



Legislative thresholds for drug possession and traffic: An overview of State and Territory differences in Australia

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In Australia's federal system drug legislation is made by the federal, state and territory governments. The Customs Act covers international trafficking and the importation and exportation of drugs. Each of the states and territories have devised their own legislation that deals with offences relating to drug manufacture, distribution/trafficking, possession and use and drug-related behaviour (e.g. drug driving). The distinction between the offences relating to possession, manufacture and traffic has historically been based on quantity. Here we focus on the threshold that relates to trafficking.

Australia has historically provided less punitive and more therapeutic responses to illicit drug users than manufacturers or traffickers (particularly high level traffickers), and hence the "trafficable quantity" is an important threshold. The "trafficable quantity" is defined as the "amount giving rise to a presumption of intention to sell or supply." Offenders found in possession of less than the trafficable quantity are liable to be charged with possession for personal use, and if found guilty are likely to receive a small fine or a diversionary opportunity to attend education or treatment. Conversely offenders found in possession of more than the trafficable quantity are liable to be charged with possession for the purposes of supply, and if found guilty may receive a sanction involving a large fine and/or imprisonment. It should be noted that charges relating to possession for personal use do not require confirmation of the presence of an illicit substance. Offenders for example may be charged with possession of "MDMA" even if the possessed tablets are later found to contain very low levels

of MDMA, MDMA analogs or indeed no illicit substance.

Given the federal system the trafficable thresholds differ between jurisdictions. Key differences are whether thresholds are specified in pure drugs (active principles only) or mixed drugs (including inert substances); the relative rankings of drug types; and the quantities themselves. In this briefing paper we provide a summary of the trafficable thresholds for the major illicit substances. The purpose is to facilitate identification of and comparison between the trafficable threshold quantities in Australia.

An overview

As shown in Table 1, the threshold for trafficable quantities of heroin, cocaine, amphetamine or methamphetamine is set at 2-3 grams in most jurisdictions. This holds regardless of whether thresholds are specified in pure drug or mixed drug. The only exception is Tasmania (with 25 mixed grams). Taking purity into consideration, SA, WA and NT stand out as having the lowest threshold quantities (2.0 grams, regardless of how impure the content is).

Table 1: Thresholds for trafficable quantities of heroin, cocaine, amphetamine, methamphetamine and MDMA, by drug type and jurisdiction

Jurisdiction	Heroin	Cocaine	Amphetamine	Meth-amphetamine	MDMA
Vic ¹	3g	3g	3g	3g	3g
Qld ¹	2g	2g	2g	2g	2g
ACT ¹	2g	2g	2g	2g	0.5g
Tas	25g	25g	25g	25g	25g
NSW	3g	3g	3g	3g	0.75g
SA	2g	2g	2g	2g	0.5g
WA	2g	2g	2g	2g	2g
NT	2g	2g	2g	2g	0.5g

¹ Based on pure drug (excluding inert material).



There is greater jurisdictional variation in threshold quantities in regards to the possession of MDMA and cannabis. In four jurisdictions the trafficable quantities for MDMA equals or exceeds 2 mixed grams. But in the other four jurisdictions it is much lower. Indeed, in SA and NT, possession of only 0.5 mixed grams of MDMA will make an offender liable to be charged with possession for the purposes of supply.

In regards to cannabis, the levels vary by type of product (see Table 2). For cannabis leaf the trafficable quantities are set at 300 grams or lower in most jurisdictions. But NT, SA and WA are notable in having the lowest thresholds (50 or 100 mixed grams). Conversely the thresholds are much higher in Queensland (500 pure grams) and Tasmania (1000 mixed grams). The threshold for cannabis plants is set at 10 plants in most jurisdictions. But in NT and NSW the threshold is lower (at 5 plants), and in Queensland the threshold is shaped primarily by the aggregate weight, but could in theory include up to 100 small plants.

Table 2: Thresholds for trafficable quantities of cannabis, by product and jurisdiction

Jurisdiction	Cannabis leaf	Cannabis oil	Cannabis resin	Cannabis plants
Vic ¹	250g			10
Qld ¹	500g			500g ²
ACT	300g	2g	20g	10
Tas	1000g	25g	25g	20
NSW	300g	5g	30g	5 ³
SA	100g	2g	20g	10
WA	100g		20g	10
NT	50g	1g	10g	5

¹ Based on pure drug (excluding inert material).

² or 100 plants if aggregate weight is less than 500g.

³ In NSW, unlike for the other substances, a threshold for possession of cannabis plants is not set for trafficable quantities. But anyone found in possession of more than the small quantity (listed above) is liable to be punished as a trafficker.

Implications

Scheduling thresholds have a number of implications. In particular they impact on the likelihood that an offender will be charged with trafficking versus possession, the ease of implementing the thresholds in day to day policing, the extent to which the thresholds fit with the patterns of illicit drug use, the extent to which the thresholds reflect the National Drug Strategy goal of harm minimisation and the extent to which the thresholds reflect the relative harms associated with illicit drugs. Here we outline two ways that current state and territory thresholds differentially affect the likelihood that offenders will be charged as consumers or providers.

Across the board Tasmania has the highest threshold quantities, and NT and SA the lowest. This means there is increased potential in the latter states for consumers to be charged with drug trafficking. Conversely the chances of being charged with trafficking in Tasmania are much lower.

It is also notable that while some states have the same threshold quantity for MDMA and amphetamine type substances (Vic, Qld, WA and Tas), others have a much lower trafficable threshold for MDMA (NT, SA, NSW and ACT). This increases the likelihood that consumers of MDMA who reside within the NT, SA, NSW and the ACT will be charged and convicted for the purposes of supply.

The diversity in current design suggests that tools for analysing and identifying optimal thresholds for drug trafficking are warranted.



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