

Possess cocaine with intent to sell or supply

s 6(1)(a) and 6(1)(c) *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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
11.	<p><i>Chadburne v The State of Western Australia</i></p> <p>[2017] WASCA 216</p> <p>Delivered 23/11/2017</p>	<p>45 yrs at time offending. 48 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-4). Convicted after PG (ct 5) (5% discount).</p> <p>Minor NSW criminal history.</p> <p>Raised and lived NSW.</p> <p>Disadvantaged background; father physically and psychologically abusive.</p> <p>Difficulties at school; expelled yr 9.</p> <p>Strong work ethic; consistently employed as a van/truck driver since aged 20.</p> <p>9 yr relationship; three adult children together; primary carer of his children after separation.</p> <p>Suffered severe depression and stress as a result of his apprehension.</p> <p>Very heavy drinker; occasional user of methyl; denied ongoing use.</p>	<p>Ct 1: Poss MDMA wiss 8.4153kg (34,475 tablets) at 30% purity. Ct 2: Poss methyl wiss 2.046kg at 66%-82% purity. Ct 3: Poss cocaine wiss 482.76g at 76%-77% purity. Ct 4: Poss cocaine wiss 275g at 58% purity. Ct 5: Fail to obey data access order.</p> <p>Chadburne was a member of a syndicate involved in the transportation and supply of large quantities of prohibited drugs from NSW into WA.</p> <p>On several occasions Chadburne attended the motor works business of one of the syndicate members. He facilitated the concealment of 15 sealed packages containing drugs into motor vehicle gear transmissions (cts 1-3).</p> <p>The engine transmissions, containing the prohibited drugs, were placed on a pallet into the tray of a utility vehicle, which Chadburne commenced to drive to WA. During the journey he collided with a kangaroo causing substantial damage to the utility. He arranged a replacement vehicle and hire trailer.</p> <p>During the change of vehicles Chadburne located a sixteenth package left on the rear seat of the utility, which unknown to him could not be accommodated into the transmissions. He</p>	<p>Ct 1: 14 yrs 6 mths imp. Ct 2: 12 yrs imp (conc). Ct 3: 5 yrs imp (conc). Ct 4: 1 yr 6 mths imp (cum). Ct 5: 6 mths imp (cum).</p> <p>TES 16 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending very serious; it involved a high level of criminality; the appellant's role was integral to the operation and the crime syndicate of which he was a part of and working with and the offending was committed out of greed and purely for commercial</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 1) and totality principle.</p> <p>At [60] The appellant was more than a mere courier of the drugs. ... The appellant participated in packing the drugs He held face to face discussions with the apparent head of the syndicate. He organised the vehicles used to transport the drugs. This was done as part of an ongoing operation, and could not be regarded as behaviour which was aberrant or out of character for the appellant. The appellant expected to make a substantial profit from the operation.</p> <p>At [64] ... the appellant's actions after the collision with the kangaroo showed that he was able to</p>

			<p>was given permission to keep this drug so he hid the package inside the wheel arch panelling of the replacement vehicle (ct 4).</p> <p>Chadburne continued his journey and eventually arrived in WA where he was stopped by police. The vehicle was seized and the sealed packages hidden within the transmissions located.</p> <p>Chadburne's Blackberry was also seized and he failed to obey a data access order to reveal its pass code. As a result it remained encrypted and inaccessible to police.</p> <p>The drug secreted in the wheel arch remained undetected. The vehicle was eventually repossessed for sale by auction. On bail and aware the drug had not been located he called the auction company a number of times, rousing suspicions. A drug detection dog inspected the vehicle and the package was discovered.</p> <p>Information from intercepted telephone calls revealed Chadburne expected to earn \$40,000-\$50,000 from the venture. It was also not the first occasion he had participated in the distribution of illicit drugs, having previously travelled to WA on behalf of the syndicate.</p> <p>The package of cocaine (ct 4) had an estimated street value of \$98,000 - \$206,000.</p> <p>Evidence at trial indicated an individual MDMA pill sold for \$15 - \$35, giving a potential value of the MDMA tablets discovered at between</p>	<p>gain.</p> <p>The trial judge found the appellant more than that of a mere courier and it was not a one-off opportunistic attempt.</p> <p>No demonstrable evidence of remorse or insight.</p>	<p>respond to an unexpected setback with adaptability and initiative. He demonstrated a relatively sophisticated understanding of the implications of finding the package of cocaine on the rear seat ...</p> <p>At [65] ... While the appellant may have been vulnerable to exploitation by others due to his social vulnerability and difficulties with emotional regulation, he knew what he was doing was illegal and appreciated the risks involved.</p> <p>At [66] ... The amount and quality of MDMA in the appellant's possession was greater than in many of those cases [referred to]. He was an active member of the syndicate which brought the drugs into WA, whose involvement extended beyond the mere provision of transport. The appellant expected to obtain a significant</p>
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			<p>\$517,125.00 - \$1,206.625.00.</p>	<p>financial reward from the activity.</p> <p>At [67] ... The circumstances of the ... offending, particularly that which was the subject of cts 4 and 5, increased the overall criminality of the appellant's conduct in a manner that warranted some accumulation of the sentences.</p> <p>At [68] ... The seriousness of [ct 4] was agg by the fact that these drugs were to be sold wholly for the appellant's personal benefit, and by the attempts after his arrest to regain possession of the drugs.</p> <p>At [69] ... Cumulacy of this sentence [ct 5] was called for in order to avoid the result that a person apprehended in the course of committing serious offences might refuse to comply with an order that will produce evidence of the offending without any practical</p>
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					adverse consequences ... At [70] The appellant's overall criminality is also agg by the substantial quantities of methyl and cocaine which were the subject of cts 2 and 3.
10.	<i>MSO v The State of Western Australia</i> [2015] WASCA 78 Delivered 14/04/2015	Convicted after PG. Favourable antecedents.	<u>Indictment</u> Ct 1: poss methyl wiss 10.54kg of 46-75% purity. Ct 2: poss heroin wiss 2.46kg of 41-59% purity. Ct 3: poss cocaine wiss 599g of 52-62% purity. Ct 4: poss MDMA wiss 1.09kg of 5-10% purity. <u>Section 32 Notice</u> Poss stolen or unlawfully obtained property x1. 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. <u>Ct 1</u> 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	<u>Indictment</u> Ct 1: 8 yrs 3 mths imp. Ct 2: 7 yrs 6 mths imp (conc). Ct 3: 5 yrs imp (conc). Ct 4: 6 yrs imp (conc). <u>Section 32 Notice</u> 12 mths imp (conc). TES 8 yrs 3 mths imp. EFP. Sentencing judge found that motivation for offending was a combination of beliefs arising from B's implied threat and a desire to	Dismissed. 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. 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

		<p>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>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>make a significant financial gain.</p> <p>Remorseful; fully accepted responsibility for conduct; low risk of reoffending.</p> <p>Letter of recognition; appellant provided very substantial assistance.</p>	<p>requirement of s 6(1) of the <i>Sentencing Act</i> which requires the sentence imposed on an offender to be commensurate with the 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>	
9.	<i>Pitassi v The State of Western</i>	<p>25 yrs at time offending. 26 yrs at time sentencing.</p>	<p>Ct 1: Poss cocaine wiss 104g of 2% purity. Ct 2: Agg poss firearm without licence.</p>	<p>Ct 1: 3 yrs imp. Ct 2: 12 mths imp</p>	Dismissed.

<p><i>Australia</i></p> <p>[2014] WASCA 231</p> <p>Delivered 12/12/2014</p>	<p>Convicted after late PG.</p> <p>No relevant prior convictions.</p> <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>Ct:3: Possess ammunition.</p> <p>Police executed a search warrant at the appellant's home. The police found a wall cavity 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>(cum). Ct 3: 6 mths imp. TES 4 yrs imp. EFP. 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>	<p>At [45] The total effective sentence of 4 years' imprisonment was within the range reasonably open to the sentencing judge on a proper exercise of his discretion.</p>
<p><i>Transitional Provisions Repealed (14/01/2009)</i></p>				

Transitional Provisions Enacted (31/08/2003)

Weight of cocaine: 3 – 65 grams

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
8.	<p><i>Lenton v The State of Western Australia</i></p> <p>[2017] WASCA 224</p> <p>Delivered 04/12/2017</p>	<p>47 yrs at time sentencing.</p> <p>Convicted after very late PG; first day of trial (5% discount).</p> <p>Long criminal history; prior drug and firearm related offences; prior sentences of imp.</p> <p>Unsettled childhood during period of parents separation aged 2 yrs. Close and supportive family.</p> <p>Attended numerous schools; completed yr 12; completed first yr of university degree.</p> <p>Employed various roles; including intermittent work</p>	<p>Ct 1: Reckless driving. Ct 2: Poss MDMA 2.09g. Ct 3: Poss methyl wiss 84.15g at 37%-52% purity. Ct 4: Poss cocaine wiss 1.98g. Ct 5: Poss MDA 0.5g (2 tablets). Ct 6: Agg poss firearm. Ct 7: Fail to obey data access order.</p> <p>Lenton was driving a motorcycle when police signalled for him to pull over. He did not do so and instead accelerated and fled from police. The pursuit continued for several km, during which he travelled at high speed and through two red traffic lights.</p> <p>When attempting to evade a second police vehicle he lost control of the motorcycle and was apprehended.</p> <p>Lenton's backpack and satchel were searched. Clipseal bags containing various</p>	<p>Ct 1: 12 mths imp (cum). Ct 2: 1 mths imp (conc). Ct 3: 6 yrs imp (head). Ct 4: 6 mths imp (conc). Ct 5: 1 mths imp (conc). Ct 6: 12 mths imp (cum). Ct 7: 6 mths imp (conc).</p> <p>TES 8 yrs imp.</p> <p>The sentencing judge found ct 3 the most serious offence and based on the cash; tick lists; weapons; scales and mobile phones found the appellant was actively engaged in commercial drug dealing and that his involvement was at a much higher level than that of a street dealer or person selling drugs to pay for their own consumption.</p>	<p>Dismissed.</p> <p>Appeal concerned totality. Individual sentences were not challenged.</p> <p>At [61] The possession of a variety of drugs and a relatively large quantity of cash together with tick lists and a firearm led to the inevitable conclusion that the appellant was playing a significant role in the sale and delivery of prohibited drugs and that this involvement had occurred in the context of a continuing commercial criminal enterprise.</p> <p>At [62] The possession of</p>

		<p>in family business prior to imp for present offences.</p> <p>Divorced; no dependents.</p> <p>Long history of illicit substance abuse; methyl and cocaine from age 29; periods of abstinence with gradual relapsed into drug use; little effort made to address his substance abuse problems.</p> <p>Medicated and counselled for post-traumatic stress disorder.</p>	<p>quantities of MDMA were located (ct 2), along with a container holding various quantities of methyl (ct 3). A clipseal bag of cocaine (ct 4) and two MDA tablets were also found (ct 5).</p> <p>An unlicensed .32 calibre five-shot revolver containing one round of live ammunition was also found (ct 6).</p> <p>Lenton was also found in possession of \$767 cash, \$4,000 cash, a flick knife, four mobile phones; tick lists; a set of electronic scales and a laptop computer. The tick lists listed names, amounts owing (in excess of \$100,000) and references to pounds and ounces.</p> <p>The four mobile telephones and laptop were locked and he failed to obey a data access order to reveal the PIN or pass codes for the devices (ct 7).</p>		<p>a loaded firearm was a particularly serious feature of his overall offending ... A cumulative sentence for this offence was necessary to properly reflect the criminality involved in the drug and firearm offences.</p> <p>At [63] The reckless driving also entailed additional criminal behaviour and put the safety of other road users, and the police officers involved, at risk. ... His attempt to explain this conduct as caused by PTSD was rightly viewed as secondary to his desire to avoid discovery of the drugs. A cumulative sentence for this offence was also appropriate.</p> <p>At [64] ... The finding of four mobile telephones and a laptop computer in the appellant's possession was consistent with these items being used in connection with the sale of drugs. Data contained</p>
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					<p>on such items may provide evidence of other offences. There is often a strong incentive for offenders in the appellant's position not to comply with a data access order. That incentive should be countered by appropriate deterrent sentences. ...</p> <p>At [71] The TES ... imposed on the appellant bears a proper relationship to the overall criminality involved in all of the offences ...</p>
7.	<p><i>The State of Western Australia v Doyle</i></p> <p>[2017] WASCA 207</p> <p>Delivered 08/11/2017</p>	<p>18-19 yrs at time offending.</p> <p>Convicted after PG (25% discount).</p> <p>Short criminal history; offences of poss MDMA; poss stolen or unlawfully obtained property and assault public officer.</p> <p>Born raised in Perth; one of four children.</p> <p>Supportive family.</p> <p>Paraplegic father; assisted</p>	<p>Cts 1-14; 16-17; 19-23; 25-29; 31-32; 34-38; 40; 42-45; 47; 49-57; 61-64; 66; 68-69; 71-72; 74; 76-77 & 79: Offer to supply MDMA 3.3kg.</p> <p>Cts 15; 18; 24; 30; 33; 58-59; 65; 67; 70; 73 & 80: Offer to supply cocaine 31g.</p> <p>Cts 39; 46; 60 & 75: Offer to supply methyl 11.5g.</p> <p>Ct 48: Offer to supply GBH (aka fantasy) 8ml.</p> <p>Ct 78: Offer to supply cannabis.</p> <p>Cts 41 & 82: Failing to comply with data access order.</p> <p>Ct 81: Poss unlawfully obtained property.</p> <p>A search warrant was executed at Doyle's home. Illicit drugs and a Blackberry device</p>	<p>Cts 1-20; 22-31; 33-43; 45-46; 48-55; 57-61; 63-76; 78-82: 9 mths imp (conc).</p> <p>Ct 21: 12 mths imp (cum).</p> <p>Ct 32; 44 & 47: 12 mths imp (conc).</p> <p>Ct 56: 18 mths imp (head sentence).</p> <p>Ct 62: 18 mths imp (cum).</p> <p>Ct 77: 18 mths imp (conc).</p> <p>TES 4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent was part of the commercial distribution of</p>	<p>Allowed.</p> <p>Appeal concerned length of sentences (cts 21, 32, 44, 47, 55-56, 62, 77 & 79) and totality principle.</p> <p>Re-sentenced on cts 21, 32, 44, 47, 55, 56, 62, 77 and 79.</p> <p>Cts 21; 32 and 47: 2 yrs imp.</p> <p>Cts 44; 55 & 79: 18 mths imp.</p> <p>Cts 56; 62 & 77: 3 yrs imp.</p>

		<p>him with dealing with his disability.</p> <p>Left school yr 10; commenced apprenticeship.</p> <p>Illicit drug use; history of abusing ecstasy and cocaine. Using 20-30 ecstasy pills per week and in excess of 6g of cocaine per week at time offending.</p>	<p>were located.</p> <p>Approximately 10 mths later a search warrant was again executed at the respondent's home. Illicit drugs and items commonly associated with the sale and supply of illicit drugs, including electronic scales, controlled weapons and numerous mobile telephones, including two encrypted Blackberry telephones were seized.</p> <p>The respondent's phone was found to contain numerous text messages in which he offered to sell or supply illicit substances to various people on a regular basis over a period of approximately 18 months.</p>	<p>prohibited drugs into the community; he was involved in drug dealing on a commercial basis and the offending was pretty persistent and relentless.</p> <p>The sentencing judge found the respondent did not sell the offered prohibited drug in a significant number of the cts. However there can be no suggestion that when he offered drugs for sale he didn't intend to sell them if he could have.</p> <p>Remorseful. Engaged in a drug programme and counselling to address his drug problems.</p>	<p>Cts 56 (head sentence) and 62 cum; all other sentences conc with each other and with head sentence.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>At [35] ... Each offence was committed by the respondent as part of an ongoing and long-term business of supplying illicit drugs. The respondent's primary motive was to obtain money to fund the lifestyle he could not otherwise afford. While it must be accepted that each offer was not in fact fulfilled, this was only because his supplier would not extend him credit for such substantial quantities of MDMA. ... He clearly intended to effect each sale. It cannot be overlooked that each offer was not an isolated event.</p>
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					<p>At [36] This court has not been previously called upon to decide whether an individual sentence for offering to sell or supply a prohibited drug is manifestly inadequate or manifestly excessive. Thus, there are no relevant comparable cases.</p> <p>At [38] ... each sentence is, when all relevant circ and all relevant sentencing factors are considered, unreasonable or plainly unjust. ... Each sentence was substantially outside the sentencing range open to his Honour on a proper exercise of his discretion.</p> <p>At [41] The overall criminality involved in the offending was very serious. The respondent was engaged in the business of dealing with methyl, MDMA, cocaine, GBH and cannabis for profit and with the particular aim of promoting his lifestyle. ...</p>
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					<p>about half of the offers resulted in the substance in question being sold or supplied.</p> <p>At [42] The appellant also twice defied data access orders. ... Offenders who fail to comply are obstructing law enforcement authorities from undertaking their role in detecting offences.</p> <p>At [43] ... a TES of 4 yrs imp falls a long way short of bearing a proper relationship to the overall criminality involved in the commission of all of the offences.</p>
6.	<p><i>Bees v The State of Western Australia</i></p> <p>[2017] WASCA 202</p> <p>Delivered 27/10/2017</p>	<p>62 yrs at time offending. 63 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Prior criminal history; mostly poss of prohibited drugs; dishonesty and traffic offences. No previous sentences of imp.</p> <p>Two children from a previous relationship which</p>	<p>Ct 1: Poss methyl wiss 1.480kg at 80.7% average purity. Ct 2: Poss methyl wiss 147.87g at 73.1% average purity. Ct 3: Poss cocaine wiss 8.53g at 79% purity.</p> <p><u>Ct 1</u> Police stopped Bees driving his motor vehicle. A search of the vehicle located a large amount of a crystalline substance in two clip seals bags within a plastic bag, inside a plastic container.</p> <p><u>Cts 2 and 3</u></p>	<p>Ct 1: 10 yrs imp (cum) Ct 2: 2 yrs imp (cum). Ct 3: 1 yrs imp (conc).</p> <p>TES 12 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant had a large quantity of drugs of fairly high purity and of significant value.</p> <p>The sentencing judge found the</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence and first limb of totality principle and error in finding of fact on ct 1 (only available inference was the appellant's role involved distributing large quantities of drugs for commercial benefit).</p> <p>At [62] ... the sentencing</p>

		<p>ended 19 yrs ago.</p> <p>Completed apprenticeship; worked many yrs in construction and hairdressing industries. Unemployed at time offending.</p> <p>History of illicit drug use; regular user of amphetamines.</p> <p>In good health; no mental health issues.</p>	<p>The same day police executed a search warrant at Bees home, where numerous quantities of methyl in clipseal bags were located, along with the quantity of cocaine.</p> <p>The cutting agent MSM and numerous empty clipseal bags of varying sizes, a 'tick list' and several mobile phones were also located.</p> <p>The 'tick list' revealed Bees had been selling prohibited drugs on credit on a regular basis between April 2014 and July 2015.</p> <p>The total value of the drugs he sold was about \$135,000.</p>	<p>appellant's role towards the top of the hierarchy and that the drug dealing indicia found in the appellant's home showed he had been distributing large quantities of drugs for commercial benefit.</p> <p>Limited remorse; cooperative with police; but limited admissions made in relation to ct 1; risk of re-offending.</p>	<p>judge's finding that the appellant intended to sell into the community the overwhelming majority of the 1.480 kg of methyl ... was not the only reasonable inference open on the material before his Honour.</p> <p>At [65] ... a different individual sentence should not have been imposed in respect of ct 1 and ... a different TES should not have been imposed in respect of cts 1, 2 and 3.</p> <p>At [70] The various serious nature of the appellant's offending on ct 1 is apparent from ... The quantity, purity and value of the methyl. ... The appellant's role in taking poss of a significant part of the 1.480 kg ... for the purpose of delivery to another person who would in turn sell and supply the drug into the community. ... The appellant's intention to</p>
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					<p>retain a significant but lesser quantity ... for sale by him in the course of his thriving drug dealing business.</p> <p>At [71] The appellant's offending on ct 1 was not isolated or an aberration.</p> <p>At [73] ... The sentence is broadly consistent with the sentencing range that is discernible from reasonably comparable cases.</p> <p>At [76] ... it was necessary, in order properly to mark the seriousness of the appellant's overall offending, for the individual sentences imposed on each of cts 1 and 2 to be served cumulatively. ...</p>
5.	<p><i>Grant v The State of Western Australia</i></p> <p>[2017] WASCA 162</p> <p>Delivered</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</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>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>Dismissed.</p> <p>Appeal concerned first limb of totality principle.</p> <p>At [80] ... the appellant was engaged in a serious course of criminal</p>

31/08/2017	<p>upbringing; supportive family and friends.</p> <p>Completed yr 12; completed plumbing apprenticeship; self-employed; annual turnover of approx \$500,000.</p> <p>Long term illicit drug use.</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 cipseal bags and written directions for the manufacture of methyl and \$1,400 cash.</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>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>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>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 hand at the time. The poss offences needed to be seen in the context of a continuing involvement in the manufacture, sale and</p>
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					<p>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><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>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>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>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</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>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>The sentencing judge found the gun was not intended for protection and those who deal in illicit drugs are frequently found in poss of firearms and are 'one of the frequently seen tools of the drug trade'.</p> <p>Good prospects of rehabilitation.</p>	<p>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 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.</p>
3.	<i>Rinaldi v The</i>	37 yrs at time offending.	Ct 1: Poss MDMA wiss 888.01 grams of	Ct 1: 18 mths imp (reduced from 5	Dismissed.

<p><i>State of Western Australia</i></p> <p>[2017] WASCA 48</p> <p>Delivered 17/03/2017</p>	<p>39 yrs at time sentencing.</p> <p>Convicted after very late PG (5% discount).</p> <p>Minor criminal history.</p> <p>Traumatic childhood; supportive family.</p> <p>Left school midway through yr 11.</p> <p>Obtained a trade; good employment history and strong work ethic.</p> <p>History of illicit drug use; escalated after his marriage break down.</p>	<p>25%-73% purity.</p> <p>Ct 2: Poss methyl wiss 1650.67g of 45%-77% purity.</p> <p>Ct 3: Poss cocaine wiss 7.29g of 68% purity.</p> <p>Cts 4-17: Poss firearm.</p> <p>Cts 18-38: Poss ammunition.</p> <p>Ct 39: Poss GPS jamming device.</p> <p>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.</p> <p>Large quantities of drugs and ammunition, 14 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>yrs for totality reasons) (cum).</p> <p>Ct 2: 8 yrs imp (cum).</p> <p>Ct 3: 2 yrs imp (conc).</p> <p>Ct 4: 18 mths imp (cum).</p> <p>Ct 5: 18 mths (conc).</p> <p>Cts 6, 8-11, 15-17: 12 mths imp (conc).</p> <p>Ct 7: 12 mths (cum).</p> <p>Ct 12: 14 mths imp (cum).</p> <p>Cts 13-14: 14 mths imp (conc).</p> <p>Cts 18, 21 and 31: 6 mths imp (conc).</p> <p>Ct 19: 8 mths imp (cum).</p> <p>Ct 20: 3 mths imp (conc).</p> <p>Ct 22-23: 2 mths imp (conc).</p> <p>Cts 24-25: 8 mths imp (conc).</p> <p>Cts 26-27 and 30: 3 mths imp (conc).</p> <p>Cts 28-29 and 32-33: 1 mths imp (conc).</p> <p>Ct 34-36: 3 mths imp (conc).</p> <p>Ct 37: 4 mths imp (conc).</p> <p>Ct 38: 2 mths imp (cum).</p> <p>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 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,</p>	<p>Appeal concerned totality and PG discount.</p> <p>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 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 ...</p>
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				<p>commercial enterprise and from which the appellant would have derived 'some commercial gain or benefit'.</p>	<p>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 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</p>
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					<p>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 amount of ammunition, including ammunition suitable for use in the firearms present at the house, is concerning.</p>
2.	<p><i>Barton v The State of Western Australia</i></p> <p>[2016] WASCA 196</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</p>	<p>Cts 1 & 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 & 2). A search located two clipseal bags containing 26.7g and 6.9g</p>	<p>Cts 1 & 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</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>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>of methyl (ct 3), along with 23 MDMA tables 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>motivated vendor of drugs into the community and his offending was for 'commercial gain' based on the presence of the tick lists, cash and phone messages.</p> <p>The appellant accepted responsibility for his offending and was addressing his drug addiction.</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>
<p>1.</p>	<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></p> <p>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 clipseal bags, one containing 501g</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></p> <p>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 distribution of [prohibited] drugs in the community'.</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>

			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 jamming device (s 32).		
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Transitional Provisions Repealed (14/01/2009)

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Transitional Provisions Enacted (31/08/2003)

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