

Cultivate Cannabis (Not Enhanced Indoor)

Less Than Commercial Quantity

s.23(1)(a) (NSW) Drug Misuse and Trafficking Act

s.23(1)(a) Cultivate or knowingly take part in cultivation of prohibited plant

Commercial Quantity: 250 plants

Maximum Penalty: 10 years – s.32(1)

<u>Case (age if known)</u>	<u>Offence</u>	<u>Amount</u>	<u>Plea</u>	<u>Original Sentence</u>	<u>Appeal</u>	<u>Priors</u>	<u>Facts</u>
Seman NSWCCA 12.5.1992	Cultivate Sched: 3 offences	137 plants 85 seedlings	PG	MT 18m AT 6m	AA FT 6m	irrelevant	Found in shed in backyard. Good subjective features. On appeal - error in not accepting plants grown for own use
Yalda NSWCCA 27.9.1994	Cultivate	97 plants	VG	2y PD \$10,000 fine.	Conviction AD		Nurtured plants in garage.
Moy NSWCCA 2.8.1995	Cultivate	3.5 - 6oz	VG	MT 6m AT 2m	AA FT 19w 3d (time served)	on recog	Found plantation and twice went with friends to remove cannabis for own use.
Simmons NSWCCA 24.3.1997	Cultivate	not specified	PG	12m PD	AD		Cultivating for own use
Tidswell (43) NSWCCA 3.4.1997	Knowingly take part in cultivation Sched: Possess leaf and seed	172 plants	PG	3 years GBB	Crown AA 18m PD	two driving offences	Plants being grown in state forest - 'commercial flavour'
Kairouz NSWCCA 18.7.1997	Knowingly take part in cultivation	130-150 plants	VG	MT 2y AT 1y	AD		Plants found growing in house by landlord, who later found vegetable matter packaged.

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

Case (age if known)	Offence	Amount	Plea	Original Sentence	Appeal	Priors	Facts
Grainger NSWCCA 2.3.1998	Cultivate Sched: Possess 1.028kg cannabis		PG	18m PD Changed at request of appellant: MT 9m AT 9m	AA MT 6m AT 12m		No details of offence but initial sentence of periodic detention considered appropriate
Edwards [1999] NSWCCA 411	Knowingly take part in cultivation		PG	MT 9m AT 9m	AA FT 5m 1w 2d (expired day of appeal)	nil	Mother of school aged children played active part in cultivating cannabis in shed on farm. Delay of 4 years- good rehabilitation.
Stanton [2000] NSWCCA 417	Cultivate		VG	MT 18m AT 18m	AD		No facts - argument on appeal related to parity only. No argument that sentence of itself excessive.
Sirocic [2000] NSWCCA 447	Cultivate Sched: Possession	3 plants	PG	MT 2y AT 2y	AA 18m NPP 12m	extensive record including drug offences	Male found cannabis plants out jogging and took three home for own use - police found 3kg cannabis matter in house.
McBurney (72) [2004] NSWCCA 203	Cultivate	250 plants	PG (20%)	4y 3m NPP 9m	AA 3y NPP 6m 10d (immediate release)	Nil	Degree of sophistication in cultivation – use of hydroponics Prior good character – severe medical condition – fresh evidence as to deterioration in condition
Ly (38) [2006] NSWCCA 324	Cultivate	183 plants	VG	2y NPP 12m	AD	Nil	Female – involved with husband and co-offender in growing plants in home unit Vietnamese – mother to small child – limited English – good character
Raso [2008] NSWCCA 120	Knowingly concerned in cultivation	60 plants	VG	2y Suspended	AD	Lengthy – drugs	Plants grown in vacant suburban house owned by co-offender Suffering physical injuries from serious car accident

Last updated: 17/7/2017

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