

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

April 2022
No. 269

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 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.

Detailed data on trafficking in a large commercial quantity of drugs and other offences are 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 non-commercial quantities of drugs.⁴ This Snapshot examines the offence of trafficking in a *large commercial quantity* of drugs.⁵ The amount of the drug that constitutes a large commercial quantity depends on the type of drug involved.⁶

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.⁷ Trafficking in a large commercial quantity of drugs is a Category 1 offence if it was committed on or after 20 March 2017. For this offence, this classification means that courts must always impose a custodial sentence.⁸ Trafficking in a large commercial quantity of drugs is also a standard sentence offence if it was committed on or after 1 February 2018.⁹ This means that courts must take into account that a prison sentence of 16 years represents the middle of the range of objective seriousness for this offence.

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.¹⁰

Trafficking in a large commercial quantity of drugs was the principal offence in 0.9% 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, 76 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. The total number of people sentenced was lowest in 2016–17 and 2017–18 (9 people in each year) and highest in 2019–20 (29 people). Standard sentences were applicable in 10 out of 29 cases in 2019–20 and all 12 cases in 2020–21.

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.¹¹ Over the five-year period, 100% of people were given an immediate custodial sentence.

Table 1 shows the principal sentence received by people sentenced for trafficking in a large commercial quantity of drugs from 2016–17 to 2020–21.¹² The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.¹³ 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 76 of 76 people).

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

Sentence type	2016–17	2017–18	2018–19	2019–20	2020–21	Total (2016–17 to 2020–21)
Non-standard sentence						
Imprisonment	9 (100.0%)	9 (100.0%)	17 (100.0%)	19 (65.5%)	0 (0.0%)	54 (71.1%)
Standard sentence						
Imprisonment	0 (0.0%)	0 (0.0%)	0 (0.0%)	10 (34.5%)	12 (100.0%)	22 (28.9%)
Total people sentenced	9	9	17	29	12	76

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

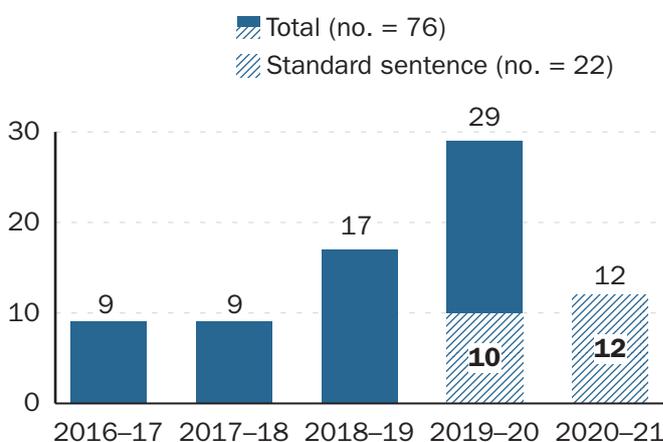
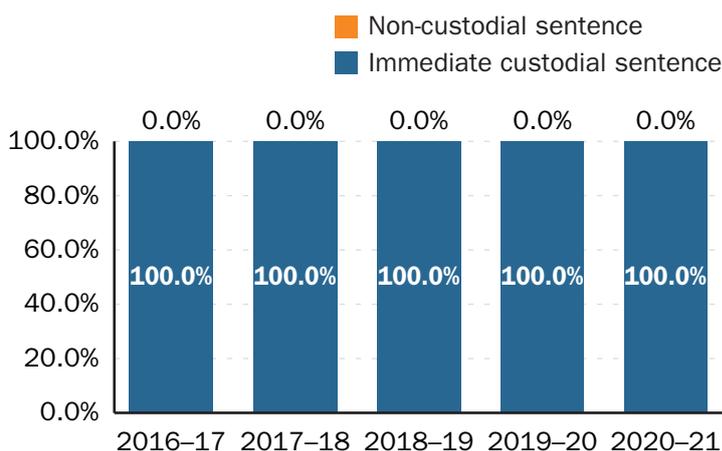


Figure 2: The percentage of people who received an immediate custodial sentence and non-custodial sentence for trafficking in a large commercial quantity of drugs by financial year



Principal and total effective sentences 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 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 2016–17 to 2020–21.

Principal sentence of imprisonment

All 76 people who received a principal sentence of imprisonment received a *non-aggregate* term of imprisonment. None of these were combined orders of imprisonment and a community correction order. The length of imprisonment for these people is shown below in Figure 3. Imprisonment terms ranged from 4 years to 15 years,¹⁴ while the median length of imprisonment was 9 years (meaning that half of the imprisonment terms were below 9 years and half were above).

The most common range of imprisonment term lengths was 9 to less than 10 years (13 people).

As shown in Figure 4, the average length of imprisonment imposed on people sentenced for trafficking in a large commercial quantity of drugs increased from 7 years in 2016–17 to 10 years and 2 months in 2020–21.¹⁵ Overall, the average length of imprisonment for trafficking in a large commercial quantity of drugs was 8 years and 10 months. The average length of imprisonment when trafficking in a large commercial quantity of drugs was a standard sentence offence was 10 years.

The lengths of imprisonment imposed when trafficking in a large commercial quantity of drugs was a standard sentence offence are presented separately because courts sentencing standard sentence offences ‘must only have regard to sentences previously imposed for the offence as a standard sentence offence’.¹⁶ Courts sentencing non-standard sentence offences must have regard to sentences imposed when the offence both was and was not a standard sentence offence.

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

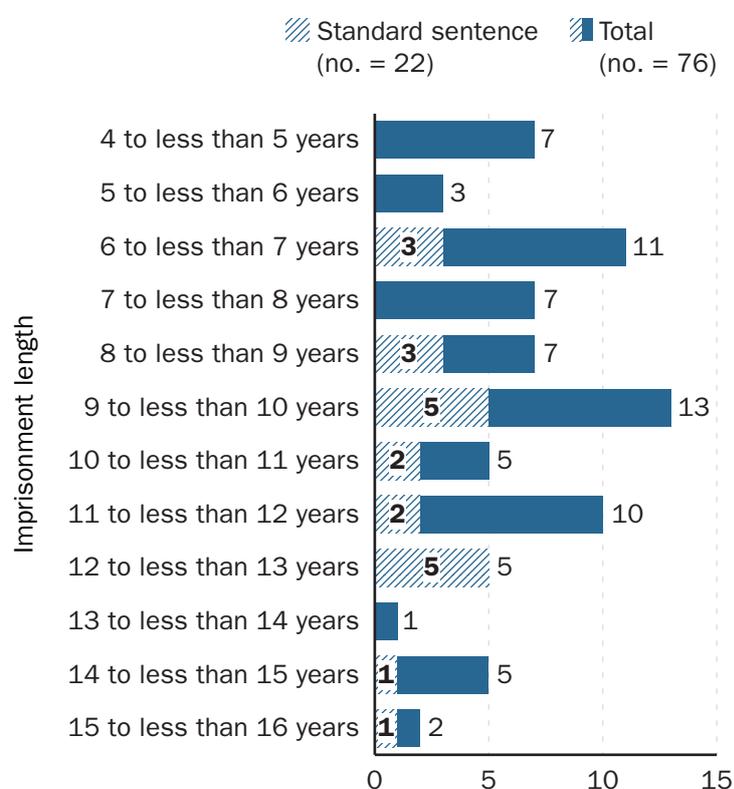
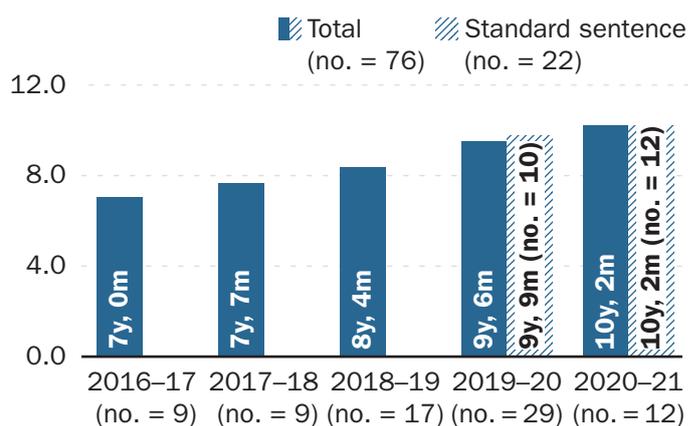


Figure 4: The average length of imprisonment imposed on people sentenced for trafficking in a large commercial quantity of drugs by financial year



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.

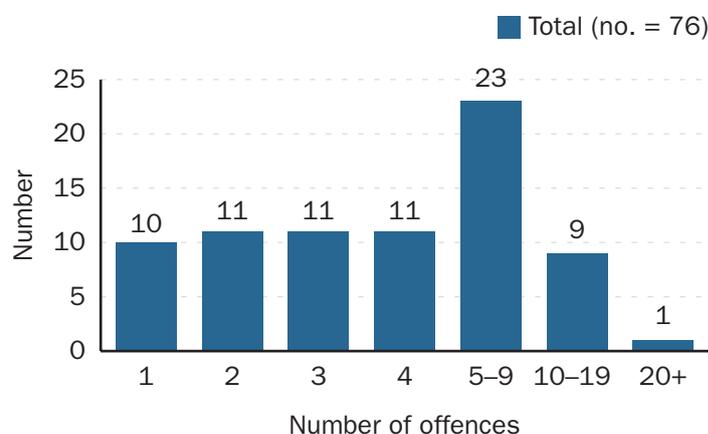
Figure 5 shows the number of people sentenced for the principal offence of trafficking in a large commercial quantity of drugs by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 22, while the median was 4 offences. There were 10 people (13.2%) sentenced for the single offence of trafficking in a commercial quantity of drugs. The average number of offences per person was 5.3.

Table 2 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, 23 of the total 76 people (30.3%) also received sentences for trafficking in a non-commercial quantity of drugs. On average, they were sentenced for 1.8 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 large 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 large commercial quantity of drugs	76	100.0%	1.2
2. Possess a drug of dependence	29	38.2%	1.3
3. Trafficking in a non-commercial quantity of drugs	23	30.3%	1.8
4. Trafficking in a commercial quantity of drugs	16	21.1%	1.1
5. Dealing with property suspected of being proceeds of crime	13	17.1%	1.4
6. Possess, carry or use a prohibited weapon	13	17.1%	1.4
7. Prohibited person possess a firearm	9	11.8%	1.6
8. Possess cartridge ammunition without licence or permit	9	11.8%	1.2
9. Negligently deal with proceeds of crime	8	10.5%	1.4
10. Commit an indictable offence while on bail	7	9.2%	1.0
People sentenced	76	100.0%	5.3

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, 2016–17 to 2020–21

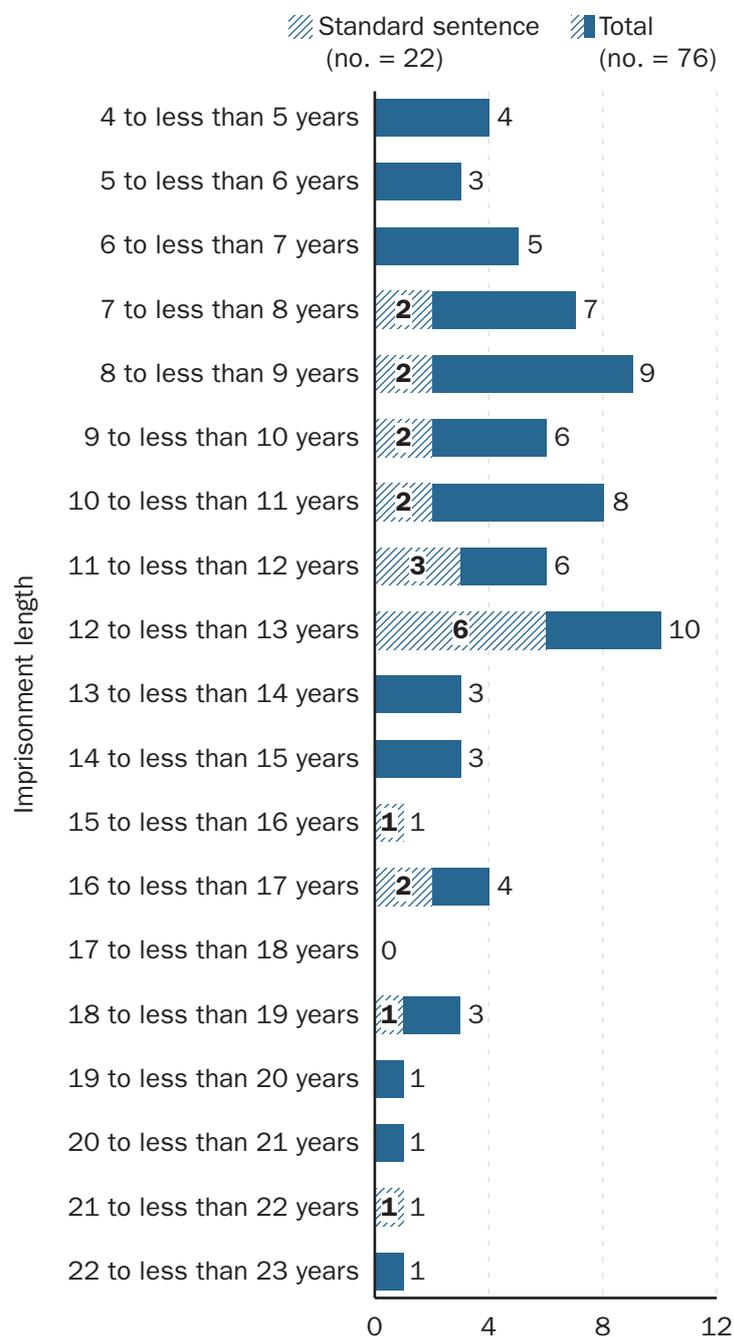


Total effective imprisonment terms

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 10 years and 3 months (meaning that half of the total effective imprisonment terms were below 10 years and 3 months and half were above).

The most common range of total effective imprisonment terms was 12 to less than 13 years (10 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, 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.

All 76 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs were eligible for parole. All 76 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 2 years to 16 years, while the median non-parole period was 7 years (meaning that half of the non-parole periods were below 7 years and half were above).

The most common range for non-parole periods was 5 to less than 6 years (13 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 76 people that were sentenced to imprisonment for trafficking in a large commercial quantity of drugs. It compares the average length of total effective sentences with the average length of non-parole periods for these people by financial year.

From 2016–17 to 2020–21, the average length of total effective sentences for all people increased from 8 years and 6 months in 2016–17 to 12 years and 7 months in 2020–21. Over the same period, the average length of non-parole periods also increased from 5 years and 5 months in 2016–17 to 8 years and 3 months in 2020–21.

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

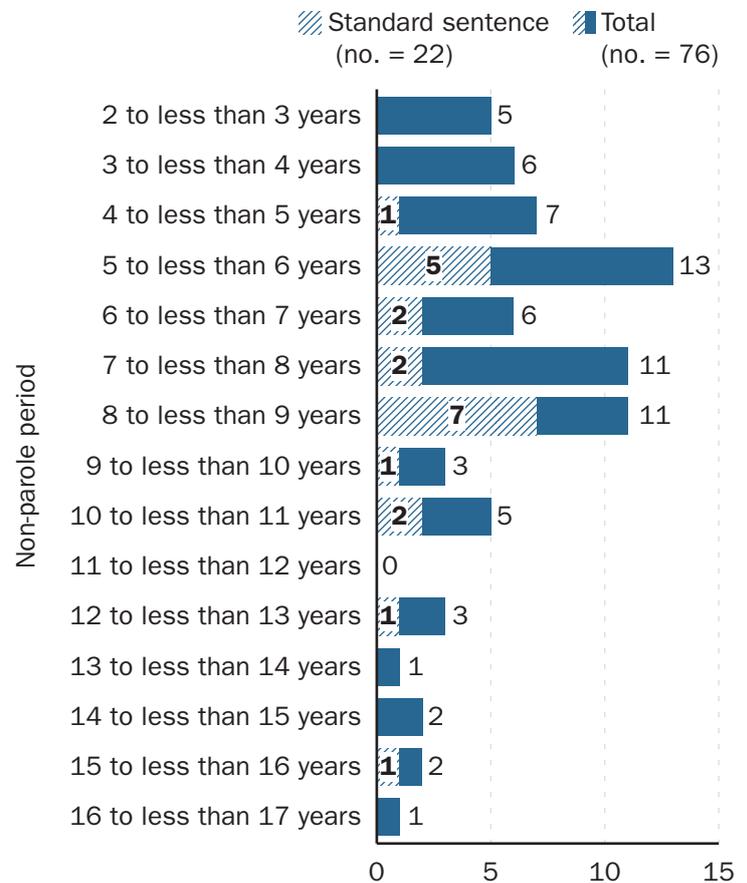


Figure 8: The average total effective sentence length and the average non-parole period for people sentenced to imprisonment with a non-parole period for trafficking in a large commercial quantity of drugs by financial year

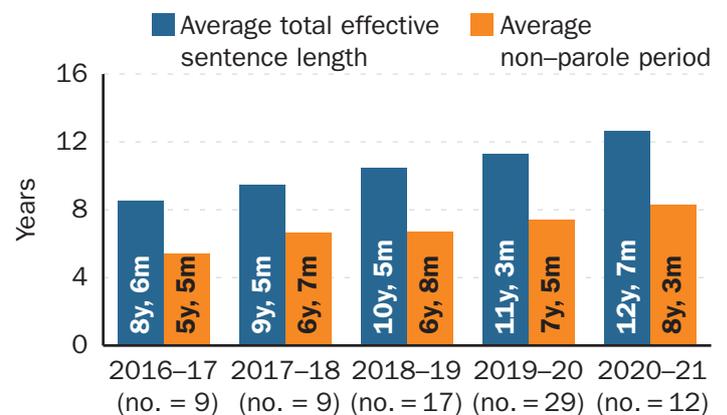


Figure 9 represents the 22 people who were sentenced to imprisonment for trafficking in a large commercial quantity of drugs as a standard sentence classification and received a non-parole period. The average total effective sentence was 11 years and 5 months in 2019–20 and 12 years and 7 months in 2020–21. The average non-parole period was 7 years and 2 months in 2019–20 and 8 years and 3 months in 2020–21.

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](#).

Summary

From 2016–17 to 2020–21, 76 people were sentenced for trafficking in a large commercial quantity of drugs in the higher courts. Of these people, 76 (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 commercial quantity of drugs were sentenced help to explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. Total effective sentences ranged from 4 years to 22 years, and non-parole periods ranged from 2 years to 16 years. The median total effective imprisonment sentence was 10 years and 3 months, while the median principal imprisonment length was 9 years.

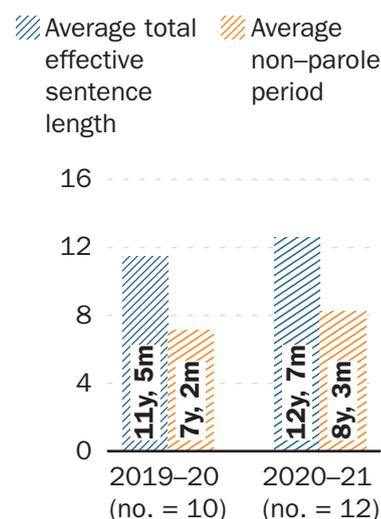
On average, people sentenced to trafficking in a large commercial quantity of drugs were found guilty of 5.3 offences each, with a maximum of 22 offences.

Of the 22 principal offences of trafficking in a large commercial quantity of drugs subject to the standard sentence in this period, all 22 received a prison term. The median imprisonment term for those charges was 9 years and 6 months, the median total effective sentence was 11 years and 11 months, and the median non-parole period was 8 years.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 245, which describes sentencing trends for trafficking in a large commercial quantity of drugs between 2014–15 and 2018–19.
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. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 71–71AC.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71.
6. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70 (definition of *large 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 3(j) (definition of *Category 1 offence*), 5(2G).
9. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71(2); *Sentencing Act 1991* (Vic) ss 5(2)(ab), 5A–5B.

Figure 9: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for trafficking in a large commercial quantity of drugs, subject to the standard sentence 2015–16 to 2019–20



10. 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.
11. 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.
12. 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, when these orders are imposed, they are included in Snapshots as they are an important form of disposition of criminal charges.
13. 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 principal sentence type.
14. There were 2 cases where an imprisonment sentence of 15 years was imposed: *DPP v Djordjic* [2017] VCC 2046 and *DPP v Quah* [2019] VCC 1158, the latter of which was upheld on appeal in *Quah v The Queen* [2021] VSCA 164.
15. In March 2021, the Court of Appeal confirmed that the call to uplift sentencing practices for trafficking in a commercial quantity of drugs in *Gregory (A Pseudonym) v The Queen* [2017] VSCA 151 had a ‘knock on effect’ of also requiring an uplift in sentencing practices for trafficking in a large commercial quantity of drugs, in order to ensure ‘appropriate relativities’ between the different trafficking offences: *Rahmani v The Queen* [2021] VSCA 51; see also *Quah v The Queen* [2021] VSCA 164, [48]. These decisions will most likely have affected sentencing practices in this Snapshot.
16. *Sentencing Act 1991* (Vic) s 5B(2)(b).

SACStat Trafficking in a large commercial quantity of drugs

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

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