

Sentencing trends in
the higher courts of
Victoria
2016–17 to 2020–21

April 2022
No. 268

**Trafficking in a commercial quantity
of drugs**

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of trafficking in a commercial quantity of drugs² in the County and Supreme Courts of Victoria (the higher courts) from 2016–17 to 2020–21.³ Adjustments made by the Court of Appeal to sentence or conviction as at June 2021 have been incorporated into the data in this Snapshot.⁴

Detailed data on trafficking in a 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 This Snapshot examines the offence of trafficking in a *commercial quantity* of drugs. The amount of the drug that constitutes a commercial quantity depends on the type of drug involved.⁶

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.⁷ If the offence was committed on or after 20 March 2017, it is a Category 2 offence, meaning courts must impose a custodial sentence except in particular circumstances.⁸

This Snapshot focuses on cases where trafficking in a commercial quantity of drugs was the principal offence, that is, cases where trafficking in a commercial quantity of drugs was the offence that received the most severe sentence.⁹

Trafficking in a commercial quantity of drugs was the principal offence in 2.6% of cases sentenced in the higher courts between 2016–17 and 2020–21.

Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic. For instance:

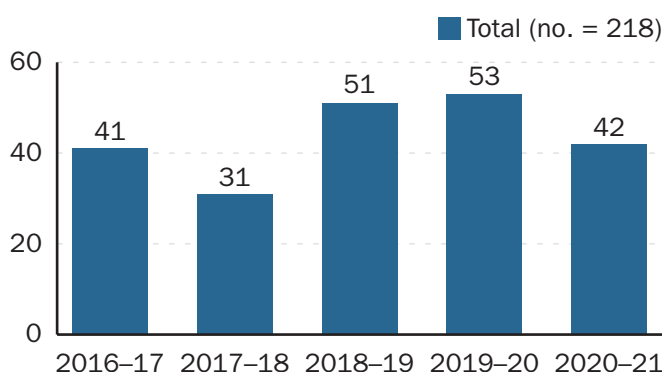
- the number of people sentenced since March 2020 may be lower than in previous years because the pandemic caused delays in court proceedings;
- court backlogs may have led to prioritisation of more serious cases and therefore higher imprisonment rates than in previous years;
- prison sentences may be shorter than in previous years to reflect the combined effect of:
 - a. guilty pleas having an 'augmented mitigatory effect' (*Worboyes v The Queen* [2021] VSCA 169) because they help to relieve the strain on the justice system; and
 - b. the experience of prison being more burdensome due to increased stress on prisoners and their families and changes in custodial conditions.

People sentenced

From 2016–17 to 2020–21, 218 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. The number of people sentenced was highest in 2019–20 (53 people) and lowest in 2017–18 (31 people).

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



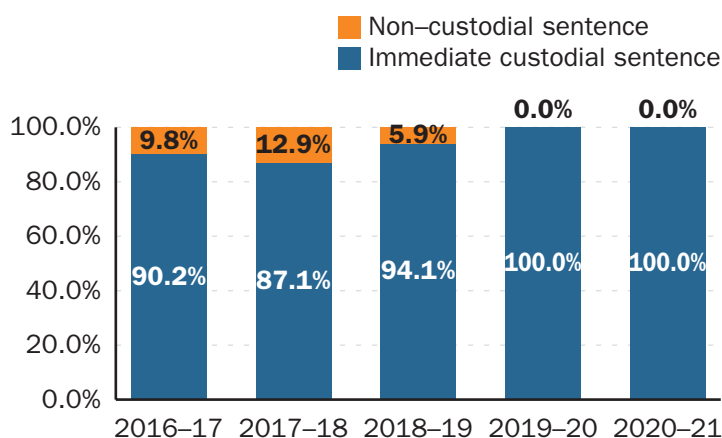
Sentence types and trends

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

A *custodial sentence* involves at least some element of immediate imprisonment or detention.¹⁰ The rate of custodial sentences was lowest in 2017–18 (87.1%) and highest in 2019–20 and 2020–21 (100.0%). Over the five-year period, 95.0% of people were given a custodial sentence.

Table 1 shows the principal sentence imposed for the principal offence of trafficking in a commercial quantity of drugs from 2016–17 to 2020–21.¹¹ The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.¹² The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished for offences committed after a certain date.¹³ Changes to community correction orders may have also influenced sentencing trends over the five years covered by this Snapshot.¹⁴

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



Over the five-year period, the majority of people sentenced for trafficking in a commercial quantity of drugs as the principal offence received a principal sentence of imprisonment (95.0% or 207 of 218 people). The rate of imprisonment sentences was highest in 2019–20 and 2020–21 (100.0%) and lowest in 2017–18 (87.1%).

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

| Sentence type | 2016–17 | 2017–18 | 2018–19 | 2019–20 | 2020–21 | Total (2016–17 to 2020–21) |
|-------------------------------|------------|------------|------------|-------------|-------------|----------------------------|
| Imprisonment | 37 (90.2%) | 27 (87.1%) | 48 (94.1%) | 53 (100.0%) | 42 (100.0%) | 207 (95.0%) |
| Community correction order | 4 (9.8%) | 4 (12.9%) | 3 (5.9%) | 0 (0.0%) | 0 (0.0%) | 11 (5.0%) |
| Total people sentenced | 41 | 31 | 51 | 53 | 42 | 218 |

Principal and total effective sentences of imprisonment

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

Therefore, 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 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 2016–17 to 2020–21.

Principal sentence of imprisonment

Table 2 shows that a total of 207 people received a principal sentence of imprisonment for trafficking in a commercial quantity of drugs. Of these, 191 (92.3%) received a non-aggregate term of imprisonment and 16 (7.7%) received an aggregate term.¹⁵ There were 24 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 trafficking in a commercial quantity of drugs by sentence type and financial year

| Type of imprisonment sentence | 2016–17 | 2017–18 | 2018–19 | 2019–20 | 2020–21 | Total (2016–17 to 2020–21) |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|----------------------------|
| Imprisonment | 27 (73.0%) | 21 (77.8%) | 43 (89.6%) | 47 (88.7%) | 36 (85.7%) | 174 (84.1%) |
| Mix (imprisonment and community correction order) | 5 (13.5%) | 5 (18.5%) | 2 (4.2%) | 4 (7.5%) | 1 (2.4%) | 17 (8.2%) |
| Total non-aggregate imprisonment | 32 (86.5%) | 26 (96.3%) | 45 (93.8%) | 51 (96.2%) | 37 (88.1%) | 191 (92.3%) |
| Aggregate imprisonment | 2 (5.4%) | 1 (3.7%) | 3 (6.3%) | 1 (1.9%) | 2 (4.8%) | 9 (4.3%) |
| Mix (aggregate imprisonment and community correction order) | 3 (8.1%) | 0 (0.0%) | 0 (0.0%) | 1 (1.9%) | 3 (7.1%) | 7 (3.4%) |
| Total aggregate imprisonment | 5 (13.5%) | 1 (3.7%) | 3 (6.3%) | 2 (3.8%) | 5 (11.9%) | 16 (7.7%) |
| Total people sentenced to imprisonment | 37 | 27 | 48 | 53 | 42 | 207 |

Figure 3 shows the length of imprisonment for the 191 people who received a non-aggregate term. Imprisonment terms ranged from 1 month to 15 years and 10 months,¹⁶ while the median length of imprisonment was 4 years (meaning that half of the imprisonment terms were below 4 years and half were above).

The most common ranges of imprisonment terms were 3 to less than 4 years and 4 to less than 5 years (51 people each).

Figure 4 shows the average length of imprisonment imposed on people sentenced for trafficking in a commercial quantity of drugs. The average imprisonment term ranged from 3 years and 2 months in 2017–18 to 4 years and 10 months in 2019–20. Over the five years, the average length of imprisonment for trafficking in a commercial quantity of drugs was 4 years and 1 month.

Other offences finalised at the same hearing

Sometimes 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 that offenders were sentenced for alongside the principal offence of trafficking in a commercial quantity of drugs.

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 sentenced offences per person. The number of sentenced offences per person ranged from 1 to 23, and the median was 5 offences. There were 22 people (10.1%) sentenced for the single offence of trafficking in a commercial quantity of drugs. The average number of offences per person was 5.9.

Table 3 (page 6) shows the 10 most common offences, by number and percentage, for people sentenced for trafficking in a commercial quantity of drugs. The last column sets out the average number of offences sentenced per person. For example, 108 of the total 217 people (49.8%) were also sentenced for possess a drug of dependence. On average, they were sentenced for 2 charges of possess a drug of dependence.

Figure 3: The number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of imprisonment term, 2016–17 to 2020–21

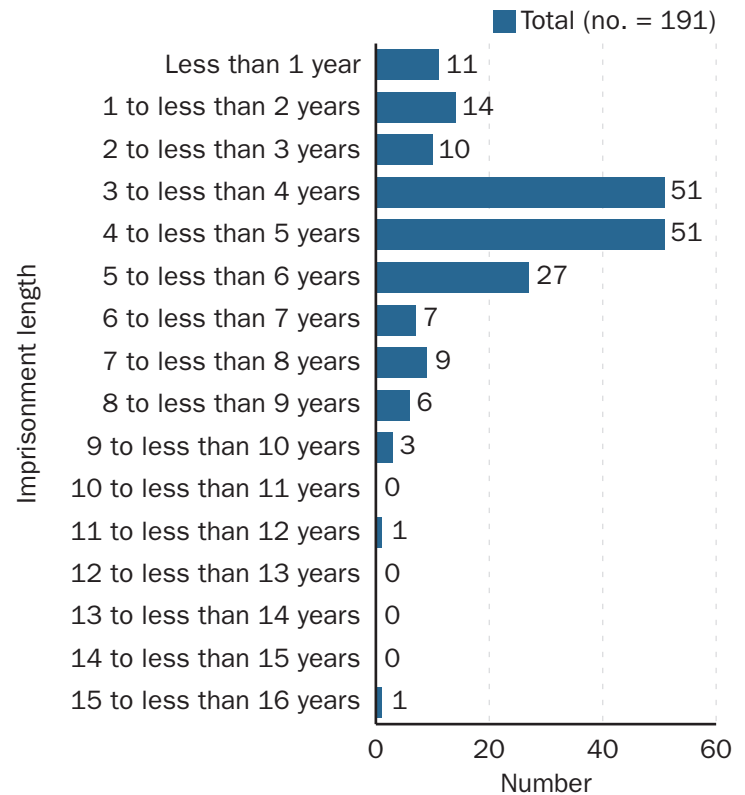


Figure 4: The average length of imprisonment imposed on people sentenced for trafficking in a commercial quantity of drugs, by financial year

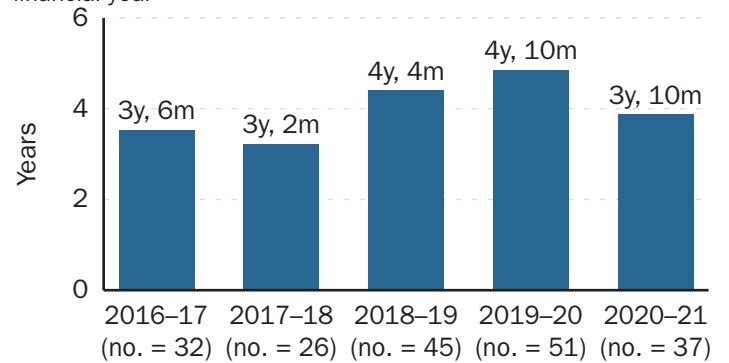


Figure 5: The number of people sentenced for the principal offence of trafficking in a commercial quantity of drugs by the number of sentenced offences per person, 2016–17 to 2020–21

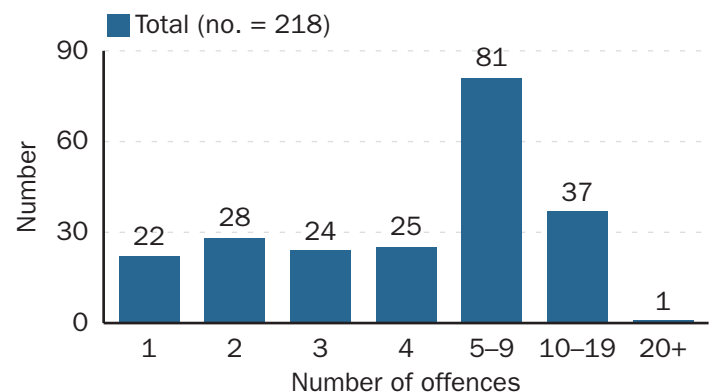


Table 3: The number and percentage of people sentenced for the principal offence of trafficking in a commercial quantity of drugs by the most common offences that were sentenced and the average number of those offences that were sentenced, 2016–17 to 2020–21

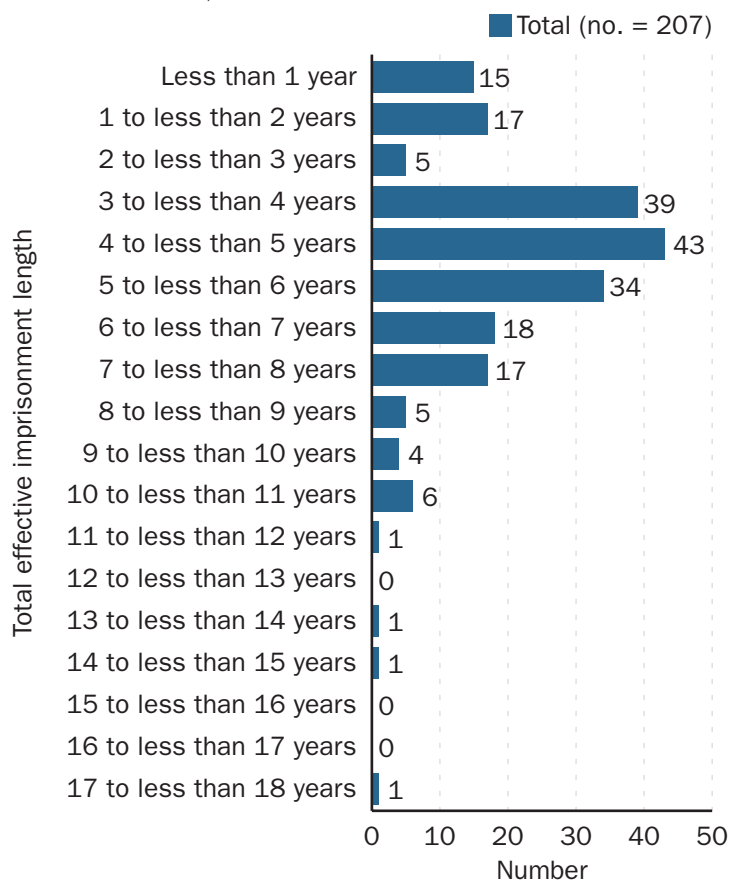
| Offence | Number of cases | Percentage of cases | Average number of proven offences per case |
|---|-----------------|---------------------|--|
| 1. Trafficking in a commercial quantity of drugs | 217 | 100.0% | 1.1 |
| 2. Possess a drug of dependence | 108 | 49.8% | 2.0 |
| 3. Trafficking in a non-commercial quantity of drugs | 103 | 47.5% | 1.8 |
| 4. Dealing with property suspected of being proceeds of crime | 78 | 35.9% | 1.2 |
| 5. Possess, carry or use a prohibited weapon | 51 | 23.4% | 1.3 |
| 6. Commit an indictable offence while on bail | 38 | 17.5% | 1.2 |
| 7. Possess cartridge ammunition without licence or permit | 34 | 15.7% | 1.0 |
| 8. Negligently deal with proceeds of crime | 32 | 14.7% | 1.3 |
| 9. Handling stolen goods | 22 | 10.1% | 1.3 |
| 10. Prohibited person possess a firearm | 21 | 9.7% | 1.6 |
| People sentenced | 217 | 100.0% | 5.9 |

Total effective imprisonment terms

Figure 6 shows the 207 people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of their total effective sentence. Total effective sentences ranged from 1 month to 17 years and 10 months, while the median total effective sentence was 4 years and 7 months (meaning that half of the total effective sentences were below 4 years and 7 months and half were above).

The most common range of total effective sentences was 4 to less than 5 years (43 people).

Figure 6: The number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of total effective sentence, 2016–17 to 2020–21



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 207 people sentenced to imprisonment for trafficking in a commercial quantity of drugs, 192 were eligible to have a non-parole period fixed. Of these people, 177 were given a non-parole period (92.2%).¹⁷

Figure 7 shows the number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs, by length of non-parole period. Non-parole periods ranged from 9 months to 12 years and 10 months, while the median non-parole period was 3 years (meaning that half of the non-parole periods were below 3 years half were above).

The most common range of non-parole periods was 2 to less than 3 years (57 people).

Note that it was not possible to determine the length of the non-parole period for 1 person.¹⁸

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 176 people who were sentenced to imprisonment for trafficking in a commercial quantity of drugs and for whom the non-parole period could be determined. It shows the average total effective sentence and average non-parole period for these people by financial year.

From 2016–17 to 2020–21, the average total effective sentence ranged from 4 years and 8 months in 2016–17 to 5 years and 11 months in 2019–20. Over the same period, the average non-parole period ranged from 2 years and 8 months in 2016–17 to 3 years and 8 months in 2019–20.

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](#).

Figure 7: The number of people sentenced to imprisonment for trafficking in a commercial quantity of drugs by length of non-parole period, 2016–17 to 2020–21

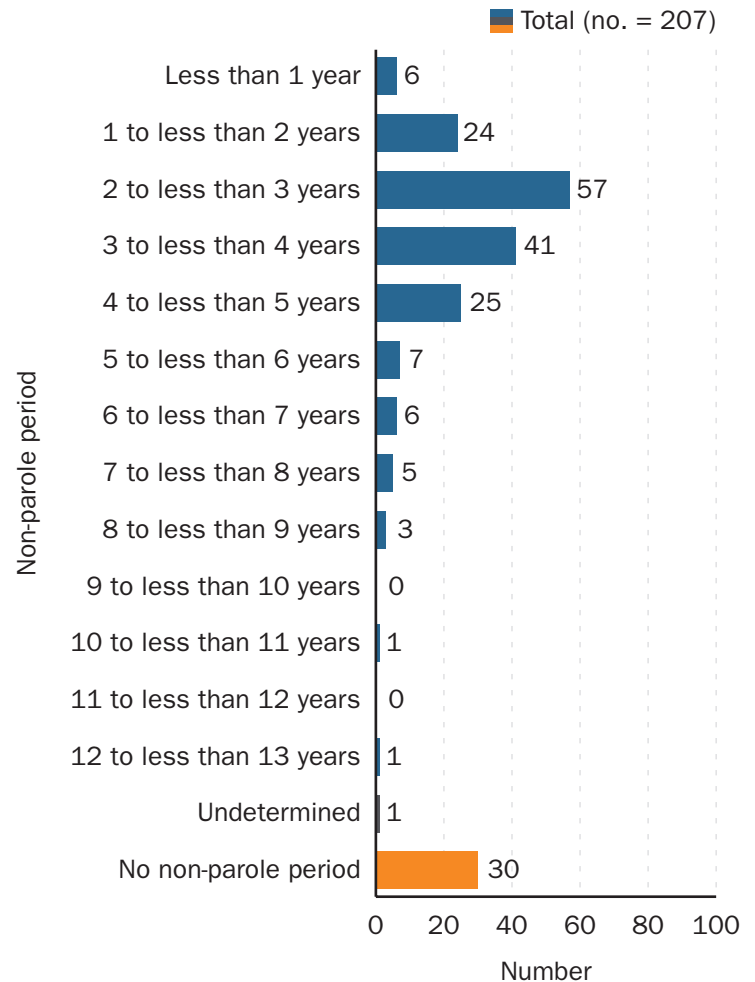
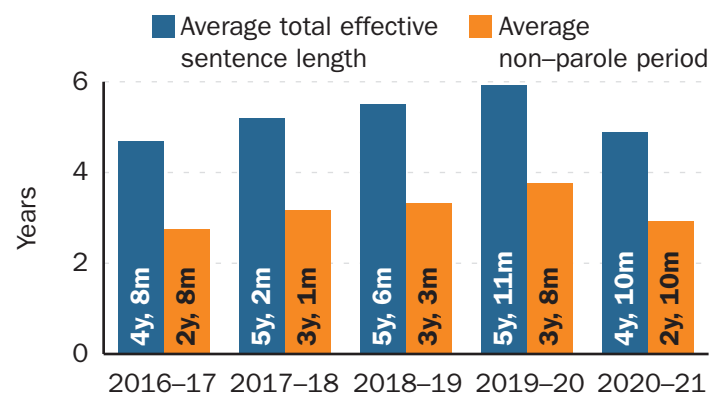


Figure 8: The average total effective sentence and the average non-parole period for people sentenced to imprisonment with a non-parole period for trafficking in a commercial quantity of drugs by financial year



Summary

From 2016–17 to 2020–21, 218 people were sentenced for trafficking in a commercial quantity of drugs in the higher courts. Of these people, 207 (95.0%) were given a principal sentence of imprisonment.

The median principal imprisonment length was 4 years, and the median total effective sentence was 4 years and 7 months.

Total effective sentences ranged from 1 month to 17 years and 10 months, and non-parole periods ranged from 9 months to 12 years and 10 months.

On average, people sentenced for trafficking in a commercial quantity of drugs were found guilty of 5.9 offences each, with a maximum of 23 offences.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 244, which describes sentencing trends for trafficking in a commercial quantity of drugs between 2014–15 and 2018–19.
2. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71AA.
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 Snapshot 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. This 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 (definition of *commercial quantity*).
7. The value of a penalty unit changes each year and can be found in the [Victorian Government Gazette](#) and on the [Victorian legislation website](#).
8. *Sentencing Act 1991* (Vic) ss 5(2H)–(2I).
9. 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.
10. Custodial sentences are mostly imprisonment but can also include partially suspended sentences, youth justice centre orders, hospital security orders, residential treatment orders, custodial supervision orders, and combined custody and treatment orders.
11. Principal sentence types can include 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 outcomes and in the count of people sentenced. These are not sentencing orders as they are imposed in cases in which the accused is found unfit to stand trial or not guilty because of mental impairment. However, they are included in this Snapshot as they are an important form of disposition of criminal charges.
12. For example, if the principal offence receives a combined order of imprisonment and a community correction order pursuant to section 44 of the *Sentencing Act 1991* (Vic), imprisonment is recorded as the most serious sentence type.
13. 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.
14. 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.
15. A court may impose an *aggregate* sentence of imprisonment on multiple charges sentenced at the same time. These sentences are a single term of imprisonment in which the parts of the term attributable to the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.

16. One person received 15 years and 10 months imprisonment: *DPP v Obian* [2020] VCC 915.
17. Fifteen people were eligible to have a non-parole period fixed but did not receive one. This included 13 people who had a sentence length between 1 year and less than 2 years, and 2 people who had a sentence of 2 years or more.
18. One person was given a non-parole period that related to more than one case (for example, they may have already been serving a prison sentence at the time). It was not possible to separately determine the non-parole periods that related to each individual case.

SACStat Trafficking in a commercial quantity of drugs

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

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

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ISSN 1836-6384 (Online)

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

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