

# EXPOSURE DRAFT

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(Prepared by Parliamentary Counsel's Office)

## **Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**

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## EXPOSURE DRAFT

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## **Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**

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### **A Bill for**

An Act to amend the *Drugs of Dependence Act 1989*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2018*.

**2 Commencement**

This Act commences on 1 July 2019.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

**3 Legislation amended**

This Act amends the *Drugs of Dependence Act 1989*.

*Note* This Act also amends the *Criminal Code 2002* (see sch 1).

**4 Offences against Act—application of Criminal Code etc  
Section 4, note 1**

*substitute*

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 162 (Cultivation of 1 to 4 cannabis plants)
- s 171 (Possessing prohibited substances)
- s 171AA (Possessing cannabis)
- s 171AB (Smoking cannabis in public place or near child).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

**5 Section 162**

*substitute*

**162 Cultivation of 1 to 4 cannabis plants**

- (1) A person commits an offence if the person—
- (a) is under 18 years old; and
  - (b) cultivates 1 to 4 cannabis plants.

Maximum penalty: 1 penalty unit.

- (2) In this section:

*artificially cultivate* means—

- (a) hydroponically cultivate; or
- (b) cultivate with the application of an artificial source of light or heat.

*cultivates* has the meaning given in the [Criminal Code](#), section 615 but does not include artificially cultivate.

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**6 Section 171**

*substitute*

**171 Possessing prohibited substances**

- (1) A person commits an offence if the person possesses a prohibited substance.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the prohibited substance.

- (3) In this section:

*prohibited substance* does not include cannabis.

**171AA Possessing cannabis**

- (1) A person commits an offence if the person—

- (a) is under 18 years old; and  
(b) possesses 50g or less of cannabis.

Maximum penalty: 1 penalty unit.

- (2) A person commits an offence if the person possesses more than 50g of cannabis.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (3) Subsection (1) or (2) does not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the prohibited substance.

**7 Offence notices**  
**Section 171A (7), definition of *simple cannabis offence***

*substitute*

*simple cannabis offence* means—

- (a) an offence against section 162 (Cultivation of 1 to 4 cannabis plants); or

*Note* Section 162 does not include artificial cultivation of cannabis plants.

- (b) an offence against section 171AA (1) of a person under 18 years old possessing 50g or less of cannabis; or
- (c) an offence against the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 37 (2) of administering cannabis to oneself.

**8 New section 171AB**

*before section 171B, insert*

**171AB Smoking cannabis in public place or near child**

- (1) A person commits an offence if the person smokes cannabis in a public place.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—
  - (a) the person smokes cannabis; and
  - (b) a child is within 20m of the person.

Maximum penalty: 30 penalty units.

(3) In this section:

*personal vaporiser*—see the *Tobacco and Other Smoking Products Act 1927*, section 3B.

*public place*—see the *Smoke-Free Public Places Act 2003*, dictionary.

*smoke cannabis* means—

- (a) to directly puff smoke, or vapour, from cannabis, or a product that contains cannabis, whether or not a device for the inhalation of smoke, or vapour, is used; or
- (b) to hold or to have control over—
  - (i) cannabis, or a product that contains cannabis, while it is ignited; or
  - (ii) a personal vaporiser that contains cannabis and that is activated.

**Examples—devices—par (a)**

- a personal vaporiser
- a pipe (including a hookah, water pipe or bong)
- a cigarette holder

## **9 Dictionary, note 2**

*insert*

- territory law

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## Schedule 1 Criminal Code 2002— Consequential amendments

(see s 3)

### [1.1] Sections 605 and 614, note

*substitute*

*Note* For additional offences relating to possessing controlled drugs, see the [Drugs of Dependence Act 1989](#), ss 169, 171 and 171AA and the [Medicines, Poisons and Therapeutic Goods Act 2008](#), s 36.

### [1.2] Section 618 (2)

*substitute*

- (2) A person commits an offence if the person—
- (a) cultivates (artificially or otherwise) 5 or more cannabis plants;  
or
  - (b) artificially cultivates 1 to 4 cannabis plants.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

*Note* A summary offence applies if a person under 18 cultivates 1 to 4 cannabis plants (see [Drugs of Dependence Act 1989](#), s 162).

### [1.3] New section 636A (3) (ba)

*insert*

- (ba) that [Act](#), section 171AA; or

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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