

# **Possess MDMA (ecstasy) with intent to sell or supply**

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

**Prior to 1 January 2014**

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
wiss	with intent to sell or supply
imp	imprisonment
susp	suspended
immed	immediate
conc	concurrent
cum	cumulative
PG	plead guilty
ct	count
TES	total effective sentence
EFP	eligible for parole
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
39.	<p><i>Pittard v The State of Western Australia</i></p> <p>[2013] WASCA 126</p> <p>Delivered 21/05/2013</p> <p>Co-offender of</p> <p><i>Jenkin v The State of Western Australia</i> [2014] WASCA 226</p>	<p>43 yrs at sentencing.</p> <p>Convicted after trial; however made sensible concessions at trial.</p> <p>Modest criminal record.</p> <p>In a stable relationship; good record of employment</p> <p>Long history of illicit drug abuse.</p> <p>Co-offender Forman charged with 11 Cts on indictment and 6 Cts on s32 notice. PG to all and sentenced to TES 6 yrs imp. EFP.</p> <p>Co-offender Jenkin charged with poss methyl wiss and poss MDMA wiss. Convicted after trial and sentenced to TES 6 yrs imp. EFP.</p>	<p>Ct 1: Poss methyl wiss, 54.65g at 20-21%</p> <p><b>Ct 2: Poss MDMA wiss, 58.75 g, 199-200 Pills.</b></p> <p>Ct 3: Poss cannabis wiss, 113.04g.</p> <p>Police officers in Geraldton had Trevor Forman under surveillance. He was seen to travel from Geraldton to Perth to acquire methyl and ecstasy from the appellant.</p> <p>In the early hours of 20 July 2012, the appellant supplied quantities of methyl and ecstasy to Foreman.</p> <p>Forman later drove from the appellant's home. Police stopped the vehicle on the Grand Highway near Dongara. Hidden inside the tailgate the police discovered a cryovac sealed bag containing two packages of drugs. One package contained methyl and the other MDMA.</p> <p>At the same time as Forman's car was being searched, police executed a search warrant at the appellant's home. Next to the appellant's bed two bags were found which contained a total of \$108,030 in cash.</p> <p>In the appellant's shed, police found two</p>	<p>Ct 1: 6 yrs imp.</p> <p>Ct 2: 1 yr imp (cum).</p> <p>Ct 3: 6 mths imp (conc).</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge found the appellant was Forman's supplier and Forman was a dealer who would, in turn, supply those drugs to his customers in the Geraldton area.</p> <p>Sentencing judge found the offences were committed in the context of an established relationship between the appellant and Forman and were not a 'one-off transaction' between the two men.</p> <p>Sentencing judge found that although</p>	<p>Dismissed – refused on papers.</p> <p>At [56] Miller AJA's analysis (in <i>Bosworth</i>) does not amount to a sentencing matrix... It is not the case that whenever an offender is convicted of an offence of possession between 3g and 65g of methyl with intent to sell or supply, he or she must receive a term of imprisonment between 2 and 5 years.</p>

			<p>vacuum-sealing machines, vacuum bags, clipseal bags, heat shrink plastic, sets of electronic scales and a large quantity of a cutting agent.</p> <p>Police found cannabis separated into three identical bags, together with a grinder which had been used to chop up the cannabis.</p>	<p>police did not find any documentation that showed that the appellant was a commercial dealer in drugs, the appellant conducted his business on a cash basis; Found that 'most if not all' of the cash found was the proceeds of his drug dealing.</p> <p>Moderate risk of re-offending.</p>	
38.	<p><b><i>RIF v The State of Western Australia</i></b></p> <p><b>[2013] WASCA 88</b></p> <p>Delivered 05/04/2013</p> <p><b>NB: Facts, circumstances of the offending, personal circumstances, antecedents and other relevant</b></p>	<p>Convicted after PG.</p> <p>Provided substantial assistance to police before sentenced.</p>	<p>5 x poss prohibited drug wiss/ att poss prohibited drug wiss (<b>MDMA</b> and methylamphetamine).</p> <p>The appellant sourced and supplied or intended to supply a very significant quantity of tablets, believing them to contain MDMA, but in fact containing methylamphetamine.</p> <p>The purity of the drugs, the subject of Cts 2-3 and 5, was very low and the purity of the drugs the subject of the other counts was unknown.</p>	<p>Not specified.</p>	<p>Allowed.</p> <p>Re-sentenced</p> <p>Ct 1: 2 yrs imp. Ct 2: 2 yrs imp. Ct 3: 2 yrs imp. Ct 4: 4 yrs imp. Ct 5: 2 yrs imp.</p> <p>Cts 1-4 and 5 conc and cum on Ct 4.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p>

	<p><b>matters, set out in confidential annexure to reasons of BUSS JA and subject to confidentiality</b></p>				<p>At [21] The degree of purity is often regarded as significant.</p> <p>At [24] Where the purity of a prohibited drug is very low the substance is unlikely to produce the deleterious effects usually associated with prohibited drugs having a high level of purity. However, the essence of the appellant's criminality was reflected in his belief that the tablets were prohibited drugs and his willingness to deal in them, for profit with that knowledge. He was running a drug dealing business. The scope of the business was beyond what was necessary to repay a drug debt he had incurred as a result of his own usage.</p> <p>At [25] Although the appellant had access to the supply of significant quantities at short notice, it is not possible to assess the position he occupied in the 'dealing chain' because ..., the purity of the drugs, was very low ...</p>
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					At [26] the principal mitigating factors were the appellant's cooperation with the police and his pleas of guilty. All of his cooperation was past cooperation as at the date on which his Honour imposed sentence.
37.	<p><i>TXT v The State of Western Australia</i></p> <p>[2012] WASCA 28</p> <p>Delivered 8/02/2012</p> <p><b>NB: Facts set out in confidential annexure to reasons and subject to confidentiality order</b></p>	<p>Convicted after PG at earliest opportunity.</p> <p>Co-operated with police.</p>	<p><b>3 x Conspire to poss MDMA wiss.</b></p> <p>15 x Offer sell/supply MDMA.</p> <p>1 x Supply MDMA.</p> <p>High level in MDMA distribution hierarchy but not at top.</p> <p>Offending period approx 5 wks but appellant dealing in drugs prior to that period.</p> <p>Drug dealing for personal profit.</p>	<p>Sentence range 12 mths – 2 yrs imp.</p> <p>TES 2 yrs 6 mths imp.</p> <p>EFP.</p> <p>Low risk re-offending; good prospects rehabilitation.</p>	<p>Dismissed – application for extension of time refused on papers.</p> <p>At [34] Separate principles apply in relation to co-operation with authorities and delay in relation to sentencing. No proper basis to allow further discount on ground co-operation or delay makes offender an inappropriate or less appropriate vehicle for general deterrence.</p> <p>At [39]-[42] Ordinary disposition for serious drug offence is immediate imprisonment – only in exceptional circumstances will a term be suspended.</p> <p>At [42] Fact appellant threatened of little consequence – well-known occupational</p>

					hazard for those involved in drug distribution.
36.	<p><i>MGM v The State of Western Australia</i></p> <p>[2012] WASCA 24</p> <p>Delivered 31/01/2012</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Cooperated with police; agreed to give evidence against co-offender 1 which resulted in co-offender changing plea to PG.</p>	<p><b>1 x Supply MDMA 3677 tablets, 966 g, 23 % pure.</b></p> <p>Appellant and two co-offenders planned the import of MDMA into WA from NSW. The appellant purchased a vehicle in NSW on behalf of co-offender 1 with the intent of using the car to transport the MDMA in the car to WA where it would then be sold by co-offender 1. Appellant carefully concealed the MDMA in the car before sending it to WA. Co-offender 2 sourced and acquired the MDMA in NSW. Appellant did not stand to gain financially from offending himself but was aware co-offender 1 would derive financial benefit from the sale of the MDMA.</p> <p>Police became aware of the plan and intercepted the car on its arrival in WA, removing the drugs. Co-offender 1 searched the car but could not find the drugs – resulting in a charge of attempt to poss MDMA (as well as charges for 3 other unrelated drug offences). Co-offender 1 received TES 8 yrs imp.</p> <p>Police telephone intercepts revealed the</p>	<p>2 yrs 6 mths imp.</p> <p>TES 2 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>At [51]-[53] Co-offender 2's sentencing contained material errors in assessment of his culpability and resulted in him receiving an unjustifiably lenient sentence. That sentence could not then properly form the basis for the appellant to challenge his sentence on a ground alleging disparity, particularly where the TES received by the appellant was at the low end of the customary range of sentences imposed.</p>

			<p>extent and willingness of appellant's involvement in the planning and execution of the offending.</p> <p>Appellant and co-offender 2 were extradited from NSW (where they usually resided) to face charges. Co-offender 2 charged supplying MDMA and received TES 4 yrs 6 mths imp.</p>		
35.	<p><i>Reid v The State of Western Australia</i></p> <p>[2012] WASCA 23</p> <p>Delivered 30/01/2012</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial of cts 1 &amp; 3. Convicted after PG ct 2.</p> <p>No relevant prior criminal record</p> <p>Good character; supportive family; privileged background.</p> <p>Excellent work history and references.</p> <p>Became involved in peer support group in prison.</p> <p>Occasional social drug use – cannabis; ecstasy.</p>	<p>Ct 1: Poss methyl wiss 14.98g at 20%. <b>Ct 2: Poss MDMA 10 pills.</b> <b>Ct 3: Att poss MDMA wiss 573g, 2339 tablets.</b></p> <p>Sentenced on basis willingly and voluntarily dealing drugs in partnership with her boyfriend to reduce the drug debt he owed. Appellant would also conduct drug transactions in the absence of boyfriend when he was working away.</p> <p>Drugs found when police executed a search warrant at the appellant's home. Tablets subject of ct 3 later found to be caffeine and paracetamol but the appellant believed them to be ecstasy pills (MDMA). Police also found 'tick lists', scales, gloves and cutting agent.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 3 mths imp. Ct 3: 6 yrs imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Little acceptance of responsibility; little insight into broader impact of offending; little remorse; unlikely to re-offend; good prospects rehabilitation (ended relationship with boyfriend at time sentencing).</p>	<p>Dismissed – leave refused on papers.</p> <p>At [50] No basis to distinguish between MDMA and other drugs such as methyl, heroin or cocaine in sentencing process.</p> <p>At [58] General sentencing principle that personal circumstances carry little weight in sentencing for dealing or trafficking prohibited drugs equally as applicable to attempts to deal or traffic in prohibited drugs.</p> <p>At [59] 6 yrs imp for ct 3 high but tempered by orders of concurrency so TES appropriate.</p>
34.	<i>Mikulic v The</i>	48 yrs at time sentencing.	Ct 2: Att to poss MDMA wiss 8.832kg.	TES 12 yrs imp.	Dismissed.

<p><i>State of Western Australia</i></p> <p><b>[2011] WASCA 127</b></p> <p>Delivered 8/06/2011</p>	<p>Convicted after PG after 5 days trial (12 prosecution witnesses testified). PG to Cts 2, 4, -10 accepted in full satisfaction of indictment.</p> <p>No prior criminal record.</p>	<p>Ct 4: Att to poss methyl wiss 3.108kg at 23-26%.  <b>Ct 5: Poss MDMA wiss 1.23kg.</b>  <b>Ct 6: Poss MDMA wiss 1.921 kg.</b>  Ct 7: Poss cocaine wiss 19.15g at 76-80%.  Ct 8: Poss methyl wiss 2.07g at 26-27%.  <b>Ct 9: Poss MDMA wiss 8.59g.</b>  Ct 10: Poss methyl wiss 2.98g at 25%.</p> <p>Involved in drug dealing at high level – planned, financed and facilitated inter-State importation drugs subject cts 2 &amp; 4. Financial motivation. Close to the source manufacture.</p> <p><u>Cts 2 &amp; 4:</u>  Drugs in possession 2 co-offenders (one of whom is the appellant’s brother) and were found when police searched a car at Eucla. Drugs were hidden in a steel tube.  Co-offenders has driven car from Perth to Sydney to purchase drugs and were returning to Perth. Sydney.</p> <p><u>Ct 5:</u>  Appellant’s home searched as result of the above and drugs subject ct 5 found. Also found note books with details of drug names, measurements and prices and over \$30,000 cash.</p> <p><u>Ct 6, 7 &amp; 8:</u></p>		
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			<p>Police found handbag containing drugs subject cts 6, 7 &amp; 8 in bushland on golf course 7-8m from rear of appellant's home.</p> <p><u>Cts 9 &amp; 10:</u> Police searched property in Lancelin owned by appellant. Found drugs subject cts 9 &amp; 10, as well as heat sealing machine, digital scales, note books and pares detailing drug weights and transactions.</p> <p>Wife also charged.</p>		
33.	<p><i>Ho v The State of Western Australia</i></p> <p>[2011] WASCA 108</p> <p>Delivered 2/5/2011</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Full-time employment; good character references.</p> <p>Ecstasy user 10 yrs; entrenched gambling habit; after arrest ceased illicit drug use but continued to gamble.</p>	<p><b>Ct 1: Supply MDMA 97 tablets 28.7g 13%.</b></p> <p><b>Ct 2: Poss MDMA wiss 198 tablets 58.6g 13%.</b></p> <p>s 32 offences (not relevant to appeal)</p> <p>Accepted in sentencing MDMA sold to finance gambling habit.</p> <p>Appellant obtained 300 ecstasy tablets, almost immediately afterwards supplied 97 tablets to another. Arrested by police who located 198 tablets in his jacket pocket.</p>	<p>Ct 1: 1 yr imp</p> <p>Ct 2: 2 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths.</p> <p>EFP.</p>	<p>Dismissed – leave refused on papers.</p> <p>Individual sentences not challenged.</p> <p>At [9] ecstasy on par with cocaine, heroin and methyl in terms of seriousness.</p>

<p>32.</p>	<p><i>Birch v State of Western Australia</i></p> <p>[2011] WASCA 101</p> <p>Delivered 19/04/11</p>	<p>29 yrs at time offending.</p> <p>Convicted after PG – not at first opportunity and in face strong prosecution case.</p> <p>Prior criminal record – mainly traffic offences and poss cannabis (1998 – only prior drug conviction).</p> <p>2 children aged 4 and 2 ½ yrs – taken to NZ without her permission by their father sometime in 2009; reasonable work history.</p> <p>Intravenous methyl user.</p>	<p><b>Ct 1: Supply MDMA 1000 tablets 208.9g.</b></p> <p>Ct 2: Conspire supply MDMA 4000 tablets.</p> <p>Ct 3: Offer supply MDMA 1000 tablets.</p> <p>Ct 4: Offer supply MDMA 40 or 50 tablets.</p> <p>Ct 5: Offer supply MDMA 400 tablets.</p> <p>Ct 6: Offer supply MDMA 400 tablets.</p> <p>Ct 7: Offer supply methyl 1.75g – 3.5g.</p> <p>Ct 8: Offer supply MDMA 1000 tablets.</p> <p>Described in sentencing as active drug dealer – implied financial motive.</p> <p>Offending period approx 2 mths.</p> <p>Charges result of intercepted phone calls and covert surveillance operation. Two co-offenders.</p>	<p>Ct 1: 5 yrs imp.</p> <p>Ct 2: 4 yrs imp.</p> <p>Ct 3: 5 yrs imp.</p> <p>Ct 4: 1 yr imp.</p> <p>Ct 5: 2 yrs imp.</p> <p>Ct 6: 2 yrs imp.</p> <p>Ct 7: 2 yrs imp.</p> <p>Ct 8: 5 yrs imp.</p> <p>TES 8 yrs. EFP.</p> <p>Limited insight into offending behaviour.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [33] not enough to gather a selection of cases and by a broad exercise of comparison try to demonstrate error – what is required is an analysis of relevant factors.</p>
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<p>31.</p>	<p><i>MXP v The State of Western Australia</i> [2010] WASCA 215</p> <p>Delivered 29/10/2010</p> <p><b>NB: Facts set out in confidential annexure to reasons of BUSS JA and subject to confidentiality order</b></p>	<p>29 yrs.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal record.</p> <p>Cooperation to authorities.</p> <p>18 month old child.</p> <p>Undertook rehabilitation program before sentencing.</p>	<p><b>1 x Poss MDMA wiss 3011 tablets 479.99g 32 – 33%.</b></p> <p>Search of vehicle after traffic stop. Motive in offending was to satisfy drug debt.</p>	<p>6 yrs 6 mths imp.</p> <p>TES 6 yrs 6 mths imp.</p>	<p>Allowed - insufficient concession given for cooperation with police.</p> <p>TES reduced 5 yrs imp.</p> <p>Review of comparative cases at [34] – [45].</p> <p>Discussion as to letters of comfort and information to be given to sentencing judge in regard to cooperation with police.</p>
<p>30.</p>	<p><i>Basilio v The State of Western Australia</i></p> <p>[2010] WASCA 202</p> <p>Delivered 21/10/2010</p>	<p>32 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record - poss methyl and smoking implement charges.</p> <p>3 children – aged 3, 11 &amp; 14 yrs at time sentencing.</p> <p>Became addicted to methyl after grandmother passed away – began dealing initially to support habit.</p>	<p>Ct 1: Att to poss methyl wiss 869g at 55-59%.</p> <p>Ct 2: Att to poss methyl wiss 139g at 34-37%.</p> <p>Ct 3: Poss methyl wiss 17.7g at 39-58%.</p> <p><b>Ct 4: Poss MDMA wiss 6.86g.</b></p> <p>Commercial dealer at very high level - not a street level dealer supporting own habit but at top end of supply chain in WA.</p> <p><u>Ct 1:</u> Appellant sent three people interstate to collect drugs and provided \$187,000 to purchase. Couriers arrested at Perth airport with 869g subject of first</p>	<p>Ct 1: 10 yrs imp.</p> <p>Ct 2: 6 yrs imp.</p> <p>Ct 3: 3 yrs imp.</p> <p>Ct 4: 2 yrs imp.</p> <p>TES 13 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced to 10 yrs.</p> <p>At [26] ‘<i>Having regard to the maximum penalty for these offences, the comparable cases, and the circumstances of this offending, the TES imposed by the sentencing judge exceeded a sound discretionary range.</i>’</p>

			<p>attempt.  <u>Ct 2:</u>  Appellant lent car to another person and sent them to collect 10 ounces. Person collected the drugs and took them to house in Canning Vale where police arrested them – seized 139g.  <u>Cts 3 &amp; 4:</u>  Search at appellant’s house then located 17.7g methyl and 6.86g MDMA plus scales, snap lock bags, vacuum sealer, glass smoking pipe and \$18,440 cash.</p>		
29.	<p><b><i>Burton v The State of Western Australia;</i></b>  <b><i>Fielding v The State of Western Australia</i></b></p> <p><b>[2010] WASCA 192</b></p> <p>Delivered 8/10/2010</p>	<p>Both 23 yrs at time sentencing.</p> <p>Both convicted after fast-track PG.</p> <p>Neither have prior criminal record.</p> <p>Neither have substance abuse problems; both have supportive families; good employment histories.</p> <p>Both committed to rehabilitation.</p>	<p><b>1 x Poss MDMA wiss 1000 tablets 243.89g 5%</b>  <b>1 x Poss MDMA wiss 2554 tablets 623.22g 5%</b></p> <p>Mid level dealers - both dealing purely for financial gain.</p> <p>Travelled to Qld to acquire drugs. Planned the procurement of the drug, its subsequent sale or supply and calculated and estimated profit</p> <p>Both appellants engaged in joint activity, nothing to distinguish level of criminality (received same sentences).</p>	<p>2 yrs 6 mths imp.  3 yrs imp.</p> <p>TES 5 yrs 6 mths imp.</p> <p>Both remorseful.</p>	<p>Dismissed – leave refused on papers.</p> <p>- At [11] ‘<i>The facts of this case underscores the continuing need for strong deterrent sentences. The appellants knew what they were doing was illegal and risky but were prepared to take the risk because of the anticipated financial gains from the enterprise.</i>’</p>

<p>28.</p>	<p><i>The State of Western Australia v Buck</i></p> <p>[2010] WASCA 188</p> <p>Delivered 21/09/2010</p>	<p>23 years old at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Minor prior criminal record, not drug related.</p> <p>Stable employment; talented sportsman (played Australian U18 rugby league team) favourable antecedents; steps toward rehabilitation; strong family support; numerous positive references.</p> <p>Attended drug counselling at Cyrenian House before sentencing.</p>	<p><b>Ct 1: Supply MDMA – 20 tablets.</b> Ct 2: Poss cocaine wiss 27.8g at 28%.</p> <p>s 32 notice offences: 3 x deal prohibited drug.</p> <p>Characterised as courier for reward.</p> <p>Ct 1: Respondent supplied 20 MDMA tablets to an associate.</p> <p>Ct 2: Respondent passenger in car stopped by police. Taken into custody and house searched – 27.8g cocaine at 28% purity found in plastic bag wrapped in kitchen towel in respondent’s underwear drawer.</p> <p>s 32 notice: offered supply girlfriend 15 ecstasy tablets for a concert; supplied 3.5g cocaine; 10 MDMA tablets found hidden in respondent’s car.</p>	<p>6 mths imp. 30 mths imp.</p> <p>6 mths imp; 12 mths imp; 12 mths imp.</p> <p>TES 3 yrs imp susp 2 yrs.</p> <p>EFP</p>	<p>Allowed – SIO set aside.</p> <p>TES 3 yrs imp substituted.</p> <p>At [10] consequences offending on family/friends not ordinarily relevant in sentencing nor is offender’s emotional distress or shame.</p> <p>At [13] ‘... drug dealers will not receive a suspended sentence unless the seriousness of the circumstances fall at the very low end of the scale.’</p>
<p>27.</p>	<p><i>Koncurat v The State of Western Australia</i></p> <p>[2010] WASCA 184</p> <p>Delivered 17/09/2010</p>	<p>Convicted after fast track PG.</p> <p>No relevant prior criminal record.</p> <p>Educated to yr 12; steady employment until 2006 when appellat was the subject misconduct allegations at work.</p> <p>Began using illicit drugs 2001 –</p>	<p><b>Ct 1: Poss MDMA wiss 4.09g at 18%.</b> <b>Ct 2: Poss MDMA wiss 1023.89g.</b> Ct 3: Preparation MDMA.</p> <p>s 32 offences: 1 x Poss pill press. 1 x Unlawful poss \$2,500 cash. 1 x Unlawful poss \$13,125 cash. 1 x Driving under suspension.</p>	<p>Ct 1: 1 yr imp. Ct 2: 7 yrs imp. Ct 3: 4 yrs imp.</p> <p>18 mths imp. 12 mths imp. 12 mths imp. \$500 fine.</p> <p>TES 8 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>At [58] ‘It was bad enough that he had in his possession a large quantity of ecstasy, but it was clear that he was producing the drug, an aggravating feature rarely present in other cases which have come before this court. This feature warranted a</p>

		<p>became daily user methyl; drug use escalated after breakdown of marriage</p> <p>Diagnosed depression (prescribed medication) and ADHD; family support.</p>	<p>Significant producer and commercial dealer ecstasy – not user/dealer.</p> <p>Began making ecstasy pills to fund methyl habit but at time arrest making profit far in excess of cost of habit. Pill press not automated but it was effective and capable producing large amount pills.</p>	Remorse.	total sentence of some severity.’
26.	<p><i>Russell v The State of Western Australia</i> [No 2]</p> <p>[2010] WASCA 159</p> <p>Delivered 4/08/2010</p>	<p>35 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - traffic offences and one possess cannabis (fined).</p> <p>Unremarkable family background; good references; good work history.</p> <p>Significant medical difficulties since birth – chronic asthma, sever lower back pain from spinal fusion, eczema and obesity; depression; low self esteem.</p>	<p>Ct 1: Offer to sell MDMA 50 pills.</p> <p>Ct 2: Offer to sell methyl 56g.</p> <p><b>Ct 3: Sold MDMA 421 pills 121g at 37%.</b></p> <p>Ct 4: Offer to sell MDMA 50 pills.</p> <p><b>Ct 5: Sold MDMA 585 tablets 175.8g at 37%.</b></p> <p>Ct 6: Offer to sell MDMA 50 pills.</p> <p>Ct 7: Att to obtain MDMA wiss 2000 pills.</p> <p>Categorised as mid range user/dealer. Offending period approx 2mths.</p> <p>Claimed dealing drugs to fund addiction to ecstasy that had developed after becoming immune to effects painkillers.</p>	<p>Ct 1: 1 yr imp.</p> <p>Ct 2: 3 yrs imp.</p> <p>Ct 3: 4 yrs imp.</p> <p>Ct 4: 1 yr imp.</p> <p>Ct 5: 4 yrs imp.</p> <p>Ct 6: 1 yr imp.</p> <p>Ct 7: 3 yrs 6 mths imp.</p> <p>TES 7 yrs 6 mths imp. EFP.</p> <p>Participated in program, at Cyrenian House on bail; remorse; good prospects rehabilitation.</p>	<p>Allowed.</p> <p>Manifestly excessive in that original sentence did not bear proper relationship to level of criminality.</p> <p>TES reduced to 6 yrs imp. EFP.</p>
25.	<p><i>Dillon v The State of Western Australia</i></p> <p>[2010] WASCA</p>	<p>36 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record - served 12</p>	<p>1 x Poss wiss methyl 75.7g 11-13%.</p> <p>1 x Poss wiss methyl 59.44g 12%.</p> <p><b>1 x Poss wiss MDMA 5.54g 21%.</b></p> <p>1 x Pervert the course of justice (PCJ).</p>	<p>4 yrs 6 months imp.</p> <p>4 yrs 6 mnth imp.</p> <p>1 yr imp.</p> <p>2 yrs imp</p>	Dismissed – only sentence PCJ challenged.

	<p><b>135</b></p> <p>Delivered 4/08/2010</p>	<p>mths imp previously for poss methyl wiss.</p> <p>Good work record; positive character references.</p>	<p>5 x s 32 offences (not drug related).</p> <p>Drugs found after appellant's car stopped and searched. PCJ result of telephone intercepts recording appellant arranging for another person to say the drugs belonged to them in exchange for \$10,000.</p>	<p>s 32 sentences concurrent.</p> <p>TES 6 yrs mths imp.</p>	
24.	<p><b><i>Wilson v The State of Western Australia</i></b></p> <p><b>[2010] WASCA 82</b></p> <p>Delivered 4/05/2010</p>	<p>34 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Offence on indictment 2 breached bail for indictment 1.</p> <p>Prior criminal record - incl drug related convictions for which fines were imposed.</p> <p>Undertaken programmes in custody.</p> <p>Good work history.</p>	<p><u>Indictment 1:</u> <b>Ct 1: Conspire to purchase MDMA wiss 500 tablets</b> Ct 2: Poss methyl wiss 32.5g at 32%.</p> <p><u>Indictment 2:</u> Ct 1: Poss methyl wiss 116g at 9-39%.</p> <p>Involved at a significant level in the hierarchy of drug industry – not street dealing but dealing at whole sale level in significant quantities.</p> <p><u>Indictment 1:</u> Agreed with third party to purchase and then sell 500 MDMA tablets at \$20 with intent on-sell them and split the profits (ct 1). Police observed appellant in car park of business and conducted a search of his car. Methyl (ct 2), \$2,000 cash found in car. \$4,100 cash found on appellant's person.</p>	<p><u>Indictment 1:</u> Ct1: 15 mths imp.</p> <p>Ct 2: 2 yrs 8 mths imp.</p> <p><u>Indictment 2:</u> Ct 1: 5 yrs imp.</p> <p>TES 6 yrs 3 mths imp.</p>	Dismissed.

			<p><u>Indictment 2:</u> Police stopped and searched appellant's car - \$2,140 cash found on appellant's person. Appellant's home subsequently searched and methyl, cutting agent, clip-seal bags, syringes and vials water found in hard case kit.</p>		
23.	<p><i>RP v The State of Western Australia</i></p> <p><b>[2010] WASCA 75</b></p> <p>Delivered 28/04/2010</p>	<p>20 yrs at time offending.</p> <p>Convicted after fast-track PG assistance given to authorities.</p> <p>No relevant prior criminal record.</p> <p>Born Bosnia-Herzegovnia; came to Australia with parents as refugee; supportive family; good upbringing.</p> <p>Began using ecstasy after relationship breakdown and became addicted.</p>	<p><b>1 x Poss MDMA wiss 539 tablets 149.18g.</b></p> <p>Characterised as user/dealer – money used to finance habit and repay drug debt. Significant commercial aspect to dealing given quantity tablets far exceed anything required personal use.</p> <p>Appellant and co-offender observed in appellant's parked car by police. Car then searched – 35 MDMA tablets, \$1450 cash and clip seal bags located. 2 further MDMA tablets found in appellant's trouser pocket.</p> <p>Appellant taken back to police station and searched again – 539 MDMA tablets found in underwear. Car searched again - further 17 MDMA tablets found.</p>	<p>2 yrs 10 mths.</p> <p>TES 2 yrs 10 mths imp.</p>	Dismissed.



<p>22.</p>	<p><i>Wickham v The State of Western Australia</i></p> <p>[2010] WASCA 73</p> <p>Delivered 28/4/2010</p>	<p>30 yrs at sentencing.</p> <p>Convicted after PG.</p> <p>2<sup>nd</sup> &amp; 3<sup>rd</sup> offences committed whilst on bail for 1<sup>st</sup> offence</p> <p>Minor record.</p> <p>Supportive family and steady employment; sole custody of son but since 2007 son living with appellant's parents until after 2<sup>nd</sup> arrest returned to live with 8 yr old son and his parents.</p>	<p><b>1 x Poss MDMA wiss 22 tablets – 6.19g at 28%</b></p> <p><b>1 x Poss MDMA wiss 69 tablets – 14g at 34%</b></p> <p>1 x Poss methyl wiss 26g 17% – judge found bulk for personal use.</p> <p>1<sup>st</sup> offence drug found with \$550 and MSN and tick list and \$2600 found at his house.</p> <p>2<sup>nd</sup> and 3<sup>rd</sup> offences result of search warrant on appellant's house.</p>	<p>12 mths imp.</p> <p>2 yrs imp.</p> <p>6 mths imp.</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Appeal dismissed.</p> <p>Sentence clearly within the range indicated in <i>Bosworth</i>.</p> <p>NB: appeal after State appeal [2009] WASCA 137 resulted in matter being remitted to District Court for a trial of issues and re-sentencing.</p>
<p>21.</p>	<p><i>Waldron v The State of Western Australia</i></p> <p>[2010] WASCA 63</p> <p>Delivered 7/04/2010</p>	<p>Convicted after trial.</p>	<p><b>1 x Poss MDMA wiss 200 tablets 48.4g.</b></p> <p>1 x Poss cannabis wiss 216g.</p> <p>Claimed drugs for personal use, rejected by jury</p> <p>Targeted traffic stop located MDMA. Search of house uncovered cannabis, smoking implement, \$3300 cash, nine cannabis plants.</p>	<p>3 yrs imp.</p> <p>1 yrs imp.</p> <p>TES 4 yrs imp.</p>	<p>Dismissed.</p>

<p>20.</p>	<p><i>Giglia v The State of Western Australia</i></p> <p>[2010] WASCA 9</p> <p>Delivered 22/01/2010</p>	<p>25 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after trial (acquitted 3 charges).</p> <p>Minor prior criminal record - assault, weapons and traffic offences.</p> <p>No substance abuse problem - never tried illicit substances.</p> <p>Educated to yr 12; good work history; supportive family and fiancée.</p>	<p><b>3 x Poss MDMA wiss 300, 500 and 500 tablets.</b></p> <p>1 x Poss methyl wiss 84g.</p> <p>8 x Offer to supply methyl to another (various weights below 63g).</p> <p>1 x Supply methyl.</p> <p>1 x Att to poss MDMA wiss 500 tablets.</p> <p>Offending in context joint enterprise between appellant and co-offenders to try and sell methyl and MDMA.</p> <p>Arrest and charges result telephone intercepts over approx 4 week period.</p>	<p>TES 8 yrs 6 mths.</p> <p>Remorse at sentencing – previously maintained innocence.</p>	<p>Dismissed.</p> <p>At [48] ‘The offences committed by the appellant were serious. He was a commercial dealer of both methylamphetamines and ecstasy. He was not solely involved in the sale of drugs at the street level, but was selling drugs to other people who were selling them to the ultimate users. He sold drugs purely for financial gain, rather than to support an addiction.’</p> <p>NB: The original sentence was imposed whilst the transitional provisions were in force.</p>
<p>19.</p>	<p><i>Fernandes v The State of Western Australia</i></p> <p>[2009] WASCA 227</p> <p>Delivered 17/12/09</p>	<p>31 yrs at time offending.</p> <p>Convicted after late PG.</p> <p>Prior criminal record - convictions for poss wiss; served 4 yrs 6 mths imp in 2003.</p> <p>Used amphetamines since 23 yrs.</p> <p>Single; owned own business as panel-beater.</p>	<p>1 x Poss methyl wiss 47.58g at 7 – 30%.</p> <p><b>1 x Poss MDMA wiss 2.52g at 17%.</b></p> <p>1 x Poss methyl wiss 3.53g at 20-29%.</p> <p>Appellant observed placing canister on top of a shed located inside yard of neighbouring industrial unit. Police attended and seized canister – contained drugs subject cts 1 &amp; 2.</p> <p>Following day, police searched appellant’s car – found drugs subject ct 3 and \$575 cash.</p>	<p>3 yrs imp.</p> <p>1 yr imp.</p> <p>2 yrs imp.</p> <p>TES 5 yrs imp.</p>	<p>Dismissed.</p>

		Committed current offence to repay business loan.			
18.	<i>The State of Western Australia v Atherton</i>  [2009] WASCA 148; (2009) 197 A Crim R 119  Delivered 25/08/2009	44-45 yrs at time offending.  Convicted after trial.  Cts 8 & 9 committed whilst on bail for cts 1-7. Minor prior criminal record - had not previously served a term of imprisonment.	Ct 1: Poss methyl wiss 142.2g at 9-10%. Ct 2: Poss methyl wiss 855.4g at 13%. Ct 3: Poss cannabis wiss 50.4g. Ct 4: Poss cannabis wiss 133g. Ct 5: Poss cannabis wiss 353g. <b>Ct 6: Poss MDMA wiss 655g at 28%.</b> <b>Ct 7: Poss MDMA wiss 342g at 9%.</b> Ct 8: Poss methyl wiss 28.7g at 19 – 33%. <b>Ct 9: Poss MDMA wiss 31.77g at 28-30%.</b>  Quantities of drugs and cash found indicated higher level of commercial dealing.	Ct 1: 3 yrs 4 mths imp. Ct 2: 6 yrs 8 mths imp. Ct 3: 8 mths imp. Ct 4: 8 mths imp. Ct 5: 12 mths imp. Ct 6: 5 yrs 4 mths imp. Ct 7: 3 yrs 4 mths imp. Ct 8: 16 mths imp.  Ct 9: 16 mths imp.  TES 8 yrs imp.  EFP.	Allowed.  TES increased to 11 yrs imp.  At [175]-[179] Sentences imposed for cts 1, 2, 6 and 7 outside range of sound exercise of sentencing discretion.
17.	<i>Hobby v The State of Western Australia</i>  [2009] WASCA 108  Delivered 25/06/2009	24 yrs at time offending.  Convicted after fast-track PG.  No relevant prior criminal record.  Relatively happy and stable upbringing; some difficulties when appellatant 17 yrs relating to death of his mother	Ct 1: Offer to sell/supply amphetamine. <b>Ct 2: Offer to sell/supply MDMA.</b> <b>Ct 3: Offer to sell/supply MDMA 50 tablets.</b> Cts 4-6: Offer to sell/supply cannabis.  <b>Ct 7: Offer to sell/supply MDMA.</b> Ct 8: Offer to sell/supply cannabis. <b>Ct 9: Offer to sell/supply MDMA 490 tablets.</b> <b>Ct 10: Offer to sell/supply MDMA 20 tablets.</b> Ct 11: Offer to sell/supply cannabis 14g. Ct 12: Offer to sell/supply cannabis 56g.	Ct 1: 8 mths imp. Ct 2: 8 mths imp. Ct 3; 16 mth simp. Cts 4-6: 4 mths imp each  Ct 7: 12 mth simp. Ct 8: 6 mths imp. Ct 9: 3 yrs imp.  Ct 10: 16 mths imp.  Ct 11: 6 mths imp. Ct 12: 12 mths imp.	Dismissed.  At [20] MDMA, for purposes of sentencing, as serious as methyl, cocaine and heroin.  At [26] Submissions regarding good character missed the point that general deterrence comes to the fore.  NB: The original sentence was imposed whilst the transitional provisions were in force.

			<p>Ct 13: Offer to sell/supply methyl 84g.  Ct 14: Offer to sell/supply methyl 28g.  Ct 15: Offer to sell/supply methyl 2.25g.  Ct 16: Offer to sell/supply methyl 28 g.  Ct 17: Offer to sell/supply cannabis 28g.  Ct 18: Offer to sell/supply methyl 3.5g.  Ct 19: Offer to sell/supply methyl 53.5g.  Ct 20: Poss methyl wiss 53.5g at 19-21%.</p> <p>Mid-range distributor. Offending period 23 days.  Initially began dealing as a favour on non profit basis but became engaged in dealing for profit at some point - engaged in selling substantial quantities of 3 different drugs.</p>	<p>Ct 13: 4 yrs imp.  Ct 14: 24 mths imp.  Ct 15: 16 mths imp.  Ct 16: 24 mths imp.  Ct 17: 12 mths imp.  Ct 18: 12 mths imp.  Ct 19: 16 mths imp.  Ct 20: 4 yrs imp.</p> <p>TES 7 yrs imp.  EFP.  Limited insight into seriousness of offending.</p>	
16.	<p><i>Nguyen v The State of Western Australia</i></p> <p>[2009] WASCA 81</p> <p>Delivered 7/05/2009</p>	<p>53 yrs at time offending.</p> <p>Convicted after fast-track PG (methyl &amp; heroin).</p> <p>Convicted after trial (MDMA – also acquitted charge supply methyl 1.213kg).</p> <p>Minor prior criminal record. History poly-substance abuse.</p> <p>Poor health (two operations for brain haemorrhage; spinal injuries in car accident resulting in</p>	<p>1 x Poss methyl wiss 138.8g 52-55%.  1 x Poss heroin wiss 55.8g (59%).  <b>1 x Poss MDMA wiss.</b></p> <p>Sentenced on basis commercial trafficker - flew from Sydney to Perth &amp; rented house for sole purpose of dealing.</p> <p>Methyl found in 5 packages in bag in appellant's pocket. Heroin in package on table in centre of bedroom. Also found electronic scales &amp; \$2,110 cash.</p>	<p>5 yrs 6 mths imp.  3 yrs imp.  8 mths imp.</p> <p>TES 6 yrs imp.</p> <p>Minimal insight into illness and illicit substance abuse.</p>	<p>Dismissed.</p> <p>NB: The original sentence was imposed whilst the transitional provisions were in force.</p>

		chronic back pain) - started using drugs as coping mechanism for disability.			
<i>Transitional Provisions Repealed (14/01/2009)</i>					
15.	<i>The State of Western Australia v Higgins</i>  [2008] WASCA 157  24/07/2008	35 yrs at time offending.  Convicted after trial.  Supportive family; dyslexia and ADD (did not contribute to offending).	<b>1 x Poss MDMA wiss 249g 33%.</b>  Dealer for financial gain who only used MDMA "once or twice".  Police found drug's at respondent's home along with \$54,250 and \$2,280 cash;	4 yrs imp.  TES 4 yrs imp.  No remorse.	Allowed.  TES increased 5 yrs 6 mths imp.  NB principles double jeopardy applied to State appeals.  At [14] minor criminal record, good antecedents, employment waiting do not place appellant in a different position to many others who come before courts for this type of offending.  At [19]-[36] review of comparative cases.  At [12] no evidentiary basis to make distinction between MDMA and methyl, amphetamine, heroin and cocaine for sentencing purposes.

<p>14.</p>	<p><i>The State Of Western Australia v Saxild</i></p> <p>[2008] WASCA 156</p> <p>Delivered 24/7/08</p>	<p>21 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Lived with family; had almost completed a 4yr apprenticeship; positive reference from employer;</p> <p>Completed drug/alcohol program at Holyoak.</p>	<p><b>1 x Poss MDMA wiss 171 tablets</b> 50.69g 35-50%.</p> <p>1 x Poss methyl wiss 2g 10-18%.</p> <p><b>1 x Poss MDMA wiss tablets 2.56g.</b></p> <p>1 x Poss methyl wiss 0.73g.</p> <p>Drugs found following search appellant' scar and house - \$9140 cash also found.</p>	<p>18 mths imp each count.</p> <p>TES 18 mths imp susp 18 mths.</p> <p>EFP.</p>	<p>Allowed – SIO set aside.</p> <p>15mths immediate imp each count substituted.</p> <p>TES increased to 15mths imp.</p> <p>NB: double jeopardy applied to State appeals at this time.</p> <p>At [12] whatever motive engaging drug trade, incentives must be weighed against clear and certain understanding that such offences ordinarily result in imprisonment.</p>
<p>13.</p>	<p><i>Bahn v The State of Western Australia and Luu v The State of Western Australia</i></p> <p>[2008] WASCA 40</p> <p>Delivered 28/02/2008</p>	<p>Both appellants convicted after PG – joint indictment with same charges.</p> <p><u>Bahn:</u> 35 yrs at time sentencing.</p> <p>No relevant criminal record.</p> <p>Good work record; offending out of character.</p> <p><u>Luu:</u> 23 yrs at time offending. 27 yrs at time sentencing.</p>	<p>1 x Conspire to sell methyl 2kg.</p> <p><b>1 x Offer to sell MDMA 10,000 tablets.</b></p> <p>1 x Supply heroin 1 kg.</p> <p>Offences part multifaceted course criminal conduct.</p> <p>Arrests result organised crime investigation involving phone intercepts, surveillance and undercover operative.</p> <p><u>Luu:</u> Offending way clearing drug debts and for personal financial gain.</p>	<p>5 yrs imp. 4 yrs imp.</p> <p>8 yrs imp.</p> <p>TES 10 yrs imp.</p> <p>Sentences same for each appellant.</p>	<p>Dismissed.</p> <p>Some summary of comparative cases for each offence in judgement.</p>

		<p>No prior criminal record.</p> <p>Well educated; remorseful; became involved drugs following relationship breakdown; attempts at rehabilitation.</p>	<p><u>Bahn:</u> Amphetamine user and financial difficulties led to offending.</p>		
12.	<p><i>The State of Western Australia v Toothill</i></p> <p>[2007] WASCA 236</p> <p>Delivered 8/11/2007</p>	<p>24 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG - cts 2 and 3 – sentenced 18 mths imp susp 2 yrs each count.</p> <p>Offending ct 1 breached suspended imp above – PG to breach.</p> <p>Convicted after trial - ct 1 (499g).</p> <p>No prior criminal record.</p> <p>Good health, no dependants, good family relations; long standing drug habit (cannabis at 16 yrs, amphetamines 22 yrs).</p>	<p>Ct 1: Poss methyl wiss 499g 78%. <b>Ct 2: Poss MDMA wiss 11.4g.</b> Ct 3: Poss methyl wiss 3.36g 34%.</p> <p>Characterised as low in the distribution hierarchy.</p> <p>Telephone intercepts of co-offender’s mobile. Offender and co-offender tailed by police, offender observed throwing backpack containing 499g of methyl into bushes. Search of offender’s home located drugs subject of counts 2 and 3.</p>	<p>4 yrs 8 mths imp. 18 mths imp. 18 mths imp.</p> <p>TES 4 yrs 8 mths.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Allowed.</p> <p>TES increased 6 yrs imp.</p> <p>EFP.</p> <p>At [39] ‘<i>Having regard to the quantity and purity of the drug involved and the nature and level of the respondent’s participation..the usual range of sentences..is 6 -10 years’.</i></p>
11.	<p><i>Ziino v The State of Western</i></p>	<p>40 yrs at time offending.</p>	<p><b>1 x Supply MDMA 55.26g 32-38%.</b> <b>1 x Poss MDMA wiss 199 tablets 54.9g</b></p>	<p>6 yrs imp.</p>	<p>Dismissed.</p>

	<p><i>Australia</i></p> <p><b>[2007] WASCA 222</b></p> <p>Delivered 13/10/2007</p>	<p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>2 children (shared custody with ex wife); unemployed at time offending but good work history</p>	<p><b>37%</b></p> <p>Mid-level commerciality.</p> <p>Search of property after ongoing police surveillance and phone intercepts.</p>	<p>6 yrs imp.</p> <p>TES 7 yrs imp.</p> <p>EFP after 5 yrs.</p>	<p>At [33] It seems that the severity of the sentence reflected the sentencing judge's assessment of the overall criminality of the applicant's conduct, including that it constituted a course of conduct and that the applicant was at the middle level of the drug commercial hierarchy. In those circumstances, although the sentence was at the higher end of an appropriate range, it was not outside the range.</p>
10.	<p><i>Burke v The State of Western Australia</i></p> <p><b>[2007] WASCA 210</b></p> <p>Delivered 17/10/20/07</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG - cts 2-3.</p> <p>Convicted after trial – ct 1.</p> <p>No prior criminal record.</p> <p>Suffered depression; supportive family; substantial amphetamine habit.</p>	<p><b>Ct 1: Supply MDMA 300 tablets 33%.</b></p> <p><b>Ct 2: Poss MDMA wiss 200 tablets 32%.</b></p> <p>Ct 3: Poss methyl wiss 27.89g 11-46%. Police arrested appellant in car - drugs subject of cts 2 &amp; 3 in DVD case under passenger seat. Then searched appellant's house - located drugs subject of ct 1 in desk drawer. Evidence those drugs ct 1 and ct 2 from same source. \$21,000 cash - admitted was for drugs.</p>	<p>3 yrs 4 mths imp.</p> <p>1 yr 9 mths imp.</p> <p>2 yrs imp.</p> <p>TES 5 yrs 4 mths imp.</p> <p>EFP.</p>	<p>Allowed – relation to ct 3 only.</p> <p>Ct 3 reduced to 1 yr 10 mths but TES appropriate and not reduced.</p>



<p>9.</p>	<p><i>Vagh v The State of Western Australia</i></p> <p>[2007] WASCA 17</p> <p>Delivered 19/1/2007</p>	<p>22 yrs at time offending.</p> <p>Convicted after PG – cooperated with police.</p> <p>No prior criminal record.</p> <p>Strong family support; strict Muslim background; arguments with family over wedding arrangements caused appellant leave home, subsequently became involved in drugs; reconciled with family since arrest.</p>	<p>Ct 1: Poss methyl wiss 133.3g 15-17%. Ct 2: Poss LSD wiss 58 trips. <b>Ct 3: Sold MDMA 98 tablets.</b> 3 x s 32 offences.</p> <p>Extremely serious offending – not isolated incident; commercial aspect.</p> <p>Appellant arranged to sell 98 MDMA tablets to another. Sent person to transact the sale and received \$2350 in return. Search of appellant’s home found 133.3g crystal methyl and 58 LSD trips in jacket in wardrobe.</p>	<p>3 yrs 9 mths imp. 1 yr 8 mths imp. 2 yrs 1 mth imp. s 32 offences 2 mths each ct.</p> <p>TES 6 yrs imp. EFP.</p>	<p>Dismissed.</p> <p>Sentence not disproportionate to overall criminality and not ‘crushing.’ [71]-[72].</p> <p>At [77] ‘As the Sentencing Judge correctly observed, the appellants conduct involved extremely serious offending; it was not isolated, it involved a reasonable amount of dangerous drugs and he played an important role in their distribution.’</p>
<p>8.</p>	<p><i>Samuels v The State of Western Australia</i></p> <p>[2006] WASCA 222</p> <p>Delivered 26/10/2006</p>	<p>33 yrs at time offending.</p> <p>Convicted after trial – 3 ½ yr delay between offending &amp; trial.</p> <p>No previous convictions for similar offences and hadn’t offended since 2001.</p> <p>Member Gypsy Joker motorcycle club.</p> <p>Separated from wife; 2 children.</p>	<p>1 x Poss methyl wiss 25.3g at 34%. <b>1 x Poss MDMA wiss 315.8g at 21%.</b></p> <p>Operating at a level of “mid-level commerciality”.</p> <p>Taskforce established to investigate Gypsy Jokers involvement in the car bomb that killed Don Hancock and a companion. Intelligence from surveillance and phone intercepts led to search of tattoo shop owned by appellant – located drugs.</p>	<p>5 yrs imp. 4 yrs imp.</p> <p>TES 6 yrs imp. EFP.</p>	<p>Appeal dismissed.</p> <p>At [75] characterised this as a case involving drugs at the upper end of seriousness.</p>

<p>7.</p>	<p><i>The State of Western Australia v Marchese</i></p> <p>[2006] WASCA 153; (2006) 163 A Crim R 363</p> <p>Delivered 4/08/2006</p>	<p>24 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Employed; 20mth old daughter;</p>	<p>1 x Poss methyl wiss 27.97g <b>1 x Poss MDMA wiss 2.06g.</b></p> <p>Found in respondent's home; also found cutting agent, clip-seal bags, scales and \$18,000 (half which was admitted to be drug-related), book &amp; electronic organizer containing drug debts owed; respondent admitted dealing drugs for financial motive &amp; denied being addicted.</p>	<p>2 yrs imp. 18 mths imp.</p> <p>TES 2 yrs imp susp 2yrs.</p> <p>PSR positive - insight shown.</p>	<p>Dismissed.</p> <p>Suspended sentence inadequate but not disturbed as appellant spent 8 mths in the community before appeal was decided.</p> <p>NB: Double jeopardy principles applied and exceptional case as State didn't expedite appeal.</p>
<p>6.</p>	<p><i>Dixon v The State Of Western Australia</i></p> <p>[2006] WASCA 255</p> <p>Delivered 28/11/2006</p>	<p>27 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No relevant convictions not the subject of a spent conviction order.</p> <p>Qualified as a welder; working since 2004.</p> <p>Took initial steps to rehabilitate and had powerful motivations for rehabilitation.</p>	<p>1 x Poss methyl wiss 56.17g 4-6%. <b>1 x Poss wiss MDMA 19.3g 21-25%.</b> 1 x Poss 0.02 g LSD.</p> <p>All drugs found in 13 clip-seal bags in appellant's car. Appellant was dealing to support his own drug habit.</p>	<p>3 yrs 2 mths imp. 1 yr 3 mths imp. 3 mths imp.</p> <p>TES 4 yrs 8 mths imp.</p> <p>EFP.</p>	<p>Appeal dismissed.</p> <p>TES proportionate to total criminality of offending at [12].</p>

<p>5.</p>	<p><i>The State of Western Australia v Andela</i></p> <p>[2006] WASCA 77</p> <p>Delivered 19/05/2006</p>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No prior criminal record.</p> <p>Employed full time; positive references.</p> <p>Committed offence to finance \$1200/week cocaine habit – began using marijuana and alcohol at 14 yrs in response to parent’s marital problems. Began using amphetamines to manage weight problem (low self esteem and break-up relationship with girlfriend).</p> <p>Brother convicted drug offences in 2000 – 10 mth imp.</p>	<p><b>1 x Poss MDMA wiss 500 tablets 138.5g 37-42%.</b></p> <p>Organised crime officers searched respondent’s house – found 500 tablets in five lots of 100 wrapped in newspaper in a jacket in his bedroom. Also found \$4350 cash.</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp susp 2 yrs.</p>	<p>Allowed SIO set aside.</p> <p>TES 18 mths imp substituted.</p> <p>NB: principles double jeopardy applied to sate appeals.</p> <p>At [12] ‘Marital and relationship breakdowns and youthful insecurities are common in modern Australian society, They do not justify or excuse criminal conduct.’</p>
<p>4.</p>	<p><i>Attenborough v The State of Western Australia</i></p> <p>[2005] WASCA 132</p> <p>Delivered 05/05/2005</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Co-operated with police.</p> <p>No prior criminal record.</p> <p>Excellent work record; strong community support.</p>	<p><b>1 x Poss MDMA wiss 36 tablets, 8.43g 40%.</b></p> <p>Low end of scale seriousness.</p> <p>MDMA found in appellant’s home - purchased for appellant and her friends for her upcoming 21<sup>st</sup> birthday party. \$3835 cash also located.</p> <p>Appellant did not profit from drugs –</p>	<p>20 mths imp.</p> <p>TES 20 mths imp.</p> <p>Remorseful.</p>	<p>Allowed – SIO imposed.</p> <p>TES reduced 12 mths imp susp for 12 mths.</p>

			absence commercial motive.		
3.	<i>Olomi v The State of Western Australia</i>  [2004] WASCA 304  Delivered 20/09/04	Convicted after fast-track PG.  Committed offence whilst on parole for armed robbery.  Supportive family; partner recently lost baby.	<b>1 x Poss MDMA wiss 247 tablets 53.85g.</b> 1 x Poss methyl wiss 64.48g. s 32 offence: quantity of ammunition, possess of smoking implement.  Found in appellant's home; also found \$3150, set of electronic scales, clip-seal bags and deal book.  Offences committed to maintain a drug habit but also to gain \$30,000.	2 yrs 8 mths imp. 2 yrs 8 mths imp.  Owed 987 days parole – ordered to be served concurrently.  TES 5 yrs 6 mths imp.  Remorse.	Dismissed.
2.	<i>Colangelo v The State of Western Australia</i>  [2004] WASCA 294  Delivered 8/12/2004	23 yrs at time sentencing.  Convicted after PG (not at first available opportunity).  Ct 3 committed whilst on bail for first two counts.  Drug user.	1 x Poss methyl wiss 53.32g at 9-48%. <b>1 x Poss MDMA wiss 74 tablets.</b> 1 x Poss methyl wiss 26.3g at 36%.  Found in appellant's house.  Carried on the business of drug-dealing; "significant drug dealer".	4 yrs imp. 2 yrs imp. 2 yrs imp.  TES 6 yrs imp.  EFP.	Appeal dismissed.  Within range of sentences for this type of offending.
1.	<i>Sinagra-Brisca v The Queen</i>  [2004] WASCA 68  Delivered 7/4/2004	Convicted after fast-track PG – in face strong prosecution case.  Prior drug convictions – poss wiss amphetamines and MDMA (3 yrs imp.)  Good upbringing; stable	<b>Ct 1: Poss MDMA wiss 10 000 tablets, 2.4kg at 27%.</b> Ct 2: Poss methyl wiss 5.06kg at 21 – 50%. Ct 3: Poss methyl wiss 800g at 28 – 70%. Ct 4: Poss MDMA wiss 55 tablets, 14g at 18%.	Ct 1: 17 yrs 6 mths imp. Ct 2: 17 yrs 6 mths imp. Ct 3: 3 yrs imp.  Ct 4: yrs imp.	Dismissed.  Adequate discount for guilty plea, more acceptance of inevitable prosecution than genuine remorse.  No further mitigation required

		<p>employment.</p> <p>Gambling problem; substance abuse problem; very low IQ with significant deficits in verbal cognitive skills (partly due to drug use); lacking social skills.</p>	<p>Significant drug dealer in a well-organised syndicate. Attempted to sell drugs interstate. Arrest came after covert police operation</p> <p>10 000 tablets found in vehicle, subsequent charges resulted from search of properties. Also found \$8000 cash, scales, clip-seal bags, cutting agent.</p> <p>Appellant rented unit in false name for purpose storing and preparing drugs.</p>	<p>TES 20 yrs 6 mths imp.</p> <p>Equivalent to 13 yrs 8 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>for property confiscation, offender failed to lead evidence property sourced from non-drug related funds.</p> <p>TES not disproportionate to conduct.</p> <p>NB: Original sentence imposed before transitional provisions in force.</p>
<p><b><i>Transitional Provisions Enacted (31/08/2003)</i></b></p>					