

# **Possess heroin with intent to sell or supply**

s 6(1)(a) *Misuse of Drugs Act*

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
wiss	with intent to sell or supply
imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
ct	count
TES	total effective sentence
att	attempt

## Weight of Heroin: Above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2017] WASCA 35</p> <p>Delivered 27/2/2017</p>	<p>61 yrs at time offending. 62 yrs at sentencing.</p> <p>PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born in Vietnam.</p> <p>Limited English and education.</p> <p>Married twice; six children.</p> <p>Good work history; unemployed for some months prior to offending.</p> <p>Commenced using methyl at aged 60.</p>	<p><u>Indictment</u></p> <p>Ct 1: Poss methyl wiss 437g of 77-80% purity. Ct 2: Poss heroin wiss 201g of 69-80% purity. Ct 3: Poss unlawfully obtained property.</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: Poss methyl wiss 1.85g. Ch 2: Poss paraphernalia.</p> <p>Police conducted a search of a house occupied by Nguyen. A clipseal bag containing a small quantity of methyl and a smoking implement, which he admitted using, were located.</p> <p>In a locked room, quantities of methyl, heroin and \$153,475 in cash were found. Along with scales, empty clipseal bags, artificial sweetener and sucrose.</p>	<p><u>Indictment</u></p> <p>Ct 1: 6yrs 6 mths imp. Ct 2: 2yrs 6 mths imp (reduced for totality reasons) (cum). Ct 3: 2yrs imp (conc).</p> <p><u>Section 32 Notice</u></p> <p>Ch 1: 6 mths imp (conc). Ch 2: 1 mth imp (conc).</p> <p>TES 9 yrs. EFP.</p> <p>The sentencing judge found the appellant was more than a mere caretaker with limited knowledge of what was at the house; he was a trusted member of the drug organisation and given the quality and quantity of the drugs and the significant amount of cash it was a large scale drug enterprise.</p> <p>Remorseful; willing to address his drug problem; low risk of re-offending.</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [23] ... This was clearly a serious example of offences ... albeit not in the most serious category.</p> <p>At [32] The appellant's sentence appropriately took into account the difficulties which the appellant's age and language difficulties will present for the appellant in the prison environment.</p>

<p>5</p>	<p><b><i>Tran v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 218</b></p> <p>Delivered 03/11/2015</p>	<p>23 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No criminal history.</p> <p>Not a user of drugs.</p>	<p>1 x Poss heroin wiss 689g of 77-80% purity.</p> <p>The appellant and his co-offender travelled from Sydney to Perth separately. They were followed by police on their arrival.</p> <p>Police arrested the appellant and his co-offender and found 349g of heroin of 77-79% purity in a bag that the appellant was carrying. Police searched their hotel room and found 340g of heroin of 78-80% purity, digital scales and \$1,735 cash.</p> <p>The appellant denied any knowledge of the heroin and stated that he found the bag outside of the hotel.</p> <p>The co-offender admitted to police that he was paid cash by a person in Sydney to travel to Perth to distribute the heroin. He admitted hiding the heroin packages in the bag carried by the appellant and in the hotel room. The appellant and co-offender were arrested as they were taking the heroin to supply it to an unknown woman.</p>	<p>8 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found a number of aggravating factors, namely, offence was committed in company, the actions were deliberate and specific for distributing heroin, the quantity was very large and of high purity, and the distribution was for financial gain. Whilst the appellant was a courier of the drugs, the scales, purity and quantity indicated the appellant was near the top of the distribution chain.</p>	<p>Dismissed.</p> <p>Ground of appeal only concerned parity with co-offender.</p> <p>At [19] ... critical feature of this case is the lack of information provided to the sentencing judge as to the circumstances leading to the offending and the role played in it by the appellant... the sentencing judge drew the irresistible inference that both offenders were high level courier involved for commercial gain.</p> <p>At [18] ... there were no proper grounds upon which the sentencing judge could have sentenced the appellant on the basis that he had less knowledge of, or a lesser role in, the offending. Because the appellant chose not to disclose how he came to be involved or what his role was, how his overall role compared with that of Mr Nguyen did not emerge. The appellant cannot now complain that the sentencing judge failed to make a finding that he played a lesser role.</p>
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4.	<p><i>MSO v The State of Western Australia</i></p> <p>[2015] WASCA 78</p> <p>Delivered 14/04/2015</p>	<p>Convicted after PG.</p> <p>Favourable antecedents.</p>	<p><u>Indictment</u></p> <p>Ct 1: poss methyl wiss 10.54kg of 46-75% purity.</p> <p>Ct 2: poss heroin wiss 2.46kg of 41-59% purity.</p> <p>Ct 3: poss cocaine wiss 599g of 52-62% purity.</p> <p>Ct 4: poss MDMA wiss 1.09kg of 5-10% purity.</p> <p><u>Section 32 Notice</u></p> <p>Poss stolen or unlawfully obtained property x1.</p>	<p><u>Indictment</u></p> <p>Ct 1: 8 yrs 3 mths imp.</p> <p>Ct 2: 7 yrs 6 mths imp (conc).</p> <p>Ct 3: 5 yrs imp (conc).</p> <p>Ct 4: 6 yrs imp (conc).</p> <p><u>Section 32 Notice</u></p> <p>12 mths imp (conc).</p> <p>TES 8 yrs 3 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [28] ...the judge viewed the appellant's conduct as extremely serious, because the appellant played an integral role in the success of what was obviously a sophisticated large-scale drug distribution network.</p> <p>At [69] Although it is common to speak of discounts for cooperation with authorities in terms of percentages, as Gleeson</p>

			<p>The appellant provided warehousing and related services to two drug traffickers, A and B, for one year from his legitimate retail business. The appellant collected, weighed, checked, stored, made up orders and delivered drugs on behalf of A and B as instructed by coded text messages. The appellant, when instructed, added cutting agents to the drugs supplied to him on behalf of B and then repackaged the resulting product. The appellant was paid in cash for his services.</p> <p><u>Ct 1</u> Police found a total of 10.54kg of methyl in 18 packages. Each package ranged in size from between 26.6g and 575g and 1kg, of 46%-75% purity. Police also found scales, clip seal bags, cutting agent, heat sealing equipment and an envelope with handwritten names and quantities on it. Street value was estimated at \$4.7-\$5.2 million (if sold in 28g lots) and at \$10.5 million (if sold in 0.1g lots).</p> <p><u>Ct 2</u> Police found three packages of heroin, two of which were a little under 1kg with 41% purity and the third containing a little less than 500g with 59% purity. Street value was estimated at \$1.1 million (if sold in 1 oz lots) and \$1.2-\$2.5 million (if sold in 0.1g lots).</p> <p><u>Ct 3</u></p>	<p>Sentencing judge found that motivation for offending was a combination of beliefs arising from B's implied threat and a desire to make a significant financial gain.</p> <p>Remorseful; fully accepted responsibility for conduct; low risk of reoffending.</p> <p>Letter of recognition; appellant provided very substantial assistance.</p>	<p>CJ observed in <i>R v Gallagher</i>, the court must have regard to the TES imposed after the discount so as to ensure that the sentence is not so far out of touch with the circumstances of the offending conduct that it...would contravene the requirement of s 6(1) of the <i>Sentencing Act</i> which requires the sentence imposed on an offender to be commensurate with the seriousness of the offence.</p> <p>At [70] In this case the appellant received a reduction in the sentence that would otherwise have been imposed upon him of 8 yrs and 3 mths in recognition of the assistance which he provided to law enforcement agencies. On any view, that is a very substantial discount.</p>
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<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					

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### Weight of Heroin: Below 65 grams

	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>Apkarian v The State of Western Australia</i></p> <p>[2015] WASCA 67</p> <p>Delivered 02/04/2015</p>	<p>54 yrs at time offending.</p> <p>Convicted after early PG.</p> <p>Long criminal history including poss drugs.</p> <p>Born in Sudan; came to Australia at age 11; positive upbringing.</p> <p>Two adult children; two adult grandchildren.</p> <p>Addicted to heroin for 20 yrs; previous attempts of rehabilitation failed.</p> <p>Co-offender was de facto partner; co-offender also</p>	<p>Ct 1: Sold heroin - 0.06g. Ct 2: Sold heroin - 0.07g. Ct 3: Sold heroin - 0.13g.</p> <p>The appellant sold 0.06g of heroin to an undercover police officer for \$100 (ct 1).</p> <p>On another date, the appellant and co-offender had a conversation with an undercover police officer about supplying that person with 0.1g of heroin. The co-offender then sold 0.07g of heroin to the undercover police officer for \$100 (ct 2).</p> <p>On another date, the appellant and co-offender had a conversation with an undercover police officer about supplying that person with 0.2g of heroin. The appellant then sold 0.13g of heroin to the undercover police officer for \$200 (ct 3).</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 12 mths imp (conc). Ct 3: 12 mths imp (cum).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found appellant's primary motivation for selling drugs was to obtain money to purchase more drugs; moral culpability and legal responsibility high because appellant was prepared, for profit, to sell drugs and thereby distribute them within the community.</p>	<p>Dismissed.</p> <p>At [53] ... the appellant was a low-level street dealer of heroin... The appellant's offending was persistent and was for financial reward, albeit primarily to feed his own habit. Some cumulation of sentence was justified having regard to the fact that he sold drugs in several separate transactions over a period of days.</p>

		addicted to heroin.  Co-offender placed on a pre-sentence order; order breached; sentenced to TES 8 mths imp.			
2.	<b><i>RIN v The State of Western Australia</i></b>  <b>[2015] WASCA 51</b>  Delivered 17/03/2015  Subject to a confidentiality order.	Convicted after PG.  Prior criminal history including 2 x poss methyl wiss and 2 x poss heroin wiss.	<u>Indictment X of 2012</u> Ct 1: Sold methyl 55.7g of 49% purity. Ct 2: Sold methyl 55.6g of 76% purity. Ct 3: Sold methyl 116.6g of 73% purity. Ct 4: Sold heroin 13g of 65% purity.  About a month before ct 1, the appellant called Crime Stoppers with vague information about another man. The appellant then sold methyl and heroin to an undercover police officer on three occasions.  <u>Indictment Z of 2013</u> Ct 1: Poss methyl wiss 13.7g of 83% purity. Ct 2: Poss methyl wiss 55.5g of 86.9% purity.  Appellant claimed that she was directed by her husband to pick up one of the amounts of methyl and the other amount of methyl was in the car. When police arrived, the appellant ran away and threw the drugs into the bushes.  Appellant was on bail for other serious drug offences at time of offending.  Appellant claimed she was offending to assist	<u>Indictment X of 2012</u> Ct 1: 3 yrs 9 mths imp (conc). Ct 2: 3 yrs 9 mths imp (conc). Ct 3: 5 yrs 8 mths imp. Ct 4: 1 yr 4 mths imp (conc).  TES 5 yrs 8 mths imp.  EFP.  Sentencing judge found appellant was selling as a representative of her husband at the least; drug dealing for personal gain; acting under some pressure from husband, but was actively involved.  Appellant deflected blame; elevated risk of reoffending.  PG demonstrated remorse	Dismissed.  <u>Indictment X of 2012</u>  At [64] On my findings of fact, the nature and extent of any assistance or cooperation given by the appellant to the authorities ...was not of any significance for sentencing purposes.  At [65] The sentences imposed by his Honour were well within the range open on a proper exercise of the sentencing discretion.  <u>Indictment Z of 2013</u>  At [73] On my findings of fact, the nature and extent of any assistance or cooperation given by the appellant to the authorities ...was not of any significance for sentencing purposes.



			<p>police by getting more concrete information.</p> <p>The appellant later drove around and pointed out drug related houses to police, but this did not result in any direct arrest or convictions.</p>	<p>and acceptance of responsibility for offending.</p> <p><u>Indictment Z of 2013</u>  Ct 1: 4 yrs imp (conc with indictment X of 2012).  Ct 2: 1 yr 4 mths imp (cum with indictment X of 2012).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge did not accept appellant acting with a view to gaining information for police; appellant's assistance was not of great assistance in practical terms to investigations.</p>	<p>At [74] The sentences she received were well within the range open to his Honour on a proper exercise of the sentencing discretion.</p>
1.	<p><b><i>Crichton v The State of Western Australia [No 2]</i></b></p> <p><b>[2014] WASCA 37</b></p> <p>Delivered 18/02/2014</p>	<p>36 yrs at time of offending.</p> <p>Convicted after early PG.</p> <p>Criminal history; including prior convictions for poss stolen property, fraud &amp; poss prohibited drugs.</p> <p>Victim of sexual abuse as a child; parents separated at 7 yrs because of family violence.</p>	<p>1 x Poss heroin wiss 1.38g.</p> <p>The appellant was a heroin addict and resided and worked in Carnarvon.</p> <p>The appellant and her partner drove from Carnarvon to Fremantle to see their children. Access to their children was refused and the appellant became upset. She purchased 1.5g of heroin for \$900. Her intention was to use the heroin herself and perhaps give some to her partner, who was also a heroin user.</p> <p>Two days later police executed a search</p>	<p>9 mths imp.</p> <p>Admitted offence; co-operated with police.</p> <p>Sentencing judge did not make a positive finding as to whether the appellant's intention to sell the drugs in the bags was a one-off aberration or part of a broader course of conduct.</p>	<p>Allowed - McLure P dissenting.</p> <p>Re-sentenced 9 mths imp susp 12 mths imp with orders.</p> <p>At [35] There are few comparative cases concerning a single offence of drug dealing involving small amounts of heroin. They were recently collected and discussed in <i>Ness v The State of Western Australia [No 2]</i> [2013] WASCA 56.</p>

	<p>Drug use commenced at 15 yrs; commenced using heroin at 18 yrs; had periods of abstinence.</p> <p>Partner has significant drug history; has 3 children whom are in the care of others; 1 child passed away in 2001.</p> <p>Highly motivated towards employment.</p> <p>Since arrest has engaged in rehabilitation.</p> <p>Never previously sentenced to term of imp.</p>	<p>warrant at the appellant's place of work. In the appellant's handbag police found a ring box in which a small plastic bag contained 1.18g of heroin. The appellant told police she had more heroin in a lipstick case which she had hidden behind a stove. The lipstick case included 5 small plastic bags each containing between 0.02g – 0.06g of heroin.</p> <p>The appellant admitted to police the heroin belonged to her. The larger quantity in the ring box was for her personal use. The 5 small plastic bags she intended to sell to her friends.</p>	<p>At [38] In my opinion, the present case has a number of exceptional features which, in combination, have led me to the conclusion that it was unjust and unreasonable to impose an immediate term of imprisonment upon the appellant ...</p> <p>At [39] None of these factors alone would have caused me to allow this appeal. I wish to stress that it is the combination of them that has led me to the exceptional conclusion that the sentence of immediate imprisonment was unjust and unreasonable.</p>		
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					