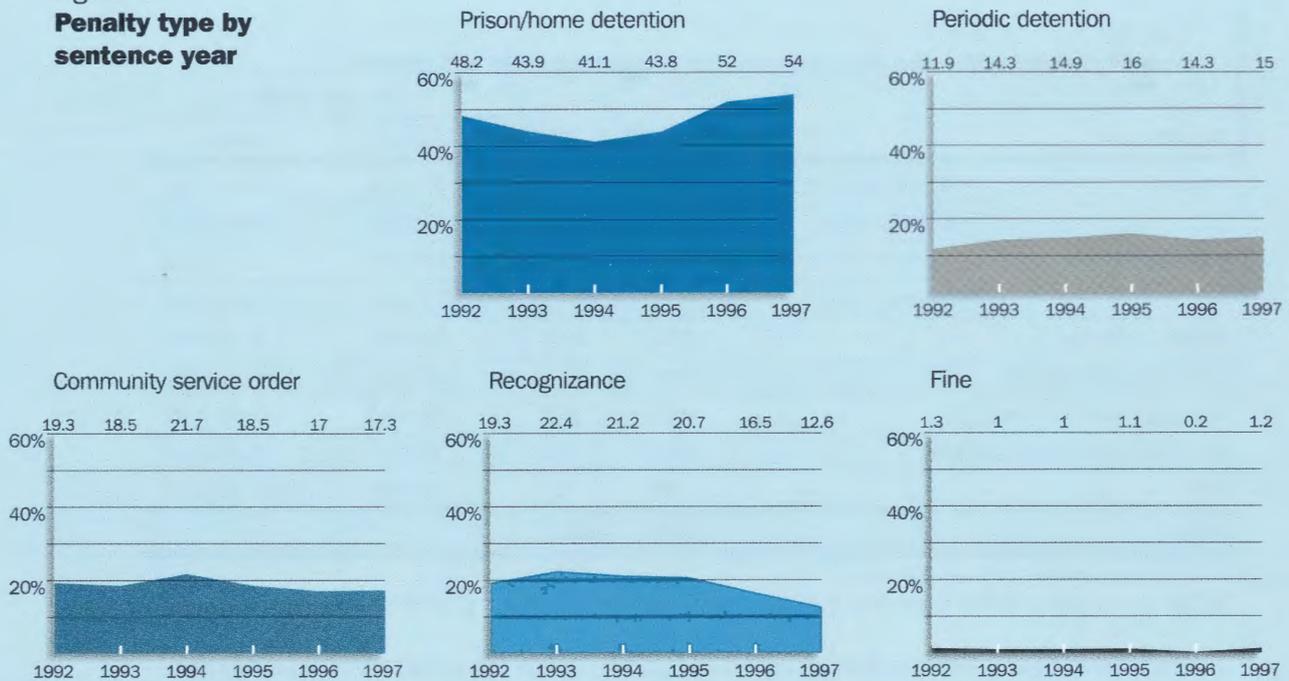
An examination of the penalties imposed for State drug offences over the years (see Figure 7) indicates that the use of imprisonment was proportionately higher in the latter years.¹¹⁴ Once again, this increase in the use of imprisonment can be explained by the more serious types of drug offences dealt with in 1996 and 1997 (see also Figure 5). The period with the lowest proportionate use of imprisonment occurred between 1993 and 1995 and may perhaps be explained by the impact of the Sentence Indication Scheme.¹¹⁵

113 Chi-square test, $p < .000$.

114 Chi-square test, $p < .002$.

115 D Spears, P Poletti and I MacKinnell, op cit n 11, p 37.

Figure 7:
Penalty type by
sentence year



* 1 January 1992 to 31 December 1997

Statistical tests were employed to determine whether any variations occurred over time in the severity of the sentences imposed for each disposition. These indicated that there were hardly any differences in the length of penalties imposed for drug offences over the six years of the study.

2.7.1 Special circumstances

For custodial sentences greater than six months, the law provides that the additional term must not exceed one-third of the minimum term unless the court finds that there are "special circumstances."¹¹⁶ An analysis of drug cases was made in order to determine the extent of use of special circumstances imposed by the higher courts in drug cases. After excluding all fixed term sentences, special circumstances were found in almost two out of every three cases. Of those who received shorter minimum terms, the median minimum term constituted 50% rather than 75% of the overall sentence.

There were many reasons given for the finding of special circumstances, including a range of matters relating to the offender's antecedents, such as: age; medical condition; prospects for rehabilitation; prior record; need for supervision; drug and alcohol counselling; ethnicity; and co-operation with, or assistance to, authorities.

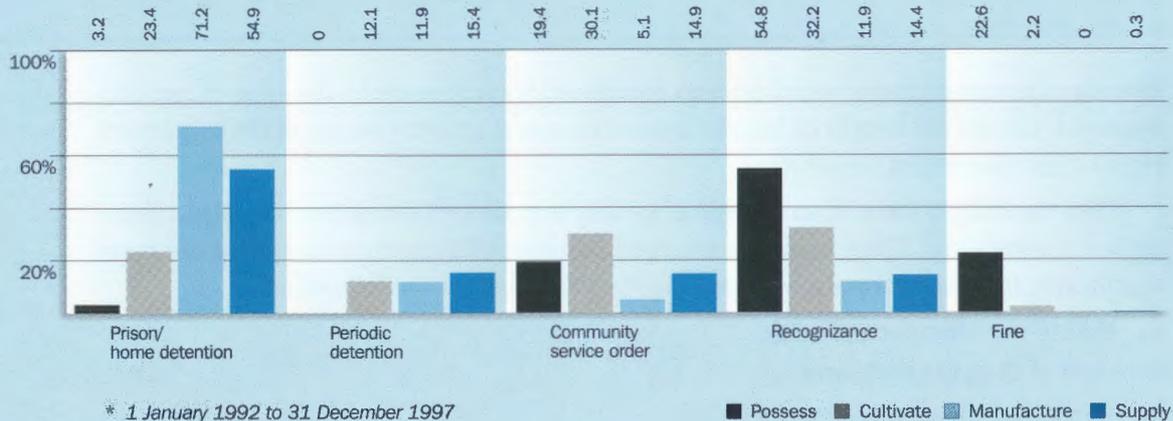
2.7.2 Type of offence

As expected, there was a strong relationship between the type of penalties handed down and the general nature or type of offence.¹¹⁷ Figure 8 shows that offenders who were sentenced for manufacturing a prohibited drug were the most likely to be given a prison term (71.2%). This is consistent with the view that the courts regard the manufacturing

116 *Sentencing Act 1989 (NSW)*, s 5(2).

117 Chi-square test, $p < .000$.

Figure 8:
Penalty type by offence type*



of drugs most seriously.¹¹⁸ This pattern may also be explained by the fact that manufacturers were over-represented in cases involving commercial and large commercial quantities.

Offenders sentenced for supplying a prohibited drug were also more likely to receive a prison sentence (54.9%) than those sentenced for mere possession or offences relating to prohibited plants. Offenders sentenced for cultivation attracted a relatively more even spread of penalties. Most offenders convicted of possession offences received a recognizance to be of good behaviour (54.8%).

2.7.3 Regression analysis

In order to determine which factors were the most likely to predict the sentencing outcomes for State drug offences, a regression analysis was carried out. The analysis considered a total of 17 variables relating to the circumstances of each case. These variables were —

- nature of the offence;
- type of drug;
- scheduled amount of drug;
- quantity of drug within the scheduled amount;
- role of the offender;
- plea;
- prior record;
- prior record of imprisonment;
- age of the offender;
- sex of the offender;
- number of counts of the principal offence;
- secondary drug offences involved;
- Form 1 matters;
- liberty status of the offender at the time of the offence;

118 See, for example, *R v Haydon* (unreported, 11 September 1990, NSWCCA, per Lee CJ at 4).

- addiction to drugs;
- legal aid; and
- court location.

The significance of these variables was examined by reference to the type of penalty imposed, the overall length of imprisonment imposed and the length of the minimum term of imprisonment imposed.

When the analysis focused on the type of penalty imposed,¹¹⁹ these factors explained about 40% of the variance. Three variables emerged (in order of importance) as being the most significant, accounting for almost three-quarters (73%) of the model's effect —

1. role of the offender (38.9%);
2. type of drug (17.8%); and
3. scheduled amount of drug (16.3%).

When the analysis focused on overall length of imprisonment,¹²⁰ almost half (48.3%) of the variance could be explained by this set of factors. Three variables emerged (in order of importance) as being the most significant, accounting for 84% of the model's effect —

1. scheduled amount of drug (54.6%);
2. type of drug (15.9%); and
3. quantity of drug within the scheduled amount (13.5%).

When the overall analysis focused on the length of the minimum term,¹²¹ these factors explained almost half (48.5%) of the variance. The most important variables were the same as for the overall length of imprisonment but the order of importance varied in accordance with the following —

1. scheduled amount of drug (54.2%);
2. quantity of drug within the scheduled amount (15.7%); and
3. type of drug (13.8%).

It may seem curious as to why the type of offence (that is, whether cultivate, manufacture or supply) did not emerge as a significant factor in the regression analysis. It in fact ranked fourth or fifth in order of importance and its effects may have been masked because the type of offence correlated strongly with the variables, role of the offender and type of drug.

When the analysis controlled for type of offence, the same variables consistently emerged as the most important. These were: scheduled amount of drug, role, type of drug and the quantity of drug within the scheduled amount. Given the importance of these findings, the following analysis will pay particular attention to the type of offence, as well as the variables just mentioned.

2.7.4 Supply prohibited drug

As already mentioned, the most prevalent drug offence before the higher courts of New South Wales between 1 January 1992 and 31 December 1997 was supply prohibited drug (69.8%). Most supply offences involved less than commercial quantities (86.1%). Heroin

119 $R^2=0.404$, $F=107.719$, $p<.000$.

120 $R^2=0.483$, $F=68.369$, $p<.000$.

121 $R^2=0.485$, $F=69.028$, $p<.000$.

(31.4%), amphetamines (29.3%) and cannabis leaf (22.5%) were the most common drugs supplied.

Table 25 shows the type of penalties handed down to offenders for supplying a prohibited drug. Offenders were slightly more likely than not to receive a prison sentence (54.9%). The median sentence of imprisonment was 30 months and the minimum term was 16 months.

Table 25:
Supply prohibited drug: Type of penalty imposed*

Penalty type	N	%	Penalty length		
			Median	Range	
Prison	1444	54.9	• overall sentence	30 mths	1 mth–24 yrs
			• minimum sentence	16 mths	1 mth–18 yrs
Periodic detention	406	15.4	18 mths	3–36 mths	
Community service order	393	14.9	300 hrs	34–500 hrs	
Recognizance	380	14.5	36 mths	12–60 mths	
Fine	6	0.2	\$1,500	\$100–\$20,000	
Total	2629	100.0			

* 1 January 1992 to 31 December 1997.

Other penalties imposed for this offence included: periodic detention (15.4%), community service orders (14.9%) and recognizances (14.5%). Most recognizances (68.9%) required the supervision of the Probation and Parole Service. Six offenders (0.3%) were fined as their principal penalty and one offender was sentenced to the rising of the court.

Offenders given periodic detention were sentenced to a median term of 18 months. Community service recipients were ordered to perform between 34 and 500 hours. The median was 300 hours. If given a recognizance the median length was 36 months. The median fine amount imposed was \$1,500.

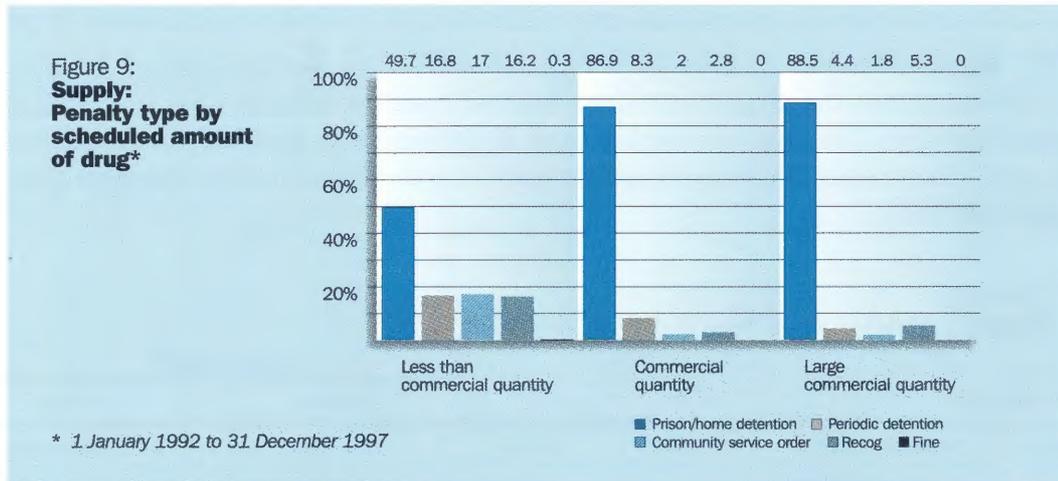
Analysis by key variables

This section examines each of the four key variables with a view to illustrating the relationship of each of these to the type of penalty and to the length of prison sentences, including minimum terms, imposed in supply offences.

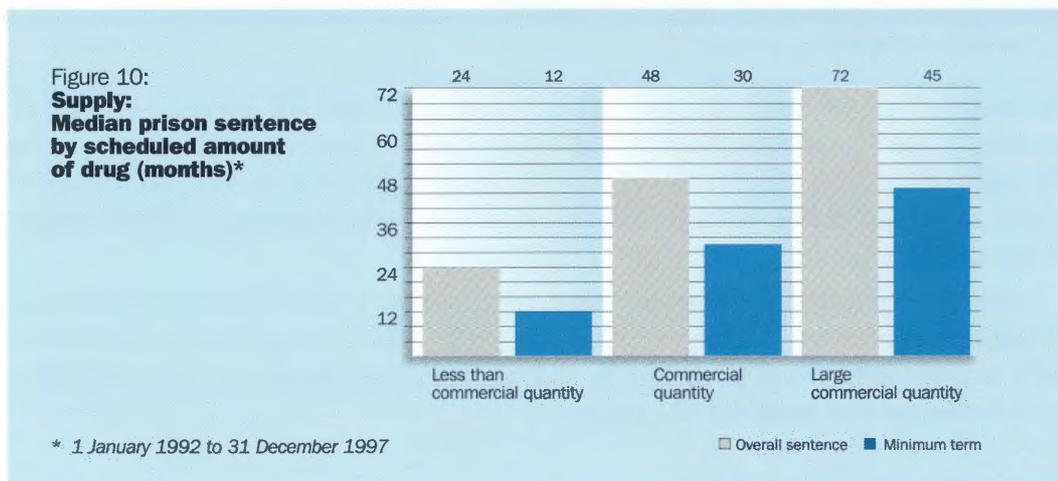
SCHEDULED AMOUNT OF DRUG

The amount of drugs supplied was vitally important in sentencing offenders in the higher courts.¹²² Figure 9 shows that imprisonment rates were much higher for offenders who supplied commercial (86.9%) or large commercial (88.5%) quantities of prohibited drugs.

122 Chi-square test, $p < .000$.



Likewise, as Figure 10 shows, overall¹²³ and minimum¹²⁴ prison terms were significantly longer for offenders who supplied commercial (48 months and 30 months) or large commercial (72 months and 45 months) quantities of prohibited drugs.



As expected, these findings are consistent with the legislative intention of imposing harsher penalties as the scheduled amount of drug increases.

QUANTITY OF DRUG WITHIN THE SCHEDULED AMOUNT

Figure 11 shows that there was a relationship between the proportion of offenders imprisoned and the quantity of drugs supplied, particularly where less than commercial quantities were supplied.¹²⁵

123 Kruskal-Wallis test, p<.000.

124 Kruskal-Wallis test, p<.000.

125 Chi-square test, p<.000 for less than commercial quantity and p<.007 for commercial quantity.

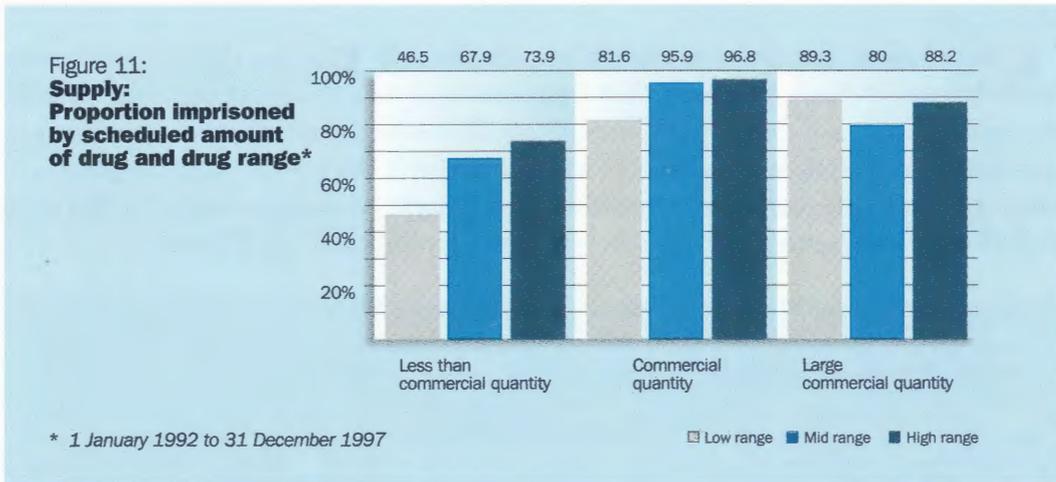
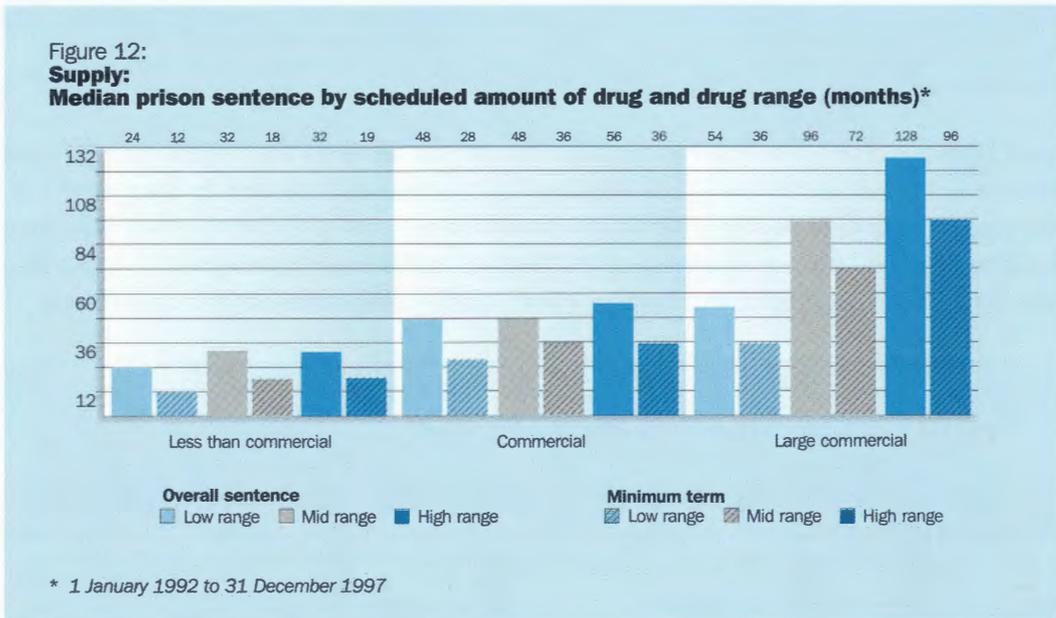


Figure 12 sets out the median prison sentences by the quantity of drug, measured in terms of high, middle and low ranges,¹²⁶ within each of the three categories of scheduled amounts. It shows, for example, that in the category of large commercial quantities, the overall¹²⁷ and minimum¹²⁸ prison sentences increased in the same direction as the quantity of drugs (range) increased.



126 The ranges were derived by dividing the scheduled amounts into three equal parts, except in the case of large commercial quantities. The latter has no upper limit and accordingly the following formula was used: for mid range the starting point was five times the minimum scheduled amount, and for high range the lowest point was ten times the minimum scheduled amount (see Table B1).

127 Kruskal–Wallis test, $p < .000$ where less than commercial, $p < .250$ where commercial, and $p < .000$ where large commercial quantities were supplied.

128 Kruskal–Wallis test, $p < .000$ where less than commercial, $p < .003$ where commercial, and $p < .000$ where large commercial quantities were supplied.

DRUG TYPE

The kind of drug supplied was also an important factor affecting the type of penalty handed down.¹²⁹ Figure 13 shows that imprisonment was the most common penalty imposed for each of the drug types, except LSD. However, the courts were more likely to sentence a drug offender to a term of imprisonment if the type of drug supplied was heroin (76.7%). Offenders who supplied cocaine (58.3%) or cannabis resin (57.7%) were slightly over-represented in cases where the penalty imposed was prison.

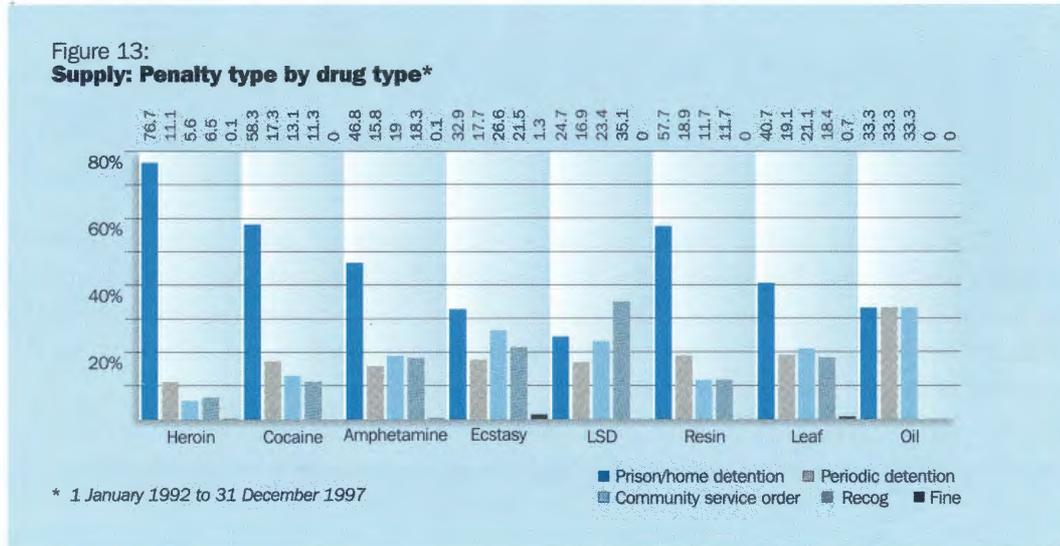
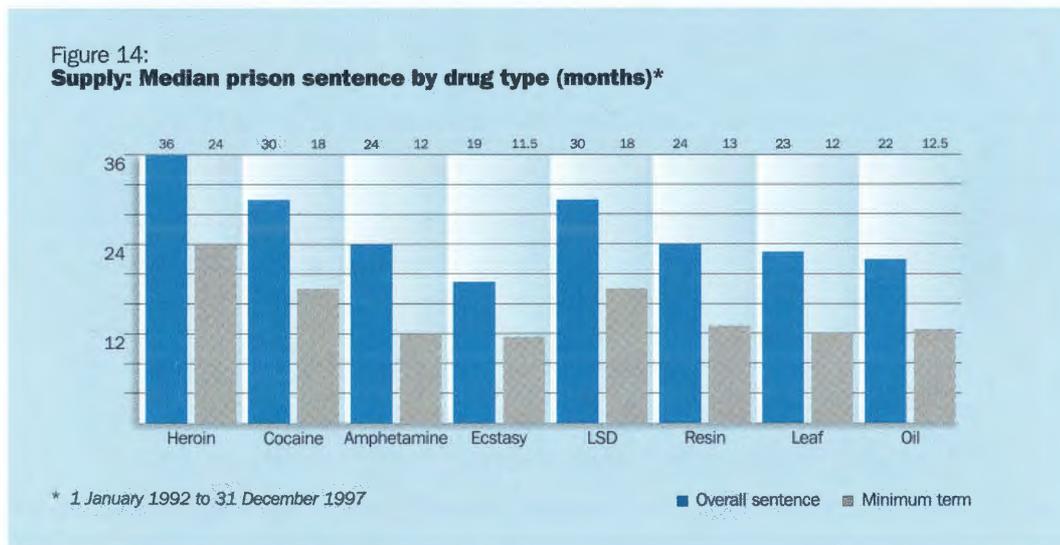


Figure 14 shows that offenders who supplied heroin also received the longest overall¹³⁰ and minimum¹³¹ prison sentences (36 months and 24 months, respectively). In the case of LSD, sentences appear to be relatively high, but it should be remembered that offenders supplying this drug were least likely to be sentenced to a term of imprisonment (see Figure 13). Those who were sentenced to imprisonment may have been involved in particularly serious offences.



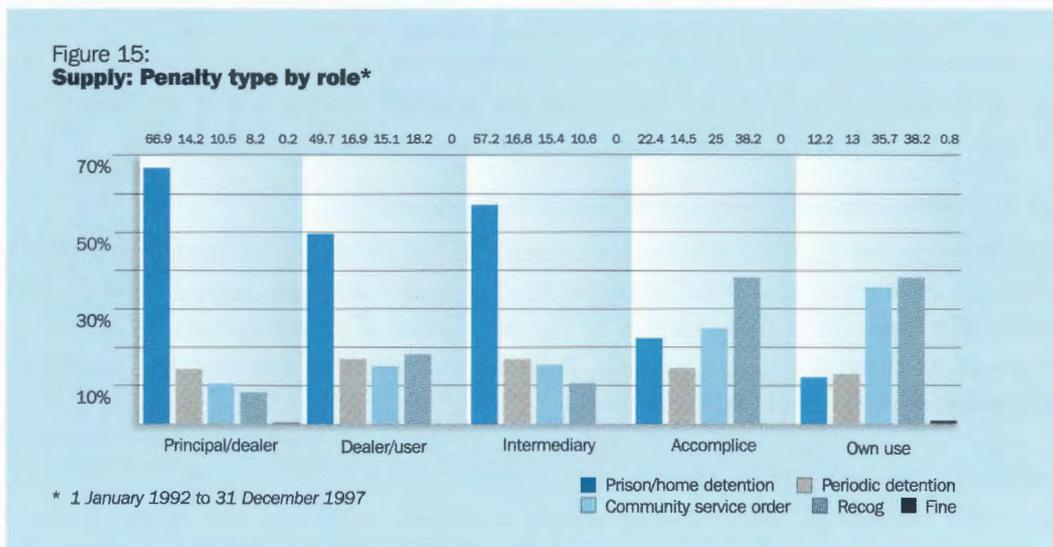
129 Chi-square test, p<.000.

130 Kruskal-Wallis test, p<.000.

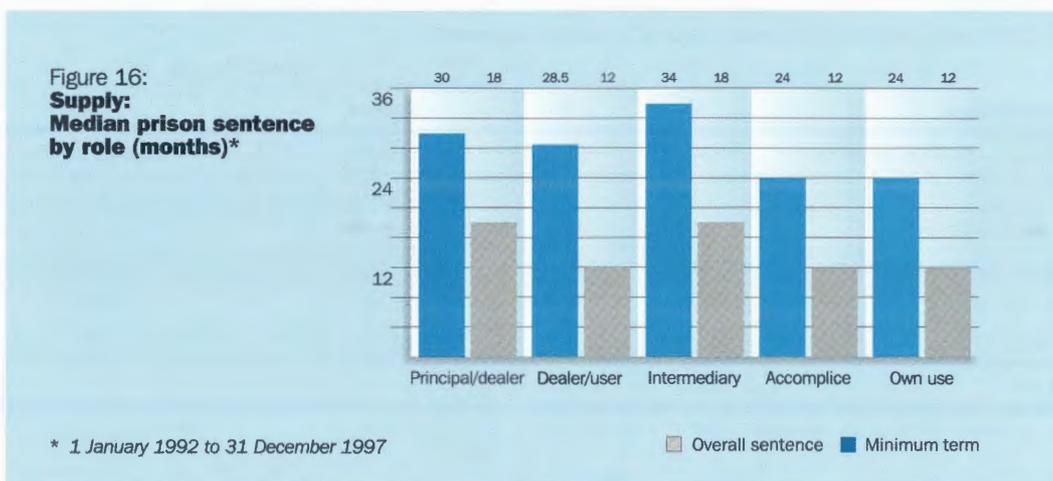
131 Kruskal-Wallis test, p<.000.

ROLE

The role of the offender was another influential factor on the type of penalty imposed.¹³² Figure 15 shows that dealers who sold (or intended to sell) drugs for financial reward were more likely to be incarcerated (66.9%) than offenders in more subsidiary roles. Offenders who had drugs in their possession for their own use were more likely to be given a recognizance (38.2%) or a community service order (35.7%). Accomplices were also more likely to receive a recognizance (38.2%).



The offender's role also appears to influence the length of prison sentences. Figure 16 shows that dealers and intermediaries received the longest minimum sentences¹³³ and intermediaries received the longest overall sentences.¹³⁴ The reason that some intermediaries received longer sentences than some suppliers may be that intermediaries are often involved in large-scale operations involving large quantities of drugs.



¹³² Chi-square test, $p < .000$.

¹³³ Kruskal-Wallis test, $p < .000$.

¹³⁴ Kruskal-Wallis test, $p < .000$.

GENERAL SUMMARY

Figures 9–16 analyse the key variables one at a time. In practice, the sentencing courts take into account many factors which interact in a complex way to produce the final sentence. Table B2, Table B3 and Table B4 in Appendix B provide a multifactorial breakdown of the key variables identified as the most important ones. It shows the median gross weight of the drug¹³⁵ and the median overall sentence and median minimum term for supplying prohibited drugs. The minimum and maximum values are displayed as a range within their respective categories. Thus, these tables usefully indicate the range of prison sentences imposed, taking into account those factors which our analysis identified as being the most important: the scheduled amount of drug, the type of drug, the role of the offender and the quantity of drug within the scheduled amount.

2.7.5 Offences with respect to prohibited plants

Over one-quarter (27.8%) of offences before the higher courts of New South Wales between 1 January 1992 and 31 December 1997 were offences with respect to prohibited plants. The majority of these related to the cultivation of prohibited plants (98.1% or 27.3% of all drug offences). As such, it is not proposed to examine the supply or possession of prohibited plants.

CULTIVATE PROHIBITED PLANTS

As already mentioned, the main drug grown in cultivation offences was cannabis plants (99.6%). The remaining four cases involved the cultivation of opium plants.

Table 26 shows the type of penalties handed down to offenders for cultivating a prohibited plant. The most common penalties imposed were recognizances (32.1%) and community service orders (30.2%). Almost one in four offenders (23.5%) were given prison sentences. Other penalties included periodic detention (12.1%) and fines (2.1%).

Table 26:
Cultivate prohibited plant: Type of penalty imposed*

Penalty type	N	%	Penalty length		
			Median	Range	
Prison			• overall sentence	24 mths	1 mth–8 yrs 6 mths
			• minimum term	12 mths	1 mth–6 yrs
Periodic detention	124	12.1	15 mths	4–36 mths	
Community service order	311	30.2	300 hrs	50–500 hrs	
Recognizance	330	32.1	36 mths	10–60 mths	
Fine	22	2.1	\$1,500	\$200–\$10,000	
Total	1029	100.0			

* 1 January 1992 to 31 December 1997

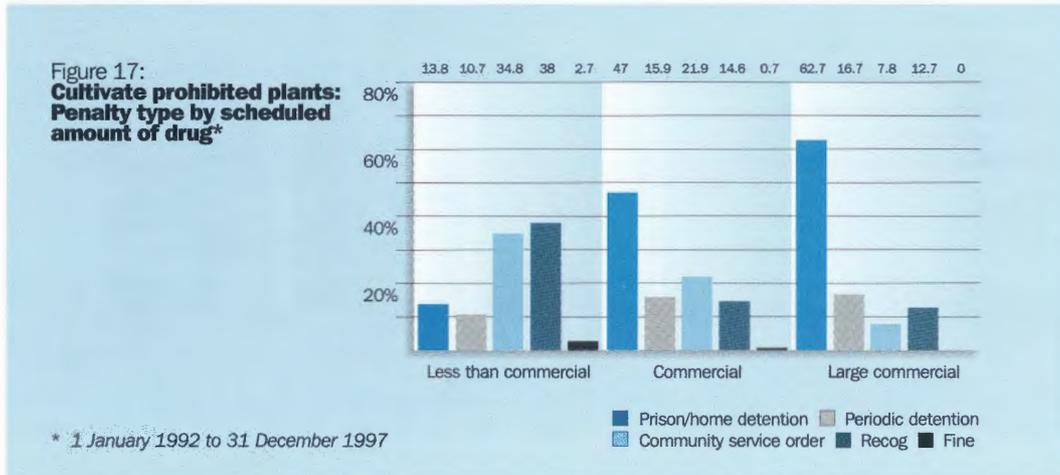
In summary, just under half (47.3%) of all recognizances were supervised by the Probation and Parole Service. The median length of recognizances was 36 months. The number of hours of community service ranged from 50 to 500 hours. The median was 300 hours. The median overall sentence for incarcerated offenders was 24 months and

135 For State drug offences, the purity of the drug is not a legal consideration. Also, the drug purity was not always provided in analyst certificates.

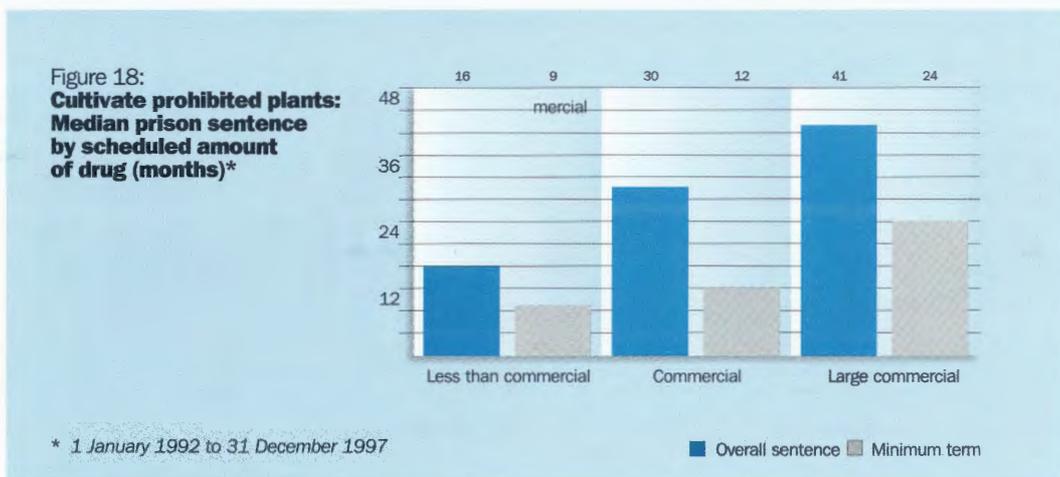
the minimum term was 12 months. Offenders given periodic detention were sentenced to a median term of 15 months. The median fine amount imposed was \$1500.

SCHEDULED AMOUNT OF DRUG

As expected, Figure 17 shows that penalties tended to be more severe as offenders moved into a higher drug offence level.¹³⁶ Imprisonment rates were much higher for offenders who cultivated commercial (47%) or large commercial (62.7%) quantities of prohibited plants. Conversely, a greater use was made of non-custodial sanctions where less than commercial quantities were involved.



Likewise, as reflected in Figure 18, overall¹³⁷ and minimum¹³⁸ prison terms were significantly longer for offenders who cultivated commercial (30 months and 12 months) or large commercial (41 months and 24 months) quantities of prohibited plants. Again, this pattern is in accordance with the legislative framework.



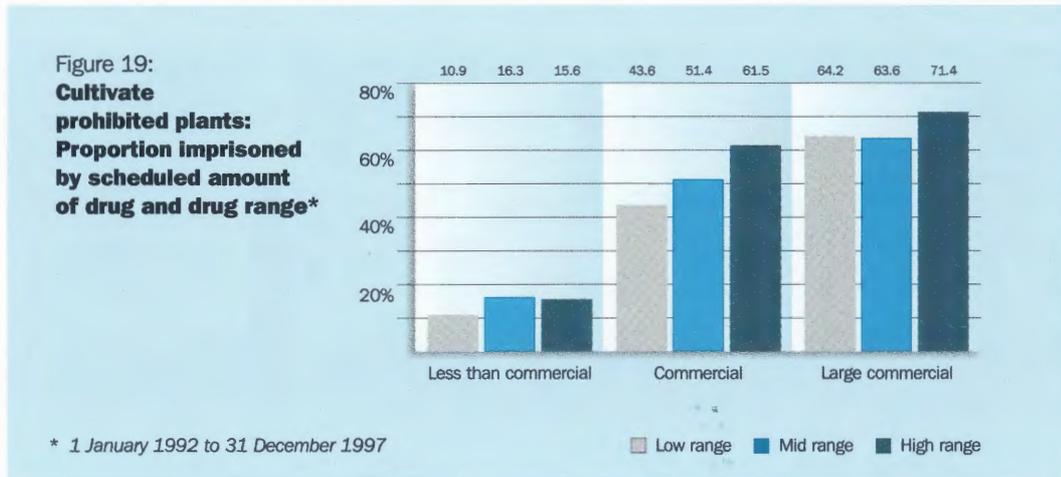
136 Chi-square test, p<.000.

137 Kruskal-Wallis test, p<.000.

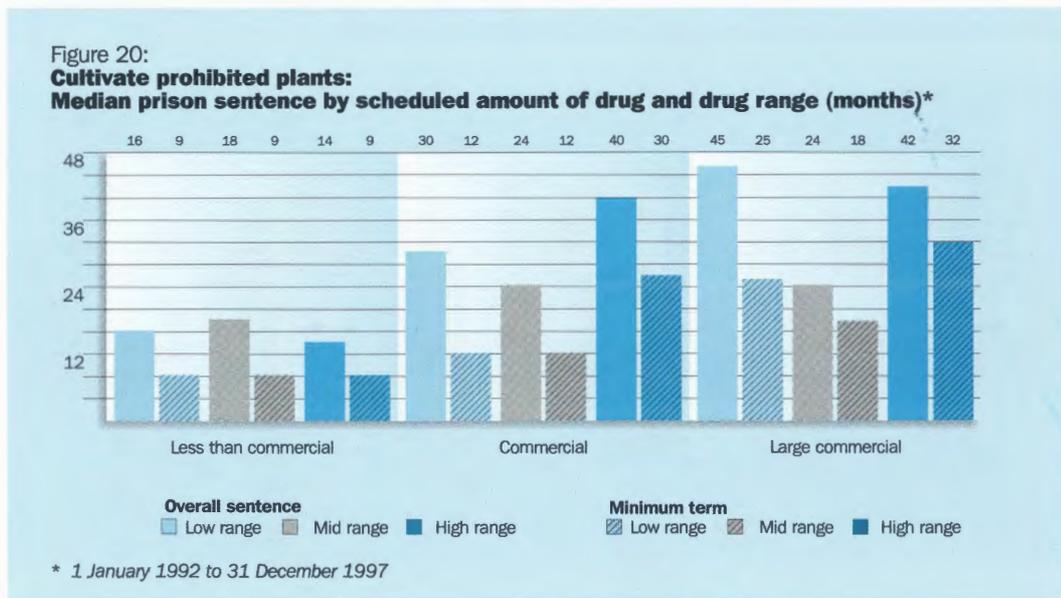
138 Kruskal-Wallis test, p<.000.

QUANTITY OF DRUG WITHIN THE SCHEDULED AMOUNT

Figure 19 shows that, generally, imprisonment increased as the number of plants increased. However this pattern is not as clear as for other types of drug offences. A possible explanation is that the maturity of plants may affect this simple relationship. For example, in *R v Hayes*,¹³⁹ Kirby P expressed the view that cultivating cannabis is more complex than merely ascertaining the variety of the plants or counting the number of plants. Also, it is not unlikely that the role of the offender may have played a significant part in the determination of sentence.



The results displayed in Figure 20 also are not in accordance with the usual pattern. However, the same possible explanations as those referred to in the commentary for Figure 19 may apply.



139 (1987) 29 A Crim R 452.

TYPE OF DRUG

As already mentioned, almost every case of cultivation involved growing cannabis plants (99.6%). Only four cases were concerned with the cultivation of opium plants. Two of these offenders were ordered to perform community service. The other two offenders were given a recognizance to be of good behaviour. Given the small number of cases where opium was grown, no reliable comparisons could be made by drug type.

ROLE

Figure 21 shows the way in which the role of the offender was related to the type of penalty imposed.¹⁴⁰ Offenders who grew plants for the purposes of supply were more likely to be imprisoned (51.1%). On the other hand, offenders who grew plants for their own use were more likely to be given a recognizance (40.5%) or a community service order (39.7%). Accomplices were also more likely to receive a bond (41.4%).

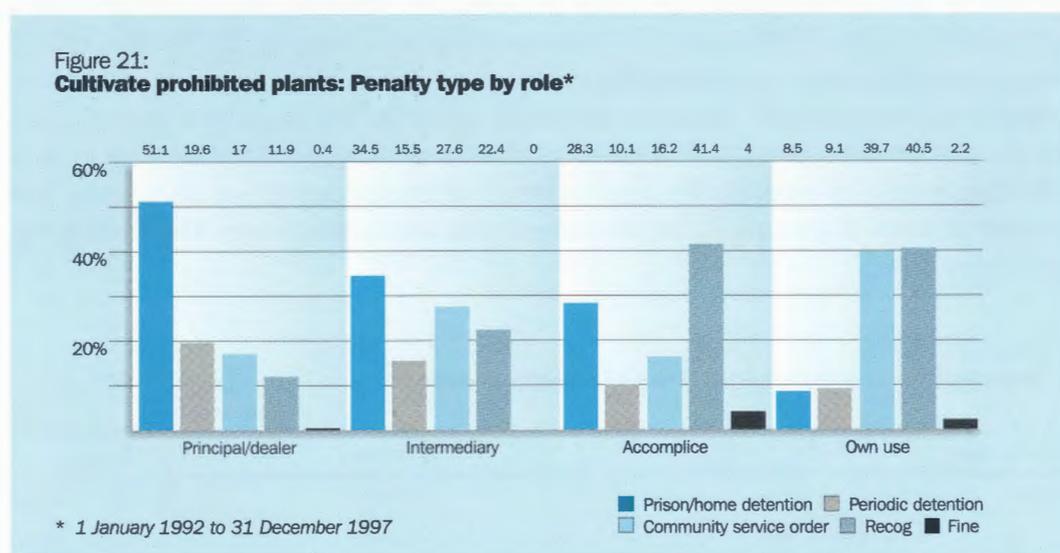
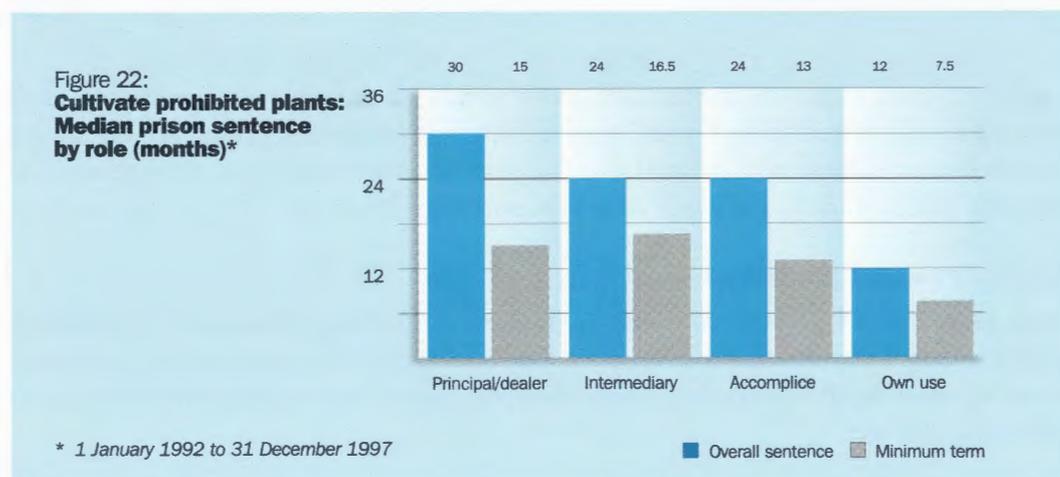


Figure 22 displays the role of the offender in association with the length of prison sentences. As expected, offenders who cultivated prohibited plants for profit received longer overall sentences (30 months).¹⁴¹



140 Chi-square test, p<.000.

141 Kruskal-Wallis test, p<.000.

GENERAL SUMMARY

Figures 17–22 analyse the key variables one at a time. Table B5 in Appendix B provides a breakdown of the key variables identified as the most important ones. It shows the median number of plants and the median overall sentences and minimum terms for cultivation offences. The minimum and maximum values are displayed as a range within their respective categories. Thus Table B5 is a useful guide to the range of prison sentences imposed for cultivation offences.

2.7.6 Manufacture prohibited drug

Manufacturing offences accounted for only a small proportion of cases (1.6%).¹⁴² Amphetamines were the most common drug manufactured (84.7%). Manufacturing offences were over-represented in cases involving commercial (25.4%) and large commercial quantities (35.6%).

Table 27 shows the type of penalties imposed on offenders for manufacturing a prohibited drug. Most offenders (71.2%) received a prison sentence. The median overall sentence handed down was 48 months and the median minimum term was 26 months. Other penalties included periodic detention (11.9%), recognizances (11.9%) and community service orders (5.1%). Offenders given periodic detention were sentenced to a median term of 18 months. The median length of recognizances was 36 months. The number of hours of community service ranged from 200 to 500 hours. The median was 500 hours.

Table 27:
Manufacture prohibited drug: Type of penalty imposed*

Penalty type	N	%	Penalty length	
			Median	Range
Prison	42	71.2	Overall sentence	48 mths 1 mth–8 yrs 6 mths
			Minimum term	26 mths 1 mth–6 yrs
Periodic detention	7	11.9	18 mths	6–36 mths
Community service order	3	5.1	500 hrs	200–500 hrs
Recognizance	7	11.9	36 mths	24–60 mths
Total	59	100.0		

* 1 January 1992 to 31 December 1997

Table B6 in Appendix B provides a breakdown of the key variables identified as the most important ones. It shows the median gross weight of the drug, the median overall sentences and the minimum terms for manufacturing prohibited drugs. The minimum and maximum values are displayed as a range within their respective categories. This table is a useful guide to the range of prison sentences imposed.

2.7.7 Possess prohibited drug

These cases related to summary offences under s 10 of *Drug Misuse and Trafficking Act 1985*. Only a small number of cases (0.8%) concerned the possession of prohibited drugs. Possession offences mainly involved amphetamines (32.3%), cannabis leaf (25.8%) or heroin (22.6%).

142 Due to the small number of manufacturing cases this report does not provide graphical displays showing the relationships of the four main variables.

As Table 28 shows, more than half (54.8%) of the offenders convicted of possession offences received a recognizance to be of good behaviour. Other penalties imposed for this offence included fines (22.6%) and community service orders (19.4%). Prison was only imposed on a small proportion (3.2%) of offenders.

Table 28:

Possess prohibited drug: Type of penalty imposed*

Penalty type	N	%	Penalty length		
			Median	Range	
Prison	• Overall sentence	1	3.2	2 mths	2 mths
	• Minimum term	0	0	2 mths	2 mths
Periodic detention					
Community service order	6	19.4	250 hrs	150–300 hrs	
Recognizance	17	54.8	24 mths	12–60 mths	
Fine	7	22.6	\$400	\$100–\$1,000	
Total	31	100.0			

* 1 January 1992 to 31 December 1997



Conclusion

This study presents a detailed and comprehensive analysis of the drug sentencing patterns of the higher courts of New South Wales. It shows how the type and prevalence of drug offences brought before the courts have varied over time and displays the penalties, both in kind and in quantum, that have been applied to drug offenders sentenced over a period of six years.

The study illustrates just how complex the sentencing process can be, a consideration that supports the need to ensure that each case is determined on its own merits. In turn, the uniqueness of each case reinforces the desirability of maintaining a broad judicial discretion so that sentences may be tailored to the individual circumstances of each particular offence and each particular offender. That this should be so is self-evident from the complex interaction of variables relevant to the sentencing of drug offenders and to the application of sentencing principles that feed into the equation to produce a just result.

Overall, the statistics reveal a pattern of consistency in the sentences handed down by the courts. This does not deny the existence of disparities, in some cases unjustified — if there were no such instances there would be no need for a system of appeals. However, the overall consistency is reflected in a clear tendency of the courts to impose: non-custodial sentences in the less serious cases; custodial sanctions in the majority of drug trafficking cases; and longer terms of imprisonment in accordance with the perceived degree of seriousness of offences. Such seriousness is measured by reference to the legislative intent; the latter, in turn, often being identified by reference to the type of drug involved in the offence, the scheduled amount relevant to that offence, the actual quantity of drug within the scheduled amount and the applicable maximum penalty prescribed by law for that offence.

While there is sometimes an overlapping of the sentences imposed, such as in the case of a higher level offence attracting a sentence more commensurate with a lower level offence, there may nevertheless be a sound basis for this. For example, an offender may have received a substantial benefit or sentencing discount for co-operating with the authorities. The role of the offender may also operate so as to reduce the culpability of the offender and, therefore, the otherwise appropriate penalty. Conversely, a principal in a less serious drug offence may be sentenced as severely as a minor player in a more serious or large scale drug operation. Add to this simple formulation considerations of other variables commonly found in the cases — such as the age, plea, prior criminal history of the offender, whether the offender was in breach of a court order at the time of sentencing or was a drug addict, whether other offences were taken into account at the

time of sentencing, and so on — and the difficulty of treating like cases alike becomes apparent.

This study has identified some of the most significant variables affecting the sentences imposed upon drug offenders in New South Wales. Furthermore, statistics have been presented incorporating these variables in numerous tables and figures which best describe the past sentencing practices of the courts. These may provide benchmarks or otherwise assist the courts in their quest to achieve consistency of approach in the sentencing of drug offenders.



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Table A1

**Commonwealth drug offences:
drug quantity ranges by scheduled amount of drug and drug type**

Scheduled amount and drug type	Range	
	Low	High
Commercial quantity		
Heroin	1.5–3.749kg	≥3.75kg
Cocaine	2.0–4.99kg	≥5.0kg
Ecstasy	0.5–1.249kg	≥1.25kg
Cannabis Resin	50.0–124.99kg	≥125.0kg
Cannabis Leaf	100.0–250.0kg	≥250.0kg
Trafficable quantity		
Heroin	2.0–749.9g	0.75–1.49kg
Cocaine	2.0–999.9g	1.0–1.99kg
Ecstasy	0.5–249.9g	250.0–499.9g
Amphetamine	2.0–999.9g	≥1.0kg
LSD	<5000sq	≥5,000sq
Cannabis Oil	2.0g–2.49kg	≥2.5kg
Cannabis Resin	20.0g–24.99kg	25.0–49.99kg
Cannabis Leaf	100.0g–49.99kg	50.0–99.99kg

* 1 January 1992 to 31 December 1997

Table A2:

**Import commercial quantity of prohibited drug (for those imprisoned):
median pure weight of the drug and median head sentence and non-parole period by drug type, role and drug quantity (range)***

Drug type	Offence level		Cases	Drug quantity [†]		Median sentence		Sentence range			
	Role of offender	Drug range		Median	Range	Head\$	NPP\$	Full range		Middle 50% range‡	
								Head\$	NPP\$	Head\$	NPP\$
Heroin											
Main/Principal	Low		3	2.11kg	1.57–2.64kg	180	114	120–264	72–198		
	High		2	51.4kg	51.4kg	384	240	288–life	216–263		
	Subtotal**		5	2.64kg	1.57–51.4kg	264	198	120–life	72–263	180–288	114–216
High Level	Low		6	2.53kg	1.59–3.27kg	138	90	84–216	60–162	108–144	60–96
	High		7	9.77kg	5.13–15.02kg	120	78	54–168	24–108	90–156	45–96
	Subtotal**		13	7.45kg	1.6–15.0kg	132	84	54–216	24–162	108–144	60–96
Courier	Low		8	1.72kg	1.51–2.53kg	108	64	60–144	42–96	72–126	48–84
	High		5	4.93kg	3.34–6.56kg	108	72	66–120	54–78	86–120	57–78
	Subtotal**		13	2.12kg	1.51–6.56kg	108	72	60–144	42–96	84–120	54–78
Lower Level	Low		5	2.31kg	2.1–2.33kg	48	30	36–96	18–54	48–72	30–48
	High		5	15.58kg	5.68–51.4kg	84	72	76–104	58–76	78–104	63–72
	Subtotal**		10	5.68kg	2.1–51.4kg	77	56	36–104	18–76	48–96	30–72
Total^{††}			41	3.27kg	1.51–51.4kg	108	72	36–life	18–263	84–138	54–90

Table A2 (continued)

				Sentence range							
Offence level			Drug quantity [†]		Median sentence		Full range		Middle 50% range [‡]		
Drug type	Role of offender	Drug range	Cases	Median	Range	Head [§]	NPP [§]	Head [§]	NPP [§]	Head [§]	NPP [§]
Cocaine											
Main/Principal	Low		3	3.79kg	3.79kg	120	84	60-144	60-84		
	High		1	9.29kg	9.27kg	168	96	168	96		
	Subtotal**		5	6.53kg	3.79-9.27kg	120	84	60-168	54-96	78-144	60-84
High Level	Low		5	3.07kg	2.8-4.4kg	108	72	96-144	42-81	108-120	72-75
	High		6	47.78kg	15.8-71.9kg	129	72	105-168	27-126	105-168	54-120
	Subtotal**		12	4.38kg	2.8-71.9kg	117	74	96-168	27-126	105-144	54-87
Courier	Low		10	3.13kg	2.1-4.1kg	105	66	32-144	19-96	84-120	54-72
	High		1	7.09kg	7.09kg	122	84	122	84		
	Subtotal**		11	3.15kg	2.1-7.09kg	108	66	32-144	19-96	84-122	54-80
Lower Level	Low		5	4.38kg	3.1-4.4kg	36	15	6-66	6-36	33-66	15-36
	High		4	53.3kg	47.8-71.9kg	60	40	36-120	24-84	60	40
	Subtotal**		10	4.38kg	3.1-71.9kg	54	33	6-120	6-84	36-66	15-40
Total^{††}			38	3.96kg	2.1-71.9kg	107	66	6-168	6-126	66-120	40-84
Ecstasy											
Main/Principal	Low		1	521.1g	521.1g	54	30	54	30		
High Level	Low		4	660.3g	521.1-759.9g	104	59	36-108	18-75	99-108	57-60
Courier	Low		6	765.1g	528.7g-1.1kg	78	45	48-102	30-54	60-96	36-48
	High		3	3.3kg	3.27-3.34kg	108	63	84-132	60-90		
	Subtotal**		9	854.8g	528.7g-3.34kg	84	48	48-132	30-90	72-102	42-60
Total^{††}			14	729.1g	521.1g-3.34kg	90	51	36-132	18-90	60-108	36-60

Table A2 (continued)

Offence level				Drug quantity [†]		Median sentence		Sentence range			
Drug type	Role of offender	Drug range	Cases	Median	Range	Head [§]	NPP [§]	Full range		Middle 50% range [‡]	
								Head [§]	NPP [§]	Head [§]	NPP [§]
Cannabis Resin											
	Main/Principal	High	5	10 tonne	10–15 tonne	156	108	108–168	78–168	144–156	102–120
	High Level	High	3	15 tonne	15 tonne	120	66	96–120	51–66		
	Lower Level	High	7	15 tonne	10–15 tonne	60	36	42–90	12–58	60–84	30–36
	Total^{††}		15	15 tonne	10–15 tonne	96	58	42–168	12–168	60–144	36–102
Cannabis Leaf											
	Main/Principal		1			60	36	60	36		

* 1 January 1992 to 31 December 1997.

† In a small number of cases the precise drug quantity was not known.

‡ Head sentence and non-parole period ranges for the middle 50% of cases, where there were four or more cases.

§ Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

Table A3:

**Import trafficable quantity of prohibited drug (for those imprisoned):
median pure weight of the drug and median head sentence and non-parole period by drug type, role and drug quantity (range)***

Drug type	Offence level		Cases	Drug quantity [†]		Median sentence		Sentence range			
	Role of offender	Drug range		Median	Range	Head [§]	NPP [§]	Full range		Middle 50% range [‡]	
								Head [§]	NPP [§]	Head [§]	NPP [§]
Heroin											
Main/Principal	Low		22	121.3g	18.4–441.0g	72	42	36–120	16–84	42–102	24–72
	High		6	892.9g	847.1g–1.32kg	96	60	64–156	42–114	90–96	54–72
	Subtotal**		29	203.5g	18.4g–1.32kg	84	52	36–156	16–114	48–102	36–72
High Level	Low		19	163.4g	7.1–736.4g	72	42	36–108	12–72	60–84	36–54
	High		6	1.18kg	770.0g–1.41kg	69	38	36–96	18–62	48–96	30–48
	Subtotal**		26	267.0g	7.1g–1.41kg	72	42	36–108	12–72	60–84	36–54
Courier	Low		43	297.3g	40.6–686.5g	72	48	24–108	15–90	72–84	42–57
	High		8	1.12kg	784.5–1.47kg	70	42	43–108	24–60	48–96	33–54
	Subtotal**		51	314.6g	40.6g–1.47kg	72	48	24–108	15–90	66–88	36–57
Lower Level	Low		9	276.8g	97.3–586.1g	60	36	36–108	12–72	42–70	27–42
	High		4	1.3kg	893.0g–1.32kg	45	29	18–72	3–42	41–48	24–33
	Subtotal**		13	409.1g	97.3g–1.32kg	48	33	18–108	3–72	42–70	24–42
Total^{††}			119	295.8g	7.1g–1.47kg	72	42	18–156	3–114	60–90	36–60

Table A3 (continued)

Offence level				Drug quantity ⁱ		Median sentence		Sentence range			
								Full range		Middle 50% range [‡]	
Drug type	Role of offender	Drug range	Cases	Median	Range	Head\$	NPP\$	Head\$	NPP\$	Head\$	NPP\$
Cocaine											
Main/Principal	Low		6	325.1g	127.4–738.9g	60	39	18–144	6–108	30–114	22–78
	High		3	1.25kg	1.23–1.96kg	120	60	108–160	55–102		
	Subtotal**		9	738.9g	127.4g–1.96kg	108	55	18–160	6–108	36–120	24–78
High Level	Low		12	760.4g	105.8–964.4g	84	54	60–120	36–72	84	48–54
	High		8	1.62kg	1.2–1.94kg	102	66	60–120	36–78	96–114	60–72
	Subtotal**		20	882.2g	105.8g–1.94kg	84	54	60–120	36–78	84–96	48–60
Courier	Low		22	665.3g	17.9–964.4g	75	48	42–120	24–72	64–90	39–54
	High		16	1.23kg	1.05–1.63kg	90	54	42–120	27–72	48–108	48–60
	Subtotal**		40	833.7g	17.9g–1.63kg	84	48	3–120	3–72	48–96	42–54
Lower Level	Low		4	526.3g	191.2–861.4g	36	18	18–60	18–36	36	18
	High		1	1.54kg	1.54kg	48	36	48	36		
	Subtotal**		5	831.7g	191.2g–1.54kg	36	18	18–60	18–36	36–48	18–36
	Total^{††}		74	832.7g	17.9g–1.96kg	84	49	3–160	3–108	57–102	36–60
Amphetamines											
High Level	Low		1	39.2g	39.2g	24	15	24	15		
Ecstasy											
Main/Principal	Low		2	153.7g	67.0–240.3g	72	51	48–96	36–66		
High Level	Low		1	154.4g	154.4g	60	36	30	36		
Courier	Low		3	36.2g	11.4–61.0g	72	36	42–72	24–36		
	High		2	396.6g	332.7–460.6g	84	51	78–90	48–54		
	Subtotal**		5	196.9g	11.4–460.6g	72	36	42–90	24–54	72–78	36–48
	Total^{††}		8	154.4g	11.4–460.6g	72	36	42–96	24–66	60–78	36–48

Table A3 (continued)

Drug type	Offence level		Cases	Drug quantity [†]		Median sentence		Sentence range			
	Role of offender	Drug range		Median	Range	Head [§]	NPP [§]	Full range		Middle 50% range [‡]	
								Head [§]	NPP [§]	Head [§]	NPP [§]
LSD											
	Main/Principal	Low	1	1000sq	1000sq	36	12	36	12		
	High Level	Low	4	950sq	699–1000sq	43	22	36–48	12–27	38–48	16–27
		High	3	9987sq	9987–30,390sq	60	24	60–84	16–48		
		Subtotal**	7	1000sq	699–30,390sq	48	24	60–84	16–48	38–60	16–27
	Lower Level	Low	2	1010sq	1010sq	24	3	24	3		
	Total††		10	1005sq	699–30,390sq	43	16	24–84	3–48	36–60	12–27

* 1 January 1992 to 31 December 1997.

† In a small number of cases the precise drug quantity was not known.

‡ Head sentence and non-parole period ranges for the middle 50% of cases, where there were four or more cases.

§ Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

Table B1:

**State drug offences:
drug quantity ranges by scheduled amount of drug and drug type***

Scheduled amount and drug type	Range		
	Low	Mid	High
Large commercial quantity			
Heroin	1.0–4.99kg	5.0–9.99kg	≥ 10.0kg
Cocaine	1.0–4.99kg	5.0–9.99kg	≥ 10.0kg
Amphetamine	1.0–4.99kg	5.0–9.99kg	≥ 10.0kg
Ecstasy	500g–2.49kg	2.5–4.99kg	≥ 5.0kg
LSD	10,000–49,999sq	50,000–99,999sq	≥ 100,000sq
Cannabis Oil	2.0–9.99kg	10.0–19.99kg	≥ 20.0kg
Cannabis Resin	10.0–49.99kg	50.0–99.99kg	≥ 100.0kg
Cannabis Leaf	100.0–499.99kg	500.0–999.99kg	≥ 1 tonne
Cannabis Plants	1,000–4,999	5,000–9,999	≥ 10,000
Commercial quantity			
Heroin	250.0–499.9g	500.0–749.9g	750.0–999.9g
Cocaine	250.0–499.9g	500.0–749.9g	750.0–999.9g
Amphetamine	250.0–499.9g	500.0–749.9g	750.0–999.9g
Ecstasy	125.0–249.9g	250.0–374.9g	375.0–499.9g
LSD	2,500–4,999sq	5,000–7,499sq	7,500–9,999sq
Cannabis Oil	500.0–999.9g	1.0–1.49kg	1.5–1.99kg
Cannabis Resin	2.5–4.99kg	5.0–7.49kg	7.5–9.99kg
Cannabis Leaf	25.0–49.99kg	50.0–74.99kg	75.0–99.99kg
Cannabis Plants	250–499	500–749	750–999
Less than commercial quantity			
Heroin	0.1–83.3g	83.4–166.7g	166.8–249.9g
Cocaine	0.1–83.3g	83.4–166.7g	166.8–249.9g
Amphetamine	0.1–83.3g	83.4–166.7g	166.8–249.9g
Ecstasy	0.1–41.7g	41.8–83.3g	83.4–124.9g
LSD	1–833sq	834–1,667sq	1,668–2,499sq
Cannabis Oil	0.1–166.7g	166.8–333.3g	333.4–499.9g
Cannabis Resin	0.1–833.3g	833.4g–1.67kg	1.68–2.49kg
Cannabis Leaf	0.1g–8.33kg	8.34–16.67kg	16.68–24.99kg
Cannabis Plants	1–83	84–167	168–249

* 1 January 1992 to 31 December 1997

Table B2:

**Supply less than commercial quantity of prohibited drug:
median gross weight of the drug and median overall sentence and minimum term by drug type, role and drug quantity (range)***

Offence level		Cases	Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range‡	
Role of offender	Drug range		N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Heroin												
Principal/dealer	Low	268	212	79.1	13.0g	0.1–82.7g	32	18	3–84	3–60	24–48	12–30
	Mid	22	22	100.0	112.4g	84.4–164.7g	53	36	32–78	16–54	44–60	25–42
	High	11	11	100.0	211.0g	167.9–233.0g	36	24	12–96	9–60	30–84	15–60
	Subtotal**	326	266	81.6	14.9g	0.1–233.0g	33	18	3–96	3–60	24–48	12–32
Dealer/user	Low	116	82	70.7	7.3g	0.2–82.5g	31	15	3–96	3–72	24–38	10–22
	Mid	2	2	100.0	126.5g	111.4–141.6g	46	35	32–60	24–45		
	Subtotal**	138	100	72.5	7.3g	0.2–141.6g	34	15	3–96	3–72	24–40	10–24
Intermediary	Low	82	49	59.8	28.0g	1.1–82.8g	26	12	9–60	6–36	24–37	10–24
	Mid	20	14	70.0	112.4g	84.0–163.0g	36	19	6–60	5–36	27–48	12–27
	High	20	16	80.0	224.4g	168.6–249.0g	48	33	30–72	9–54	41–48	24–36
	Subtotal**	135	87	64.4	54.5g	1.1–249.0g	34	18	6–72	5–54	24–48	12–28
Accomplice	Low	12	4	33.3	2.6g	1.6–38.8g	24	15	8–24	6–18		
	Mid	1	1	100.0	132.2g	123.2g	24	6	24	6		
	Subtotal**	16	5	31.3	3.0g	1.6–123.2g	24	12	8–24	6–18	24	6–18
Own use	Low	22	9	40.9	14.4g	5.1–80.8g	27	12	6–36	6–27	24–34	9–12
Total††		664	480	72.3	15.2g	0.1–249.0g	32	18	3–96	3–72	3–96	3–72

Table B2 (cont.)

Offence level			For those imprisoned									
Role of offender	Drug range	Cases	Prison		Drug quantity ^f		Median sentence		Full sentence range		Middle 50% sentence range ^g	
			N	%	Median	Range	Overall ^h	Min. ^h	Overall ^h	Min. ^h	Overall ^h	Min. ^h
Cocaine												
Principal/dealer	Low	52	33	63.5	26.3g	5.1–78.8g	24	18	4–60	4–42	18–36	9–24
	Mid	6	6	100.0	120.9g	92.5–141.4g	34	15	20–48	14–36	22–39	15–24
	High	3	3	100.0	227.0g	197.6–243.6g	32	24	12–70	12–34		
	Subtotal**	65	44	67.7	27.7g	5.1–243.6g	29	17	4–70	4–42	20–36	12–24
Dealer/user	Low	18	8	44.4	13.0g	6.1–26.3g	31	19	12–66	6–36	24–36	12–27
	Mid	1	1	100.0	146.0g	146.0g	48	30	48	30		
	High	1	0	0.0								
	Subtotal**	21	9	42.9	14.0g	6.1–146.0g	36	19	12–66	6–36	24–48	12–30
Intermediary	Low	24	9	37.5	13.2g	0.4–31.4g	16	7	6–28	4–18	16–24	6–18
	Mid	4	1	25.0	83.8g	93.8g	48	36	48	36		
	High	1	1	100.0	197.6g	197.6g	12	9	12	9		
	Subtotal**	29	11	37.9	23.5g	0.4–197.6g	16	8	6–48	4–36	12–24	6–18
Accomplice	Low	4	2	50.0	25.8g	23.5–28.0g	11	5	6–16	4–6		
Own use	Low	10	1	10.0	22.9g	22.9g	36	12	36	12		
	Subtotal**	11	1	9.1	22.9g	22.9g	36	12	36	12		
Total^{††}		137	70	51.1	26.3g	0.4–243.6g	25	15	4–70	4–42	16–36	9–24

Table B2 (cont.)

Offence level			For those imprisoned									
Role of offender	Drug range	Cases	Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range‡	
			N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Amphetamines												
Principal/dealer	Low	240	130	54.2	18.6g	0.3–78.0g	24	12	3–72	3–54	15–36	9–18
	Mid	26	19	73.1	111.4g	83.6–162.3g	36	18	16–72	6–54	20–48	12–36
	High	12	11	91.7	222.0g	168.6–242.4g	32	20	15–63	12–48	24–40	15–30
	Subtotal**	291	167	57.4	25.6g	0.3–242.4g	24	12	3–72	3–54	16–36	9–22
Dealer/user	Low	124	45	36.3	27.2g	2.0–67.5g	22	9	3–60	3–36	12–30	6–12
	Mid	7	4	57.1	136.0g	112.0–163.0g	24	17	24–48	12–24	24	15–18
	High	1	1	100.0	218.2g	218.2g	23	17	23	17		
	Subtotal**	137	53	38.7	27.6g	2.0–218.2g	24	10	3–60	3–36	12–30	8–15
Intermediary	Low	70	20	28.6	25.2g	3.0–56.2g	24	12	12–36	3–24	18–30	6–18
	Mid	9	2	22.2	120.8g	110.2–131.4g	20	10	16–24	8–12		
	High	12	4	33.3	197.0g	170.5–237.6g	24	9	10–45	7–12	11–36	8–9
	Subtotal**	93	27	29.0	28.3g	3.0–237.6g	24	12	10–45	3–24	16–32	6–18
Accomplice	Low	16	1	6.3	5.3g	5.3g	12	3	12	3		
	High	1	0	0.0								
	Subtotal**	17	1	5.9	5.3g	5.3g	12	3	12	3		
Own use	Low	81	6	7.4	25.3g	4.4–70.8g	30	14	20–48	9–24	20–48	9–24
	High	1	0	0.0								
	Subtotal**	84	6	7.1	25.3g	4.4–70.8g	30	14	20–48	9–24	21–30	12–18
Total^{††}		657	269	40.9	26.9g	0.3–242.4g	24	12	3–72	1–54	15–36	9–18

Table B2 (cont.)

Offence level		Cases	Prison		Drug quantity ^f		Median sentence		Full sentence range		Middle 50% sentence range ^g	
Role of offender	Drug range		N	%	Median	Range	Overall ^h	Min. ^h	Overall ^h	Min. ^h	Overall ^h	Min. ^h
Ecstasy												
Principal/dealer	Low	23	7	30.4	10.9g	0.6–19.0g	6	6	2–24	2–12	6–17	6–11
	High	5	2	40.0	107.2g	107.2–107.9g	44	24	40–48	18–30		
	Subtotal**	31	9	29.0	12.0g	0.6–107.9g	6	6	2–48	2–30	6–24	6–12
Dealer/user	Low	18	3	16.7	11.4g	11.4–13.5g	20	15	20–48	12–18		
	High	1	1	100.0	86.9g	86.9g	46	16	46	16		
	Subtotal**	20	4	20.0	12.5g	11.4–86.9g	33	16	20–48	12–18	20–46	15–16
Intermediary	Low	6	1	16.7	1.8g	1.8g	2	2	2	2		
	Mid	1	1	100.0	70.6g	70.6g	18	6	18	6		
	High	4	4	100.0	98.3g	98.3g	12	9	12	9	12	9
	Subtotal**	13	8	61.5	98.3g	1.8–98.3g	12	9	2–36	2–12	12	6–9
Accomplice	Low	2	0	0.0								
Own use	Low	3	0	0.0								
	Mid	1	1	100.0	43.9g	43.9g	32	18	32	18		
	Subtotal**	4	1	25.0	43.9g	43.9g	32	18	32	18		
Total^{tt}		73	22	30.1	16.3g	0.6–107.9g	15	9	2–48	2–30	6–32	6–15

Table B2 (cont.)

Offence level			For those imprisoned									
			Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range‡	
Role of offender	Drug range	Cases	N	%	Median	Range	Overall\$	Min. \$	Overall\$	Min. \$	Overall\$	Min. \$
LSD												
Principal/dealer	Low	24	9	37.5	45sq	27-790sq	30	18	4-41	4-27	4-41	4-27
	Mid	4	1	25.0	1000sq	1000sq	36	27	36	27		
	High	1	1	100.0	2400sq	2400sq	24	9	24	9		
	Subtotal**	30	12	40.0	46sq	27-2,400sq	31	18	4-41	4-27	24-36	11-18
Dealer/user	Low	7	1	14.3	28sq	28sq	15	3	15	3		
	Mid	1	1	100.0	1000sq	1000sq	30	5	30	5		
	Subtotal**	8	2	25.0	514sq	28-1,000sq	23	4	15-30	3-5	15-30	3-5
Intermediary	Low	11	0	0.0								
	Mid	1	0	0.0								
	High	1	0	0.0								
	Subtotal**	13	0	0.0								
Accomplice	Low	1	0	0.0								
Own use	Low	15	1	6.7	138sq	138sq	12	6	12	6		
	Mid	1										
	Subtotal**	16	1	6.3	138sq	138sq	12	6	12	6		
Total††		72	16	22.2	50sq	27-2,400sq	30	15	4-41	3-27	4-41	3-27
Cannabis oil												
Principal/dealer	Low	4	2	50.0	46.3g	39.9-52.7g	22	13	12-32	9-16		
Accomplice	Low	1	0	0.0								
Own use	Low	1	0	0.0								
Total††		6	2	33.3	46.3g	39.9-52.7g	22	13	12-32	9-16		

Table B2 (cont.)

Offence level			For those imprisoned									
			Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range‡	
Role of offender	Drug range	Cases	N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Cannabis resin												
Principal/dealer	Low	37	19	51.4	119.0g	7.4–832.0g	18	12	4–32	4–18	16–24	6–12
	Mid	12	8	66.7	1.0kg	946.8g–1.6kg	30	13	12–64	1–48	24–36	12–18
	High	1	1	100.0	2.16kg	2.16kg	12	9	12	9		
	Subtotal**	51	29	56.9	396.0g	7.4g–2.16kg	24	12	4–64	1–48	16–30	7–14
Dealer/user	Low	9	2	22.2	537.5g	437.0–638.0g	28	21	24–32	18–24		
Intermediary	Low	4	2	50.0	302.5g	100.2–504.7g	16	12	16	12		
	Mid	1	0	0.0								
	Subtotal**	6	3	50.0	302.5g	100.2–504.7g	16	12	3–16	3–12		
Accomplice	Low	1	0	0.0								
	Mid	1	0	0.0								
	Subtotal**	2	0	0.0								
Own use	Low	5	0	0.0								
	Mid	1	0	0.0								
	Subtotal**	6	0	0.0								
Total††		77	35	45.5	504.7g	7.4g–2.16kg	24	12	4–64	1–48	16–30	7–18

Table B2 (cont.)

Offence level			For those imprisoned									
Role of offender	Drug range	Cases	Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
			N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Cannabis leaf												
Principal/dealer	Low	257	138	53.7	1.48kg	16.6g-7.25kg	24	12	3-60	3-42	12-30	9-15
	Mid	16	13	81.3	10.03kg	8.65-16.58kg	21	12	7-72	4-54	12-30	9-16
	High	3	3	100.0	18.81kg	17.98-24.38kg	30	20	24-42	12-24		
	Subtotal**	296	161	54.4	1.76kg	16.6g-24.38kg	24	12	3-72	3-54	12-30	9-18
Dealer/user	Low	37	6	16.2	2.0kg	331.3g-3.63kg	9	4	2-24	1-9	4-12	2-4
	High	1	1	100.0	19.6kg	19.6kg	24	18	24	18		
	Subtotal**	42	9	21.4	2.45kg	331.3g-19.6kg	10	4	2-24	1-18	4-24	4-6
Intermediary	Low	86	33	38.4	2.72kg	364.2g-7.75kg	18	12	1-54	1-27	12-27	6-16
	Mid	17	10	58.8	12.38kg	8.65-15.0kg	23	12	5-60	5-24	12-24	9-18
	High	1	1	100.0	18.88kg	18.88kg	60	36	60	36		
	Subtotal**	111	46	41.4	4.74kg	364.2g-18.88kg	22	12	1-60	1-36	12-29	6-18
Accomplice	Low	16	1	6.3	7.25kg	7.25kg	9	2	9	2		
	Mid	1	1	100.0	15.0kg	15.0kg	16	12	16	12		
	High	2	2	100.0	21.18kg	17.98-24.38kg	24	11	24	9-12		
	Subtotal**	21	4	19.0	16.49kg	7.25-24.38kg	20	11	9-24	2-12	16-24	9-12
Own use	Low	90	10	11.1	1.35kg	341.4g-8.06kg	11	6	6-36	4-18	8-18	6-12
	Mid	1	0	0.0								
	Subtotal**	91	10	11.0	1.35kg	341.4g-8.06kg	11	6	6-36	4-18	8-18	6-12
Total††		579	231	39.9	2.25kg	16.6g-24.38kg	22	12	1-72	1-54	12-30	7-16

* 1 January 1992 to 31 December 1997.

† In a small number of cases the precise drug quantity was not known.

‡ Overall sentence and minimum terms for the middle 50% of cases, where there were four or more cases.

§ Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

Table B3:

**Supply commercial quantity of prohibited drug:
median gross weight of the drug and median overall sentence and minimum term by drug type, role, and drug quantity (range)***

			For those imprisoned									
Offence level		Cases	Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
Role of offender	Drug range		N	%	Median	Range	Overall [§]	Min. [§]	Overall [§]	Min. [§]	Overall [§]	Min. [§]
Heroin												
Principal/dealer	Low	25	25	100.0	339.9g	250.8–497.9g	64	36	24–96	12–72	48–72	30–54
	Mid	6	6	100.0	642.0g	503.9–724.9g	76	54	18–128	6–96	36–84	18–60
	High	8	8	100.0	899.2g	755.7–901.2g	80	60	56–102	42–72	72–80	54–60
	Subtotal**	44	44	100.0	448.0g	250.8–901.2g	72	48	18–160	6–120	48–80	36–60
Dealer/user	Low	8	8	100.0	347.4g	250.0g–493.9g	71	42	36–78	12–54	60–72	42–51
Intermediary	Low	36	31	86.1	448.0g	252.0–493.9g	48	33	16–96	12–60	38–64	24–48
	Mid	13	13	100.0	550.0g	500.0–699.3g	48	30	36–78	12–54	48–60	30–42
	High	8	8	100.0	874.4g	754.7–902.4g	64	42	35–112	24–84	56–96	35–64
	Subtotal**	57	52	91.2	478.5g	252.0–902.4g	53	36	16–112	12–84	40–64	28–48
Accomplice	Low	2	1	50.0	333.8g	333.8g	60	45	60	45		
	Total^{††}	116	109	94.0	450.0g	250.0–902.4g	60	39	16–160	6–120	45–72	30–51
Cocaine												
Principal/dealer	Low	1	1	100.0	252.3g	252.3g	36	12	36	12		
	Mid	1	1	100.0	556.1g	556.1g	48	30	48	30		
	High	5	5	100.0	908.0g	908.0–998.5g	32	24	30–72	18–48	31–32	24–31
	Subtotal**	7	7	100.0	908.0g	252.3–998.5g	32	24	30–72	12–48	31–48	18–31
Intermediary	Low	4	3	75.0	338.5g	277.2–445.0g	18	12	12–36	12–13		
	Mid	1	1	100.0	556.1g	556.1g	36	18	36	18		
	Subtotal**	5	4	80.0	391.8g	277.2–556.1g	27	13	12–36	12–18	18–36	12–13
Accomplice	Low	1	1	100.0	280.0g	280.0g	14	10	14	10		
	Total^{††}	14	13	92.9	556.1g	252.3–998.5g	32	18	12–72	10–48	18–36	12–24

Table B3 (cont.)

Offence level			For those imprisoned									
Role of offender	Drug range	Cases	Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
			N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Cannabis resin												
Principal/dealer	Low	2	1	50.0	4.55kg	4.55kg	20	15	20	15		
	Mid	4	4	100.0	5.14kg	5.0–6.03kg	62	39	35–84	5–48	40–84	30–48
	High	1	1	100.0	8.8kg	8.8kg	36	18	36	18		
	Subtotal**	7	6	85.7	5.14kg	4.55–8.8kg	38	24	20–84	5–48	35–84	15–48
Intermediary	Low	5	5	100.0	4.28kg	3.0–4.96kg	34	12	12–36	2–14	23–36	4–12
	Mid	1	1	100.0	7.0kg	7.0kg	35	23	35	23		
	Subtotal**	6	6	100.0	4.62kg	3.0–7.0kg	35	12	12–36	2–23	23–36	4–14
Total††		14	12	85.7	4.98kg	3.0–8.8kg	36	15	12–84	2–48	34–36	12–23
Cannabis leaf												
Principal/dealer	Low	2	2	100.0	29.64kg	27.5–31.79kg	88	66	80–96	60–72		
	Mid	7	5	71.4	51.08kg	50.0–51.08kg	40	30	30–64	24–48	32–64	24–48
	Subtotal**	9	7	77.8	51.08kg	27.5–51.08kg	64	48	30–96	24–72	32–80	24–60
Intermediary	Mid	1	1	100.0	50.0kg	50.0kg	24	18	24	18		
	High	1	1	100.0	89.0kg	89.0kg	30	18	30	18		
	Subtotal**	2	2	100.0	69.5kg	50.0–89.0kg	27	18	24–30	18		
Own Use	Low	1	0	0.0								
	Mid	1	1	100.0	54.21kg	54.21kg	12	6	12	6		
	Subtotal**	2	1	50.0	54.21kg	54.21kg	12	6	12	6		
Total††		13	10	76.9	51.08kg	27.5–89.0kg	36	27	12–96	6–72	30–64	18–48

* 1 January 1992 to 31 December 1997.

† In a small number of cases the precise drug quantity was not known.

‡ Overall sentences and minimum terms for the middle 50% of cases, where there were four or more cases.

§ Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

Table B4:

**Supply large commercial quantity of prohibited drug:
median gross weight of the drug and median overall sentence and minimum term by drug type, role and drug quantity (range)***

For those imprisoned

Offence level		Prison			Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
Role of offender	Drug range	Cases	N	%	Median	Range	Overall\$	Min. \$	Overall\$	Min. \$	Overall\$	Min. \$
Heroin												
Principal/dealer	Low	10	10	100.0	1.28kg	1.0-4.52kg	96	71	54-160	36-120	96-132	48-84
	Mid	1	1	100.0	5.69kg	5.69kg	192	144	192	144		
	High	8	8	100.0	19.75kg	17.01-70.5kg	186	135	108-288	72-216	168-216	120-162
	Subtotal**	22	22	100.0	4.52kg	1.0-70.5kg	116	84	54-288	36-216	96-180	69-126
Dealer/user	Low	1	1	100.0	1.08kg	1.08kg	48	24	48	24		
Intermediary	Low	18	18	100.0	1.75kg	1.0-4.52kg	72	39	6-144	6-108	40-96	30-60
	Mid	2	1	50.0	9.61kg	9.61kg	96	72	96	72		
	High	1	1	100.0	20.0kg	20.0kg	144	108	144	108		
	Subtotal**	21	20	95.2	1.78kg	1.0-20.0kg	78	45	6-144	6-108	40-96	30-72
	Total^{††}	47	45	95.7	1.78kg	1.0-70.5kg	96	69	6-288	6-216	72-132	36-84
Cocaine												
Principal/dealer	Low	5	4	80.0	1.99kg	1.31-2.0kg	72	44	24-96	18-60	72	42-45
	Mid	1	1	100.0	5.0kg	5.0kg	42	24	42	24		
	Subtotal**	6	5	83.3	2.0g	1.31-5.0kg	72	42	24-96	18-60	42-72	24-45
Intermediary	Low	8	7	87.5	2.0kg	1.0-3.57kg	36	18	10-100	7-58	24-84	12-54
	High	2	2	100.0	42.5kg	15.0-70.0kg	40	28	8-72	8-48	24-72	8-48
	Subtotal**	11	10	90.9	2.0g	1.0-70.0kg	54	18	8-100	7-58	24-78	12-48
	Total^{††}	17	15	88.2	2.0kg	1.0-70.0kg	72	24	8-100	7-60	24-78	12-48



Table B4 (cont.)

Offence level		Cases	Prison		Drug quantity [†]		Median sentence		Full sentence range		Middle 50% sentence range‡	
			N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Role of offender	Drug range											
Amphetamines												
Principal/dealer	Low	9	9	100.0	2.05kg	1.8–3.02kg	96	72	36–120	24–84	53–96	39–72
	Mid	1	1	100.0	9.1kg	9.1kg	96	72	96	72		
Subtotal**		10	10	100.0	2.14kg	1.8–9.1kg	96	72	36–120	24–84	53–96	39–72
Dealer/user	Low	1	1	100.0	2.25kg	2.25kg	96	60	96	60		
Intermediary	Low	8	7	87.5	2.0kg	1.04–4.0kg	48	24	16–72	12–54	32–66	15–45
Accomplice	Low	3	0	0.0								
Total††		22	18	81.8	2.0kg	1.04–9.1kg	63	47	16–120	12–84	44–96	24–72
Ecstasy												
Intermediary	High	2	1	50.0	8.82kg	8.82kg	72	54	72	54		
Accomplice	Low	1	1	100.0	1.67kg	1.67kg	48	18	48	18		
Total††		3	2	66.7	5.25kg	1.67–8.82kg	60	36	48–72	18–54		
LSD												
Principal/dealer	Low	1	1	100.0	11,966sq	11,966sq	48	36	48	36		
Total††		4	3	75.0	11,966sq	11,966sq	40	30	16–48	12–36		

Table B4 (cont.)		For those imprisoned										
Offence level		Cases	Prison		Drug quantity ^f		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
Role of offender	Drug range		N	%	Median	Range	Overall [§]	Min. [§]	Overall [§]	Min. [§]	Overall [§]	Min. [§]
Cannabis resin												
Principal/dealer	Low	5	5	100.0	10.53kg	10.04–22.98kg	32	24	20–48	15–36	24–48	24–36
	High	3	2	66.7	100.0kg	100.0kg	128	96	128	96		
	Subtotal**	8	7	87.5	22.97kg	10.04–100.0kg	48	36	20–128	15–96	24–128	24–96
Dealer/user	Low	1	1	100.0	18.82kg	18.82kg	48	24	48	24		
	High	1	1	100.0	10.14kg	10.0–22.98kg	20	12	12–56	9–42	12–27	9–18
Intermediary	Low	7	6	85.7	10.14kg	10.0–22.98kg	20	12	12–56	9–42	12–27	9–18
	High	1	1	100.0	100.0kg	100.0kg	64	48	64	48		
	Subtotal**	8	7	87.5	10.14kg	10.0–100.0kg	21	15	12–64	9–48	12–56	9–42
Accomplice	Low	3	2	66.7	10.14kg	10.14kg	36	18	24–48	18		
Total††		20	17	85.0	10.53kg	10.0–100.0kg	32	24	12–128	9–96	21–48	15–36

* 1 January 1992 to 31 December 1997.

^f In a small number of cases the precise drug quantity was not known.

[‡] Overall sentence and minimum terms for the middle 50% of cases, where there were four or more cases.

[§] Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

Table B5:

**Cultivate prohibited plants:
median number of plants and median overall sentence and minimum term by scheduled amount of drug, plant type, role, and quantity (range) ***

Offence level			For those imprisoned									
			Prison		Number of plants [†]		Median sentence		Full sentence range		Middle 50% sentence range‡	
Role of offender	Drug range	Cases	N	%	Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Less than commercial — opium plants												
Own use	Low	1	0	0.0								
	Mid	1	0	0.0								
	Subtotal**	2	0	0.0								
Total		4	0	0.0								
Less than commercial — cannabis plants												
Principal/dealer	Low	72	24	33.3	61	7-83	18	9	2-54	2-18	12-24	6-12
	Mid	45	20	44.4	121	84-163	23	11	6-52	4-36	18-27	9-18
	High	17	3	17.6	180	168-185	24	12	24-48	6-36		
	Subtotal**	137	49	35.8	83	7-185	20	9	2-54	2-36	16-24	6-15
Intermediary	Low	12	1	8.3	18	18	16	12	16	12		
	Mid	10	4	40.0	122	100-156	24	11	18-54	4-24	24-54	9-12
	High	3	0	0.0								
	Subtotal**	26	6	23.1	116	18-156	24	12	16-54	4-24	18-36	9-18
Accomplice	Low	23	0	0.0								
	Mid	17	2	11.8	156	156	15	8	12-18	6-9		
	High	9	2	22.2	199	197-200	14	9	12-16	6-12		
	Subtotal**	49	4	8.2	177	156-200	14	8	12-18	6-12	12-16	6-9
Own use	Low	322	21	6.5	53	3-79	9	6	1-42	1-24	4-16	3-9
	Mid	121	6	5.0	121	86-165	14	11	6-27	6-15	6-16	6-12
	High	34	5	14.7	209	188-235	12	9	9-16	6-12	9-12	6-9
	Subtotal**	491	35	7.1	64	3-235	12	6	1-42	1-24	6-16	4-9
Total††		772	107	13.9	83	3-235	16	9	1-54	1-36	9-24	6-12

Table B5 (cont.)

Offence level		Cases	Prison		For those imprisoned							
Role of offender	Drug range		N	%	Number of plants [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
					Median	Range	Overall§	Min. §	Overall§	Min. §	Overall§	Min. §
Commercial — cannabis plants												
Principal/dealer	Low	37	26	70.3	338	261-436	32	15	11-48	6-36	24-36	9-18
	Mid	20	13	65.0	591	520-743	24	17	6-60	6-30	18-30	9-18
	High	4	4	100.0	861	861-929	48	33	40-56	30-42	48	36
	Subtotal**	61	43	70.5	407	261-929	30	17	6-60	6-42	24-36	9-24
Intermediary	Low	10	3	30.0	410	261-436	4	4	4-24	4-9		
	Mid	3	0	0.0								
	High	2	0	0.0								
	Subtotal**	15	3	20.0	410	261-436	4	4	4-24	4-9		
Accomplice	Low	8	3	37.5	316	283-402	24	6	8-41	6-14		
	Mid	3	2	66.7	667	591-743	22	7	8-35	3-11		
	High	1	1	100.0	861	861	22	16	22	16		
	Subtotal**	13	6	46.2	497	283-861	23	9	8-41	3-16	8-35	6-14
Own use	Low	36	8	22.2	399	309-495	19	7	4-42	3-15	12-36	5-12
	Mid	7	1	14.3	567	567	36	12	36	12		
	High	3	2	66.7	772	772	40	30	40	30		
	Subtotal**	46	11	23.9	454	309-772	36	12	4-42	3-30	12-40	5-15
Total^{††}		151	71	47.0	413	261-929	30	12	4-60	3-42	18-36	8-18

Table B5 (cont.)

Offence level			For those imprisoned									
			Prison		Number of plants [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
Role of offender	Drug range	Cases	N	%	Median	Range	Overall [§]	Min. [§]	Overall [§]	Min. [§]	Overall [§]	Min. [§]
Large commercial — cannabis plants												
Principal/dealer	Low	31	22	71.0	1,955	1,005–4,646	52	35	24–102	6–72	40–66	27–42
	Mid	3	3	100.0	5,303	5,264–7,086	48	24	16–77	12–56		
	High	3	3	100.0	141,534	11,448–141,534	72	48	42–72	32–48		
	Subtotal**	37	28	75.7	2,885	1,005–141,534	52	35	16–102	6–72	42–72	27–48
Intermediary	Low	16	10	62.5	2,515	1,023–3,946	30	18	24–48	9–24		
	Mid	1	1	100.0	5,264	5,264	15	12	15	12		
	Subtotal**	17	11	64.7	3,150	1,023–5,264	30	18	15–48	9–24	24–32	15–24
Accomplice	Low	24	14	58.3	2,417	1,186–4,138	42	18	10–48	9–36	24–48	12–30
	Mid	6	2	33.3	5,157	5,050–5,264	24	17	12–36	7–27		
	High	4	2	50.0	11,501	11,455–11,547	24	14	23–24	12–15		
	Subtotal**	37	18	48.6	3,169	1,186–11,547	33	18	10–48	7–36	23–48	12–30
Own use	Low	2	0	0.0								
Total^{††}		102	64	62.7	2,629	1,000–141,534	41	24	10–102	6–72	24–48	16–36

* 1 January 1992 to 31 December 1997.

† In a small number of cases the precise drug quantity was not known.

‡ Overall sentence and minimum terms for the middle 50% of cases, where there were four or more cases.

§ Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

Table B6 (cont.)

Offence level		Cases	Prison		Drug range [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
Role of offender	Drug range		N	%	Median	Range	Overall\$	Min. \$	Overall\$	Min. \$	Overall\$	Min. \$
Commercial — heroin												
Own use	Low	1	0	0.0								
Commercial — amphetamines												
Principal/dealer	Low	2	2	100.0	303.8g	279.0–328.5g	48	17	36–60	9–24		
	Subtotal**	3	3	100.0	303.8g	279.0–328.5g	60	24	36–116	9–87		
Intermediary	Low	1	1	100.0	328.5g	328.5g	36	9	36	9		
	Mid	1	1	100.0	585.0g	585.0g	84	48	84	48		
	Subtotal**	6	4	66.7	456.8g	328.5–585.0g	45	33	36–84	9–48	42–47	30–35
Accomplice	Low	2	0	0.0								
	Mid	1	1	100.0	683.0g	683.0g	24	12	24	12		
	Subtotal**	3	1	33.3	683.0g	683.0g	24	12	24	12		
Total**		13	9	69.2	328.5g	279.0–683.0g	42	24	7–116	7–87	7–116	7–87

Table B6 (cont.)

Offence level		Cases	Prison		Drug range [†]		Median sentence		Full sentence range		Middle 50% sentence range [‡]	
Role of offender	Drug range		N	%	Median	Range	Overall [§]	Min. [§]	Overall [§]	Min. [§]	Overall [§]	Min. [§]
Large commercial — amphetamines												
Principal/dealer	Mid	1	1	100.0	5.8kg	5.8kg	50	30	50	30		
	High	4	4	100.0	28.5kg	14.5–130.0kg	162	105	72–288	36–216	144–180	84–126
Subtotal**		9	9	100.0	15.0kg	5.8–130.0kg	72	30	32–288	24–216	45–144	27–84
Intermediary	High	2	1	50.0	14.09kg	14.09kg	36	24	36	24		
	Subtotal**	7	5	71.4	14.09kg	14.09kg	36	24	24–62	12–50	36–48	24–36
Total††		19	16	84.2	14.3kg	1.98–130.0kg	49	30	24–288	12–216	42–72	24–45
Large commercial — ecstasy												
Principal/dealer	High	1	1	100.0	8.0kg	8.0kg	60	18	60	18		
Large commercial — cannabis oil												
Principal/dealer	High	1	1	100.0	28.55kg	28.55kg	128	96	128	96		

* 1 January 1992 to 31 December 1997.

† In a small number of cases the precise drug quantity was not known.

‡ Overall sentence and minimum terms for the middle 50% of cases, where there were four or more cases.

§ Months.

** Includes cases where the drug quantity (range) was not known.

†† Includes cases where the role of the offender and/or the drug quantity (range) was not known.

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