

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

April 2022
No. 271

Cultivating a commercial quantity of narcotic plants

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of *cultivating a 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 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 non-commercial quantities of the plant.⁴ This Snapshot examines the offence of cultivating a commercial quantity of narcotic plants. The amount that constitutes a 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 commercial quantity is 25–249 kg or 100–999 plants.⁶

Cultivating a commercial quantity of narcotic plants 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 cultivating a commercial quantity of narcotic plants was the principal offence, that is, cases where cultivating a commercial quantity of narcotic plants was the offence that received the most severe sentence.⁹

Cultivating a commercial quantity of narcotic plants was the principal offence in 4.1% 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:

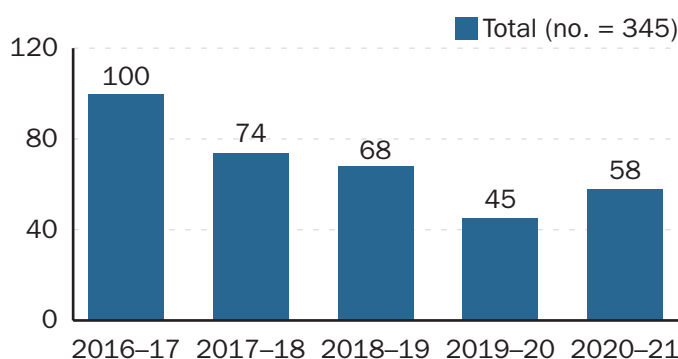
- the number of people sentenced since March 2020 may be lower than in previous years because the pandemic caused delays in court proceedings;
- court backlogs may have led to prioritisation of more serious cases and therefore higher imprisonment rates than in previous years;
- prison sentences may be 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, 345 people were sentenced in the higher courts for a principal offence of cultivating a commercial quantity of narcotic plants.

Figure 1 shows the number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by financial year. The number of people sentenced was highest in 2016–17 (100 people) and lowest in 2019–20 (45 people).

Figure 1: The number of people sentenced for cultivating a 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 commercial quantity of narcotic plants.

An immediate custodial sentence involves at least some element of immediate imprisonment or detention.¹⁰ Over the five-year period, 97.7% of people were given an immediate custodial sentence. The rate of custodial sentences was highest in 2019–20 (100.0%) and lowest in 2020–21 (94.8%).

Table 1 shows the principal sentence for the principal offence of cultivating a commercial quantity of narcotic plants 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.¹³ Changes to community correction orders may have also influenced the sentencing trends over the five years covered by this Snapshot.¹⁴

Over the five-year period, almost all the people sentenced for cultivating a commercial quantity of narcotic plants received a principal sentence of imprisonment (97.4% or 336 of 345 people). The rate of imprisonment sentences was highest in 2019–20 (100.0%) and lowest in 2020–21 (94.8%).

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

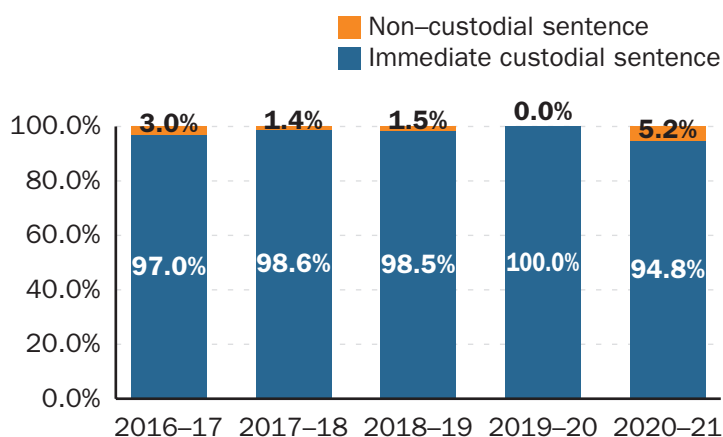


Table 1: The number and percentage of people sentenced for cultivating a commercial quantity of narcotic plants by most serious principal sentence type and financial year

Sentence type	2016–17	2017–18	2018–19	2019–20	2020–21	Total (2016–17 to 2020–21)
Imprisonment	96 (96.0%)	73 (98.6%)	67 (98.5%)	45 (100.0%)	55 (94.8%)	336 (97.4%)
Community correction order	3 (3.0%)	1 (1.4%)	1 (1.5%)	0 (0.0%)	3 (5.2%)	8 (2.3%)
Partially suspended sentence	1 (1.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.3%)
Total people sentenced	100	74	68	45	58	345

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 cultivating a commercial quantity of narcotic plants must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of cultivating a commercial quantity of narcotic plants from 2016–17 to 2020–21.

Principal sentence of imprisonment

Table 2 shows that a total of 336 people received a principal sentence of imprisonment for cultivating a commercial quantity of narcotic plants. Of these, 318 people received a non-aggregate term of imprisonment and 18 people received an aggregate term. There were 9 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 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	81 (84.4%)	66 (90.4%)	64 (95.5%)	44 (97.8%)	54 (98.2%)	309 (92.0%)
Mix (imprisonment and community correction order)	5 (5.2%)	1 (1.4%)	2 (3.0%)	1 (2.2%)	0 (0.0%)	9 (2.7%)
Total non-aggregate imprisonment	86 (89.6%)	67 (91.8%)	66 (98.5%)	45 (100.0%)	54 (98.2%)	318 (94.6%)
Aggregate imprisonment	10 (10.4%)	6 (8.2%)	1 (1.5%)	0 (0.0%)	1 (1.8%)	18 (5.4%)
Total aggregate imprisonment	10 (10.4%)	6 (8.2%)	1 (1.5%)	0 (0.0%)	1 (1.8%)	18 (5.4%)
Total people sentenced to imprisonment	96	73	67	45	55	336

Figure 3 shows the length of imprisonment for the people who received a non-aggregate term. Imprisonment terms ranged from 21 days to 6 years and 6 months,¹⁵ while the median length of imprisonment was 2 years and 2 months (meaning that half of the imprisonment terms were below 2 years and 2 months and half were above).

The most common range of imprisonment term lengths was 2 to less than 3 years (125 people).

As shown in Figure 4, the average length of imprisonment imposed on people sentenced for cultivating a commercial quantity of narcotic plants ranged from 2 years and 2 months (in 2015–16, 2018–19 and 2019–20) to 2 years and 6 months in 2020–21. Overall, the average length of imprisonment for cultivating a commercial quantity of narcotic plants was 2 years and 3 months.¹⁶

Other offences finalised at the same hearing

Sometimes people prosecuted for cultivating a 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 commercial quantity of narcotic plants. The section includes data on all people sentenced for a principal offence of cultivating a 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 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 14, while the median was 1 offence. There were 184 people (53.3%) sentenced for the single offence of cultivating a commercial quantity of narcotic plants. The average number of offences per person was 1.9.

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

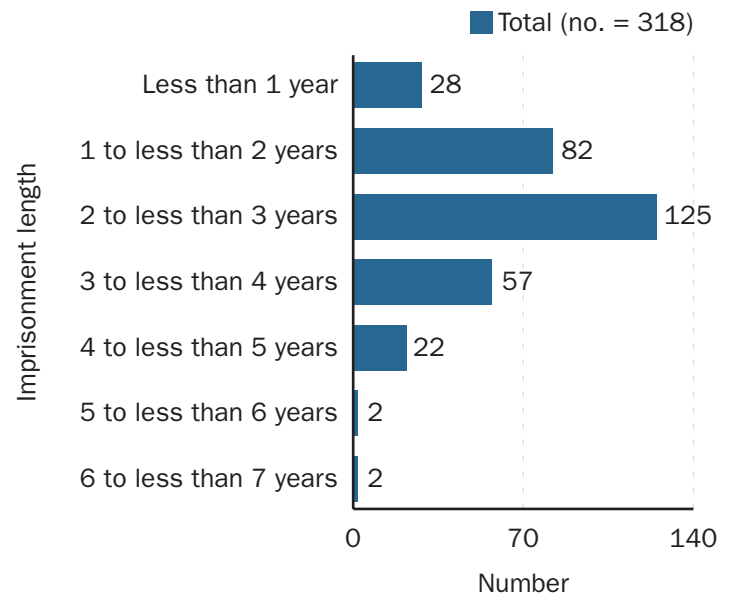


Figure 4: The average length of imprisonment imposed on people sentenced for cultivating a commercial quantity of narcotic plants by financial year

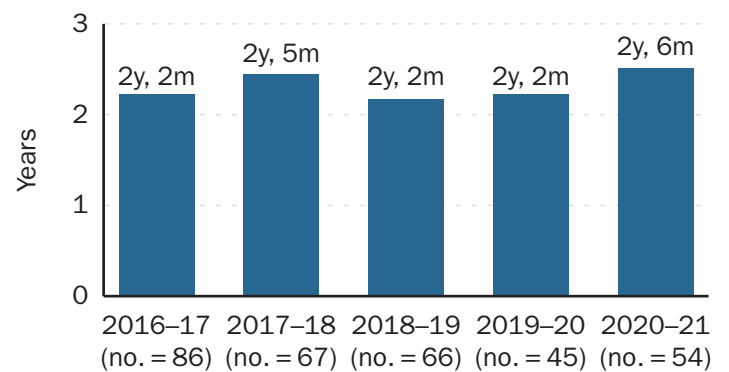


Figure 5: The number of people sentenced for the principal offence of cultivating a commercial quantity of narcotic plants by the number of sentenced offences per person, 2016–17 to 2020–21

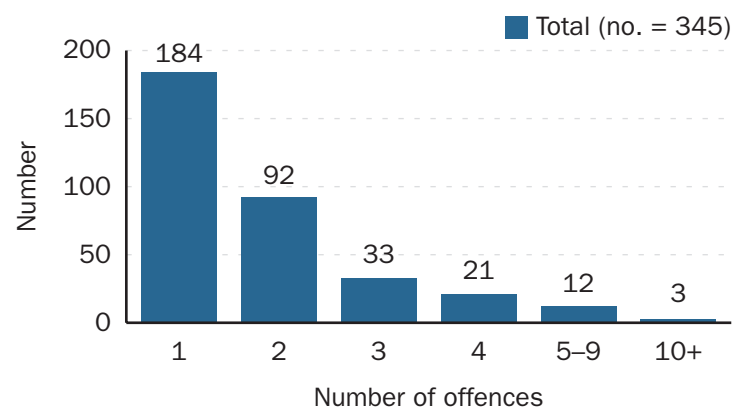


Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for cultivating a commercial quantity of narcotic plants. The last column sets out the average number of offences sentenced per person. For example, 90 of the total 345 people (26.1%) also received sentences for 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 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

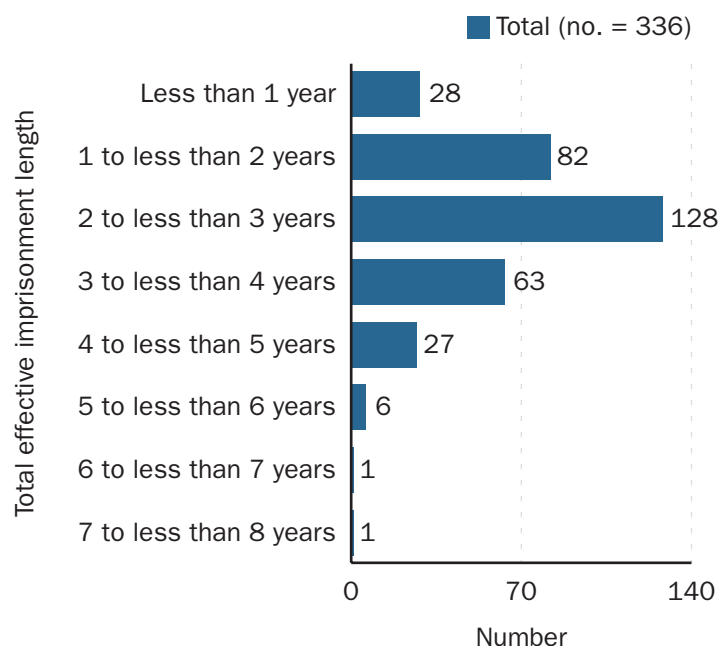
Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Cultivating a commercial quantity of narcotic plants	345	100.0%	1.0
2. Theft	90	26.1%	1.1
3. Deal property suspected proceed of crime	37	10.7%	1.1
4. Possess a drug of dependence	25	7.2%	1.5
5. Cultivating a non-commercial quantity of narcotic plants	14	4.1%	1.6
6. Trafficking in a non-commercial quantity of drugs	12	3.5%	1.0
7. Possess, carry or use a prohibited weapon	8	2.3%	1.6
8. Negligently deal with proceeds of crime	7	2.0%	1.3
9. Possess cartridge ammunition without licence or permit	7	2.0%	1.0
10. Commit an indictable offence while on bail	6	1.7%	1.0
People sentenced	345	100.0%	1.9

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants by length of total effective imprisonment term. The total effective imprisonment terms ranged from 21 days to 7 years and 6 months, while the median total effective imprisonment term was 2 years and 3 months (meaning that half of the total effective imprisonment terms were below 2 years and 3 months and half were above).

The most common range of total effective imprisonment terms was 2 to less than 3 years (128 people).

Figure 6: The number of people sentenced to imprisonment for cultivating a 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 336 people who were sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, 308 were eligible to have a non-parole period fixed.¹⁷ Of these people, 275 were given a non-parole period (89.3%).¹⁸

Figure 7 shows the number of people sentenced to imprisonment for cultivating a commercial quantity of narcotic plants, by length of non-parole period. Non-parole periods ranged from 7 months to 5 years, while the median non-parole period was 1 year and 6 months (meaning that half of the non-parole periods were below 1 year and 6 months and half were above).

The most common range for non-parole periods was 1 to less than 2 years (176 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 308 people that were sentenced to imprisonment for cultivating a 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.

From 2016–17 to 2020–21, the average length of total effective sentences ranged from 2 years and 6 months in 2016–17 to 2 years and 10 months in 2017–18. Over the same period, the average length of non-parole periods ranged from 1 year and 5 months in 2016–17 to 1 year and 8 months in 2017–18.

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

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

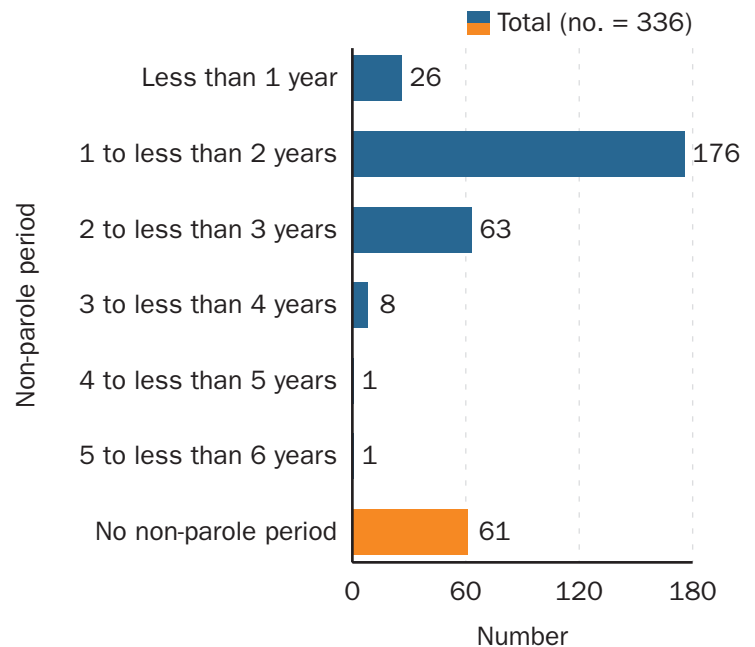
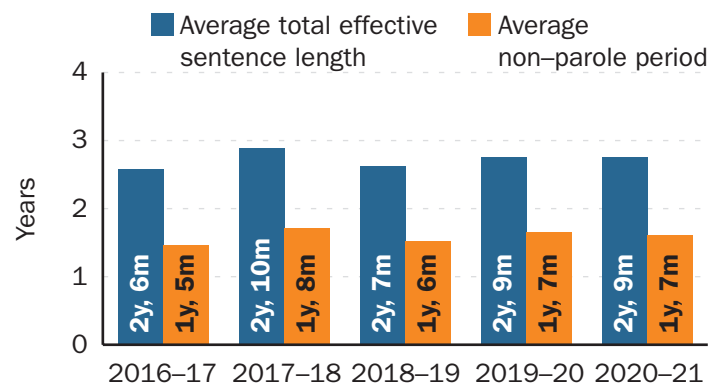


Figure 8: The average total effective sentence length and the average non-parole period for people sentenced to imprisonment with a non-parole period for cultivating a commercial quantity of narcotic plants by financial year



Summary

From 2016–17 to 2020–21, 345 people were sentenced for cultivating a commercial quantity of narcotic plants in the higher courts. Of these people, 336 (97.4%) were given a principal sentence of imprisonment.

The median principal imprisonment length was 2 years and 2 months, and the median total effective imprisonment length was 2 years and 3 months.

Total effective imprisonment lengths ranged from 21 days to 7 years, and 6 months and non-parole periods (where imposed) ranged from 7 months to 5 years.

On average, people sentenced for cultivating a commercial quantity of narcotic plants were found guilty of 1.9 offences each, with a maximum of 14 offences.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 247, which describes sentencing trends for cultivating a commercial quantity of narcotic plants between 2014–15 and 2018–19.
2. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 72A.
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. *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. *DPP v Faro* [2016] VCC 1460.
16. In August 2016 the Court of Appeal held that there was a need to uplift sentencing practices for 'mid-category' cultivation of a commercial quantity of drugs: *Nguyen v The Queen* [2016] VSCA 198. This may have affected sentencing practices during the period covered in this Snapshot.

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. Thirty-three people were eligible to have a non-parole period fixed but did not receive one. All 33 people had a sentence length between 1 year and less than 2 years.

SACStat Cultivating a commercial quantity of narcotic plants

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

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