

Sentencing trends in
the higher courts of
Victoria
2014–15 to 2018–19

April 2020
No. 241

Causing injury recklessly

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of causing injury recklessly² in the County and Supreme Courts of Victoria (the higher courts) from 2014–15 to 2018–19.³ Adjustments made by the Court of Appeal to sentence or conviction as at June 2019 have been incorporated into the data in this Snapshot.⁴

Detailed data on causing injury recklessly and other offences are available on [Sentencing Advisory Council Statistics \(SACStat\)](#).

A person who recklessly causes injury to another person without lawful excuse is guilty of this offence. Recklessness requires foresight on the part of the accused of the probability that injury will occur as a consequence of their actions. *Injury* means physical injury or harm to mental health, whether temporary or permanent. *Physical injury* includes unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function. *Harm to mental health* includes psychological harm but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm. These definitions are not exhaustive.

Causing injury recklessly is an indictable offence that carries a maximum penalty of 5 years' imprisonment and/or a fine of 600 penalty units.⁵ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Causing injury recklessly is also triable summarily by the Magistrates' Court under certain circumstances, if the Magistrates' Court considers it appropriate and the accused consents. As at March 2017, if the victim was on duty as an emergency worker, custodial officer or youth justice worker, a court sentencing this offence must impose a sentence of imprisonment or other specified custodial sentence.⁶

This Snapshot focuses on cases where causing injury recklessly was the principal offence, that is, cases where causing injury recklessly was the offence that received the most severe sentence.⁷

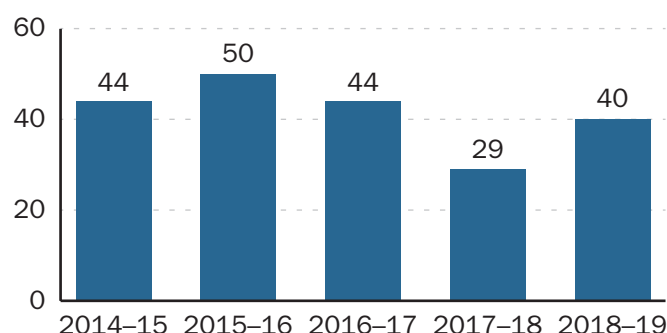
Causing injury recklessly was the principal offence in 2.3% of cases sentenced in the higher courts between 2014–15 and 2018–19.

People sentenced

From 2014–15 to 2018–19, 207 people were sentenced in the higher courts for a principal offence of causing injury recklessly.

Figure 1 shows the number of people sentenced for the principal offence of causing injury recklessly by financial year. There were 40 people sentenced for this offence in 2018–19, up by 11 people from the previous year. The number of people sentenced was highest in 2015–16 (50 people) and lowest in 2017–18 (29 people).

Figure 1: The number of people sentenced for causing injury recklessly by financial year



Sentence types and trends

Figure 2 shows the proportion of people receiving an immediate custodial sentence and non-custodial sentence for the principal offence of causing injury recklessly. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁸ Over the five-year period, 48.3% of people were given an immediate custodial sentence. The highest proportion occurred in 2017–18 (55.2%) and the lowest in 2015–16 (38.0%).

The proportion of people receiving an immediate custodial sentence in 2018–19 was 52.5%, down 2.7% from the previous year.

Table 1 shows the number of people sentenced for causing injury recklessly from 2014–15 to 2018–19 by the most serious type of sentence imposed.⁹ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.¹⁰ Changes to community correction orders have also influenced the sentencing trends over the five years covered by this Snapshot.¹¹

Over the five-year period, most people sentenced for causing injury recklessly received a principal sentence of either imprisonment (44.0% or 91 of 207 people) or a community correction order (41.5% or 86 of 207 people). The *principal sentence* is the sentence imposed for the charge that is the principal offence.

Figure 2: The percentage of people who received an immediate custodial sentence and non-custodial sentence for causing injury recklessly by financial year

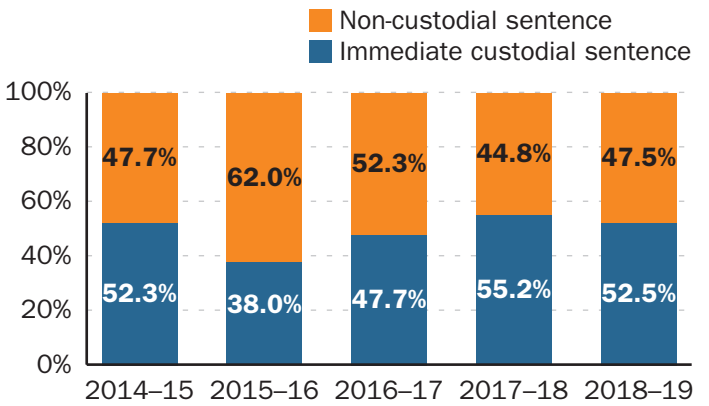


Table 1: The number and percentage of people sentenced for causing injury recklessly by most serious principal sentence type and financial year

Sentence type	2014–15	2015–16	2016–17	2017–18	2018–19	Total
Imprisonment	21 (47.7%)	16 (32.0%)	19 (43.2%)	15 (51.7%)	20 (50.0%)	91 (44.0%)
Community correction order	18 (40.9%)	25 (50.0%)	18 (40.9%)	13 (44.8%)	12 (30.0%)	86 (41.5%)
Fine	0 (0.0%)	6 (12.0%)	0 (0.0%)	0 (0.0%)	4 (10.0%)	10 (4.8%)
Youth justice centre order	1 (2.3%)	0 (0.0%)	1 (2.3%)	1 (3.4%)	1 (2.5%)	4 (1.9%)
Other	4 (9.1%)	3 (6.0%)	6 (13.6%)	0 (0.0%)	3 (7.5%)	16 (7.7%)
Total people sentenced	44	50	44	29	40	207

Principal and total effective sentences

The principal sentence describes sentences for the offence at a charge level (as described in the previous section). The total effective sentence describes sentences at a case level.

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 sometimes longer than the principal sentence. Principal sentences for causing injury recklessly must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of causing injury recklessly from 2014–15 to 2018–19.

Principal sentence of imprisonment

Table 2 shows that a total of 91 people received a principal sentence of imprisonment for causing injury recklessly. Of these, 39 people received a non-aggregate term of imprisonment and 52 people received an aggregate term. There were 41 people who received a community correction order in addition to their term of imprisonment.

Table 2: The number and percentage of people sentenced to imprisonment for causing injury recklessly by sentence type and financial year

Type of imprisonment sentence	2014–15	2015–16	2016–17	2017–18	2018–19	Total
Imprisonment	9 (42.9%)	3 (18.8%)	4 (21.1%)	4 (26.7%)	11 (55.0%)	31 (34.1%)
Imprisonment and community correction order (combined)	1 (4.8%)	2 (12.5%)	1 (5.3%)	2 (13.3%)	2 (10.0%)	8 (8.8%)
Total non-aggregate imprisonment	10 (47.6%)	5 (31.3%)	5 (26.3%)	6 (40.0%)	13 (65.0%)	39 (42.9%)
Aggregate imprisonment	4 (19.0%)	3 (18.8%)	6 (31.6%)	2 (13.3%)	4 (20.0%)	19 (20.9%)
Aggregate imprisonment and community correction order (combined)	7 (33.3%)	8 (50.0%)	8 (42.1%)	7 (46.7%)	3 (15.0%)	33 (36.3%)
Total aggregate imprisonment	11 (52.4%)	11 (68.8%)	14 (73.7%)	9 (60.0%)	7 (35.0%)	52 (57.1%)
Total people sentenced to imprisonment	21	16	19	15	20	91

Figure 3 shows the length of imprisonment for the people who received a non-aggregate term.¹² Imprisonment terms ranged from 1 month (combined with a community correction order) to 4 years, while the median length of imprisonment was 1 year and 2 months (meaning that half of the imprisonment terms were below 1 year and 2 months and half were above).

The most common range of imprisonment term lengths was 1 to less than 2 years (17 people).

As shown in Figure 4, the average length of imprisonment imposed on people sentenced for causing injury recklessly ranged from 8 months in 2015–16 to 2 years and 9 months in 2016–17. Overall, the average length of imprisonment for causing injury recklessly was 1 year and 7 months.

Other offences finalised at the same hearing

Sometimes people prosecuted for causing injury recklessly are sentenced for other offences at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of causing injury recklessly. It includes data on all people sentenced for a principal offence of causing injury recklessly, not just those who received imprisonment.

Figure 5 shows the number of people sentenced for the principal offence of causing injury recklessly by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 54, while the median was 2 offences. There were 38 people (18.4%) sentenced for the sole offence of causing injury recklessly. The average number of offences per person was 4.00.

Figure 3: The number of people sentenced to a non-aggregate term of imprisonment for causing injury recklessly by length of imprisonment term, 2014–15 to 2018–19

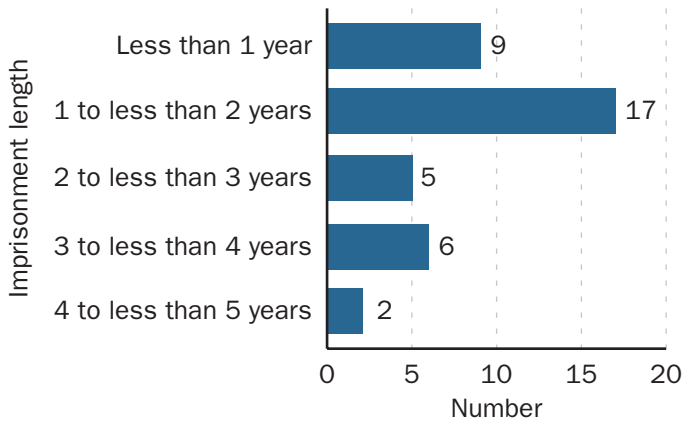


Figure 4: The average length of imprisonment imposed on people sentenced for causing injury recklessly by financial year

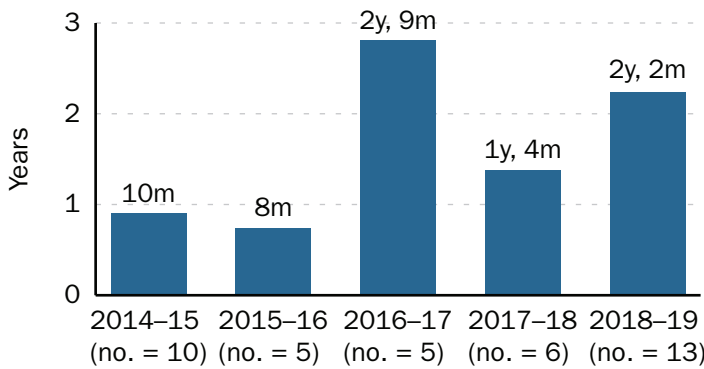


Figure 5: The number of people sentenced for the principal offence of causing injury recklessly by the number of sentenced offences per person, 2014–15 to 2018–19

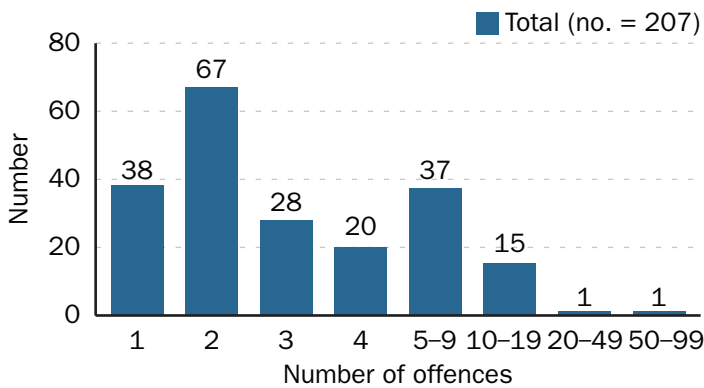


Table 3 shows the 10 most common offences, by number and percentage, co-sentenced alongside causing injury recklessly. The last column sets out the average number of offences sentenced per person. For example, 60 of the total 207 people (29.0%) also received sentences for aggravated burglary. On average, they were sentenced for one count of aggravated burglary.

Table 3: The number and percentage of people sentenced for the principal offence of causing injury recklessly by the most common offences that were sentenced and the average number of those offences that were sentenced, 2014–15 to 2018–19

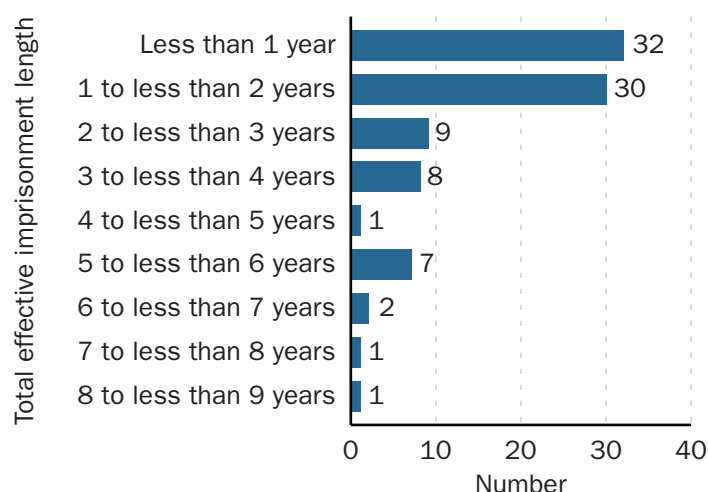
Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Recklessly cause injury	207	100.0%	1.20
2. Aggravated burglary	60	29.0%	1.00
3. Intentionally damage or destroy property	36	17.4%	1.58
4. Theft	28	13.5%	1.86
5. Common Law assault	19	9.2%	1.58
6. Commit indictable offence on bail	18	8.7%	1.39
7. Unlawful assault	16	7.7%	1.06
8. Make threat to kill	15	7.2%	1.20
9. False imprisonment	13	6.3%	1.23
10. Robbery	13	6.3%	1.15
People sentenced	207	100.0%	4.00

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for causing injury recklessly by length of total effective imprisonment term. The total effective imprisonment terms ranged from 8 days (combined with a community correction order) to 8 years, while the median total effective imprisonment term was 1 year and 3 months (meaning that half of the total effective imprisonment terms were below 1 year and 3 months and half were above).

The most common range of total effective imprisonment term lengths was less than 1 year (32 people).

Figure 6: The number of people sentenced to imprisonment for causing injury recklessly by length of total effective imprisonment term, 2014–15 to 2018–19



Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than 1 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. If the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Of the 91 people who were sentenced to imprisonment for causing injury recklessly, 32 were not eligible to have a non-parole period imposed because their total effective sentence was less than one year. Of the 59 people who were eligible to have a non-parole period fixed, 34 were given a non-parole period (57.6%).

Figure 7 shows the length of non-parole periods for people sentenced to imprisonment for causing injury recklessly. Non-parole periods ranged from 7 months to 6 years and 2 months, while the median non-parole period was 2 years (meaning that half of the non-parole periods were below 2 years and half were above).

The most common range for non-parole periods was 1 to less than 2 years (10 people); however, the most common outcome was that no non-parole period was imposed (57 people).¹³

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 34 people who were sentenced to imprisonment for causing injury recklessly and had a non-parole period applied to their sentence. Figure 8 compares the average length of total effective sentences with the average length of non-parole periods for these people by financial year.¹⁴

From 2014–15 to 2018–19, the average length of total effective sentences ranged from 1 year and 10 months in 2014–15 to 5 years and 3 months in 2016–17. Over the same period, the average length of non-parole periods ranged from 1 year and 2 months in 2014–15 to 3 years and 7 months in 2016–17.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for causing injury recklessly is available on [SACStat](#).

Figure 7: The number of people sentenced to imprisonment for causing injury recklessly by length of non-parole period, 2014–15 to 2018–19

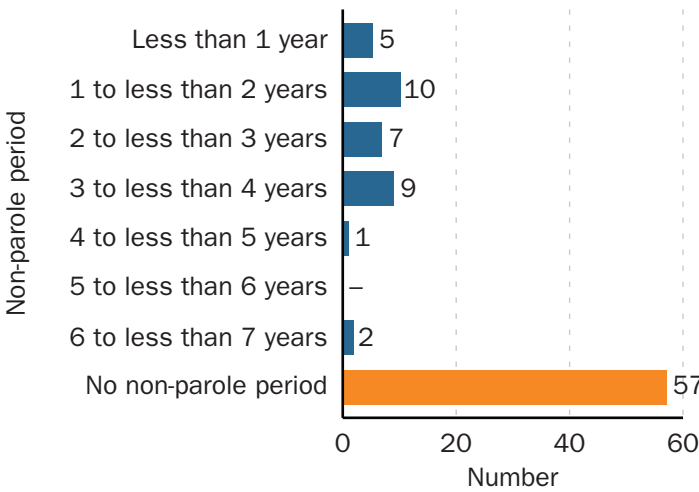
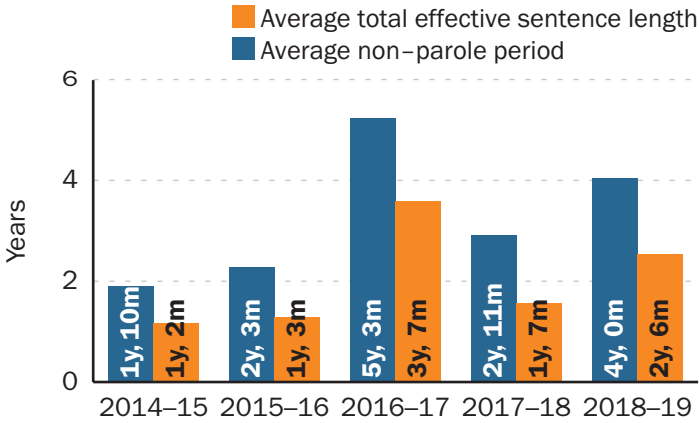


Figure 8: The average total effective sentence length and the average non-parole period for people sentenced to imprisonment with a non-parole period for causing injury recklessly by financial year



Summary

From 2014–15 to 2018–19, 207 people were sentenced for causing injury recklessly in the higher courts. Of these people, 91 (44.0%) were given a principal sentence of imprisonment.

People with a principal offence of causing injury recklessly were sometimes sentenced for other offences. The number and range of those offences help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 1 year and 3 months, while the median principal imprisonment length was 1 year and 2 months.

Total effective imprisonment lengths ranged from 8 days (combined with a community correction order) to 8 years, and non-parole periods (where imposed) ranged from 7 months to 6 years and 2 months.

Endnotes

1. In addition to sentencing outcomes, 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) and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases in which 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. 216, which describes sentencing trends for causing injury recklessly between 2012–13 and 2016–17.
2. *Crimes Act 1958* (Vic) s 18.
3. Data on first-instance sentence outcomes 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.
4. In October 2017, the High Court delivered its judgment in *Director of Public Prosecutions v Dalgliesh (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, the courts should change their practices immediately, not incrementally.

Although the High Court's decision only occurred halfway during the reference period of this Snapshot, it may result in considerable changes to sentencing patterns for cases sentenced after October 2017.
5. 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](#).
6. Section 5(2G) of the *Sentencing Act 1991* (Vic) requires a court sentencing a Category 1 offence to impose a sentence of imprisonment or other specified custodial sentence (but not imprisonment combined with a community correction order). Section 3 then defines *Category 1 offence* to include an offence against section 18 of the *Crimes Act 1958* (Vic) (causing injury recklessly) if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty. Further, unless a sentencing court finds that a special reason exists under section 10A of the *Sentencing Act 1991* (Vic), section 10AA(4) requires a court sentencing this offence to impose a sentence of imprisonment of at least 6 months if it was committed against an emergency worker on duty, custodial officer on duty or youth justice custodial worker on duty. This requirement to impose a prison sentence applies to young offenders (those aged under 21 at the time of sentencing) unless the court finds that there are reasonable prospects of rehabilitation or that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison, in which case the court may make a youth justice centre order of at least 6 months' duration instead: *Sentencing Act 1991* (Vic) s 10AA(2).
7. 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.
8. For the principal offence of causing injury recklessly, an immediate custodial sentence included imprisonment, imprisonment combined with a community correction order, a custodial supervision order, a hospital security order, a partially suspended sentence and a youth justice centre order.

9. For example, if the principal offence has a sentence that includes imprisonment combined with a community correction order, imprisonment is the most serious sentence type.
10. 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.
11. 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.
12. Data presented in this section does not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Figures 3 and 4 only report on non-aggregate sentences of imprisonment for the principal offence of causing injury recklessly.
13. The 57 people sentenced to imprisonment with no non-parole period consisted of 32 people who were not eligible to have a non-parole period imposed and 25 people who were eligible but were not given a non-parole period with their sentence.
14. Figure 8 only includes cases where the total effective sentence is an imprisonment term and a non-parole period is applied. This means cases with imprisonment combined with a community correction order (which do not receive a non-parole period) are excluded from Figure 8.

SACStat – Higher Courts Causing injury recklessly

<http://www.sentencingcouncil.vic.gov.au/sacstat/home.html>

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