

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

April 2022
No. 270

Cultivating a non-commercial quantity of narcotic plants

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of *cultivating a non-commercial* quantity of narcotic plants² 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 cultivating a non-commercial quantity of narcotic plants 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 offences in relation to the cultivation of a narcotic plant that distinguishes between large commercial, commercial and less than commercial quantities of the illegal plant.⁴ This Snapshot examines the offence of cultivating a non-commercial quantity of narcotic plants. The amount that constitutes a non-commercial quantity depends on the type of plant.⁵ In relation to cannabis, which is the most common narcotic plant involved in these offences, a non-commercial quantity is between 250g to less than 25 kg or 10 to 99 plants.⁶

Cultivating a non-commercial quantity of narcotic plants is an indictable offence that carries a maximum penalty of 15 years' imprisonment and/or a fine of up to 1,800 penalty units.⁷ It can also be heard summarily in the Magistrates' Court if the Magistrates' Court considers it appropriate and the accused consents.⁸ If the sentencing court is satisfied on the balance of probabilities that the plant was not cultivated for any purposes related to trafficking, the maximum penalty is reduced to 1 year's imprisonment and/ or a fine of up to 20 penalty units.⁹

This Snapshot focuses on cases where cultivating a non-commercial quantity of narcotic plants was the principal offence, that is, cases where cultivating a non-commercial quantity of narcotic plants was the offence that received the most severe sentence.¹⁰

Cultivating a non-commercial quantity of narcotic plants was the principal offence in 1% 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:

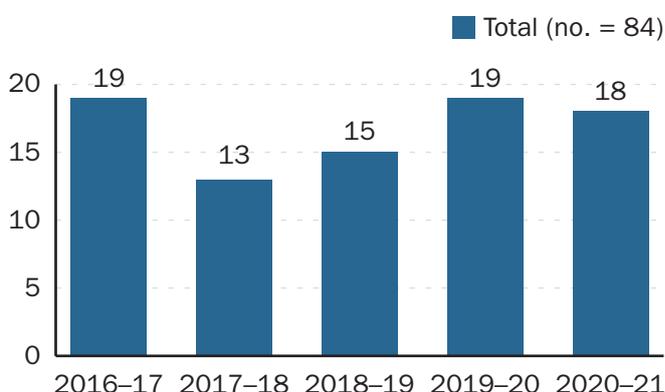
- the number of people sentenced since March 2020 may be lower than in previous years because the pandemic caused delays in court proceedings;
- court backlogs may have led to prioritisation of more serious cases and therefore higher imprisonment rates than in previous years;
- prison sentences may be 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, 84 people were sentenced in the higher courts for a principal offence of cultivating a non-commercial quantity of narcotic plants.

Figure 1 shows the number of people sentenced for the principal offence of cultivating a non-commercial quantity of narcotic plants by financial year. The number of people sentenced was highest in both 2016–17 and 2019–20 (19 people in each year) and lowest in 2017–18 (13 people).

Figure 1: The number of people sentenced for cultivating a non-commercial quantity of narcotic plants by financial year



Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or non-custodial sentence for the principal offence of cultivating a non-commercial quantity of narcotic plants.

An immediate custodial sentence involves at least some element of immediate imprisonment or detention.¹¹ Over the five-year period, 73.8% of people were given an immediate custodial sentence. The rate of custodial sentences was highest in 2017–18 (92.3%) and lowest in 2019–20 (57.9%).

Figure 2: The percentage of people who received an immediate custodial sentence and non-custodial sentence for cultivating a non-commercial quantity of narcotic plants by financial year

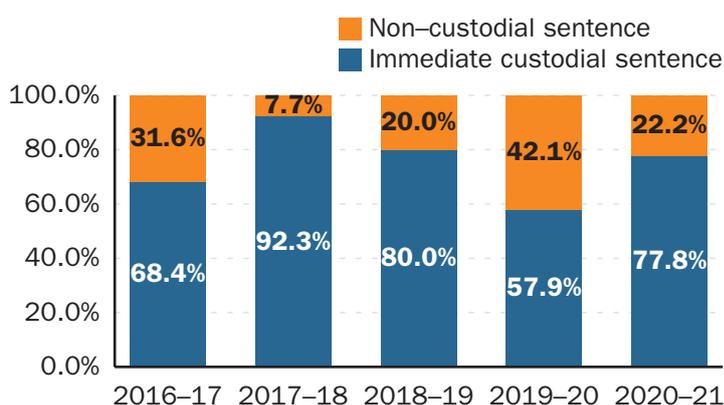


Table 1 shows the principal sentence for the principal offence of cultivating a non-commercial quantity of narcotic plants from 2016–17 to 2020–21.¹² The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.¹³ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.¹⁴ Changes to community correction orders may have also influenced the sentencing trends over the five years covered by this Snapshot.¹⁵

Over the five-year period, the majority of people sentenced for cultivating a non-commercial quantity of narcotic plants received a principal sentence of imprisonment (73.8% or 62 of 84 people). The rate of imprisonment sentences was highest in 2017–18 (92.3%) and lowest in 2019–20 (57.9%).

Table 1: The number and percentage of people sentenced for cultivating a non-commercial quantity of narcotic plants by most serious 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	13 (68.4%)	12 (92.3%)	12 (80.0%)	11 (57.9%)	14 (77.8%)	62 (73.8%)
Community correction order	4 (21.1%)	0 (0.0%)	1 (6.7%)	7 (36.8%)	3 (16.7%)	15 (17.9%)
Fine	2 (10.5%)	0 (0.0%)	1 (6.7%)	1 (5.3%)	1 (5.6%)	5 (6.0%)
Other	0 (0.0%)	1 (7.7%)	1 (6.7%)	0 (0.0%)	0 (0.0%)	2 (2.4%)
Total people sentenced	19	13	15	19	18	84

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 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 cultivating a non-commercial quantity of narcotic plants from 2016–17 to 2020–21.

Principal sentence of imprisonment

Table 2 shows that a total of 62 people received a principal sentence of imprisonment for cultivating a non-commercial quantity of narcotic plants. Of these, 51 people received a non-aggregate term of imprisonment and 11 people received an aggregate term. There were 14 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 cultivating a non-commercial quantity of narcotic plants 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	10 (76.9%)	11 (91.7%)	6 (50.0%)	10 (90.9%)	6 (42.9%)	43 (69.4%)
Mix (imprisonment and community correction order)	1 (7.7%)	0 (0.0%)	2 (16.7%)	1 (9.1%)	4 (28.6%)	8 (12.9%)
Total non-aggregate imprisonment	11 (84.6%)	11 (91.7%)	8 (66.7%)	11 (100.0%)	10 (71.4%)	51 (82.3%)
Aggregate imprisonment	1 (7.7%)	1 (8.3%)	2 (16.7%)	0 (0.0%)	1 (7.1%)	5 (8.1%)
Mix (aggregate imprisonment and community correction order)	1 (7.7%)	0 (0.0%)	2 (16.7%)	0 (0.0%)	3 (21.4%)	6 (9.7%)
Total aggregate imprisonment	2 (15.4%)	1 (8.3%)	4 (33.3%)	0 (0.0%)	4 (28.6%)	11 (17.7%)
Total people sentenced to imprisonment	13	12	12	11	14	62

Figure 3 shows the length of imprisonment for the people who received a non-aggregate term. Imprisonment terms ranged from 1 month and 6 days to 4 years,¹⁶ while the median length of imprisonment was 1 year (meaning that half of the imprisonment terms were below 1 year and half were above).

The most common range of imprisonment term lengths was less than 1 year (23 people).

As shown in Figure 4, the average length of imprisonment imposed on people sentenced for cultivating a non-commercial quantity of narcotic plants ranged from 9 months in 2016–17 to 1 year and 6 months in 2018–19. Overall, the average length of imprisonment for cultivating a non-commercial quantity of narcotic plants was 1 year and 2 months over the five years.

Other offences finalised at the same hearing

Sometimes people prosecuted for cultivating a non-commercial quantity of narcotic plants 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 cultivating a non-commercial quantity of narcotic plants. The section includes data on all people sentenced for a principal offence of cultivating a non-commercial quantity of narcotic plants, not just those who received imprisonment.

Figure 5 shows the number of people sentenced for the principal offence of cultivating a non-commercial quantity of narcotic plants by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 19, while the median was 2 offences. There were 41 people (48.8%) sentenced for the single offence of cultivating a non-commercial quantity of narcotic plants. The average number of offences per person was 2.3.

Figure 3: The number of people sentenced to imprisonment for cultivating a non-commercial quantity of narcotic plants by length of imprisonment term, 2016–17 to 2020–21

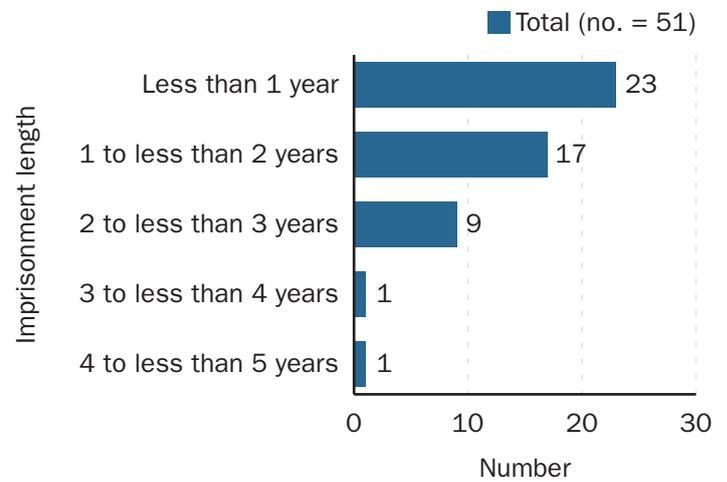


Figure 4: The average length of imprisonment imposed on people sentenced for cultivating a non-commercial quantity of narcotic plants by financial year

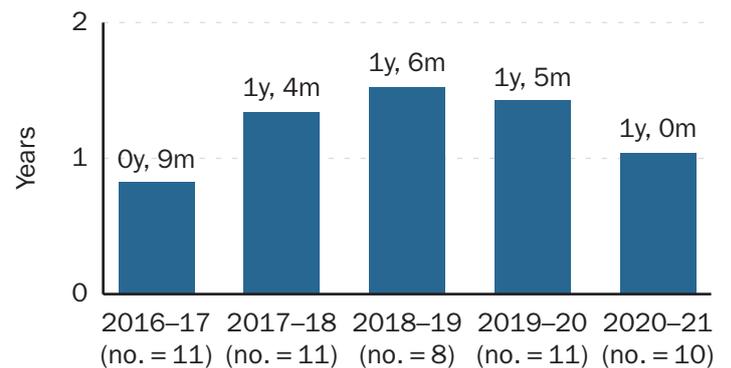


Figure 5: The number of people sentenced for the principal offence of cultivating a non-commercial quantity of narcotic plants by the number of sentenced offences per person, 2016–17 to 2020–21

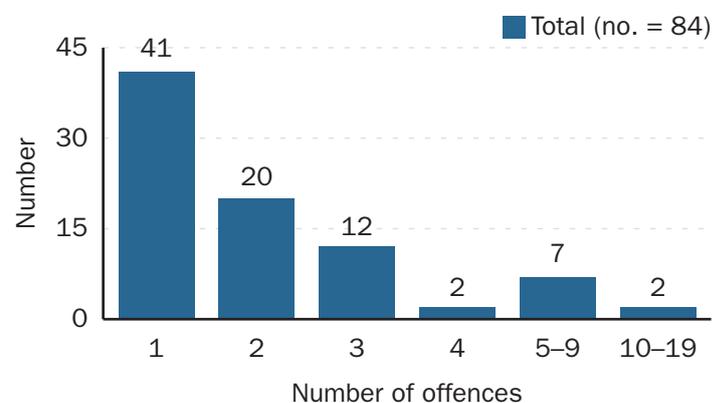


Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for cultivating a non-commercial quantity of narcotic plants. The last column sets out the average number of offences sentenced per person. For example, 26 of the total 84 people (31.0%) also received sentences for theft. On average, they were sentenced for 1.1 counts of theft.

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

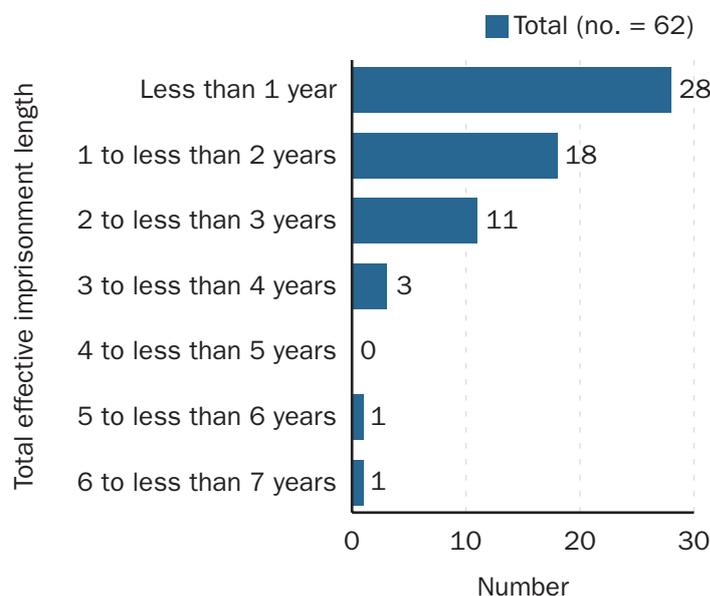
Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Cultivating a non-commercial quantity of narcotic plants	84	100.0%	1.1
2. Theft	26	31.0%	1.1
3. Possess a drug of dependence	10	11.9%	1.0
4. Trafficking in a non-commercial quantity of drugs	7	8.3%	1.0
5. Dealing with property suspected of being proceeds of crime	6	7.1%	1.0
6. Possess, carry or use a prohibited weapon	4	4.8%	3.0
7. Drive whilst authorisation suspended	2	2.4%	1.0
8. Fail to answer bail	2	2.4%	1.0
9. Non-prohibited person possess, carry or use a registered category A longarm without a licence	2	2.4%	1.0
10. Non-prohibited person possess, carry or use a registered category B longarm without a licence	2	2.4%	1.0
People sentenced	84	100.0%	2.3

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for cultivating a non-commercial quantity of narcotic plants by length of total effective imprisonment term. The total effective imprisonment terms ranged from 1 month and 6 days to 6 years, while the median total effective imprisonment term was 1 year (meaning that half of the total effective imprisonment terms were below 1 year and half were above).

The most common range of total effective imprisonment terms was less than one year (28 people).

Figure 6: The number of people sentenced to imprisonment for cultivating a non-commercial quantity of narcotic plants 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.

Of the 62 people who were sentenced to imprisonment for cultivating a non-commercial quantity of narcotic plants, 34 were eligible to have a non-parole period fixed.¹⁷ Of these people, 22 were given a non-parole period (64.7%).¹⁸

Figure 7 shows the number of people sentenced to imprisonment for cultivating a non-commercial quantity of narcotic plants, by length of non-parole period. Non-parole periods ranged from 7 months to 4 years, while the median non-parole period was 1 year and 6 months (meaning that half of the non-parole periods were below 1 years and 6 months and half were above).

The most common range for non-parole periods was 1 to less than 2 years (11 people); however, the most common outcome was that no non-parole period was imposed (40 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 22 people that were sentenced to imprisonment for cultivating a non-commercial quantity of narcotic plants and for whom the non-parole period could be determined. Figure 8 compares the average length of total effective sentences with the average length of non-parole periods for these people by financial year.

The average length of total effective sentences decreased overall, from 3 years and 3 months in 2016–17 to 1 year and 10 months in 2020–21. Over the same period, the average length of non-parole periods also decreased, from 2 years in 2016–17 to 1 year and 2 months in 2020–21.

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

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

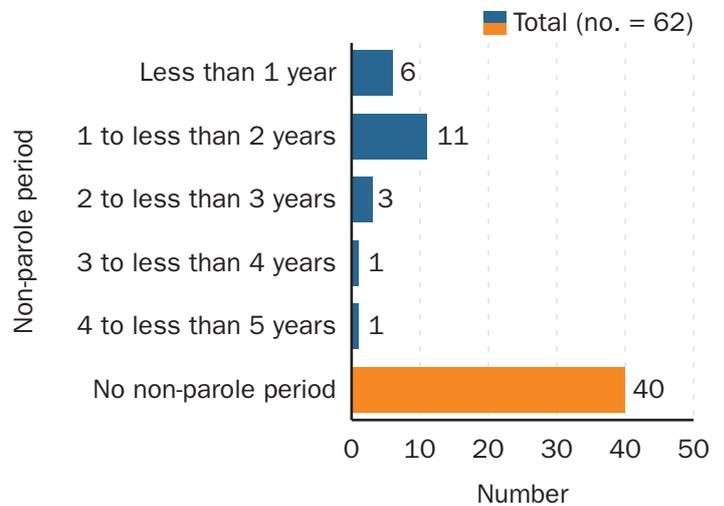
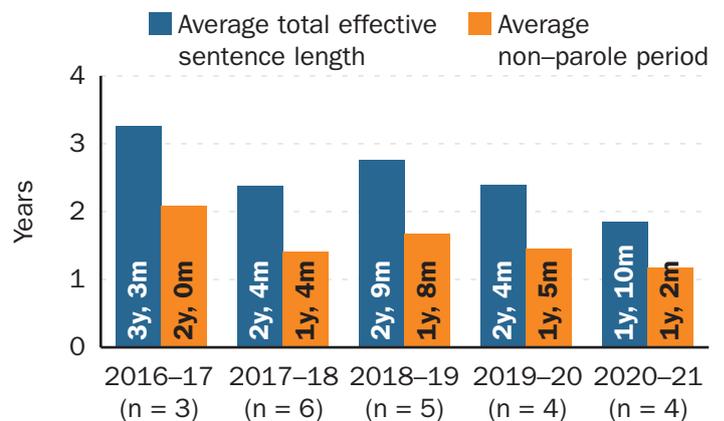


Figure 8: The average total effective sentence length and the average non-parole period for people sentenced to imprisonment with a non-parole period for cultivating a non-commercial quantity of narcotic plants by financial year



Summary

From 2016–17 to 2020–21, 84 people were sentenced for cultivating a non-commercial quantity of narcotic plants in the higher courts. Of these people, 62 (73.8%) were given a principal sentence of imprisonment.

The median principal imprisonment length and the median total effective imprisonment length were both 1 year.

Total effective imprisonment lengths ranged from 1 month and 6 days to 6 years, and non-parole periods (where imposed) ranged from 7 months to 4 years.

On average, people sentenced for cultivating a non-commercial quantity of narcotic plants were found guilty of 2.3 offences each, with a maximum of 19 offences.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 246, which describes sentencing trends for cultivating a non-commercial quantity of narcotic plants between 2014–15 and 2018–19.
2. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72B.
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 72–72B.
5. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 70 (definition of *commercial quantity*).
6. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) sch 11 pt 2.
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. *Criminal Procedure Act 2009* (Vic) s 29, sch 2 s 6.
9. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72B(a).
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, they are included in this Snapshot 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 most serious sentence type.
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. One person received 4 years imprisonment: *DPP v Kennedy* [2018] VCC 1054.
17. Twenty-eight people were not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.
18. Twelve people were eligible to have a non-parole period fixed but did not receive one. All 12 people had a sentence length between 1 year and less than 2 years.

SACStat Cultivating a non-commercial quantity of narcotic plants

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

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