

Community Correction Orders Second Monitoring Report (Pre-Guideline Judgment)

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- conduct research and disseminate information on sentencing matters
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- advise the Attorney-General on sentencing issues
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Community Correction Orders Second Monitoring Report (Pre-Guideline Judgment)

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Abbreviations

CBO	community-based order
CCO	community correction order
ICO	intensive correction order
YJCO	youth justice centre order

Glossary

95th percentile	The point that 95% of observations in a set of data fall below and 5% of observations fall above. The 95th percentile is a good indicator of the upper extreme of values.
Case	A collection of one or more proven charges against an offender sentenced at one hearing.
Charge	A single proven count of an offence for which an offender is sentenced.
Higher courts	The Supreme Court of Victoria and the County Court of Victoria.
Mean	The most common type of average or measure of central tendency of a distribution of values.
Median	A type of average representing the 'middle' value in a series of numbers that are sequenced in ascending or descending order. Also known as the 50th percentile, the median is the value that 50% of values fall below and 50% of values fall above.
Principal sentence	The most severe sentence imposed on a charge within a case.

Community correction orders and the focus of this report

The community correction order (CCO) is a recently created and important sentencing option for Victorian criminal courts. The CCO allows courts to combine a range of punitive and therapeutic conditions in a sentence that an offender serves in the community. With the recent abolition of suspended sentences of imprisonment in Victoria, the CCO is now, for some offending, the only alternative sentence to imprisonment.

This report examines changes in the use of CCOs, and sentencing practices more generally, by Victorian courts during the period from January 2012 to December 2014. One of the aims of this report is to assess the effects on sentencing practices of major sentencing reforms, including the phase-out of suspended sentences and the changes adopted in September 2014 to the way CCOs may be combined with sentences of imprisonment.

This report does not assess the effects on sentencing practices of the Court of Appeal's guideline judgment,¹ which was issued at the end of this report's reference period. The guideline judgment will be the subject of future research by the Sentencing Advisory Council (the 'Council').

The Council's previous work on CCOs

This report follows two previous Council reports examining the use of CCOs by Victorian courts. The first, *Community Correction Orders: Monitoring Report*, examines the use of CCOs in both the higher courts (the Supreme and County Courts) and the Magistrates' Court over the first 18 months of the order's operation (January 2012 to June 2013).² Key findings of that report include the following:

- between January 2012 and June 2013, the median duration of CCOs was 12 months in the Magistrates' Court and 24 months in the higher courts;
- in the Magistrates' Court, the CCO was used for similar types of cases and in similar numbers to the orders it replaced – the community-based order (CBO) and the intensive correction order (ICO); and
- in 2012, the CCO was used in the higher courts in place of not just CBOs and ICOs but also some suspended sentences, which were declining in use; however, in the first half of 2013, CCOs gradually declined while imprisonment increased, suggesting the higher courts became more inclined to use imprisonment than CCOs to replace suspended sentences.

The second, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions*,³ sought to identify, through statistical techniques, factors that influenced sentencing decisions relating to the CCO in the higher courts. The sentencing decisions examined in that study relate to the distinction between a CCO and a short term of imprisonment as well as the length of, and conditions attached to, CCOs.

The present report updates key data in *Community Correction Orders: Monitoring Report*.

1. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014).

2. Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (2014).

3. Sentencing Advisory Council, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions* (2014).

Reforms to CCOs

Introduced in January 2012, the CCO replaced a number of sentencing orders including the CBO and the ICO. The background to the CCO is canvassed in detail in the Council's two previous reports on CCOs discussed above. Details about CCO duration, conditions, and combinations with other sentences, however, are relevant to this report.

The maximum duration of a CCO is determined by the jurisdiction of the sentencing court. In the Magistrates' Court, a CCO may be imposed for up to two years in respect of one offence.⁴ In the higher courts, the maximum duration of a CCO is equivalent to the maximum penalty for the offence (for example, 25 years for the offence of aggravated burglary).

Courts are also required to impose a range of 'core' conditions and at least one 'other' condition. In imposing 'other' conditions, the court may order that the offender:

- performs unpaid community work;
- undergoes treatment and rehabilitation;
- is supervised by a community corrections officer;
- does not contact or associate with a person, or a class of people, specified in the order;
- resides or does not reside at a particular place specified in the order;
- does not enter or remain in a specified area or place;
- does not enter, remain at, or consume alcohol at specified or unspecified licensed premises or a location of any major event;
- pays a bond;
- is monitored by the court; and
- is electronically monitored.

In addition to specifying the duration and conditions attached to a CCO, the courts may also combine a CCO with other orders. When the CCO was introduced, it could be combined with a fine or a sentence of imprisonment, suspended or otherwise, of up to three months. Subsequent amendments to the *Sentencing Act 1991 (Vic)* have changed the nature of orders with which a CCO may be combined. First, in August 2012, legislation removed the courts' ability to suspend a sentence of imprisonment when combined with a CCO. As found in the Council's first monitoring report, the court practice of combining a CCO with a suspended sentence was common prior to, but ceased after, this legislative change. Second, in September 2014, the maximum term of imprisonment with which a CCO could be combined was increased to two years. The effect of this second change is explored in this report.

Other changes to the CCO came into operation in September 2014. These provided that:

- a court must not impose a custodial sentence if the purpose or purposes of the sentence can be achieved by a CCO combined with one or more of the following conditions: non-association, residence restrictions or exclusions, place or area exclusions, curfews, and/or alcohol exclusions; and
- a CCO may be considered an appropriate sentence in cases where a wholly suspended sentence may have been imposed prior to that order being abolished.⁵

4. Section 37(1) of the *Sentencing Act 1991 (Vic)* was amended in 2014 to clarify that the duration of a CCO imposed in the Magistrates' Court must not exceed two years in respect of one offence, four years in respect of two offences, and five years in respect of three or more offences. Section 41A of the *Sentencing Act 1991 (Vic)* provides that the duration of cumulative CCOs imposed in the Magistrates' Court in respect of multiple offences committed at the same time must not exceed five years. The newly inserted section 44(1B) provides that in sentencing an offender to a combined CCO and imprisonment order, the Magistrates' Court must not impose a sentence that 'exceeds in the whole five years'.

5. *Sentencing Amendment (Emergency Workers) Act 2014 (Vic)* pt 5.

The latter change has implications for CCOs as a replacement for suspended sentences.

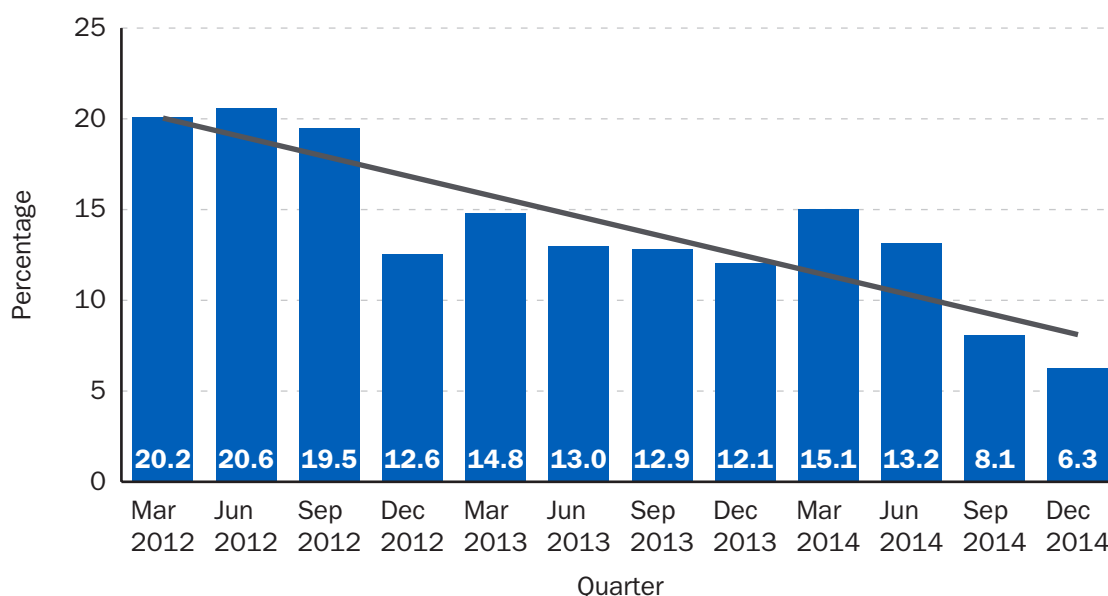
In addition to these legislative reforms, the Court of Appeal has issued a guideline judgment on sentencing considerations in relation to the length and conditions of a CCO.⁶ While the guideline judgment may well promote clarity and consistency in the courts' use of CCOs, due to the timing of the guideline judgment (22 December 2014, at the very end of this report's reference period (January 2012 to December 2014)), its effect is not the subject of this report. The Council will examine the effects of the guideline judgment on sentencing practices in future research.

Reforms to suspended sentences

Two substantial legislative reforms to suspended sentences of imprisonment occurred during the period July 2013 to December 2014. First, suspended sentences were abolished in the higher courts for any offence committed on or after 1 September 2013.⁷ This followed legislative changes in 2010 and 2011 that restricted then eliminated the power of the higher courts to suspend a sentence of imprisonment for 'serious' and 'significant' offences. Second, suspended sentences were abolished in the Magistrates' Court for any offence committed on or after 1 September 2014.⁸

The effect of these reforms on sentencing practices has not been examined in published research. This report provides an opportunity to explore how sentencing practices changed in the 15 months following the reforms in the higher courts and the three months following the reforms in the Magistrates' Court. Trends in the use of suspended sentences are briefly examined here. Figure 1 presents the number of cases, by quarter, that received a partially or a wholly suspended sentence in the higher courts as a percentage of all higher courts cases from 2012 to 2014. There is a declining trend in the use of suspended sentences; however, the only substantial reductions occurred in the December quarter of 2012 (6.9 percentage points) and the September quarter of 2014 (5.1 percentage points). The first of these declines is likely due to the legislative changes that occurred in 2011, while the second decrease is likely due to the 2013 reforms.

Figure 1: Percentage of cases, by quarter, with a principal sentence of a wholly or partially suspended sentence of imprisonment, higher courts, January 2012 to December 2014



6. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014).

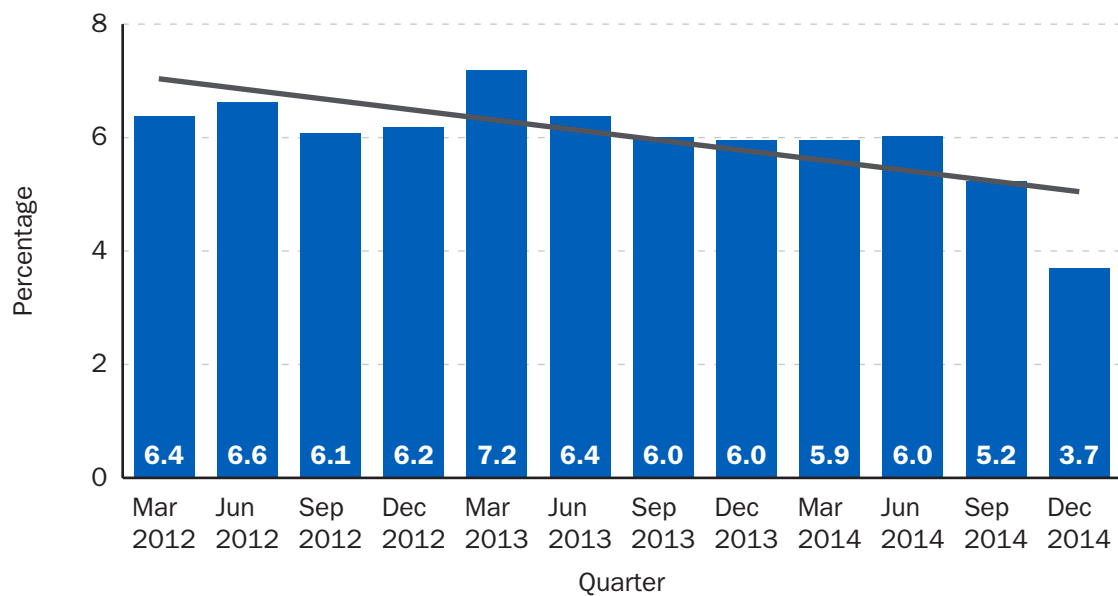
7. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) div 2.

8. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) div 3.

They highlight the delayed effects of sentencing reforms that apply to offences committed on or after a particular date; it takes some time for offences to be sentenced in court (previous Council research has found that the median time between offence and sentence is 19 months in the higher courts).⁹

The effect of the reforms on sentencing practices in the Magistrates' Court is evident from Figure 2, which shows that, in the December quarter of 2014, the percentage of cases receiving a wholly or partially suspended sentence declined to 3.7% from 5.2% in the previous quarter. Thus the effects of the abolition of suspended sentences in the Magistrates' Court are more immediate than in the higher courts. This is consistent with the shorter median time between offence and sentence in the Magistrates' Court (six months compared with 19 in the higher courts).¹⁰

Figure 2: Percentage of cases, by quarter, with a principal sentence of a wholly or partially suspended sentence of imprisonment, Magistrates' Court, January 2012 to December 2014



9. Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates' Court of Victoria* (2013) 7.

10. *Ibid.*

Broader criminal justice context

The legislative reforms to CCOs and suspended sentences occurred at a time when Victoria's prison population experienced rapid growth. The average daily number of prisoners in Victoria increased by 1,120 prisoners (21%) between July 2013 (5,323) and December 2014 (6,443).¹¹ The increase was likely due to a number of factors including the courts' increased use of straight imprisonment sentences following the abolition of suspended sentences and the Adult Parole Board's lower rate of granting prisoners release on parole in the 2013–14 financial year than in previous years.¹²

The CCO is a sentencing option that can help address some of the drivers of the prison population. First, as mentioned earlier, the September 2014 amendments to the *Sentencing Act 1991* (Vic) encourage courts to use a CCO instead of imprisonment where a suspended sentence of imprisonment may have been imposed previously. Second, with the increase in the maximum imprisonment term with which a CCO may be combined, the courts may be using the CCO as a de facto parole period, meaning prisoners are released to a CCO rather than to parole.

Research questions

This report examines three research questions. The first two relate specifically to CCOs:

1. How did the number and characteristics of CCOs change between January 2012 and December 2014?
2. Did the courts' use of the combined CCO–imprisonment sentence increase after September 2014?

The third research question relates to CCOs and sentencing practices more generally:

3. How did general sentencing practices change between January 2012 and December 2014?

11. Australian Bureau of Statistics, *Corrective Services Australia, December Quarter 2014*, cat. no. 4512.0 (2015), Table 1. Since December 2014, the prison population has shown signs of stabilising; see Australian Bureau of Statistics, *Corrective Services Australia, March Quarter 2015*, cat. no. 4512.0 (2015) Table 1.

12. Adult Parole Board of Victoria, *2013–2014 Annual Report* (2014) 14.

Methodology used for this analysis

Data

All data used for this report have been sourced from Court Services Victoria. The higher courts data are from information collected from conviction returns, and the Magistrates' Court data are from the Courtlink case management system.

All data represent first instance sentences, and therefore data have not been revised to take account of appeal decisions. While there have been successful high-profile appeals in relation to CCOs,¹³ very few CCO sentences have been successfully appealed. Thus incorporating revised sentences into the sentencing data would have little effect on the broad sentencing trends that are the focus of this report.

Analysis

The analysis used for this report focuses on changes over time in general sentencing practices and CCOs in particular. Time is broken down into 18-month blocks to reflect the data available since the Council's first monitoring report.¹⁴ In addition, time is broken down according to yearly quarters in order to identify the precise timing of shifts in sentencing practices.

In examining sentence type, two counting rules are used:

- cases where a CCO has been imposed, regardless of whether it is part of a combined sentence; and
- cases where a given sentence is the most severe or principal sentence type imposed, except where a combined CCO–imprisonment order is used – these cases are displayed as a separate category.

13. For example, *R v Clements* (S APCR 2013 0141), *R v Boulton* (S APCR 2013 0135), and *R v Fitzgerald* (S APCR 2013 0177).

14. Sentencing Advisory Council (2014), above n 2, 8.

Sentencing trends in the higher courts

This section examines data for the Supreme and County Courts (the 'higher courts') in relation to the three research questions posed earlier in this report.

Changes in the number and characteristics of CCOs

Number of CCOs

This analysis examines changes over the January 2012 to December 2014 period by looking at two 18-month periods then by looking at three-month, or quarterly, periods. The two 18-month periods are January 2012 to June 2013 (Period 1) and July 2013 to December 2014 (Period 2). The count of CCO cases used in this section is all cases where a CCO has been imposed, regardless of whether the CCO is combined with another order, such as imprisonment.

As Figure 3 shows, a CCO was imposed in 608 cases in Period 2 compared with 465 cases in Period 1. This represents an increase of 143 cases or 30.8% over the two periods. As a percentage of all cases sentenced in the higher courts, CCO cases increased from 17.8% to 22.4%, suggesting that the higher courts are using CCOs for a wider range of offences.

In order to identify with greater precision the timing of changes to the imposition of CCOs in the higher courts, the analysis now shifts to quarterly data for the period 2012 to 2014 (see Figure 4). After general stability across 2012 (where an average of 84.3 CCOs were imposed in each quarter), the number of CCOs imposed declined to a low of 48 in the March quarter of 2013 before increasing sporadically across 2013. Across 2014, the number of CCOs generally increased, with substantial increases in the June quarter (from 74 to 119) and in the December quarter (from 112 to 150).

Figure 3: Number of cases, by period, where a CCO was imposed, higher courts, January 2012 to December 2014

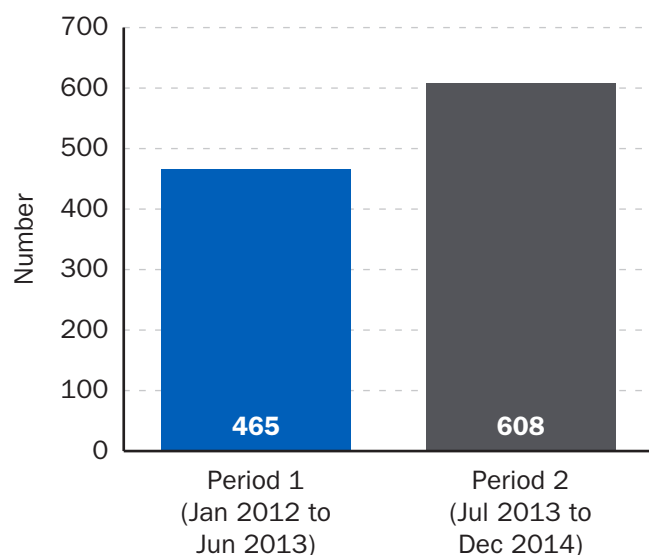
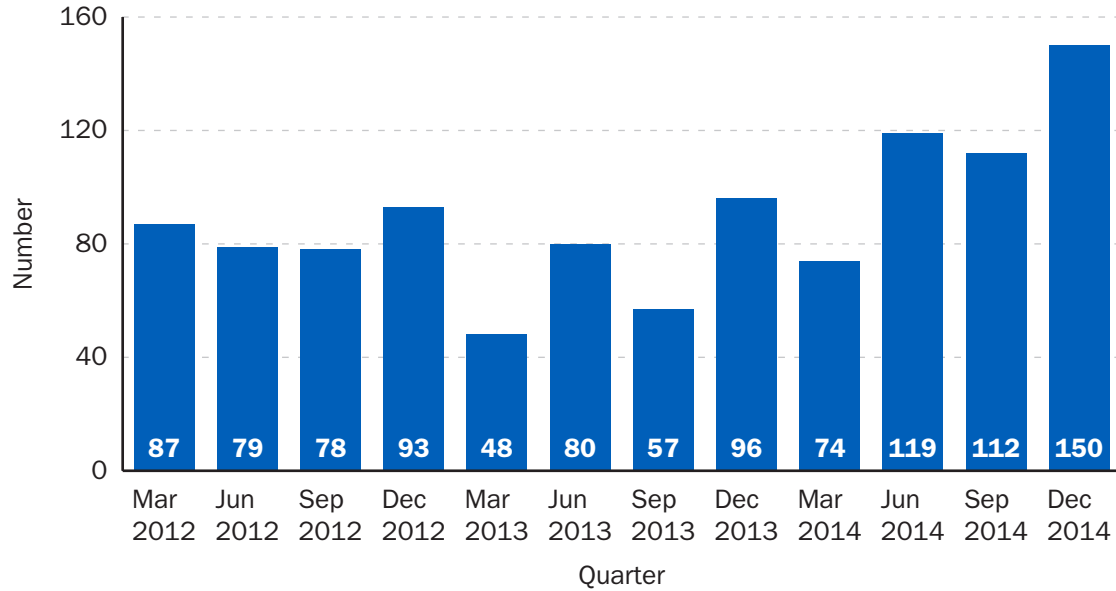
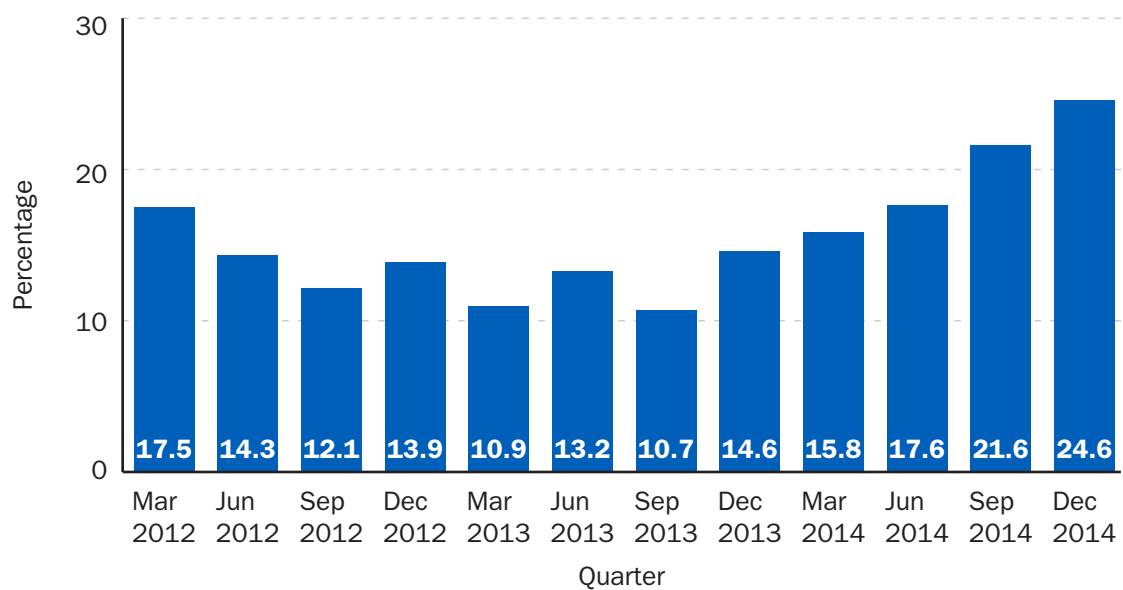


Figure 4: Number of cases, by quarter, where a CCO was imposed, higher courts, January 2012 to December 2014

In order to control for any seasonality in the quarterly data, CCO data are now examined in terms of the percentage of all cases sentenced per quarter. Figure 5 shows a decline in the percentage of cases receiving a CCO between the March quarter of 2012 (17.5%) and the September quarter of 2012 (12.1%). After remaining relatively low for the next year, the percentage of cases increased each quarter between the December quarter of 2013 (14.6%) and the December quarter of 2014 (24.6%). It is likely that the increases following September 2013 were driven, at least in part, by judges using CCOs in place of suspended sentences.

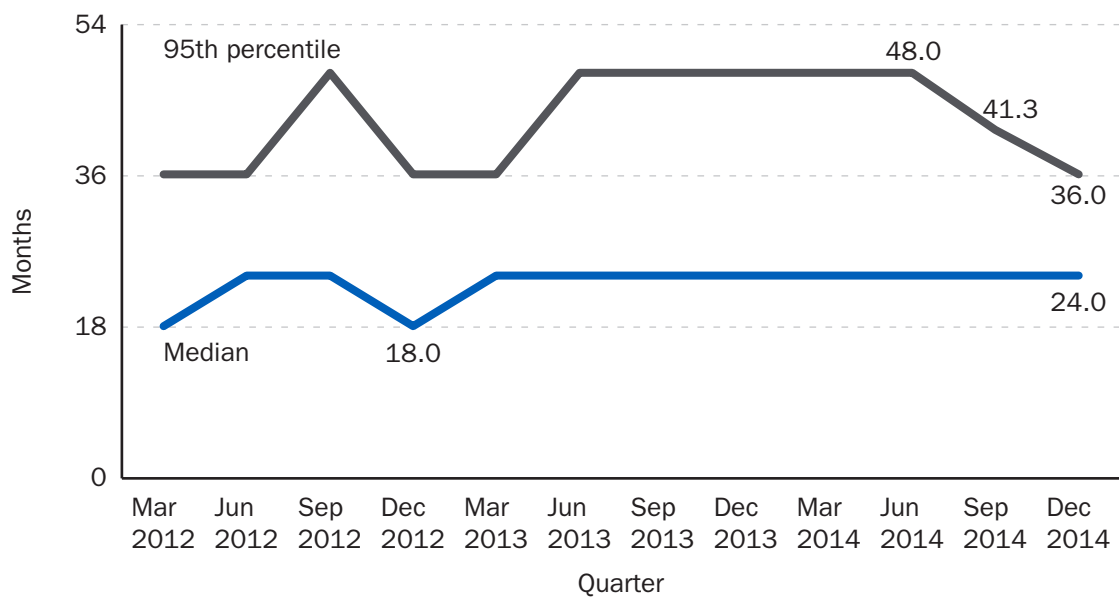
Figure 5: Percentage of cases, by quarter, where a CCO was imposed, higher courts, January 2012 to December 2014

Characteristics of CCOs

The only characteristic of CCOs examined here for the higher courts is duration. Data on CCO conditions were unavailable for the higher courts at the time of publication. As stated in the Council's first monitoring report, the median duration of CCOs imposed in the higher courts between January 2012 and June 2013 was 24 months.¹⁵ The median in the subsequent 18 months was unchanged at 24 months.

Figure 6 shows the duration, by quarter, of CCOs where a CCO was the principal sentence measured by the median and the 95th percentile. The 95th percentile is the point that 95% of observations in a set of data fall below and 5% of observations fall above. Thus the 95th percentile is a good indicator of the upper extreme of values. While the median remained constant over much of the three-year period (at 24.0 months), the 95th percentile declined in the September quarter (41.3 months) and the December quarter (36.0 months) of 2014. This suggests that fewer CCOs of above three years' duration were imposed in the second half of 2014 than from the June quarter of 2013 to the June quarter of 2014.

Figure 6: Median and 95th percentile duration, by quarter, of CCOs where a CCO was the principal sentence, higher courts, January 2012 to December 2014



15. Sentencing Advisory Council (2014), above n 2, 37.

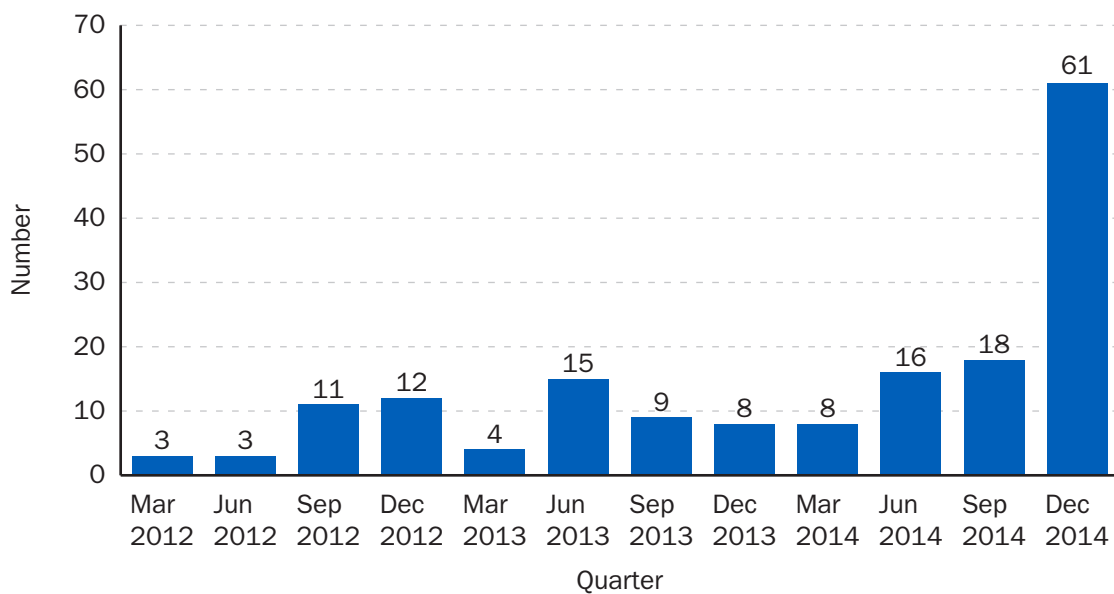
Changes in the use of the combined CCO–imprisonment sentence

Legislation that came into operation in September 2014 enhanced the courts' ability to combine a CCO with an imprisonment order by increasing the maximum length of imprisonment with which a CCO could be combined.¹⁶

Figure 7 shows quarterly data for the number of combined CCO–imprisonment sentences imposed between January 2012 and December 2014. There was a marked increase in the use of the combined sentence in the December quarter of 2014 when 61 combined CCO–imprisonment sentences were imposed compared with just 18 in the previous quarter (an increase of 238.9%). As a percentage of all CCOs, the combined CCO–imprisonment sentence increased from 6.9% of CCOs between the March quarter of 2012 and the September quarter of 2014 to 40.7% of CCOs in the December quarter of 2014.

The increase in the combined CCO–imprisonment order in the December quarter of 2014 was almost certainly due to the legislative change.

Figure 7: Number of combined CCO–imprisonment sentences, by quarter, higher courts, January 2012 to December 2014



16. Sentencing Amendment (Emergency Workers) Act 2014 (Vic) pt 5.

Changes in general sentencing practices

The analysis now considers the use of CCOs in the context of all major sentence types imposed in the higher courts. Except for the combined CCO–imprisonment sentence, the data used here represent the principal sentence type in each case.

Table 1 shows the number and percentage of all cases sentenced in the higher courts according to principal sentence type in Period 1 (January 2012 to June 2013), Period 2 (July 2013 to December 2014), and the entire three-year period (January 2012 to December 2014). Over the three years, imprisonment was by far the most commonly used sentence type in the higher courts, imposed in 59.7% of cases. CCOs were the second most common sentence comprising one in six (16.0%) sentences, while the combined CCO–imprisonment sentence was used in 3.2% of cases.

Table 1: Number and percentage of cases by principal sentence category and period, higher courts, January 2012 to December 2014

Sentence	Period 1 (Jan 2012 to Jun 2013)		Period 2 (Jul 2013 to Dec 2014)		Total (Jan 2012 to Dec 2014)	
	No.	%	No.	%	No.	%
Imprisonment	1,544	59.2	1,630	60.1	3,342	59.7
Combined CCO– imprisonment sentence	48	1.8	120	4.4	168	3.2
CCO*	373	14.3	478	17.6	851	16.0
Suspended sentence	433	16.6	303	11.2	736	13.8
Youth justice centre order	105	4.0	55	2.0	160	3.0
Fine	65	2.5	78	2.9	143	2.7
Other	41	1.6	48	1.8	89	1.7
Total	2,609	100.0	2,712	100.0	5,321	100.0

* Counts in this category do not include CCOs that were combined with a suspended sentence or with imprisonment. CCOs combined with suspended sentences are counted in the suspended sentence category, while CCOs combined with imprisonment are counted in the combined CCO–imprisonment sentence category.

Changes over the two periods, measured in percentage points, in the use of different order types are presented in Figure 8. The order type that increased in use the most over the two periods was the CCO, which rose by 3.3 percentage points. Combined CCO–imprisonment sentences increased by 2.6 percentage points, while imprisonment increased by 0.9 percentage points. In contrast, suspended sentences declined by 5.4 percentage points, and youth justice centre orders (YJCOs) declined by 2.0 percentage points. Thus, given the size of the decline in suspended sentences, it is reasonable to conclude that where they could no longer be imposed, suspended sentences were replaced (in order of magnitude) by CCOs, combined CCO–imprisonment sentences, and imprisonment orders. Suspended sentences were clearly not replaced by YJCOs as the use of these orders declined (from 105 to 55 orders). Previous Council research suggests that the CCO, rather than imprisonment, has been used as an alternative to the YJCO.¹⁷

17. Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders* (2015) 17.

Figure 8: Percentage point change, by principal sentence category, from Period 1 to Period 2 in the rate at which sentences were imposed, higher courts, January 2012 to December 2014

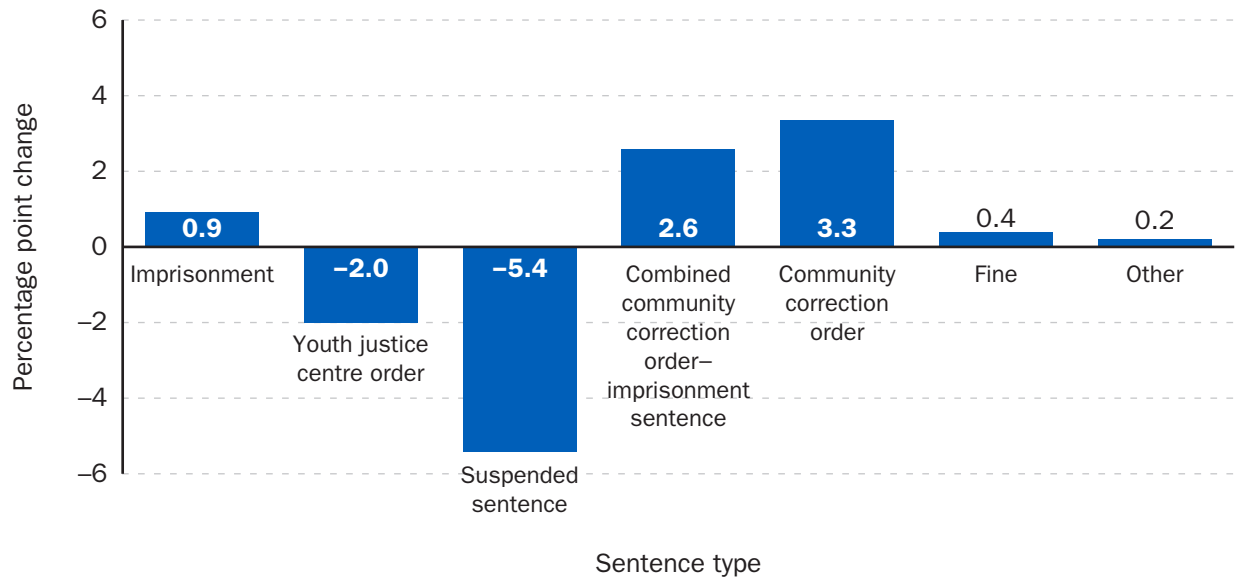
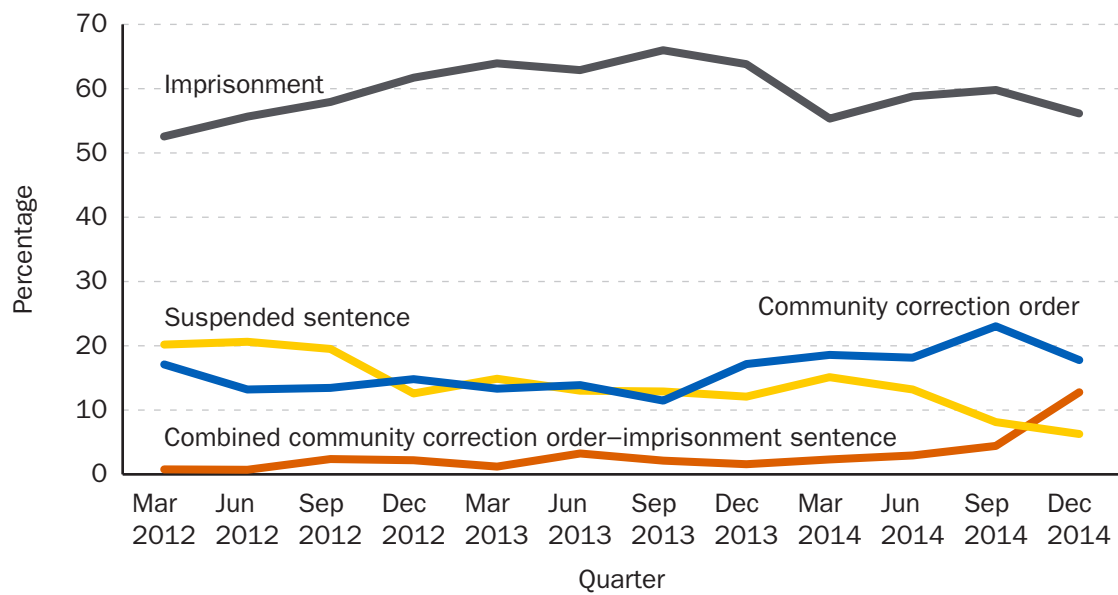


Figure 9 shows the percentage of cases by selected sentence types per quarter. There was a gradual decline in suspended sentences between the March quarter of 2012 and the December quarter of 2014. The decline in both imprisonment and CCOs in the December quarter of 2014 was offset by the rise in the combined CCO-imprisonment sentence.

Figure 9: Percentage of cases by selected sentence types and quarter, higher courts, January 2012 to December 2014



Sentencing trends in the Magistrates' Court

This section examines sentencing data from the Magistrates' Court in relation to the three research questions posed earlier in this report.

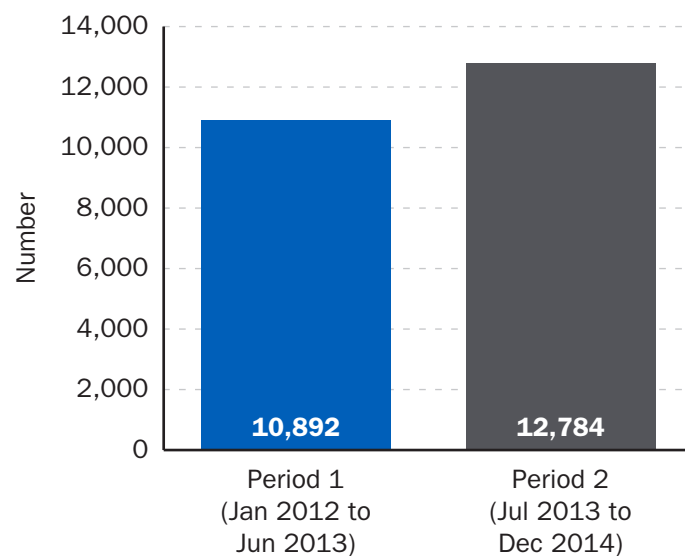
Changes in the number and characteristics of CCOs

Number of CCOs

The volume of CCOs imposed in the Magistrates' Court is substantially greater than that imposed in the higher courts. For the three years to December 2014, 23,676 CCOs were imposed in the Magistrates' Court compared with 1,073 in the higher courts. The Magistrates' Court imposed over 20 times the number of CCOs.

As in the higher courts, there was an increase in the use of CCOs in the Magistrates' Court from Period 1 (January 2012 to June 2013) to Period 2 (July 2013 to December 2014). As Figure 10 shows, the number of CCOs increased by 1,892 cases, from 10,892 to 12,784. This represents a 17.4% increase.

Figure 10: Number of cases, by period, where a CCO was imposed, Magistrates' Court, January 2012 to December 2014



The quarterly analyses show a general increasing trend in both the number of CCOs imposed (Figure 11) and the rate at which they were imposed (Figure 12). Focusing on the number of cases that received a CCO in the period between the March quarter of 2012 and the March quarter of 2013, the average number per quarter of cases that received a CCO was 1,644. This increased by 20.2% to a quarterly average of 1,976 cases in the period between the June quarter of 2013 and the March quarter of 2014. The numbers then increased each quarter from the June quarter of 2014 (2,160) to the December quarter of 2014 (the end of the reference period) when CCOs were used for 2,395 cases.

Figure 11: Number of cases, by quarter, where a CCO was imposed, Magistrates' Court, January 2012 to December 2014

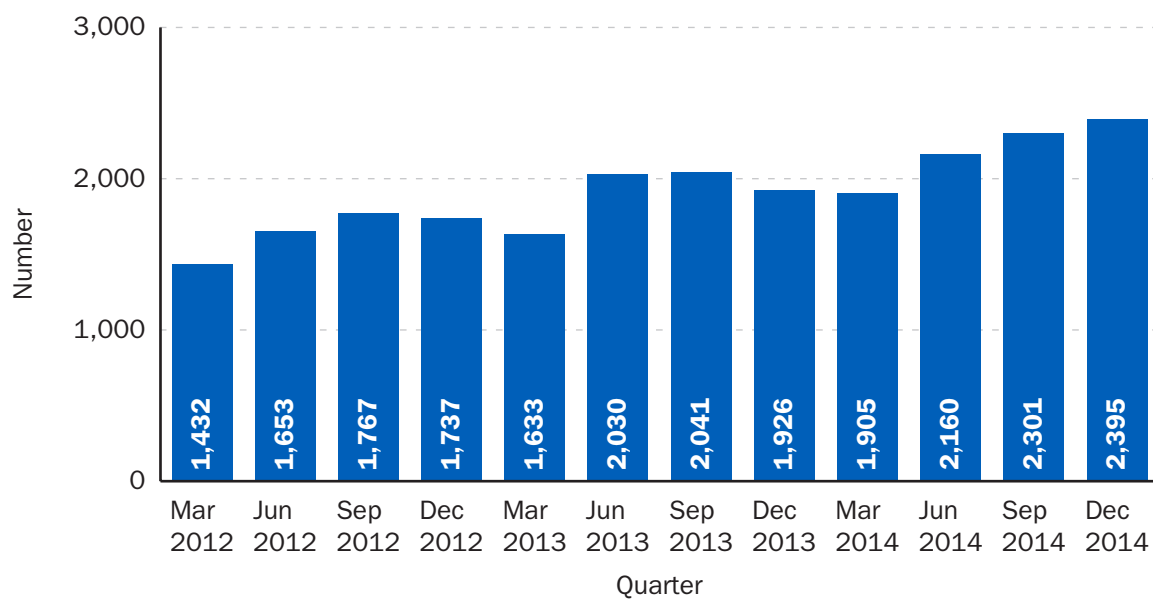
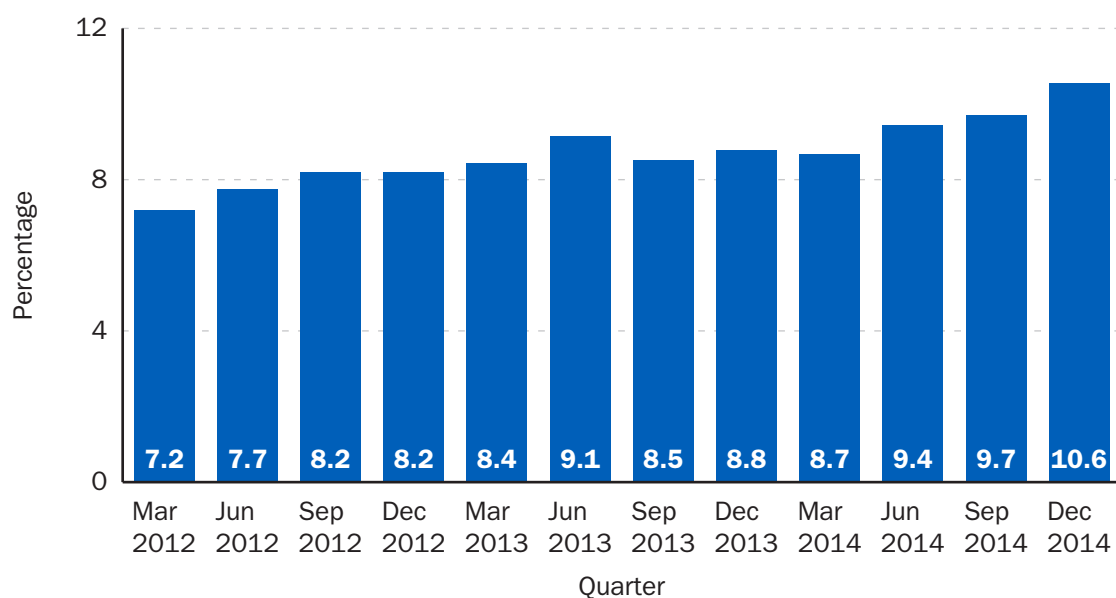


Figure 12: Percentage of cases, by quarter, where a CCO was imposed, Magistrates' Court, January 2012 to December 2014



Characteristics of CCOs

The characteristics of CCOs examined here are duration and 'other' conditions. As related in the Council's first monitoring report, the median duration of CCOs imposed between January 2012 and June 2013 in the Magistrates' Court was 12 months.¹⁸ In the subsequent 18 months, the median was unchanged at 12 months. In each of the 12 quarters in the 2012 to 2014 period, the median was 12 months while the 95th percentile was 18 months, indicating remarkable stability in the duration of CCOs imposed in the Magistrates' Court.

The analysis now turns to the 'other' CCO conditions imposed in the Magistrates' Court. The analysis first considers the three-year period from 2012 to 2014 as a whole, then examines changes across the three-year period. Data on conditions were unavailable for 7.2% of cases, and these cases were excluded from the data used to calculate percentages.

As Table 2 and Figure 13 show, over the three-year period from 2012 to 2014, two conditions were used for a majority of CCOs: assessment and treatment (79.6% or 17,491 cases) and unpaid community work (72.9% or 16,030 cases). The next most common condition was supervision (40.3% or 8,865 cases), while judicial monitoring was used in just over one in 10 cases (10.5% or 2,298 cases). The conditions of non-association (0.8%), alcohol exclusion (0.8%), place restriction (0.7%), curfew (0.3%), and residential restriction (0.2%) were all used in a very small minority of CCO cases.

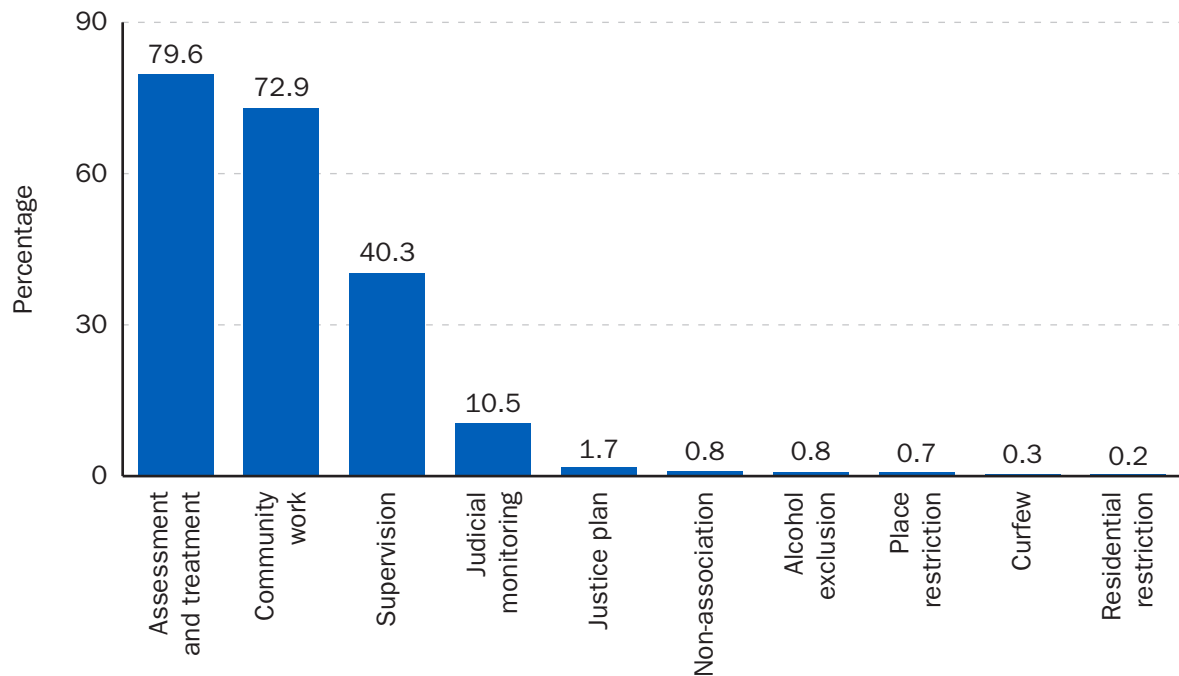
Across the three-year period, there was little change in the frequency with which most condition types were imposed (see Figure 14). The shifts were minor for assessment and treatment (80.7% in Period 1 to 78.7% in Period 2), unpaid community work (70.4% to 75.0%), judicial monitoring (9.9% to 10.9%), and most other conditions.

Only one condition, supervision, changed substantially. The percentage of CCOs that included a supervision condition declined by 19.2 percentage points, from 50.9% in Period 1 to 31.7% in Period 2. The reason for this decline is unclear. However, one possible reason is that, where magistrates imposed a CCO in place of a suspended sentence, which occurred with increasing frequency throughout the period, they may have considered that the offender did not require supervision.

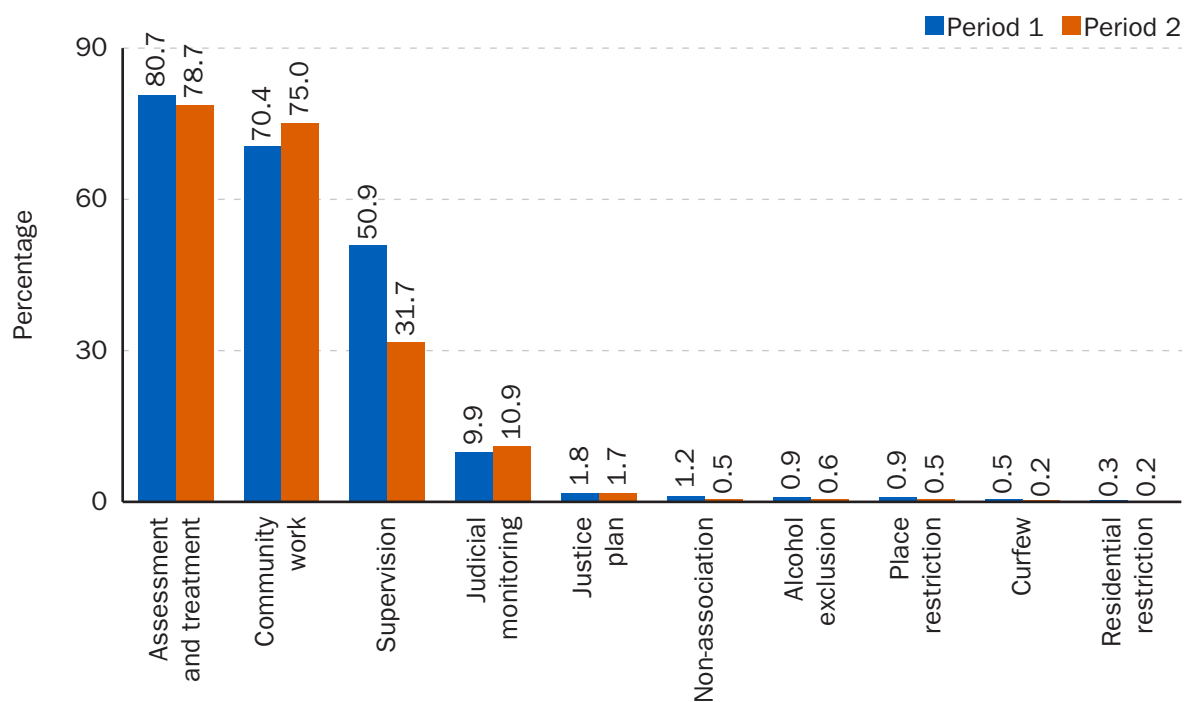
Table 2: Number of CCOs by condition and period, Magistrates' Court, January 2012 to December 2014

Condition	Period 1 (Jan 2012 to Jun 2013)	Period 2 (Jul 2013 to Dec 2014)	Total (Jan 2012 to Dec 2014)
Assessment and treatment	7,992	9,499	17,491
Community work	6,978	9,052	16,030
Supervision	5,044	3,821	8,865
Judicial monitoring	981	1,317	2,298
Justice plan	174	208	382
Alcohol exclusion	121	61	182
Non-association	94	73	167
Place restriction	93	61	154
Residential restriction	47	29	76
Curfew	30	21	51
Total number of CCOs with conditions	9,909	12,068	21,977

18. Sentencing Advisory Council (2014), above n 2, 12.

Figure 13: Percentage of CCOs by condition type, Magistrates' Court, January 2012 to December 2014 (n = 21,977)

Use of the conditions referred to expressly in the September 2014 legislative changes to CCOs¹⁹ (non-association, residence restrictions or exclusions, place or area exclusions, curfews, and/or alcohol exclusions) all declined from Period 1 to Period 2. For example, use of the non-association condition declined from 1.2% of CCOs in Period 1 to 0.5% of CCOs in Period 2.

Figure 14: Percentage of CCOs by condition type and period, Magistrates' Court, January 2012 to December 2014

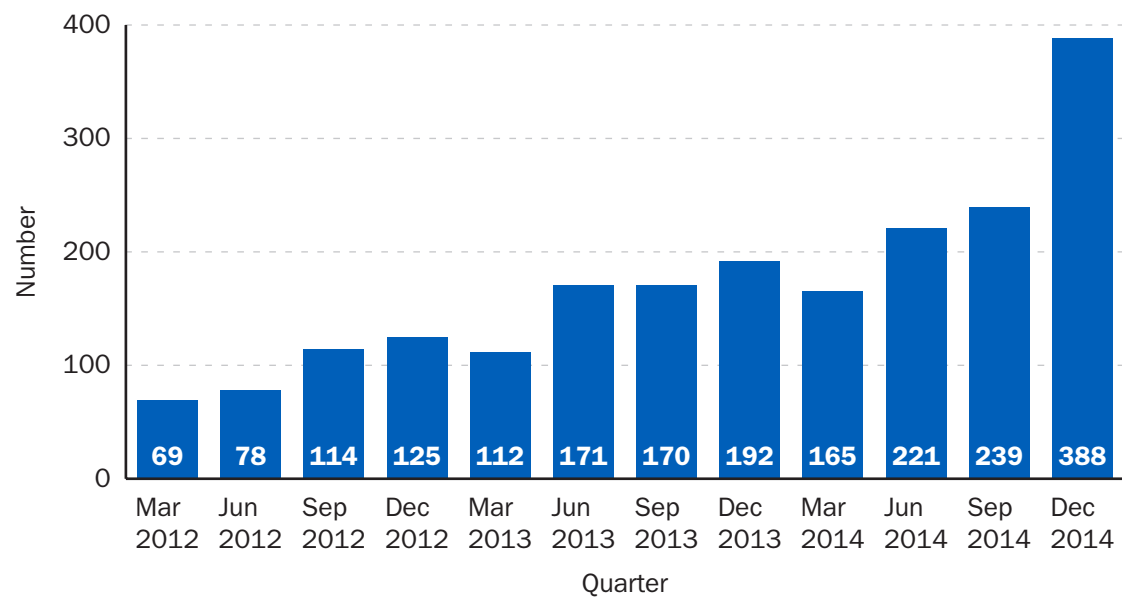
19. Sentencing Amendment (Emergency Workers) Act 2014 (Vic) pt 5.

Changes in the use of the combined CCO–imprisonment sentence

The legislative change from September 2014 that allowed CCOs to be combined with an imprisonment term of two years saw a sharp increase in the use of the combined CCO–imprisonment sentence in the Magistrates' Court, as in the higher courts, in the December quarter of 2014. As Figure 15 shows, the combined sentence was used in 388 cases in the December quarter of 2014, up 62.3% from 239 in the previous quarter.

Prior to the legislative change, there was a steady increase in the use of the combined sentence in the Magistrates' Court (unlike in the higher courts), despite the three-month ceiling on the imprisonment term with which a CCO could be combined. Prior to the December quarter of 2014, there were quarterly increases in the number of combined sentences in 8 of the 11 quarters and an overall increase of 170 sentences (69 in the March quarter of 2012 to 239 in the September quarter of 2014).

Figure 15: Number of combined CCO–imprisonment sentences by quarter, Magistrates' Court, January 2012 to December 2014



Changes in general sentencing practices

Table 3 shows that the CCO was used as a principal sentence in 8.0% of all cases sentenced in the Magistrates' Court between January 2012 and December 2014. Clearly the most common sentence imposed was a fine, which was used as a principal sentence for 148,186 cases or 56.4% of all cases.

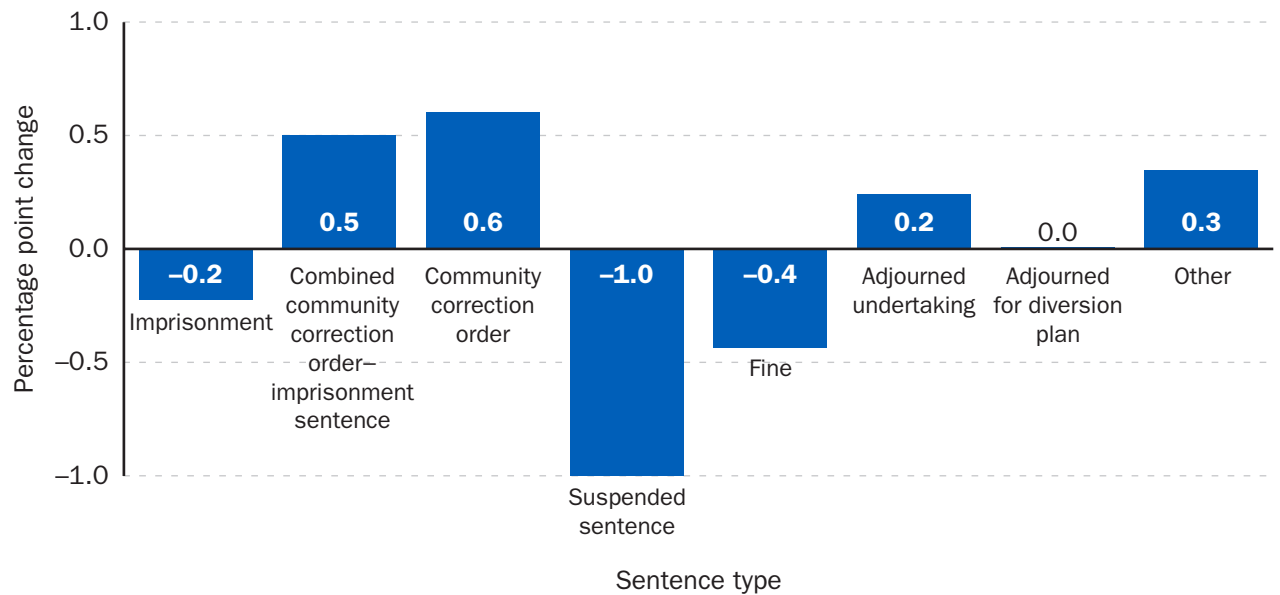
Table 3: Number and percentage of cases by principal sentence and period, higher courts, January 2012 to December 2014

Sentence	Period 1 (Jan 2012 to Jun 2013)		Period 2 (Jul 2013 to Dec 2014)		Total (Jan 2012 to Dec 2014)	
	No.	%	No.	%	No.	%
Imprisonment	5,753	4.5	5,975	4.4	11,728	4.5
Combined CCO– imprisonment sentence	669	0.5	1,375	1.0	2,044	0.8
Community correction order*	9,682	7.7	11,354	8.3	21,036	8.0
Suspended sentence	8,109	6.5	7,507	5.5	15,616	5.9
Fine	71,130	56.6	77,056	56.2	148,186	56.4
Adjourned undertaking	15,141	12.0	16,856	12.3	31,997	12.2
Diversion	7,085	5.6	7,746	5.6	14,831	5.6
Other sentence	8,113	6.5	9,331	6.8	17,444	6.6
Total	125,682	100.0	137,200	100.0	262,882	100.0

* Counts in this category do not include CCOs that were combined with a suspended sentence or with imprisonment. CCOs combined with suspended sentences are counted in the suspended sentence category while CCOs combined with imprisonment are counted in the combined CCO–imprisonment sentence category.

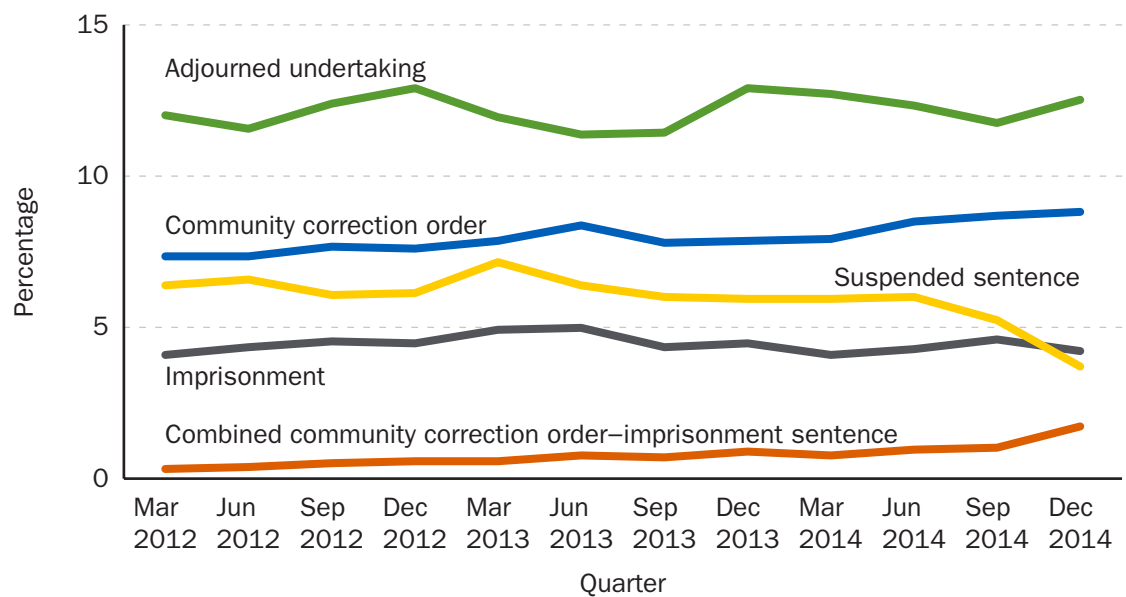
Figure 16 shows that, between January 2012 and December 2014, the use of CCOs increased more than any other sentence. CCOs increased by 0.6 percentage points, and the combined CCO–imprisonment sentence increased by 0.5 percentage points. In contrast, declines occurred for suspended sentences (1.0 percentage points) and fines (0.4 percentage points). Thus it is reasonable to conclude that CCOs along with imprisonment and the combined CCO–imprisonment sentence were used in place of suspended sentences in the Magistrates' Court, as in the higher courts.

Figure 16: Percentage point change, by sentence category, from Period 1 to Period 2 in the rate at which principal sentences were imposed, Magistrates' Court, January 2012 to December 2014



Quarterly data showing the percentage of cases with selected sentence types are presented in Figure 17. The clearest downward trend occurred for suspended sentences, which declined from the March quarter of 2013 to the December quarter of 2014. CCOs and the combined CCO-imprisonment sentence both increased while imprisonment and adjourned undertakings showed no discernable trend. There was also no discernable trend in the use of fines over the three years (not shown in Figure 17).

Figure 17: Percentage of cases by selected sentence types and quarter, Magistrates' Court, January 2012 to December 2014



Summary and conclusion

This report has examined trends in the use of CCOs and sentences more generally over the period January 2012 to December 2014. Over the three years, nearly 25,000 cases received a CCO from Victorian adult courts, with the Magistrates' Court dealing with over 95% of these cases. A CCO was used as a principal sentence in 16.0% of cases sentenced in the higher courts and 8.0% of cases sentenced in the Magistrates' Court.

The report has also examined changes in the use of CCOs, particularly in the period July 2013 to December 2014 compared with the previous 18 months. Over the three-year period, the use of CCOs increased. Between Period 1 (January 2012 to June 2013) and Period 2 (July 2013 to December 2014), the number of CCOs imposed in the higher courts increased by 30.8%, while the number imposed in the Magistrates' Court increased by 17.4%.

The rise in the use of CCOs is likely due to a number of factors. One factor is that courts increasingly used CCOs in place of suspended sentences. Legislation from September 2014 explicitly encourage courts to adopt such a practice. Another factor is that courts increasingly combined CCOs with imprisonment sentences. This practice is encouraged by the September 2014 legislative change increasing the maximum imprisonment term with which a CCO may be combined from three months to two years.

While the use of CCOs increased over the three-year period, there was no change in the typical duration (as measured by the median) attached to CCOs. As in the previous 18 months, the median duration between July 2013 and December 2014 was 24 months in the higher courts and 12 months in the Magistrates' Court.

The choice of conditions attached to CCOs changed in the Magistrates' Court. While the conditions of unpaid community work and assessment and treatment remained steady, supervision declined from 50.9% of cases to 31.7%. There continued to be very infrequent use of conditions that did not exist for the community-based order, such as alcohol exclusion and curfews.

In terms of the combined CCO–imprisonment sentence, there was a substantial increase in the use of these in both the Magistrates' Court and the higher courts in the December quarter of 2014. Between the September quarter of 2014 and the December quarter of 2014, the number of combined sentences increased by 62.3% in the Magistrates' Court and 238.9% in the higher courts. These increases are likely to have been a direct response to legislation from September 2014 that increased the maximum imprisonment term with which a CCO may be combined from three months to two years.

The guideline judgment issued by the Court of Appeal in December 2014 may have resulted in further changes in the use of CCOs. The effects of the guideline judgment will be explored in future Council research.

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