



# Trafficking dangerous drugs in Queensland

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Trafficking in dangerous drugs is one of the most [serious criminal offences](#) in Queensland. Under the *Drugs Misuse Act 1986*, any person who carries on a business of unlawfully trafficking in a dangerous drug is guilty of a crime.

## What is a dangerous drug?

In Queensland, dangerous drugs are divided into two classes: Schedule 1 and Schedule 2.

Schedule 1 drugs are those considered to be the most serious and harmful, such as heroin, cocaine, methylamphetamines, steroids and MDMA (ecstasy). Schedule 2 drugs include cannabis, psilocybin (magic mushrooms), fentanyl, and diazepam.

Notably, the definition of a dangerous drug has been specifically expanded to include 'designer drugs'. This includes synthetic drugs that have a substantially similar chemical structure or have (or are intended to have) a substantially similar pharmacological effect to dangerous drugs.

## What does 'trafficking' dangerous drugs mean?

A charge of trafficking in dangerous drugs is often comprised of multiple individual instances of [supplying dangerous drugs](#). But what does the term 'trafficking' actually encompass?

The term 'trafficking' is not defined within the *Drugs Misuse Act 1986*. Whilst at first glance, the term 'trafficking' suggests the selling of dangerous drugs, the courts have considered the term extensively over the years, which has resulted in a broader

meaning.

To establish trafficking, it is necessary to show a regularity of drug dealing, which is sufficient to establish that such dealing occurred *in the course of a business*. Occasional sales across limited or isolated transactions are not sufficient to establish a charge of trafficking in dangerous drugs.

The courts have also held that the term trafficking has a wider meaning than simply 'selling', and includes knowingly engaging in the movement of drugs from the source to the ultimate user. This can include activities such as advertising and/or promoting the sale of dangerous drugs, negotiating prices, setting up lines of supply or arranging deliveries.

It is important to note that a person can still be charged with trafficking in dangerous drugs even if they are not making a profit. For example, a person addicted to drugs could carry on a business, though the only reward is drugs for personal consumption.

## Available defences to trafficking dangerous drugs

There are a variety of issues to be considered when defending a charge of trafficking dangerous drugs. Given the meaning of trafficking, close attention should be paid to whether the accused person was actually "carrying on a business" of dealing in drugs.

Other considerations include:

- whether the substance can be proven to be a dangerous drug;
- whether the police have sufficient evidence of identification; and
- examining how the police obtained their evidence (e.g. whether [search warrants are valid](#)).

Other defences contained in the Criminal Code also apply to the *Drugs Misuse Act 1986*, including, for example, 'mistake of fact'. This defence is sometimes relied upon when the accused person asserts that they held a reasonable belief that the product being dealt with was not a dangerous drug.

## What penalties apply to trafficking dangerous drugs?

The maximum penalty for trafficking in dangerous drugs is 25 years imprisonment, regardless of whether the drug(s) trafficked are Schedule 1 or Schedule 2 drugs.

It is common for defendants convicted of trafficking to be sentenced to a term of imprisonment, even for first time offenders. Whilst there is no hard and fast rule which requires terms of imprisonment to be imposed for trafficking offences, sentencing trends reveal that non-custodial sentences for trafficking in dangerous drugs are only ordered in exceptional circumstances.

There are many factors which can influence the severity of the sentence imposed for an offence of trafficking, including:

1. the type of drugs being trafficked (Schedule 1 or Schedule 2);

2. the purity, quantity and street value of the drugs;
3. the period over which the trafficking occurred;
4. the level of involvement of the defendant;
5. the sophistication of the trafficking business;
6. the defendant's personal background (age, employment, upbringing, criminal history etc).

## Other consequences – confiscation of assets, forfeiture and restraining orders.

There are other very significant consequences that can flow from trafficking in dangerous drugs.

### Confiscation proceedings under the *Criminal Proceeds Confiscation Act 2002* (Qld)

The *Criminal Proceeds Confiscation Act 2002* (Qld) targets financial gains associated with criminal activity. If you are charged with a serious criminal offence such as trafficking in dangerous drugs, the State of Queensland may commence proceedings to seize your property and/or assets.

This process involves the State making an application to restrain property, followed by an application to forfeit that property. Of importance, you do not need to be formally convicted for your property to be confiscated. Moreover, property held in the names of other persons can also be restrained and forfeited if shown to be connected to the defendant's illegal conduct.

### Serious Drug Offender Confiscation Order

The *Criminal Proceeds Confiscation Act 2002* also governs the Serious Drug Offender Confiscation Scheme, which is particularly important to those charged with trafficking offences.

Under this Act, if a defendant is convicted and sentenced for a charge of trafficking in dangerous drugs, the court must issue a serious drug offence certificate. This certificate allows the State of Queensland to apply to the Supreme Court for a "Serious Drug Offender Confiscation Order".

The effect of a Serious Drug Offender Confiscation Order is to forfeit to the State of Queensland all of the property of a defendant, as well as all property gifted by a defendant to others in the six years prior to a defendant being charged.

The State of Queensland will automatically succeed in any forfeiture application under this process unless it can be shown that it is not in the public interest for particular property and/or assets to be forfeited. Of importance, there is no requirement for the confiscated property and/or assets to be linked to the commission of a specific offence.

## Confiscation proceedings under the *Drugs Misuse Act 1986* (Qld)

The *Drugs Misuse Act 1986* also contains extensive provisions which allow the police and/or the prosecution to apply for the forfeiture of property involved in, or acquired from, drug offences.

Property will be liable for forfeiture if it:

- was acquired to commit or used to commit an offence;
- is the proceeds of, or acquired with the proceeds of, a drug offence; and/or
- is property into which the proceeds of such offences have been converted.

## Get help from a criminal lawyer

Trafficking in dangerous drugs is a serious criminal offence. If you or a loved one has been charged with this offence, you should obtain urgent advice about your options.

Our lawyers at Gilshenan &Luton Legal are experts in serious drug matters and regularly assist our clients to achieve optimal results.

## Contacting Gilshenan &Luton Criminal Defence Lawyers

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## Further reading

- [Charges for possession of dangerous drugs](#)
- [Drug diversion programs Queensland](#)
- [How does criminal sentencing work in Queensland?](#)
- [Common court orders in Queensland criminal sentencing](#)

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*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*