

SENTENCING
SPOTLIGHT ON...

trafficking in dangerous drugs



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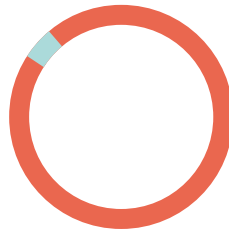
Sentencing Spotlight on... trafficking in dangerous drugs

This *Sentencing Spotlight* examines sentencing outcomes for trafficking in dangerous drugs offences finalised in Queensland courts between 1 July 2005 and 30 June 2016.

Summary of offences 2005–06 to 2015–16



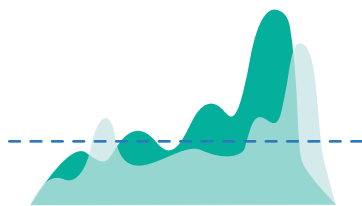
2596
offenders in total



2498
trafficking in dangerous drugs
as most serious offence (MSO)
98
another offence as MSO



Number of offenders
sentenced for a
trafficking in dangerous
drugs MSO
increased each year
since 2009–10



Average age
34 years



83.7%
male offenders



5%
Aboriginal and/or
Torres Strait Islander
offenders



97.8%
pleaded guilty



99.1%
of offenders
received a
custodial penalty



Average prison
sentence was
4.6 years

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Trafficking of dangerous drugs

The *Drugs Misuse Act 1986* (Qld) (DMA) refers to ‘a person who carries on the business of unlawfully trafficking’ as being guilty of a crime. The term ‘trafficking’ is not defined in legislation under the DMA, but rather by case law. If dealing with dangerous drugs does not meet the case law definition of trafficking, it will usually constitute the separate offence of supplying dangerous drugs.¹

While trafficking typically involves selling, it has a wider meaning² of ‘knowingly engaging in the movement of drugs from source to ultimate user’.³

A single sale made as part of carrying on a business could be trafficking,⁴ if it was the first sale of expected continuing activity.⁵ Occasional sales across limited isolated transactions are not sufficient. The prosecution is required to demonstrate several transactions were conducted for gain over more than a brief interval.⁶ However, the trade does not have to last indefinitely, generate profit, service more than one customer, or include payment in money (for instance, someone addicted to drugs could traffic to obtain drugs for personal consumption).⁷ Carrying on the business of unlawfully trafficking goes beyond sales and usually involves other activities including product advertising or promotion, negotiating prices and terms, taking orders and arranging delivery.⁸

Different drug traffickers receive different sentences because factors vary across individual cases.⁹ These include the application of general sentencing principles in section 9 of the *Penalties and Sentences Act 1992* (Qld) and other considerations such as the type, quantity and value of drugs supplied, the nature of the trafficking, and whether the offender’s motivation was financial profit or to feed their drug habit.¹⁰ Analysis or comments about the type and quantity of dangerous drugs associated with these offenders’ cases are excluded as these are not reported in the administrative data.

Dangerous drugs

The *Drugs Misuse Regulation 1987* (Qld) (DMR) groups different types of dangerous drugs into two schedules.¹¹ This grouping defines what types of drugs are treated as dangerous drugs and, prior to changes that came into force on 9 December 2016, it also determined the associated maximum penalty.

Schedule 1 dangerous drugs are the most serious and, since September 2014,¹² are further categorised as non-steroid and steroid drugs. Non-steroid Schedule 1 dangerous drugs include amphetamine, cocaine, heroin, methylamphetamine (known as ice in its crystal form)¹³ and 3,4-methylenedioxymethamphetamine (MDMA) — commonly referred to as ecstasy in tablet form.¹⁴

Schedule 2 dangerous drugs include cannabis, gamma hydroxybutyric acid (GHB), ketamine, morphine, opium and oxycodone.

Maximum penalties

A number of changes have been made to the way different drug types are categorised and the maximum penalty that applies to trafficking in these drugs over the review period of this *Sentencing Spotlight*.

Section 5 of the DMA currently provides that trafficking in any dangerous drug is a crime that carries a maximum penalty of 25 years’ imprisonment irrespective of whether the drug is included in Schedule 1 or 2.¹⁵ However, the current version of section 5 differs from previous versions which were in force during the data periods relevant to this *Sentencing Spotlight*.

In 1990, the mandatory life sentence for drug trafficking in Schedule 1 drugs was replaced with a non-mandatory maximum penalty of 25 years’ imprisonment. The maximum penalty of life imprisonment for trafficking in Schedule 2 drugs was also reduced to 20 years.¹⁶

From 27 July 2000 to 1 June 2008, a third penalty for trafficking existed:¹⁷ a five-year maximum term of imprisonment for dangerous drugs was specified in Schedule 2A (which dealt with unlawful activity associated with performance and image enhancing drugs, principally Anabolic Androgenic Steroids, Flunitrazepam (commonly known as Rohypnol) and Ephedrine).¹⁸ In 2008, Schedule 2A was repealed and the relevant drugs were incorporated under Schedule 2¹⁹ (with some later transitioned into the steroid component of Schedule 1 in 2014).²⁰

In December 2016, the current single maximum penalty of 25 years’ imprisonment for all forms of trafficking was established²¹ and any previous differences between maximum penalties for trafficking in Schedule 1 or 2 drugs was removed.

The maximum penalties applicable for trafficking in dangerous drugs for the data period relevant to this *Sentencing Spotlight* are therefore:

- 25 years for Schedule 1 drugs (the current maximum for all trafficking offences)
- 20 years for Schedule 2 drugs (until 9 December 2016)
- 5 years for Schedule 2A drugs (until 1 June 2008).

Imprisonment

The general legislative principles in the sentencing of offenders also apply to offenders being sentenced for drug trafficking. In sentencing an offender, a court must have regard to the principles:²²

- imprisonment should only be imposed as a last resort
- sentences that allow an offender to remain in the community are preferable.

However, the Queensland Court of Appeal has noted while no rule exists requiring custodial sentences be imposed, sentencing trends reveal non-custodial sentences for trafficking only tend to be imposed in exceptional circumstances.²³

A mandatory sentencing law also existed during the data period which impacts court outcomes. This law applied from 29 August 2013²⁴ to 9 December 2016.²⁵ Section 5 of the DMA during this period required a court sentencing an offender convicted of drug trafficking to a term of imprisonment to order that the person serve a minimum of 80 per cent of the term before becoming eligible for parole (although this did not apply if the term of imprisonment was wholly or partially suspended or was ordered to be served as an intensive correction order). The minimum 80 per cent rule contrasts to the more common eligibility point of one-third of the term for pleas of guilty,²⁶ or after 50 per cent of the term which otherwise applies.²⁷ The Queensland Court of Appeal confirmed when applying the 80 per cent rule for drug trafficking:

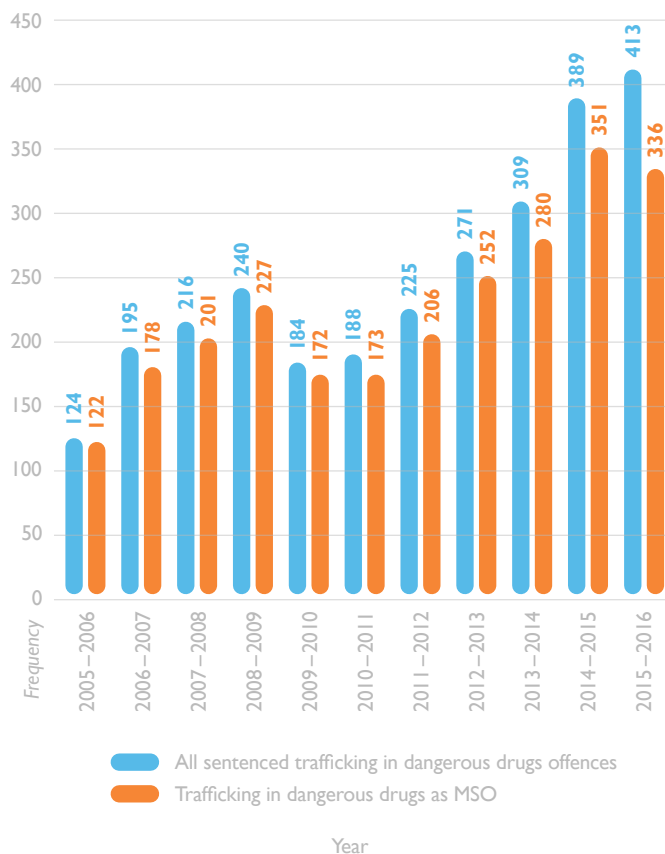
- a term of imprisonment was only to be suspended where appropriate to do so, and not as a means of subverting the 80 per cent rule,²⁸ but
 - the 80 per cent rule did not create a preference for parole over suspension²⁹
 - where a modest sentence length was required, the possibility that the rule might limit the beneficial effect of parole conditions was relevant when choosing between parole and a suspended sentence³⁰
- where the rule applied and actual imprisonment with parole was required, it was appropriate to sentence at the lower end of the available range.³¹

Offenders sentenced for trafficking in dangerous drugs

A total of 2596 offenders were sentenced for trafficking in dangerous drugs from 2005–06 to 2015–16. For 2498 (96.2%) of those offenders, trafficking in dangerous drugs was their most serious offence (MSO). For the remaining 98 offenders (3.8%) sentenced for this offence, this was not their MSO. This *Sentencing Spotlight* primarily focuses on offenders sentenced for trafficking in dangerous drugs as their MSO.

Figure 1 shows the total number of sentenced trafficking in dangerous drugs offences compared to the number of trafficking in dangerous drugs offences as an offender's MSO over the 11-year period. Offenders may appear more than once across this period if they have more than one drug trafficking offence as their MSO. These offenders are considered in the section 'Repeat trafficking in dangerous drugs offenders' later in this *Sentencing Spotlight*.

Figure 1: Number of sentenced trafficking in dangerous drugs offences and number of sentenced trafficking in dangerous drugs offences as MSO, 2005–06 to 2015–16



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Both the number of offenders sentenced for a trafficking in dangerous drugs MSO and the number of sentenced trafficking in dangerous drugs offences, has increased each year since 2009–10, following a drop between 2008–09 and 2009–10. Trafficking in dangerous drugs as an MSO has risen 175 per cent, from 122 in 2005–06 to 336 in 2015–16. However the total number of sentenced drug trafficking offences increased from 124 in 2005–06 to 413 in 2015–16, a 233 per cent increase. Figure 1 indicates that drug trafficking increased more as a non-MSO offence than an MSO offence over the period.

Characteristics of offenders sentenced for trafficking in dangerous drugs

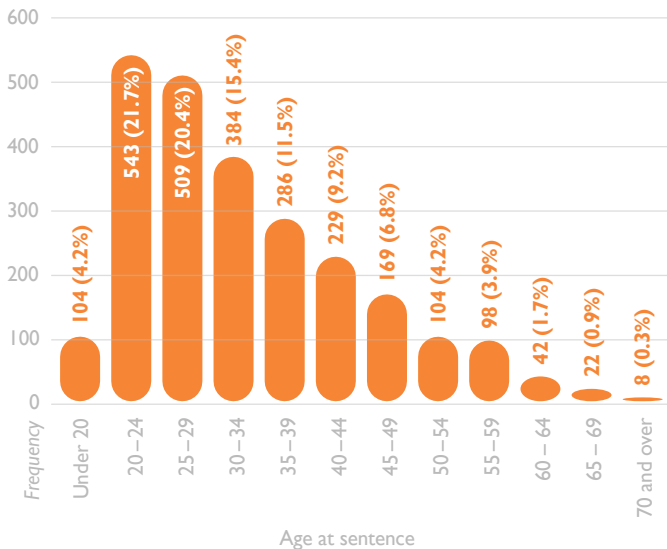
This section compares the age, gender and Aboriginal and/or Torres Strait Islander status of all offenders sentenced for a trafficking in dangerous drugs MSO.

Age

The average age of an offender sentenced for a drug trafficking MSO was 34 years (with a median age of 31 years). Age at sentence ranged from 16 to 78 years.

Figure 2 shows the number of offenders sentenced for a drug trafficking MSO by age at sentence. Over 40 per cent (42.1%) of offenders sentenced for a drug trafficking MSO were aged between 20 and 29 years old at the time of

Figure 2: Number of people sentenced for a trafficking in dangerous drugs MSO by age at sentence, 2005–06 to 2015–16



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted January 2017

sentence.

Figure 3 compares the distribution of age at sentence of drug trafficking offenders (MSO) against all sentenced offenders over the 11-year period (across all offence types). On average, offenders sentenced for a drug trafficking MSO are slightly older, at 34 years, than the average age of all sentenced offenders at 31 years old.³² Offenders sentenced for a drug trafficking MSO are less likely to be aged under 20 years in comparison to all sentenced offenders.

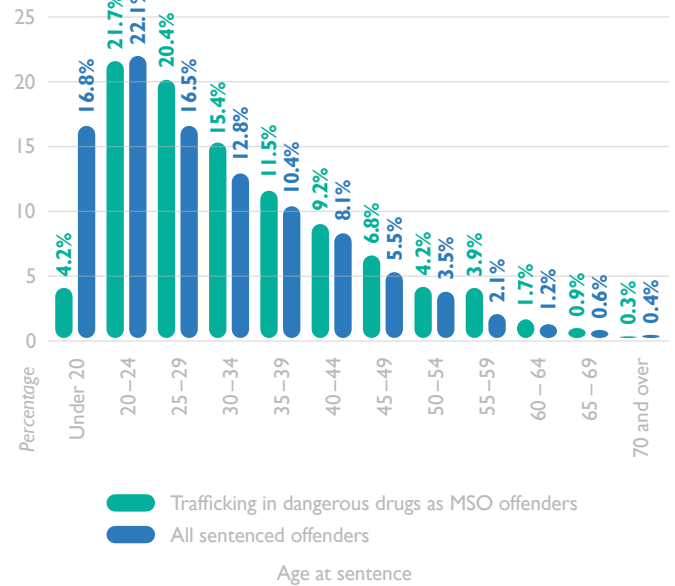
Gender

The majority of offenders sentenced for a trafficking in dangerous drugs MSO in Queensland were male (83.7%). When comparing the gender profile of offenders with a drug trafficking MSO against all sentenced offenders across all offence types, drug trafficking MSO involves more male offenders (83.7% male offenders versus 76.9% male offenders across all offence types).³³

Little difference in age at time of sentence was identified for male and female offenders sentenced for a trafficking in dangerous drugs MSO (female average age=34.9 years; male average age=33.7 years).³⁴ Across the 11-year period, the number of offenders sentenced for drug trafficking in dangerous drugs increased since 2009–10 (see Figure 1). The proportion of female offenders sentenced for drug trafficking MSO

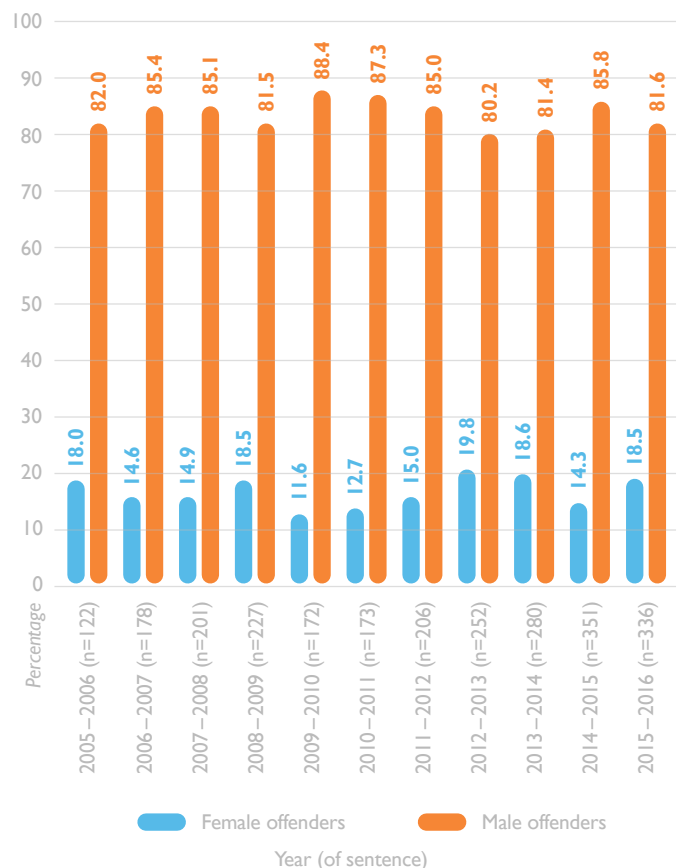
has fluctuated over the 11-year period (see Figure 4), peaking in 2012–13 (19.8%) from the lowest proportion in 2009–10 (11.6%).

Figure 3: Age of offenders sentenced for a trafficking in dangerous drugs MSO compared with age of all sentenced offenders, 2005–06 to 2015–16



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted January 2017

Figure 4: Sentenced trafficking in dangerous drugs (MSO), by gender and year



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted January 2017

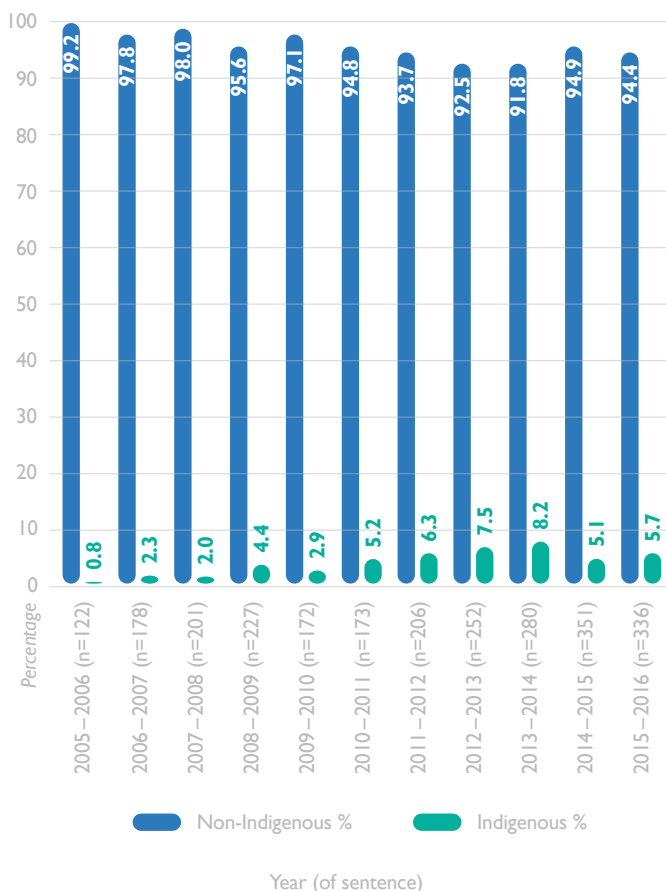
Aboriginal and/or Torres Strait Islander people ³⁵

People who identify as Aboriginal and/or Torres Strait Islander represent approximately 3.8 per cent of Queensland's population aged 10 years and over. ³⁶ Aboriginal and/or Torres Strait Islander people accounted for 5.0 per cent of all offenders sentenced for a trafficking in dangerous drugs MSO. Overall, there were 125 offenders sentenced for a drug trafficking MSO who identified as being Aboriginal and/or Torres Strait Islander over the 11-year period.

The proportion of Aboriginal and/or Torres Strait Islander offenders sentenced for a drug trafficking MSO (5.0%) is much lower than the proportion of all sentenced offenders (across all offence types) who identified as being Aboriginal and/or Torres Strait Islander (16.3%). ³⁷

Little difference in age at time of sentence for drug trafficking MSO offenders was observed when Aboriginal and/or Torres Strait Islander status was considered. The average age at sentence for Aboriginal and/or Torres Strait Islander offenders was 32.8 years compared to 34.0 years for non-Aboriginal and/or Torres Strait Islander offenders. ³⁸

Figure 5: Trafficking in dangerous drugs (MSO), by Aboriginal and/or Torres Strait Islander status and year



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

When considering Aboriginal and/or Torres Strait Islander status by gender, of the 2091 male offenders sentenced for a trafficking in dangerous drugs MSO, Aboriginal and/or Torres Strait Islander male offenders accounted for 4.4 per cent (n=91). In comparison, of the 407 female offenders, Aboriginal and/or Torres Strait Islander female offenders accounted for 8.4 per cent (n=34).

Overall, the number of offenders sentenced for a drug trafficking MSO increased from 2005–06 to 2015–16, however the number of Aboriginal and/or Torres Strait Islander offenders sentenced for these offences fluctuated across the 11-year period. Proportionally, Aboriginal and/or Torres Strait Islander offenders sentenced for a drug trafficking MSO peaked in 2013–14 when they accounted for 8.2 per cent of offenders sentenced for a drug trafficking MSO (see Figure 5). The proportion was lowest in 2005–06 when 0.8 per cent of offenders sentenced for a drug trafficking MSO were Aboriginal and/or Torres Strait Islander offenders.

Young offenders ³⁹

A total of 12 young offenders were sentenced in a Childrens Court for a trafficking in dangerous drugs MSO over the 11-year period (0.5% of all drug trafficking MSO offenders). One additional young offender was sentenced for a drug trafficking offence which was not their MSO. Young offenders sentenced for trafficking in dangerous drugs are not examined in detail in this *Sentencing Spotlight* due to low numbers.

Court type and location at sentence and type of plea

Court type

Of the 2498 offenders sentenced for a trafficking in dangerous drugs MSO, the vast majority were finalised in the Supreme Court (83.3%). ⁴⁰ Of the 12 young offenders who were sentenced for a drug trafficking MSO, five were finalised in the Supreme Court and seven were sentenced in the Childrens Court of Queensland (District Court).

Type of plea

The overwhelming majority (97.8%) of offenders sentenced for a trafficking in dangerous drugs MSO pleaded guilty, either initially or at a subsequent date. Only 1.6 per cent of offenders sentenced for a trafficking MSO pleaded not guilty. ⁴¹

No differences in formal plea type were identified when gender ⁴² or Aboriginal and/or Torres Strait Islander offenders were considered. ⁴³ However some differences were identified when type of plea was analysed by age (see Table 1). The younger age groups (i.e. under 35 years) were slightly more likely to have pleaded guilty to a trafficking in dangerous drugs MSO. The 50–54 age group recorded the lowest proportion of guilty pleas and the highest proportion of no plea entered (with a reliable sample size). The 60–64 age groups had the highest number of not guilty pleas.

Table 1: Plea type by age at sentence of trafficking in dangerous drugs MSO offenders

Age group	Guilty	Not Guilty	No plea
Under 20	100.0	0.0	0.0
20–24	99.5	0.2	0.4
25–29	98.8	0.6	0.6
30–34	98.2	1.3	0.5
35–39	97.9	1.4	0.7
40–44	95.2	3.5	1.3
45–49	96.5	3.0	0.6
50–54	91.4	5.8	2.9
55–59	95.9	4.1	0.0
60–64	95.2	4.8	0.0
65–69*	90.9	4.6	4.6
70 and over*	100.0	0.0	0.0

* Please note small sample size in this category.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Other offences

Associated offences

Offenders sentenced for a trafficking in dangerous drugs MSO may have also been sentenced for other offences at the same court hearing. Of the 2498 offenders sentenced for a trafficking MSO, 14.5 per cent were dealt with only for their trafficking offence. The number of sentenced offences per court event with a drug trafficking MSO ranged from one to 58. The average number of sentenced offences per court event with a trafficking MSO was 6.0 (median=4.0) (see Table 2).

Female offenders were more likely to be sentenced for only the trafficking in dangerous drugs MSO than male offenders (18.4% and 13.7% respectively). Comparatively, male offenders were more likely to be sentenced for 5–10 and 11 or more offences than female offenders — see Table 2 (Note: the offence counts includes the drug trafficking MSO).

Considering all offences sentenced at the same court event as a drug trafficking MSO from 2005–06 to 2015–16 (12,502 offences), the three most common associated offences were also drug related offences (Table 3).

Table 2: Number of sentenced offences per court event with a trafficking in dangerous drugs MSO, by gender and Aboriginal and/or Torres Strait Islander status, 2005–06 to 2015–16

	N	Average no. of offences	Median no. of offences	Min	Max	Single offence (%)	2 to 4 offences (%)	5 to 10 offences (%)	11 + offences (%)
Female	407	5.3	4	1	28	18.4	38.3	31.5	11.8
Male	2,091	6.1	4	1	58	13.7	37.5	34.0	14.8
Non-Aboriginal and/or Torres Strait Islander	2,373	6.0	4	1	58	14.5	37.4	33.7	14.3
Aboriginal and/or Torres Strait Islander	125	5.9	4	1	29	13.6	41.6	30.4	14.4
Total	2,498	6.0	4	1	58	14.5	37.6	33.6	14.3

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 3: The top 10 associated offences of adult offenders with trafficking in dangerous drugs MSO, 2005–06 to 2015–16 (n=12,502)

Offence	Frequency	%
Possess illicit drugs	3,361	26.9
Other illicit drug offences (not elsewhere classified)	2,896	23.2
Deal in illicit drugs	2,746	22.0
Receive or handle proceeds of crime	1,160	9.3
Manufacture or cultivate illicit drugs	332	2.7
Breach of bail	209	1.7
Unlawfully obtain or possess regulated weapons/explosives	195	1.6
Sell, possess and/or use prohibited weapons/explosives	156	1.2
Deal or traffic in illicit drugs – commercial quantity	155	1.2
Resist or hinder police officer or justice official	112	0.9

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 4: Top 10 MSOs of offenders whose trafficking in dangerous drugs offence was not their MSO, 2005–06 to 2015–16

Offence	Frequency	%
Possess illicit drugs	33	33.7
Deal in illicit drugs	19	19.4
Manufacture or cultivate illicit drugs	9	9.2
Other illicit drug offences (Not elsewhere classified)	5	5.1
Receive or handle proceeds of crime	5	5.1
Aggravated robbery	4	4.1
Unlawful entry with intent / burglary, break and enter	4	4.1
Dangerous or negligent operation (driving) of a vehicle	3	3.1
Import or export illicit drugs	3	3.1
Sell, possess and/or use prohibited weapons/explosives	3	3.1

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

For the 98 offenders whose drug trafficking offence was not their MSO, possession of illicit drugs and dealing drugs were the most common MSO offences (see Table 4). As detailed in the [Sentencing Spotlight technical information](#), MSO is defined as the offence receiving the most serious sentence, as ranked by the classification scheme used by the Australian Bureau of Statistics (ABS). In practice, this means imprisonment is considered more severe than any partially or wholly suspended sentences. This rule applies even when a longer time period is attached to partially or wholly suspended sentences than that attached to a sentence of imprisonment. For example, an offender who had a drug trafficking offence not recorded as their MSO received a lesser penalty for their drug trafficking offence than for another offence which was then deemed to be their MSO.

Repeat trafficking in dangerous drug offenders ⁴⁴

The 2498 finalised court events with a drug trafficking MSO involved 2474 unique individuals. There were 24 offenders sentenced for a drug trafficking MSO on more than one occasion across the 11-year period. When considering all sentenced offenders with at least one drug trafficking offence

(regardless of whether it is their MSO), the number of repeat drug trafficking offenders increased to 25. Due to the small sample size of repeat drug trafficking offenders, repeat offenders have not been further analysed.

Recidivism of offenders ⁴⁵

Sentenced offenders with a trafficking in dangerous drugs MSO in 2010–11 were examined in more detail. In 2010–11 there were 173 sentenced court events where drug trafficking was the MSO. These events involved 173 unique offenders, meaning no offenders were sentenced more than once for a trafficking MSO within 2010–11.

Of the 173 unique offenders, 26 (15.0%) did not record any additional court events either prior to (2005–06 to 2009–10) or after (2011–12 to 2015–16) their drug trafficking MSO in 2010–11, while 49.7 per cent (n=86) recorded sentenced offences both prior to and following their 2010–11 drug trafficking MSO. Table 5 shows the number of prior and/or subsequent court events within the time periods. For all offenders with previous and/or subsequent sentenced offences, possession of illicit drugs is within the top three MSOs recorded.

Table 5: Summary of prior and subsequent court events of offenders sentenced in 2010–11 for a trafficking in dangerous drugs MSO

	N	Number of prior courts events				Number of subsequent court events			
		Min	Max	Average	Median	Min	Max	Average	Median
2010–11 trafficking in dangerous drugs MSO event only	26	-	-	-	-	-	-	-	-
Only prior event/s (2005–06 to 2009–10)	46	1	8	2.7	2.0	-	-	-	-
Only subsequent event/s (2011–12 to 2015–16)	15	-	-	-	-	1	4	1.6	1.0
Both prior and subsequent events	86	1	14	4.5	3.0	1	15	2.8	2.0

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 6 shows the top 10 sentenced offences (MSO) for those with only sentenced events prior to their 2010–11 trafficking in dangerous drugs MSO (46 offenders; 511 finalised court events).

Table 6: Top prior offences (MSO) of 2010–11 trafficking in dangerous drugs (MSO) sentenced offenders (those who had prior sentenced offences only) 2005–06 to 2009–10

Prior offence only – MSO (2005–06 to 2009–10)		
Offence	Frequency of prior MSO	%
Possess illicit drugs	56	11.0
Drive while licence disqualified or suspended	56	11.0
Breach of bail	53	10.4
Driving without a licence	30	5.9
Offensive behaviour	30	5.9
Resist or hinder police officer or justice official	28	5.5
Exceed the prescribed content of alcohol or other substance limit	25	4.9
Other illicit drug offences (not elsewhere classified)	20	3.9
Serious assault resulting in injury	19	3.7
Registration offences	16	3.1

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 7 shows the top 10 sentenced offences (MSO) for those with sentenced events subsequent to their 2010–11 trafficking in dangerous drugs MSO (15 offenders; 268 finalised court events).

Table 7: Top subsequent offences (MSO) of 2010–11 trafficking in dangerous drugs (MSO) sentenced offenders (those who had subsequent sentenced offences only) 2011–12 to 2015–16

Subsequent offence only – MSO (2011–12 to 2015–16)		
Offence	Frequency of subsequent MSO	%
Possess illicit drugs	33	12.3
Other illicit drug offences (not elsewhere classified)	24	9.0
Drive while licence disqualified or suspended	19	7.1
Exceed the prescribed content of alcohol or other substance limit	17	6.3
Breach of bail	16	6.0
Driving without a licence	16	6.0
Receive or handle proceeds of crime	14	5.2
Property damage (not elsewhere classified)	9	3.4
Resist or hinder police officer or justice official	9	3.4
Breach of suspended sentence	8	3.0
Offensive behaviour	8	3.0

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

For the 86 offenders with sentenced offences both prior to and following their 2010–11 drug trafficking MSO, driving while their licence was disqualified or suspended was the most common MSO in the prior time period (2005–2006 to 2009–2010) and possession of illicit drugs was the most common MSO in the subsequent time period (2011–12 to 2015–16) (see Table 8).

Table 8: Top (MSO) prior (2005–2006 to 2009–2010) and subsequent (2011–12 to 2015–16) offences of 2010–11 trafficking in dangerous drugs (MSO) sentenced offenders

Prior offences (2005–06 to 2009–10) 389 court events			Subsequent offences (2011–12 to 2015–16) 244 court events		
Offence	Frequency of MSO	%	Max	Frequency of MSO	%
Drive while licence disqualified or suspended	44	11.3	Possess illicit drugs	28	11.5
Breach of bail	41	10.5	Other illicit drug offences not elsewhere classified)	20	8.2
Possess illicit drugs	39	10.0	Drive while licence disqualified or suspended	17	7.0
Resist or hinder police officer or justice official	24	6.2	Exceed the prescribed content of alcohol or other substance limit	16	6.6
Driving without a licence	22	5.7	Driving without a licence	16	6.6
Offensive behaviour	21	5.4	Breach of bail	15	6.1
Other illicit drug offences (not elsewhere classified)	17	4.4	Receive or handle proceeds of crime	12	4.9
Exceed the prescribed content of alcohol or other substance limit	15	3.9	Property damage (not elsewhere classified)	9	3.7
Serious assault resulting in injury	15	3.9	Resist or hinder police officer or justice official	9	3.7
Breach of violence order	12	3.1	Offensive behaviour	8	3.3
Registration offences	12	3.1	Breach of violence order	6	2.5
Theft (except motor vehicles)	12	3.1	Dangerous or negligent operation (driving) of a vehicle	6	2.5
Theft from retail premises	12	3.1	Drive under the influence of alcohol or other substance	6	2.5
Property damage	10	2.6	Serious assault resulting in injury	6	2.5
Receive or handle proceeds of crime	10	2.6	Theft from retail premises	6	2.5
Dangerous or negligent operation (driving) of a vehicle	9	2.3	Unlawful entry with intent / burglary, break and enter	6	2.5

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Penalties and sentencing

Over the period 2005–06 to 2015–16, almost all offenders (99.1%) sentenced for a trafficking in dangerous drugs MSO received a custodial penalty, incorporating imprisonment, partially suspended sentences, wholly suspended sentences and intensive correction orders. No difference was identified in the proportion of custodial and non-custodial penalties applied when year of sentence was considered (see Table 9).

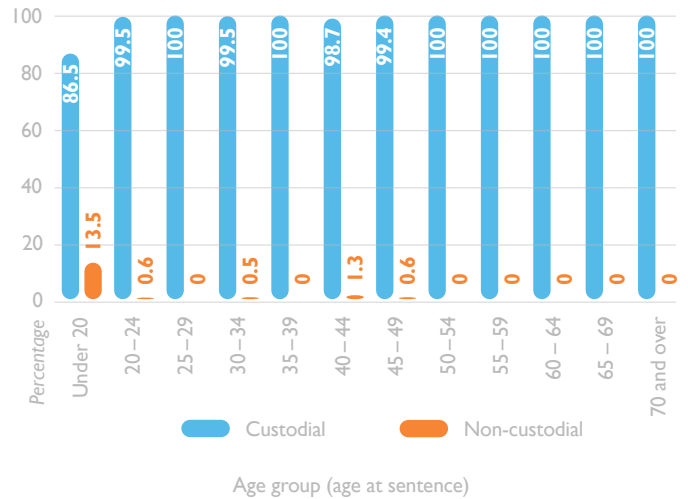
Table 9: Penalty type by year for trafficking in dangerous drugs MSO, 2005–06 to 2015–16

Year	N	Custodial penalty (%)	Non-custodial penalty (%)
2005–06	122	98.4	1.6
2006–07	178	100.0	0.0
2007–08	201	100.0	0.0
2008–09	227	99.6	0.4
2009–10	172	99.4	0.6
2010–11	173	99.4	0.6
2011–12	206	100.0	0.0
2012–13	252	98.8	1.2
2013–14	280	97.9	2.1
2014–15	351	98.0	2.0
2015–16	336	99.4	0.6
Total	2,498	99.1	0.9

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Figure 6 shows the penalty type by age at time of sentence revealing that the under 20 age group recorded the lowest proportion of custodial penalties.

Figure 6: Penalty type by age at time of sentence for trafficking in dangerous drugs (MSO)



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Penalty type

Penalty type, gender and Aboriginal and/or Torres Strait Islander status

Of all offenders sentenced to a custodial penalty for a trafficking in dangerous drugs MSO (n=2475), 5 per cent were Aboriginal and/or Torres Strait Islander and 83.8 per cent were male. As shown in Table 10, sentenced offenders with a drug trafficking MSO were significantly more likely to receive a custodial penalty (99.1%) than a non-custodial penalty (0.9%). Little difference is seen when gender and Aboriginal and/or Torres Strait Islander status are considered together — with the vast majority of offenders across all subgroups receiving custodial penalties.

Table 10: Penalty types for trafficking in dangerous drugs MSO, by gender and by Aboriginal and/or Torres Strait Islander status, 2005–06 to 2015–16

	N	Custodial penalty (%)	Non-custodial penalty (%)
Female	407	98.5	1.5
Male	2,091	99.2	0.8
Aboriginal and/or Torres Strait Islander	125	98.4	1.6
Aboriginal and/or Torres Strait Islander female	34	100.0	0.0
Aboriginal and/or Torres Strait Islander male	91	97.8	2.2
Non-Aboriginal and/or Torres Strait Islander	2,373	99.1	0.9
Non-Aboriginal and/or Torres Strait Islander female	373	98.4	1.6
Non-Aboriginal and/or Torres Strait Islander male	2,000	99.3	0.8
Total	2,498	99.1	0.9

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Custodial penalties

For adult offenders sentenced for a trafficking in dangerous drugs MSO who received a custodial penalty (n=2471), actual imprisonment was the most likely sentence imposed (58.4%). Adult female offenders sentenced for a trafficking MSO were significantly more likely to be given a wholly suspended sentence (15.0%) than adult male offenders (10.9%) (see Table 11).

Table 11: Adult offenders — Custodial penalty types for trafficking in dangerous drugs MSO by gender and by Aboriginal and/or Torres Strait Islander status, 2005–06 to 2015–16

	Custodial penalty (N)	Imprisonment (n, % of custodial penalty)	Partially suspended sentence (n, % of custodial penalty)	Wholly suspended sentence (n, % of custodial penalty)	Intensive correction order (n, % of custodial penalty)
Female	400	227 (56.8%)	109 (27.3%)	60 (15.0%)	4 (1.0%)
Male	2,071	1,217 (58.8%)	616 (29.7%)	226 (10.9%)	12 (0.6%)
Non-Aboriginal and/or Torres Strait Islander	2,348	1,372 (58.4%)	691 (29.4%)	271 (11.5%)	14 (0.6%)
Aboriginal and/or Torres Strait Islander	123	72 (58.5%)	34 (27.6%)	15 (12.2%)	2 (1.6%)
Total	2,471	1,444 (58.4%)	725 (29.3%)	286 (11.6%)	16* (0.7%)

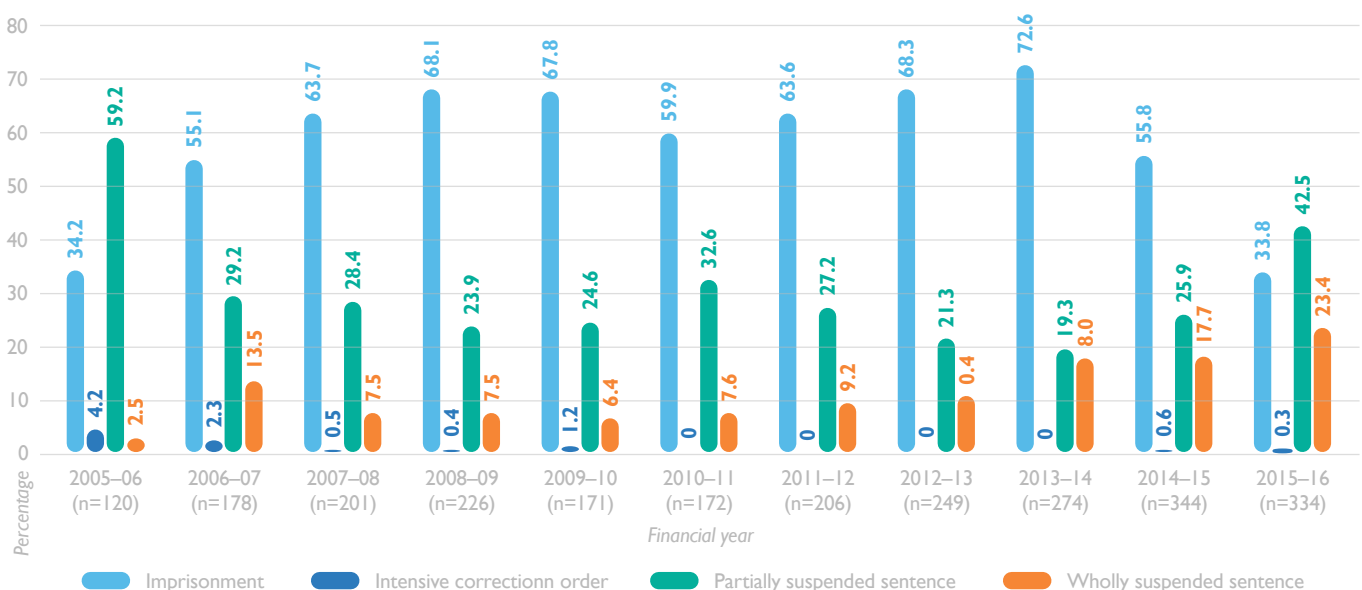
* Please note small sample size in this category.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Figure 7 shows that the proportion of partially suspended sentences given for a drug trafficking MSO increased substantially from 2013–14 onwards, while the proportion of offenders given an imprisonment sentence decreased. This trend occurred over the same period as the mandatory minimum 80 per cent non-parole period for an offender sentenced to a term of immediate imprisonment for trafficking in dangerous drugs was in place (August 2013 to December 2016).

Figure 7 also shows a marked reduction in the number of partially suspended sentences from 2006–2007. During this period, court ordered parole under the new *Corrective Services Act 2006* (Qld) was introduced commencing on 28 August 2006. These findings are consistent with those of the 2016 Queensland Parole System Review. The review's final report noted a rapid rise in the use of court ordered parole after its introduction via the *Corrective Services Act*, causing a sharp decline in the number of prisoners on partially suspended sentences,⁴⁶ and a 'fall in offenders supervised in the community on alternative orders, such as combined prison and probation orders and intensive corrections orders'.⁴⁷

Figure 7: Custodial penalty type for trafficking in dangerous drugs (MSO) by year of sentence, adult offenders



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Non-custodial penalties

As only a small number of adult sentenced offenders for trafficking in dangerous drugs (MSO) received a non-custodial penalty (n=15), those cases have not been analysed by gender or Aboriginal and/or Torres Strait Islander status. Probation was the most common non-custodial penalty (n=8), followed by community service (n=4).

Of those who received a non-custodial penalty, the majority (n=9) were younger at time of sentence than other offenders (i.e. aged under 25 years). Those adult offenders who received a non-custodial sentence tended to hold no prior convictions, and were involved in lower level trafficking.

Length of sentence

Custodial sentences

Overall, the average custodial sentence length for a trafficking in dangerous drugs MSO was four years (see Table 12). Across all custodial penalty types, the length of custodial sentences ranged from three months to 17 years. Table 13 shows the sentence length by type of custodial penalty (in years) received by adult offenders sentenced for a drug trafficking MSO.

Female offenders sentenced for a drug trafficking MSO received significantly shorter average custodial sentences than male offenders (3.4 years compared to 4.2 years). Similarly, on average, Aboriginal and/or Torres Strait Islander offenders received significantly shorter custodial sentences for a drug trafficking MSO than non-Aboriginal and/or Torres Strait Islander offenders (3.1 years and 4.1 years respectively).

Non-Aboriginal and/or Torres Strait Islander males, on average, received the longest custodial sentences for a trafficking MSO (4.2 years). Conversely, Aboriginal and/or Torres Strait Islander female offenders received the shortest average custodial sentences (2.8 years). Non-Aboriginal and/or Torres Strait Islander males received significantly longer average custodial sentences than Aboriginal and/or Torres Strait Islander males (4.2 years versus 3.2 years). No significant difference in average custodial sentence length was observed between Non-Aboriginal and/or Torres Strait Islander and Aboriginal and/or Torres Strait Islander female offenders (3.5 years versus 2.8 years).

Table 12: Custodial sentence length for trafficking in dangerous drugs (MSO), by gender and by Aboriginal and/or Torres Strait Islander status, 2005–06 to 2015–16 (all custodial order types)

	N	Average (years)	Median (years)	Min (years)	Max (years)
Female	401	3.4	3	0.25 (3 months)	9.5
Male	2,074	4.2	3.5	0.25 (3 months)	17
Aboriginal and/or Torres Strait Islander	123	3.1	3	0.33 (4 months)	10
Aboriginal and/or Torres Strait Islander female	34	2.8	2.5	0.75 (9 months)	6
Aboriginal and/or Torres Strait Islander male	89	3.2	3	0.33 (4 months)	10
Non-Aboriginal and/or Torres Strait Islander	2,352	4.1	3.5	0.25 (3 months)	17
Non-Aboriginal and/or Torres Strait Islander female	367	3.5	3	0.25 (3 months)	9.5
Non-Aboriginal and/or Torres Strait Islander male	1,985	4.2	3.5	0.25 (3 months)	17
Total	2,475	4.0	3.5	0.25 (3 months)	17

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 13: Adult — Custodial sentence length by gender and by Aboriginal and/or Torres Strait Islander status, 2005–06 to 2015–16 (by custodial order type)

	Imprisonment (years)					Partially suspended sentence (years)				
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
Female	227	3.6	3	0.75 (9 months)	9.5	109	3.4	3.5	1	5
Male	1,217	4.8	4	0.5 (6 months)	17	616	3.6	3.5	0.75 (3 months)	5
Aboriginal and/or Torres Strait Islander	72	3.5	3	0.75 (9 months)	10	34	3.0	3	1.5 (18 months)	5
Non-Aboriginal and/or Torres Strait Islander	1,372	4.7	4	0.5 (6 months)	17	691	3.6	3.5	0.75 (9 months)	5
Total	1,444	4.6	4	0.5 (6 months)	17	725	3.6	3.5	0.75 (9 months)	5

	Wholly suspended sentence (years)					Intensive correction order (years)				
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
Female	60	2.7	2.5	1	5	4	1	1	1	1
Male	226	2.7	2.5	0.5 (6 months)	5	12	0.9	1	0.3 (4 months)	1
Aboriginal and/or Torres Strait Islander	15	2.1	2	1	4	2	0.7 (8 months)	0.67 (8 months)	0.33 (4 months)	1
Non-Aboriginal and/or Torres Strait Islander	271	2.7	2.5	0.5 (6 months)	5	14	1.0	1	0.75 (9 months)	1
Total	286	2.7	2.5	0.5 (6 months)	5	16*	1.0	1	0.33 (4 months)	1

* Please note, small sample size in this category.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Considering gender, on average adult male offenders sentenced for a drug trafficking MSO received significantly longer prison sentences than female offenders (4.8 years versus 3.6 years) — see Table 13. Similarly, on average, adult non-Aboriginal and/or Torres Strait Islander offenders sentenced for a trafficking MSO received significantly longer prison sentences than Aboriginal and/or Torres Strait Islander offenders (4.7 years versus 3.5 years).

The average time served before release for a partially suspended sentence was 10.8 months.⁴⁸ No significant differences were seen when gender or Aboriginal and/or Torres Strait Islander status were considered.⁴⁹

Non-custodial sentences

Due the small number of offenders who received a non-custodial sentence for trafficking offences, sentence lengths for these order types have not been analysed.

Endnotes

- ¹ *Drugs Misuse Act 1986* (Qld) s 6 and see the definition of ‘supply’ in *Drugs Misuse Act 1986* (Qld) s 4. Queensland case law establishes that, if an offender is convicted of trafficking as well as separate supply charges which were part of the trafficking, a penalty should be imposed only for the trafficking charge. This is to avoid the person being punished twice for the same offending conduct. See *R v lanculescu* [2000] 2 Qd R 521, *R v Elhusseini* [1988] 2 Qd R 442, 455, *R v Connolly* [2016] QCA 132, [16] and *R v Chan* [2017] QCA 8, [4].
- ² This discussion of the definition of trafficking is based on Queensland Supreme and District Courts, ‘132.1 Trafficking in a dangerous drug’ (March 2017 amendments) in *Queensland Supreme and District Courts Criminal Directions Benchbook*, <http://www.courts.qld.gov.au/__data/assets/pdf_file/0003/86142/sd-bb-132-trafficking-in-a-dangerous-drug.pdf>.
- ³ *R v Elhusseini* [1988] 2 Qd R 442, 450 as cited in Queensland Supreme and District Courts, above n 2.
- ⁴ See also analysis of *R v Quaille* [1988] 2 Qd R 103 in Judge A J Rafter, LexisNexis Australia, *Carter’s Criminal Law of Queensland* [3080.10].
- ⁵ *R v Patena* [1996] QCA 152, 4 (Pincus and Davies JJA) as reproduced in Judge A J Rafter, LexisNexis Australia, above n 4.
- ⁶ *Martin v Osborne* (1936) 55 CLR 367, 376; *R v Kelly* [2005] QCA 103, [7] as cited in Queensland Supreme and District Courts, above n 2.
- ⁷ Queensland Supreme and District Courts, above n 2.
- ⁸ *R v Elhusseini* [1988] 2 Qd R 442, 445 (Connolly J), 450 (McPherson J), as reproduced in Judge A J Rafter, LexisNexis Australia, above n 4.
- ⁹ See *R v Stamatov* [2017] QCA 158, [27] (Applegarth J), making reference to *lbbs v The Queen* (1987) 163 CLR 447, 452 and *Adams v The Queen* (2008) 234 CLR 143, 148.
- ¹⁰ *R v Bradforth* [2003] QCA 183, [29] (Muir J) as reproduced in Judge A J Rafter, LexisNexis Australia, above n 4. See also *R v Le* [1996] 2 Qd R 516, 520 (Thomas J), also reproduced there. However, note also *R v Roach* [2017] QCA 240, [48]–[49] (Brown J): “In determining the question of seriousness of trafficking, the Court has regard to a broad range of factors and is not confined to considering the quantity of the drugs involved nor the value of such drugs upon sale. While those are relevant factors, they are not determinative.”
- ¹¹ There were amendments over time to the schedules regarding the dangerous drugs themselves. For instance, the increasing seriousness of amphetamine and methylamphetamine was recognised by moving them from Schedule 2 to Schedule 1 (*Drugs Misuse Amendment Regulation (No. 2) 2001* (Qld) s 4). The same occurred with 3,4-Methylenedioxymethamphetamine (MDMA) (*Drugs Misuse Amendment Act 2008* (Qld) s 40) and steroids (*Safe Night out Legislation Amendment Act 2014* (Qld) ss 23, 24). Maximum penalties for supplying and possessing dangerous drugs are still linked to the type of drug as set out in these schedules, and further, their amounts (set in Schedules 3 and 4 of the *Drugs Misuse Regulation 1987* (Qld)).
- ¹² Steroid drugs were added to Schedule 1 of the *Drugs Misuse Regulation 1987* (Qld) by the *Safe Night Out Legislation Amendment Act 2014* (Qld), ss 2, 23 and 24.
- ¹³ See Crime and Corruption Commission, *Methylamphetamine* (10 June 2016) <<http://www.ccc.qld.gov.au/crime/how-the-ccc-fights-crime/drugs-in-queensland/methylamphetamine>>. See also Australian Criminal Intelligence Commission, *Illicit Drug Data Report* (30 June 2017) <<https://www.acic.gov.au/publications/intelligence-products/illicit-drug-data-report-0>>, and Queensland Government, *Queensland Health – Methamphetamine Paper* (January 2017) <https://www.health.qld.gov.au/__data/assets/pdf_file/0021/641316/methpaper.pdf>.
- ¹⁴ See Crime and Corruption Commission, *MDMA* (10 June 2016) <<http://www.ccc.qld.gov.au/crime/how-the-ccc-fights-crime/drugs-in-queensland/mdma>>.
- ¹⁵ *Drugs Misuse Act 1986* (Qld) s 5. As to the definition of ‘dangerous drug’, see *Drugs Misuse Act 1986* (Qld) s 4.
- ¹⁶ *Drugs Misuse Act Amendment Act 1990* (Qld) s 5. The same 1990 amending legislation also allowed traffickers already sentenced to life imprisonment under the DMA, to apply to be resentenced under the reduced maximum penalty regime within three months (or an extended time as allowed by the Supreme Court): *Drugs Misuse Act Amendment Act 1990* (Qld) s 15.
- ¹⁷ Created by the *Drugs Misuse Amendment Act 2000* (Qld) s 5 and removed by the *Drugs Misuse Amendment Act 2008* (Qld) s 7.
- ¹⁸ Explanatory Notes, *Drugs Misuse Amendment Bill 2000* (Qld) 1.
- ¹⁹ *Drugs Misuse Amendment Act 2008* (Qld) ss 41, 42.
- ²⁰ *Safe Night out Legislation Amendment Act 2014* (Qld) ss 23, 24.
- ²¹ *Serious and Organised Crime Legislation Amendment Act 2016* (Qld) s 164.
- ²² *Penalties and Sentences Act 1992* (Qld) s 9(2).
- ²³ See the discussion in *R v Stamatov* [2017] QCA 158, [93]–[100] (Applegarth J), discussing *R v Dowel*; Ex parte Attorney-General (Qld) [2013] QCA 8, [16], [21] and *R v Ritzau* [2017] QCA 17, [36].

- ²⁴ *Justice and Other Legislation Amendment Act 2013 (Qld)* ss 42B, 68B.
- ²⁵ *Serious and Organised Crime Legislation Amendment Act 2016 (Qld)* ss 21, 162, 164. It applied to a trafficking offence which occurred wholly on or after 13 August 2013: *Justice and Other Legislation Amendment Act 2013 (Qld)* s 68C.
- ²⁶ See *R v Crouch; R v Carlisle* [2016] QCA 81, [29] (McMurdo P).
- ²⁷ *Corrective Services Act 2006 (Qld)* s 184(2). This is the general statutory rule which a sentencing judge can generally override. Other more specific legislative provisions can also mean more non-parole time, such as serious violent offence declarations (*Penalties and Sentences Act 1992 (Qld)* Part 9A) and the serious organised crime circumstance of aggravation provisions (*Penalties and Sentences Act 1992 (Qld)* Part 9D). Both of these legislative schemes can apply to drug trafficking.
- ²⁸ *R v Clark* [2016] QCA 173, [34], [53] (Morrison JA).
- ²⁹ *R v Borowicz* [2016] QCA 211, [43] (Gotterson JA); [42] agreeing with the *R v Clark* [2016] QCA 173 judgment.
- ³⁰ *R v Borowicz* [2016] QCA 211, [44] (Gotterson JA).
- ³¹ *R v Clark* [2016] QCA 173, [5] (McMurdo P) and [68] (Morrison JA); see also *R v Brookes* [2017] QCA 63, [32], [39] and [42] (McMurdo JA).
- ³² For all offenders over the 11-year period: n= 1,710,345; median= 28.2; minimum age= 10; maximum age= 97; companies/organisations (n=5325) were not included in the calculations; age data was missing for 29,067 and were not included in the calculations.
- ³³ Companies/organisations (n=5325) were not included in this calculation.
- ³⁴ Median age for female offenders was 32.6 years; median age for male offenders was 30.8 years.
- ³⁵ See the technical paper for information on how Aboriginal and/or Torres Strait Islander people were defined in the data <http://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0003/517773/Sentencing-Spotlight-Technical-Information.pdf>
- ³⁶ As at 30 June 2015. See Queensland Government Statistician's Office (QGSO), *Population estimates by Indigenous Status, LGAs, 2001 to 2015* (10 January 2017) <<http://www.qgso.qld.gov.au/subjects/demography/atsi-people/tables/pop-est-indigenous-status/index.php>>.
- ³⁷ Companies/organisations (n=5325) were not included in this calculation.
- ³⁸ Median age for Aboriginal and/or Torres Strait Islander offenders was 29.8 years, median age for non-Aboriginal and/or Torres Strait Islander offenders was 31.1 years.
- ³⁹ In this *Sentencing Spotlight* series, young offenders are classified as offenders sentenced in a Childrens Court, regardless of age at sentence.
- ⁴⁰ 404 cases (16.2%) were sentenced in the District Court and one case was sentenced in the Magistrates Court.
- ⁴¹ There were 17 (0.7%) offenders who did not enter a formal plea or whose plea was unknown.
- ⁴² Pled guilty: male=97.4%; female=99.5%.
- ⁴³ Pled guilty: Aboriginal and/or Torres Strait Islander offenders = 99.2%; non-Aboriginal and/or Torres Strait Islander offenders = 97.7%.
- ⁴⁴ Offenders sentenced for multiple trafficking in dangerous drugs offences within one court event are not counted as repeat offenders. To be counted as a repeat offender, they must have more than one court event with a trafficking dangerous drugs offence as their MSO.
- ⁴⁵ No attempt has been made to control for the incapacitation of offenders who may have been incarcerated during the review period which may impact recidivism.
- ⁴⁶ Walter Sofronoff QC, *Queensland Parole System Review: Final Report* (November 2016) 79, [369], Figure 4.2.
- ⁴⁷ *Ibid*, 80, [370], Figure 4.3.
- ⁴⁸ The median time served for a partially suspended sentence was 10 months, with a range of 6 days to 3 years.
- ⁴⁹ The median time served for a partially suspended sentence: female offenders – average=9.6 months, median=9.0 months; male offenders – 11.0 months, median=10.0 months; Aboriginal and/or Torres Strait Islander offenders – average=10.0 months, median=8.0 months; non-Aboriginal and/or Torres Strait Islander offenders – average=10.8 months, median=10.0 months.



Sentencing Spotlight on... trafficking in dangerous drugs

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