

Cultivate cannabis with intent to sell or supply

s 7(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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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:

cult	cultivate
methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
hydro	hydroponic
poss	possess
wiss	with intent to sell or supply
immed	immediate
imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
12.	<p><i>Sandwell v The State of Western Australia</i></p> <p>[2012] WASCA 15</p> <p>Delivered 25/01/2011</p>	<p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>Good employment history.</p> <p>Since arrest attended counselling sessions with respect to long term cannabis use.</p>	<p>1x Cult cannabis wiss 147 seedlings 1 x Poss cannabis wiss 2.3 kilograms 1x Poss cannabis wiss 209 grams</p> <p>Police stopped vehicle driven by appellant for a random breath test. Noticed smell of cannabis from vehicle. Search of vehicle found cannabis totalling 2.3 kg. Appellant's house was subsequently searched. Police discovered 209 g of high quality cannabis head material, and 147 cannabis seedling growing in a bathroom.</p> <p>Not commercial dealer – cannabis for own use and that of friends.</p>	<p>12 mths imp. 12 mths imp. 6 mths imp.</p> <p>TES 12 mths imp.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [16] Affirmed position in <i>Wong v The Queen</i> (2001) 207 CLR 584 that while quantity of drug important factor in sentencing it is not the sole factor to be taken into account.</p>
11.	<p><i>Lester v The State of Western Australia</i></p> <p>[2001] WASCA 128</p> <p>Delivered 8/06/2011</p>	<p>50 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Minor prior criminal record – including poss drugs in 1998 & 2001.</p> <p>Began using cannabis at 17 yrs and became addicted.</p> <p>Stable upbringing; good employment history until injured in industrial accident in 1990.</p>	<p>1 x Cult cannabis wiss 6 mature plants, 18 seedling. 1 x Poss cannabis wiss 2kg head material, 1.68kg dry leaf material.</p> <p><u>s 32 offences:</u> 1 x Poss cannabis. 1 x Poss smoking implement.</p> <p>Police executed search warrant at appellant's home. Portion of a shed was converted into a concealed hydroponic growing room with a sophisticated set-up (indicative of commercial intent). 6 mature plants found and 18 tissue cultivated seedlings growing in a separate chamber. Police also found digital scales and \$2,100 cash.</p>	<p>18mths imp. 18 mths imp.</p> <p>TES 18 mths imp.</p> <p>Remorseful; engaging in treatment for addiction.</p>	<p>Dismissed.</p> <p>At [21]-[23] since 2001, courts repeatedly stated more serious view of cannabis trade is to be taken given the correlation between cannabis and mental illness and progression to harder drugs. Deterrence main consideration and past 5 yrs has seen a considerable firming up of sentences for other prohibited drugs – applies to cannabis as well.</p>
10.	<p><i>McLeod v The State</i></p>	<p>31 yrs at time sentencing.</p>	<p>1 x Cult cannabis wiss.</p>	<p>18 mths imp.</p>	<p>Dismissed – extension of time</p>

	<p><i>of Western Australia</i></p> <p>[2009] WASCA 233</p> <p>Delivered 22/12/2009</p>	<p>Convicted after PG.</p> <p>Manufacture offence committed while on bail other offences.</p> <p>Prior criminal record – drug offences (cannabis); no terms imp previously imposed.</p> <p>2 children.</p> <p>Began using cannabis at 13 yrs; heavy alcohol use 15-22yrs; diagnosed ADHD; stopped using ADHD medication and used methyl instead.</p>	<p>1 x Poss cannabis wiss. 1 x Attempt to manufacture methyl.</p> <p>Convicted on s 32 notice 26 drug offences.</p> <p>Appellant and co-offender planted 300 cannabis seedlings – plants matured and result was approx 100 plants between 4-7 ft. Appellant stopped on driving offence and, sue to smell in car, police found 1.85kg cannabis.</p> <p>While on bail, appellant subject surveillance and telephone intercepts.</p> <p>Appellant and co-offender found producing methyl following Australian Customs interception of package of 559g ephedrine powder being sent to appellant (powder substituted by Customs).</p>	<p>18 mths imp. 2 yrs 6 mths imp.</p> <p>Sentence range 3-6 mths imp.</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p>	<p>refused.</p>
<p><i>Transitional Provisions Repealed (14/01/2009)</i></p>					
<p>9.</p>	<p><i>Nguyen v The Sate of Western Australia</i></p> <p>[2009] WASCA 8</p> <p>Delivered 13/01/2009</p>	<p>27 yrs at sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record - previous interstate drug convictions relating to cannabis and heroin, plus convictions</p>	<p>Ct1: poss heroin wiss 113g 14% (rock form).</p> <p>Ct 2: poss heroin wiss 23g 26%.</p> <p>Ct 3: poss methyl wiss 207g 21-55%.</p> <p>Ct 4: poss BDMPEA wiss 1004 tablets.</p> <p>Ct5: cult cannabis wiss 124 plants.</p> <p>Ct 6: poss cannabis wiss 2.38kg.</p>	<p>Ct1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp. Ct 3: 4 yrs imp. Ct 4: 3 yrs imp. Ct 5: 3 yrs imp. Ct 6: 2 yrs imp.</p>	<p>Dismissed.</p>

		<p>for assault and traffic offences; four outstanding Victorian warrants.</p> <p>Lived in Vietnam until 10 yrs old, then in refugee camps in Hong Kong until coming to Australia 14 yrs old.</p> <p>Heroin addiction approx 10 yrs.</p>	<p>Ct 7: cult cannabis wiss 148 plants. Ct 8: poss cannabis wiss 7-8kg.</p> <p>Appellant and girlfriend in car at shopping centre. Police questioned them and appellant said from Melbourne and living in his car. When challenged by police as to living arrangements, appellant ran off and was caught after chase 100-150m. Police searched car and found drugs subject of cts 1-4 and approx \$17 000 in cash.</p> <p>Police investigations into houses involved in cultivation hydroponic cannabis (cts 5-8).</p>	<p>Ct 7: 3 yrs imp. Ct 8: 2 yrs imp.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p>	
8.	<p><i>Trajkoski v The State of Western Australia</i></p> <p>[2008] WASCA 130 Delivered 20/06/2008</p>	<p>Previous drug convictions (poss cannabis wiss 15kg and poss heroin wiss).</p> <p>Commonwealth supported carer for wife and children</p>	<p>1 x Cult cannabis wiss.</p> <p>Sophisticated set-up in bush near Lancelin – camp well stocked; 4 dams with irrigation pumps; camouflaged.</p> <p>Commercial operation – financial motivation.</p>	<p>2 yrs 8 mths imp.</p> <p>EFP.</p>	Dismissed – no error in not suspending term.
7.	<p><i>Hodge v The Queen</i></p> <p>[2004] WASCA 100 Delivered 17/05/2004</p>	<p>45 yrs at time offending.</p> <p>Convicted after PG - poss cannabis wiss. Convicted after trial cult cannabis (PG to cult only).</p>	<p>1 x Cult cannabis wiss 146 plants in 7 different plantations.</p> <p>1 x Poss cannabis wiss approx 6.6kg ‘green’ cannabis total.</p> <p>Systematic and organised commercial</p>	<p>12 mths imp.</p> <p>3 yrs imp.</p> <p>TES 4 yrs imp.</p>	<p>Allowed – failure to consider co-operation with authorities and confined to max security for own safety.</p> <p>TES reduced to 3yrs imp.</p>

		<p>Cult offence committed while on bail for poss offence.</p> <p>Difficult childhood – alcoholic mother; physical abuse; left home at 13yrs; early addiction to drugs.</p> <p>Suffered depression; Ross River virus; on invalid pension; heavily dependent marijuana.</p>	<p>operation.</p> <p>Appellant tended 7 crops for person he refused to name because of fears for safety. Role was essentially that of employee not organiser.</p> <p>Poss charge related to 6.6kg ‘green’ cannabis found in bags in freezer.</p> <p>Accepted by court storage in that manner reduces potency.</p>	EFP.	<p>Individual sentences not altered.</p> <p>EFP.</p>
<i>Transitional Provisions Enacted (31/08/2003)</i>					
6.	<p><i>Noble v The Queen</i></p> <p>[2003] WASCA 83</p> <p>Delivered 2/04/2003</p>	<p>No prior criminal record.</p> <p>Heavy cannabis user but had abstained past 3mths.</p> <p>Married; young child; pregnant wife; operated two franchises with wife.</p>	<p>1 x Cult cannabis wiss 48 hydro plants 15-25cm tall.</p> <p>1 x Cult cannabis wiss cannabis 36 hydro plants 90-125cm tall.</p> <p>1 x Poss cannabis (850g of no real value/potency).</p> <p>Moderate commercial scale – high degree sophistication.</p> <p>Police searched appellant’s home and found 48 plants growing in spare bedroom cupboard; 36 plants growing in one of the rooms; hydro set-up included lights, extractor fans, piping, reflective sheeting and room with chains and hooks to dry</p>	<p>6 mths imp.</p> <p>2 yrs imp.</p> <p>TES 2yrs imp.</p> <p>Equivalent to 16 mths imp after implementation of transitional provisions.</p> <p>\$200 fine.</p>	Dismissed.

			plants.		
5.	<i>Johnson v The Queen</i> [2002] WASCA 78 Delivered 8/04/2002	Convicted after trial. 3 rd generation dairy farmers and viticulturists. Member Rebels Motorcycle Club and president of South-West chapter; wife; three young children.	1 x Cult cannabis wiss 184 hydro plants and 78 hydro seedlings. Police searched rural property and found plants above. Meter box also bypassed.	8 yrs imp. TES 8 yrs imp. Equivalent to 5 yrs 4 mths imp after implementation of transitional provisions. EFP.	Allowed. TES reduced to 6yrs imp. EFP.
4.	<i>Day v State of Western Australia</i> [2001] WASCA 284 Delivered 14/09/2001	41 yrs at time offending. Convicted after early PG. No relevant prior criminal record. Alcoholic father died when appellant 16yrs - appellant had to support family; good employment history; disabled child.	1 x Cult cannabis wiss 109 hydro plants – 47 mature; 62 seedlings. Very professional, commercial enterprise on major scale. Appellant and three co-offenders converted house into ‘factory’ growing cannabis – bedroom and living room converted to growing rooms, two bedrooms converted into ‘nurseries’ and rear room converted to control room; reticulation; lighting; camera surveillance at front of house; sophisticated security system; built in robes converted into drying racks; Bypassed metre box – police called by firemen attended scene to extinguish fire that had started when wiring overheated. Also found several firearms and ammunition; \$49,000 cash; written	6 yrs imp. TES 6 yrs imp. Equivalent to 4 yrs imp after implementation of transitional provisions. EFP.	Allowed. TES reduced to 3 yrs 6 mths imp. At [27] notes that court has recently taken more serious view of cannabis offence and firmed up sentences, therefore an range identified previously need be treated with caution.

			evidence of crops back to 1998. Appellant admitted being one of principals and that he expected to receive 1/3 profits.		
3.	<i>Roth-Beirne v The Queen</i> [2001] WASCA 64 Delivered 14/03/2001	42 yrs at sentencing. Minor criminal record. Born with cleft palate – shy and reclusive; partner recently died in tragic circumstances – more reclusive; depression; interpersonal difficulties; at time sentencing suffering injuries from car accident and psycho report indicated possibility mild frontal lobe deficit.	1 x Cult cannabis wiss 61 hydro plants; 35 plants in yard. 1 x Poss cannabis wiss 4.4kg dry leaf material total. 1 x Cult opium poppy wiss 30 plants. PG further 8 charges in s 32 notice – committed while on bail for offences above (incl poss heroin; cult cannabis wiss; poss cannabis)	12 mths imp. 18 mths imp. 12 mths imp. TES 18 mths imp. Equivalent to 12 mths imp after implementation of transitional provisions.	Dismissed. At [17] Sentences at bottom acceptable range.
2.	<i>Maniaci v The Queen</i> [2000] WASCA 195 Delivered 2/08/20000	Almost 40 yrs at time sentencing. Convicted after trial. No prior criminal record. Marriage recently broken down.	1 x Cult cannabis wiss 12 hydro plants. 1 x Cult cannabis wiss 20 hydro plants. Sophisticated operation to continually yield cannabis. Plants being grown hydroponically at two premises – both of which had been specifically modified for that purpose. Evidence that significant number plants recently been harvested and police had observed significantly more plants during surveillance operations.	2 yrs imp. 3 yrs imp. TES 5yrs imp. Equivalent to 3 yrs 4 mths imp after implementation of transitional provisions. EFP.	Allowed. TES reduced to 3yrs 8mths imp. Individual sentences not disturbed.

<p>1.</p>	<p><i>Atholwood v R</i></p> <p>[1999] WASCA 256</p> <p>Delivered 15/11/99</p>	<p>31 yrs at time offending.</p> <p>Convicted after late PG – originally charged 3 cannabis offences, PG day before to trial to cult wiss cannabis and other 2 charges discontinued.</p> <p>Minor prior criminal record.</p> <p>Good employment record.</p>	<p>1 x Cult cannabis wiss 42 plants total.</p> <p>Appellant renting a house and living in it. Friend asked if he could use some parts of the house for business. Appellant agreed – friend paid rent and supplied appellant with cannabis for personal use in return.</p> <p>Sentenced on basis involved in commercial cult cannabis – role as essentially ‘babysitter’ who would not share in profits accepted by prosecution but wrongly rejected by judge.</p>	<p>2 yrs 9 mths imp.</p> <p>TES 2 yrs 9 mths imp.</p> <p>Equivalent to 1 yr 10 mths imp after implementation of transitional provisions.</p>	<p>Allowed.</p> <p>Factual basis sentencing incorrect and PG not adequately taken in to account.</p>
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