

Misuse of Drugs Act 1981

Penalties & Thresholds Related to Cannabis Offences¹

Table 1: Minor² cannabis offences and penalties

Description of offence	Offence		Penalty framework	
	Section	Section	Range	
Being in a place where cannabis is smoked	5(1)(e)	34(1)(e)	\$2,000, 2 years or both	
Occupier of premises permitting premises to be used for the manufacture, preparation, sale, supply or use of cannabis	5(1)(a)	34(1)(d)	\$3,000, 3 years or both	
Owner or lessee of premises permitting premises to be used for the use of cannabis	5(1)(b)	34(1)(d)	\$3,000, 3 years or both	
Person concerned in the management of premises for the manufacture, preparation, sale, supply or use of cannabis	5(1)(c)	34(1)(d)	\$3,000, 3 years or both	
Possession of any drug paraphernalia ³ in or on which there is a prohibited drug or prohibited plant	7B(6)	-	\$36,000, 3 years or both	
Possession of cannabis	6(2)	34(1)(e)	\$2,000, 2 years or both	
Cultivation of cannabis	7(2)	34(1)(e)	\$2,000, 2 years or both	
Contravention of order prohibiting a person from selling or supplying any thing used to hydroponically cultivate cannabis	7A(3)	34(1)(c)(ii)	\$2,000, 2 years or both	
Display of drug paraphernalia for sale in retail outlet	7B(2)	-	\$10,000	
Sale of drug paraphernalia to an adult	7B(3)	-	\$10,000	
Sale of drug paraphernalia to a child	7B(4)	-	\$24,000, 2 years or both	

Table 2: Thresholds for serious cannabis offences (ie presumption of intent to sell or supply)

Type of cannabis	Threshold amounts	
	Amount	Schedule
Leaf	100 g	Schedule 5
Plants	10 plants ⁴	Schedule 6
Cigarettes	80 cigarettes	Schedule 5
Resin ⁵	20 g	Schedule 5
Tetrahydrocannabinols	2 g	Schedule 5

Note: Offences contained in Sections 11(a) & 11(b)
See Table 4 for penalties

¹ Updated at 31 March 2013 by Greg Swensen.

² In the legislation referred to as 'simple' offences.

³ Defined as "any thing made or modified to be used" to manufacture or prepare a prohibited drug or a prohibited plant" for it to be - administered to a person, be used to smoke, be used to inhale or ingest a prohibited drug or prohibited plant or be used to produce fumes or smoke by burning or heating a prohibited drug or prohibited plant that can smoked or inhaled.

⁴ Encompasses possession or cultivation.

⁵ Hashish oil is not covered in the legislation.

Table 3: Serious cannabis offences and penalties

Description of offence	Offence	Penalty framework	
	Section	Section	Range
Possession of cannabis with intent to sell or supply	6 (1) (a)	34 (1) (a)	\$100,000, 25 years or both
Cultivation or possession of cannabis plants with intent to sell or supply	7 (1) (a)	34 (1) (a)	\$100,000, 25 years or both
Sell, supply or offer to sell or supply cannabis plants	7 (1) (b)	34 (1) (a)	\$100,000, 25 years or both
Sell, supply or offer to sell or supply any thing that is known will be used to hydroponically cultivate cannabis	7A(1)	34 (1) (c) (i)	\$20,000, 5 years or both

Table 4: Cannabis offences - place of trial – variations in penalties

Type of cannabis	Threshold	Section	Optional summary trial	Trial in higher court
Leaf	500 g	Schedule 3	\$5,000, 4 years or both	\$20,000, 10 years or both
Resin	40 g	Schedule 3	\$5,000, 4 years or both	\$20,000, 10 years or both
Plants	20 plants	Schedule 4	\$5,000, 4 years or both	\$20,000, 10 years or both
Cigarettes (containing any portion of cannabis)	400 cigarettes	Schedule 3	\$5,000, 4 years or both	\$20,000, 10 years or both

Note: Process contained in Section 9 of Misuse of Drugs Act 1981.

Table 5: Cannabis offences - thresholds for declaration as a drug trafficker

Type of cannabis	Threshold	Section
Leaf	3 kg	Schedule 7
Plants	20 plants	Schedule 8
Resin	100 g	Schedule 7

Spent convictions

As a result of the *Cannabis Law Reform Act 2010*⁶, which in October 2010 amended the *Misuse of Drugs Act 1981* to establish a system of conditional cannabis cautioning (required attendance at a cannabis intervention session), two different provisions now operate in Western Australia if a person wishes to expunge the record of their conviction for a minor cannabis offence.

Section 11(6) of the *Spent Convictions Act 1988* was amended by the October 2010 legislation with the effect if the person was convicted for a minor cannabis after 31 July 2011⁷, they could apply after three years to the Commissioner of Police for a spent conviction order.

⁶ This act also repealed the Cannabis Control Act 2003 and thereby abolished the cannabis infringement notice scheme.

⁷ Part IIIA of the Misuse of Drugs Act 1981, which sets out the cannabis intervention option, was prescribed to commence 1 August 2011.

The narrow definition of a minor cannabis offence in Section 11(6), means it applies to either a drug paraphernalia offence (ie on or in which there is a prohibited drug or prohibited plant) as per Section 7B(6) of the *Misuse of Drugs Act 1981*, or possession of cannabis leaf.⁸ Section 11(6) specifically excludes the three year option if the offence involved a cannabis plant under cultivation, cannabis resin or any other cannabis derivative.

This means that a minor cannabis conviction prior to 1 August 2011 falls under the *Spent Convictions Act 1988* general provision that a lesser conviction cannot be expunged until 10 years after the conviction. This act requires that in the intervening period between the conviction and application that the person not have committed any other offence.

A 'lesser conviction' is defined as involving a minor punishment for which a fine of \$500 or less was imposed. (See Regulation 3 of the *Spent Convictions Regulations 1992*.) The *Spent Convictions Regulations 1992* contain a prescribed form to be used when application is made to the Commissioner of Police.

It should also be noted that an offender has the option, if they were dealt at first instance in a Magistrate's Court, for a minor cannabis offence, that they may be able to apply to have a spent conviction order under the *Sentencing Act 1995*, viz:

45. Spent conviction order, making and effect of

- (1) Under section 39(2), a court sentencing an offender is not to make a spent conviction order unless —
- (a) it considers that the offender is unlikely to commit such an offence again; and
 - (b) having regard to —
 - (i) the fact that the offence is trivial; or
 - (ii) the previous good character of the offender, it considers the offender should be relieved immediately of the adverse effect that the conviction might have on the offender.

⁸ This would appear to cover the possession of up to less than 100 grams due to the definition in Schedule 5 of the *Misuse of Drugs Act 1981* of the threshold of 100 grams or greater is a serious cannabis offence.