

## Cultivate Cannabis by Enhanced Indoor Means for Commercial Purposes Less Than Commercial Quantity

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

Commenced 14.7.2006

s.23(1A) cultivates or knowingly take part in cultivation by enhanced indoor means of less than commercial quantity of prohibited plants for a commercial purpose

**Commercial Quantity:** 50 plants (for plants cultivated by enhanced indoor means)

**Maximum Penalty:** 15 years – s.33(2)(b)

	Case (age if known)	Offence	Amount	Plea	Original Sentence	Appeal	Priors	Facts
1.	<b>Zepina</b> (36) <a href="#">[2010] NSWCCA 155</a>	Knowingly concerned in cultivation by enhanced indoor means  Sched: Deal with proceeds of crime	39 plants	PG (25%)	2y 6m NPP 12m	AD	Nil	Also found in possession of \$104,450 proceeds from earlier harvest – extensive and sophisticated operation using hydroponics system Suffering post traumatic stress disorder and adjustment disorder with anxious and depressed mood – wife suffering MS – remorse and good prospects of rehabilitation
2.	<b>Eyles</b> (56) <a href="#">[2013] NSWCCA 128</a>	Cultivation by enhanced indoor means  2 x firearms offences  Sched: Related offences	58 plants	PG (25%)	3y NPP 18m	AD		Large sophisticated hydroponic cannabis plantation in garage – high quality plants as well as drying cannabis, seeds and dried cannabis – packaged cannabis for sale – firearm offences related to possession of plastic handgun Poor health
3.	<b>Mesterovic</b> <a href="#">[2016] NSWCCA 140</a>	Cultivation by enhanced indoor means	23 plants	VG	2y GBB	AD	Nil	Drove co-offender to premises knowing co-offender there for purpose connected with cultivation Good character – good prospects of rehabilitation No basis for finding no conviction should have been recorded

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
4.	Carl (41) <a href="#">[2023] NSWCCA 190</a>	Cultivation by enhanced indoor means  Sched: 2 x deal proceeds crime	36 plants	PG (25%)	3y 6m NPP 1y 2m	AA 1y 2m 27d by way of ICO	Limited.	Police search of applicant's property where resided - locked room built inside shed contained hydroponic cannabis growing system - role of "principal" - purchased equipment, sole operator of operation - scale of operation indicated level of sophistication. CCA: SJ erred in consideration of expert evidence of mental health; denied procedural fairness when departed from Crown concession on remorse. Middle of range objective seriousness – no aggravating factors. Mental health (anxiety disorder, severe symptomology) and drug addiction can be comprehensively treated in community - prior good character - good prospects of rehabilitation - unlikely to reoffend.

Last updated: August 2023

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