

Australian Capital Territory

# Drugs of Dependence (Personal Cannabis Use) Guidance Material 2020\*

Notifiable instrument NI2020–37

made under the

Drugs of Dependence Act 1989, section 171BA (Guidance material)

---

## 1 Name of instrument

This instrument is the *Drugs of Dependence (Personal Cannabis Use) Guidance Material 2020*.

## 2 Commencement

This instrument commences on 31 January 2020.

## 3 Guidance material

I make the guidance material in schedule 1 about the legal and health implications of the amendments of the *Drugs of Dependence Act 1989*, part 10 made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*.

Rachel Stephen-Smith MLA  
Minister for Health  
17/01/2020

\*Name amended under Legislation Act, s 60

## Schedule 1

### Purpose

This guidance material is to inform the community about the legal and health implications of the amendments to the *Drugs of Dependence Act 1989* (the Act), part 10 made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*.

### Legal Implications – General

The Act maintains it is an offence to cultivate one or two cannabis plants and classifies the offence as a simple cannabis offence. However, the Act creates an exception to that offence for people 18 years old or older who cultivate those plants in the ACT (excluding artificial cultivation).

The Act maintains an offence of possessing 50g or less of dried cannabis or 150g or less of cannabis that is not dried or is a mixture of dried and not dried cannabis and classifies the offence as a simple cannabis offence. However, the Act creates an exception to the offence for people who are 18 years or older who possess the cannabis in the ACT.

If a Police Officer reasonably believes that an individual has committed a simple cannabis offence, he or she may serve an offence notice on that person. Under the Act it remains an offence for all individuals to possess more than 50g of cannabis.

It is also an offence under the Act to do any of the following:

- Cultivate more than 4 cannabis plants at a premises;
- Cultivate cannabis plants in a place other than where the person lives and in areas lawfully accessible to a member of the public;
- Not store cannabis out of reach of children;
- Smoke cannabis in a public place; and
- Smoke cannabis and expose a child to the smoke or vapour from the cannabis the person is smoking.

The Act does not have any effect on existing offence provisions and penalties regarding cannabis supply, possession of trafficable amounts of cannabis and artificial cultivation of cannabis plants, meaning that these offences are still in effect.

The Commonwealth Criminal Code creates offences for possession of cannabis. Section 308.1 of the Commonwealth Criminal Code creates an offence for a person to possess a substance which is a controlled drug. Cannabis is a controlled drug pursuant to the Commonwealth Criminal Code Regulations.

A person in the ACT charged and prosecuted under the Commonwealth Criminal Code (as opposed to the ACT legislation) for possessing cannabis in the ACT may be able to rely on defences provided by the Commonwealth Criminal Code at either section 313.1 or section 313.2. These sections provide that it is a defence to drug offences under the Code (excluding import/export offences) that the conduct giving rise to the offence was justified or excused by a law of a State or Territory. Whether either defence is accepted by the Court will be a matter for the Court.

## **Legal Implications – Drug Driving**

It remains an offence to drive after consuming cannabis and under the influence of the drug. Like all other Australian jurisdictions, the ACT has a zero-tolerance approach to drug driving. Drink and drug driving remain a significant contributing factor to many serious and fatal crashes in the ACT.

The ACT drug driving regime currently makes it an offence to have cannabis, methamphetamine and/or ecstasy in your system when driving. It is also an offence to have any other drug (both legal and illegal drugs) in your system to such an extent that it influences your ability to have proper control of a motor vehicle.

There is no agreed position in relation to the causal link between specific levels of drugs and impairment that can be applied across the population. This is different to alcohol where there has long been an agreed position on the levels at which alcohol impairs one's driving ability.

Given the quantity of active ingredients in a drug is often unknown, and the difficulties in determining the quantities that are likely to impair the average driver, there are challenges in setting a prescribed 'acceptable level', in particular for cannabis.

Further, the effect of the drug on individuals is influenced by many factors, including:

- Concentration of the active ingredient;
- Possible interaction with other drugs;
- Method of consumption;
- Amount consumed; and
- Individual characteristics of the person consuming, for example:
  - Age;
  - Weight; and
  - Frequency of use.

In the ACT, it is illegal to have any cannabis in your system while driving. If you have cannabis in your system, it can affect your alertness, ability to concentrate and judge distances and coordination reaction time. These effects can last for many hours after taking cannabis.

It is not possible to say definitively what the detection window is in relation to cannabis use as this can vary significantly from one person to another, and depends on a number of factors including the type of drug and amount taken, frequency of drug use and other factors specific to the individual. In general, cannabis can typically be detected in a roadside oral fluid test for up to 12 hours after use however this can be extended to upwards of 30 hours for frequent users.

Detectability in blood samples is likely to be longer. Blood samples are generally only taken in the ACT:

- following an accident;
- because a person is unable to provide an oral fluid sample; or
- the person is in custody and an oral fluid analysis device is not available.

## **Health Consequences of Cannabis Use**

Cannabis use is known to have a range of adverse health consequences.

Using cannabis in the short term can cause:

- drowsiness;
- anxiety or panic;
- memory impairment;
- slower reflexes;
- bloodshot eyes;
- increased heart rate; and
- paranoia and psychotic symptoms.

The main long-term effects of cannabis are:

- dependence (addiction);
- reduced cognitive function;
- symptoms of chronic bronchitis; and
- increased risk of psychosis and schizophrenia, particularly with heavy use.

People with a family history of mental illness are more likely to experience anxiety, depression and psychotic symptoms (e.g. delusions or hallucinations) after using cannabis.

Individual responses to cannabis use can vary according to age, gender, pre-existing conditions and method of use. Persons choosing to consume cannabis products should seek advice from their medical practitioner or drug and alcohol services.

Cannabis smoke contains similar carcinogens to tobacco smoke, but the evidence that smoking cannabis can cause cancer is less clear than for tobacco smoking.

A complicating factor for research is that many cannabis users also smoke tobacco.

The impact of cannabis use on individual and population health continues to be a focus of research, as a result the ACT Government is mindful of the potential for new information in relation to potential health impact cannabis may become available in the future.

*Further information on the health impacts of cannabis can be found at:*

[www.who.int/substance\\_abuse/publications/cannabis/en/](http://www.who.int/substance_abuse/publications/cannabis/en/)

[www.who.int/substance\\_abuse/facts/cannabis/en/](http://www.who.int/substance_abuse/facts/cannabis/en/)

[www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis](http://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis)