

Drugs in NSW – Myths and Realities

I ONLY HAVE ENOUGH FOR PERSONAL USE – THAT’S OK, RIGHT?

Certain drugs and plants – including popular drugs like MDMA, ketamine, ice, marijuana and GHB – are prohibited in NSW by the *Drug Misuse and Trafficking Act 1985*. Unlike in some other jurisdictions, there is no hierarchy of prohibition such as Class A, Class B and Class C. All prohibited drugs are equally prohibited.

NSW law sets out ‘small quantity’ amounts for every prohibited drug and plant. If police find an amount at or below this threshold on you, it is likely you will be charged with possession of a prohibited drug. The maximum penalty is two years’ imprisonment, a fine of \$2200, or both. There is no ‘safe’ amount. There is no risk-free way to possess prohibited drugs.

I WAS HOLDING THE DRUG FOR SOMEONE ELSE.

The elements of the offence of possess prohibited drug are:

- Was the substance a prohibited drug?
- Was it in your possession or control?
- Did you know it was a prohibited drug?

It doesn’t matter whether it ‘belonged’ to you.

WHAT ABOUT POT?

The Cannabis Cautioning Scheme permits police to give formal police cautions to adult offenders detected for minor cannabis offences. In appropriate cases, police can choose to issue a caution rather than a charge. However, you can only be cautioned twice and cannot receive a caution if you have any prior convictions for drugs, violence or sexual assault. There is also no automatic entitlement to a caution – it is up to police discretion. Possession of marijuana risks a possession charge.

POT IS LEGAL IN MY HOME STATE OR COUNTRY.

Marijuana is a prohibited drug under NSW law.

POLICE CAN ONLY SEARCH ME IF I CONSENT, OR IF I AM ARRESTED.

Police may, relevantly, search you or your car without arrest if they have reasonable grounds to suspect you have prohibited drugs. ‘Reasonable grounds’ can include the action of a police dog. Police can pat you down, ask you to remove your outer clothes and shoes, and look into your stuff and your clothes. They can also ask you to open your mouth. Police must provide the name and place of duty of the officer performing the search, and explain why they are searching you. Not consenting to complying with the search may be a criminal offence.

If police have reasonable grounds to suspect that it is necessary and the circumstances are serious and urgent, they may perform a strip search. They must provide you with as much privacy as possible for the search.

MY FRIENDS AND I POOLED OUR MONEY AND BOUGHT SOME PILLS. I’M NOT BREAKING THE LAW BY GIVING THEM THE PILLS, AM I?

Under NSW law, there is no requirement for money to change hands or for a person to profit for it to be ‘supply’ within the meaning of the law (‘dealing’). The legal definition of supply is very broad. Supply includes selling or distribution, agreeing to sell or distribute, offering to sell or distribute, having in your possession for sale or distribution; or facilitating any of these things. For example, if police catch you passing the pills to one of your friends – there is a risk that you may be charged with actual supply of a prohibited drug.

If you have an amount greater than the small quantity amount on you, NSW law states that you are considered to have this amount for the purposes of supply or dealing (unless proved otherwise). You may be charged with supply accordingly.

IT’S NOT A CRIME TO BE UNDER THE INFLUENCE OF A PROHIBITED DRUG.

Under NSW law, it is a crime to use or attempt to use a motor vehicle while under the influence of alcohol or a prohibited drug. Penalties include substantial fines and imprisonment for up to 18 months.

It is also an offence to drive or attempt to drive a vehicle with a ‘prescribed illicit drug’ present in your oral fluid, blood or urine. ‘Prescribed’ means specified rather than prescribed by a doctor. The four specified illicit drugs are THC (cannabis), methylamphetamine (speed), cocaine and ecstasy. Similarly, it is an offence to drive or attempt to drive a vehicle with cocaine or

morphine present in your blood or urine. Penalties include fines, and disqualification. There is no requirement for the police to prove impairment for successful prosecution of this offence.

This information is current to 23 January 2019 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.

Discrimination is only unlawful when it happens in an area of 'public life.' If you are unfairly treated in private, for instance by family members, friends or flatmates, this won't be unlawful discrimination.

'Areas' of life that are covered by discrimination law include:

- Employment
- Education
- Obtaining goods and services
- Accessing public places and facilities
- Accommodation
- Clubs and associations.

IS IT 'DIRECT' OR 'INDIRECT' DISCRIMINATION?

Direct

Direct discrimination refers to treatment that is clearly discriminatory. The treatment will be obvious that a person is being discriminated against because of one the 'grounds' or 'protected characteristics'. For example, if a real estate agent refuses an application from an Aboriginal man to rent a house because the landlord prefers non-Aboriginal people, the real estate agent has discriminated against the Aboriginal man based on his race.

Indirect

Other times the discriminatory treatment may not be so obvious. It may occur on instances when a rule or policy might look fair because it applies to everyone, but in practice it has an unfair and unreasonable effect on a particular group of people. For example if a person in a wheelchair wants to go to a particular cinema but stairs are the only entrance to that cinema, that person is being discriminated against based on their disability. Everyone has to go up the stairs but the person in a wheelchair will not be able to do so.

WHAT IS VILIFICATION?

Vilification in Australia is against the law. It refers to when someone says or does something in public that could make other people ridicule or hate a particular group of people.

Under the *Anti-Discrimination Act 1977* (NSW) the following types of vilification are against the law:

- vilification of people with HIV/AIDS
- vilification of people who are homosexual
- vilification of people who are transgender
- vilification of racial groups.

I WANT TO MAKE A DISCRIMINATION COMPLAINT. WHERE DO I GO?

To make a complaint you cannot go directly to court or a tribunal. You have the option to make a complaint to either the Anti-Discrimination Board of NSW (ADB) or the Australian Human Rights Commission (AHRC). You cannot make a complaint to both organisations.

If you are unsure of which organisation to make the complaint to, it is best to seek legal advice.

HOW LONG DO I HAVE TO MAKE A COMPLAINT?

If you decide to make a complaint to the ADB or the AHRC, you have **12 months** from the date the discrimination occurred, to submit your complaint. However, the President of the AHRC can now terminate a complaint if the complaint was lodged more than 6 months from the date the discrimination occurred.

The complaint must be made **in writing**. The ADB and the AHRC are required to assist you in formulating a complaint.

MAKING A COMPLAINT TO THE ANTI-DISCRIMINATION BOARD

Section 87A of the *Anti-Discrimination Act 1977* (NSW) allows a person in NSW to make a complaint to the ADB alleging unlawful discrimination.

Once a complaint is made to the ADB the complaint handler will investigate the complaint by gathering information from the Applicant and the Respondent.

The complaint handler will then try to resolve the complaint through conciliation conferences. The conferences will provide an opportunity to consider possible resolutions.

Your 'settlement proposal' may include resolutions such as:

- verbal or written apology
- compensation (usually a relatively nominal amount)
- anti-discrimination/harassment training for the persons who treated you badly
- introduction of policies, procedures and training for preventing and dealing with discrimination.

If the complaint is not resolved the complaint may be referred to the NSW Civil and Administrative Tribunal (NCAT).

MAKING A COMPLAINT TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION

The Australian Human Rights Commission is a federal organisation that deals with discrimination matters across all of Australia.

Section 46P of the *Australian Human Rights Commission Act 1986* (Cth) says a person may lodge a complaint with the AHRC alleging unlawful discrimination.

Similar to the Anti-Discrimination Board, once the Commission receives your complaint, the Commission will give the respondent a copy of the complaint and the respondent will be required to provide a response to the complaint.

The Commission will let the complainant know what the respondent has said in reply to your complaint and then invite both parties attend conciliation.

If the President of the Commission is satisfied that a complaint cannot be resolved, the complaint will be terminated and you may apply to the Federal Circuit Court of Australia (FCC) or the Federal Court of Australia (FCA).

This information is current to 8 November 2018 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.