

Stealing as a servant or public servant

ss 378(6) and 378(7) *Criminal Code* or analogous instances of stealing

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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	attempted
burg	burglary
conc	concurrent
cum	cumulative
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
susp	suspended
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>Lambert v The State of Western Australia</i></p> <p>[2021] WASCA 199</p> <p>Delivered 30/11/2021</p>	<p>44 yrs time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>No prior criminal history.</p> <p>Married; dysfunctional relationship with her husband; in poor financial position; no home equity and significant debts.</p> <p>Gambling addiction well before offending commenced; significant mental health issues; depression; anxiety, self-esteem and self-worth.</p>	<p>4 x Stealing as a servant.</p> <p>Lambert was employed as a bookkeeper. She was responsible for accounts payable and for the employee payroll, leave and superannuation entitlements.</p> <p>Lambert used two different methods to steal from her employer over a period of about two yrs. Each ct alleged a single offence of stealing by way of a general deficiency and all of the cts comprised more than 300 discrete transactions.</p> <p>The total amount stolen was \$1,157,555.46.</p> <p>The first method involved deliberately overpaying her own wages and making false payments of wages in the name of her husband, who had previously worked for the company. Using this method she stole \$66,755.69 (ct 1) and \$131,254.23 (ct 3).</p> <p>The second method was more elaborate. Lambert was responsible for paying people and entities who supplied goods or services. When an invoice was received she entered the invoice into the accounting system for payment. However, instead of paying the supplier she arranged for an amount greater than that legitimately invoiced by the supplier to be paid into her own bank accounts. She would then send the legitimate amount to the supplier from her own bank accounts and retain the difference between the inflated amount and the legitimate amount. Using this method she obtained \$472,871.86 (ct 2) and \$486,673.68 (ct 4).</p> <p>The money stolen by Lambert was gambled and lost at casinos in Perth and Melbourne.</p>	<p>Ct 1: 18 mths imp (cum). Ct 2: 3 yrs imp (cum). Ct 3: 3 yrs imp (conc). Ct 4: 3 yrs imp (conc).</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offences fell ‘towards the high end of the range of seriousness’ and the offending required a ‘degree of sophisticated planning’.</p> <p>Insight into her offending; expressed shame and remorse; no reparation made and no prospect of any reparation.</p> <p>Excellent prospects of rehabilitation; steps taken to overcome her gambling addiction and mental health problems; low risk of reoffending, however if employed in a position with financial responsibility at risk of reoffending given her vulnerability to gambling.</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle.</p> <p>At [50] ... the objective facts and circumstances of the appellant’s overall offending were, no doubt, very serious. ... The offending involved a degree of sophistication and planning. No restitution has been made.</p> <p>At [52] In our opinion, ... the TES ... was not unreasonable or plainly unjust.</p>