

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
14.	<p><i>Bogers v The State of Western Australia</i></p> <p>[2020] WASCA 174</p> <p>Delivered 23/10/2020</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after PG (15% discount).</p> <p>Long prior criminal history; dishonesty offending; prior sentences of imp.</p> <p>Raised nurturing and supportive environment.</p> <p>Learning difficulties at school; completed yr 10.</p> <p>No formal educational or vocational qualifications; little work history.</p> <p>Prescription drug abuse and binge-drinking since teenager; homeless; unemployed and addicted to online betting and methyl at time offending.</p> <p>Diagnosed with APD (antisocial personality disorder).</p>	<p>Cts 1; 2; 4; 11: Fraud. Cts 3; 5; 7; 10; 14 & 16: Agg fraud. Cts 6 & 8: Att fraud. Cts 9; 12; 15 & 17: Possess identification material w/i to commit an offence. Ct 13: Poss stolen or unlawfully obtained property.</p> <p>Bogers offending was committed over a period of nine months.</p> <p>The total amount defrauded or att to be defrauded was \$196,947.80.</p> <p><u>Ct 1</u> Bogers established 17 accounts with an online gambling company, using unlawfully obtained identification. Using the fraudulently obtained details of 57 credit cards he deposited various sums totalling \$127,061 into the accounts. He used the funds to place bets, resulting in winnings of \$33,990.89. He transferred the winnings to his personal bank account. The total defrauded was \$161,051.89.</p> <p><u>Cts 2; 4 & 11</u> Using a false name Bogers created an online taxi account. Linking the fraudulently obtained details of five credit cards to the account he took fares valued at \$15,359.40.</p> <p>On another occasion Bogers used a false name to make an online booking to have his vehicle</p>	<p>Ct 1: 3 yrs 6 mths imp. Ct 2: 3 yrs imp (conc). Cts 3; 7; 9-10 & 12: 2 yrs imp (conc). Ct 4: 20 mths imp (conc). Ct 5: 2 yrs imp (cum). Ct 6: 6 mths imp (cum). Cts 8 & 13: 12 mths imp (conc). Ct 11: 18 mths imp (conc). Cts 14-17: 2 yrs 2 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's conduct was not an 'uncharacteristic aberration'; it revealed a 'calculated pattern of deception which demonstrated both effort and persistence'; the amounts of identification material and the fact it was obtained from the dark web and that he was motivated by a need to fund his lifestyle, with a complete disregard for the</p>	<p>Allowed (length of individual sentences).</p> <p>Appeal concerned totality principle and length of individual sentences (cts 2, 3, 4 & 11).</p> <p>Resentenced to:</p> <p>Ct 1: 3 yrs 6 mths (cum). Ct 2: 3 yrs imp (conc). Cts 3 & 11: 9 mths imp (conc). Cts 4; 8 & 13: 12 mths imp (conc). Cts 5 & 7: 18 mths imp (conc). Ct 6: 6 mths imp (conc). Cts 9-10; 12; 14-15 & 17: 2 yrs imp (conc). Ct 16: 2 yrs imp (cum).</p> <p>TES 5 yrs 6 mths imp. EFP.</p> <p>At [119] The offending in respect of each of the offences the subject of [cts 2, 3, 4 & 11] was serious, involving, as it did, the use of fraudulently obtained credit card details to deceive the proprietors of</p>

			<p>serviced. The \$1,153.92 fee he paid for using the fraudulently obtained details of four credit cards.</p> <p>On another occasion Bogers used a false name to make an online purchase of a pair of shoes valued at \$229.95. He attended the store in an att to take delivery of the purchase, however he was refused service.</p> <p>On another occasion Borger used stolen identification and credit card details to establish an online account with a company allowing the purchase of goods and services through an app. He made four purchases to a total value of \$822.96.</p> <p><u>Cts 3; 5; 7; 10; 14; 15 & 16</u></p> <p>On six separate occasions Bogers used false names to book accommodation through an online booking platform. He then charged the accommodation fees to fraudulently obtained credit card details in the amounts of \$450; \$1,280; \$2,700; \$5,000; \$2,584.68 and \$3,290.</p> <p>This offending was aggravated by the fact that the victims were over 60 yrs of age.</p> <p>Bogers was arrested while occupying the premises the subject of ct 14. He was in possession of a credit card and identification materials, none of which he was entitled to possess.</p> <p><u>Cts 8 & 9</u></p> <p>Using an online booking platform Bogers used a</p>	<p>owners of the credit cards and the affected business operators demonstrated the seriousness of the appellant's offending.</p> <p>No genuine remorse; demonstrated some insight into what drove his offending and acknowledgement the role his drug and alcohol abuse played in it.</p>	<p>small businesses. ... We would not characterise the offending as unsophisticated. ...</p> <p>At [122] ... the length of the terms imposed in each of cts, 3, 4 and 11 were not merely heavy, but ... each of the sentences did not reflect an appropriate exercise of the sentencing discretion. Each sentence was unreasonable or plainly unjust. It was manifestly excessive. ...</p> <p>At [124]-[125] The amount defrauded from the victim in ct 2 ... was considerable and involved fraudulent behaviour which extended over a 17-day period that ... sentence was not unreasonable or plainly unjust. ...</p> <p>At [131] Each of the offences committed by the appellant was serious. Plainly, the most serious offence committed by the appellant was ct 1 ... apart from the victim in ct 2, the appellant targeted small</p>
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			<p>false name to book a holiday home at a cost of \$3,025. The victim became suspicious of the transaction and arranged for the police to attend. When Bogers arrived he was arrested.</p> <p>At the time of his arrest Bogers was in possession of numerous items of identification material, including the details of more than 80 fraudulently obtained credit cards and eight identity cards.</p> <p><u>Ct 12 & 13</u> At a supermarket self-service checkout Bogers was seen to select items from the menu that did not match the items in his trolley. The police attended and he was arrested.</p> <p>At the time of his arrest he was in possession of gift cards, valued at \$500, \$1,000 and \$550, all of which were suspected to have been unlawfully obtained.</p> <p><u>Ct 17</u> A search warrant was executed at premises occupied by Bogers. As he att to flee he discarded identification materials he was not entitled to possess.</p> <p>Cts 14-17 were committed while Bogers was on bail.</p>		<p>businesses who are generally vulnerable to the kind of behaviour engaged in by the appellant. ...</p> <p>At [132] ... his offending was motivated by need rather than greed. The types of accommodation the appellant obtained or att to obtain as a result of his fraudulent behaviour were not basic and involved a standard of comfort inconsistent with the notion that the appellant's offending was motivated by need. ...</p> <p>At [138] The appellant engaged in repeated and systematic dishonesty over an extended period of time against multiple victims. ... Some accumulation of the sentences we would impose is required in order to properly reflect the overall seriousness of the appellant's offending.</p>
13.	<p><i>Greeney v The State of Western Australia</i></p> <p>[2020] WASCA</p>	<p>41 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p>	<p>Cts 1-4 & 6: Criminal damage. Ct 5: Steal motor vehicle. Cts 7-8 & 12: Stealing. Cts 9 & 11: Armed robbery. Ct 10: Armed so as to cause fear.</p>	<p>Cts 1-4 & 6: 3 mths imp (conc). Ct 5: 6 mths imp (conc). Cts 7-8 & 12: 6 mths imp (conc).</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle.</p>

<p>135</p> <p>Delivered 04/09/2020</p>	<p>Very extensive criminal history; subject to susp sentence at time offending.</p> <p>Indigenous; disadvantaged background; alcoholic father; childhood marred by domestic violence; assaulted by his father; lived with his father after parents' divorce when a teenager; grandparents significant impact upon him.</p> <p>No contact with mother and younger sister after parents' divorce.</p> <p>Partner 20 yrs subjected to domestic violence; two children; one grandchild at time sentencing; partner supportive.</p> <p>Some work history mid-20s.</p> <p>Loss of his father whilst on remand; suffered greatly with death of his grandparents whilst previously in custody.</p> <p>Entrenched drug addiction; cannabis from aged 14 yrs; intravenous methyl use from aged 19 yrs.</p>	<p>Cts 13-16: Fraud.</p> <p>The offending occurred over two days.</p> <p><u>Cts 1-4</u> At around midnight Greeney threw bricks through the windows or door panes of four business premises.</p> <p><u>Ct 5</u> Several hrs later Greeney was at the victim's address. Without permission he took a set of car keys and the victim's vehicle. He used the vehicle during the commission of cts 6 to 9 before driving it off road, bogging it and causing it significant damage. He made no att to notify the victim of where the car was.</p> <p><u>Ct 6</u> Greeney drove the stolen vehicle into the sliding door of a service station, smashing it.</p> <p><u>Cts 7 & 8</u> Greeney then drove the vehicle to another service station and put \$30 worth of petrol into the car. He left without paying for the fuel.</p> <p>Greeney entered an unlocked vehicle belonging to the second victim and stole a wallet, containing a credit card.</p> <p><u>Ct 9</u> Greeney then drove the vehicle to the home of the third victim, who lived alone with her two children. Seeing him drive up onto her lawn the</p>	<p>Ct 9: 3 yrs imp (cum). Ct 10: 1 yr imp (cum). Ct 11: 2 yrs 6 mths imp (cum). Cts 13-16: 2 mths imp (conc). TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the fact the appellant was on a susp sentence at the time of his offending an aggravating factor; the damage he caused was wanton and senseless; he caused significant damage and inconvenience to local businesses in a small regional town.</p> <p>The sentencing judge characterised the appellant's offending as a rampage in a rural community; he found cts 9 to 11 extremely serious; ct 9 occurred on a rural property with a woman who was alone with her young children; he threatened to shoot the</p>	<p>At [40] The overall criminality involved in the appellant's offending was undoubtedly very serious. Although the offences were all committed over two days, there were separate incidents involving the production of weapons and two separate armed robbery offences. It was an aggravating feature of the overall offending that it was committed while the appellant was subject to a susp sentence.</p> <p>At [42] ... it is not reasonably arguable that the TES failed to bear a proper relationship to the overall criminality involved in all the appellant's offences, viewed in their entirety and having regard to the circumstances of the case</p>
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			<p>victim went outside. Greeney got out of the car with a claw hammer raised up alongside his head and asked the victim about the safe on her veranda. The victim told him the safe was empty, but he demanded she give it to him and threatened to shoot her. Fearing for her and her children's safety she threw the safe towards him. He put it in the car and drove away. He later found the safe was empty.</p> <p><u>Ct 10</u> Later the same day Greeney walked to a house where the fourth victim lived with her daughter. Carrying a large hunting knife he approached the victim, who was in her car preparing to leave. He asked the victim for her car, but she declined.</p> <p><u>Cts 11 & 12</u> Greeney then walked to another property and approached the fifth and sixth victims, who lived at the premises. Still carrying the large knife he demanded the keys to one of the victims car. Scared, one of the victims gave him his car keys. Greeney drove away in the vehicle at speed. The victims followed in another vehicle, but soon lost sight of him. Greeney drove it before abandoning it.</p> <p><u>Cts 13-16</u> Using the stolen credit card belonging to the second victim Greeney and an associate purchased goods, in three separate transactions, to the value of \$50, \$51.99 and \$25 respectively.</p> <p>Greeney then drove to a service station and</p>	<p>victim and he was armed with a hammer; cts 10 and 11 involved the appellant approaching people, going about their business at their own homes whilst armed with a knife.</p> <p>Demonstrated some degree of remorse; acknowledged the impact of his offending on his victims.</p>	
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			obtained \$30 worth of fuel using the stolen credit card.		
12.	<p><i>NI v The State of Western Australia</i></p> <p>[2020] WASCA 78</p> <p>Published 22/05/2020</p>	<p>31 yrs at time offending.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born Iran; difficult childhood; marked by significant discrimination and trauma; witnessed extensive violence between his parents and subjected to severe discipline by his mother.</p> <p>Supportive family and friends.</p> <p>Immigrated to Australia with family aged 18 yrs.</p> <p>Excelled in study and employment opportunities.</p> <p>Single; no dependants.</p> <p>No substance abuse issues.</p>	<p>Ct 2: Att fraud. Ct 3: Arson.</p> <p>NI operated his own business, which he ran from a property he rented from his co-offender Mr Pourzand.</p> <p>The business was not doing well and NI had substantial debts. Mr Pourzand indicated he could help him out with his problem as he wanted to set fire to the building. NI refused.</p> <p>Mr Pourzand continued to approach NI about committing arson. On two occasions NI covertly recorded his discussions with Mr Pourzand, in which he gave NI instructions as to how to go about committing the offence.</p> <p>NI purchased and paid for in cash items for the purpose of committing arson, including citronella, a sash cord and candles and personal protective equipment.</p> <p>One evening NI attended the building where he laid out the sash cord between furniture piled together at various locations. He soaked the cord with citronella. He then turned off the electricity and removed the CCTV recording devices before lighting the fire.</p> <p>The fire spread throughout the two-story building causing extensive damage, rendering it unstable, unusable and likely to be demolished.</p>	<p>Ct 2: 8 mths imp (cum). Ct 3: 4 yrs 4 mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending, in respect of both offences, were at the upper end of the scale of seriousness; the appellant was a principal offender in relation to the arson; and an aider in relation to the att fraud.</p> <p>The sentencing judge found that while the appellant's criminal responsibility was less than Mr Pourzand his contribution was crucial.</p> <p>The sentencing judge found the appellant's criminal responsibility did not stop the moment he left the building, which was on fire; he continued to be a party to the att</p>	<p>Dismissed.</p> <p>Appeal concerned plea discount and error of fact (estimated cost of damage sustained).</p> <p>At [78] ... there is no warrant for this court to interfere in the exercise of the discretion invested in the sentencing judge by s 9AA of the <i>Sentencing Act</i>.</p> <p>At [97] The sentencing judge approached the case on the basis that the damage to the ... building was 'in the millions of dollars, and the building may be unusable'. This is an accurate assessment of the scale of the damage caused by the fire, whether the range of reinstatement estimates in the RBB report or the Taylor report are adopted. ... There is nothing in the material before the court to lead to the conclusion that either estimate is unreasonable, based on the qualifications</p>

			<p>The damage was estimated to be between \$14.4 million and \$19.9 million.</p> <p>The next day Mr Pourzand submitted an insurance claim. His insurer did not pay on the claim and he later withdrew it.</p> <p>The cost to the DFES was approx \$38,000.</p> <p>NI was interviewed by police. He initially denied the offence, however made full admissions and implicated himself in the att fraud in a second interview.</p>	<p>fraud and he did nothing to prevent it or to bring the truth to light until charged.</p> <p>The sentencing judge found the arson offence aggravated in that it was premeditated and involved a great deal of planning; it was committed as part of a plan to commit fraud for a very substantial sum; the appellant was motivated by the promise of a significant financial benefit; the damage caused to the building was very substantial and amounted to the destruction of a very valuable property; and emergency service officers were unnecessarily put at risk.</p> <p>The sentencing judge found the att fraud aggravated by the size of the claim the appellant believed would be made and the planning and degree of deception.</p> <p>Appellant found to be</p>	<p>and assumptions contained in the respective reports. ...</p> <p>At [98] ... the quantification of the actual cost, or range of costs, of reinstating the ... building has very little significance for the assessment of the criminality involved in the appellant's offending.</p> <p>At [99] ... we are not satisfied that the absence of the RBB report in the sentencing proceedings gave rise to any miscarriage of justice.</p> <p>At [116] ... [The appellant] had discussed with Mr Pourzand how and when the offence would be committed, and for what purpose. The offending was far from an impulsive act on the appellant's part. There was no error in the sentencing judge referring to the appellant's involvement in the planning of the offence as an aggravating factor.</p>
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				vulnerable to manipulation; remorseful; cooperative; realised the seriousness of his offences.	At [126] ... The sentencing judge correctly recognised that the seriousness of the appellant's offending was such as to make suspended or conditionally suspended sentences inappropriate sentencing options. ... it was not open to the sentencing judge to suspend or conditionally suspend the appellant's sentences.
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</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</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>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 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>need for general deterrence.</p> <p>Co-operative; no demonstrated remorse; attributed blame to others.</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>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>
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					<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 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</p>
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					to keep his company afloat. ...
10.	<i>Rofail v The State of Western Australia</i> [2019] WASCA 214 Delivered 13/08/2019	35 yrs at time offending. Convicted after PG. (20% discount cts 1, 3 & 5). (15% discount cts 2, 4 & 6). No prior convictions. Born Egypt; migrated with his family to Australia aged 5 yrs. Strict upbringing; traumatised childhood as a result of father's use of corporal punishment. Schooling interrupted by health issues; graduated high school. Married; two young children. Financial problems at time offending; significant tax debt. Long-standing degenerative incurable illness; requires a brace to assist with walking; other times needs a wheelchair.	Cts 1 & 2: Fraud. Cts 3-5: Forgery. Ct 6: Att fraud. <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. 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. 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. <u>Cts 2 - 5</u> The victim, Rofail's father, was aged 67 yrs. 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. Rofail then submitted an application for a loan of \$250,000 to Prime Capital Securities (Prime), forging both his parents' signatures as	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. EFP. The sentencing judge found the appellant was prepared to engage in patent dishonesty and he took advantage of his parents' naivety. 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. Ongoing stress suffered	Dismissed. 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). At [45] The complaint ... 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 ... 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

			<p>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 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>by appellant's father; repayments totalling \$17,100 made by appellant. The sentencing judge noted the repayments were very modest and a huge debt (\$175,199.62) remained outstanding.</p> <p>Compensation order made.</p> <p>Some demonstrated remorse; although peppered with self-justification.</p>	<p>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 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>19 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</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>Ct 1: 2 yrs imp (conc). Ct 2: 3 mths imp (conc).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Appeal concerned error of fact (inadequate information provided on nature of appellant's Post Traumatic Stress Disorder)</p>

<p>Delivered 29/07/2019</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 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>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 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>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 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>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 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 att fraud in the convenience store. ...</p>
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		No physical health issues; suffers flashbacks and nightmares; suggestive of PTSD			<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> <p>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. ...</p>
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>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</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</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</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 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>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>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>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 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>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, 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.	<i>Hope v The State of Western</i>	51 yrs at time of offending.	<p>Ct 1: Arson.</p> <p>Ct 2: Att fraud.</p>	<p>Ct 1: 2 yrs imp (cum).</p> <p>Ct 2: 6 mths imp (cum).</p>	Dismissed.

<p>Australia</p> <p>[2019] WASCA 12</p> <p>Published 16/01/2019</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>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>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>Low risk of reoffending; prison more onerous due to the appellant's physical and mental health.</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 themselves at risk in fighting a fire that was still burning.</p>
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6.	<p><i>Worthington v The State of Western Australia</i></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>Cts 1 & 2: Agg burg. Cts 3; 6 & 11: Burg. Cts 4; 7 & 12: Stealing. Ct 5: Steal motor vehicle. Cts 8-10 & 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</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)</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</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 burglary offences.</p>	<p>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>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 and community protection were significant factors in the exercise of her discretion.</p> <p>The appellant did not express remorse.</p>	<p>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 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.</p>
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</p>	<p><u>Indictment</u></p> <p>Ct 1: Fraud.</p> <p>Ct 2: Att fraud.</p> <p><u>Section 32 Notice</u></p> <p>2 x Stealing.</p> <p>3 x Trespass.</p> <p>1 x Fraud.</p> <p>1 x Att fraud.</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>Dismissed.</p> <p>Appeal concerned backdating of sentence. Individual sentences and TES not challenged.</p> <p>At [70] ...the appellant's period in immigration</p>

		<p>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>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>Compensation and forfeiture orders made.</p>	<p>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, his Honour reduced by a period he considered appropriate, as</p>
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					<p>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><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>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</p>

			The appellant maintained that she was innocent and had been given permission to sell the car.		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 circ of the offence were too serious to justify a spent conviction.
3.	<p><i>Wittensleger v The State of Western Australia</i></p> <p>[2014] WASCA 205</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>Built a successful business; On release from prison for prior offending he re-</p>	<p>86 x Fraud.</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 market. The appellant knew at all times that there was no basis for the</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>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>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><i>Adams v The State of Western Australia</i></p> <p>[2014] WASCA 191</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></p> <p>1 x Deprivation of liberty. 1 x Att armed robbery. 1 x Armed robbery. 9 x Fraud. 9 x Attempted fraud. 1 x Possess identification material w/i to commit an offence.</p> <p><u>Section 32 Notice</u></p> <p>1 x Stealing Commonwealth property. 1 x Bringing stolen goods into State. 2 x Stealing. 3 x Poss prohibited weapon. 1 x Poss controlled weapon. 1 x Unlicensed ammunition. 2 x Possess stolen or unlawfully obtained property. 1 x Possess false number plates.</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>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>Low - moderate risk of re-offending in a sexual way; moderate – high risk of committing further</p>	<p>Allowed – Grounds 3 & 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>At [61] The past, present</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 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</p>	<p>dishonesty offences.</p>	<p>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 capable of affecting the total effective sentence</p>
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			<p>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 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>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>
1.	<i>Anderson v The State of Western</i>	53 yrs at time sentencing.	1 x Fraud.	3 yrs 6 mths imp.	Dismissed – on papers.

<p>Australia</p> <p>[No 3] [2014]</p> <p>WASCA 190</p> <p>Delivered 09/09/2014</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>Appellant's wife mentally ill and unable to work.</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>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>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 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</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 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>
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<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions