

2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018

DRAFT EXPLANATORY STATEMENT

Presented by
Michael Pettersson MLA
Member for Yerrabi

Table of Contents

Purpose of the Bill	2
Background	2
Interaction with Federal Law	3
Human Rights Considerations	3
Clause 1 - Name of Act.....	5
Clause 2 - Commencement	5
Clause 3 – Legislation Amendment	5
Clause 4 – Section 4, note 1	5
Clause 5 – Section 162.....	5
Clause 6 – Section 171 and 171AA	5
Clause 7 – Section 171A.....	6
Clause 8 – Section 171BA	6
Schedule 1 – Consequential Amendments	
Clause 1.1 – Section 618 (2)	6

DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018

OUTLINE

This explanatory statement relates to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (“the Bill”) as presented in exposure draft format to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Purpose of the Bill

The Drugs of Dependence (Personal Cannabis Use) Bill Amendment 2018 provides amendments to reform the *Drugs of Dependence Act 1989* in relation to personal possession of cannabis and consequential amendments to the *Criminal Code (ACT) 2002*.

The Bill will amend criminal laws to allow for the personal use and carry of cannabis up to a limit of 50g. The Bill will also allow individuals to cultivate up to four cannabis plants (excluding artificial cultivation). This change will bring cannabis laws more in line with modern community standards and reflect global trends. The Bill will reduce the burden on our criminal justice system and bring us a step closer to a cannabis market.

The Bill will retain penalties for possession above 50g at current levels, cultivation of more than four plants will remain illegal, artificial cultivation will remain illegal, sale will remain illegal and sale and supply to minors will especially remain illegal.

Background

In 1971 Australia signed the Single Convention on Narcotic Drugs of 1961 which extended importation controls over drugs like cannabis. Since then Australia has been a party to further international treaties on drugs and Section 300 of the *Criminal Code (Cth) 1995* creates offences relating to drug trafficking and gives effect to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. States however retain power of laws regarding possession.

In 1992, the ACT decriminalized cannabis possession under 25g through the Simple Cannabis Offence Notice (SCON) scheme. This scheme, according to the 2013 ACT Health Department report *Evaluation of the Australian Capital Territory Drug Diversion Programs*, aimed to;

1. To minimise harms associated with unnecessary involvement in the criminal justice system (CJS)
2. To strength partnerships (between law enforcement, courts, health and other stakeholders)
3. To educate police and courts regarding what are the appropriate responses to Alcohol and Other Drugs (AOD) issues
4. To fulfil the community expectation of community protection and the punishment of offenders
5. To educate young people and families
6. To deter encounters with the CJS
7. To reduce AOD use

8. To reduce cost to the CJS and reduce social cost of AOD

9. To reduce AOD-related crime

The limit was subsequently increased to 50g to reflect the fact that almost universally individuals purchased cannabis at quantities above the 25g limit and therefore were ineligible to be diverted from the CJS.

Recent international developments have seen 9 US states and the District of Colombia legalise cannabis not just for personal use but legalising the industry. Canada has also legalized the sale and possession of cannabis and is in the process of setting up their market. New Zealand has also pledged a referendum on the issue before 2020.

Community attitudes on cannabis are shifting and unbiased research has shown it is not a particularly harmful substance. According to the Australian Institute for Health and Welfare in their report, Impact of Alcohol and Illicit Drug Use on the Burden of Disease and Injury in Australia, alcohol represents 4.6% of the total burden of diseases and injuries in Australia, tobacco 9% and cannabis only 0.1%.

Despite causing 46 times less harm than alcohol, cannabis remains illegal. And despite the decades long campaign waged against drug use, cannabis remains the most popular drug in Australia according to the Australian Criminal Intelligence Commission in their report Organised Crime in Australia 2017. The National Drug Household Strategy Household Survey 2016 found that 35% of Australians have used cannabis and 10% have used it in the last year. But the substantial profits of cannabis go to organised crime and away from health and education.

The Bill will ease the burden on law enforcement who spend over \$1.1 billion every year on drug law enforcement in Australia according to the UNSW based Drug Policy Modelling Program in their 2013 report Government Drug Policy Expenditure in Australia 2009/10. And according to the Australian Criminal Intelligence Commission's 2016-17 Illicit Drug Data Report over 50% of drug related arrests in Australia (154 650 total) were cannabis related and 91% of those were consumer arrests i.e. small amounts.

Cannabis is sometimes touted as a 'gateway drug' and that it will encourage people to try harder substances. A comprehensive review of scientific studies on this topic by the American National Academies of Sciences, Engineering, and Medicine titled The Current Health Effects of Cannabis and Cannabinoids states that 'Additional studies are needed to determine whether cannabis use is an independent risk factor for, or causally contributes to, the initiation or use of and dependence on other drugs of abuse later in life'.

Interaction with Federal Law

This Bill does not affect the prosecution or enforcement of Commonwealth and Territory laws relating to the sale or trafficking of cannabis, including laws prohibiting the possession of amounts of cannabis over 50g and the cultivation of 5 or more cannabis plants.

Human Rights Considerations

The Bill engages rights in criminal proceedings (s 22 of the Human Rights Act) because it preserves the Simple Cannabis Offence Notice Scheme and the right to equality before the law (s 8 of the Human Rights Act) because it remakes the simple cannabis offence to apply to people under the age of 18.

The purpose of the Simple Cannabis Offence Notice and the 2013 amendments to the scheme (which increased the amount of cannabis it applied to from 25g to 50g) were to improve access to diversionary programs, and to keep people away from the criminal justice system in cases where they possess small amounts of cannabis. The scheme itself reflects a focus on addressing drug use from a health and harm minimisation perspective. There are no human rights limited by the decriminalisation introduced by this Bill, as it will reduce interaction with the criminal justice system.

This Bill does maintain the simple cannabis offence notice for people under the age of 18. The purpose of maintaining this prohibition is to protect the interests of children and young people. This change is consistent with prohibitions of the possession of tobacco, alcohol and other drugs by people under the age of 18. The health consequences and vulnerability of children and young people as compared to adults justifies the preservation of the prohibition on cannabis possession for people under the age of 18. The Bill preserves the Simple Cannabis Offence Notice for amounts of 50g or below or cultivation of not more than four cannabis plants, which provides a diversionary pathway for people under 18 as an alternative to prosecution.

Additional protections for children in the bill include new section 171BA which, consistent with the *Smoke-Free Public Places Act 2003* creates a new offence of smoking near children or in public places. These offences are a justifiable limitation on individual liberty to protect against health impacts on members of the public who choose not to smoke and children.

DETAIL

Clause 1 – Section

This clause names the Act as the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2018*.

Clause 2 - Commencement

This clause provides that the Act commences on July 1 2019.

Clause 3 - Legislation Amended

This clause identifies the legislation amended by the Act.

This Act amends the following legislation: The *Drugs of Dependence Act 1989* and the *Criminal Code (ACT) 2002*.

Clause 4 – Section 4, note 1

This section notes the application of Chapter 2 of the *Criminal Code (ACT) 2002* to the new offences proposed by the Bill.

Clause 5 – Section 162

This clause substitutes for Section 162 of the *Drugs of Dependence Act 1989* and will remove offences for an individual 18 years or older to cultivate up to four cannabis plants (excluding artificial cultivation). This doubles the current plant limit from 2 to 4 but remains in line or below jurisdictions in the United States who have legalised cannabis. Individuals will need to practice ‘progressive harvesting’ to remain under at 50g or less, as individual plants can yield more than 50g of cannabis.

Subsection (1) will see an individual under 18 years who cultivates up to four plants have a maximum penalty of one penalty unit. This offence can be dealt with under the existing diversionary program known as the Simple Cannabis Offence outlined in Section 171A.

Clause 6 – Sections 171 and 171AA

This clause substitutes for Section 171 of the *Drugs of Dependence Act 1989* and in subsection (3) removes cannabis as a ‘prohibited substance’. It will remove cannabis possession of not more than 50g by an adult as an offence and therefore legalise it.

Section 171AA is a new proposed section that establishes an offence under subsection (1) for an individual under the age of 18 for possession of not more than 50g for one penalty unit and to be dealt with under the SCON scheme. The proposed new section retains offences for possession more than 50g for all individuals.

Clause 7 – Section 171A (7)

This clause will substitute for Section 171A and define what constitutes a Simple Cannabis Offence. Individuals under 18 who cultivate up to 4 plants (excluding artificial cultivation) and or are caught in possession of not more than 50g are eligible to receive a Simple Cannabis Offence Notice, which is a diversionary education program and a small fine.

Clause 8 – Section 171AB

This proposed new section will insert Section 171AB into the *Drugs of Dependence Act 1989*. Subsection (1) will make it an offence to smoke cannabis in a public place. Subsection (2) will make it an offence to smoke within 20m of a child. It also contains a definition of ‘smoke cannabis which has been drafted to capture a wide range of conduct that might be considered smoking in the modern context including vaping or having control over or holding an ignited product or activated personal vaporiser’.

Schedule 1 – Consequential Amendments to Criminal Code 2002 (ACT)

Clause 1.1 – Sections 605 and 614, note

This proposed new section will note that for additional offences relating to possessing controlled drugs see the *Drugs of Dependence Act 1989*, ss169, 171 and 171AA and the *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36.

Clause 1.2 – Section 618 (2)

This section will be substituted for Section 618 (2). Subsection (a) will make it an offence to cultivate (artificially or otherwise) 5 or more cannabis plants while subsection (b) will make it an offence to artificially cultivate 1 to 4 cannabis plants. The Maximum Penalty will be 200 penalty units, imprisonment for two years or both.

Clause 1.3 – New section 636A (3) (ba)

The proposed new section updates a cross reference to ensure that the new offences in Section 171AA are available as an alternative verdict to sentences against Section 603.