



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
Mr Peter Cain MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair),
Mr Johnathan Davis MLA

Submission Cover Sheet

Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021

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The Committee Secretary
ACT Legislative Assembly
Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021
GPO Box 1020, CANBERRA CITY ACT 2601
Via email: LASelectCommitteeDDAB2021@parliament.act.gov.au

11th June 2021

Thank-you for the opportunity to prepare a written submission for the **Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021**.

The Drug Policy Modelling Program (DPMP), UNSW Sydney is the leading drug policy research and practice program in Australia. Our mission is to improve government decision-making on drugs. We have been conducting research into drug policy, including drug-related legislation, and more specifically decriminalisation and diversion schemes globally and nationally.

We congratulate the ACT Government on considering amendments to the Drugs of Dependence Bill. While the Committee's Inquiry extends beyond the Bill's provisions, we have chosen to focus this submission solely on the proposed Bill. We have conducted extensive research on many of the topics included in the Committee's Terms of Reference such as unmet demand for drug and alcohol treatment, treatment funding mechanisms, evidence-supported harm reduction initiatives (such as drug checking and supervised injecting and consumption spaces), and best practice policy approaches in the drug and alcohol field. We would be pleased to provide the Committee with any research, evidence or expert advice about any of the Committee's deliberations.

The views expressed below are backed up by sound scientific evidence. All the references referred to in our submission are available directly from us, should the Committee wish to have copies of the original research. We would be pleased to expand on any of the points raised in our submission.

Yours sincerely,

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Drug Policy Modelling Program submission to the **ACT Legislative Assembly
Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021**

Alison Ritter, Keelin O'Reilly, Isabelle Volpe, Liz Barrett and Michala Kowalski¹

11th June 2021

Introduction

The ACT already has forward-thinking drug laws and regulations. Of note is:

- The Drugs of Dependence Act (1989) provides for the Simple Cannabis Offence Notice (SCON) which provided a fine (and no criminal conviction) for those detected with personal quantities of cannabis for their own consumption (i.e. 50 grams or less of dried cannabis, 150 grams or less of fresh cannabis, up to two plants).
- An Amendment to the Drugs of Dependence Act, the Personal Cannabis Use Amendment Bill, came into effect at the end of January 2020. Although possession of small amounts of cannabis remains an offence under this Act, individuals over 18 years of age are exempt from this offence (and for individuals under 18, possession of small amounts of cannabis may be issued a SCON or referred to a drug and alcohol diversion program).
- Police diversion programs also operate, whereby police can direct a person to an assessment plus voluntary education or counselling, where any illicit drug (in specified quantities) is detected.

Given this array of legal and regulatory arrangements, a key question is whether the proposed **Drugs of Dependence (Personal Use) Amendment Bill 2021** enhances and complements the existing arrangements. Our response is yes. Cannabis has been dealt with very well by the ACT Government, yet responses to drugs other than cannabis fall well short. The current police diversion program is limited to two opportunities. There is gap in the ACT for better managing personal drug use that is not covered by any of the existing frameworks.

Significant health and social harms arise from the use of drugs beyond just cannabis: the removal of criminal status for drug use in order to facilitate greater access to education, information and where needed treatment and support is essential. The current approach is a wasteful use of police resources. The framework for the Amendment already exists (the SCON) and its extension to apply to other illicit drugs is sensible, proportionate, and sound policy.

RECOMMENDATION: That the ACT Legislative Assembly pass the Bill.

We recommend that the Legislative Assembly pass the Bill because:

- a. The Bill is in line with best-practice drug laws concerned with drug use/possession (notwithstanding the points raised below)

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- b. There is a strong evidence-base from Australia and overseas that supports the positive effects of such drug laws
 - c. It represents fair, proportionate, sensible, and just drug policy
 - d. The Bill is consistent with international drug treaties to which Australia is a signatory
 - e. There is no evidence that the proposed Bill will cause an increase in drug use in the ACT
- We provide additional comment on each of these five points, below.

The rationale for supporting the Bill

1a. The Bill is in line with best practice drug laws

A wealth of evidence demonstrates the benefits of alternatives to arrest for drug use and drug possession. For example, our evaluations found that drug diversion is a cost-effective response to use and possession that significantly reduces the number of people who are arrested and sent to court for this offence alone. Diversion thereby improves a number of outcomes for the individual and substantially reduces the costs borne by the state (Shanahan, Hughes, & McSweeney, 2017). Programs like drug diversion are not associated with an increase in drug use or offending (Hughes, Shanahan, Ritter, McDonald, & Gray-Weale, 2014; Hughes, Stevens, Hulme, & Cassidy, 2018).

One of the most talked about drug decriminalisation systems is Portugal. Portugal decriminalised the use and possession of all illicit drugs in 2001, under the goal of treating all drug use as a health and social issue - not a criminal issue. At the same time, it expanded investment in drug treatment, harm reduction and social reintegration. Eighteen years post-reform the impacts have been clear: a reduced burden on the criminal justice system, reductions in problematic drug use, reductions in drug-related HIV and AIDS, reductions in drug-related deaths, increases in access to treatment and reintegration services (such as employment assistance) and reduced social costs of responding to drugs (Gonçalves, 2015; Hughes & Stevens, 2010).

1b. There is a strong evidence base from Australia and overseas that supports the positive effects of such drug laws

There is now a large body of research on the impacts of decriminalisation beyond the Portuguese experience, with over 30 countries practising some form of decriminalisation (Eastwood et al., 2016). Hughes, Stevens, Hulme and Cassidy (2018) were commissioned by the Government of Ireland to review the evidence-base on alternatives to simple possession across nine different countries (including Australia, Czech Republic, Germany, Portugal and the USA). They found no evidence of significant increase in the prevalence of use after decriminalisation. Conversely, decriminalisation of personal use and possession was associated with many positive consequences including reductions in drug-related harms, reduction in the burden on the criminal justice system and improved employment and economic outcomes (Hughes et al., 2018).

In addition to evidence of decriminalisation internationally, there has also been research evaluating the current models of decriminalisation in Australian states and territories. Although currently no Australian states or territories have decriminalised all illicit drugs, South Australia, the Northern Territory, and the ACT have implemented models of decriminalisation for cannabis by replacing criminal sanctions with civil penalties for personal use. When evaluating these schemes, Hughes et al. (2018) found various benefits including a reduced burden on the criminal justice system, economic savings, and social benefits (such as increased employment rates). Although implementation is paramount to the success of these schemes, it is clear that removing criminal penalties for personal use of drugs has significant advantages.

The recently introduced fine scheme in NSW (the Criminal Infringement Notice, CIN), while exceptionally limited in its jurisdiction (confined to music festivals at the present time), has been evaluated and been shown to be highly cost-saving. Between January and June 2019, 300 notices were issued; the costs saved (excluding policing time saved from alternate action and revenue from fines) was near \$200,000. If a CIN had been issued to all the people who were convicted of use/possess for same period (N=8,930), the savings amount to around \$5 million (Sutherland, Weatherburn, & Degenhardt, 2021).

1c. It represents fair, proportionate, sensible, and just drug policy

The community is concerned about drug supply and drug trafficking: the efforts of law enforcement and policing should be focused on reducing the availability of currently illicit drugs. At the same time, the community recognises that drug use is a health and social concern, not a law enforcement concern. As such, the removal of criminal penalties for drug use is seen as fair and just drug policy. The proposed Bill, removing criminal penalties for drug use, is such an initiative.

We commend the decision not to limit opportunities to access the scheme as well as placing no restrictions on offending history as this is consistent with principles of fair, proportionate and sound drug policy. Our previous research evaluating diversion programs in Australia identified eligibility criteria (i.e. eligibility for diversion, compared to arrest) as a barrier to expansion of these programs (Hughes et al., 2019). Many diversion programs in Australia have limits on diversion opportunities, for example excluding people with conviction histories or concurrent offences (Hughes et al., 2019). These restrictions are not consistent with fair and just application of the law, and it is pleasing to see these removed in the ACT case.

The proposed Bill is sensible and pragmatic. Around 43% of Australians (NDSHS, 2019) have used an illegal drug at least once in their lifetime. This perforce means that almost half of the Australian population are regarded as criminals under the law. In the ACT however, the removal of criminal penalties for drug use recognises that it is important that the law be upheld and respected in line with community expectations.

1d. The Bill is consistent with international drug treaties to which Australia is a signatory

The decriminalisation of the personal use of drugs is consistent with the three main international drug treaties/conventions (the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988). The 1961 and 1971 Conventions require member states to prohibit but not criminalise possession. The 1988 Convention requires member states to make drug use a criminal offence but has long permitted the use of alternatives to conviction for minor offences. More notably, on 17 January 2019 the Chief Executives Board of the UN (representing 31 UN agencies including the United Nations Office on Drugs and Crime) adopted a new common position on decriminalisation. This position calls on member states to promote alternatives to conviction and punishment in appropriate cases, including the decriminalisation of drug possession for personal use. This reflects increasing recognition that criminalisation increases stigma and reduces access to drug treatment and harm reduction services, and that policing itself can increase harmful drug use practices.

1e. There is no evidence that the proposed Bill will cause an increase in drug use in the ACT

Despite many fearing that a move away from criminal penalties for minor drug offences would lead to an increase in use, research from both Australia and internationally has found no evidence of any significant increases (Csete et al., 2016; Eastwood, Fox, & Rosmarin, 2016; Hughes et al., 2018). Portugal has decriminalised all illicit drugs for over 20 years, with no significant increases in drug use

compared to other European countries (Csete et al., 2016). Furthermore, research evaluating different models of decriminalisation internationally have found no significant impacts on rates of drug use (Eastwood et al., 2016; Hughes et al., 2018). Additionally, studies of the Australian states that have decriminalised personal quantities of cannabis have found no significant, long-term increases in the use of either cannabis and other illicit drugs (Hughes et al., 2018; Single, Christie, & Ali, 2000). The ACT acts as one example of this, where alternatives to criminal proceedings for cannabis use have been provided since 1993 with no subsequent significant increases in cannabis use, and the ACT maintains one of the lowest prevalence rates of drug use compared to other Australian states (Australian Institute of Health and Welfare, 2019).

Despite the strong evidence-base for the proposed Bill, there remain some areas that deserve closer attention, and consideration by way of amendment.

Amendments for consideration

RECOMMENDATION: That the ACT Legislative Assembly consider amendments to the proposed Bill.

We would like to draw the Committee's attention to four areas that deserve further consideration, either after the Bill is passed or during the finalisation of the Bill. These are:

- a. threshold quantities as specified in the current Draft;
- b. the list of substances specified;
- c. the use of fines; and
- d. police discretion.

2a. Threshold quantities

RECOMMENDATION: That consideration be given to defining personal use/possession for the purposes of decriminalisation at the threshold quantities as given in the existing Criminal Code (Controlled Drugs) Regulation 2005.

In the event that the Bill proceeds with the personal possession limits as currently set out in Table 170, an urgent review of threshold quantities is undertaken of all listed substances after the Bill is passed.

The Bill proposes introducing "personal possession limits" for certain drugs, as outlined in Table 170 of the Bill. These "personal possession limits" are in addition to the existing "trafficking quantities" in the ACT Criminal Code Regulation 2005, that are used as a 'threshold' to distinguish drug supply from drug use. Those caught with quantities of illicit drugs lower than the "personal possession limits" of the illicit drugs outlined in Table 170 may be issued with a 'Simple Drug Offence Notice' (SDON) involving a \$100 fine. Those caught with quantities of illicit drugs more than the "personal possession limits", but lower than the "trafficking quantities" listed in the Criminal Code Regulation, will be subject to the existing penalties for drug use/possess offences in the ACT, which includes 50 penalty units (\$5,500 fine) and up to two years in prison.

Under this proposal, it seems that some personal drug use will not be criminal and be subject to a fine and other personal drug use will remain a criminal offence and proceed to court. This creates a two-tiered system of use/possess offences which could effectively discriminate against people who experience dependence, and perversely incentivise repeated purchasing of single-dose or session quantities. The act of purchasing is often considered one of the most dangerous behaviours for people who use drugs, as it exposes the buyer to potential violence and/or encounters with law enforcement.

It is crucial that quantities used to differentiate illicit drug offences are given careful consideration. If set at an amount too high, drug supply may be treated as a use offence; if set at an amount too low, drug use may be treated as a supply offence. Although the new “personal possession limits” are not differentiating supply from use, their quantities still require careful consideration to ensure people are not excluded from the scheme who the Bill aims to help. The newly proposed “personal possession limits” sit dangerously close to or below what some people “typically” consume in one session and/or purchase for a personal use occasion (Hughes & Ritter, 2011). To that end, we agree with Michael Pettersson’s presentation speech comment that the threshold quantities (“personal possession limits”) that are proposed in this Bill should be discussed.

We would like to draw attention to several disadvantages of the proposed addition of “personal possession limits”:

- they create unnecessary complexity, potentially creating confusion for police by introducing an additional set of thresholds;
- they create unclear policy for the public, particularly for people who use drugs;
- they are not necessarily reflective of patterns of use, creating unfair and ineffective policy; and
- they bear unnecessary costs on the criminal justice system by excluding large groups of people who use drugs from the SDON.

All of these points could be rectified by implementing the proposed Bill with the existing thresholds outlined in the Criminal Code Regulation (Serious Drug Offences).

The proposed “personal possession limits” in the Bill do not align with recent advances in ACT legislation. The ACT has been a national leader in implementing evidence-informed threshold quantities. In a 2014 amendment to the Criminal Code (Serious Drug Offences) Regulation, the ACT Government raised threshold quantities to better reflect current drug using practices and patterns of consumption, based on research provided by DPMP (Hughes & Ritter, 2011). This amendment enabled better distinguishing between use and supply offences. The proposed “personal possession limits” are reflective of the previous ACT threshold quantities and are therefore not reflective of drug consumption patterns. This could lead to the exclusion of people who use drugs from the SDON, who may then be subject to criminal proceedings. As a result, this may bear costs on the criminal justice system that could otherwise be avoided. As noted in the explanatory statement, the intention of the Bill is to “treat drug use as a public health problem and not one first and foremost of the criminal justice system”; we believe the proposed “personal possession limits” run contra to the aim of the Bill.

The existing SCON operates with a similar set of “personal possession limits” (50 grams of dried cannabis or 150 grams of fresh cannabis) in addition to the “trafficking thresholds” (300 grams). Although anything below 300 grams is not considered a supply offence, those caught with these quantities are not eligible for the SCON. This excludes large groups of people who use cannabis and may subject them to criminal proceedings. As noted by the ACT Alcohol Tobacco & Other Drug

Association (2020, p. 2): “less than a quarter of cannabis consumers in the ACT, who were arrested for minor, consumer-level, cannabis offences, were issued with a SCON – the remaining 76% had to appear before a court to answer the charge”. The latest data from the ACT shows that out of 243 arrests for minor cannabis offences, only 55 people received a SCON (Australian Criminal Intelligence Commission, 2019). It is likely that the proposed “personal possession limits” of other drugs will similarly exclude large groups of people who use drugs.

We acknowledge that the rationale for the proposed “personal possession limits” is one of pragmatism, aiming to minimise conflict between trafficable amount thresholds in the ACT legislation compared to Commonwealth legislation. However, the interaction between these thresholds in practice should be minimal. The Commonwealth will only prosecute for serious drug offences when: there is a relationship to import or export activity; the offence is related to other serious federal offending and should be trialled together; or there is significant interest to a federal agency (Commonwealth Director of Public Prosecutions, 2014). Therefore, there is no impediment to using the current ACT threshold quantities as listed in the Criminal Code Regulation.

The Drug Policy Modelling Program has extensively studied the issue of threshold quantities and would be more than willing to provide further advice to the ACT. To that end, please find Attachment 1 enclosed which provides a preliminary assessment of the extent to which the threshold quantities for “personal possession limits” as listed in the proposed Amendment Bill are evidence-informed.

2b. The list of substances

RECOMMENDATION: That consideration be given to amending the Bill to include all substances listed in the Criminal Code Regulation (Part 1.2 Prohibited Substances).

The explanatory statement acknowledges that the substances chosen for inclusion with “personal possession limits” were associated with criminal justice system interactions and are among the most commonly used drugs. However, what is considered ‘common’ at a population level is subject to change across time, and drug use patterns vary between population or cultural groups. In the proposed Bill, a person possessing a drug of dependence for which there is no personal possession limit would be subject to existing criminal penalties for drug use. For example, under the proposed Bill, a person found with 0.2mg (a standard dose) of DMT (N,N-Dimethyltryptamine) (a drug which induces a brief hallucinogenic experience with a total duration of 6-20 minutes), or 0.5g of ketamine (a drug which is used recreationally to induce effects similar to alcohol), could be subjected to a fine of \$5,500, imprisonment for two years, or both.

We have previously found that providing diversion for all drugs is an important principle for these schemes (Hughes et al 2019). This ensures that opportunities for diversion do not discriminate between people who use drugs, depending on whether or not the drug being used is considered at this point in time to be ‘common’. The basis upon which a substance is chosen for inclusion under the SDON (and has “personal possession limits”) is not transparent. By way of example, the National Drug Strategy Household Survey (which provides the triennial reporting of Australian drug use) includes ketamine and GHB, suggestive of these being drugs used by a sufficient proportion of the population to warrant epidemiological estimates.

Furthermore, given the unregulated drug market, it is possible to unknowingly possess an illicit substance due to adulteration or mis-selling. Recent examples include novel psychoactive substances mis-sold as benzodiazepines (Therapeutic Goods Administration, 2020), or fentanyl/fentanyl analogues used as adulterants in heroin and cocaine (ACT Health, 2020).

We are struck by the choice to include substances such as methadone (where it is not authorised under the Medicines, Poisons and Therapeutic Goods Act 2008), whereas other opioid medications, which can also be subject to diversion into illicit markets, such as fentanyl and morphine are not included. This suggests a level of arbitrariness to Table 170. It would be simpler to focus solely on the Prohibited Substances list from the Criminal Code Regulation rather than arbitrarily selecting substances from across both the Controlled Medicines and Prohibited Substances lists in the Regulation. This would also align with the above recommendation to use the threshold quantities from the Prohibited Substances list in the existing Regulations rather than introduce a new set of “personal possession limits” for a select range of substances.

Principles of clarity and simplicity for ACT residents, and for police, are also worth considering: the existing Criminal Code Regulation 2005 provides a comprehensive and single source for lists of substances that are either controlled or prohibited. This will reduce any potential confusion for all stakeholders.

2c. Fines

RECOMMENDATION: That the system for payment of fines is reviewed to remove penalties for non-compliance with fines, and to consider future amendments to include education/treatment options in lieu of fines.

The proposed Bill focusses on a monetary consequence (\$100 fine) which, if paid with 60 days, is expiated with no criminal record. Although fines offer an alternative to criminal charges for personal use offences, fines inherently advantage those with more wealth, and disadvantage already marginalised groups with more financial difficulties (Clarke, Forell, & McCarron, 2008). This is important to consider when designing a scheme for people who use drugs and should be carefully considered to avoid criminalising people who may be unable to pay the fines.

The current SCON and proposed SDON involve the possibility for criminal charges in the case of non-compliance of paying the fine. It is inherently unfair and arbitrary that the difference between a criminal record and no criminal record is the financial situation of the fine recipient. If fines are to be used then payment systems need to be dealt with as per other ACT infringement notices, particularly Criminal Infringement Notices with online payment options and options to pay in instalments.

It is possible to mitigate low levels of SDON compliance by implementing alternative and accessible payment options. Our previous research evaluating SCON and other diversion programs in the ACT identified low levels of compliance, with limited knowledge of the criminal justice outcomes of individuals who were non-compliant (while it appeared that most received the ‘easiest’ option of a caution, some may have proceeded to court for criminal proceedings) (Hughes et al., 2014). Two effective elements for decriminalisation schemes with civil sanctions (i.e. SCON and SDON) are allowing different avenues of payment (such as an alternative of treatment or education for those unable to pay the fine) and simpler avenues of payment (such as online options) (Hughes et al.,

2018). The ACT has already made changes to allow for simpler SCON payments to be made online via the Access Canberra website. However, without an alternative to paying the \$100 fine associated with the SCON and proposed SDON, the scheme may disadvantage those with financial difficulties (Clarke, Forell, & McCarron, 2008).

A fair and equitable scheme for those detected with small quantities of drugs for personal use should offer equal access to all. However, without an alternative to payment of the fine, it is likely that those with financial difficulties will be over-represented in the non-compliant group which may result in criminalisation. Implementing an alternative method of payment, such as treatment or education, could rectify this potential for discrimination and allow equal access to the scheme.

2d. Police discretion

RECOMMENDATION: That police discretion is removed. Failing that, resources are set aside to ensure that the ACT Police are fully trained to support the implementation of the SDON.

The proposed SDON operates as a discretionary scheme, offering police an alternative to laying criminal charges. Police discretion is a barrier to successful implementation of these programs (Hughes et al., 2019), as there is the potential for not everyone who is eligible for the scheme receiving it. Whilst the SDON has considerable advantages, in that it allows an alternative civil sanction rather than criminal charges for personal possession of some drugs, the discretionary element may prevent full application of the scheme.

Our previous work identified several barriers to implementation of diversion programs (including SCON) relating to police discretion (Hughes et al., 2019). These included the perception that these programs would result in extra work for police, fear of criticism from media or stakeholders, and cultural barriers that mean police do not support the diversion of these offences (Hughes et al., 2019). Additionally, our review of the diversion programs in the ACT found that there was low police support for the SCON due to the extra work involved (Hughes et al., 2014). Although there have been alterations to the SCON since this review (including introducing online payment options for fines, see above) the low levels of application may indicate that there is still a lack of support from police for the SCON and likely for the proposed SDON.

The optional, discretionary nature of the proposed SDON is problematic because:

- It is probable that only a minority of people engaged in the behaviour under scrutiny will receive the SDON with the remainder subject to existing criminal penalties, which defies the rationale of the program;
- Certain marginalised groups may be unfairly targeted for criminal charges;
- Police are left with the possibility of being accused of exercising bias and discrimination; and
- The scheme is at risk of not being implemented to its full potential.

And the removal of discretion is beneficial because it:

- Increases the transparency of the law;
- Reduces stress placed on police;
- Removes fear of criticism of police by media and stakeholders; and
- Eliminates cultural barriers that may prevent police from using the scheme.

Removing the discretionary aspect of diversion programs in Australia is important to ensure that everyone eligible receives the program (Hughes et al., 2019). Such programs are not uncommon, for example in South Australia, the *Controlled Substances Act 1984* made it mandatory for SA police to divert adults detected for simple possession drug offences away from the criminal justice system.

If the discretionary aspect remains, implementation of legislation will be critical, with corresponding procedures, protocols and training needed for local law enforcement agencies. Our previous work on diversion programs identified the need for increased education and training for police officers of diversion programs, including the benefits of such programs and the eligibility criteria (Hughes et al., 2019). Hughes et al. (2019) suggested the ACT Mental Health community police initiative in 2011 as a successful example of this, which involved a three-day training session that educated police officers on responding to mental health issues. This session increased police referrals to mental health services demonstrating the benefits of police training (Hughes et al., 2019). A similar program could be explored for the SDON if the discretionary element is to remain.

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Attachment 1: Threshold quantities

As outlined in section 2a of our submission, if threshold quantities are used in this legislation, they require careful consideration. The Drug Policy Modelling Program has previously conducted research on determining threshold quantities (Hughes & Ritter, 2011), and we present selected information in this attachment.

Threshold quantities are not the only way of distinguishing drug use/possession from drug supply. Many countries do not use threshold quantities and some proponents argue that threshold quantities should be abandoned altogether. Alternative methods to distinguishing *drugs intended for personal use* from *drugs intended for distribution* rely on determination of intent at the intercept or court level, or on legally ambiguous terms such as ‘a personal amount’ or ‘a small amount’ (such as in Spain, Denmark and Uruguay).

The use of the weight of the drug to determine the threshold at which someone is charged with a use/possess offence versus a supply offence is, however, a pragmatic solution. Threshold quantities represent the least-worst option as a baseline tool which streamlines decision-making processes at the intercept level and seeks to minimize wealth-based inequities in access to legal representation. However, it is an imperfect solution, and possession of an amount exceeding the baseline level set should not on its own be used as a substitute for proof of the legal concept of ‘intent’ to distribute.

Using threshold quantities raises the question of what amounts are consistent with someone who is using drugs themselves, and not supplying drugs to others. The trafficable threshold in the Criminal Code reflects the amount of drug considered to be a supply amount; it is assumed that below these amounts, the person is not supplying drugs to others but has a quantity for their own personal use. The proposed Bill introduces an additional distinction within this category of personal drug use, of allowable “possession limits”.

The question then becomes whether the amounts specified in the Criminal Code Regulation are indeed consistent with the kinds of amounts below which someone is engaged in drug use/possession for their own purposes and not engaged in supply.

Consideration needs to be given to the range of quantities which would represent own use (and absent supply). One metric is the median amount likely to be consumed in a single session for each substance class. Another metric would be the average amount consumed in a ‘heavy session’ or by people who use greater amounts on occasions. A third metric would be the typical amount that people purchase for their own consumption (for example purchasing ecstasy for a long weekend use). Other purchasing or acquisition patterns that result in possession above single-session consumption levels, such as ‘stockpiling’ (i.e. high-quantity purchases), are a common behaviour among people who regularly use MDMA (Fowler, Kinner, & Krenske, 2007).

In Table 1, we have collated data to present a comparison of current threshold quantities (per the Criminal Code Regulation 2005), proposed “personal possession limits” (those listed in Table 170 in the current Bill), and the most recently available data on typical drug use and purchasing, including amounts consumed by people who use drugs (but do not sell them).

It is worth noting that a proportion of people who use drugs are dependent on drugs (Wagner & Anthony, 2002) and experience significant health and social impacts from their dependency. These people are consuming drugs regularly (often daily) and are the ones most in need of a non-criminal response.

Table 1. Comparison of current and proposed threshold quantities, and data on patterns of use and acquisition of these substances

Substance	Current trafficking quantities ¹	Proposed personal possession limits ²	Typical 'personal drug use' data / comments to inform being able to distinguish drug use/possession from drug supply ⁵
MDMA	10g	0.5g (approx. 4 caps or 1-2 pills ³)	<p>The average (median) amount of MDMA used on a single 'typical' occasion is 2 caps (or 0.38g powder) (ACT EDRS 2020). However bingeing (i.e. high quantity use, such as at a festival) is a common behaviour among regular MDMA users (Sindicich & Burns, 2012). Estimates for heavy use vary, and include a median of 4 caps (or 0.5g powder) in a heavy session (ACT EDRS 2020); 80% of people who regularly use MDMA exceed 0.75 grams in a heavy session (Hughes, Ritter, Cowdrey, & Phillips, 2014a, 2014b).</p> <p>Most people using MDMA pills (a commonly consumed form of MDMA) reported to use 2 pills per typical session, or 3 pills per heavy session (ACT EDRS, 2020). This would be approximately 0.6g – 0.9g in total weight, based on approximate translations using an estimate of 1 pill=0.29g (Australian Crime Commission, 2010). However, recent New Zealand drug checking data from 2019-2021 shows a median total pill weight of 0.37g, with a range of 0.14-0.53g (Know Your Stuff, 2021).</p> <p>Stockpiling (i.e. high-quantity purchases) is another common behaviour among regular MDMA users (Fowler et al., 2007). For example, approximately 57 percent of people who regularly use MDMA/ecstasy (and do not sell MDMA) exceed 0.75 grams in their purchasing and/or use behaviour (Hughes, Ritter, Cowdrey, & Phillips, 2014a, 2014b).</p> <p>Taken together, this ACT data on typical consumption patterns suggests that the 'personal possession limit' in the proposed Bill for MDMA is too low. The New Zealand data suggests that a single pill could be over the proposed 'personal possession limit'.</p> <p>Turning to typical purchasing patterns of MDMA for people who use this drug (and do not supply/sell it), there are no specific ACT data available. Of the Australian respondents to the Global Drug Survey (a global survey with more than 100,000 participants) who reported MDMA pill purchasing patterns for personal use (n=595), in 2018 only 49% reported a purchase that would fall within the proposed personal possession limits, with a purchase of three pills. The median purchase amount was four pills. 75% of respondents purchased less than ten pills, and 25% of respondents reporting a purchase of ten pills or</p>

Substance	Current trafficking quantities ¹	Proposed personal possession limits ²	Typical 'personal drug use' data / comments to inform being able to distinguish drug use/possession from drug supply ⁵
			<p>more as their average purchase. This would amount to just under 1.5grams which is three times the nominated personal possession limit (Barratt, 2021).</p> <p>For MDMA powder (n=313 respondents), 13% of the sample purchased an amount within the proposed personal possession limit. The median purchase amount was 1 gram of MDMA powder, which is twice the proposed personal limit. 75% of respondents purchased 1.5 grams of MDMA or less, and 25% of respondents purchased more than 1.5 grams. 14 respondents (6% of the sample) reported purchasing an amount that would meet the threshold for a trafficking (Barratt, 2021).</p> <p>The threshold quantity for MDMA is particularly odd when compared to the relatively higher thresholds for other amphetamine-type substances including amphetamine and cocaine which are both 6 grams to define a supply offence.</p> <p>These data on purchasing patterns for personal use confirm that the proposed MDMA thresholds are too low. A personal possession limit of at least 1.6 grams is in line with the purchasing habits reported by more than 75% of the GDS respondents. A personal possession limit of 3.6 grams would encapsulate the purchasing behaviour of 90% of the respondents.</p>
Amphetamine/Methyl amphetamine	6g	2g (approx. 16 caps)	<p>The most common form of methamphetamine used in Australia is methyl-amphetamine. The criminal code and the personal possession limits do not differ between amphetamine and methamphetamine.</p> <p>In the ACT, the average (median) amount of methamphetamine used per session was 0.5g – 0.8g (powder, ACT EDRS data). This can vary depending on drug form; in other ACT data (IDRS 2020/2019), the median per day use of methamphetamine was reported as</p> <ul style="list-style-type: none"> Powder 0.2g Base 0.45g Crystal 0.1g <p>We know little about the purchasing patterns of people who use methamphetamine.</p>
Cocaine	6g	2g	The average (median) amount of cocaine used by ACT respondents to the EDRS (2020) was 0.5g (ACT EDRS 2020) per session. In the ACT IDRS respondents it was also 0.5g (ACT IDRS 2020).

Substance	Current trafficking quantities ¹	Proposed personal possession limits ²	Typical 'personal drug use' data / comments to inform being able to distinguish drug use/possession from drug supply ⁵
			<p>A heavy use session was characterised as a median of 1g (ACT IDRS 2020).</p> <p>Data on average purchase amount for personal use of cocaine are only available for Australian respondents to the Global Drug Survey (Barratt, 2021). The median purchase amount was 1 gram (n=244 respondents). 90% of respondents reported purchasing two gram or less as their average cocaine purchase.</p>
Cannabis	<p>Dried cannabis 300g</p> <p>Harvested cannabis: not included</p> <p>Cannabis Plants: 10 plants</p>	<p>Dried cannabis: 50g</p> <p>Harvested cannabis: 150g</p> <p>Cannabis Plants: 2 per person or 4 per household</p>	<p>We commend the decision of the Drugs of Dependence Cannabis Amendment Bill, allowing those over 18 to possess up to 50 grams of dried and 150 grams of harvested cannabis, and allowing those under 18 to be issued a SCON for these same quantities. Whilst we understand the current Bill will make no changes to this, we would recommend changing these to align with the trafficking quantities set out in the criminal code regulation, as per our recommendations for other substances.</p> <p>We welcome the use of 'harvested cannabis' as opposed to 'fresh cannabis'. This is because the term 'fresh cannabis' could be interpreted as the total weight of a plant, rather than the weight of cannabis that has been harvested from the plant ('harvested cannabis'). However, the threshold quantities for harvested cannabis should be increased to better reflect the expected yield for the amount of legally allowed plants.</p> <p>We recently conducted interviews with people (n=30) who use and grow cannabis in the ACT. There is a disconnect between the legally allowed limits of 'fresh cannabis' and the amounts that are actually being grown/harvested from plants. Many people spoke of plants with yields much higher than 150g from backyard plants, making growers liable to prosecution. Multiple people spoke about harvesting between 450g and 1 kilo per plant over the lifespan of a plant, which could subject them to charges of trafficking.</p>
Heroin	5g	2g	<p>While the total number of people who have tried heroin is small, especially relatively to the other prohibited substances considered here, around 30% of people who have tried heroin will become dependent on heroin (Santiago Rivera, Havens, Parker, & Anthony, 2018). Heroin dependence entails 2-3 injections per day, on a daily basis (to avoid withdrawal).</p> <p>Therefore in an average week, someone using heroin dependently will consume around 1.4 grams per week (IDRS ACT data, median use per session is 0.2g)</p>

Substance	Current trafficking quantities ¹	Proposed personal possession limits ²	Typical 'personal drug use' data / comments to inform being able to distinguish drug use/possession from drug supply ⁵
Lysergic Acid (LSD)	0.003g	0.002g (0.5-2 tabs)	<p>LSD is typically sold in the form of tabs (on pieces of blotting paper) or in vials (diluted in liquid). These carriers are needed because LSD is extremely potent, and only a miniscule amount of the pure drug is used in a single dose. The weight of these carriers (e.g. blotting paper for a single tab or liquid for a single drop) are significantly heavier than the pure LSD itself, and will almost certainly exceed the proposed threshold quantities. Presumably, the proposed threshold quantity was developed based on typical consumption according to <i>pure weight</i> rather than <i>total weight</i>, and it would be important to reflect this in the legislation. Otherwise, people in possession of a single LSD dose could be classed as traffickers. ACT data on LSD use showed that the median use per typical session was 1-2 tabs (ACT EDRS 2020). The median use per heavy session was 3 tabs (ACT EDRS 2020). This suggests that the personal possession limit for LSD is too low.</p> <p>Of the Australian respondents from GDS 2018 (n=370) who reported on their average LSD purchase amount, only 24% of the sample reported a purchase which would fall under the proposed personal possession limits. The median purchase amount was four tabs. 71% of respondents reported purchasing an average of eight tabs or less, with 29% of respondents reporting purchasing more than eight tabs (Barratt, 2021). Not insignificant proportions of people (14.4%) in the 2020 GDS reported consuming 2 tabs in one session and 2.8% of people consuming 3 tabs in one session. Additionally, purchasers of LSD generally have no control over the amount of micrograms present in each tab, and one tab of LSD can contain anywhere between 50 to 300 micrograms (0.0005g – 0.003g) (GDS, 2020).</p> <p>These data confirm the impression that the LSD limits are too low.</p>
Psilocybine (magic mushrooms)	2g	2g	<p>The current 2g threshold for Psilocybine (magic mushrooms) lacks distinction between fresh and dry mushrooms. There needs to be clarification between wet and dry mushrooms, and sourcing. As described in popular media articles (e.g. Rann, 2005), many people pick their own fresh, which could easily be a few hundred grams, compared to lower weight dried mushrooms.</p>

Notes:

Note 1: Current ACT Thresholds in the Criminal Code Regulation 2005.

Note 2: Proposed 'personal possession limits' listed in Table 170 in the current Bill.

Note 3: 1 pill = 0.29g, agreed estimate from Australian Customs/Australian Federal Police/Australian Bureau of Criminal Intelligence (Australian Crime Commission, 2010).

Note 4: The EDRS and IDRS do not distinguish between dried and harvested cannabis.

Note 5: Where possible, the most recently available ACT data are used:

ACT EDRS 2020 (Uporova, Price, Karlsson & Peacock, 2021)

ACT IDRS 2020 (Uporova, Price, Karlsson & Peacock, 2021)

ACT IDRS 2019 (Uporova, Price, Karlsson & Peacock, 2020)

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