

Cannabis and the law

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Please note that the information on cannabis and the law given on this factsheet does not constitute legal advice and should not be relied upon in this way. The information is correct at the time of publication. People wanting legal advice should consult a lawyer.

Is cannabis illegal in Australia?

It is illegal to use, possess, grow or sell cannabis in Australia, but the penalties for cannabis offences are different in each state and territory. In some states, if someone is caught with a 'small amount' of cannabis they may be given a \$50 fine, while in other states they may be charged with a criminal offence and receive a much larger fine, or even be sentenced to jail. The definition of a 'small amount' of cannabis also differs between states and territories. In response to increases in hydroponic cannabis cultivation (cannabis grown indoors in an artificial environment), the Australian Drug Misuse and Trafficking Act (1985) was amended in 2006. The amendment reduced the amount of indoor cultivated cannabis needed to qualify for a 'commercial quantity' and 'large commercial quantity'.

What is the difference between decriminalisation and legalisation?

Some jurisdictions have decriminalised minor cannabis offences, such as the possession of a small amount of the drug for personal use. This means that the offence can be dealt with by a civil penalty, such as a fine, rather than by receiving a criminal charge. Speeding is a good example of an offence that is commonly dealt with by a civil penalty.

If an offence is decriminalised, it does not mean that it is legal. Legalisation of cannabis would mean that cannabis would no longer be an illicit drug, but would be a legal drug like alcohol and tobacco.

Which states and territories have decriminalised cannabis?

The following states and territories have decriminalised minor cannabis offences. Any cannabis offence is still illegal in these areas.

Australian Capital Territory

The ACT introduced a civil penalty system for the possession of small amounts of cannabis in 1993. If someone is caught with up to two non-hydroponic cannabis plants, or up to 25 grams of marijuana (cannabis plant material), they receive a \$100 fine with 60 days to expiate instead of a criminal charge. Instead of paying the fine, the person may choose to attend a drug assessment and treatment program.

South Australia

In 1987, South Australia was the first state to decriminalise minor cannabis offences. The possession of up to 100 grams of marijuana, 20 grams of hash (the resin from the cannabis plant), one non-hydroponic plant or cannabis smoking equipment leads to a fine from \$50 to \$150 with 60 days to expiate.

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Western Australia

Western Australia is the most recent area to introduce a civil penalty scheme for cannabis possession. Since 2004, a fine from \$100 to \$200 with 28 days to expiate is served if a person is found in possession of smoking equipment, up to 30 grams of marijuana, or two non-hydroponic cannabis plants. An alternative to paying the fine or appearing in court is to attend a cannabis education session.

The new Western Australian government plans to repeal these laws to return to a criminal penalty scheme for cannabis possession and cultivation offences with cautions for first offenders possessing 15 grams or less.

Northern Territory

Since 1996, adults found in possession of up to 50 grams of marijuana, one gram of hash oil, 10 grams of hash or cannabis seed, or two non-hydroponic plants can be fined \$200 with 28 days to expiate rather than face criminal charge.

Table 1

Minor cannabis offences in jurisdictions that have decriminalised cannabis

Jurisdiction (year of initiation)	Maximum amount of cannabis allowed	Exclusions	Fine	Alternatives to paying fine
SA (1987)	<ul style="list-style-type: none"> • 100 grams plant material • 20 grams resin • 1 plant 	Artificial cultivation; cannabis oil	\$50 –\$150	Criminal conviction
ACT (1992)	<ul style="list-style-type: none"> • 25 grams plant material • 2 plants 	Artificial cultivation; cannabis resin and oil	\$100	Attend the Alcohol and Drug Program, an assessment and treatment program
NT (1996)	<ul style="list-style-type: none"> • 50 grams plant material • 10 grams resin • 1 gram oil • 10 grams seed • 2 plants 		\$200	Debt to state, no conviction – juveniles are sent to assessment
WA (2004)	<ul style="list-style-type: none"> • 30 grams plant material • 2 plants 	Artificial cultivation; cannabis resin and oil	\$100 – \$200	Attend an education session

What happens in other states?

In the rest of Australia, any cannabis offence is a criminal offence. If someone is charged with possession of cannabis in these areas and found guilty, they could receive a large fine or jail time and will have a criminal record.

It is unlikely, however that someone caught with a small amount of cannabis for the first time would receive a criminal conviction, because of the diversion programs that run in these states. Diversion programs aim to divert non-violent drug offenders away from the criminal justice system and into appropriate assessment, education and treatment services. These programs aim to break the criminal cycle associated with illicit drug use by reducing the motivation behind much criminal activity and by encouraging offenders to tackle their drug problems early.

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It should be noted that it is usually up to the police officer whether or not to ‘divert’ the offender or charge them. Also, juveniles or people who have a history of drug offences, or violence are ineligible for diversion.

NSW

If someone is caught with up to 15 grams of cannabis in NSW, they may receive a ‘caution’ from the police officer, which includes information about the harms association with cannabis use and a number to call for drug-related information or referral. Only two cautions are allowed to be given to the same person.

Victoria

A police officer may give someone a caution and offer them the opportunity to attend a cannabis education program if they are caught with no more than 50 grams of cannabis. Like NSW, only two cautions are allowed to be given to the one person.

Tasmania

Someone found in the possession of up to 50 grams of cannabis can be given a caution up to three times in ten years. For the first caution, information and referral is provided. A brief intervention is given with the second caution. On the third and final caution, the offender must be assessed for drug dependence and attend either a brief intervention or treatment program.

Queensland

Police officers in Queensland offer someone the option of diversion if they are found in possession of up to 50 grams of cannabis. This is the only state in which diversion must be offered to a minor cannabis offender - elsewhere, it is up to the police officers whether or not they offer diversion or charge the offender. The diversion includes a mandatory assessment and brief intervention program. Only one offer of diversion is allowed per person.

Table 2

Diversion programs for minor cannabis offences

Jurisdiction (year of legislation)	Maximum amount of cannabis allowed for option of diversion	Maximum number of cautions allowed	Diversion program description
TAS (1998)	50 grams	3 in 10 years	<ul style="list-style-type: none">• First offence: caution plus information and referral• Second offence: brief intervention• Third offence: assessment and either treatment or brief intervention
VIC (1998)	50 grams	2	Cautioning notice plus voluntary education program
NSW (2000)	15 grams	2	Caution, plus information and referral
QLD (2001)	50 grams	1	Mandatory assessment and brief intervention session