

# Manufacture & Attempted Manufacture Prohibited Drug

ss 6(1)(b) and 33(1) *Misuse of Drugs Act*

**From 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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)
P2P	1-phenyl-2-nitropropene
DMT	dimethyltryptamine
wiss	with intent to sell or supply
imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
PSO	Pre-sentence order
immed	immediate

## Manufacture Prohibited Drug

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
7.	<p><i>Evans v The State of Western Australia</i></p> <p><b>[2017] WASCA 225</b></p> <p>Delivered 06/12/2017</p>	<p>36 yrs at time sentencing.</p> <p><u>Ind 553</u> Convicted after late PG (12.5% discount).</p> <p><u>Ind 179</u> Convicted after early PG (20% discount).</p> <p>Substantial criminal history; prior drug offending and sentence of imp.</p> <p>Stable childhood.</p> <p>Completed apprenticeship.</p> <p>Twice married, two young children to current partner.</p> <p>History of illicit drug use; methyl use after first marriage breakup; significant dependency.</p> <p>No serious or treatable mental health issues.</p>	<p><u>Ind 553</u> Ct 1: Manufacture methyl 27.19g Ct 2: Poss methy wiss 29.4g at 59% purity. Ct 3: Poss methy wiss 10.34g, 2.72g at 52% purity.</p> <p><u>Ind 179</u> Ct 1: Att manufacture methyl.</p> <p><u>Ind 553</u> Evans was found in possession of a total of \$1,613 in cash. A search of the boot of his car located two jerry cans containing a biphasic liquid, the upper layer found to be ephedrine and methyl. Laboratory apparatus and chemicals constituting a clandestine drug laboratory were also discovered. Ephedrine and methyl were detected on some of the equipment (ct 1).</p> <p>Located inside the vehicle in a clipseal bag a quantity of methyl was also found. Along with a set of scales and a large quantity of clipseal bags (ct 2).</p> <p>Whilst on bail for the above offences a search of Evans' home located a quantity of methyl (5.37g) in his shed. In his house a further quantity of methyl (4.97g) was also found, along with \$1,000 in cash and a set of digital scales on which methyl was detected. (ct 3)</p> <p><u>Ind 179</u></p>	<p><u>Ind 553</u> Ct 1: 3 yrs 4 mths imp (cum). Ct 2: 2 yrs 10 mths imp (conc). Ct 3: 1 yr 8 mths imp (cum).</p> <p><u>Ind 179</u> 3 yrs 2 months imp (cum).</p> <p>TES 8 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found there was a commercial element and 'sheer persistence' to the offending.</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality, individual sentences not challenged.</p> <p>At [28] The appellant's overall criminality was high, particularly having regard to the persistence and commerciality of the offending. ...</p> <p>At [29] ... The offending the subject of the second ind was separate in time and place to the offending in the first ind. It was particularly serious because it was committed while the appellant was in effect a fugitive from justice, having breached bail. In order to reflect its seriousness, it warranted a separate and additional punishment.</p>

			Evans absconded from bail. In bushland police located items consistent with the clandestine manufacture or attempted manufacture of methyl. A forensic examination located his DNA. A search of his home found items consistent with the manufacture of methyl, including packaging similar to that found at the laboratory site and instructions on how to manufacture the drug.		
6.	<p><i>Valerio v The State of Western Australia</i></p> <p>[2017] WASCA 167</p> <p>Delivered 11/09/2017</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Substantial criminal history; including drug and dishonesty offences; breaches of VRO.</p> <p>Married; separated three yrs.</p> <p>Disability pensioner; worked 20 yrs various roles.</p> <p>Suffers depression; anxiety.</p> <p>Marijuana use from aged 19 yrs; methyl use since marriage breakup.</p>	<p>1 x Manufacture DMT 12.09g.</p> <p>Valerio manufactured DMT and was in the process of making more when a fire broke out. He suffered severe burns.</p> <p>Two other people were present in the house at the time of the fire, including a child aged seven yrs.</p> <p>Liquid found in pots in the kitchen were found to contain DMT.</p>	<p>3 yrs 4 mths imp.</p> <p>EFP.</p> <p>The sentencing judge was satisfied the manufacture was not for commercial purposes, finding it was intended for personal use.</p> <p>The sentencing judge noted the appellant put a child, himself and others at risk and that the inherent danger created by the process of manufacturing drugs is a significant element in the sentencing process.</p> <p>The sentencing judge found 12.09g of DMT was contained within the liquid in the pots.</p> <p>Acknowledged offending following conviction.</p>	<p>Dismissed – on papers.</p> <p>At [31] ... there are no appellate decisions of any assistance in discerning patterns of sentencing for offences of manufacturing DMT. ... The question is to be approached by reference to the maximum penalty, general principles and to the circumstances of the particular case, including the offender's personal circumstances.</p> <p>At [32]-[33] The reasons for deterring manufacture of DMT are the same as for deterring the manufacture of methyl. The dominant sentence consideration in offences of manufacturing drugs is general deterrence.</p> <p>At [34] ... the danger inherent in the manufacture of drugs is a significant element in its criminality. In this case, that danger extended to endangering the life or safety of a child, a</p>

					<p>matter reflected in the circumstance of aggravation.</p> <p>At [36] ... when proper account is taken of the seriousness of the appellant's offence, reflected in the maximum penalty ... in all the circumstances of the case, it cannot be said that the sentence of imp ... is manifestly excessive.</p>
5.	<p><b><i>Grant v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 162</b></p> <p>Delivered 31/08/2017</p>	<p>26-27 at time offending. 29 at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Advantage of good secure upbringing; supportive family and friends.</p> <p>Completed yr 12 and plumbing apprenticeship; self-employed; annual turnover of approx \$500,000.</p> <p>Long term illicit drug use.</p>	<p>Ct 1: Manufacture methyl. Ct 2: Poss methyl wiss 33.1g. Ct 3: Poss cocaine wiss 3.7g. Cts 4-5: Poss dexamphetamine wiss 47.24g.</p> <p>A search warrant was executed at the appellant's business premises and home.</p> <p>At the business premises equipment consistent with the manufacture of methyl, and which contained traces of ephedrine and methyl, were located. A number of containers holding large quantities of reaction waste were also found and established methyl manufactured. Although quantity unknown.</p> <p>At the home two bags of cocaine and two bottles containing 94 (18.8g) and 142 (28.44g) dexamphetamine tablets were located. In addition items associated with dealings in prohibited drugs were found, including sets of digital scales; a vacuum sealing machine; money counting machines; empty clipseal bags and written directions for the manufacture of methyl and \$1,400 cash.</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 3 yrs imp (cum). Ct 3: 12 mths imp (conc). Cts 4-5: 6 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>Manufacturing occurred over an unknown period of time.</p> <p>Whether or not the appellant was the 'cook' or was in overall charge of the manufacture could not be determined, however he played 'an integral role'. He provided premises, organised others, obtained ingredients and had some involvement in the actual manufacturing process.</p>	<p>Dismissed.</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [80] ... the appellant was engaged in a serious course of criminal conduct. He played a significant part in manufacturing an unknown quantity of methyl by providing the premises at which the manufacture occurred, by organising others, by obtaining and providing the necessary ingredients and by some involvement in the actual manufacturing process.</p> <p>At [81] ... this was a reasonably sophisticated manufacturing enterprise that was pursued for commercial profit. The quantities of drugs ... showed that he was in the business of selling or supplying a range of drugs. Though the quantities were not particularly high, all the evidence suggested that these were simply the drugs that the appellant had on</p>

			<p>He had earlier purchased a quantity of isopropanol alcohol, a solvent used in the manufacture of methyl.</p> <p>A computer and mobile phone belonging to him also contained information relating to the manufacture of methyl. In telephone calls he used code words to reference methyl and dexamphetamine and instructions to an associate made reference to the manufacture of drugs.</p> <p>His DNA was found on some items located at his business premises, including from a mixed profile inside a pair of gloves.</p>	<p>It was a commercial effort directed at production for on-sale and not primarily, or even significantly, for his own use. The objective seriousness was towards the upper end of the middle of the scale of seriousness.</p> <p>No remorse or contrition.</p>	<p>hand at the time. The possible offences needed to be seen in the context of a continuing involvement in the manufacture, sale and supply of drugs.</p> <p>At [83] ... Four cases is a small sample from which to discern patterns of sentences customarily imposed.</p> <p>At [96] Having regard to all the relevant circumstances there is no reasonable basis for the claim that the total sentence was disproportionate to the total criminality of the offending having regard to all relevant circumstances ...</p>
4.	<p><b><i>Tai v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 234</b></p> <p>Delivered 23/12/2016</p>	<p>31 yrs at time sentencing.</p> <p>Early PG (15% discount).</p> <p>Significant NZ criminal history, including drug and offences of violence.</p> <p>Prior criminal history in WA, including AOBH.</p> <p>Born and raised in NZ; one of five children; positive upbringing.</p> <p>Limited education; ongoing literacy problems.</p> <p>Employed as a labourer; out of work for some time at time of</p>	<p>Ct 1: Att manufacture methyl. Ct 2: Manufacture methyl.</p> <p>As a result of an explosion a search of a rented room in a unit complex was conducted. Items consistent with the manufacture of methyl, including glassware, acids and solvents were found. Also located were clip seal bags containing traces of pseudoephedrine.</p> <p>Some months later a search was conducted at another address. Further items consistent with the manufacture of methyl were found, including glassware containing visible residue. Forensic analysis confirmed the glassware had been used in the final stages of manufacturing methyl.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 3 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>The sentencing judge was not satisfied that the manufacture was solely for personal use.</p> <p>The danger, magnified by the offence being carried out in a rented room with a high prospect of many people being in close proximity, increased the criminality of the offending.</p>	<p>Dismissed.</p> <p>Appellant challenged under totality principle.</p> <p>At [34] The dangers involved in manufacturing drugs must to some extent have been reinforced in the appellant's mind when his attempt to manufacture the subject of ct 1 resulted in an explosion. That did not deter the appellant from proceeding with the manufacture of methyl the subject of ct 2. ... that displayed a degree of persistence and a serious disregard for the safety of the public.</p>

		offending. Not eligible for Centrelink payments.  Regular methyl user.		Likely to reoffend unless drug dependency addressed.	
3.	<b><i>Lowe v The State of Western Australia</i></b>  <b>[2015] WASCA 83</b>  Delivered 30/04/2015	28 yrs at time sentencing.  Convicted after late PG.  Committed ct 2 while on bail for ct 1.  Prior criminal history, including poss prohibited drug, poss drug paraphernalia and breach of bail.  Difficult upbringing; left school yr 10; intermittently employed.  User of cannabis since age 14 and methyl since age 17; no intention of ceasing cannabis use.  Another offender, Linturn, was not charged in connection with ct 1. Linturn was convicted of other manufacture methyl offences.	Ct 1: Manufacture methyl. Ct 2: Manufacture methyl.  <u>Ct 1</u> Linturn manufactured a small unknown quantity of methyl at the appellant's house. The appellant aided Linturn by allowing his house to be used, obtaining pseudoephedrine, purchasing toluene and caustic soda, and assisting in cleaning up the premises after the manufacture. The appellant received half of the methyl manufactured.  <u>Ct 2</u> On another date, police searched the appellant's vehicle and, a short time later, his home. Searches revealed that the appellant manufactured a small quantity of methyl for his own use. The methyl was of poor quality and made the appellant ill.	Ct 1: 16 mths imp (cum). Ct 2: 2 yrs imp (cum).  TES 3 yrs 4 mths immed imp.  EFP.	Dismissed – on papers.  At [23] ...a sentence of immed imp will ordinarily, as a matter of fact, be imposed for manufacturing methyl. General deterrence is an important factor, particularly because of the prevalence of the offending.  At [24] It is sufficient for me to say that the individual sentences imposed in the present case conform with the range of sentences customarily imposed.  At [34] Having regard to the separate nature of the offending and the aggravating factor that ct 2 was committed while the appellant was on bail for ct 1, cum sentences were justified.  At [37] The appellant and Mr Linturn were not co-offenders in any sense. The offences committed by Mr Linturn were different to the offences committed by the appellant.
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					

*Transitional Provisions Enacted (31/08/2003)*

**Attempt to Manufacture Prohibited Drug**

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>Oziewicz v The State of Western Australia</i></p> <p><b>[2018] WASCA 81</b></p> <p>Delivered 24/05/2018</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history; previous convictions for manufacturing prohibited drugs.</p> <p>Good employment history; has a trade.</p> <p>In a relationship; three children from earlier relationship.</p> <p>Long history of illicit substance abuse; methyl addiction time offending; partner also methyl user.</p>	<p>Cts 1 &amp; 2: Att manufacture methyl. Ct 3: Poss methyl wiss. 23.74g at 6% - 65% purity. Ct 4: Poss MDA 10.15g at 22% purity.</p> <p><u>Ct 1</u> A search of premises found chemicals and apparatus. Several of the items contained methyl and pseudoephedrine, indicating they had earlier been used to manufacture methyl. Oziewicz's fingerprints were on several items.</p> <p><u>Ct 2</u> About six months later Oziewicz's home was searched. Chemicals and apparatus and items consistent with the manufacture of methyl were found.</p> <p><u>Cts 3 and 4</u> During the search brown powder, two separate bags of white powder and 20 capsules were located.</p> <p>Analysis found methyl and MDA components of the brown powder and 15 of the capsules. MDA and methyl were found in five of capsules. A bag of white powder contained methyl, the other a component of methyl.</p>	<p>Ct 1: 3 yrs imp (cum) Ct 2: 3 yrs 10 mths imp (cum). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 8 mths imp (cum).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the quantity of the drug the subject of ct 3 significant; there was a commercial purpose behind the offences and it was the appellant's intention to sell the drugs; the offending could not be described as uncharacteristic.</p> <p>Credit given for participation in drug rehabilitation programs on remand.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (cts 1 and 2) and totality principle.</p> <p>At [90] ... The first att manufacture of methyl occurred about six months before he committed the second such offence. ... that called for an element of accumulation in the sentences for cts 1 and 2. Further, the appellant's offences of poss of methyl and of MDA were each distinct from his att to manufacture. ... a further degree of accumulation was warranted. The offence of poss of methyl wiss was itself a serious offence ...</p> <p>At [93] ... we are not satisfied that the TES was disproportionate to the overall criminality involved in all of the offences viewed in their entirety ...</p>

			<p>Scales, clip seal bags and a tick list were also found, along with a loaded sawn-off shotgun and ammunition.</p>		
1.	<p><b><i>Tai v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 234</b></p> <p>Delivered 23/12/2016</p>	<p>31 yrs at time sentencing.</p> <p>Early PG (15% discount).</p> <p>Significant NZ criminal history, including drug and offences of violence.</p> <p>Prior criminal history in Western Australia, including AOBH.</p> <p>Born and raised in NZ; one of five children; Positive upbringing.</p> <p>Limited education; ongoing literacy problems.</p> <p>Employed as a labourer; out of work for some time at time of offending. Not eligible for Centrelink payments.</p> <p>Regular methyl user.</p>	<p>Ct 1: Att manufacture methyl. Ct 2: Manufacture methyl.</p> <p>As a result of an explosion a search of a rented room in a unit complex was conducted. Items consistent with the manufacture of methyl, including glassware, acids and solvents were found. Also located were clip seal bags containing traces of pseudoephedrine.</p> <p>Some months later a search was conducted at another address. Further items consistent with the manufacture of methyl were found, including glassware containing visible residue. Forensic analysis confirmed the glassware had been used in the final stages of manufacturing methyl.</p>	<p>Ct 1: 2 yrs imp (cum). Ct 2: 3 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>The sentencing judge was not satisfied that the manufacture was solely for personal use.</p> <p>The danger, magnified by the offence being carried out in a rented room with a high prospect of many people being in close proximity, increased the criminality of the offending.</p> <p>Likely to reoffend unless drug dependency addressed.</p>	<p>Dismissed.</p> <p>Appellant challenged under totality principle.</p> <p>At [34] The dangers involved in manufacturing drugs must to some extent have been reinforced in the appellant's mind when his attempt to manufacture the subject of ct 1 resulted in an explosion. That did not deter the appellant from proceeding with the manufacture of methyl the subject of ct 2. ... that displayed a degree of persistence and a serious disregard for the safety of the public.</p>
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>					