

DRUGS & THE LAW

WHAT YOU NEED TO KNOW



Australian Government
Department of Health

DRUGS AND THE LAW

WHAT YOU NEED TO KNOW

We usually think about drugs and the law in terms of whether it is 'legal' or 'illegal' to use drugs. However, the criminal status of drugs is only one small aspect of drug law. Equally important are the criminal penalties set by legislators to guide sentencing, police powers in particular settings and laws that cover other drug offences (e.g. drugs and driving). The status of laws can also change to suit new circumstances. This makes understanding drugs and the law a challenge, even for lawyers.

LEGAL STATUS OF DRUGS

Many substances which have psychoactive properties (e.g. heroin, methamphetamine, cocaine, ecstasy and cannabis) are prohibited in Australia. This means it is an offence to possess, grow, manufacture, or supply/traffic them. It is also an offence in most parts of Australia to use an illicit drug or to possess any implement for using illicit drugs other than a needle and syringe. Exceptions to this are seen in Queensland and the Northern Territory where it is prohibited to possess a needle and syringe if it is not disposed of safely or if it is considered a risk to society.

The two most common drug offence types are 'possession' and 'supply'. So what do these offences mean?

- **Possession: this includes physically carrying a prohibited drug on you, or having it at your place of residence or in your motor vehicle. Possession also includes jointly possessing a drug with another person.**
- **Supply or trafficking: this means providing a prohibited drug to another person. Traditionally a trafficker is considered someone who exchanges drug(s) for money, property or services. However, if any prohibited drug is passed onto others (even friends) this is also considered to be 'trafficking'.**

Legal penalties relating to prohibited substances vary across Australian jurisdictions. They also vary by offence, drug type and how the prosecution chooses to undertake the charge: as a minor (summary) offence or major (indictable) offence (see Table 1 for details).

The maximum penalties are:

- **2 years prison for use or possession of a drug or particular drug paraphernalia (e.g. a cannabis bong, methamphetamine pipe or a used needle and syringe)**
- **2-14 years prison for a lower level drug trafficking offence. Higher level drug trafficking offences carry a maximum penalty of 21 years prison in Tas, 25 years prison in WA and Qld, and life imprisonment in the ACT, NSW, SA, Vic and the Commonwealth**

In most jurisdictions the penalties for cannabis offences are lower than for offences involving other illicit drugs. Notably, in three jurisdictions (SA, NT and the ACT), use and possession of cannabis has been decriminalised, which means offenders have the option to pay a civil penalty notice of \$100-300 rather than receive a criminal conviction and fine and/or prison sentence. This does not mean that the drugs have been legalised.

Table 1: Maximum penalties for drug offences in Australia, by offence type and jurisdiction, 2012

Jurisdiction	Law	Personal Use	Possession			Trafficking (trafficable quantity)		
			Paraphernalia	Cannabis	Other illicit drug	Cannabis	Other illicit drug	
Cth	Criminal Code Act 1995	No offence	No offence	2 yrs prison &/or 400 PU	2 yrs prison &/or 400 PU	10 yrs prison &/or 2000 PU	10 yrs prison &/or 2000 PU	
ACT	Drugs of Dependence Act 1989 Criminal Code 2002	No offence	No offence	Civil penalty notice of \$100 or 1 PU	2 yrs prison &/or 50 PU	3 yrs prison &/or 300 PU	10 yrs prison &/or 1,000 PU	
NSW	Drug Misuse and Trafficking Act 1985 No 226	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU ¹	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 100 PU (S) 10 yrs prison &/or 2000 PU (I)	15 yrs prison	
NT	Misuse of Drugs Act 2006	2 yrs prison &/or 17 PU	2 yrs prison &/or 17 PU ²	Civil penalty notice of 1.7 PU	2 yrs prison &/or 40 PU (E or M) 5 yrs prison &/or 85 PU (H or C)	5 yrs imprisonment &/or 85 PU	5 yrs imprisonment &/or 85 PU (E or M) 15 yrs prison (H or C)	
QLD	Drugs Misuse Act 1986	No offence	2 yrs prison ²	3 yrs prison (S) 15 yrs prison (I)	3 yrs prison (S) 15 yrs prison (I)	20 yrs prison	25 yrs prison	
SA	Controlled Substances Act 1984	\$500 (cannabis) 2 yrs prison &/or \$2,000 (other)	2 yrs prison &/or \$2,000 ¹	Civil penalty notice of \$150-300 or \$500 fine	2 yrs prison and/or \$2,000	10 yrs prison &/or \$50,000 (basic) 15 yrs prison &/or \$75,000 (aggravated)	10 yrs prison &/or \$50,000 (basic) 15 yrs prison &/or \$75,000 (aggravated)	
TAS	Misuse of Drugs Act 2001	2 yrs prison &/or 50 PU	50 PU ¹	2 yrs prison and/or 50 PU	2 yrs prison &/or 50 PU	4 yrs prison &/or 100 PU (S) 21 yrs prison (I)	4 yrs prison &/or 100 PU (S) 21 yrs prison (I)	
VIC	Drugs, Poisons and Controlled Substances Act 1981	5 PU (cannabis) 1 yr prison &/or 30 PU (other)	No offence	5 PU	1 yr prison &/or 30 PU	15 yrs prison	15 yrs prison	
WA	Misuse of Drugs Act 1981	No offence	3 yrs prison &/or \$3000 ¹	2 yrs prison &/or \$2,000	2 yrs prison &/or \$2,000	4 yrs prison &/or \$5,000 (S) 10 yrs prison &/or \$20,000 (I)	25 yrs prison &/or \$100,000	

Cth: All prosecutions for Commonwealth drug offences are conducted in state or territory courts using the criminal procedure of that state or territory.
PU: Penalty units. PU are used in many jurisdictions to calculate the amount of a fine. 1 PU in 2012 = \$110 (NSW, Qld & ACT), \$120 (Tas), \$140.84 (Vic) & \$141 (NT) & in 2013 1 PU=\$170 (Cth).
Paraphernalia: Some states prohibit possession of an implement for using a drug (e.g. a cannabis bong). Most exclude possession of a needle and syringe (I) but some prohibit possession of a used needle and syringe (2).
Possession of cannabis: ACT, NT and SA provide civil penalty notices. Failure to pay can lead to further penalties including a criminal conviction and fine.
S and I: Summary or Indictable Offence. Drug offences in some jurisdictions have the option to be dealt with summarily (in the lower courts and without a jury). NT law distinguishes higher maximums for heroin (H) and cocaine (C), than for ecstasy (E) or methamphetamine (M). For simplicity penalties for public places are listed.

WHAT WILL THE POLICE DO IF I'M CAUGHT WITH AN ILLICIT DRUG ON ME?

WILL I GET A CRIMINAL RECORD?

If you are caught with even a small amount of cannabis or other prohibited substance, the police will confiscate it and you can be arrested. What the police do depends on the circumstances (e.g. what drug you are caught with, your prior criminal history). Police and court drug diversion programs are provided throughout Australia, so for a first or second offence, you are likely to get offered the opportunity to pay a civil penalty notice or be diverted into an education or treatment program instead of receiving a criminal charge. But to be eligible for a diversion program there are restrictions on the maximum quantity of drugs you can be detected with (e.g. 15g cannabis in NSW and 50g cannabis in NT, Qld, Tas and Vic). If you have a larger quantity of drugs you are likely to be ineligible for a diversion program and you may even find yourself at risk of being charged with supply (see below).

If you are sent to court and receive a criminal conviction it can have a serious impact on your future prospects. For example, it can stop you being able to visit some countries (e.g. the USA), limit the types of jobs you can apply for, or lead to you being refused a job, dismissed or denied a promotion.

HOW DO THE POLICE AND COURTS DECIDE WHAT IS "DEALING"?

AND WHAT IS POSSESSION FOR PERSONAL USE?

Supply or 'dealing' is a very serious offence, and imprisonment will be the usual response for anyone convicted of trafficking, unless there are exceptional circumstances. Anyone sanctioned for drug trafficking may also be subject to asset confiscation laws, which means they may have their property or the property of their family confiscated.

In most parts of Australia three levels of 'dealing' have been outlined, based on the quantity of drug involved. These are termed the 'trafficable', 'commercial' and 'large commercial' thresholds. People can still be charged with trafficking if they have less than these amounts (e.g. if they are caught with evidence of intent to traffic such as large sums of money, drugs distributed into multiple bags or in the act of supplying drugs to another – even friends). But something that is often not recognised is that under 'deemed supply' laws anyone who carries or possesses an amount that is equal to or exceeds the trafficable threshold (see Table 2) will be deemed to have drugs for the purposes of supply. They will thus have to prove the absence of intent to traffic, or risk being sanctioned for trafficking. Trafficable threshold quantities for the five most common illicit drugs are outlined below.

Table 2: Trafficable threshold quantities (grams) in Australia, by drug type, jurisdiction and system (mixed or pure), 2012

	Heroin	Meth / amphetamine	Cocaine	MDMA	Cannabis
Mixed Drug					
NT	2	2	2	0.5	50
NSW	3	3	3	0.75	300
SA	2	2	2	2	250
TAS	25	25	25	10	1000
VIC	3	3	3	3	250
WA	2	2	2	2	100
Commonwealth	2	2	2	0.5	250
Pure Drug					
ACT	2	2	2	0.5	300
QLD	2	2	2	2	500

Mixed Drug = Total mass, however it was sold on the street, including any added ingredients such as fillers and binding agents .

Pure Drug = Weight of active principles only: excluding buffers or glucose.

WHAT HAPPENS IF I TAKE DRUGS AND DRIVE?

It is an offence to drive, attempt to drive or supervise a learner driver with any illicit drug in your system. Unlike blood alcohol concentration (BAC) testing, where there is a legal blood alcohol limit, it is an offence if any amount of drug is detected. All states and territories have the power to use random roadside drug testing which can detect for the presence of cannabis, methamphetamine and MDMA. In some states if you refuse to provide a saliva sample, when stopped, you may be fined. Typical penalties include a 6–12 month disqualification of your driver's license (or being stopped from attaining a license if you are a learner driver) and a fine (see Table 3). Prison is also an option. Penalties are greater for subsequent offences. Most jurisdictions also have additional offences for 'driving under the influence'. This means that if you take drugs and are involved in an accident or are detected by police for impaired driving the penalties may be more severe.

Table 3: Maximum penalties for drug driving offences in Australia, by offence type and jurisdiction, 2012

Jurisdiction	Law	First Offence	Second Offence
ACT	Road Transport (Alcohol and Drugs) Act 1977 - Sect 20	10 PU AND 12 mths license disqualification	3 mths prison and 25 PU and 60 mths licence disqual
NSW	Road Transport (Safety and Traffic Management) Act 1999, sect 12(1)	9 mths prison &/or 20 PU AND 12 mths license disqual	12 mths prison &/or 30 PU AND 36 mths licence disqual
NT	Traffic Act - Sect 28	3 mths prison or 5 PU	6 mths prison or 7.5 PU AND \geq 3 mths licence disqual
QLD	Transport Operations (Road Use Management) Act 1995 - Section 79(2AA)	3 mths prison or 14 PU AND 6 mths license disqual	18 mths prison or 60 PU AND 9 mths licence disqual
SA	Road Traffic Act 1961 - Sect 47BA and Sect 47	\$900-1,300 fine AND \geq 3 mths license disqual	\$1,600 fine AND \geq 6 mths licence disqual
TAS	Road Safety (Alcohol and Drugs) Act 1970 - Sect 6A	3 mths prison &/or 2-10 PU AND 6 mths license disqual	
VIC	Road Safety Act 1986 - Sect 49(1ba)	12 PU AND \geq 12 mths licence disqualification	12 mths prison or 120 PU and \geq 24 mth licence disqual
WA	Road Traffic Act 1974 - Sect 64 AC	10 PU	20 PU & automatic license disqual for \geq 6 mths

PU: Penalty units. PU are used in many states to calculate the amount of a fine. 1 PU in 2012 = \$110 (NSW, Qld & ACT), \$120 (Tas), \$140.84 (Vic) & \$141 (NT).

WHAT RIGHTS DO POLICE HAVE TO STOP AND SEARCH ME FOR DRUGS OR PARAPHERNALIA? WHAT RIGHTS DO THEY HAVE TO USE SNIFFER DOGS?

Police have the powers to 'stop, search and detain' anyone in a public place who they believe may possess illicit drugs. This includes searching your property (e.g. your car). Police must have 'reasonable grounds' to undertake the search, but failure to comply is an offence. They may also stop and search anyone in a public place they believe is purchasing drugs, trying to buy drugs or supplying prohibited drugs.

Police have increasingly used drug detection ('sniffer') dogs to assist in identifying people who may have drugs on them. The rules around when and how they can be used vary between states and territories:

- **In the ACT, NT and Victoria police can use them without a warrant as part of their general duties**
- **In NSW, Qld and Tas they can only be used without a warrant in particular places. This includes in or around areas where alcohol is sold (e.g. pubs and clubs), at entertainment events including sporting events, outdoor music festivals, on public transport and at bus and train stations.**

If you are approached by a sniffer dog and the dog sits down next to you that gives police grounds to search you. Not all people will be searched. If police search you they may ask you to turn out your pockets, conduct a pat down or a full search (a full search should be conducted away from immediate public view). If you are searched and drugs are found on you then you are required to give your name and address to police. Police are likely to seize the drugs, but as outlined above the outcome will depend on the type of drug, quantity, your behaviour, the discretion of the police officer at the time and the laws in the jurisdiction in which you live.

WHAT HAPPENS IF I AM CAUGHT WITH SOMETHING THAT ISN'T 'REALLY' A DRUG?

For possession offences the court must be satisfied that the substance does in fact contain a prohibited drug. However, even if the substance has only an extremely small amount of a prohibited drug (i.e. low purity), drug possession charges will still apply. For supply offences, if a person offers a substance to someone and says that it is a drug to persuade that person to buy or take it, they are guilty of supplying the drug whether the substance is actually the drug or not. For example, a person who offers to supply someone with heroin when all they have is icing sugar may be considered guilty of supplying heroin.



WHAT HAPPENS IF I BUY A DRUG (E.G. THROUGH AN ONLINE MARKETPLACE) AND IT COMES FROM OVERSEAS?

It is an offence to import a drug (such as cocaine or a 'legal high') across the Australian border either for personal use or to supply to others. Even if there is no *proof* that the drug you bought came from overseas you may be charged: the prime criteria for police and courts is whether you should 'reasonably suspect' it to have an international origin. Basic possession of an imported substance carries similar sanctions to possession of something obtained within Australia (2 years imprisonment and a fine of 400 penalty units). But, importation of only 2g of a border controlled drug carries a maximum penalty of 10 years imprisonment and/or 2,000 penalty units (307.6 of the Criminal Code).

THERE ARE LOTS OF DRUGS WHICH SOME PEOPLE CALL 'LEGAL HIGHS' COMING ONTO THE MARKET (E.G. KRONIC AND MEPHEDRONE).

IS IT LEGAL TO PURCHASE OR USE THESE?

In recent years, many 'new' drugs have arrived on the market. These are often advertised as 'legal highs' (technically called drug analogues), despite the fact that in many cases they're not legal. They are also generally misrepresented as 'safe' for recreational use. They can, however, prove to be as harmful as illicit drugs. They have been chemically altered to circumvent drug legislation and mimic the effect of a prohibited substance, however the Australian Government (Commonwealth) and state and territory legislators are constantly extending the list of prohibited substances. They are also creating new 'group entry' offences that cover current and all future substances that mimic a prohibited substance (e.g. cannabis). This makes current and future use, possession or supply of many 'legal high' substances subject to similar criminal penalties as traditionally prohibited substances. Individuals detected with 'legal highs' are often ineligible for drug diversion programs. This means that if you are detected you are likely to be at risk of a conviction and fine and/or imprisonment.

FOR ADVICE ON LEGAL ISSUES AROUND DRUGS PLEASE CONTACT LEGAL AID IN YOUR STATE OR TERRITORY.

NEW SOUTH WALES

Law Access NSW helpline. Visit www.legalaid.nsw.gov.au or call **1300 888 529** (9am–5pm, Monday to Friday).

VICTORIA

Legal Aid helpline. Visit www.legalaid.vic.gov.au or call **03 9269 0120** or country callers can phone **1800 677 402** (8:45am–5:15pm, Monday to Friday).

TASMANIA

Legal Aid helpline. Visit www.legalaid.tas.gov.au or call **1300 366 611** (9am–5pm, Monday to Friday).

AUSTRALIAN CAPITAL TERRITORY

Legal Aid helpline. Call **1300 654 314** (9am–4pm, Monday to Friday).
For after hours legal support, call the After Hours Legal Aid Helpline on **0429 440 084** (6pm–9am available 6pm–9am Monday to Friday and open over the weekend, from 6pm on Friday to 9am Monday)
See also www.legalaidact.org.au

QUEENSLAND

Legal Aid helpline. Visit also www.legalaid.qld.gov.au or call **1300 651 188** (8:30am–5pm, Monday to Friday).

NORTHERN TERRITORY

Legal Aid helpline. Visit www.ntlac.nt.gov.au or call **1800 019 343** (9am–4pm, Monday to Friday).

SOUTH AUSTRALIA

Legal Services Commission helpline. Visit www.lsc.sa.gov.au or call **1300 366 424** (9am–4:30pm, Monday to Friday).

WESTERN AUSTRALIA

Legal Aid helpline. Visit www.legalaid.wa.gov.au or call **1300 650 579** (8:30am–4:30pm, Monday to Friday).

**Legal Aid also operate a Youth Law Centre (for people aged between 12–25).
Visit www.legalaidact.org.au or call 02 6173 5410.**



Australian Government

Department of Health