

Fraud

s 409 *Criminal Code*

Prior to 1 January 2014

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
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
29.	<p><i>Wilhelm v The State of Western Australia</i></p> <p>[2013] WASCA 273</p> <p>Delivered 29/11/2013</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record in NSW & WA; apart from one stealing as a servant in NSW, both records limited to non-recent minor traffic offences.</p> <p>Parents separated when 9 yrs; Estranged from father.</p> <p>Left school after Year 11; Employed in Navy for 6 yrs; Discharged because he stole navy property.</p> <p>Failed marriage.</p> <p>The offences had been committed 6-8 years before sentencing; proceedings delayed as a result of appellant fleeing the jurisdiction for 5 ½ years.</p>	<p><u>Indictment 727 of 2012</u> Fraud x 3</p> <p><u>Indictment 810 of 2012</u> Possess child pornography x 7</p> <p><u>Section 32 Notice (facts not recited)</u> Steal MV x 2 Fraud x 21 No MDL x 2 Stealing x 1 Breach of Bail x 1 Exceed speed limit x 1 Fail to stop x 1 Reckless driving x 1 False number plates x 1</p> <p><u>Indictment 727 of 2012</u> The victim agreed to sell to the appellant his motor vehicle. The appellant paid a \$200 deposit and took possession of the vehicle. The appellant on sold the vehicle to two other persons without each other's knowledge. The victims never received delivery of the vehicle.</p> <p>The appellant then assisted another with the purchase of a motor vehicle. The victim gave money to the appellant in anticipation of the purchase. The appellant used the money for his own purposes.</p> <p>Each victim sustained significant financial loss and expense.</p>	<p><u>Indictment 727 of 2012</u> TES 2 yrs 8 mths imp.</p> <p><u>Indictment 810 of 2012</u> TES 6 mths imp.</p> <p><u>Section 32 Notice</u> TES 2 yrs imp. MDL disq 6 yrs 6 mths. Fine \$2,900.</p> <p>TES 5 yrs 2 mths imp.</p> <p>EFP.</p> <p>No remorse and no real insight into his offending; Externalised blame for the fraud offences onto his former partner.</p> <p>Low risk of violent sexual offending.</p> <p>Sentencing judge noted child pornography offences as being 'not of a high level of objective seriousness'.</p>	<p>Allowed.</p> <p>Indictment 727 of 2012 orders for cumulacy on Ct 3 set aside and served conc with Ct 2; Re-sentenced to 22 mths imp.</p> <p>Indictment 810 of 2012 order for cumulacy Ct 5 set aside & each term of imp be wholly conc with Indictment 727 of 2012.</p> <p>Section 32 notice not interfered with.</p> <p>Re-sentenced to TES 3 yrs 10 mths imp.</p> <p>EFP.</p> <p>Driver's licence disqualification was conceded by respondent. MDL disq substituted with 4 yrs 6 mths.</p> <p>At [46] The appellant's overall offending was multifaceted and serious. There is no question that it warranted a significant</p>

			<p><u>Indictment 810 of 2012</u> Police executed a search warrant at the appellant's home address. Police located 24 printed images of child pornography. Police also seized 111 CDs. Altogether, police discovered 762 images and 17 videos that constituted child pornography.</p>		<p>term of imprisonment.</p> <p>At [49] Child pornography offences ... not as bad as others. His Honour may not have imposed terms of immediate imprisonment had he been dealing with these offences alone.</p> <p>At [52] ... The total sentence of imprisonment was unjust and unreasonable. It was more than was required to satisfy sentencing objectives.</p>
28.	<p><i>Kelly v The State of Western Australia</i></p> <p>[2013] WASCA 200</p> <p>Delivered 28/08/2013</p>	<p>25-26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal record; predominately traffic offences; Convictions for creating false belief and fraud.</p> <p>Long history of cannabis abuse.</p> <p>Committed Ct 8 whilst on bail.</p> <p>The appellant had continued to lie to the</p>	<p>Ct 1: Fraud. Ct 2: Att to pervert the course of justice. Ct 3: Fraud. Ct 4: Fraud. Ct 5: Fraud. Ct 6: Fraud. Ct 7: Fraud. Ct 8: Att fraud.</p> <p>The appellant created false documents and identification as proof of employment, financial status and identity to obtain finance, motor vehicle loans, insurance and lease agreements.</p> <p>The appellant also appeared as the respondent in the Magistrates Court for the recovery of unpaid rent. The amount claimed was \$3,300. The appellant represented himself using the false details in which he had been granted a lease. The appellant provided</p>	<p>Ct 1: 1 yr imp (conc). Ct 2: 1 yr 8 mths imp (cum). Ct 3: 8 mths imp (cum). Ct 4: 1 yr imp (conc). Ct 5: 8 mths imp (conc). Ct 6: 1 yr imp (conc). Ct 7: 8 mths imp (conc). Ct 8: 8 mths imp (cum).</p> <p>TES 3 yrs imp.</p> <p>EFP.</p> <p>No remorse or contrition; Limited insight into the gravity of his conduct.</p>	<p>Dismissed – on papers.</p> <p>At [86] The offence of attempting to pervert the course of justice was serious. The appellant intentionally deceived the magistrate in relation to his true identity. He handed to the magistrate false documents ... The main sentencing factors were appropriate punishment and personal and general deterrence.</p> <p>At [87] The fraud offences committed by the appellant were also serious. They</p>

		Consultant Psychiatrist and PSR Author; Submitted letter to judge containing 'half-truths'.	altered documentation to the Court showing payments were up to date. He also provided answers to questions that were untrue. As a result the proceedings against him were dismissed.	<p>Sentencing judge found each count involved an elaborate 'scam' and the 'extent of the forgeries [was] serious, usually involving very important proof of identification, but otherwise proof of employment and so on'.</p> <p>Late concession by the appellant that he was a 'pathological liar and finds he has to lie all the time'.</p> <p>Judge found he was 'maintaining an inflated lifestyle ...' Was 'a deliberate, calculating and fundamentally dishonest person'.</p>	were premeditated, planned and committed over a period of time.... Altering the identification documents involved a degree of sophistication....
27.	<p><i>Miles v The State of Western Australia</i></p> <p>[2013] WASCA 156</p> <p>Delivered 28/06/2013</p>	<p>40 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Lengthy and significant criminal history including many dishonesty offences and violence; repeat offender in respect to home burglary.</p> <p>Difficult upbringing;</p>	<p><u>Indictment</u></p> <p>1 x Agg burg.</p> <p><u>Section 32 notice</u></p> <p>1 x Stealing.</p> <p>1 x Att fraud.</p> <p>1 x Fraud.</p> <p>1 x Common assault.</p> <p>1 x Giving false details.</p> <p><u>Indictment:</u></p> <p>The appellant entered the victim's house and was confronted by the 71 yr old victim. He telephoned</p>	<p><u>Indictment</u></p> <p>22 mths imp cum.</p> <p><u>Section 32 notice</u></p> <p>3 mths imp.</p> <p>2 mths imp.</p> <p>4 mths imp cum.</p> <p>3 mths imp cum.</p> <p>1 mth imp.</p> <p>TES 29 mths imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>TES did not infringe first limb of the totality principle.</p> <p>At [17] ... Householders are entitled to feel that they and their property will be safe in their home. The type of offending engaged in by the appellant</p>

		<p>childhood marred by domestic violence and sexual abuse; left home at 13 yrs; addiction to illicit drugs since teenage years.</p> <p>Suffers from epilepsy, depression and bipolar disorder.</p> <p>Former partner died in 2011.</p> <p>At time of offending on methadone program.</p>	<p>police who attended and found the appellant standing in front of the victim's house. She made no attempt to flee on becoming aware that he police had been called.</p> <p><u>Section 32 notice:</u> The victim had lost his wallet including credit cards. The appellant found the wallet and a short time later used one of the cards in an attempt to buy items from a shop. The transaction was declined. Undeterred the appellant went to another shop where he purchased items. The transaction was accepted.</p> <p>The appellant went to a post office to obtain money via transfer. The appellant was unable to produce any photo ID and payment was declined. The appellant became aggressive and abusive. She pushed the victim, struck her to the face and then pushed her again.</p> <p>After her arrest for the agg burg she provided police with false details.</p>	<p>Credit for 5 mths on remand.</p> <p>Remorse.</p> <p>Since incarceration completed drug rehabilitation and other courses.</p>	<p>undermines this confidence.</p> <p>At [19] The appellant's behaviour in the post office was totally inexcusable and unreasonable. The complainant was simply doing her job and was assaulted because of it. Sentences for assaults in such situations should reflect the need to protect those serving the public from this kind of behaviour.</p>
26.	<p><i>The State of Western Australia v Chapman</i></p> <p>[2012] WASCA 203</p> <p>Delivered 15/10/2012</p>	<p><u>Chapman</u> 48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Tertiary qualifications; excellent references and employment history.</p> <p>Married to Johnston but</p>	<p>Ct 1: Steal as public servant.</p> <p>Ct 2: Steal as public servant.</p> <p>Ct 3: Obtain property by deception (Cth charge).</p> <p>Ct 4: Stealing as public servant.</p> <p>Ct 5: Fraud.</p> <p>Ct 6: Fraud.</p>	<p>Ct 1: 2 yrs imp (C) 16 mths imp (J).</p> <p>Ct 2: 18 mths imp (C) 12 mths imp (J).</p> <p>Ct 3: 4 yrs imp (C) 32 mths imp (J).</p> <p>Ct 4: 2 yrs imp (C) 16 mths imp (J).</p> <p>Ct 5: 2 yrs imp (C) 16 mths imp (J).</p> <p>Ct 6: 2 yrs imp (C) 16 mths imp (J).</p>	<p><u>Chapman</u> Allowed.</p> <p>TES increased to 8 yrs imp.</p> <p>At [6] "<i>The need for general deterrence scarcely needs be stated. Public servants, especially high ranking ones, are entrusted to act in the</i></p>

		<p>separated at time sentencing; 2 children – 10 yrs and 5 yrs old</p> <p>Instigator of the offending and recruited Johnston to help him.</p> <p>Rationalised offending on basis on his belief that he was not being financially acknowledged for the work he did.</p> <p><u>Johnston</u> 48 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Married to Chapman but separated at time sentencing; 2 children – 10 yrs and 5 yrs old.</p> <p>Significant health problems – unresolved psychiatric issues.</p> <p>Well educated; impressive work history; considerable contribution to community as public servant.</p> <p>Willing participant and beneficiary of fraud and</p>	<p>Ct 7: Fraud.</p> <p>Ct 8: Steal as public servant (Chapman only). Ct 9: Steal as public servant (Chapman only). Ct 10: Fraud.</p> <p>Ct 11: Steal as public servant (Chapman only). Ct 12: Fraud.</p> <p>Ct 13: Fraud.</p> <p>Ct 14: Fraud.</p> <p>Ct 15: Steal as public servant.</p> <p>Total amount stolen \$1,705,328 and 3 paintings valued at \$61,000. Offending period 8 yrs. No restitution and paintings not recovered.</p> <p>Two respondents embarked on course of joint criminal conduct which saw them steal and defraud money and property in a sophisticated scheme involving false invoices and fake trust accounts. Offending only stopped when it was discovered.</p>	<p>Ct 7: 32 mths imp (C) 21 mths imp (J). Ct 8: 12 mths imp (C) Ct 9: 12 mths imp (C) Ct 10: 32 mths imp (C) 21 mths imp (J). Ct 11: 12 mths imp (C) Ct 12: 2 yrs imp (C) 16 mths imp (J). Ct 13: 2 yrs imp (C) 16 mths imp (J). Ct 14: 2 yrs imp (C) 16 mths imp (J). Ct 15: 16 mths imp (C) 12 mths imp (J).</p> <p><u>Chapman</u> TES 6 yrs imp.</p> <p>EFP.</p> <p>No remorse. <u>Johnston</u> TES 32 mths imp.</p> <p>EFP.</p>	<p><i>community interest and not to use their position to enrich themselves. Money and property dishonestly taken is to the detriment of the community as a whole.”</i></p> <p><u>Johnston</u> Allowed.</p> <p>TES increased to 4 yrs imp.</p> <p>At [92]-[113] Discussion of comparable cases.</p> <p>At [119]-[130] Discussion of relevance of effect on sentencing on children.</p>
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25.	<p><i>Dudzik v The State of Western Australia</i></p> <p>[2012] WASCA 195</p> <p>Delivered 8/10/2012</p>	<p>Convicted after fast-track PG.</p> <p>Came to Australia in 2008 on 457 working visa.</p>	<p>1 x Attempt PCJ.</p> <p>Ct 1: Fraud. Ct 2: Fraud. Ct 3: Fraud. Ct 4: Fraud. Ct 5: Fraud.</p> <p>Total amount defrauded was \$241, 120 – appellant repaid \$41, 540 to Woodside (the amount she personally received). Offending period approx 2 ½ mths.</p> <p><u>Fraud</u> Appellant employed as a contracts manager at Woodside assigned to a project in Karratha. Appellant falsely registered a co-worker’s business (CDC) as a vendor contracted to Woodside so that invoices from that business could be paid directly to her. Appellant submitted a false invoice from CDC for an amount of \$5,280. The full amount was transferred by Woodside to the appellant’s personal bank account (ct 1). Appellant submitted a false invoice from CDC and was paid \$19,360 by Woodside (ct 2). Appellant submitted a false invoice from CDC in the amount of \$84, 480 by Woodside (ct 3). On this occasion the invoice said the fees were for services rendered by her co-worker and the money was to be paid into an account held by CDC. Appellant then told that co-worker that she had been</p>	<p>2 yrs imp.</p> <p>Ct 1: 12 mths imp. Ct 2: 18 mths imp. Ct 3: 2 yrs imp. Ct 4: 2 yrs imp. Ct 5: 2 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [24] When an attempt to PCJ involves deceit of a court, the gravity of the offending is increased.</p> <p>At [25] Sentence of 2 yrs imp for attempt PCJ in these circumstances is towards the lower end of the sound discretionary range.</p> <p>At [36] <i>“The tendering of false character references and other materials poses serious potential threats to the administration of justice. There is, in the particular case, a real prospect that a sentence will be mislead and impose a sentence that is unjust. Further, there is the potential to undermine the integrity of the sentencing proceedings generally. Finally, there is the prospect that character witnesses and experts might be required to attend</i></p>

			<p>subcontracting to Woodside outside her normal duties and had included \$42,000 of her fees in the invoice. Appellant instructed her co-worker to transfer \$10,500 to her personal account and retain the rest to cover any additional tax liability and for assisting her.</p> <p>Appellant submitted a false invoice from CDC in the amount of \$54,560 by Woodside (ct 4). Again the invoice said the fees were for services rendered by her co-worker and the money was to be paid into an account held by CDC. Appellant again told that co-worker that she had been subcontracting to Woodside outside her normal duties and had included \$25,600 of her fees in the invoice.</p> <p>Appellant instructed her co-worker to transfer \$6,000 to her personal account and retain the rest to cover any additional tax liability and for assisting her.</p> <p>Appellant submitted a false invoice from CDC and was paid \$77,400 by Woodside (ct 5). Again the invoice said the fees were for services rendered by her co-worker and the money was to be paid into an account held by CDC. This time the co-worker, having become suspicious of the appellant, refused to transfer any money into her account and reported the activity to Woodside.</p> <p><u>Pervert the course of justice</u></p> <p>In the course of the sentencing proceedings for the fraud convictions below, the appellant prepared, signed and submitted three letters in the name of her daughter, a family friend and her mother without their knowledge or permission. The appellant also gave instructions to her counsel that her parents had died in a car crash when she was</p>		<p><i>court to attest to what they have written causing needless inconvenience and hampering of the ability of courts to dispose of sentencing cases in a timely way.”</i></p>
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			<p>approx 12 mths old and that her two children were completely dependent on her. Counsel made oral submissions to that effect. The statements were false.</p> <p>Appellant also provided a letter from Rio Tinto for the purposes of a bail variation prior to sentencing to allow her to leave the country stating her attendance in the USA was crucial to testing the company was doing, that the appellant was a permanent employee of Rio Tinto and that Rio Tinto was aware of the criminal proceedings in relation to the counts of fraud and was prepared to allow her to continue working for them after the conclusion of the criminal matter. The author of that letter subsequently told the court he knew nothing of the criminal proceedings; was told by the appellant that there were issues with fraudulent invoices at Woodside but that she had done nothing wrong and that the matter had been resolved; was told by the appellant the letter was for visa purposes and he was unaware the letter would be used in criminal proceedings; that no one at Rio Tinto had guaranteed the appellant continued employment following the conclusion of the criminal proceedings; the appellant had told him she was undergoing treatment for cancer and she had been given time off work for that treatment.</p>		
24.	<p><i>Alabbasi v The State of Western Australia</i></p> <p>[2012] WASCA 133</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record – 53 x fraud; 16 x fraud; breach</p>	<p>11 x Fraud. 12 x Attempted fraud. 1 x Stealing (s 32 matter).</p> <p>Total amount defrauded/attempted to be defrauded \$322, 716.20. Offending period from 2006-2011.</p>	<p>TES 2 yrs 8 mths imp.</p> <p>TES to run cumulative with activated suspended sentence of 16 mths imp.</p>	Dismissed – leave refused on papers.

	Delivered 6/07/2012	ISO. Offending breached SIO (16 x fraudulently use credit card to bet with TAB). Pathological gambler. Substance abuse issues – alcohol and hashish.	<u>Cts 1, 2, 4-21:</u> Appellant fraudulently used bank accounts and credit cards in order to obtain, or attempt to obtain, funds for on-line gambling. <u>Ct 3:</u> Appellant advertised a mobile phone for sale on ebay. The appellant received money from the purchaser but did not send the phone. <u>Ct 22 and 23:</u> Appellant used and attempted to use false identification to purchase mobile phones.	Poor prospects for rehabilitation; lack of victim empathy; limited insight into offending behaviour and consequences; likely to offend in the future.	
23.	<i>Sayed v The Queen</i> [2012] WASCA 17 Delivered 27/01/2012	51 yrs at time sentencing. No prior criminal record. Born in Afghanistan; entered Australia at 18 to undertake university studies; returned to Afghanistan in 1985 to visit family in refugee camp and began teaching in camp before being taken into custody by Russian forces - subjected to torture and interrogation over five months and threatened with death before escaping and returning to Australia. Suffered 'diagnosable	<u>Ct 1:</u> Intent to defraud by deceit or fraudulent means (State offence). <u>Ct 2:</u> Dishonestly obtaining a financial advantage from another by deception (Commonwealth offence). The appellant was director of Muslimlink. Muslimlink was registered with the WA State minister for Education as the governing body of Muslim Ladies College of Australia – a non systems school. This entitled the school to per capita grants of money made by the State of WA. Appellant fraudulently submitted certification claiming there were 189 students enrolled at the school and the school received substantial payments as a result. When the Commonwealth conducted an audit, the appellant supplied student rolls containing false information.	<u>Ct 1:</u> 18 mths imp. <u>Ct 2:</u> 3 yrs imp with a recognisance release order in the sum of \$ 5000 after serving 2 yrs. TES: 3 yrs 6 mths imp. EFP.	Allowed. At [134] Non-parole period was found to be manifestly excessive and disproportionate to TES. TES unaltered but non-parole period reduced from 2 yrs 9 mths imp to 2 yrs 3 mths imp.

		<p>psychiatric disorder in fluctuating degree' - worsening PTSD; anxiety; panic attacks; pervasive depressive symptoms.</p> <p>Received prison counselling and prescribed medication - symptoms more or less resolved.</p> <p>Previous good character - dedicated family man.</p>			
22.	<p><i>Sami v The State of Western Australia</i></p> <p>[2011] WASCA 274</p> <p>Delivered 23/12/2011</p>	<p>49 yrs at time sentencing.</p> <p>Prior criminal record – fraud and dishonesty offences.</p> <p>Separated; 2 children (aged 6 and 11 yrs).</p> <p>Born in Egypt; came to Australia in 2000.</p>	<p>16 x Fraud. 3 x Attempted fraud.</p> <p>Appellant wrote cheques against accounts which the appellant knew contained insufficient funds. Appellant also entered into a rental agreement, lease, purchase agreement and two loans based on falsehoods as to his ability to meet repayments.</p>	<p>18 mths imp (ct 25); 6 mths imp all other cts.</p> <p>At time sentencing serving term imp for Cth fraud offences of 20 mths. Spent 231 days in custody prior to sentencing.</p> <p>TES 18 mths imp.</p>	<p>Dismissed - leave refused on papers.</p>
21.	<p><i>Lesay v The State of Western Australia</i></p> <p>[2011] WASCA 154</p> <p>Delivered 15/07/2011</p>	<p>45 yrs at time sentencing.</p> <p>Prior criminal record – minor traffic and drug convictions.</p> <p>2 children; separated from wife in 2008; good employment record</p>	<p>Ct 1: Wilful damage. Ct 2: Wilful damage. Ct 3: Arson. Ct 4: Fraud.</p> <p>Fraud involved high level criminality - deliberate and planned deception involving forgery of two documents, a not insignificant amount of money and occurred over period of time.</p>	<p>Ct 1: 2 yrs 6 mths imp. Ct 2: 2 yrs 6 mths imp. Ct 3: 12 mths imp. Ct 4: 12 mths imp.</p> <p>TES 4 ½ yrs imp. EFP.</p>	<p>Dismissed – leave refuse on papers.</p> <p>Individual sentences not challenged on TES.</p> <p>At [21] ‘...<i>the one transaction rule is not a rule at all. It will not</i></p>

		<p>(including 10 yrs Naval service).</p> <p>Amphetamine and alcohol abuse following emotional and financial difficulties related to marital problems.</p> <p>Mood disorder – anxiety and depression.</p>	<p>Total amount defrauded \$24,250.</p> <p>Appellant devised plan to blow up ATMs in order to steal money they hold. Appellant stole a car and drove with his 15 yr old son to a shopping centre – dressed in white hooded coverall, balaclava and latex gloves. Son tried to gain access to inside of ATM using crowbar. Appellant then placed half a stick of explosive on the ATM and detonated it. Detonation failed to properly work and ATM damaged but no money accessed. Value of damage approx \$5,000 (ct1).</p> <p>About 30 min later, appellant drove to another ATM – dressed in same manner. Again tried unsuccessfully to gain access to money in ATM with crow bar. Appellant again attempted to use explosive to gain access to money. Detonation was again unsuccessful and no money obtained. \$65,000 damage done (ct2).</p> <p>Appellant and son then drove stolen car they were using to bushland near a golf course, poured petrol over it and set it alight. Car, worth approx \$10,000, was totally destroyed by blaze (ct 3).</p> <p>Approx 6 weeks later, appellant applied for a loan and, in support of that application, produced a letter purporting to be from the appellant’s employer stating that he was entitled to a \$28,750 bonus payment. A second letter produced by the appellant stated that payment was due to be made on 11 December 2009. On the strength of those letters a loan of \$24,250 was obtained by the appellants. Both letters were forged by the appellant.</p>	Remorse.	<p><i>always be the case that individual offences, when committed as part of one episode, will attract concurrent sentences...the ultimate requirement when sentencing a person who has committed multiple offences, is to impose punishment which is a just and proper reflection of the offender’s total criminality.’</i></p>
20.	<i>Pollock v The State of Western</i>	48-50 yrs at time offending. 58 yrs at time sentencing.	9 x Fraud.	TES 5 yrs 4 mths imp.	Dismissed.

<p>Australia</p> <p>[2011] WASCA 133</p> <p>Delivered 15/06/2011</p>	<p>Prior criminal record – minor dishonesty offences.</p> <p>Convicted after re-trial – conviction on same charges from first trial quashed on appeal.</p>	<p>Large scale and systematic fraud of high degree criminality.</p> <p>Total amount defrauded \$3,002,500 – owing to long and involved receivership proceedings, court not able to make a finding as to actual loss suffered by NAB.</p> <p>Individual amounts defrauded ranged from \$176,000 - \$478,500:</p> <p>Cts 1-3 involved amount of \$405,000 each.</p> <p>Ct 4 involved amount of \$302,500.</p> <p>Ct 5 & 6 involved amount of \$198,000 each.</p> <p>Ct 7 involved amount of \$478,500.</p> <p>Ct 8 involved amount of \$176,000.</p> <p>Ct 9 involved amount of \$434,500.</p> <p>Appellant Managing Director of group companies (the Pollock Group) with divergent interests but which all required heavy machinery in the course of their business. Appellant responsible for all major decisions, including financial ones. The Pollock Group had extensive financial dealings with the NAB. In March 2003, NAB appointed joint receivers to the all companies in the Pollock Group and appellant eventually bankrupted. Business affairs of the Pollock Group were subsequently investigated and offending discovered.</p> <p><u>Cts 1-3:</u> Appellant entered into 3 separate hire purchase agreements with NAB for front end loaders. Purchase price of each loader was \$405,000 – appellant provided invoices from machinery supplier IMAP for each loader specifying make,</p>	<p>EFP.</p> <p>No significant remorse</p> <p>Cts 1-3: 3 yrs 4 mths each.</p> <p>Ct 4: 2 yrs imp.</p> <p>Ct 5 & 6: 2 yrs imp.</p> <p>Ct 7: 2 yrs imp.</p> <p>Ct 8: 2 yrs imp.</p> <p>Ct 9: 2 yrs imp.</p> <p>TES following first trial was 3 yrs 4 mths imp susp 24 mths – State appealed against inadequacy but sentence not considered as conviction appeal successful.</p>	<p>At [36]-[39] Briefly discusses principles that apply to sentencing after re-trial and notes that where new facts come to light in course second trial or where original sentence inadequate, higher sentence can be imposed.</p> <p>At [69] Notes that general deterrence dominant sentencing consideration – offending of this kind strikes at heart of commercial financing and credit systems and courts must do all they can to prevent such offences. Significant penalties are therefore ordinarily called for.</p>
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			<p>model, serial number, engine number and year of manufacture. On strength machines existed and would be delivered to one of the Pollock Group companies, NAB credited a different Pollock Group company with an amount of \$1,215,000. IMAP invoices later found to be not genuine and machinery specified never imported into Australia and had never been available for sale – facts the appellant was aware at all relevant times.</p> <p><u>Cts 4-9:</u> On six separate occasions, at appellant’s direction, a false invoice was prepared on the stationary of a company which did not belong to the Pollock Group (Curran Holdings Pty Ltd), for various items of heavy machinery. In each instance, the NAB entered into a hire purchase agreement with the Pollock Group company purported to have purchased the machinery and paid the invoiced amount to Curran Holdings. Curran Holdings, under a pre-existing agreement, then paid that money to the Pollock Group. The machinery invoiced on each occasion was machinery already owned unencumbered by the Pollock Group.</p>		
19.	<p><i>Magar v The State of Western Australia</i></p> <p>[2011] WASCA 122</p> <p>Delivered 27/05/2011</p> <p>Co-offender of</p>	<p>71 yrs at time sentencing</p> <p>Convicted after trial.</p> <p>No prior criminal record or history of dishonesty.</p> <p>Highly educated.</p> <p>Significant health problems – heart condition; diabetes;</p>	<p>Cts 1- 4, 8-12: Fraud.</p> <p>Cts 5, 6, 13-15: Dishonestly obtain property s 134.1(1) <i>Criminal Code 1995</i> (Cth).</p> <p>Offending was a calculated and repeated course conduct.</p> <p>Total amount defrauded/dishonestly gained \$3,059,247 (\$591,505 State and \$2,467,742 Cth).</p> <p>Offending period approx 18 mths.</p> <p>Full restitution made prior to sentencing but appellant did not contribute to that resititution.</p>	TES 3 yrs imp.	<p>Dismissed.</p> <p>At [29]-[39] Discussion as to meaning of ‘intent to defraud’ – subjective in nature.</p> <p>At [74] Offences of this kind are hard to detect and require deterrent sentence.</p>

	<p><i>Magdi v The State of Western Australia</i> [2010] WASCA 234</p>	<p>circulatory problems; high cholesterol; evidence affirmed all medical problems could be properly managed in prison.</p>	<p>Individual amounts defrauded/dishonestly gained ranged from \$18,256 - \$1,012,196:</p> <p>Ct 1 involved amount of \$22,168. Ct 2 involved amount of \$92,544. Ct 3 involved amount of \$18,256. Ct 4 involved amount of \$119,810. Ct 5 involved amount of \$114,044. Ct 6 involved amount of \$674,625. Ct 8 involved amount of \$23,496. Ct 9 involved amount of \$40,838. Ct 10 involved amount of \$38,288. Ct 11 involved amount of \$70,912. Ct 12 involved amount of \$165,253. Ct 13 involved amount of 245,605. Ct 14 involved amount of \$421,605. Ct 15 involved amount of \$1,012,196.</p> <p>Charges arose out of an investigation into the per capita funding for 3 schools of the Australian Islamic College. Appellant, who was the overall Director of the College, and two co-offenders deliberately inflated student numbers at the Colleges so as to obtain additional State and Commonwealth government funding. Funding was claimed for 1,160 non-existent students. Appellant, as Director, had ultimate control of all schools and was involved in the day to day operations of each school. Appellant was responsible for collating false census information that was used for fraudulent claims.</p> <p>Appellant did not personally benefit from offending – money went to Colleges which were struggling</p>	<p>Ct 1: 12 mths imp. Ct 2: 2 yrs imp. Ct 3: 12 mths imp. Ct 4: 2 yrs imp. Ct 5: 2 yrs imp. Ct 6: 3 yrs imp. Ct 8: 12 mths imp. Ct 9: 12 mths imp. Ct 10: 12 mths imp. Ct 11: 2 yrs imp. Ct 12: 2 yrs 6 mths imp. Ct 13: 30 mths imp. Ct14: 30 mths imp. Ct 15: 3 yrs imp.</p>	
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			financially at the time.		
18.	<i>Khoo v The State of Western Australia</i> [2011] WASCA 75 Delivered 4/04/2011	Youth not mitigating factor. Convicted after trial. Minor prior criminal record - mislead police; provide false details to police; traffic offences.	1 x Fraud. Total amount defrauded \$315,000. Appellant obtained a loan in the amount of \$315,000 from financial institution in a false name by using false documentation. The appellant signed documents and produced identification in the name of another person in order to obtain the loan. Money was mostly used to pay off appellant's existing debts. Offending discovered when person whose identity the appellant fraudulently used became aware of the mortgage. Offending motivated by appellant's self inflicted financial difficulties.	14 mths imp. TES 14 mths imp. EFP. Lack of empathy; no insight; no remorse.	Dismissed – leave refused on papers. At [22]-[24] Noted that even where victim's economic interests are not at risk an intent to defraud can still exist.
17.	<i>Magdi v The State of Western Australia</i> [2010] WASCA 234 Delivered 14/12/2010	55 yrs at time sentencing. Convicted after trial. No prior criminal record. Highly educated; had made positive contribution to community. Partner suffering significant health problems; responsible for partial care of partner's son.	Cts 8, 10 & 11: Fraud. Cts 13 & 14: Dishonestly obtain property s 134.1(1) <i>Criminal Code 1995</i> (Cth). Offending was a calculated and repeated course conduct. Total amount defrauded/dishonestly gained \$799,513 (scheme resulted in fraud totalling \$3,059,247). Offending period approx 6 mths. Full restitution made prior to sentencing but appellant did not contribute to that restitution. Individual amounts defrauded/dishonestly gained ranged from \$18,256 - \$1,012,196:	TES 2 yrs imp. EFP.	Dismissed. At [28]-[29] Offences of this kind are hard to detect, strike at the heart of educational grants scheme and require deterrent sentence to provide for both punishment and denunciation. At [42] Suspended term of imprisonment not

			<p>Ct 8 involved amount of \$23,496. Ct 10 involved amount of \$38,288. Ct 11 involved amount of \$70,912. Ct 13 involved amount of \$245,605. Ct 14 involved amount of \$421,605.</p> <p>Charges arose out of an investigation into the per capita funding for 3 schools of the Australian Islamic College. Appellant, who was the Principal of two schools, and two co-offenders deliberately inflated student numbers at the Colleges so as to obtain additional State and Commonwealth government funding. Funding was claimed for 1,160 non-existent students - appellant was involved in claims for 337 non-existent students. Appellant engaged in offending at direction of co-offender (Magar) and signed five false census documents knowing funds would be received for non-existent students. Appellant also falsified student registers and, when approached by staff who were concerned about the accuracy of the registers, told them not to be concerned about it. Appellant did not personally benefit from offending – money went to Colleges which were struggling financially at the time. Appellant motivated by misguided loyalty to co-offender and schools.</p>	<p>Ct 8: 9 mths imp. Ct 10: 9 mths imp. Ct 11: 12 mths imp. Ct 13: 18 mths imp. Ct 14: 24 mths imp.</p>	<p>appropriate given seriousness of offending and need for general deterrence.</p>
16.	<p><i>Nikaghanri v The State of Western Australia</i> [2009] WASCA 192</p>	<p>27 yrs at time offending commenced. Convicted after PG to 2 cts aggravated fraud and 2 cts using another's passport.</p>	<p>18 x Aggravated fraud (victims over 60 yrs). 8 x Fraud. 25 x Using another's passport s 21(2) <i>Foreign Passports (Law and Enforcement Security) Act 2005</i> (Cth).</p>	<p>3 yrs imp each ct. 2 yrs imp each ct. Sentence range 9-18 mths imp each ct. TES 6 yrs imp.</p>	<p>Dismissed. At [20] Use of technology such as email and the internet allowed for larger victim pool and maximised</p>

<p>Delivered 4/11/2009</p>	<p>Convicted after trial remaining offences.</p> <p>Born and educated in Nigeria; married with young child and in Australia on permanent spousal visa.</p> <p>Studied information technology.</p>	<p>Offending at high end of scale of seriousness and bore hallmarks of organised crime – others were involved and appellant’s fraud depended on prior fraudulent actions of others (some of whom were not in Australia). Total amount defrauded \$132,429. Offending period approx 2 ½ yrs. 5 victims.</p> <p>Individual amounts defrauded ranged from \$1,000 - \$10,792.51.</p> <p>Appellant conducted ‘advance fee fraud scheme’ whereby victims tricked into transferring money by promising them a significant financial benefit in return.</p> <p><u>Victim 1:</u> Victim 1 accessed on-line survey site which entered him in prize and lottery draws. Victim received phone call stating he had won £2.8 million in a British lottery. Victim later received an email explaining the options to collect the prize and received fraudulent documentation purporting to authenticate the win. Victim was advised there were difficulties in transferring the funds to Australia and was contacted by appellant claiming to be a diplomatic courier stating that the money was being held in Malaysia and that certificates were required to secure its release. Victim was instructed to send \$27,000 through Western Union to pay the fees for the certificates. Victim transferred the money but did not receive the alleged lottery winnings.</p> <p><u>Victims 2 & 3:</u> Victims 2 & 3 were de facto couple who received an email from a person claiming to be a UK lawyer</p>	<p>EFP.</p>	<p>prospects of catching victims.</p> <p>At [21]-[22] Notes this type offending is hard to detect and prosecute which increases the seriousness.</p>
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		<p>informing the female that she was entitled to claim £9.8 million following the death of a distant relative. Victim was told the money was being held with Credit Suisse. Victim contacted by person claiming to a solicitor from Credit Suisse advising her that taxes needed to be paid out of the estate. Victim also received false documentation to verify purported banks account. Victim told inheritance being held in Malaysia and that she would now be dealing with an alleged Malaysian diplomat (the appellant) to secure the transfer of funds to Australia. Victim was told by appellant that anti-terrorist certificates were required and victim borrowed money to pay for them. Appellant also advised that other fees would need to be paid prior to the victim receiving the alleged inheritance. Victim and partner travelled to Canberra on one occasion to meet the appellant but were told on arrival that he was in Perth or Malaysia. Victim paid total of \$27,394.</p> <p><u>Victim 4:</u> Received an on-line message from a person claiming to be a US General serving in Iraq who was due to retire in Feb 2008. Person claimed he wanted to retire to WA. General claimed to have in his possession 2 boxes of Saddam Hussein's personal fortune which contained a total of \$30 million. Person said he wanted to send the money to Australia and that he wanted victim to act on his behalf and receive the boxes – victim was to be paid \$15 million in return. Victim was told boxes would be sent to Australia by a US diplomat. Appellant contacted victim and advised that he was a UN diplomat and that the boxes had arrived in Sydney but that fees were required to be paid to</p>		
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			<p>secure their transfer to Perth. Victim paid total of \$14,335.</p> <p><u>Victim 5:</u></p> <p>Victim was contacted by person claiming to be English barrister who had a deceased client with an estate valued at US\$20.7 million and no beneficiary. Victim was told money would be forfeited to bank if no beneficiary was found and asked if he would be interested in being the beneficiary. Victim was told the proposition was legal and that he should contact a person alleged to be a remittance officer at the bank. Victim contacted bank and was told money could be credited to his account in 24hrs. Victim then received a stop order from the International Monetary Fund and was told a certificate was required for the transfer to occur. Victim began sending money. Victim told that money arrived in Canberra but that a fee had to be paid to convert it from US dollars. Victim became suspicious and contacted his local bank who advised he was the victim of scam, referred him to the police and to do nothing further.</p> <p>Approx 9 mths later, victim contacted by person claiming to be Interpol officer who told him fraudulent barrister had been imprisoned and that the remaining US\$6.7 million of the estate could now be transferred to him. Victim then contacted by appellant claiming to be a diplomat and stated he was holding a consignment in the diplomatic vault for him. Appellant was vouched for by alleged Interpol officer. Appellant informed victim fees and certificates had to be paid to secure release of funds. Victim paid \$63,700 through Western Union. Victim lost life savings.</p>		
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			<p>Appellant found in possession of numerous false passports of varying nationalities. Passports had been used to collect money forwarded by victims from Western Union.</p> <p>Appellant acted to minimise chance getting caught by using numerous mobile phones registered in different names and by using untraceable email addresses.</p>		
<i>Transitional provisions repealed (14/01/2009)</i>					
15.	<p><i>Skipworth v The State of Western Australia</i></p> <p>[2008] WASCA 64</p> <p>Delivered 19/03/2008</p>	<p>42 yrs at time sentencing.</p> <p>Convicted after fast track PG. Voluntarily contacted police and made admissions.</p> <p>No prior criminal record.</p> <p>Marriage of 18 yrs ended as result financial difficulties which lead to offending; 2 children.</p> <p>Educated to yr 10; good work history; employed at time sentencing.</p>	<p>Ct 1: Fraud. Cts 2 & 3: Fraud. Ct 4: Forgery. Ct 5: Utter forged record.</p> <p>Total amount defrauded \$120,000. Offending period approx 11 mths (July 2004 – June 2005).</p> <p><u>Ct 1:</u> At time offending, appellant operating two painting businesses. Appellant obtained \$10,000 to pay for employees' wages. Loan obtained was in joint name of appellant and wife. Wife did not know of loan and appellant copied her signature from another document.</p> <p><u>Ct 2:</u> Approx 3 weeks later, appellant again applied for a joint loan in his and his wife's name – this time for \$50,000 to use to pay company debts. Wife was again unaware of loan and the fact that the marital home was provided as security. Appellant copied</p>	<p>8 mths imp. 16 mths imp each ct. 8 mths imp. 8 mths imp.</p> <p>TES 2 yrs 8 mths imp.</p> <p>EFP.</p> <p>Remorseful; accepted full responsibility; little likelihood re-offending.</p>	<p>Dismissed.</p> <p>At [47]-[50] Some discussion of comparable cases.</p> <p>At [50] & [71] not open to sentencing judge in circumstances to suspend term of imprisonment.</p>

			<p>wife's signature from other documents.</p> <p><u>Ct 3:</u> Appellant obtained \$60,000 loan against a property he solely owned. Loan documents were purported to be witnessed by appellant's father-in-law but the appellant had signed his father-in-law's signature himself. The property used as security was subject to 4 caveats and appellant produced false documents to substantiate the supposed removal of those caveats.</p> <p><u>Ct 4 & 5:</u> Appellant and wife separated but still jointly owned family home. Appellant entered into contract to sell home and signed on behalf of his wife without her knowledge (ct 4). Appellant presented sale contract with falsified signature to settlement agent who began to finalise settlement (ct 5). Appellant's wife discovered what had happened and contacted police. Sale of house was cancelled.</p> <p>Appellant expected to be able to repay the loans but his business failed and he was unable to.</p>		
14.	<p><i>Norton v State of Western Australia</i></p> <p>[2007] WASCA 75 Delivered 10/04/07</p>	<p>25 yrs old at time offending.</p> <p>Convicted after fast track PG. Cooperated with the authorities.</p> <p>No prior criminal record.</p> <p>Single mother of a young child.</p>	<p>1 x Attempt PCJ. 1 x Fraud.</p> <p>Appellant was approached by juvenile co-accused in her front yard and they discussed difficulties appellant was having selling her car. Juvenile co-offender told appellant he knew someone who could take the car and burn it so she could claim it on insurance - appellant agreed. Within a few days, juvenile co-offender returned with co-offender and appellant gave them her spare key and immobiliser.</p>	<p>18 mths imp. 18 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p> <p>Remorse; low likelihood re-offending.</p>	<p>Allowed.</p> <p>Sentence for fraud reduced to 12 mths imp.</p> <p>TES unaffected.</p> <p>EFP.</p> <p>Appellant engaged in deliberate scheme with two</p>

		Motivated by financial pressure.	<p>Two co-offenders drove around the suburban area at excessive speeds in a reckless manner. Juvenile co-offender was dropped off and other co-offender was later involved in a police pursuit in the car - apprehended he crashed into a garden bed and a police car, damaging the appellant's car. Appellant telephoned police and reported that car had been stolen. Next day appellant telephoned insurance company and told them the car had been stolen and had been involved in a police pursuit during which it had been crashed. Total cost for hire car, towing and investigation was \$4934.48. Police interviewed appellant and obtained a written statement. Appellant maintained the car had been stolen and that she had no knowledge of who stole it or how it was stolen. She said she may have left her keys in the ignition.</p> <p>Co-offender who crashed car was charged with stealing and made several appearances in court before it was listed for trial. 17 mths after incident, co-offender admitted truth to police. Appellant was interviewed further and admitted the false statement she made to police.</p> <p>Appellant not the instigator of offence but readily agreed to it.</p>		<p>other people to deceive and defraud an insurance company. Offence was not committed immediately after adoption of the scheme (or on the "spur of the moment") – there was time for appellant to have reflected upon the gravity of the proposed course of conduct before it was implemented.</p> <p>Contains a good summary of relevant principles and of comparative cases.</p>
13.	<p><i>Anderson v The State of Western Australia</i></p> <p>[2007] WASCA 25</p> <p>Delivered</p>	<p>Youth not mitigating factor.</p> <p>Convicted after late PG.</p> <p>Offending breached parole (sentenced to 21 mths imp for previous fraud offence). S 32 offending breached</p>	<p>1 x Conspiracy to commit fraud.</p> <p>54 x Fraud (25 on indictment and 19 on s 32 notice).</p> <p>1 x Forgery.</p> <p>1 x Utter forged record.</p> <p>Offending serious - deliberate, systematic, repeated and planned.</p>	<p>16 mths imp.</p> <p>Sentence range 4 – 16 mths imp.</p> <p>TES 5 yrs 4 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [41]-[42] Offending of this kind and on this scale rare with very few cases presenting where offender falls to be sentenced against a background of</p>

	5/02/2011	<p>bail for indictable offences.</p> <p>Prior criminal record – fraud.</p> <p>At time offending commenced appellant’s youngest child was being treated for leukaemia (significant factor in earlier appeal being allowed). At time appeal heard, child in remission despite two relapses.</p>	<p>Total amount defrauded \$73,566.96. Offending period approx 10 mths (May 2002 – March 2003).</p> <p>Appellant met one the co-offenders while in prison for fraud offence. They met up once both were released. Appellant and co-offenders engaged in a sophisticated scheme where they would obtain loans and credit cards using multiple false identities. Appellant would take false documentation supplied by main co-offender and open accounts or obtain credit cards. Appellant then gave cards/funds to main co-offender, who paid the person supplying the false documents. Appellant and main co-offender then split remainder of money equally between them.</p> <p>At time arrest, total limit on fraudulently obtained credit cards and loans was \$217,500. A car worth \$25,942 was also obtained (later recovered). Further false loan and credit card applications had been made but not yet approved.</p>	No insight into offending.	<p>similar offending.</p> <p>At 45] Sentence cannot be increased due to prior offending but as that offending is of same kind now sentenced for, it significantly detracts from any mitigation to be found in personal circumstances.</p>
12.	<p><i>Barrett v the State of Western Australia</i></p> <p>[2007] WASCA 21</p> <p>Delivered 1/02/2007</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after fast track PG.</p> <p>Offending breached parole (fraud offences). Offending on second indictment also breached bail for offences on first indictment.</p> <p>Prior criminal record – 24</p>	<p>54 x Fraud (two indictments).</p> <p>Total amount defrauded \$278,842.65. 28 victims (4 aged over 60 yrs).</p> <p>Appellant conducted fraudulent activity in course of operating his gardening and landscaping business. Appellant engaged in a number of different types of fraud – including taking money in return for landscape work or supply landscape materials to be done when work was either not undertaken or</p>	<p>TES 6 yrs 6 mths imp.</p> <p>Not EFP.</p> <p>No remorse; did not fully accept responsibility; minimised seriousness of offending; lack of insight into offending.</p>	Dismissed.

		<p>cts fraud involving total amount \$350,000 (6 yrs imp).</p> <p>Long term de facto partner; 2 yr old child.</p> <p>Supportive and successful family background.</p>	<p>completed and materials not supplied; obtaining investment funds from clients for the purpose of purchase and on-selling of plants and trees where no plants or trees were purchased and investors received no return on their money; purchased materials without effecting payment; engaged sub contractors and did not pay them for work performed.</p>		
11.	<p><i>Hunter v the State of Western Australia</i></p> <p>[2005] WASCA 110</p> <p>Delivered 20/05/2005</p> <p>Co-offender of <i>Dermish v The State of Western Australia</i> [2000] WASCA 418</p>	<p>Convicted after PG.</p>	<p>10 x Fraud.</p> <p>Total amount defrauded \$169,000. Offending period approx 3 mths (July – Oct 1997).</p> <p>Appellant falsely represented himself as medical supply company (took a name from medical supply company in Yellow Pages and had stationary in that name printed and leased premises in that name). Appellant and co-offender created numerous false identities and opened bank accounts in the false names. Once accounts were open, loan applications were made. Appellant supplied false letters of employment from the false medical supply company he created to support loan application. Cash from the loans was transferred into a bank account controlled by appellant held in a false name and then withdrawn by the appellant.</p> <p>During the same period, the appellant and co-offender also travelled to South Australia and committed a series of similar offences. Co-offender received TES of 4 yrs imp in South Australia (served 16 mths and was released on 2 yrs home detention) and was then extradited to Western</p>	<p>14 mths imp each ct.</p> <p>TES 14 mths imp.</p> <p>EFP.</p>	<p>Allowed - on parity only.</p> <p>TES 7 mths imp substituted (appellant had already served 7 mths at time appeal heard).</p>

			<p>Australia where he received a TES of 1 yr 11 mths imp (substituted TES following an appeal against TES of 2 yrs 11 mths imp).</p> <p>Appellant received TES 4 yrs imp for South Australian offences (served 18 mths and a further 2 mths on remand awaiting extradition). TES in SA and WA served separately and consecutively (co-offender had partial concurrency between SA and WA terms).</p>		
10.	<p><i>Hladin v The State of Western Australia</i></p> <p>[2005] WASCA 50; (2005) 156 A Crim R 176</p> <p>Delivered 18/03/2005</p>	<p>40 or 41 yrs at time sentencing.</p> <p>Convicted after late PG – no assistance given to police.</p> <p>No prior criminal record.</p>	<p><u>Indictment 632 of 2002:</u> 50 x Fraud.</p> <p>Total amount defrauded unclear. Offending period approx 12 mths. No restitution nor any genuine prospect of restitution.</p> <p><u>Cts 1 and 4-12:</u> Appellant, in each instance, wrote a cheque as payment for loans which had been fraudulently obtained. On each occasion the appellant knew there were no funds in the account to cover the cheque and that the cheque would be dishonoured – the last two cheques were written after the account from which they were to be drawn was closed. The appellant used this as a method of deferring payment of the debt owed.</p> <p><u>Cts 13-50:</u> Appellant obtained short term loans on fraudulent premises from two companies. Appellant then solicited cheques from each company which were paid to the other company and represented by the appellant as returns on the initial loans. Total amount loaned by both companies was \$384,050.</p>	<p>TES 6 yrs imp (both indictments).</p> <p>3 yrs imp each ct.</p> <p>3 yrs imp each ct.</p>	<p>Allowed.</p> <p>2 yrs imp substituted on each ct on both indictments.</p> <p>TES reduced to 4 yrs imp.</p> <p>EFP.</p> <p>At [30]-[32] Unable on facts to determine exact amount lost by 3 victims – sentencing judge sentenced on basis total amount ‘invested’ lost but that was not the case.</p> <p>At [37]-[43] Discussion of comparable sentences for fraud and steal as servant.</p>

			<p><u>Cts 2 & 3:</u> Appellant wrote cheques to be drawn from an account he knew was closed in repayment of loans he had received.</p> <p><u>Indictment 1579 of 2002:</u> 2 x Stealing. 1 x Fraud.</p> <p>Appellant offered to sell a BMW on behalf of victim (widow of appellant's friend). BMW was sold by appellant for \$46,000. Victim did not receive any funds from the sale – appellant directed purchaser to put full amount towards a debt he owed purchaser.</p> <p>Appellant also offered to arrange repairs to a Rolls Royce owned by the same victim. Instead of arranging repairs, the appellant sold the car for \$21,000. The purchaser deposited funds into an account as directed by the appellant. The victim did not receive any money from the sale of the car and, at the time of the appeal, had not been able to secure the car's return.</p>	<p>3 yrs imp each ct.</p> <p>3 yrs imp each ct. 3 yrs imp each ct.</p>	
9.	<p><i>Deville v The State of Western Australia</i></p> <p>[2004] WASCA 264</p> <p>Delivered 4/11/2004</p>	<p>Convicted after late PG (day prior to trial).</p> <p>No prior criminal record.</p> <p>Supportive family; established new relationship and engaged to be married at time appeal; fiancée and her family supportive.</p>	<p>23 x Fraud.</p> <p>Serious examples of fraud - offending sophisticated and well planned.</p> <p>Total amount defrauded \$102,788.</p> <p>Offending period approx 7 mths (Feb 1999 – Sept 1999).</p> <p>Appellant made series applications for loans, credit cards, store cards, vehicle hire purchases and for electrical good rental. Appellant either used his own</p>	<p>1 yrs imp each ct.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES suspended 12 mths – allow rehabilitation to continue and for reparation to be made in full.</p> <p>Appellant served 7 mths imp prior to release on bail pending appeal.</p>

		Re-established his business and became involved in charitable organisation.	name but with fraudulent employment details or procured others to make credit applications for him. Co-offender received total of \$4,500 fines for 6 cts of fraud committed jointly with the appellant.		At [16] Failure to obtain PSR generally not a ground of appeal except where sentencing discretion can be shown to have miscarried as a result of the court being insufficiently informed as to relevant factual material.
8.	<i>Nelmes v The State of Western Australia</i> [2004] WASCA 191 Delivered 12/08/2004	38 yrs at time sentencing. Convicted after fast track PG – co-operated with police. Serious gambling addiction – taken some steps to address. Married; children; well respected in community.	Cts 1-6: Steal as servant. Cts 7-27: x Fraud. Serious offending – breach of trust and premeditated – towards middle to upper range seriousness. Total amount stole/defrauded \$309,671.44. Offending period approx 3 yrs (Oct 2000 – Nov 2003). Restitution \$5,000 (employment termination entitlements). Appellant employed as financial services administrator. Created a system which allowed him to fraudulently alter cheques and direct the funds in to his personal accounts. Appellant also created fictitious company and falsely invoiced his employer for services provided by that fake company. Offending discovered following inquiries about an account were made of the appellant. Appellant disclosed offending and later fully co-operated with	Cts 1-27: 4 yrs 8 mths imp each ct. TES 4 yrs 8 mths imp. EFP after 2 yrs 4 mths. Significant remorse.	Allowed – no regard to PG or remorse and starting point too high. TES reduced to 4 yrs imp. <u>Sentences on appeal:</u> Cts 1-6: 32 mths imp each ct. Cts 7-27: 16 mths imp each ct. At [16] Offending repeated on many occasions and that is appropriately reflected by a degree of accumulation in the sentences.

			police.		
<i>Transitional provisions enacted (31/08/2003)</i>					
7.	<i>Davis v The Queen</i> [2002] WASCA 298 Delivered 30/10/2002	39 yrs at time sentencing. Convicted after early PG. No prior criminal record. 2 children (9 yrs and 13 yrs old).	Cts 1-12: Fraud. Total amount defrauded \$191,000. Restitution of \$110,000 at time sentencing – balance secured by mortgage on property and due to be paid; forfeited \$82,000 from superannuation fund. At time offending, appellant worked at bank 21 yrs and was Manager Personal Lending. <u>Cts 1-3 and 7-12:</u> Involve unauthorised manipulation of bank computer systems to increase credit limits and overdrafts on accounts she held. <u>Ct 4:</u> Appellant applied for loan and deliberately understated her financial liabilities. Appellant received a loan of \$20,000 as a result. <u>Ct 6:</u> Appellant applied for credit card and deliberately understated her financial liabilities. Appellant received a credit card with a limit of \$3,000 as a result. Offending motivated by financial difficulties after husband had overtime significantly cut back.	2 yrs imp each ct. TES 2 yrs imp. Equivalent to 16 mths imp after implementation of transitional provisions. EFP. Remorse; accepted responsibility.	Dismissed. At [27] Sentencing discretion did not miscarry when sentence not suspended. At [26] Offences of this kind generally meet with term immediate imprisonment otherwise the sentence carries no deterrence. Common for offenders committing this type of offence to have unblemished record and who are unlikely to offend again but people who abuse position trust must receive adequate punishment. Many parents have stolen to support family but sentence imposed must still be commensurate with seriousness offending.
6.	<i>Turner v The Queen</i>	Convicted after trial indictment 1452 of 2001.	<u>Indictment 1452 of 2001</u> 20 x Fraud.	3 yrs imp each ct.	Dismissed.

	<p>[2002] WASCA 189</p> <p>Delivered 17/07/2002</p>	<p>Convicted after late PG indictment 1839 of 2001 (after conviction on indictment 1452 of 2001).</p>	<p><u>Indictment 1839 of 2001</u> 2 x Fraud.</p> <p>Total amount defrauded \$268,000 (indictment 1452 total \$223,000 and indictment 1839 total \$45,000. Offending period approx 11 mths (Jan 1993-Nov 1994). Restitution \$100,000 made at time sentencing.</p> <p>Individual amounts defrauded between \$750-43,280.</p> <p><u>Indictment 1452 of 2001:</u> Appellant State Manager for construction company and on salary package \$150,000. Appellant procured employees to make arrangements with subcontractor/suppliers and arrange for them to submit tenders which were inflated to allow for costs of improvements to be made at his own home. Appellant also caused false invoices to be submitted for work on various projects when the work had actually been done at the appellant's home. Offending motivated by greed and desire to support lifestyle.</p> <p><u>Indictment 1839 of 2001:</u> Appellant raised false invoices in relation to two projects in the amounts of \$25,000 and \$20,000. The money was paid to the Builders' Labourers Federation to stop industrial unrest on worksites.</p>	<p>2 yrs imp each ct.</p> <p>TES 6 yrs imp (both indictments). Equivalent to 4 yrs imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>No remorse; attempted to divert blame during trial.</p>	
5.	<p><i>Lenton v The Queen</i></p>	<p>32 yrs at time sentencing. Convicted after PG.</p>	<p><u>District Court sentences:</u> 24 x Fraud. 9 x Forgery.</p>	<p>TES 4 yrs 4mths imp (District Court).</p>	<p>Dismissed. At [20] Offending was</p>

	<p>[2001] WASCA 392</p> <p>Delivered 6/12/2001</p>	<p>Minor prior criminal record.</p> <p>Offending result drug addiction that appellant developed in aftermath of breakdown of his marriage of 10 yrs.</p> <p>Intelligent; educated to yr 12; good employment history.</p> <p>Abusive step-father; left home at 15 yrs old; supportive family.</p> <p>Committed to rehabilitation.</p>	<p>3 x Prepare for forgery. 1 x Receiving.</p> <p><u>Magistrates Court sentences:</u> 57 offences (fraud, forgery, stealing, falsify birth certificate and passport, possess weapon and possess drugs). Imposed 6 days after District Court sentences and ordered to run cumulative.</p> <p>Involved high level criminality. Total amount defrauded \$150,000 (\$30,000 District Court offences and \$120,000 Magistrate Court offences). Offending period approx 11 mths (July 1999 – July 2000). Majority of money not recovered.</p> <p>Appellant involved in various deceits involving misappropriated and altered cheques and bank accounts/loans in false names. Investigation into indictable offences uncovered 4 Telstra identification cards, two forged student cards, 17 driver's licenses, 6 birth certificates, 13 bank and credit cards, 8 cheque books, 4 Medicare cards, 73 cheques and 160 bank statements all in false names meticulously filed in the appellant's possession. Appellant would break into cars and premises to obtain original documents which he then altered or copies.</p>	<p>TES 2 yrs 6 mths imp (Magistrates Court).</p> <p>TES 6 yrs 10 mths imp (both courts). Equivalent to 4 yrs 6 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p><i>'lengthy, sinister and invasive'</i>.</p> <p>At [23] Offending demonstrated <i>'determined and calculated undertaking over an extended period involving a considerable sum of money and a complete disregard for both the property and feelings of others. Head sentences are designed to express community rejection of the offences under consideration and to act as a general as well as personal deterrent.'</i></p>
<p>4.</p>	<p><i>Dermish v The Queen</i></p> <p>[2000] WASCA</p>	<p>Convicted after fast track PG.</p> <p>No prior criminal record.</p>	<p>12 x Fraud. 1 x Attempted fraud.</p> <p>Total amount defrauded approx \$200,000.</p>	<p>TES 2 yrs 11 mths imp. Equivalent to approx 23 mths imp after implementation of</p>	<p>Allowed.</p> <p>TES reduced to 1 yr 11 mths imp.</p>

<p>418</p> <p>Delivered 13/12/2000</p> <p>Co-offender of <i>Hunter v the State of Western Australia</i> [2005] WASCA 110</p>	<p>Engaged in offending under considerable duress due to cocaine addiction.</p>	<p>Offending period approx 3 mths (July – Oct 1997).</p> <p>Co-offender falsely represented himself as medical supply company (took a name from medical supply company in Yellow Pages and had stationary in that name printed and leased premises in that name). Appellant and co-offender created numerous false identities and opened bank accounts in the false names. Once accounts were open, loan applications were made by appellant. Co-offender supplied false letters of employment from the false medical supply company he created to support loan application. Cash from the loans was transferred into a bank account controlled by co-offender held in a false name and then withdrawn by the co-offender</p> <p>During the same period, the appellant and co-offender also travelled to South Australia and committed a series of similar offences. Appellant received TES of 4 yrs imp in South Australia (served 16 mths and was released on 2 yrs home detention) and was then extradited to Western Australia where he received a TES of 1 yr 11 mths imp (substituted TES following an appeal against TES of 2 yrs 11 mths imp).</p> <p>Co-offender received TES 4 yrs imp for South Australian offences (served 18 mths and a further 2 mths on remand awaiting extradition). TES in SA and WA served separately and consecutively (appellant had partial concurrency between SA and WA terms).</p> <p>Following release on SA term, and while on bail for WA offences, appellant returned home to NSW and</p>	<p>transitional provisions.</p> <p>EFP.</p> <p>Unlikely to re-offend.</p>	<p>EFP.</p>
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			engaged in drug counselling, was employed and did not re-offend.		
3.	<i>McPharlin v The Queen</i> Supreme Court Library No 970665 Delivered 10/10/1997	Convicted after fast track PG. No prior criminal record.	5 x Fraud. Total amount defrauded approx \$800,000. Appellant Managing Director of family run company – worked for company for 32 yrs, starting there at the time it was run by his father. Company manufactured cranes and other industrial equipment.	2 yrs imp each ct. TES 4 yrs imp. Equivalent to 2 yrs 8 mths imp after implementation of transitional provisions. EFP.	Dismissed. No error in failing to suspend sentences.
2.	<i>The Queen v Kite</i> Supreme Court Library No 9506591 Delivered 1/12/1995	44 yrs at time sentencing. Convicted after PG. No prior criminal record. Excellent work history.	53 x Fraud. Total amount defrauded approx \$500,000 – cts on indictment representative charges amounting to total amount defrauded of approx \$174,000. Respondent deposited valueless cheques into his account so as to inflate the credit balance. Appellant would then write out cheques to his creditors knowing that the inflated balance would mean the cheques were honoured by the bank. Money was used to pay existing debts and hospital bills for brother.	Sentence range 6 mths – 12 mths imp each ct. TES 2 yrs 6 mths imp. Equivalent to 2 yrs 8 mths imp after implementation of transitional provisions. EFP. Remorse.	Allowed. TES increased 3 yrs 6 mths imp – individual sentences not altered. p5 even though motivation was not to fund extravagant lifestyle, appellant still derived benefit from offending and motivation does not lessen offending. NB: Double jeopardy applied to State appeals.
1.	<i>Pak v R</i> Supreme Court Library No 950407	34 yrs at time sentencing. Convicted after trial some cts and PG on others. Minor prior criminal record	12 x Fraud. 2 x Operate bank account in false name. 1 x Uttering forged document. 1 x Forgery. 2 x PCJ (unrelated to frauds).	Sentence range for frauds 12 mths – 3 yrs imp each ct. TES 7 yrs 6 mths imp. Equivalent to 5 yrs imp	Dismissed. Sentence at upper limits discretion but not excessive, either individually or in total.

	<p>Delivered 11/08/1995</p>	<p>– dishonesty offences.</p> <p>Born in Korea; came to WA in 1977 with family; educated; stable employment history.</p>	<p>Offending serious in nature. Total amount defrauded \$1.3 million – loss to banks unknown. No prospect of any restitution.</p> <p>Appellant and two co-offenders engaged in a scheme whereby mortgages were obtained to purchase properties at an inflated price and the difference between the actual value and inflated value was deposited into accounts controlled by appellant. Appellant also wrote unauthorised cheques, falsified documents and opened bank accounts in false names.</p> <p>Money used fund lifestyle appellant could not otherwise afford.</p>	<p>after implementation of transitional provisions.</p> <p>EFP.</p> <p>Blamed others for offending; believes as long as intends to pay money back then he was not doing anything wrong.</p>	
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