

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 2021

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

att	attempt
conc	concurrent
cum	cumulative
ct	count
CBO	community based order
CSIO	conditionally suspended imp order
EFP	eligible for parole
hydro	hydroponic
immed	immediate
imp	imprisonment
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
methyl	methylamphetamine
OMG	outlaw motorcycle gang
PG	plead guilty
susp	suspended
TES	total effective sentence
UCO	undercover officer
wiss	with intent to sell or supply

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<i>Sharp v The State of Western Australia</i> [2023] WASCA 142 Delivered 04/10/2023	32 yrs at time sentencing. 30–31 at time offending. Convicted after PG (20% discount). Extensive criminal history; drug, violence, traffic, and property offences. Born in WA; only child; parents separated; did not get along with his step-father. Left school after completing yr 9; frequently truant and involved in fights. Worked in various trade roles; owned his own business before it deteriorated; unemployed since 2018. Used cannabis and alcohol from 16 yrs; significant family history of addiction; methyl use since 2018; limited motivation to address substance use. One significant relationship; two children; relationship deteriorated due to drug use.	Ct 1: Att supp methyl 27.85 g at 80% purity. Ct 2: Att supp cannabis 23.41 g. Ct 3: Fail to obey data access order. The appellant threw two tennis balls into the Yongah Hill Detention Centre. Each of the tennis balls had been wrapped in tape and had lighters attached to them. The first tennis ball contained 13.82 g of methyl and 12.07 g of cannabis. The second tennis ball contained 14.03 g of methyl and 11.34 of cannabis. The appellant's DNA was located inside the plastic clip seal bags in which the drugs were packaged. A SW at the appellant's house resulted in another tennis ball being found. Police also located a mobile phone which the appellant refused to provide the access code to. The appellant was served a data access order. The appellant failed to provide police with the information necessary to access the mobile phone.	Ct 1: 4 yrs imp. Ct 2: 18 mths imp (conc). Ct 3: 6 mths imp (cum). TES: 4 yrs 6 mths imp. The sentencing judge described the offending as very serious. The appellant attempted to introduce illicit drugs into a detention centre. The sentencing judge found that the appellant's criminal history meant that specific deterrence was an important sentencing factor. The sentencing judge accepted that the appellant's addiction made him more vulnerable to being taken advantage of; however, the appellant offended for personal gain — the supply of drugs.	Appeal dismissed (leave refused). Appeal concerned first limb of totality principle. At [35] 'that this was an attempt to introduce drugs into a detention centre was a significant aggravating factor... There is an obvious risk that illicit drugs will ... create the risk of violence and further offending within a confined environment.' At [36] 'the appellant's role was not limited to merely throwing the drugs over the detention centre fence. The presence of his DNA on the packaging inside the tennis balls indicated that he was involved in the packaging exercise.' At [37] 'the failure to comply with the data access order was itself a serious offence. The sentencing judge was correct to view this as separate offending deserving of additional punishment. This court has noted in the past that unless those whole fail to comply with data access orders receive some additional punishment there will be no effective incentive to comply.' At [40] '... it is not reasonably arguable that the overall total effective sentence of 4 years and 6 months' immediate imprisonment is plainly unreasonable or unjust.'
7.	<i>West v The State of Western Australia</i> [2023] WASCA 3 Delivered 06/01/2023	26 yrs at time offending. 29 yrs time sentencing. Convicted after PG (cts 1 & 2) (25% discount). Convicted after trial (ct 3). Prior criminal history. Completed yr 10 high school. Consistent employment history; highly regarded employee. Cannabis use since aged 16 yr.	Ct 1: Manufactured cannabis oil. Ct 2: Poss cannabis wiss 679 g. Ct 3: Att poss LSD wiss 600 tabs at 11.6 g. A SW was executed at West's home. Items consistent with the manufacture of cannabis oil, including cannabis plant material, butane gas canisters, glycerine, propylene, glycol, decarboxylators and a machine capable of extracting oil from plant material were found. At the rear of West's property drug-related items, including scales, clipseal bags, syringes and silicone containers	Ct 1: 6 mths imp (conc). Ct 2: 12 mths imp (cum). Ct 3: 4 yrs 6 mths imp (cum). TES 5 yrs 6 mths imp. EFP. The sentencing judge found the appellant a low to mid-level drug dealer; cts 3 was a serious offence having regard to the quantity of the drug. Demonstrated remorse; voluntary steps taken towards rehabilitation; drug free since release from prison.	Dismissed (leave refused - error in finding). Appeal concerned length of sentence ct 3; totality principle and error in finding (harm caused by LSD). At [49]-[51] ... his Honour's remark [that LSD had the capacity to 'blow your mind'] was just that – a remark ... no mention of [it] was mentioned in the sentencing remarks. ... the only statements made in the sentencing remarks which bear on the question of harm were ... made in the context of explaining why general deterrence was an important sentencing factor ... At [64] Each offence committed by the appellant was serious. The appellant engaged in the actual manufacture of cannabis oil. He possessed cannabis, packaged for sale, in a context where he was selling the drug for profit. Ct 3 involved even more serious offending. [He] arranged for a substantial quantity of LSD to be sent to him, via

			<p>were also located.</p> <p>Messages relating to the sale and supply of drugs on his computer and mobile telephone were also found.</p> <p>Also located and seized was a quantity of cannabis, packaged into clipseal bags and \$2,645 in cash, derived from the sale and supply of drugs.</p> <p>About eight days later a parcel, sent from Poland and addressed to West, was intercepted by police. It contained paper sheets, perforated into 600 small squares ('tabs') and impregnated with LSD. The tabs were seized and substituted with an inert substance.</p> <p>A controlled delivery of the parcel was arranged to West's address. The parcel was placed into his letter box. Police executed a SW a short time later and found the unopened parcel hidden in a rubbish bin.</p> <p>West had sold LSD in the past for \$25 per tab. If sold by the tab, the LSD would have been worth \$15,000. If sold by the sheet it was valued at between \$6,000 and \$7,800.</p>		<p>the post, from Poland, for sale. If not for the interception of the package containing the LSD by customs officers, it is highly likely the delivery would have been completed. While ct 3 was offence of att to possess LSD wiss, the appellant did everything he could to effect his poss of it. He did so against the background that he had previously sold the drug and had advertised its sale over the internet. Even allowing for the cost of purchasing the LSD, and his on use, [he] stood to derive a profit from its sale.</p> <p>At [65] The offending, as a whole, involved planning, determination and some sophistication. The appellant's overall offending involved substantial criminality.</p> <p>At [71] ... Cts 1 and 2 involved significant additional criminality. [He] had gone to some considerable lengths to manufacture cannabis oil, and, on the evidence, had successfully done so. ... It was clear from the items seized by the police that the appellant was engaged in the sale of the drug. Not only was [he] engaged in dealing in cannabis for a commercial purpose, but he also intended to deal in LSD for the same purpose. It was entirely appropriate for his Honour to impose an additional term of imp to take account of the criminality involved in cts 1 and 2.</p>
6.	<p><i>Giangiulio v The State of Western Australia</i></p> <p>[2022] WASCA 77</p> <p>Delivered 01/07/2022</p>	<p>50 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Long criminal history; serious drug offending; prior sentences of imp.</p> <p>Single; two sons; grandchild; close relationship with his family.</p> <p>Left school yr 10; completed trade apprenticeship.</p> <p>Many yrs employed building industry; work-place injury 2003; delivery driver at time sentencing;</p>	<p>Ct 1: Poss methyl wiss 2 kg at 74%-76% purity.</p> <p>Ct 2: Poss cannabis wiss 3.48 kg.</p> <p>The co-offender Liadow arranged to supply an UCO with methyl. When the UCO attended Liadow's home to collect a large quantity of the drug Giangiulio entered the room. He was carrying a bag, which he placed near the entrance, before leaving.</p> <p>Liadow informed the UCO that Giangiulio was his courier. Liadow handed the shopping bag containing 2 kg of methyl to the UCO on credit for \$306,000.</p>	<p>Ct 1: 9 yrs imp (cum).</p> <p>Ct 2: 2 yrs imp (cum).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>Co-offender Liadow sentenced to 11 yrs imp. EFP (ct 1).</p> <p>Appellant sentenced on basis he was Liadow's courier.</p> <p>The sentencing judge found that while the appellant acted as courier this did not detract from his involvement in a significant way in a criminal enterprise; although not 'the profit taker' he was paid several thousand dollars</p>	<p>Dismissed (leave refused – totality principle).</p> <p>Appeal concerned parity and totality principles.</p> <p>At [81] ... we consider that the absence of materially greater disparity in favour of the appellant between Mr Liadow's sentence for ct 1 and the appellant's sentence for ct 1 did not infringe the parity principle or the principle of equal justice. ...</p> <p>At [82] ... The appellant's offending on ct 2 was very serious. That offending was separate and discrete from his offending on ct 1. The appellant's offending on ct 2 involved the poss of a very substantial quantity of cannabis with the intention of selling or supplying the drug so that it was disseminated into the community. The appellant's offending on ct 2 required additional punishment. ...</p> <p>At [103] We are satisfied, ... that her Honour, in arriving at the TES ..., made a qualitative and discretionary judgment to wholly</p>

		<p>very good work ethic.</p> <p>Suffers anxiety, stress, depression, high blood pressure; some deafness; dyslexic.</p> <p>Long history of illicit drug use; cannabis and methyl; not used since his arrest.</p>	<p>Later that same day a SW was executed at Liadow's residence.</p> <p>On the same day a SW was also executed at Giangiulio's home. Four cardboard boxes, containing 3.48 kg of cannabis in large clipseal or vacuum sealed bags were found.</p> <p>During his interview Giangiulio maintained his right to silence.</p>	<p>and he knew of the existence of the methyl and was prepared to deliver it.</p> <p>The sentencing judge found the appellant was in poss of a significant quantity of cannabis wiss; although he was unable to find the appellant intended to sell the cannabis for a commercial return the cannabis was packaged for the purposes of supply and he was prepared to be involved in the sale or supply of the cannabis.</p> <p>Remorseful; steps taken towards rehabilitation.</p>	<p>accumulate the individual sentences for cts 1 and 2. ...</p>
5.	<p><i>Celani v The State of Western Australia</i></p> <p>[2021] WASCA 215</p> <p>Delivered 16/12/2021</p>	<p>25 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Prior criminal history; largely consistent with his drug addiction.</p> <p>Parents separated when aged 12 yrs; witnessed domestic violence.</p> <p>Supportive family.</p> <p>Educated to yr 10; completed apprenticeship; later trained and worked in plastic fabrication.</p> <p>Cannabis use from aged 12 yrs; methyl from aged 16 yrs; regular user of methyl; heavy user at time of offending.</p>	<p>Cts 1; 11; 17 & 18: Offer to sell cannabis 3.6212 kg. Cts 2-6; 8-10; 12-16; 19-31 & 33-35: Offer to sell methyl 93.145 g. Ct 7: Offer to sell cocaine 28 g. Ct 32: Offer to sell heroin 1.75 g.</p> <p>Celani was travelling in a motor vehicle when it was stopped by police. His mobile telephone was seized and an examination of the text messages stored on the phone revealed he had made offers to sell prohibited drugs to 32 contacts listed in his phone. Each ct related to one named contact, a small number of contacts the subject of more than one ct as he offered to sell them more than one kind of prohibited drug. In total he made a 120 separate offers to his various customers.</p> <p>Many of the cts were committed over a period of time.</p>	<p>Cts 1-3; 8 & 10: 12 mths imp (conc). Ct 4 & 18: 20 mths imp (conc). Cts 5-6 & 21: 14 mths imp (conc). Ct 7: 36 mths imp (head). Ct 9; 11; 13-14; 17; 22; 24-25 & 28-31: 6 mths imp (conc). Cts 12; 34 & 35: 9 mths imp (conc). Ct 15: 18 mths imp (conc). Ct 16; 19 & 23: 24 mths imp (conc). Cts 20 & 26: 10 mths imp (cum). Ct 27: 15 mths imp (conc). Ct 32: 6 mths imp (cum). Ct 33: 10 mths imp (conc).</p> <p>TES 5 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending serious and aggravated by its repeated and persistent nature and that he committed the offences in order to fund his drug habit.</p> <p>Remorseful; positive steps taken towards rehabilitation; 2 yrs clear of drug use; no further offending.</p>	<p>Dismissed - leave refused.</p> <p>Appeal concerned plea discount and totality principle (individual sentences not challenged).</p> <p>At [44] ... Having regard to the fact that the text messages which founded the charges were on the appellant's mobile telephone and their content involved clear offers to sell prohibited drugs, his Honour's characterisation of the case as being 'very strong' was well open. ... the sentencing judge was entitled to take into account the strength of the case against the appellant in assessing the appropriate discount under s 9AA of the <i>Sentencing Act</i>. In these circumstances, and having regard to when the pleas were entered, we are satisfied that a 15% discount was not unreasonable or plainly unjust. It was not manifestly inadequate.</p> <p>At [55] ... the appellant was involved, during the commission of the offences, in a commercial enterprise in which he sold prohibited drugs. The offers that he made were in respect of four different prohibited drugs, ... He was engaged in this business for the purpose of funding his own methyl habit. It was not suggested that the appellant did not have the capacity or intention to fulfil the offers.</p> <p>At [56] It is clear the appellant had a large coterie of customers, and it was not suggested that he did not have access to the prohibited drugs he offered to sell. While it was not said that all of the offers resulted in actual sales, it was not claimed the offers were unfulfilled.</p> <p>At [60] ... it is not reasonably arguable that the TES ... infringed the first limb of the totality principle. ...</p>
4.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2021] WASCA 198</p>	<p>49 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p>	<p>Cts 1 & 2: Property laundering (\$70,000 and \$15,630 cash). Cts 3-9: Cultivation cannabis wiss.</p> <p>Nguyen was part of a sophisticated and extensive commercial cannabis growing</p>	<p>Ct 1: 1 yr 4 mths imp (cum). Ct 2: 10 mths imp (conc). Ct 3: 2 yrs 8 mths imp (head). Ct 4: 2 yrs 4 mths imp (conc). Ct 5: 2 yrs 6 mths imp (cum ct 3). Ct 6: 2 yrs 8 mths imp (conc).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [42]-[44] The appellant managed the financial operation associated with the grow houses. He did so over a lengthy period of time. While</p>

<p>Delivered 25/11/2021</p>	<p>Born and educated to tertiary level in Vietnam.</p> <p>Arrived WA 2015; limited English; communication difficulties.</p> <p>Married; three children; wife and two youngest children residing Vietnam; some family members in Vietnam in frail and poor health at time sentencing.</p> <p>Supportive family in Vietnam; no family support WA.</p> <p>Business interests in Vietnam.</p>	<p>enterprise. Although not involved in the physical operation of growing cannabis, he managed the financial operation of a number of grow houses, including keeping records of the expenses and revenues for each grow house and the preparation of financial analyses for each property.</p> <p><u>Cts 1-2</u> A search warrant was executed at Nguyen's home. During the search two cash bundles of \$70,000 and \$15,630 were located. This money was the proceeds of the sale of cannabis cultivated at one or more of the grow houses at an earlier time.</p> <p>Nguyen had control of the money essentially for the purpose of paying business expenses, but the money did not belong to him.</p> <p><u>Cts 3-9</u> Seven separate 'grow house' had been converted for cultivating cannabis. Each house consisted of a sophisticated hydroponic set-up, including the use of an electricity bypass system.</p> <p>A total of 1081 plants were being cultivated.</p> <p>During the search of Nguyen's home police located handwritten notes, feed charts, excerpts from account books and receipts for items (including nutrients to feed the cannabis plants) purchased to facilitate the growth of cannabis plants.</p> <p>Six mobile telephones, one for each of the grow houses were also found. Nguyen was found also in possession of the floor plans and measurements of four of the grow houses.</p> <p>Nguyen received bills relating to two of the properties and he communicated with the owner of one of the houses regarding the payment of rent.</p>	<p>Ct 7: 2 yrs 8 mths imp (conc). Ct 8: 2 yrs 8 mths imp (conc). Ct 9: 2 yrs 4 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge accepted other people apart from the appellant were involved in the cannabis growing operations and that the appellant was not the principal of the cannabis growing enterprise; but he played an important and trusted role in respect of each grow house; he provided his services for a 'not insignificant' reward.</p> <p>The sentencing judge found the money held by the appellant showed he played an 'important role' and demonstrated the trust that had been placed in him by his superiors; his possession of the cash enabled it to be held separately from the owners of the grow houses, reducing the prospect of it coming to the attention of police.</p> <p>Prison more onerous on the appellant given his limited English and no personal family support available to him in WA.</p> <p>Moderate risk of reoffending.</p>	<p>he was not involved in the physical set-up of the operation or the actual cultivation of cannabis plants, he must have been aware of the scale and sophistication of the enterprise. ... and must have been closely monitoring their progress. ... [He] oversaw and managed the payment of expenses. It cannot be doubted that his function was to ensure, as far as he could, the maximum commercial benefit from each grow house. ... [He] was an important, trusted and willing participant in the enterprise and shouldered significant responsibility in it. The enterprise was potentially highly profitable, concerning, as it did, the hydroponic cultivation of a large number of cannabis plants in seven separate grow houses with the potential value of the cannabis being grown being several hundred thousand dollars. We regard the appellant's role as involving a high degree of criminality. ... his importance to the organisation of the enterprise cannot be doubted.</p> <p>At [46] ... The appellant's role was to ensure that the grow houses operated efficiently and to maximise the financial returns for the owners of the business. Those who, for reward, use their financial expertise to assist those who grow cannabis and enhance the profitability of their illegal operation must understand that their actions involve a high degree of criminality and that, if convicted, substantial punishment will surely follow.</p> <p>At [48] ... we are not persuaded that the TES in this case did not bear a proper relationship to the overall criminality involved in the nine offences, viewed in their entirety ... While we would regard the TES that was imposed as high, it was not unreasonable or plainly unjust.</p>
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<p>3.</p>	<p>Turner v The State of Western Australia</p> <p>[2021] WASCA 132</p> <p>Delivered 28/07/2021</p>	<p>27 yrs at time offending. 28 yrs at time sentencing.</p> <p>Convicted after very late PG (5% discount) – TOI to resolve dispute as to appellant’s intent to sell or supply.</p> <p>Criminal history; no prior drug offences.</p> <p>Parents separated when aged 18 yrs.</p> <p>Completed yr 10 high school.</p> <p>Became father aged 17 yrs; separated from son’s mother shortly after his birth.</p> <p>Consistent work history; gardener and handyman.</p> <p>Regular user of illicit drugs; taking and sharing drugs with friends a normal way of life.</p>	<p>Ct 1: Poss MDMA wiss 8.57g at 85% purity. Ct 2: Poss cannabis wiss 362.45 g. Ct 3: Poss methyl wiss 4.96g at 80% purity.</p> <p>Turner was stopped by police driving a vehicle. His 10-yr-old son was a passenger in the vehicle.</p> <p>A search of the vehicle located four vacuum sealed bags containing 41.88g; 280g; 26.4g and 14.07g of cannabis.</p> <p>In a further vacuum sealed bag 8.57g of MDMA was located.</p> <p>In a clip seal bag 4.96g of methyl was found.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 2 yrs 8 mths imp (conc). Ct 3: 3 yrs 6 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found at the TOI that the appellant was a mid-level user/dealer; while some of the drugs were for his personal use, he intended to sell or supply the majority of the drugs.</p> <p>The sentencing judge found immediate imp was the only appropriate sentence.</p> <p>Not remorseful; some credit given for limited cooperation.</p>	<p>Allowed (length of sentence ct 2).</p> <p>Appeal concerned length of individual sentences and totality principle.</p> <p>Resentenced (5% discount):</p> <p>Ct 1: 12 mths imp (cum). Ct 2: 10 mths imp (conc). Ct 3: 2 yrs 10 mths imp (cum).</p> <p>TES 3 yrs 10 mths imp.</p> <p>EFP.</p> <p>At [23]-[24] ... The element of commerciality involved in the offending was limited. ... However, the offending was not fleeting, unplanned or out of character. The appellant engaged in a course of distributing three different types of prohibited drug. While he dealt with drug users known to him, he did so regularly and to some extent for commercial gain. It was an aggravating feature of the offending that the appellant’s 10-yr-old son was present in the vehicle [he] used to transport the prohibited drugs.</p> <p>At [27] ... the sentence ... imposed ... for the cannabis offence is so far in excess of that which is properly capable of being regarded as commensurate with the seriousness of the cannabis offence so as to drive us to the conclusion that the sentence is manifestly excessive, notwithstanding that it is to be served conc with other sentences.</p>
<p>2.</p>	<p>Nguyen v The State of Western Australia</p> <p>[2021] WASCA 128</p> <p>Delivered 22/07/2021</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after late PG (18% discount).</p> <p>No criminal history.</p> <p>Born Vietnam, came to Australia after having a child with Australian citizen.</p> <p>Supportive extended family; parents both deaf and mute; parents in Australia for sentencing.</p> <p>Primary caregiver two children; aged 8 yrs (multiple developmental needs) and 2 yrs (breastfeeding at time sentencing); youngest child</p>	<p>Cts 3 & 5: Cultivate cannabis wiss (412 plants). Ct 6: Fraudulent diversion of power.</p> <p>Nguyen was jointly charged with her partner, Mr Tran.</p> <p>The offending occurred at two houses used exclusively to cultivate cannabis, both converted with extensive and elaborate hydroponic systems.</p> <p><u>Ct 3</u> A search warrant was executed at a property leased by an unidentified male. Nguyen and Mr Tran were present inside the home and refused police entry. They attempted to leave, but were both arrested at the premises.</p> <p>Five rooms of the property had been</p>	<p>Ct 3: 18 mths imp (conc). Ct 5: 2 yrs imp (conc). Ct 6: 2 mths imp (conc).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending serious; the work required to establish the properties as grow houses and to maintain the cannabis plants would have required significant planning, preparation, premeditation and persistence, while noting the appellant was not involved in the establishment of the grow house the subject of ct 3; the number of cannabis plants involved; the extent of the damage done to the rented properties; the sophistication of the hydroponic set-ups; four or five rooms in each of the growing houses were completely</p>	<p>Dismissed.</p> <p>Appeal concerned error of finding (knowledge of the scale and extent of the enterprise) and length and type of sentence.</p> <p>At [63] ... the reference to the scale and extent of the enterprise refers, as a matter of substance, to the scale and extent of that operation, which encompasses the following ... Both houses were used exclusively to cultivate cannabis. ... converted to be used for that purpose, and had elaborate and sophisticated hydroponic systems for growing cannabis. The hydroponic systems extended, in each house, over several rooms, and enabled cultivation of cannabis on a substantial scale, not merely a cultivation of, say, 10 or 20 plants.</p> <p>At [86] ... the cultivations the subject of cts 3 and 5 reflected a high level of criminality. ... both grow houses had elaborate and sophisticated hydroponic systems for growing cannabis for profit and they were being used to grow a substantial number of plants ... The appellant’s involvement in the cultivations the subject of cts 3 and 5 was by no means minor or low-level. ... The appellant was the lessee of the [property the subject of cts 5 and 6] and purchased items for use</p>

		<p>fathered by co-offender; neither child father figure in their life.</p> <p>Lawful employment and study undertaken.</p>	<p>converted to grow cannabis hydroponically. The hydroponic system included timers, switches, lights, fans and irrigation and filtration systems. The installation of the hydroponic system caused significant damage to the rental property.</p> <p>71 cannabis plants at various stages of maturity were located at the property.</p> <p>Mr Tran was responsible for cultivating the cannabis and was paid by unidentified persons for his involvement. Nguyen aided Mr Tran, by assisting him in purchasing equipment, dealing with the proceeds of the offending and encouraging him to participate in the offending.</p> <p><u>Cts 5 & 6</u> Nguyen and Mr Tran entered a lease for a property. Shortly after taking possession they converted the property into a cannabis grow house.</p> <p>Nguyen signed the lease agreement using a false name, purchased bypass equipment and attempted to delay a rental inspection.</p> <p>Several mths later a search warrant was executed at the property. Four rooms had been converted to grow cannabis hydroponically. The hydroponic system included timers, switches, lights, fans and irrigation and filtration systems. The installation of the hydroponic system caused significant damage to the rental property.</p> <p>A total of 341 cannabis plants at various stages of maturity were located.</p> <p>The properties electrical meter had been bypassed and \$7,008 of electricity was fraudulently obtained.</p>	<p>used to grow cannabis and the amount of power fraudulently obtained.</p> <p>The sentencing judge found the appellant played a lesser role than Mr Tran; but she aided, abetted and assisted him; she actively participated in the offending, with full knowledge of the commercial purpose and knowledge of the scale and extent of the enterprise involved in the illegal conduct.</p> <p>The sentencing judge found exceptional circumstances arising from the hardship the appellant's incarceration would cause her family and her children; but the seriousness of the offending meant a term of imp had to be imposed.</p> <p>No genuine remorse; failed to fully accept responsibility or appreciate the seriousness of her offending.</p>	<p>in the cultivation process in relation to [the property the subject of ct 3]. Involvement of that kind elevates the seriousness of the offending. ... The appellant was involved in ct 5 over a period of mths and her involvement in the cultivation the subject of ct 3 was far from fleeting. ... [and she] was involved in the cultivation of cannabis in more than one grow house.</p> <p>At [91]-[92] ... in our view, it was not open to susp the term of imp in relation to ct 5. Consequently, it was not open to the sentencing judge to susp any of the terms of imp for the appellant's offences. ... in our opinion, it was well open to the sentencing judge to conclude that only immediate imp would be commensurate with the seriousness of the appellant's offending. ...in the circumstances, that was the only reasonable conclusion.</p>
1.	<i>Nickson v The State of Western Australia</i>	<p>58 yrs at time sentencing.</p> <p>Convicted after PG</p>	<p><u>Ind 2154</u> Ct 1: Poss methyl wiss 69.5 g.</p>	<p><u>Ind 2154</u> Ct 1: 3 yrs 6 mths imp (cum).</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p>

<p>[2021] WASCA 40</p> <p>Delivered 05/03/2021</p>	<p>(Ind 2154 10% discount and Ind 990 20% discount).</p> <p>Extensive prior criminal history; previous convictions for drug related offences.</p> <p>Born New Zealand; unremarkable childhood; came to Australia aged 30 yrs; close with his mother and sister; father deceased.</p> <p>Educated to yr 10; completed trade apprenticeship; employed consistently until 2007.</p> <p>Marriage of 17 yrs ended 2006.</p>	<p><u>Ind 990</u> Ct 1: Poss methyl wiss 505.59 g at 4% and 77%-80%. Ct 2: Poss dexamphetamine wiss 2.95 g. Ct 3: Poss cannabis wiss 105.5 g Cts 4-6: Poss unlawfully obtained property (\$8,745 cash; jewellery and \$700 cash).</p> <p><u>Ind 2154</u> A search warrant was executed at Nickson's home. A package, containing five clip seal bags, was located in a freezer. Each clipseal bag contained quantities of methyl, weighting a total of 69.5 g.</p> <p>In Nickson's bedroom three sets of digital scales, a small quantity of methyl, numerous clipseal bags, various weapons, a mobile telephone and \$6,000 cash was found.</p> <p>A further \$2,000 cash was also found in a shed, along with a quantity of the cutting agent MSM.</p> <p>Nickson was charged and released on bail.</p> <p><u>Ind 990</u> Some mths later Nickson was inside a unit when it was searched by police. The property was fortified with chains and pieces of property. Police were forced to dismantle the barricade to gain entry.</p> <p>Inside the unit three separate quantities of methyl were found in three separate locations. In a cupboard in clipseal bags a total of 194.9 g of methyl with a purity of between 77% and 80% was found. In another part of the cupboard clipseal bags containing a total of 12.69 g of methyl with a purity of 4% was found. In the shower area police also located a clipseal bag containing 298 g of methyl with a purity of 77% (ct 1).</p>	<p><u>Ind 990</u> Ct 1: 7 yrs 6 mths imp (cum). Ct 2: 18 mths imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 12 mths imp (conc). Ct 5: 12 mths imp (conc). Ct 6: 12 mths imp (conc).</p> <p>TES 11 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found it was an agg factor that the offences the subject of Ind 990 were committed while the appellant was on bail for the offence charged in Ind 2154 and that all the offences were committed in the context of the appellant conducting an ongoing drug dealing business for commercial gain.</p> <p>The sentencing judge found the appellant had been selling illicit drugs since 2007 to fund his personal illicit drug use; he was within the mid to high level user/dealer range.</p> <p>Some demonstrated remorse; steps taken to rehabilitate himself and drug programmes undertaken while in custody.</p>	<p>At [52] It was a significant agg factor that the appellant's offending in relation to [Ind 990] occurred while he was on bail for the offence charged in [Ind 2154]. Also, it was a significant agg factor in relation to the offences involving methyl that the appellant was dealing commercially in that drug. Further, the seriousness of the appellant's drug dealing offences was underscored by his poss of a variety of weapons. ...</p> <p>At [53] ... we are satisfied that it was necessary, in order properly to mark the seriousness of the appellant's overall offending, for the individual sentences for the ct on [Ind 2154] and for ct 1 on [Ind 990] to be served cumulatively. The offences charged in those cts involved separate and distinct offending.</p> <p>At [55] The TES bears a proper relationship to the overall criminality involved in all of the offences, viewed in their entirety, and having regard to all relevant circumstances, ...</p>
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		<p>Another clipseal bag found in the unit contained 13 tablets, being 2.95 g of dexamphetamine (ct 2).</p> <p>Also located were two clipseal bags containing cannabis, with a total weight of 105.5 g (ct 3).</p> <p>In various locations within the unit a total of \$8,745 in cash was found (ct 4) and inside a safe were various items of jewellery with an estimated value of \$10,000 (ct 5).</p> <p>Data from a mobile telephone located in the unit revealed Nickson had been offered jewellery in exchange for the discharge of outstanding debts. Digital scales, numerous clipseal bags, stun guns and an electrical shotgun were also located in the unit.</p> <p>A search warrant was then executed at another premises. A caravan, over which Nickson had control, was searched and found to contain \$700 cash, scales and a stun gun (ct 6).</p>		
<i>Transitional Provisions Repealed (14/01/2009)</i>				
<i>Transitional Provisions Enacted (31/08/2003)</i>				

Office of the Director of Public Prosecutions