

## **DRUGS OF DEPENDENCE (PERSONAL USE) AMENDMENT BILL 2021**

### **OUTLINE**

This explanatory statement relates to the Drugs of Dependence (Personal Use) Amendment Bill 2021 (“the Bill”) as presented to the Legislative Assembly. It has been prepared 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 Use) Bill Amendment 2021 provides amendments to reform the Drugs of Dependence Act 1989 in relation to personal possession of common illicit drugs.

The Bill will amend criminal laws to rename the Simple Cannabis Offence Notice (SCON) Scheme to the Simple Drug Offence Notice (SDON) Scheme and add other common illicit drugs to this diversionary pathway.

This change will bring our drug laws more in line with modern community standards and reflect global trends that seek to treat drug use as a public health problem and not one first and foremost of the criminal justice system. The Bill will reduce the burden on our criminal justice system by allowing police to divert drug users at the first point of contact to appropriate services and avert prosecution.

The Bill will retain current penalties for possession above the new decriminalised thresholds. The Bill will also retain current penalties for supply, trafficking, driving under the influence of drugs and manufacture.

This Bill does not affect the operation of the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* in relation to cannabis. Personal possession limits, the number of plants that a person can grow, and all other rules relating to cannabis introduced by that legislation are preserved.

### **Background**

In 1992 the ACT decriminalised cannabis possession under 25g through the Simple Cannabis Offence Notice (SCON) scheme. This scheme was evaluated in 2013 which reported the following range of objectives for drug diversion programs in the ACT:

1. To divert drug offenders away from the criminal justice system.
2. To divert drug offenders into:
  - a. Contact with the ACT Alcohol and Other Drugs (AOD) treatment system.
  - b. Education.
  - c. Assessment and treatment.

The secondary objectives of the ACT drug diversion program are:

1. Minimise harms associated with unnecessary involvement in the criminal justice system (CJS).
2. Strengthen partnerships (between law enforcement, courts, health, and other stakeholders).
3. Educate police and courts regarding what are the appropriate responses to AOD issues.

4. Fulfil the community expectation of community protection and the punishment of offenders.
5. Educate young people and families.
6. Deter encounters with the CJS.
7. Reduce AOD use.
8. Reduce cost to the CJS and reduce social cost of AOD.
9. Reduce AOD-related crime.<sup>1</sup>

The Bill seeks to pursue these outcomes for further substances by including them in the decriminalisation framework that exists currently in ACT law.

Illicit drugs and their use are not rare. According to national survey data, 43% of Australians have used what has been considered an illicit drug.<sup>2</sup> Whilst their use may be common, there were still only 334 drug consumer arrests and 107 drug provider arrests in the ACT in 2018-19.<sup>3</sup> This shows an obvious disconnect between what our laws say, what the community is partaking in and the priorities and effectiveness of current law enforcement.

Despite this, drug-related expenditure in Australia is significantly skewed towards punitive drug law enforcement and not towards harm reduction measures. In 2009-10, a total of \$1.7 billion was allocated across Australian Governments to address drug use. Of that total sum, 66% was spent enforcing punitive drug laws and only 2% was spent on harm reduction measures.<sup>4</sup> This expenditure represents a significant imbalance of resources towards criminal prosecution and not to harm reduction.

### **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 illicit drugs, including laws for possession in amounts above the thresholds in the Bill.

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<sup>1</sup> Caitlin Hughes et al. *Evaluation of the Australian Capital Territory Drug Diversion Programs*, p.28. Accessed 01/02/2021

<https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/Evaluation%20of%20the%20Australian%20Capital%20Territory%20Drug%20Diversion%20Programs.pdf>

<sup>2</sup> Australian Institute of Health and Welfare 2020, *National Drug Strategy Household Survey 2019*. Drug Statistics series no. 32. PHE 270. Canberra AIHW, p. viii. Accessed 01/02/2021

<https://www.aihw.gov.au/getmedia/77dbea6e-f071-495c-b71e-3a632237269d/aihw-phe-270.pdf.aspx?inline=true>

<sup>3</sup> Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2018-19*, p. 151. Accessed 01/02/2021

[https://www.acic.gov.au/sites/default/files/2020-09/illicit\\_drug\\_data\\_report\\_2018-19\\_internals\\_v10\\_full.pdf](https://www.acic.gov.au/sites/default/files/2020-09/illicit_drug_data_report_2018-19_internals_v10_full.pdf)

<sup>4</sup> Alison Ritter, Ross McLeod and Marian Shanahan, *Government Drug Policy Expenditure in Australia – 2009/10*, National Drug and Alcohol Research Centre, p. 1. Accessed 01/02/2021

[https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/24%20Government%20drug%20policy%20expenditure%20in%20Australia%20-%202009\\_10.pdf](https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/24%20Government%20drug%20policy%20expenditure%20in%20Australia%20-%202009_10.pdf)

## Human Rights Considerations

The Bill engages rights in criminal proceedings (s 22 of the Human Rights Act) and the right to equality before the law (s 8 of the Human Rights Act). It engages these rights and supports these by offering a way for individuals who possess drugs to be diverted away from the criminal justice system, and to be put on a path to seeking treatment and information about the harms of drug use instead of on a path to receiving a criminal conviction.

The Simple Drug Offence Notice (SDON) scheme will offer police an alternative to charging individuals with a criminal offence for personal possession of the drugs listed in table 170. The SDON is meant to operate like the Simple Cannabis Offence Notice scheme, which allowed police to serve an offence notice to a person in lieu of prosecution. 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.

This Bill will reduce interaction with the criminal justice system and support people impacted by drug addiction to access treatment. The drugs listed in table 170 of this Bill have been identified for inclusion in the Simple Drug Offence Notice scheme because they are common sources of interaction with the justice system for individuals and some of the most commonly used. Bringing a diversionary, health-focused approach to the legal classification of these drugs is important.

As outlined above, this Bill does maintain the rules governing the possession and cultivation of cannabis introduced by the Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019. The amounts adults can possess and the number of plants they can cultivate are unchanged. This also means that the simple cannabis offence notice for people under the age of 18 is preserved.

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. 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.