

# Fraud

s 409 *Criminal Code*

**From 1 January 2021**

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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

agg	aggravated
att	attempt
conc	concurrent
cum	cumulative
ct	count
circ	circumstances
CBO	community based order
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
ISO	intensive supervision order
PG	plead guilty
PSR	pre-sentence report
SIO	suspended imprisonment order
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>Singh v The State of Western Australia</i></p> <p><b>[2023] WASCA 31</b></p> <p>Delivered 14/02/2023</p>	<p>35 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Criminal history; prior convictions of fraud.</p> <p>Born India; youngest of three children; profoundly impacted by death of father 2016.</p> <p>Moved to Australia 2004.</p> <p>Separated; ex-wife only significant relationship; one child; continued to live together; not divorced at time sentencing.</p> <p>Varied work history.</p> <p>Alcohol use; extreme gambling addiction.</p>	<p>Cts 1-8; 10 &amp; 11: Fraud. Ct 9: Property laundering. Ct 12: Preparation for forgery.</p> <p>Mr Kilsby engaged Singh, a software developer, to develop an adult entertainment application suitable for mobile devices (the app). Mr Kilsby had conceived and developed the underlying idea and had registered a patent.</p> <p>Singh made a series of fraudulent representations to Mr Kilsby, including the creation of several fictitious persons and entities, who were purported to be interested in purchasing the app for substantial sums of money.</p> <p>There were a total of 67 cash transfers over a period of almost four yrs.</p> <p>With this conduct Singh defrauded Mr Kilsby and nine other individuals of a total of \$1,462,461.70.</p> <p>None of the money has been repaid.</p>	<p>Ct 1: 4 yrs imp (cum). Cts 2 &amp; 3: 2 yrs imp (cum). Cts 4; 8; 9 &amp; 11: 2 yrs imp (conc). Cts 5-7 &amp; 10: 3 yrs imp (conc). Ct 12: 1 yrs imp.</p> <p>TES 8 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant's offending 'a very serious example of each type of offence'; the offending was serious by the amount he derived through the course of his offending; the duration and persistence of the offending and the level of deception in which he engaged to hide his offending; he went to great lengths to cultivate Mr Kilsby's trust through false representations convincing Mr Kilsby to turn to people who knew and trusted him to secure investment funds.</p> <p>The sentencing judge characterised the fraud offence as highly sophisticated, extensive; deliberate, brazen and sustained and 'nothing short of callous'; the appellant's offending was motivated by greed and not need.</p> <p>The sentencing judge found the seriousness of the offending such that terms of imp were the only justifiable outcome and the fact so many offences had been committed over so many victims over four yrs justified a strong measure of accumulation in his sentence.</p> <p>Offending had profound psychological impact on victims; devastated by the financial losses sustained; some lost their homes or are unable to meet health or other ordinary living expenses.</p> <p>No finding appellant remorseful.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [73] ... a particularly serious example of offending of this kind: ... The appellant's offending was not constituted by the maintenance or repetition of a single continuing false representation. ... He engaged in an elaborate fraudulent scheme involving a series of fictitious persons, companies and documents. He repeatedly manufactured ongoing extensive chains of communication between fictitious persons he had created and Mr Kilsby. ... [He] was motivated by greed ... there can be no doubt that the appellant was aware that Mr Kilsby was not the source of all of the funds being paid towards the purported project ... [He] must have known that at least a substantial part of the funds he obtained from Mr Kilsby ... came from others. ... The appellant's offending has had a devastating effect on his victims. ...</p> <p>At [75] The appellant commenced this offending about two yrs after being convicted of two cts of fraud and about a yr after completing a susp term of imp for that offending. ...</p> <p>At [88] ... the appellant's TES cannot, even arguably, be said to infringe the first limb of the totality principle. The appellant's sentence sits comfortably within the bounds of an appropriate exercise of the sentencing discretion and bears a proper relationship to the overall criminality involved in all of the offences.</p>
2.	<p><i>Houlahan v The State of Western Australia</i></p> <p><b>[2022] WASCA 85</b></p> <p>Delivered</p>	<p>21 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after very late PG (cts 1 &amp; 2) (10% discount). Convicted after trial (cts 7-9).</p>	<p>Ct 1: Steal MV. Ct 2: Fraud. Ct 7: Agg burg. Ct 8: Steal MV. Ct 9: Reckless driving.</p> <p>All offences committed over a period of</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 6 mths imp (conc). Ct 7: 2 yrs 6 mths imp (cum). Ct 8: 15 mths imp (conc). Ct 9: 18 mths imp (cum).</p> <p>TES 5 yrs imp.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned length of individual sentences cts 1, 2 &amp; 9 and totality principle.</p> <p>At [35] As to the sentence imposed on ct 2, having regard to all of the relevant circumstances, including the appellant's PG, ... and the</p>

	19/07/2022	<p>Very lengthy unenviable criminal history; frequently in detention or imprisoned since aged 14 yrs.</p> <p>Dysfunctional upbringing; parents separated aged 7 yrs; raised by mother; tumultuous relationship with father; exposed to alcohol and illicit drugs young age; antisocial behaviours and associations.</p> <p>Mother and sister supportive.</p> <p>Educated to yr 9.</p> <p>Introduced to methyl aged 13 yrs.</p>	<p>15 days.</p> <p>During a burglary, the victim's motor vehicle was stolen. It was not alleged Houlahan had taken part in the burglary. However, he drove the vehicle and put fuel in the vehicle, paying using the victim's debit card. The vehicle was later found damaged. A forensic examination located Houlahan's DNA on the steering wheel. The cost to repair the vehicle was \$2,310.</p> <p>In the early hrs of the morning the victim and his family were asleep in their home. Houlahan broke into the house through a window. He used a pair of socks as gloves. Inside the home he stole items of property, including the keys to a motor vehicle. He then drove the vehicle from the premises.</p> <p>That same morning Houlahan sped past an unmarked police car, who activated the car's lights to pull him over. He did not stop. When police activated both lights and sirens, he accelerated away from the pursuing police car. He drove in excess of 45 km p/hr over the speed limit in order to evade the police. At certain points he reached speeds of between 155 km p/h and 160 km p/hr. He also drove through a number of major intersections at high speed and on the incorrect side of the road. Police deployed a stinger device, which Houlahan deliberately evaded.</p> <p>At one point Houlahan stopped to let a passenger out of the vehicle.</p> <p>Eventually the vehicle came to rest against a tree. Houlahan ran from the vehicle and hid. He was eventually located by police.</p>	<p>EFP.</p> <p>MDL disq for life.</p> <p>The sentencing judge found the appellant's offending 'very serious'; he drove on suburban streets, often at extreme speeds, posing a very real danger to others and showing a total disregard for other road users; the agg home burglary was particularly serious, it occurred at night when people were in the house.</p> <p>The sentencing judge found the appellant had a continuing and entrenched disobedience of the law in very serious ways; nothing to indicate on the path to rehabilitation.</p> <p>Financial loss and great inconvenience caused to victims.</p>	<p>modest amount [he] defrauded, the sentence of ... imp was not manifestly excessive, bearing in mind that [he] used the petrol he obtained by fraud to enable him to continue driving the stolen vehicle.</p> <p>At [36] As to the sentence imposed on ct 9, the submissions of the appellant substantially understate the seriousness of the offence. While the offence lasted between six and 10 min, it involved a very determined and sustained att to evade arrest. He was driving a stolen car and at one point had a passenger in the vehicle. In doing so [he] drove with extreme speed on a major highway and suburban streets in a manner which put the lives and safety of other road users in jeopardy. The driving involved a selfish disregard for the safety of others. ...</p> <p>At [44] In the present case, her Honour was correct to accumulate some of the sentences to properly reflect the appellant's overall criminality which encompassed five distinct offences in two separate incidents committed over a 15-day period. ... The TES was an appropriate reflection of the appellant's overall criminality, ...</p>
1.	<b><i>NHI v The State of Western Australia</i></b> <b>[2021] WASCA 32</b>	<p>38 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p>	<p>Cts 1-4: Fraud.</p> <p>NHI and Mr L created a company for the purpose of securing bank loans to purchase and develop four blocks of</p>	<p>Ct 1; 3-4: 16 mths imp (conc). Ct 2: 16 mths imp (cum).</p> <p>TES 2 yrs 8 mths imp.</p>	<p>Allowed.</p> <p>Appeal concerned totality principle and length of cooperation discount.</p> <p>Resentenced:</p>

	<p>Delivered 25/02/2021</p>	<p>20% discount for past and future cooperation.</p> <p>Minor criminal history; road traffic offences only.</p> <p>Parents very hardworking, rarely present; as a result lived with extended family; often responsible for caring for his younger siblings.</p> <p>Aged 27 yrs when parents separated; experienced stress and anxiety resulting from dealing with family's major financial decision.</p> <p>Living with his mother at time of sentencing.</p> <p>Two long-term relationships; marriage ended due to the offending and his mental health; seven children; continues to support and provide for his family financially.</p> <p>Completed yr 12 and first yr of a business degree.</p> <p>Employed various jobs; real estate agent time offending; purchased a real estate agency; the company ran at a loss and eventually declared bankrupt; since gained work outside real estate industry.</p> <p>Mental health issues; history of anxiety, depression and stress; diagnosed with ADHD and bipolar disorder.</p> <p>History of drug and alcohol misuse; commenced using cannabis in high school; daily use at university; ceased using cannabis and commenced using alcohol excessively; adverse impact on his employment and</p>	<p>land. Mr L was appointed the company's sole director.</p> <p>NHI and Mr L falsified various documents in a loan application to obtain the funds for the purchase in Mr L's name. These documents created a misleadingly positive impression of Mr L's financial position.</p> <p>NHI facilitated a meeting with a broker and subsequently provided the documents, he knew to be false, to the broker. He was aware throughout the loan application process that Mr L was having financial difficulties.</p> <p>The bank approved four loans of \$216,000 to purchase the land. Each loan was secured by a mortgage over the respective block of land.</p> <p>The development of the land never occurred, and the bank subsequently exercised its rights as mortgagee and sold all four blocks.</p> <p>The loans would not have been made without NHI's and Mr L's dishonest activity and, had the development been successful, NHI would have benefited by earning a commission from the sales of the developed properties as the real estate agent.</p>	<p>EFP.</p> <p>The sentencing judge found the appellant's offending involved a significant level of deception; the fraudulent activity was persistent and premeditated; it occurred over a period of time and involved dealing with a mortgage broker who was dealing with financial institutions.</p> <p>Genuinely remorseful; substantial steps taken towards rehabilitation; undertaking to give evidence against Mr L; attending counselling to address his mental health and relationship issues at time sentencing; low risk of reoffending.</p>	<p>Ct 1: 14 mths imp (cum). Ct 2: 10 mths imp (cum). Cts 3 &amp; 4: 14 mths imp (conc).</p> <p>TES 2 yrs imp. EFP.</p> <p>At [53] ... the appellant's assistance was, ..., limited to identifying the co-offender of the offence the appellant committed – it did not extend to assisting the prosecution of other offences. Also, the appellant's cooperation did not place his welfare at risk, .... In all the circumstances, ... we are not satisfied that the discount of 20% for the appellant's cooperation is so low as to reveal implied error.</p> <p>At [63]-[64] ... the appellant's offending is agg by its persistence. His offending involved the creation of several false documents and a course of conduct extending over a period of more than two mths. ... Nevertheless, we are persuaded that the total effective term ... was, in all the circumstances, so high as to reveal error. ...</p> <p>At [66] ... the appellant had provided substantial past assistance and promised substantial future assistance ... while the 20% discount was not to be directly applied to the TES, the appellant's substantial cooperation called for a significant further reduction in the TES that would otherwise have been appropriate.</p>
--	---------------------------------	--	---	--	--

		relationships.			
<i>Transitional provisions repealed (14/01/2009)</i>					
<i>Transitional provisions enacted (31/08/2003)</i>					

Office of the Director of Public Prosecutions