

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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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)
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
3.	<p><i>Tai v The State of Western Australia</i></p> <p>[2016] WASCA 234</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>
2.	<p><i>Lowe v The State of Western Australia</i></p> <p>[2015] WASCA 83</p> <p>Delivered 30/04/2015</p>	<p>28 yrs at time sentencing.</p> <p>Convicted after late PG.</p> <p>Committed ct 2 while on bail for ct 1.</p> <p>Prior criminal history, including poss prohibited drug, poss drug paraphernalia and breach of bail.</p> <p>Difficult upbringing; left school yr 10; intermittently employed.</p>	<p>Ct 1: Manufacture methyl. Ct 2: Manufacture methyl.</p> <p><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.</p>	<p>Ct 1: 16 mths imp (cum). Ct 2: 2 yrs imp (cum).</p> <p>TES 3 yrs 4 mths immed imp.</p> <p>EFP.</p>	<p>Dismissed – on papers.</p> <p>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.</p> <p>At [24] It is sufficient for me to say that the individual sentences imposed in the present case</p>

		<p>User of cannabis since age 14 and methyl since age 17; no intention of ceasing cannabis use.</p> <p>Another offender, Linturn, was not charged in connection with ct 1. Linturn was convicted of other manufacture methyl offences.</p>	<p><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.</p>		<p>conform with the range of sentences customarily imposed.</p> <p>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.</p> <p>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.</p>
<i>Transitional Provisions Repealed (14/01/2009)</i>					
<i>Transitional Provisions Enacted (31/08/2003)</i>					

Attempt to Manufacture Prohibited Drug

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>Tai v The State of Western Australia</i></p> <p>[2016] WASCA 234</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>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.</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</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</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>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>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>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>
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