SUPREME COURT OF QUEENSLAND

CITATION:	*State of Queensland v Cannon* [2011] QSC 75
PARTIES:	**STATE OF QUEENSLAND** (applicant) **v** **CHARLES EDWARD CANNON** (respondent)
FILE NO:	1166 of 2003
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	8 April 2011
DELIVERED AT:	Brisbane
HEARING DATES:	15, 16, 19, 20 and 21 July 2010, 3 December 2010, 3 March 2011
JUDGE:	Applegarth J
ORDERS:	**1. Pursuant to s 78 of the *Criminal Proceeds Confiscation Act* 2002 (Qld) the respondent pay to the applicant the sum of $4,200,000.** **2. The applicant submit minutes of order.**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – ORDERS FOR COMPENSATION, REPARATION, RESTITUTION, FORFEITURE AND OTHER MATTERS RELATING TO DISPOSAL OF PROPERTY – FORFEITURE OR CONFISCATION – CONFISCATION – where respondent convicted of trafficking in methylamphetamine – where applicant State of Queensland sought an order that the respondent pay to it the proceeds of his illegal activity – where some witnesses relied upon by the State were also involved in methylamphetamine production and trafficking – where those witnesses received reduced sentences in return for co-operating in the prosecution of the respondent – where respondent challenged the credibility of such witnesses – whether evidence of such witnesses should be relied upon – whether respondent engaged in "serious crime related activity" as defined in the *Criminal Proceeds Confiscation Act* 2002 (Qld) – method of assessing proceeds of illegal activity – whether proceeds assessment should be made – assessment of value of proceeds

LEGISLATION:	*Criminal Proceeds Confiscation Act* 2002 (Qld), s 77, s 78, s 82, s 84, s 85
CASES:	*Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] HCA 34 cited *New South Wales Crime Commission v Kelly (No 2)* [2003] NSWSC 154 cited *Ollis v New South Wales Crime Commission* (2007) 177 A Crim R 306; [2007] NSWCA 311 cited *R v Cannon* [2007] QCA 205 cited *R v Fagher* (1989) 16 NSWLR 67 cited *Rejfek v McElroy* (1965) 112 CLR 517; [1965] HCA 46 cited
COUNSEL:	M D Hinson SC and J S Brien for the applicant P E Smith for the respondent (15, 16, 19, 20 and 21 July 2010) W Tolton for the respondent (3 December 2010) S Shearer for the respondent (3 March 2011)
SOLICITORS:	Director of Public Prosecutions for the applicant Burchill & Horsey for the respondent (15, 16, 19, 20 and 21 July 2010) Cobb Law for the respondent (3 December 2010) Caroll Fairon Solicitors for the respondent (3 March 2011)

[1] The State of Queensland applies pursuant to ss 77(1) and 78(1) of the *Criminal Proceeds Confiscation Act* 2002 ("the Act") for the Court to assess the value of the proceeds derived by the respondent from illegal activity, and for orders that he pay the State the assessed value by way of a proceeds assessment order. A proceeds assessment order is an order requiring a person to pay to the State the value of the proceeds derived from the person's illegal activity that took place within six years before the day the application for the order is made.[1] The application in this matter was made on 7 February 2003.

[2] Section 78(1) provides that the Court must make a proceeds assessment order against a person if the Court finds it more probable than not that, at any time within the six years before the application was made, the person engaged in a "serious crime related activity". However, s 78(2) provides that the Court may refuse to make the order if the Court is satisfied that it is not in the public interest to make the order.

[3] A finding under s 78(1) need not be based on a finding about the commission of a particular offence.[2] For a proceeds assessment order to be made it is not necessary that the serious crime-related activity that is proven be an offence for which the respondent has been convicted.[3] However, in this proceeding the State relies upon a certificate of conviction in respect of offences of trafficking in methylamphetamine and possessing methylamphetamine.

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1 The Act, s 77(1).

2 The Act, s 78(3).

3 See ss 16(2), 4(3) to (6), 13(1) and 13(5); compare ss 178(1) and 195(1)(a); and see also *Ollis v New South Wales Crime Commission* (2007) 177 A Crim R 306; [2007] NSWCA 311 at [60]-[66] and [105]-[109] in relation to comparable legislation.

[4] On 17 November 2005 the respondent was convicted on two counts. The first was that between 31 December 1995 and 15 January 2003 at the Gold Coast and elsewhere in Queensland he carried on the business of unlawfully trafficking the dangerous drug methylamphetamine. He was sentenced to be imprisoned for a period of 12 years and eight months. He was also convicted on a count that on 14 January 2003 he unlawfully had possession of the dangerous drug methylamphetamine, in a quantity that exceeded two grams. He was sentenced to a concurrent term of imprisonment of two years for that offence.

[5] On 22 June 2007 the Court of Appeal dismissed the respondent's appeal against conviction, and his application for leave to appeal against sentence was refused.[4] More recently the respondent apparently sought legal aid to challenge his conviction on the basis of alleged non-disclosure of material that is said to be relevant to certain Crown witnesses called at his criminal trial. However, there is no evidence that aid was granted or that there is any real prospect that his conviction will be set aside.

[6] The applicant's case is that the certificate of conviction and other evidence relied on by it establishes that in the six years between 8 February 1997 and 7 February 2003 the respondent engaged in "illegal activity", as defined by the Act, by trafficking in methylamphetamine, and that the evidence supports the conclusion that he derived millions of dollars from the production and sale of methylamphetamine.

[7] The respondent denies that he engaged in this kind of illegal activity. He says that certain witnesses called by the applicant in this proceeding to prove that he engaged in serious crime related activity are liars. He also submits that the State's case concerning the extent of drug production and sale and the value of proceeds derived from such activity is flawed.

[8] The essential issues are:

(a) did the respondent engage in a "serious crime related activity" within the six years before 7 February 2003; and

(b) if so, what is the value of the proceeds derived from that illegal activity, as assessed in accordance with Division 2 of Part 5 of the Act.

[9] As to the first issue, the respondent's original outline of submissions conceded, to a degree, that a proceeds assessment order would be made against him. The "inevitability" of such an order was acknowledge in his submissions in reply dated 1 February 2011 which fairly acknowledged:

> "The real argument in this case is the proper quantum of such an assessment".

[10] Accordingly, my reasons will mainly be about two substantial issues:

(a) The extent of the respondent's "serious criminal related activity" in trafficking in methylamphetamine; and

(b) The value of the proceeds derived from the activity.

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4 *R v Cannon* [2007] QCA 205.

First I shall address in some greater detail the statutory regime.

The statutory regime

[11] The main object of the Act is to remove the financial gain and increase the financial loss associated with illegal activity, whether or not a particular person is convicted of an offence because of the activity.[5] One of the separate schemes provided for by the Act relies on a person being charged and convicted. The other scheme, which includes provision for a proceeds assessment order, does not depend on a charge or conviction.

[12] This proceeding is not a criminal proceeding, and questions of fact must be decided on the balance of probabilities.[6] The gravity of the allegation that the respondent engaged in serious crime related activity must be taken into account when being invited to reach this conclusion according to the balance of probabilities. The seriousness of the allegation and the gravity of the consequences flowing from such a finding are considerations which must affect the determination of whether or not the respondent engaged in the serious crime related activity that is alleged.[7] The gravity of the consequences that flow from findings about the extent to which a person has engaged in "serious crime related activity" means that reasonable satisfaction as to those matters should not rely on what Dixon J in *Briginshaw v Briginshaw* described as "inexact proofs" and "indefinite testimony".[8] Still, the standard of proof is the balance of probabilities. The High Court in *Rejfek v McElroy* said:[9]

> "[T]he standard of proof to be applied in a case and the relationship between the degree of persuasion of the mind according to the balance of probabilities and the gravity or otherwise of the fact of whose existence the mind is to be persuaded are not to be confused. The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge."

[13] The Court must make a proceeds assessment order if it finds that it is more probable than not that, at any time within the six years before the application was made, the person engaged in a "serious crime related activity."[10] Anything done by a person that was, when it was done, a serious criminal offence, is a "serious crime related activity". This is so whether or not the person has been charged with the offence or, if charged:

(a) has been tried; or

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5 The Act, s 4(1).
6 The Act, s 8(3).
7 *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34 per Dixon J.
8 Ibid.
9 (1965) 112 CLR 517 at 521-522; [1965] HCA 46 at [11].
10 The Act, s 78(1).

(b) has been tried and acquitted; or

(c) has been convicted, even if the conviction has been quashed or set aside.[11]

An offence is a "serious criminal offence" if, among other things, it is an indictable offence for which the maximum penalty is at least five years imprisonment.[12]

[14] A finding that a person has engaged in a serious crime-related activity:

(a) need not be based on a finding about the commission of a particular offence; and

(b) may be based on the finding that some offence that is a serious crime related activity was committed.[13]

[15] A proceeds assessment order requires a person to pay to the State the value of the "proceeds derived from the person's illegal activity that took place within 6 years before the day the application for the order is made."[14] The term "proceeds" in this context includes property and another benefit derived because of the activity by the person who engaged in the activity, or by another person at the direction or request, directly or indirectly, of the person who engaged in the activity.[15] In assessing the value of proceeds the Court must have regard to the evidence before it about the various matters specified in s 82(1). These are:

"(a) the value of cash and other property that came into the possession or under the control of the relevant person or someone else at the request, or by the direction, of the relevant person, because of the illegal activity;

(b) the value of any benefit provided for the relevant person or someone else at the request, or by the direction, of the relevant person, because of the illegal activity;

(c) if the illegal activity involved a dangerous drug or controlled substance (the ***illegal drug***)—

(i) the market value, when the illegal activity happened, of a dangerous drug or controlled substance similar, or substantially similar, to the illegal drug; and

(ii) the amount that was, or the range of amounts that were, ordinarily paid for an act similar, or substantially similar, to the illegal activity;

(d) the value of the relevant person's property before, during and after the illegal activity;

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11 The Act, s 16.
12 The Act, s 17.
13 The Act, s 78(3).
14 The Act, s 77(1).
15 The Act, s 18.

(e) the relevant person's income and expenditure before, during and after the illegal activity."

[16] The Court may treat as the value of the proceeds the value the proceeds would have had if derived when the valuation is being made, and may have regard to any decline in the purchasing power of money between the time the proceeds were derived and the time the valuation is being made.[16]

[17] In assessing the value of proceeds pursuant to Division 2 of Part 5 of the Act, any expenses or outgoings incurred by the relevant person in relation to the illegal activity must be disregarded. Section 84 includes the following example:

> "For deciding the value of the proceeds derived by the relevant person from an illegal activity involving the sale of dangerous drugs the person's expenses paid in acquiring the drugs must be disregarded."[17]

[18] In determining the value of the proceeds, the Court may receive evidence of the opinion of a prescribed officer, who is experienced in the investigation of illegal activities involving dangerous drugs, about the market value at a particular time of a particular kind of dangerous drug or the amount or range of amounts ordinarily paid at a particular time for the doing of anything in relation to a particular kind of dangerous drug.[18]

Is it more probable than not that the respondent engaged in "serious crime related activity" within the six years prior to 7 February 2003?

[19] The applicant's case is that the respondent derived proceeds as a result of the extraction of pseudoephedrine from Sudafed tablets, the production of methylamphetamine from that pseudoephedrine and also from ephedrine that he obtained, and the sale of the methylamphetamine that was produced. As noted, the respondent was convicted of having carried on the business of unlawfully trafficking in methylamphetamine between 31 December 1995 and 15 January 2003. The judgment of the Court of Appeal, which dismissed his appeal against conviction and refused an application for leave to appeal against sentence, summarises the prosecution case at trial and the respondent's contention that the guilty verdict against him was unreasonable. The nature of the prosecution case is relevant to my reliance on the certificate of conviction.

[20] The judgment reports that the respondent was under police surveillance from March 2002. He was arrested on 14 January 2003. During the course of the surveillance after March 2002, police intercepted a large number of telephone calls which suggested that the respondent was a participant in an enterprise involving the production and sale of methylamphetamine. The prosecution also relied on the evidence of five witnesses who gave direct evidence of dealings with the respondent in relation to his trafficking in methylamphetamine after 1996. These were Thomas Pfaff, John Hooning, Sheree Bailey, Rebecca Benson and Paul Johnson. The first three of these witnesses were called as witnesses by the applicant in these

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16 The Act, s 82(2).
17 The Act, s 84.
18 The Act, s 85(1).

proceedings, and cross-examined at length. The applicant's case in these proceedings is broadly the same as the prosecution case that resulted in the respondent being convicted for trafficking in methylamphetamine. That case is that the respondent acquired large quantities of Sudafed tablets from suppliers such as Mr Hooning. The respondent is alleged to have arranged for pseudoephedrine to be extracted from those tablets with the assistance of individuals such as Ms Bailey. He also is alleged to have obtained large quantities of ephedrine from Mr Pfaff. Mr Pfaff, Mr Hooning and Ms Bailey were each convicted of offences involving the respondent. Each was sentenced under s 13A of the *Penalties and Sentences Act* 1992 (Qld) and received a reduced sentence in return for an undertaking to co-operate with the authorities in relation to the prosecution of the respondent. Mr Hooning also was given an undertaking from the Attorney-General that he would not be prosecuted for any offence on his part which his evidence at the criminal trial might reveal.

[21] Ms Benson, who gave evidence at the respondent's criminal trial that he had been selling methylamphetamine in quantities of an ounce or more from 1996, was not called as a witness in these proceedings. Before giving evidence at the respondent's trial Ms Benson had been given an undertaking from the Attorney-General that she would not be prosecuted for any offence which her evidence might reveal. Mr Johnson received a reduced sentence in relation to his co-operation with the authorities against the respondent.

[22] The prosecution case against the respondent also relied upon the evidence of a forensic accountant who analysed the finances of the respondent and associated companies between 22 January 1999 and 14 January 2003. This analysis was said by the Court of Appeal to reveal an unexplained surplus of about $1,000,000. The prosecution relied upon many other items of evidence, including a list of chemicals and tools which, it was said, could be used to manufacture methylamphetamine. This list, upon which the respondent's fingerprints were found, was located in a Jaguar car when a search warrant was executed at the residence of the respondent's girlfriend at Hervey Bay on 25 July 2002.

[23] At his criminal trial and in his appeal the respondent challenged the reliability of the witnesses Pfaff, Hooning, Bailey, Benson and Johnson. The Court of Appeal found that the trial judge made the jury "fully alive to the doubts which might reasonably be said to attend the reliability of each of these witnesses."[19] The Court of Appeal concluded that even taking account of all the criticisms which might legitimately be made of the evidence of these witnesses, it was reasonably open to the jury on the whole of the evidence to be satisfied beyond reasonable doubt of the respondent's guilt. The evidence was said clearly to disclose "a major trafficking operation from which the [respondent] reaped large profits."[20]

[24] I have no sound reason to conclude that the respondent was wrongly convicted. For the reasons to be given when considering the evidence of witnesses in the proceedings before me, I generally accept the evidence of the applicant's witnesses, including Mr Pfaff, Mr Hooning and Ms Bailey, who had direct knowledge of the respondent's drug trafficking activities. Also, for reasons to be given, I do not accept the respondent's denials to the effect that he was not engaged in drug

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19 *R v Cannon* [2007] QCA 205 at [58].

20 Ibid. at [94].

trafficking. I also found the evidence given in these proceedings by his sister, Ms Burton, to be unreliable and unconvincing.

[25] Evidence in the form of the certificate of the respondent's conviction for drug trafficking and the other evidence called by the applicant satisfies me that the respondent carried on the business of unlawfully trafficking in the dangerous drug methylamphetamine for at least four years prior to January 2003. I am satisfied that he acquired substantial quantities of ephedrine and pseudoephedrine in order to make methylamphetamine for sale. There is no reasonable basis in the evidence to conclude that it was acquired for any other purpose, or that the purpose of producing methylamphetamine for sale was not achieved. I find that the respondent sold methylamphetamine. I am satisfied that the respondent arranged for the production and sale of methylamphetamine in large quantities as part of a well-organised business.

[26] I find that the respondent engaged in a "serious crime related activity", namely trafficking in methylamphetamine, within the six years before the application was made on 7 February 2003.

The extent of the respondent's "serious crime related activity"

[27] The respondent correctly submits that the certificate of conviction for trafficking only establishes the elements of the offence: it does not establish the amounts of drugs that were acquired, produced or sold. The extent of the respondent's drug trafficking and the value of the proceeds derived by him depend upon the amount of methylamphetamine that was available for sale, and the inference that most, if not all, of the methylamphetamine available for sale was in fact sold. The amount of methylamphetamine available for sale depends upon evidence about the quantity of precursors available to him and an assessment of the amount of methylamphetamine that was produced from these precursors. The determination of factual issues in relation to the quantity of precursors available to him involves an assessment of the evidence of Mr Pfaff, Mr Hooning and Ms Bailey.

[28] The respondent does not submit that these witnesses concocted their evidence together. Instead, he submits that their separate evidence suffers from similar difficulties and was obtained in circumstances that require very close scrutiny to be given to it. Ultimately, he submits that this evidence is inaccurate and unreliable, and that a proceeds assessment order should not be based on it. A theme in the respondent's challenges to the accuracy and reliability of the evidence of Mr Pfaff, Mr Hooning and Ms Bailey is that each was persuaded to give evidence against him at his criminal trial, each received the benefit of a reduced sentence by agreeing to give evidence against him and each would be at risk of re-opening that sentence if they now departed from the account which they earlier gave.

[29] The respondent also makes detailed submissions about the reliability and credibility of each of these witnesses and relies upon what are said to be inconsistencies in the accounts they have given over the years in statements to the police, in evidence at committal proceedings, in their evidence at the respondent's trial and in the present proceedings. It will be necessary to assess separately the reliability and credibility of each witness. Before doing so it is appropriate to give a brief account of the course of these proceedings, since it is relevant to the recollections of these witnesses.

The course of the proceedings

[30] These proceedings were commenced shortly after the respondent was arrested on 14 January 2003. He was convicted on 17 November 2005. His appeal was dismissed on 22 June 2007. It is unnecessary to canvass the interlocutory history of these proceedings. Affidavits by Mr Pfaff, Mr Hooning, Ms Bailey and other deponents were sworn and filed in 2008. The trial of these proceedings commenced before White J (as her Honour then was) on 27 April 2010. The trial was adjourned upon the respondent's application on 28 April 2010. It commenced before me on 15 July 2010. The respondent was then represented by Mr P E Smith of counsel and his instructing solicitors, Birchell & Horsey, who had also appeared for the respondent before White J. The respondent's case was well-prepared by his lawyers and included a substantial forensic accountant's report. Mr Smith cross-examined the applicant's witnesses with his customary thoroughness and vigour. On a number of occasions at the end of his cross-examination I allowed Mr Smith some additional time to confer with his client in order to ascertain whether there were additional matters which might be the subject of further cross-examination.

[31] At the conclusion of the applicant's case the respondent gave evidence and called his sister (Ms Burton), a forensic accountant (Mr Lord) and a professor in chemistry (Professor Brown). The respondent's case closed at around 11:00 am on 21 July 2010, subject to the tender of certain documents which had been the subject of cross-examination, and to the possibility of the respondent being able to call another person, who was in New Jersey, about matters in respect of which one of the applicant's witnesses, Ms Maisie, was not in a position to give evidence. I anticipated when I adjourned at 11:00 am on 21 July 2010 that, subject to any application to call additional evidence (for which leave would have been required in the light of pre-trial directions concerning the evidence of witnesses), the evidence was closed and that directions would be given for the parties in respect of the making of written and oral submissions.

[32] When the Court resumed at 12:50 pm Mr Smith and his solicitors sought leave to withdraw. Mr Smith explained that the application for leave to withdraw was due to a conflict with the respondent arising, and did not relate to the manner in which the case had been conducted.[21] I remarked at the time that I had found Mr Smith's conduct of the case very competent, that he had thoroughly cross-examined witnesses and that he had shown "an obvious command of the brief". I also remarked that the material from his instructing solicitors had been compiled very professionally. Mr Smith indicated that it was likely that new solicitors would be able to act for the respondent. I granted Mr Smith and his instructing solicitors leave to withdraw, subject to the grant of legal aid to new solicitors.

[33] In due course new solicitors were appointed, and they briefed Mr Tolton of Counsel. It is unnecessary for present purposes to canvass the course of events that followed relating to the provision of submissions and what was at one stage foreshadowed as an application for leave to re-open to call additional evidence on behalf of the respondent. As matters transpired, the respondent's new solicitors, Cobb Law, did not file such an application. On 28 October 2010, 58 pages of

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[21] The circumstances under which Mr Smith and his solicitors came to withdraw are the subject of affidavits: Court file index 257 and 258. I accept that the respondent gave the instructions signed by him on 19 July 2010 (Exhibit CB1 to the affidavit of Mr Cobb filed 25 October 2010) and that his lawyers acted in accordance with those instructions.

submissions together with annexures were delivered by Cobb Law. The submissions, which had earlier been prepared by Mr Smith of Counsel, were adopted by Mr Tolton of Counsel. Directions had been made for written submissions in reply. The applicant delivered its written submissions in reply on 28 October 2010. The respondent did not initially deliver submissions in reply due to some difficulties in relations between the respondent and Mr Cobb, including whether it was necessary for Mr Cobb personally to attend upon the respondent in order to take instructions about the submissions in reply. The matter was listed for the purpose of counsel making final oral submissions on 3 December 2010. At that hearing I granted Mr Tolton and his instructing solicitors leave to withdraw and made directions for the respondent to file any submissions in reply. The respondent engaged new solicitors who instructed Mr Shearer of Counsel, who in turn prepared the respondent's submissions in reply dated 1 February 2011. Counsel made oral submissions on 3 March 2011.

An overview of the evidence of Mr Pfaff, Mr Hooning and Ms Bailey

[34] A large part of the substantial written submissions that were prepared by Mr Smith of Counsel, and adopted by Mr Tolton of Counsel, relate to the accuracy, credibility and reliability of the witnesses Pfaff, Hooning and Bailey. The applicant's submissions in reply address the submissions made in this regard. I have taken account of these extensive submissions on points of detail and find it unnecessary to address all of the respondent's criticisms of the evidence of these witnesses, or the applicant's response to these criticisms. The respondent's submissions include a detailed analysis of the respects in which there were inconsistencies in the evidence of individual witnesses. For example, differences between the evidence that a witness gave in committal proceedings and then gave subsequently are relied upon in support of a submission that the witness gave false evidence. The respondent gave many reasons as to why I should not rely upon the evidence of Mr Pfaff, Mr Hooning and Ms Bailey. I shall assess in turn the credibility and reliability of each of these witnesses. Before doing so I shall address in more general terms an issue relating to the reliability of their evidence in these proceedings, namely the time which has elapsed since the events to which their evidence relates. Each witness experienced some difficulties in now recalling points of detail. However, this difficulty is understandable and does not automatically render their evidence the kind of "indefinite testimony" to which reference was made in *Briginshaw v Briginshaw*.

[35] Each of these witnesses was not being required in 2010 to recall for the first time events that had happened between 1999 and 2003. Their 2008 affidavits and their oral evidence in July 2010 in these proceedings related to matters about which they had given evidence on earlier occasions, including evidence in police interviews, formal investigation hearings, committal proceedings and the respondent's criminal trial. It is understandable that the recollections of these witnesses on certain points of detail has faded over time. I have considered the respondent's submissions concerning inconsistencies and, for reasons to be given, I have some reservations concerning the reliability of certain evidence. However, I do not consider that alleged inconsistencies within the evidence given by each of these witnesses over the years should lead me completely to reject their evidence, let alone find that they have lied on oath. Some alleged inconsistencies are more apparent than real. Some seem to be the product of imprecision in language. To illustrate the point, a witness might be asked whether he or she "supplied drugs" to a named individual. He or

she may deny having done so, either not recalling an occasion upon which a small sample of drugs was supplied or not acknowledging that such a sample offering amounted to a supply. A later, apparently inconsistent, acknowledgment that there was a drug supply gives rise to an inconsistency between the original denial and the later admission. However, the inconsistency arises because the person did not originally recall the supply of a small sample or did not regard it as being a supply for the purpose of the original question. Not all of the alleged inconsistencies relied upon by the respondent are of this character. Some are more substantial. However, a large number of alleged inconsistencies in the accounts given by these witnesses are not of a kind that leads me to have any significant reservations about the reliability of their evidence on matters of substance. Some minor variation on points of detail between accounts given over many years is understandable. In addition, an inability in 2010 to recall a point of detail given many years earlier in a witness statement, at a committal hearing or at a trial in 2005 should not necessarily result in a rejection of the witness' evidence generally, or a rejection of the account given closer in time to the actual events. In general, sworn evidence given closer to the events in question, being evidence that was subject to cross-examination either at committal or at trial, is likely to be more reliable than an inconsistent recollection given many years later. The extent of such inconsistencies should not be overstated. There was not much deviation in the accounts given by each of these witnesses at various times of the essential facts in relation to their dealings with the respondent.

Mr Pfaff

[36] Mr Pfaff gave evidence in these proceedings of having sold a total of 11 kilograms of ephedrine to the respondent on three occasions between April and August 2001. After 1997 Mr Pfaff worked in nightclubs in Surfers Paradise. He became good friends with Rebecca Benson and in about 2000 or 2001 met the respondent at the Palladium Nightclub where Mr Pfaff did some security work. Mr Pfaff's evidence is that in about March 2001 an associate of his, John Donnelly, asked him whether he knew anyone who wanted to buy ephedrine, and offered to sell it to Mr Pfaff at $30,000 a kilogram, suggesting that he could on-sell it at $35,000. He says that he, and Benson on his behalf, made some inquiries and that he then spoke to the respondent. He says that the respondent showed some interest in the ephedrine and asked for a sample. This was in about April 2001. Mr Pfaff supplied the respondent with either a 50 or 100 gram sample which the respondent told him he was going to have tested. The respondent later reverted to him, said the sample was good and indicated that he wished to purchase a quantity of the ephedrine. In paragraph 13 of his affidavit, Mr Pfaff says that there were five kilograms available, that he offered them to the respondent for $33,500 per kilogram, that the respondent did not want to pay this price and that, being desperate for money, Mr Pfaff dropped the price to $32,500 on the basis that the respondent would purchase all five kilograms. He says that he sourced the ephedrine from Donnelly, who charged him $30,000 per kilogram, and that the transaction took place at Mr Pfaff's home at Markell Avenue, Surfers Paradise.

[37] Mr Pfaff says that after this first sale the respondent reported some problems with using the ephedrine and said that he had ended up with a "big crystal rock". Mr Pfaff says that he contacted Benson and asked her about it. Benson suggested that it could be the quality of the other products that the respondent was using and offered to give a sample to a friend to see if he could identify the problem. Mr Pfaff says he also supplied the respondent with a document that explained how to process

ephedrine, as opposed to pseudoephedrine, and that this recipe was obtained from a book that he had bought on the internet. The respondent is said not to have taken up this offer, but asked to let him know when the next lot came in.

[38] Mr Pfaff says that about a month after the first purchase Donnelly told him that he had three kilograms of ephedrine available, and that as a result he spoke to the respondent, who agreed to purchase it at $32,000 per kilogram. He says that the transaction occurred at his flat, and he has a specific recollection of a miscalculation in the cash that was paid, following which the respondent paid him an extra $5,000. He also has a recollection of the smell of the containers and of a comment that the respondent made about them.

[39] The third cash transaction is alleged to have occurred in around August 2001, when Mr Pfaff arranged to meet the respondent at the Palladium. According to Mr Pfaff, the respondent gave him a bag of money and he gave the respondent the ephedrine.

[40] Pfaff recalls another occasion when he met the respondent at The Spit where the respondent claimed that the last supply of three kilograms was "short" and arrangements were made to return $1,600 of the payment to him.

[41] A search warrant was executed at Mr Pfaff's home in the early hours of 14 January 2003. He came to learn that police had recorded telephone conversations that he had participated in, and that a person he had been selling drugs to was an undercover police officer. Mr Pfaff was interviewed by police on various occasions. He implicated certain individuals, including the respondent.

[42] The respondent submits that Mr Pfaff is a witness in respect of whom one would have grave reservations. He admitted to lying to the undercover police officer, Barnes, by "big noting" himself. At his committal he admitted that he was prepared to embellish things about other people if it served a purpose at the time. The respondent submits that Mr Pfaff is a person who will tell lies to advance his own purpose, and did this by telling lies about the respondent.

[43] The preparedness of Mr Pfaff to "big note" himself, to embellish matters and to lie on occasions to suit his own purposes does not mean that it suited his purposes to lie about the supply of ephedrine to the respondent, or the extent of his involvement with the respondent. I accept the applicant's submission that whilst Mr Pfaff admitted that at times he embellished a story to make himself look better, it is unlikely that he would exaggerate the extent of his trafficking since the extent of his unlawful conduct had a direct bearing on the sentence he received.

[44] He stood to benefit by being sentenced under the provisions of s 13A of the *Penalties and Sentences Act* by undertaking to give evidence in accordance with his statement, and if he had failed to co-operate in this regard his sentence would have been re-opened. The interests of those seeking to prosecute the respondent were served by persuading Mr Pfaff to implicate the respondent. That said, I do not find that it was in Mr Pfaff's interest to invent a story about supplying large quantities of ephedrine to the respondent, or deliberately to exaggerate the quantities of drugs that he supplied.

[45] The respondent notes that Mr Pfaff was not charged with production even though he had a list of chemicals and obtained a book on the manufacture of methylamphetamine from America. He also was recorded in a telephone

conversation talking about a "cook" that "went bad". He denied ever being present for any cooks, having produced methylamphetamine or being able to produce methylamphetamine if given the necessary equipment or ingredients. Although there is reason to be sceptical about Mr Pfaff's evidence that the book was for interest only, I am not able to conclude that there was sufficient evidence to successfully prosecute Mr Pfaff for the offence of production of methylamphetamine. Mr Pfaff, however, was involved in the drug trade and supplied drugs to an undercover police officer. On 25 November 2002 an undercover police officer was present when Mr Pfaff met the respondent and gave him a bottle of ephedrine to be used in the production of amphetamines. The approximate weight of the ephedrine was 10 grams.

[46] Following his arrest Mr Pfaff knew that he was in serious trouble and must have known that he would benefit from giving evidence against, amongst others, the respondent. However, this does not mean that his evidence in respect of the respondent was a lie, or even known to be exaggerated. I am not persuaded that Mr Pfaff would have given evidence that incriminated himself of having supplied large quantities of ephedrine to the respondent on three occasions between April and August in 2001 if no such supply had occurred. I do not accept the respondent's submission that Mr Pfaff had good reasons to lie about the respondent. Whilst entitled to a reduction in his sentence on account of his co-operation with the authorities, Mr Pfaff had no good reason to invent the sales sworn to in his affidavit. When it was put to him that he did not supply any ephedrine to the respondent, he responded:

> "Well, okay, I guess I wouldn't have gone to prison if that was the case. I'm not going to tell a lie that's going to send me to gaol for possibly eight years."

There is a difference between the outlandish stories that were told by Mr Pfaff to others in order to "big note" himself or to make a deal, being statements that were made for his own benefit, and statements that implicated him in the supply of substantial quantities of ephedrine to the respondent, which were distinctly against his interest. It was not in his interest to invent such substantial supplies since to do so would result in his imprisonment for a crime that he did not commit.

[47] In a further challenge to Mr Pfaff's credibility, the respondent pointed to apparent inconsistencies between the evidence given by him on certain topics during committal proceedings and at the respondent's trial. These include matters relating to his personal use of drugs and the extent to which he was involved in drug dealing. For example, at a committal proceeding he said that he was not a drug user, but on other occasions gave evidence that he had used drugs in the past, had used ecstasy on two occasions and also had used cannabis and speed. These inconsistencies indicate a preparedness to downplay, on occasions, the extent of his previous involvement in drugs. These inconsistencies cause me to have some reservations about the accuracy of Mr Pfaff's evidence. They do not persuade me that he lied on oath in the proceedings before me, or that his evidence is generally unreliable.

[48] The respondent submits that Mr Pfaff's account of supplying drugs to him is improbable given the extent of their prior association. However, I do not find the fact that Mr Pfaff did not know the respondent very well in April 2001 would have

deterred Mr Pfaff from broaching the topic of the supply of ephedrine. Mr Pfaff said that he knew of the respondent's involvement in ephedrine through conversations with one of Mr Pfaff's previous employers.

[49] In respect of the supply of a sample of 50 or 100 grams in about April 2001, Mr Pfaff cannot now recall whether the supply occurred in the foyer of the Palladium Nightclub or, as he said in the first committal, in its car park. He cannot be sure whether the sample was of 50 or 100 grams. I do not consider that his inability to recall precisely where the sample was handed over or its precise weight warrants rejection of his evidence that the respondent asked for a sample and that such a sample was supplied in the precincts of the Palladium Nightclub in April 2001. The event in question occurred about 10 years ago, and Mr Pfaff was first asked by police to recall it almost two years after the transaction. I accept his evidence that there was a sample supplied in April 2001.

[50] A second, more substantial supply is alleged to have occurred in April 2001. Mr Pfaff was interviewed about this on 14 January 2003 and thought that the sale was three kilograms, although he could not be completely sure. In a later statement provided to the Criminal Misconduct Commission in March 2003 he nominated the quantity as five kilograms. In later committal proceedings and at the respondent's criminal trial he was cross-examined about the quantity. He acknowledged that in the earlier interview he had said that the maximum amount was "probably" three kilograms, however, he maintained that the amount was five kilograms.

[51] Although I accept Mr Pfaff's evidence that he first sold a substantial quantity of ephedrine to the respondent in April 2001, I am not satisfied that the quantity supplied on that occasion was five kilograms. Mr Pfaff has been consistent in his account of the circumstances of the supply; however, his evidence concerning the quantity supplied has not been consistent. I acknowledge that his initial recollection that the quantity was probably no more than three kilograms may have been an imperfect recollection made under the pressure of the circumstances in which he found himself on 14 January 2003, and that on further reflection he gave a more accurate recollection of five kilograms. Also, it is improbable that he would overstate the quantity supplied on this occasion since a supply of five kilograms on this occasion was the basis upon which he pleaded guilty and was sentenced. I do not have major reservations about Mr Pfaff's evidence about this or any other supply. However, given the gravity of the consequences that flow from a finding in relation to the quantity of drugs supplied on this occasion, I am not sufficiently persuaded to find that the quantity was five kilograms.

[52] I recognise the force of the applicant's submission to the effect that there is no sound reason for Mr Pfaff to admit selling five kilograms of ephedrine to the respondent on this occasion if he only sold some smaller amount. Such an admission would only make worse the extent of the trafficking for which he was convicted and for which he was punished. However, I adopt a cautious approach in my findings concerning the quantity of drugs supplied in circumstances in which Mr Pfaff did not nominate the amount of five kilograms at the original interview. Accordingly, I find that Mr Pfaff supplied three kilograms of ephedrine in April 2001 in the circumstances deposed by him in paragraphs 13 to 16 of his affidavit.

[53] As to the next transaction, I accept Mr Pfaff's evidence that this transaction occurred. His recollection is supported by details about the handing over of money.

The respondent's submission notes that some of the details appearing in paragraph 18 of Mr Pfaff's affidavit were not mentioned in his original interview, but came to light during later interviews. However, as Mr Pfaff explained, the original interview occurred on the day that police arrested him and was a brief outline of events. On later occasions when he was again interviewed he had a better opportunity to recall matters and was not under the same pressure.

[54] I also accept that another transaction occurred in August 2001 when Mr Pfaff again supplied three kilograms of ephedrine in the precincts of the Palladium Nightclub. The respondent submits that it is "curious" that no video evidence was ever tendered if, as Mr Pfaff said at his trial, the supply occurred in the front foyer of the Palladium where there was video surveillance, rather than in the car park. The retention of video recordings of the foyer of the nightclub in August 2001 was not explored in evidence before me, and I have no reason to suppose that such a recording was available to the police or to the respondent months or years after August 2001. The evidence concerning this transaction, like others, rests on the word of Mr Pfaff. Having considered the evidence of Mr Pfaff, the respondent's extensive cross-examination of him, and the parties' competing submissions, I accept the applicant's submission that this transaction occurred and that the respondent was supplied with approximately three kilograms of ephedrine by Mr Pfaff in about August 2001. Mr Pfaff's account of this transaction has been consistent over time. It is improbable that he would invent such a transaction and expose himself to a substantial punishment for something that he did not do. It is also improbable that he would deliberately exaggerate the amount that he sold on this occasion. I found the respondent's denial of this and other transactions unconvincing.

[55] In reaching the conclusions that I have concerning Mr Pfaff's credibility and the reliability of the evidence given by him on affidavit and orally in these proceedings, I take account of Mr Pfaff's admitted involvement in drug trafficking. The respondent's submissions rhetorically ask: "If Mr Cannon was the big drug dealer alleged by the Crown: why was he not involved with Pfaff in the supply of drugs?" One plausible answer is that the respondent, an experienced businessman, was careful in the manner in which he conducted his business and the manner in which he obtained precursors, arranged for the manufacture of methylamphetamine and sold it. Mr Pfaff admits that he was supplying drugs to other people. However, this is not a good reason as to why the respondent would wish to involve himself with Mr Pfaff in such supplies.

[56] The respondent also relies upon evidence given by Mr Pfaff at a committal to the effect that nothing the respondent said to him led him to believe that the respondent was cooking speed. This is consistent with the respondent being careful not to tell Mr Pfaff matters about which Mr Pfaff did not need to know. It is consistent with a careful approach to the conduct of a business of drug trafficking in not unnecessarily disclosing the identity of "cooks" or other aspects of the business that were not Mr Pfaff's concern.

[57] In summary, I generally accept the evidence of Mr Pfaff and reject the evidence of the respondent where it is in conflict. I do not accept the respondent's submission that Mr Pfaff is lying. I find that his evidence is generally reliable. I take into account that the events to which he and other witnesses are referring occurred long ago and that his memory on some points of detail has faded over time. This is

understandable. His evidence on essential matters has not materially altered. The critical facts about which he has given evidence in these proceedings accord with statements made by him to police and other law enforcement agencies in 2003 and on oath in subsequent proceedings. It is highly improbable that Mr Pfaff would invent occasions upon which he supplied ephedrine to the respondent. I consider that his evidence concerning the quantities of ephedrine on each occasion is generally reliable, subject to my reservations concerning the amount supplied in April 2001. Mr Pfaff's inability to recall the five kilogram quantity when interviewed by police on 14 January 2003 may be explained by the pressure that he was under that day, and his recollection in March 2003 of having supplied five kilograms on the relevant occasion may be accurate. However, I am inclined to find that only three kilograms was supplied on this occasion. I find that a further three kilograms was supplied about a month later and that a further three kilograms was supplied in around August 2001. In summary, I find that Mr Pfaff supplied the respondent with approximately nine kilograms of ephedrine.

Mr Hooning

Mr Hooning's evidence

[58] Mr Hooning, now aged 50, is a former drug user who supplied substantial quantities of Sudafed tablets to the respondent. His evidence is that he has not used drugs since about 2001 and has reformed his life, being devoted to providing for his family. He has three children from the relationship with his de facto partner, which commenced in about 2002.

[59] Mr Hooning met the respondent in about 1998 through the respondent's daughter, Angela Cannon. Mr Hooning, Angela Cannon and others were living together in a house at Monterey Keys. Mr Hooning saw Angela Cannon with a shopping bag of Sudafed boxes. She explained they were for the respondent, who needed them to manufacture amphetamine. Mr Hooning expressed his interest in becoming involved, and started to buy Sudafed tablets to make some money. Mr Hooning says that discussions progressed and in either March or April 1999 he asked the respondent if he could deal directly with him. The respondent offered to pay him $10 profit per box and asked Mr Hooning to buy as many boxes as he could. Mr Hooning agreed to this and purchasing Sudafed became his "full time job".

[60] Before this agreement was struck, Mr Hooning says that he had purchased about 10 boxes of 90 tablets daily, which were supplied to Ms Cannon, who supplied them to the respondent. From April 1999, Mr Hooning says that he individually purchased 30 boxes of (90) Sudafed tablets per day, for five and a half days per week, until the box changed. During this time, about four or five others were helping him and Mr Hooning was able to supply the respondent with 60 – 120 boxes per day for five and a half days per week. On occasions when Mr Hooning worked alone, he supplied the respondent with 30 boxes only. Boxes of 90 tablets were discontinued in November 1999 (stocks were not recalled) and boxes of 60 were voluntarily discontinued in September 2000.

[61] Mr Hooning cannot precisely recall the date that he ceased purchasing Sudafed tablets for the respondent. He gave evidence that he thinks it was possibly in February 2002. However, he also stated that he used the money he received from the respondent to buy heroin for his own personal use. He entered a methadone

program in October 2000, and when asked "[w]hen you ceased heroin you stopped the supply of Sudafed tablets?" he responded "Sort of, yes". Therefore, it is possible that he ceased purchasing tablets for the respondent at that time.

[62] Mr Hooning stated in his affidavit that on at least two occasions he supplied the respondent with a carton of 144 Sudafed boxes. The carton was the kind supplied to chemists and wholesalers. However, no evidence as to these supplies was given at the respondent's criminal trial.

[63] Mr Hooning gave evidence that he purchased ounces of speed from the respondent at $3000 per ounce.

The parties' submissions about Mr Hooning's evidence

[64] In reliance upon Mr Hooning's evidence, the applicant submits that he supplied the respondent with Sudafed tablets from March or April 1999 to either October 2000 or early to mid 2002. The applicant submits that Mr Hooning supplied the respondent with about 50-60 boxes of 90 tablets for a week in early 1999; and between April 1999 and October 2002, Mr Hooning supplied the respondent with 30 boxes of tablets each day when working alone, or 90 boxes when working with others, and worked six days a week. According to Ms Maisie's evidence, boxes of 90 tablets were available until about November 1999, and boxes of 60 tablets until September 2000. However, Mr Hooning says that after the boxes of 90 went off the market, he could only buy boxes of 30. The applicant submits that on two occasions Mr Hooning supplied the respondent with 2 cartons each of 144 boxes of 30 tablets. Acceptance of these submissions would lead to a total of 23,090 boxes of 90 Sudafed tablets and 31,968 boxes of 30 tablets.

[65] The respondent admitted that he received from Mr Hooning about 60 boxes of Sudafed tablets in total. He asserted that he asked Mr Hooning to supply them because he wanted to use them for body training. The respondent stated that he consumed about one or two tablets, two or three times per week. Yet, at that rate, the supply of 60 boxes could not possibly be for personal use (60 boxes of 30 tables would last almost six years and 60 boxes of 90 tablets would last more than 17 years). The applicant submits that the only reasonable explanation for the supply of boxes of Sudafed tablets in such high quantities is the production of methylamphetamine.

[66] The issue of substance in connection with Mr Hooning's evidence does not relate to the fact that he supplied the respondent with a large number of boxes of Sudafed. There is no dispute that he did. The essential issues in dispute are the number of boxes that he supplied and the period over which he supplied them.

[67] The respondent submits that Mr Hooning's evidence should not be accepted for various reasons. These include that Mr Hooning:

- accepted that he entered into a deal for his benefit in exchange for giving evidence against the respondent;
- had been a drug user for many years and suffers memory loss as a result;
- previously lied to police;

- gave inconsistent evidence as to his dealings with the respondent; and

- exaggerated the quantity of Sudafed tablets he supplied to the respondent.

Accordingly, the respondent submits that any calculation of the amount of tablets supplied by Mr Hooning to the respondent is "difficult and unfair".

[68] In addition, the respondent submits that Mr Hooning did not purchase "speed" from him. He also submits that if Mr Hooning purchased any Sudafed tablets during the relevant time, he would have used them for his own production of methylamphetamine. The respondent then submits that if Mr Hooning did provide the respondent with Sudafed tablets, then he also would have been the "speed cook" as he apparently had some expertise and "cooking would have been more profitable than supplying tablets". He submits that the Court should not make any assessment beyond 9 October 2000, when Mr Hooning was last admitted to the methadone program.

Mr Hooning's credibility and the reliability of his evidence

[69] On 20 October 2003 Mr Hooning pleaded guilty in this Court to the following offences:

(a) That between a date unknown and 23 February 2002 he unlawfully produced the dangerous drug methylamphetamine; and

(b) That on 22 February 2002 he had in his possession chemicals and scientific glassware used in connection with the commission of the crime of producing the dangerous drug methylamphetamine.

He was sentenced to a term of imprisonment for two years which was wholly suspended for a period of three years.

[70] He was sentenced in accordance with s 13A of the *Penalties and Sentences Act* because he gave an undertaking to give evidence against the respondent in accordance with his statement. The respondent submits that Mr Hooning had a great incentive to tell untruths about him in order to gain the benefit of being sentenced pursuant to s 13A and that if Mr Hooning had not continued to give evidence in accordance with his statement he would have exposed himself to the risk of being re-sentenced to actual imprisonment.

[71] The charges that Mr Hooning faced arose from the execution of a search warrant on his home at Studio Village in February 2002. According to Mr Hooning, he had been producing methylamphetamine there for about a year in order to supply his own habit.

[72] Mr Hooning was also involved in the production of methylamphetamine at Millmerran and Northgate and was present in December 2002 when police raided premises at Northgate. He agreed to co-operate with police. As a result of his co-operation he received an indemnity and has not been charged in respect of the productions that occurred at Millmerran and Northgate or with acts that he alleges he was involved in with the respondent.

[73] I accept that Mr Hooning had a strong incentive to co-operate with police. He was at risk of being imprisoned, if charged, and convicted in respect of the productions at Millmerran and Northgate which occurred while he was on bail in respect of the offences committed at Studio Village. The strong incentive for Mr Hooning to co-operate with police does not mean that he had an incentive to lie about the respondent. It could also be said that he had an incentive to tell the truth about the respondent.

[74] Mr Hooning used drugs from his mid-teens until he was about 40 years of age. He accepts that his drug use has had an impact on both his short and long term memory. During the times that he used drugs he lied to police and used false names. During committal proceedings he resiled from certain evidence that was in his formal statement and could not explain why certain matters were in his statement.

[75] The respondent has developed a number of submissions that point to apparent inconsistencies between evidence given by Mr Hooning in earlier statements and evidence subsequently given in court proceedings. I have had regard to these submissions, which are headed "Maoris", "Fort Knox", "Back at Nerang" and "Wimbledon Court". I accept the applicant's submissions in reply in relation to these matters.

[76] Mr Hooning originally thought that the respondent had sent two Maoris to his home to threaten him, and he thought that they were sent there to remind him to hurry up purchasing a list of chemicals. He was not at home at the time. Mr Hooning later accepted that he was mistaken in his assumption that the respondent had sent the two men to his home. They were sent by someone else. Mr Hooning corrected his mistaken assumption. I do not consider that this acknowledged mistake in which he jumped to the wrong conclusion is a significant matter in relation to the reliability of his evidence about relevant matters. I do not consider that it indicates a disposition to make false allegations against the respondent.

[77] As to "Fort Knox", Mr Hooning recalled an occasion upon which he met the respondent outside a storage facility at the Gold Coast known as Fort Knox, and Mr Hooning recalls telling the respondent at the time that he believed they were being followed and to be careful, but the respondent did not believe him. Mr Hooning cannot now recall whether he handed chemicals to the respondent at Fort Knox on that occasion. His original recollection, given to the National Crime Authority/Australian Crime Commission (NCA/ACC) was that he gave the respondent chemicals on this occasion and that it occurred around August or September 2002. I do not accept the respondent's submission that Mr Hooning's evidence about Fort Knox indicates that he was prepared to make a false statement that he delivered chemicals to the respondent, and that the respondent's later poor recollection of having delivered chemicals on that occasion was because he later became aware that the surveillance evidence would not support such an allegation. The absence of surveillance observations on the relevant day was not explored in evidence before me. The matter proceeded before me on the basis that surveillance of the respondent commenced after March 2002, but the evidence before me did not indicate whether the respondent was under constant surveillance and whether any delivery of chemicals to the respondent at Fort Knox would have been observed and recorded. I accept Mr Hooning's evidence that he met the respondent at Fort Knox.

[78] Mr Hooning gave evidence of an occasion when he was taken by the respondent to a house located at the back of Nerang and that during part of the journey Mr Hooning was blindfolded so as to not know the precise location. He described the home as a white weatherboard Queenslander on a rural property, with a secret room under it that was set up for making drugs. He saw chemicals that he had purchased and glassware similar to that which he had purchased. He said that it looked like "a very well used lab". He said that it was obvious that "cooking" had been done there. Mr Hooning had an interest in chemistry and the apparent purpose of the trip was to attempt to make ecstasy. Mr Hooning has been cross-examined on a number of occasions about the experiments that he performed, and there is some confusion in the evidence about whether the substances that were used were the chemicals methylmine and acetamide. I accepted Mr Hooning's evidence that the respondent blindfolded him and took him to a secret drug laboratory at a rural location which Mr Hooning surmised was at the back of Nerang.

[79] As to Wimbledon Court, Mr Hooning gave evidence of being taken to a shed-like house on a semi-rural property near Oxenford. He was taken there for the purpose of cleaning up what had been a laboratory. On previous occasions, and under cross-examination in these proceedings, he recalled taking out buckets of dried Sudafed chalk. His recollection of the number of buckets has differed from time to time as to whether there were three, four or five buckets. However, I accept his evidence that he removed these buckets of dried Sudafed chalk and was able later to extract some additional ephedrine from the substance. I accept Mr Hooning's recollection of having cleaned iodine stains.

[80] There is some evidence that the respondent no longer resided at these premises after May 1999. Mr Hooning's recollection is that there was no furniture there. At the trial his evidence was that he visited it at the end of 2000 or the beginning of 2001, and in his police statement he said that he went there two years earlier. It seems likely that it may have been earlier, at some time after the shed was vacated by the respondent and the nearby home was vacated by Ms Bailey. Mr Hooning was cross-examined on points of detail concerning the existence and removal of exhaust fans and whether the ceilings were painted. I do not consider that his inability to recall these matters of detail detracts from the reliability of his evidence that he was given the task of cleaning up premises that had been used as a methylamphetamine factory by the respondent. His inability to recall points of detail about exhaust fans is understandable, given that his usual occupation was as a handyman and one would not expect him to recall these points of detail so long after the event.

[81] The respondent points to the fact that the authorities could have tested the premises for the existence of residue, and there is no evidence that this was ever done. However, this does not lead me to reject Mr Hooning's evidence concerning cleaning up the premises and the removal of a large quantity of dried Sudafed chalk from it.

[82] The respondent submits that I should not accept Mr Hooning's evidence that the respondent gave him $9,000 to $10,000 to purchase books, chemicals and glassware. He submits that this is improbable or incredible and that he would not have made such a "fairly useless investment". He also questions whether such equipment would have cost that amount. Some glassware items were found at Mr Hooning's home at Studio Village when police executed a search warrant there in February 2002. As I understand the respondent's submission, it is that it does not

make sense that the respondent would make such an investment and then not have Mr Hooning use the equipment to make speed or ecstasy.

[83] The respondent's request for Mr Hooning to purchase these items does not mean that the respondent intended them to be used only by Mr Hooning. Mr Hooning used false names to purchase this glassware. Mr Hooning's evidence is consistent with the respondent arranging with Mr Hooning to purchase chemicals and glassware for intended use by more than one person for the respondent's benefit. I accept the reliability of Mr Hooning's recollection that he purchased equipment with money provided by the respondent.

[84] Under cross-examination Mr Hooning said that he purchased "tonnes of glassware" for the respondent. There was no dissection of how much of the sum provided to Mr Hooning was used to purchase glassware, chemicals and books. So far as the glassware is concerned, Mr Hooning's evidence is that some of it was in his house when it was raided on 22 February 2002. There is no inconsistency between this evidence and Mr Hooning's evidence about purchasing a large quantity of glassware at the respondent's request and with money given to him by the respondent. I infer that the balance of the glassware was used by the respondent for drug production at other locations. The estimated sum of about $9,000 for glassware, books and chemicals was a "ballpark figure" given by Mr Hooning and, under cross-examination at the respondent's committal, his evidence was to the effect that this amount was not received in one lot.

[85] So far as Mr Hooning's evidence about his involvement in purchasing Sudafed is concerned, the respondent identifies some differences in his account as to the precise circumstances under which he came to know that Angela Cannon was supplying Sudafed to her father and the number of boxes that were involved. I find minor variations in the evidence of Mr Hooning on these points of detail unsurprising. I accept his evidence to the effect that he came to know of the respondent's involvement in procuring Sudafed as a result of his observations of Ms Cannon and ensuing discussions. I do not consider that minor differences in recollection about the precise date or circumstances under which he became involved directly with the respondent are important. The essential facts have not changed. Those facts, as summarised in Mr Hooning's affidavit in these proceedings, are that Mr Hooning commenced to buy Sudafed tablets in association with Angela Cannon in early 1999 and began to deal directly with the respondent in either March or April 1999.

The period during which Mr Hooning purchased Sudafed and the numbers purchased by him

[86] Mr Hooning's evidence in these proceedings, and in earlier proceedings, is that he was initially purchasing 30 boxes of Sudafed each day, that each box contained 90 tablets and that he was working about five and a half days per week. Understandably, Mr Hooning did not keep records of the number of boxes of Sudafed that he purchased for the respondent. Findings in relation to the quantity of Sudafed tablets that he supplied to the respondent depend upon the reliability of his recollection. Under cross-examination he conceded that his recollection of many matters was poor. He told an NCA hearing that it was "anywhere from, gee, usually about thirty a day", and that he would turn up at the respondent's place with "an average [of] about sixty boxes a day". He had difficulty in recalling matters at a

committal hearing and said that it started at 10 a day, then increased to 30, then to 60, after which they were hard to get. At the respondent's trial he said it was initially 30 boxes a day but he could not give an accurate figure.

[87] Boxes of 90 tablets were voluntarily discontinued by Pfizer, the sole Australian manufacturer of Sudafed tablets, in November 1999. Existing stocks were not recalled, and usually it would take four to six weeks for existing retail stock holdings to be sold. Boxes of 60 tablets were voluntarily discontinued in September 2000. Existing stocks were not recalled. Again, it would take about four to six weeks for retail stock holdings to be sold.

[88] Mr Hooning gave evidence that during the period when he was purchasing boxes of 90 he received help from others. He nominated one individual and said that there were at least another 10 people who helped him purchase Sudafed for the respondent. He went so far as to say that at one stage he had "about four or five people working daily for me" and that each person purchased about 30 boxes of Sudafed per day. He says that on average there was only one day per month that he worked alone when he would deliver 30 boxes per day to the respondent, and on other days he was giving the respondent between 60 and 120 boxes per day and receiving about $4,000 a day from him. But there is no precision in Mr Hooning's evidence as to the period during which other people would work for him. On one occasion under cross-examination he was asked when the others who helped him came "into the equation", to which he answered "About half way through".

[89] Given this lack of precision and Mr Hooning's admitted poor recollection of detail, I am not prepared to find that he, with the assistance of others, was able to achieve, on average, 90 boxes per day. I accept that Mr Hooning did enlist the assistance of other "workers" and that each additional worker would have been able to obtain about 30 boxes per day. However, I am not reasonably satisfied that Mr Hooning and his assistants were able to achieve, on average, purchases of 90 boxes on each day over the relevant period. I conclude that the amount would have been closer to 60 boxes per day when he had someone else working with him and 90 boxes on a day when he and two others were working. However, I am not reasonably satisfied that Mr Hooning had people working with him on an almost daily basis. I adopt a cautious approach about the extent to which others assisted him.

[90] The approximate date when Mr Hooning stopped buying Sudafed tablets for the respondent is uncertain, and Mr Hooning could not recall it with any certainty. Under cross-examination he suggested that it was after police executed a search warrant at his home in Studio Village, which was in February 2002. At the respondent's committal hearing Mr Hooning said that the supply of tablets stopped when he stopped using heroin as he had no need for cash. He stopped using heroin when he went on the methadone program. He started on that program on 9 October 2000 and finished it on 22 October 2001. He said that he "virtually" stopped using heroin when he went on the program. He was vague when asked to clarify whether, when he ceased using heroin, he also stopped the supply of Sudafed tablets. When it was put to him that he stopped the supply of Sudafed tablets when he ceased using heroin, he responded "Sort of, yes" and accepted that after he ceased using heroin he did not have the same need for cash.

[91] On one view of the evidence, Mr Hooning continued to supply Sudafed tablets to the respondent into 2002, and paragraph 12 of his affidavit states that he purchased

Sudafed for the respondent from about April 1999 to mid-2002. Given the gravity of findings about the extent to which the respondent trafficked in methylamphetamine by obtaining Sudafed from Mr Hooning, and the uncertainty in Mr Hooning's evidence about when he stopped buying Sudafed for the respondent, I am not prepared to find that Mr Hooning continued to purchase Sudafed for the respondent after October 2000, being the month when he last went on the methadone program.

[92] The respondent challenged the reliability of Mr Hooning's evidence that he delivered the boxes to the respondent before the respondent went to the gym. I take account of the respondent's submissions concerning other evidence that Mr Hooning has given of having dropped off the boxes at other places, including the Finks Clubhouse, and at addresses at Monterey Keys, Parkwood and Paradise Point. I do not consider that this evidence discloses significant inconsistencies. I understand his evidence to be to the effect that he would meet the respondent each morning. At first this would happen at Monterey Keys and later at the respondent's house at Parkwood or other agreed places including the gym.

[93] The respondent also challenges the accuracy of Mr Hooning's recollection that, during the period he was purchasing Sudafed boxes for the respondent, and when the respondent was away, members of the respondent's family would pick up the boxes. Mr Hooning referred to Angela Cannon and said that on other occasions he recalls the respondent's sisters, Rose and Ann, would pick up the boxes. I accept Mr Hooning's recollection in this regard. He has given evidence in ACC interviews, at committal and at trial of the involvement of these individuals in the supply of Sudafed tablets to the respondent.

[94] Mr Hooning has consistently given evidence that others assisted him in the purchase of Sudafed for the respondent. In his statement of February 2003 he referred to individuals named Ivan, Sue and Christine, and at the trial he also mentioned Sue's friends. Having reviewed this evidence I accept that there were a number of occasions when the person named Ivan travelled with Mr Hooning and on other occasions the other named persons also assisted him. His recollection at the NCA hearing was that Christine assisted him only five or six times in the whole year. Mention was also made of a person named Nicole who was involved once or twice. It is likely that, on many days, Mr Hooning had the assistance of a few other persons, each of whom was capable of buying, on average, 30 boxes of Sudafed per day, and that on these days between 90 and 120 boxes were purchased. However, I am not prepared to find that this level of daily purchases was consistently sustained over the period Mr Hooning supplied Sudafed to the respondent. In his NCA interview Mr Hooning said that it was an average of 60 boxes per day, but at the committal he said he was making anywhere from $1,000 - $2,000 per week, and sold at least 100 or 200 boxes a week, most weeks.

[95] Having reviewed the evidence and submissions, and having the reservations that I have expressed about the vagueness of Mr Hooning's evidence as to the number of boxes purchased by him and the assistance which he enlisted from others, I am not prepared to find that Mr Hooning achieved the level of purchases that the applicant submits. Because of the vagueness of some of his evidence concerning the quantities of Sudafed procured by him and his associates and which were supplied to the respondent, I shall adopt a cautious approach to the assessment of quantities.

[96] I am reasonably satisfied that between early 1999 and October 2000 Mr Hooning was preoccupied with purchasing Sudafed tablets for the respondent and this, in effect, became a full time job. He was well organised and enlisted the assistance of others.

[97] Mr Hooning was driven to supply as many boxes as he could to support his heroin addiction. I think it likely that after March 1999 his personal daily acquisitions quickly rose to 30 boxes or more. I find that it was probably in the order of 30 or 40 boxes a day. I find that his evidence to the NCA, that he would turn up at the respondent's "place with an average of sixty boxes a day", overstates the average number of boxes that he could procure without assistance from others. He often worked about five and a half days per week, and by reason of his organised routes he was still able to buy at least 30 boxes of Sudafed on his half days. However, taking account of days off and holidays, I find that during this period he worked on average five days per week and therefore was able personally to procure, on average, between 150 and 200 boxes per week. I find that most weeks between April 1999 and November 1999 (inclusive) he procured, with limited assistance from others, on average 180 boxes per week.

[98] After about November 1999 others assisted him to a greater extent. People working for Mr Hooning were able to purchase, on average, 30 boxes per day but rarely were there more than two or three people to assist Mr Hooning at any one time. I find it likely that on many days Mr Hooning was not assisted by these associates. With their assistance Mr Hooning could on occasions procure 90 boxes a day but these days were rare. Also towards the end, increasing demand for identification probably reduced the number of boxes that Mr Hooning and his associates could obtain each day. I find that, on average, these associates procured an additional 30 boxes per week that were supplied to the respondent either directly or, more often, via Mr Hooning. The average number of boxes between December 1999 and October 2000 was 180 boxes per week.

[99] I find that it is likely that:

(a) Mr Hooning supplied about 50 boxes of 90 tablets in early 1999, around March.

(b) Between April 1999 and about November 1999 (when boxes of 90 tablets were discontinued) Mr Hooning procured, on average, 180 boxes per week.

(c) Between December 1999 and October 2000 Mr Hooning personally procured, on average, at least 30 boxes of 30 tablets per day, five days per week, and others procured an additional 30 boxes per week, on average. This amounts to, on average, 180 boxes per week.

[100] As noted, Mr Hooning recalls at least two occasions when he supplied the respondent with Sudafed tablets in the original carton which is supplied to chemists or wholesalers. He says that he received these cartons from his "contacts". He could not or would not identify his contacts. The fact that no reference was made to these purchases in previous proceedings or earlier statements does not necessarily mean that I should reject Mr Hooning's evidence. It is possible that he has recalled these occasions in recent times and was not pressed to recall such exceptional purchases when previously interviewed or examined by police. Given the

seriousness of a finding concerning supply, and the absence of previous reference to the acquisition of cartons of such a size, I decline to find that these supplies occurred.

Purchase of methylamphetamine by Mr Hooning from the respondent

[101] Mr Hooning was cross-examined about the purchase of "speed" from the respondent for a price of $3,000. He maintained that he did so although he did not think it was on four or five occasions. The respondent calls into question why someone such as Mr Hooning, who was capable of producing speed for his own use, would spend $3,000 to purchase an ounce from someone else. Reliance is also placed upon evidence that Mr Hooning gave of an occasion when, hoping to end his addiction, he flushed some speed down the toilet.

[102] There was evidence that Mr Hooning did not start to produce speed for his own use until some time in 2001. However, his evidence was vague about the precise period when he commenced producing speed. He gave evidence that he made speed for himself in the year before the Studio Village raid, and that he used one or two boxes of Sudafed a day to produce his own methylamphetamine. Under cross-examination he appeared to accept that he was making methylamphetamine from 1999 to 2000. He stated that he began using speed after he stopped using heroin, and that his speed usage lasted for a couple of years. However, this begs the question as to when he stopped using heroin. That probably occurred soon after he finally went on the methadone program in October 2000 and, on this basis, he probably started producing speed for his own use in late 2000 or some time in 2001. His evidence, which I accept, is that he was not a speed user when he started buying Sudafed for the respondent.

[103] I do not find any inconsistency in the evidence that Mr Hooning purchased speed from the respondent and was prepared to pay $3,000 per ounce for it, and that he also produced speed for his own use. Calculations differ as to the cost to Mr Hooning of producing speed for himself. The respondent submits that it would be about $50 per gram or about half the price he paid the respondent. Mr Hooning said that he had a habit of about $200 a day but after he started making it for his own use, he could make it for about $10 per day. He used one to two boxes of Sudafed a day to produce his own methylamphetamine. Mr Hooning probably started using speed after he stopped using heroin, and he continued to use speed for a couple of years. I find that Mr Hooning probably commenced making speed for his own use after he decided he could not afford to support his habit by buying it. I find that before making speed for his own use he purchased speed from others, and I accept his evidence that he purchased speed from the respondent for $3,000.

[104] The evidence that Mr Hooning commenced using Sudafed tablets for the production of speed for his own use does not necessitate any revision of the findings I have earlier made about the number of Sudafed tablets that he supplied to the respondent between early 1999 and October 2000. I accept, as earlier indicated, that from the time he commenced to produce speed for his own use he did so from Sudafed tablets that he purchased. However, I do not accept the respondent's submission that Mr Hooning must have used a large number of Sudafed tablets for his purposes prior to October 2000. Any diversion of Sudafed tablets purchased by him towards his own use, as distinct from supplying the respondent, probably occurred after October 2000. Any diversion of one or two boxes per day before this date does not

cause me to revise my earlier findings which are based upon my assessment of the evidence about the number of boxes that were delivered to the respondent.

[105] There is no acceptable evidence that Mr Hooning worked as a "speed cook" to any great extent before October 2000. I find that he graduated to being a speed cook, both for himself and for others, after October 2000, culminating in his arrest at Studio Village in February 2002

Ms Bailey

[106] Mr Hooning's evidence that he, with the assistance of others, supplied large quantities of Sudafed tablets to the respondent finds support in the evidence of Ms Bailey. She gave evidence that between early 1999 and December 2000 she extracted pseudoephedrine from Sudafed tablets at the respondent's request. The respondent supplied her with the tablets, showed her how to do the extraction, and paid her for each extraction. He provided her with the equipment. He told her that he was going use the pseudoephedrine to make speed. She states that she produced a total of 5.25 kilograms of pseudoephedrine. In her affidavit she says that, for each extraction, she produced 15 bags each containing 50 grams, as instructed by the respondent. However, at the committal she did not know whether 50 grams was yielded for each jug. She estimated that the eight jugs may have yielded 400-500 grams. At the committal and the criminal trial, she was not sure about how many Sudafed tablets were used in the extraction at Wimbledon Court and, in relation to extractions at Lochinvar Court, she generally alleged that there were about five extractions. There are some inconsistencies in her evidence as to the details surrounding these extractions, such as where particular conversations took place and where equipment was purchased.

[107] Ms Bailey pleaded guilty on 2 February 2004 to seven drug offences, including producing methylamphetamine. She was sentenced to two years' imprisonment, wholly suspended. Ms Bailey says that on three separate occasions between May and July 2002 she purchased an ounce of speed from the respondent. On each occasion she paid the respondent $3,000.

[108] The respondent calls into question the reliability of Ms Bailey's evidence, and submits that she had a "great incentive" to name the respondent to police, would have been desperate to avoid jail, was given to understand that if she co-operated it would stand her in good stead, and was given to understand at the start of her interview with police and from the naming of the respondent in the search warrant that the police were particularly interested in the respondent. The respondent also points to Ms Bailey's evidence about her drug use prior to 2003 and her associations with persons named Kieran and Lisa who were associated with drugs.

[109] I approach the assessment of the reliability of Ms Bailey's evidence with caution because of her past association with drugs and the risk that she might have misstated or overstated the extent of the respondent's involvement in the drug trade in order to gain favour with the police and receive a suspended sentence. However, I find that Ms Bailey did not exaggerate the activities of the respondent. Instead, I find that, realising the predicament that she was in, she co-operated with the police and gave an accurate account of her dealings with the respondent. She acknowledged that she has difficulty now remembering some things because they occurred so long ago, and because she has tried to put these events out of her mind and get on with her

life. However, her recollection of transactions, as recorded in her affidavit in these proceedings, broadly accords with earlier accounts that she has given of these matters, commencing with an interview with police in January 2003.

[110] In that interview Ms Bailey indicated that the respondent had intimidated her and made veiled threats to her. The respondent submits that such a suggestion is unreliable and should not be accepted, since Ms Bailey socialised with the respondent and his friends, and invited him to her fortieth birthday party in 2001. I accept Ms Bailey's evidence that she felt intimidated by the respondent. This arose more from what she had heard about him than anything that he said or did. Maintaining social contact with the respondent is not inconsistent with feeling intimidated by him. Nor is respecting his express instruction not to tell anyone about her extraction of ephedrine for him.

[111] When interviewed on 14 January 2003 Ms Bailey told police that the first extraction was performed at Wimbledon Court, Oxenford. There are some inconsistencies in her recollections from time to time as to the length of time and the dates upon which the respondent lived at Wimbledon Court. I do not consider that these minor inconsistencies reflect adversely on the accuracy of her recollection about the fact that the first extraction that she undertook was at Wimbledon Court and that the respondent showed her how to extract ephedrine. At the relevant time Ms Bailey and her then husband were residing at rented premises at Wimbledon Court. There was a separate residence at the back of the property which resembled a large shed but which had been converted into a house. The respondent lived there for a period, and the respondent, who Ms Bailey had known since 1992, asked her to extract ephedrine from Sudafed tablets. He showed her how to do it. This involved using 210 grams of the crushed Sudafed. The respondent offered to pay Ms Bailey $430 each time she extracted ephedrine from Sudafed for him. She performed one extraction at Wimbledon Court, using Sudafed tablets that were delivered to her in a plastic bag. They were not delivered to her in blister packs or boxes. Despite the passage of time, Ms Bailey was able to give reliable evidence about this and other extractions. She also recalled a day while she was living at Wimbledon Court when she saw a ripped bag and money scattered all over her yard. She collected the money and gave it to the respondent. She noticed that the money was in green $100 notes.

[112] Ms Bailey moved with her children to rented premises at Lochinvar Court. The respondent again asked her to extract ephedrine from Sudafed tablets for him and she agreed to do so, this time being paid $500 for each extraction. She recalls five occasions when this was done at Lochinvar Court. I will not describe the relatively simple process that was involved. On each occasion she was instructed to use 210 grams of Sudafed tablets, and the extracted ephedrine was divided into 50 gram lots with each lot being placed into a plastic bag. She would normally extract enough ephedrine on each occasion to fill 15 plastic bags.

[113] I have had regard to the parties' submissions concerning Ms Bailey's evidence in the initial police interview, at the respondent's committal and at trial, as well as her evidence as to the amounts involved and the process by which she performed the extraction. I do not interpret her evidence that each extraction would take place "over about a two day period" as indicating that she was constantly involved in the process for the entire two days. I accept her evidence that the respondent provided her with a microwave, jugs, other equipment and quantities of liquid to enable her to

perform the extractions. Ms Bailey's various accounts over the years of the number of extractions is fairly consistent. At her interview she thought that it was "six or seven all up". I accept her evidence that she extracted ephedrine from Sudafed tablets for the respondent on five occasions at Lochinvar Court. I also accept her evidence that after she moved to Wedgetail Lane in September 2000, where she took the microwave and other equipment that the respondent had given her to extract ephedrine, the respondent came to her house and asked her to process another lot, which she did. Her recollection is that this occurred in November or December 2000 and she was again paid $500 cash for her work. This was the last time that she processed ephedrine for the respondent.

[114] In summary, I accept Ms Bailey's evidence about the number of extractions that she undertook and the approximate amount of ephedrine extracted on each occasion. I find that on each of the seven occasions she produced 15 bags, each bag containing 50 grams, and the total amount of pseudoephedrine produced was 5.25 kilograms. These events occurred before the respondent was placed under surveillance in March 2002. Ms Bailey had an incentive to tell the truth about the respondent's role in these activities, and was not motivated to overstate the number of extractions that she performed or the quantities that were yielded. Upon being sentenced she was entitled to favourable consideration because of her co-operation and the fact that the extent of her production of methylamphetamine was gauged by virtue of her admissions. Ms Bailey did not have a compelling reason to overstate the amount of drugs that she produced.

[115] I also accept Ms Bailey's evidence about her acquisition of "speed" from the respondent. Her evidence is that she was approached by an acquaintance named Kieran to obtain an ounce of speed, and did so on three occasions from the respondent. She says that she met the respondent at a café at Paradise Point and agreed to pay $3,000 an ounce. She knew that she could make a profit, sold each ounce for $3,500 to Kieran and then paid the respondent the money that she owed him. When first interviewed on 14 January 2003 about the dates of these transactions, she was uncertain about the dates and remained uncertain when cross-examined at the committal. The identity of Kieran is uncertain; however, I do not accept the respondent's submission that his existence is "highly doubtful". I am not persuaded that Ms Bailey was motivated to lie about these three sales. Although there was no evidence in the form of surveillance to corroborate her account, there were telephone calls from her to the respondent. I find it likely that the respondent had methylamphetamine to sell at the time and that Ms Bailey was a trusted associate of his. I do not find it improbable that the person named Kieran asked Ms Bailey to procure the drugs, and that Ms Bailey did so in order to gain a profit of $500 on each occasion.

Mr Cannon

[116] At the hearing before me the respondent relied on a number of affidavits sworn by him in these proceedings. His affidavits responded to the evidence of Pfaff, Hooning and Bailey, challenged the evidence given by Benson at his criminal trial, complained of non-disclosure by the prosecuting authorities at that trial and critiqued the evidence led against him. His affidavits were the vehicle for commentary and submissions about the reliability of witnesses and the manner in which their evidence had been elicited from them during police interviews.

[117] Under cross-examination he confirmed the contents of an affidavit deposing that, in all the time that he knew Mr Hooning, Mr Hooning only ever supplied him with about "five or six one-quarter full plastic shopping bags containing Sudafed tablet boxes being maybe 10 boxes at a time", and amounting to a total of about 60 boxes of Sudafed tablets. Mr Cannon explained that he used Sudafed and ephedrine for "body training", and that it is common knowledge in the fitness industry that these drugs are used to oxygenate blood cells and that they give users "a bigger pump". He explained that pseudoephedrine "hypes you up", and this is why footballers, truck drivers and others use it. He explained that he used it for training and for sprints.

[118] Under cross-examination he explained that he would use it two or three times a week. If it was in tablet form he would use one or two tablets. He also obtained tablets from America that consisted of ephedrine, caffeine and two or three other agents. On occasions between 1999 and 2003 he would purchase ephedrine in powder form, as opposed to tablets, usually in quantities of an ounce, whenever he wanted it or if somebody else in the gym asked him for some. He denied ever purchasing it in large quantities, and said that when he passed it on it was only to one or two friends that used it for the same reason, and he did not supply it for money. He denied ever arranging for anyone to extract pseudoephedrine from Sudafed tablets, arranging for the production of methylamphetamine from either pseudoephedrine or ephedrine, or selling methylampetamine. He specifically denied ever obtaining ephedrine from Mr Pfaff.

[119] As for the purchase of boxes of Sudafed, he acknowledged that his daughter Angela Cannon bought Sudafed tablets for him and that Mr Hooning purchased "a handful of boxes, probably for about two weeks or three weeks, a month at tops, and that was it." He denied having asked Mr Hooning to purchase these boxes and said that "He [Mr Hooning] came to me".

[120] I find the respondent's evidence that the boxes of Sudafed tablets that he acquired were essentially for his own personal training implausible. I find that he has deliberately understated the number of boxes that were supplied to him by Mr Hooning. At the rate of personal consumption that he described, a box of 90 tablets would last at least 15 weeks, and three or four boxes would constitute a year's supply. Sixty boxes of 90 tablets per box would be more than 17 years' supply. Sixty boxes of 30 tablets would be almost six years' supply. When cross-examined about the fact that his annual consumption could be satisfied by four boxes, the respondent could offer no explanation as to why he would, on his version, have acquired 60 boxes from Mr Hooning.

[121] When asked why he could not go out and buy Sudafed for himself, the respondent replied that he did. He acknowledged that, in addition to reimbursing Mr Hooning for the purchase price, he paid him $5 or $10 a box. There is no plausible explanation as to why he would purchase Sudafed tablets from Mr Hooning in such significant quantities for his own personal consumption in the course of body training. I found his evidence that Mr Hooning purchased boxes of Sudafed without being asked completely unconvincing.

[122] I conclude that the respondent has grossly understated the quantity of Sudafed tablets supplied to him by Mr Hooning, Mr Hooning's associates and the respondent's daughter, and the period during which Mr Hooning supplied Sudafed

tablets to him in bulk. I also find that the respondent acquired ephedrine, including about nine kilograms of ephedrine from Mr Pfaff.

[123] The respondent was cross-examined about a document (Exhibit 12) which was found by police when they searched a Jaguar car at Hervey Bay in July 2002. The respondent used that car, but denied having seen the document being removed by police. The respondent's fingerprint was found on the document. The document contains a list of chemicals. Mr Pfaff's evidence was that the handwriting on the document was his and that he wrote it after receiving a fax from Rebecca Benson on 23 May 2002. He said that he gave the document to the respondent.

[124] When cross-examined, the respondent did not deny having received the document from Mr Pfaff. He acknowledged that he spoke to Mr Pfaff about the production of ephedrine and that Mr Pfaff told him that he had a recipe for the production of ephedrine and showed him something. The respondent said "that's as far as it went. Didn't go any further than that." He also said "I honestly don't know whether [Mr Pfaff] gave it to me. I may have looked at the – looked at a piece of paper that he showed me, but I can't honestly sit here and say that I took possession of that piece of paper."

[125] I found the respondent's evidence about this document evasive. I think it likely that the respondent well knew that this exhibit was the document that he obtained from Mr Pfaff and that it was found in the Jaguar car that he used in mid-2002. The document has Mr Hooning's handwriting on the back of it.

[126] Mr Hooning supplied chemicals to the respondent. Some of the chemicals listed in the document have legitimate uses such as the cleaning and chlorination of pools. However, the chemicals on the list are also used in the production of methylamine and for other applications. Methylamine is used in the production of methylamphetamine via the "P2P route". An interest in its production by this route increased once legislation had the effect of restricting the availability of pseudoephedrine.

[127] The document links Mr Pfaff, the respondent and Mr Hooning. I am not aware of any evidence that suggests that Mr Hooning and Mr Pfaff knew each other. The respondent did not introduce them to each other and had never seen the two in each other's company. The respondent knew each of them.

[128] Another document found in the Jaguar on 25 July 2002 is a receipt for chemicals that was prepared by Mr Hooning. The document has handwriting upon it, and a comparison with another exhibit containing the respondent's handwriting leads me to conclude that the handwriting is his. Some of the chemicals listed in the receipt can be used in the production of methylamine and P2P. I do not accept the respondent's denial that the handwriting is his.

[129] The respondent gave no satisfactory explanation about how these documents came to be in the car that he used. I find it likely that Exhibit 12 was procured by him from Mr Pfaff in order to explore means to produce methylamphetamine.

[130] The respondent remained interested in sourcing precursors for the production of methylamphetamine, and this is supported by the contents of a telephone conversation between him and his daughter on 9 January 2003, which showed his continuing interest in obtaining quantities of Sudafed tablets. Earlier, Mr Hooning

had spoken to Ms Angela Cannon about providing a large quantity of Sudafed tablets. Their conversation was recorded on a secret recording device. The respondent submits that the recorded conversation between him and his daughter Angela "did not distinctly suggest that Sudafed tablets had been converted into speed previously with which Hooning and Angela had been involved." He submits that "at best on this topic the evidence was equivocal". A rhetorical question is asked: "Why could not this conversation relate to the Sudafed that Mr Cannon admits he obtained from Angela and Hooning?" I find that the conversation relates to the previous supply of Sudafed from his daughter and Mr Hooning, but that the respondent has greatly understated the volume of such supplies, particularly the volume obtained from Mr Hooning. The recorded conversation is powerful evidence that the respondent remained in the business of drug trafficking shortly before his arrest in January 2003 and remained prepared to purchase large quantities of Sudafed tablets if they could be obtained for him from Mr Hooning.

[131] The respondent was a recreational user of cannabis early in his life, but stopped all drug taking when he started training in gyms in about 1984 or 1985. The evidence of the applicant's witnesses upon which I rely leads me to conclude that he was well-organised in the manner in which he trafficked in methylamphetamine. He carried on that business at the same time as he carried on legitimate businesses. He organised sources of precursor drugs, particularly in the form of Sudafed from Mr Hooning, and was able to source substantial quantities of ephedrine, including the nine kilograms of ephedrine he acquired from Mr Pfaff. He enlisted Ms Bailey to extract pseudoephedrine from the Sudafed tablets that he was able to obtain. The individuals who he relied upon in this regard had separate functions in facilitating the respondent's business of drug trafficking. They did not need to know about the role played by others in the respondent's business.

[132] I reject the respondent's evidence in which he attempted to minimise the extent to which he procured Sudafed tablets (particularly from Mr Hooning), denied having obtained ephedrine from Mr Pfaff and denied enlisting Ms Bailey to extract pseudoephedrine. Contrary to the respondent's denials, I find that he arranged the supply of large quantities of Sudafed tablets and arranged for pseudoephedrine to be extracted from them, arranged for the supply of ephedrine from Mr Pfaff and others, and did these things for the purpose of producing methylamphetamine.

Ms Burton

[133] Ann-Marie Burton is the respondent's older sister. She was summoned to appear before a private examination of the Australian Crime Commission on 16 January 2003. Her sworn evidence included evidence that she found out that the respondent had been bringing large quantities of Sudafed tablets home and "getting my Mum to pop them" out of their blister packs into a bucket. This was said to have gone on for a couple of months, with Ms Burton seeing her mother do it on five or six occasions. Ms Burton said that the Sudafed tablets had been brought by "a guy called John" and others whose names she did not know. She later identified the "guy called John" as John Hooning. On a couple of occasions Ms Burton followed her brother's instructions to supply packages that he left for his mates to pick up or to receive money that he said was owed to him. In her statement signed at Ballina on 21 March 2003, Ms Burton said that at that stage it had not "clicked" with her that what she was handing over was speed and that later she had a falling out with her brother over his mates coming on to a property on which a nursery was

conducted. The sworn statement concluded with a paragraph in which Ms Burton deposed that the respondent said that he would "get" their sister Rose and that he "would be at a restaurant eating steak when it happens", implying that he would get someone else to do it. Ms Burton said that Rose was living at Tara, west of Dalby, at that stage. The respondent was also threatening Ms Burton and her husband, so the two of them also decided to pack up and move to Tara, where they felt safe and stayed.

[134] Ms Burton visited her brother, who was in custody, in mid-2003. In June 2003 she gave a statutory declaration at Yamba which stated that Mr McDougall from the ACC had said to her in January 2003 that her mother and brother had lied and had requested her to talk to them since they were in "big trouble" and could be charged if they did not change their statement. Ms Burton's statutory declaration at the time said that this "sounded like a threat". Relevantly, Ms Burton did not say in that statutory declaration, or in any statement at the time, that her evidence of either January 2003 or March 2003 was untrue. She had legal representation at the time.

[135] On 8 December 2003 she gave evidence in this Court in an examination before a Registrar. She had engaged a barrister and a solicitor at that time. During that examination she confirmed the evidence that she had given earlier to the ACC, namely that she had seen her mother popping Sudafed pills which had been sourced from Angela Cannon and John Hooning.

[136] In her affidavit in these proceedings Ms Burton resiled from this evidence. She claimed to have no knowledge of Mr Hooning supplying Sudafed tablets to the respondent and she denied paragraph 16 of Mr Hooning's affidavit in which he alleged that Ms Burton picked up Sudafed tablets from him for the respondent. Ms Burton said that she had no knowledge of the respondent being involved in drug activity and, as far as she knew, he made his money from running a gym.

[137] I do not accept Ms Burton's attempt to resile from her earlier evidence, nor do I accept her denial of any knowledge of the respondent's involvement in drugs. Although it is possible that Mr McDougall made it clear to Ms Burton in January 2003 that her mother and her brother would be in trouble as a result of lies told by them, it is significant that Ms Burton's statutory declaration made no mention of any threat made against her. If, as she suggests, in June 2003 she and other family members "withdrew" their statements and told the authorities of this, then it is remarkable that she confirmed the accuracy of her earlier statements when cross-examined in December 2003. This is particularly so since she was legally represented at the time and presumably told her barrister and solicitor that her earlier statements were false. Even if she was told by her lawyers that her allegation of threats by the ACC was a case of her word against theirs, it is extraordinary to conclude that her lawyers would permit or encourage her to give false evidence to this Court in December 2003, especially if she had earlier communicated to the ACC that she had withdrawn her earlier statement and that its contents were false. Ms Burton had difficulty in explaining why, in December 2003, she affirmed the evidence that she had earlier given, and said "I think it was just that I was terrified."

[138] I do not accept that Mr McDougall threatened Ms Burton in January 2003, or that the evidence that she gave at the ACC examination on 16 January or in her statement of 21 March 2003 was false. It is distinctly possible that she was overwhelmed by the experience of having to give evidence under compulsion and

implicate her brother. In her statutory declaration of June 2003 she did not resile from the evidence that she had given, nor did she resile from it in December 2003. I consider that the evidence that she gave in January and March 2003 is more reliable than the affidavit which she has provided in these proceedings at the instance of her brother.

[139] I was unimpressed by the oral evidence that Ms Burton gave that attempted to downplay her concerns about her brother's propensity for violence. I consider that her real fear in January 2003 was that the respondent or his then solicitor would locate her and that the respondent would take revenge if he ascertained that she had incriminated him. I do not accept her evidence that she was not scared of the respondent at that time. She explained to the ACC hearing on 16 January 2003 that she had not spoken to the respondent for some time because of bashings and assaults that he had committed, including an assault on her sister Rose. She described an occasion when the respondent "was just like a wild bull" when he believed that Rose had ripped him off. Ms Burton confirmed under cross-examination the details of the respondent's assault on Rose. I conclude that Ms Burton was scared of her brother in January 2003 and that this remains the case. I consider that the affidavit sworn by her in these proceedings was influenced by a desire to help her brother, and that it is unreliable. I prefer to act upon her earlier sworn evidence about the involvement of family members in the respondent's dealings in Sudafed, drugs and money.

Potential witnesses not called

[140] Ms Benson, who gave evidence against the respondent at his criminal trial, was not called as a witness for the applicant. No reason was given for this, and I conclude that her evidence would not have assisted the applicant's case.

[141] The respondent's daughter, Angela Cannon, swore an affidavit that was filed in the proceedings. However, the respondent did not rely upon this affidavit, and I infer that, if cross-examined, her evidence would not have assisted the respondent in his defence of these proceedings.

Findings in relation to the quantities of precursors

[142] I have previously found that Mr Hooning, and others who assisted him, supplied substantial quantities of Sudafed tablets to the respondent (or to family members of the respondent when he was absent). The respondent admitted that Ms Angela Cannon supplied him with Sudafed tablets.

[143] It is quite possible that the respondent sourced Sudafed tablets from Mr Hooning and his associates after October 2000. However, I shall confine my assessment concerning the quantity of Sudafed tablets sourced from Mr Hooning and his associates to the period ending October 2000. I find:

(a) The respondent received about 50 boxes of 90 tablets in around March 1999.

(b) Between April and November 1999 (inclusive) Mr Hooning and his associates supplied the respondent, on average, with 180 boxes of 90 tablets each week.

(c) Between December 1999 and October 2000 (inclusive) Mr Hooning and his associates supplied the respondent, on average, with 180 boxes of 30 tablets each week.

[144] On this basis the respondent acquired the following number of boxes from Mr Hooning and Mr Hooning's associates:

(a) 50 boxes of 90 tablets in March 1999.

(b) 5,760 boxes of 90 tablets between April and November 1999 (eight months x four weeks per month x 180 boxes per week = 5,760)

(c) 7,920 boxes of 30 tablets between December l999 and October 2000 (11 months x four weeks per month x 180 boxes per week = 7,920). This is the equivalent of 2,640 boxes of 90 tablets.

In total the respondent received the equivalent of 8,450 boxes of 90 tablets from Mr Hooning and his associates.

[145] I have earlier accepted Ms Bailey's evidence and concluded that the total amount of pseudoephedrine that she extracted was in the order of 5.25 kilograms. According to Mr Davis, whose evidence I accept, 3.82 kilograms of methylamphetamine hydrochloride can be produced from 5.25 kilograms of pseudoephedrine hydrochloride. According to Mr Davis' evidence concerning yields, approximately 99,000 tablets would have been required for the seven extractions. This is equivalent to 1,100 boxes of 90 tablets, 1,650 boxes of 60 tablets or 3,300 boxes of 30 tablets.

[146] I find it likely that the respondent used individuals in addition to Ms Bailey to extract pseudoephedrine from Sudafed tablets. I find that the places that he had at his disposal to manufacture methylamphetamine included the shed-like house at Oxenford which he vacated and had Mr Hooning clean up, and the concealed laboratory to which he took Mr Hooning at the back of Nerang.

[147] In addition to the pseudoephedrine extracted from Sudafed tablets, the respondent procured ephedrine, including approximately nine kilograms of ephedrine from Mr Pfaff.

The yield

[148] I shall not detail the steps involved in the process of producing methylamphetamine. There was a difference of opinion between Mr Davis, who considered that the extraction process would yield about 80 to 85 per cent of the maximum theoretical yield doing one extraction, and the evidence of Professor Brown, who thought that a realistic yield in non-laboratory conditions would be about 70 per cent. Professor Brown said that a yield of 60 to 70 per cent may occur where the extraction is completed by an inexperienced person using proper equipment, or an experienced person lacking proper equipment.

[149] Mr Davis, a chemist employed by Queensland Health Forensic and Scientific Services, is a State Analyst under the *Health Act* 1937 and the *Drugs Misuse Act* 1986. He has personal experience in the processes involved in the extraction of pseudoephedrine hydrochloride through to the production of methylamphetamine

hydrochloride. He described the extraction of pseudoephedrine from Sudafed tablets as "an extremely simple process". The yield from the process will vary with the experience of the person doing the extraction. Mr Davis said that a person with experience would get a yield of around 80 per cent and that a yield of 65 per cent was highly unlikely. He said that if someone achieved a 70 per cent yield a second extraction was likely to be done. Professor Brown agreed that it was common sense to repeat the process.

[150] Professor Brown is employed as a Professor of Biomedical Sciences at the University of Southern Queensland. He is highly qualified. However, he has had no experience in the use of ephedrine, pseudoephedrine or methylamphetamine over the course of his career. Mr Davis has more relevant experience and I prefer his evidence as to yield. Mr Davis has performed extractions on numerous occasions, attempting to copy what is done in practice, in some cases using equipment recovered from clandestine laboratories.

[151] I consider it appropriate to apply an 80 per cent figure as the likely practical yield. Although I accept Professor Brown's evidence that achievable yields depend on experience and equipment, the processes described in the evidence are simple and appear to require little skill. I do not have a basis to conclude that the respondent or those who he engaged failed to achieve yields of the kind reported by Mr Davis. For example, Ms Bailey was instructed by the respondent about the process, was equipped with the materials and equipment to undertake it, and had the skills to perform the basic tasks required.

[152] I accept Mr Davis' evidence that the practical yield of methylamphetamine hydrochloride from a box of 90 Sudafed tablets was 3.5 grams.

[153] Some evidence was given about the use of "blockers". Ms Maisie, an employee of the pharmaceutical company that supplies Sudafed in Australia, gave evidence that "blockers" were incorporated into Sudafed tablets in Australia in the late 1990s. The "blockers" were intended to prevent the extraction of pseudoephedrine hydrochloride. However, the feedback from the authorities was that they had not been effective and so the use of these blockers was phased out. Ms Maisie could not give definite evidence about when this occurred save for saying that she understood that they were phased out in early 2000.

[154] Mr Davis was cross-examined about whether "blockers" in Sudafed tablets can affect yield. He responded:

> "Depending on the extraction process. The United States – the company at the time that was making Sudafed came out with a type of tablet which was supposed to block the extraction of pseudoephedrine. The unfortunate mistake in that case was they – they based it on the main method for extraction in the US, and, when tests were done here, it was actually demonstrated that it was more efficient to extract the pseudoephedrine than the previous preparation."

He understood that Sudafed tablets with these blockers were not sold in Australia because of that failure, but conceded the pharmaceutical company would have a better knowledge of that topic. Mr Davis' understanding that tablets with blockers

were not sold in Australia is not supported by Ms Maisie's evidence that they were, for a period. But this does not detract from Mr Davis' evidence or his calculation of yields. On the basis of his evidence, if Sudafed tablets with "blockers" were supplied to the respondent, then higher amounts of pseudoephedrine than Mr Davis calculated would have been able to be extracted from them. The respondent sought to impugn Mr Davis' evidence on the basis of an alleged inconsistency between his understanding that Sudafed with blockers were not sold in Australia and his evidence that tablets with blockers were sent to his laboratory and were found to be ineffective since they yielded higher amounts. There is no inconsistency between Mr Davis' understanding of whether tablets with blockers were available to be purchased in Australia and his evidence of the experiments that were performed in the laboratory in which he worked. I accept the evidence that I have quoted above concerning the ineffectiveness of the "blockers" to reduce yields through certain extraction methods. I also accept his evidence concerning yields, which was based on his experience and his understanding of the types of Sudafed that were available on the Australian market. Indeed, his evidence about yields from Sudafed with "blockers" makes his calculations understate the yields that would have been possible using the extraction process that Ms Bailey was taught if Sudafed with blockers had been used.

[155] Cutting agents are often added to methylamphetamine hydrochloride. Based on the purity of the methylamphetamine found in the respondent's possession on 14 January 2003, Mr Davis calculated quantities on the basis of 60.6 per cent pure methylamphetamine hydrochloride.

[156] Adopting these figures, a box of 90 Sudafed tablets can produce 3.5 grams of methylamphetamine hydrochloride and 4.6 grams of powder with a purity of 60.6 per cent. A quantity of 8,450 boxes could therefore produce 38.87 kilograms of powder with a purity of 60.6 per cent. Adopting a conversion rate of 2.2046 pounds to a kilogram, this equates to approximately 85.7 pounds.

[157] According to Mr Davis, ephedrine can be used in the same manner as pseudoephedrine to produce methylamphetamine. Ephedrine hydrochloride is subject to the potential losses described in his evidence. Following the processes described by him, one kilogram would be converted to 736.5 grams of methylamphetamine hydrochloride. When cut with other substances, a kilogram of ephedrine would result in 975.9 grams of a product having a purity of 60.6 per cent.

[158] I have earlier found that Mr Pfaff supplied nine kilograms of ephedrine to the respondent. This quantity of precursor is likely to yield 8.7831 kilograms or about 19.36 pounds of a product with a purity of 60.6 per cent.

[159] The respondent submits that there is no evidence that the ephedrine alleged to have been supplied by Mr Pfaff was converted into saleable drugs, and notes that Mr Pfaff's evidence was that on one occasion some of the ephedrine supplied by him was apparently turned into a rock type substance, and that the respondent declined the opportunity to provide a sample of it in order to rectify the situation. In response, the applicant submits that the clear inference is that the ephedrine supplied by Mr Pfaff was converted into saleable drugs. In his reply, the respondent submits that to draw this inference it is necessary for there to be at least some evidence of intermediate facts which, if proved to a sufficient standard, would provide a basis for the necessary inference to be drawn.

[160] I am prepared to draw the inference that the ephedrine supplied by Mr Pfaff was intended to be converted into methylamphetamine and that this purpose was largely achieved. The likelihood that it was achieved is demonstrated by the respondent's ability to supply methylamphetamine. It is most improbable that, having expended large sums to acquire large quantities of ephedrine from Mr Pfaff, the respondent did not use it for its intended purpose. He had the business acumen to arrange for production. It is possible that some of the ephedrine that was supplied by Mr Pfaff and which turned into a rock type substance was unable to be converted into a saleable product. It is equally possible that the respondent did not seek assistance in resolving that problem from Ms Benson and her associates because he found the solution elsewhere. I infer that the applicant did so because he ordered and obtained two further supplies of ephedrine from Mr Pfaff.

[161] I reject the hypothesis that nothing was done with the ephedrine sourced from Mr Pfaff. It is possible that it was on-sold in "an unconverted form". However, the evidence, including the respondent's ability to supply methylamphetamine on request, leads me to conclude that the respondent achieved his objective of producing methylamphetamine. I have declined to find that Mr Pfaff supplied 11 kilograms of ephedrine. I base my findings on a figure of nine kilograms. This quantity was capable of producing 19.36 pounds of product having a purity of 60.6 per cent.

[162] The Sudafed tablets that I have found were supplied to the respondent by Mr Hooning and his associates up until October 2000 would have yielded 85.7 pounds of product with a 60.6 per cent purity. When added to the quantity able to be produced from the nine kilograms of ephedrine, one arrives at a total yield of around 47.7 kilograms or 105 pounds of product with this purity.

The value of proceeds

[163] In assessing the value of the proceeds derived from the respondent's illegal activity, the applicant relies upon the value of cash and other property that came into the possession or under the control of the respondent, and the value of any benefit provided for the respondent, because of the illegal activity.[22] Regard may be had to the market value of the drug and the amount ordinarily paid for it, as proved by the opinion evidence of a prescribed officer. As previously noted, in assessing the value of proceeds, any expenses or outgoings incurred in relation to the illegal activity must be disregarded and, as a consequence, the respondent's expenses in acquiring the drugs must be disregarded.

[164] Mr Feeney is a prescribed officer for the purpose of s 85(1). His experience includes 11 years in the State Drug Investigation Unit of the Queensland Police Service, including a period between 1997 and 2003, and two years at the Drug and Alcohol Co-ordination Unit. He is now employed as the Crime Manager (Drugs, Serious and Organised Crime) in the Australian Federal Police. In these roles he became familiar with the market value of dangerous drugs in Queensland at the relevant time. Based on his experience, he expressed the opinion that for the relevant period a kilogram of ephedrine was valued at $35,000 and that the market price for a pound of methylamphetamine was between $40,000 and $50,000. His opinion derived some support from the Illicit Drug Data Report 2002-2003.

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22 The Act, s 82(1)(a) and (b).

[165] The respondent points to the fact that the publications from the Australian Bureau of Crime Intelligence ("ABCI") annexed to Mr Feeney's affidavit do not record details of transactions that were apparently reported from Queensland. Mr Feeney could not explain why these details were not included.

[166] I accept Mr Feeney's evidence concerning the market values of these drugs. Mr Feeney acknowledged that markets differed between states. Purity levels are relevant to the price, and the price range of $40,000 to $50,000 for a pound of methylamphetamine that Mr Feeney gave related to the price paid for an amount which had been adulterated at least once.

[167] Mr Feeney's evidence about the value of a kilogram of ephedrine accorded with Mr Pfaff's evidence in that regard. Mr Feeney's evidence about the value of an ounce of methylamphetamine ($2,500 - $3,000) is also supported by the evidence of Ms Bailey and Mr Hooning, as to the amounts they paid to the respondent per ounce. Ms Bailey on-sold an ounce for $3,500. These amounts per ounce, when applied to 16 ounces or one pound, produce figures of more than $48,000. Some discount for supplies in quantities greater than an ounce is appropriate in arriving at the value of a pound of methylamphetamine.

[168] The respondent submits that if the Court is to make an assessment of value, then based on the ABCI figures for the various dates "an amount of say $30,000 would not be an inappropriate amount to assess for the value of a pound." I do not accept this submission. Mr Feeney's evidence supports a finding that a pound of methylamphetamine that had been adulterated at least once had a market value of at least $40,000 at the relevant time. I shall adopt the figure of $40,000.

[169] If I was to separately value the market value of the ephedrine that was acquired from Mr Pfaff then I would adopt a value of $35,000 per pound. However, taking account of the possible loss of some of the ephedrine that was supplied by Mr Pfaff which turned into a rock-type substance, I conclude that most, if not all, of the nine kilograms of ephedrine sourced from Mr Pfaff was converted into methylamphetamine, and that the product had a market value of $40,000 per pound.

[170] Adopting this figure, the market value of 105 pounds having the purity of the methylamphetamine found in the respondent's possession on 14 January 2003 is $4,200,000.

Assessment

[171] In accordance with the method of assessment prescribed by ss 82(1)(a) and (b) of the Act, I assess the value of the proceeds of the respondent's illegal activity at $4,200,000.

Other matters

[172] Mr Goody is employed by the Crime and Misconduct Commission as Manager, Proceeds of Crime. He is a qualified accountant, with 26 years experience in accountancy, audit and financial investigatory positions. He prepared an affidavit in April 2008 for the purpose of assisting the Court in determining the amount of any proceeds assessment order to be made in these proceedings. His calculations recognised a number of variables in respect of which he made assumptions. These included the quantity of Sudafed purchases, the quantity of ephedrine purchases,

yields from these precursors and the market value of methylamphetamine. For example, Mr Goody assumed for the purposes of his affidavit that Mr Hooning and his workers purchased Sudafed boxes at the rate of 120 boxes per day. Mr Goody expressly stated that the assumptions made in his affidavit were "at the upper range for all variables" and that the findings of the Court on the factual evidence would impact on these calculations. Based on the methodology used by Mr Goody, the applicant's submissions contained calculations based upon acceptance of the evidence of Mr Pfaff, Mr Hooning, Ms Bailey and other witnesses called by it. Those calculations were based upon a much larger quantity of Sudafed boxes being supplied by Mr Hooning and his "workers" than I have found, and were also based upon the submission that I should find that Mr Pfaff supplied 11 kilograms of ephedrine to the respondent.

[173] The respondent relied upon forensic accounting reports prepared by Ms Bundesen and Mr Lord, who are experienced forensic accountants. Mr Lord also gave oral evidence. Their reports reviewed a number of different scenarios and noted that, on the different scenarios, there were over 2,000 different outcomes for the total market value of methylamphetamine that could have been produced by the respondent. These ranged in the initial report from $6,085 to $26,937,578. Additional alternative calculations were supplied in a supplementary report in the light of further evidence.

[174] I appreciate the assistance provided to me by the affidavits, reports and oral evidence given by Mr Goody, Ms Bundesen and Mr Lord in terms of methodology. However, as they acknowledged, the calculation of a proceeds assessment order depends upon findings of fact of the kind that I have made.

[175] I add for completeness that the assessment that I have arrived at necessarily differs from the assessment of profit which a sentencing judge may make in the course of reaching a conclusion about the profit which a person derived from drug trafficking. In that regard, in sentencing the respondent on 17 November 2005, Mullins J had regard to evidence in the nature of a financial analysis of the respondent's circumstances and those of related companies between January 1999 and 14 January 2003 that were said to indicate a surplus of about $1,000,000 from unknown sources. In the light of that evidence and all the other evidence that was put before the Court at the respondent's criminal trial, Mullins J observed that the figure of $1,000,000 probably indicated the scale of the respondent's trafficking over the period from 1998 to the end of 2001. The financial analysis upon which her Honour relied is not in evidence before me, and my task is quite different to that undertaken by her Honour for a different purpose based on different evidence. I am not concerned with an assessment of the profit that the respondent derived after paying expenses. My task is to assess the value of proceeds derived by the respondent from his illegal activity in trafficking drugs. I have regard to the various matters specified in s 82(1) and, in accordance with s 84, disregard expenses or outgoings incurred by the respondent in relation to the illegal activity.

[176] In *R v Fagher*,[23] Roden J observed:

> "Calculation or assessment of the value of the benefits derived by a particular offender from any criminal transaction, is likely to be

[23] (1989) 16 NSWLR 67 at 71-72.

> difficult. There will be no audited accounts available, nor can one expect a contract or other documentation evidencing the nature of the dealings among the several participants who may be involved. Additionally, if the participants themselves give evidence of the details of those transactions, their evidence is unlikely to be the most reliable, and to the extent that it may be relied upon is unlikely to disclose clearly defined legal relationships."

In the same case Allen J, in addressing the construction of certain provisions of the *Crimes (Confiscation of Profits) Act* 1985 (NSW) said:

> "... the court should not lose sight of reality that the court, to fulfil its statutory obligation, often will have to assess the value of the benefits derived by the defendant on material which is far less satisfactory than what it normally would expect to have in litigation. It is not the nature of criminals to keep records of such a kind as to assist the court: nor is it the nature of criminals to tell the truth when telling a lie would seem more advantageous. The sections clearly recognise the difficulty of the task imposed upon the court and accept that the assessment of the value must in many cases be a somewhat rough and ready process."[24]

I do not interpret these statements, or statements to similar effect in other cases,[25] as suggesting that findings about the extent of a respondent's alleged involvement in illegal activities should be based on "inexact proofs, indefinite testimony or indirect references".[26] Instead, they serve to emphasise that the calculation or assessment of the value of the proceeds derived from criminal activity occurs in a different context to findings of fact in respect of legitimate businesses that ordinarily keep accounts and appropriate taxation records. To state the obvious, the respondent, those who supplied precursors to him and those to whom he sold drugs did not keep accounting records of their business transactions. This circumstance is relevant to the process of determining the value of the proceeds derived by the respondent. The degree of precision required in proof of the value of proceeds depends on the proof reasonably available and the nature of the matters that are to be proved. The value of the proceeds derived by the respondent must be proved by evidence, not guesswork. However, account must be taken of the absence of records in relation to illicit drug transactions.

Conclusion

[177] The respondent engaged in a "serious crime-related activity" within the six years before the application in these proceedings was made on 7 February 2003, namely trafficking in methylamphetamine. Having made this finding, I must make a proceeds assessment order. No submission was made that I should exercise my discretion under s 78(2) and refuse to make such an order on public interest grounds.

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24 Ibid. at 80.

25 See, for example, the observations of Shaw J in *New South Wales Crime Commission v Kelly (No 2)* [2003] NSWSC 154 at [49].

26 *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34 per Dixon J.

[178] The respondent was a well-organised drug trafficker who also conducted legitimate businesses. During the relevant period he arranged for pseudoephedrine to be extracted from the large quantities of Sudafed tablets that were supplied to him by Mr Hooning and others. He also obtained quantities of ephedrine, including at least nine kilograms of ephedrine from Mr Pfaff. He arranged for the production of methylamphetamine, and he sold methylamphetamine.

[179] I have based my assessment of the value of the proceeds derived by him on findings about the quantity of Sudafed tablets supplied to him prior to October 2000. It is quite possible that the respondent was supplied with greater quantities than I have found before October 2000, and that Mr Hooning and others continued to supply Sudafed tablets to him to some extent after October 2000. I have declined to make findings in accordance with the submissions made by the applicant about the quantity of Sudafed tablets supplied by Mr Hooning and others up to October 2000. I have also based my assessment on a finding that Mr Pfaff supplied approximately nine kilograms of ephedrine, not the 11 kilograms contended for by the applicant. My calculation of yields is based upon my preference for the evidence of Mr Davis. I have adopted a market value of $40,000 per pound for methylamphetamine at the relevant time. In accordance with the method of assessment prescribed by the Act, I assess the value of the proceeds of the respondent's illegal activity at $4,200,000.

Orders

[180] I direct the applicant to prepare minutes of order and to consult with the respondent's legal representatives in relation to the issue of costs.

[181] As presently advised, I consider that costs should follow the event and include reserved costs. However, I will hear from the parties, if required, concerning the form of orders and the question of costs.