

# your **legal responsibilities**

Most parties are incident-free. However, there are a number of issues that hosts need to consider when planning their parties, to minimise the likelihood of experiencing legal issues.

This fact sheet highlights some of the legal implications when hosting or attending parties, particularly where illegal activities may take place. The information only applies to partying in New South Wales. This information was compiled using Steve Bolt's book *Rough Deal: A plain English guide to drug laws in NSW*, 2nd edition (Redfern Legal Centre Publishing: 2005) with assistance from the HIV/AIDS Legal Centre, David Buchanan SC, The People's Solicitors and the Inner City Legal Centre.

## **THIS FACT SHEET:**

- Does not intend to encourage or facilitate unlawful behaviour, including the use of illicit drugs.
- Is not intended to be read as formal or specific legal advice.

**This fact sheet intends to only raise some of the legal issues that can arise when hosting house parties. Anyone concerned about their own legal position should always obtain appropriate professional advice rather than relying on the general observations contained here.**

**If you are a citizen of Australia, community legal centres can help you and it is advised that you contact them directly for legal advice. To locate your local community legal centre contact the National Association of Community Legal Centres website or Lawaccess. Their contact details are at the end of this fact sheet.**

## **BEFORE THE PARTY**

**Police attendance at parties is most often due to noise complaints. Once police have reason to attend a party, an opportunity is created for the police to take greater interest if they have a reasonable suspicion that illegal activities are being carried out.**

**There are a number of things hosts can do to minimise police attendance:**

- Advise neighbours that a party will be taking place with the date, approximate times and suggest that if there are any problems, they knock on your door so that you can sort the problem out – a note in neighbours' letterboxes and/or speaking to them in person are good ways to inform your neighbours. If you have regular parties, speak to your neighbours after the event and check for problems that you can rectify for next time.
- Plan to keep the volume of music and other party noise down, be clear with guests about noise issues and if needs be tape the volume control to the agreed level so that it cannot be increased.
- Soundproof the house - keep windows near sound systems or speakers closed, put up thicker curtains, keep balcony and other external doors closed. Put up a sign to remind people when leaving to be quiet, not to slam doors or talk loudly while waiting for lifts or while outside on the road, for example. You can download and print out a 'Remember the Neighbours' sign from the legal information page at [www.partyingathome.acon.org.au](http://www.partyingathome.acon.org.au).

**Be familiar with Australian laws relating to illicit drug use. Australia has strict federal and state/territory drug laws. Supply, possession and use of illegal drugs are criminal offences.**

- Police have a duty to investigate when they have reason to suspect that a crime has been committed.
- Respect the police's right to carry out their duties, but also be aware of your own rights as member of the public.
- Dealing with police when a crime may have been committed is stressful for most people, but knowing your rights in advance gives you the best chance of

# your legal responsibilities

avoiding convictions. Contact your local legal centre who will be able to tell you what your rights are.

**Many people convicted of drug and other offences are convicted on the basis of their own statements. Remember as a general rule: If you are asked questions by police, seek legal advice.**

- If questioned by police, tell them: 'I will not answer any questions until I have spoken to my lawyer'.
- If charged with an offence, giving only your name and address until you have sought legal advice is the best approach.

## DURING THE PARTY

**During the party police may visit in response to a noise complaint, for example. If this happens officers will usually come to the front door and ask to speak with the householder about the complaint. If the police witness or have reason to suspect that any illegal activity is taking place, they may have reason to investigate further. If activity relating to illegal drugs is suspected, police may undertake searches.**

Anyone, including the police, has an *implied consent* to enter your front gate in order to knock on your front door. You can remove this implied consent with a sign such as 'Trespassers will be prosecuted' on your gate.

**Personal searches: Police have powers to 'stop, search and detain' anybody they 'reasonably suspect' might be in possession of drugs, without arresting them and without a warrant.**

- What is a 'reasonable suspicion' is not clear cut. Reasonable suspicion means a police officer must have a suspicion which a court would think is reasonable. Reasonable suspicion does not require solid evidence. For example a person looking or behaving as if drug-affected would be grounds for a reasonable suspicion, as would a smell of something like cannabis.
- If the police attend a party for any reason and intend to search the host, the most appropriate thing to do is to state that you do not consent to the search, and to insist that the police record your statement. Do not resist if the police insist on searching you.

**Premises searches: Police need a warrant to search a house except for in particular emergency situations (no warrant is needed if there is a fire or there is a suspected violent crime underway, for example). Police usually only search premises for relatively serious offences such as suspected drug supply or manufacture.**

- Searching a house without a warrant amounts to trespass by the police, unless the occupier consents to the search or there is an emergency as described above.
- Party hosts need to be prepared to manage the situation if the police come to the door.
- It is not advisable to give consent to a search without a warrant. Insist on seeing the warrant if police wish to search the premises.
- If police suspect that illegal drugs are being sold or supplied from a private house, they may apply for a search warrant. Police don't have to go away and come back with a warrant. If a police officer asks for one, a search warrant can be issued quite quickly by telephone.

**If police find that the host or any guests are using illegal drugs at a party, there are a number of criminal charges that may be laid:**

**Self-administration** means using a prohibited drug yourself whether by swallowing, smoking, inhaling, injecting or any other method.

**Administering to others** can include, for example, dosing a friend with GHB or injecting another person. Where a person administers an illegal drug to another person, both people may be charged – the person providing the drug can be charged with administering to others, and the person receiving the drug can be charged with allowing another person to administer an illegal drug to them. To pursue these charges, police must be able to prove that the substance that was swallowed, smoked, injected, inhaled or otherwise used was a drug.

- Police may analyse any remaining drug in the person's possession to prove the charge.
- It is not necessary for police to have solid evidence (such as drugs, or drug paraphernalia such as bongs

# your legal responsibilities

or crystal pipes) in order to lay a charge of self-administration or administering to others. Police can arrest someone and then request that a doctor obtain a blood test for use as evidence. However, this is not routine procedure.

- Charges of self-administration and administering to others more often rely on an admission of guilt by the person or people involved.
- Remember: If you are asked questions by police, seek legal advice.

**Possession:** Any person found to be carrying an illegal substance/s, may be charged with possession of a banned substance.

- If charged with possession of a drug the person will usually be granted bail and given a date to go to court. It's important to get legal advice before going to court. If a person is on Centrelink benefits or a low income they may be eligible for Legal Aid, otherwise they'll need to consider getting a private solicitor.
- The prosecution must prove beyond reasonable doubt that the person knowingly had the drug either physically in their possession or under their control or ownership. The person does not need to own the drugs to be considered in control of them. For example taking a joint that is passed you is considered possession, even if you don't own the joint.
- This broad definition of possession also means that a person does not need to be actually carrying the drug with them to be charged with possessing it. For example, it could reasonably be inferred that drugs stored in your bedroom were in your possession.
- A single person can be charged with possessing a drug, but it is also possible for a group of people to be charged with shared possession of a drug. To prove this charge, the prosecution needs to be able to show that each person has some control and ownership of the substance, and can access it at will. This is usually a difficult charge to prove if none of the people suspected make admissions.

**Supply:** If anyone at the party is found to be providing illegal drugs to others, whether they are selling, exchanging or providing the drugs for free, they may be charged with supply. Even first offences for supply can result in large fines and/or imprisonment.

- Supply is a broad charge, and can include providing another person with a pill or a bump, passing a joint to somebody, or buying drugs on behalf of a group of friends and then passing them on. Whether or not money or any other kind of payment changes hands does not make a difference to a supply charge being laid.
- The legal system applies penalties of varying severity for drug offences, depending on the quantity and/or weight of the drug or drugs seized by law enforcement. The smallest quantities are assumed to be for personal use and generally lead to lighter penalties. People found carrying larger quantities of drugs (classified as a 'trafficable quantity') will be assumed to be supplying or selling drugs, even if not caught doing so, and much heavier penalties will apply.
- The amount that is considered a trafficable quantity in NSW law varies between illegal substances, but for some of the more common substances the following amounts are defined as trafficable quantities:
  - cannabis leaf or heads - 300g;
  - methamphetamine -3g ;
  - cocaine – 3g;
  - ecstasy – 0.75g (about 3 pills);
  - LSD – 0.003g or 15 tabs;
  - Ketamine – 7.5g.
- Larger quantities again are variously classed as 'indictable', 'commercial' and 'large commercial' quantities, each with larger fines and/or imprisonment terms for people caught supplying such quantities.

# your **legal responsibilities**

## AFTER THE PARTY

Roadside drug testing is now happening on NSW roads, initially on a trial basis. For information visit the RTA website:

<http://www.rta.nsw.gov.au/roadsafety/drinkdriving/drugs/index.html>.

- Police can test for methamphetamine, THC – the active component of cannabis, MDMA (ecstasy) and opiates. First offences can attract fines, and disqualification from driving for 6 months.
- Police also have a separate power to stop and search vehicles. To do this police need to have a 'reasonable suspicion' that someone in the vehicle is in possession of an illegal substance.
- To help ensure that partygoers leave and get home safely, hosts can prepare a list of taxi phone numbers for guests to call if they're not okay to drive home.

**Do you need legal information or advice? If you live in NSW, contact the services below, Monday to Friday during business hours.**

For legal information and referrals to your nearest Community Legal Centre:

Lawaccess

Ph. 1300 888 529

[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

If you are on a low income and need legal representation:

Legal Aid Commission of NSW

Ph. 02 9219 5000

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

For other places in Australia visit:

National Association of Community Legal Centres

[www.naclc.org.au](http://www.naclc.org.au)

## TIPS

All people have a duty to respond if another person is in need of urgent medical attention. Failure to do so can lead to a range of charges being laid. Hosts of private parties have a general legal responsibility to provide a safe party environment for their guests.

- Everyone, regardless of whether they are the host or not, has a responsibility to other people around them who require urgent medical attention due to injury or illness, regardless of the cause.
- There have been cases where people have been charged with criminal charges of either reckless indifference to human life or manslaughter, after they knowingly failed to call an ambulance when someone collapsed, and the person later died because of lack of medical attention.
- The safety of people attending parties is paramount. Do not hesitate to call for an ambulance on 000 if someone is injured, unconscious or has overdosed.
- Go to the Emergencies page at [www.partyingathome.acon.org.au](http://www.partyingathome.acon.org.au) for detailed information on how to prevent, recognise and respond to medical emergencies at private parties.