

# DRUG OFFENCES

## Preliminary Information

All drug related offences are dealt with under the *Drugs Misuse Act 1986* (Qld) and the *Drugs Misuse Regulations 1987* (Qld).

**The definition of 'dangerous drug' is contained in s 4 DMA and refers to the schedules of the *Regulations* which contain the names (sch 1, 2) and proscribed quantities (sch 3, 4) of each dangerous drug.**

The drug related offences are contained in Part 2 of the Act and all are indictable offences.

DMA s 116 provides that the Criminal Code is to be read with the DMA and that the Criminal Code be read and construed with the DMA.

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## Possession (s 9 DMA): - C1513

Crime – 15 to 25 years maximum penalty depending on the circumstances

Offence: a person who unlawfully has possession of a dangerous drug.

### ELEMENTS:

- 1) Unlawfully
  - a. Without authorisation, justification of excuse by law: s 4 DMA
- 2) Has possession
  - a. 'Possession' is defined in s 1 of the Code:
    - i. Possession includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession of custody of the thing in question.
    - ii. This definition contemplates 3 types of possession – actual, constructive and joint.
    - iii. Actual possession is physical control, custody, manual handling
    - iv. Constructive possession is control, intention to control and claim of right
    - v. Joint possession is consent to possession or joint intention to possess
  - b. There is no requirement of ownership
  - c. There is no possession where the accused is unaware of the existence of the thing: Clare
    - i. Therefore, the person must know that the thing is there but not that it is a dangerous drug.
    - ii. Mistake of fact (s 24 CC) is excluded unless the accused shows an honest and reasonable belief in the existence of any state of things material to the charge: s 129(1)(d) DMA
      1. It is hereby possible for the accused to prove that they honestly and reasonably did not believe it to be a dangerous drug – therefore not guilty of possession. This is the doctrine of innocent possession.
      2. Involves a subjective test (honest) and objective test (reasonable belief) – the onus is on the accused on the balance of probabilities: s 129(1)(d) DMA.
  - d. Where a dangerous drug is in or on a place of which the accused is the occupier or concerned in the management or control of, this is conclusive evidence that the drug was in the accused's possession unless the accused shows that he/she neither knew nor had reason to suspect that the drug was in or on that place: s 129(1)(c) DMA
    - i. Place includes a vehicle: s 4 DMA
    - ii. Accused can rebut this presumption on the balance of probabilities
    - iii. Occupier means the power to exclude strangers from the place – don't have to be paying rent – don't have to be present when the drugs were found – however, mere residence does not necessarily mean they have a right of control – this presumption applies to people

concerned in the management/control of a place – ownership does not necessarily mean concerned with management/control

- iv. This presumption does not apply when some other person is in possession of the drug:  
Lawler

3) Of a dangerous drug

- a. See preliminary information above.
- b. The quantity of the drug must be at least enough to say, as a matter of common sense that the accused in possession: *Donnelly v Rose*. A minute amount, such as traces of heroine, will not be sufficient: *Bourke*.

**PENALTIES:**

- 25 years for a sch 1 drug (of equal or greater quantity than proscribed in sch 4)
- 20 years for a sch 1 drug (of equal or greater quantity than proscribed in sch 3 but less than sch 4) and the accused is a drug dependent person
- 25 years for a sch 1 drug (of equal or greater quantity than proscribed in sch 3 but less than sch 4) and the accused is not a drug dependent person
- 20 years for a sch 2 drug (of equal or greater quantity than proscribed in sch 3)
- 15 years in any other case for a sch 1 or 2 drug

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## Trafficking (s 5 DMA): - C1498

Crime – 20 to 25 years maximum penalty depending on the circumstance

**ELEMENTS:**

1) Carrying on a business

- a. a single transaction is sufficient, doesn't need to be a repeat conduct if there is evidence that this was the first of many: *Quaile*
  - i. an isolated transaction with no intention of repetition is not sufficient
- b. intention of the accused to be a series of acts with a view to making financial gain, this is carrying on a business: *Ambrose*
- c. Carrying on a business may involve a series of acts such as: advertising or promoting; communication with prospective purchasers; negotiating prices; arranging terms for sale; setting up lines of supply; arranging delivery; courier or mere servant (via s 7 CC): *Ellhusseini*

2) Of unlawfully

- a. Not authorised, justified or excused by law: s 4 DMA

3) Trafficking

- a. Has been defined as 'distribute, arrange to distribute, from the source to the person to whom he proposes to dispose of': *Quaile*
- b. Has been defined as 'the process involved in the movement of drugs from the manufacturer/producer through to the consumer with a commercial element': *Quaile*
- c. 'Trading in or dealing with drugs': *Quaile*
- d. 'knowingly engaged in the movement of drugs from source to ultimate consumer with an element of commercial enterprise': *Ellhusseini*
- e. Includes selling the drug at any point in the chain of distribution – receiving the drug for consideration if intending to dispose of it for consideration

4) Dangerous drug

- a. See preliminary information above as to what is a dangerous drug

**PENALTIES:**

- 25 years for a schedule 1 drug
- 20 years for a schedule 2 drug

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## Supplying (s 6 DMA): - C1505

Crime – 15 to 25 years maximum penalty depending on the circumstances

### ELEMENTS:

- 1) Unlawfully
  - a. Without authorisation, justification or excuse in law: s 4 DMA
- 2) Supplies
  - a. Defined in s 4 DMA:
    - i. Give, distribute, sell, administer, transport or supply; or
    - ii. Offering to do any act as per para (i); or
    - iii. Doing or offering to do any act preparatory to, in furtherance of, or for the purpose of, any act specified as per para (i).
  - b. Supplying is complete when the offer to sell is made: Gauci
- 3) Dangerous drug
  - a. See preliminary information above as to what is a dangerous drug
- 4) To another
  - a. Is possible to supply to oneself as a counsellor/procurer under s 7 CC: Maroney

### PENALTIES:

- 25 years for a sch 1 drug with aggravated supply
  - o 'Aggravated supply' is where the supply of the drug is by an adult to a minor, to an intellectually handicapped person, to a person in an educational institution or correctional facility or where the person does not know he/she is being supplied: s 6(2) DMA.
- 20 years for a sch 1 drug
- 20 years for a sch 2 drug with aggravated supply
- 15 years for a sch 2 drug

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## Producing (s 8 DMA): - C1510

Crime – 20 to 25 years maximum penalty depending on the circumstances

Offence: a person who unlawfully produces a dangerous drug.

'Produce' is defined in s 4 DMA: means:

- (a) prepare, manufacture, cultivate, package or produce; or
- (b) offering to do any act specified in (a); or
- (c) doing or offering to do any act preparatory to, in furtherance of, or for the purpose of, any act specified in (a).

See preliminary information above as to what is a dangerous drug.

### PENALTIES:

- 25 years for a sch 1 drug (of equal or greater quantity than proscribed in sch 4)
- 20 years for a sch 1 drug (of equal or greater quantity than proscribed in sch 3 but less than sch 4) and the accused is a drug dependent person
- 25 years for a sch 1 drug (of equal or greater quantity than proscribed in sch 3 but less than sch 4) and the accused is not a drug dependent person
- 20 years in any other case for a sch 1 drug
- 20 years for a sch 2 drug (of equal or greater quantity than proscribed in sch 3)
- 15 years in any other case for a sch 2 drug

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## Receiving or Possession of Property Obtained from Trafficking or Supplying Dangerous Drugs (s 7 DMA): - C1509

Crime – 20 years max

This offence requires proof that the accused received or possessed the property 'knowing or believing' the property to have been obtained through the trafficking (s 5) or supplying (s 6) of dangerous drugs.

### ELEMENTS:

- 1) Received or possessed the property
  - a. Sufficient to show that the accused aided the disposal or concealing of the property: s 7(3) DMA.
  - b. Definition of 'possession' is same as for the offence of possession above.
- 2) Knowing or believing the property had been obtained through trafficking or supplying

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## Possessing Property (s 10 DMA): - C1517

Various offences:

This section deals with possessing property reasonably suspected of being acquired or used in connection with offences under Part 2 DMA.

### Subsection (1):

Offence: a person who has in his/her possession anything:

- (a) For use in connection with the commission of a crime defined in Part 2; OR
- (b) That the person has used in connection with such a purpose

commits a crime, liable to 15 years imprisonment.

### Subsection (2):

Offence: a person who has in his/her possession anything (other than a hypodermic needle or syringe):

- (a) For use in connection with the administration, consumption or smoking of a dangerous drug; or
- (b) That the person has used in connection with such a purpose

commits a simple offence, liable to 2 years imprisonment.

There are 3 further simple offences in relation to hypodermic syringes and needles under this section, all liable to 2 years imprisonment – see Carter's page 1517.