

# Possess cocaine 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
PG	plead guilty
PNG	plead not guilty
ct	count
SIO	suspended imprisonment order
immed	immediate
CBO	community based order

## Weight of cocaine: above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<i>Tricoli v The State of Western Australia</i>  [2011] WASCA 74  Delivered 4/04/2011	32 yrs at time sentencing.  Convicted after PG at earliest opportunity.  No prior criminal record.  Stable family; good employment history; single; educated to yr 12.  Began using cocaine in 2008 after break-up of relationship	<b>1 x Poss cocaine wiss 436.59g at 68%.</b> 1 x Poss unlawfully obtained property.  Sentencing judge found appellant to be 'in the upper level of the business enterprise' – cocaine held at his house, involved in supply and taking of money (not simply holding it for another party).  Appellant did not profit financially from sale of cocaine but was supplied with cocaine in exchange for involvement.	6 yrs imp. 3 mths imp.  TES 6 yrs imp.	Dismissed -leave refused on papers (only sentence in relation to cocaine challenged).  At [5] poss large quantity cocaine often attract up to 10 yrs imp - amount in this case is 'large' quantity.  At [9] not entitled to lesser sentence on grounds drug addict.
13.	<i>Penney v The State of Western Australia</i>  [2011] WASCA 71  Delivered 23/03/2011	37 yrs at time offending. 38 yrs at sentencing.  Convicted after PG.  No relevant prior criminal record.  Mental disorder – relevant to risk re-offending not culpability.  Excellent work record.  Used 3.5 g methyl and 5 g cocaine each day.	<b>1 x Poss cocaine wiss 3.09kg at 64%.</b> 1 x Poss methyl wiss 5.76 kg at 10 – 12%.  3 x s 32 offences.  More than a courier but not the 'principal' in the distribution network. Primary motivation to pay off debts – commercial gain.  Vehicle (hire car from Sydney) stopped by police driven by associate of the appellant, appellant asleep in the vehicle. Searched vehicle finding drugs in scuba diving equipment and keys that opened a factory and a caravan. Heat sealing machines, heat seal bags, digital scales, boxes of rubber gloves, face mask, elastic bands,	9 yrs imp. 4 yrs imp.  18 mths; 1 mth; 1 mth imp.  TES 13 yrs imp.  EFP.  Low risk of re-offending; evidence of remorse and acceptance of personal responsibility	Dismissed.  Sentence high but within sound range.

			envelope, Alinta gas account addressed to appellant, filter components from an air extractor unit, 2 hard covered books containing figures, money counting machine and \$854,550 cash.		
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
12.	<p><i>Ngo v The State of Western Australia</i></p> <p>[2007] WASCA 221</p> <p>Delivered 19/10/2007</p>	<p>Convicted after early PG – did not identify friend holding drugs for (fearful of retribution to himself and family).</p> <p>Offending breached susp sentence for poss amphetamine paste 25.2g at 18% (2 yrs 6 mths susp 2 yrs).</p> <p>At time offences had fulltime job; de facto relationship and twin boys (6 yrs at time sentence).</p> <p>Arrived in Australia at 15yrs as refugee and fell in with wrong crowd; addiction to drugs; attempts to overcome addiction.</p>	<p><b>1 x Poss cocaine wiss 490g at 68-74%.</b> 1 x Poss heroin wiss 10g at 18%.</p> <p>Characterised as large scale drug user, dealing to support habit.</p> <p>Appellant’s house searched – two plastic bottles hidden in vent in bathroom. Appellant stated they contained cocaine and he was keeping them for a friend. Heroin located separately and appellant stated for own use and payment for looking after bottles.</p>	<p>6 yrs 6 mths imp. 3 yrs imp.</p> <p>20 mths imp imposed for breach.</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>Evidence of remorse.</p>	<p>Dismissed - sentences severe but in range</p> <p>At [16] heroin and cocaine both at top drug hierarchy.</p> <p>At [27]-[28] ‘...<i>vital cog in the wheel of distribution...holding of cocaine was part of a distribution network and constituted criminality of the most serious kind.</i>’</p> <p>At [31] heroin and methyl in same category prohibited drugs, affirming <i>Darwell</i> (1997) 94 A Crim R 35.</p> <p>At [36] Court of Appeal can not intervene on basis mercy.</p>
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					

## Weight of cocaine: 3 – 65 grams

	Case	Antecedents	Summary/Facts	Sentence	Appeal
11.	<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 u 18 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>Ct 1: supply MDMA – 20 tablets. <b>1 x Poss cocaine wiss 27.8g at 28%.</b></p> <p>s 32 notice offences: 3 x deal prohibited drug.</p> <p>Characterised as courier for reward.</p> <p><u>Ct 1:</u> Respondent supplied 20 MDMA tablets to an associate.</p> <p><u>Ct 2:</u> 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><u>s 32 offences:</u> 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 immed imp.</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] '<i>... drug dealers will not receive a suspended sentence unless the seriousness of the circumstances fall at the very low end of the scale.</i>'</p>
10.	<p><i>The State of Western Australia v Johnson</i></p> <p>[2010] WASCA 187</p> <p>Delivered</p>	<p>23 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>No relevant prior criminal record.</p> <p>Stable employment; good character; positive steps towards rehabilitation; stable and supportive upbringing;</p>	<p>Ct 1: Offer to supply cocaine 7g. Ct 2: Supply cocaine 3.5g. Ct 3: Supply cocaine 27.8g at 28%. <b>Ct 4: Poss cocaine wiss 64.74g at 39%.</b></p> <p>Sentencing Judge found offender mid to upper level drug dealer who had access to large quantities of drugs – commercial motivation. Police stopped respondent and searched vehicle.</p>	<p>8 mths imp. 12 mths imp. 30 mths imp. 40 mths imp.</p> <p>TES 4 yrs 4 mths imp susp 2 yrs.</p> <p>EFP.</p>	<p>Allowed in part - SIO quashed but sentences not altered.</p> <p>TES 4 yrs 4mths immed imp substituted.</p> <p>At [25] Youth and absence prior convictions do not</p>

	<p>21/09/2010</p> <p>NB: supplier of drugs for <i>Buck</i> [2010] WASCA 188.</p>	<p>significant number positive references.</p>	<p>House then searched. When police arrived at house, appellant's girlfriend in her car in the driveway – drugs subject ct 4 found in her car. Girlfriend knew of respondent's arrest and attempted to remove drugs from his house. Police found cutting agent, tick lists and \$8,225 cash at house.</p> <p>No evidence to suggest any portion drugs for appellant's personal use.</p>	<p>Remorseful; low risk re-offending.</p>	<p>usually result in suspended sentence for drug offences.</p> <p>At [25] many youthful offenders, after being charged, taken steps towards rehabilitation and not significant risk re-offending – immed imp reflects general deterrence required given prevalence this type offending among young people.</p> <p>At [26] offending too serious to allow for suspension.</p>
8.	<p><i>McDougall v The State of Western Australia</i></p> <p>[2009] WASCA 232</p> <p>Delivered 22/12/2009</p>	<p>27 yrs at time offending.</p> <p>Convicted after trial – admitted cocaine was his during police interview, however PNG asserting admission was a false confession enabling partner to be discharged from custody to care for children.</p> <p>No prior relevant criminal record.</p> <p>Stable family life; good employment history.</p>	<p><b>1 x Poss cocaine wiss 28.1g at 67%.</b></p> <p>Characterised in sentencing as mid-level user/prospective dealer (conceded by sentencing counsel for appellant).</p> <p>Police executed search warrant at property where appellant lived with partner and child. Located clip seal bag.</p> <p>None of usual paraphernalia associated with dealing found by police (ie no scales, no clipseal bags, no large sums cash, no mixing or cutting agents).</p> <p>No evidence at trial appellant was cocaine user or that cocaine for personal use.</p>	<p>4 yrs 6 mths imp.</p> <p>TES 4 yrs 6 mths imp.</p>	<p>Dismissed – sentence at high end but not outside range.</p> <p>At [15] ‘...because significant weight is given to considerations of deterrence for drug trafficking offences, reduced weight is given to matters personal to the offender.’</p> <p>NB Original sentence, upheld by Court of Appeal, was imposed</p>

					whilst the transitional provisions were in force.
<b>Transitional Provisions Repealed (14/01/2009)</b>					
7.	<b><i>The State of Western Australia v Hatch</i></b>  [2008] WASCA 162  Delivered 1/08/2008	48 yrs at time PSO imposed.  Convicted after PG.  Prior criminal record – incl poss drug convictions.  Entrenched drug user – on methadone at time offending.  Single parent with 4 children, including disabled son aged 14yrs and 19yr daughter recently given birth to twins.	1 x Poss heroin wiss 4.2g at 26%. 1 x Poss methyl wiss 3.4g at 21%. 1 x Poss methyl wiss 11.45g at 24%. <b>1 x Poss cocaine wiss 6.38g at 80%.</b> 1 x Supply heroin .04g.  Drug dealer at a relatively high level.  Police searched respondent’s car and home. Found drugs subject first 4 charges and other indicia of commercial distribution. (first 4 charges) While on bail for first 4 charges, house searched again – police found .04g of heroin.	PSO imposed on 06/03/2008.  Spent 234 days in custody prior PSO.  Respondent admitted to taking prohibited drugs after being released on bail for these offences, showed little insight into her current offences and seemed to place the majority of the blame on outside sources’	Allowed – remitted to DC for sentencing – imposition PSO an error.  At [22] not open to sentencing judge to conclude that if respondent complied with PSO she might not impose term of imprisonment – relevant sentencing principle together with serious nature and circumstances of offending meant immed imp only appropriate option.
6.	<b><i>Cohen v The State of Western Australia [No 2]</i></b>  [2007] WASCA 279	53 yrs at time sentencing.  Convicted after trial - co-operated by making certain admissions and reducing length trial.  Prior criminal record – drug trafficking	Ct 1: Poss methyl wiss 1.68g at 19%. Ct 2: Poss methyl wiss 164g at 19%. <b>Ct 3: Poss cocaine wiss 13.5g at 30%.</b> Ct 4: Poss methyl wiss 1.64g at 19%.  Came to attention of police through telephone intercepts. Car searched and drugs subject ct 1	Ct 1: 1 yr imp. Ct 2: 8 yrs imp. Ct 3: 7 yrs imp. Ct 4: 2 yrs imp.  TES 9 yrs imp.	Allowed - primarily on ground that confiscation of lawfully acquired house (inherited from mother and worth more \$1,000,000) not originally taken into account as

	Delivered 18/12/2007	convictions.  Not a drug addict, motivated solely by greed – carried on drug trafficking business.	found concealed in car's air-conditioning duct. Apartment subsequently searched – rubber gloves, clipseal bags and dextrose (cutting agent methyl) found, as well as \$100,000 cash. Empty apartment next door also searched – drugs subject cts 2 & 3 found. House then searched – drugs subject ct 4 found.	EFP.	mitigating factor given sentence cts 2 & 3 are at upper end of range.  TES reduced 7 yrs 6 mths.  At [21] possibility deportation alone not mitigating factor.
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					
5.	<b><i>Kirby v The Queen</i></b>  [2003] WASCA 164  Delivered 31/07/2003	40 yrs at time offending.  Convicted after early PG.  Prior criminal record of serious drug convictions.	<b>1 x Poss cocaine wiss 4.85g at 25%.</b> 1 x Poss amphetamine wiss 3.168kg at 9-10%. 3 x s 32 offences (not drug related).  Characterised as being involved in commercial drug dealing. Appellant stopped and searched while riding motorbike. Initially co-operated but became aggressive when police wanted to search underpants. Appellant ran from police and was seen to remove something from his pants and throw it away. Appellant detained and drug dog found clipseal bag containing white powder in vegetation. Also found \$928 cash on appellant in search.  Appellant's property then searched – found Tupperware container buried near water tank adjacent to the house. Container had 7 vacuum sealed bags inside (3.168kg amphetamine). Also found amphetamine residue in bags in bin, on kitchen sink and bench and on set scales found. Police also found \$363,700 cash buried in 5	4 yrs imp. 9 yrs imp. 6 mths; 3 mths; 3 mths.  TES 9 yrs imp. Equivalent to 6 yrs imp after enactment transitional provisions.  EFP.	Dismissed – within proper range.'  At [144] “ <i>Courts must impose sentences which will operate as a real deterrent to those who may be minded to involve themselves in the business of drug dealing</i> ’.  At [150] cocaine and amphetamine in highest category of drugs for sentencing purposes.

			different spots on the property, unlicensed ammunition and firearms.		
4.	<p><b><i>Brittain v The Queen</i></b></p> <p><b>[2001] WASCA 92</b></p> <p>Delivered 23/03/2001</p> <p><b>[2001] WASCA 117</b> (re-sentencing after leave granted in [2001] WASCA 92)</p> <p>Delivered 12/04/2001</p>	<p>Convicted after trial.</p> <p>Significant period of rehabilitation between commission of offence and sentencing – including 25 drug and alcohol free urine samples and active engagement in programs at Palmerston Centre.</p> <p>Self employed and working long hours – business being carried on by fiancée while appellant imprisoned.</p>	<p><b>1 x Poss cocaine wiss 27.7g 33%.</b></p> <p>1 x Poss MDMA wiss 29.37g 34-41%.</p> <p>s 32 convictions:</p> <p>1 x Poss methyl 4 tablets 1.5%.</p> <p>1 x Poss methyl 0.15g 14% &amp; 0.3g 2.1%.</p> <p>Working in nightclub at time of offences – paid \$3000 for drugs above. Arrested after seen attending premises of drug dealer who was under police surveillance.</p> <p>Issue as to how much was for personal use and how much for sale. Evidence showed appellant had been spending large amounts own money on drug habit.</p>	<p>7 yrs imp.</p> <p>7 yrs imp.</p> <p>6 mths imp.</p> <p>6 mths imp.</p> <p>TES 7 yrs imp.</p> <p>Equivalent to 4 yrs 8 mths imp after implementation of transitional provisions.</p>	<p>Allowed in part – sentences reduced but not suspended.</p> <p>TES reduced to 3 yrs imp.</p> <p>At [26] impeccable efforts at rehabilitation but offending too serious to suspend term.</p>
3.	<p><b><i>Giannopoulos v The Queen</i></b></p> <p><b>[2000] WASCA 396</b></p> <p>Delivered 13/12/2000</p>	<p>33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>History substance abuse (using 2-3g cocaine per day and had health problems as result) – self referred for detox but progress in program unsatisfactory.</p> <p>Married with 3 yr old child and another baby on way; good work history; numerous positive references.</p>	<p><b>1 x Poss cocaine wiss 24.8g at 20%.</b></p> <p>1 x Poss amphetamine wiss 12.8g at 3.5%.</p> <p>1 x Poss cannabis wiss 451g leaf.</p> <p>Amphetamine and cocaine found in appellant's car. Appellant maintained for personal use but jury rejected and found intent to sell. Due to purity and addiction, sentencing judge sentenced on basis not commercial dealer but still intended sell/supply two destructive drugs.</p>	<p>5 yrs imp.</p> <p>3 yrs imp.</p> <p>6 mths imp.</p> <p>TES 5 yrs imp.</p> <p>Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>Dismissed.</p>

2.	<p><b>"S" v The Queen</b></p> <p><b>[2000] WASCA 34</b></p> <p>Delivered 28/02/2000</p>	<p>53 yrs at time sentencing.</p> <p>Convicted after PG at earliest opportunity – co-operated with police at risk to own safety and letter of comfort before sentencing judge (information provided led to conviction of person of poss wiss 180g heroin – received 6 yrs imp).</p> <p>Prior criminal record – incl poss cannabis; 22 stealing offences; numerous fraud convictions; breach CBO; traffic offences.</p> <p>Married with young child.</p>	<p><b>1 x Poss cocaine wiss 18.29g 70-75%.</b> 2 x Poss heroin wiss 58g &amp; 22g 70-75%.</p> <p>Appellant stopped while driving car – 58g heroin found. House then searched – 22g heroin and 18.29g cocaine found behind loose brick in cavity wall. Appellant claimed holding drugs as security for repayment of \$10,000 loan he had made to another person. That person not apprehended – alleged to have fled overseas.</p> <p>On appeal, appellant admitted in process delivering drugs to third party – retracting earlier explanation.</p>	<p>6 yrs imp. 6 yrs imp each count.</p> <p>TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions.</p>	<p>Allowed – inadequate recognition assistance to police and early PG.</p> <p>Sentences reduced to 5 yrs (cocaine) and 3 yrs and 2 ½ yrs (heroin).</p> <p>TES reduced to 5 yrs imp.</p> <p>At [13] ‘... it has been accepted that prison sentences of between 7 and 10 years represent the range of punishment for possession of around 100 grams of heroin/cocaine of high purity – anything above about 55%.’</p>
1.	<p><b>Thurling v The Queen</b></p> <p><b>[2000] WASCA 271</b></p> <p>Delivered 22/09/2000</p>	<p>25 yrs at time sentencing.</p> <p>Prior criminal record – poss wiss offences of 5 different drugs (LSD, cannabis, amphetamine, heroin and MDMA); served term imp previously for drug offences.</p> <p>While on bail for offences subject of appeal, appellant charged, and was subsequently convicted of, two further</p>	<p><b>1 x Poss cocaine wiss 16g.</b> 1 x Poss LSD wiss five dots.</p> <p>Characterised as dealing for profit – no evidence that appellant had cocaine addiction.</p>	<p>5 yrs imp. 12 mths imp.</p> <p>TES 5 yrs imp. Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions.</p>	<p>Dismissed.</p> <p>At [5] cocaine regarded in the same light as heroin. Personal circumstances and antecedents have little mitigatory force.</p>

		<p>drug offences (poss amphetamine and heroin).</p> <p>In 14 mths prior to trial appellant given up heroin, moved away from scene offences (Kalgoorlie) to Perth and secured part-time employment.</p> <p>Support of parents and partner.</p>			
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Office of the Director of Public Prosecutions