

Possess cocaine with intent to sell or supply

s 6(1)(a) and 6(1)(c) *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

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
PNG	plead not guilty
ct	count
SIO	suspended imprisonment order
immed	immediate
CBO	community based order

Weight of cocaine: above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
17.	<i>Jiang v The State of Western Australia</i> [2020] WASCA 7 Delivered 15/01/2020	<p>33 yrs at time sentencing.</p> <p>Convicted after very late PG (5% discount).</p> <p>No prior criminal history.</p> <p>Born China; family still reside in China.</p> <p>Moved to New Zealand aged 15 yrs; completed high school and Bachelor degree; dedicated student; financially supported by parents.</p> <p>Single; no children.</p> <p>Owner of a successful business, purchased by her parents; employed seven persons; liquidated while in custody; parents suffered financial loss.</p> <p>No history of illicit drug use.</p> <p>Likely to be deported from Australia upon completion of prison sentence.</p>	<p>1 x Poss cocaine wiss 1.97 kg at 79%-89% purity.</p> <p>Jiang and Ms Wang were long-time friends. When Ms Wang eventually moved to Perth from New Zealand she would regularly ask Jiang to visit her.</p> <p>A joint investigation by State and Federal authorities was conducted into the importation, distribution and manufacture of prohibited drugs. Surveillance and intercepted discussions revealed a Mr To was expecting the arrival of prohibited drugs, which he was going to provide to Ms Wang and her partner Mr Xu. Ms Wang was a regular user of methyl.</p> <p>Jiang eventually travelled to Perth to visit Ms Wang. Ms Wang told Jiang she had lost money lent in a failed business venture and that she had cancer. Respectful of Ms Wang as an older person and as part of her culture, she agreed to assist her.</p> <p>Ms Wang telephoned Jiang and, in a coded manner, told her that drugs had arrived. Jiang was not aware that</p>	<p>6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending was serious; it was a substantial amount of cocaine at a high level of purity; the drug could have been cut to increase the profit on sales; her role was at the bottom end of the hierarchy and she did not participate for her own commercial benefit; however she was a link in the drug dealing chain which was involved in obtaining a large quantity of drugs for distribution in Australia.</p> <p>The sentencing judge found the appellant had no involvement in the planning or organisation to obtain the drug; she was not involved in its distribution or had any direct knowledge of how the drug would be distributed; her role was confined to aiding the activities carried out that night.</p>	<p>Dismissed.</p> <p>Appeal concerned error in finding (appellant's role in enterprise); length of sentence and plea discount.</p> <p>At [55] ... there is no proper basis for concluding that the sentencing judge erred ... by finding that the appellant aided the offending by 'hiring cars'.</p> <p>At [62] The statement that the appellant drove Mr Xu to the Bunnings store ... was an error that did not affect, and was incapable of affecting, the sentence that the sentencing judge imposed on the appellant. The aspect which aggravated the appellant's criminality was her participating in and assisting Mr Xu (who did not speak English) with the purchase of tools to be used to gain access to the</p>

		<p>Ms Wang was talking about drugs or illegal activity.</p> <p>Ms Wang advised Jiang to meet her at an apartment complex. Ms Wang instructed Jiang to stay downstairs, whilst inside the apartment she and Mr To tried to cut open a metal cylinder containing drugs.</p> <p>By reason of their behaviour Jiang became suspicious of what was going on inside the apartment.</p> <p>Jiang travelled with a Mr Sui to a Bunnings store. She remained in the vehicle while Mr Sui purchased items to cut open the cylinder. Jiang was now aware that she was assisting the co-offenders in a criminal activity.</p> <p>Jiang returned to the apartment, carrying the items that had been purchased inside. They were unable to open the cylinder and arrange to take it to Mr Sui at another address.</p> <p>Jiang drove Mr To and the cylinder to Mr Sui. Jiang was now aware the cylinder contained a considerable amount of drugs.</p> <p>Jiang and Mr Xu then travelled to a Bunnings store where they purchased</p>	<p>The sentencing judge found the appellant was manipulated by Ms Wang; she was motivated to assist her friend and believed it was to recover a \$500,000 debt relating to a failed business venture.</p> <p>Appellant genuinely remorseful; efforts made towards rehabilitation whilst in custody; low risk of re-offending.</p>	<p>drugs in the metal cylinder. ... The error was not material, and does not enliven the jurisdiction of this court to resentence the appellant. ...</p> <p>At [72] ... it was well open to the sentencing judge to consider that a discount of only 5% was appropriate or the very late plea of guilty. ...</p> <p>At [87] It is true that the appellant was only knowingly involved in the enterprise for a few hrs before police intervened. She did not expect or receive a financial reward for her assistance, and was acting out of a misguided sense of loyalty to a friend. [She] had no knowledge of, or involvement in, planning for the importation and subsequent distribution of the drugs. However, she was generally aware of the scale of the offending in which she was knowingly participating. Although she did not</p>
--	--	--	---	---

			<p>tools. Jiang paid for the tools selected by Mr Xu and then returned to Mr Sui's address.</p> <p>Police then executed a search warrant at the address. Mr Xu was observed using an angle grinder to cut into the cylinder, while Mr To and Ms Wang watched.</p> <p>The fire brigade attended and cut open the cylinder. It was found to contain 11 packets of cocaine, in varying sizes</p>		<p>expect any personal financial reward, she was seeking to obtain a very significant financial benefit for Ms Wang, which could be used to satisfy what the appellant understood to be a \$500,000 debt.</p> <p>At [90] Given the nature and short period of the appellant's involvement, the absence of any expectation of financial reward and her very good antecedents, the sentence of 6 yrs imp may be regarded as high. However, that sentence was very much lower than the range found in many cases concerning possession, wiss, of large quantities of prohibited drugs such as methyl, heroin and cocaine. The lateness of the appellant's PG significantly reduced its mitigating effect. ... we are not persuaded that the sentence imposed was unreasonable or plainly unjust. ...</p>
--	--	--	---	--	---

<p>16.</p>	<p><i>HSV v The State of Western Australia</i></p> <p>[2020] WASCA 5</p> <p>Delivered 15/01/2020</p>	<p>30 yrs at time offending. 31 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No significant criminal history.</p> <p>Supportive family; very close siblings.</p> <p>Educated to yr 11.</p> <p>Single; no children; acrimonious breakdown of 6 yr relationship.</p> <p>Good employment history; violently assaulted in 2017; unable to work 6 mths due to injury.</p> <p>No ongoing substance abuse issues; ecstasy use from aged 19 yrs; progressed to methyl and cocaine use; \$20,000 drug debt.</p>	<p>Ct 1: Sold methyl 27.8 g at 72% purity. Ct 2: Poss cocaine wiss 630.07 g. Ct 3: Poss MDA wiss 183.3 g (527 tablets). Ct 4: Poss methyl wiss 977.82 g Ct 5: Poss unlawfully obtained property.</p> <p>HSV drove to a car park. A woman approached his vehicle and got into the front passenger seat. HSV handed her a quantity of methyl.</p> <p>Later that day HSV was stopped driving his motor vehicle. He was conveyed to his home address where a search warrant was executed. Police located a 5.57 g package of cocaine (85% purity); three packages each containing 100 MDA tablets weighing 26.3 g (12% purity), 26 g (15% purity) and 26.4 g (13% purity). A further package containing 227 MDA tablets weighing 59.6 g (14% purity) was also found.</p> <p>Three bundles of cash totalling \$33,075 were also located, along with a further 3.72 g of methyl (80% purity).</p> <p>Clip seal bags, elastic bands, digital scales, paper towels with printed</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 5 yrs 6 mths imp (conc). Ct 3: 3 yrs imp (conc). T 4: 9 yrs 6 mths imp (cum). Ct 5: 18 mths imp (conc).</p> <p>TES 13 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending very serious; it involved a large quantity of drugs and he was dealing for substantial profit in a large-scale commercial drug dealing operation and he had engaged a sophisticated system to avoid detection in the form of the secret compartment.</p> <p>The sentencing judge noted the variety of drugs involved was an agg factor.</p> <p>Appellant remorseful.</p>	<p>Dismissed.</p> <p>Appeal concerned totality. Individual sentences were not challenged.</p> <p>At [46] The overall criminality involved in all of the appellant's offending was high. He was operating a commercial drug dealing business involving significant quantities of drugs. He was in possession of about a kg of methyl with intent to sell at least most of it to others as part of his regular business. He was dealing with a range of other different kinds of prohibited drugs. There was a significant element of planning and sophistication involved in the appellant's steps to conceal the drugs. He was engaged in a commercial operation for profit. While the appellant was acting as agent for another person, his payment of \$5,000 per week plus</p>
------------	---	--	---	--	---

		<p>logos and a vacuum sealing machine were also found.</p> <p>A search of the vehicle parked at the premises located a sophisticated secret compartment, activated by hydraulic rams, containing 499 g of cocaine (88% purity) and four individually wrapped packages of cocaine, weighing 27.8 g, 28.1 g, 27.8 g and 27.9 g each (83–86% purity). The vehicle was registered in his brother's name to avoid drawing attention to himself.</p> <p>Two further vacuum-sealed bags containing 395 g of methyl (69% purity) and 496 g of methyl (80% purity) were also located.</p> <p>The vehicle was seized for further examination. Another hidden compartment in the front dashboard, operated by remote control, was located and found to contain four packages of methyl, two weighing 13.8 g (77% and 78% purity) and the other two weighing 27.8 g (76% purity) and 27.7 g (74% purity).</p> <p>A further search of the first secret compartment revealed an additional package containing 13.9 g (67% purity) of cocaine.</p>		<p>drugs for his own use was a significant personal benefit for the appellant. It indicates the importance of his role in the particular drug dealing enterprise. The offending was not fleeting, isolated or out of character. The quantity, purity and variety of the drugs, and the value of the cash, found in the appellant's possession, together with the sophistication of the steps taken to conceal the drugs and the payment the appellant was receiving, indicate that the appellant was more than the mere 'foot soldier' suggested by his counsel's submission.</p> <p>At [47] ... Some degree of accumulation was clearly required in respect of the ... offending, particularly having regard to the additional criminality involved in ct 2 ... and ct 5 ...</p>
--	--	---	--	---

15.	<p><i>Lau v The State of Western Australia</i></p> <p>[2020] WASCA 4</p> <p>Delivered 15/01/2020</p>	<p>26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Minor criminal history Hong Kong.</p> <p>Raised in Hong Kong; very limited English language skills.</p> <p>Educated equivalent yr 11-12.</p> <p>Employed kitchen hand.</p> <p>Occasional drug use.</p>	<p>1 x Poss cocaine wiss 4.91 kg at 65%- 89% purity.</p> <p>Lau and his co-offender Cheung were on working holiday visas. They and the co-offender Chan were part of an organised crime syndicate supplying trafficable amounts of prohibited drugs in WA.</p> <p>Lau and Cheung were ‘controllers’ who coordinated the activities of ‘runners’ who collected large packages of prohibited drugs for distribution to third parties. Chan was a ‘runner’.</p> <p>Lau and Cheung arranged flights for Chan to travel to QLD where he collected a quantity of cocaine, which was subsequently brought to WA for processing and distribution. The drug was disguised as sports supplements, the powder secreted in capsules in plastic containers.</p> <p>On Lau and Cheung’s instructions Chan removed the powder from the capsules and then informed them how much cocaine had been extracted.</p> <p>A search warrant was executed at Chan’s residence and a locked</p>	<p>11 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending involved a large amount of the drug, it was of high purity and he was paid to give instructions; he and Cheung were involved in taking on the risky but important task of supervising and assisting the runner.</p> <p>The sentencing judge did not find the appellant one of the leaders of the syndicate or that he was at the top of the tree, but he was a willing participant who assisted in the distribution of drugs within the community.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [20] The appellant was knowingly involved in a supervisory capacity in an organised crime syndicate’s dealings in almost 5 kg of cocaine, much of which was of very high purity. It may be inferred that he was aware of the quantity and type of drugs involved, and that he expected to be paid for his assistance. He played an important role in coordinating the enterprise while shielding the principal organisers from exposure to prosecution. ...</p> <p>At [21] Having regard to the appellant’s role in the enterprise, the customary sentencing standards for serious drugs offences and all relevant circumstances and sentences factors, ... the sentence imposed ... is</p>
-----	---	---	--	--	---

			suitcase, containing 10 separate packages of cocaine, was found. Each package weighed approximately 500 g.		not unreasonable or plainly unjust. ...
14.	<p>Higgins v The State of Western Australia</p> <p>[2019] WASCA 78</p> <p>Delivered 21/05/2019</p>	<p>27 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after late PG (15% discount) (cts 10, 11, 37, 38 and 40). Convicted after PG (18% discount) (other 35 counts).</p> <p>Born in England; moved to Ireland aged 12 yrs; no family in WA.</p> <p>Completed yr 12 in Ireland.</p> <p>Employed construction industry on leaving school; lost job during Irish recession; struggled financially; commenced drinking heavily.</p> <p>Moved to Australia 2012-2013; gained work; reduced alcohol consumption; commenced bodybuilding.</p> <p>Problematic use of performance enhancing drugs; injecting six-seven times per day; cost of habit increasing to thousands of dollars per week; resulting financial stress; began offending as a means of making up the shortfall between his income and expenses.</p>	<p>Cts 1-3; 9-11; 13-14; 17; 21; 26: Offer to sell MDMA. Cts 4-5; 8; 12; 15-16; 18-19; 24; 28; 31-32; 35-36: Offer to sell anabolic steroids. Cts 6-7; 25; 30: Offer to sell testosterone. Ct 20; 22-23; 27; 29; 33-34: Offer to sell human growth hormones. Cts 37 & 38: Sold methyl 13.6g at 75% purity & 55.7g at 75% purity. Ct 39: Offer to sell cocaine 255g (for \$67,500). Ct 40: Sold methyl 89.3g at 82% purity & 900g at 84% purity.</p> <p>Intercepted mobile telephone calls revealed Higgins offered to sell quantities of MDMA, anabolic steroids, testosterone and human growth hormones to others. Higgins was also seen meeting a customer and receiving money for the sale of MDMA pills (cts 1-36).</p> <p>Higgins began communicating with an UCO and supplied him with methyl and cocaine on four separate occasions (cts 37-40).</p>	<p>Ct 1: 12 mths imp (cum). Ct 2; 21 & 37: 2 yrs imp (conc). Cts 3; 9-11; 13; 17 & 26: 12 mths imp (conc). Cts 4-7; 14; 16; 20; 27; 33 & 35: 3 mths imp (conc). Ct 8: 6 mths imp (cum). Cts 12; 15; 18-19; 22-25; 28-32; 34 & 36: 6 mths imp (conc). Ct 38: 3 yrs imp (conc). Ct 39: 3 yrs imp (cum). Ct 40: 8 yrs imp (cum).</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending very serious; he dealt with large volumes of various prohibited drugs for commercial gain.</p> <p>The sentencing judge found the appellant's actions were 'deliberate, repeated and persistent'; the quantity, purity and value of the drugs</p>	<p>Dismissed.</p> <p>Appeal concerned error in law (plea discount) and parity principle.</p> <p>At [181] ... bearing in mind the extent of the delay in the pleas, ... the discount of 18% was well within the range of an appropriate exercise of discretion. ...</p> <p>At [133] ... bearing in mind the strength of the state case, the discount of 16% applied to cts 10, 11, 37, 38 and 40, to which the appellant PG only after committal for trial ... can fairly be said to be generous.</p> <p>At [187]-[188] ... Mr Woodcock's role in the sale of the methyl was undoubtedly higher in the chain of supply hierarchy than the appellant's. In</p>

		Ceased drug use following arrest.	<p>Higgins communicated with a co-accused Mr MacDonald, knowing he was able to source very large quantities of methyl.</p> <p>The UCO informed the appellant he was interested in purchasing 1 kg of methyl. Mr MacDonald informed the UCO his supplier could provide the 1 kg of methyl for \$192,500. Higgins was present during this discussion and he discussed this proposed purchase with the UCO on further occasions. Higgins acted as the go-between between the UCO and Mr MacDonald. When the deal did not come to fruition Higgins indicated to the UCO he may be able to source the drug elsewhere.</p> <p>Higgins then contacted the co-accused Mr Costa Ramirez. Mr Costa Ramirez and the UCO discussed the purchased of methyl, along with a co-accused Mr Perlin. Some days later Mr Costa Ramirez and Mr Perlin sold 989.3 g of methyl to the UCO in exchange for \$180,000. A further co-offender Mr Woodcock supplied the methyl and was present during this transaction.</p>	<p>involved significant and some involved substantial quantities; others were involved in the offences and he was motivated by commercial gain.</p> <p>Demonstrated remorse; cooperative; steps taken towards rehabilitation.</p>	<p>that respect, Mr Woodcock's offence reflected a high degree of culpability and yet the appellant received a higher sentence ...</p> <p>Against this, however, is the appellant's offending in relation to ct 40 involved a high degree of persistence over a lengthy period of time. ... the appellant engaged in discussions with the UCO with a view to a sale of 1 kg of methyl. ... the appellant pursued and facilitated the sale that ultimately was ct 40. ...</p> <p>At [191] ... While Mr Costa Ramirez's offending might fairly be seen as somewhat more serious than the appellant's, that is comfortably accommodated by the 1 yr higher sentence imposed on Mr Costa Ramirez.</p>
13.	<i>Chadburne v The State of Western Australia</i>	<p>45 yrs at time offending.</p> <p>48 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-4).</p>	<p>Ct 1: Poss MDMA wiss 8.4153kg (34,475 tablets) at 30% purity.</p> <p>Ct 2: Poss methyl wiss 2.046kg at 66%-82% purity.</p>	<p>Ct 1: 14 yrs 6 mths imp.</p> <p>Ct 2: 12 yrs imp (conc).</p> <p>Ct 3: 5 yrs imp (conc).</p> <p>Ct 4: 1 yr 6 mths imp (cum).</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and</p>

<p>[2017] WASCA 216</p> <p>Delivered 23/11/2017</p>	<p>Convicted after PG (ct 5) (5% discount).</p> <p>Minor NSW criminal history.</p> <p>Raised and lived NSW.</p> <p>Disadvantaged background; father physically and psychologically abusive.</p> <p>Difficulties at school; expelled yr 9.</p> <p>Strong work ethic; consistently employed as a van/truck driver since aged 20.</p> <p>9 yr relationship; three adult children together; primary carer of his children after separation.</p> <p>Suffered severe depression and stress as a result of his apprehension.</p> <p>Very heavy drinker; occasional user of methyl; denied ongoing use.</p>	<p>Ct 3: Poss cocaine wiss 482.76g at 76%-77% purity.</p> <p>Ct 4: Poss cocaine wiss 275g at 58% purity.</p> <p>Ct 5: Fail to obey data access order.</p> <p>Chadburne was a member of a syndicate involved in the transportation and supply of large quantities of prohibited drugs from NSW into WA.</p> <p>On several occasions Chadburne attended the motor works business of one of the syndicate members. He facilitated the concealment of 15 sealed packages containing drugs into motor vehicle gear transmissions (cts 1-3).</p> <p>The engine transmissions, containing the prohibited drugs, were placed on a pallet into the tray of a utility vehicle, which Chadburne commenced to drive to WA. During the journey he collided with a kangaroo causing substantial damage to the utility. He arranged a replacement vehicle and hire trailer.</p> <p>During the change of vehicles Chadburne located a sixteenth package left on the rear seat of the utility, which unknown to him could not be accommodated into the</p>	<p>Ct 5: 6 mths imp (cum).</p> <p>TES 16 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending very serious; it involved a high level of criminality; the appellant's role was integral to the operation and the crime syndicate of which he was a part of and working with and the offending was committed out of greed and purely for commercial gain.</p> <p>The trial judge found the appellant more than that of a mere courier and it was not a one-off opportunistic attempt.</p> <p>No demonstrable evidence of remorse or insight.</p>	<p>totality principle.</p> <p>At [60] The appellant was more than a mere courier of the drugs. ... The appellant participated in packing the drugs He held face to face discussions with the apparent head of the syndicate. He organised the vehicles used to transport the drugs. This was done as part of an ongoing operation, and could not be regarded as behaviour which was aberrant or out of character for the appellant. The appellant expected to make a substantial profit from the operation.</p> <p>At [64] ... the appellant's actions after the collision with the kangaroo showed that he was able to respond to an unexpected setback with adaptability and initiative. He demonstrated a relatively sophisticated understanding of the implications of finding</p>
--	---	---	--	---

		<p>transmissions. He was given permission to keep this drug so he hid the package inside the wheel arch panelling of the replacement vehicle (ct 4).</p> <p>Chadburne continued his journey and eventually arrived in WA where he was stopped by police. The vehicle was seized and the sealed packages hidden within the transmissions located.</p> <p>Chadburne's Blackberry was also seized and he failed to obey a data access order to reveal its pass code. As a result it remained encrypted and inaccessible to police.</p> <p>The drug secreted in the wheel arch remained undetected. The vehicle was eventually repossessed for sale by auction. On bail and aware the drug had not been located he called the auction company a number of times, rousing suspicions. A drug detection dog inspected the vehicle and the package was discovered.</p> <p>Information from intercepted telephone calls revealed Chadburne expected to earn \$40,000- \$50,000 from the venture. It was also not the first occasion he had participated in the distribution of illicit drugs,</p>	<p>the package of cocaine on the rear seat ...</p> <p>At [65] ... While the appellant may have been vulnerable to exploitation by others due to his social vulnerability and difficulties with emotional regulation, he knew what he was doing was illegal and appreciated the risks involved.</p> <p>At [66] ... The amount and quality of MDMA in the appellant's possession was greater than in many of those cases [referred to]. He was an active member of the syndicate which brought the drugs into WA, whose involvement extended beyond the mere provision of transport. The appellant expected to obtain a significant financial reward from the activity.</p> <p>At [67] ... The circumstances of the ... offending, particularly that which was the subject</p>
--	--	---	--

			<p>having previously travelled to WA on behalf of the syndicate.</p> <p>The package of cocaine (ct 4) had an estimated street value of \$98,000 - \$206,000.</p> <p>Evidence at trial indicated an individual MDMA pill sold for \$15 - \$35, giving a potential value of the MDMA tablets discovered at between \$517,125.00 - \$1,206.625.00.</p>		<p>of cts 4 and 5, increased the overall criminality of the appellant's conduct in a manner that warranted some accumulation of the sentences.</p> <p>At [68] ... The seriousness of [ct 4] was agg by the fact that these drugs were to be sold wholly for the appellant's personal benefit, and by the attempts after his arrest to regain possession of the drugs.</p> <p>At [69] ... Cumulacy of this sentence [ct 5] was called for in order to avoid the result that a person apprehended in the course of committing serious offences might refuse to comply with an order that will produce evidence of the offending without any practical adverse consequences ...</p> <p>At [70] The appellant's overall criminality is also agg by the substantial quantities of methyl and cocaine which were the</p>
--	--	--	---	--	--

					subject of cts 2 and 3.
12.	<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>Ch 1: Poss stolen or unlawfully obtained property.</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></p> <p>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%</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>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>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 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>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> Police found three packages containing 109g of cocaine of 52% purity, 190g of cocaine of 56% purity and 300g of cocaine of 62% purity, respectively. Street value estimated at \$450,000 (if sold in 1g lots) and \$214,000 (if sold in 1 oz lots).</p> <p><u>Ct 4</u> Police found 3,815 ecstasy tablets, which belonged to B and had been at the factory for a year. They ranged in purity between 5% and 10%. Street value estimated at \$152,600 (if sold individually) and \$53,000-\$57,000 (if sold in lots of 1,000).</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>
--	--	--	--

			<p><u>Section 32 Notice</u> Police found \$232,000 cash during the search.</p> <p>The appellant cooperated fully with police.</p>		
11.	<p><i>Pitassi v The State of Western Australia</i></p> <p>[2014] WASCA 231</p> <p>Delivered 12/12/2014</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>No relevant prior convictions.</p> <p>Good work ethic.</p> <p>Regular user of illicit drugs.</p> <p>Low intelligence.</p> <p>About 9 mths following the commission of these offences was charged in relation to a separate offence of possess stolen or unlawfully obtained property (being \$120,000).</p>	<p>Ct 1: Poss cocaine wiss 104g of 2% purity. Ct 2: Agg poss firearm without licence. Ct:3: Possess ammunition.</p> <p>Police executed a search warrant at the appellant's home. The police found a wall cavity in the kitchen behind a small plastic ventilation grate. There was 104g of powder in the cavity later analysed as cocaine with a purity of about 2% and methyl with a purity of about 4%.</p> <p>Police also located MSM, \$60,000 cash, a loaded pistol, tick lists, an elaborate surveillance system, a money counting machine, a number of weapons including a Taser device, pepper spray, a cattle prod and a baton, 11 mobile telephones, a bundle of sandwich bags, 120 rounds of ammunition and a plate on which there was a card and a \$50 note wrapped as a straw, both of which were covered with powder.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 12 mths imp (cum). Ct 3: 6 mths imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>Very low remorse.</p> <p>Sentencing judge satisfied appellant possessed the illicit drugs as part of a commercial drug dealing operation.</p> <p>Sentencing judge said was 'at a higher position in the drug distribution network than a low level street dealer' and 'involved in a fairly significant enterprise'.</p>	<p>Dismissed.</p> <p>At [45] The total effective sentence of 4 years' imprisonment was within the range reasonably open to the sentencing judge on a proper exercise of his discretion.</p>

			The appellant was also charged with possess stolen or unlawfully obtained property, possess prohibited weapon (two charges), possess controlled weapon and possess prohibited drug (two charges) and sentenced separately.		
Transitional Provisions Repealed (14/01/2009)					
Transitional Provisions Enacted (31/08/2003)					

Weight of cocaine: 3 – 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
10.	Gallagher v The State of Western Australia [2019] WASCA 108 Delivered	39 yrs at time sentencing. Convicted after early PG (22% discount). No prior criminal history. Married; two young children;	<u>Indictment 24</u> Ct 1: Att poss cocaine wiss 4.98g. Ct 2: Att poss MDMA wiss 6.93g. Ct 3: Poss cocaine wiss 10.28g. <u>Indictment 1167</u> Cts 1; 3-11: Stealing as a servant. Cts 2 & 12: Att stealing as a servant.	<u>Indictment 24</u> Ct 1: 10 mths imp (conc). Ct 2: 10 mths imp (conc). Ct 3: 14 mths imp (conc). <u>Indictment 1167</u> Cts 1 & 2: 4 mths imp (conc). Cts 3 & 6: 2 mths imp (conc).	Dismissed. Appeal concerned early plea discount and type of sentence imposed. At [26] ... in all the circumstance ... it is

	<p>07/08/2019</p>	<p>no contact with 18 yr old son earlier relationship.</p> <p>Almost completed Bachelor degree.</p> <p>Good employment history.</p> <p>Gambling and substance abuse problems.</p>	<p><u>Indictment 24</u> A parcel, address to Gallagher and containing cocaine and MDMA, was intercepted at an Australia Post office.</p> <p>A controlled delivery of the parcel was made to his home address. It was collected from his mailbox.</p> <p>The same day a search warrant was executed at Gallagher's address. The unopened parcel was located in his garage. His laptop contained material relating to the purchase of the drugs from the 'dark web', including a recent order for quantities of MDMA and cocaine.</p> <p>Gallagher also declared possession of three quantities of cocaine in his vehicle, of which he was to retain half for his own use and supply the other half to a co-purchaser (ct 3).</p> <p><u>Indictment 1167</u> These offences occurred while Gallagher was on bail for the above offences.</p> <p>Gallagher was employed as a sales representative.</p> <p>On various dates Gallagher altered invoices issued to customers, substituting his own bank account details for those of the company's account.</p>	<p>Cts 4-5 & 7-9: 8 mths imp (conc). Ct 10: 18 mths imp (cum). Ct 11: 12 mths (conc). Ct 12: 6 mths imp (conc).</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p> <p><u>Indictment 1167</u> The sentencing judge found the offending had some degree of sophistication and deception and there was a degree of significant premeditation.</p> <p>Appellant genuinely remorseful; steps taken to address his substance abuse problems.</p> <p>Appellant's incarceration imposed financial and emotional strain on his family.</p>	<p>appropriate to allow a discount of 22% in respect of the drug offences ... we consider the discount given ... to be appropriate in all the circumstances, including the time at which the appellant indicated he would PG to the drug offence. We also agree ... that a discount of 22% ... is appropriate in respect of the stealing offences.</p> <p>At [29] The drug offences were not at the upper end of seriousness on the scale of offending of this type. The quantities involved were relatively low, and the only supply was to a co-purchaser. Nevertheless, any poss of quantities of dangerous drugs with an intention to sell or supply them to another is a serious offence.</p> <p>At [31] ... the offending involved a series of premeditated and deceptive transactions over a period of mths,</p>
--	-------------------	---	--	---	---

			<p>On other occasions Gallagher altered invoices issued by a supplier to the company, substituting his own bank account details for those of the supplier.</p> <p>The amount stolen was \$53,845.60.</p> <p>On two other occasions Gallagher altered the account details but the invoices were not paid by the customer or the company.</p> <p>In total Gallagher sought to obtain \$60,291.30.</p>		<p>which resulted in a significant financial detriment ... The offences were agg by the fact that the appellant committed them while on bail ... a sentence of immed imp was clearly the only appropriate type of sentence for the stealing offences. We are positively satisfied that suspended and conditionally susp imp are not appropriate sentencing options ... The imposition of a term of immed imp for the stealing offences precludes suspension or conditional suspension of the terms for the drug offences, ...</p>
9.	<p>May v The State of Western Australia</p> <p>[2019] WASCA 92</p> <p>Delivered 20/02/2019</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Minor criminal history.</p> <p>Born and raised New Zealand; moved to Australia 1988.</p> <p>Excellent work history; employed drilling industry</p>	<p>1 x Att poss cocaine wiss 14g of 54% purity.</p> <p>May was contacted by his co-offender, Fredrickson, with an offer to buy a quantity of cocaine for \$10,000.</p> <p>Fredrickson provided May with bank details to facilitate payment of the drug. Within a few days May transferred a total of \$10,000 into two accounts controlled by Fredrickson and his wife.</p> <p>Several days later Fredrickson flew to Perth</p>	<p>15 mths imp.</p> <p>EFP.</p> <p>The sentencing judge accepted the appellant intended to use some of the 14g of cocaine he had purchased himself and to supply some to close friends; he did not intend to distribute the drug into the wider community, nor commercially profit from its sale.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and error of fact (prior distribution of drug to friends).</p> <p>At [51] ... there was no factual basis, either in the evidence or in the sentencing submissions made on behalf of the appellant, for the finding</p>

		<p>before starting own successful business with 50-60 employees and contractors.</p> <p>Positive contributions to local community.</p> <p>Significant assets.</p> <p>Separated; four children aged between 13-19 yrs; primary carer for three youngest children.</p> <p>Good physical and mental health; commences using cocaine socially 2010.</p>	<p>from the eastern states. At Perth Airport he was found to be carrying 82.1g of cocaine, in three separate packages.</p> <p>One of the packages contained 27.8g of cocaine and was labelled 'MB'. From this package 14g of the drug, at a cost of \$5,000, was for May.</p> <p>The balance of the package was to be provided by Fredrickson to a third person whose initial was B. The additional \$5,000 paid by May was on behalf of B, who would later repay him.</p>	<p>The sentencing judge found the appellant's offending had to be viewed against a background of him being involved in the use and distribution of cocaine to a small group of friends on repeated occasions over a number of yrs.</p> <p>Significant remorse and insight into seriousness of his offending; very low risk of reoffending.</p>	<p>made by the learned sentencing judge that the appellant had, in the past, supplied cocaine to his partner and friends. It was not open to his Honour to find, as a fact, that the appellant had supplied cocaine to others in the past. ...</p> <p>At [66] ... The appellant att to obtain 14g of cocaine, which he understood was of good quality. While he did not initiate the transaction ... he embraced it quickly, and with evident enthusiasm. Within a short period of time, he paid into the bank accounts of [Fredrickson] and his partner a total sum of \$10,000, \$5,000 of which was to purchase 14g of cocaine, with the balance being, in effect, a loan to B so that B could obtain poss of approx 14g of cocaine. ... the fact that he was prepared to provide \$5,000 for an associate to obtain a dangerous drug ...</p>
--	--	---	--	--	--

					<p>detracts from the appellant's status as a person who has made positive contributions to the community.</p> <p>At [67] It is relevant that the appellant intended only to distribute part of the 14g of cocaine ... to a small group of friends who were fellow users of the drug, and that he had no commercial motive. Nevertheless, the appellant intended to distribute cocaine, an illicit and dangerous drug, to others. ...</p> <p>At [70]-[72] ... the offence committed by the appellant was serious. ... We are positively satisfied that the only appropriate penalty is a term of immed imp by reason of the objective seriousness of the offence ... we would not impose a sentence different from that imposed ...</p>
8.	<i>Lenton v The State of Western Australia</i>	47 yrs at time sentencing. Convicted after very late PG;	Ct 1: Reckless driving. Ct 2: Poss MDMA 2.09g. Ct 3: Poss methyl wiss 84.15g at 37%-52%	Ct 1: 12 mths imp (cum). Ct 2: 1 mths imp (conc). Ct 3: 6 yrs imp (head).	Dismissed. Appeal concerned totality.

	<p>[2017] WASCA 224</p> <p>Delivered 04/12/2017</p>	<p>first day of trial (5% discount).</p> <p>Long criminal history; prior drug and firearm related offences; prior sentences of imp.</p> <p>Unsettled childhood during period of parents separation aged 2 yrs. Close and supportive family.</p> <p>Attended numerous schools; completed yr 12; completed first yr of university degree.</p> <p>Employed various roles; including intermittent work in family business prior to imp for present offences.</p> <p>Divorced; no dependents.</p> <p>Long history of illicit substance abuse; methyl and cocaine from age 29; periods of abstinence with gradual relapsed into drug use; little effort made to address his substance abuse problems.</p> <p>Medicated and counselled for post-traumatic stress disorder.</p>	<p>purity. Ct 4: Poss cocaine wiss 1.98g. Ct 5: Poss MDA 0.5g (2 tablets). Ct 6: Agg poss firearm. Ct 7: Fail to obey data access order.</p> <p>Lenton was driving a motorcycle when police signalled for him to pull over. He did not do so and instead accelerated and fled from police. The pursuit continued for several km, during which he travelled at high speed and through two red traffic lights.</p> <p>When attempting to evade a second police vehicle he lost control of the motorcycle and was apprehended.</p> <p>Lenton's backpack and satchel were searched. Clipseal bags containing various quantities of MDMA were located (ct 2), along with a container holding various quantities of methyl (ct 3). A clipseal bag of cocaine (ct 4) and two MDA tablets were also found (ct 5).</p> <p>An unlicensed .32 calibre five-shot revolver containing one round of live ammunition was also found (ct 6).</p> <p>Lenton was also found in possession of \$767 cash, \$4,000 cash, a flick knife, four mobile phones; tick lists; a set of electronic scales and a laptop computer. The tick lists listed names, amounts owing (in excess of \$100,000) and references to pounds and</p>	<p>Ct 4: 6 mths imp (conc). Ct 5: 1 mths imp (conc). Ct 6: 12 mths imp (cum). Ct 7: 6 mths imp (conc).</p> <p>TES 8 yrs imp.</p> <p>The sentencing judge found ct 3 the most serious offence and based on the cash; tick lists; weapons; scales and mobile phones found the appellant was actively engaged in commercial drug dealing and that his involvement was at a much higher level than that of a street dealer or person selling drugs to pay for their own consumption.</p>	<p>Individual sentences were not challenged.</p> <p>At [61] The possession of a variety of drugs and a relatively large quantity of cash together with tick lists and a firearm led to the inevitable conclusion that the appellant was playing a significant role in the sale and delivery of prohibited drugs and that this involvement had occurred in the context of a continuing commercial criminal enterprise.</p> <p>At [62] The possession of a loaded firearm was a particularly serious feature of his overall offending ... A cumulative sentence for this offence was necessary to properly reflect the criminality involved in the drug and firearm offences.</p> <p>At [63] The reckless driving also entailed additional criminal behaviour and put the safety of other road users,</p>
--	--	---	--	--	---

			<p>ounces.</p> <p>The four mobile telephones and laptop were locked and he failed to obey a data access order to reveal the PIN or pass codes for the devices (ct 7).</p>		<p>and the police officers involved, at risk. ... His attempt to explain this conduct as caused by PTSD was rightly viewed as secondary to his desire to avoid discovery of the drugs. A cumulative sentence for this offence was also appropriate.</p> <p>At [64] ... The finding of four mobile telephones and a laptop computer in the appellant's possession was consistent with these items being used in connection with the sale of drugs. Data contained on such items may provide evidence of other offences. There is often a strong incentive for offenders in the appellant's position not to comply with a data access order. That incentive should be countered by appropriate deterrent sentences. ...</p> <p>At [71] The TES ... imposed on the appellant bears a proper relationship to the overall</p>
--	--	--	---	--	--

					criminality involved in all of the offences ...
7.	<p><i>The State of Western Australia v Doyle</i></p> <p>[2017] WASCA 207</p> <p>Delivered 08/11/2017</p>	<p>18-19 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Short criminal history; offences of poss MDMA; poss stolen or unlawfully obtained property and assault public officer.</p> <p>Born raised in Perth; one of four children.</p> <p>Supportive family.</p> <p>Paraplegic father; assisted him with dealing with his disability.</p> <p>Left school yr 10; commenced apprenticeship.</p> <p>Illicit drug use; history of abusing ecstasy and cocaine. Using 20-30 ecstasy pills per week and in excess of 6g of cocaine per week at time offending.</p>	<p>Cts 1-14; 16-17; 19-23; 25-29; 31-32; 34-38; 40; 42-45; 47; 49-57; 61-64; 66; 68-69; 71-72; 74; 76-77 & 79: Offer to supply MDMA 3.3kg.</p> <p>Cts 15; 18; 24; 30; 33; 58-59; 65; 67; 70; 73 & 80: Offer to supply cocaine 31g.</p> <p>Cts 39; 46; 60 & 75: Offer to supply methyl 11.5g.</p> <p>Ct 48: Offer to supply GBH (aka fantasy) 8ml.</p> <p>Ct 78: Offer to supply cannabis.</p> <p>Cts 41 & 82: Failing to comply with data access order.</p> <p>Ct 81: Poss unlawfully obtained property.</p> <p>A search warrant was executed at Doyle's home. Illicit drugs and a Blackberry device were located.</p> <p>Approximately 10 mths later a search warrant was again executed at the respondent's home. Illicit drugs and items commonly associated with the sale and supply of illicit drugs, including electronic scales, controlled weapons and numerous mobile telephones, including two encrypted Blackberry telephones were seized.</p> <p>The respondent's phone was found to contain numerous text messages in which he offered to sell or supply illicit substances to various people on a regular basis over a period of approximately 18 months.</p>	<p>Cts 1-20; 22-31; 33-43; 45-46; 48-55; 57-61; 63-76; 78-82: 9 mths imp (conc).</p> <p>Ct 21: 12 mths imp (cum).</p> <p>Ct 32; 44 & 47: 12 mths imp (conc).</p> <p>Ct 56: 18 mths imp (head sentence).</p> <p>Ct 62: 18 mths imp (cum).</p> <p>Ct 77: 18 mths imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent was part of the commercial distribution of prohibited drugs into the community; he was involved in drug dealing on a commercial basis and the offending was pretty persistent and relentless.</p> <p>The sentencing judge found the respondent did not sell the offered prohibited drug in a significant number of the cts. However there can be no suggestion that when he offered drugs for sale he didn't intend to sell them if he could have.</p> <p>Remorseful. Engaged in a drug programme and counselling to</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences (cts 21, 32, 44, 47, 55-56, 62, 77 & 79) and totality principle.</p> <p>Re-sentenced on cts 21, 32, 44, 47, 55, 56, 62, 77 and 79.</p> <p>Cts 21; 32 and 47: 2 yrs imp.</p> <p>Cts 44; 55 & 79: 18 mths imp.</p> <p>Cts 56; 62 & 77: 3 yrs imp.</p> <p>Cts 56 (head sentence) and 62 cum; all other sentences conc with each other and with head sentence.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [35] ... Each offence was committed by the respondent as part of an ongoing and long-term business of supplying</p>

				<p>address his drug problems.</p>	<p>illicit drugs. The respondent's primary motive was to obtain money to fund the lifestyle he could not otherwise afford. While it must be accepted that each offer was not in fact fulfilled, this was only because his supplier would not extend him credit for such substantial quantities of MDMA. ... He clearly intended to effect each sale. It cannot be overlooked that each offer was not an isolated event.</p> <p>At [36] This court has not been previously called upon to decide whether an individual sentence for offering to sell or supply a prohibited drug is manifestly inadequate or manifestly excessive. Thus, there are no relevant comparable cases.</p> <p>At [38] ... each sentence is, when all relevant circ and all relevant sentencing factors are</p>
--	--	--	--	-----------------------------------	---

					<p>considered, unreasonable or plainly unjust. ... Each sentence was substantially outside the sentencing range open to his Honour on a proper exercise of his discretion.</p> <p>At [41] The overall criminality involved in the offending was very serious. The respondent was engaged in the business of dealing with methyl, MDMA, cocaine, GBH and cannabis for profit and with the particular aim of promoting his lifestyle. ... about half of the offers resulted in the substance in question being sold or supplied.</p> <p>At [42] The appellant also twice defied data access orders. ... Offenders who fail to comply are obstructing law enforcement authorities from undertaking their role in detecting offences.</p> <p>At [43] ... a TES of 4 yrs imp falls a long way short</p>
--	--	--	--	--	--

					of bearing a proper relationship to the overall criminality involved in the commission of all of the offences.
6.	<p><i>Bees v The State of Western Australia</i></p> <p>[2017] WASCA 202</p> <p>Delivered 27/10/2017</p>	<p>62 yrs at time offending. 63 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; mostly poss of prohibited drugs; dishonesty and traffic offences. No previous sentences of imp.</p> <p>Two children from a previous relationship which ended 19 yrs ago.</p> <p>Completed apprenticeship; worked many yrs in construction and hairdressing industries. Unemployed at time offending.</p> <p>History of illicit drug use; regular user of amphetamines.</p> <p>In good health; no mental health issues.</p>	<p>Ct 1: Poss methyl wiss 1.480kg at 80.7% average purity. Ct 2: Poss methyl wiss 147.87g at 73.1% average purity. Ct 3: Poss cocaine wiss 8.53g at 79% purity.</p> <p><u>Ct 1</u> Police stopped Bees driving his motor vehicle. A search of the vehicle located a large amount of a crystalline substance in two clip seals bags within a plastic bag, inside a plastic container.</p> <p><u>Cts 2 and 3</u> The same day police executed a search warrant at Bees home, where numerous quantities of methyl in clipseal bags were located, along with the quantity of cocaine.</p> <p>The cutting agent MSM and numerous empty clipseal bags of varying sizes, a 'tick list' and several mobile phones were also located.</p> <p>The 'tick list' revealed Bees had been selling prohibited drugs on credit on a regular basis between April 2014 and July 2015.</p> <p>The total value of the drugs he sold was about \$135,000.</p>	<p>Ct 1: 10 yrs imp (cum) Ct 2: 2 yrs imp (cum). Ct 3: 1 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had a large quantity of drugs of fairly high purity and of significant value.</p> <p>The sentencing judge found the appellant's role towards the top of the hierarchy and that the drug dealing indicia found in the appellant's home showed he had been distributing large quantities of drugs for commercial benefit.</p> <p>Limited remorse; cooperative with police; but limited admissions made in relation to ct 1; risk of re-offending.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and totality principle and error in finding of fact on ct 1 (only available inference was the appellant's role involved distributing large quantities of drugs for commercial benefit).</p> <p>At [62] ... the sentencing judge's finding that the appellant intended to sell into the community the overwhelming majority of the 1.480 kg of methyl ... was not the only reasonable inference open on the material before his Honour.</p> <p>At [65] ... a different individual sentence should not have been imposed in respect of ct 1 and ... a different TES should not have been imposed in respect of cts</p>

					<p>1, 2 and 3.</p> <p>At [70] The various serious nature of the appellant's offending on ct 1 is apparent from ... The quantity, purity and value of the methyl. ... The appellant's role in taking poss of a significant part of the 1.480 kg ... for the purpose of delivery to another person who would in turn sell and supply the drug into the community. ... The appellant's intention to retain a significant but lesser quantity ... for sale by him in the course of his thriving drug dealing business.</p> <p>At [71] The appellant's offending on ct 1 was not isolated or an aberration.</p> <p>At [73] ... The sentence is broadly consistent with the sentencing range that is discernible from reasonably comparable cases.</p>
--	--	--	--	--	--

					At [76] ... it was necessary, in order properly to mark the seriousness of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 2 to be served cumulatively. ...
5.	<p><i>Grant v The State of Western Australia</i></p> <p>[2017] WASCA 162</p> <p>Delivered 31/08/2017</p>	<p>26-27 at time offending. 29 at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Advantage of good secure upbringing; supportive family and friends.</p> <p>Completed yr 12; completed plumbing apprenticeship; self-employed; annual turnover of approx \$500,000.</p> <p>Long term illicit drug use.</p>	<p>Ct 1: Manufacture methyl. Ct 2: Poss methyl wiss 33.1g. Ct 3: Poss cocaine wiss 3.7g. Cts 4-5: Poss dexamphetamine wiss 47.24g.</p> <p>A search warrant was executed at the appellant's business premises and home.</p> <p>At the business premises equipment consistent with the manufacture of methyl, and which contained traces of ephedrine and methyl, were located. A number of containers holding large quantities of reaction waste were also found and established methyl manufactured. Although quantity unknown.</p> <p>At the home two bags of cocaine and two bottles containing 94 (18.8g) and 142 (28.44g) dexamphetamine tablets were located. In addition items associated with dealings in prohibited drugs were found, including sets of digital scales; a vacuum sealing machine; money counting machines; empty clipseal bags and written directions for</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 3 yrs imp (cum). Ct 3: 12 mths imp (conc). Cts 4-5: 6 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Manufacturing occurred over an unknown period of time.</p> <p>Whether or not the appellant was the 'cook' or was in overall charge of the manufacture could not be determined, however he played 'an integral role'. He provided premises, organised others, obtained ingredients and had some involvement in the actual manufacturing process.</p> <p>It was a commercial effort directed at production for on-sale and not primarily, or even significantly, for</p>	<p>Dismissed.</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [80] ... the appellant was engaged in a serious course of criminal conduct. He played a significant part in manufacturing an unknown quantity of methyl by providing the premises at which the manufacture occurred, by organising others, by obtaining and providing the necessary ingredients and by some involvement in the actual manufacturing process.</p> <p>At [81] ... this was a reasonably sophisticated manufacturing enterprise</p>

			<p>the manufacture of methyl and \$1,400 cash.</p> <p>He had earlier purchased a quantity of isopropanol alcohol, a solvent used in the manufacture of methyl.</p> <p>A computer and mobile phone belonging to him also contained information relating to the manufacture of methyl. In telephone calls he used code words to reference methyl and dexamphetamine and instructions to an associate made reference to the manufacture of drugs.</p> <p>His DNA was found on some items located at his business premises, including from a mixed profile inside a pair of gloves.</p>	<p>his own use. The objective seriousness was towards the upper end of the middle of the scale of seriousness.</p> <p>No remorse or contrition.</p>	<p>that was pursued for commercial profit. The quantities of drugs ... showed that he was in the business of selling or supplying a range of drugs. Though the quantities were not particularly high, all the evidence suggested that these were simply the drugs that the appellant had on hand at the time. The poss offences needed to be seen in the context of a continuing involvement in the manufacture, sale and supply of drugs.</p> <p>At [83] ... Four cases is a small sample from which to discern patterns of sentences customarily imposed.</p> <p>At [96] Having regard to all the relevant circumstances there is no reasonable basis for the claim that the total sentence was disproportionate to the total criminality of the offending having regard</p>
--	--	--	---	---	--

					to all relevant circumstances ...
4.	<p><i>Sakhie v The State of Western Australia</i></p> <p>[2017] WASCA 103</p> <p>Delivered 01/06/2017</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; including previous convictions for possession of weapons.</p> <p>Born in Afghanistan; family members killed in conflict; lived Pakistan aged 1-10 yrs before emigrating to Australia.</p> <p>Supportive family; parents separated; father suffers drug and mental health problems.</p> <p>Difficulties at high school due to limited English; completed yr 12.</p> <p>Employed; trainee bricklayer.</p> <p>Commenced cannabis used in yr 9-10; methyl at 16-17 yrs old; \$15,000 drug debt at time of arrest.</p>	<p>Ct 1: Poss modified handgun, whilst not being the holder of a licence or permit. Ct 2: Poss methyl wiss 13g of 70% purity. Ct 3: Poss cocaine wiss 23g of 52% purity</p> <p>Sakhie was riding a motorcycle. When called upon to stop he sped away. After a short chase he abandoned his motorcycle, fled on foot and was apprehended a short time later.</p> <p>At the time of arrest Sakhie threw an object over a fence. The item was recovered and found to be a modified 8mm handgun, fitted with a silencer and with the serial numbers removed.</p> <p>Later than morning a search of his home located methyl and cocaine hidden in the house.</p> <p>If sold in points the methyl and cocaine each had an estimated value of \$13,500.</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Aggregate sentence reduced from 6 yrs imp).</p> <p>The sentencing judge found the appellant a mid-level dealer; the drugs were of high purity and high value and was indicative of the level of his involvement.</p> <p>The sentencing judge found the gun was not intended for protection and those who deal in illicit drugs are frequently found in poss of firearms and are 'one of the frequently seen tools of the drug trade'.</p> <p>Good prospects of rehabilitation.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence; totality and claims of duress.</p> <p>At [20] ... the onus is on the appellant to prove ... that he committed the offences as a result of pressure placed on him by others: ... A mere assertion that the appellant has been assaulted or threatened, without reference to any specific incident, is not admissible.</p> <p>At [22] ... the appellant's recent claims of duress are inconsistent with the submissions made on his behalf at the sentencing hearing.</p> <p>At [31] ... The fact that the appellant, on his own admission, had run up a \$15,000 drug debt is indicative of his level of involvement. It was also accepted that the weapons</p>

		At time of PG ceased using methyl; distanced himself from negative peer influences.			were used in the context of drug dealing. There are dangers inherent in drug dealing, but the carrying of weapons in this context increases the possibility of serious violence as they can be used to threaten or coerce. The firearms offence was also made more serious by the fact that the handgun had been modified, not only to remove its serial number, but to enable the fitting of a silencer.
3.	<i>Rinaldi v The State of Western Australia</i> [2017] WASCA 48 Delivered 17/03/2017	37 yrs at time offending. 39 yrs at time sentencing. Convicted after very late PG (5% discount). Minor criminal history. Traumatic childhood; supportive family. Left school midway through yr 11. Obtained a trade; good employment history and strong work ethic.	Ct 1: Poss MDMA wiss 888.01 grams of 25%-73% purity. Ct 2: Poss methyl wiss 1650.67g of 45%-77% purity. Ct 3: Poss cocaine wiss 7.29g of 68% purity. Cts 4-17: Poss firearm. Cts 18-38: Poss ammunition. Ct 39: Poss GPS jamming device. Police executed a search warrant at Rinaldi's home and discovered a 'wine cellar' accessible via a retractable trapdoor. The home was protected by a security system, comprising a steel reinforced front door, outside sensor lights and monitored CCTV cameras. Large quantities of drugs and ammunition, 14	Ct 1: 18 mths imp (reduced from 5 yrs for totality reasons) (cum). Ct 2: 8 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 4: 18 mths imp (cum). Ct 5: 18 mths (conc). Cts 6, 8-11, 15-17: 12 mths imp (conc). Ct 7: 12 mths (cum). Ct 12: 14 mths imp (cum). Cts 13-14: 14 mths imp (conc). Cts 18, 21 and 31: 6 mths imp (conc). Ct 19: 8 mths imp (cum). Ct 20: 3 mths imp (conc). Ct 22-23: 2 mths imp (conc). Cts 24-25: 8 mths imp (conc). Cts 26-27 and 30: 3 mths imp	Dismissed. Appeal concerned totality and PG discount. At [54] ... the sentencing judge did not err by failing to make a finding that the appellant's PG to cts 1-33 and ct 39 were entered at the first reasonable opportunity. Very plainly, they were not made at the first reasonable opportunity. ... The reduction of 5% was, in all of the circumstances, open to his

		<p>History of illicit drug use; escalated after his marriage break down.</p>	<p>unlicensed firearms and cash were found, along with the GPS jamming device.</p> <p>The unlicensed firearms comprised five rifles, one shotgun and eight handguns. Three of the weapons had their serial numbers removed and two of the rifles were unable to be lawfully owned in WA. Compatible magazines, silencers and shoulder holsters were also found in the house.</p> <p>In total 2,386 rounds of ammunition were found.</p> <p>\$337,220 in cash was found in bundles in various locations in the house, including in a washing machine and the roof cavity.</p>	<p>(conc). Cts 28-29 and 32-33: 1 mths imp (conc). Ct 34-36: 3 mths imp (conc). Ct 37: 4 mths imp (conc). Ct 38: 2 mths imp (cum). Ct 39: \$1000 fine.</p> <p>TES 14 yrs imp. EFP. Fine \$1000.</p> <p>The sentencing judge described the premises as a 'fortified drug house' used for the purpose of storing and warehousing illicit drugs, firearms and cash. It was in a large scale distribution network for drugs and guns as part of an illegal, commercial enterprise and from which the appellant would have derived 'some commercial gain or benefit'.</p>	<p>Honour.</p> <p>At [55] ... in respect of the five ex officio charges (cts 34 to 38). ... the appellant's PG in respect of these cts were made at the first reasonable opportunity. This concession was properly made and should be accepted. In our opinion, a reduction of 25% ... should have been made for these offences. However, having regard to all relevant circumstances ... exercising the sentencing discretion afresh, we would not have imposed different sentences for cts 34 to 38.</p> <p>At [66] ... the appellant's overall criminality was extremely serious. While... not directly involved in the sale of the drugs, firearms and ammunition, he voluntarily participated in what was clearly a large-scale commercial enterprise aimed at</p>
--	--	--	--	--	---

					<p>distributing into the community a large quantity of dangerous illicit drugs and firearms. The appellant's willing complicity in these offences is well illustrated by the modifications to his residence, most notably the wine cellar in which the drugs and most of the firearms and ammunition were stored. The large quantities of drugs, firearms, ammunition and cash show the scale of the operation. It is true that the appellant was not in command, but it is also true that a high degree of trust had been reposed in him.</p> <p>At [67] A significant aggravating feature of the appellant's overall criminality are the firearms offences, which involve a quantity and variety of weapons not previously seen by this court. Their number and type are very sinister. The amount of ammunition,</p>
--	--	--	--	--	---

					including ammunition suitable for use in the firearms present at the house, is concerning.
2.	<i>Barton v The State of Western Australia</i> [2016] WASCA 196 Delivered 18/11/2016	37 yrs at time sentencing. Convicted after early PG (25% discount). Prior criminal history; multiple offences of poss prohibited drugs; no previous sentences of imp. Two long-term relationships, including a prior marriage. Self-employed; unlikely to be able to continue working as a mortgage broker. Illicit drug user. History of anxiety and ADHD; prescribed medication.	Cts 1 & 2: Poss stolen property. Ct 3: Poss methyl wiss 33.6g of 68% purity and 25.4% purity. Ct 4: Poss MDMA wiss 5.57g. Ct 5: Poss cocaine wiss 6.29g of 69% purity. Ct 6: Poss methyl wiss 5.6g. Ct 7: Poss thing reasonably suspected to be unlawfully obtained. Ct 8: Poss methyl wiss 61.46g of 82% and 81% purity. Police recovered from Barton's home two stolen iPads (cts 1 & 2). A search located two clipseal bags containing 26.7g and 6.9g of methyl (ct 3), along with 23 MDMA tablets and power (ct 4). In addition 5.24g and 1.05g of cocaine were found (ct 5). Barton was on bail for the above offences when he was stopped driving a vehicle. A search of the car located a quantity of methyl (ct 6); \$1,185 in cash (ct 7) and two mobile phones containing messages relating to prohibited drugs. A further search of his home located two clipseal bags, each containing 27.5g of methyl, and an additional 6.46g of methyl (ct 8). Digital scales, plastic straw scoops, spoons, clipseal bags in various sizes and 'tick lists' were also located.	Cts 1 & 2: 6 mths imp each ct (conc). Ct 3: 2 yrs 7 mths imp (conc). Ct 4: 10 mths imp (conc). Ct 5: 10 mths imp (conc). Ct 6: 10 mths imp (conc). Ct 7: 6 mths imp (conc). Ct 8: 3 yrs 3 mths imp (cum with ct 3). TES 5 yrs 10 mths imp. The sentencing judge found the appellant was a willing and motivated vendor of drugs into the community and his offending was for 'commercial gain' based on the presence of the tick lists, cash and phone messages. The appellant accepted responsibility for his offending and was addressing his drug addiction.	Dismissed – on papers. Appeal concerned totality principle. Individual sentences not challenged. At [38] ... the appellant's drug dealing offences were, no doubt, serious. ... The quantity and purity of the drugs the subject of cts 3 and 8 were significant. At [43] ... it was necessary, in order properly to mark the appellant's overall criminality in committing eight offences on two disparate occasions, to accumulate the individual sentences for cts 3 and 8.
1.	<i>Nembousse v The State of Western</i>	29 yrs at time sentencing.	<u>Indictment</u> Ct 1: Poss cocaine wiss 31.6g of 20% purity.	<u>Indictment</u> Ct 1: 2 yrs 6 mths imp (cum).	Dismissed – on papers.

	<p>Australia</p> <p>[2015] WASCA 68</p> <p>Delivered 1/4/2015</p>	<p>Convicted after PG.</p> <p>Criminal history including demanding property by oral threats.</p> <p>Moved to Australia from Nigeria in 1990; partially completed university degree; unemployed since 2012.</p>	<p>Ct 2: Poss methyl wiss 502.24g of 67-70% purity.</p> <p><u>Section 32 Notice</u> 13 charges.</p> <p>Police executed a search warrant at the appellant's home. They forced open a safe and found 31.6g of cocaine (ct 1) and \$13,750 cash (s 32). Police also found eight live rounds of ammunition, 14.3g cannabis and an anabolic steroid (s 32).</p> <p>On another date, police followed the appellant to his home. The appellant got out of the car carrying a bag and tried to dispose of the bag when challenged by police. Inside the bag were two cipseal bags, one containing 501g of methyl and the other 1.24g methyl (ct 2). The appellant was on bail for ct 1 when he committed ct 2. The appellant was also found in poss of \$4,605 cash, two cans of OC spray, a taser stun gun, 23 serepax tablets, digital scales, a smoking implement and grinder, cannabis and a radio jamming device (s 32).</p>	<p>Ct 2: 6 yrs imp (cum).</p> <p><u>Section 32 Notice</u> Sentences ranging between 3-6 mths (conc).</p> <p>TES 8 yrs 6 mths imp.</p> <p>Sentencing judge found appellant in contact with, and trusted by, persons who had primary access to the source of the drugs.</p> <p>Sentencing judge found appellant at 'a somewhat high level in the chain of distribution of [prohibited] drugs in the community'.</p>	<p>At [19] The circumstances of the offending are at the high end of the scale of seriousness, having regard to the weight and purity of the methyl and the appellant's role in the distribution hierarchy.</p> <p>At [20] Having regard to all relevant sentencing factors, 6 yrs imp is towards the lower end of the range of sentences customarily imposed in comparable cases.</p>
--	---	--	---	---	--

Transitional Provisions Repealed (14/01/2009)

--	--	--	--	--	--

<i>Transitional Provisions Enacted (31/08/2003)</i>					