

Cultivate Cannabis By Enhanced Indoor Means

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

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

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

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

Commenced 14.7.2006

	Case (age if known)	Offence	Amount	Plea	Sentence	Appeal	Priors	Facts
1.	Truong (43) [2009] NSWCCA 41	Cultivate by enhanced indoor means	189 plants	VG	3y 6m NPP 1y 6m	AD		Growing plants in domestic house owned by offender – financial gain – a little below mid-range Difficult personal background - Vietnamese
2.	Nguyen (44) [2009] NSWCCA 181	Cultivate by enhanced indoor means	172 plants	PG (25%)	4y NPP 4y 6m	AA 3y NPP 22m	Nil	Female – told to look after plants in house for money and accommodation – suburban house – sophisticated operation – not principal – tending and guarding plants Vietnamese – husband and two children in Vietnam – adult son in Australia – illegal immigrant
3.	Pham (43) [2009] NSWCCA 266	Cultivate by enhanced indoor means Drug premises offence Sched: Electricity offence	112 plants	PG (25%)	3y NPP 18m FT 6m (concurrent)	AD	nil	Plants grown in garage adjoining house – immediate co-operation with police – sophisticated arrangement – low level involvement – to receive \$10,000-15,000 for babysitting crops Vietnamese

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4.	Nguyen [2011] NSWCCA 127	Cultivate by enhanced indoor means Sched: Electricity offence Being found on drug premises	168 plants	PG (25%)	4y NPP 2y 6m	AD	Possess drugs - dishonesty	Tenant of premises – police located plants in home – street value in excess of \$500,000 – role of “major player”
5.	Portolesi (37) [2012] NSWCCA 157	Cultivate by enhanced indoor means Supply 7 summary offences	197 plants 3.37kg	PG (25%)	5y NPP 3y 6m 2y <u>Total:</u> 5y 6m NPP 4y	AD	minor	Plants grown in shed on vineyard owned by appellant – sole principal – significantly above mid-range
6.	Nguyen (34) [2012] NSWCCA 42	Cultivate by enhanced indoor means	157 plants	PG (25%)	5y 3m NPP 3y	AD	nil	Plants being grown in residential premises in southern Sydney – enhanced indoor means – electricity bypassed – instigator who recruited his co-offenders – financial greed
7.	Tan (33) [2013] NSWCCA 164	Cultivate by enhanced indoor means Sched: Possess 36g cannabis	153 plants	PG (25%)	4y 6m NPP 2y 9m	AA 3y NPP 2y 2m	Minor	Sophisticated indoor cultivation Gambling / drug problems
8.	Wei [2015] NSWCCA 66	Cultivation by enhanced indoor means Sched: Deemed supply Consume electricity	135 plants	PG (25%)	3y 6m NPP 2y	AA 2y 7m NPP 1y 6m	nil	Looking after plants in home – no more than gardener and lodger used as pawn by those who stood to profit from venture – continuous presence in house exposed him to substantial risk of detection, not commensurate with meagre income received Illegal immigrant -- limited English - immigration status and poor financial circumstances made him prey to exploitation - trying to raise money to purchase ticket to return to Malaysia On appeal - failed to take into account discount for guilty plea

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9.	Andreata [2015] NSWCCA 239	Cultivate by enhanced indoor means Supply Sched: 3 offences Plus summary offences	somewhere between 50-133 2.385kg	PG (20%)	6y NPP 3y FT 3y (concurrent)	AA 3y NPP 18m FT 18m <u>Total:</u> 3y 3m NPP 1y 9m	Not relevant	Plants grown in house leased by offender – limited role – not principal but not limited to watering plants / babysitting - cultivation involved reasonable level of sophistication, but scale relatively small in context of commercial quantity - 2.385 kg cannabis located Good work record - stable family circumstances. NB: Reference to comparative cases Error in stating maximum sentence for supply offence –sentence for cultivate charge manifestly excessive
10.	Crowley (36) [2017] NSWCCA 99	Cultivate by enhanced indoor means s.166 certificate 2 x possess	128 plants 2.64kg leaf 20g seeds	PG (25%)	3y NPP 2y	AD	Fine for possession	Plants grown in rooms attached to garage – originally set up by mother who grew plants for many years – claim purely for personal use and hobby rejected by judge who found offender ready to supply – mid range
11.	Kresovic (55) [2018] NSWCCA 37	Cultivate by enhanced indoor means Supply s.166 certificate Ongoing drug premises Sched: Electricity offence	57 plants 6.708kg	PG (25%)	<u>Indicative</u> 2y 9m 12m <u>Aggregate:</u> 3y NPP 1y 10m	AD	nil	Male growing cannabis in home – used some for personal use and sold some – principal – close to midpoint between low and mid-range Good character – Suffering PTSD from war experiences in home country reducing culpability and impacting custodial conditions – poor physical health

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12.	Vu (32) [2018] NSWCCA 122	2 x Cultivate by enhanced indoor means Supply cannabis Sched: 6 offences	105 plants 91 plants 9.4kg	PG (25%)	<u>Indicative</u> 5y 6m (each) 1y 9m <u>Aggregate:</u> 8y NPP 4y	AD	Nil	Female - member of syndicate with three co-offenders - cultivating cannabis in separate dwellings, one leased by offender - mid-management role that involved level of trust and responsibility within syndicate higher than other three members – role included coordination, selling and negotiations connected with selling cannabis, handling large sums of money, distribution of money to other members, some supervision and providing advice - first count at very upper end of lower range objective seriousness - second count mid-range. Good prospects of rehabilitation – grew up in difficult financial circumstances caused by parent gambling
13.	Yu (52) [2019] NSWCCA 96	Cultivate by enhanced indoor means Sched: 2 offences	68 plants	PG (25%)	4y 6m NPP 3y 4m	AD	Deemed drug supply	Quite significant role in production - leasing premises, paying rent and other expenses, tending to plants and harvesting. Refugee background.
14.	Nguyen (27) [2019] NSWCCA 209	Cultivate by enhanced indoor means Sched: 3 offences	69 plants	PG	4y 6m NPP 2y 9m	AD	Nil	Leased property - role of preparation of nutrient-enriched water and watering - assisted in cultivation at two other properties (Form 1 offences).
15.	Laughton [2019] NSWCCA 318	Knowingly take part in cultivation by enhanced indoor means Supply methamphet Sched: Supply Possess	58 plants 21.1g	PG	<u>Aggregate:</u> 5y NPP 3y	AD	extensive	Plants found growing in bedroom of house rented by offender and co-offender – offender primary offender – offence for profit – greater than moderate seriousness – also found in room methamphetamine (deemed supply), 64.1g gamma-butyrolactone (deemed supply) and 128.3g cannabis leaf (possession) Poor prospects of rehabilitation
16.	Tran (44) [2020] NSWCCA 39	Cultivate Sched: Use electricity	172 plants \$52,014	PG (25%)	3y NPP 2y 3m	AD	supply prohibited drug	Involved in cultivation of plants in house over several months – watering plants – general maintenance – paying gambling debt remorse – born in Vietnam

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17.	Burrows [2021] NSWCCA 32	Cultivate Cultivate less commercial qty s.166 Certificate Possess proh drug Sched: 2 offences	82 plants 39 plants s.10A	PG (25%)	<u>Indicative:</u> 3y 18m s.10A <u>Aggregate</u> 3y 6m NPP 20m	AD	Cultivate cannabis	Plants found outside premises and in tent inside room in applicant's house – found cash and drug paraphernalia. Rehabilitation for traumatic brain injury – drug addiction led to cultivation due to cost – low to moderate risk of recidivism.

Last updated: February 2022