

**Possess cannabis with intent to sell or supply,**  
**Cultivate cannabis with intent to sell or supply**  
**and Offer to sell or supply cannabis**

*ss 6(1), 7(1) and 7(2) Misuse of Drugs Act*

**From 1 January 2014**

**Transitional Sentencing Provisions:** Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

cult	cultivate
methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
hydro	hydroponic
poss	possess
wiss	with intent to sell or supply
immed	immediate
imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
TES	total effective sentence
UO	undercover operative
circ	circumstances

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
15.	<p><i>Harvey v The State of Western Australia</i></p> <p><b>[2017] WASCA 149</b></p> <p>Delivered 11/08/2017</p>	<p>24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted on PG (15% discount).</p> <p>Prior criminal history; traffic offences only.</p> <p>Strong support of family and friends.</p> <p>Raised and schooled in country town.</p> <p>Learning difficulties; educated to yr 10; possible undiagnosed ADHD.</p> <p>Att motor mechanic apprenticeship.</p> <p>Prior to sentence found stable employment; requiring regular drug testing.</p> <p>Married; 6 yr relationship.</p> <p>Heavy cannabis use since his teens.</p> <p>Suffers anxiety and depression.</p>	<p>1 x Att poss cannabis wiss (909g).</p> <p>A search warrant executed at a home located two packages of cannabis. Telephone intercepts revealed Harvey had arranged to purchase this cannabis for \$8,000. He had previously purchased cannabis on at least one other occasion two weeks earlier.</p> <p>The same day Harvey drove past the house and was stopped by police. A search of his vehicle located \$10,500 in cash for the purchase of the cannabis and to pay money owing.</p> <p>Also located was a set of scales, a box of clip-seal bags and a list of addresses.</p>	<p>2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found there was some commerciality in the transaction and that he was selling cannabis to make a profit.</p> <p>The sentencing judge found the offending very serious and in the circumstances the only appropriate disposition was a term of imp to be served immediately and to susp the sentence wouldn't adequately demonstrate the community's condemnation of such offences.</p> <p>Steps taken towards rehabilitation.</p>	<p>Allowed.</p> <p>Appeal concerned both length and type of sentence.</p> <p>Re-sentenced to 12 mths imp.</p> <p>EFP.</p> <p>At [31] The seriousness of the appellant's offending is agg by the significant quantity and value of the cannabis which he att to purchase. In the parlance of the drug trade, he was going to buy two pounds of cannabis ... He was operating his own cannabis supply business for profit in order to fund his own illicit drug use ... and the incident was not isolated.</p> <p>At [33] ... After a period of 'going off the rails', the appellant appeared to have taken steps to get back on track. He had ... found stable employment and engaged in a positive way with his local community. The drug testing in the employment which the appellant gained ... suggested that [he] had ceased his</p>

					<p>regular cannabis use. He was in a stable relationship. Apart from his drug dealing, [he] was a person of generally good character without any relevant prior convictions.</p> <p>At [35] ... it was open to the sentencing judge to conclude that the seriousness of the offence and the need for general deterrence outweighed the mitigating factors and made inappropriate any sentence other than immed imp.</p> <p>At [36] ... the sentence imposed was manifestly excessive as to its length. Having regard to the maximum penalty ..., the circ of the offence, the current customary sentencing standards and practice and all other relevant sentencing considerations ... we are of the view that a sentence of 2 yrs' immed imp was unreasonable or plainly unjust.</p>
14.	<i>The State of Western Australia v Nilsson</i>	23 yrs at time offending. 24 yrs at time sentencing.	Ct 1: Att poss of methyl 129g at 77% purity.	Ct 1: 30 mths imp (cum).	Allowed.

<p><b>[2017] WASCA 68</b></p> <p>Delivered 18/04/2017</p>	<p>Convicted after early PG (25% discount).</p> <p>No relevant prior criminal history. This offence was the first serious offending.</p> <p>Previously of good character.</p> <p>Supportive family.</p> <p>Excellent work history until made redundant.</p> <p>Drug user following redundancy; drug dealing to fund habit and lifestyle.</p> <p>Determined efforts at rehabilitation while remanded in custody.</p>	<p>Ct 2: Poss methyl wiss 121.41g at 47-81% purity. Ct 3: Poss MDMA wiss 9.74g. Ct 4: Poss cannabis wiss 96.9g. Cts 5 &amp; 10: Poss unlawfully obtained money. Ct 6: Poss methyl wiss 127.24g at 68-74% purity. Ct 7: Poss 25C-NBOMe wiss 7.74g. Ct 8: Poss MDA wiss 0.84g. Ct 9: Poss MDMA wiss 0.37g.</p> <p><u>Ct 1</u> Police inspected an envelope containing methyl which was addressed to James Willson at a post office box registered to Nillson. Police replaced the methyl with an inert substance and the envelope was delivered to Nillson's post office box. Nillson collected the envelope and returned home.</p> <p><u>Cts 2-5</u> Later that day, police executed a search warrant at Nillson's address and found Nillson attempting to dispose of the inert substance in the shower.</p> <p>Police found 26 containers of methyl ranging from 0.05g to 32.7g (ct 2), 8.52g of MDMA and 5 MDMA pills weighing 1.22g (ct 3), cannabis (ct 4), \$23,635 cash (ct 5),</p>	<p>Ct 2: 30 mths imp (conc). Ct 3: 9 mths imp (conc). Ct 4: 6 mths imp (conc). Ct 5: 12 mths imp (conc). Ct 6: 2 yrs imp (cum). Ct 7: 9 mths imp (conc). Ct 8: 3 mths imp (conc). Ct 9: 3 mths imp (conc). Ct 10: 12 mths imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found Nillson to be an active retail and midlevel drug dealer and the sole proprietor of the drug dealing business; there was evidence of a very organised, large-scale polysubstance drug dealing operation; Nillson's culpability was high; the set-up pointed to widespread retailing and deep market penetration and</p>	<p>Appeal concerned length of individual sentences for cts 1, 2 and 6, and totality.</p> <p>Nillson re-sentenced on cts 1, 2 and 6 only:</p> <p>Ct 1: 4 yrs 6 mths imp (cum). Ct 2: 4 yrs 6 mths imp (conc). Ct 6: 2 yrs imp (reduced from 4 yrs 6 mths imp for totality reasons) (cum on ct 1).</p> <p>TES 6 yrs 6 mths imp.</p> <p>Other sentences and orders remain.</p> <p>At [32] The sentencing judge was...mistaken in concluding that there had been a softening of approach... such a conclusion was not one that could ordinarily be reached on the basis of an inference drawn from a comparison of three cases and it was not one that could be reached in this instance, not least because it was based upon an erroneous analysis of those cases.</p>
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			<p>unused clipseal bags and plastic containers, digital scales, a brass weight, a tick list and approx. 200g of cutting agent.</p> <p><u>Cts 6-10</u> Police searched Nillson's car at a self-storage unit and found 16 containers of methyl (ct 6), 25C-NBOMe (ct 7), MDA (ct 8), MDMA (ct 9), \$12,150 cash (ct 10), unused clipseal bags, digital scales and cutting agent.</p>	<p>that Nillson must have been an important player in the Geraldton drug distribution business.</p> <p>Sentencing judge found good prospects of rehabilitation and that Nillson would not reoffend in a similar way.</p> <p>Remorse and acceptance of responsibility.</p>	<p>At [35] The offending... was very serious. The respondent was aptly described by the sentencing judge as the sole proprietor of a 'very organised, large-scale polysubstance drug dealing operation'. The amount of methyl involved in each of cts 1, 2 and 6 was substantial and at a high level of purity. The drug dealing was a commercial operation carried on for profit to fund both the respondent's drug habit and his lifestyle, in circumstances where... the respondent was 'overwhelmed with greed' ... Apart from the PG... the only mitigating factor was the respondent's favourable personal circumstances, which was not a factor of great weight in the context of the offending.</p>
13.	<p><i>Rillotta v The State of Western Australia</i></p> <p>[2017] WASCA 55</p> <p>Delivered 27/03/2017</p>	<p><u>Rillotta 1</u> 36 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history in SA; convictions for cultivating and trafficking in cannabis.</p>	<p>2 x Sell supply cannabis 22.67kg.</p> <p>The Rillotta's are brothers who jointly organised the supply and sale of cannabis from SA to WA. They largely conducted business using 'covert' mobile phones, subscribed in false names.</p>	<p>Ct 1: 5 yrs imp (cum). Ct 2: 15 mths imp (cum).</p> <p>TES 6 yrs 3 mths imp. EFP.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeals concerned totality.</p> <p>At [34] ... a significant quantity (about 22.7kg) of cannabis was involved, and the appellants were well aware</p>

<p>Co-offenders of:</p> <p><i>Franchina v The State of Western Australia</i> [2017] WASCA 56</p> <p><i>Adornetto v The State of Western Australia</i> [2017] WASCA 57</p>	<p>Offences committed two months after his release on parole in SA (16 mths to be served on completion of WA sentence).</p> <p>Unremarkable upbringing.</p> <p>Steady employment history; operated legitimate business closed prior to sentencing.</p> <p>Stable relationship; father of two young children.</p> <p>Good health.</p> <p>History of cannabis use.</p> <p><u>Rillotta 2</u> 35 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No relevant criminal history.</p> <p>Unremarkable upbringing.</p> <p>Steady employment history; operated legitimate business closed prior to sentencing.</p>	<p>Rillotta 1 predominantly dealt with a co-offender Zippel to transport cannabis from SA to WA.</p> <p>Rillotta 2 predominantly dealt with the WA customers, co-offenders Franchina and Adornetto.</p> <p><u>Indictment</u> The Rillottas arranged for Zippel to deliver 50 pounds (22.67 kg) of cannabis to WA. Another co-offender Trouchet then delivered 30 pounds (13.6 kg) of cannabis to Franchina and 20 pounds (9.07 kg) to Adornetto.</p> <p>Rillotta 2 flew to Perth to collect money for the cannabis. He met with Adornetto and received payment for the 20 pounds of cannabis. On the same day he intended to meet Franchina to collect payment for the cannabis, but was unable to do so before Franchina was arrested.</p>	<p>took into account the appellants offered to PG to the cts of which they were convicted in satisfaction of the ind, including a conspiracy ct. This offer was not accepted, the jury could not reach a verdict on the conspiracy charge and it was withdrawn.</p> <p>By reason of his more serious record and the fact the offences were committed while on parole Rillotta 1 would ordinarily receive a greater sentence. However, this was counter-balanced by the fact he would be required to serve the balance of his sentence in SA, impacting totality.</p> <p>Both remorseful. Risk of reoffending due to financial difficulties.</p>	<p>of the nature and quantity of the drugs they were selling. They stood at the head of the supply chain into WA, and organised the delivery of the cannabis by subordinates. They operated ... purely for commercial gain. ... it can be inferred that the appellants anticipated making a significant profit from the venture if it succeeded.</p> <p>At [35] The appellants are to be punished only for what they have been convicted of doing. However, the circumstance that the sales took place as part of an ongoing commercial operation provides the context for assessing the seriousness of the conduct .... that the conduct was not isolated or out of character, and ... was planned and premeditated.</p>
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		<p>Stable relationship; father 1 mth old baby.</p> <p>Good health.</p> <p>No history of illicit drug use.</p>			
12.	<p><b>Franchina v The State of Western Australia</b></p> <p>[2017] WASCA 56</p> <p>Delivered 27/03/2017</p> <p>Co-offender of:</p> <p><b>Rillotta v The State of Western Australia</b> [2017] WASCA 55</p> <p><b>Adornetto v The State of Western Australia</b> [2017] WASCA 57</p>	<p>68 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; two prior convictions for poss and cultivation of cannabis; no sentences of imp.</p> <p>Born in Sicily; immigrated in 1967; limited English.</p> <p>Limited schooling; basic reading and writing skills.</p> <p>No formal work qualifications; good employment history.</p> <p>Significant assets.</p> <p>Married; three adult children; five grandchildren.</p> <p>Serious health issues; diabetic; liver transplant and had spinal fusion surgery; medicated daily.</p>	<p>1 x Poss cannabis wiss 22.67kg.</p> <p>Franchina was a customer of the Rillotta brothers, co-offenders who sent significant quantities of cannabis from SA to WA.</p> <p>The Rillotta's arranged for 50 pounds (22.67 kg) of cannabis to be bought to WA by truck. The cannabis was then delivered in three different packages to Franchina's home. Franchina made a number of telephone calls and arranged the sale of the cannabis to people with whom he had previously dealt with in relation to the supply of drugs.</p> <p>A short time later a search warrant was executed at Franchina's home and the cannabis was located. Scales, clipseal bags and a vacuum sealer machine was also found, along with more than \$50,000 in cash.</p>	<p>4 yrs imp. EFP.</p> <p>The sentencing judge found the appellant was persistent and active in seeking to be supplied with a significant quantity of cannabis and was actively involved in drug dealing. The offences represented part of a continuing course of drug-dealing conduct and he played a crucial and integral role in the distribution of cannabis within WA. The offending was premeditated, planned and a profitable venture.</p> <p>The sentencing judge found the appellant's offending was less serious than those of the</p>	<p>Dismissed.</p> <p>Appellant appealed length of sentence and challenged correctness of <b>Lester v The State of WA [2011] WASCA 128</b>.</p> <p>At [37] We have not been able to detect ... any shift in community standards which demands a more lenient treatment of dealers in very substantial quantities of illicit drugs, be they cannabis or other illicit drugs.</p> <p>At [42] ... this was a serious example of an offence against s6(1) of the Drugs Act involving cannabis. The appellant was a major customer for the cannabis sourced by the Rillotta brothers, and played a crucial and integral role in its</p>

				Rillotta brothers because he was 'lower in the drug syndicate than they were'.  No remorse. Unlikely to reoffend due to age and ill-health.	distribution in this State. The appellant's offending was not fleeting, isolated or impulsive, but was premediated and planned. ...
11.	<p><b><i>Adornetto v The State of Western Australia</i></b> <b>[2017] WASCA 57</b></p> <p>Delivered 27/03/2017</p> <p>Co-offender of:</p> <p><b><i>Rillotta v The State of Western Australia</i></b> [2017] WASCA 55</p> <p><b><i>Franchina v The State of Western Australia</i></b> [2017] WASCA 56</p>	<p>63 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>No relevant criminal history.</p> <p>Unremarkable positive upbringing; strong family relationships.</p> <p>Married; three daughters.</p> <p>Stable employment history; business owner.</p> <p>General good health; suffers from anxiety; hypertension and a pulmonary condition.</p> <p>No history of illicit drug use.</p>	<p>Ct 1: Sell cannabis 5.4kg. Ct 5: Poss cannabis wiss 9.07kg. Ct 6: Sell cannabis 4.53kg. Ct 7: Conspiracy to supply cannabis.</p> <p>Adornetto was one of six offenders involved in the illegal supply of cannabis from SA to WA.</p> <p>Two of the co-offender, the Rillotta brothers, operated and sourced cannabis from SA. A third co-offender, Zippel, transported the cannabis to WA. A fourth co-offender Trouchet assisted in the delivery of the cannabis in WA. The main distributors in WA were Adornetto and the fifth co-offender Franchina.</p> <p>An UO arranged to buy \$40,000 worth of cannabis from Adornetto. The UO was offered 12 pounds (approx. 5.4kg) at a total cost of \$50,400. Adornetto arranged delivery and collection of the money. The UO was told to go to a street where he was</p>	<p>Ct 1: 2 yrs 4 mths imp (cum). Ct 5: 3 yrs 8 mths imp (cum). Ct 6: 3 yrs 8 mths imp (conc). Ct 7: 3 yrs 8 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>The sentencing judge observed the appellant's offending as being similar to that of the Rillotta brothers. While they were at the head of a cannabis exportation business based in SA, the appellant had an important and crucial role in the drug distribution network.</p>	<p>Dismissed.</p> <p>Appeal concerned parity and totality.</p> <p>At [39] ... The significance of the appellant's plea is reduced by the Rillotta brothers' offer to plead to the charges of which they were ultimately convicted and by the lateness of the appellant's plea.</p> <p>At [40] ... it is important to recognise that the appellant was convicted of two additional offences. ... The difference in the number and character of the offences of which the Rillotta brothers were convicted explains the lack of disparity in the TES of the appellant and the Rillotta brothers. The conspiracy</p>



		<p>to meet a 'guy in a white van'. At the scheduled time the UO drove to the street and saw Adornetto in his vehicle, gesturing him to his destination. The UO pulled up next to the van. The UO said he only wanted 9 pounds. Adornetto was gestured to stop by the associate and it was arranged for the UO to take the 12 pounds (5.44kg) and to pay the extra \$10,400 in a few weeks.</p> <p>The UO gave the associate \$40,000 and in return was handed the 12 pounds of cannabis. This money was later given to Adornetto.</p> <p>Some weeks later the UO paid Adornetto the outstanding \$10,400. At this time the UO asked to buy a further 10 pounds (4.53kg). Adornetto later told the UO it would have to be 20 pounds (9.07 kg).</p> <p>Over the next few weeks Adornetto discussed the delivery of cannabis to WA through the Rillotta brothers and Zippel and ordered 20 pounds (9.07 kg) of cannabis in two 10 pound packages.</p> <p>On its arrival Adornetto telephoned the UO with instructions on where collect his 10 pound order of cannabis. A short time later the UO met Adornetto where he collected</p>	<p>Demonstrated no remorse; low risk of reoffending.</p>	<p>offence in particular involved a substantial degree of additional criminality ... This conduct demonstrated the appellant's determination to continue to run the risk of apprehension to obtain a financial reward, and highlighted the weight to be given to considerations of deterrence.</p> <p>At [47] The appellant was an active principal of his own cannabis distribution operation in WA and actively sought cannabis to supply that operation over an extended period of time. ... The appellant's sustained offending was not isolated or opportunistic, but was premeditated conduct undertaken for the purposes of obtaining financial reward which required significant planning....</p>
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			and paid \$42,000 in cash for the cannabis.  One of the Rillotta brothers later flew from SA to WA to meet Adornetto to collect payment for the cannabis.		
10.	<i>Dias v The State of Western Australia</i>  [2017] WASCA 49  Delivered 17/03/2017	31 yrs at time offending.  Early PG (25% discount).  Prior criminal history, including drug offences.  Supportive family.  Completed school at yr 10.  Good employment history.  Long term cannabis and methyl user.  Unaddressed mental health issues; poor coping mechanisms and decision-making skills.	Indictment Ct 1: Poss cannabis wiss 39.57g. Ct 2: Poss methyl wiss 7.16g of 78% purity. Ct 3: Poss dexamphetamine 32.4g. Ct 4: Poss money unlawfully obtained.  Section 32 Notice Ch 1: Poss ammunition. Ch 2: Poss MDMA. Ch 3-4: Poss drug paraphernalia. Ch 5: Poss prohibited weapon. Ch 6: Fail to obey data access order. Ch 7: Poss methyl.  Indictment Dias was stopped driving in vehicle. A search of his car located cannabis inside a backpack in two plastic containers (ct 1).  Also in the backpack in a container were five clipseal bags containing a total of 6.89g of methy and numerous unused clipseal bags, a calculator and a 'tick list'. At his home a further clipseal bag containing 0.27g of methyl and a set of scales were found. He admitted using the scales to weigh drugs (ct 2).	Indictment Ct 1: 3 mths imp (cum). Ct 2: 18 mths imp (cum). Ct 3: 12 mths imp (conc). Ct 4: 3 mths imp (conc). Section 32 Notice Ch 1: 1 mth's imp (conc). Ch 2: \$300 fine. Ch 3-4: \$200 fine. Ch 5: \$100 fine. Ch 6: 9 mths imp (conc). Ch 7: 3 mths imp (cum with cts 1 and 2 on ind).  TES 2 yrs imp. EFP.  The sentencing judge found the offending towards 'the lower end of the scale'; but he was prepared to disseminate a number of different	Dismissed – on papers.  Appellant appealed length of sentence and concerned totality.  At [27] ... the appellant's drug-related offending was not an isolated aberration but an ongoing street-level operation conducted for personal gain. He dealt in a variety of prohibited drugs. The presence of clipseal bags, scales, weapons, tick lists and cash showed a degree of organisation and persistence. The fact that the appellant was also a drug user and dealt in drugs to support his habit did not reduce the seriousness of his offending.

			<p>A bottle containing 74 dexamphetamine tablets were also found in his vehicle. At his home another bottle containing 88 tablets were found (ct 3).</p> <p>In Dias' wallet \$1,205 cash was found, along with \$600 in cash at his home (ct 4).</p> <p>Section 32 Notice During the search of his home police located ammunition and a shot gun round; two MDMA tablets of 0.59g; and two smoking implements.</p> <p>In his vehicle a knuckleduster or kubotan with a dagger blade inside was found.</p> <p>Dias refused to provide police with the unlock codes of two mobile phones. A data access order was obtained, but he failed to comply with it.</p> <p>Some months later Dias' vehicle was stopped and searched. Three clipseal bags containing less than a gram of methyl were located behind the dashboard.</p>	<p>types of prohibited drugs to others in order to obtain money. The substantial tick lists showed the extent and scale of the appellant's operation. His drug dealing was not a one-off aberration but an on-going business.</p> <p>Sought counselling and hope of rehabilitation.</p>	
9.	<p><i>HNA v The State of Western Australia</i></p> <p>[2016] WASCA 165</p>	<p>Early PG.</p> <p>No prior adult criminal history.</p> <p>Childhood marred by gender confusion</p>	<p>1 x Cultivate cannabis wiss (11.279kg, 4.45kg saleable).</p> <p>HNA was employed for financial reward to harvest cannabis plants at a house</p>	<p>9 mths imp.</p> <p>The judge found the appellant's mental health issues could have</p>	<p>Dismissed.</p> <p>Appellant challenged type, not length of sentence.</p>

	<p>Delivered 27/09/2016</p>	<p>and physical and sexual abuse; born female; lived as a male since age 30.</p> <p>History of major depression and anxiety; diagnosed with bipolar affective disorder.</p> <p>Vulnerable to exploitation.</p>	<p>converted into a highly sophisticated commercial hydroponics operation. It was to take two weeks to harvest the cannabis.</p> <p>Before the cannabis was ready he was driven to the house under the cover of darkness. He saw many plants growing and was told it was “a million dollar operation” and that the house was leased using false documents to a “false person”.</p> <p>On the first day HNA spent 12 hours trimming and placing cannabis buds in drying bags and hanging them from the ceiling. He was to work the next day, however a search warrant was executed. 270 plants with an approx weight of 151kg and valued at between \$230,000 and \$940,000 were found growing inside the house.</p> <p>Various quantities of head material, including three large vacuum sealed bags each containing about 454g were also found.</p>	<p>reduced his moral culpability and that his gender issues were likely to make imp a greater than usual hardship.</p> <p>The offence was so serious the need for deterrence was high. A susp sentence would be inappropriate and fail to adequately reflect the serious nature of the offence.</p> <p>Co-operative with police; demonstrated remorse.</p>	<p>At [41] ... Although the appellant was not in any sense an organiser, and was not going to share in the profits generated by the operation, the offence remained serious.</p> <p>At [54] The evidence and findings do not establish that the appellant’s mental state at the time of committing the offence was such as to remove personal and general deterrence as significant sentencing considerations. The appellant understood that he was committing an offence, and did so for ... financial reward. His mental state did not prevent him from completing 12 hs of work.</p> <p>At [55] ... The scale of the illegal ... operation in which the appellant knowingly participated for financial reward, and the need for personal and general deterrence, formed a proper basis for the sentencing judge to be positively satisfied that suspended and conditionally</p>
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					susp imp were not appropriate sentencing options.
8.	<p><i>Miles v The State of Western Australia</i></p> <p>[2016] WASCA 138</p> <p>Delivered 04/08/2016</p>	<p>33 yrs at time offending.</p> <p>Late PG cts 1 and 3 (5% discount). Convicted after trial ct 2 of alternative charge of simple poss.</p> <p>Considerable criminal history, including breach of suspended sentences.</p> <p>Young son cared for by his ailing mother.</p> <p>Serious drug problem, methyl use from early 20s.</p> <p>Difficulty retaining employment due to substance abuse.</p> <p>Had served 13 mths of 15 mth imp imposed by Magistrate's Court for various drug and firearm offences including production of a firearm. Combination of drugs and firearms particularly concerning.</p>	<p>Ct 1: Poss cannabis wiss (421.8g). Ct 2: Poss dexamphetamine (46.78g) [statutory alternative]. Ct 3: Poss of money suspected of being unlawfully obtained.</p> <p>A search of Miles' home located cannabis, dexamphetamine tablets and \$27,500 in cash. He admitted the money was obtained from the sale of cannabis.</p>	<p>Ct 1: 11 mths imp. Ct 2: 3 mths imp conc. Ct 3: 11 months imp (cum).</p> <p>TES: 22 mths imp.</p> <p>TES all offences 2 yrs 11 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the cannabis and cash to be part of the one business dealing, noting the money must have been the proceeds of past drug deals and the cannabis the subject of future deals, requiring a sentence of imp to match the objective seriousness of the offending.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [19] Cts 1 and 3 on the indictment were serious offences. They reflected ... involvement in a commercial enterprise for the sale of cannabis to others. Given that the appellant was clearly a commercial dealer in cannabis, and having regard to the late PG, the quantity of cannabis involved and the appellant's antecedents, the sentence imposed for the possession of cannabis was well within the range of sound sentencing. The cash found was the product of the sale of cannabis ... and was appropriately the subject of a cumulative sentence.</p>
7.	<p><i>Hickling v The State of Western Australia</i></p> <p>[2016] WASCA 124</p>	<p>41 yrs at time sentencing.</p> <p>PG (20% discount).</p> <p>No relevant criminal history.</p>	<p>Ct 1: Poss methyl wiss 7.01g at 37% purity. Ct 2: Poss cannabis wiss 515.07g.</p> <p>A search of Hickling and his car located</p>	<p>Ct 1: 3 yrs imp. Ct 2: 6 mths imp (cum).</p> <p>TES 3 yrs 6 mths imp. EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence on ct 1, totality and failure to take into account</p>

	<p>Delivered 13/07/2016</p>	<p>Born in NZ; arrived in Australia 1998.</p> <p>Permanent resident, not a citizen of Australia.</p> <p>Cannabis user from 15 yrs.</p> <p>Daily user of methyl and cannabis at time offending.</p>	<p>two clip seal bags containing methyl (ct 1), two mobile phones and \$4,975 in cash. Text messages and a 'tick lists' on the phones recorded payments received and amounts owed.</p> <p>Records extracted from the mobile phones indicated that at the time Hickling was apprehended he was in the midst of a drug deal.</p> <p>A search of Hickling's home located cannabis in a vacuum-sealed plastic sleeve, as well as smaller amounts in plastic clipseal bags (ct 2).</p> <p>In addition police found drug paraphernalia; three dead 1m high mature cannabis plants; 12 dead immature seedlings and three living seedlings.</p>	<p>The sentencing judge described the offending as serious and found the appellant undertook drug transactions on credit and had established a group of persons who purchased illicit drugs from him.</p> <p>The sentencing judge rejected the proposition that half the methyl was for personal use and the other half would have been sold, only to fund his habit and not for profit.</p> <p>Favourable prospects of rehabilitation and positive character references.</p>	<p>deportation as a consequence of imp.</p> <p>At [56] ... the Minister is obliged to cancel the appellant's visa in light of the imposition of a term of imp of more than 12 mths, subject to the Minister's power to revoke such a decision.</p> <p>At [57] ... the appellant did not expressly ask this court to overrule <i>Dauphin</i> ... We respectfully agree with the reasoning of Steytler J in <i>Dauphin</i>.</p> <p>At [59] The court's sentencing discretion is not appropriately exercised by reference to predictions about how such an administrative discretion, which arises only after the appropriate sentence is imposed, may be exercised at some future time.</p> <p>At [62] ... the evidence ... about the appellant's prospect of deportation and hardship was 'limited' ....</p>
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				<p>At [63] ... The prospect of deportation is not a mitigating circumstance in WA. In any event, in those States in which the potential of deportation may be taken into account as a mitigating circumstance, it is necessary for offenders to demonstrate hardship.</p> <p>At [71] ... the appellant was a user of illicit drugs; however, he was also dealing in drugs for profit. The appellant was deeply involved in the drug trade, even if that involvement was at the lower end of the hierarchy.</p> <p>At [72] ... The appellant was found in possession of a reasonably substantial quantity of cannabis in the context of being engaged in the cultivation of that drug for some time prior to his apprehension. The presence of seedlings indicates an ongoing intention to produce and distribute cannabis. Given the nature of this separate and</p>
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					additional offending, it was well open for his Honour to order that the sentence on ct 2 be served cum on ct 1.
6.	<p><b><i>The State of Western Australia v Malone</i></b></p> <p><b>[2015] WASCA 188</b></p> <p>Delivered 16/09/2015</p> <p>Co-offender of:</p> <p><b><i>McRobb v The State of Western Australia</i></b> [2015] WASCA 189</p>	<p>31-32 yrs at time offending; 33 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal history; does not involve serious criminality.</p> <p>Dysfunctional upbringing.</p> <p>Three young children with former partner; supportive former partner.</p> <p>Intellectual disability.</p> <p>Co-offender Wess McRobb was convicted after trial of two cts of poss cannabis wiss and one ct of conspire to sell or supply cannabis and was sentenced to TES of 6 yrs imp.</p> <p>Co-offender Keaton McRobb was convicted after trial of one ct of poss cannabis wiss and one ct of conspire to sell or supply cannabis and was sentenced to TES of 4 yrs imp.</p> <p>Co-offender Said was convicted after</p>	<p>Cts 1-15: Poss cannabis wiss. Ct 16: Attempt to poss cannabis wiss.</p> <p>Total estimated weight for all cts was 330kg. \$2.9 million estimated street value.</p> <p>The respondent was involved in an interstate cannabis trafficking syndicate which supplied large quantities of cannabis from South Australia to people in Western Australia and Queensland. The syndicate operated solely through the respondent in connection with the supply of cannabis in Western Australia.</p> <p>The respondent ordered significant quantities of cannabis on an almost weekly basis and on-sold the cannabis through his associates. One associate, Said, acted as an intermediary in certain transactions for various Western Australian customers. Said's partner, Cooper, assisted him occasionally by collecting boxes containing cannabis. Wess McRobb purchased cannabis from the respondent and sold it through his own drug dealing business. While Wess McRobb was overseas, Keaton McRobb looked after and</p>	<p>Cts 1-15: 4 yrs 3 mths imp each (conc). Ct 16: 4 yrs 3 mths imp (conc).</p> <p>TES 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found the respondent's intellectual disability had an impact on his ability to understand the seriousness of his offending behaviour, reduced his moral culpability and may have made it difficult to reduce respondent's risk of reoffending.</p> <p>.</p>	<p>Allowed.</p> <p>Re-sentenced to:</p> <p>Cts 1-15: not disturbed. Ct 16: 3 yrs 3 mths imp (cum on ct 1).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>At [76] His offending... was premeditated, planned, sustained and repetitive ... The respondent committed the offences purely for commercial motives.</p> <p>At [79] The sentencing judge appears to have attached significant weight to ... the respondent's diminished 'intellectual ability...'</p> <p>At [81] There was some limited mitigation arising from the sentencing judge's</p>



		<p>early PG of one ct of poss cannabis wiss and was sentenced to 3 yrs 9 mths imp.</p> <p>Co-offender Cooper was convicted after early PG of one ct of poss cannabis wiss and was sentenced to 18 mths imp.</p>	<p>ran his business of selling cannabis.</p> <p>Overall, the respondent sent well in excess of \$800,000 to the syndicate in payment for the cannabis he had received.</p> <p>Cts 1 to 15 concerned 15 separate and distinct offences in which the respondent received a significant quantity of cannabis from the syndicate.</p> <p>Ct 16 concerned an offence where the respondent did not receive the cannabis because he had been arrested and the police intercepted the box containing the drug.</p> <p>The quantity of cannabis received by the respondent on each occasion varied between 10 kg and about 40 kg.</p>	<p>unchallenged finding that the respondent has an ‘intellectual disability’ which has ‘an impact on [his] ability to understand the seriousness of [his] offending behaviour’... However, that factor was decisively outweighed by the countervailing matters...</p> <p>At [92] The respondent’s objective criminality and moral culpability were materially greater than... each of the related offenders. The respondent was directly involved in a cross-border operation in which he was the sole Western Australian contact for the South Australian based drug syndicate. He was entrusted with ordering, receiving and distributing vast quantities of cannabis. He was also entrusted with collecting and transferring to the syndicate very large sums of money derived from drug dealing. He was handsomely rewarded for his efforts. The respondent's level in the drug dealing</p>
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					hierarchy was significantly higher than that of each of the related offenders.
5.	<p><b><i>McRobb v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 189</b></p> <p>Delivered 16/09/2015</p> <p>Co-offender of:</p> <p><b><i>The State of Western Australia v Malone</i></b> <b>[2015] WASCA 188</b></p>	<p>27 yrs at time offending; 29 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Did not take any prohibited drugs.</p> <p>Co-offender Malone was convicted after early PG of 15 cts of poss cannabis wiss and one ct of attempt to poss cannabis wiss and was sentenced on appeal to TES 7 yrs 6 mths imp.</p> <p>Co-offender Said was convicted after early PG of one ct of poss cannabis wiss and was sentenced to 3 yrs 9 mths imp.</p> <p>Co-offender Cooper was convicted after early PG of one ct of poss cannabis wiss and was sentenced to 18 mths imp.</p>	<p>Ct 1: Poss cannabis wiss 10kg. Ct 2: Poss cannabis wiss 20kg. Ct 3: Conspire to sell or supply cannabis.</p> <p>Boxes containing about 10kg of cannabis were imported into Western Australia from South Australia. The co-offender Malone was the primary importer. The appellant took poss of cannabis in one pound packages and sold them to his customers at prices between \$4,400 and \$4,800 per pound.</p> <p><u>Ct 1</u> Malone collected two boxes and delivered one of them to the appellant's home.</p> <p><u>Ct 3</u> The appellant went on an extended holiday three days after ct 1. Prior to leaving, the appellant made an agreement with co-offender Keaton McRobb that he would, in the appellant's absence, look after and run the appellant's business of selling cannabis. The appellant gave Keaton McRobb written instructions and a list of customers. Anticipated revenue was \$100,000.</p> <p><u>Ct 2</u></p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 4 yrs imp (cum). Ct 3: 4 yrs imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Trial judge found appellant's level in drug distribution hierarchy was below that of Malone, but was 'still substantial'. The appellant was 'clearly more than just a street dealer in cannabis'.</p> <p>Trial judge found that the appellant was 'not far removed from the source of the drugs in South Australia'.</p> <p>No remorse; continued to deny guilt.</p>	<p>Dismissed.</p> <p>At [53]... the appellant's offending was, no doubt, serious. Ct 3... was especially egregious... The appellant performed a significant function in a well-organised drug distribution operation. He carried on, within that operation, his own drug dealing business purely for commercial purposes. The business involved 'not insignificant amounts of money'. The appellant was 'not far removed from the source of [the] drugs in South Australia'. He was 'dealing in fairly large quantities of cannabis'.</p>

			<p>While the appellant was overseas, another related offender Cooper, on instruction from related offender Said, collected two boxes from Malone and delivered them to the appellant's home. The appellant had procured Keaton McRobb to pass the cannabis with a common intention to sell or supply it to another or others while the appellant was overseas.</p> <p>The co-offender Keaton McRobb was in possession of \$70,000 cash when he was arrested.</p>		
4.	<p><i>Drleski v The State of Western Australia</i></p> <p>[2015] WASCA 144</p> <p>Delivered 24/07/2015</p>	<p>41 yrs at time sentencing.</p> <p>Convicted after PG (breach of CSIO). CSIO of 10 mths imp conditionally susp for 18 mths with supervision and programme requirements, imposed for offence of cult cannabis wiss.</p> <p>Criminal history, including three prior convictions for cult a prohibited plant.</p> <p>Diagnosed with paranoid schizophrenia in 2000; appellant believes he does not have a mental illness and does not need to take anti-psychotic medication.</p> <p>At time sentencing, appellant on a community treatment order as an involuntary patient.</p>	<p>Breach of CSIO imposed for offence of cult cannabis wiss x 1.</p> <p><u>Breach offence</u></p> <p>CSIO was imposed on 31 January 2014. The appellant breached CSIO by testing positive to illicit substances on 7 May 2014 contrary to written lawful instruction given on 14 April 2014.</p> <p><u>Cult offence</u></p> <p>Police executed a search warrant at the appellant's home. They located and seized 25 cannabis plants growing in the backyard.</p> <p>The appellant admitted ownership of the plants. He stated that once the plants were at a suitable height, his intention was to</p>	<p>Ordered to serve whole of previously suspended term of 10 mths imp.</p> <p>Sentencing judge found that the appellant was at a high risk of reoffending.</p>	<p>Dismissed – on papers.</p> <p>At [24] The purpose of imposing the CSIO with programme and supervision requirements was to work towards reducing the high risk of the appellant reoffending by facilitating his rehabilitation. An essential step in that process was to seek to address the appellant's problematic drug abuse which the trial judge found was intertwined with the appellant's mental condition. That purpose was defeated from the time of the imposition of the CSIO by the appellant's then existing and continuing intention, which he</p>

		Longstanding and entrenched polysubstance abuse; appellant does not believe he has a substance abuse problem; appellant admitted he has no intention of ceasing drug use.	harvest them and give them to friends in exchange for drugs, and to sell the cannabis to raise money so he could purchase other drugs, including methyl.		acted on, to persist with his problematic drug abuse. The appellant's attitude and conduct reflect a level of contemptuousness wholly inconsistent with the objective of the penalty. In those circumstances, it was open to the trial judge to order the appellant to serve the term of imp that was susp.
3.	<i>The State of Western Australia v Wilson</i>  [2015] WASCA 119  Delivered 10/06/2015	39 yrs at time sentencing.  Convicted after PG.  Lengthy prior criminal history, including drug offences.  Has a de facto partner; young daughter.  Entrenched illicit drug abuse.	<u>Indictment</u> Ct 1: Attempt to poss methyl wiss 71.4g of 76% purity. Ct 2: Poss methyl wiss 303.7g of 64-77% purity. Ct 3: Poss cannabis wiss 2.677kg. Ct 4: Poss methyl wiss 371.3g of 73% purity.  <u>Section 32 Notice</u> 19 offences.  Through inquiries, police identified four envelopes containing 71.4g of methyl addressed to a PO box believed to be controlled by the respondent and his partner (co-accused). The methyl was substituted and the envelopes were placed in the PO box for collection. The co-accused collected the envelopes.	<u>Indictment</u> Ct 1: 2 yrs imp (cum). Ct 2: 4 yrs imp (conc). Ct 3: 2 yrs imp (conc). Ct 4: 4 yrs imp (cum).  <u>Section 32 Notice</u> Various imp sentences, TES 6 mths imp (cum), and two fines.  TES 6 yrs 6 mths imp.  EFP.  Sentencing judge found appellant offended for commercial gain.  Remorse; suffered difficulties at the hands	Allowed.  Re-sentenced to a TES 8 yrs 6 mths imp.  Set aside orders for cum and conc on indictment.  Ordered ct 2 and ct 4 to be served cum, and ct 1 and ct 3 to be served conc.  At [30] Upon the material before the learned sentencing judge, it appeared that the respondent was not at the pinnacle of the drug distribution hierarchy. Clearly, someone else was supplying him with the drugs. However, given the quantities and the

			<p>The co-accused then attended the respondent's home. Police executed a search warrant at the respondent's home and found the four envelopes (ct 1), 303.7g methyl in a hidden compartment of a coffee table (ct 2), 2.677kg dried cannabis throughout the house (ct 3), firearms and \$196,600 cash (section 32 notice).</p> <p>The respondent arrived home during the search and fled in his car to evade arrest. He was arrested at another property a week later. Police searched this property and found 371.3g methyl (ct 4).</p>	<p>of other prisoners while in custody.</p>	<p>purity of the methyl he possessed and the very substantial quantity of cash found at the Cathryn Street address, the respondent must have been close to the source of the drugs. Further, the respondent must have been a trusted associate of whomever was above him in the drug hierarchy.</p> <p>At [36] ... each sentence, had it stood alone, would have been manifestly inadequate. However, the sentences did not stand alone.</p> <p>At [38] The very large sum of cash found there showed that the respondent's drug dealing was both substantial and lucrative.</p> <p>At [44] ... the TES was not merely lenient. Having regard to all of the relevant circumstances of this case, I have been persuaded that the TES of 6 yrs 6 mths immed imp infringed the first limb of the totality principle...</p>
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<p>2.</p>	<p><b><i>Rodi v The State of Western Australia</i></b></p> <p><b>[No 2] [2014] WASCA 233</b></p> <p>Delivered 15/12/2014</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No criminal record.</p> <p>Single.</p> <p>Small business owner.</p> <p>Cannabis user.</p>	<p>Poss cannabis wiss 925.19g.</p> <p>Police executed a search warrant. Located were six shopping bags of cannabis head material, loose cannabis material and cannabis. Cannabis head material was also found drying on a frame above a spare bed. Also located was a box of clip seal bags, scissors with traces of tetrahydrocannabinol on the surface, some clip seal bags containing cannabis seeds, smoking implements and a set of electronic scales with traces of other drugs on them.</p> <p>Total street value of cannabis was \$7,000.</p>	<p>12 mths imp.</p> <p>EFP.</p> <p>Lack of remorse.</p> <p>Admitted possession of the cannabis; Was intended for his use for pain relief for a back injury.</p> <p>Sentenced on the basis that his possession was for commercial purposes and that he was a mid-level dealer in the drug.</p>	<p>Dismissed.</p> <p>At [35] the sentence was appropriate having regard to the quantity of cannabis possessed, that it was possessed for the purpose of commercial dealing and that the appellant was found to be a mid-level dealer.</p>
<p>1.</p>	<p><b><i>Le v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 120</b></p> <p>Delivered 13/06/2014</p>	<p>31 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after late PG (first day of trial).</p> <p>Extensive prior criminal record; including possess prohibited drugs wiss, possess prohibited drugs and carried a prohibited weapon.</p> <p>Family from Vietnam; appellant born in Australia.</p> <p>Childhood marred by domestic</p>	<p>Ct 1: s19(1), 19(1ac) <i>Firearms Act</i> poss altered firearm W/O licence.</p> <p>Ct 2: Poss methyl wiss 16.46g of 78-85% purity.</p> <p>Ct 3: Poss cannabis wiss 14.7g.</p> <p>Ct 4: Poss MDPV wiss 6.64g.</p> <p>Ct 5: Poss methyl wiss 56.17g of 69-72%.</p> <p>Ct 6: Att poss MDMA wiss 46.65g.</p> <p>Ct 7: Poss cannabis wiss 55.3g.</p> <p>Ct 8: Poss methyl wiss 11.6g of 80%.</p> <p>The appellant's mother contact police after discovering a firearm and a bag containing white powder in his bedroom in her house. Police searched and discovered a 410 gauge</p>	<p>Ct 1: 12 mths imp.</p> <p>Ct 2: 2 yrs 4 mths imp.</p> <p>Ct 3: 6 mths imp.</p> <p>Ct 4: 18 mths imp.</p> <p>Ct 5: 4 yrs 2 mths imp.</p> <p>Ct 6: 2 yrs 4 mths imp.</p> <p>Ct 7: 12 mths imp.</p> <p>Ct 8: 2 yrs 6 mths imp.</p> <p>Ct 2 cum on Ct 5.</p> <p>All other sentences conc with Ct 5.</p>	<p>Dismissed.</p> <p>At [42] s 6(1)(a) applies to a person who is in possession of a prohibited drug merely as a bailee for another.</p> <p>At [45] His primary motivation in dealing with the drugs was to repay a debt to the owner of the drugs seized during the first search.</p> <p>At [51] The appellant's role in relation to the drugs was</p>

		<p>violence; parents later separated.</p> <p>Seven yr old daughter from previous relationship.</p> <p>Completed Year 12.</p> <p>Regularly employed in various occupations.</p> <p>Long history of illicit drug abuse; commenced using cannabis at 14 years; heroin at 18 yrs; methyl at 20 yrs; occasional user of ecstasy.</p>	<p>shotgun with a shortened barrel; 16.46g of methyl; 14.7g of cannabis and 6.64g or MDPV, a derivative of methyl. Police also discovered \$36,000 cash in two shotgun cartridges. The appellant was arrested, charged and released on bail.</p> <p>The prosecution conceded that the firearm and drugs were owned by another person and that the appellant was holding them for that person. Also conceded \$36,000 cash was the same owner and that the appellant was holding the cash for the owner.</p> <p>About six months later, police searched a house where the appellant as living with his girlfriend. Police located 56.17g of methyl; 14.65g of tablets which resembled MDMA but later analysis revealed they did not contain any illicit substances and 55.3g of cannabis.</p> <p>Later on that same day, police again searched the home of the appellant's mother and located 11.6g of methyl and other items associated with drug dealing.</p>	<p>TES 6 yrs 6 mths imp. EFP.</p> <p>The appellant had been engaging in the distribution of illicit drugs for at least a month before his second arrest.</p> <p>Sentencing judge accepted that Cts 1-4 the appellant had been acting as a bailee for a friend, he had received no benefit for holding the firearm, drugs and cash.</p> <p>Judge accepted Cts 5-8 that five men had demanded that the appellant repay the value of the property seized by the police (earlier charges) had threatened him and his family with violence if he did not comply.</p>	<p>important. He was concealing a significant quantity of an illicit drug on behalf of a person who wanted to distance himself from the drugs. The appellant knew the drugs were intended for distribution into the community.</p> <p>At [65] At two different times and in two different ways, the appellant was prepared to facilitate the dissemination into the community of substantial quantities of illicit drugs.</p>
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*Transitional Provisions Repealed (14/01/2009)*

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*Transitional Provisions Enacted (31/08/2003)*

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