

# Trends in Minor Drug Offences Sentenced in the Magistrates' Court of Victoria

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# Trends in Minor Drug Offences Sentenced in the Magistrates' Court of Victoria

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# Contents

**Contributors** vii

Acknowledgments vii

**Abbreviations** viii

**Glossary** ix

**Executive summary** xi

Profile of minor drug offenders xi

Sentencing of minor drug offences xi

**1. Minor drug offences: previous research and the focus of this report** 1

Previous Victorian research on minor drug offences 2

Overview of offences examined in this report 3

    Possession of a drug of dependence 3

    Use of a drug of dependence 3

    Proven charges 4

    Jurisdiction 4

A note on the drug types examined in this report 4

**2. Non-sentencing approaches to minor drug offences** 5

Victoria Police 5

Magistrates' Court 6

Parliamentary inquiry into drug law reform 8

**3. Trends in proven minor drug offences** 9

All minor drug offences 9

Workload of the Magistrates' Court 10

Trends according to drug type 10

    Trend analysis 10

**4. The profile of minor drug offenders** 13

Trends in the number of cases 13

Demographic profile 14

    Demographic profile and different drug types 14

Co-sentenced offences 17

    Minor drug offence cases with multiple drug types 17

    Minor drug offence cases with other offence types 19

    Relationship between drug type and co-sentenced offence 21

**5. Sentencing trends for minor drug offences** 23

Aggregate sentences and case consolidation 24

Principal sentence in minor drug offence cases with only one proven charge 24

    Trends over time 25

    Trends across drug types 26

Principal sentence in all minor drug offence cases 27

    Trends over time 27

    Trends across drug type 29

**Conclusion** 31

**Appendix** 32

**References** 38

Bibliography 38

Legislation 39

Quasi-legislative materials 39

# Contributors

## **Authors**

Zsombor Bathy  
Geoff Fisher

## **Sentencing Advisory Council**

### **Chair**

Arie Freiberg AM

### **Deputy-Chair**

Lisa Ward

### **Council Directors**

Carmel Arthur  
Hugh de Kretser  
Fiona Dowsley  
Helen Fatouros  
David Grace QC  
John Griffin PSM  
Sherril Handley  
Brendan Kissane QC  
Shane Patton  
Geoff Wilkinson OAM

### **Chief Executive Officer**

Cynthia Marwood

## **Acknowledgments**

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# Abbreviations

<b>CJDP</b>	Criminal Justice Diversion Program
<b>DPCS Act</b>	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic)</i>
<b>GHB</b>	gamma hydroxybutyrate
<b>LSD</b>	lysergic acid diethylamide
<b>THC</b>	tetrahydrocannabinol

# Glossary

<b>Adjourned undertaking</b>	The adjournment of a criminal matter and the release of an offender, with or without conviction, for a period of up to five years. The court may order an adjourned undertaking where a charge is proven. The offender gives an undertaking with attached standard and special conditions, and if these conditions are breached, the offender may be resented on the original charge.
<b>Aggregate sentence</b>	A sentence imposed on two or more charges in a case rather than on individual charges.
<b>Case</b>	A collection of one or more proven charges related to the one offender and sentenced at the one hearing.
<b>Community order</b>	In this report, a community correction order or a community-based order.
<b>Co-sentenced offence</b>	An offence sentenced in a case along with an offence of interest. The co-sentenced offence and the offence of interest are committed by one offender but not necessarily on the same date.
<b>Criminal Justice Diversion Program</b>	A program offered in the Magistrates' Court of Victoria designed to prevent first-time or low-risk offenders who have accepted responsibility for their offending from entering the criminal justice system.
<b>Diversion</b>	An outcome resulting from both a police charge prior to a court appearance and a program imposed by a sentencing court.
<b>Fine</b>	A sum of money payable by an offender to the State of Victoria as a sentence on the order of a court.
<b>Imprisonment</b>	Detention in a prison. Imprisonment is the most severe sentence in Victoria.
<b>Median</b>	The middle number in an ordered set of numbers. Half of the set of numbers are less than the median and half are more than the median. For example, of the numbers 1, 1, 4, 5, 6, the median is 4. Of the numbers 1, 1, 4, 5, 5, 6, the median is the average of the middle two numbers, 4 and 5, giving a median of 4.5.

<b>Minor drug offence</b>	The possession or use of an illicit drug of dependence under sections 73(1)(a)–(b) or 75(a)–(b) of the <i>Drugs, Poisons and Controlled Substances Act 1981</i> (Vic). In this report, a minor drug offence includes <i>attempted</i> forms of the offences described in these sections and excludes charges sentenced under section 73(1)(c).
<b>Minor drug offence case</b>	A case that includes a proven charge of a minor drug offence.
<b>Minor drug offender</b>	A person who has been found guilty of a minor drug offence.
<b>Principal sentence</b>	In this report, the most severe sentence type imposed on a charge or case. Often both charges and cases receive multiple sentence types. Imprisonment is the most severe sentence type, followed by community correction order, fine, adjourned undertaking and proven and dismissed. The analysis of sentencing practices in this report is restricted to the principal sentence for both charges and cases. The principal sentence imposed on a case does not always reflect the penalty imposed on the charge of a minor drug offence.
<b>Proven charge</b>	A single count of an offence, the criminal responsibility for which is established in court.
<b>Reference period</b>	In this report, the 10 years between 1 July 2007 and 30 June 2017.
<b>Suspended sentence</b>	A sentence of imprisonment that the court held back, wholly or partially, for a specified period (the <i>operational period</i> ). If the offender reoffended during the operational period, they could be imprisoned for the total duration of the sentence. Suspended sentences have been abolished in Victoria and are no longer available in the Magistrates' Court for offences committed on or after 1 September 2014.

# Executive summary

This report examines trends in the prevalence and sentencing of minor drug offences in the Magistrates' Court of Victoria in the 10 years from 1 July 2007 to 30 June 2017 (the reference period). For this report, a minor drug offence is defined as the possession or use of an illicit drug of dependence. The report analyses data on 118,101 proven charges of a minor drug offence. In total, 61,788 cases in the Magistrates' Court included at least one proven charge of a minor drug offence.

The report finds that, over the reference period, there was a substantial increase in the number of proven charges of a minor drug offence, particularly from 2010–11 to 2016–17, when the number increased by 97%, from 8,586 to 16,937.

The increase in minor drug offences was primarily driven by the drug methylamphetamine. The number of proven charges relating to methylamphetamine increased from just 263 in 2007–08 to 5,712 in 2016–17, when it surpassed cannabis (5,169 proven charges) as the most common drug type in minor drug offences. The number of proven charges involving prescription drugs increased by 298%, from 250 in 2007–08 to 996 in 2016–17.

## Profile of minor drug offenders

The majority of minor drug offenders were male (83%) and were aged under 35 years (63%). The age distribution of minor drug offenders changed very little over the reference period. However, there was a modest upward trend in the annual percentage of minor drug offenders who were female, from 14% in 2012–13 to 20% in 2016–17.

An examination of co-sentenced offences committed by minor drug offenders (but not necessarily on the same day as the minor drug offence) found that 80% of minor drug offence cases also included other offence types. The most common was condition breaches (32% of cases), followed by deception (30%), road safety offences (29%) and theft (26%). Offences against the person were relatively uncommon, included in just 12% of minor drug offence cases.

Minor drug offence cases involving methylamphetamine and prescription drugs were most likely to include co-sentenced offences (82% and 81% respectively). Compared with cases involving other drugs, cases involving methylamphetamine were most likely to include offences relating to condition breaches (42%), road safety offences (41%), deception (37%) and weapons offences (25%).

## Sentencing of minor drug offences

A complete picture of sentencing practices for minor drug offences is obscured by the high and increasing prevalence of aggregate sentences in the Magistrates' Court. Over 90% of imprisonment sentences imposed on charges of a minor drug offence in 2016–17 were aggregate sentences. However, an analysis of cases with a single charge of a minor drug offence from 2016–17 found that the vast majority received either a fine (58%) or an adjourned undertaking (32%).

A person's case did not always proceed to a sentencing court; 18% of people who committed a minor drug offence in 2016–17 received a drug diversion from police, while an average of 6% of all minor drug offence cases were adjourned so that the offender could participate in a drug diversion program.

# 1. Minor drug offences: previous research and the focus of this report

Community concern over the growth in the use of methylamphetamine in the past five years has been prominent in the media. This concern is reflected in government drug policy and parliamentary interest.<sup>1</sup>

There have also been significant changes to general sentencing law over the last six years, including the introduction of community correction orders and the phasing out of suspended sentences.

This report examines trends in minor drug offences sentenced in the Magistrates' Court of Victoria over the 10 years from 1 July 2007 to 30 June 2017 (the reference period). For the purposes of this report, a minor drug offence involves the possession or use, or the attempted possession or use, of a drug of dependence, such as methylamphetamine, cannabis and heroin.

The report addresses the following questions:

- How has the number of charges of a minor drug offence sentenced changed?
- How have the drug types involved in minor drug offences changed?
- What is the demographic profile of minor drug offenders and how has it changed?
- What is the offence profile of offenders sentenced for minor drug offences?
- What are the sentencing outcomes for minor drug offenders and how have these outcomes changed?

This report focuses on minor drug offences that have been proven in court; therefore it understates the prevalence of drug use in the community overall. Research from 2016 shows that 43% of Australians aged 14 years and over use, or have used, an illicit drug.<sup>2</sup> This includes 15% of Victorians aged 14 years and over who report illicit drug use some time in their life. Recent use of cannabis was reported by 10% of Victorians aged 14 years and over. The second most common illicit drug was pain-killers and opioids (3%). The rate of recent illicit drug use among Victorians has increased by just two percentage-points since 2010, from 13% to 15% in 2016.<sup>3</sup>

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1. See for example, Premier of Victoria, 'Ice Action Plan' (premier.vic.gov.au, 2015) Getting Things Done. Making Things Fair <<https://www.premier.vic.gov.au/ice-action-plan/>> at 26 April 2018; Department of the Prime Minister and Cabinet, *Final Report of the National Ice Taskforce* (2015); Parliament of Victoria, Law Reform, Road and Community Safety Committee, *Inquiry into Drug Law Reform* (2018).

2. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016* (2016) 53: 8.5 million people aged 14 years and over reported drug use 'at some point in their lifetime'.

3. Ibid 90. Recent drug use is defined as any use within the 12 months prior to the survey.

## Previous Victorian research on minor drug offences

In 2009, the Council published a report<sup>4</sup> on sentencing outcomes in the Magistrates' Court for drug possession. For the four years to 30 June 2008, the report found that:

- the Magistrates' Court sentenced 5,147 people for the principal offence of possession of a drug of dependence;
- the most common drug involved was cannabis (54.6%), followed by amphetamine (20.5%), heroin (15.4%), ecstasy (4.6%) and other drugs (4.9%);
- most people sentenced for a principal offence of possession of a drug of dependence (amphetamine, cannabis, heroin, ecstasy and other) received a non-custodial sentence;
- people sentenced for possession of heroin tended to receive more severe sentence types than people sentenced for possession of other drug types;
- the majority of people sentenced were men (83.5%); and
- the age of people sentenced for possession of a drug of dependence ranged from 17 to 79 years, with a median age of 30 years.<sup>5</sup>

Recent research by the Crimes Statistics Agency has identified a significant increase in the number of offences involving drug possession and use in Victoria since 2005.<sup>6</sup> This research used data on alleged offences recorded by Victoria Police. Further research using the same data source identified cannabis, methylamphetamine and prescription drugs as the main drug types involved in the increased offending.<sup>7</sup>

A 10-year trend analysis (2007 to 2016) showed a 5.7% increase in offending involving cannabis, a 23.9% increase in illicit possession and use of prescription drugs and a 114.6% increase in offending involving methylamphetamine.<sup>8</sup> A two-year trend analysis (2015 to 2016) showed that the only significant increases involved methylamphetamine (78.6%) and the *other* drug category (41.8%), which includes a range of drugs such as cocaine, lysergic acid diethylamide (LSD) and gamma hydroxybutyrate (GHB).<sup>9</sup> This analysis also showed that offending that involved heroin remained stable over the 10 years, while offending that involved amphetamine decreased substantially, particularly between 2015 and 2016.<sup>10</sup>

Over the 11 years to 31 March 2016, males were responsible for 81% of all recorded minor drug offending. Women had slightly higher rates of recorded offending than men for heroin, methylamphetamine and prescription drugs.<sup>11</sup> People aged 20 to 24 accounted for 25.9% of minor drug offences, making this age group the most prevalent.<sup>12</sup>

4. Sentencing Advisory Council, *Sentencing Outcomes for Possession of Drugs in the Magistrates' Court of Victoria* (2009).

5. *Ibid* 1.

6. Crime Statistics Agency, *Recorded Drug Use and Possession Offences and Offenders, 2005–2014*, In Brief No. 1 (2015) 1.

7. Crime Statistics Agency, *What Drug Types Drove Increases in Drug Use and Possession Offences in Victoria over the Past Decade?* In Brief No. 5 (2016) 16.

8. *Ibid* 5–6, 15.

9. *Ibid* 6.

10. *Ibid*.

11. *Ibid* 12.

12. *Ibid* 13.

## Overview of offences examined in this report

In this report, a minor drug offence is defined as the possession or use of an illicit drug. A minor drug offence relates to personal use and specifically excludes drug offences relating to profiting from illicit drugs, such as cultivation or trafficking offences. The Council has examined sentencing practices for these more serious drug offences elsewhere, including in its Sentencing Snapshots<sup>13</sup> and in a 2015 report on current sentencing practices for major drug offences.<sup>14</sup>

Drug offences in Victoria are primarily defined by the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (the DPCS Act). The DPCS Act distinguishes between the following quantities of a drug of dependence: small, traffickable, commercial mixed, commercial pure, large commercial mixed and large commercial pure. This report examines possession or use of a small quantity of a drug of dependence.

### Possession of a drug of dependence

The offence of possession of a drug of dependence is created by section 73 of the DPCS Act and is defined as a person having, or attempting to have, 'in his [or her] possession a drug of dependence'. Section 73 sets out three separate offences:

- possession of cannabis or tetrahydrocannabinol (THC)<sup>15</sup> in a small quantity (50 grams or less) and not related to trafficking. This offence carries a penalty of not more than 5 penalty units (section 73(1)(a));
- possession of any drug (excluding a small quantity of cannabis or THC) where possession of the drug is not related to trafficking. This offence carries a penalty of not more than 30 penalty units or imprisonment for a maximum of one year or both (section 73(1)(b)); and
- possession where the accused does not satisfy the court, on the balance of probabilities, that the offence was not related to trafficking. This offence carries a higher maximum penalty of not more than 400 penalty units or imprisonment for a maximum of five years or both (section 73(1)(c)).

As this report focuses on minor drug offences that relate to personal use, it includes offending under sections 73(1)(a) and 73(1)(b) but excludes offending under section 73(1)(c), which relates to trafficking.

### Use of a drug of dependence

The offence of use of a drug of dependence is created by section 75 of the DPCS Act, which states that a person who uses or attempts to use a drug of dependence is guilty of an offence. Section 75 creates two offences:

- the use of cannabis or THC. This offence carries a penalty of not more than 5 penalty units (section 75(a)); and
- the use of a drug other than cannabis or THC. This offence carries a penalty of not more than 30 penalty units or imprisonment for a maximum of one year or both (section 75(b)).

The analysis in this report includes offending under sections 75(a) and 75(b), as both relate to personal use of an illicit drug.

13. See for example, Sentencing Advisory Council, *Sentencing Trends for Trafficking in a Commercial Quantity of Drugs in the Higher Courts of Victoria 2010–11 to 2014–15*, Sentencing Snapshot no. 194 (2016).

14. Sentencing Advisory Council, *Major Drug Offences: Current Sentencing Practices* (2015).

15. THC is found in hash or hash oil.

## Proven charges

While research by the Crimes Statistics Agency, referred to above, examined data relating to alleged offences, the focus of this report is on offences that have been proven in court. The core analysis therefore excludes minor drug offences that have:

- not been detected by police;
- not proceeded to court (despite having been detected by police); and
- not resulted in a finding of guilt against the offender (despite having been detected by police and proceeding to court).

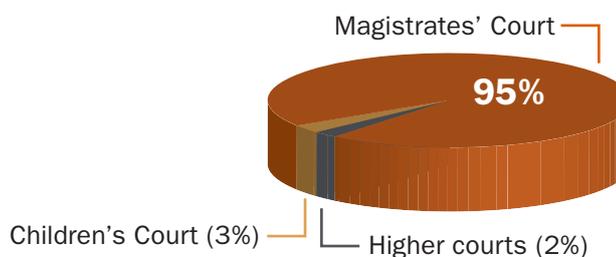
## Jurisdiction

Possession of a drug of dependence under section 73 of the DPCS Act is an indictable offence triable summarily.<sup>16</sup> Use of a drug of dependence under section 75 is a summary offence.<sup>17</sup>

These offences are usually heard and determined in the Magistrates' Court of Victoria, where 95% of charges of a minor drug offence are sentenced (Figure 1). The 2% of charges of a minor drug offence heard in the higher courts

usually involve more serious co-sentenced offences. Almost all cases (97%) with a principal offence of possession or use of a drug of dependence were heard in the Magistrates' Court. The number of minor drug offences sentenced in all Victorian courts is shown in Table A1 of the Appendix.

**Figure 1: Distribution of proven charges of a minor drug offence across Victorian courts, 2007–08 to 2016–17**



## A note on the drug types examined in this report

This report focuses on six drug types: cannabis, methylamphetamine, amphetamine, heroin, ecstasy and prescription drugs. The terms amphetamine and methylamphetamine, and their numerous street names, are often used interchangeably. They are related drugs and classified as stimulants.

Methylamphetamine is manufactured from amphetamine. However, these two drugs have a different chemical composition and are processed differently in the user's body.

The data in this report distinguishes between methylamphetamine and amphetamine, based on the charge descriptions used by Victoria Police and the Magistrates' Court. However, the report does not distinguish between the various forms of methylamphetamine. The three main forms of methylamphetamine are crystalline (often referred to as *ice*), powder (often referred to as *speed*) and base.<sup>18</sup> Ice is usually considered to be the purest form of methylamphetamine.

The data in this report reflects the most accurate drug identification available at sentencing.

16. *Criminal Procedure Act 2009* (Vic) sch 2 item 6.1.

17. *Sentencing Act 1991* (Vic) s 112; *Interpretation of Legislation Act 1984* (Vic) s 52.

18. National Drug & Alcohol Research Centre, *NDAEC Fact Sheet: Methamphetamine (Ice)* (2016).

## 2. Non-sentencing approaches to minor drug offences

A number of programs within the criminal justice system allow people who commit minor drug offences to be diverted from prosecution and sentencing. Although the focus of this report is minor drug offences that are proven and sentenced in court, such programs, which are operated by Victoria Police and the Magistrates' Court, have been taken into consideration as they represent important options for dealing with low-level offending.

### Victoria Police

Not all people found using or possessing a drug of dependence are charged by Victoria Police. Adults could instead receive a cannabis caution or drug diversion. A person may be eligible for a cannabis caution if he or she:

- is in possession of a small quantity of cannabis (up to 50 grams) for personal use;
- admits to the offence;
- has no concurrent offences (unless these are immediately dealt with by way of another caution or infringement notice); and
- consents to the caution.<sup>19</sup>

Similarly, a person may be eligible for a drug diversion on the same basis if he or she is in possession of a small quantity of a drug of dependence for personal use. If eligible, the person must agree to participate in a drug diversion program involving assessment and appropriate treatment with an approved service provider.<sup>20</sup>

A person will not be considered eligible for a cannabis caution or drug diversion if he or she has received more than one previous caution or drug diversion.<sup>21</sup>

Police use of cautions and warnings for alleged minor drug offences is relatively common. A caution or warning was used in one-quarter of alleged minor drug offences recorded by Victoria Police over the reference period (39,320 of 158,118 offences).<sup>22</sup> These offences did not proceed to court.

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19. Victoria Police, *Victoria Police Manual: Disposition of Offenders* (2014) 4.

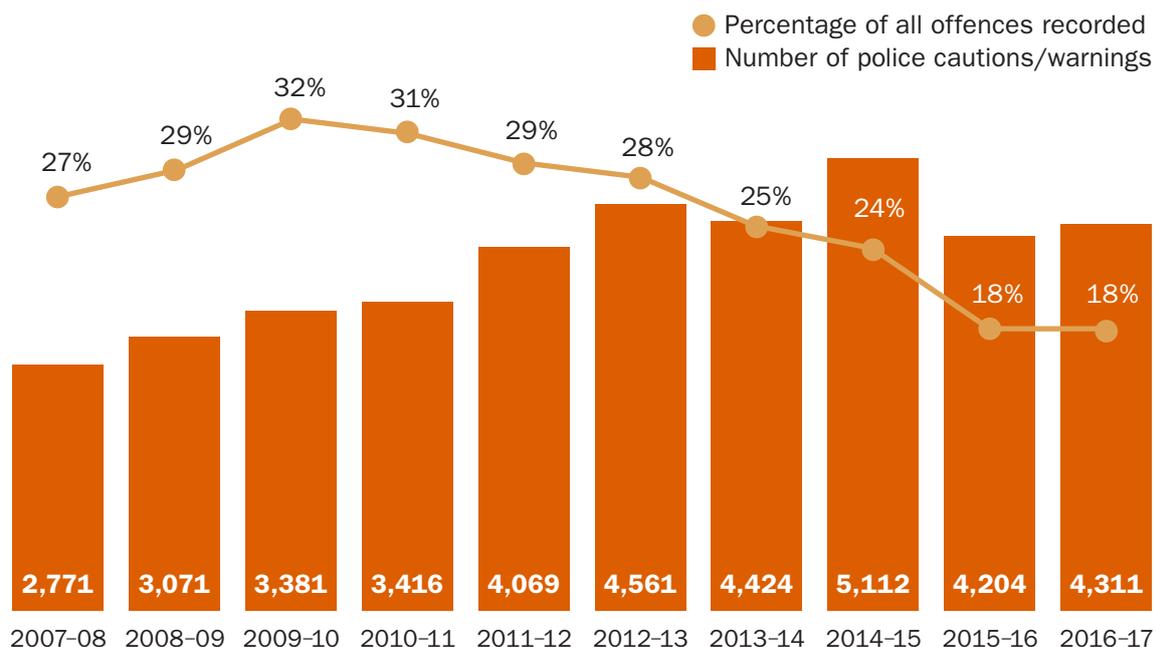
20. *Ibid.*

21. *Ibid.*

22. Crime Statistics Agency, unpublished data (18 September 2017).

The number of alleged minor drug offences that received a caution or warning increased in most years to 2014–15 (Figure 2). Cautions and warnings for alleged minor drug offences were at their lowest level in 2015–16 and 2016–17 (18% of all alleged minor drug offences recorded by police).<sup>23</sup>

**Figure 2: Number and percentage of alleged minor drug offences recorded by police that received a caution or warning, 2007–08 to 2016–17**



## Magistrates' Court

If Victoria Police decides not to use a cannabis caution or drug diversion, the person is taken to court. As indicated in Figure 1 (page 4), the Magistrates' Court is the court most likely to hear a charge of a minor drug offence.

The Criminal Justice Diversion Program (CJDP) is an important option for the Magistrates' Court in dealing with minor offences in lieu of hearing the charges.

Diversion is not considered a sentence. People participating in the program are able to avoid prosecution and a criminal record by agreeing to conditions in accordance with a plan developed by a magistrate or a judicial registrar. To be eligible for the program:

- the offence must be triable summarily and not be subject to a minimum or fixed sentence or penalty (except demerit points);
- the person must acknowledge responsibility for the offence; and
- the prosecution must consent to the matter proceeding by way of diversion.<sup>24</sup>

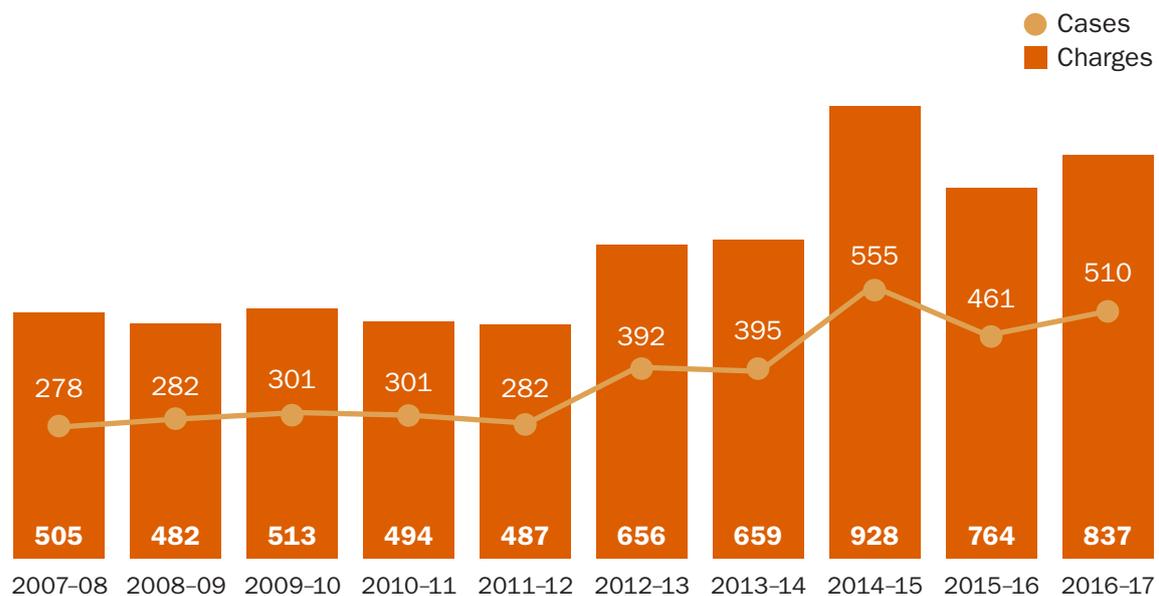
23. This decline correlates with the closure of a number of music festivals (among other factors), which had been sites of police detection of drug possession and use: Meeting with Victoria Police (12 December 2017).

24. Magistrates' Court of Victoria, 'Criminal Justice Diversion Program' (magistratescourt.vic.gov.au, 2018) <[www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program](http://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program)> at 15 March 2018.

The court takes into account any prior convictions in assessing a person's suitability for the program. The magistrate or judicial registrar develops a diversion plan setting out the conditions that must be satisfied. These conditions may include attending counselling and/or treatment or performing voluntary work. The charges are adjourned while the person undertakes the conditions set out in the diversion plan. If the conditions are successfully completed, the charges are discharged with no finding of guilt. If the conditions are not completed, the matter is brought back before the court as if the matter was being listed for the first time.<sup>25</sup>

Figure 3 shows the number of charges of a minor drug offence and the number of cases with at least one minor drug offence that were adjourned because the person participated in the CJDP. In total, 3,757 people participated in the CJDP during the reference period. That is, diversion was an outcome for at least one charge of a minor drug offence in the person's case. Previous research has found that over 90% of all participants accepted into the CJDP successfully completed the program.<sup>26</sup> The number of adjourned cases involving minor drug offences reached a peak in 2014–15, while on average 6% of cases each year were adjourned for this purpose. The charges adjourned for diversion in these cases are not included in the analyses of sentences imposed for charges of a minor drug offence in this report.

**Figure 3: Number of charges that received diversion and number of cases in which charges were diverted, 2007–08 to 2016–17**



25. Ibid.

26. Sentencing Advisory Council, *The Criminal Justice Diversion Program in Victoria: A Statistical Profile* (2008) 3.

## Parliamentary inquiry into drug law reform

Recently, the Parliament of Victoria investigated further options for drug offences and offenders as part of an inquiry into drug law reform.<sup>27</sup> Its report considered decriminalisation of illicit drugs by both *de jure* and *de facto* approaches.<sup>28</sup> The report noted that other jurisdictions, both interstate and international, have successfully decriminalised illicit drugs. In particular, the inquiry cites the World Health Organization, which proposed decriminalisation 'policies and laws [to] reduce incarceration'.<sup>29</sup>

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27. Parliament of Victoria, Law Reform, Road and Community Safety Committee, *Inquiry into Drug Law Reform* (2018).

28. *Ibid* 14: 'With *de jure* decriminalisation, penalties are generally removed from the criminal law, in some cases to be replaced with civil fines [or] administrative sanctions ... *De facto* decriminalisation ... sees the laws remain but they are not administered in practice'.

29. *Ibid* 48.

## 3. Trends in proven minor drug offences

If the Magistrates' Court decides that a person is not suitable for the CJDP, the court tests the veracity of the charges. Some charges are proven (either through a guilty plea from the person or through a finding of guilt by the court) while others are dismissed.

This chapter focuses on charges of a minor drug offence that have been proven in the Magistrates' Court. The chapter considers trends in both the overall numbers of charges of a minor drug offence and the number of charges of a minor drug offence involving different drug types.

### All minor drug offences

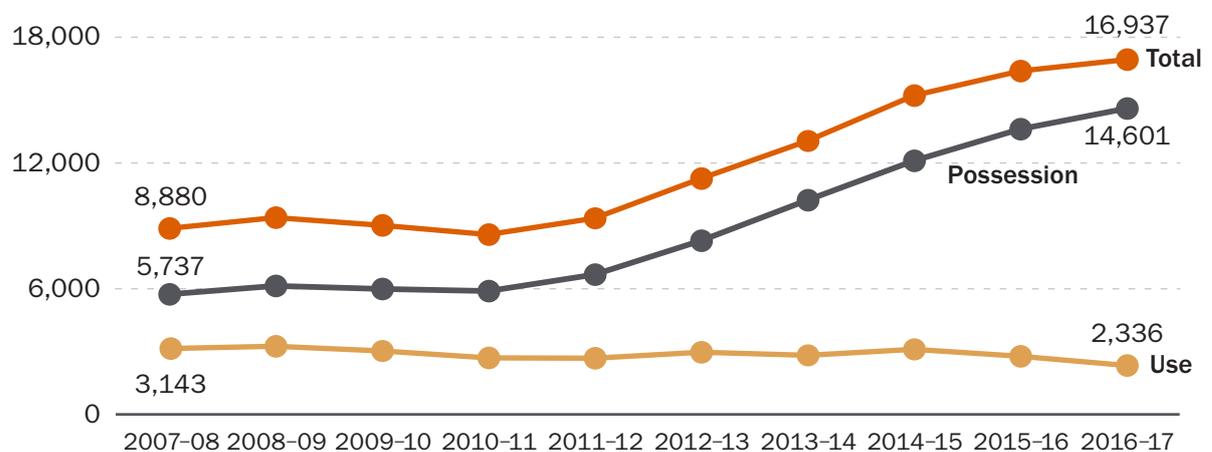
A total of 118,101 proven charges of a minor drug offence were sentenced in the Magistrates' Court from 2007–08 to 2016–17 (the reference period).

The overall annual number of proven charges of a minor drug offence remained relatively stable from 2007–08 to 2010–11; however, the number increased in each of the next six years to 2016–17. From 2010–11 to 2016–17, the average annual increase was 1,391 proven charges, while the overall increase was 97% (from 8,586 proven charges in 2010–11 to 16,937 proven charges in 2016–17).

The majority of proven charges of a minor drug offence related to possession rather than use. For example, 86.2% of the 16,937 proven charges of a minor drug offence in 2016–17 were for possession of a drug of dependence, while the remaining 13.8% were for use of a drug of dependence.

Figure 4 shows trends in the number of proven charges of a minor drug offence sentenced in the Magistrates' Court over the reference period. It presents data on drug possession and drug use separately and collectively. From 2007–08 to 2016–17, the number of proven charges of possession of a drug of dependence increased by 155% (from 5,737 to 14,601) while the number of proven charges of use of a drug of dependence declined by 26% (from 3,143 to 2,336).<sup>30</sup>

**Figure 4: Number of proven charges of a minor drug offence, Magistrates' Court, 2007–08 to 2016–17**



30. The decline in the number of proven charges of use of a drug of dependence may be attributable to the increased use of case conferencing from 2014–15 and prosecutorial decisions to withdraw charges of use of a drug of dependence as part of plea negotiations: Meeting with Victoria Police (12 December 2017).

## Workload of the Magistrates' Court

Minor drug offences represent a relatively small but increasing component of the Magistrates' Court's workload. This workload can be measured, in part, by determining the total number of charges sentenced in the Magistrates' Court.

Minor drug offences accounted for 4.9% of all proven charges in the Magistrates' Court over the reference period. The percentage increased slightly from 4.2% of all proven charges in 2007–08 to 5.5% of all proven charges in 2016–17.

## Trends according to drug type

This section looks at the prevalence of different drug types in minor drug offences and focuses on six in particular: cannabis, methylamphetamine, amphetamine, heroin, ecstasy and prescription drugs. Over the reference period, these six drug types were most commonly involved in proven charges of a minor drug offence, accounting for 95% of all proven charges of a minor drug offence where the drug type was identified (see Table A2 in the Appendix).<sup>31</sup>

The analysis utilises data that was processed in the Magistrates' Court from original police charge sheets. It was not possible to determine how reliably drug types were recorded on police charge sheets. However, a separate Victorian analysis of a small sample of minor drug offences found that the drug types recorded on charge sheets, when compared with laboratory drug test results, were accurate in 70% of recorded incidents.<sup>32</sup> It is not possible to apply this finding to the current report, and it suggests that the analysis of drug type in the current report should be interpreted with caution.

## Trend analysis

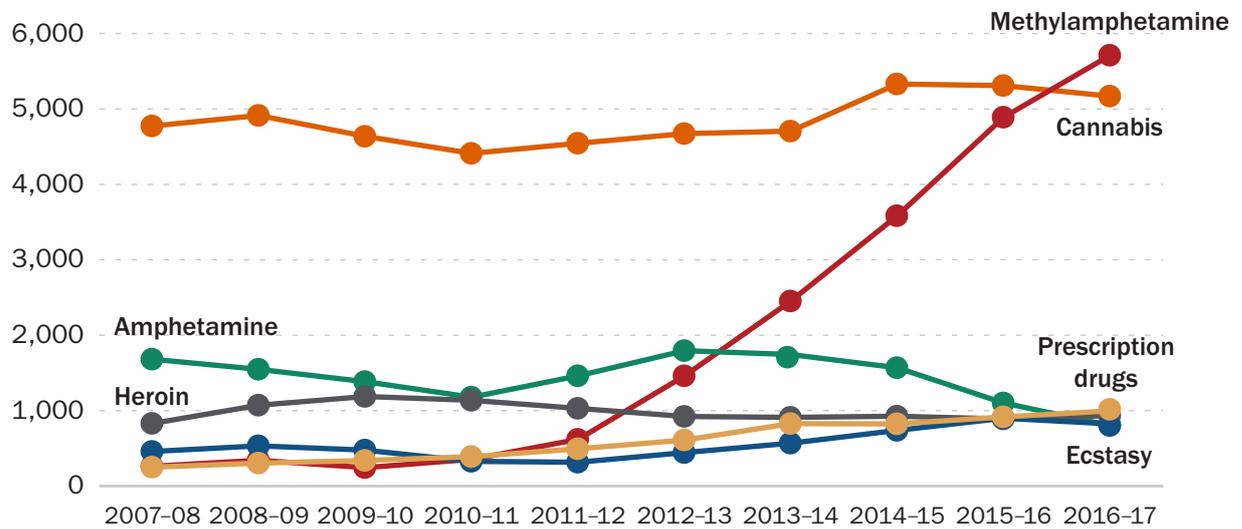
Over the reference period, cannabis was the most common drug type involved in minor drug offences, accounting for 44% of all proven charges of a minor drug offence. Methylamphetamine was the second most common drug, accounting for 18%. These findings are consistent with other recent Victorian research.<sup>33</sup>

The prevalence of different drug types in minor drug offences changed over the reference period. As Figure 5 (page 11) shows, the largest increase occurred for methylamphetamine. The number of proven charges of a minor drug offence involving methylamphetamine rose from only 263 in 2007–08 to 5,712 in 2016–17, an increase of 2,072%. Much of this increase occurred from 2012–13 to 2016–17, with an average increase of 1,062 proven charges per year. Table A3 in the Appendix presents the number of proven charges for these trends.

31. The six drug types of interest expand on the four drug types examined in Sentencing Advisory Council, *Sentencing Outcomes for Possession of Drugs in the Magistrates' Court of Victoria* (2009). The addition of methylamphetamine and prescription drugs in the current report is due to the recent growth in these drug types in minor drug offences. Table A2 in the Appendix contains two drug categories (prescription drugs and anabolic steroids) that were created from drug names used in the original charge sheets with reference to the Therapeutic Goods Administration's poisons standard: Department of Health, Therapeutic Goods Administration, 'Poisons Standard October 2017' (legislation.gov.au, 2017) Federal Register of Legislation <<https://www.legislation.gov.au/Details/F2017L01285>> at 27 April 2018. Ecstasy and methylenedioxymethamphetamine (MDMA) appear together and separately in the source data, indicating their equivalence. Otherwise, drug names used on charge sheets are as presented in Table A2.

32. Crime Statistics Agency, *Reliability of Police-Recorded Drug Offence Codes as a Measure of Drug Types*, Technical Note No. 1 (2016) 4–5. Of three categories of drug offences, the rate of correct identification of drug type was lowest for drug use and possession. The other two categories were cultivate or manufacture drugs (94% correct identification) and drug dealing and trafficking (84% correct identification). Overall, 78% of drug offences had the drug type recorded correctly.

33. Crime Statistics Agency, *What Drug Types Drive Increases in Drug Use and Possession Offences in Victoria over the Past Decade?* In Brief No. 5 (2016) 4–5.

**Figure 5: Number of proven charges of a minor drug offence, by drug type, 2007–08 to 2016–17**

In 2016–17, methylamphetamine became, for the first time, the most common drug type in minor drug offences, accounting for 36% of proven charges of a minor drug offence. By comparison, 33% of proven charges involved cannabis. However, this does not simply reflect a wholesale increase in the prevalence of methylamphetamine. Rather, as noted in other Victorian research, some of this increase in minor drug offences involving methylamphetamine may be the result of a shift from amphetamine use (which declined) to methylamphetamine use<sup>34</sup> and the way in which these drugs are recorded by Victoria Police.<sup>35</sup>

The number of proven charges of a minor drug offence involving amphetamine peaked at 1,796 in 2012–13, decreasing to 804 in 2016–17. This represents a decrease of 52% over 10 years.

The number of proven charges of a minor drug offence involving heroin remained stable, with a peak of 1,187 in 2009–10 and an overall increase of 12% over the reference period. By comparison, the number of charges of a minor drug offence involving ecstasy increased by 79% in the reference period, peaking at 898 charges in 2015–16.

The percentage of proven charges of a minor drug offence involving prescription drugs increased by 298% over the reference period. Since 2010–11, this drug type has been more prevalent than ecstasy. However, in total, a similar number of proven charges of a minor drug offence involved prescription drugs (5,953) and ecstasy (5,588) over the reference period.

Over the reference period, a large proportion of all proven charges had no drug type identified (7%). With increased policing and detection, identifying the drug type on the spot may not always be possible.<sup>36</sup> Generally, the facts of the charge are accepted at sentencing when the specific drug possessed or used is not vital to the outcome.

34. Ibid 15–16, referring to Megan S. C. Lim et al., "'Ice Epidemic'? Trends in Methamphetamine Use from Three Victorian Surveillance Systems' (2015) 39(2) *Australian and New Zealand Journal of Public Health* 194–195.

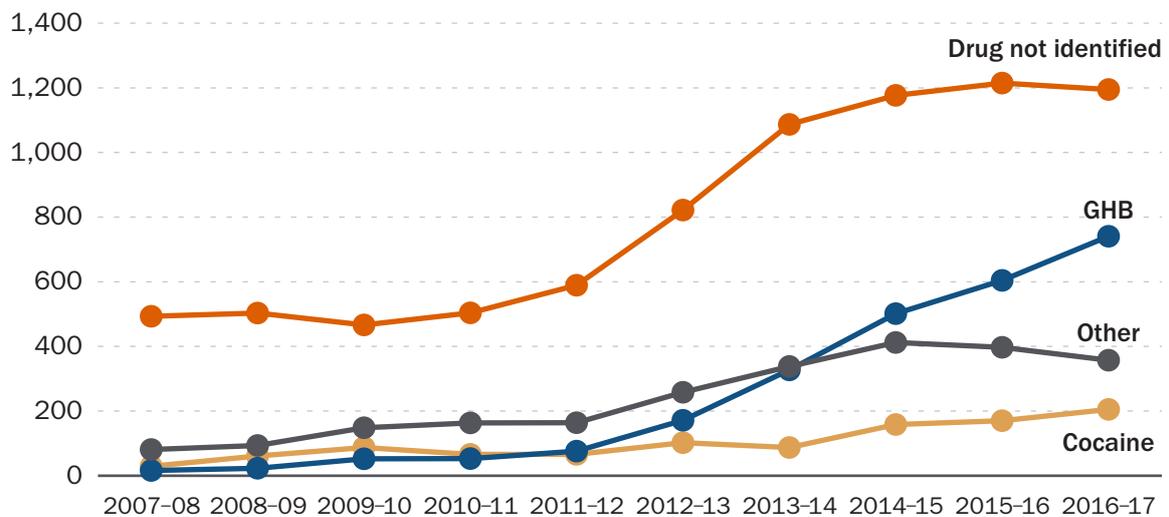
35. Meeting with Victoria Police (12 December 2017).

36. Meeting with Victoria Police (12 December 2017).

Figure 6 shows the number of proven charges where no drug type was identified. This number was more than the combined number of proven charges for cocaine (a stimulant) and GHB (a depressant). Over the reference period, proven charges of a minor drug offence involving GHB increased from 16 to 741 (4,531%), the largest percentage increase of all identified drug types.

*Other* drugs were mostly anabolic steroids and assorted designer drugs.<sup>37</sup> Table A4 in the Appendix presents the number of proven charges for these trends.

**Figure 6:** Number of proven charges of a minor drug offence, by drug type and where the drug type was not identified, 2007-08 to 2016-17



37. Kenneth Vogtsberger, 'Designer Drugs Are Synthetic Analogues of Substances with Known Psychoactive Properties' (1989) 85(7) *Texas Medical Association* 30.

## 4. The profile of minor drug offenders

This chapter considers two aspects relating to minor drug offenders: their demographic profile and co-sentenced offences.

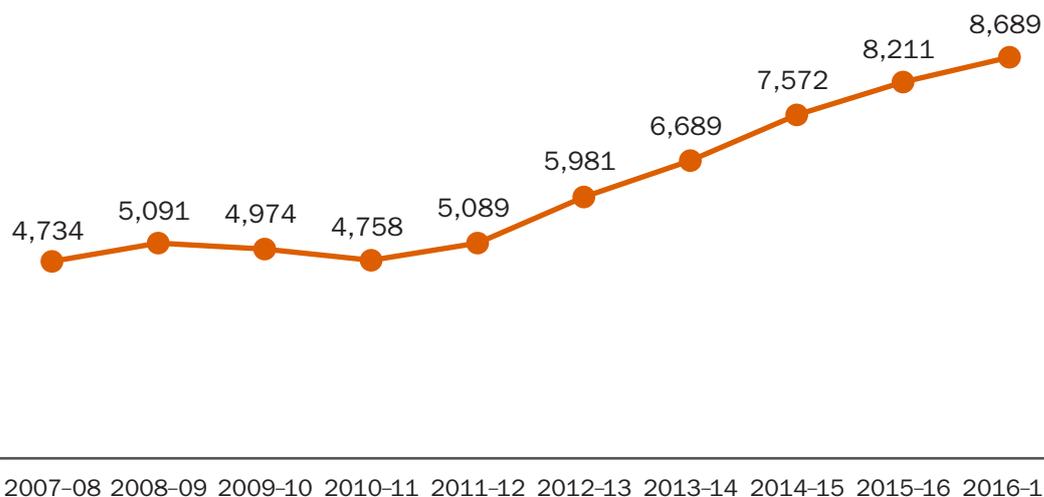
While the analysis in the previous chapter considered proven *charges* of a minor drug offence, the analysis in this chapter focuses on *cases* that included at least one proven charge of a minor drug offence. A case is a collection of one or more charges related to one offender and sentenced at the same hearing. The number of cases is a reasonable indicator of the number of offenders sentenced in a given financial year, although some offenders appear in multiple cases both within and across financial years.

### Trends in the number of cases

Over the reference period, 61,788 cases sentenced in the Magistrates' Court included at least one proven charge of a minor drug offence. As shown in Figure 7, the number of minor drug offence cases has increased steadily since 2010–11, from 4,758 cases to 8,689 cases in 2016–17, an overall increase of 83%.

There was little change in the volume of drug offences within a typical case: over the reference period, the average number of proven charges of a minor drug offence ranged from 1.8 to 2.0 per case.

**Figure 7:** Number of cases that included at least one charge of a minor drug offence, Magistrates' Court, 2007–08 to 2016–17



## Demographic profile

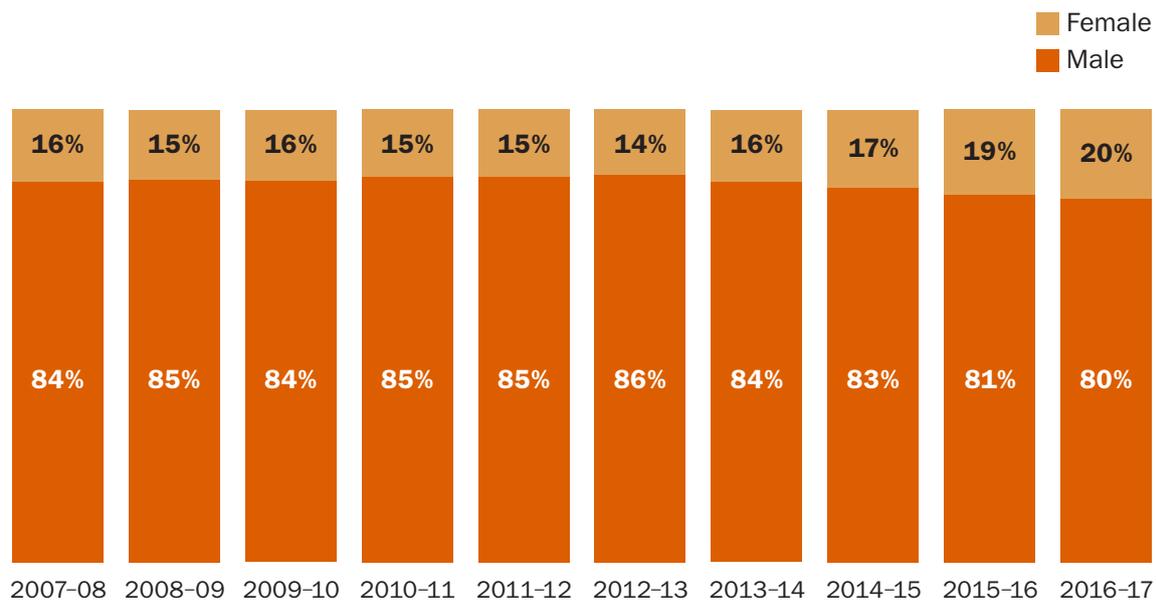
This demographic profile considers the minor drug offender's gender and age when the sentence was imposed for the minor drug offence.

The majority of the 61,788 minor drug offence cases involved a male offender (83%). However, as Figure 8 shows, the percentage declined in the latter half of the reference period, from 86% in 2012–13 to 80% in 2016–17. The number of minor drug offence cases involving females increased by 126% over the reference period, from 755 in 2007–08 to 1,707 in 2016–17.

The median age of minor drug offenders at sentence was 31 years. The age distribution was consistent over the reference period (Figure 9, page 15), the median age ranging from 30 to 31 years. Minor drug offenders aged in their 20s at sentence were consistently the largest group, accounting for between 38% and 42% of cases in each year.<sup>38</sup>

Minor drug offenders aged 40 years and over at sentence comprised just under 25% of cases in each year. Nonetheless, the number of cases involving minor drug offenders in this age group increased by 89%, from 1,036 in 2007–08 to 1,962 in 2016–17.

**Figure 8: Percentage of minor drug offence cases, by gender of minor drug offender, 2007–08 to 2016–17**



## Demographic profile and different drug types

This section identifies age and gender differences among minor drug offenders across six drug types: cannabis, methylamphetamine, amphetamine, heroin, ecstasy and prescription drugs. The analysis focuses on minor drug offence cases with only one of each of these six drug types (a total of 41,512 cases) and covers the age and gender distributions for this sample.<sup>39</sup>

The gender distributions across most drug types did not vary greatly from the overall distribution for all cases (83% male offenders and 17% female offenders). Figure 10 (page 15) shows that minor drug offence cases involving only prescription drugs had the highest percentage of female offenders (22%), while minor drug offence cases involving only ecstasy had the lowest percentage of female offenders (13%).

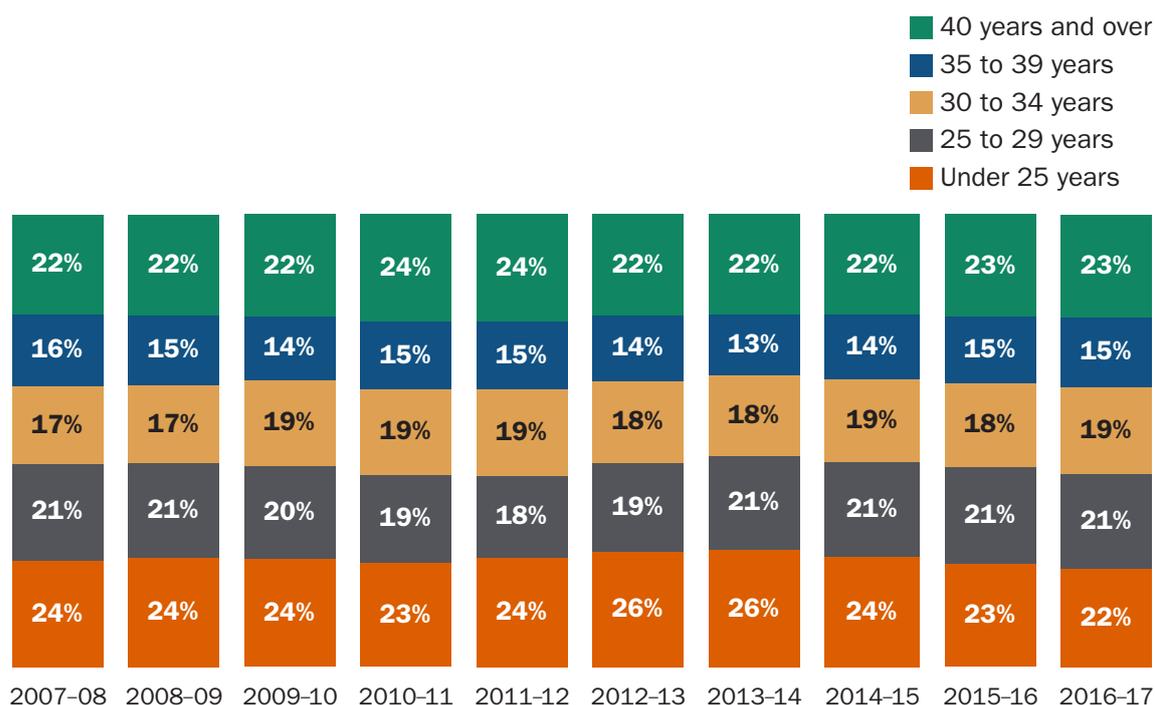
38. The source data did not specify an age for 153 offenders.

39. The source data did not specify an age for 97 offenders.

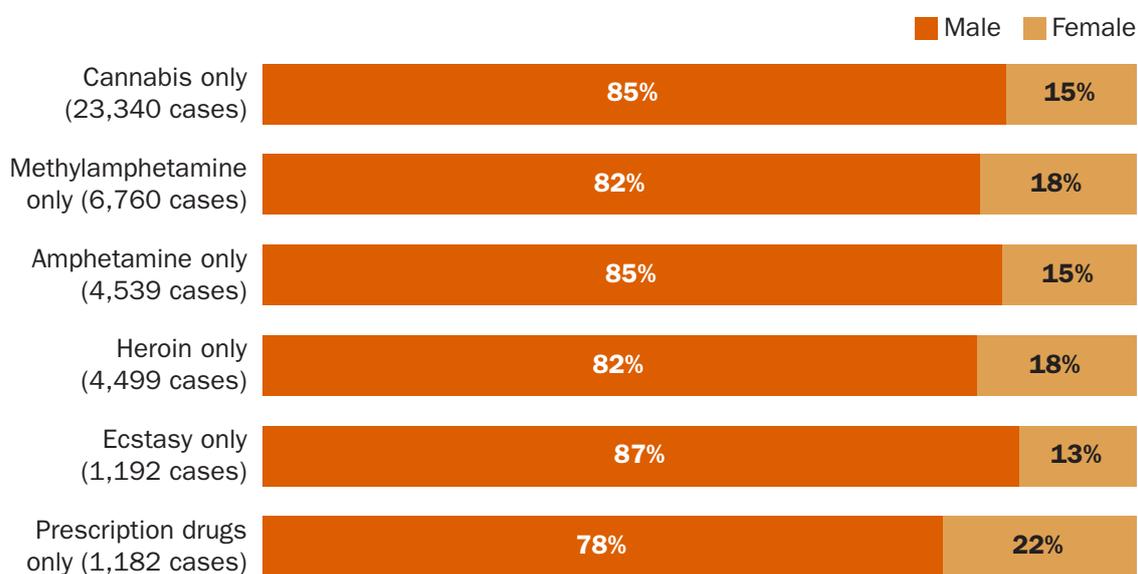
In contrast to the gender distribution for the six drug types, the age distribution showed some clear differences. The age of sentenced minor drug offenders across the six drug types is shown in Figure 11 (page 16).

Minor drug offence cases involving the six drug types generally reflected the overall age distribution (shown in Figure 9). However, there were some key exceptions.

**Figure 9: Percentage of minor drug offence cases, by age at sentence, 2007–08 to 2016–17**



**Figure 10: Percentage of minor drug offence cases, by gender and specific drug type, 2007–08 to 2016–17**



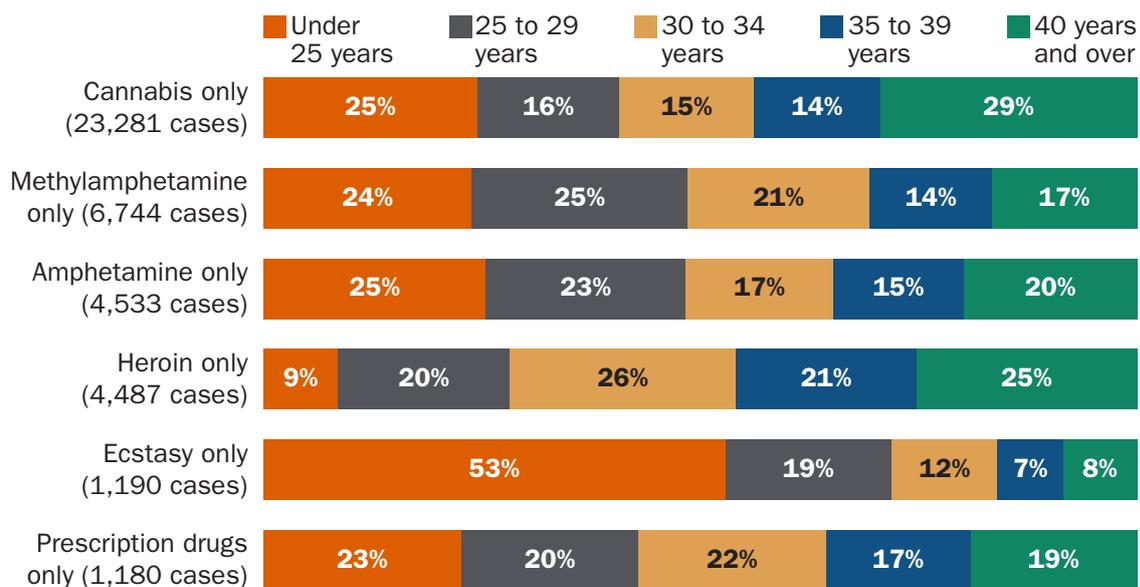
The youngest age profile across the drug types was for cases involving ecstasy: 53% of minor drug offenders were aged under 25 years (by comparison, 24% of all minor drug offenders were aged under 25 years). The oldest age profile was for cases involving heroin: 25% of minor drug offenders were aged 40 years and over, and only 9% were aged under 25 years. Of the six drug types, heroin had the lowest proportion of cases for this age group.

Minor drug offenders sentenced for cases involving only cannabis were most likely to be aged 40 years and over. By comparison, just 8% of minor drug offenders sentenced for cases involving only ecstasy were aged 40 years and over.

Minor drug offenders sentenced for cases involving only methylamphetamine or amphetamine had similar age profiles, with approximately half aged under 30 years.

The age profile was most even for minor drug offenders sentenced for cases involving only prescription drugs, with relatively equal proportions of minor drug offenders in each age group. Nearly half were aged under 30 years.

**Figure 11:** Percentage of minor drug offence cases, by age of minor drug offender at sentence and drug type, 2007–08 to 2016–17



## Co-sentenced offences

In this report a co-sentenced offence is an offence sentenced in the same case as a charge of a minor drug offence. The charges in the case may not have all been committed on the same date. Therefore, a co-sentenced offence is an offence committed by a minor drug offender, but it may not have been committed on the *same date* as the minor drug offence.

An analysis of co-sentenced offences gives an insight into the prevalence of a range of offences and suggests patterns of offence behaviour among minor drug offenders.

## Minor drug offence cases with multiple drug types

Often minor drug offence cases contained proven charges relating to multiple drug types. This analysis focuses on the 58,445 minor drug offence cases that contained at least one proven charge involving one or more of the six drugs of interest.<sup>40</sup> Of these cases, 77% related to only one drug type, while the remaining 23% related to multiple drug types.

Table 1 groups the 58,445 minor drug offence cases by the drug type involved and the number of cases that included each drug type. Consistent with the pattern for all charges (Figure 5), cannabis was the most common drug type at a case level overall, included in 55% of all sentenced cases. Methylamphetamine was included in 24% of all minor drug offence cases.

**Table 1: Number of cases involving one or more of the six drugs of interest, by drug type in case, 2007–08 to 2016–17**

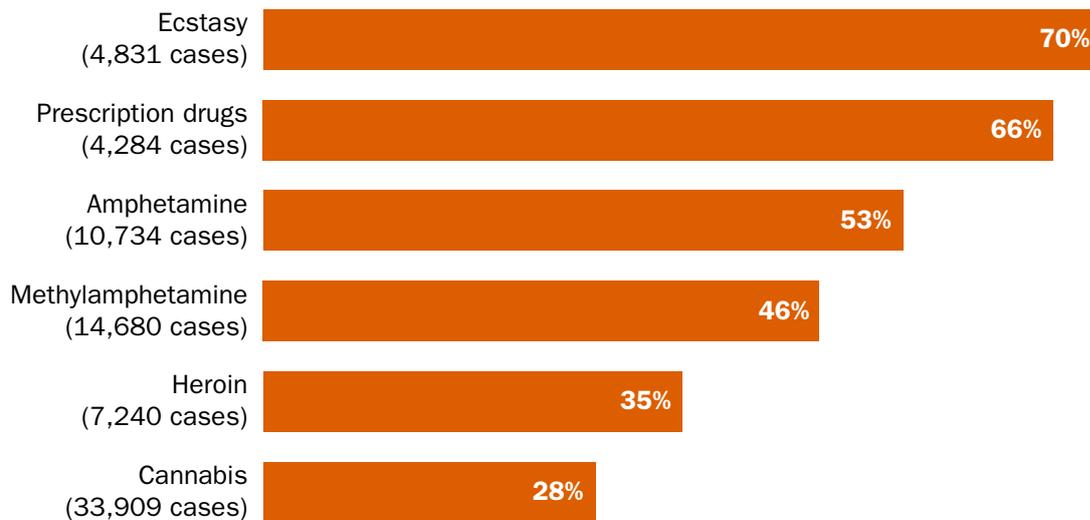
Drug type	Number of cases	Percentage of all cases
Cannabis	33,909	55%
Methylamphetamine	14,680	24%
Amphetamine	10,734	17%
Heroin	7,240	12%
Ecstasy	4,831	8%
Prescription drugs	4,284	7%
<b>Total cases involving the six drug types</b>	<b>58,445</b>	<b>95%</b>
<b>All cases sentenced</b>	<b>61,788</b>	<b>100%</b>

40. This count excludes minor drug offence cases in which the drug type identified was not one of the six drugs of interest (1,173 cases), the drug type was not identified (2,035) and there was some combination of other drugs (135).

Figure 12 shows the extent to which the 58,445 minor drug offence cases included charges involving multiple drug types. Cases involving ecstasy and prescription drugs were most likely to include multiple drug types (70% and 66% of cases respectively). In contrast, cases involving heroin and cannabis were least likely to include multiple drug types (35% and 28% respectively).

Table A5 in the Appendix shows how many drug types were included in cases that involved each of the six drug types of interest.

**Figure 12: Percentage of cases that included multiple drug types, by drug type in case, 2007–08 to 2016–17**

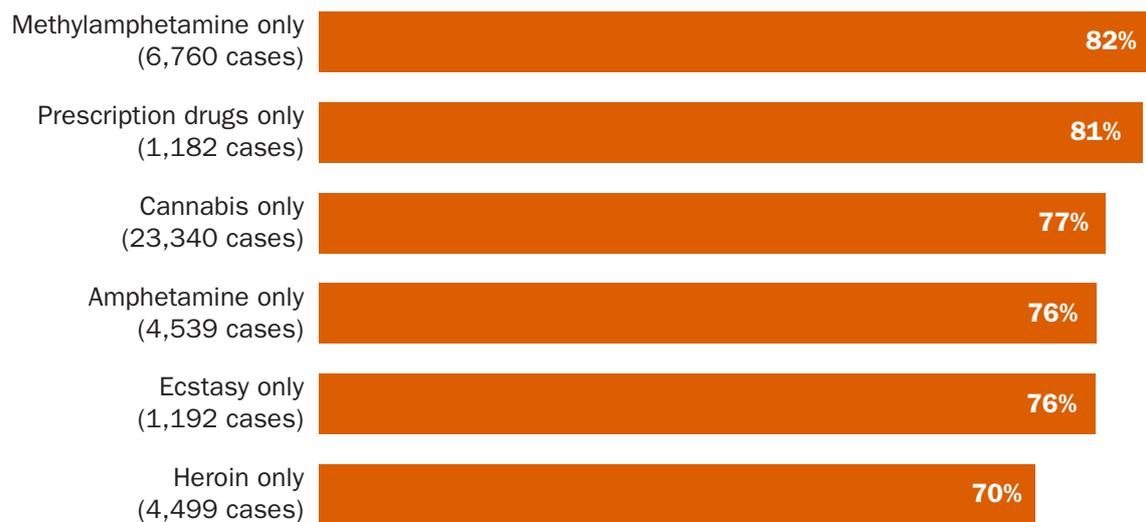


## Minor drug offence cases with other offence types

This section analyses minor drug offence cases that contained offence types other than minor drug offences. Examining all 61,788 minor drug offence cases sentenced over the reference period, the analysis identifies the other offence types committed by minor drug offenders and the prevalence of these other offence types in minor drug offence cases. The analysis underestimates the true extent of proven offences committed by minor drug offenders because it is restricted to proven charges *within a minor drug offence case*. It is beyond the scope of the analysis to consider minor drug offenders' cases that do not contain a minor drug offence.

Of the 61,788 minor drug offence cases, 80% included at least one other offence type; the remaining 20% included only minor drug offences. These percentages varied to a small extent according to the drug type in the case. As Figure 13 shows, other offence types were most likely to be included in cases involving methylamphetamine only (82%) and prescription drugs only (81%), and least likely to be included in cases involving heroin only (70%).

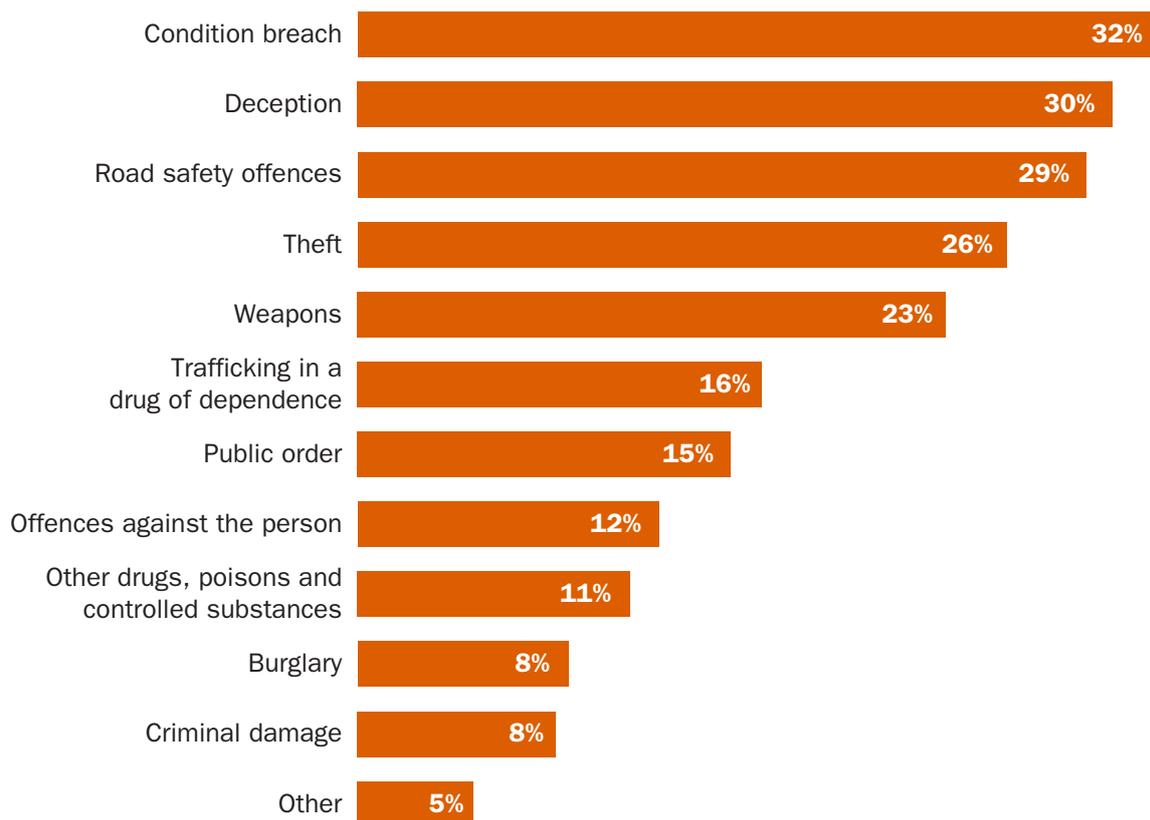
**Figure 13:** Percentage of minor drug offence cases that contained at least one other offence type, by drug type, 2007–08 to 2016–17



The prevalence of other offence types in minor drug offence cases is displayed in Figure 14. Condition breaches<sup>41</sup> (such as breaching bail or parole) were the most common other offence type sentenced in minor drug offence cases (32%), followed by deception (30%) and road safety offences (29%). The prevalence of condition breaches may indicate that offenders breached conditions by committing minor drug offences, and the minor drug offences and the breach offences were subsequently sentenced together.

Offences against the person were relatively uncommon in minor drug offence cases (12%). This may seem surprising given the clear increase in methylamphetamine use in Victoria and the violence that has come to be associated with it. However, upon arrest, many drug-affected violent offenders would be no longer in possession of any of the drug they had consumed and would not be charged with a minor drug offence.<sup>42</sup> Also, offenders who commit a violent offence in attempting to gain possession of a drug of dependence are not included in the data; such offenders would be charged with the violent offence but not possession of a drug of dependence.<sup>43</sup>

**Figure 14: Percentage of minor drug offence cases with co-sentenced offences, by other offence type in the case, 2007-08 to 2016-17**



41. The Council recently highlighted the growth in the number of sentenced secondary offences in Victoria, including breach of bail and breach of parole: see Sentencing Advisory Council, *Secondary Offences in Victoria* (2017) 12, 34.

42. Meeting with Victoria Police (12 December 2017).

43. Ibid.

## Relationship between drug type and co-sentenced offence

This section explores the relationship between the drug types minor drug offenders used or possessed and the co-sentenced offences these offenders committed. As with the analysis of demographic profiles in Figure 10 (page 15), this analysis isolates minor drug offence cases involving a single drug type (41,512 cases).

The prevalence of co-sentenced offences gives some insight into offence behaviour. Table 2 (page 22) shows the percentage of cases involving each drug type that included charges of co-sentenced offences. The most common category of co-sentenced offence for each drug type is highlighted in the table.

As shown in Figure 14, condition breaches were the most common co-sentenced offence overall, and criminal damage, burglary and *other* offences were the least common. With regard to the six drug types, condition breaches were most commonly included in minor drug offence cases involving cannabis and methylamphetamine (see Table 2).

Around one in 10 minor drug offence cases involving only cannabis or methylamphetamine also included sentenced charges of trafficking in a drug of dependence. This offence type was most common in minor drug offence cases involving only ecstasy (27%). However, it was ranked fairly low among co-sentenced offences, suggesting that drug trafficking is often not a purpose of drug possession. The figures understate the connection between possession and trafficking, as many drug possession charges are not pursued by prosecutors once a guilty plea for charges of drug trafficking is entered by the offender.<sup>44</sup>

Table 2 shows that condition breaches were the most common co-sentenced offence in minor drug offence cases involving cannabis only, and road safety offences were the second most common co-sentenced offence. Co-sentenced offences involving 'other drugs, poisons and controlled substances' were sentenced at a much greater rate in cases involving cannabis only (20%) than in cases involving the other five drug types.

Condition breaches were also the most common co-sentenced offence type in minor drug offence cases involving methylamphetamine only. Of the six drug types, cases involving methylamphetamine only were most likely to contain condition breaches. Deception (37%), road safety offences (41%) and weapons offences (25%) were most often co-sentenced in minor drug offence cases involving methylamphetamine only.

At 34%, road safety offences were the most common co-sentenced offence type in minor drug offence cases involving amphetamine only.

Theft was the most common co-sentenced offence type in minor drug offence cases involving heroin only (34%). Cases involving heroin only were the most likely of the six drug types to contain co-sentenced offences in the *other* category. These cases had the lowest percentage of road safety offences (20%), weapons offences (12%), offences against the person (8%) and public order offences (12%).

Deception was the most common co-sentenced offence in minor drug offence cases involving ecstasy only (28%). In addition, trafficking in a drug of dependence was most often included in minor drug offence cases involving ecstasy only (27%).

Theft was the most common co-sentenced offence in minor drug offence cases involving prescription drugs only. Public order offences (18%) and offences against the person (15%) were most likely to be co-sentenced in cases involving prescription drugs only.

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44. Meeting with Victoria Police (12 December 2017).

Table 2: Percentage of cases sentenced with co-sentenced offences, by drug type and co-sentenced offence type, 2007–08 to 2016–17

Co-sentenced offence	Cannabis only (23,340 cases)	Methylamphetamine only (6,760 cases)	Amphetamine only (4,539 cases)	Heroin only (4,499 cases)	Ecstasy only (1,192 cases)	Prescription drugs only (1,182 cases)
Condition breach	24%	42%	28%	32%	20%	32%
Deception	17%	37%	28%	31%	28%	32%
Road safety offences	21%	41%	34%	20%	23%	27%
Theft	20%	30%	25%	34%	16%	37%
Weapons	17%	25%	20%	12%	18%	21%
Trafficking in a drug of dependence	10%	13%	13%	13%	27%	8%
Public order	15%	15%	13%	12%	14%	18%
Offences against the person	13%	12%	11%	8%	10%	15%
Other drugs, poisons and controlled substances	20%	2%	2%	1%	3%	7%
Burglary	6%	11%	9%	11%	4%	11%
Criminal damage	8%	9%	7%	5%	6%	9%
Other	3%	5%	5%	7%	3%	5%

## 5. Sentencing trends for minor drug offences

This chapter examines the extent to which sentencing practices for minor drug offences changed over the reference period. The chapter considers aggregate sentences in the context of minor drug offences. However, due to the distorting effect of aggregate sentences on sentencing practices, this analysis focuses primarily on cases in which the proven charge of a minor drug offence was the only proven charge in the case.

The sentence types examined for these offences are:

- imprisonment;
- suspended sentence;
- community order (community correction order or community-based order);
- fine;
- adjourned undertaking; and
- other.

A maximum fine of 5 penalty units applies to two of the four minor drug offences included in this analysis. In addition, the DPCS Act provides for a presumption in favour of an adjourned undertaking of not more than 12 months for a minor drug offence in certain circumstances.<sup>45</sup> Consequently, any analysis of sentencing trends for minor drug offences would expect to find these two sentence types featured commonly.

There were also two relevant changes to sentencing dispositions during the reference period. First, the community correction order became a sentencing option for offences sentenced on or after 16 January 2012, and at the same time a number of sentencing options were abolished, including the community-based order and the intensive correction order. In this report, data for community correction orders and community-based orders are combined, and both orders are referred to as *community orders*.

Second, suspended sentences of imprisonment were abolished in the Magistrates' Court for any offence committed on or after 1 September 2014. This meant that magistrates needed to use an alternative sentence type where previously they would have used a suspended sentence. Magistrates were assisted by legislation that explicitly encouraged courts to use the community correction order in such instances.<sup>46</sup>

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45. This applies where the court is satisfied beyond reasonable doubt that the person is guilty of the offence, the offence is not related to drug trafficking and the person has not been previously convicted of a drug offence: *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 76.

46. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) pt 5.

## Aggregate sentences and case consolidation

When considering sentencing practices in relation to a specific offence or set of offences, it is important to understand and account for the effect of aggregate sentences. An aggregate sentence is a sentence imposed on two or more charges in a case, rather than a sentence being imposed on each separate charge. Consequently, from an analytical point of view, it is not meaningful to link an aggregate sentence to a specific charge.

The ability to impose an aggregate sentence reduces the complexity of the task of sentencing. When aggregate sentences were first introduced in the Magistrates' Court in 1997, the then Attorney-General heralded them as a 'sentencing tool ... which is expected to simplify the sentencing task and reduce the risk of technical sentencing errors'.<sup>47</sup> When introducing aggregate sentences to the County Court and the Supreme Court in 2006, the then Attorney-General described them as 'more flexible and pragmatic than imposing an individual sentence for each offence'.<sup>48</sup>

Aggregate sentences, or some variant, may be utilised for each sentence type. The *Sentencing Act 1991* (Vic) permits aggregate sentences for offences that may receive imprisonment or a fine where the offences are 'founded on the same facts, or form, or are part of, a series of offences of the same or a similar character'.<sup>49</sup>

The *Sentencing Act 1991* (Vic) does not use the term *aggregate sentence* for community correction orders and adjourned undertakings. However, it does state that a community correction order may be imposed across multiple offences, which implies an aggregate sentence in practice, if not in name. As adjourned undertakings apply to an offender, they may apply across multiple offences.

Aggregate sentences are used extensively in the Magistrates' Court for minor drug offences. Over the reference period, aggregate sentences were used for 89% of charges of a minor drug offence that received imprisonment, 93% of charges that received a suspended sentence and 80% of charges that received a fine (see Table A6 in the Appendix).

Not only is the use of aggregate sentences extensive in the Magistrates' Court, but it is also increasing. For example, the percentage of proven charges of a minor drug offence that received an aggregate sentence of imprisonment increased from 80% to 93% over the reference period. This was in line with the general practice in the Magistrates' Court: the percentage of all charges that were part of aggregate sentences of imprisonment increased from 79% to 91% in the same period.

The increased use of aggregate sentences has been attributed, in part, to the practice of combining multiple cases relating to the one offender into a single case. This practice is known as *case consolidation*, and there is anecdotal evidence that the practice has increased over the past decade.

## Principal sentence in minor drug offence cases with only one proven charge

Minor drug offence cases tended to have multiple proven charges: 90% of the total 61,788 cases included two or more proven charges of any offence, and 40% included more than five charges (Figure 15, page 25).

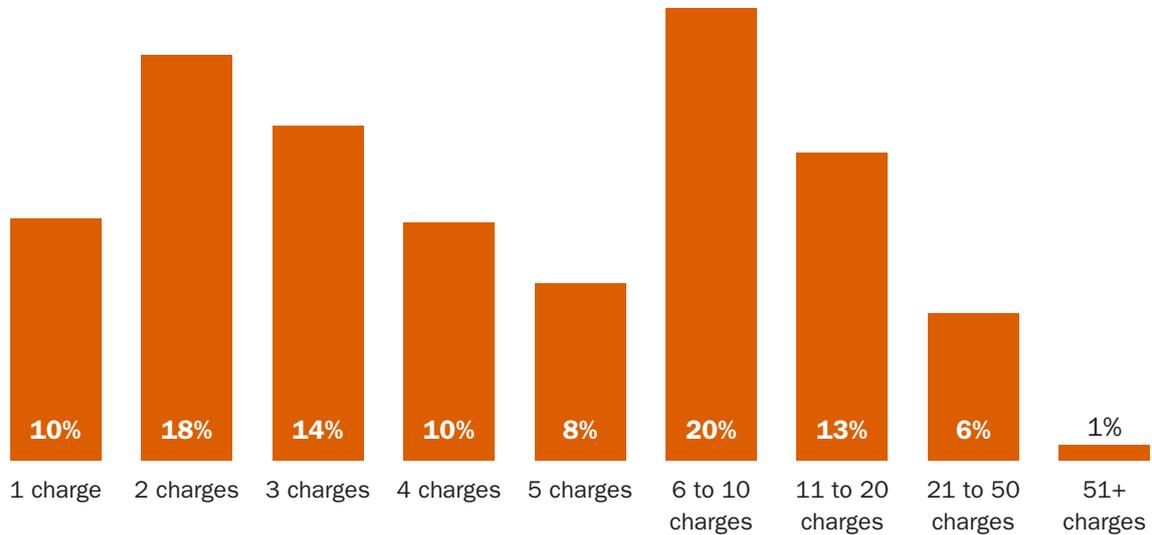
The following analysis of sentencing practices is restricted to minor drug offence cases that only had one proven charge. This restriction ensures that the sentence examined relates only to a charge of a minor drug offence. There were 6,452 minor drug offence cases with a single proven charge, representing 10% of minor drug offence cases.

47. Victoria, *Parliamentary Debates*, Legislative Assembly, 24 April 1997, 875 (Jan Wade, Attorney-General).

48. Victoria, *Parliamentary Debates*, Legislative Assembly, 24 April 1997, 1776 (Rob Hulls, Attorney-General).

49. *Sentencing Act 1991* (Vic) ss 9(1), 51(1).

**Figure 15:** Percentage of minor drug offence cases, by total number of proven charges in each case, 2007–08 to 2016–17

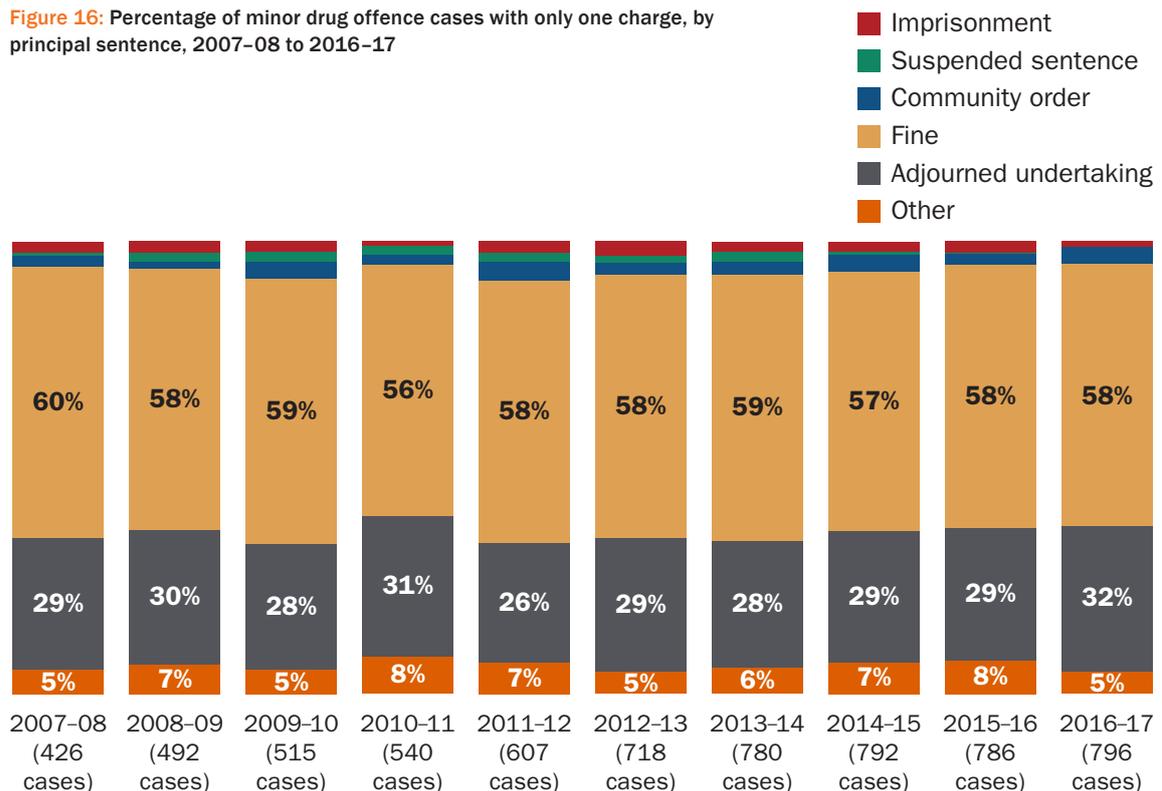


### Trends over time

Figure 16 shows the distribution of principal sentences over the reference period for cases in which the charge of a minor drug offence was the only charge in the case. Focusing on 2016–17, the most common sentence imposed was a fine (58%), followed by an adjourned undertaking (32%). Imprisonment or a community correction order were used in only 5% of cases.

Sentencing practices for minor drug offence cases with a single charge remained stable over the reference period. The use of fines ranged from 56% of cases in 2010–11 to 60% of cases in 2007–08. The use of adjourned undertakings ranged from 26% of cases in 2011–12 to 32% of cases in 2016–17.

**Figure 16:** Percentage of minor drug offence cases with only one charge, by principal sentence, 2007–08 to 2016–17



## Trends across drug types

Figure 17 shows the distribution of principal sentences in minor drug offence cases with a single charge, according to the drug type involved. There were 6,004 minor drug offence cases with a single charge that involved one of six drug types: cannabis, methylamphetamine, amphetamine, heroin, ecstasy and prescription drugs. For these drug types, fines and adjourned undertakings were used in over 80% of cases.

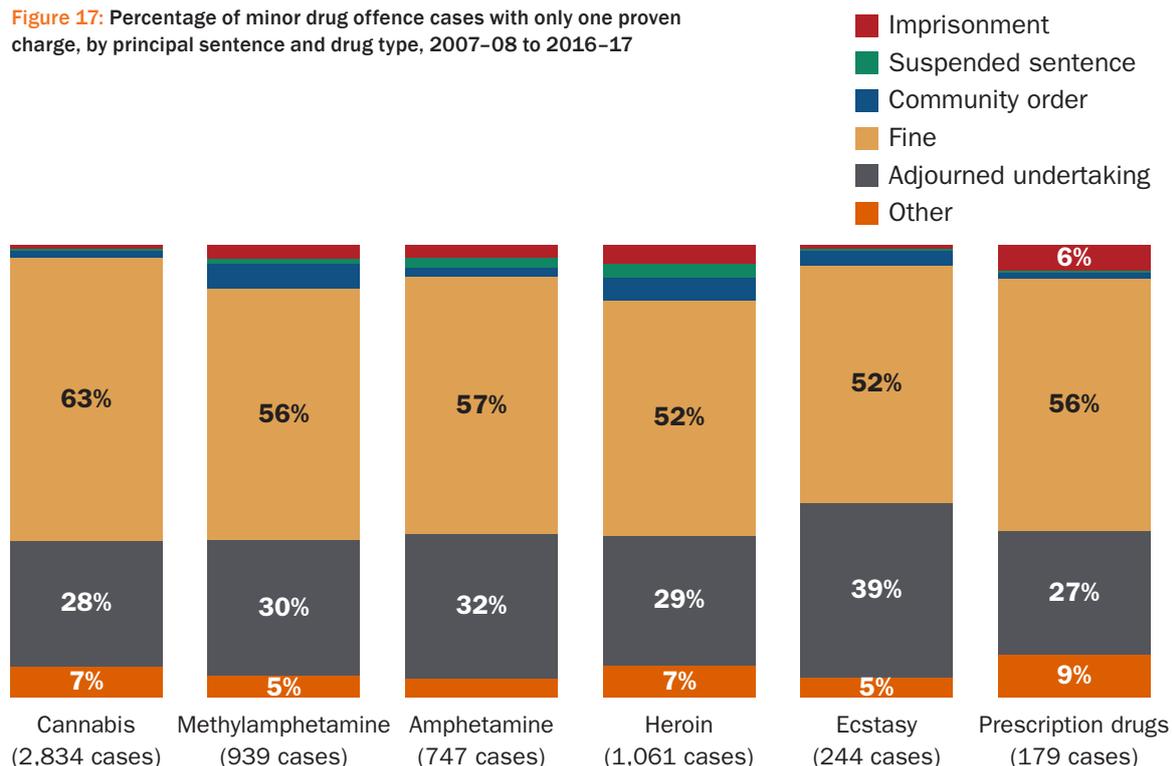
A fine was the most common sentence for cases involving each of the six drug types. This ranged from 52% of sentences for cases involving heroin only and ecstasy only to 63% of sentences for cases involving cannabis only.

An adjourned undertaking was the second most common sentence for cases involving each of the six drug types. It was used most frequently for cases involving ecstasy only (39%) and least frequently for cases involving prescription drugs only (27%).

This analysis of sentencing outcomes is extended in Table A7 in the Appendix to include both aggregate and non-aggregate sentences for all proven charges of a minor drug offence. This extended analysis demonstrates the effect of aggregate sentences, and other offences within the same case, on sentencing trends for minor drug offences. For example, for cases involving prescription drugs, imprisonment was used for only 6% of charges where the case only had one charge of a minor drug offence (Figure 17). However, imprisonment was used for 18% of charges where all charges of a minor drug offence are considered (Table A7 in the Appendix). Similarly, a fine was used for 56% of charges where the case involving prescription drugs only had one charge of a minor drug offence, but a fine was used for 28% for all charges.

Generally, when aggregate sentences are included in the analysis of sentencing trends for minor drug offences, the distribution skews towards relatively severe sentences. This reflects the fact that minor drug offences are frequently sentenced in cases that also include other more serious offences.

**Figure 17: Percentage of minor drug offence cases with only one proven charge, by principal sentence and drug type, 2007–08 to 2016–17**



## Principal sentence in all minor drug offence cases

The analysis in this section extends to all minor drug offence cases, regardless of the number or type of charges. The analysis considers sentencing trends over time and across drug types.

The analysis examines the principal sentence, which is the most severe sentence imposed on a case, taking into account the sentence imposed on all charges in the case. Consequently, the principal sentence imposed on a minor drug offence case may not reflect the penalty imposed on charges of a minor drug offence within a case.

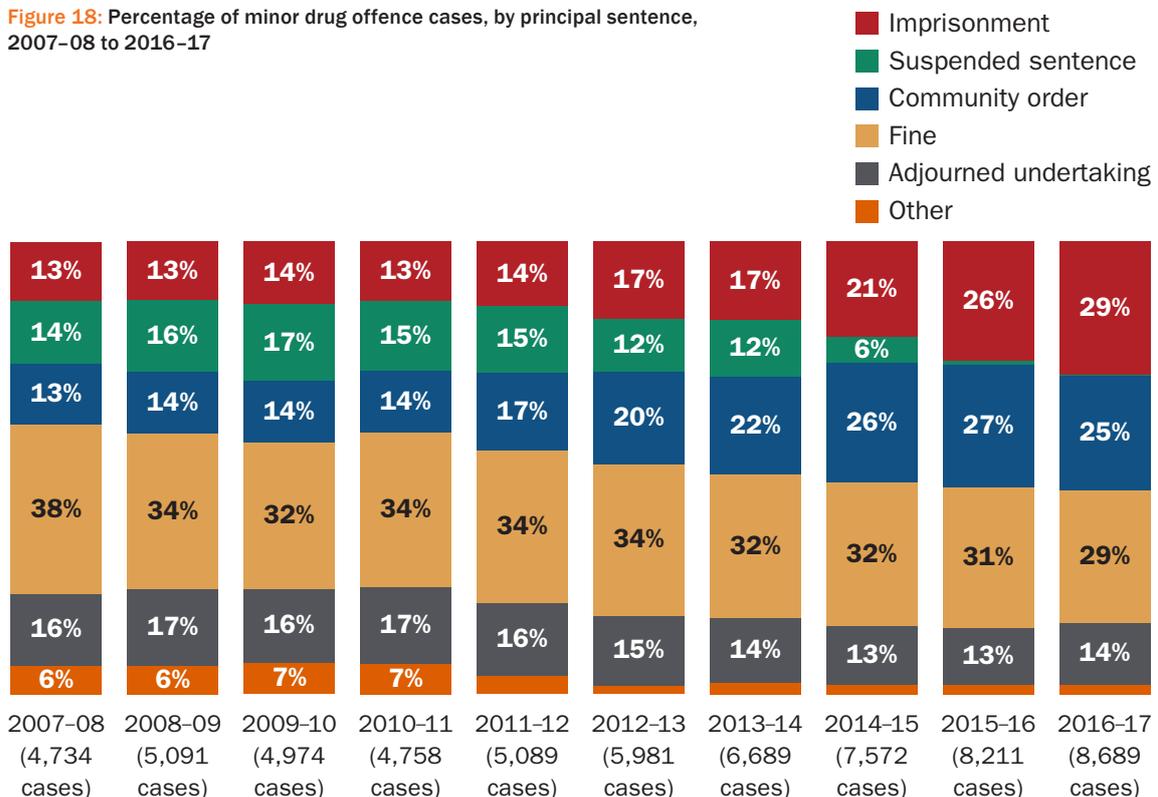
### Trends over time

In 2016–17, almost equal proportions of principal sentences in minor drug offence cases involved imprisonment (29%), fines (29%) and community correction orders (25%). Adjourned undertakings were used in 14% of cases.

There were some clear changes in sentencing practices for minor drug offence cases over the reference period, as shown in the distribution of principal sentences in Figure 18. The use of imprisonment increased from 13% of principal sentences in 2007–08 to 29% in 2016–17. Similarly, community orders rose from 13% of principal sentences in 2007–08 to 27% in 2015–16.

While the use of imprisonment and community orders increased for minor drug offenders, the use of other orders decreased. The use of fines declined from 34% in 2012–13 to 29% in 2016–17, and the use of suspended sentences declined from 12% in 2013–14 to less than 1% in 2016–17. This decline was due to the abolition of suspended sentences for offences committed on or after 1 September 2014.

**Figure 18: Percentage of minor drug offence cases, by principal sentence, 2007–08 to 2016–17**



The increase in the use of imprisonment and community orders may be due to a number of factors. It is possible that there was an increase in the seriousness of offending in minor drug offence cases, resulting in higher rates of imprisonment. The growing practice of case consolidation means that the range and volume of offences within each case are likely to have increased. An increase in the number of charges per case may also have led to higher imprisonment rates. As Figure 19 shows, the average number of charges per case increased during the reference period from 5.87 in 2010–11 to 9.51 in 2016–17. Such an increase could well have led to some fines escalating to community orders and some community orders escalating to imprisonment.

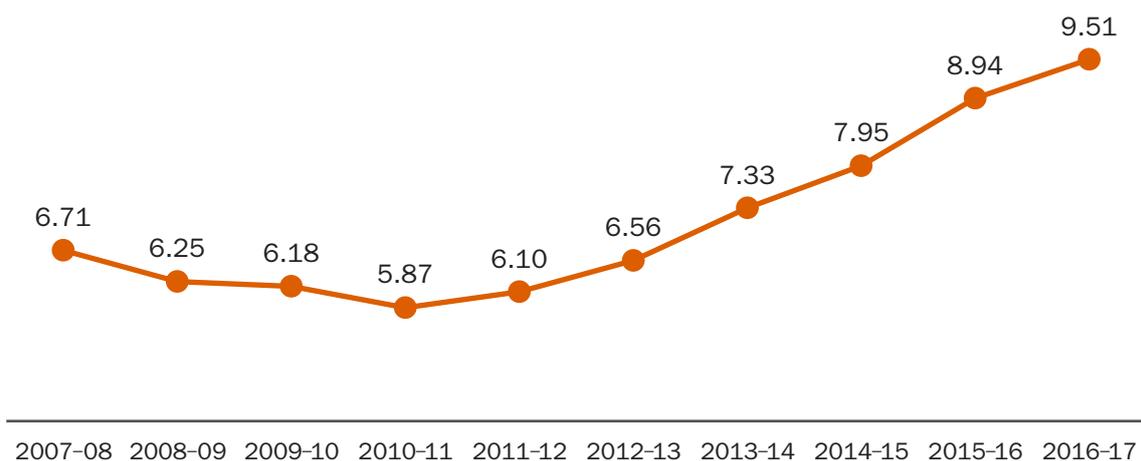
The abolition of suspended sentences is likely to have substantially contributed to the increase in the use of community correction orders and, in small part, the increase in the use of imprisonment. Previous research has found that, in the Magistrates' Court, community correction orders were primarily used in place of suspended sentences.<sup>50</sup>

A factor that is relevant to the increase in imprisonment for minor drug offences is the increased use of remand (instead of bail) for offenders overall. This means that more offenders come to be sentenced having already spent time in prison.

The unsentenced prisoner population in Victoria increased from 829 in July 2007 to 2,224 in June 2017. In just the last two years of the reference period, an average of 36 unsentenced prisoners were added to the prison population each month, compared with an average of just six unsentenced prisoners per month in the eight years to July 2015.<sup>51</sup>

The courts may be more likely to impose a *retrospective* imprisonment sentence (equivalent or similar to the time already served) on these offenders than on offenders who have not spent time on remand, irrespective of the offence.

**Figure 19: Average number of charges of any offence in each minor drug offence case, 2007–08 to 2016–17**



50. Sentencing Advisory Council, *Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)* (2016) 33.

51. Corrections Victoria, 'Monthly Time Series Prisoner and Offender Data' (corrections.vic.gov.au, 2017) Corrections, Prisons & Parole <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/monthly+time+series+prisoner+and+offender+data>> at 12 January 2018.

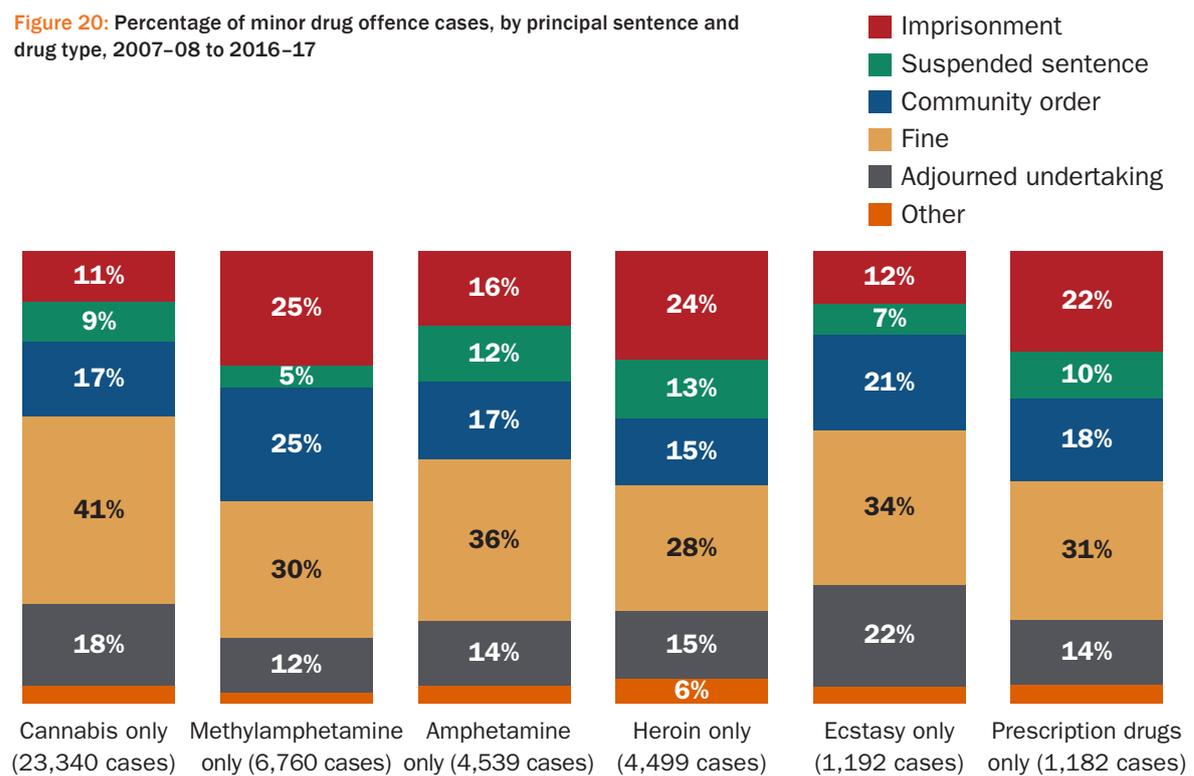
## Trends across drug type

This section uses a case-level analysis to examine differences in sentencing practices according to the drug type involved in minor drug offences. In cases that include multiple charges, the principal sentence imposed on the case takes into account all co-sentenced charges. The analysis also considers other factors such as prior convictions and the offender's age.

Figure 20 presents the principal sentences imposed on minor drug offence cases according to the drug type involved. Only cases involving a single drug type are included. The data reveals some clear differences in sentencing practices according to drug type. Relatively high rates of imprisonment were used for cases involving methylamphetamine (25%), heroin (24%) and prescription drugs (22%), particularly when compared with cannabis (11%) and ecstasy (12%).

These differences may be due to the increased prevalence of methylamphetamine and prescription drugs in the second half of the reference period, during which the use of imprisonment increased more generally following the abolition of suspended sentences.

**Figure 20: Percentage of minor drug offence cases, by principal sentence and drug type, 2007–08 to 2016–17**



In order to mitigate the effect of the abolition of suspended sentences, the analysis examined the aggregate of cases that received one of the following orders: imprisonment, suspended sentence or community order. A similar pattern emerged to the pattern found in the analysis of imprisonment sentences. Substantially higher proportions of cases involving methylamphetamine (55%), heroin (52%) and prescription drugs (51%) received imprisonment, a suspended sentence or a community order than cases involving cannabis (37%) and ecstasy (40%).

The differences in sentencing patterns across drug types were likely to be due to factors other than a generalised shift in sentencing practices, such as the prevalence and type of co-sentenced offences and the offender's age and prior convictions. It is beyond the scope of this report to assess causal linkages between such factors and differences in sentencing patterns, although the influence of some factors, such as co-sentenced offences and age, was explored.

The three drug types that had the highest imprisonment rates (methylamphetamine, heroin and prescription drugs) also had the highest level of co-sentenced offences involving condition breaches (from 32% to 42%), deception (from 31% to 37%) and burglary (11% for each drug type) (see Table 2, page 22). The drug type with the lowest imprisonment rate, cannabis, also had the second lowest level of co-sentenced offences involving condition breaches (24%) and burglary (6%) and the lowest level involving deception (17%). It may be that the presence of these types of co-sentenced offences increased the likelihood of imprisonment for the case.

Prior convictions could not be directly measured for this report as the available data did not include them. However, the data did include age of the offender, which is often indirectly correlated, as older offenders tend to have more prior convictions.

Overall, minor drug offenders aged under 25 years (14,719) and 40 years and over (13,886) were least likely to receive imprisonment (14% and 16% respectively). By comparison, 24% of minor drug offenders aged 30 to 34 received imprisonment. Further, minor drug offenders aged under 25 years were most likely to receive community orders (26%), and minor drug offenders aged 40 years and over were most likely to receive fines (41%).

Of the six drug types, cases involving heroin had the lowest proportion of minor drug offenders aged under 25 years (9%), while cases involving ecstasy had the highest proportion of minor drug offenders aged under 25 years (53%) (see Figure 11, page 16). The age of minor drug offenders may help explain why heroin cases were more likely to receive imprisonment than ecstasy cases.

This analysis has discussed some possible factors that may have influenced the relationship between drug types in minor drug offences and sentencing outcomes. Further research is required to better understand these factors.

# Conclusion

Over the past six years, there has been a substantial increase in the volume of minor drug offences proven in the Magistrates' Court of Victoria. This increase is consistent with the alleged minor drug offences recorded by Victoria Police, suggesting that it has been driven, at least in part, by more police activity. This increase has resourcing implications for the Magistrates' Court, something that has been recognised in other recent research.<sup>52</sup>

The increase in the number of proven charges of a minor drug offence has been driven largely by the drug methylamphetamine. The number of proven charges of a minor drug offence involving this drug increased by over 2,000% over the reference period, and the drug surpassed cannabis as the most prevalent drug type among charges of a minor drug offence.

Minor drug offences tend to be associated with a high level of criminal activity. Most minor drug offence cases (80%) included at least one other offence type. The most common offences were condition breaches followed by theft, deception and road safety offences.

Violent offences were found to be relatively rare among minor drug offenders. The presence of offences against the person in minor drug offence cases ranged in prevalence for different drug types, from 8% of cases involving heroin only to 15% of cases involving prescription drugs only. However, the methodology used for this report is likely to have underestimated the true level of violence associated with drug use.

While it is possible that the level of violent offences associated with drug use is understated, it is not an aim of this report to quantify drug-fuelled violence sentenced in Victoria. The connection between the use of particular illicit drugs and violent criminal behaviour may be worth further analysis. The steady increase in proven charges of a minor drug offence in the past five years indicates a significant burden on police, courts and social welfare.

A complete picture of sentencing of minor drug offences is clouded by the high and increasing prevalence of aggregate sentences in the Magistrates' Court. However, the report's analysis of cases involving a single proven charge of a minor drug offence found that the vast majority of these cases received either a fine (58% in 2016–17) or an adjourned undertaking (32% in 2016–17). Fines and adjourned undertakings are relatively low-severity sentences and reflect the view that minor drug offences are of a low level of seriousness.

The sentence imposed on a case takes into account all the offences for which an offender is sentenced and reflects the severity of the entire range of proven offences. In 2016–17, imprisonment (29%) and community correction orders (25%) were commonly used to sentence minor drug offence cases.

It is hoped that the findings of this report can add to the complex picture of minor drug offending and be used to inform community and public discussion about effective policy approaches to drug possession and use in Victoria.

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52. See Hugh Macdonald et al., *In Summary: Evaluation of the Appropriateness and Sustainability of Victoria Legal Aid's Summary Crime Program* (2017).

## Appendix

**Table A1:** Distribution of sentenced charges of a minor drug offence and minor drug offence cases across all Victorian courts, by charge and case distinction, 2007–08 to 2016–17

Court	Charges of a minor drug offence		Minor drug offence cases		Cases in which the principal offence was a minor drug offence	
	Number of charges	Percentage of charges	Number of cases	Percentage of cases	Number of cases	Percentage of cases
Children's Court	3,628	3%	2,402	4%	410	17%
Magistrates' Court	118,101	95%	61,788	94%	17,619	29%
Higher courts	2,556	2%	1,610	2%	132	8%
<b>Total</b>	<b>124,285</b>	<b>100%</b>	<b>65,800</b>	<b>100%</b>	<b>18,161</b>	<b>28%</b>

**Table A2:** Number and percentage of proven charges of a minor drug offence sentenced in the Magistrates' Court, by drug type and offence type, 2007–08 to 2016–17

Drug type	Possession	Use	Total	Percentage of all charges
Cannabis	33,966	14,506	48,472	41.0%
Methylamphetamine	15,502	4,424	19,926	16.9%
Amphetamine	10,365	3,902	14,267	12.1%
Heroin	7,123	2,715	9,838	8.3%
Prescription drugs	5,600	353	5,953	5.0%
Ecstasy	4,761	827	5,588	4.7%

Table A2: *continued*

Drug type	Possession	Use	Total	Percentage of all charges
GHB	2,152	412	2,564	2.2%
Cocaine	899	132	1,031	0.9%
Anabolic steroids	634	46	680	0.6%
LSD	407	56	463	0.4%
Oxycodone	238	39	277	0.2%
Hallucinogen	203	36	239	0.2%
Ketamine	159	29	188	0.2%
Morphine	134	37	171	0.1%
Alprazolam	104	1	105	0.1%
Psilocybin	72	0	72	0.1%
Butanediol	64	4	68	0.1%
Buprenorphine	31	1	32	<0.1%
Dimethylamphetamine	18	14	32	<0.1%
Methylphenidate	23	2	25	<0.1%
GBL	17	4	21	<0.1%
Synthetic cannabinoid	11	3	14	<0.1%
Dimethyltryptamine	13	0	13	<0.1%
Benzylpiperazine	6	0	6	<0.1%
Methcathinone	3	0	3	<0.1%
25I-NBOMe	1	0	1	<0.1%
Dimethocaine	1	0	1	<0.1%
Drug not identified	6,761	1,290	8,051	6.8%
<b>Total</b>	<b>89,268</b>	<b>28,833</b>	<b>118,101</b>	<b>100%</b>

Table A3: Number of proven charges of a minor drug offence in each financial year, by drug type, 2007-08 to 2016-17

Drug type	Financial year sentenced									
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Cannabis	4,775	4,913	4,637	4,412	4,545	4,674	4,705	5,331	5,311	5,169
Methylamphetamine	263	343	243	355	619	1,463	2,453	3,584	4,891	5,712
Amphetamine	1,681	1,548	1,385	1,179	1,462	1,796	1,744	1,568	1,100	804
Heroin	832	1,072	1,187	1,136	1,030	922	911	925	889	934
Ecstasy	460	534	476	329	316	444	570	737	898	824
Prescription drugs	250	305	340	389	494	609	829	825	916	996

Table A4: Number of proven charges of other drugs sentenced in each financial year, by drug type and where drug is not identified, 2007-08 to 2016-17

Drug type	Financial year sentenced									
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Cocaine	29	61	87	66	66	102	87	158	170	205
GHB	16	23	52	53	76	171	327	501	604	741
Other	81	93	148	163	164	258	338	412	397	357
Drug not identified	493	503	466	504	589	822	1,087	1,177	1,215	1,195

**Table A5:** Number of minor drug offence cases, by drug type within case and number of other drug types sentenced, 2007-08 to 2016-17

Drug type in the case	Number of other drug types involved in the case					
	0	1	2	3	4	5
Cannabis	24,500	6,984	1,878	469	71	7
Methylamphetamine	7,867	4,762	1,535	441	68	7
Amphetamine	4,999	3,935	1,355	372	66	7
Heroin	4,708	1,735	554	192	44	7
Ecstasy	1,458	1,810	1,136	365	55	7
Prescription drugs	1,457	1,550	880	329	61	7

**Table A6:** Number of charges of a minor drug offence, by principal sentence, drug type and aggregate or non-aggregate form of the principal sentence, 2007–08 to 2016–17

Sentence type and drug	Aggregate	Non-aggregate	Total	Percentage aggregate
<b>Fine</b>	<b>31,536</b>	<b>7,925</b>	<b>39,461</b>	<b>80%</b>
Cannabis	18,383	4,768	23,151	79%
Methylamphetamine	4,434	991	5,425	82%
Amphetamine	4,142	881	5,023	82%
Heroin	1,771	826	2,597	68%
Ecstasy	1,385	236	1,621	85%
Prescription drugs	1,421	223	1,644	86%
<b>Imprisonment</b>	<b>10,525</b>	<b>1,344</b>	<b>11,869</b>	<b>89%</b>
Cannabis	1,982	193	2,175	91%
Methylamphetamine	3,574	413	3,987	90%
Amphetamine	1,553	269	1,822	85%
Heroin	1,853	286	2,139	87%
Ecstasy	621	69	690	90%
Prescription drugs	942	114	1,056	89%
<b>Suspended sentence</b>	<b>3,583</b>	<b>284</b>	<b>3,867</b>	<b>93%</b>
Cannabis	943	65	1,008	94%
Methylamphetamine	575	45	620	93%
Amphetamine	823	75	898	92%
Heroin	633	79	712	89%
Ecstasy	268	13	281	95%
Prescription drugs	341	7	348	98%
<b>Total</b>	<b>45,644</b>	<b>9,553</b>	<b>55,197</b>	<b>83%</b>

Table A7: Number and percentage of charges of a minor drug offence, by principal sentence imposed on each charge and drug type, 2007-08 to 2016-17

Principal sentence imposed	Cannabis	Methylamphetamine	Amphetamine	Heroin	Ecstasy	Prescription drugs
Imprisonment	2,175	3,987	1,822	2,139	690	1,056
	4%	20%	13%	22%	12%	18%
Suspended sentence	1,008	620	898	712	281	348
	2%	3%	6%	7%	5%	6%
Community order	8,701	6,857	3,652	2,294	1,772	1,814
	18%	34%	26%	23%	32%	30%
Fine	23,151	5,425	5,023	2,597	1,621	1,644
	48%	27%	35%	26%	29%	28%
Adjourned undertaking	9,642	2,308	2,074	1,280	974	797
	20%	12%	15%	13%	17%	13%
Other	3,795	729	798	816	250	294
	8%	4%	6%	8%	4%	5%
<b>Total</b>	<b>48,472</b>	<b>19,926</b>	<b>14,267</b>	<b>9,838</b>	<b>5,588</b>	<b>5,953</b>
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Diversion <sup>a</sup>	2,991	760	780	126	523	797
	-	-	-	-	-	-

a. Diversion is not technically a sentence, as there is no finding of guilt. This disposition is shown separately and does not contribute to the total number of charges for each drug type.

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**Sentencing Advisory Council**

Level 3

333 Queen Street

Melbourne VIC 3000

Telephone 1300 363 196

Facsimile 03 9908 8777

[contact@sentencingcouncil.vic.gov.au](mailto:contact@sentencingcouncil.vic.gov.au)

[www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)

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