

Australian drug trafficking laws: guilty until proven innocent?

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Dealing and trafficking in illegal drugs (like heroin, methamphetamine, cocaine, ecstasy and cannabis) are serious criminal offences. A number of laws are employed for sanctioning alleged drug traffickers in Australia, but most jurisdictions also have laws to sanction solely on the weight of the drug found. The weight of the drugs determines whether the person is charged with a use/possess offence (diversion into treatment, fine, bond) or a supply offence (up to 21-25 years or life imprisonment, depending on the jurisdiction). This type of law, which has existed since the 1970s in eight of nine Australian jurisdictions¹ is called “deemed supply”. The person is deemed to have supplied the drugs based only on weight.² No other evidence is required. Moreover, if the accused wishes to dispute the supply charge, the onus is placed on the accused to prove the quantity possessed was *not* for the purposes of supply.

Our legal and historical analysis of these Australian “deemed supply” laws has shown that the laws are unjust, unnecessary and inconsistent with standard legal principles. Our research can be found here.³ We found that:

1. Deemed supply laws are inconsistent with Australian criminal law

Deemed supply provisions conflict with core principles of Australian criminal law. In particular, they conflict with the presumption of innocence: that an offender should be presumed to be innocent rather than, in this case, presumed to be guilty. They also conflict with the burden of proof: that prosecutors are required to prove guilt, not accused persons prove their innocence. Such features make deemed supply provisions an aberration in the Australian criminal justice system.

2. Deemed supply laws are inconsistent with international drug trafficking laws

Australia remains exceptional for both the adoption and continued use of deemed supply laws. Most nations have explicitly avoided deemed supply provisions. For example in 2005 such laws were proposed in the UK but abandoned as being unjust, impractical, perverse, arbitrary and unnecessary.

3. Deemed supply laws conflict with the goals of Australia’s National Drug Strategy

Deemed supply provisions conflict with Australia’s National Drug Strategy commitment to ensuring it is drug traffickers, not people who use drugs, who get the most severe criminal sanctions. We found two clear miscarriages of justice where drug users were erroneously imprisoned as drug traffickers by virtue of the laws. More problematically an evaluation of the current drug trafficking thresholds in six Australian states⁴ found that people who use drugs often consume or purchase (for their personal use alone) a quantity that amounts to an automatic charge of ‘deemed supply’.

4. Deemed supply laws threaten confidence in the Australian judicial system

Deemed supply laws have come under increased scrutiny by Australian courts. There are concerns that such laws may be ruled invalid or adversely affect public confidence in the justice system.

Summary: Australian deemed supply provisions were once seen as essential to overcoming difficulties in the prosecution and sanction of drug traffickers. This position is increasingly untenable. Deemed supply laws should be subject to legislative review or preferably abolition from Australian drug trafficking law in favour of a system where charges for supply are based on proof of actual trafficking or preparation for trafficking. This would not be a radical nor unfeasible move: it would be a progressive move towards proportional and justifiable drug trafficking laws.

¹ The exception is Queensland: as Queensland abolished deemed supply laws in 1986.

² The weight of the drug varies by jurisdiction. For example a ‘traffickable quantity’ of drugs in NSW is defined as 0.75 grams of MDMA/ecstasy (equivalent to 3 average sized pills) or 3 grams of cocaine, methamphetamine or heroin. For more details see: <http://crq.aic.gov.au/reports/1314/35-1112-FinalReport.pdf>.

³ Hughes, C.E., Cowdery, N. & Ritter, A. (2015). Deemed supply in Australian drug trafficking laws: A justifiable legal provision? *Current Issues in Criminal Justice*, 27(1), 1-20.

⁴ <http://search.informit.com.au/documentSummary;dn=366887334489689;res=IELHSS>

⁵ Hughes, C., Ritter, A., Cowdery, N., & Phillips, B. (2014). Evaluating Australian drug trafficking thresholds: Proportionate, equitable and just? Report to the Criminology Research Advisory Council. Canberra: Criminology Research Advisory Council