

**2019**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL  
2018**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by  
Andrew Barr MLA  
Chief Minister**

## **DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL** **2018**

### **OUTLINE**

On 28 November 2018, Michael Petterson MLA introduced the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* into the Legislative Assembly (Private Members Bill). The intent of this Private Members Bill is to legalise the personal possession and use of small amount of cannabis.

This Supplementary Explanatory Statement outlines the Government amendments to be made to the Private Member's Bill (PMB).

The Government Amendment Bill amends the PMB in the following manner:

- a) it remains an offence to possess and cultivate small amounts of cannabis; however, an exception means the offence does not apply to anyone over 18 years of age;
- b) a limit of two cannabis plants per person is allowed, rather than four as proposed in the PMB;
- c) no more than four plants are allowed at any one household;
- d) cannabis must be kept securely when not in an individual's possession, to restrict access by children and young people;
- e) cannabis plants can only be cultivated on parts of residential property not generally accessible by the public and only by persons usually residing at the premises;
- f) a 150 gram limit for fresh (or 'wet') cannabis is introduced to account for cannabis that has been harvested but not yet dried;
- g) smoking near children is prohibited through an offence involving a mental element rather than a 20 metre distance rule (i.e. knowingly or intentionally using cannabis in a way that a person less than 18 years old is exposed to it is an offence); and
- h) commencement is six months from the date of passage, or an earlier date as notified in writing by the Minister.

These reforms together remove the penalties for the use and possession of personal amounts of cannabis.

## BACKGROUND

The ACT Government does not condone or encourage the recreational use of cannabis or other illicit drugs. This is a message we will continue to share with the Canberra community both in the context of this legislation, and more broadly. However, we must also acknowledge that the outright prohibition model of drug policy is not working, as cannabis use is prevalent across Australia and within the ACT. There is good evidence from drug law reform around the world that a harm minimisation approach delivers better outcomes both for individuals and communities.

This is why the ACT Government is taking a harm minimisation approach by supporting the Private Members Bill and introducing a range of amendments to add further safeguards and protections for the community.

## DETAIL

### **Clause 2 Commencement** **Page 2, line 4**

This clause specifies commencement to be on a day fixed by the Minister by written notice.

### **Clause 4 Offences against Act – application of Criminal Code etc** **Proposed section 4, note 1, dot point** **Page 2, line 17**

This clause omits dot point “s 162 (Cultivation of 1 or 4 cannabis plants)” and substitutes it with “s 162 (Cultivation of 1 or 2 cannabis plants)”. A limit of a maximum of two plants is consistent with the settings of the current Simple Cannabis Offence Notice scheme.

### **Clause 4 Offences against Act – application of Criminal Code etc** **Proposed section 4, note 1, new dot points** **Page 2, line 19**

This clause updates note 1 at section 4 to insert the proposed new sections 171AAA (Cultivation of more than 4 cannabis plants at premises), 171AAB (Cannabis plant cultivation – other offences) and 171AAC (Storage of cannabis).

### **Clause 5 Cultivation of 1 or 2 cannabis plants** **Proposed new section 162 (1A)** **Page 3, line 1**

This clause omits proposed new section 162 (Cultivation of 1 to 4 cannabis plants) and substitutes it with proposed new section 162(1A). Section 162(1A) provides that section 162 of the *Drugs of Dependence Act 1989* (Cultivation of 1 or 2 cannabis plants) does not apply if the person is 18 years or older and cultivates the plants in the Australian Capital Territory.

**Clause 6      Section 171 - Possessing prohibited substances**  
**Proposed new section 171AA - Possessing cannabis**  
**Page 4, line 3**

This clause omits proposed new section 171AA and substitutes it with proposed new section 171AA.

Proposed new section 171AA establishes an offence under subsection (1) if a person possesses:

- 50g or less of cannabis; or
- 150g or less of cannabis that has been harvested and
  - is not dried cannabis; or
  - is a mixture of dried cannabis and cannabis that is not dried cannabis.

Subsection 171AA(3) provides that the offence under 171AA(1) does not apply if the person is 18 years old or older and possesses the cannabis in the Australian Capital Territory. The maximum penalty for the offence under 171AA(1) is 1 penalty unit.

Section 171AA(2) establishes an offence if a person possesses:

- more than 50g of dried cannabis; or
- more than 150g of cannabis that has been harvested and
  - which is not dried cannabis; or
  - is a mixture of dried cannabis and cannabis that is not dried cannabis.

The maximum penalty for the offence under 171AA(2) will be 50 penalty units, imprisonment for two years or both.

Subsection 171AA(4) provides that subsections 171AA(1) and 171AA(2) do not apply if a person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the cannabis.

Subsection 171AA(5) inserts a definition of 'dried cannabis' meaning cannabis that has been subjected to a drying process.

**Clause 6      Proposed new sections 171AAA to 171AAC**  
**Page 4, line 14**

**Proposed new section 171AAA - Cultivation of more than 4 cannabis plants at premises**

Section 171AAA is a proposed new section into the *Drugs of Dependence Act 1989*. Subsection (1) establishes an offence if (a) a person cultivates a cannabis plant at the premises, and (b) more than four cannabis plants are being cultivated at the premises. The maximum penalty will be 50 penalty units, imprisonment for two years or both. Subsection (2) provides that strict liability applies in respect of 171AAA(1)(b).

Subsection (3) provides a defence to prosecution for an offence against section 171AAA if the defendant proves that the defendant (a) lived at the premises when cultivating the cannabis; and (b) was not aware, and could not reasonably have been

expected to be aware, that more than 4 cannabis plants were being cultivated at the premises.

### **Proposed new section 171AAB - Cannabis plant cultivation—other offences**

Section 171AAB is a proposed new section into the *Drugs of Dependence Act 1989*. Subsection (1) establishes an offence if a person cultivates a cannabis plant at a place other than where the person lives.

Subsection 171AAB(2) establishes an offence if a person cultivates a cannabis plant in an area lawfully accessible to a member of the public. The maximum penalty for offences under subsections 171AAB(1) and (2) will be 50 penalty units, imprisonment for two years or both.

### **Proposed new section 171AAC - Storage of cannabis**

Section 171AAC is a proposed new section into the *Drugs of Dependence Act 1989*. Subsection (1) establishes an offence if a person possesses harvested cannabis and does not store the cannabis out of reach of children. The maximum penalty for this offence will be 50 penalty units, imprisonment for two years or both.

Subsection (2) provides a defence to prosecution for an offence under 171AAC(1) if the defendant proves that they took all reasonable steps to ensure that a child could not access the cannabis.

#### **Clause 7      Section 171A - Offence notices Proposed new section 171A (7), definition of *simple cannabis offence*, paragraph (a) Page 4, line 19**

This clause omits 'of 1 to 4' and substitutes it with 'of 1 or 2' plants so that 'simple cannabis offence' is defined under subsection 171(7)(a) to mean 'an offence against section 161(Cultivation of 1 or 2 plants)'. Two plants is the current threshold allowable under the current Simple Cannabis Offence Notice scheme.

#### **Clause 7      Section 171A - Offence notices Proposed new section 171A (7), definition of *simple cannabis offence*, paragraph (b) Page 4, line 23**

This clause omits paragraph (b) and substitutes it with '(b) an offence against section 171AA (1)'.

#### **Clause 8      Smoking cannabis in public or near a child Proposed new section 171AB (2)(b) Page 5, line 9**

This clause omits proposed new section 171AB(2)(b) 'a child within 20m of the person' and substitutes it with a proposed new section 171AB(2)(b) 'a child is exposed to smoke or vapour from the cannabis the person is smoking'. Proposed new section 171AB(2)(b) accordingly establishes an offence where a person smokes

cannabis, and a child is exposed to smoke or vapour from the cannabis the person is smoking.

**Clause 8 Smoking cannabis in public or near a child**  
**Proposed new section 171AB (2A)**  
**Page 5, line 10**

This clause inserts proposed new section 171AB(2A) which provides a defence to prosecution of an offence under proposed new section 171AB(2) if the defendant proves that the defendant (a) took all reasonable steps to ensure that the child was not exposed to the smoke or vapour; or (b) believed on reasonable grounds that the child was 18 years old or older.

**Schedule 1 Consequential Amendments**  
**Part 1.1 Criminal Code 2002**  
**Amendment 1.1 – Sections 605 and 514, note**  
**Page 7, line 7**

This clause substitutes 'ss 169, 171 and 171AA' with 'pt 10' so that the note reads 'For additional offences relating to possessing controlled drugs, see the *Drugs of Dependence Act 1989*, pt 10 and the *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36'.

**Schedule 1 Consequential Amendments**  
**Part 1.1 Criminal Code 2002**  
**Amendment 1.2 – Section 618(2)**  
**Page 7, line 9**

This clause omits the proposed amendment to section 618(2) of the *Criminal Code 2002*.

Section 618(Cultivating a controlled plant) of the *Criminal Code 2002* remains unchanged.

For reference purposes only:

- Subsection 618(2) of the *Criminal Code 2002* specifies that a person commits an offence if the person (a) cultivates (artificially or otherwise) 3 or more cannabis plants; or (b) artificially cultivates 1 or 2 cannabis plants. The maximum penalty for this offence is 200 penalty units, imprisonment for 2 years or both.  
Note: Non-artificial cultivation of 1 or 2 plants is a summary offence under the *Drugs of Dependence Act 1989*, s 162.
- Subsection 618(3) defines 'artificially cultivate' to mean (a) hydroponically cultivate; or (b) cultivate with the application of an artificial source of light or heat.

## **Schedule 1 Consequential Amendments**

### **Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008**

#### **Amendment 1.4 – Proposed new section 9A - Application of Act to certain cannabis use not prohibited under Drugs of Dependence Act 1989**

##### **Page 8, line 5**

This clause omits proposed new section 9A in the *Medicines, Poisons and Therapeutic Goods Act 2008* and substitutes it with proposed new section 9A.

Proposed new subsection 9A(1) provides that the defined provisions of the *Medicines, Poisons and Therapeutic Goods Act 2008* listed in subsection 9A(2) do not apply to an adult to the extent that the substance is an amount of cannabis that the adult is not prohibited from cultivating or possessing under the *Drugs of Dependence Act 1989*.

Subsection 9A(2) provides that the defined provisions of the *Medicines, Poisons and Therapeutic Goods Act 2008* mean the following:

- (a) section 26(2)(Supplying declared substances);
- (b) section 33 (Manufacturing regulated substances);
- (c) section 35(1) (Obtaining certain declared substances);
- (d) section 36 (Possessing certain declared substances); and
- (e) section 37(2)(Administering certain declared substances)).