

The Drugs of Dependence (Personal Use) Amendment Bill 2021

Supplementary Explanatory Statement

**(on the amendments to be moved by Johnathan Davis to the amendments
moved by the Minister for Health)**

**Amendments to be moved by Johnathan Davis MLA
Member for Brindabella
September 2022**

Overview

These amendments to Minister for Health's amendments to the Drugs of Dependence (Personal Use) Amendment Bill 2021 define the attendance requirements of a drug diversion program as attending the first session of the program to allow for a person-centred interpretation of this alternative method to discharge an infringement.

Purpose of the amendments

The purpose of these amendments is to ensure that, if the ACT Government's amendments are to be passed into law, the proposed requirements for a drug diversion program would take a person-centered approach to attendance requirements. Doing this would bring the ACT Government's approach more in line with the philosophical principles of drug decriminalisation in that it provides a more compassionate diversion program. These amendments will ensure the program is not overly prescriptive by virtue of legislative definition.

The policy intent of these amendments is to:

- a. Encourage people who are experiencing problematic and/or harmful use of drugs to access treatment and harm reduction services.
- b. Reduce the number of people who use drugs from ending up in the criminal justice system.

Background

The ACT has long taken a comparatively progressive stance to the personal use of drugs, including adopting nation-leading harm reduction measures and decriminalising the possession of cannabis.

In 2014, the ACT Government set new trafficable thresholds for the possession of drugs in the *Criminal Code Regulation 2005*. These thresholds are based on evidence patterns of purchase and possession provided by the Drug Policy Modelling Program at the University of New South Wales. The thresholds govern what quantities of what drugs are regarded as trafficable, commercial, and large commercial quantities, which in turn govern the penalties for possessing and trafficking drugs. The thresholds also operate to create a presumption that a person is trafficking in a drug where they possess an amount greater than the trafficable threshold. This implicitly suggests that possession (without proof of trafficking) of anything less than the trafficable quantity would amount to 'personal' possession.

In February 2021, Michael Pettersson MLA tabled the [Drugs of Dependence \(Personal Use\) Amendment Bill 2021](#) (the bill) and a [Select Committee](#) was established to inquire into the Bill and related matters. Submission to this inquiry evidenced overwhelming support for drug harm reduction measures including decriminalisation. Several submissions from advocates, academics and health services posited two key problems. First, that the legislation as drafted defined the limits of 'personal possession' well below the evidence base for personal possession in the ACT and second, that the legislation still enacted a punitive

approach to personal possession by enacting an infringement system that would unfairly penalise vulnerable people through fines and/or compulsory drug diversion programs.

In November 2021, the Select Committee released a report with the recommendation to decriminalise small amounts of drugs for personal use, noting concerns with the bill relating to low threshold possession limits, the impacts of proposed infringement systems on vulnerable people, and the need for evaluation of the bill's impacts.

In June 2022, the ACT Government [tabled its response](#) providing in principle support to the Bill and flagging amendments to threshold quantities, custodial sentences and providing a mechanism for a legislative review. In July 2022, the ACT Government circulated amendments to the bill which did not address the concerns raised about low possession limits and the impact of fines and compulsory drug diversion programs.

These amendments are supplementary to the initial amendments that will be moved by Johnathan Davis MLA to the bill moved by Michael Pettersson MLA. The amendments detailed in this explanatory statement are to be moved to the amendments to the bill moved by the Minister for Health.

Consultation Undertaken

These amendments have been developed by the Office of Johnathan Davis MLA in consultation and with input from local and national drug user advocacy organisations, academics from the Australian National University and the University of New South Wales, and representatives from drug treatment services. These amendments also reflect the feedback on the bill expressed to the Select Committee throughout the Inquiry.

Human Rights Implications

This bill has promotes the right to life and the right to non-discrimination as defined under the *Human Rights Act 2004*. This bill also has positive implications for the right to health, which although not yet explicitly present in the ACT's Human Rights Act, the Act is not exhaustive of human rights,¹ and health is a right articulated in the International Covenant on Economic, Social, and Cultural Rights which has been ratified by Australia.

The right to life

Section 9 of the *Human Rights Act 2004* recognises the right to life stating that 'everyone has the right to life. In particular, no-one may be arbitrarily deprived of life'. The amendments in this bill will promote the right to life by encouraging people who use drugs to use harm reduction services and treatment by reducing stigma and fear of criminal sanction. Harm reduction services, such as needle and syringe

¹ *Human Rights Act 2004*, s 7.

programs, drug check services, and safe consumption sites save lives by reducing the chance of overdose and the transmission of blood borne viruses.²

The right to non-discrimination

The right to non-discrimination, referred to as “recognition and equality before the law” in the *Human Rights Act 2004*, stipulates that “everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.” The ACT has serious issues regarding the disproportionate incarceration of First Nations peoples, people with disability, and people living in poverty.³ While drug use is present amongst all groups within all societies, drug laws disproportionately impact marginalised populations.⁴ Given decriminalisation and harm reduction measures have been shown to reduce crime, reduce recidivism, increase access to health and social services, and protect people from illness and death as a result of drug use, there is little justification for the existence of punitive drug responses that have a discriminatory impact on minority communities.

The right to health

While the Human Rights Act 2004 does not yet recognise the right to health, the right to health is recognised as a right within the International Covenant on Economic, Social and Cultural Rights (the Covenant) to which Australia is party. Article 12 of the Covenant states that “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The amendments to the personal use bill will promote the right to physical and mental health by creating a social and political environment which encourages people who use drugs to access health services. Decriminalisation is intended to culturally shift drug use from being understood as a criminal issue to being understood to be a social and health issue. This shift is important for enabling access to health services and care for those experiencing problematic use.

Outline of the provisions of the bill

Part 1 Definition of attendance requirements of a drug diversion program

This amendment will ensure that, should the SDON scheme go ahead, those who choose a diversion program instead of paying a fine will be able to meet their obligation to commence person centred support within 60 days, affording more flexibility for programs to recognise a person’s needs, rather than all required to be fit into a 60-day timeframe..

² Ritter, A and Cameron, J. 2009. A review of the efficacy and effectiveness of harm reduction strategies for alcohol, tobacco and illicit drugs. *Drug and Alcohol Review*. Vol. 25, issue 6. Pp. 611-624 <https://onlinelibrary.wiley.com/doi/abs/10.1080/09595230600944529>

³ ACT Justice Reform Group, Submission 26 to the Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021

⁴ Ibid.