

Cultivate Cannabis by Enhanced Indoor Means Large Commercial Quantity

s.23(2)(a) (NSW) Drug Misuse and Trafficking Act

s.23(2)(a) Cultivate or knowingly take part in cultivation of not less than commercial quantity of prohibited plant

Large Commercial Quantity: 200 plants (for plants cultivated by enhanced indoor means)

Maximum Penalty: 20 years – s.33(3)(b) (large commercial quantity)

Standard Non-Parole Period: 10 years (for offences where offender pleaded guilty or was convicted on or after 1.1.2008)

Commenced 14.7.2006

| | Case (age if known) | Offence | Amount | Plea | Sentence | Appeal | Priors | Facts |
|----|--|--|------------|-------------|--------------------|--------|-----------|---|
| 1. | Bui [2008] NSWCCA 314 | Cultivate lge comm qty - enhanced indoor means Sched: Possess 168g cannabis leaf | 281 plants | PG (25%) | 5y NPP 3y | AD | Neg drive | Growing plants in house – sophisticated set-up Vietnamese |
| 2. | Nguyen (55) [2009] NSWCCA 283 | Cultivate lge comm qty - enhanced indoor means Sched: 4 offences | 202 plants | PG | 5y 7m NPP 3y 3m | AD | Nil | SNPP 10 years Hydroponic operation at premises - role was to remain at premises each night, water and fertilise plants, change globes as required - operation already set up when offender joined |

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| 3. | Phan [2010] NSWCCA 8 | Cultivate lge comm qty - enhanced indoor means Sched: electricity offence | | PG | 5y NPP 3y | AD | Drug offences | SNPP 10 years Sophisticated hydroponic system used to grow \$500,000 worth of cannabis in house – minor involvement as handyman over three days Low intellectual capacity |
| 4. | Tran (31) [2010] NSWCCA 72 | Cultivate lge comm qty - enhanced indoor means | 210 plants | PG (25%) | 7y 6m NPP 5y | AD | Prior for growing cannabis | SNPP 10 years Grew plants at house to make money – worked alone – just below mid-range |
| 5. | Wong (22) [2010] NSWCCA 160 | Cultivate lge comm qty - enhanced indoor means | 255 plants | PG (25%) | 3y 9m NPP 1y 9m | AD | Nil | SNPP 10 years Grew plants at house instead of having to pay rent – denied knowing plants were cannabis – claimed watering plants for man he rented house from - did not know who plants belonged to – below mid-range Good character – sound work history – supportive family |
| 6. | Pham (55) [2011] NSWCCA 3 | Cultivate lge comm qty - enhanced indoor means s.166 Certificate Possess cannabis leaf | 305 plants | PG | 8y NPP 5y s.10A | AD | | SNPP 10 years Vietnamese national - Sophisticated hydroponics set-up in house owned by wife |
| 7. | Ta (48) Nguyen (27) [2011] NSWCCA 32 | Knowingly take part in cultivation lge comm qty - enhanced indoor means | 551 plants | VG | 7y NPP 4y | AA 5y NPP 3y | Nil Nil significant | SNPP 10 years Plants being grown in residential house – participants not principals – only seen at house for one hour - below mid-range T – female – sole parent N - male |

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| 8. | Stock [2011] NSWCCA 49 | Cultivate lge comm qty - enhanced indoor means Conceal serious offence | 335 plants | PG (25%) | 9y NPP 5y FT 12m (concurrent) | AD | | SNPP 10 years Plants grown in shed on property – production set up by offender - paid co-offender money per month to keep lease of property in his name and to maintain property and plants - part of group of offenders - sophisticated enterprise – street value \$1 million – mid-range objective seriousness. Special circumstances - Youth - rehabilitation |
| 9. | Nguyen [2011] NSWCCA 92 | Cultivate lge comm qty - enhanced indoor means Sched: Possess false driver licence | 317 plants | PG (25%) | 6y 5m NPP 4y 9m | AD | | SNPP 10 years Female - with co-offenders, plants grown at home rented by offender – not principal – no evidence contributed financially to enterprise – no evidence of management or decision making on day to day basis - planned, involved installation of complex irrigation and electrical support mechanisms not by offender - offence "slightly less than mid-range of seriousness but at a level much closer to mid-range than low range" - potential street value \$1.2 million. |
| 10. | Co (44) [2011] NSWCCA 148 | Cultivate lge comm qty - enhanced indoor means | 266 plants | PG (25%) | 7y 6m NPP 4y | AD | Nil | SNPP 10 years Sophisticated hydroponic system – premises heavily fortified – electricity illegally used – fully involved – lower end of mid-range of seriousness Vietnamese |
| 11. | Crawford (61) [2013] NSWCCA 269 | Cultivate lge comm qty - enhanced indoor means Supply cannabis | 319 plants | PG (25%) | 9y NPP 6y 9m FT 3y (concurrent) | AA 7y 6m NPP 5y 7m FT 3y (concurrent) | Cultivate cannabis | SNPP 10 years Police found plants in large shed on a property occupied by offender and wife - highly sophisticated hydroponic system supporting growth of plants in shed as well as underground area accessible via shed - also seized 3.476 kg cannabis leaf. <u>Muldrock</u> appeal. |
| 12. | Clarke (2015) 254 A Crim R 150 [2015] NSWCCA 232 | Cultivate lge comm qty - enhanced indoor means | 1,997 "plants" in various stages of growth from seedlings to 1m tall 9 plants | PG (25%) | 7y NPP 4y | AD | Discharging firearm at dwelling house | SNPP 10 years Leased 100 acre rural property where offender lived in shed – found by police with two others - large, sophisticated hydroponic cannabis cultivation growing in shed area - 1,997 "plants" - underground bunker under hay shed contained 9 further mature plants, transformers and two large generators - not a principal, but significant role in operation as an employee carrying out instructions |

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| 13. | Ngo (20-21) [2018] NSWCCA 296 | Cultivate lge comm qty - enhanced indoor means s.166 certificate Cultivate Sched: Cultivate comm qty | 231 plants 26 plants 453 plants | PG (25%) | 3y 9m NPP 2y 3m FT 1y <u>Total:</u> 4y 6m NPP 2y 9m | AD | nil | SNPP 10 years Involved in indoor cultivation of plants in three different locations – not principal – main offence involved sophisticated hydroponic set-up with plants at various stages of growth – below mid-range |
| 14. | Le (27) [2019] NSWCCA 181 | Cultivate lge comm qty - enhanced indoor means Sched: Electricity offence Supply cannabis | 233 plants | PG | 4y 1m NPP 2y 4m | AD | Nil | SNPP 10 years Caretaker for plants being grown in suburban house – sophisticated hydroponic system – 370g cannabis in freezer Vietnamese national |
| 15. | Phan (31) [2020] NSWCCA 168 | Cultivate lge comm qty - enhanced indoor means Cultivate comm qty by enhanced indoor means Sched: s.93Y(1) participate in crim group | 288 plants 165 plants | PG (25%) | <u>Indicative:</u> 4y 6m NPP 2y 6m 2y 3m <u>Aggregate:</u> 5y 6m NPP 3y 6m | AD | Nil | SNPP 10 years Involved in indoor plantations in two suburban houses for financial gain – above 'crop sitter' and delivery man – important and trusted role over extended period – hired vehicles and transported equipment – performed work at both premises – paid rent and arranged storage facilities – below mid-range Vietnamese – good prospects of rehabilitation – remorse – isolation in custody On appeal: error in taking into account sophistication of cultivation and stolen electricity – no lesser sentence despite error |

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| 16. | Pham (31) [2020] NSWCCA 269 | Cultivate lge comm qty - enhanced indoor means Direct criminal group: s.93T Sched: Possess drug | 2,640 plants | PG | <u>Indicative</u> 6y NPP 3y 4m 3y 6m <u>Aggregate:</u> 7y NPP 3y 10m | AD | Nil | SNPP 10 years Arranged leases on the residential properties for cultivation - planned activity given size of cultivation. Good rehabilitation prospects - risk of reoffending low. |
| 17. | Ooi (early 40s) [2023] NSWCCA 97 | Knowingly take part in cultivation lge comm qty – enhanced indoor means Participate in criminal group: s.93T(1) Sched: Knowingly take part in cultivation comm qty – enhanced indoor means | 2,143 plants 190 plants | PG (25%) | <u>Indicative:</u> 4y 6m NPP 2y 8m 12m <u>Aggregate:</u> 4y 6m NPP 2y 8m | AD | | SNPP 10 years Involved in cultivation of plants at two separate properties – sophisticated enterprise – ‘crop-sitter’ – slightly above two co-offenders - below, although not greatly below, mid-range Female - prior good character – prospects of rehabilitation – unlikely to re-offend – background of financial hardship and domestic violence – isolation in custody On appeal: not manifestly excessive – no breach of parity |

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