



# FAIR PLAY

YOUR RIGHTS & SAFETY AT LGBTIQ EVENTS

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## **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 almost certain that they will consider that you have broken the law by committing the offence of possession of a prohibited drug. There is no ‘safe’ amount. There is no risk-free way to possess prohibited drugs.

From 25 January 2019, police have the option of issuing either a penalty notice or a court attendance notice in relation to possession of small quantities of prohibited drugs other than cannabis leaf. (Police also have this option if you have less than 0.75g of MDMA in any form other than capsules in your possession).

If you are issued with a penalty notice, you can choose to finalise the matter by paying a fine of \$400 within time and not go to court. Finalising a matter in this way will not affect your criminal history. You can still choose to take the matter to court, although this means any outcome other than dismissal will appear on your criminal history.

If you are issued with a court attendance notice in relation to drug possession, you will need to go to court. The maximum penalty that a court can impose is two years’ imprisonment, a fine of \$2200, or both.

### **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 am under arrest – is that right?**

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. You must be searched by a police officer of the same sex (or by a police officer's delegate who is of the same sex if no such officer is available).

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. Police must not search your genital area, or your breasts if you are female or identify as female, unless they suspect on reasonable grounds that it is necessary to do so.

## **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.

## **Is it a crime to be under the influence?**

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 that the drug affected your driving or impaired you for successful prosecution of this offence.

*This information is current to 29 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.*