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**NSW Police Force**

**CANNABIS CAUTIONING SCHEME  
GUIDELINES FOR POLICE**

**STATE CRIME COMMAND**

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## Summary

- These guidelines aim to provide members of NSW Police Force with sufficient information on how to use and apply the Cannabis Cautioning Scheme (CCS).
- The CCS gives police the discretion to formally caution, rather than charge, individuals for minor cannabis offences.
- These guidelines apply to the cautioning of adults detected using or in possession of not more than **30 grams** of dried cannabis and/or in possession of equipment for the use of cannabis.
- The CCS permits a maximum of two cautions with further cannabis offences resulting in a charge.
- People using, or in possession of, synthetic cannabinoid products are not able to receive a cannabis caution.
- Recipients of a first cannabis caution will be provided with contact information for the Cannabis Caution Line and strongly encouraged to access a telehealth session delivered by qualified Alcohol and Other Drug (AOD) professionals. Recipients of a second caution may contact the Cannabis Caution Line for a more intensive telehealth intervention.
- Individuals with prior convictions of serious drug offences are *not* eligible for the CCS, unless the convictions are spent.
- It is no longer a requirement that the individual must consent to the caution or admit to the offence.
- The Cannabis Cautioning Scheme operates alongside the Early Drug Diversion Initiative for low-level drug offences, rather than being replaced by it. Where a suspect is in possession of dried cannabis leaf and / or equipment and meets the criteria for a cannabis caution, as well as one other illicit drug which meets the criteria for a drug CIN, police may issue a cannabis caution for the cannabis offence and a CIN for the other eligible drug offence.

# Document Control Sheet

## Document Properties

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1	03/2013	Drug and Alcohol Coordination Unit	Original document
2	08/2021	Capability, Performance and Youth Command	Review and update of document
3	02/2024	Crime Prevention Command	Update of guidelines to reflect Corporate Procedures template, amendments to procedures in line with the EDDI.
4	04/2024	Crime Prevention Command	Updated document security classification - D/2024/346228

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## Purpose

These guidelines aim to provide members of NSW Police Force with sufficient information to enable the effective utilisation of the Cannabis Cautioning Scheme (CCS).

The CCS gives police the discretion to formally caution, rather than charge individuals for minor cannabis offences.

## Scope

NSW Police Force encourages the use of discretion.

The issuing of a cannabis caution is at the discretion of the investigating officer. Police must be satisfied that a caution is appropriate given all of the circumstances and sufficient evidence exists to substantiate a prosecution.

**The Cannabis Cautioning Scheme operates alongside the Early Drug Diversion Initiative for low-level drug offences, rather than being replaced by it<sup>1</sup>. Where a suspect is in possession of dried cannabis leaf and / or equipment and meets the criteria for a cannabis caution, as well as one other illicit drug which meets the criteria for a drug CIN, police may issue a cannabis caution for the cannabis offence and a CIN for the other eligible drug offences<sup>1</sup>.**

## Roles & responsibilities

Commissioner's Executive Team	Document approval
Commander – Drug & Firearms Squad	Document sponsor
Commander – Drug & Firearms Squad	Document owner
Drugs, Alcohol & Mental Health Team – Crime Prevention Command	<ul style="list-style-type: none"><li>• Review these procedures prior to the scheduled review date and ensure content remains up to date</li><li>• Support sworn staff by answering queries relating to these procedures as they arise</li></ul>
All Sworn Staff	<ul style="list-style-type: none"><li>• Must comply with this document when issuing Cannabis Cautions</li><li>• Must understand how the Cannabis Cautioning Scheme relates to the Early Drug Diversion Initiative when issuing either a Cannabis Caution or a Drug Criminal Infringement Notice</li></ul>

## Background

In 1999, the NSW Government convened a Drug Summit with input from drug experts, parents, drug users, community leaders and representatives from various agencies, including NSW Police Force.

These guidelines were developed to facilitate the operational implementation of the CCS by NSW Police Force and apply to the cautioning of adults detected using or in possession of small quantities (not more than 30 grams) of dried cannabis and/or in possession of equipment for the use of cannabis<sup>2</sup>. Please note that this quantity threshold has recently changed to align with the Early Drug Diversion Initiative.

**Police are encouraged to exercise discretion and issue a caution. The CCS permits a maximum of two cautions with further cannabis offences resulting in a charge.**

The CCS covers offences of use and possession of dried cannabis leaf, stalks, heads and equipment for use. It does not include living plants or derived products such as hash and hash oil or seeds, where seeds make up the bulk of the drug content.

Cannabis other than dried cannabis (that is, fresh/wet cannabis and living plants) must be handled in accordance with the Precautions for Handling Cannabis Plants/Leaf in the NSW Police Force Handbook.

**People using, or in possession of, synthetic cannabinoid products are not able to receive a cannabis caution.**

The recipient of a first cannabis caution will be provided with contact information for the Cannabis Caution Line and strongly encouraged to access a telehealth session delivered by qualified Alcohol and Other Drug (AOD) professionals (e.g., psychologists, social workers, AOD counsellors, nurses). The telehealth session would provide information about the health and social consequences of cannabis use and options for ongoing treatment and support, including electronic links to further online AOD information (e.g., NSW Health's 'YourRoom' site, which contains information about AOD facts, harms and supports)<sup>1</sup>.

The recipient of a second caution may contact the Cannabis Caution Line for a more intensive telehealth intervention. The telehealth session would include assessment of individual circumstances and provide tailored intervention and education about physical and social impacts of drug use, associated risks, harm minimisation strategies, relapse prevention and behaviour change strategies, options for ongoing treatment and support, and referral to a treatment service where necessary and appropriate. They would also receive electronic feedback on their individual level of risk in relation to their drug use and links to further online AOD information (e.g., NSW Health's 'YourRoom' site)<sup>1,3</sup>.

The recipient of a second cannabis caution may undertake a telephone health education session on cannabis use with the Cannabis Caution Line within 14 days from the issue of the caution. Both the first and second caution notices will provide contact telephone numbers for the Cannabis Caution Line.

First and second cautions are issued from a single notice book. The issuing officer must indicate at the appropriate place on the cautioning notice whether they are issuing a first or a second caution.

## Procedures

### Eligibility Criteria

**Use or possession of not more than 30 grams of dried cannabis and/or possession of equipment for the use of cannabis<sup>2</sup>.**

The CCS applies only to dried leaf, stalks and heads of the cannabis plant and excludes freshly cut leaf, heads and stalks that contain moisture. The CCS excludes living plants or derived products such as hash and hash oil or seeds, where seeds make up the bulk of the drug content.

**The offender must be an adult.**

When dealing with people under 18 years the *Young Offenders Act 1997* must be applied.

**The cannabis must be for personal use.**

The investigating officer must be satisfied that the cannabis is for personal use.

**No other offence involved or detected for which a brief of evidence is required.**

Offences that can be dealt with by caution or penalty notice are exempt and a cannabis caution may be issued.

**There must be no prior convictions for any serious drug offence, unless the prior conviction is spent<sup>4</sup>.**

Offenders with spent convictions are eligible for the CCS.

Under the *Criminal Records Act 1991*, after a crime free period of 10 years, most minor offences will be treated as spent.

Individuals with prior convictions of **serious drug offences are not eligible for the CCS, unless the convictions are spent<sup>4</sup>.**

“**Serious drug offences**” include prior convictions (unless spent) for offences in relation to prohibited drugs or controlled substances, such as:

- Supply, manufacture, or production
- Cultivate or supply a prohibited plant
- Possession in whole or in part of manufacture apparatus including a tablet press or drug encapsulator
- Import and/or export or conspiracy to
- It also includes the possession of prescribed amounts of a precursor chemical and permitting serious drug offending to occur on a premise.

The offence/s may be based in relevant State or Commonwealth-based legislation.

**Note: it is no longer a requirement that the individual must consent to the caution or admit to the offence<sup>5</sup>.**

**Note: prior sexual offences and/or offences for violence are no longer part of the exclusion criteria for a caution<sup>4</sup>.**

## **Procedure – first cannabis caution**

- Ensure all *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) safeguards are applied.
- Seize the cannabis and/or equipment.
- Weigh or estimate the weight of the cannabis.
- Place the cannabis in a plastic drug security bag (PAB18) and seal in accordance with instructions. Write the drug bag number on the caution form.
- Read the eligibility criteria to the individual.
- Issue only one caution even if more than one minor offence is detected, for example possession of cannabis *and* equipment.
- Hand the individual their copy of the form and **alert them to the health and legal information overleaf**.
- Encourage them to contact the Cannabis Caution Line. Contact details are on the caution notice.
- Convey the drug security bag and/or any drug use implements to the nearest drug holding station as soon as practicable.
- At the station weigh the cannabis and enter the seizure in EFIMS.
- Create an event on COPS – possess/use prohibited drug. In the legal process category select 'cannabis caution' and complete all fields. Police should issue the caution at the scene.
- If there is a need to return to the station inform the individual of the reason and ask them to voluntarily accompany you to the police station.
- Inform the custody manager that you have an individual in relation to a cannabis caution.
- A custody record is not required.
- If the individual declines to voluntarily attend the police station for police to carry out further enquiries, the investigating officer must then make the decision whether to continue with the caution at the scene or take action for the offence by other means, such as by a Court Attendance Notice.
- If an offender is arrested for the possession of cannabis and/or equipment for the use of cannabis, they are to be taken to the nearest charge station. If at any stage during the offender's detention it is ascertained that the offender meets the criteria for a caution one can still be issued. The police have discretion not to proceed to a charge.
- **Note: Police do not have the power of arrest to issue a caution.**

## **Eligibility criteria – second cannabis caution**

The eligibility criteria for a second caution are the same as those for a first caution with the following additions:

**The offender has previously been issued one caution under the CCS.**

Conduct a CNI check to establish if prior cannabis cautions exist.



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Carry out a criminal history check to establish eligibility. An individual is permitted a maximum of two cautions under the CCS. A previous drug matter dealt with under Section 556A of the *Crimes Act 1900* (Repealed) or Section 10 of the *Crimes (Sentencing Procedure) Act 1999* is not considered a conviction and should be considered as a previous caution.

### Procedures – second cannabis caution

First caution procedures apply to a second caution with the following additions:

- Read the second caution eligibility criteria to the individual and explain that they may contact the Cannabis Caution Line within 14 days of the caution being issued.
- Inform the individual that they are required to give the Cannabis Caution Line the caution notice number which is located at the top right corner of the notice.

Staff from the Cannabis Caution Line will inform NSW Police Force when the individual has contacted their service.

An individual cannot be cautioned for possession or use of cannabis and/or equipment for use of cannabis on more than two occasions under the CCS. Officers should be aware that offenders who have already received two prior cannabis cautions may be eligible for referral to the MERIT (Magistrates Early Referral into Treatment) Program.

### Cannabis Cautioning Scheme notice books and drug bags

The availability of drug security bags and the Cannabis Cautioning notice books are the responsibility of the PAC or PD. It is important that:

- Sufficient supplies are allocated to operational response vehicles and dealt with in the same manner as other accountable books or equipment on issue.
- Drug bag allocation registers reflect the movement of all drug bags.

CCS notice books can be ordered through the SAP system as you would do for other accountable items. Go to Location Order > Stationery > Stationery Accountables > P1015 Cannabis Cautioning Scheme notice book.

### Withdrawing a caution

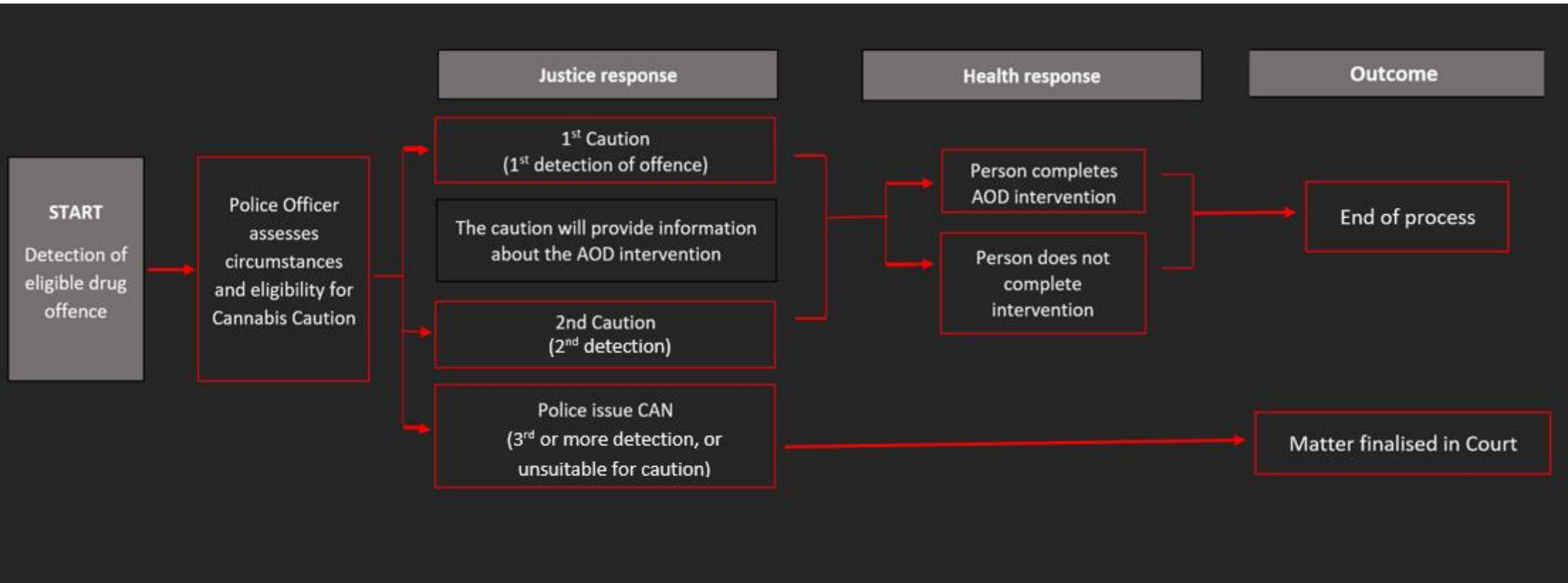
If it is later found that the offender does not meet the eligibility criteria for the CCS or was not appropriate to administer a caution, (e.g., the information supplied was false) the investigating officer, with the consent of a supervisor, may withdraw the cannabis caution.

**Note: Supervisors are encouraged to use their discretion to NOT withdraw a caution if there is a minor discrepancy between the actual weight of the cannabis and the estimation made by the investigating officer at the scene.**

### Contacts

Any enquiries regarding the Cannabis Cautioning Scheme can be directed to the Crime Prevention Command, Drugs, Alcohol and Mental Health team via email at #DAMH<sup>6</sup>.

## Flowchart Summary of Cannabis Cautioning Scheme Process



## Endnote References

<sup>1</sup> Reference to the Early Drug Diversion Initiative and co-existence of the CCS with the Initiative: Recommendation 12 of the 2020 Report on the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants recommended the NSW Government introduce a legislated police diversion scheme for lower-level offending, as an alternative to decriminalising the use and possession of prohibited drugs for personal use. The Early Drug Diversion Initiative and updated CCS is the result of this Recommendation being actioned. D/2023/668701

<sup>2</sup> Increase of the maximum cannabis threshold eligible for a caution from a half-small (15 g) to a small (30 g) quantity: the CCS was updated in order to operate alongside the Early Drug Diversion Initiative, rather than be replaced. The previous eligibility criteria for a caution (including the quantity threshold) were updated and streamlined for consistency between the two Schemes. D/2023/668701

<sup>3</sup> Updates to the health intervention received under the CCS and explicit reference to the Cannabis Caution Line instead of the Alcohol and Drug Information Service: an enhanced health response to recipients of cannabis cautions was designed to better support individuals in addressing their cannabis use, and to enable streamlining and consistency between the CCS and the Early Drug Diversion Initiative. D/2023/668701

<sup>4</sup> Changes to exclusion/eligibility criteria for cannabis caution recipients: the CCS was updated in order to operate alongside the Early Drug Diversion Initiative, rather than be replaced. The previous eligibility and exclusion criteria for a caution were updated and streamlined for consistency between the two Schemes. This included removal of the criteria for an individual having no prior convictions for sexual, violent, or low-level drug offences unless spent. The only prior conviction that is now in place as an exclusion criterion is for 'serious drug offences' as defined within the guidelines. D/2023/668701

<sup>5</sup> Removal of the need for the individual to consent to the caution or make admissions to the offence: the CCS was updated in order to operate alongside the Early Drug Diversion Initiative, rather than be replaced. The previous eligibility and exclusion criteria for a caution were updated and streamlined for consistency between the two Schemes. This included removal of the criteria for the individual having to admit to the offence, as well as removing the requirement to obtain the individual's consent before giving a caution (including their signature on the caution notice). D/2023/668701

<sup>6</sup> The contact information was updated to reflect the current unit in charge of these guidelines, as the Drug and Alcohol Coordination was devolved in 2020 with associated work and positions relocated to the Crime Prevention Command. D/2020/663296