

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
28.	<p><i>Griffin v The State of Western Australia</i></p> <p>[2020] WASCA 17</p> <p>Delivered 14/02/2020</p>	<p>53 yrs at time offending. 54 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; including prohibited drug offences; no prior convictions for selling or supplying prohibited drugs; 13 yrs since last conviction.</p> <p>Employed, handyman number of yrs.</p> <p>Entrenched cannabis use.</p> <p>History of significant depression; diagnosed bipolar disorder; suffers tinnitus resulting from an ear injury.</p>	<p>Ct 1: Cultivate cannabis wiss (20 plants). Ct 2: Poss cannabis wiss (1.874 kg).</p> <p>A search warrant was executed at Griffin's home address. Ten mature cannabis plants and 10 small cannabis plants were located growing hydroponically in a shed.</p> <p>The hydroponic systems included insulation, lighting, fertiliser, fans, timers and reticulation.</p> <p>Cannabis material, including head, leaf and stems weighing 1.874 kg, was also located.</p> <p>Griffin stated the cannabis was for personal use. He smoked the cannabis to self-medicate.</p> <p>Griffin admitted smoking cannabis with friends, but denied selling or supplying them with any of his cannabis.</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 2 yrs imp (conc).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the cannabis plants were valued at about \$30,000 to \$50,000; the harvested material valued at approx \$42,760.</p> <p>The trial judge sentenced the appellant on the basis that there were no indicia relating to commercial dealing in cannabis; and he was not entitled to any leniency for good character.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle; length and type of individual sentences.</p> <p>At [49] ... the appellant's offending was serious. His offending was not fleeting or impulsive. It was premeditated and sustained. The value of the cannabis plants was significant. The value of the harvested cannabis material was also significant. Although ... sentenced ... on the basis that there were no indicia relating to commercial dealing in cannabis, his supply of cannabis to others facilitated and reinforced the consumption of an illicit drug by others in the community.</p> <p>At [52] ... it was reasonably open ... to conclude that the seriousness of each offence and the need for personal and general deterrence outweighed the mitigating factors and made inappropriate any sentence other than immed imp. His Honour was entitled to be positively satisfied that it</p>

					was not appropriate to suspend or conditionally suspend the term of imp for ct 1 or ct 2. ...
27.	<p><i>Bui v The State of Western Australia</i></p> <p>[2019] WASCA 186</p> <p>Delivered 21/11/2019</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Born Vietnam; arrived Australia 2009.</p> <p>Married; two young children.</p>	<p>Ct 1: Cultivate cannabis wiss (237 plants). Ct 2: Poss cannabis wiss (16.57 kg).</p> <p>Police executed a search warrant at a large scale cannabis grow house, apprehending Bui and his co-accused.</p> <p>Seven rooms of the house were converted into cannabis grow rooms containing lights, transformers and extractor fans. Electricity had also been bypassed to the house.</p> <p>A total of 237 cannabis plants were located, many of them mature and in late stages of growth. Thirty-seven bags of packaged cannabis material were located in the lounge room.</p> <p>Bui's role was to water and fertilise the plants before packaging them into bags and providing instructions to his co-accused. He was paid \$15,000 - \$20,000 for each crop grown over a three mth period.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 18 mths imp (cum).</p> <p>TES 4 yrs, 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge did not consider it necessary to impose a sentence that would deter the appellant, as he had no criminal record and was not likely to be involved in any future offending; with good prospects of rehabilitation.</p> <p>The sentencing judge found it was a large scale operation and the law must send a clear message to people, not to be involved in the poss and cultivation of cannabis.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [27] ...the quantity of cannabis involved was significant ... The appellant knew very well what was involved in the cannabis growing operation ... he managed the cultivation and packaging of the crop, providing instructions and making payment to his co-offender. The appellant received a significant reward ... for his participation in a crucial role of the operation.</p> <p>At [28] Having regard to the maximum penalties for the offences which the appellant was convicted ... the pleas of guilty at the earliest opportunity, his prior good character ... prospects for rehabilitation, the sentence imposed ... may be regarded</p>

					as high ... particularly having regard to the whole of the appellant's conduct and his financial stake in the operation ... the length of the TES does not reach the point of being unreasonable or plainly unjust.
26.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2019] WASCA 149</p> <p>Delivered 16/09/2019</p>	<p>22 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after very late PG (10% discount).</p> <p>No prior criminal history at time offending; conviction for poss of cannabis 2017.</p> <p>Born Vietnam; arrived in Australia aged 16 yrs.</p> <p>Educated to yr 12.</p> <p>Married; living with extended family prior to sentencing; good family support.</p> <p>Good work history.</p> <p>No history of any substance abuse or mental health issues.</p>	<p>Ct 1: Fraudulent diversion of power. Ct 2: Cultivate cannabis wiss (50 plants).</p> <p>Nguyen, and three others, were involved in a large-scale cannabis growing operation conducted in six homes.</p> <p>Police executed a search warrant at one of the unoccupied homes. Five rooms had been converted and modified to cultivate cannabis. Each room contained apparatus and equipment associated with the cultivation of cannabis, along with an extensive hydroponic and air filtration system.</p> <p>The electricity was also diverted, and \$25,623.58 worth of electricity was fraudulently used.</p> <p>Fifty cannabis plants in various stages of growth were located.</p> <p>Papers in the name of Danny Tra were located at the house. A false MDL in the</p>	<p>Ct 1: 6 mths imp (conc). Ct 2: 16 mths imp.</p> <p>TES 16 mths imp.</p> <p>EFP.</p> <p>The appellant sentenced on the basis that he was liable as an aider under s7(b) of the <i>Criminal Code</i>. His act which aided or enabled the establishment of the cannabis grow house was providing his photograph, understanding it would be used to create a false identification to assist in the cultivation of cannabis.</p> <p>The sentencing judge found the appellant was</p>	<p>Allowed.</p> <p>Appeal concerned parity principle; length and type of sentence.</p> <p>Resentenced to (10% discount):</p> <p>Ct 1: 1 mths imp, suspended 15 mths. Ct 2: 10 mths imp, suspended 15 mths.</p> <p>At [32] ... the only act for which the appellant was to be punished was providing a photograph of himself to other persons involved in the criminal enterprise. He did so knowing the nature and scale of the enterprise, and that the photograph was to be used to create a fake identification to be used to assist in the</p>

			<p>name Danny Tran was also located at another home associated with the criminal enterprise, and further cards in the name of Danny Tann were found at a third premises. Nguyen's photograph was used in the false MDL.</p>	<p>aware he was assisting in a far larger operation and he had some knowledge of the scale and purpose of the cannabis growing operation; nonetheless his role was still of importance in the overall scheme of things.</p> <p>Remorseful.</p>	<p>cultivation of cannabis. ...</p> <p>At [33] The appellant was not found in poss of the cannabis and was not found to have done anything to have cultivated or harvested the cannabis, or diverted the power. Nor was it alleged that the appellant created the false driver licence or other false identification ... The judge did not find [he] was to receive any financial gain from providing the photograph.</p> <p>At [34] ... the limited nature of the assistance provided distinguishes the present case even from those cases where an offender is paid to 'sit' with or harvest a crop for modest remuneration. While the overall cannabis growing operation was very serious, the nature of the assistance provided by the appellant was not such as to make his offending so serious that immediate imp was necessarily the only appropriate sentencing option.</p>
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					At [38]-[39] ... a sentence of ... imp was disproportionate to the criminality of the appellant's act of providing a photograph of himself to other persons who ... created a false identification and used it to establish an electricity account ... The decisions to impose sentences of ... immediate imp ... were, in our view, unreasonable or plainly unjust. The sentences of immediate imp were manifestly excessive as to type.
25.	<p><i>Lee v The State of Western Australia</i></p> <p>[2019] WASCA 137</p> <p>Delivered 04/09/2019</p>	<p>61 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior WA criminal history; prior NSW history; 2007 conviction for cultivation of cannabis; sentenced to term of imp.</p> <p>Separated former wife; five children (three whom died at young age).</p> <p>Good employment history; owner/operator of bakeries in NSW.</p>	<p>Ct 1: Cultivate cannabis wiss (431 plants). Ct 2: Fraudulent diversion of power.</p> <p>A suspicious power outage led to the discovery of power being bypassed from a roadside dome into a house. Police forced entry into the home, It was uninhabitable and was converted into a sophisticated hydroponic grow house.</p> <p>Inside the home police located 431 cannabis plants in various stages of growth, with overhead grow lights and a complex watering system.</p> <p>Lee was lessee of the house. He purchased</p>	<p>Ct 1: 5 yrs imp (cum). Ct 2: 12 mths imp (cum).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The appellant was remorseful and co-operative with police.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and totality principle.</p> <p>At [20] ... a serious example of this type of offence. The appellant set up a sophisticated hydroponic growing operation in a rented house and was cultivating 431 plants at the time of arrest. The operation was carefully planned. He did so for financial reward, and intended</p>

		<p>Gambler; number of health issues.</p>	<p>the hydroponic equipment and, with the assistance of another person, he set it up inside the home, planted the cannabis and tended to them.</p> <p>Lee also installed the electrical wiring to bypass the meter to avoid paying for electricity.</p> <p>Lee intended to be involved with another person in the sale of the cannabis crop.</p> <p>In return for his work Lee was to be paid \$500 per week and was to share in the sale proceeds of the crop. A \$10,000 gambling debt was also to be written off as part payment for his participation in the offending.</p> <p>The estimated value of the hydroponic equipment was \$75,000.</p> <p>The crop was expected to yield 0.2 kg of head material per plant, resulting in about 82 kg. There was potential for 344.8 kg of cannabis to be produced in a year and it was estimated the cannabis was worth approx \$6,600 per kg, or \$3,000 per pound.</p>	<p>to participate in the profits resulting from the operation.</p> <p>At [29] The hydroponic operation in this case was broadly similar to that in <i>Ha</i>, although a significantly greater number of plants were involved in the present case. Further, the appellant's role in the enterprise ... was significantly greater than that of the offender in <i>Ha</i>. [His] role was not confined to providing labour for an agreed weekly wage for the cultivation and harvesting of the cannabis. He had set up and managed the cultivation of very large quantities of cannabis, and intended to participate in the profits generated by its commercial distribution.</p> <p>At [35] It was open to the sentencing judge to make the sentence in respect of the fraudulent appropriation of power, which added to the overall criminality of the appellant's conduct, cum on</p>
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					the cannabis offence. ... The TES was not unreasonable or plainly unjust.
24.	<p><i>Ha v The State of Western Australia</i></p> <p>[2019] WASCA 69</p> <p>Delivered 03/05/2019</p>	<p>50 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born and raised Vietnam; large family.</p> <p>Speaks little English; little education.</p> <p>Previously employed general labourer; came to Australia to earn money for his family; experienced difficulties finding work.</p> <p>Married; young child; wife and child in Vietnam; supportive; experienced financial hardship and difficulties as a result of his absence and incarceration in Australia.</p> <p>Two adult children from previous marriage.</p> <p>No history of illicit drug or alcohol abuse.</p>	<p>Ct 1: Cultivate cannabis wiss (112 plants). Ct 2: Poss cannabis wiss (32.08 kg).</p> <p>Ha and three co-accused were part of a sophisticated and extensive commercial cannabis growing enterprise.</p> <p>Ha and a co-accused were arrested at a house completely converted for the sole purpose of cultivating cannabis hydroponically and with the intent of harvesting the plants for supply to others.</p> <p>Five rooms in the house were equipped with lights and an irrigation system. The potted cannabis plants comprised 67 mature plants about 1 m tall and 45 immature plants 15-20 cm tall.</p> <p>At the time of his arrest Ha was harvesting cannabis plants inside the house. A large number of buds had been removed and placed into bags. A total of 29.8 kg of cannabis buds and a total of 2.28 kg of cannabis stick and leaf material were seized.</p> <p>Ha was to be paid \$500 per wk to assist in cultivating the cannabis. He worked for</p>	<p>Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 2 yrs 6 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was 'a part of a sophisticated commercial operation' and his conduct involved very serious offending; although he was at a relatively low level in the organisation.</p> <p>The sentencing judge found the seriousness of the offending aggravated by the degree of sophistication and scale of the cannabis cultivation organisation and by the very substantial amount of cannabis bud located.</p>	<p>Allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Re-sentenced:</p> <p>Ct 1: 2 yrs 6 mths imp. Ct 2: 2 yrs 6 mths imp.</p> <p>Ct 2 partially conc with ct 1; sentence to commence after serving 9 mths of sentence on ct 1.</p> <p>TES 3 yrs 3 mths imp. EFP.</p> <p>At [44] ... the appellant's offending was not at the upper end of the scale for offending of this kind. The appellant had not set up the production of the cannabis, and was not participating in the profits of the enterprise.</p> <p>At [45] ... the appellant's involvement ... was not</p>

			three-four weeks before his arrest but was never paid for this work.	Remorseful.	<p>confined to that of a mere ‘gardener’ either. He undertook the cultivation of the cannabis on the understanding that he would be paid for doing so, and thus for commercial gain. ... there was clearly a level of trust placed in [him]. ...</p> <p>At [46] ... the appellant’s role was not confined to the cultivation of the plants. When he was apprehended, he was engaged in packaging the cannabis for supply to others. ...</p> <p>At [48] ... the TES was unreasonable or plainly unjust, so that the result of the exercise of the sentencing judge’s discretion permits an error of principle to be inferred. That implied error ... justifies and requires appellate intervention, consistently with the principles in <i>House v The King</i>.</p>
23.	<i>Slade v The State of Western Australia</i>	22 yrs at time offending. 24 yrs at time sentencing.	Ct 1: Offer to sell cannabis (1 kg). Ct 2: Offer to sell cannabis (\$4,000 worth). Ct 3: Offer to sell cannabis (907 g).	Cts 1-3 & 5: 10 mths imp (conc). Ct 4: 2 yrs 10 mths imp	Dismissed – on papers. Appeal concerned totality

<p>[2019] WASCA 65</p> <p>Delivered 24/04/2019</p>	<p>Convicted after trial (cts 4; 6; 8-9 & 11). Convicted after PG (cts 1-3; 51 7 & 10) (5% discount).</p> <p>Prior criminal history; no prior convictions involving dealing in drugs.</p> <p>Troubled childhood; parents separated aged 12 yrs; mother struggled to cope and abused prescription drugs; difficult relationship with her son; led him to live with his aunt.</p> <p>Supportive family; relationship with mother now improved; close relationship with his father.</p> <p>Single; no dependents.</p> <p>Completed trade apprenticeship; prior work history.</p> <p>Undertook drug counselling; no serious problem with drug addiction.</p>	<p>Ct 4: Offer to sell methyl (28 g). Ct 5: Offer to sell cannabis (454 g). Ct 6: Sell methyl (28 g). Ct 7: Poss cannabis wiss (4.99 kg) Ct 8: Poss methyl wiss (under 10 g). Ct 9: Poss unlawfully obtained property (\$3,179 cash). Cts 10-11: Failing to comply with data access order.</p> <p>Slade was engaged in the sale of cannabis and methyl on a wholesale basis. Intercept warrants were obtained for the telephone services he was using.</p> <p><u>Cts 1-3</u> Slade received a telephone call and agreed to supply a kilo of cannabis, saying he had it 'right here now'. During another telephone call the same day he agreed to supply to another person a quantity of cannabis for \$4,000. A few days later he called another person and offered to deliver 2 lb (907g) of cannabis for \$4,200 per pound.</p> <p><u>Ct 4</u> On another occasion Slade received a request for ½ ounce of methyl. In response he offered a full ounce and tried to persuade the person this was a better deal.</p>	<p>(cum). Ct 6: 3 yrs 6 mths imp (cum). Ct 7: 2 yrs 6 mths imp (conc). Ct 8: 18 mths imp (conc). Ct 9: 2 mths imp (conc). Ct 10: 5 mths imp (conc). Ct 11: 6 mths imp (cum) (reduced from 10 mths imp on totality grounds).</p> <p>TES 6 yrs 10 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant was trafficking cannabis and methyl in a reasonably sophisticated enterprise for a commercial purpose; his activities were highly profitable; the substantial amount of cannabis in the self-storage locker was kept for the purpose of commercial distribution; the methyl found on him</p>	<p>principle.</p> <p>At [46] ... the appellant's offending involved a reasonably sophisticated commercial enterprise supplying both methyl and cannabis for substantial profit. The appellant supplied both users and lower-level suppliers.</p> <p>At [47] ... his offending was far from isolated, persisting over several months and reflecting an ongoing enterprise.</p> <p>At [48] ... the appellant's offending was aggravated by the fact that he committed cts 8 and 9 while he was on bail for other drug-dealing offences.</p> <p>At [49] ... the judge was satisfied that the cash found in the appellant's possession was the proceeds of his drug dealing.</p> <p>At [50] ... the appellant</p>
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			<p><u>Ct 5</u> The following day Slade called a person and offered to supply them with a pound of cannabis for \$4,000.</p> <p><u>Ct 6</u> On a further occasion a co-accused and another attended Slade's apartment and collected an ounce of methyl. This offence was part of a regular process of supply of methyl by Slade to the co-accused.</p> <p><u>Ct 7</u> In a self-storage locker used by Slade, but in the name of a co-accused, police found 11 lb of cannabis in vacuum-sealed individual one-pound bags. A money-counting machine was also located.</p> <p><u>Cts 8-9</u> While on bail for some of the drug offences outlined above Slade was stopped by police. He was found in possession of \$3,179 in cash, an iPhone; a BlackBerry and just under 10g of high-purity methyl.</p> <p><u>Cts 10-11</u> Without reasonable cause Slade failed to comply with data access orders by refusing to provide police with the PIN numbers for both the iPhone and BlackBerry.</p>	<p>was also intended for commercial distribution, allowing for the possibility that a small amount may have been for personal use.</p> <p>No demonstrated remorse or genuine steps taken towards rehabilitation; courses completed by appellant on remand considered by sentencing judge to be a cynical att to mislead the jury and for the purposes of sentencing; not satisfied the appellant was a person who needed assistance with respect to drug and alcohol issues.</p>	<p>committed two offences of unlawfully disobeying a data access order. ... those offences rightly attracted a degree of accumulation. ...</p>
22.	<i>Greenfield v The</i>	48 yrs at time offending.	Ct 1: Poss methyl wiss 32.1g at 85% purity.	Ct 1: 4 yrs imp (cum).	Dismissed.

<p>State of Western Australia</p> <p>[2019] WASCA 29</p> <p>Delivered 14/02/2019</p>	<p>49 yrs at time sentencing.</p> <p>Convicted after trial (ct 1). Convicted after late PG (ct 2).</p> <p>Prior criminal history; including drug related offending; on bail for present offences when charged and convicted of poss cannabis.</p> <p>Regularly employed until 2015; on becoming unemployed commenced dealing in cannabis on a commercial basis.</p> <p>History of illicit drug use; past drug counselling undertaken and prior to sentence.</p>	<p>Ct 2: Poss cannabis wiss 5.46g.</p> <p>On the execution of a search warrant at Greenfield's home police located methyl and cannabis.</p> <p>Also located in his car were two sets of scales containing traces of the drugs.</p>	<p>Ct 2: 6 mths imp (cum).</p> <p>TES 4 yrs 6 mths imp. EFP.</p> <p>The sentencing judge found the 'very significant quantity of high purity drug in crystal form' was capable of being broken down and distributed widely into the community; the high purity of the methyl suggested the appellant was close to the source, and seemingly trusted to be supplied with drugs of such purity for sale.</p> <p>The sentencing judge determined that the seriousness of the offending was such that the only appropriate disposition was terms of imp.</p> <p>No demonstrated remorse or evidence of cooperation; steps taken</p>	<p>Appeal concerned length of sentence (ct 2) and totality principle.</p> <p>At [32] Ct 2 involved the poss of what can properly be described as a small quantity of cannabis wiss it to another. The offence was committed in the context that the appellant dealt in 1 oz quantities of cannabis, and that he was a commercial dealer in the drug over a period of time. He was also dealing in cannabis at the same time as he was dealing in methyl. ... cannabis is not a harmless drug. It has deleterious effects upon those who use it, and it is often associated with, or is a gateway to, more harmful drugs.</p> <p>At [34] ... there is very little that can be said in mitigation for the appellant, save that he had undertaken some counselling ... prior to being sentenced. Even that is somewhat dubious in light of</p>
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				<p>towards rehabilitation.</p> <p>the fact that while ... on bail for the present offence, he was found in poss of a quantity of cannabis.</p> <p>At [39] ... a fine would have been an inappropriate sentencing option in this case, and ... the only appropriate sentencing option was a term of immediate imp. ... As to its length, we regard the 6 mths that was imposed ... within the range of an appropriate exercise of the sentencing discretion. ... The sentence is not manifestly excessive.</p> <p>At [41] Ct 1 was a serious offence of its type. ... the appellant possessed a reasonably substantial quantity of methyl with a high purity. The high purity is of importance because, ... it gave rise to the potential for the methyl to be 'broken down', thus broadening the potential harm to the community. It is also the case that the appellant was close to the source of the methyl. The appellant</p>
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					<p>possessed the drug with the intention of distributing it into the community for commercial gain.</p> <p>At [45] ... The cumulation of the 6-mth sentence on ct 2 with the sentence on ct 1 was appropriate to reflect that the appellant was dealing with two different illicit drugs. Additional punishment was appropriate in order to properly reflect the greater criminality involved in the appellant's dealing in cannabis. ...</p>
21.	<p><i>Savory v The State of Western Australia</i></p> <p>[2018] WASCA 165</p> <p>Delivered 21/09/2018</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Prior criminal history; including nine convictions for simple drug poss and two prior drug convictions of similar nature. On bail for other drug related offences when committed the offence.</p> <p>Childhood marked by transience and father's alcohol use; parents separated when aged 13 yrs.</p> <p>Two children to ex-partner.</p>	<p>1 x Att poss cannabis wiss (1,348g)</p> <p>A package containing cannabis and addressed to Savory was intercepted at an Australian Post Office. The cannabis was replaced with an inert substance and placed in his post office box.</p> <p>Savory collected the package and was arrested.</p>	<p>20 months imp.</p> <p>EFP.</p> <p>The sentencing judge found the State's case 'significantly strong' and the appellant was caught red-handed.</p> <p>The sentencing judge found the appellant's PG was an indication of an acceptance of responsibility, perhaps</p>	<p>Dismissed.</p> <p>Appeal concerned alleged error of fact (admissions to facilitating importation of cannabis by post on other occasions) and error in determination of plea discount.</p> <p>At [40] ... we are not persuaded that if, ... his Honour made the error alleged, the error would have been material. The judge's</p>

		<p>Poor work history; unemployed 5 yrs; financially supported by his daughter.</p> <p>History of alcohol and drug abuse; including prior heroin addiction.</p>		<p>remorse and a willingness to facilitate the course of justice; however, his cooperation was tempered by the fact that the explanation he initially provided to police was inconsistent with the explanation he offered to the court as to how he was to receive payment.</p>	<p>observation was directed to the need for personal deterrence in the context of the appellant having committed three cannabis offences. Whether earlier offences involved the use of the appellant's post office box did not add, in any material way, to the importance of personal deterrence as a sentencing factor.</p> <p>At [45] ... it was open to the judge to find that the plea was not entered at the first reasonable opportunity.</p> <p>At [57] ... assuming ground 3 was made out, a different sentence should not have been imposed.</p> <p>At [60] The appellant's offence had serious elements. He attempted to possess more than 1.3 kg of cannabis wiss. He committed the offence while on bail for a drug charge. The appellant had two previous convictions for possession of cannabis wiss.</p>
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					<p>As the sentencing judge rightly observed, personal deterrence was a significant factor in the sentencing exercise.</p> <p>At [61] and [62] Upon a resentencing, ... we would discount the head sentence ... by 20%. ... [and] after taking into account all relevant sentencing factors ..., impose a sentence of 20 months' immediate imp. Nevertheless, the appeal was dismissed.</p>
20.	<p><i>Abbott v The State of Western Australia</i></p> <p>[2018] WASCA 45</p> <p>Delivered 06/04/2018</p>	<p>46 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; including poss prohibited drugs; cultivate cannabis.</p> <p>Loving and supportive family.</p> <p>Left school aged 12 yrs.</p> <p>Completed 5 yr jockey apprenticeship; employed many yrs horse racing industry. Worked hospitality industry and own petrol station.</p>	<p>Ct 1: Offer to supply cannabis. Cts 2-5: Offer to supply methyl. Ct 6: Poss methyl wiss 68.7g at 73-86% purity. Ct 7: Poss methyl wiss 1.61kg at 78-80% purity. Ct 8: Poss unlawfully obtained property (\$41,750 cash).</p> <p>Police were investigating Abbott and Mr B in connection with drug dealings. During an intercepted telephone call Mr B informed Abbott he had buried some drugs on his property. At Mr B's request Abbott dug up and retrieved the drugs.</p> <p>An unidentified woman asked Abbott if he</p>	<p>Ct 1: 3 mths imp (conc). Ct 2: 6 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 2 yrs imp (cum). Ct 5: 2 yrs imp (conc). Ct 6: 4 yrs imp (conc). Ct 7: 9 yrs imp (cum). Ct 8: 18 mths imp (conc).</p> <p>TES 11 yr imp. EFP.</p> <p>The trial judge found the appellant was not merely aiding Mr B by</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (cts 6-7), parity and totality.</p> <p>At [67] ... 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 4 and 7 to be served cum.</p> <p>At [69] The TES bears a proper relationship to the overall criminality involved in</p>

		<p>No form of legitimate employment since 2015; receipt of Centrelink benefits.</p> <p>Two serious relationships; currently single; no children.</p> <p>Illicit drug use; increased use after death of his father in 2014.</p>	<p>could get her a stick of cannabis. He agreed to do so 'on tick' (ct 1).</p> <p>Abbott received a text message from an unidentified male asking for a 'half weight' (0.5g) of methyl. Abbott agreed to sell or supply him with the drug (ct 2).</p> <p>During a telephone conversation with an unidentified male Abbott agreed to sell him a 'quart' (7g) of methyl. (ct 3).</p> <p>During a telephone conversation with an unidentified male Abbott offered to sell or supply him with half an ounce of methyl for \$5,250 (ct 4).</p> <p>During a telephone conversation with an unidentified female Abbott offered to sell or supply her with half ounce of methyl for \$5,500 (ct 5).</p> <p>Police conducted a search of Abbott's premises. In his bedroom eight bags of methyl were located. The value of the drug, if sold as packaged, was about \$34,000 (ct 6).</p> <p>Later, buried under a water tank on the property police found a large container containing two sealed packages of methyl. One contained 1.05 kg at 80% purity, the</p>	<p>permitting him to store illegal drugs under his rainwater tank; he was 'actively involved in the stashing of those drugs under that tank'. All evidence led to the irresistible conclusion the appellant was dealing in drugs on a very regular basis and in amounts of half ounces and quarter ounces.</p> <p>The trial judge was satisfied the appellant and Mr B were in joint possession of the methyl; whilst the appellant's ultimate expected benefit in relation to the drugs may have been less than Mr B's, the appellant would have acquired a benefit.</p> <p>The trial judge found the drugs in the appellant's bedroom were solely for the purpose of dealing commercially in methyl</p>	<p>all of the offences, viewed in their entirety, and after having regard to all relevant circumstances, including those referable to the appellant personally, and the TES imposed in reasonably comparable cases.</p> <p>At [71] ... none of the individual sentences of imp imposed on the appellant is manifestly excessive. ...</p> <p>At [75] ... the appellant was not jointly charged with [Mr B] in relation to any of the cts on which the appellant was convicted.</p> <p>At [78] ... The appellant and [Mr B] were not co-offenders. There was no evidence before the trial judge and there is no evidence before this court that the offences of which the appellant was convicted and the offences of which [Mr B] was convicted related to their participation in a common criminal enterprise. ... the overall seriousness of the</p>
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			<p>other 560g of methyl with a purity of 78% (ct 7).</p> <p>Also found in his bedroom was the sum of \$11,700 cash in a box that could be locked, along with \$100 in a draw. Police later seized a bag belonging to Abbott containing \$29,950 cash (ct 8).</p>	<p>and he was ‘certainly more than a user/dealer’.</p> <p>The trial judge found the 1.61kg of methyl, if sold in one-ounce lots, was worth nearly \$650,000 and if sold in 1g lots it was worth nearly \$1.3 million.</p> <p>Remorseful in way he has treated his family; however no indication of more general remorse.</p>	<p>offences of which the appellant was convicted was significantly greater than the overall seriousness of the offences of which [Mr B] was convicted.</p> <p>At [86] ... it is not reasonably arguable that the appellant should have received any different individual sentences or a different TES, having regard to all the facts and circumstances of the case ...</p>
19.	<p><i>Separovic v The State of Western Australia</i></p> <p>[2018] WASCA 36</p> <p>Delivered 19/03/2018</p>	<p>43 yrs at time offending. 45 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Minor criminal history, prior convictions for poss of methyl and cannabis.</p> <p>Good work history; 20 yrs in hairdressing trade.</p> <p>Highly regarded in the community.</p> <p>Minor problem with methyl use.</p>	<p>Ct 1: Poss methyl wiss 221.68g at 80% purity. Ct 2: Poss methyl wiss 1.042kg at 80% purity. Ct 3: Poss cannabis wiss 828.2g.</p> <p>Separovic and her boyfriend, the co-offender, were jointly involved in the business of selling methyl and cannabis.</p> <p>On 22 February 2015 police located the methyl (ct 1) and cannabis inside their home, along with firearms, other weapons, cash, scales, cryovac machines and tick lists.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 8 yrs 6 mths imp (cum). Ct 3: 12 mths imp (conc).</p> <p>TES 10 yrs imp. EFP.</p> <p>The trial judge found that the appellant (and co-offender) was a commercial drug dealer. They were in joint possession of the drug</p>	<p>Dismissed - on papers.</p> <p>Appeal concerned length of sentence and totality principle.</p> <p>At [34] The very serious nature of the appellant’s overall offending ... is apparent from ... the quantity, purity and value of the methyl ... and the quantity of the cannabis Also, at [35] The appellant’s offending ... was not isolated or an aberration. The trial judge’s unchallenged finding was that in 2015 the</p>

			<p>The quantity of methyl (ct 2) was found in a car parked in the driveway of the house.</p>	<p>which constituted their stock in trade and the drugs were of significant value, even if sold in bulk.</p> <p>The trial judge found the fact the appellant was in possession of methyl and cannabis for commercial gain was an aggravating factor.</p>	<p>appellant was a commercial drug dealer.</p> <p>Also, at [36] The appellant was not youthful or inexperienced for sentencing purposes.</p> <p>At [42] ... the very serious nature of the offending, viewed as a whole, including the unchallenged agg factor that the appellant was in possession of the methyl and the cannabis for commercial gain ...</p> <p>At [43] The TES bears a proper relationship to the overall criminality ...</p> <p>At [45] ... none of the individual sentences of imp imposed on the appellant is manifestly excessive. ...</p>
18.	<p><i>My v The State of Western Australia</i></p> <p>[2018] WASCA 1</p> <p>Delivered 05/01/2018</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Arrived Australia 2010 as a student;</p>	<p><u>Indictment</u></p> <p>Ct 1: Poss unlawfully obtained property.</p> <p>Cts 2 & 5: Cultivate cannabs wiss (116 and 91 plants).</p> <p>Ct 3: Poss cannabis wiss (8.09 kg).</p> <p>Cts 4 & 6: Fraudulent diversion of power.</p>	<p><u>Indictment</u></p> <p>Ct 1: 9 mths imp (conc).</p> <p>Ct 2: 2 yrs 2 mths imp (cum).</p> <p>Ct 3: 1 yr 9 mths imp (conc).</p> <p>Ct 4: 8 mths imp (cum).</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned individual sentences and totality principle.</p> <p>At [24] ... he was a willing</p>

	<p>Co-offender of:</p> <p><i>Nguyen v The State of Western Australia</i> [2017] WASCA 195</p>	<p>eventually ceased studies.</p> <p>Employed full-time.</p> <p>Much of income sent to parents in Vietnam; principally to pay for mother's medical treatment.</p>	<p><u>Breach offence</u> 1 x Breach of bail undertaking.</p> <p><u>Indictment</u> Search warrant executed at My's home. Total of \$32,000 cash located and provided false explanation as to how he came by the money (ct 1).</p> <p>On the same day a search warrant was executed at a second home being used as a cannabis factory.</p> <p>My and two co-offenders engaged in a joint enterprise to grow cannabis for sale. His role was to purchase the ingredients, attend the second house to take care of the plants and to package the cannabis for sale. 116 plants were found growing (ct 2).</p> <p>8.096 kg of cannabis material was also found at the second home. My admitted possession of the cannabis and that he sold it for cash (ct 3).</p> <p>My admitted bypassing the meter box at the second home. Electricity valued at \$76,225 was fraudulently used (ct 4).</p> <p>On a further date a search warrant was executed on a second home being used as a cannabis factory. Hydroponic equipment</p>	<p>Ct 5: 1 yr 8 mths imp (cum). Ct 6: 3 mths imp (conc).</p> <p>Breach offence 6 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge described the offending as 'a large-scale operation' with a 'high level of sophistication' and 'a high degree of commerciality'; the appellant was intricately involved in the business.</p> <p>Appellant remorseful; acceptance of responsibility.</p>	<p>participant in a well-planned and sophisticated cannabis-growing and distribution business which generated considerable sums of money. While [co-offender] was 'a senior partner' of the enterprise, the appellant's role was very significant. ... It cannot be overlooked that the business was conducted at two residential premises and that, at each house, the appellant fraudulently diverted electricity from the main electrical supply by bypassing the meter.</p> <p>At [25] The breach of bail offence involved a plan to thwart justice by travelling to Darwin with the intention of fleeing the jurisdiction. It was a particularly serious example of its type.</p> <p>At [31] ... it is not reasonably arguable that any of the individual sentences are unreasonable or plainly unjust.</p> <p>At [32] ... the sentencing</p>
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			<p>and 91 plants were found growing, comprising 55 mature plants and 36 seedlings (ct 5).</p> <p>At this third home the electricity was also diverted, and \$11,593 worth of electricity was fraudulently used (ct 6).</p> <p><u>Breach offence</u> The appellant failed to appear in the District Court in accordance with his bail undertaking. Apprehended attempting to leave Australia in order to evade sentence.</p>		<p>judge did not err in his assessment of the discount to be given for the pleas of guilty pursuant to s 9AA.</p>
17.	<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>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>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>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>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>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>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 address his drug problems.</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 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</p>
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					<p>comparable cases.</p> <p>At [38] ... each sentence is, when all relevant circ and all relevant sentencing factors are 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</p>
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					detecting offences. At [43] ... a TES of 4 yrs imp falls a long way short of bearing a proper relationship to the overall criminality involved in the commission of all of the offences.
16.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2017] WASCA 195</p> <p>Delivered 24/10/2017</p> <p>Co-offender of:</p> <p><i>My v The State of Western Australia</i></p> <p>[2018] WASCA 1</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history; previous term of imp for large heroin importation offence.</p> <p>Vietnamese refugee; came to Australia under extremely difficult circumstances.</p> <p>Dysfunctional and abusive relationships; husband former heroin addict; children successful in life.</p> <p>10 yr work history in catering; good work reputation.</p> <p>No history of drug addiction or use.</p>	<p>Ct 1: Poss unlawfully obtained money. Ct 2: Poss ammunition. Cts 3 & 6: Cultivate cannabis wiss (122 and 91 plants). Ct 4: Poss cannabis wiss (8.1 kg). Cts 5 & 7: Fraudulent diversion of power.</p> <p>Nguyen and her son, the co-accused, were involved in a cannabis growing and distribution enterprise.</p> <p>Nguyen was a 60% senior partner in control of the operation.</p> <p>At a property used as an administration centre to store and distribute the cannabis a safe belonging to Nguyen was found to contain \$83,650 (ct1). She was also found in possession of three pistol bullets (ct 2).</p> <p>Nguyen procured two houses for cannabis growing and she also purchased hydroponic equipment. Both homes were converted for the purposes of growing cannabis.</p>	<p>Ct 1: 1 yrs imp (conc). Ct 2: 3 mths imp (conc). Ct 3: 3 yrs imp (cum). Ct 4: 2 yrs 6 mths imp (conc). Ct 5: 1 yrs imp (cum). Ct 6: 2 yrs 6 mths imp (cum). Ct 7: 4 mths imp (conc).</p> <p>TES: 6 yrs 6 mths imp.</p> <p>The judge characterised the offending as 'high level organised crime carried out over a lengthy period purely for greed' and described the appellant as a serious criminal who must be dealt with very seriously.</p> <p>The sentencing judge</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentences on cts 3 and 6 and totality principle.</p> <p>At [27] ... The appellant's submissions focus on the number of plants that were cultivated. While that is undoubtedly a matter of importance, it is only one of many material factors in assessing the criminality of an offence of cultivating a prohibited plants wiss. The level of the offender's participation in drug dealing and whether the offence was committed solely for commercial gain are also relevant. The appellant was a partner in a well-organised enterprise of cultivating and</p>

			<p>At one of the homes cannabis plants ranging in height from 2 – 2.5 metres were found (ct 3) along with a quantity of vacuum-packed cannabis head (ct 4). A sophisticated electrical power bypass was found and \$76,225 worth of electricity was fraudulently used (ct 5).</p> <p>At the other home a similar set up found cannabis plants were grown there (ct 6). An electrical power bypass was also found and \$11,593 worth of electricity fraudulently used (ct 7).</p>	<p>found the offending was not in any sense opportunistic or an aberration; cannabis is a dangerous drug and people who wilfully distribute it in large quantities into the community out of commercial greed can expect no clemency from the court.</p> <p>Totally unremorseful; very real risk of reoffending.</p>	<p>selling cannabis, and acted purely for commercial gain.</p> <p>At [30] The appellant cultivated two separate crops of cannabis at two different locations. The cultivations were part of a well-organised enterprise, planned over a period of time. The offences were in no sense an aberration. The appellant was also convicted of possession of a substantial quantity of cannabis material, packed ready for distribution. ... she was in possession of more than \$80,000 in cash, profits from previous sales of cannabis. Both cultivations were conducted with the assistance of a fraudulent diversion of electrical power. ... there was no error in accumulating the sentences in respect of the two cultivations. there is no error in accumulating one of the sentences for fraudulently diverting electrical power.</p>
15.	<i>Harvey v The State of Western Australia</i>	24 yrs at time offending. 25 yrs at time sentencing.	1 x Att poss cannabis wiss (909g).	2 yrs imp.	Allowed.

	<p>[2017] WASCA 149</p> <p>Delivered 11/08/2017</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>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>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 the only appropriate disposition was a term of immediate imp and to susp the sentence wouldn't adequately demonstrate the community's condemnation of such offences.</p> <p>Steps taken towards rehabilitation.</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>
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					<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 Nillson</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>[2017] WASCA 68</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 & 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 operated a well-established business involving sending significant quantities 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>Franchina v The State of Western Australia</p> <p>[2017] WASCA 56</p> <p>Delivered 27/03/2017</p> <p>Co-offender of:</p> <p>Rillotta v The State of Western Australia [2017] WASCA 55</p> <p>Adornetto v The State of Western Australia [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 Lester v The State of WA [2011] WASCA 128.</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>

				<p>Rillotta brothers because he was 'lower in the drug syndicate than they were'.</p> <p>No remorse. Unlikely to reoffend due to age and ill-health.</p>	<p>distribution in this State. The appellant's offending was not fleeting, isolated or impulsive, but was premeditated and planned. ...</p>
11.	<p><i>Adornetto v The State of Western Australia</i></p> <p>[2017] WASCA 57</p> <p>Delivered 27/03/2017</p> <p>Co-offender of:</p> <p><i>Rillotta v The State of Western Australia</i> [2017] WASCA 55</p> <p><i>Franchina v The State of Western Australia</i> [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 premediated 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 cipseal bags containing a total of 6.89g of methy and numerous unused cipseal bags, a calculator and a 'tick list'. At his home a further cipseal 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 cipseal 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 cipseal 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>

Delivered 27/09/2016	<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><i>The State of Western Australia v Malone</i></p> <p>[2015] WASCA 188</p> <p>Delivered 16/09/2015</p> <p>Co-offender of:</p> <p><i>McRobb v The State of Western Australia</i> [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><i>McRobb v The State of Western Australia</i></p> <p>[2015] WASCA 189</p> <p>Delivered 16/09/2015</p> <p>Co-offender of:</p> <p><i>The State of Western Australia v Malone</i> [2015] WASCA 188</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.	<p><i>The State of Western Australia v Wilson</i></p> <p>[2015] WASCA 119</p> <p>Delivered 10/06/2015</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Lengthy prior criminal history, including drug offences.</p> <p>Has a de facto partner; young daughter.</p> <p>Entrenched illicit drug abuse.</p>	<p><u>Indictment</u></p> <p>Ct 1: Attempt to poss methyl wiss 71.4g of 76% purity.</p> <p>Ct 2: Poss methyl wiss 303.7g of 64-77% purity.</p> <p>Ct 3: Poss cannabis wiss 2.677kg.</p> <p>Ct 4: Poss methyl wiss 371.3g of 73% purity.</p> <p><u>Section 32 Notice</u></p> <p>19 offences.</p> <p>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.</p>	<p><u>Indictment</u></p> <p>Ct 1: 2 yrs imp (cum).</p> <p>Ct 2: 4 yrs imp (conc).</p> <p>Ct 3: 2 yrs imp (conc).</p> <p>Ct 4: 4 yrs imp (cum).</p> <p><u>Section 32 Notice</u></p> <p>Various imp sentences, TES 6 mths imp (cum), and two fines.</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found appellant offended for commercial gain.</p> <p>Remorse; suffered difficulties at the hands</p>	<p>Allowed.</p> <p>Re-sentenced to a TES 8 yrs 6 mths imp.</p> <p>Set aside orders for cum and conc on indictment.</p> <p>Ordered ct 2 and ct 4 to be served cum, and ct 1 and ct 3 to be served conc.</p> <p>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>

			<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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2.	<p><i>Rodi v The State of Western Australia</i></p> <p>[No 2] [2014] WASCA 233</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>
1.	<p><i>Le v The State of Western Australia</i></p> <p>[2014] WASCA 120</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. Ct 2: Poss methyl wiss 16.46g of 78-85% purity. Ct 3: Poss cannabis wiss 14.7g. Ct 4: Poss MDPV wiss 6.64g. Ct 5: Poss methyl wiss 56.17g of 69-72%. Ct 6: Att poss MDMA wiss 46.65g. Ct 7: Poss cannabis wiss 55.3g. 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. Ct 4: 18 mths imp. Ct 5: 4 yrs 2 mths imp. Ct 6: 2 yrs 4 mths imp. Ct 7: 12 mths imp. 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.</p> <p>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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<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					