

# Manufacture & Attempted Manufacture Prohibited Drug

ss 6(1)(b) and 33(1) *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
P2P	1-phenyl-2-nitropropene
PSO	Pre-sentence order
Immed	immediate

## Manufacture Prohibited Drug

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
24.	<p><i>Bomford v The State of Western Australia</i></p> <p>[2013] WASCA 153</p> <p>Delivered 24/06/2013</p>	<p>34 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal record.</p> <p>User of methyl.</p> <p>Unemployed since 2009; no assets.</p>	<p>1 x Manufacture methyl.</p> <p>During a period of about 4 months the appellant attempted on 41 occasions (35 successfully and 6 unsuccessfully) to purchase medication containing pseudoephedrine.</p> <p>Detectives executed a search of the appellant's home address and as a result located items consistent with the manufacture of methyl.</p> <p>Pseudoephedrine, methyl, codeine and other by-products of the methyl manufacturing process were detected on filter papers and items found.</p> <p>Trial judge accepted State's concession that there was 'no commercial aspect'. The drug was used by him and his girlfriend.</p>	<p>2 yrs 9 mths imp.</p> <p>EFP.</p> <p>No remorse.</p> <p>Judge found irrespective of whether the appellant was the principal or an aider he had played a 'significant role' in the offending.</p> <p>No evidence that he had taken any steps towards rehabilitation to address his addiction.</p>	<p>Dismissed on papers.</p> <p>[25] (Held Judge correct to find in the circumstances it didn't affect the sentence whether the appellant was an aider and not a principal).</p> <p>At [40] Personal and general deterrence are the primary sentencing factors.</p>
23.	<p><i>Lovett v The State of Western Australia</i></p> <p>[2013] WASCA 78</p> <p>Delivered 20/03/2013</p>	<p>49 yrs at time sentencing.</p> <p>Convicted after late PG – morning of trial; following agreement with the state that a second charge of manufacture be discontinued.</p> <p>Minor criminal record including convictions for poss methyl and MDMA – Fined \$600.</p>	<p>1 x Attempt to manufacture methyl.</p> <p>Police attended a property on Great Northern Highway, Millendon following a fire in a garage caused by an explosion. They were accompanied by chemists from the Chemcentre.</p> <p>A search of the property revealed chemicals and apparatus used in the manufacture of methyl using the 'Nazi</p>	<p>2 yrs 6 mths imp.</p> <p>Remorse.</p> <p>Sentencing judge noted tried to minimise his involvement by suggesting that he simply produced the gas.</p>	<p>Dismissed on papers.</p> <p>At [15] The circumstances of an attempt may not be less serious than the circumstances of a completed offence.</p> <p>At [17] In this case, the appellant's role in the manufacturing process was not incidental but substantial. The</p>

		<p>Offence committed while on bail on another charge of manufacture methyl.</p> <p>Two adult children.</p>	<p>method'. The chemicals found included 1.36g of pseudoephedrine, an amount which had the potential to yield 1.52g of methyl at a purity of between 80-90%. An analysis of the items found at the property disclosed that methyl had previously been manufactured using the equipment.</p> <p>The explosion occurred while the appellant was attempting to produce gas as part of the process of manufacturing methyl. The appellant had arranged with the tenant of the garage to have the use of the garage on the day of the explosion. He did so for the purpose of producing the gas. Substantial damage was caused to the garage by the explosion and the appellant suffered 15% partial deep burns to the face, back, forearms and hands. He was taken to RPH where he was admitted to ICU before being transferred to the burns unit.</p>	<p>Portion of methyl was produced for own use.</p> <p>Completed rehabilitation courses whilst on remand.</p> <p>Took into account that appellant had been injured but noted able to discharge himself from hospital within a few days.</p>	<p>appellant had organised the use of the garage at the premises in order to manufacture the gas. The manufacture of the gas was an important part of the manufacturing process. It also put at risk anyone in the vicinity. It is recognised that the process of manufacture of methylamphetamine is dangerous to the participants, to the police, and to members of the public:</p> <p><i>Rumenos v The State of Western Australia</i> [2011] WASCA 59 [35] – [36]. The danger is graphically illustrated in this case. The explosion and resulting fire caused substantial damage to the building and no doubt it is only by good fortune that no-one else was injured.</p> <p>At [18] It is also a significant factor in this case that the appellant committed the offence while he was on bail for another offence.</p>
22.	<p><b><i>Skinner v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 99</b></p> <p>Delivered 7/05/2012</p>	<p>Mid-thirties at time offending. 37 yrs at time sentencing.</p> <p>Convicted after fast-track PG – some co-operation with police (information of little value).</p> <p>Lengthy prior criminal record – starting in Children’s Court; assault; assault public officer; disorderly conduct; drug offences; wilful damage; traffic offences.</p>	<p>1 x Manufacture methyl. 1 x Manufacture methyl. 1 x Attempt to manufacture methyl. 22 x Offer sell/supply cannabis. 5 x Offer sell/supply MDMA. 8 x Offer sell/supply methyl. 1 x Receiving. 3 x Supply cannabis. 6 x Supply methyl. 2 x Agg burg.</p> <p>s 32 matters:</p>	<p>2 yrs 6 mths imp. 3 yrs imp. 18 mths imp. 1 mth imp each ct. 1-6 mths imp each ct. 1-6 mths imp each ct. 6 mths imp. 1-6 mths imp each ct. 1-6 mths imp each ct. 18 mths imp; 12 mths imp.</p>	<p>Dismissed.</p> <p>At [30] Persistent manner of re-offending makes personal deterrence an even more dominant sentencing factor.</p> <p>At [30] Obvious in recent times that process of manufacturing is dangerous and the fact that such offences are now more prevalent means sentences for</p>

		<p>Offending breached bail on several occasions until appellant eventually remanded in custody.</p> <p>Happy childhood; left school at 15 yrs;</p> <p>Began drug use at 14 yrs; serious methyl addiction at time offending.</p> <p>Good employment history.</p> <p>In lead up to offending, appellant became unemployed and slipped back into drug use and the manufacturing and selling himself.</p>	<p>1 x Poss cannabis. 1 x Poss smoking utensil. 1 x Poss unlicensed ammunition. 1 x Breach bail. 1 x Poss unlicensed firearm. 1 x Poss stolen property. 1 x Driving without authority.</p> <p>Individual charges, weights and sentences set out in table annexed to judgement.</p> <p>Scale of the manufacturing operation was described by an experienced police officer as “huge” in comparison to other labs he had seen – offending properly characterised as ‘serious’.</p> <p>Police searched appellant’s home and found materials for manufacture process. Appellant released on bail and failed to appear – police subsequently again searched his home. Appellant again in possession of materials to manufacture methyl – part of the manufacture process was in progress at the time of the raid. Again the appellant was released on bail. Appellant’s home again searched and appellant found to be in possession of materials for manufacturing methyl. Appellant was then refused bail.</p>	<p>TES 8 yrs imp. EFP.</p>	<p>manufacturing must be firmed up to provide the requisite general deterrence.</p> <p>At [80]-[90] Some discussion comparative cases.</p>
<b>21.</b>	<p><i>Smith v The State of Western Australia</i></p> <p><b>[2012] WASCA 91</b></p> <p>Delivered 24/04/2012</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Extensive prior criminal record – including numerous drug convictions.</p>	<p>Ct 1: Attempt poss heroin wiss 1.75g. Ct 2: Poss heroin wiss 3.44g at 34%. Ct 3: Poss firearm. Ct 4: Poss ammunition. Ct 5: Manufacture heroin. Cts 6-11: Sold heroin.  Ct 12: Conspire to supply heroin.</p>	<p>Ct 1: 6 mths imp. Ct 2: 12 mths imp. Ct 3: 12 mths imp. Ct 4: 6 mths imp. Ct 5: 18 mths imp. Cts 6-11: 6 mths imp each ct. Ct 12: 3 yrs imp.</p>	<p>Dismissed.</p> <p>At [25] “Where an offence is committed after serving time in custody in respect of a charge upon which the offender is subsequently acquitted, there would ordinarily be no reason to</p>

		Entrenched heroin addiction; current partner also heroin addict.	<p>Cts 13-75, 77-131: Offer sell heroin 0.2g-0.5g.</p> <p>Total quantity heroin involved approx 40g.</p> <p>Appellant involved in offending of methodical and concerted nature – manufacturing home bake heroin, obtaining heroin from others and selling heroin. The possession of the firearm and ammunition add to the seriousness of the offending.</p> <p>Appellant convicted after PG in 2008 of 3 cts poss amphetamine wiss – on analysis powder contained no illicit substances (not known until after appellant served full 15 mths imp). Convictions later overturned on appeal.</p>	<p>Cts 13-75, 77-131: 6 mths imp each ct.</p> <p>TES 4 yrs imp.</p>	<p><i>take the prior period of custody into account so as to reduce the sentences imposed in respect of the current offence.”</i></p> <p>At [28] Court of Appeal entitled to have regard to fact that a term of imprisonment was served for offences the appellant was subsequently acquitted of.</p>
20.	<p><b><i>The State of Western Australia v Hyder</i></b></p> <p><b>[2011] WASCA 256</b></p> <p>Delivered 24/11/2011</p>	<p>48 yrs at time offending. 50 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Educated to yr 12; good employment history – initially worked in successful family business then set up own engineering research business.</p> <p>Wealthy (approx \$8 million in assets); never married; no children.</p> <p>Began recreational methyl use in 2001; habit escalated to daily use by 2005.</p>	<p>1 x Manufacture methyl. 1 x Poss methyl. 1 x Poss unlicensed submachine gun. 1 x Poss unlicensed handgun.</p> <p>Engaged in sophisticated process of methyl over long period of time – no commerciality in offending.</p>	<p>3 yrs imp. 1 yr imp. \$2000 fine. \$2000 fine.</p> <p>TES 4 yrs suspended 2 yrs and \$4,000 fine.</p> <p>Remorseful; no counselling or treatment; still using illicit drugs at time sentencing; little insight into offending and its broader social impact.</p>	<p>Allowed.</p> <p>TES 3 yrs immed imp imposed.</p> <p>EFP after 18 mths.</p> <p>At [28] Immed imprisonment generally imposed for manufacturing offences.</p> <p>At [31]-[32] Manufacture for personal use does not alter fact that dominant sentencing consideration is deterrence.</p> <p>At [35] Need for general deterrence underscored by increase of incidence of offending</p>

					of this type in recent times. NB: Only suspension of term challenged not length.
19.	<p><i>The State of Western Australia v Jenkin</i></p> <p>[2011] WASCA 171</p> <p>Delivered 5/08/2011</p>	<p>34 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Lengthy prior criminal record – drugs; aggravated burglary, burglary; possess stolen property, fraud; stealing.</p> <p>Loving family; educated to yr 10; good employment history until 18 mths prior to offending.</p> <p>Entrenched history poly substance abuse; past and present offending linked to substance abuse.</p> <p>Failed to fully comply with substance abuse counselling sessions while on bail for these offences and continued to use illicit substances; previously cheated on drug urinalysis while on parole.</p> <p>De facto partner pregnant at time sentencing; de facto has 4 other children, 2 of whom live with her and respondent; de facto also has substance abuse issues.</p>	<p>5 x Manufacture methyl.</p> <p>Police discovered a methyl lab in bushland near Busselton and a guard was placed at the site.</p> <p>The respondent was seen by police driving towards the lab and, having seen the police, attempted to reverse away from the property. Police intercepted, stopped and searched vehicle – found equipment and materials associated with manufacture of methyl (including 8.5kg gas cylinder, chemicals, lithium batteries and caustic soda).</p> <p>Respondent admitted in police interview to taking part in manufacture process on previous occasions.</p> <p>Respondent told police his role in the process was to produce the ammonia gas required and that he received half the methyl produced in return. Sentencing judge accepted that manufactured product was for personal use of respondent and co-offender.</p>	<p>15 mth PSO imposed.</p>	<p>Allowed.</p> <p>PSO set aside.</p> <p>Matter remitted to District Court for sentencing before another judge in accordance with appeal reasons.</p> <p>At [6] power to impose PSO not enlivened if appropriate sentencing option in the circumstances is that of immediate imp.</p> <p>At [12] ‘<i>The offence of manufacturing a prohibited drug is, by any measure, serious.</i>’</p> <p>At [13]-[14] notes increasing improvised clandestine drug labs in WA in past decade as well as their dangers and the association of drugs with criminal offending means that ordinarily immed imp will be imposed for offences of manufacture.</p> <p>At [16] given seriousness of offending, increased incidence of the offence &amp; fact that respondent falls within demographic most likely to commit this kind of offence, only sentencing option</p>

					open is term immed imp – error to impose PSO.  On re-sentencing in District Court TES 2yrs 6 mths imp imposed.
<b>18.</b>	<b><i>Rumenos v The State of Western Australia</i></b>  <b>[2011] WASCA 59</b>  Delivered 17/03/2011	48 yrs at time sentencing.  Convicted after fast-track PG.  At time offending, on suspended term imp (driving offences).  Prior criminal record – incl serious drug offences (previously served term imp in relation to drugs); poss unlicensed ammunition; over 50 driving offences as adult.  Family support; employment; serious drug addiction.	1 x Manufacture methyl. 1 x Burglary.  Also sentenced 24 x s32 offences (incl burglary, stealing, poss drugs, crim damage, firearms, mislead police, driving offences).  Police search of appellant’s house revealed clandestine laboratory used for manufacturing methyl. Also found numerous items and substances to use in manufacture process (some of the burglary and stealing charges relate to the taking of cold and flu tablets from pharmacies).	2 yrs imp. 12 mths imp.  Sentence range fines – 12 mths imp.  TES 4 yrs.  EFP.	Dismissed – 2yrs for manufacture within range.  At [23] TES low.  At [25]-[26] and [34] fact manufacturing drug for personal use does not alter dominant sentencing consideration of deterrence – legislation does not draw distinction between manufacture for personal or commercial use in defining max penalties.  At [35]-[39] Outlines dangers clan labs present to community.
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b>17.</b>	<b><i>R v Sebborn</i></b>  <b>[2008] VSCA 200</b>  Referred to by the Court of Appeal in <i>Rumenos</i> [2011] WASCA 59	46 yrs at time of appeal.  Convicted after PG.  Sept 06 manufacturing offence committed while on bail for Feb 05 offences.  Regularly before courts, including prior conviction in trafficking amphetamines. CBO imposed. Breached CBO.	<u>Feb 05 offences:</u> 1 x Trafficking in meth (on the basis of manufacturing). 1 x Poss of cannabis.  <u>Sept 06 offences:</u> 1 x Trafficking in meth (on the basis of manufacturing). 1 x Poss of meth. 1 x Poss of cannabis.  Personal use - no commercial element in	2 yrs imp.  Fined \$250.  2 yrs 6 mths imp.  3 mths imp. Fined \$500.  TES 4 yrs 6 mths imp.	Allowed.  TES reduced to 3yrs and 6mths.  EFP after 2 yrs 6 mths.  NB: Individual sentences not disturbed.  NB: <i>Rumenos</i> [2011] WASCA 59 at [29] need to be careful relying on decisions from other

		Supportive family; above average intelligence; introduced to amphetamines at 16yrs – only started using drug regularly much later; long-term relationship with 3 children; difficulty in coping after break-down of relationship and became increasingly involved in illicit drugs.	<p>manufacturing.</p> <p><u>Feb 05 offences:</u> Police discovered clandestine laboratory at appellant's house designed for the manufacture of methyl. Items found included literature, handwritten notes on the method of manufacture of methyl, list of local pharmacies, lab equipment, snap-lock bags and electronic scales.</p> <p><u>Sept 06 Offences:</u> The appellant agreed with occupant of a house to manufacture methyl on premises later that day. Appellant went to house with two boxes of pseudoephedrine-based medication. Returned to house and began to produce drugs. House raided by police. Quantity of material located consistent with the production of 2g methyl. Appellant arrested later that night, possessing items consistent with having manufactured ecstasy, a syringe, 30mg methyl, 0.06g cannabis.</p>		jurisdictions (esp Victoria as max penalty for manufacture is 15 yrs).
16.	<p><i>Johnston v The State of Western Australia</i></p> <p>[2008] WASCA 221</p> <p>Delivered 31/10/2008</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after PG.</p>	<p>1 x Manufacture methyl.</p> <p>Commercial aspect – evidenced by telephone intercepts.</p>	<p>2 yrs 5 mths imp.</p> <p>TES 2 yrs 5 mths imp.</p>	<p>Dismissed.</p> <p>No error in approach taken to confiscation of property.</p>
15.	<p><i>White v The State of Western Australia</i></p> <p>[2007] WASCA 119</p>	<p>40 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal record - burglary, fraud, unlawful possession, stealing</p>	<p>1 x Manufacture methyl.</p> <p>Potential commercial use.</p> <p>Appellant played key role in the manufacture of methyl – purchased</p>	<p>4 yrs imp.</p> <p>TES 4 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [30] '4 yrs' imp.. is nowhere near demonstrably excessive in the present case.'</p>

	Delivered 29/05/2007	and receiving.  Former medical practitioner whose career terminated because of drug addiction.  Evidence of rehabilitation since between time of offence and sentencing.	ingredients, harboured equipment used for manufacturing methyl, knew the drugs manufactured were for sale to third parties and tried to dispose of equipment which connected him to the manufacture. Police seized a number of items from appellant's house and former mother-in-law's house associated with the manufacture of methyl. Potential yield from iodine located was 257g high purity methyl.		At [43] ' <i>the sentence of 4 years' imp imposed on the present appellant was within the range of sentences that could be expected for the offence of manufacture of methyl.</i> '
14.	<b><i>Bolton v The State of Western Australia</i></b>  [2006] WASCA 120  Delivered 27/06/2006	Convicted after trial.  Prior record of minor offending. Significant amount of driving offences. No previous drug-related offence.  De facto partner co-offender.  4 children with co-offender aged 4-10 yrs; if appellant and partner both sentenced to immed terms of imp children would be placed in foster care.  Ongoing business obligations.	1 x Manufacture methyl.  Not regarded as most serious but quantity of methyl capable of production and nature of ongoing operation regarded as serious.  Found at home of appellant equipment and ingredients capable of being used in the manufacture of methyl. Ingredients available could have led to the manufacture of some 20 grams of methyl of 80 to 90 per cent purity. Further items sufficient to make another 3.8 grams of high purity methyl.	40 mths imp.  TES 40 mths imp.  EFP.  Co-offender TES 40 mths imp susp 2 yrs.	Dismissed.  Disparity between appellant and co-offender does not justify a reduction of appellant's sentence.
13.	<b><i>Headley v The State of Western Australia</i></b>  [2004] WASCA 88  Delivered 11/05/2004	53 yrs at time sentencing.  Convicted after PG (including fast-track, early plea, last minute plea).  Breached suspended sentence for poss amphetamine when committing further drug-related offences.  Prior record of conviction,	1 x Manufacture methyl. 1 x Poss methyl wiss. 1 x Attempted manufacture methyl. 1 x Poss methyl wiss. 1 x Poss heroin wiss. 1 x Poss amphetamine wiss. 1 x Poss methyl wiss.  Significant personal use but also commercial use. Regarded at the higher end of seriousness	5 yrs imp. 2 yrs imp. 3 yrs imp. 2 yrs imp. 2 yrs imp. 18 mths imp susp 2 yrs. 2 yrs imp susp 2 yrs.  TES 10 yrs imp.  EFP.	Dismissed.  At [47]: ' <i>the totality of the sentences imposed on the applicant was by no means disproportionate to the chapters of criminal conduct that the facts of this case reveal.</i> '

		<p>including poss of cann, poss of amphetamines, poss of controlled weapons,</p> <p>5 children, youngest 12 yrs old; Vietnam veteran; regarded totally permanently incapacitated pensioner; diagnosed with chronic post-traumatic stress disorder; poor health; addicted to amphetamines.</p>	<p>Police searches at appellant's residence, searches of other residences, intercepting telephone conversations and surveillance. Equipment found during searches included electric scales, cash, documents relating to the manufacture of methyl, list of names and amount of money owing, revolver, automatic rifle, ammunition, glass containers, funnels and tubes (containing traces of ephedrine, pseudoephedrine and phenycin), caustic soda, sodium methyl.</p>		
12.	<p><i>Shipley v The Queen</i></p> <p>[2003] WASCA 247</p> <p>Delivered 14/10/2003</p>	<p>60 yrs at time offending. One week from turning 61 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Second offence committed while on bail for first offence.</p> <p>Extensive prior criminal record – offending back to 1963; wide range offences; numerous drug convictions; previous terms imp drug offences.</p> <p>Serious methyl addiction since 40 yrs; long-term relationship for 26 yrs.</p> <p>Awaiting hip replacement operation (chronic hip deformity); acute pain when walking and became dependant on methyl for mobility.</p>	<p>1 x manufacture methyl. 1 x manufacture methyl. 1 x assault public officer.</p> <p>Claimed manufacture personal use only – found to be running at least medium scale operation.</p> <p><u>1<sup>st</sup> manufacture offence:</u> Search warrant executed at appellant's home. Clan lab found in bathroom. Various chemicals and equipment associated with manufacture methyl found. Strong smell ammonia when police arrived – manufacture in progress when police arrived. Method production used fast and efficient, producing methyl up to 90% purity. Appellant denied involvement.</p> <p><u>2<sup>nd</sup> manufacture offence:</u> Police officers on patrol investigated activity observed at factory unit – glassware and chemicals seen and strong smell ammonia present. Police requested access and were refused – people in</p>	<p>4 yrs imp. 5 yrs 6 mths imp. 6 mths imp.</p> <p>TES 9 yrs 6 mths imp.</p>	<p>Dismissed.</p> <p>Sentences for manufacture offences both well within range.</p>

			building seen to be hiding items. Door opened and appellant came out armed with crowbar, threatened police and ran off. Police found appellant nearby – taken to hospital and treated for ammonia gas inhalation (claimed out of breath from running and not affected by gas). Factory unit searched and clan lab and chemicals found. Appellant denied involvement.		
<b>Transitional Provisions Enacted (31/08/2003)</b>					
<b>11.</b>	<b><i>Brady v The Queen</i></b> <b>[2003] WASCA 154</b>  Delivered 18/07/2003	Convicted after very late PG (entered on Friday – trial due to start following Monday).  Prior criminal record – dishonesty; assault; previous drug convictions.  History substance abuse.  Uneventful childhood; de facto relationship; young child; good employment history.	1 x Manufacture methyl. 1 x Poss methyl wiss (26g at 19-51%).  Found in sentencing manufacture partly to sustain own habit and even though operation of substantial scale, it was not commercial in nature.  Charges result extensive surveillance on appellant’s house. Surveillance and equipment, chemicals and drugs found in search indicated production on significant scale.	6 yrs imp. 3 yrs 6 mths imp.  TES 9 yrs 6 mths imp.  EFP.  High risk re-offending.	Allowed.  TES reduced to 6 yrs imp.  NB: Individual sentences not disturbed.  At [9] potential to manufacture on significant scale or operation some sophistication broad range 5 ½ - 7 yrs.  Some discussion of one transaction principle when drug in possession of likely just been manufactured and charges, though distinct, are basically contemporaneous.
<b>10.</b>	<b><i>Abela v The Queen</i></b> <b>[2002] WASCA 279; (2002) 134 A Crim R 392</b>  Delivered	Convicted after late PG.  Prior conviction in WA for conspiracy to manufacture prohibited drug (probation & community service); prior convictions in Victoria for 2 x poss	4 x Manufacture P2P (1 <sup>st</sup> stage in amphetamine production). 2 x Manufacture amphetamine.  Manufacture for commercial reasons not personal use.	7 yrs imp each count. 7 yrs imp each count.  TES 8 yrs imp (all sentences concurrent; 12 mths cumulative for bail offence).	Allowed – global approach to sentencing error, each count required individual sentence that fit circumstances offending.  2 yrs imp substituted each count P2P and 3 yrs substituted each

	10/10/2002	amphetamine (fine).	Offending period approx 7 weeks. Search of appellant's home found chemicals and lab equipment. Capacity to produce 1kg (across 6 charges).	EFP.	amphetamine. Head sentence 7 yrs imp.  TES 8 yrs imp (including 12 mths cumulative for bail offence).
9.	<b>R v Pallister</b>  [2002] WASCA 68  Delivered 28/03/2002	Convicted after PG.  Significant drug habit.	1 x Manufacture methyl.  Personal use (contentious) – high degree sophistication, multiple methods of production and capable of producing a high yield of drug. Clandestine laboratory at respondent's Manjimup home. Laboratory included chemicals and apparatus used in the manufacture of methyl. Estimated that laboratory had already produced 64 grams of methyl at 70 per cent purity. Respondent claimed for personal use, not wiss. Trial Judge made no finding with respect to above claim. On appeal respondent's claim upheld. Laboratory material capable of yielding 14.5g and 1.1kg of methyl respectively.	2 yrs ISO imposed on 7/09/01.	Allowed.  TES 2 yrs immed imp substituted (taking into account 7 months spent in custody).  EFP.  On a further appeal, taking into account 12 mths spent in custody, ISO imposed by primary judge confirmed.
8.	<b>Worth v R</b>  [2001] WASCA 303  Delivered 3/10/2001	Convicted after PG but not at earliest opportunity.  Prior criminal record - offending departure from earlier criminal conduct. Encouraged by another to become involved in manufacturing amphetamines - in difficult financial circumstances.  User of drugs, particularly cannabis, since 14 yrs old; became involved with people with underworld connections who	1 x Manufacture amphetamine.  Commercial use, relatively large and some level of sophistication in manufacturing process. Potential produce 6kg amphetamine.  Police officers located clandestine drug laboratory at applicant's residence during search. They located a large metallic cylinder full of liquid on a hotplate, tubes and a power cord seen to have been connected to the cylinder. Items found in the premises and shed included glassware,	6 yrs 6 mths imp.  TES 6 yrs 6 mths imp.  EFP	Allowed.  TES reduced to 5 yrs 6 mths imp.  EFP.  <i>At [52] 'The potential of the manufacturing operation is not irrelevant in sentencing.'</i>

		unknown to him heavily involved in the manufacture and supply of amphetamines in Western Australia and was eventually directed to do things he was reluctant to do after they had lent him money which he could not repay. Supported habit by dealing; forced to become involved in the manufacture of amphetamines.	apparatus, equipment, various chemicals and pistol. 16.1 gms of 100 per cent pure amphetamine had been produced but capability to produce a further 500g. If a further quantity of P2P had been obtained, taking into account the 16 litres of unused benzaldehyde found, there was capability to produce a yield of not less than 6 kilos of amphetamine. Maximum yield without obtaining a further quantity of P2P was 262 gms.		
7.	<b><i>Cabassi v R</i></b>  [2000] WASCA 305  Delivered 25/10/2000	58 yr old at time sentencing.  Convicted after trial.  No prior criminal record.  A number of impressive references directed towards his character; previous hard work and community spirit; had been involved in farming his whole life but financial difficulty led into plan to manufacture.	1 x Manufacture methyl.  Commercial use  When accused and co-offenders interrupted by the arrival of the police, they had made only 1.4g of methyl in a lab for profit. However, having regard to the quantity of chemicals on the premises, potential yield of 60g of relatively pure amphetamine.	7 yrs imp.  TES 7 yrs imp.  EFP.	Dismissed.  At [9] manufacturer of prohibited drug at highest end of chain of supply – conduct more serious than person in possession drug with intent sell/supply.  At [15] quantity drug manufactured as well as potential of manufacturing operation relevant considerations, as are premeditation and planning involved and scale of enterprise.
6.	<b><i>Paparone v The Queen</i></b>  [2000] WASCA 127; (2000) 112 A Crim R 190  Delivered 12/05/2000	29 yrs at time sentencing.  Convicted after early PG.  No relevant prior criminal record.  Diagnosed ADHD – some evidence self medicating with methyl but no causative link to offending.  Family support; 2 young children.	1 x Manufacture amphetamine. 1 x Poss methyl wiss. 1 x Poss methyl wiss. 1 x Poss anabolic steroid.  Element personal use in manufacture but not sole impetus.  Appellant's car stopped by police and search on home then conducted – found 'amphetamine factory'.	3 yrs imp. 2 yrs 6 mths imp. 12 mths imp. \$750 fine.  TES 5 yrs 6mths imp; \$750 fine.  EFP.	Dismissed (by majority – Wallwork J dissenting and finding causal link between offending and ADHD proven).

4.	<p><i>Lim v The Queen</i></p> <p>[1999] WASCA 296</p> <p>Delivered 17/12/1999</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record traffic offences only.</p> <p>Buddhist; successful entrepreneur; offending out of character; community and family support.</p>	<p>5 x Manufacture methyl.</p> <p>Also convicted on s 32 notice 2 x poss ecstasy and 1 x poss methyl.</p> <p>Commercial nature only – no element personal use.</p> <p>Appellant’s parents overseas – appellant turned bathroom into clan lab. Evidence 5 successful yields of high purity methyl. Degree premeditation &amp; planning.</p>	<p>5 yrs 6 mths imp each count.</p> <p>6 mths imp each count.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Deeply remorseful. Low risk re-offending.</p>	<p>Dismissed.</p> <p>At [18]-[19] uppermost level criminality occupied by manufacturer with commercial impetus. Higher up distribution chain, greater the need for punishment and deterrence</p>
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### Attempt to Manufacture Prohibited Drug

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<p><i>Perry v The State of Western Australia</i></p> <p>[2012] WASCA 124</p> <p>Delivered 21/06/2012</p>	<p>24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No relevant prior criminal record.</p> <p>Regular employment since leaving school at 15 yrs to complete an apprenticeship.</p> <p>Recently reconciled with de facto partner of 5 yrs and 2 children (2 ½ yrs and 3 ½ yrs old).</p>	<p>1 x Attempt to manufacture methyl.</p> <p>Appellant purchased equipment and chemicals to produce methyl on a variety of dates and at different times so as to avoid suspicion. Appellant then engaged two of his friends to obtain the cold and flu medication required to produce methyl. Appellant manufactured methyl at two different locations – one in the bush to avoid the attention that the smell produced by the ammonia gas.</p> <p>Police executed a search warrant at the appellant’s home and at the bushland site.</p>	<p>16 mths imp.</p> <p>TES 16 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [40] As per <i>Dooling v The State of Western Australia</i>, where offender has all necessary materials to undertake the manufacturing process, there is little to differentiate his culpability from that of a person who has completed the manufacturing process.</p> <p>At [41] Dominant sentencing consideration is that of general deterrence and a term of immediate imprisonment is</p>

		<p>History of substance abuse; began drinking at 14 yrs; began smoking amphetamines following breakdown of de facto relationship; ceased using amphetamines since being arrested.</p> <p>Prior to offending his grandmother, his partner's mother, his close friend and his football coach had all recently died; grandfather had recently been diagnosed with cancer and appellant helped with his care.</p>	<p>Appellant admitted attempting to manufacture methyl for his own use.</p>		<p>ordinarily warranted irrespective of whether or not the drugs were manufactured for personal use or other reasons.</p>
4.	<p><b><i>Dooling v The State of Western Australia</i></b></p> <p><b>[2012] WASCA 95</b></p> <p>Delivered 3/05/2012</p>	<p>40 yrs at time sentencing.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record – burg; drug related offences.</p> <p>Married with children (one of whom died in 2002); 2 children taken into care in 2011 due to substance abuse, domestic violence and family dysfunction.</p> <p>Suffered serious accident in 2012 – foot severed and later re-attached.</p>	<p>2 x Attempt to manufacture methyl.</p> <p>Police searched appellant's home and found acids, solvents, hydrogen chloride gas generators, lithium batteries and other items used in the manufacturing process. When interviewed by police, appellant admitted to aiding another person on two occasions with attempting to manufacture methyl in order to obtain a portion of the drug for himself.</p>	<p>2 yrs imp each ct.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Remorseful; some steps towards rehabilitation.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [8] Circumstances of an attempt to manufacture may not necessarily be less serious than a completed manufacture – especially where the penalty for the two offences is the same.</p> <p>At [9] Where offender has all necessary materials to undertake manufacturing process there is little difference in the culpability between an attempt and the completed offence. Sentences for attempt to manufacture are therefore roughly consistent with sentences imposed for completed manufacture offences.</p> <p>At [10] Given cooperation and remorse, individual sentences towards high end of the range but</p>

					that is balanced by the order for concurrency.
3.	<p><b><i>McLeod v The State of Western Australia</i></b></p> <p><b>[2009] WASCA 233</b></p> <p>Delivered 22/12/2009</p>	<p>31 yrs at time sentencing.</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 Attempt to manufacture methyl. 1 x Cult cannabis wiss. 1 x Poss cannabis wiss.</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, due 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 with 559g ephedrine powder being sent to appellant (powder substituted by Customs).</p>	<p>2 yrs 6 mths imp. 18 mths imp. 18 mths imp.</p> <p>Sentence range 3-6 mths imp.</p> <p>TES 4 yrs 10 mths imp.</p> <p>EFP.</p>	Dismissed – extension of time refused.
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
2.	<p><b><i>McKeagg v The Queen</i></b></p> <p><b>[2006] WASCA 26</b></p> <p>Delivered 22/02/2006</p>	<p>36 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive prior criminal record – drugs; firearms; served previous term imp for drug importation.</p>	<p>1 x Manufacture methyl. 1 x Attempt to manufacture methyl. Capacity for substantial quality high purity methyl.</p> <p><u>Manufacture methyl:</u> Appellant and co-offender imported 25kg Ma huang from USA (precursor of</p>	<p>4 yrs 8 mths imp. 2 yrs 8 mths imp.</p> <p>TES 5 yrs 2 mths imp.</p>	<p>Conviction appeal allowed – manufacture charge quashed. Charge of manufacture requires drug be produced.</p> <p>Conviction of attempt to manufacture substituted – 4 yrs imp imposed on that count.</p>

			<p>ephedrine and pseudoephedrine). Appellant's property searched under warrant by police. Lab equipment found as well as quantities of ephedrine and pseudoephedrine (only traces of methyl on scales).</p> <p><u>Attempt to manufacture:</u> Appellant imported four 25 kg containers of Ma huang. Shipment intercepted and delivery to appellant controlled by Customs. Appellant arrested when accepted delivery.</p>		TES reduced to 4 yrs 2 mths imp.
1.	<p><b><i>Rudzitis v the Queen</i></b></p> <p><b>[2003] WASCA 243</b></p> <p>Delivered 10/10/2003</p>	<p>53 yrs at time sentencing.</p> <p>Prior criminal record – poss prohibited plant only conviction of relevance (\$700 fine).</p> <p>Separated from wife. Unemployed.</p>	<p>1 x Attempt manufacture MDMA.</p> <p>Sole purpose financial gain – not user.</p> <p>Police executed search warrant at appellant's home. Found sophisticated clan lab in back shed. Chemicals, equipment and internet instructions as to manufacture process also found. Materials found capable producing 32-65g high grade MDMA.</p>	<p>5 yrs imp (sentence prior to transitional provisions).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced to 2 yrs 8 mths (4 yrs pre transitional).</p> <p>At [17] affirmed view in <i>Cabassi v R</i> [2000] WASCA 305 that potential capacity of production relevant sentencing factor.</p>
<p><b><i>Transitional Provisions Enacted (31/08/2003)</i></b></p>					