



Chief Minister

Treasurer
Minister for Social Inclusion and Equality
Minister for Tourism and Special Events
Minister for Trade, Industry and Investment
Member for Kurrajong

Ms Bec Cody MLA
Chair
Standing Committee on Health, Ageing and Community Services
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Ms ~~Cody~~ ^{Bec}

Thank you for your letter of 27 February 2019 inviting the Government to provide an outline of intended amendments to the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018* that has been referred to the Standing Committee on Health, Ageing and Community Services for inquiry. The following information is provided for the information of the Committee.

The ACT Government's drug policy

The ACT Government's policy regarding the harms caused by alcohol, tobacco and other drugs is clearly articulated in the *ACT Drug Strategy Action Plan 2018-21* (the ACT Action Plan). The Action Plan, which aligns with the National Drugs Strategy, outlines a commitment to evidence based and practice informed responses to drug use that minimise harm in our community.

The Government has been clear that we do not condone nor encourage the recreational use of cannabis, which we know presents health risks. However, outright prohibition has clearly proven not to work as an effective strategy for dealing with drug use in our community. Despite currently being illegal, 8.4 per cent of Canberrans have reported using cannabis in the previous 12 months.¹

The ACT has a long history of taking progressive steps and trying new ideas to minimise the harm of drugs in our community. This includes being one of the first jurisdictions in Australia to decriminalise the personal possession of small amounts of cannabis. The Government intends to continue taking well considered steps to improve our drug laws, including supporting this Bill subject to appropriate amendments which are detailed later in this submission.

¹ Australian Institute of Health and Welfare's National Drug Strategy Household Survey (2016)
<https://www.aihw.gov.au/about-our-data/our-data-collections/national-drug-strategy-household-survey>

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Matters to be considered

As is to be expected with an issue as complex as this, the Government has identified a number of issues requiring further consideration before the Bill can be passed.

Even after the passage of this Bill, possessing and growing cannabis will carry a degree of risk arising from interaction between Territory and Commonwealth law. We believe the ACT is able and entitled to make our own laws on this matter. However, we would be the first jurisdiction in Australia to legislate in this way, and the interaction with existing Commonwealth law remains untested.

There is also uncertainty as to how a Commonwealth Government may react to the ACT passing this Bill and we cannot guarantee a Commonwealth Government would not intervene to prevent reforms – as has occurred in the past.

There are also a range of health implications to be considered. It is clear that some people experience adverse mental health effects from using cannabis, and that its use can become problematic over time. However, it must be noted that these health risks already exist for anyone who uses cannabis under current legislation.

Implementation of this Bill may be able to assist in addressing some of these health risks. For example, the stigma and risk of punishment associated with illegal drug use may mean that prohibition is preventing people from seeking medical or other types of help when it is needed. Legalising the personal use of small amounts of cannabis will create opportunities to better reach people who are already using the drug and connect them with the services or supports they need. The implications for justice outcomes are similarly complex. Currently, possessing small amounts of cannabis for personal use can bring people into contact with the justice system, with lasting and serious consequences. Moving from the decriminalisation to legalisation of small amounts of personal cannabis could avoid help individuals avoid these negative outcomes.

The Government also has a responsibility to focus our justice resource where they're needed the most: on disrupting serious and organized crime, protecting our community from individuals or groups who might wish to do us harm, helping women and children dealing with domestic and family violence. Legalisation means the ACT's police and court resources can be better focused in these areas where they are most needed.

There are also broader public safety effects to be considered. Under the current regime, the one-in-twelve Canberrans that use cannabis have no legal channel to obtain it. As a result, otherwise law-abiding individuals are required to interact with criminals in a way that exposes them to risks and may also increase the risk of further offending in our community.

By legalising the option for individuals to cultivate a small number of plants for their own use, there may be opportunities to reduce the market for illegal drugs – a market that would otherwise provide revenue to serious or organised criminals.

Proposed Government Amendments

In light of these and other issues, the Government intends to move a number of amendments to the Private Members Bill. We have instructed the Parliamentary Counsel's Office to draft Government amendments which would give effect to the following safeguards and improvements:

1. Personal plant limits

Whereas the Bill would allow an individual to possess four cannabis plants, the Government will move amendments to limit this to a maximum of two plants. This is consistent with the settings of the current Simple Cannabis Offence Notice scheme and is considered a reasonable limit for personal use.

2. Household plant limits

The Bill does not currently include a limit on the number of plants that would be allowable in any single dwelling. This gives rise to potential situations where sharehouses (or dwellings that otherwise have multiple residents) could effectively be used as larger scale 'grow houses'

The Government amendments will introduce a household limit of four cannabis plants, regardless of how many individuals are resident.

3. Restrictions on where cannabis can be grown

The Government will move amendments to restrict where personal cannabis plants can be grown. These amendments will address two separate issues.

First, cannabis plants will only be able to be legally cultivated on parts of residential property not generally accessible by the public. This would exclude cannabis being grown in areas such as front yards, verges or community gardens. This restriction is intended to minimise access to cannabis plants by persons other than the legal owner. This would also have the effect of prevent cannabis being legally cultivated on commercial or community property.

Second, cannabis plants would only be able to be legally cultivated by a person usually residing at that property. This is intended to establish a nexus of ownership for each cannabis plant.

4. Secure storage

Government amendments will require cannabis to be kept securely when not in an individual's possession in order to restrict access by children and young people or other vulnerable individuals.

5. Distinguish between fresh and dried cannabis

The Bill as drafted would legalise possession of 50 grams of cannabis, which is taken to refer to dry cannabis, in line with the settings of the Simple Cannabis Offence Notice Scheme. This creates a practical issue due to freshly harvested cannabis plant material weighing more before it is dried.

To reduce ambiguity in the Bill, the Government intends to move amendments that would distinguish between dry cannabis (i.e. cannabis ready to be used) and 'wet' cannabis (i.e. harvest plant material that has not yet been dried).

Dry cannabis would still be subject to the 50 gram limit as included in the Bill. The Government will move to include a separate limit of 150 grams for fresh (or 'wet') cannabis that would be applicable to cannabis that has been harvested but not yet dried. This limit has been selected primarily on the basis that it would limit individuals from potentially possessing amounts of dry and wet cannabis that would approach the threshold for a trafficable quantity.

6. Smoking near children

The Government supports the intention of the Bill's restrictions on smoking near children but considers there would be practical challenges to implementing this through the proposed 20 metre distance rule. For example, an individual legally smoking cannabis in their own open backyard could potentially be within 20 metres of a child in a neighbouring property without intending to be, or being aware this is the case.

To make this element more practical, the Government will move amendments to prohibit the smoking of cannabis near children through an offence involving a mental element rather than a distance based rule. That is, an individual will be deemed to have committed an offence if they *knowingly or intentionally* use cannabis in a way that exposes a person less than 18 years old to this.

Other matters

The Government acknowledges that legalisation of cannabis for personal use has not been tried in Australia before. Notwithstanding the above amendments, there remains a degree of uncertainty and risk associated with the proposed new approach. However, the ACT Government believes it is important to continue exploring new measures to reduce the harm from drugs in our community.

We will seek to collect relevant data to effectively evaluate the outcomes of legalisation, with a formal evaluation being conducted not more than two years after the date of the Bill's implementation. This will help inform decisions about any necessary further reform or amendments to the legislative framework created through this Bill.

Thank you again for your invitation to make a submission to this inquiry. We understand that these are reforms the Canberra community wants to see made, but also ones that must also be properly and carefully considered. The Government is now undertaking that work and will provide a detailed set of drafted amendments reflecting the points above to the Committee when these are available.

Yours sincerely



Andrew Barr MLA
Chief Minister

18 MAR 2019