

# **Possess cocaine with intent to sell or supply**

s 6(1)(a) *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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)
wiss	with intent to sell or supply
imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
PNG	plead not guilty
ct	count
SIO	suspended imprisonment order
immed	immediate
CBO	community based order

## Weight of cocaine: above 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>MSO v The State of Western Australia</i></p> <p>[2015] WASCA 78</p> <p>Delivered 14/04/2015</p>	<p>Convicted after PG.</p> <p>Favourable antecedents.</p>	<p><u>Indictment</u></p> <p>Ct 1: poss methyl wiss 10.54kg of 46-75% purity.</p> <p>Ct 2: poss heroin wiss 2.46kg of 41-59% purity.</p> <p>Ct 3: poss cocaine wiss 599g of 52-62% purity.</p> <p>Ct 4: poss MDMA wiss 1.09kg of 5-10% purity.</p> <p><u>Section 32 Notice</u></p> <p>Poss stolen or unlawfully obtained property x1.</p> <p>The appellant provided warehousing and related services to two drug traffickers, A and B, for one year from his legitimate retail business. The appellant collected, weighed, checked, stored, made up orders and delivered drugs on behalf of A and B as instructed by coded text messages. The appellant, when instructed, added cutting agents to the drugs supplied to him on behalf of B and then repackaged the resulting product. The appellant was paid in cash for his services.</p> <p><u>Ct 1</u></p> <p>Police found a total of 10.54kg of methyl in 18 packages. Each package ranged in size from between 26.6g and 575g and 1kg, of 46%-75% purity. Police also found scales, clip seal bags, cutting agent, heat sealing equipment and an envelope with handwritten names and quantities on it. Street value was estimated at \$4.7-\$5.2 million (if sold in 28g lots) and at \$10.5 million (if sold in 0.1g lots).</p>	<p><u>Indictment</u></p> <p>Ct 1: 8 yrs 3 mths imp.</p> <p>Ct 2: 7 yrs 6 mths imp (conc).</p> <p>Ct 3: 5 yrs imp (conc).</p> <p>Ct 4: 6 yrs imp (conc).</p> <p><u>Section 32 Notice</u></p> <p>12 mths imp (conc).</p> <p>TES 8 yrs 3 mths imp.</p> <p>EFP.</p> <p>Sentencing judge found that motivation for offending was a combination of beliefs arising from B's implied threat and a desire to make a significant financial gain.</p> <p>Remorseful; fully accepted</p>	<p>Dismissed.</p> <p>At [28] ...the judge viewed the appellant's conduct as extremely serious, because the appellant played an integral role in the success of what was obviously a sophisticated large-scale drug distribution network.</p> <p>At [69] Although it is common to speak of discounts for cooperation with authorities in terms of percentages, as Gleeson CJ observed in <i>R v Gallagher</i>, the court must have regard to the TES imposed after the discount so as to ensure that the sentence is not so far out of touch with the circumstances of the offending conduct that it...would contravene the requirement of s 6(1) of the <i>Sentencing Act</i> which requires the sentence imposed on an offender to be commensurate with the</p>

			<p><u>Ct 2</u> Police found three packages of heroin, two of which were a little under 1kg with 41% purity and the third containing a little less than 500g with 59% purity. Street value was estimated at \$1.1 million (if sold in 1 oz lots) and \$1.2-\$2.5 million (if sold in 0.1g lots).</p> <p><u>Ct 3</u> Police found three packages containing 109g of cocaine of 52% purity, 190g of cocaine of 56% purity and 300g of cocaine of 62% purity, respectively. Street value estimated at \$450,000 (if sold in 1g lots) and \$214,000 (if sold in 1 oz lots).</p> <p><u>Ct 4</u> Police found 3,815 ecstasy tablets, which belonged to B and had been at the factory for a year. They ranged in purity between 5% and 10%. Street value estimated at \$152,600 (if sold individually) and \$53,000-\$57,000 (if sold in lots of 1,000).</p> <p><u>Section 32 Notice</u> Police found \$232,000 cash during the search.</p> <p>The appellant cooperated fully with police.</p>	<p>responsibility for conduct; low risk of reoffending.</p> <p>Letter of recognition; appellant provided very substantial assistance.</p>	<p>seriousness of the offence.</p> <p>At [70] In this case the appellant received a reduction in the sentence that would otherwise have been imposed upon him of 8 yrs and 3 mths in recognition of the assistance which he provided to law enforcement agencies. On any view, that is a very substantial discount.</p>
5.	<p><i>Pitassi v The State of Western Australia</i></p> <p>[2014] WASCA 231</p>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>No relevant prior convictions.</p>	<p>Ct 1: Poss cocaine wiss 104g of 2% purity. Ct 2: Agg poss firearm without licence.</p> <p>Ct:3: Possess ammunition.</p> <p>Police executed a search warrant at the appellant's home. The police found a wall cavity</p>	<p>Ct 1: 3 yrs imp. Ct 2: 12 mths imp (cum). Ct 3: 6 mths imp.</p> <p>TES 4 yrs imp.</p>	<p>Dismissed.</p> <p>At [45] The total effective sentence of 4 years' imprisonment was within the range reasonably open to the sentencing judge on</p>

Delivered 12/12/2014	<p>Good work ethic.</p> <p>Regular user of illicit drugs.</p> <p>Low intelligence.</p> <p>About 9 mths following the commission of these offences was charged in relation to a separate offence of possess stolen or unlawfully obtained property (being \$120,000).</p>	<p>in the kitchen behind a small plastic ventilation grate. There was 104g of powder in the cavity later analysed as cocaine with a purity of about 2% and methyl with a purity of about 4%.</p> <p>Police also located MSM, \$60,000 cash, a loaded pistol, tick lists, an elaborate surveillance system, a money counting machine, a number of weapons including a Taser device, pepper spray, a cattle prod and a baton, 11 mobile telephones, a bundle of sandwich bags, 120 rounds of ammunition and a plate on which there was a card and a \$50 note wrapped as a straw, both of which were covered with powder.</p> <p>The appellant was also charged with possess stolen or unlawfully obtained property, possess prohibited weapon (two charges), possess controlled weapon and possess prohibited drug (two charges) and sentenced separately.</p>	<p>EFP.</p> <p>Very low remorse.</p> <p>Sentencing judge satisfied appellant possessed the illicit drugs as part of a commercial drug dealing operation.</p> <p>Sentencing judge said was 'at a higher position in the drug distribution network than a low level street dealer' and 'involved in a fairly significant enterprise'.</p>	a proper exercise of his discretion.
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>				
<b><i>Transitional Provisions Enacted (31/08/2003)</i></b>				

## Weight of cocaine: 3 – 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
4.	<p><i>Sakhie v The State of Western Australia</i></p> <p>[2017] WASCA 103</p> <p>Delivered 01/06/2017</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after late PG (10% discount).</p> <p>Prior criminal history; including previous convictions for possession of weapons.</p> <p>Born in Afghanistan; family members killed in conflict; lived Pakistan aged 1-10 yrs before emigrating to Australia.</p> <p>Supportive family; parents separated; father suffers drug and mental health problems.</p> <p>Difficulties at high school due to limited English; completed yr 12.</p> <p>Employed; trainee bricklayer.</p> <p>Commenced cannabis used in yr 9-10; methyl at 16-17 yrs old; \$15,000 drug debt at time of arrest.</p> <p>At time of PG ceased using methyl; distanced himself from negative peer influences.</p>	<p>Ct 1: Poss modified handgun, whilst not being the holder of a licence or permit. Ct 2: Poss methyl wiss 13g of 70% purity. Ct 3: Poss cocaine wiss 23g of 52% purity</p> <p>Sakhie was riding a motorcycle. When called upon to stop he sped way. After a short chase he abandoned his motorcycle, fled on foot and was apprehended a short time later.</p> <p>At the time of arrest Sakhie threw an object over a fence. The item was recovered and found to be a modified 8mm handgun, fitted with a silencer and with the serial numbers removed.</p> <p>Later than morning a search of his home located methyl and cocaine hidden in the house.</p> <p>If sold in points the methyl and cocaine each had an estimated value of \$13,500.</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 2 yrs imp (cum). Ct 3: 2 yrs imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Aggregate sentence reduced from 6 yrs imp).</p> <p>The sentencing judge found the appellant a mid-level dealer; the drugs were of high purity and high value and was indicative of the level of his involvement.</p> <p>The sentencing judge found the gun was not intended for protection and those who deal in illicit drugs are</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned length of sentence; totality and claims of duress.</p> <p>At [20] ... the onus is on the appellant to prove ... that he committed the offences as a result of pressure placed on him by others: ... A mere assertion that the appellant has been assaulted or threatened, without reference to any specific incident, is not admissible.</p> <p>At [22] ... the appellant's recent claims of duress are inconsistent with the submissions made on his behalf at the sentencing hearing.</p> <p>At [31] ... The fact that the appellant, on his own admission, had run up a \$15,000 drug debt is indicative of his level of involvement. It was also</p>

				frequently found in poss of firearms and are 'one of the frequently seen tools of the drug trade'.  Good prospects of rehabilitation.	accepted that the weapons were used in the context of drug dealing. .... There are dangers inherent in drug dealing, but the carrying of weapons in this context increases the possibility of serious violence as they can be used to threaten or coerce. The firearms offence was also made more serious by the fact that the handgun had been modified, not only to remove its serial number, but to enable the fitting of a silencer.
3.	<b><i>Rinaldi v The State of Western Australia</i></b>  [2017] WASCA 48  Delivered 17/03/2017	37 yrs at time offending. 39 yrs at time sentencing.  Convicted after very late PG (5% discount).  Minor criminal history.  Traumatic childhood; supportive family.  Left school midway through yr 11.  Obtained a trade; good employment history and strong work ethic.  History of illicit drug use; escalated after his marriage break down.	Ct 1: Poss MDMA wiss 888.01 grams of 25%-73% purity. Ct 2: Poss methyl wiss 1650.67g of 45%-77% purity. Ct 3: Poss cocaine wiss 7.29g of 68% purity. Cts 4-17: Poss firearm. Cts 18-38: Poss ammunition. Ct 39: Poss GPS jamming device.  Police executed a search warrant at Rinaldi's home and discovered a 'wine cellar' accessible via a retractable trapdoor. The home was protected by a security system, comprising a steel reinforced front door, outside sensor lights and monitored CCTV cameras.  Large quantities of drugs and ammunition, 14	Ct 1: 18 mths imp (reduced from 5 yrs for totality reasons) (cum). Ct 2: 8 yrs imp (cum). Ct 3: 2 yrs imp (conc). Ct 4: 18 mths imp (cum). Ct 5: 18 mths (conc). Cts 6, 8-11, 15-17: 12 mths imp (conc). Ct 7: 12 mths (cum).	Dismissed.  Appeal concerned totality and PG discount.  At [54] ... the sentencing judge did not err by failing to make a finding that the appellant's PG to cts 1-33 and ct 39 were entered at the first reasonable opportunity. Very plainly, they were not made at the first reasonable opportunity. ... The reduction of 5% was, in all of the

			<p>unlicensed firearms and cash were found, along with the GPS jamming device.</p> <p>The unlicensed firearms comprised five rifles, one shotgun and eight handguns. Three of the weapons had their serial numbers removed and two of the rifles were unable to be lawfully owned in WA. Compatible magazines, silencers and shoulder holsters were also found in the house.</p> <p>In total 2,386 rounds of ammunition were found.</p> <p>\$337,220 in cash was found in bundles in various locations in the house, including in a washing machine and the roof cavity.</p>	<p>Ct 12: 14 mths imp (cum).  Cts 13-14: 14 mths imp (conc).  Cts 18, 21 and 31: 6 mths imp (conc).  Ct 19: 8 mths imp (cum).  Ct 20: 3 mths imp (conc).  Ct 22-23: 2 mths imp (conc).  Cts 24-25: 8 mths imp (conc).  Cts 26-27 and 30: 3 mths imp (conc).  Cts 28-29 and 32-33: 1 mths imp (conc).  Ct 34-36: 3 mths imp (conc).  Ct 37: 4 mths imp (conc).  Ct 38: 2 mths imp (cum).  Ct 39: \$1000 fine.</p> <p>TES 14 yrs imp.  EFP.  Fine \$1000.</p> <p>The sentencing judge described the premises as a 'fortified drug</p>	<p>circumstances, open to his Honour.</p> <p>At [55] ... in respect of the five ex officio charges (cts 34 to 38). ... the appellant's PG in respect of these cts were made at the first reasonable opportunity. This concession was properly made and should be accepted. In our opinion, a reduction of 25% ... should have been made for these offences. However, having regard to all relevant circumstances ... exercising the sentencing discretion afresh, we would not have imposed different sentences for cts 34 to 38.</p> <p>At [66] ... the appellant's overall criminality was extremely serious. While... not directly involved in the sale of the drugs, firearms and ammunition, he voluntarily participated in what was clearly a large-scale commercial</p>
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				<p>house' used for the purpose of storing and warehousing illicit drugs, firearms and cash. It was in a large scale distribution network for drugs and guns as part of an illegal, commercial enterprise and from which the appellant would have derived 'some commercial gain or benefit'.</p>	<p>enterprise aimed at distributing into the community a large quantity of dangerous illicit drugs and firearms. The appellant's willing complicity in these offences is well illustrated by the modifications to his residence, most notably the wine cellar in which the drugs and most of the firearms and ammunition were stored. The large quantities of drugs, firearms, ammunition and cash show the scale of the operation. It is true that the appellant was not in command, but it is also true that a high degree of trust had been reposed in him.</p> <p>At [67] A significant aggravating feature of the appellant's overall criminality are the firearms offences, which involve a quantity and variety of weapons not previously seen by this court. Their number and type are very sinister. The</p>
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					amount of ammunition, including ammunition suitable for use in the firearms present at the house, is concerning.
2.	<p><b><i>Barton v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 196</b></p> <p>Delivered 18/11/2016</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history; multiple offences of poss prohibited drugs; no previous sentences of imp.</p> <p>Two long-term relationships, including a prior marriage.</p> <p>Self-employed; unlikely to be able to continue working as a mortgage broker.</p> <p>Illicit drug user.</p> <p>History of anxiety and ADHD; prescribed medication.</p>	<p>Cts 1 &amp; 2: Poss stolen property.</p> <p>Ct 3: Poss methyl wiss 33.6g of 68% purity and 25.4% purity.</p> <p>Ct 4: Poss MDMA wiss 5.57g.</p> <p>Ct 5: Poss cocaine wiss 6.29g of 69% purity.</p> <p>Ct 6: Poss methyl wiss 5.6g.</p> <p>Ct 7: Poss thing reasonably suspected to be unlawfully obtained.</p> <p>Ct 8: Poss methyl wiss 61.46g of 82% and 81% purity.</p> <p>Police recovered from Barton’s home two stolen iPads (cts 1 &amp; 2). A search located two clipseal bags containing 26.7g and 6.9g of methyl (ct 3), along with 23 MDMA tablets and power (ct 4). In addition 5.24g and 1.05g of cocaine were found (ct 5).</p> <p>Barton was on bail for the above offences when he was stopped driving a vehicle. A search of the car located a quantity of methyl (ct 6); \$1,185 in cash (ct 7) and two mobile phones containing messages relating to prohibited drugs. A further search of his home located two clipseal bags, each containing 27.5g of methyl, and an additional 6.46g of methyl (ct 8). Digital scales, plastic straw scoops, spoons, clipseal bags in various sizes and ‘tick lists’ were also located.</p>	<p>Cts 1 &amp; 2: 6 mths imp each ct (conc).</p> <p>Ct 3: 2 yrs 7 mths imp (conc).</p> <p>Ct 4: 10 mths imp (conc).</p> <p>Ct 5: 10 mths imp (conc).</p> <p>Ct 6: 10 mths imp (conc).</p> <p>Ct 7: 6 mths imp (conc).</p> <p>Ct 8: 3 yrs 3 mths imp (cum with ct 3).</p> <p>TES 5 yrs 10 mths imp.</p> <p>The sentencing judge found the appellant was a willing and motivated vendor of drugs into the community and his offending was for ‘commercial gain’ based on the presence of the tick</p>	<p>Dismissed – on papers.</p> <p>Appeal concerned totality principle. Individual sentences not challenged.</p> <p>At [38] ... the appellant’s drug dealing offences were, no doubt, serious. ... The quantity and purity of the drugs the subject of cts 3 and 8 were significant.</p> <p>At [43] ... it was necessary, in order properly to mark the appellant’s overall criminality in committing eight offences on two disparate occasions, to accumulate the individual sentences for cts 3 and 8.</p>

				lists, cash and phone messages.  The appellant accepted responsibility for his offending and was addressing his drug addiction.	
1.	<p><i>Nembousse v The State of Western Australia</i></p> <p>[2015] WASCA 68</p> <p>Delivered 1/4/2015</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal history including demanding property by oral threats.</p> <p>Moved to Australia from Nigeria in 1990; partially completed university degree; unemployed since 2012.</p>	<p><u>Indictment</u></p> <p>Ct 1: Poss cocaine wiss 31.6g of 20% purity. Ct 2: Poss methyl wiss 502.24g of 67-70% purity.</p> <p><u>Section 32 Notice</u> 13 charges.</p> <p>Police executed a search warrant at the appellant's home. They forced open a safe and found 31.6g of cocaine (ct 1) and \$13,750 cash (s 32). Police also found eight live rounds of ammunition, 14.3g cannabis and an anabolic steroid (s 32).</p> <p>On another date, police followed the appellant to his home. The appellant got out of the car carrying a bag and tried to dispose of the bag when challenged by police. Inside the bag were two cipseal bags, one containing 501g of methyl and the other 1.24g methyl (ct 2). The appellant was on bail for ct 1 when he committed ct 2. The appellant was also found in poss of \$4,605 cash, two cans of OC spray, a taser stun gun, 23 serepax tablets, digital scales, a smoking implement and grinder, cannabis and a radio</p>	<p><u>Indictment</u></p> <p>Ct 1: 2 yrs 6 mths imp (cum). Ct 2: 6 yrs imp (cum).</p> <p><u>Section 32 Notice</u> Sentences ranging between 3-6 mths (conc).</p> <p>TES 8 yrs 6 mths imp.</p> <p>Sentencing judge found appellant in contact with, and trusted by, persons who had primary access to the source of the drugs.</p> <p>Sentencing judge found appellant at 'a somewhat high level in the chain of</p>	<p>Dismissed – on papers.</p> <p>At [19] The circumstances of the offending are at the high end of the scale of seriousness, having regard to the weight and purity of the methyl and the appellant's role in the distribution hierarchy.</p> <p>At [20] Having regard to all relevant sentencing factors, 6 yrs imp is towards the lower end of the range of sentences customarily imposed in comparable cases.</p>

			jamming device (s 32).	distribution of [prohibited] drugs in the community’.	
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***Transitional Provisions Repealed (14/01/2009)***

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

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