

Possession of cannabis

July 2013

What do these words mean?

Words that are highlighted in **bold** are explained in our *What do these words mean?* fact sheet.

What is 'possession of cannabis (marijuana)'?

Your **charge sheet** says that the police have **charged** you with an **offence** of possession of cannabis. This means that the police **allege** that they found cannabis on you, in your house or in your car.

Cannabis is a drug of dependence and these drugs are illegal.

Quantities of cannabis are defined as:

- small quantity – up to 50 g
- traffickable quantity – 250 g or over, or 10 plants
- commercial quantity – 25 kg or over, or 100 plants
- large commercial quantity – 250 kg or over, or 1000 plants.

It is still an offence to possess a quantity over 50 g and under 250 g. It is more serious to have over 50 g but not necessarily considered a traffickable quantity.

Whether you are guilty depends on the exact facts and circumstances of your case. Look in the 'Details of the charge' in your charge sheet to see what the police officer wrote about your offence. The magistrate refers to this in the courtroom.

Note: if the police charged you with possession of cannabis, they may also charge you with use of cannabis. Use includes smoking, inhaling fumes, injecting or swallowing an illegal drug. The police can charge you if they saw you using or trying to use the cannabis that was in your possession. They can also charge you if they did not see you using but you admitted to using it.

If you have been charged with possessing more than 250 g of cannabis or higher, the police may have also charged you with trafficking cannabis. If you have been charged with trafficking cannabis, speak with a lawyer.

What does the prosecution have to prove?

The **prosecution** must have **evidence** that an offence occurred. For the offence of possession of cannabis, the police have to prove that:

- the offence occurred at a certain time and place, and
- you are the offender, and
- you had a substance in your possession, and
- the substance was cannabis.

What can I do today?

Admit to the charges and ask for diversion

The diversion program means your case is treated differently. It is normally for less serious cases. You must agree to certain conditions, such as doing the Cautious With Cannabis program. You do not get a **criminal record**.

To get diversion you must admit responsibility for the offence. This includes everything the **informant** says in the **statement of alleged facts**. This means you tell the magistrate that you know you broke the law but you would like diversion. If you have not been given a **diversion recommendation**, you can ask to **adjourn** the case.

See our *Diversion* fact sheet for more information.

Plead guilty

If you agree that you did break the law, tell the court staff that you are **pleading** guilty. Go into the courtroom. The police prosecutor reads out the statement of alleged facts. The magistrate finds you guilty and gives you a **penalty**.

If you plead guilty the magistrate treats your **plea** as a sign that you are co-operating and may give you a less severe penalty.

See our *Pleading guilty* fact sheet to help you work out what to say to the magistrate.

Plead not guilty

If you believe that you did not break the law or you disagree with what the informant says you did, you must tell the police prosecutor that you plan to plead not guilty. They will hold a **summary case conference** with you before your case is heard in court. After conference, if you still wish to plead not guilty tell the magistrate. The magistrate adjourns your case for another day.

You will come back to court for a **contested hearing**. At this **hearing** the magistrate listens to **evidence** from you and the police before making a decision. You should have a **defence**. Saying that you did not know you were breaking the law will not be a good enough defence.

If you are pleading not guilty, get legal advice before the contested hearing. Also see our *Pleading not guilty* fact sheet.

Possible defences

You may have a defence if:

- the substance was not cannabis
- the substance was not in your possession.

If the police found the substance in your purse, pockets, house and car or anywhere you have control over, the magistrate will treat this substance as being in your possession unless you can prove otherwise.

Can I adjourn today's hearing?

You can ask the magistrate for an adjournment if you want to:

- go into the diversion program
- see a private lawyer.

Adjournments are hard to get for any other reason. The magistrate may say no.

What are the penalties if I am found guilty?

Fines

This depends on the amount of cannabis you pleaded guilty to possessing. If you pleaded guilty to possessing up to 50g of cannabis the magistrate could fine you up to five penalty units. If you pleaded guilty to possessing over 50 g but under 250 g, the magistrate could fine you up to 30 penalty units or sentence you to a year in jail.

If the police also charged you with using cannabis, and the magistrate found you guilty, the magistrate could fine you up to five penalty units. This is on top of the penalty units for the possession charge.

One penalty unit is about \$145.

Other penalties

The magistrate can also choose to place you on an **undertaking** to behave well for a certain amount of time.

How does the magistrate decide what penalties to give?

The magistrate looks at:

- how serious your offence is
- if you have been found guilty of similar offences before
- what else is happening in your life.

What else might happen if I am found guilty?

Forfeiture

If the police seized the cannabis, the police prosecutor will apply to the court for a forfeiture order. This means that the police will not return the cannabis to you.

Criminal record

What happens in court goes in your criminal record.

This includes:

- the finding of guilt
- a **conviction**, if there is one
- penalties.

The court and the police can see your criminal record. Sometimes they can let other people know what is in your criminal record. For example, a criminal record, especially with convictions, may make it harder for you to get some jobs or get visas to some countries.

See our *Criminal records* fact sheet.

Can I appeal the magistrate's decision?

Yes. If you do not agree with the decision you can **appeal** to the County Court. You have 28 days to do this. Get legal advice before you decide. You could get a higher penalty.

See our *Appealing a Magistrates' Court decision* fact sheet.

How do I pay a fine?

You can pay the fine at any Magistrates' Court. Go to the court counter and ask the staff for help.

Let the magistrate know if you might have trouble paying the fine. There are options. You can ask the magistrate to:

- make a plan for you to pay bit by bit
- give you community work instead of the fine.

If you do not pay, the court can issue a **warrant** for your arrest.

Where can I get help?

Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

Victoria Legal Aid

Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

Website

www.legalaid.vic.gov.au