

Possess heroin with intent to sell or supply

s 6(1)(a) *Misuse of Drugs Act*

From 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
AFP	eligible for parole
imp	imprisonment
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
methyl	methylamphetamine
PG	plead guilty
susp	suspended
TES	total effective sentence
VRO	violence restraining order
wiss	with intent to sell or supply

Weight of Heroin: Above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Watson v The State of Western Australia [No 2]</i></p> <p>[2024] WASCA 66</p> <p>Delivered 14/06/2024</p>	<p>27 yrs at time offending. 30 yrs at time sentencing.</p> <p>Convicted after PG (20% discount for IND 1136 and 25% discount for IND 925).</p> <p>Minor criminal history; traffic offences in both NZ and Australia.</p> <p>Born in NZ; happy childhood.</p> <p>Left school in yr 13 and undertook some study before finding gainful employment.</p> <p>Moved to Australia; became isolated and unmotivated; stopped working; receiving Centrelink payments at time of offending.</p> <p>In a relationship; partner remained supportive; no children.</p> <p>Bi-weekly cannabis use; social drinker.</p>	<p><u>IND 1136</u></p> <p>Ct 1: Supplied methyl 3.99 kg at 69–72%.</p> <p>Ct 2: Poss money that was the proceeds of an offence (\$5,987,220).</p> <p><u>IND 925</u></p> <p>Ct 2: Conspiracy to poss methyl wiss 30 kg.</p> <p>Ct 3: Conspiracy to poss cocaine wiss 10 kg.</p> <p>Ct 4: Conspiracy to poss heroin wiss 10 kg.</p> <p><u>IND 1136</u></p> <p>The appellant was observed by police parking his vehicle near a bush reserve. The appellant got out of the car and entered the reserve carrying a black backpack. A short time later he returned to the car, no longer carrying the backpack.</p> <p>On the same day, another man, Mr C was observed entering the reserve. A short time later, Mr C was observed carrying the black backpack left by the appellant. Police executed a SW of Mr C's vehicle and found a package containing 3.999 kg.</p> <p>On another occasion, the appellant and two co-offenders Mr W and Mr O were packaging cash at the appellant's home. The cash was packed into six boxes containing a total of \$5,987,220. The boxes were left in the appellant's residence, and later transported by Mr O to another residence. During a SW of the appellant's residence, police located a Ciphre phone, cash counting equipment and boxes matching the \$5,987,220.</p>	<p><u>IND 1136</u></p> <p>Ct 1: 10 yrs imp. Ct 2: 3 yrs imp (cum).</p> <p>13 yrs imp.</p> <p><u>IND 925</u></p> <p>Ct 2: 8 yrs imp (conc). Ct 3: 7 yrs imp (conc). Ct 4: 7 yrs imp (conc).</p> <p>8 yrs (cum on IND 1136).</p> <p>TES: 21 yrs imp.</p> <p>EFP.</p> <p><u>IND 1136</u></p> <p>The appellant was sentenced on the basis that he was more than a warehouseman and more than a courier.</p> <p>The sentencing judge found the appellant's involvement in the criminal enterprise was continuous, and not isolated.</p> <p>The sentencing judge found that the appellant was an enthusiastic supporter, but not a decision maker. However, the people higher in the hierarchy did repose a large degree of trust in him.</p> <p>The appellant has participated in the commission of the offence was commercial reward; the paltry compensation he received did not excuse his offending.</p> <p><u>IND 925</u></p> <p>The sentencing judge found that cts 2–4 alleged separate offences, but they were the same criminal conduct.</p>	<p>Allowed.</p> <p>Appeal concerned the first limb of the totality principle.</p> <p>Resentenced:</p> <p><u>IND 925</u></p> <p>Ct 2: 4 yrs imp (conc). Ct 3: 4 yrs imp (conc). Ct 4: 4 yrs imp (conc).</p> <p>4 yrs imp (cum on IND 1136).</p> <p>TES: 17 yrs imp.</p> <p>At [93] 'the totality principle ... [i]n practical terms will require the sentencing judge to consider the whole of the offending conduct and give consideration to whether the total effective sentence is a fair and just punishment for that conduct.'</p> <p>At [94] 'in this case two other issues also impacted on sentencing. First, the possession of the cash, whilst the subject of a separate charge, was also relevant as part of the conduct relating to the conspiracy ... It is apparent from the facts relied on in the two sentencing proceedings that all of the charges arose from a series of closely connected events. It was important in that context to ensure that the appellant was not doubly punished for any part of the conduct.'</p> <p>At [95] 'second, the exact nature of the conspiracy was significant in assessing the seriousness of the appellant's conduct ... The conspiracy the appellant was convicted of was not necessarily coextensive with the activities and objectives of the broader criminal enterprise.'</p> <p>At [100] 'although the description of a courier was disavowed by defence counsel, the appellant's role was closer to that of a courier than someone at a more senior position in the criminal enterprise. He also had a role in the movement of the cash that was used to purchase the drugs, but only in a role that was likened to that of a clerk who counted and stored the money.'</p> <p>At [101] 'the sentencing judge's descriptions of the agreement to which the appellant was a party were an inaccurate reflection of the admitted facts ... The effect of this was that the appellant was dealt with on a basis that attributed to him much greater criminality than he had in fact admitted.'</p>

			<p><u>IND 925</u></p> <p>The three conspiracy cts relate to a single agreement between Mr O, Mr W and the appellant to import 50 kg of drugs into WA. The Ciphra phone seized from the appellant revealed an agreement to possess 30 kg of methyl, 10 kg of cocaine, and 10 kg of heroin.</p>	<p>The criminality of the appellant found to be co-extensive with the scope of the broader criminal enterprise. The sentencing judge found that there was no meaningful distinction between the role of the appellant and that of Mr O.</p> <p>The sentencing judge found that the offending was motivated by personal gain.</p> <p>As with IND 1136, the appellant was found to have been an enthusiastic participant in the agreement.</p> <p>The sentencing judge found that appellant was sincerely remorseful for his conduct. It was also accepted that the appellant had undertaken study and passed bridging courses whilst in custody.</p>	<p>At [102] ‘in our view, the total sentence of 21 yrs’ imprisonment was unreasonable or plainly unjust having regard to the appellant’s limited role in both sets of offending and his early pleas of guilty. Where large amounts of drugs are involved there are likely to be many people in the enterprise, and those people are likely to vary significantly in their level of criminality. In such cases the role of the offender is often a more significant consideration than the amount of drugs.’</p>
1.	<p><i>Astone v The State of Western Australia</i></p> <p>[2024] WASCA 18</p> <p>Delivered 16/02/2024</p>	<p>59 yrs at time sentencing.</p> <p>Convicted after PG (17.5% discount).</p> <p>No criminal history; minor road traffic record.</p> <p>Youngest of three sisters; parents migrated to Australia from Sicily; parents were strict; raised on a farm in a reclusive environment; father was physically and emotionally abusive.</p> <p>Completed yr 10 at high school; bullied and ostracised at school.</p> <p>Completed a clerical course at TAFE; worked for extended period in bookkeeping and clerical positions; former employers spoke highly of her work ethic and confirmed she was drug free.</p> <p>Forced into an arranged marriage; husband was abusive and a drug-user; appellant was afraid to leave the marriage; two children from</p>	<p>Ct 1: Poss unlawfully obtained property \$13,950.</p> <p>Ct 2: Offer to supply methyl 27.96 g.</p> <p>Ct 4: Offer to supply methyl 28 g.</p> <p>Ct 5: Poss methyl wiss 111 g at 81% purity.</p> <p>Ct 6: Poss heroin wiss 60.79 g 74–77% purity.</p> <p>Ct 7: Poss unlawfully obtained property \$3,000.</p> <p><u>Ct 1</u></p> <p>Police executed a SW at the appellant’s home whilst the co-offender was present. Police seized and charged the co-offender with poss methyl together with poss a firearm, parts and ammunition. Police located \$13,950 in cash. An intercepted phone call revealed the appellant was aware of the cash in her home.</p> <p><u>Ct 2</u></p>	<p>Ct 1: 9 mths imp (conc).</p> <p>Ct 2: 3 yrs 3 mths imp (cum).</p> <p>Ct 4: 4 yrs 3 mths imp (HS).</p> <p>Ct 5: 4 yrs imp (conc).</p> <p>Ct 6: 3 yrs 3 mths imp (conc).</p> <p>Ct 7: 6 mths imp (conc).</p> <p>TES: 5 yrs 3 mths.</p> <p>EFP.</p> <p><u>Co-offender</u></p> <p>Ct 1: 15 mths imp (cum).</p> <p>Ct 2: 4 yrs imp (HS).</p> <p>The sentencing judge found the appellant had remorse. But the appellant’s poor mental health did not reduce her culpability.</p> <p>The sentencing judge expressly referred to imposing comparable sentences to the co-offender and Mr T.</p> <p>The sentencing judge found that the drug dealing business belonged to the co-offender; however, the appellant’s role allowed the business to operate more efficiently.</p>	<p>Appeal dismissed (leave refused for length of sentence).</p> <p>Appeal concerned first limb of totality principle and parity with co-offender’s sentence.</p> <p>At [57] ‘the appellant played a sustained and integral role in her son’s drug dealing business ... the business required the appellant’s organisation to function. The appellant herself offered to supply 28 g of methyl to a client and 27.96 g of methyl to her son. She was closely involved in the transport of 111 g of methyl...The transport involved a degree of planning in which a third person was recruited in an effort to conceal the appellant and her son’s role in the offending. Separately, she held just over 60 g of heroin for Mr E in her home, which she knew was to be used ... in a commercial operation. A significant degree of accumulation ... was required for the total sentence to reflect the overall criminality.’</p> <p>At [58] ‘we do not accept ... that there is a material distinction to be drawn between a person pursuing a drug dealing enterprise for their own financial benefit and doing so for the financial benefit of a close family member. Nor does the appellant’s motivation to protect [the co-offender] from threats ... fundamentally alter the appellant’s culpability.’</p> <p>At [58] ‘the appellant did not attempt to extricate [the co-offender] from the trade by finding lawful means of assisting him...Rather, she chose to facilitate the continuation of her son’s unlawful drug dealing business.’</p>

		<p>the marriage (the oldest was the co-offender); marriage ended after 20 yrs.</p> <p>Later commenced a relationship with Mr E; Mr E was a heroin addict and drug dealer; was abusive to towards the appellant; on and off relationship; died one yr before sentencing.</p> <p>Poor mental health; anxiety; depression and possibly PTSD.</p> <p>Became involved in drug dealing to assist her son (the co-offender) with his debts.</p> <p><u>Co-Offender</u></p> <p>29 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Ct:1 poss methyl wiss (13.8 g at 63% purity). Ct 2: supply methyl (111 g).</p> <p>Criminal history; imp for serious drug offences; drug and weapon offences.</p> <p>Left school at 17 yrs; receiving Centrelink benefits; drug use; in good physical health.</p> <p>Depressive symptoms.</p>	<p>A listening device in the appellant's property recorded a conversation between the appellant and co-offender during which the appellant offered to supply the co-offender with 28 g of methyl.</p> <p><u>Ct 4</u></p> <p>The listening device captured the appellant offering to supply an individual with 28 g of methyl.</p> <p><u>Ct 5</u></p> <p>Surveillance devices later recorded the co-offender and Mr T (another co-offender) discussing a plan to collect drugs. Mr T went to the appellant's home, and the appellant and co-offender told Mr T the plan for the day. The appellant gave Mr T \$40 for fuel and the three offenders drove in a two-car convey to a truck stop. Mr T waited at a café and the appellant and co-offender later returned to his location. The co-offender placed a package of methyl under the bonnet of Mr T's car and the two vehicles drove away. Police stopped and searched the vehicles, discovering a package containing 111 g of methyl at 81% purity.</p> <p><u>Ct 6 & 7</u></p> <p>After searching the offender's vehicles, a SW was conducted at the appellant's home. Police found 60.79 g of heroin with a purity between 74% and 77%. Police also located \$3,000 in cash. The appellant was holding and hiding the heroin and money for her then-partner Mr E — who was a heroin user and dealer. The appellant was not personally selling or supplying heroin for commercial purposes.</p>	<p>The sentencing judge found that the circumstances of the appellant's offending were at least equal to the co-offender.</p> <p>The sentencing judge found the appellant had knowledge of the legal consequences and harm caused by drug dealing activities. Nonetheless, the appellant became involved and helped facilitate the co-offender's drug dealing activities.</p> <p>The sentencing judge found that the appellant's involvement was — to some extent — related to a long history of being exposed to domestic violence and being fearful of her then partner.</p>	<p>At [79] 'overall, there was little to distinguish the roles the appellant and [the co-offender] played in the drug dealing business.'</p> <p>At [80] 'it is also true the appellant's antecedents provided significantly greater mitigation than those of [the co-offender] ... Based on the mitigating factors that were available to the appellant, it would be expected that she would receive a lower sentence ...'</p> <p>At [81] 'however, the overall criminality of the offending for which the appellant and [the co-offender] received their respective total effective sentences was not the same. The appellant was convicted of more offences ... the difference between the appellant's and [co-offender's] total effective sentences reflects the greater level of criminality involved in the larger number of offences of which the appellant was convicted.'</p> <p>At [84] 'considered in isolation, the lack of disparity between the individual sentences for the offences relating to the same 111 g of methyl would not be justifiable given the appellant's significantly better antecedents and other mitigating factors.'</p> <p>At [85] 'however, it is relevant that the sentenced imposed for ct 5 on the appellant's indictment is to be served concurrently with other sentences and so does not add to the length of her total effective sentence.'</p> <p>At [87] 'it was therefore reasonably open for the sentencing judge to take the view that the parity principle was appropriately accommodated by the difference in the total effective sentences imposed.'</p>
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Transitional Provisions Repealed (14/01/2009)

Weight of Heroin: Below 65 grams

	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>The State of Western Australia v Gholizadeh</i></p> <p>[2024] WASCA 45</p> <p>Delivered 30/04/2024</p>	<p>30 yrs at time offending. 34 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Criminal history; minor drug and traffic offences.</p> <p>Born in Iran; travelled to Australia as a refugee at 21 yrs; detained in immigration detention for 12 mths.</p> <p>Completed compulsory military service in Iran; worked as a carpenter and cabinet maker in Australia; lost work due to COVID-19.</p> <p>Commenced using drugs following the death of his brother; sold drugs to fund his drug use.</p>	<p>Ct 1: Poss heroin 2.38 g. Ct 2: Poss heroin wiss 23.5 g at 71% purity. Ct 3: Poss unlawfully obtained property \$4,990.</p> <p>After police were called to the scene of a traffic incident, the respondent was found slumped over the steering wheel of his car. A search of the car was undertaken. Police located a small black bag containing 2.38 g of heroin and a pink bag containing 23.5 g of heroin.</p> <p>Police also located a set of digital scales, and the respondent's mobile phone contained numerous messages connected with the sale and supply of drugs.</p> <p>Police also searched the respondent's house and found \$6,990 in cash; it was accepted \$4,990 of that cash was the proceeds of drug dealing.</p>	<p>Ct 1: \$500 fine. Ct 2: 12 mths imp (conc). Ct 3: 6 mths imp (conc).</p> <p>TES: 12 mths imp.</p> <p>EFP.</p> <p>Sentenced as a low-level dealer.</p> <p>The sentencing judge accepted that the respondent had taken positive steps towards rehabilitation. The respondent was found to be remorseful and at low risk of reoffending.</p> <p>The sentencing judge found that the respondent was only dealing in small amounts to fund his habit.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentence imposed on ct 2 and first limb of totality principle.</p> <p>Resentenced:</p> <p>Ct 1: \$500 fine. Ct 2: 3 yrs imp (conc). Ct 3: 6 mths imp (conc).</p> <p>TES: 3 yrs imp.</p> <p>At [48] '... the quantity of heroin possessed by the respondent was significant in terms of size, purity and value. The respondent was not a mere courier or bailee. His involvement in the possession of the heroin was not brief or limited in scope. He was in possession of the heroin because he was actively engaged in drug dealing for profit.'</p> <p>At [49] 'the respondent's admission that he was a drug dealer was amply confirmed by the telephone messages, the scales found in his possession and the cash found at his house...The respondent was plainly a retail or street level dealer, but the telephone messages reveal that he had many customers and was active in seeking to source and sell his product. This places ct 2 in its proper context.'</p> <p>At [50] 'as regards the respondent's personal circumstances, his history as a refugee deserves sympathy, but it cannot, of course, excuse or justify engaging in drug dealing for a profit.'</p> <p>At [51] 'as to comparable cases, the cases referred to by the State support a conclusion that the sentence imposed in this case was manifestly inadequate. The fact that those cases relate to methyl rather than heroin does not deprive them of utility. Heroin and methyl are comparable in terms of seriousness and attract the same maximum penalty at the quantities involved in this case. It must also be recognised that methyl has become a much more common drug and that there are comparatively few recent cases dealing with heroin.'</p> <p>At [62] 'the sentence imposed was inconsistent with sentencing standards established in other comparable cases. Further, the sentence on count 2 failed to adequately reflect the maximum penalty for that offence.'</p>
1.	<p><i>Celani v The State of Western</i></p>	<p>25 yrs at time offending. 29 yrs at time sentencing.</p>	<p>Cts 1; 11; 17 & 18: Offer to sell cannabis 3.6212 kg.</p>	<p>Cts 1-3; 8 & 10: 12 mths imp (conc). Ct 4 & 18: 20 mths imp (conc).</p>	<p>Dismissed - leave refused.</p>

<p>Australia</p> <p>[2021] WASCA 215</p> <p>Delivered 16/12/2021</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 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 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>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>
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