

Part 1 Drug related definitions

Table of Contents

Table of Contents	2
Drug related definitions	3
Administering	3
CBD product	3
Controlled drug	3
Controlled drug analogue	3
Class A controlled drug	4
Class B controlled drug	4
Class C controlled drug	4
Conspiracy - crucial elements	4
Consumed	4
Control	4
Cultivate	5
Equipment	5
Importing	5
Knowledge	5
Knowingly	6
Knowledge of existence	6
Knowledge of situation	6
Knowledge of qualities	7
Manufacture	7
Material	7
Non-psychoactive THC analogue	7
Offered to supply	8
Permitting	8
Possession of Drugs	8
Physical Element	8
Mental Element	8
Willingness to possess	9
Possession - joint	9
Possession - usable amounts	9
Possession - attempted	9
Possession - purpose	9
Precursor substance	10
Procure	10
Produce	11
Prohibited plant	11
Smoking	11
Supply	11
Supplying	11
Temporary class drug	11
Use to commit an offence	11

Drug related definitions

Administering

In defining the term 'administer' you should follow the dictionary meaning of the term 'to give': to bestow, present or confer ownership of something to another person.

CBD product

CBD product means a product that:

- contains cannabidiol; and
- either:
 - does not contain a specified substance; or
 - contains specified substances in an amount that is no more than 2% of the sum of the amount of cannabidiol and the amount of specified substances in the product; and
 - does not contain any other controlled drug; and
 - does not contain any other psychoactive substance (as defined in section 9 of the Psychoactive Substances Act 2013).

Specified substance above means a substance that naturally occurs in cannabis; and is:

- a tetrahydrocannabinol, or
- an isomer, ester, or ether of a tetrahydrocannabinol, or
- an ester or ether of an isomer of a tetrahydrocannabinol, or
- a salt of any substance described in the three bullet points above, or
- a substance that has a structure substantially similar to that of any substance described in the four bullet points above,

and for substances listed in the last four bullet points above, is capable of inducing more than a minor psychoactive effect, by any means, in a person.

(s2A)

Controlled drug

'Controlled drug' means any substance, preparation, mixture, or article specified or described in [Schedule 1](#), [Schedule 2](#), or [Schedule 3](#) to the Misuse of Drugs Act 1975; and includes any temporary class drug and any controlled drug analogue.

(s2)

Where a controlled drug is also defined as a [medicine](#), the Misuse of Drugs Act provisions apply (and the drug is not a poison, poisonous substance or toxic substance for the purposes of the [Hazardous Substances and New Organisms Act 1996](#)).

[Prescription medicines](#) are covered by the [Medicines Act 1981](#), although some are also listed as controlled drugs in the schedules to the Misuse of Drugs Act 1975.

Note: Controlled drugs include heroin, LSD, cocaine, morphine, opium, methamphetamine and cannabis plant, seed, fruit, resin and extracts.

Controlled drug analogue

'Controlled drug analogue' means any substance, such as the substances specified or described in Part 7 of [Schedule 3](#) to the Misuse of Drugs Act 1975, that has a structure substantially similar to that of any controlled drug; but does not include:

- any substance specified or described in [Schedule 1](#) or [Schedule 2](#) or Parts 1 - 6 of [Schedule 3](#) to the Misuse of Drugs Act 1975; or
- any [pharmacy-only medicine](#) or [prescription medicine](#) or restricted medicine within the meaning of the Medicines Act 1981; or
- an approved product within the meaning of the [Psychoactive Substances Act 2013](#); or
- a non-psychoactive THC analogue.

(s2)

Class A controlled drug

'Class A controlled drug' means the controlled drugs specified or described in [Schedule 1](#) to the Misuse of Drugs Act 1975.
(s2)

Class B controlled drug

'Class B controlled drug' means the controlled drugs specified or described in [Schedule 2](#) to the Misuse of Drugs Act 1975.
(s2)

Class C controlled drug

'Class C controlled drug' means the controlled drugs specified or described in [Schedule 3](#) to the Misuse of Drugs Act 1975; and includes any controlled drug analogue.
(s2)

Conspiracy - crucial elements

The crucial element to Conspiracy is an agreed intention, rather than any actual action. In proceedings for a conspiracy, it is necessary for the Crown to prove an 'agreement', between the two or more persons involved, to do an unlawful act.

It is not necessary that the design should have been affected or even attempted or that any act should have been done in pursuance to the plan. [R v Dillon](#) [1956] NZLR 110 refers.

There can be a conspiracy between two people that one will supply the other. [R v Lambert](#), 17/7/91, Tompkins J, HC Auckland T249/90 refers.

Where there is a conspiracy to import controlled drugs into New Zealand and the agreement or unlawful acts are carried out in foreign territory, there may be a problem regarding jurisdiction. This English case is relevant to New Zealand law:

The crime of conspiracy in essence consists of an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means. When the conspiratorial agreement is made the offence is complete. So long as the agreement is being performed the offence exists and the Courts of England have jurisdiction to try the offence only when evidence suffices to show that a conspiracy whenever or wherever it was formed was in existence when the accused were in England. *Director of Public Prosecutions v Doot* [1973] 1 All ER 940 refers.

The Doot decision agrees with New Zealand conspiracy law, and so you would need to prove that the accused had done something to complete the conspiracy in New Zealand for the offence to come within the jurisdiction of the New Zealand courts. An example of this is given in the following case law.

The use of the New Zealand customs and postal services is part of the conspiracy, and this brings the offence within the jurisdiction of the New Zealand Courts. Although the conspiracy is complete upon an agreement to do an unlawful act, it is not ended until there is an act or omission in New Zealand in furtherance of the conspiracy. It therefore comes within jurisdiction pursuant to section 7 of the Crimes Act 1961. [Place of commission of offence]. [This ruling follows] [R v Sanders](#) [1984] 1 NZLR 636. [R v Johnston](#) (1986) 2 CRNZ 289 refers.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[Definition of conspiracy](#)'.

Consumed

'Consumed' should be taken in its natural and ordinary meaning; that is, consumption involves using it. A drug is consumed when it is swallowed, even though some time may elapse before it is absorbed into the bloodstream. A suspect who induces vomiting can be charged with consuming the drug, but if the vomiting is induced before the drug is absorbed, it may be held that they can be found guilty of an attempt only.

Note: Swallowing a drug in order to store it is not consumption, but possession.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[consuming](#)'.

Control

'Control' involves the physical ability to:

- determine how the drug is dealt with; or
- arrange or invite its presence; or
- act in any way as its owner.

Physical control is the power to exercise dominion over a thing, to the exclusion of other people.

There will be sufficient control over a drug which is in the custody of another if that other is "obliged" to surrender it on demand. [R v McRae](#) (1993) 10 CRNZ 61 (CA) refers.

Control also involves a mental attitude that includes:

- knowing that the drug is present
- intending to act as its owner
- wanting to act as its owner.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[control](#)'.

Cultivate

'Cultivate' includes sow or plant, and 'cultivation' has a corresponding meaning ([s2](#)).

Note: The seeds need not be planted. It is sufficient that steps have been taken to germinate them; for example, they have been put in a dish containing moist tissue.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[cultivate](#)'.

Equipment

The Misuse of Drugs Act does not define the term, and it has not been the subject of discussion by the Courts. For the purposes of this chapter, 'equipment' means apparatus tools or paraphernalia including physical objects such as:

- lighting systems; including bulbs, shades, transformers, power cords etc
- plumbing systems; including irrigation hoses, reservoirs, pumps
- growing systems; including grow pots, stands
- ventilation systems; including fans and odour control items such as carbon filters ozone generators
- cloning equipment; including heat pads, trays, scalpels
- literature on cannabis cultivation i.e. 'Indoor Marijuana Horticulture' (also known as 'The Cannabis Bible').

Importing

'Importing', within the Misuse of Drugs Act 1975, has 'the ordinary meaning of to introduce or bring in from abroad or to cause to be brought in from a foreign country'.

[Saxton v Police](#) [1981] 2 NZLR 186 (CA) refers.

The definition of importation takes its meaning from its statutory setting. The purpose of the Misuse of Drugs Act 1975 is to prevent the illicit use of drugs in New Zealand. Importation as it increases the availability of drugs is prohibited. Importing into New Zealand for the purposes of section [6\(1\)\(a\)](#) is a process that exists from the time the goods enter New Zealand until they reach their immediate destination. By this, the goods must have ceased to be under the control of the appropriate authorities and have become available to the consignee or addressee. Delivery into the post office box was held to be the final step in the process at which point the package was deemed to have been delivered and available to the addressee. [R v Hancox](#) [1989] 3 NZLR 60 refers.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[importation](#)'.

Knowledge

The required mens rea is sometimes described as "knowledge" of essential facts, this being most apt in relation to circumstances existing when a person acts. When knowledge is not expressly required by the legislation, but the need for mens rea is implied by the Courts, it appears that the requirement of "knowledge" of circumstances will be satisfied even if the accused was unsure of the facts

but was aware that there was a real risk that the relevant circumstances were present, at least if the accused was reckless. In [Waaka v Police](#) [1987] 1 NZLR 754; (1987) 2 CRNZ 370 (CA), at p 759; p 375, it was held that it was an essential element of the summary offence of assaulting a constable in the execution of his duty (section 10 Summary Offences Act 1981) that the accused "knew" that the victim was such a person; but the Court of Appeal added that it sufficed if the accused "wilfully shut his eyes to those possibilities or was indifferent to whether or not they were the truth" (emphasis added); see also [Frost v Police](#) (1988) 4 CRNZ 539.

Where the legislation expressly requires only "knowledge" of existing circumstances it appears that, at least as a general rule, it will not suffice that an accused was "suspicious", and thought that there was a real risk that they existed. In [R v Crooks](#) [1981] 2 NZLR 53 (CA), the Court of Appeal gave extensive consideration to the meaning of "knowing that thing to have been dishonestly obtained" in the definition of receiving, in what was then section 258. The Court held that "knowing" in this context meant "knowing or believing" and the effect of the rather involved, and at times circular, judgment seems to be that mere suspicion is not enough, even if accompanied by a decision not to inquire about the facts, and that what is needed is that the accused is sure about the relevant matter or has no real doubt. "Knowing" was said to involve "a certainty that the point of his inquiry is free from doubt", and a "belief" is an "acceptance of a proposition", based on information not mere intuition. Mere "suspicion" or "doubt" is not enough, and a failure to inquire may support an inference of knowledge or belief only if the accused was confronted by circumstances which were "so compelling" that it can be inferred that the accused failed to inquire "because he knew what the answer was going to be". While the decision in *Crooks* has been rendered largely obsolete by the change in definition of "receiving" to include recklessness as to whether the thing has been stolen (see section 246; CA246.04), the Court's discussion of the meaning of "knowing" is still helpful. See further, Mathias [1987] NZLJ 112, pp 114-115. In *R v Jorgensen* (1995) 129 DLR (4th) 510; 102 CCC (3d) 97 (SCC), it was held that an accused satisfied a statutory requirement of knowledge of facts if he or she was aware that further inquiry was necessary, or "strongly suspected" that it would confirm those facts, and deliberately chose not to inquire. See also *R v Duong* (1998) 124 CCC (3d) 392 (Ont CA) and also the discussion of "wilful blindness" below CA20.35).

In some instances, "knowledge" may be expressly required in relation to future consequences of conduct. In such cases it is unclear whether the accused has to know or believe, when the act was done, that the consequences "will" occur or whether it is sufficient that he or she was reckless in the sense of simply being aware that such consequences were likely. The reasoning in *Crooks* suggests the former meaning. This is consistent with Randerson J's obiter description in [Moore v Police](#) 23/8/01, HC Tauranga AP11/01, of section 12A(1) Misuse of Drugs Act 1975 as requiring knowledge that drug manufacturing equipment "is to be used" in the commission of an offence. See also *Pereira v DPP* (1988) 82 ALR 217; 35 A Crim R 382 (HCA). Compare G Williams, Textbook of Criminal Law (2nd ed), pp 125-126, citing *R v Smith* (Donald Sydney) [1973] QB 924; [1973] 2 All ER 1161.

Knowingly

Actual knowledge of the use or wilful blindness amounting to actual knowledge is necessary. *R v Souter* [1971] 2 All ER 1151 refers.

Mere reasonable grounds for suspicion that the use is occurring is insufficient. [R v Sweeney](#) [1982] 2 NZLR refers.

For an explanation of 'knowing', refer to Mathias: Misuse of Drugs, ([Westlaw's Specialist Law Texts](#)).

Knowledge of existence

The components that provide knowledge of existence are:

- the accused must be aware that they possess the substance
- the accused identifies the substance as a controlled drug, even if there is no substance to be analysed to prove their assertion
- physical custody presumes knowledge, unless otherwise proven.

A person cannot be said to be in possession of some article which he or she does not realise is in their possession. *Lockyer v Gibb* [1966] 2 All ER 653 refers.

Proof that a substance is cannabis is not limited to scientific evidence. Where material was not recovered and the defendant admitted to the Police that he thought it was cannabis, the Court of Appeal held that there was no logical reason why circumstantial evidence might not be sufficient to prove identity of the substance beyond all reasonable doubt, particularly when there was no likelihood of an alternative substance being involved. *R v Cruse* (1989) BCL 850 (CA) refers.

Knowledge of situation

Although this does not have to be specifically established by the court, the person who possesses the drugs must have a fairly specific idea of where the drugs are in order to be said to control them.

Knowledge of qualities

This phrase relates to the illegal intent of the person. In considering whether a person knows the qualities of a substance, you need to establish that they:

- know they have the substance
- know the substance's nature or qualities (section 29 deals with mistaken beliefs)
- intend to use the substance in a way that allows you to charge them with possession.

Knowledge and intent are the crucial elements. Take, for example, the situation in which a woman cultivates her son's cannabis plants in the genuine belief that they are merely house plants. Although she is obviously aware that she has the plants, she is not aware of the illegal nature and so cannot criminally intend to take advantage of possessing them. Nonetheless, although mens rea is crucial to any charge, generally with charges of cultivating or possessing a controlled drug, it is assumed that the person knows the nature of their actions unless they produce evidence that raises reasonable doubt about their guilty intent.

It is unthinkable that Parliament ever intended to expose citizens to a liability up to 14 years' imprisonment where the accused did not know that the plant that he or she was cultivating was a prohibited plant, so clearly this is not an absolute offence. In the absence of evidence to the contrary, knowledge on her part will be presumed, but if there is some evidence that the accused honestly believed on reasonable grounds that her act was innocent, then she is entitled to be acquitted unless the jury is satisfied beyond reasonable doubt that this was not so. *R v Strawbridge* [1970] NZLR 909 (CA) refers.

Note: The case of *R v Strawbridge* also applies in cases of simple possession.

Where guilty knowledge is an element of a charge alleging unlawful possession, a person cannot knowingly be in possession of an article which he mistakenly but honestly believes he does not possess. *Police v Rowles* [1974] 2 NZLR 756 refers.

For example, A is travelling to Sydney to visit B. A mutual friend arranges with B to slip some cannabis into A's luggage without the A's knowledge. Although A might be able to recognise the substance as cannabis and realise its illegal nature when shown it, if A was genuinely unaware that the cannabis was in their luggage A cannot be charged with 'knowing possession'.

Manufacture

To manufacture is to synthesise a product by combining components or processing raw materials; for example, heroin home bake - Mathias: Misuse of Drugs, Butterworths, 1988 refers.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[manufacture](#)'.

Material

'A substance from which a thing is made' and would include items such as:

- plant nutrients
- fertilisers
- chemicals
- insecticides
- growing medium - i.e. Perlite / Hydroton Balls / Rockwool.

Non-psychoactive THC analogue

Non-psychoactive THC analogue means a substance that:

- occurs naturally in cannabis; and
- is not capable of inducing more than a minor psychoactive effect, by any means, in a person; and
- has a structure substantially similar to that of:
 - a tetrahydrocannabinol; or
 - an isomer, ester, or ether of a tetrahydrocannabinol; or

- an ester or ether of an isomer of a tetrahydrocannabinol; or
- a salt of any tetrahydrocannabinol substance described above.

(s2)

Offered to supply

A person offers to supply a drug by indicating to someone else that they are ready to supply it on request. To 'offer' includes to tender, propose or present for acceptance or refusal.

An offer is made through the use of the words that can reasonably be construed as an offer. *R v Fraser* (1960) 6 CRNZ 517 refers.

The intention that the other person believes a real offer has been made. *R v During* [1973] NZLR 366.

The offer is valid:

- when they have a drug which they intend to supply and they offer to supply
- when they have no drug but intend to get some and they offer to supply
- when they think they have a drug, but in fact it is not, and they offer to supply a controlled drug
- when they intend to mislead the other person by pretending to have a drug to supply and they offer to supply a controlled drug (this is probably also a false pretence).

R v Brown [1978] 2 NZLR 174 refers.

Note: The person making the offer need not be the one supplying the drug. An intermediary can be a party to the offer.

Permitting

'Permitting' means:

- knowing of the offence; or
- 'shutting one's eyes' to the obvious; or
- allowing activities to continue irrespective of whether an offence is taking place.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[permitting](#)'.

Possession of Drugs

The Court of Appeal decision of *R v Cox* [1990] 2 NZLR 275 (CA) outlined that possession of drugs requires two elements to be proven. The first is the physical element, and the second is the mental element.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[possession](#)'.

Physical Element

The physical element requires physical custody or control over the drugs. This can be either **actual** or **potential**.

Actual custody or control:	Potential custody or control:
Means that the person actually has the drug in their custody or control. For example, if the drug is found in their pocket.	Under section 2(2) of Misuse of Drugs Act 1975 the things which a person has in their possession includes anything subject to their control which is in the custody of another. An example of this is if a person is storing their drugs at a friend's house. A defendant can exercise control of property through an agent; however, exercise of control must be established.

Mental Element

The mental element requires a combination of knowledge and intention.

Knowledge:	Intention:
Knowledge requires that the defendant had "knowledge in the sense of an awareness by the accused that the substance is in his possession (which is often to be inferred or presumed)". The defendant must also have knowledge "that what is in his possession is a controlled drug; although he need not know its exact nature".	The defendant must have intended to exercise possession.

Willingness to possess

The individual must also willingly exercise possession of the drug - *R v McIntyre* CA94/77, 9 March 1978 (a person forced by threats to remain in a motel to guard drugs was not in possession).

Possession - joint

Joint possession occurs when two or more people enjoy control over the drug, whether to the same degree or not.

When a common stock of drugs exists, from which a number of people may draw at will, they may all be in common possession of all of the drug, although it will be difficult to prove. It is not enough to show that the 'others' knew that the drugs existed or that one person held them, a common pool or joint enterprise must be shown. *R v Searle* (1971) CLR 592 refers.

Note: A person who intends to buy cannabis can be charged as a party to the seller's possession for supply. In such an instance, you would need to prove that the purchaser encouraged the seller to possess the cannabis for a proposed deal, and that the purchaser took steps to ensure that the sale or meeting took place.

Possession - usable amounts

Remember that in all cases, the amount of drug in the accused's possession must be useable.

Section [29A](#) of the Misuse of Drugs Act 1975 provides that during a summary trial it is not necessary for the prosecution to prove that the amount of the controlled drug in the defendant's possession was of a useable quantity. However, if the defendant alleges the amount of any controlled drug was not of a useable quantity, the District Court Judge must, if requested to do so by the prosecutor, adjourn the hearing. This is to enable the prosecutor to arrange for a witness to provide evidence on the question of useable quantity.

A person could not be in 'possession' of mere scraps of drug residue that could not be used. The onus was on the prosecution to prove in every case that the drug seized was 'useable'. *Police v Emerali* [1976] 2 NZLR 476 (CA) refers.

If the defence does not claim that the amount seized was not usable, the court assumes that it was. If the defence does claim that the amount was not usable, the onus is on the prosecution to prove that it was. The court will take into account the nature, condition and size of the substance, and whether it can be weighed.

Amounts that are in themselves unusable may be deemed usable if they can be combined with other substances; for example, scraps of cannabis leaf may become usable by adding them to a cigarette.

Possession - attempted

It is an offence to attempt to gain possession of a drug, a charge which covers someone obtaining something innocuous in the mistaken belief that it is a drug.

Police found the respondent J in possession of a plastic bag containing plant material. J admitted that he thought it was cannabis and that he had purchased it from another person. On analysis the plant material was found to be hedge clippings. Chilwell J held that the commission of the offence of receiving cannabis was not legally impossible, although in the circumstances it was factually impossible. As the respondent had criminal intent and did an act for the purpose of accomplishing his object, he was guilty of an attempt to commit an offence. *Police v Jay* [1974] 2 NZLR 204 refers.

Possession - purpose

Section [6\(1\)](#)(a) to (f) of the Misuse of Drugs Act 1975 creates a presumption of law that if a person has possession of a specified amount of any drug, that person will be presumed to have that drug for one of the purposes set out in section [6\(1\)](#)(a), (b) or (c).

The presumption that the drug is for sale or supply may be rebutted if the person is able to prove, on the balance of probabilities that they did not intend to commit a 'dealing' offence, notwithstanding the amount. For example, the defence may argue that the suspect was heavily addicted and required large amounts for personal use.

A person in possession of less than the amounts specified in section 6(6)(a) to (f) can still be charged with possession for supply if other circumstances provide good cause to suspect the offence. These circumstances may include the environment in which the drugs were found, the way in which they were packaged, the suspect's admissions, presence of large amounts of money or 'tick-lists' showing sales. Some key cases provide guidance concerning class C controlled drugs and when certain facts need to be established and when they may be inferred. [R v Tracy](#) suggests that where the purpose of possession is uncertain or cannot be proved you should draft the charge in the alternative.

Where the particular purpose for possession cannot be proved or is uncertain, the charge should be drafted in the alternative, e.g. 'in possession of a class C controlled drug for a purpose specified in paragraph (d) or paragraph (e) of 6(1) of the Misuse of Drugs Act 1975'. [R v Tracy](#) [1978] 2 NZLR 91 refers.

However, as [R v Paterson](#) (a decision made after *Tracy*) points out, these purposes can and should only be inferred by Tracy's formula where they cannot be proved otherwise or are uncertain or subject to doubt. Where there is no evidence of supply or intended supply to any person under 18 years, the charge should use the words, "for the purpose of sale".

The prosecution should not in every case where reliance was placed on the section 6(6) presumption, follow the suggested *Tracy* formula. Follow this only when the purpose is uncertain. [R v Paterson](#) [1985] 1 NZLR 334 refers.

What a person intends to do with the drug is a separate issue from possession.

In cases where *Tracy's* formula is applied, the defendant needs to rebut the presumptions of section 6(6) by proving, on the balance of probabilities that they did not intend to supply, administer or sell the drug, or attempt to supply, administer or sell the drug.

Where it is sought to displace the presumption of possession for supply by assertions of a merely custodial role, the practical consequences of actions taken to distribute the drug are of more weight than technical questions as to changes of ownership. [R v Donald](#) (1986) 2 CRNZ 192 refers.

Defences

If a person is found in possession of a container in which there are controlled drugs, it is a defence to prove they:

- had no opportunity, or was not legally entitled, to examine the contents; or
- had no reason to suspect the contents were illicit; or
- honestly believed the contents were different in kind to controlled drugs.

Warner v MPC [1969] 2 AC 256 refers.

To establish a prima facie case, the prosecution must prove that the defendant knowingly had custody of the substance or of its container, and that the substance was a controlled drug.

Precursor substance

This means any substance specified or described in Part 1 or Part 2 or Part 3 of Schedule 4 in the Misuse of Drugs Act 1975. (s2)

Examples of 'Precursor substances' Parts 1, 2 or 32 of Schedule 4 of the Act include:

- ephedrine
- lysergic acid
- pseudoephedrine.

Procure

'Procure' should be taken in its natural and ordinary meaning; that is, obtaining, acquiring, bringing about.

Produce

'Produce' includes compound; and 'production' has a corresponding meaning.

(s2)

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[produce](#)'.

Prohibited plant

'Prohibited plant' means:

- any plant of the genus Cannabis
- any plant of the species Papaver Somniferum
- Erythroxyton coca and Erythroxyton novagranatense (syn. E. truxillense) and every other species of the genus Erythroxyton from which a controlled drug can be produced
- any plant of the species Lophophora williamsii or Lophophora lewinii
- any fungus of the genera Conocybe, Panaeolus or Psilocybe from which a controlled drug can be produced or which contains a controlled drug
- any other plant which is declared to be a prohibited plant by regulations made under the Misuse of Drugs Act 1975.

(s2)

Smoking

"Smoking" should be taken in its natural and ordinary meaning; that is draw into the mouth the smoke from an object. A person who is merely present in a room where others are smoking cannabis probably would not be held to be committing an offence by passively inhaling the smoke.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[smoking](#)'.

Supply

'Supply' includes distribute, give and sell.

(s2)

Supplying

The term 'supply' includes distributing, giving or selling. The cases of *Donald* and *Knox* discuss the meaning of supplying class A or B controlled drugs as set out in section [6](#)(1)(c).

The statutory interpretation of the word 'supply' to include 'distribute' covers the factual situation in this case. The accused was intending to take part in the distribution of the jointly owned property amongst its co-owners, even if those co-owners were co-possessors. The technicality of change of ownership is not as important as the practical consequence of what the accused was about to do. The accused was intending to take part in a 'distribution' and is therefore caught within the meaning of supply. *R v Donald* (1986) 2 [CRNZ](#) 192 refers.

The word 'giving' also includes 'giving back'. As a result, a person who is in unlawful possession of a controlled drug which has been given to them for safekeeping has the necessary intent to 'supply' if his intention is only to return it to the person who deposited it with them. *R v Knox* (1987) 3 [CRNZ](#) 148 (HC) refers.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[supplying](#)'.

Temporary class drug

Temporary class drug means any substance, preparation, mixture, or article specified as a temporary class drug by an order made under section [4C](#).

(s2)

Use to commit an offence

The premises or vehicle must somehow facilitate the commission of the offence that is knowingly committed. It is not sufficient that a

drug-related offence is committed in a premises or vehicle, it must be established that the premises or vehicle made a material contribution to the commission of the offence.

Note: The suspect must have had control over the premises or vehicle and have refrained from taking steps to end the unlawful use.

It is not sufficient just to have reasonable grounds to suspect that an offence is taking place.

See Mathias: Misuse of Drugs, (Westlaw's Specialist Law Texts) for further commentary on '[use of premises etc. to commit an offence](#)'.
