

Non-criminal responses to drug use and personal possession in Australia

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Context

In Australia, states and territories are each responsible for the drug use and drug possession laws in their respective jurisdictions.

This Bulletin sets out to summarise the key features of the Australian states and territories' non-criminal responses to the use of illicit drugs (such as cannabis and heroin) and possession for personal use.

Non-criminal responses have been variously referred to as 'diversion', 'depenalisation' or 'decriminalisation'. We avoid these terms here as we aim to describe the features of the programs, and there is no firm national or international consensus about how these terms are defined.

There have been many changes to both legislation and police procedures since the last published summary of Australian programs (Hughes et al., 2016; Hughes, Seear, Ritter, & Mazerolle, 2019). This bulletin provides a summary of non-criminal illicit drug responses across Australia as of May 2024.

Australia has had numerous programs in place over the last 30 years and is recognised as a country with extensive non-criminal (decriminalisation, depenalisation and diversion) responses. However, as this Bulletin demonstrates, despite the plethora of programs, the laws regarding drug use and possession for personal use remain extremely limited given eligibility criteria, discretion, and the continued presence of criminal penalties for small quantities in most jurisdictions.

Findings

When an individual is caught by police possessing an illicit substance, there are several factors that determine what the response will be. This differs between jurisdictions, and takes into account:

- The type of drug. Most states/territories differ in their response between cannabis and other illicit drugs;
- Whether the response is written into the law, or whether it is through regulations and police procedures; and how much discretion is involved from law enforcement;
- The weight of the drug (“threshold quantities” or “prescribed quantities”). There are specific quantities set out in each jurisdiction that distinguish different types of possession and/or trafficking offences;
- The type of response, which can include a fine, caution, assessment, or treatment; and
- The eligibility criteria for non-criminal responses, notably the number of times someone can receive the response before being charged with a criminal offence, as well as any other eligibility criteria such as age and previous/concurrent offending.

These details are given in the next four tables.

Table 1a for cannabis and Table 1b for other illicit drugs provides a simple summary of the key features of the non-criminal responses offered in each jurisdiction to drug use and possession for personal use, including: whether a non-criminal response is available; whether it is discretionary; whether the number of times it is offered is limited; whether criminal penalties remain possible; and whether the maximum criminal penalty includes imprisonment.

Table 2 provides a summary of the non-criminal arrangements in each jurisdiction. It includes the drug types (cannabis; other illicit drugs), whether in law or police procedures, the response(s), extent of police discretion, the number of times someone is eligible to receive the non-criminal response, age limits and other known eligibility criteria.

Table 3 provides the amounts/weights of drugs which distinguish the different possession offences. These amounts (called ‘threshold quantities’) differ by drug type (we have included cannabis, MDMA, methamphetamine, heroin and cocaine). The threshold quantities determine the options available to police.

Note: The terminology differs between jurisdictions; we use the term “small quantity” to indicate the levels that decide whether someone is eligible for a lesser penalty or non-criminal response. We use “possession quantity” to indicate the quantities that are typically associated with the lowest possession charge (sometimes called “personal possession” or “possession without intent to supply”).

Table 4 outlines the maximum criminal penalties for possession of drugs for each jurisdiction. In most cases the maximum criminal penalties for possession of ‘small’ or ‘prescribed’ quantities is no different to the penalties for possession. Most jurisdictions have harsher penalties for possession of larger quantities (which in most jurisdictions indicates an intent to supply). We have not outlined those penalties here.

When someone is arrested, issued a criminal charge, or required to appear in court for drug use or possession, there are many additional diversionary options available at pre and post court, including court diversion programs (e.g., the Magistrates Early Referral Into Treatment, MERIT) and drug courts. These diversionary options may require the individual to attend treatment in lieu of a conviction or criminal charge. These court-based programs are not summarised here, but are detailed in our 2019 Monograph (Hughes et al., 2019). If they are charged and/or convicted of a criminal offence, these are the maximum criminal penalties possible, which typically include penalty units (criminal fine) or imprisonment.

Synthesis

As of May 2024, all Australian jurisdictions now have a non-criminal response available for both cannabis and other illicit drugs.

Most programs are not mandatory, meaning the apprehending officer has discretion over whether the individual is given a non-criminal response. In addition, for cannabis, five states have limits on the number of times someone can receive a non-criminal response (the three states that do not are SA, NT and the ACT). For illicit drugs other than cannabis, only one state (the ACT) has no limit on the number of times someone can receive a non-criminal response to drug use. Most programs also have several eligibility criteria limiting the reach and impact of the programs. The QLD, ACT, and SA programs appear to have the strongest protections for ensuring that a non-criminal response is provided to people detected with drugs. These three states also have fewer eligibility criteria. Most states have now removed the requirement to admit guilt, with the exception of Victoria.

The quantities eligible for a non-criminal response differ between jurisdictions. Three jurisdictions do not have "small quantities" specified; for the remaining five that do, the amounts are either 1 gram (for heroin, methamphetamine and cocaine) in NSW, Vic and ACT or 2 grams in the other jurisdictions.

The range of non-criminal responses varies: three jurisdictions have fines only (SA, NT and ACT, for cannabis); mandatory education and/or treatment sessions are the most common non-criminal responses for illicit drugs other than cannabis. Queensland and Tasmania use an escalating response scheme.

For the programs that are not in the legislation, the information about the programs such as the eligibility criteria are difficult to access, hard to interpret, and frequent changes to the policies has meant a lack of clarity and transparency about the programs. In many jurisdictions, the police manual or procedure that outlines the details and eligibility criteria of the non-criminal response was not publicly available.

We do not know the current reach of the non-criminal responses. Data from 2010/10 to 2014/15 showed approximately 55-60% of the people apprehended for drug use and possession (without any other offences) receive a non-criminal response (including pre-court diversion programs), with the remaining proceeding to court. Of those that proceeded to court, about 95% are found guilty. The maximum criminal penalties in many cases still involve imprisonment, though in practice, very few people with a principal charge of drug use or possession for personal use receive a custodial sentence (less than 3% of defendants from 2010/11 to 2014/15) (Hughes et al., 2019).

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Table 1: Summary of key features of the non-criminal responses for drug use and possession for personal use, May 2024

Table 1a: Cannabis

S/T	Cannabis				
	Non-criminal response available?	Discretionary? ¹	Limited number of times eligible for non-criminal response?	Criminal penalty possible for small quantities? ²	Maximum criminal penalty includes imprisonment?
NSW	✓	✓	✓	✓	✓
Vic	✓	✓	✓	✓	✗ ³
QLD	✓	✗	✓	✓	✓
SA	✓	✗	✗	✓	✗ ³
WA	✓	✓	✓	✓	✓
Tas	✓	✗	✓	✓	✓
NT	✓	✓	✗	✓	✓ ⁴
ACT	✓	✗	✗	✗	✗

Table 1b: Other illicit drugs

S/T	Other Illicit drugs				
	Non-criminal response available?	Discretionary? ¹	Limited number of times eligible for non-criminal response?	Criminal penalty possible for small quantities? ²	Maximum criminal penalty includes imprisonment?
NSW	✓	✓	✓	✓	✓
Vic	✓	✓	✓	✓	✓
QLD	✓	✗	✓	✓	✓
SA	✓	✗	✓	✓	✓
WA	✓	✓	✓	✓	✓
Tas	✓	✓	✓	✓	✓
NT	✓	✓	✓	✓	✓
ACT	✓	✓	✗	✓	✗ ⁴

Notes:

1. All programs require the apprehending officer to exercise discretion about whether the possession was intended for personal use. Whilst this technically involves a level of discretion from the officer, we have not considered this to be a discretionary model if the diversion is otherwise mandatory. See Appendix 2 for further details on the extent of discretion for each non-criminal response.
2. This column indicates whether possession of small quantities remains an offence associated with criminal penalties in the legislation.
3. The absence of imprisonment in Vic and SA applies only to small quantities.
4. Imprisonment possible only if possession in a public space.

Table 2: Summary of the non-criminal responses available for drug use and possession for personal use in each state and territory, May 2024 ¹

S/T	Drug type	Policy type	Response	Discretion ²	Eligible number of diversions	Age limits ³	Other known eligibility criteria ⁴
NSW	Cannabis	Police procedure	1 st : Caution 2 nd : Caution and telephone health intervention ⁵	Police discretion	Two	18+	<ul style="list-style-type: none"> No concurrent offences related to the possession (e.g., theft or drug driving) No prior serious drug convictions (e.g., trafficking)
	Other illicit drugs	Police procedure	Fine OR telephone health intervention ⁶	Police discretion	Two	18+	<ul style="list-style-type: none"> Must not possess more than one drug type (excl. cannabis) No prior serious drug convictions No concurrent drug driving offences
Vic	Cannabis	Police procedure	Caution and optional education program	Police discretion	Two	17+	<ul style="list-style-type: none"> Must admit to the offence
	Other illicit drugs	Police procedure	Health assessment and treatment intervention	Police discretion	Two (incl. cannabis)	10+	<ul style="list-style-type: none"> Must admit to the offence
Qld	Cannabis + other illicit drugs (no distinction)	Law	1 st : Warning 2 nd /3 rd : Drug assessment and education session	Mandatory	Three	18+	<ul style="list-style-type: none"> No concurrent indictable offences related to the possession (e.g., trafficking) No previous imprisonment for serious drug offences
SA ⁷	Cannabis	Law	Expiation notice (fine) ⁸	Mandatory	Unlimited	18+	<ul style="list-style-type: none"> None
	Other illicit drugs	Law	Health assessment	Mandatory	Two per 4-year period	18+	<ul style="list-style-type: none"> No concurrent serious drug offences
WA	Cannabis	Law	Education session	Police discretion	One (adults) Two (young people)	14+	<ul style="list-style-type: none"> No previous minor cannabis conviction as an adult No more than two previous cannabis convictions for young people No previous serious violent or sexual convictions or serious drug convictions
	Other illicit drugs	Police procedure	Three treatment sessions	Police discretion	One	18+	<ul style="list-style-type: none"> Must complete treatment sessions within a 42-day period No prior serious drug convictions No previous serious violent or sexual offences⁹
Tas	Cannabis	Police procedure	1 st : Caution 2 nd : Brief intervention	Police discretion	Three in 10-year period	18+	<ul style="list-style-type: none"> No certain types of concurrent offences including dangerous driving, violent offences, sexual offences, and serious drug offences

S/T	Drug type	Policy type	Response	Discretion ²	Eligible number of diversions	Age limits ³	Other known eligibility criteria ⁴
			3 rd : Assessment and treatment				<ul style="list-style-type: none"> No maximum quantities eligible so long as officer is satisfied the possession was intended for personal use.
	Other illicit drugs	Police procedure	Assessment and treatment	Police discretion	Three in 10-year period	18+	<ul style="list-style-type: none"> No certain types of concurrent offences including dangerous driving, violent offences, sexual offences, and serious drug offences No maximum quantities eligible so long as officer is satisfied the possession was intended for personal use.
NT	Cannabis	Law	Fine	Mandatory	Unlimited	17+	Unknown
	Other illicit drugs	Unknown	Referral to health service	Unknown	Unknown	Unknown	Unknown
ACT	Cannabis	Law	No penalty (adults) Fine (young people)	Mandatory	Unlimited	No penalty: 18+ Fine: <18	<ul style="list-style-type: none"> None
	Other illicit drugs	Law	Fine OR health education session	Police discretion	Unlimited	None	<ul style="list-style-type: none"> No concurrent offences

Notes:

1. This table refers only to possession at the lowest level, i.e., not more than the 'small' or 'prescribed' quantities in each state or territory (See Table 3).
2. For all programs, eligibility criteria includes that the apprehending police officer must be satisfied/convinced the possession of the drug was intended for personal use. Whilst this technically involves a level of discretion from the officer, we have not considered this to be a discretionary model if the diversion is otherwise mandatory.
3. Other non-drug specific programs are available in most jurisdictions for young people. We have not detailed these here, but in most cases will involve a more lenient response such as a warning, caution, or other non-criminal response particularly for a first offence.
4. The eligibility criteria listed here are limited to what is publicly available. Policing manuals may contain additional eligibility criteria and/or guidance that are not included here. All jurisdictions include an eligibility criteria that requires the officer to reasonably believe or assume the possession was intended only for personal use.
5. For cannabis in NSW, on the first apprehension, police will provide the contact information for the Cannabis Caution Line and encourage the individual to make contact. On the second apprehension the individual will be required to contact the Cannabis Caution Line within 14-days. If not completed a charge may be issued.
6. For other illicit drugs in NSW, individuals will have the option to pay the \$400 fine OR they can participate in a 1-hour phone consultation with a nominated health professional and will then not be required to pay the fine.
7. For SA, quantities below the trafficable quantities for drugs other than cannabis are eligible for the non-criminal response.
8. The SA Cannabis Expiation Notice requires the individual to pay a fine (between \$250 and \$400 depending on the quantity) within 28-days of the offence.
9. WA eligibility criteria is up to date as of 2019, which was the most recent resource available online.

Table 3: Summary of the threshold quantities for possession of five illicit drugs, by state and territory, May 2024

S/T	Threshold quantity	Cannabis	MDMA	Methamphet	Heroin	Cocaine
NSW ¹	Small quantities	<30g	<0.25g ⁶	<1g	<1g	<1g
	Possession without intent to supply	<300g	<0.75g	<3g	<3g	<3g
Vic ¹	Small quantities	≤50g	≤0.75g	≤0.75g	≤1g	≤1g
	Possession without intent to supply	≤250g	≤3g	≤3g	≤3g	≤3g
Qld ^{1,2}	Prescribed quantities	≤50g	≤1g ⁷	≤1g	≤1g	≤1g
	Possession	<500g	<2g	<2g	<2g	<2g
SA ^{1,3}	Small quantities	≤100g	-	-	-	-
	Possession without intent to supply	<250g	<2g	<2g	<2g	<2g
WA ⁴	Small quantities	≤10g	≤1g	≤0.5g	≤0.5g	≤0.5g
	Possession without intent to supply	<100g	<4g	<2g	<2g	<2g
Tas ^{1,5}	Small quantities	-	-	-	-	-
	Possession without intent to supply	<1kg	<10g	<25g	<25g	<25g
NT ^{1,5}	Small quantities	-	-	-	-	-
	Possession without intent to supply	<50g	<0.5g	<2g	<2g	<2g
ACT ¹	Small quantities	≤50g	≤1.5g	≤1.5g	≤1g	≤1.5g
	Possession without intent to supply	<300g	<10g	<6g	<5g	<6g
Cwlth ⁵	Small quantities	-	-	-	-	-
	Possession without intent to supply	<250g	<0.5g	<2g	<2g	<2g

Notes:

1. NSW, Vic, Qld, SA, NT and ACT have an additional higher set of threshold quantities which are associated with more severe penalties (sometimes called “commercial quantities” or “aggravated possession quantities”).
2. Queensland legislation operates slightly differently to other jurisdictions. There are no ‘deemed supply’ laws, meaning quantities do not indicate an intent to traffic. Instead the quantities indicate more severe penalties, sometimes called ‘aggravated possession’. Queensland uses the term ‘prescribed quantities’ for the quantities that are eligible for the non-criminal response. (See Appendix 2 for further details).
3. South Australia has small quantities and possession quantities for cannabis (fine and diversion respectively), but only possession quantities for eligibility for a diversion response for all other drugs. (see Appendix 2 for further details).
4. WA defines the ‘small quantities’ for drugs other than cannabis outside of legislation i.e., police guidance. See Appendix 2 for details.
5. Tas, NT and Cwlth do not define ‘small quantities’ in the legislation or other publicly available resource that we could locate. The Commonwealth does not have quantities for “small” as its jurisdiction is concerned with drug supply, not with drug use per se. See Appendix 2 for more details on this issue.
6. Or <0.75g if in tablet/capsule form.
7. Or 4 tablets/capsules.

Table 4: Maximum criminal penalties for drug possession and trafficking, by state and territory, May 2024 (See Note 1)

S/T	Cannabis		Other illicit drugs	
	Small quantity (when non-criminal response not offered)	Possession without intent to supply	Small quantity (when non-criminal response not offered)	Possession without intent to supply
NSW	2-years imprisonment and/or 20 PU	2-years imprisonment and/or 20 PU	2-years imprisonment and/or 20 PU	2-years imprisonment and/or 20 PU
Vic ²	5 PU	1-year imprisonment and/or 30 penalty units	1-year imprisonment and/or 30 PU	1-year imprisonment and/or 30 PU
QLD ³	15-years imprisonment	15-years imprisonment	15-years imprisonment	15-years imprisonment
SA	\$2000 fine	\$2000 fine	2-years imprisonment and/or \$2000 fine	2-years imprisonment and/or \$2000 fine
WA	2-years imprisonment and/or \$2000 fine	2-years imprisonment and/or \$2000 fine	2-years imprisonment and/or \$2000 fine	2-years imprisonment and/or \$2000 fine
Tas	2-years imprisonment and/or 50 PU	2-years imprisonment and/or 50 PU	2-years imprisonment and/or 50 PU	2-years imprisonment and/or 50 PU
NT	Private property: 50 PU Public: 2-years imprisonment or 200 penalty units	Private property: 50 PU Public: 2-years imprisonment or 200 penalty units	Private property: 2-years imprisonment or 200 PU Public: 5-years imprisonment or 500 PU	Private property: 2-years imprisonment or 200 PU Public: 5-years imprisonment or 500 PU
ACT ²	No penalty	6-months imprisonment and/or 50 PU	1 PU	6-months imprisonment and/or 50 PU
Cwlth	2-years imprisonment and/or 400 PU	2-years imprisonment and/or 400 PU	2-years imprisonment and/or 400 PU	2-years imprisonment and/or 400 PU

PU = penalty units

Notes:

1. While the table provides the maximum criminal penalties for possession, there are many additional diversionary options available at pre and post court, including court diversion programs and drug courts. These diversionary options may require the individual to attend treatment or pay a fine in lieu of a conviction or criminal charge. In practice, receiving the maximum criminal penalty for drug use or possession when no other offences are recorded is unlikely.
2. ACT and Vic have reduced maximum criminal penalties for smaller quantities of drugs, whereas other jurisdictions have maintained the maximum criminal penalties for these smaller quantities when someone is not eligible for a non-criminal response (see Appendices for further details).
3. Queensland legislation does not use the terms ‘small quantities’ and does not use deemed supply laws. They use ‘prescribed quantities’ to refer to the amounts eligible for the non-criminal response.

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Appendix 1: Method

We began by reviewing previous work (ref monograph, bulletin/briefing note) to check existing diversion programs and drug use/possession laws in each jurisdiction.

The first task was to understand the legislative response to drug use and possession in each jurisdiction. We began by checking each jurisdiction's respective drug legislation and associated regulation. We recorded the threshold quantities for five common drugs: cannabis, MDMA, methamphetamine, heroin, and cocaine. We excluded larger scale threshold quantities above the trafficable quantities, such as commercial quantities, as these are significantly larger (e.g., 25kg of cannabis) and therefore not relevant to possession for personal use. We also recorded the maximum criminal penalties for drug use, and the different possession offences, including possession of paraphernalia and possession with intent to traffic. When in the legislation, we recorded any alternative responses for drug use and possession, such as expiation notices or police diversion to health services.

Because some states and territories have non-criminal responses (i.e., police diversion programs) that are not in the legislation, we used secondary sources to identify what programs/responses were offered in each state and territory (E.g., Hughes et al., 2019; NSW Government, 2024). We also checked government and police websites, explanatory bills, legal websites, and police manuals/policy documents when relevant. A table of the legislation used for each jurisdiction is provided in Appendix 3. In many states/territories, the police manual (or specific policy document for the drug diversion programs) are not publicly available or are difficult to access. In these cases we relied on secondary sources (such as legal websites) and recorded all the known eligibility criteria that were publicly available. There may be additional eligibility criteria that are not included in this bulletin.

There were some details/elements we excluded from this bulletin as it was beyond scope. This included:

- Maximum criminal penalties for higher level trafficking offences such as commercial trafficking;
- Cultivation and manufacture, noting some states and territories have decriminalised cultivation of a small number of cannabis plants;
- Aggravated penalties, such as supplying to someone under 18 or possession near a school;
- Court-based diversion programs such as the Magistrates Early Referral Into Treatment (MERIT). See Hughes et al. (2019) for details of court diversion programs;
- Location based exemptions such as medically supervised injecting centres;
- Non-drug specific diversion programs such as youth and Aboriginal programs;
- Details of indictable and summary offences; and
- Any policies that are not available/easily accessible in the public domain

Appendix 2: Summary of each state and territory

New South Wales

Cannabis Cautioning Scheme

In 2000, in response to the 1999 NSW drug summit, the 'Cannabis Cautioning Scheme (CCS)' was implemented in NSW. In 2024 the Early Drug Diversion Initiative (EDDI) was implemented for illicit drugs other than cannabis. These programs are detailed below.

NSW police operate the CCS which allows police to provide a formal cautioning to adults apprehended for 'minor' cannabis offences (NSW Police Force, 2024). Minor cannabis offences include possession of a 'small' quantity (30g) of cannabis, self-administration (use), and possession of paraphernalia. There are several eligibility criteria for the scheme currently, which is outlined in the 'Cannabis Cautioning Scheme Guidelines for Police' (NSW Police Force, 2024). The guideline states that 'police are encouraged to exercise discretion and issue a caution' for minor cannabis offences (NSW Police Force, 2024). Individuals apprehended will be given contact information for the 'Cannabis Caution Line' and encouraged to access a telehealth education session with an alcohol or other drug professional. Contacting the health service is not mandatory for the caution. An individual apprehended for a second caution will again be encouraged to contact the information line and may be provided with an assessment and intervention depending on their individual circumstances. Any subsequent apprehension for a minor cannabis offence will involve a referral to court.

The eligibility criteria for the CCS are:

- Officer must be satisfied the possession was intended for personal use;
- No more than one previous cannabis caution – a third or subsequent apprehension will involve a criminal charge and referral to court;
- Individual must be aged 18 or over (other diversion programs are available for those under 18);
- No concurrent offences involved; and
- No prior serious drug convictions (e.g., supply or manufacture), unless 'spent' (usually 10 years after conviction)

Previously the eligibility criteria also included a requirement to admit guilt and no previous violent or sexual offences. These criteria have since been removed.

Early Drug Diversion Initiative

NSW have introduced a fine-based diversion scheme for possession of small quantities of other illicit drugs in 2024 (previously trialled under some circumstances such as music festivals) called the Early Drug Diversion Initiative (EDDI) (NSW Government, 2024). This scheme will allow police to issue a \$400 Criminal Infringement Notice (CIN) to adults caught using or possessing small quantities of illicit drugs instead of a criminal charge. The individual can choose to attend a telehealth consultation in replacement of the CIN, and the fine will be waived if the individual attends the session. A maximum of two diversions can be issued before a criminal charge and referral to court.

The exact eligibility criteria for the EDDI are not publicly available (the policing procedure they are held in is private). The known eligibility criteria are:

- Police officer must be reasonably convinced the possession was intended for personal use;
- No more than one previous diversion;
- Possession of no more than one type of drug (other than cannabis); and
- No previous serious drug convictions (e.g., supply or manufacture)

Both the CCS and the EDDI are not currently in the NSW legislation and are instead operated and managed by NSW police. The small quantities eligible for both schemes are defined in the NSW Drugs Misuse and Trafficking Act 1985 and shown in Table A2 below.

Legislation and Criminal Penalties

The NSW Drugs Misuse and Trafficking Act 1985 prohibits the use and possession of all illicit drugs, including cannabis. Maximum penalties for possession of both cannabis and other illicit drugs involves imprisonment and a large fine (see Table A1). These penalties and the associated threshold quantities are shown in the tables below.

Table A1. Maximum criminal penalties for drug use and possession, NSW

Offence type	Maximum criminal penalties	
	Cannabis	Other illicit drugs
Self-administration (use)	2-years imprisonment and/or 20 penalty units	2-years imprisonment and/or 20 penalty units
Paraphernalia	2-years imprisonment and/or 20 penalty units	2-years imprisonment and/or 20 penalty units
Possession ¹ (below trafficable quantity)	2-years imprisonment and/or 20 penalty units	2-years imprisonment and/or 20 penalty units
Possession (at or above trafficable quantity)	10-years imprisonment or 2,000 penalty units	15-years imprisonment and/or 2,000 penalty units
Note:		
1. Maximum criminal penalties do not differ for small quantities in NSW.		
Source: Drug Misuse and Trafficking Act 1985; Criminal Procedures Regulation 2017		

Table A2. Threshold quantities for possession of illicit drugs, NSW

Drug type	Small quantity	Trafficable quantity
Cannabis	30g	300g
MDMA	0.25g ¹	0.75g
Methamph	1g	3g
Heroin	1g	3g
Cocaine	1g	3g
Notes:		
1. 0.75g if in tablet form.		
Source: Drug Misuse and Trafficking Act 1985		

Victoria

Cannabis Cautioning Program

In Victoria, the Cannabis Cautioning Program (CCP) has been in place since 2000¹ (Payne, Kwiatkowski, & Wundersitz, 2008; Vic Health, 2023; Victoria Legal Aid, 2023). If apprehended for use or possession of up to small quantities of cannabis, police may issue a caution in place of a criminal charge. The caution involves a referral to a voluntary cannabis education program available in 15 locations across Victoria. The known eligibility criteria include:

- Police officer must reasonably assume the possession was intended for personal use;
- Individual must be aged 17 or over (other diversion programs available for young people); and
- Individual must possess only a 'small' quantity of cannabis (50g).

¹ Both Victorian police diversion programs are not currently in the Victorian legislation and are instead defined in the Victoria Police Manual, which is not easily accessible. This manual is only available in a physical disc form and involves a cost to access. We have summarised the eligibility criteria using other publicly available resources but cannot confirm the exact requirements of either of the programs.

Drug Diversion Program

The Drug Diversion Program (DDP) operates in Victoria for drugs other than cannabis (Payne et al., 2008; Vic Health, 2023; Victoria Legal Aid, 2023). If an individual is apprehended for a minor drug offence (use or possession below small quantities), the police officer may issue a caution if the individual attends a clinical drug assessment and a single session of treatment. The known eligibility criteria of the DDP are:

- The police officer must reasonably assume the possession was intended for personal use;
- The individual is aged 10 or over;
- The individual must admit to the offence;
- The individual has not received more than one previous drug caution (including a cannabis caution); and
- The quantity possessed is at or below the small quantity of the relevant substance (Table A4).

Both the cannabis and other illicit drug program are detailed in the Victoria Police Manual, but not in the legislation.

Legislation and Criminal Penalties

The Victorian Drugs, Poisons and Controlled Substances Act 1981 prohibits the use and possession of all illicit drugs, with varying penalties depending on the type of drug and quantity. The maximum penalties and associated threshold quantities are shown in the tables below.

Table A3. Maximum criminal penalties for drug use and possession of illicit drugs, Victoria

Offence type	Maximum penalty	
	Cannabis	Other illicit drugs
Self-administration (use)	5 penalty units	1-year imprisonment and/or 30 penalty units
Paraphernalia	No penalty	No penalty
Possession (at or below the small quantity)	5 penalty units	1 year imprisonment and/or 30 penalty units
Possession (at or below the trafficable quantity)	1-year imprisonment and/or 30 penalty units	1-year imprisonment and/or 30 penalty units
Possession (above the trafficable quantity)	5-year imprisonment ¹ and/or 400 penalty units	5-year imprisonment ¹ and/or 400 penalty units.
Notes:		
1. 15-years imprisonment if additional evidence of trafficking.		
Source: Drugs, Poisons and Controlled Substances Act 1981		

Table A4. Threshold quantities for possession of illicit drugs, Victoria

Drug type	Small quantity ¹	Trafficable quantity ²
Cannabis	50g	250g ³
MDMA	0.75g	3g
Methamph	0.75g	3g
Heroin	1g	3g
Cocaine	1g	3g
Notes:		
1. Schedule 11, Part 2, Column 4		
2. Schedule 11, Part 2, Column 3		
3. Or 10 plants.		
Source: Drugs, Poisons and Controlled Substances Act 1981		

Queensland

Police Drug Diversion Program

In 2024, Queensland amended the Police Powers and Responsibilities Act to expand the existing Police Drug Diversion Program (PDDP). The program was previously limited to cannabis only but has been updated to include other illicit drugs, as well as removing some eligibility criteria² to expand its use (Queensland Police, 2024).

The PDDP involves three 'tiers' for people apprehended for minor drug offences (including possession of small quantities and paraphernalia). The 1st apprehension will involve a warning and referral to a voluntary alcohol and other drug service. The 2nd and 3rd apprehension will involve the opportunity to partake in a mandatory assessment and education session. If the individual fails to attend the mandatory assessment, a criminal charge may be issued. The 4th and subsequent apprehensions will involve a referral to court. The eligibility criteria (as published April 2024) are:

- Officer must reasonably believe that the possession was intended for personal use;
- No more than two previous police drug diversions;
- Individual is aged 18 or over³;
- Possession must be at or below the prescribed quantities (Table A6);
- No concurrent indictable offences related to the drug possession (e.g., supply or manufacture); and
- No previous imprisonment for certain offences (e.g., supply, trafficking or manufacture)

If the eligibility criteria are met, the apprehending officer must issue the diversion. However, there is discretion involved in whether the possession is believed to be intended for personal use.

Legislation and Criminal Penalties

The Drugs Misuse Act outlines the maximum criminal penalties for possession of drugs for personal use in Queensland. Self-administration (or use) of drugs is not a criminal offence in Queensland, however possession of drug paraphernalia is. Possession of all quantities of drugs (including below the prescribed quantities) is a criminal offence and there remains a possibility of a criminal charge and imprisonment.

² Previously in Queensland there were other eligibility criteria including the requirement for an admission of guilt and no previous sexual or violent offending. These have been removed to expand the reach of the program, though individuals with a history of violent or sexual offending will be required to attend a telehealth session rather than in person.

³ The PDDP is available for individuals under 18 if they meet the eligibility criteria, however the Youth Justice Act 1992 is the primary act that governs how children are dealt with and there are other diversionary actions police can take under that Act.

Table A5. Maximum criminal penalties for use and possession of illicit drugs, Queensland

Offence type	Maximum penalty
Self-administration (use)	Not an offence.
Paraphernalia	2-years imprisonment
Possession ¹ (below the exceeding schedule quantity)	15-years imprisonment
Aggravated possession (at or above the exceeding schedule quantity)	20-years imprisonment
Trafficking offence ³	Life imprisonment ¹
Notes:	
1. Maximum criminal penalties do not differ for the prescribed quantities.	
2. From May 2024	
3. Queensland does not use deemed supply laws. Trafficking is not determined by quantity and can only be charged if there is evidence of supply.	
Source: <i>Drugs Misuse Act 1986; Police Powers and Responsibilities Act 2000; Departmental Brief on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023</i>	

Table A6. Threshold quantities for possession of illicit drugs, Queensland

Drug type	Prescribed quantity for a minor drugs offence	Aggravated possession quantities
Cannabis	50g	500g
MDMA	1g ¹	2g
Methamph	1g	2g
Heroin	1g	2g
Cocaine	1g	2g
1. Or 4 tablets/capsules		
Source: <i>Drugs Misuse Regulation 1987; Departmental Brief on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023</i>		

South Australia

Cannabis Expiation Notices

South Australia was the first jurisdiction to remove criminal penalties for some minor cannabis offences in 1987. Since this, the program has been further developed and updated in response to issues with the scheme. Currently South Australia offer a Cannabis Expiation Notice (CEN) program which involves a non-criminal fine in replacement of a criminal charge for 'simple' cannabis offences (use, possession of small quantities of cannabis, paraphernalia, or cultivation no more than one cannabis plants). The procedure for the CEN is outlined in the Controlled Substances Act 1984. The amount of the fine is dependent on the quantity of cannabis possessed, and currently ranges from \$250-400. Cannabis Expiation Notices are mandatory (officers cannot issue a criminal charge) as long as the eligibility criteria are met. The current eligibility criteria are:

- Individual must be aged 18 or over
- Possession must be below the threshold quantities (Table A8)

An admission of guilt is no longer required and options are now available for non-payment of fines. Police must issue a CEN before issuing a criminal charge.

Police Drug Diversion Initiative

Similar to the cannabis program, the Police Drug Diversion Initiative (PDDI) in South Australia is detailed in the Controlled Substances Act 1984 and is mandatory, meaning a charge of possession of drugs (for personal use) cannot proceed to court if the eligibility criteria for the PDDI are met (South Australia Health, 2022). The individual must be offered the opportunity to attend a health assessment before a criminal charge/notice to appear in court is issued. If the individual does not complete the assessment, a charge may be issued. The PDDI is detailed in the South Australian legislation. The eligibility criteria for the PDDI are:

- The apprehending officer must reasonably believe the possession was intended for personal use;
- The individual is aged 18 or over;
- The possession was below the relevant quantities;
- No concurrent serious drug offences; and
- No more than one previous diversion in the past 4-years.

Legislation and Criminal Penalties

The South Australia Controlled Substances Act 1984 outlines the maximum penalties for drug offences. The maximum penalties for the relevant offences and their associated threshold quantities are shown in the table below.

Table A7. Penalties for drug use and possession, South Australia

Offence type	Maximum criminal penalty	
	Cannabis	Other illicit drugs
Self-administration (use)	\$2,000 fine	2-years imprisonment and/or \$2,000
Paraphernalia	\$2,000 fine	2-years imprisonment and/or \$10,000
Possession ¹ (under the trafficable quantity)	\$2,000 fine	2-years imprisonment and/or \$2,000
Trafficable quantity (at or above the trafficable quantity)	10-years imprisonment and/or \$50,000	10-years imprisonment and/or \$50,000
Notes:		
1. Maximum criminal penalties do not differ for possession of the prescribed quantities.		
Source: Controlled Substances Act 1984		

Table A8. Threshold quantities for possession of illicit drugs, South Australia

Drug type	Prescribed quantity	Trafficable quantity
Cannabis	100g	250g
MDMA	N/A	2g
Methamph	N/A	2g
Heroin	N/A	2g
Cocaine	N/A	2g
Source: Controlled Substances Act 1984		

Western Australia

Cannabis Intervention Requirement

The Cannabis Intervention Requirement (CIR) is available in WA for people caught possessing less than 10g of cannabis (Table A10) (Western Australia Mental Health Commission). If someone is eligible, they will be required to complete a 90-minute cannabis intervention session, or a criminal charge may be issued. The known eligibility criteria are:

- Police officer must reasonably assume the possession was intended for personal use;
- The individual has not received a prior minor cannabis conviction or CIR as an adult;
- If under 18, the individual must not have received more than one previous minor cannabis convictions/CIRs;
- No previous serious violent/sexual convictions or serious drug offences

Other drug intervention requirement

The Other Drug Intervention Requirement is the program available for drugs other than cannabis in WA (Western Australia Mental Health Commission). Individuals must complete three 90-minute health/treatment sessions or a criminal charge may be issued. The known eligibility criteria are:

- Police officer must reasonably assume the possession was intended for personal use;
- The quantity possessed must be below the small quantities (Western Australia Police Force, 2019); and
- No previous drug intervention requirement (only eligible once).

Legislation and Criminal Penalties

The Misuse of Drugs Act 1981 outlines the criminal penalties associated with the different drug offences. Both use and possession of illicit drugs (including cannabis) are associated with maximum criminal penalties which include imprisonment in WA. The penalties and the threshold quantities are shown in the tables below.

Table A9. Maximum criminal penalties for drug use and possession, Western Australia

Offence type	Maximum criminal penalty	
	Cannabis	Other illicit drugs
Self-administration (use)	2-years imprisonment and/or \$2,000	2-years imprisonment and/or \$2,000
Paraphernalia	3-years imprisonment and/or \$36,000	3-years imprisonment and/or \$36,000
Possession (below the trafficable quantity)	2-years imprisonment and/or \$2,000	2-years imprisonment and/or \$2,000
Possession (at or above trafficable quantity)	5-years imprisonment and/or \$20,000 ¹	5-years imprisonment and/or \$20,000
Note:		
1. Summary conviction: 3-years imprisonment and/or \$12,000		
Source: Misuse of Drugs Act 1981		

Table A10. Threshold quantities for possession of illicit drugs, Western Australia

Drug type	Small quantity ¹	Trafficable quantity
Cannabis	10g	100g
MDMA	1g ¹	4g
Methamph	0.5g ¹	2g
Heroin	0.5g ¹	2g
Cocaine	0.5g ¹	2g
Notes:		
1. Quantities eligible for diversion 'small quantities' are set at ¼ of trafficable quantity (as of 2019), but not defined in the legislation.		
Source: Misuse of Drugs Act 1981; Misuse of Drugs Regulation 1982		

Tasmania

Initial Drug Diversion Initiative

Tasmania have a single program, called the Initial Drug Diversion Initiative (IDDI) that operates for both cannabis and other drugs. The program is discretionary, and there is little available information on the eligibility criteria (HolyOake, 2021).

The IDDI does not have maximum eligible quantities; meaning police officers can choose to divert an individual regardless of the quantity possessed, so long as the officer reasonably believes the possession was intended for personal use (Community Legal Centres Tasmania, 2023). However, The extent of the use of the Tasmanian diversion program has been questioned in recent years (Tasmanian Council of Social Service Inc., 2023).

There are multiple responses depending on the type of drug and number of times diverted:

- For a first apprehension, for cannabis only, a caution may be given
- For a second cannabis apprehension, a referral to a health service for a brief intervention will be issued
- For a third cannabis apprehension, or apprehension of any other drug, a referral to assessment and treatment will be issued.

If the individual completes the health intervention as required, no criminal charge will be issued.

The known eligibility criteria are:

- Officer must reasonably believe the possession was intended for personal use;
- Available for young people and adults;
- The individual has little or no past criminal justice system contact; and
- The individual may be required to attend counselling/health intervention.

Legislation and Criminal Penalties

The Misuse of Drugs Act 2001 outlines the criminal penalties associated with the different drug offences. Both use and possession of illicit drugs (including cannabis) are associated with maximum criminal penalties which include imprisonment in Tasmania. The penalties and the threshold quantities are shown in the tables below.

Table A11. Penalties for drug use and possession, Tasmania

Offence type	Maximum penalty
Self-administration (use)	2-years imprisonment and/or 50 penalty units
Paraphernalia	50 penalty units
Possession (at or below the trafficable quantity)	2-years imprisonment and/or 50 penalty units
Possession (at or above trafficable quantity)	4-years imprisonment and/or 100 penalty units
Notes:	
1. If charged as an indictable offence, higher penalties may apply.	
Source: <i>Misuse of Drugs Act 2001 (Tas)</i>	

Table A12. Threshold quantities for possession of illicit drugs, Tasmania

Drug type	Small quantity	Trafficable quantity
Cannabis	N/A	1kg
MDMA	N/A	10g
Methamph	N/A	25g ¹
Heroin	N/A	25g ¹
Cocaine	N/A	25g ¹
Notes:		
N/A: not applicable. Small quantities are not used in Tasmania.		
1. Or 20 packages.		
Source: <i>Misuse of Drugs Act 2001 (Tas)</i>		

Northern Territory

Infringement Notices

The Northern Territory have an infringement notice system for possession of small quantities (50g) of cannabis. If caught possessing less than a small quantity, police may issue a fine in replacement of a criminal charge. If the fine is not paid within 28 days, they may issue a notice to appear in court. Additional eligibility criteria for the infringement notice were not available.

Illicit Drug PreCourt Diversion Program

The Northern Territory also have a diversion program available for other illicit drugs, called the Illicit Drug PreCourt Diversion Program (IDPCDP). This program allows police to refer an individual caught in possession of illicit drugs to health, education or treatment rather than issuing a criminal charge. The known eligibility criteria (as of 2019) are:

- No previous diversion;
- Must admit to the offence;
- Ages 17 and over; and
- No prior convictions for violent or drug offences (Hughes et al., 2019)

We could not locate any further information about the Northern Territory illicit drug diversion program.

Legislation and Criminal Penalties

The Drugs of Dependence Act 1990 outlines the criminal penalties associated with the different drug offences. Both use and possession of illicit drugs are associated with maximum criminal penalties which include imprisonment in the Northern Territory, the exception being for possession of cannabis (below the trafficking quantities) has a

maximum criminal penalty of 50 penalty units. The penalties and the threshold quantities are shown in the tables below.

Table A13. Maximum criminal penalties for drug use and possession, Northern Territory

Offence type	Maximum penalty	
	Cannabis	Other illicit drugs
Self-administration (use)	6-months imprisonment or 50 penalty units	6-months imprisonment or 50 penalty units
Paraphernalia	6-months imprisonment or 50 penalty units	6-months imprisonment or 50 penalty units
Possession (below the trafficable quantity)	50 penalty units	2-years imprisonment or 200 penalty units
Possession in public (below the trafficable quantity)	2-years imprisonment or 200 penalty units	5-years imprisonment or 500 penalty units
Possession (at or above trafficable quantity)	5-years imprisonment or 500 penalty units	7-years imprisonment
Possession in public (at or above trafficable quantity)	7-years imprisonment	14-years imprisonment

Source: Misuse of Drugs Act 1990

Table A14. Threshold quantities for possession of illicit drugs, Northern Territory

Drug type	Small quantity	Trafficable quantity
Cannabis	N/A	50g
MDMA	N/A	0.5g
Methamph	N/A	2g
Heroin	N/A	2g
Cocaine	N/A	2g

Note:
N/A: not applicable. Small quantities were not identified in the legislation or elsewhere.

Source: Misuse of Drugs Act 1990

Australian Capital Territory

Cannabis

In 2020 the ACT government removed penalties for the possession of small quantities of cannabis for adults. This means possession of below 50g of cannabis is no longer considered a criminal offence in the ACT. For those aged under 18, the maximum penalty is a small fine.

Other illicit drugs

For other illicit drugs, in 2023, the ACT Government introduced legislation to change the penalties for possession of other illicit drugs (ACT Government, 2024). The legislation reduced the maximum criminal penalties (Table A15) for possession, and introduced a non-criminal response for possession below the small quantities (Table A16).

The non-criminal response introduced allows for police to divert the individual to a health intervention instead of issuing a criminal charge. The individual may opt to pay a \$100 fine instead of receiving the health intervention. If both those options are refused, the officer may issue a criminal charge.

The ACT Government state the non-criminal response (health intervention or fine) will be offered in most cases, but generally not if there are other offences involved at the time of the drug possession. In these cases a criminal charge is likely.

Legislation and Criminal Penalties

The Drugs of Dependence Act 1989 outlines the criminal penalties associated with the different drug offences for the ACT. The ACT has removed criminal penalties for adult possession of cannabis in small quantities. For other illicit drugs the maximum criminal penalties have been reduced to 1 penalty unit. The penalties and the threshold quantities are shown in the tables below.

Table A15. Maximum criminal penalties for drug possession, Australian Capital Territory

Offence type	Maximum penalty	
	Cannabis	Other illicit drugs
Self-administration (use)	No penalties	No penalties
Possession (at or below the small quantity)	No penalties ¹	1 penalty unit
Possession (below the trafficable quantity)	6-months imprisonment and/or 50 penalty units	6-months imprisonment and/or 50 penalty units
Possession (at or above trafficable quantity)	5-year imprisonment and/or 500 penalty units	5-year imprisonment and/or 500 penalty units
Notes:		
1. For those under 18, the maximum penalty is 1 PU or a small non-criminal fine.		
Source: Drugs of Dependence Act 1989		

Table A16. Threshold quantities for drug possession, Australian Capital Territory

Drug type	Small quantity	Trafficable quantity
Cannabis	50g ¹	300g
MDMA	1.5g	10g
Methamph	1.5g	6g
Heroin	1g	5g
Cocaine	1.5g	6g
Notes:		
1. Or 150g if fresh/harvested.		
Source: Criminal Code Regulation 2005		

Commonwealth

The Commonwealth Criminal Code 1995 prohibits the use and possession of all illicit drugs. There is no Commonwealth diversion or decriminalisation scheme, though the Illicit Drug Diversion Initiative (IDDI) was developed in 1999 which allowed for and provided funding to states and territories to implement programs to divert individuals apprehended for drug use and possession to health, education or treatment programs in lieu of a criminal charge. This was considered a de facto reform (i.e., the legislation was not amended).

The Criminal Code outlines threshold quantities for each illicit substance. Above these quantities indicates a supply or trafficking offence. Maximum penalties and threshold quantities for the most commonly charged substances are shown below.

Table A17. Maximum criminal penalties for drug use and possession, Commonwealth

Offence type	Maximum criminal penalty
Possession	2-years imprisonment and/or 400 penalty units
Trafficable quantity	10-years imprisonment and/or 2,000 penalty units
Note: In Australia states and territories are each responsible for drug use and possession laws in their respective jurisdictions. As a result, the drug use and possession offences located in the Commonwealth Criminal Code are generally not applicable. The state and territory penalties for the offence must not exceed those listed by the Commonwealth.	
Source: Commonwealth Criminal Code 1995	

Table A18. Threshold quantities for five illicit drugs, Commonwealth

Drug type	Trafficable quantity
Cannabis	250g
MDMA	0.5g
Methamphetamine	2g
Heroin	2g
Cocaine	2g
Source: Commonwealth Criminal Code Regulations 2019	