

Fraud

s 409 *Criminal Code*

Transitional Sentencing Provisions: This table 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

imp	imprisonment
susp	suspended
PG	plead guilty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
Cth	Commonwealth
CRO	conditional release order
Circ	circumstances
AOBH	assault occasioning bodily harm
agg burg	aggravated burglary
PSR	pre-sentence report
PCJ	pervert the course of justice
ISO	intensive supervision order
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
11.	<p><i>Skelly v The State of Western Australia</i></p> <p>[2020] WASCA 3</p> <p>Delivered 14/01/2020</p>	<p>30 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Born UK; immigrated 2012.</p> <p>Qualified heavy diesel fitter; employed various mind sites.</p> <p>Married; separated; one child residing with former wife in QLD.</p> <p>Mother died proceeding 12 mths.</p> <p>Anxiety and depression.</p>	<p>1 x Fraud.</p> <p>Skelly, Mr S and another were the directors of a company (C & G Group).</p> <p>The victim operated a debt factoring company, 'FIFO'. This business supplied cash flow finance to companies whose debtors took some time to pay on invoices. FIFO would buy the invoice, advancing 80% of the invoice sum to their client. They would then collect the invoice from the debtor and pay the remaining 20% to their client, less a fee.</p> <p>Skelly and Mr S signed documents necessary for FIFO to provide debtor financing to C & G Group.</p> <p>Later Skelly sent the victim an email with an offer to sell required for the financing of a debt. The email was sent from an outlook email address purported to be from Phoenix Mineral Services Pty Ltd (Phoenix) with an attached invoice in the sum of \$661,725.90 and a Purchase Order on Phoenix letterhead for work, hire of plant and other equipment in the amount of \$661,175.90.</p> <p>The victim took this to mean C & G Group were owed the sum of \$661,725.90 by Phoenix for the services referred to in the Purchase Order and the invoice.</p> <p>Phoenix did not request or receive any work the subject of the invoice and the outlook email</p>	<p>3 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending involved a significant amount of money, the benefit of which went to the appellant's company; his actions were deliberate; the deceit and fraudulent means included the forging of a signature on two documents as well as the creation of a false email address.</p> <p>The trial judge observed that white-collar crimes of this type difficult to detect, reinforcing the need for general deterrence.</p> <p>Co-operative; no demonstrated remove; attributed blame to others.</p>	<p>Allowed.</p> <p>Appeal concerned error of fact and miscarriage of justice (finding appellant signed a Form 535).</p> <p>Resentenced to 3 yrs imp. EFP.</p> <p>At [5] ... the sentencing process miscarried because the judge sentenced the appellant on the basis that his fraud offence was aggravated by the appellant having forged a particular document, when such a forgery was not part of the State case against the appellant.</p> <p>At [79] ... in our view, in the evaluation of the seriousness of the appellant's offence for the purpose of sentencing, it would not have been open to the State to invite the judge to go beyond the manner in which the State had chosen to present its case.</p>

			<p>address was not genuine.</p> <p>The victim subsequently sent an email to the false Phoenix outlook address advising that C & G Group had transferred to FIFO the amount payable in relation the invoice. The victim attached a debtor finance facility form 535 requesting it be signed. Several days later the victim received by email a signed copy of the form 535. The State case did not allege that Skelly caused this email to be sent to the victim.</p> <p>On receipt of the Form 535 the victim, on behalf of FIFO, accepted the offer from C & G Group and purchased the invoice. Payments to the total of \$529,380.20 were made by the victim to C & G Group.</p>		<p>At [80] ... in finding that the appellant's forgery of the Form 535 aggravated the seriousness of his offence of fraud, the sentencing judge, in effect, punished the appellant for an additional offence of which he had not been charged or convicted.</p> <p>At [85] ... in finding the facts relevant to the seriousness of the appellant's offence of fraud and in finding that the forgery was an aggravating factor, the sentencing judge, in effect, punished the appellant for an additional offence to the one with which he had been charged.</p> <p>At [90] The ... offence exhibited some serious elements. A significant amount of money was involved, in excess of \$500,000, more than \$300,000 of which has not been repaid to the victim. His fraud was by no means a spur of the moment offence. It involved</p>
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					<p>attaching several false documents to his email In the period from then until the receipt of payments a month later, the appellant maintained his deceit in his interaction with the victim. Further, by his fraud, the appellant gained a benefit for the company of which he was, in substance, the controller and owner.</p> <p>At [91] ... the ... offence is not in, or close to, the most serious category of offences of this kind. ... Some offences are committed for reasons of greed, whereas, ... the appellant was motivated to obtain the money in order to keep his company afloat. ...</p>
10.	<p><i>Rofail v The State of Western Australia</i></p> <p>[2019] WASCA 214</p> <p>Delivered 13/08/2019</p>	<p>35 yrs at time offending.</p> <p>Convicted after PG. (20% discount cts 1, 3 & 5). (15% discount cts 2, 4 & 6).</p> <p>No prior convictions.</p> <p>Born Egypt; migrated with his family to Australia aged 5</p>	<p>Cts 1 & 2: Fraud. Cts 3-5: Forgery. Ct 6: Att fraud.</p> <p><u>Ct 1</u> Rofail obtained a short-term loan of \$10,000 from the victim. Under the loan agreement he was to repay the loan in four wks. At the time the money was to be repaid he claimed to have transferred the funds to the victim, when he had not.</p>	<p>Ct 1: 8 mths imp (conc). Ct 2: 18 mths imp (conc). Cts 3-5: 6 mths imp (conc). Ct 6: 12 mths imp (conc). TES 18 mths imp.</p>	<p>Dismissed.</p> <p>Appeal concerned length and type of sentence and error of fact (ability to resume work and pay reparation and incorrect facts cts 3, 4 and 5).</p> <p>At [45] The complaint ...</p>

		<p>yrs.</p> <p>Strict upbringing; traumatised childhood as a result of father's use of corporal punishment.</p> <p>Schooling interrupted by health issues; graduated high school.</p> <p>Married; two young children.</p> <p>Financial problems at time offending; significant tax debt.</p> <p>Long-standing degenerative incurable illness; requires a brace to assist with walking; other times needs a wheelchair.</p>	<p>Over the following months Rofail provided various excuses as to why he had not repaid the money. He eventually transferred \$1,000 to the victim.</p> <p>Rofail later contacted the victim and denied borrowing the money, claiming someone had hacked into his phone and email accounts. He provided the victim with a statutory declaration to that effect.</p> <p><u>Cts 2 - 5</u> The victim, Rofail's father, was aged 67 yrs.</p> <p>Rofail's parents agreed to put their names as advisors to his business on the understanding their mortgage of \$23,300 would be paid off.</p> <p>Rofail then submitted an application for a loan of \$250,000 to Prime Capital Securities (Prime), forging both his parents' signatures as guarantors and their home as security. He also forged the signature of a solicitor as a witness to the signing by his parents of various documents, including a Landgate form to register the mortgage over his parents' property.</p> <p>Prime paid out the balance of the mortgage. No further funds were released.</p> <p>Rofail's parents became aware of the mortgage over their property and the forging of their signatures. At this time Prime threatened to take possession of their home. To avoid this the</p>	<p>EFP.</p> <p>The sentencing judge found the appellant was prepared to engage in patent dishonesty and he took advantage of his parents' naivety.</p> <p>The sentencing judge referred to the appellant's severe and deteriorating medical condition; he found illness was not to be seen as a licence to commit offences; and the serious elements of the appellant's offending, involving a breach of his parents' trust and ongoing dishonesty, made it inappropriate for the term of imp to be suspended.</p> <p>Ongoing stress suffered by appellant's father; repayments totalling \$17,100 made by appellant. The sentencing judge noted the repayments were very modest and a huge</p>	<p>is that the judge should have, but failed to, take into consideration that the likely degeneration of the appellant, given his medical condition, meant that upon completion of his term of imp he was unlikely to be able to work, and thereby have the means to satisfy the compensation order. That complaint, even if made good, provides no basis to impugn the sentence imposed ...</p> <p>At [49] As to cts 3, 4 and 5, the appellant alleges that the judge mischaracterised the facts, and seriousness, of those counts because the forgeries '[led] to nowhere'. ... These facts were admitted by counsel for the appellant before the sentencing judge. The judge did not err in so finding.</p> <p>At [56] ... The appellant's offending had a number of serious elements: it involved engaging in dishonest behaviour over</p>
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			<p>victim's daughter (Rofail's sister) obtained a loan to discharge the mortgage which was now \$195,299.62.</p> <p><u>Ct 6</u> Rofail submitted an application and supporting documents to a finance broker for a \$400,000 loan to a company controlled by him. He forged his parent's signature in support of his application. The offending came to light when the finance broker spoke to Rofail's father, who advised he knew nothing of the loan.</p>	<p>debt (\$175,199.62) remained outstanding.</p> <p>Compensation order made.</p> <p>Some demonstrated remorse; although peppered with self-justification.</p>	<p>an extended period and he took advantage of his parents' trust in him, with devastating effects for them. ...</p> <p>At [57] The judge gave full weight to the mitigation provided by the appellant's illness in fixing the length of imp, ...</p> <p>At [58] ... in our view, immediate imp was the only appropriate form of disposition. ...</p>
9.	<p><i>Baynah v The State of Western Australia</i></p> <p>[2019] WASCA 103</p> <p>Delivered 29/07/2019</p>	<p>19 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Raised by his mother; three siblings; little contact with his father.</p> <p>Traumatic childhood; due to poor behaviour sent to live with his father in USA aged 12 yrs; then extended family in Kenya; engaged in criminal behaviour incarcerated; tortured during his imp; witnessed the killing</p>	<p>Ct 1: Agg robbery. Ct 2: Att fraud.</p> <p>In the early hrs of the morning Baynah, Nikora and a third offender, came across the victims, L and P, walking together.</p> <p>Baynah had consumed a substantial quantity of alcohol and cannabis and was very intoxicated.</p> <p>The three approached the victims. Baynah asked L if he had any cash on him. When told he did not Baynah demanded L's wallet and took his bank card. As this was happening the third offender reached out towards P's pockets. P pushed his hand away and the third offender punched him in the back of the head.</p> <p>Baynah and the third accused then punched L and</p>	<p>Ct 1: 2 yrs imp (conc). Ct 2: 3 mths imp (conc).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge characterised the offending as 'cowardly' and 'a very serious street mugging'; it was persistent and involved a continuing and significant level of violence; some of the acts of violence were carried out when the victims were on the</p>	<p>Dismissed.</p> <p>Appeal concerned error of fact (inadequate information provided on nature of appellant's Post Traumatic Stress Disorder) and length and type of individual sentences.</p> <p>At [82] ... While his Honour did not find that the appellant had PTSD, he did find that he had the symptoms of PTSD and that he may have the disorder. ... having regard to all relevant facts and circ and all relevant</p>

		<p>of two people; exposed to violence.</p> <p>Limited education; left school yr 9.</p> <p>Unemployed at time offending; limited employment opportunities; factory work after offending; left after suffering a back injury.</p> <p>Regular cannabis user since aged 12 yrs.</p> <p>History of problematic alcohol use; regular binge drinking; occasional blackouts.</p> <p>History of codeine addiction and Rohypnol use.</p> <p>No physical health issues; suffers flashbacks and nightmares; suggestive of PTSD</p>	<p>P multiple times. When L fell to the ground he was also kicked, including once to the head. L handed his wallet to Baynah.</p> <p>Baynah and Nikora then went into a nearby store, where Baynah attempted to use L's bank card. When L alerted staff they were using his card and that the police were on the way Baynah and Nikora left the store and further assaulted him. He was punched numerous times, causing him to fall onto the roadway. During this assault Baynah told L he had a knife and forced him to hand over his mobile phone.</p> <p>P attempted to stop the attack on L but he was thrown to the ground. Baynah and Nikora then kicked and stomped on the two victims.</p> <p>The two victims suffered minor physical injuries.</p>	<p>ground and defenceless; he chased and attacked the victim L and told him he had a knife.</p> <p>The sentencing judge found the factual circumstances of the offending too serious for the sentences of imp to be suspended, conditionally or otherwise.</p> <p>Appellant genuinely remorseful.</p>	<p>sentencing factors, we are not persuaded that an actual diagnosis of PTSD would have had any material impact on the sentencing outcome.</p> <p>At [95] ... the facts of the offending ... are, self-evidently, serious. The offending was prolonged and persistent; the appellant was the main aggressor in a group attack upon two defenceless victims, both of whom were assaulted, harassed and terrorised. He punched and kicked the victims before and after the attack in the convenience store. ...</p> <p>At [97] ... The appellant was fortunate that [the victims] were not more seriously injured. The absence of more serious injury is no more than the absence of an agg factor. ... the potential for more serious consequences to the victim cannot be ignored. ...</p>
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					At [100] ... the overall seriousness of the offence of agg robbery was such that no other penalty apart from immediate imp was reasonably open. Specifically, susp imp, with or without conditions, was inappropriate. ...
8.	<p><i>Biruta v The State of Western Australia</i></p> <p>[2019] WASCA 52</p> <p>Published 02/04/2019</p>	<p>50 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Minor criminal history; two prior convictions for dishonesty offending.</p> <p>Happy and pro-social upbringing; very close family; no violence, drug use or dysfunction.</p> <p>Left school aged 14 yrs.</p> <p>Married; separated 11 yrs; three children; one aged 15 yrs time offending.</p> <p>Employed part-time prior to workplace injury after offending; on worker's compensation at time</p>	<p>Ct 1: Arson. Ct 2: Fraud.</p> <p>Biruta was struggling to repay a credit card debt. She and two co-offenders, her son Ferritto-Di Franco and Dulson, formed a plan to destroy her car so she could claim the insurance money.</p> <p>Biruta drove her vehicle to a hospital where she was to be admitted for treatment, parking it in the hospital's carpark. Later that day the two co-accused visited her in hospital, where she gave Ferritto-Di Franco the keys to her car, knowing he intended to take it and destroy it by setting it on fire.</p> <p>Ferritto-Di Franco drove Biruta's car from the hospital carpark. Dulson followed in her car. Ferritto-Di Franco later drove the car to a semi-rural area where he doused it in petrol and set it on fire. Dulson remained close by in her car and then drove him from the scene.</p> <p>The car was completely destroyed.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 8 mths imp (cum).</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p> <p>The sentencing judge noted the seriousness of arson offences and found the appellant deliberately targeted her own vehicle to obtain a financial benefit; the offending was premeditated; she acted as leader and instigator, in concert with her 19 yr-old son and she alone made the claim for insurance as a calculated and premeditated act of dishonesty.</p> <p>The sentencing judge</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence for ct 1; totality and parity principles.</p> <p>At [38] While the appellant's offence was by no means the most serious example of an offence of criminal damage by fire, it nevertheless exhibited serious elements. It was premeditated, done for commercial gain and done in concert with others.</p> <p>At [39] ... the appellant's sentence ... on ct 1 cannot be seen as manifestly excessive. To the contrary, it lies at the bottom of the range of sentences commonly imposed for less serious cases of arson,</p>

		<p>sentencing.</p> <p>Significant financial troubles leading up to offending.</p> <p>Good physical health; suffers from and medicated for depression and anxiety.</p>	<p>The next day, Biruta reported her car stolen to police. She also informed her insurer and commenced an insurance claim.</p> <p>During an interview with a representative of her insurer Biruta indicated she did not know who had taken her car and that she had no involvement in either its theft or damage.</p> <p>She was later interviewed by a private investigation company and denied any involvement in the theft of her car or to engaging a third party to take it.</p> <p>Biruta received an insurance payment of \$11,782.98 for her car.</p>	<p>found the appellant involved others, including her son, for the sole purpose of benefiting herself financially and she maintained her deception when interviewed.</p> <p>The sentencing judge found the appellant to be significantly more culpable than her son; she was the architect of the plan and the beneficiary of the fraud.</p> <p>Remorseful.</p>	<p>at a time before the max sentence was increased to life imp. ...</p> <p>At [42] Both the appellant and her son were sentenced on the basis that the appellant had led her son into committing the offences. That finding, of itself, amply justified the imposition of a higher sentence ... than was imposed on her son. Moreover, [her] son was 19 yrs old when he was sentenced, and thus had the significant mitigating benefit of youth. ... [Her] son also PG at an earlier stage, resulting in a high discount under s 9AA.</p>
7.	<p><i>Hope v The State of Western Australia</i></p> <p>[2019] WASCA 12</p> <p>Published 16/01/2019</p>	<p>51 yrs at time of offending.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Victim of serious crimes as a child; suffers continued adverse effects of this offending.</p> <p>Single; never married.</p>	<p>Ct 1: Arson. Ct 2: Att fraud.</p> <p>Hope was living in a house with her sister. Both contributed to the mortgage and it was accepted they were joint owners of the property. The home and its contents were insured.</p> <p>A deliberately lit fire caused soot and smoke damage to the interior of the home. No charges were laid in respect of this fire.</p> <p>About a week later Hope and her sister prepared</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 6 mths imp (cum).</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Sentenced on the basis that the lighting of the fire the subject of ct 1 was not the only occasion the appellant had set fire to the house.</p>	<p>Dismissed.</p> <p>Appeal concerned error in finding (appellant lit first fire) and type of sentence.</p> <p>At [56] ... it was well open to the learned sentencing judge, ... to be satisfied beyond reasonable doubt that the appellant was the person who caused the [first] fire ... There is no</p>

		<p>History of paid employment; unemployed at time offending; in receipt of workers' compensation payout.</p> <p>Close to her mother and sister; no other close relationships.</p> <p>Significant chronic health problems; including severe dermatitis and allergies; experiences of depression, anxiety and stress; once attempted suicide.</p>	<p>to leave the house. Hope remained inside a short time while her sister waited for her outside. She set fire to some items in her bedroom, then left the home, locking the house as she left.</p> <p>The fire spread through the house and emergency services attended. The fire caused significant damage to the house and its contents.</p> <p>A claim was made to the insurance company on the house and contents policy. Hope represented to the company that she did not know how the fire started. A payment was later made to her sister, but not to Hope.</p>	<p>Low risk of reoffending; prison more onerous due to the appellant's physical and mental health.</p>	<p>other reasonable inference open on the evidence adduced at trial.</p> <p>At [82] The ... sentencing judge correctly characterised the arson offence as 'a very serious crime'. ... the appellant deliberately caused the house to be damaged by fire. The property was in a built-up area and there was a risk of the fire spreading to other properties. ... the appellant's actions resulted in the need for fire and emergency services personnel to attend the house and place themselves at risk in fighting a fire that was still burning.</p> <p>At [83] ... the earlier fire shows that the offence ... was not isolated and shows that the appellant was determined to carry out her wish to damage the house by fire. The offence could not be characterised as spontaneous. ... A serious additional aspect of the appellant's offending was</p>
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					<p>that the appellant att to obtain ... half of the proceeds of the insurance claim. ...</p> <p>At [86] ... his Honour was right to conclude, ... that it was not open to him, in the circ, to impose a susp term of imp, and that the only appropriate sentence was immediate imp.</p>
6.	<p>Worthington v The State of Western Australia</p> <p>[2016] WASCA 57</p> <p>Delivered 08/04/2016</p>	<p>37 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Appalling criminal history, including dishonesty offences and 27 prior convictions for burglary. Repeat offender.</p> <p>Dysfunctional childhood; subjected to violence; substance misuse; neglect; abuse and his parents' separation.</p> <p>Left home at a young age.</p> <p>Offences occurred only five mths after his release from prison for assault and</p>	<p>Cts 1 and 2: Agg burg. Cts 3; 6 and 11: Burg. Cts 4; 7 and 12: Stealing. Ct 5: Stealing motor vehicle. Cts 8-10 and 13-20: Fraud.</p> <p>Over a seven-week period Worthington broke into five homes and stole property.</p> <p>Worthington entered a home. The victim and her two-year-old child were home alone. \$4,100 worth of property was stolen. Identified by fingerprints (ct 1).</p> <p>Worthington entered a home and stole \$770 worth of property before being disturbed by the occupant (ct 2).</p> <p>Worthington forced entry to a home and stole a large amount of property, including a car, trailer and boat valued at approx. \$46,000 (cts 3-5).</p> <p>Worthington smashed his way into a home and</p>	<p>Cts 1 and 11: 18 mths imp (cum). Ct 2: 20 mths imp (conc). Ct 3: 3 yrs 6 ths imp (cum). Cts 4 and 6: 18 mths imp (conc). Ct 5 and 7: 12 mths imp (conc). Ct 8-10 and 13: 3 mths imp (conc). Ct 12: 1 mth imp (conc) Cts 14-20: 3 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp. EFP.</p> <p>The sentencing judge identified no mitigating personal circ. Personal and general deterrence</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle, individual sentences not challenged.</p> <p>At [18] ... Given the number of offences and the multiple occasions upon which offences were committed, it was appropriate ... to accumulate some of the sentences imposed.</p> <p>At [22] Although the TES ... was substantial, it is not reasonably arguable that it was, in all of the circ of the case, erroneous. The TES bore a proper relationship to the appellant's overall criminality, viewed in its</p>

		burglary offences.	<p>stole a credit card and goods worth approximately \$9,900. He used the card on three occasions to purchase \$137.21 worth of property. Some of the property was later located (cts 6-10).</p> <p>Worthington forced entry a home. He stole approximately \$4,000 worth of property and a credit card. The card was used on eight occasions to purchase goods worth \$380.09 (cts 11-20).</p> <p>Worthington's offending led to a gross property loss of at least \$60,000. Only some of the stolen property was recovered.</p>	<p>and community protection were significant factors in the exercise of her discretion.</p> <p>The appellant did not express remorse.</p>	entirety and having regard to the circ of the case, including the appellant's personal circ, and the total effective sentences imposed in comparable cases.
5.	<p><i>O'Brien v The State of Western Australia</i></p> <p>[2016] WASCA 23</p> <p>Published 29/01/2016</p>	<p>Convicted after PG.</p> <p>Irish national.</p> <p>Visa cancelled after breaching conditions; held in immigration detention by reason of being an unlawful non-citizen, prior to being arrested for offences.</p> <p>Criminal justice stay visa refused.</p> <p>Granted bail, at all material times, by Magistrates Court for offences.</p>	<p><u>Indictment</u> Ct 1: Fraud. Ct 2: Att fraud.</p> <p><u>Section 32 Notice</u> 2 x Stealing. 3 x Trespass. 1 x Fraud. 1 x Att fraud. 2 x Criminal damage. 1 x Poss stolen or unlawfully obtained property.</p> <p>The appellant, with intent to defraud, by deceit or fraudulent means gained \$22,000 in money for himself and others (ct 1). The victim was of or over 60 yrs of age.</p> <p>The appellant, with intent to defraud, by deceit of fraudulent means att to gain \$17,000 in money for himself and others (ct 2). The victim was of or over 60 yrs of age.</p>	<p>A fine for each of the stealing offences and a term of imm imp for each of the other offences.</p> <p>TES 13 mths imp.</p> <p>EFP.</p> <p>Compensation and forfeiture orders made.</p>	<p>Dismissed.</p> <p>Appeal concerned backdating of sentence. Individual sentences and TES not challenged.</p> <p>At [70] ...the appellant's period in immigration detention was connected with the offences in question in that, but for the pending charges and the State criminal justice stay certificate, he would have been removed or deported from Australia as soon as practicable after he was taken into immigration detention.</p> <p>At [71] ... the appellant's</p>

					<p>period in immigration detention was not time spent in custody 'for no other reason' than 'in respect of' the offences, within s 87(a) [of the <i>Sentencing Act</i>].</p> <p>At [84] The TES of 13 mths imm imp was very lenient.</p> <p>At [85] His Honour 'heavily [took] into account', in determining the sentencing outcome, the period the appellant had been in immigration detention...In other words, his Honour reduced by a period he considered appropriate, as contemplated by s 87(c) of the <i>Sentencing Act</i>, the terms of imp (including the total effective term) he would otherwise have imposed.</p> <p>At [88] If there had been a backdating then there is no doubt that an appropriate TES would have been significantly in excess of 13 mths imm imp.</p>
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4.	<p><i>Snook v The State of Western Australia [No 2]</i></p> <p>[2015] WASCA 29</p> <p>Delivered 20/02/2015</p>	<p>Convicted after late PG.</p> <p>Mostly unrepresented.</p> <p>Irrelevant prior criminal history.</p> <p>Two children; removed from her care by Department of Child Protection.</p> <p>Appellant stated she was a professional engineer with 26 yrs experience and had served 3 yrs as an officer with the Royal Welsh Fusiliers and United Nations.</p> <p>Suffers from PTSD.</p>	<p>Ct 1: Stealing motor vehicle. Ct 2: Fraud.</p> <p>The victim, Mr Cunneen, was a volunteer. The victim allowed the appellant to borrow his car to drive to a holiday camp with her children. After the appellant left, the victim was informed that officers from the Department of Child Protection had obtained a court order to take custody of the appellant's children. The victim called the appellant and advised her of the order and asked her to return with his car. The appellant refused.</p> <p>The appellant asked the victim for money and to look after her dogs. The victim refused. The appellant advertised and sold the victim's car for \$10,500 without the victim's permission. At the time of selling the car, the appellant represented that the car belonged to her mother and that she had permission to sell it on her behalf.</p> <p>The car was recovered, but the \$10,500 was not.</p> <p>The appellant maintained that she was innocent and had been given permission to sell the car.</p>	<p>Ct 1: 10 mths imp susp 12 mths (conc).</p> <p>Ct 2: 10 mths imp susp 12 mths (conc).</p> <p>TES 10 mths imp susp 12 mths.</p> <p>No remorse; under stress at time offending; prior good character; offending out of character; mental health problems; unlikely to commit these offences again.</p>	<p>Dismissed - on papers.</p> <p>At [15] The appellant did not admit the facts. The sentencing judge found that the elements of the charges were proven on the pleas of guilty but made no other findings of fact.</p> <p>At [115] In the present case the offences were carried out with deliberation and planning. They involved significant dishonesty and the abuse of the charitable assistance offered by Mr Cunneen. There was no evidence of remorse; to the contrary the appellant had stubbornly maintained her innocence over many years in the face of a strong prosecution case. Deterrence, both personal and general, were important considerations. The appellant's PTSD was a relevant personal factor, but it had to be considered along with all other relevant factors.</p> <p>At [116] ...the circ of the offence were too serious to</p>
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					justify a spent conviction.
3.	<i>Wittensleger v The State of Western Australia</i> [2014] WASCA 205 Delivered 07/11/2014	44 yrs at time sentencing. Convicted after trial. Criminal history including 46 counts of stealing as an agent. Born in Sri Lanka; immigrated to Australia when 5 yrs old; stable and unremarkable childhood. Did well academically and in sport; completed a Degree in Business, Economics and Finance. Built a successful business; On release from prison for prior offending he re-established his business. Married; separated at time of sentencing; 2 children aged 18 and 15 yrs. No mental health or substance abuse issues.	Fraud x 86. The victim (finance company) provided short term funding to business clients, to enable them to pay large insurance premiums and professional fees. The appellant owned and operated an accountancy business called James Brae and Brodrick. Over a 14 month period the appellant prepared, signed and submitted 86 false loan applications in order to obtain loans from the finance company. The appellant used some of the moneys obtained from the other loans to make repayments to the earlier ones. The appellant was aware when he made the applications that the finance company had withdrawn from the professional fee funding market. The appellant knew at all times that there was no basis for the applications he submitted. The total amount of money obtained was approximately \$6.5 million. The outstanding loss to the finance company as a result of the fraud was \$2.5 million. The appellant used the money to meet personal expenses.	TES 8 yrs imp. Psychological report noted appellant continually denied his offending and completely lacking remorse.	Dismissed – on papers. At [144] the appellant’s offending was extremely serious. He engaged in a persistent course of fraudulent conduct... he used his familiarity with the finance company’s systems to manipulate them and thereby obtain very significant benefits for himself.
2.	<i>Adams v The State of Western Australia</i> [2014] WASCA	44 yrs at time sentencing. Convicted after PG. No relevant criminal history.	<u>Indictment</u> Deprivation of liberty x 1. Att armed robbery x 1. Armed robbery x 1. Fraud x 9.	TES 10 yrs imp. EFP. \$300 fine.	Allowed – Grounds 3 & 6. <u>Section 32 notice</u> Ct 1 varied – release after serving 7 mths of it on

<p>191</p> <p>Delivered 28/10/2014</p>	<p>Parents separated when 3 ys old; raised by his mother; very difficult upbringing.</p> <p>Previously married; long term relationship; no children.</p> <p>Former AFP, Customs and Immigration officer.</p>	<p>Attempted fraud x 9. Possess identification material w/i to commit an offence x 1.</p> <p><u>Section 32 Notice</u> Stealing Commonwealth property x 1. Bringing stolen goods into State x 1. Stealing x 2. Poss prohibited weapon x 3. Poss controlled weapon x 1. Unlicensed ammunition x 1. Possess stolen or unlawfully obtained property x 2. Possess false number plates x 1.</p> <p>Sometime before the appellant left the AFP in 2006, he dishonestly appropriated a number of items belonging to his employer, including a police radio, a ballistic vest & a container of OC spray.</p> <p>Between 2006 and 2010 the appellant resided and was employed as a customs officer in Darwin. Whilst his neighbours were on holiday the appellant broke into their unit and stole property and identification. The appellant subsequently transferred to Perth between November 2010 and January 2011 and took with him these items.</p> <p>In 2011 the appellant became and immigration officer. During this time he applied online for credit cards using the stolen identity details as well as incorrect information as to his employment, assets and liabilities. Some of the false information as to his employment came from</p>	<p>Remorse; victim empathy; acceptance of responsibility.</p> <p>Sentencing judge described robberies and sexual offences as involving ‘a significant measure of premeditation, sexual motivation and planning’; described fraud as ‘deliberate, systematic and planned criminality over a significant period’.</p> <p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</p>	<p>recognizance in the sum of \$10,000.</p> <p>At [8] It is very difficult, for the purposes of comparison in the context of the first limb of the totality principle, to identify any relevant total effective sentences imposed in previous cases. The nature, extent and diversity of the appellant’s overall offending, by a person with his antecedents, is very unusual. No previous case is truly comparable.</p> <p>At [61] The past, present and likely future conditions of the appellant’s imprisonment, by reason of his status as a former police officer, were a relevant sentencing consideration that his Honour was bound to take into account.</p> <p>At [138] The appellant’s overall offending was self-evidently very serious. It was varied and substantial. It involved deliberate,</p>
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			<p>documents he had accessed through his employment. The applications were approved. The appellant also attempted to apply for further credit cards but when asked for further documentation he did not proceed or did not collect the card.</p> <p>In 2011 the appellant stole a cheque from a letterbox and deposited into one of his false accounts, withdrew money from the credit account he had opened and stole cheques from a cheque deposit box at a bank and then deposited the cheque into an access account he had opened.</p> <p>In 2012 the appellant rented a self-storage unit and post office box under the false name and address previously stolen. The box was used as a mailing address for invoices for the rented storage unit and applications for bank accounts.</p> <p>In March 2012 the appellant received two parking infringements for failing to display an unexpired ticket. Affixed to the vehicle were registration plates from another vehicle. The purpose being he would avoid paying the parking fees.</p> <p>On 30 March 2012 the victim, a 19 yr old Finnish national, was at a bus stop waiting for a bus. The appellant approached the victim, armed with a BB gun and demanded money. He forced the victim to a secluded location where he digitally penetrated her and performed cunnilingus. The victim tried to attempt to remove the handgun however the appellant produced a large black-handled knife from his backpack and threatened to</p>	<p>systematic and planned criminality executed with considerable sophistication... The appellant used the skills he had gained in the work he had undertaken in the banking and law enforcement sectors to commit the offences, and went to considerable lengths to avoid detention.</p> <p>Discussion on the scope of section 32 notices and Commonwealth offences.</p> <p>At [174] Ground 3 is capable of affecting the total effective sentence imposed by his Honour. However, having regard to all of the circ of the case and particularly to the seriousness of the appellant's overall offending and the need for deterrence, I would not impose a different sentence.</p>
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			<p>slash her throat.</p> <p>One month later the appellant approached another female victim. He exposed a handgun tucked into his shorts. Terrified, the victim threw her handbag at the appellant and ran.</p> <p>A search warrant was executed on the appellant's house where police located 38 items of mail stolen by the appellant from addresses in Perth. A further search warrant was executed at the storage facility where nine items of stolen mail was located. Also found were unlicensed registration plates, weapons and unlicensed ammunition.</p>		
1.	<p><i>Anderson v The State of Western Australia</i></p> <p>[No 3] [2014] WASCA 190</p> <p>Delivered 09/09/2014</p>	<p>53 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Extensive prior criminal history of dishonesty offences.</p> <p>Married twice; supports wife and step-daughter financially & care.</p> <p>Good relationship with parents & siblings.</p> <p>Good health; no issues with alcohol or substance abuse.</p> <p>Previous parole order of 2002-2003 cancelled due to re-offending by dishonesty.</p>	<p>Fraud x 1.</p> <p>The appellant applied for a loan from the Police & Nurses Credit Society for \$722,000 through a broker to purchase a home. The appellant applied for the loan in his correct name but gave a false date of birth and provided a number of documents with his date of birth that had been falsified. The significance being that appellant had been convicted prior to 2009, of many dishonesty offences. The appellant was well aware that the application would be rejected if the victim knew his true identity. The appellant had also altered payslips to show he was earning more than he was being paid and falsified his bank documents to substantially inflate his savings.</p> <p>With this information the loan was approved and the appellant entered into a loan agreement of \$753,139.86, \$31,139.86 being the lender's mortgage insurance fee.</p>	<p>3 yrs 6 mths imp.</p> <p>EFP.</p> <p>PSR noted that appellant 'attempted to minimise the extent of his criminality stating that he "only provided a different date of birth & income"'. Judge described offences as 'calculated and planned'; characterised offending as 'very serious'.</p> <p>Judge found that it was inappropriate to extend mercy to the appellant</p>	<p>Dismissed – on papers.</p> <p>At [92] Whilst there is no tariff for fraud offences because of the very diverse circ in which the offence is committed and of the offenders who commit them, the cases establish that in serious cases of fraud and stealing involving substantial sums of money, terms of immediate imprisonment have been imposed.</p> <p>At [96] – [97] The general principle is that hardship to an offender's family is not a mitigating circumstance ... Moreover, to treat an</p>

		Appellant's wife mentally ill and unable to work.	<p>Although the appellant made some repayments on the loan, he fell into arrears. Almost 18 months after the loan was disbursed the victim took possession of the property and exercised its power of sale.</p> <p>There was a shortfall of the sale on the property and the overall loss to the victim including various costs was \$154,340.72. Most of the loss was recovered from the mortgage insurers, although the victim was left with a shortfall of \$18,941.52.</p>	<p>by reason of hardship to his family having regard to the seriousness of his offending although did afford some leniency.</p> <p>Lack of insight into the impact of offending upon the victim.</p> <p>No evidence of rehabilitation.</p> <p>Sentenced on the basis he induced the victim to lend him a substantial amount of money by deceitful means.</p>	<p>offender who has dependents more leniently than one who does not have the tendency to defeat the appearance of justice and be patently unjust. However, there are exceptional cases where family hardship may be mitigating.</p>
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					