

Sentencing trends in
the higher courts of
Victoria
2012–13 to 2016–17

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No. 219

Trafficking in a commercial quantity of drugs

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of trafficking in a commercial quantity of drugs in the County and Supreme Courts of Victoria from 2012–13 to 2016–17.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2017 have been incorporated into the data in this Snapshot.³

Detailed data on trafficking in a commercial quantity of drugs and other offences is available on [Sentencing Advisory Council Statistics Online \(SACStat\)](#).

The *Drugs, Poisons and Controlled Substances Act 1981* (Vic) provides for a set of trafficking offences that distinguishes between large commercial, commercial and less than commercial quantities of illicit drugs.⁴

A person who prepares, manufactures, sells, exchanges, agrees to sell, offers for sale, or has in his or her possession for sale a drug of dependence without being authorised or licensed to do so is guilty of trafficking in a drug of dependence.⁵ The maximum penalties that apply vary depending on the nature and quantity of the drug involved, as well as the age of the recipient of the drugs, with higher maximum penalties for supplying to persons aged under 18 years.⁶

This report examines the offence of trafficking in a commercial quantity of a drug (or drugs) of dependence to an adult.⁷ The amount of the drug that constitutes a commercial quantity depends on the type of drug involved.⁸ Different types of drugs can be combined in order to achieve a commercial quantity.⁹

Trafficking in a commercial quantity of drugs is an indictable offence that carries a maximum penalty of 25 years' imprisonment and/or a fine of up to 3,000 penalty units.¹⁰ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Trafficking in a commercial quantity of drugs is a Category 2 offence, which means that a court cannot impose a non-custodial sentence, except in particular circumstances.¹¹

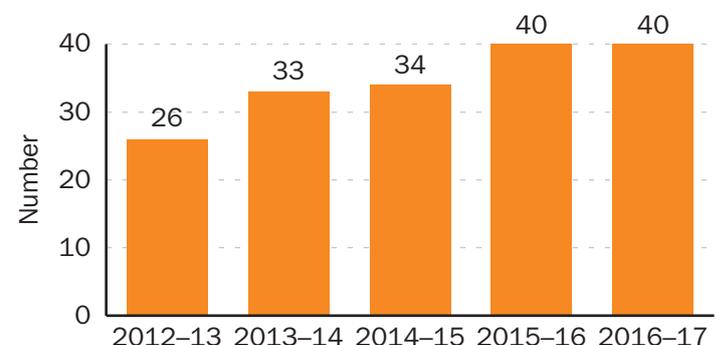
Trafficking in a commercial quantity of drugs was the principal offence¹² in 1.9% of cases sentenced in the higher courts between 2012–13 and 2016–17.

People sentenced

From 2012–13 to 2016–17, 173 people were sentenced in the higher courts for a principal offence of trafficking in a commercial quantity of drugs.

Figure 1 shows the number of people sentenced for the principal offence of trafficking in a commercial quantity of drugs by financial year. There were 40 people sentenced for this offence in 2016–17, the same as the previous year. The number of people sentenced was highest in 2015–16 and 2016–17 (40 people each year) and lowest in 2012–13 (26 people).

Figure 1: The number of people sentenced for trafficking in a commercial quantity of drugs by financial year, 2012–13 to 2016–17



Sentence types and trends

Figure 2 shows the total number of people sentenced for trafficking in a commercial quantity of drugs and the number receiving an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate imprisonment or detention.¹³ Over the five-year period, 95% of people were given an immediate custodial sentence.

Table 1 (page 3) shows the number of people sentenced for trafficking in a commercial quantity of drugs from 2012–13 to 2016–17 by the type of sentence imposed. The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.¹⁴ Changes to community correction orders have also influenced sentencing trends over the five years covered by this Snapshot.¹⁵

Over the five-year period, the majority of people sentenced for trafficking in a commercial quantity of drugs received a sentence of imprisonment (82% or 141 of 173 people), while 8% received a sentence of imprisonment combined with a community correction order, and 5% received a community correction order.

A total of 162 people received a principal sentence of imprisonment for trafficking in a commercial quantity of drugs. The *principal sentence* is the sentence imposed for the charge that is the principal offence.¹⁶ This total includes people in Table 1 who received a sentence of imprisonment, imprisonment combined with a community correction order, aggregate imprisonment, and aggregate imprisonment combined with a community correction order. Of the total number of people receiving a principal sentence of imprisonment for trafficking in a commercial quantity of drugs, 87% (141 of 162 people) received imprisonment, and 9% (14 of 162 people) received imprisonment combined with a community correction order. Aggregate imprisonment (4 of 162 people) and aggregate imprisonment combined with a community correction order (3 of 162 people) made up the remaining 4% of imprisonment sentences.

Sentences of imprisonment were the predominant form of sentencing for trafficking in a commercial quantity of drugs over the five-year period, although the form of imprisonment changed. In 2012–13, the majority of people (92%) were sentenced to a straight sentence of imprisonment for trafficking in a commercial quantity of drugs. However, over time the percentage of people receiving straight sentences of imprisonment steadily declined, with only 65% of people receiving this sentence in 2016–17. In comparison, the percentage of people receiving sentences of imprisonment combined with a community correction order has steadily increased, from 4% in 2012–13 to 13% in 2016–17.

Figure 2: The number of people sentenced for trafficking in a commercial quantity of drugs and the number receiving an immediate custodial sentence, 2012–13 to 2016–17

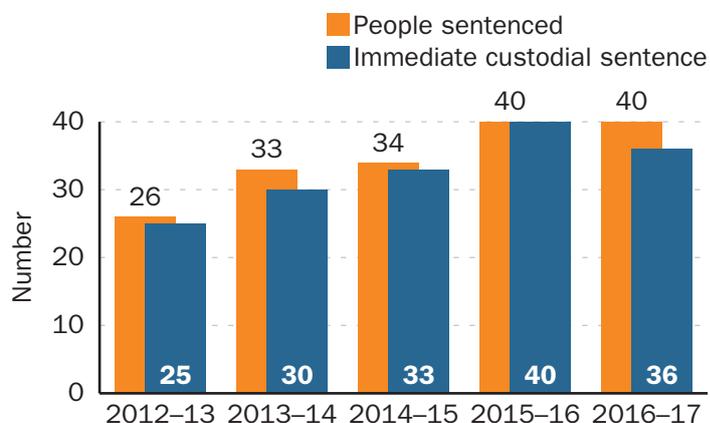


Table 1: The number and percentage of people sentenced for trafficking in a commercial quantity of drugs by sentence type, 2012–13 to 2016–17 (in descending order of numbers for 2016–17)

Sentence type	2012–13	2013–14	2014–15	2015–16	2016–17	Total
Imprisonment	24 (92%)	28 (85%)	28 (82%)	35 (88%)	26 (65%)	141 (82%)
Imprisonment and community correction order (combined)	1 (4%)	1 (3%)	3 (9%)	4 (10%)	5 (13%)	14 (8%)
Community correction order	0 (–)	3 (9%)	1 (3%)	0 (–)	4 (10%)	8 (5%)
Aggregate imprisonment and community correction order (combined)	0 (–)	0 (–)	0 (–)	0 (–)	3 (8%)	3 (2%)
Aggregate imprisonment	0 (–)	0 (–)	2 (6%)	0 (–)	2 (5%)	4 (2%)
Partially suspended sentence	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)	1 (<1%)
Youth justice centre order	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)	1 (<1%)
Aggregate wholly suspended sentence	1 (4%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
People sentenced	26	33	34	40	40	173

Age and gender of people sentenced

Data on the age and gender of people sentenced for trafficking in a commercial quantity of drugs is available on [SACStat](#).

Sentence length

Two methods for describing sentence lengths are examined in this section. One relates to the principal sentence and examines sentences for the offence at a charge level. The other relates to the total effective sentence and examines sentences for the offence at the case level (the principal sentence is described on page 2).

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

Where a case involves multiple charges, the total effective sentence imposed on a person is often longer than the principal sentence. Principal sentences for trafficking in a commercial quantity of drugs must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of trafficking in a commercial quantity of drugs from 2012–13 to 2016–17.

Principal sentence of imprisonment

Of the 162 people who received a principal sentence of imprisonment for trafficking in a commercial quantity of drugs, 155 people received a non-aggregate term of imprisonment. Fourteen of these people received a community correction order in addition to their non-aggregate term of imprisonment.

Figure 3 shows the length of imprisonment for the people receiving a non-aggregate term.¹⁷ Imprisonment terms ranged from 1 month and 3 days (combined with a community correction order) to 8 years, while the median length of imprisonment was 4 years (meaning that half of the imprisonment terms were shorter than 4 years and half were longer).¹⁸

The most common length of imprisonment imposed was 4 to less than 5 years (53 people).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for trafficking in a commercial quantity of drugs ranged from 3 years and 2 months in 2012–13 to 3 years and 10 months in 2013–14 and 2015–16.¹⁹

Other offences finalised at the same hearing

Often people prosecuted for trafficking in a commercial quantity of drugs face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of trafficking in a commercial quantity of drugs. The section includes data on all people sentenced for a principal offence of trafficking in a commercial quantity of drugs, not just those who received imprisonment.

Figure 5 shows the number of people sentenced for the principal offence of trafficking in a commercial quantity of drugs by the total number of offences for which sentences were imposed. The number of sentenced offences per person ranged from 1 to 29, while the median was 3 offences. There were 47 people (27.2%) sentenced for the single offence of trafficking in a commercial quantity of drugs. The average number of offences per person sentenced for trafficking in a commercial quantity of drugs was 4.60.

Figure 3: The number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of imprisonment term, 2012–13 to 2016–17

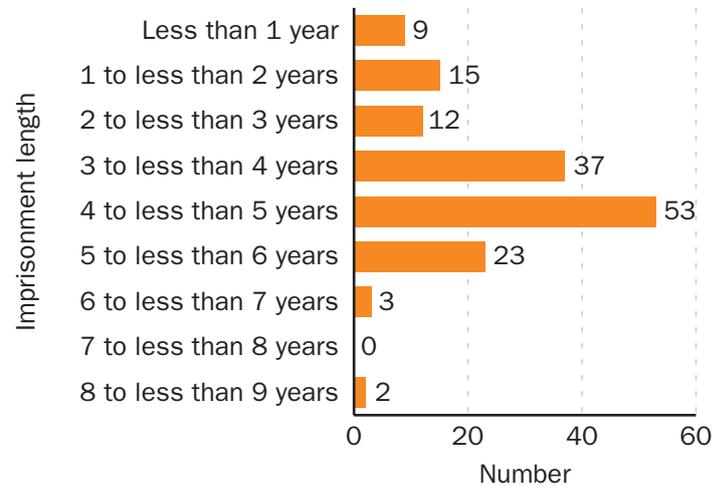


Figure 4: The average (mean) length of imprisonment imposed on people sentenced for trafficking in a commercial quantity of drugs, 2012–13 to 2016–17

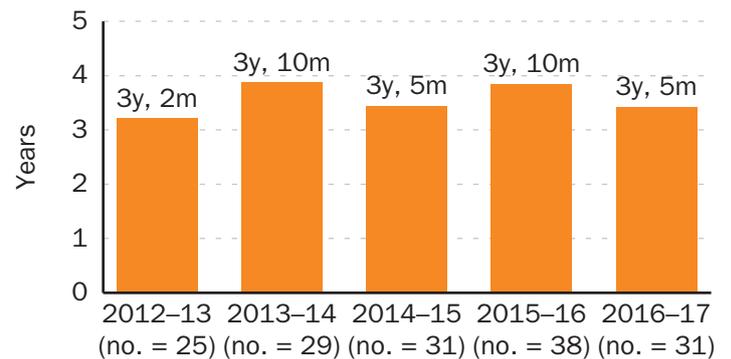


Figure 5: The number of people sentenced for the principal offence of trafficking in a commercial quantity of drugs by the number of sentenced offences per person, 2012–13 to 2016–17

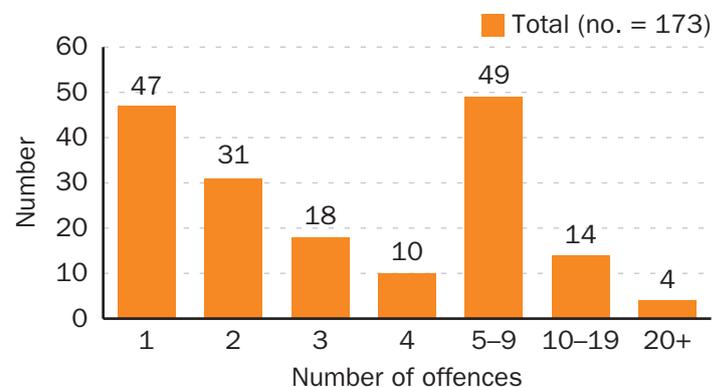


Table 2 shows the 10 most common offences for people sentenced for trafficking in a commercial quantity of drugs, by number and percentage. The last column sets out the average number of offences sentenced per person. For example, 65 of the total 173 people (37.6%) also received sentences for trafficking in a non-commercial quantity of drugs. On average, they were sentenced for 1.71 counts of trafficking in a non-commercial quantity of drugs.

Table 2: The number and percentage of people sentenced for the principal offence of trafficking in a commercial quantity of drugs by the most common offences that were sentenced and the average number of those offences that were sentenced, 2012–13 to 2016–17

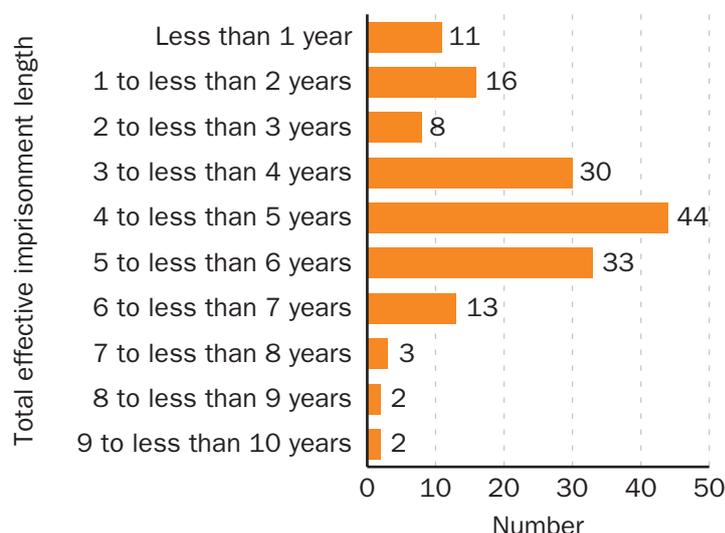
Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Trafficking in a commercial quantity of a drug of dependence	173	100.0	1.12
2. Trafficking in a non-commercial quantity of a drug of dependence	65	37.6	1.71
3. Possess a drug of dependence	55	31.8	2.44
4. Deal with property suspended of being proceeds of crime	37	21.4	1.43
5. Possess, use or carry a prohibited weapon (other than an imitation firearm)	27	15.6	1.26
6. Possess cartridge ammunition without licence	17	9.8	1.06
7. Prohibited person possess, carry or use a firearm	12	6.9	2.00
8. Knowingly deal with proceeds of crime	11	6.4	1.18
9. Drive while disqualified or suspended	10	5.8	2.00
10. Theft	10	5.8	1.20
People sentenced	173	100.0	4.60

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs from 2012–13 to 2016–17 by length of total effective imprisonment term. The total effective imprisonment terms ranged from 1 month and 3 days (combined with a community correction order) to 9 years and 9 months, while the median total effective imprisonment term was 4 years (meaning that half of the total effective imprisonment terms were below 4 years and half were above).

The most common total effective imprisonment term was 4 to less than 5 years (44 people).

Figure 6: The number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of total effective imprisonment term, 2012–13 to 2016–17



Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than one year, the court cannot impose a non-parole period. For terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For terms of imprisonment of 2 years or more, the court must impose a non-parole period in most circumstances. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term in custody.

Of the 162 people who were sentenced to imprisonment for trafficking in a commercial quantity of drugs, 151 were eligible to have a non-parole period fixed.²⁰ Of these people, 134 were given a non-parole period (89%).²¹ Figure 7 shows the number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs from 2012–13 to 2016–17 by length of non-parole period. Non-parole periods ranged from 5 months and 21 days to 6 years and 6 months, while the median length of the non-parole period was 2 years and 6 months (meaning that half of the non-parole periods were below 2 years and 6 months and half were above).

The most common non-parole period imposed was 2 to less than 3 years (48 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 compares the average length of total effective sentences of imprisonment with the average length of non-parole periods from 2012–13 to 2016–17.

From 2012–13 to 2016–17, the average length of total effective sentences for all people ranged from 3 years and 5 months in 2012–13 to 4 years and 5 months in 2015–16. Over the same period, the average length of non-parole periods ranged from 2 years and 1 month in 2012–13 to 3 years in 2015–16.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for trafficking in a commercial quantity of drugs is available on [SACStat](#).

Non-imprisonment sentences

Data on the length of non-imprisonment sentence types, such as community correction orders, suspended sentences and fines, for trafficking in a commercial quantity of drugs is available on [SACStat](#).

Summary

From 2012–13 to 2016–17, 173 people were sentenced in the higher courts for trafficking in a commercial quantity of drugs. Of these people, 162 (94%) were given a principal sentence of imprisonment. Both the median total effective imprisonment length and the principal imprisonment length was 4 years.

Total effective imprisonment lengths ranged from 1 month and 3 days (combined with a community correction order) to 9 years and 9 months, and non-parole periods (where imposed) ranged from 5 months and 21 days to 6 years and 6 months.

Figure 7: The number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of non-parole period, 2012–13 to 2016–17

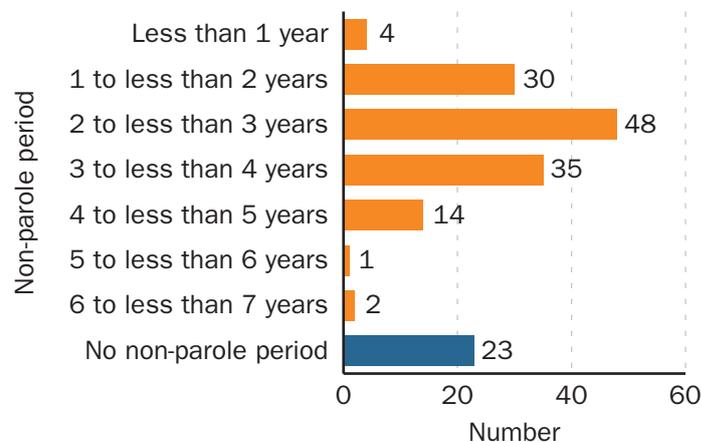
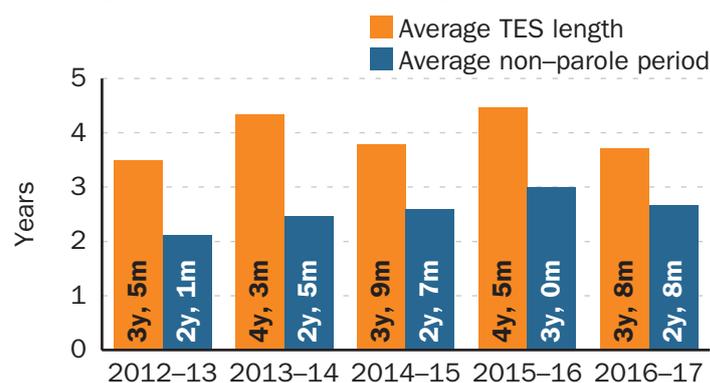


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for trafficking in a commercial quantity of drugs, 2012–13 to 2016–17



Endnotes

1. This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the accused is found to be unfit to stand trial or not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 194, which describes sentencing trends for trafficking in a commercial quantity of drugs between 2010–11 and 2014–15.
2. Data on first-instance sentencing outcomes presented in this Snapshot was obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes was collected by the Sentencing Advisory Council from the [Australasian Legal Information Institute](#), and was also provided by the Victorian Court of Appeal. The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report is accurate, the data is subject to revision.
3. In October 2017, the High Court delivered its judgment in *Director of Public Prosecutions v Dalglish (A Pseudonym)* [2017] HCA 41, in which it made two important findings about sentencing in Victoria. First, Victorian courts had been giving too much weight to *current sentencing practices*, which is just one of the factors courts are required to take into account when imposing a sentence. Second, where current sentencing practices are shown to be in error (for example, when they fail to adequately reflect community expectations) courts should change their practices immediately, not incrementally.

Although the High Court's decision occurred after the five-year period of this Snapshot ended, it may result in considerable changes to sentencing patterns for future editions of the Snapshots.
4. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 71–71AC.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
6. The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding drug trafficking offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. This involved reading the sentencing remarks of the particular cases and determining if the quantity of the drug was non-commercial, commercial or large commercial. In total, there were 576 cases that had drug trafficking (section 71, 71AA, 71AB or 71AC of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)) as the principal offence over the five-year period from 2012–13 to 2016–17. Sentencing remarks were located for 547 cases (95%). The drug quantities for all these cases were checked and coded into the appropriate category. The remaining cases had sentences that were all within the statutory maximum penalty for the offence and were therefore assumed to have been recorded correctly in the first instance.
7. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71AA.
8. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
9. See 'aggregate commercial quantity': *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
10. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the [Victorian Legislation and Parliamentary Documents website](#).
11. *Sentencing Act 1991* (Vic) ss 5(2H)–(2I).
12. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
13. An *immediate custodial sentence* includes imprisonment, imprisonment combined with a community correction order, aggregate imprisonment, aggregate imprisonment combined with a community correction order, a partially suspended sentence, and a youth justice centre order.
14. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
15. For example, initially the maximum term of imprisonment that could be combined with a community correction order was set at 3 months, but it was increased to 2 years in September 2014 and reduced to 1 year in March 2017.
16. Refer to endnote 12.
17. Data presented in this section does not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Sentence lengths for aggregate sentences of imprisonment apply to the whole case, while Figure 3 only deals with sentences of imprisonment for the principal offence of trafficking in a commercial quantity of drugs. From 2012–13 to 2016–17, 7 people received an aggregate form of imprisonment.
18. One of the 155 people who received a non-aggregate period of imprisonment was not displayed in Figure 3. In this particular case, the judge gave the offender a reduced total effective sentence and non-parole period, to account for the offender's cooperation with the authorities. However, the sentencing remarks did not include sufficient information for the reduced length of the principal sentence of imprisonment to be included in Figure 3.

19. One of the 155 people who received a non-aggregate period of imprisonment was not included in Figure 4. Refer to endnote 18.
20. A total of 11 people were not eligible to have a non-parole period fixed because they were given a total effective sentence length of less than one year.
21. Five people were not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to these cases. The non-parole periods for these people are excluded from the analysis. A non-parole period was not set for 12 people who were eligible for a non-parole period.

SACStat – Higher Courts Trafficking in a commercial quantity of drugs

https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_9719_71AA.html

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