

# **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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
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
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>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>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 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>Ct 1: 2 yrs imp (cum). Ct 2: 6 mths imp (cum).</p> <p>TES 2 yrs 6 mths imp. 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>Low risk of reoffending; prison more onerous due to the appellant's physical and mental health.</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 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</p>

					<p>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 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 circumstances, to impose a susp term of imp, and that the only appropriate sentence was immediate imp.</p>
6.	<p><b>Worthington v The State of Western Australia</b></p> <p>[2016] WASCA 57</p>	<p>37 yrs at time offending. 38 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Appalling criminal history,</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</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</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle, individual sentences not challenged.</p> <p>At [18] ... Given the</p>

	<p>Delivered 08/04/2016</p>	<p>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>The offences occurred only five mths after his release from prison for assault and burglary offences.</p>	<p>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 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>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 circumstances. Personal and general deterrence and community protection were significant factors in the exercise of her discretion.</p> <p>The appellant did not express remorse.</p>	<p>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 circumstances of the case, erroneous. The TES bore a proper relationship to the appellant's overall criminality, viewed in its entirety and having regard to the circumstances of the case, including the appellant's personal circumstances, and the total effective sentences imposed in comparable cases.</p>
5.	<p><b><i>O'Brien v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 23</b></p>	<p>Convicted after PG.</p> <p>Irish national.</p> <p>Visa cancelled after breaching conditions; held</p>	<p><u>Indictment</u> Ct 1: Fraud. Ct 2: Att fraud.</p> <p><u>Section 32 Notice</u> 2 x Stealing.</p>	<p>A fine for each of the stealing offences and a term of imm imp for each of the other offences.</p>	<p>Dismissed.</p> <p>Appeal concerned backdating of sentence. Individual sentences and TES not challenged.</p>

	<p>Published 29/01/2016</p>	<p>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>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 or 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>TES 13 mths imp. EFP. Compensation and forfeiture orders made.</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 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,</p>
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					<p>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>
4.	<p><b><i>Snook v The State of Western Australia [No 2]</i></b></p> <p><b>[2015] WASCA 29</b></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>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</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</p>

		Suffers from PTSD.	<p>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>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. At [116] ...the circumstances of the offence were too serious to justify a spent conviction.</p>
3.	<p><b><i>Wittensleger v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 205</b></p> <p>Delivered 07/11/2014</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including 46 counts of stealing as an agent.</p> <p>Born in Sri Lanka; immigrated to Australia when 5 yrs old; stable and unremarkable childhood.</p> <p>Did well academically and in sport; completed a Degree in Business, Economics and Finance.</p>	<p>Fraud x 86.</p> <p>The victim (finance company) provided short term funding to business clients, to enable them to pay large insurance premiums and professional fees.</p> <p>The appellant owned and operated an accountancy business called James Brae and Brodrick.</p> <p>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</p>	<p>TES 8 yrs imp.</p> <p>Psychological report noted appellant continually denied his offending and completely lacking remorse.</p>	<p>Dismissed – on papers.</p> <p>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.</p>

		<p>Built a successful business; On release from prison for prior offending he re-established his business.</p> <p>Married; separated at time of sentencing; 2 children aged 18 and 15 yrs.</p> <p>No mental health or substance abuse issues.</p>	<p>market. The appellant knew at all times that there was no basis for the applications he submitted.</p> <p>The total amount of money obtained was approximately \$6.5 million.</p> <p>The outstanding loss to the finance company as a result of the fraud was \$2.5 million.</p> <p>The appellant used the money to meet personal expenses.</p>		
2.	<p><b><i>Adams v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 191</b></p> <p>Delivered 28/10/2014</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>No relevant criminal history.</p> <p>Parents separated when 3 yrs 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><u>Indictment</u> Deprivation of liberty x 1. Att armed robbery x 1. Armed robbery x 1. Fraud x 9. 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 &amp; a container of OC spray.</p>	<p>TES 10 yrs imp.</p> <p>EFP.</p> <p>\$300 fine.</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>Allowed – Grounds 3 &amp; 6.</p> <p><u>Section 32 notice</u> Ct 1 varied – release after serving 7 mths of it on 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>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 an 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 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 it 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 cheques 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</p>	<p>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further dishonesty offences.</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, 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</p>
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			<p>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 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>		<p>capable of affecting the total effective sentence imposed by his Honour. However, having regard to all of the circumstances 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>
1.	<p><b><i>Anderson v The State of Western Australia</i></b></p> <p><b>[No 3] [2014] WASCA 190</b></p>	<p>53 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Extensive prior criminal history of dishonesty offences.</p>	<p>Fraud x 1.</p> <p>The appellant applied for a loan from the Police &amp; 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</p>	<p>3 yrs 6 mths imp.</p> <p>EFP.</p> <p>PSR noted that appellant 'attempted to minimise the extent of his</p>	<p>Dismissed – on papers.</p> <p>At [92] Whilst there is no tariff for fraud offences because of the very diverse circumstances in which the offence is committed and</p>

<p>Delivered 09/09/2014</p>	<p>Married twice; supports wife and step-daughter financially &amp; care.</p> <p>Good relationship with parents &amp; 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>Appellant's wife mentally ill and unable to work.</p>	<p>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>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>criminality stating that he "only provided a different date of birth &amp; income".</p> <p>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 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>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 offender who has dependents more leniently than one who does not has the tendency to defeat the appearance of justice and be patently unjust. However, there are exceptional cases where family hardship may be mitigating.</p>
<p style="text-align: center;"><i>Transitional provisions repealed (14/01/2009)</i></p>				

<i>Transitional provisions enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions