

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

August 2020
No. 245

Trafficking in a large commercial quantity of drugs

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of trafficking in a large commercial quantity of drugs² 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 trafficking in a large commercial quantity of drugs and other offences is available on [Sentencing Advisory Council Statistics \(SACStat\)](#).

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.⁵

A person who prepares, manufactures, sells, exchanges, agrees to sell, offers for sale or has in their possession for sale a drug of dependence without being authorised or licensed to do so is guilty of trafficking in a drug of dependence.⁶ 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.⁷

This report examines the offence of trafficking in a large commercial quantity of a drug (or drugs) of dependence to an adult.⁸ The amount of the drug that constitutes a large commercial quantity depends on the type of drug involved.⁹ Different types of drugs can be combined in order to achieve a large commercial quantity.¹⁰

Trafficking in a large commercial quantity of drugs is an indictable offence that carries a maximum penalty of life imprisonment and/or a fine of up to 5,000 penalty units.¹¹ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Trafficking in a large commercial quantity of drugs is a Category 1 offence, which means that a court must impose a custodial sentence for that offence.¹² Classification as a Category 1 offence would have applied to any charges of this offence *committed* on or after 20 March 2017. Trafficking in a large commercial quantity of drugs is also a standard sentence offence. This means that courts must take into account that parliament considers a prison sentence of 16 years to represent the middle of the range of objective seriousness for this offence.¹³ Classification as a standard sentence offence would have applied to any charges of this offence *committed* on or after 1 February 2018.

This Snapshot focuses on cases where trafficking in a large commercial quantity of drugs was the principal offence, that is, cases where trafficking in a large commercial quantity of drugs was the offence that received the most severe sentence.¹⁴

Trafficking in a large commercial quantity of drugs was the principal offence in 0.8% of cases sentenced in the higher courts between 2014–15 and 2018–19.

People sentenced

From 2014–15 to 2018–19, 74 people were sentenced in the higher courts for a principal offence of trafficking in a large commercial quantity of drugs.

Figure 1 shows the number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by financial year. There were 17 people sentenced for this offence in 2018–19, up by 7 people from the previous year. The number of people sentenced was highest in 2015–16 (25 people) and lowest in both 2016–17 and 2017–18 (10 people).

Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence and non-custodial sentence for the principal offence of trafficking in a large commercial quantity of drugs.

An immediate custodial sentence involves at least some element of immediate imprisonment or detention.¹⁵ Over the five-year period, 100% of people were given an immediate custodial sentence.

Table 1 shows the number of people sentenced for trafficking in a large commercial quantity of drugs from 2014–15 to 2018–19 by the most serious type of sentence imposed.¹⁶ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.¹⁷

Over the five-year period, all people sentenced for trafficking in a large commercial quantity of drugs received a principal sentence of imprisonment (100% or 74 of 74 people). The *principal sentence* is the sentence imposed for the charge that is the principal offence.

Table 1: The number and percentage of people sentenced for trafficking in a large commercial quantity of drugs by most serious principal sentence type and financial year

Sentence type	2014–15	2015–16	2016–17	2017–18	2018–19	Total
Imprisonment	12 (100.0%)	25 (100.0%)	10 (100.0%)	10 (100.0%)	17 (100.0%)	74 (100.0%)
Total people sentenced	12	25	10	10	17	74

Figure 1: The number of people sentenced for trafficking in a large commercial quantity of drugs by financial year

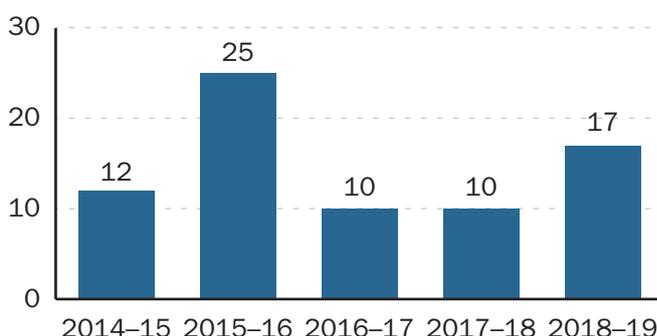
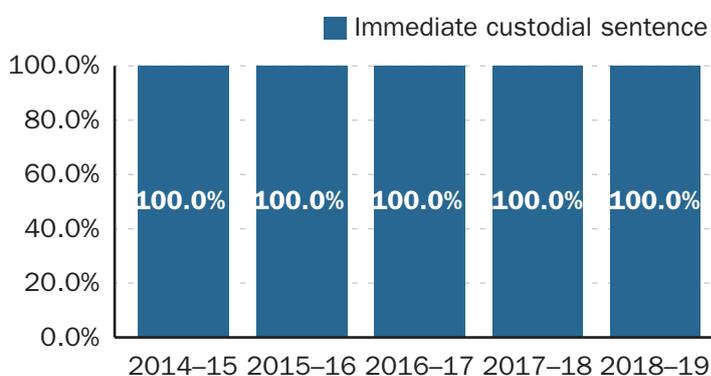


Figure 2: The percentage of people who received an immediate custodial sentence and non-custodial sentence for trafficking in a large commercial quantity of drugs by financial year



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 trafficking in a large 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 large commercial quantity of drugs from 2014–15 to 2018–19.

Principal sentence of imprisonment

Table 2 shows that a total of 74 people received a principal sentence of imprisonment for trafficking in a large commercial quantity of drugs. Of these, 73 people received a non-aggregate term of imprisonment and 1 person received an aggregate term.

Table 2: The number and percentage of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by sentence type and financial year

Type of imprisonment sentence	2014–15	2015–16	2016–17	2017–18	2018–19	Total
Imprisonment	11 (91.7%)	25 (100.0%)	10 (100.0%)	10 (100.0%)	17 (100.0%)	73 (98.6%)
Aggregate imprisonment	1 (8.3%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.4%)
Total people sentenced to imprisonment	12	25	10	10	17	74

Figure 3 shows the length of imprisonment for the 73 people who received a non-aggregate term.¹⁸ Imprisonment terms ranged from 4 years to 15 years, while the median length of imprisonment was 7 years (meaning that half of the imprisonment terms were below 7 years and half were above).

The most common range of imprisonment term lengths was 7 to less than 8 years (16 people).

As shown in Figure 4, the average length of imprisonment imposed on people sentenced for trafficking in a large commercial quantity of drugs ranged from 6 years and 7 months in 2016–17 to 8 years and 4 months in 2015–16 and 2018–19. Over the five years, the average length of imprisonment for trafficking in a large commercial quantity of drugs was 8 years and 1 month.

Other offences finalised at the same hearing

Sometimes people prosecuted for trafficking in a large commercial quantity of drugs face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of trafficking in a large commercial quantity of drugs.

Figure 5 shows the number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 28, while the median was 3 offences. There were 18 people (24.3%) sentenced for the single offence of trafficking in a large commercial quantity of drugs. The average number of offences per person was 4.59.

Table 3 (page 5) shows the 10 most common offences, by number and percentage, for people sentenced for trafficking in a large commercial quantity of drugs. The last column sets out the average number of offences sentenced per person. For example, 24 of the total 74 people (32.4%) also received sentences for trafficking in a non-commercial quantity of a drug of dependence. On average, they were sentenced for 1.83 counts of trafficking in a non-commercial quantity of a drug of dependence.

Figure 3: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of imprisonment term, 2014–15 to 2018–19

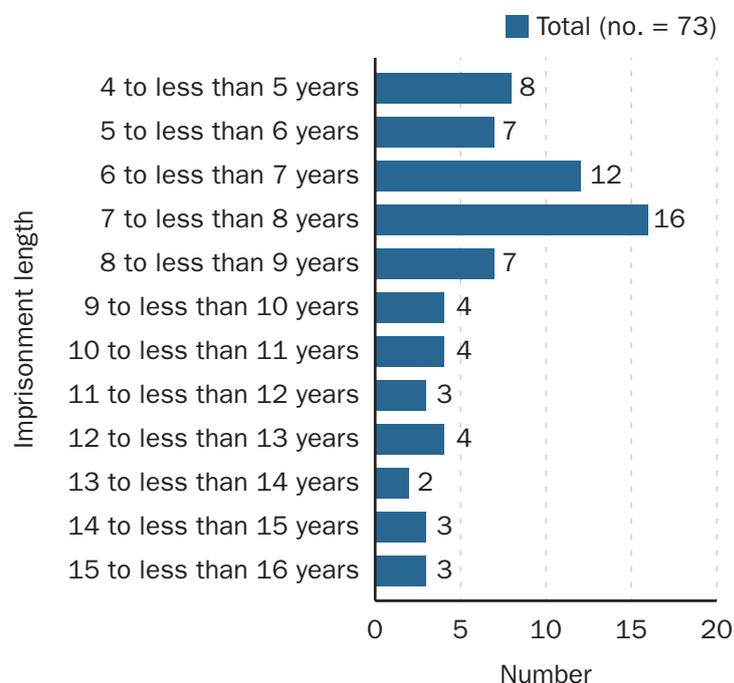


Figure 4: The average length of imprisonment imposed on people sentenced for trafficking in a large commercial quantity of drugs by financial year

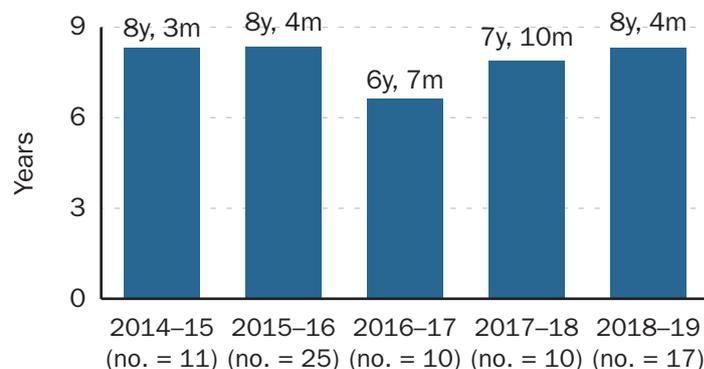


Figure 5: The number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by the number of sentenced offences per person, 2014–15 to 2018–19

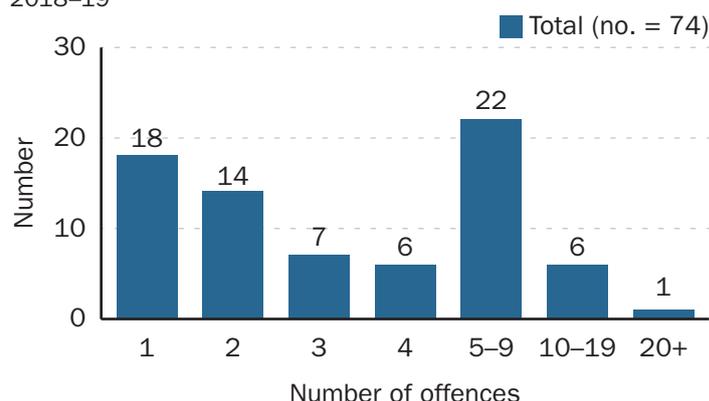


Table 3: The number and percentage of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by the most common offences that were sentenced and the average number of those offences that were sentenced, 2014–15 to 2018–19

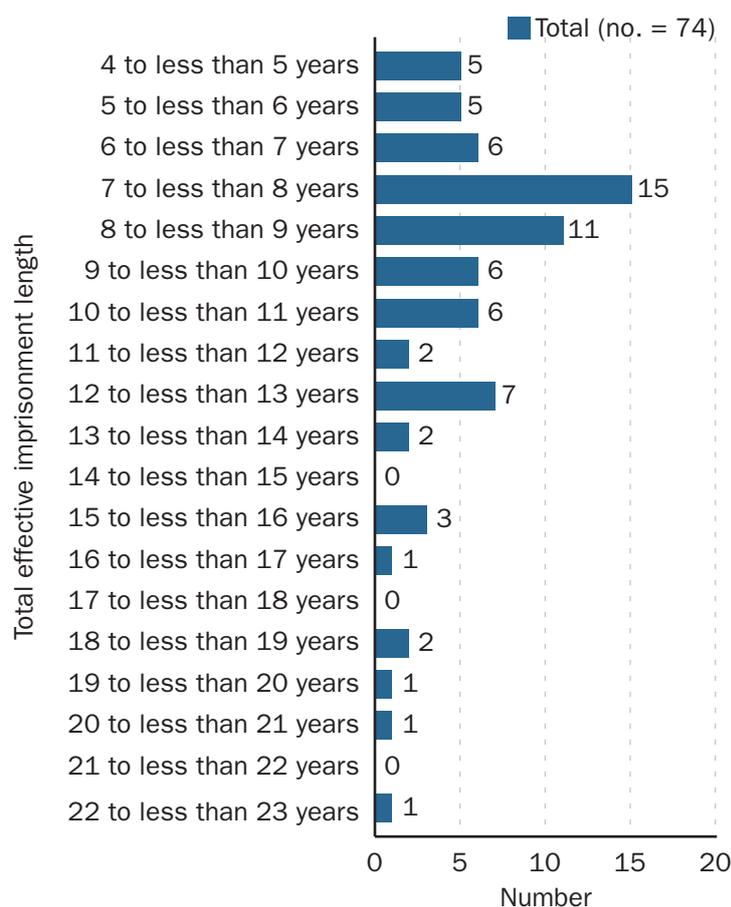
Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Trafficking in a large commercial quantity of a drug of dependence	74	100.0%	1.14
2. Trafficking in a non-commercial quantity of a drug of dependence	24	32.4%	1.83
3. Possess a drug of dependence	23	31.1%	1.48
4. Trafficking in a commercial quantity of a drug of dependence	14	18.9%	1
5. Dealing with property suspected of being proceeds of crime	11	14.9%	1.36
6. Possess cartridge ammunition without licence or permit	10	13.5%	1
7. Possess, carry or use a prohibited weapon (other than an imitation firearm)	9	12.2%	1.33
8. Possess, carry or use an unregistered handgun by non-prohibited person	7	9.5%	1
9. Possess precursor chemical	6	8.1%	1.67
10. Knowingly deal with proceeds of crime	6	8.1%	1
People sentenced	74	100.0%	4.59

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of total effective imprisonment term. The total effective imprisonment terms ranged from 4 years to 22 years, while the median total effective imprisonment term was 8 years, 1 month and 15 days (meaning that half of the total effective imprisonment terms were below 8 years, 1 month and 15 days and half were above).

The most common range of total effective imprisonment terms was 7 to less than 8 years (15 people).

Figure 6: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs 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.

All 74 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs were eligible for parole. All 74 of these people were given a non-parole period (100%).

Figure 7 shows the number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs, by length of non-parole period. Non-parole periods ranged from 1 year to 16 years, while the median non-parole period was 5 years, 4 months and 15 days (meaning that half of the non-parole periods were below 5 years, 4 months and 15 days and half were above).

The most common range for non-parole periods was 5 to less than 6 years (17 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 74 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs. Figure 8 compares the average length of total effective sentences with the average length of non-parole periods for these people by financial year.¹⁹

From 2014–15 to 2018–19, the average length of total effective sentences for all people ranged from 8 years and 2 months in 2016–17 to 10 years and 5 months in 2018–19. Over the same period, the average length of non-parole periods ranged from 5 years and 2 months in 2016–17 to 7 years and 4 months in 2017–18.

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

Figure 7: The number of people sentenced to imprisonment for trafficking in a large commercial quantity of drugs by length of non-parole period, 2014–15 to 2018–19

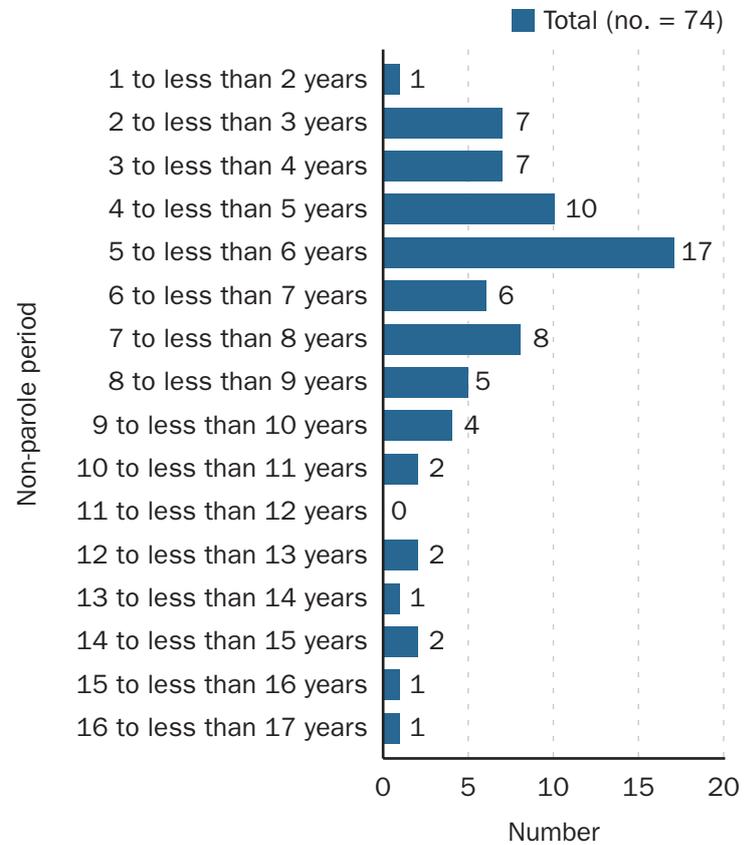
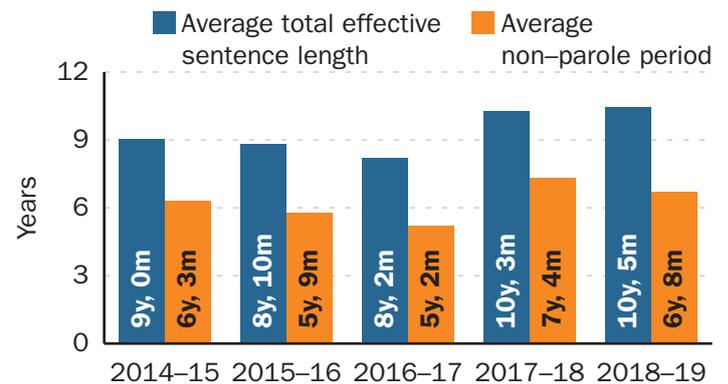


Figure 8: The average total effective sentence length and the average non-parole period for people sentenced to imprisonment with a non-parole period for trafficking in a large commercial quantity of drugs by financial year



Summary

From 2014–15 to 2018–19, 74 people were sentenced for trafficking in a large commercial quantity of drugs in the higher courts. Of these people, 74 (100%) were given a principal sentence of imprisonment.

The number and range of offences for which people with a principal offence of trafficking in a large commercial quantity of drugs were sentenced 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 8 years, 1 month and 15 days, while the median principal imprisonment length was 7 years.

Total effective imprisonment lengths ranged from 4 years to 22 years, and non-parole periods ranged from 1 year to 16 years.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 220, which describes sentencing trends for trafficking in a large commercial quantity of drugs between 2012–13 and 2016–17.
2. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71.
3. Data on first-instance sentence 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.
4. In June 2017, the Court of Appeal held that there was a need to uplift sentencing practices for trafficking in both a commercial and a large commercial quantity of drugs: *Gregory (A Pseudonym) v The Queen* [2017] VSCA 151. Further, in October 2017, the High Court held that where current sentencing practices are shown to be inadequate, the courts should change their practices immediately, not incrementally: *Dalgliesh (A Pseudonym) v The Queen* [2017] HCA 41. Although both of these judgments occurred partway through the reference period in this Snapshot, they may have resulted in considerable changes to sentencing practices for cases sentenced subsequently.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 71–71AC.
6. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
7. 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 commercial, commercial or large commercial. In total, there were 579 cases that had drug trafficking (*Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 71, 71AA, 71AB or 71AC) as the principal offence over the five-year period from 2014–15 to 2018–19. Sentencing remarks were located for 531 cases (91.7%). 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.
8. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71 (for trafficking in a drug of dependence to a child, see *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71AB)).
9. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70.
10. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70 (definition of *aggregated commercial quantity*).
11. 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.
12. *Sentencing Act 1991* (Vic) ss 3(j) (definition of *category 1 offence*), 5(2G).
13. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71(2); *Sentencing Act 1991* (Vic) s 5(2)(ab).
14. 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.
15. For the principal offence of trafficking in a large commercial quantity of drugs, an immediate custodial sentence included imprisonment and aggregate imprisonment.

16. 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.
17. 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.
18. 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 trafficking in a large commercial quantity of drugs.
19. Figure 8 only includes cases where the total effective sentence is an imprisonment term and a non-parole period is applied.

SACStat – Higher Courts Trafficking in a large commercial quantity of drugs

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

Authored by Dugan Dallimore, Paul Schollum and Dennis Byles, Sentencing Advisory Council.

Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

© Copyright State of Victoria, Sentencing Advisory Council, 2020

ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne.

Disclaimer:

The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots are accurate at the time of publishing.