

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.	Zepina (36) [2010] NSWCCA 155	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.	Eyles (56) [2013] NSWCCA 128	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.	Mesterovic [2016] NSWCCA 140	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) [2023] NSWCCA 190	Cultivation by enhanced indoor means Sched: 2 x deal proceeds crime	36 plants	PG (25%)	3y 6m NPP 1y 2m	AA ICO 1y 2m 27d	Limited.	Police search of offender's property found 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 – mid-range – no aggravating factors On appeal: SJ erred in consideration of expert evidence of mental health; denied procedural fairness when departed from Crown concession on remorse. 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