



Legislative Assembly for the Australian Capital Territory

Select Committee on the Drugs of
Dependence (Personal Use) Amendment
Bill 2021

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

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About the committee

Establishing resolution

The Assembly established the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 on 11 February 2021.

You can read the full establishing resolution [on our website](#).

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Mr Peter Cain MLA, Chair

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About this inquiry

The Drugs of Dependence (Personal Use) Amendment Bill 2021 was presented in the Assembly as a Private Member's Bill by Mr Michael Pettersson MLA on 11 February 2021.

Subsequent to its presentation, the Assembly resolved, on the motion of Mr Jeremy Hanson MLA, that the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 be appointed to examine the Bill and any other related matter. The Standing Committee for Health and Community Wellbeing also informed the Assembly that it had resolved to conduct an inquiry into programs for drug harm reduction in the ACT.¹

On 30 March 2021, the Standing Committee for Health and Community Wellbeing announced that it was discontinuing its inquiry as it would overlap considerably with the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021's subject matter, and could cause confusion for those wishing to send in submissions or otherwise participate in the process. Mr Peter Cain MA, as Chair of the Select Committee for the Drugs of Dependence (Personal Use) Amendment Bill 2021 (the Committee), pursuant to standing order 246A, informed the Assembly that in addition to examining the Bill, the Committee would also inquire into broader programs and practices in relation to drug harm reduction.²

59 submissions were received from the community. An online survey was also conducted which attracted 778 responses.

The Committee held five days of public hearings on the 8th, 9th, 21st, 29th, and 30th of July 2021. A variety of witnesses gave evidence, including Ministers, government officials, representatives of community service organisations, researchers on drug and alcohol addiction, and people with lived experience with drug harm and abuse.

¹ ACT Legislative Assembly, Minutes of Proceedings, No 6, 11 February 2021, p 74.

² MOP No 7, 30 March 2021, p 89.

Acronyms

ACLEI	Australian Commission for Law Enforcement Integrity
ACT	Australian Capital Territory
AFP	Australian Federal Police
AMA	Australian Medical Association
ANU	Australian National University
ATODA	Alcohol Tobacco and Other Drug Association
AOD	Alcohol and other drugs
CAHMA	Canberra Alliance for Harm Minimisation & Advocacy
DASL	Drug and Alcohol Sentencing List
DASP	Drug and Alcohol Services Planning
MDMA	Methylenedioxymethamphetamine
NDHS	National Drug Household Survey
NGO	Non-government organisation
PACER	Police, Ambulance and Clinician Early Response
SCON	Simple Cannabis Offence Notice
TGA	Therapeutic Goods Administration

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Recommendations

Recommendation 1

The Assembly should pass the Drugs of Dependence (Personal Use) Amendment Bill 2021.

Recommendation 2

The ACT Government should commission an independent evaluation of the provisions enacted by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* and the enacted Drugs of Dependence (Personal Use) Amendment Bill 2021.

Recommendation 3

The ACT Government should amend the Bill to include a ‘catch-all’ clause (potentially acknowledging the Therapeutic Goods Association scheduled prohibited drugs) to include emerging drug trends.

Recommendation 4

The ACT Government should review the drug possession limits in the Bill to ensure they reflect the evidence on patterns of consumption for personal use.

Recommendation 5

The ACT Government should provide alternative options to a fine such as attending an information session on drug harm reduction, a peer support service or alcohol and other drug treatment, or, in specific situations, to completely waive the fine.

Recommendation 6

The ACT Government should, through ACT Policing, enact a policy to provide information about treatment services available with a Simple Offence Notice.

Recommendation 7

The ACT Government should significantly increase its investment in alcohol and other drug services.

Recommendation 8

The ACT Government should continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers.

Recommendation 9

The ACT Government should invest in housing options for people who use alcohol and other drugs and are at-risk or experiencing homelessness.

Recommendation 10

The ACT Government should commission a feasibility study into the establishment of a combined mental health and alcohol and other drug residential facility.

Recommendation 11

The ACT Government should refresh the Drug and Alcohol Services Planning tool.

Recommendation 12

The ACT Government should fund the alcohol and other drug sector to provide counselling support to children of their clients.

Recommendation 13

The ACT Government should review current ACT drug education programs and implement an evidence-informed school drug education program, appropriately funded, for ACT school students and their teachers.

Recommendation 14

The ACT Government should review current alcohol and other drugs training for frontline health and emergency services workers and community services providers to ensure best-practice harm reduction practice.

Recommendation 15

The ACT Government should work collaboratively with the sector and industry experts in a co-design process to expand capacity, address infrastructure constraints and develop new models of care. Specialised models for consideration include:

- intersection of mental health and alcohol and other drugs services (no wrong door approach);
- specialised methamphetamine services;
- southside peer-based model of care (Canberra Alliance for Harm Minimisation & Advocacy);
- women's day detox/rehab program;
- family member support services;
- an alcohol and other drugs Police, Ambulance and Clinical Emergency Response service;
- the We CAN program through Alcohol Tobacco and Other Drug Association to target smoking amongst injecting drug users;
- continue to support the distribution of naloxone and training in its administration to people likely to witness an overdose (cf Canberra Alliance for Harm Minimisation & Advocacy program);
- trials and research on medicinal drug use (such as ketamine, psilocybin and MDMA) for treatment of mental health and PTSD issues; and
- trials and research on a Hydromorphone Assisted Treatment program.

Recommendation 16

The ACT Government should revise the ACT Drug Strategy Action Plan. Part of that revision should include:

- development of a whole-of-government action plan/s;
- an expert advisory committee that includes alcohol and other drugs experts and people with lived experience;
- engagement with the Commonwealth Government to ensure consistency of ACT and Commonwealth Law; and
- a provision for a steering group to oversee the implementation of the Amendment Bill.

Recommendation 17

The ACT Government should provide training to ACT Police on the cultural transition to a decriminalisation model, as well as the practical implications of the implementation of the legislation.

1. Background

Legislation

- 1.1. Drugs are legislated in the ACT by a number of Commonwealth and Territory instruments. Firstly, they are defined under the [Poisons Standard](#),³ which is made under the *Therapeutic Goods Act 1989* (Cwlth). The Standard recommends to the States and Territories how the availability of poisons should be controlled, by classifying them into schedules with different provisions for supply, labelling, disposal etc. This inquiry is concerned with drugs classified as controlled drugs (e.g. cocaine, amphetamine, morphine, therapeutic cannabis) and prohibited substances (e.g. heroin, coca leaf, non-therapeutic cannabis), listed in Schedules 8 and 9 of the Standard, respectively.

Schedule 8	Controlled Drug - Substances which should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence.
Schedule 9	Prohibited Substance - Substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of Commonwealth and/or State or Territory Health Authorities.

Table 1: Excerpt from the Poisons Standard [Poisons Standard October 2021, Introduction, page ix.]

- 1.2. The [Drugs of Dependence Act 1989](#) defines offences of sale, supply and possession of such substances, and their consequential penalties. It also defines the powers of police to search for and seize illegal drugs, and how these drugs must be analysed and disposed of. The [Criminal Code 2002](#) deals with more serious drug offences such as the manufacture or trafficking of controlled drugs, drug offences involving children, and property offences derived from drug offences.⁴
- 1.3. In October 2019 the [Sentencing \(Drug and Alcohol Treatment Orders\) Legislation Amendment Act 2019](#) was passed, which established an alternative sentencing option for offenders who were dependant on alcohol or other drugs and had not committed a serious violent or sexual offence. This pathway is referred to as the Drug and Alcohol Sentencing List (DASL), or the Drug and Alcohol Court:

The DASL was developed to offer an alternative approach to rehabilitating offenders whose crime is related to drug or alcohol dependency.

³ Poisons Standard October 2021 (Cwlth).

⁴ A number of drug supply and production offences are also laid out under the [Medicines, Poisons and Therapeutic Goods Act 2008](#) (TGA), however this Act focuses on the misuse of substances which are subject to lesser control under the Poisons Standard, such as pharmaceutical medicines.

Its aim is to improve people's health and well-being, reintegrate them into the community and reduce criminal offending.

Similar court programs exist in every state of Australia and have been shown to be effective in improving health of participants and reducing crime.

Those sentenced under the DASL must engage in an intensive treatment program, which is overseen by a judge.⁵

- 1.4. The [ACT Drug Strategy Action Plan \(2018-2021\)](#), following the [National Drug Strategy \(2017-2026\)](#) (Cwlth) (the National Drug Strategy), outlines the Territory's new initiatives over three years to address and minimise harms from alcohol, tobacco, illicit drugs and non-medicinal use of pharmaceuticals. It adopts the National Strategy's three pillars of harm minimisation (demand reduction, supply reduction, and harm reduction) and states that it is guided by evidence-based practices, collaboration with stakeholders, and equity of access.
- 1.5. In 1992, the ACT Legislative Assembly passed the [Drugs of Dependence Amendment Act](#), which *decriminalised* possession of small amounts of cannabis. The criminal penalty (which had previously included fines and imprisonment) was replaced with a Simple Cannabis Offence Notice Scheme (SCON), which allowed police to issue a non-court-based infringement notice of \$100 for being in possession of not more than 25 grams of cannabis, cultivating not more than five plants for personal use, or self-administering cannabis.
- 1.6. In 2019, the [Drugs of Dependence \(Personal Cannabis Use\) Amendment Act 2019](#) was passed which *legalised* possession of up to 50 grams of cannabis for personal use, and the cultivation of up to 4 plants, also for personal use. This change came about due to a desire to reduce the negative effects of criminalisation on users.⁶ Many restrictions still apply, including supplying cannabis to a child, using cannabis in a public place, growing plants hydroponically, and selling, gifting, or sharing cannabis.
- 1.7. During the inquiry, there was debate around the effectiveness of decriminalising drugs in Portugal.⁷ The Parliamentary Joint Committee on Law Enforcement, in its 2018 report on its inquiry into crystal methamphetamine, noted that the Portugal decriminalisation model was largely designed to address heroin use and the decriminalised setting has drastically reduced drug-related harms in Portugal.⁸ However, it is the ACT Select Committee's view that Canberra now is not Portugal then, and that drug law reform in the ACT should be based on the ACT context.

⁵ ACT Supreme Court, *Drug and Alcohol Sentencing List*, <https://www.courts.act.gov.au/supreme/law-and-practice/criminal/drug-and-alcohol-sentencing-list>, accessed 19 October 2021.

⁶ Mr Michael Pettersson MLA, Legislative Assembly for the ACT: 2018 Week 13 Hansard (Wednesday, 28 November 2018), p 4942.

⁷ Drug Free Australia, *Submission 31*, pp 18–21, compared with the Alcohol, Tobacco and Other Drug Association ACT, *Submission 27*, p 2.

⁸ Joint Committee on Law Enforcement, Commonwealth, *Inquiry into crystal methamphetamine (ice): Final Report*, p 143.

Drug use in the ACT

- 1.8. The National Drug Household Survey of 2019 (NDHS) provides the most recent data of drug users in the ACT and nationally. According to this survey, 43 percent of the Australian population over 14 years old report ever having used illicit drugs. In the ACT, recent illicit drug use was reported at being 14.6 percent, down from 17.8 percent in 2001.⁹
- 1.9. In 2019, cannabis was the most commonly used illicit drug in the ACT, followed by cocaine. Meth/amphetamines, commonly known as ice, are used in relatively low numbers in the ACT. However, hospital presentations¹⁰ and non-pharmacotherapy-based treatment episodes due to drug use were much more likely to be as a result of meth/amphetamines¹¹, showing how drug harm can be concentrated amongst a small portion of drug users.
- 1.10. The ACT Government presented evidence that rates of illicit drug use among ACT secondary students is decreasing:
- Although ...reported illicit drug use remained relatively stable between 2014 and 2017, there have been significant decreases over time. This is most obvious in the 'used at least one illicit substance in their lifetime' category, which dropped from 37.5 per cent in 1996 to 17.4 per cent in 2017. During the same period, the proportion of students who reported they had 'used an illicit drug at least once in the past year' decreased from 32.5 per cent to 15.7 per cent, respectively, 'past month' from 17.9 per cent to 5.1 per cent, respectively, and 'past week' from 11.7 per cent to 2.5 per cent, respectively.¹²
- 1.11. Some demographics are over-represented amongst drug users, due to factors such as discrimination, socio-economic background, or reduced access to care and treatment. The National Drug Strategy highlights the following priority populations as areas where the largest risk of harm exists:
- Aboriginal and Torres Strait Islander people;
 - people with mental health conditions;
 - young people;¹³
 - older people;¹⁴
 - people in contact with the criminal justice system;
 - culturally and linguistically diverse populations; and

⁹ ACT Government – Health, *Submission 15*, p 4.

¹⁰ Three percent of all national emergency department presentation are due to ice: Australasian College of Emergency Medicine, *Submission 13*, [p 2].

¹¹ *Submission 15*, p 7.

¹² *Submission 15*, p 8.

¹³ Defined as people between 10 and 24 years old.

¹⁴ The National Drug Strategy defines older people as people over the age of 60. It notes that they are at increased risk from prescription drugs, illicit drugs, and alcohol.

- lesbian, gay, bisexual, transgender and/or intersex people.¹⁵

1.12. The issues surrounding drug use can be complex and leave certain people more vulnerable to the effects of drug harm and requiring specialised approaches in the efforts to mitigate and reduce this harm. An example of this can be seen amongst people experiencing homelessness, who are more likely to use drugs than the general population.¹⁶ People experiencing homelessness who use drugs are more likely to remain homeless even after receiving specialist homelessness services.¹⁷ Homelessness also reduces their access to health care, which increases the risk of drug harm, and requires them to keep their drug supply on their person. This increases the potential for them to be convicted of drug possession offences.¹⁸

1.13. According to the ANU Drug Research Network, 63 percent of people with drug dependence suffer from mental illness, compared to 20 percent of the general population.¹⁹ Many of the witnesses to the inquiry who had lived experience with drug harm spoke of the combined effects of drug abuse and mental illness:

[He] often said that he had some issues, or felt that he had some mental health problems. Essentially, he had taken drugs to mend that. You could go back the other way; if you have someone who is sound of mind, so to speak, and they go out and have an experience with a few friends and get addicted to a very hard drug, you end up with mental health issues and destroying any opportunities for a normal life. It goes hand in hand.²⁰

1.14. Despite making up less than 2 percent of the ACT population in 2019 (1.6 percent as per 2016 census data), Aboriginal and Torres Strait Islander people were reported in the NDHS as representing 3.5 percent of consumers of illicit drugs within the last 12 months. Twenty-three percent of Indigenous people had used drugs recently, compared with 16.6 percent of non-Indigenous people. Ms Tongs, Chief Executive Officer of Winnunga Nimmityjah Aboriginal Health and Community Services, explained to the Committee how historical disadvantages contribute to disadvantage in the present:

The problem is that, for a lot of First Nations people, there is all of that historical trauma. Being born into poverty, with colonisation, dispossession and the stolen generation, all of those things have led people into, firstly, the child protection system and, from there, into juvenile detention and prison.²¹

¹⁵ Department of Health, *National Drug Strategy 2017-2026*, p 18.

¹⁶ Toora Women Inc, *Submission 29*, p 4; Jenny Xue, *Submission 32*, [p 5].

¹⁷ *Submission 32*, [p 5].

¹⁸ *Submission 32*, p 10.

¹⁹ Australian National University Drug Research Network, *Submission 40*, p 22.

²⁰ Mr Bingham, *Committee Hansard*, 8 July 2021, p 5.

²¹ Ms Julie Tongs OAM, Chief Executive Officer, Winnunga Nimmityjah Aboriginal Health and Community Services, *Committee Hansard*, 29 July 2021, p 99.

- 1.15. Evidence from the submissions spoke of a strong relationship between drug use and incarceration.²² Drug use does not stop or reduce amongst people who enter prison, in fact it often remains or increases due to boredom, ease of availability, and lack of effective treatment services.²³

Alcohol and other drug services and rehabilitation sector

- 1.16. Alcohol, tobacco and other drug education for children in the ACT mainly comes from the national school curriculum. Principals and school boards choose how to implement the curriculum and also whether they access additional resources such as interactive online modules or in-school presentations.²⁴ For adults, two services are available: alcohol and drug awareness courses for people charged with drink or drug driving offences, and alcohol and other drug (AOD) Support Connections provided by CatholicCare which aims to support people who are seeking help on how to reduce their substance use.²⁵
- 1.17. Many AOD services in the ACT can be categorised under harm reduction practices, which aim to reduce the negative impacts of drug use without requiring the cessation of drug use as a precondition of support. Support of this kind include ACT Health's needle and syringe program (which provides sterile injecting equipment to prevent the spread of blood borne diseases such as HIV), and provision of the take-home opioid overdose reversal drug naloxone. Other common types of harm reduction services available in Canberra are sobering up shelters, drop-in services, and peer or family support, which are all provided through a range of non-government organisations (NGOs) and funded by the Government. As part of its commitment to supporting harm reduction practices, the ACT Government has also developed the Festivals Pill Testing Policy, and two trials of this service have been conducted so far.²⁶
- 1.18. The third branch of the AOD service sector concerns treatment. There are many types of treatment available for various types of drug use, including alcohol and tobacco. As of 2018, there were 16 treatment services available in the ACT, 14 of which are run by NGOs.²⁷ These services include psychological therapy, pharmacotherapy, and residential and non-residential rehabilitation. Treatment must be tailored to the patient's needs, for example if poly-substance use, behavioural addictions or other mental conditions are present.²⁸ Alcohol is the most common principal drug of concern in treatment episodes, followed by amphetamines, and heroin and cannabis are also significantly represented.²⁹

²² ACT Justice Reform Group, *Submission 26*, p 4; Burnet Institute, *Submission 34*, p 4; Families and Friends for Drug Reform, *Submission 38*, p 54.

²³ *Submission 26*, p 4.

²⁴ *Submission 15*, p 30.

²⁵ ATODA, *Service Type: Information and Education*, <http://directory.atoda.org.au/category/service-type/information-and-education/>, accessed 20 October 2021.

²⁶ *Submission 15*, p 43.

²⁷ *Submission 15*, p 32.

²⁸ The Australian Medical Association ACT, *Submission 48*, p 6.

²⁹ *Submission 15*, p 34.

In 2018, the Service Users' Satisfaction and Outcomes Survey reported that clients of the ACT AOD treatment sector are:

- 58.3 per cent male;
- 37.5 years average age;
- 31.0 per cent Aboriginal and/or Torres Strait Islander;
- 20.4 per cent with a disability;
- 49.9 per cent over 18+ with Year 10 or less as their highest level of education;
- 61.2 per cent of adults are parents;
- 69.5 per cent unemployed or not working;
- 30.1 per cent homeless or at risk of homelessness; and
- 88.6 per cent living in the ACT (1 in 5 in Tuggeranong).³⁰

This survey also reported very high levels of satisfaction with quality of treatment, with 92.4 percent overall client satisfaction.³¹

³⁰ *Submission 15*, p 38.

³¹ *Submission 15*, p 39.

2. The Bill and other criminal justice matters

Current possession offences

- 2.1. The *Drugs of Dependence Act 1989* (the Act) specifies penalties for the possession, sale, and supply of prohibited substances, drugs of dependence, and has a separate set of offences for cannabis. The Criminal Code Regulation 2005 defines 185 prohibited substances, which include heroin, methylenedioxymethamphetamine (MDMA) and cannabis. The Regulation also defines 75 drugs of dependence (which it refers to as controlled medicines), which include amphetamine, cocaine and methylamphetamine.
- 2.2. Sections 169 and 171 of the Act have general offences for possessing drugs of dependence and prohibited substances respectively. The penalties comprise up to two years in prison or 50 penalty units, or both. The value of a penalty unit for an individual is \$160, setting the maximum fine in this case at \$8,000.³²
- 2.3. The Act has separate offences for cannabis:
 - the simple cannabis offence of cultivating one or two plants, where the person is under 18 years of age, with a maximum penalty of one penalty unit (section 162);
 - the simple cannabis offence of possessing a small amount of cannabis (such as up to 50 grams of dried cannabis), where the person is under 18 years of age, with a maximum penalty of one penalty unit (sub-section 171AA(1));
 - possession of larger amounts of cannabis (such as over 50 grams of dried cannabis), with a maximum penalty of 50 penalty units, imprisonment for 2 years, or both (sub-section 171AA(2));
 - cultivation of more than four cannabis plants at their premises, or any number of plants at other premises, with a maximum penalty of 50 penalty units, imprisonment for 2 years, or both (sections 171AAA and 171AAB);
 - stores cannabis that children can access, with a maximum penalty of 50 penalty units, imprisonment for 2 years, or both (section 171AAC); and
 - smoking cannabis in a public place or smoking cannabis and exposing a child to the vapour, with a maximum penalty of 30 penalty units (section 171AB).
- 2.4. Section 171A of the Act specifies a process for simple cannabis offences. The police officer must serve an offence notice on the person/child and their parents, or whoever has that role that they are residing with. The notice must specify some processes, including that, if the person pays the prescribed penalty within 60 days, then all liability is discharged and there is no conviction for the offence. The prescribed penalty is \$100.
- 2.5. Since 2001, the Australian Capital Territory (ACT) has had a non-legislated approach to police diversion called the Illicit Drug Diversion Program. Its aim is to divert people away

³² Section 133 of the *Legislation Act 2001* defines the value of a penalty unit.

from the criminal justice system to health and social services.³³ ACT Policing stated that its internal governance specifies various criteria for diversion, including the amount, the person's age, the context, and whether other offences are involved.³⁴

- 2.6. In 2019–20, ACT Policing completed 192 referrals under the Illicit Drug Diversion Program.³⁵ The drugs most involved were cocaine (68), cannabis (56), and MDMA (34). ACT Policing advised the Committee that it focuses on criminality rather than personal use:

ACT Policing very rarely criminalises the personal use of substances – resources are targeted at drug trafficking. However, criminality can often be driven by drug use. For instance, drug possession offences are regularly prosecuted alongside other more serious offences.

ACT Policing already adopts a harm minimisation approach to illicit drugs.³⁶

Description of the Bill

- 2.7. The Bill seeks to decriminalise possession of certain drugs under personal possession limits for 11 prohibited substances and drugs of dependence. The drugs, and their personal possession limits, are in the table below.

Drug	Personal possession limit
Amphetamine	2 grams
Cannabis, dried	50 grams
Cannabis, harvested	150 grams
Cocaine	2 grams
Heroin	2 grams
LSD	0.002 grams
Lysergic acid	0.002 grams
MDMA	0.5 grams
Methadone	2 grams
Methylamphetamine	2 grams
Psilocybine	2 grams

³³ *Submission 15*, pp 4, 22.

³⁴ ACT Policing, *Submission 7*, p 6.

³⁵ By way of context, there were 149 offences committed in the same year where drugs were also seized, *Submission 7*, p 9.

³⁶ *Submission 7*, p 2.

- 2.8. The Bill intends to operate through creating the new concept of a simple drug offence, which would be a simple cannabis offence expanded to the 11 drugs where the amount involved is under the personal possession limits.³⁷ Outside this, drug offences would effectively remain unchanged.

Overview of evidence on the Bill

- 2.9. It is the Committee's view that people experiencing drug dependency in the ACT be considered to be experiencing a health issue and should be assisted to receive any treatment that they may require.
- 2.10. Broadly, there were three types of views about the Bill:
- to reject it;³⁸
 - to modify it;³⁹ and
 - to support it.⁴⁰
- 2.11. The submissions that rejected the Bill argued that all drug use is problematic.⁴¹ Mr Bill Stefaniak argued 'This Bill appears to be a reaction to a virtually non-existent problem.'⁴² Consistent with this, the ACT Law Society argued that the Bill would have a limited additional effect in diverting drug users away from the criminal justice system, noting that police are already doing this:
- Although the Society supports and harm minimisation and therapeutic approach in dealing with drug users, we also expect that the Bill will have a minimal effect on diverting drug users from the criminal justice system. We observe that it is relatively uncommon for drug users to come before the courts charged only with drug possession ... In cases where a police officer detects a person in possession of only a small quantity of an illicit drug for the first time, we understand that the Australian Federal Police is already adopting a diversionary approach.⁴³
- 2.12. ACT Policing and the AFP Association recommended a staged (proportional) approach. ACT Policing was concerned about the practicalities of how the new law might be enforced identifying challenges with identifying substances roadside.⁴⁴ However, other submissions argued strongly against a proportional approach. They suggested that those people exhibiting drug dependency for drugs such as heroin or methylamphetamine are most

³⁷ The exception is that the provisions in paragraph 171A(3)(f) about the destruction and preservation of seized cannabis would not be expanded to the 11 drugs.

³⁸ See, for example, *Submission 31*; Mr Bill Stefaniak, *Submission 45*, ACT Law Society, *Submission 10*.

³⁹ See, for example, *Submission 7*, pp 11, 14; *Submission 15*, p 27; the Australian Federal Police Association supported the expansion to MDMA as a 12-month trial, *Submission 33*, p 6.

⁴⁰ See, for example, *Submission 27*, p 2; Canberra Alliance for Harm Minimisation and Advocacy, *Submission 39*, [p 2]; *Submission 34*, [p 3].

⁴¹ *Submission 31*, p 32.

⁴² *Submission 45*, p 3.

⁴³ *Submission 10*, p 2.

⁴⁴ *Submission 7*, p 11.

often isolated, vulnerable and require the most urgent support – therefore it was counter intuitive to a health, harm-reduction approach.⁴⁵

- 2.13. ACT Policing also argued for a staged approach to decriminalisation because of links between methylamphetamine and criminality. It is worth noting the Commonwealth Inquiry into crystal methamphetamine (2018) recommendations found that ‘when former law enforcement officers and law enforcement agencies themselves are saying that Australia cannot arrest its way out of the methamphetamine problem, that view must be taken seriously’.⁴⁶ Further, the Commonwealth report recommended ‘shifting the focus on methamphetamine from a law enforcement problem to a health issue within an environment where treatment and support are readily available and without stigmatisation’.⁴⁷
- 2.14. Evidence to the inquiry overwhelmingly supported the Bill, emphasising the benefits of decriminalisation, such as reduced harm, reduced stigma and increased use of drug treatment services.⁴⁸
- 2.15. The Alcohol, Tobacco and Other Drug Association ACT summarised this view as follows:
- ATODA strongly endorses the Drugs of Dependence (Personal Use) Amendment Bill 2021 (the Bill) as a necessary step towards improving the health of the ACT community by re-setting the Territory’s drug law on a firmer evidence base. The ‘war on drugs’ approach has failed. As a result, drug use is prevalent, with 43% of Australian adults having used illicit drugs. Similar human-rights and health focused reforms are occurring worldwide, and the overwhelming evidence is that decriminalisation does not increase drug use. This is well illustrated by decriminalisation and the partial legalisation of cannabis in the ACT.⁴⁹
- 2.16. Directions Health Services, the ACT’s leading primary health service offering specialty care to people impacted by AOD use, mental illness or other complex needs, strongly endorsed the Bill, stating:
- There is strong evidence early intervention and diversion into treatment, rather than the justice system saves taxpayer dollars by reducing criminal recidivism, improving health, wellbeing and life outcomes; significantly reducing costs associated with the judicial process and incarceration; and reducing participants future reliance on welfare and service supports.⁵⁰
- 2.17. The Uniting NSW/ACT submission stated, ‘as a provider of services to many families and individuals impacted by drug dependency, we consider that any change that moves the ACT closer to a decriminalisation model would improve the lives of the vulnerable and

⁴⁵ *Submission 36*, p 11; Mr David McDonald, Consultant, ATODA, *Committee Hansard*, 9 July 2021, p 66.

⁴⁶ Joint Committee on Law Enforcement, p 158.

⁴⁷ Joint Committee on Law Enforcement, p 158.

⁴⁸ *Submission 39*, [p 8].

⁴⁹ *Submission 27*, p 2.

⁵⁰ *Submission 43*, p 4.

disadvantaged and benefit the community, particularly if combined with increased access to treatment and reducing stigma'.⁵¹

- 2.18. The ANU Drug Research Network (a multidisciplinary group of alcohol and other drug experts) suggest the 'criminalisation of drug use and possession is catastrophically counter-productive. It has devastating consequences for human rights and health...Our criminal justice response to illicit drug use remains largely punitive...we support the proposed Bill. It recognises that a punitive approach does not achieve our social and health goals and acts against the interests both of users, their families and the community as a whole'.⁵²
- 2.19. Canberra Alliance for Harm Minimisation and Advocacy (CAHMA) submission strongly supports the Bill. They state they believe 'that with the appropriate preparation, planning and development of this bill we will see significant reduction in stigma, discrimination and harms associated with drug use'.⁵³

Views of drug use in the community

- 2.20. On 20 May 2021, the Committee opened a survey to gauge the level of community support for the Drugs of Dependence (Personal Use) Amendment Bill 2021, and general views on alcohol and other drugs use. It had nine multiple choice questions and two opportunities for free text responses. It was open until 10 July 2021 and attracted 779 responses.
- 2.21. The majority of survey respondents indicated that they would like drug abuse treated as a public health issue rather than a criminal justice one.

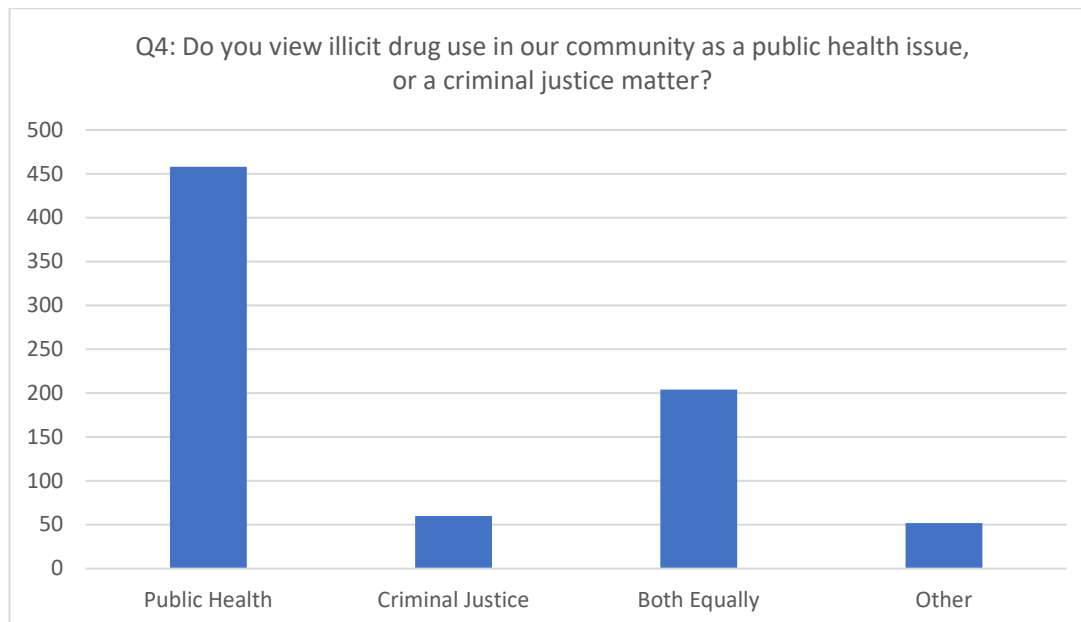


Table 2: Committee survey results

⁵¹ Submission 36, p 18.

⁵² Submission 40, p 3.

⁵³ Submission 39, [p 16].

Consistent with this view, respondents would prefer to see treatment and rehabilitation over punitive measures in response to personal possession of illicit drugs.

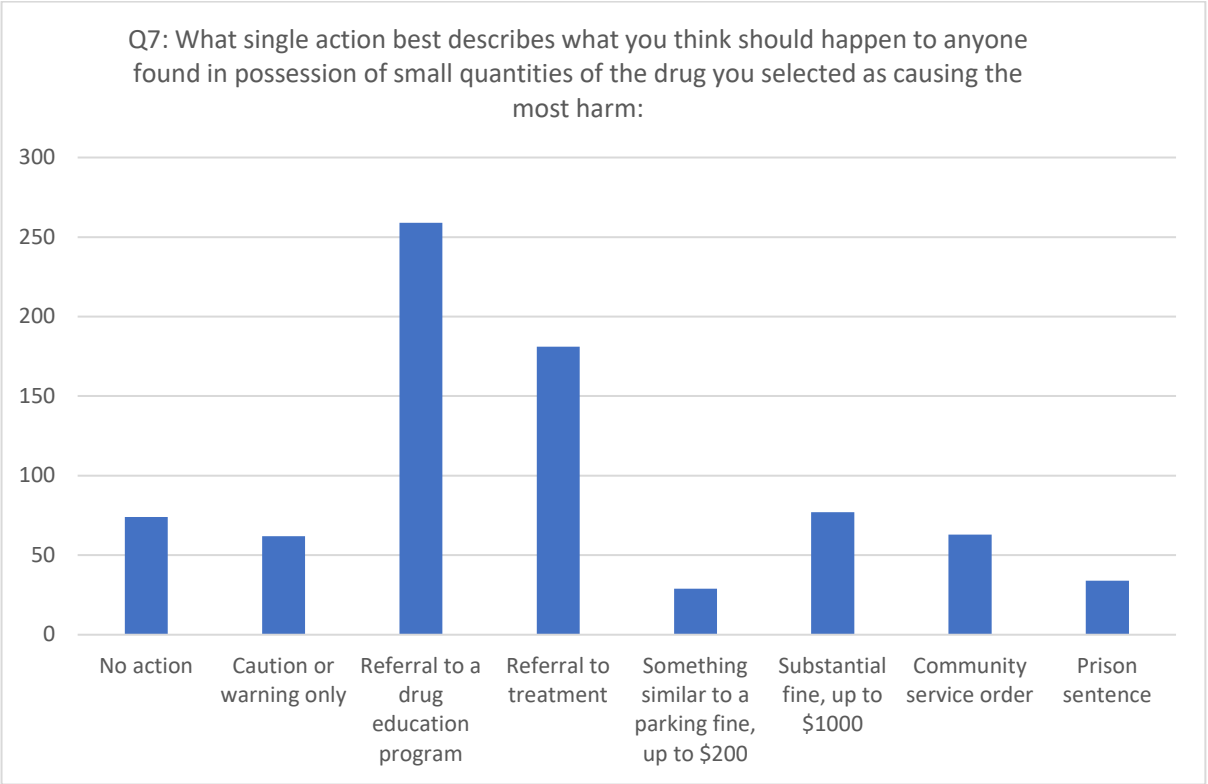


Table 3: Committee survey results

These views are corroborated by an ACT Government survey which showed that the favoured response to personal possession was treatment and/or education.⁵⁴

- 2.22. When asked to rate the perceived levels of harm of illegal drugs, most respondents rated meth/amphetamines as most harmful (325 of respondents), followed by heroin (198 respondents).⁵⁵ The free text survey responses also revealed widespread concern about the effects of legal drugs, such as alcohol, tobacco, and prescription medicines.

Analysis of the Bill

Conflict with Commonwealth law

- 2.23. Part 9.1 of the Commonwealth Criminal Code creates various drug offences, including for possession. This raises the question whether the Commonwealth law would override the Bill if the Assembly passed it. It also raises the question of whether this would create significant risk or uncertainty for ACT Policing.
- 2.24. The Committee received a wide range of evidence on this point. The sponsor of the Bill did not see an issue, as indicated in the Explanatory Statement:

⁵⁴ Submission 15, p 9.

⁵⁵ Survey Question 6.

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.⁵⁶

- 2.25. The Australian National University Drug Research Network argued that the Commonwealth has not sought to cover the field in the Criminal Code, and so the Bill could result in valid law:

Inter-governmental practice in this area aims to shield the independence of State and Territory laws from the threat of a Commonwealth override. The High Court of Australia has determined that the Criminal Code does not attempt to ‘cover the field’ of drug laws in Australia. The Act explicitly provides for the concurrent operation of State and Territory laws, “even if the penalty, fault element or defence under the relevant State or Territory law differs from the corresponding matters provided for in the Code.”⁵⁷

- 2.26. The Committee questioned the AFP Association about whether it had any concerns for its members that the Commonwealth might prosecute its offences despite ACT legislation:

... it does not mean that it is not workable, but it does leave our members in a position where they are conflicted and potentially open to scrutiny from internal affairs, ACLEI⁵⁸ and the other bodies that do scrutinise them.⁵⁹

Recommendation 1

The Assembly should pass the Drugs of Dependence (Personal Use) Amendment Bill 2021.

Other criminal justice reforms

Reviewing the 2019 changes

- 2.27. The ACT Government suggested an evaluation of the Bill if it were to become law,⁶⁰ and the Committee is in agreement. The Committee further believes it would be valuable to jointly evaluate the effects of the legalisation of personal cannabis possession in the ACT, as suggested by the ATODA.⁶¹

⁵⁶ Explanatory Statement to the Bill

⁵⁷ *Submission 40*, p.11.

⁵⁸ Australian Commission for Law Enforcement Integrity

⁵⁹ Mr Alex Caruana, President, AFP Association, *Committee Hansard*, 9 July 2021, p 72.

⁶⁰ *Submission 15*, p 27.

⁶¹ *Submission 27*, p 13.

Recommendation 2

The ACT Government should commission an independent evaluation of the provisions enacted by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* and the enacted *Drugs of Dependence (Personal Use) Amendment Bill 2021*.

Emerging drug trends

- 2.28. While the list of drugs included in the Bill account for the majority of drug related arrests in the ACT, it is usual practice for legislation on drugs of dependence to include provisions for new and emerging substances, which captures ongoing innovation in the drugs of dependence market.⁶² This may be done through a schedule to an Act which can be promptly amended by delegated legislation on the advice of experts and user groups, and can include a ‘catch-all’ category instead of having to explicitly name each substance.⁶³ The CAHMA suggested wording as follows:

By “future proofing” the drug list in the bill ... as the population shifts away from using “classical” substances to a menagerie of novel chemicals, CAHMA therefore suggests a cover-all to future proof the list. CAHMA suggests the use of the word “analogues” in this catch-all as this parallels the wording of other legislation which seeks to cover future drug trends.⁶⁴

Recommendation 3

The ACT Government should amend the Bill to include a ‘catch-all’ clause (potentially acknowledging the Therapeutic Goods Association scheduled prohibited drugs) to include emerging drug trends.

Review of possession limits

- 2.29. Many submissions to the Committee commented that the drug weight thresholds in the Bill do not reflect realistic quantities of personal possession.⁶⁵ Rather than acquire a single dose for single consumption, regular drug users will procure several doses in one transaction, and the concern was raised that the limits proposed in the Bill would lead to people inappropriately being charged with trafficking.⁶⁶ For example, the limit on MDMA is 0.5 grams, however research shows that a regular user may consume up to 9 grams in a session, and stockpile up to 145 grams for personal use.⁶⁷

⁶² Submission 40, p 16.

⁶³ Submission 39, [p 12].

⁶⁴ Submission 39, [p 12].

⁶⁵ Submission 43, p 7.

⁶⁶ Submission 27, p 14.

⁶⁷ Submission 40, p 13.

- 2.30. The ANU Drug Research Network noted that clarification was also required in relation to whether the Bill refers to mixed versus pure quantities (used in Commonwealth and ACT legislation respectively):

Indeed, the ACT's consistency with existing Commonwealth law is already misleading. The ACT measures the 'pure drug' content of the substances in question, whereas the Commonwealth, in line with most other Australian jurisdictions, operates by what is called the 'mixed drug' quantity. This has very real practical implications. Users are unlikely to know the exact purity of the drugs they purchase. The purchase of a drug of variable quantity may expose them to the risk of being convicted, without prior knowledge, of trafficking.⁶⁸

Recommendation 4

The ACT Government should review the drug possession limits in the Bill to ensure they reflect the evidence on patterns of consumption for personal use.

Alternatives to a fine

- 2.31. A common theme in submissions was that a \$100 fine is a significant burden for some members of the community.⁶⁹ Canberra Community Law noted that such a fine would compound their other difficulties, stating that a \$100 fine is:

... a potentially oppressive form of punishment for people experiencing homelessness in circumstances where it is not uncommon for them to accrue excessive infringement notices, fines and charges for minor poverty related criminal offending. Specifically for our clients a penalty exacerbates their already difficult living situations by placing them under additional financial strain. Our clients already have limited, or non-existent, incomes. Often their sole source of income, if they have one, is Centrelink benefits. If clients are fined, this compounds the difficulties they face in: trying to find affordable accommodation, obtaining stable employment, repaying other debts and dealing with personal and welfare issues.⁷⁰

- 2.32. The Committee agrees that individuals using drugs can be tackling many other problems and that a \$100 fine needs to be viewed in this context. Therefore, there should be many alternatives to a fine, including waiver.

⁶⁸ *Submission 40*, p 14.

⁶⁹ Health Care Consumers Association, *Submission 3*, p 7; ACT Council of Social Service, *Submission 23*, p 3; *Submission 39*, [pp. 10-11].

⁷⁰ Canberra Community Law, *Submission 9*, p 6.

Recommendation 5

The ACT Government should provide alternative options to a fine such as attending an information session on drug harm reduction, a peer support service or alcohol and other drug treatment, or, in specific situations, to completely waive the fine.

Information to accompany a Simple Offence Notice

- 2.33. This decriminalisation response can be enhanced if the Notice were accompanied by information about treatment and harm reduction. This could be simply achieved through changes to ACT Government and ACT Policing policies. In some cases, this information may not be acted on by the recipient. However, as the Alcohol and Drug Foundation noted, it is important to provide the information in those cases where the recipient wants it:

While most people who use drugs will not experience a dependence on them and will not want treatment or support for that use, it is critical that people be consistently provided with information on how to access support in the instance that they do want it.⁷¹

Recommendation 6

The ACT Government should, through ACT Policing, enact a policy to provide information about treatment services available with a Simple Offence Notice.

⁷¹ Alcohol and Drug Foundation, *Submission 19*, p 6.

3. The service sectors

Funding for the AOD sector

- 3.1. Evidence received by the Committee revealed that despite high levels of satisfaction with the quality of services provided by the AOD sector, a shortage of funding means that there is a significant lack of availability of these services. The Alcohol, Tobacco and Other Drug Association ACT pointed to a 2014 Commonwealth review of AOD services which found that nationally, about half of people who seek treatment for AOD are not able to access it, and recommended that funding for these services needed to at least double to cover the unmet demand.⁷² The sector in the ACT suffers a shortage of skilled staff, infrastructure, and resourcing.⁷³ Canberrans seeking speciality AOD services are faced with long waiting periods which leads to greater harm and increased costs.⁷⁴ Some organisations see their continuation in the sector as unsustainable due to the short term nature of their funding.⁷⁵
- 3.2. In a hearing before the Committee, Professor Looi from the Australian Medical Association stated that requests for needed funds were rejected:
- [I]f we want to plan for more innovative models of care, it will always be underpinned by adequate resourcing, staffing and infrastructure, of which presently we do not have sufficient levels.
- To give you some specifics on that, in the ATT public treatment and rehabilitation services work for addiction medicine and psychiatry, clinicians try to deliver a high-quality service, but frequently struggle to meet the levels of demand that they face, because of this unsustainable under-resourcing, understaffing and lack of infrastructure.⁷⁶
- 3.3. A related aspect of the funding issue which was raised in evidence was the need for budget loading to cover evaluation of new services provided. Evaluation of services is necessary to provide a best-practice, evidence-based approach to drugs of dependence. Previous harm reduction initiatives in the ACT that have been found to lead to positive outcomes include the take-home naloxone program, which lead the ACT Government to commit further funding in line with its harm reduction strategy.⁷⁷

Recommendation 7

The ACT Government should significantly increase its investment in alcohol and other drug services.

⁷² *Submission 27*, p 30.

⁷³ See, for example, *Submission 27*, p 31; Associate Professor Jeffery Looi, Board Member, Australian Medical Association (ACT) Ltd, *Committee Hansard*, 9 July 2021, p 42; and others.

⁷⁴ *Uniting*, *Submission 36*, p 17.

⁷⁵ *Meridian*, *Submission 4*, [p 10].

⁷⁶ Professor Looi, *Committee Hansard*, 9 July 2021, p 42.

⁷⁷ *Submission 27*, p 27.

Needs of Aboriginal and Torres Strait Islander people

- 3.4. As noted in chapter 1, Aboriginal and Torres Strait Islander people are especially vulnerable to drug harm, and this contributes to the gap in health outcomes that they experience compared to other Australians.⁷⁸ For example, they have higher rates of smoking,⁷⁹ are at disproportionate risk of contracting hepatitis C as a result of sharing drug injecting equipment,⁸⁰ and access drug and alcohol treatment services at much higher rates than their non-Indigenous peers.⁸¹ Furthermore, they are over-represented in the justice system in the ACT, and a large proportion of First Nations people who are detained in the Alexander Maconochie Centre are there because of drug use or drug related crimes.⁸²
- 3.5. Community groups in the Indigenous sector stress the importance of culturally relevant treatment services. Although Aboriginal people can and do access mainstream services, these are often not appropriate for them. Chief Executive Officer of Winnunga Nimmityjah Aboriginal Health and Community Services, Ms Tongs, gave evidence that there has not been a large success rate for Aboriginal people who have been diverted to treatment through the Drug Court, as 'it is very intense, and people do not have level of resources in [their] community to be able to do it'.⁸³ She stressed the importance of autonomous services, especially Aboriginal-led services, because there is a level of mistrust towards authority figures connected to the justice system due to historical abuse.⁸⁴ Also, that it is important to address the underlying mental health factors which lead Aboriginal people to drug use:
- [Mental] health is a big, underlying factor in all of this. People self-medicate, and the drug is a symptom, not the problem. You need to start to address that unresolved historical trauma.⁸⁵
- 3.6. The committee notes that the ACT Government has committed to establishing a community controlled Aboriginal drug and alcohol residential rehabilitation facility. Three hundred thousand dollars was allocated in the 2019-20 budget for the project, and consultation on a draft Model of Care, completed by Winnunga Nimmityjah Aboriginal Health and Community Services, is ongoing.⁸⁶

⁷⁸ ACT Drug Strategy Action Plan 2018-21, *Social disadvantage, health and wellbeing*, p 5.

⁷⁹ ACT Drug Strategy Action Plan 2018-21, *Tobacco and related products*, p 15.

⁸⁰ ACT Drug Strategy Action Plan 2018-21, *Illicit and illicitly used drugs*, p 18.

⁸¹ *Submission 15*, p 38.

⁸² *Committee Hansard*, 29 July 2021, p 97.

⁸³ *Committee Hansard*, 29 July 2021, p 102.

⁸⁴ *Committee Hansard*, 29 July 2021, p 99.

⁸⁵ *Committee Hansard*, 29 July 2021, p 100.

⁸⁶ ACT Drug Action Plan, *Looking forward: 2020 actions on illicit and illicitly used drugs*, p 16.

Recommendation 8

The ACT Government should continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers.

Intersecting housing and AOD service needs

3.7. As discussed in Chapter 1, people with inadequate housing are especially vulnerable to drug harm. They have complex barriers to health and safety due to the issues which may have led them to experience homelessness in the first place, such as domestic violence or psychiatric disorders, and the public nature of homelessness, which precludes them from being able to conduct their affairs privately or store their belongings, and which leads to their increased contact with the justice system.⁸⁷ Drug use becomes a way for them to cope with or escape their situation.⁸⁸

3.8. People experiencing homelessness cannot effectively engage with AOD treatment services when their basic need for secure housing is not met.⁸⁹ Ms Bronwyn Hendry, CEO of Directions Health Services, described how drug users are precluded from accessing public housing in the ACT:

Homelessness is [a] significant issue. It is virtually impossible for people who use drugs to get access to emergency housing through OneLink or to get the sort of permanent housing that would support their recovery.⁹⁰

3.9. Ms Anusha Goonetilleke, Program Manager and Senior Solicitor at Canberra Community Law, gave further evidence that a housing first approach is necessary in approaching drug use in this demographic:

The current policy on homelessness in the ACT does not align with the health approach to our clients who engage in drug use. Clients who are sleeping rough or are in temporary accommodation struggle to receive effective drug treatment and are preoccupied with trying to find a safe place to reside and can feel hopeless in their situation, which can direct them to drug use. We believe that the aspirations of this bill would be best supported by a housing first approach for people experiencing homelessness and receiving a simple drug offence notice. Once a house is secured, individuals are supported by support workers to engage in rehabilitation efforts such as drug and alcohol treatment, which is intended to assist the person to sustain their housing tenancy and reintegrate into the community. This offers a more suitable and effective approach to reduce the

⁸⁷ *Submission 9*, p 3.

⁸⁸ *Submission 9*, p 3.

⁸⁹ The Salvation Army, *Submission 44*, p 9.

⁹⁰ *Committee Hansard*, 29 July 2021, p 80.

societal harm of drug use arising from people experiencing homelessness because it is supportive and holistic in its approach.⁹¹

Recommendation 9

The ACT Government should invest in housing options for people who use alcohol and other drugs and are at-risk or experiencing homelessness.

Drug use and mental illness

- 3.10. Mental illness is a common comorbidity in people with substance dependence. People who suffer from mental illness may use drugs as a form of self-medication, and many people who seek treatment for substance use also present with symptoms of mental illness.⁹² Research has shown that for the most effective outcomes, mental illness and substance abuse must be treated together in an integrated model of care.⁹³ However, services for these conditions are separate and un-coordinated in the ACT, each with their own programs, professionals, and areas of speciality.⁹⁴
- 3.11. The Committee heard from many witnesses about the need for a ‘one-stop-shop’ service for drug users where their mental health can be addressed with their substance abuse.⁹⁵ As it stands, arrangements in the ACT’s health services present near insurmountable barriers to patients who seek treatment, as explained by Ms Hendry, CEO of Directions Health Services:

As we have heard in previous presentations, the common responses received by people who use drugs and who are trying to access mental health services, including when we refer them ourselves, is that it is a drug and alcohol issue, not a mental health issue, or that people need to stop using drugs first, which they are unable to do unless their mental illness and psychological distress are treated. This creates an obvious catch-22 for which there is currently little prospect of escape. People who use drugs are also poorly treated by other mainstream health services, regardless of their health needs, and tend to avoid accessing services unless it is an emergency. Consequently they experience very poor health outcomes and significantly reduced life expectancy.⁹⁶

⁹¹ *Committee Hansard*, 9 July 2021, p 52.

⁹² Australian National University Drug Research Network, *Submission 40*, p 22.

⁹³ *Submission 40*, p 22.

⁹⁴ *Submission 27*, p 21.

⁹⁵ See, for example, *Submission 38*, p 81; *Submission 43*, p 9; *Submission 13*, [p 4].

⁹⁶ *Committee Hansard*, 29 July 2021, p 80.

Recommendation 10

The ACT Government should commission a feasibility study into the establishment of a combined mental health and alcohol and other drug residential facility.

The Drug and Alcohol Services Planning tool

- 3.12. The Drug and Alcohol Services Planning (DASP) Model was commissioned by the Intergovernmental Committee on Drugs (Cwlth) in 2010 to provide a tool for planning drug and alcohol services. Completed in 2013, it takes the form of an Excel file which calculates the AOD resources needed per 100,000 people or per State or Territory or other population.⁹⁷ Initial modelling on a national population level identified that 200,000 to 500,000 people would require AOD services per year in addition to the 200,000 people already in treatment.⁹⁸ ACT level modelling is not available.
- 3.13. In their submission, the Alcohol Tobacco & Other Drugs Association ACT explained that updating the tool to perform ACT level analysis would provide a valuable asset in performing a gap analysis of the Territory's AOD services:

The DASP tool requires some updating, but expertise is available to do this and apply it to the ACT. Modelling based on the DASP tool could be a relatively quick process and help inform planning and co-design. The sector is confident that DASP modelling in the ACT would echo its message of the need for the immediate doubling of capacity or more. The sector is aware of many urgent priorities which should not wait for DASP modelling to begin co-design with the sector and people who use drugs. DASP modelling will be especially important in better understanding future demand and capacity.⁹⁹

Recommendation 11

The ACT Government should refresh the Drug and Alcohol Services Planning tool.

Intergenerational substance use

- 3.14. In the evidence provided by community groups as well as from individuals and families, the Committee heard how drug harm affects not only the person with substance abuse

⁹⁷ Drug and Alcohol Service Planning Model—Final report to the Intergovernmental Committee on Drugs (IGCD) on the development of a population based planning tool for Australia, dated 16 August 2013, accessed on 17 November 2021 at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F36dba59f-6d3b-4713-aadc-c3263f0be410%22>.

⁹⁸ Submission 27, p 21.

⁹⁹ Submission 27, p 22.

problems, but extends to their families.¹⁰⁰ Children of drug users are at a high risk due to their vulnerability and the lack of child counsellors who have qualifications in AOD treatment.¹⁰¹

- 3.15. In their submission to the Committee, Toora Women Inc (a not-for-profit organisation which provides support for women in the ACT community) outlined the importance of offering intensive, holistic care to the children of their clients in order to break the cycle of intergenerational substance abuse:

AOD misuse can be intergenerational – learnt behaviour passed down from parent to child or self-harming behaviour used to try to cope with intergenerational childhood trauma. Without direct intervention, intergenerational trauma is a Catch-22 situation – you experience abuse; learn to cope with abuse through drugs and alcohol or by abusing others; you teach these behaviours to your children who, in turn, pass this down to their children, and so on, and so on. And if you begin misusing drugs or alcohol as a child, when your body and brain are still developing, by the time you’re an adult AOD misuse is a typical, ‘normal’ way of life.

The children who come to Toora have all experienced some form of trauma. All have experienced instability, uncertainty and grief. This is true whether the child is in our domestic violence and homelessness service or our AOD service. For children to recover from trauma, their voices need to be heard and their experiences directly addressed. We need to complement the support we provide a mother with direct support for her children.¹⁰²

Recommendation 12

The ACT Government should fund the alcohol and other drug sector to provide counselling support to children of their clients.

Drug education in schools

- 3.16. Alcohol and drug education in ACT schools is delivered primarily through the Australian curriculum in Health and Physical Education. This content addresses a wide range of drugs of dependence and the impact they can have on users, families and communities. Schools can also adopt further resources which support the curriculum.¹⁰³ Concerns were raised with the Committee that not all school based drug education services are effective, and indeed, some can result in higher levels of drug use if conducted incorrectly.¹⁰⁴ Effective,

¹⁰⁰ See, for example, Mrs Girdler, *Committee Hansard*, 8 July 2021, p 14; Mr Bill Stefanik, *Committee Hansard*, 8 July 2021, p 20.

¹⁰¹ *Submission 29*, p 25.

¹⁰² *Submission 29*, pp 24–25.

¹⁰³ *Submission 15*, p 30.

¹⁰⁴ 360Edge, *Submission 11*, p 11.

evidence-based programs are interactive, delivered by trained facilitators, and avoid using fear or stigma as a deterrent to drug use.¹⁰⁵

- 3.17. A mix of school-wide programs and targeted interventions for at-risk young people is appropriate.¹⁰⁶

Recommendation 13

The ACT Government should review current ACT drug education programs and implement an evidence-informed school drug education program, appropriately funded, for ACT school students and their teachers.

Training for staff in the health and social services sectors

- 3.18. During the inquiry, the Committee received evidence that staff in the health and social services sectors are not equipped with the skills or experience to effectively deal with clients who are attempting to manage drug use. This means that treatment may not be optimal:

It is also important that education targets health professionals and social service providers. In many of the sectors that routinely encounter people who use drugs (e.g., residential services, psychologists), training in alcohol and other drugs is not widespread, and stigma is common. This makes it less likely that people will receive evidence-based support.¹⁰⁷

- 3.19. Other submitters recommended training for staff in the health and social services sectors in dealing with clients who use alcohol and other drugs,¹⁰⁸ and the Committee supports this proposal.

Recommendation 14

The ACT Government should review current alcohol and other drugs training for frontline health and emergency services workers and community services providers to ensure best-practice harm reduction practice.

Treatment and harm reduction innovations

- 3.20. Throughout the inquiry, the Committee took evidence about gaps in services, or newly commenced services that warranted ongoing support.

¹⁰⁵ *Submission 11*, p 11; *Submission 27*, p 34.

¹⁰⁶ *Submission 11*, p 12.

¹⁰⁷ *Submission 40*, p 24.

¹⁰⁸ Directions Health Services, *Submission 43*, p 9; *Submission 27*, pp 33–34.

- 3.21. In terms of social programs, the Committee heard about family member support services,¹⁰⁹ discussed previously. The Committee also heard proposals about trials and research for medicinal drug use¹¹⁰ as well as hydromorphone treatment (hydromorphone is an opioid pain reliever).¹¹¹
- 3.22. The Committee also heard about a range of treatment and harm minimisation programs, including specialised methamphetamine services,¹¹² treating women as a target population,¹¹³ the naloxone program for treating overdoses,¹¹⁴ a Police, Ambulance, Clinician, Emergency Response (PACER) service,¹¹⁵ peer-based treatment and support,¹¹⁶ and the We CAN program targeting smoking by injecting drug users.¹¹⁷
- 3.23. The Committee is of the view that the ACT Government should support these programs, at the minimum to determine their cost-effectiveness.

Recommendation 15

The ACT Government should work collaboratively with the sector and industry experts in a co-design process to expand capacity, address infrastructure constraints and develop new models of care. Specialised models for consideration include:

- intersection of mental health and alcohol and other drugs services (no wrong door approach);
- specialised methamphetamine services;
- southside peer-based model of care (Canberra Alliance for Harm Minimisation & Advocacy);
- women's day detox/rehab program;
- family member support services;
- an alcohol and other drugs Police, Ambulance and Clinical Emergency Response service;
- the We CAN program through Alcohol Tobacco and Other Drug Association to target smoking amongst injecting drug users;
- continue to support the distribution of naloxone and training in its administration to people likely to witness an overdose (cf. Canberra Alliance for Harm Minimisation & Advocacy program);

¹⁰⁹ *Submission 29*, p 3.

¹¹⁰ *Mind Medicine Australia, Submission 8*.

¹¹¹ *Submission 38*, p 43; *Submission 39*, [p 4].

¹¹² Erika Unsworth et al, *Submission 18*, p 2.

¹¹³ *Submission 40*, p 21.

¹¹⁴ *Submission 13*, p 6; *Submission 43*, [p 10].

¹¹⁵ Discussed by *Submission 44*, p 23. Such a program focuses on the links between different services "creating shared accountability for outcomes".

¹¹⁶ *Submission 39*, [p 15]; *Submission 13*, p 6.

¹¹⁷ *Submission 27*, pp 15, 18.

- trials and research on medicinal drug use (such as ketamine, psilocybin and MDMA) for treatment of mental health and PTSD issues; and
- trials and research on a Hydromorphone Assisted Treatment program.

An alcohol and other drug strategy

- 3.24. Currently, the Government has an ACT Drug Strategy Action Plan for 2018–21. It has objectives for alcohol, tobacco, illicit and illicitly used drugs, and all drugs. The body of the document lists actions and how they relate to the National Drug Strategy. There are eight actions for alcohol, five for tobacco, 11 for illicit and illicitly used drugs, and 15 for all drugs. It has another four actions for emerging issues, data and reporting.¹¹⁸
- 3.25. The Committee acknowledges that the Government has set out its actions for 2018-21, which will support transparency and accountability. However, the document does not cover ongoing activities that would comprise the bulk of the Government’s activities and which could at least be subject to monitoring with the potential for review. The Alcohol, Tobacco and Other Drug Association of the ACT put it as follows:

The current ACT Drug Strategy Action Plan 2018 – 2021 (DSAP) does not provide an adequate framework for alcohol, tobacco and other drug policy in the ACT. The Plan is almost entirely silent on treatment and focuses on action in the Government space, with little mention of non-government activities. Given that nine of the ten specialist AOD treatment service providers are NGOs, this is a significant omission. Further, the Action Plan includes only new ambitions, excluding existing programs like treatment services that are working well but require additional resourcing. It also does not re-balance the serious, problematic misallocation of resources, with the bulk of the ACT’s expenditures on responding to drugs and drug use going to the domain with the least evidence for cost-effectiveness, i.e., criminal justice responses.¹¹⁹

- 3.26. The Committee is of the view that a full strategy will give context to the Government’s activities and give it and the community a proper sense of where it is directing resources.
- 3.27. The Committee heard that in order to further its aims of harm reduction with best-practice services, the AOD sector would benefit from incorporating the views of experts in the AOD treatment field as well as people with lived experience of drug use.¹²⁰ This would enable the outcomes of AOD sector programs to be monitored by people with real-world experience, who can provide regular advice in a field which is, according to the Australian National University Drug Research Network, ‘subject to rapid changes and developments.’¹²¹

¹¹⁸ ACT Government, *ACT Drug Strategy Action Plan 2018–2021*, December 2018.

¹¹⁹ *Submission 27*, p 16.

¹²⁰ *Submission 39*, [p 13].

¹²¹ *Submission 40*, p 17.

- 3.28. This report has already discussed the importance of clarifying the effect of Commonwealth laws on police operations in the ACT. This should also be included in the strategy.
- 3.29. The final matter the Committee would like to raise for a drug strategy is that implementation of the Bill will involve many elements of government. The Committee is of the view that the Government should establish a steering group to maximise co-operation and co-ordination within government to support the Bill's successful implementation.

Recommendation 16

The ACT Government should revise the ACT Drug Strategy Action Plan. Part of that revision should include:

- development of a whole-of-government action plan/s;
- an expert advisory committee that includes alcohol and other drugs experts and people with lived experience;
- engagement with the Commonwealth Government to ensure consistency of ACT and Commonwealth Law; and
- a provision for a steering group to oversee the implementation of the Amendment Bill.

Cultural transition for police

- 3.30. As more drugs are decriminalised, police will need to make a cultural shift to reflect changes in community attitudes. In other jurisdictions, reforms have led to unintended consequences, partly due to how police adapted. The Committee received evidence from the Alcohol and Drug Foundation that reforms, including discretionary approaches, can prove challenging:

Discretionary approaches can place police in challenging situations and can result in inconsistency in sentencing (e.g., discriminatory impacts on overpoliced communities).

For example, according to data provided by the NSW Bureau of Crime Statistics and Research (BOCSAR) to *The Guardian*, from "2013 and 2017 the police disproportionately used the justice system to prosecute Indigenous people, despite the existence of a specific cautioning scheme introduced to keep minor drug offences out of the courts."¹²²

- 3.31. The ACT Government reported 'net widening' occurring in South Australia in the late 1980s with the introduction of more efficient penalty notices for cannabis offences. Police used them often because they were more efficient than going to court, resulting in a higher total

¹²² *Submission 19*, p 5.

number of proceedings. However, a significant number of recipients of the notices defaulted, ultimately leading to a higher number of court proceedings as well.¹²³

- 3.32. Some submitters recommended that passage of the Bill be accompanied by training for the police,¹²⁴ and the Committee supports these proposals.

Recommendation 17

The ACT Government should provide training to ACT Police on the cultural transition to a decriminalisation model, as well as the practical implications of the implementation of the legislation.

Mr Peter Cain MLA

Chair

25 November 2021

¹²³ *Submission 15*, pp 22, 30.

¹²⁴ Marion McConnell OAM, *Submission 21*, p 5; *Submission 39*, [p 12]; ACT Council of Social Service, *Submission 23*, p 2.

Appendix A: Witnesses

8 July 2021

Mr Bingham, Parent

Mrs Bingham, Parent

Mrs Judith Girdler, Parent

Mr Lawrie Paul, Step-parent

Mr Bill George Stefaniak, Parent

Mrs Marion McConnell, Parent

Mr Peter Taylor, Parent

9 July 2021

Dr Devin Bowles, CEO, Alcohol Tobacco and Other Drug Association ACT

Mr Alex Caruana, President, Australian Federal Police Association

Mr Paul William Edmonds, Member, Criminal Law Committee, ACT Law Society

Professor Diana Egerton-Warburton, Fellow, Australasian College for Emergency Medicine

Ms Anusha Goonetilleke, Program Manager and Senior Solicitor, Canberra Community Law

Mr Michael Kukulies-Smith, Chairperson, Criminal Law Committee, ACT Law Society

Associate Professor Jeffrey Looi, Board Member, Australian Medical Association (ACT) Ltd

Mr David McDonald, Consultant, Alcohol Tobacco and Other Drug Association ACT

Mr Matthew Peterson, Legal and Industrial Relations Manager, Australian Federal Police Association

Mr Troy Roberts, Media and Government Relations Manager, Australian Federal Police Association

Mr Peter Somerville, Chief Executive Officer, Australian Medical Association (ACT) Ltd

21 July 2021

Mr Joshua Anlezark, Executive Officer, Hepatitis ACT Inc

Mr Ian Gary Christian, Research Director, Drug Free Australia

Ms Bronwyn Hendry, Chief Executive Officer, Directions Health Services

Ms Stephanie Stephens, Director, Service Delivery, Directions Health Services

29 July 2021

Ms Laura Bajurny, Knowledge Manager, Policy and Advocacy, Alcohol and Drug Foundation

Reverend Simon Hansford, Moderator, Uniting Church, Synod of NSW and ACT

Dr Erin Lalor, Chief Executive Officer, Alcohol and Drug Foundation

Professor Nicole Lee, Chief Executive Officer, 360Edge

Ms Emma Maiden, Head of Advocacy and Media, Uniting Church, Synod of NSW and ACT

Dr Adele Stevens, Member, Health Care Consumers' Association

Dr Fiona Tito Wheatland, Member, Health Care Consumers' Association

Ms Julie Tongs OAM, Chief Executive Officer, Winnunga Nimmityjah Aboriginal Health and Community Services

Mr Gino Vumbaca, President, Harm Reduction Australia

30 July 2021

Ms Meg Brighton, Deputy Director-General, Health System, Policy and Research, ACT Health Directorate

Mr Bill Bush, President, Families and Friends for Drug Law Reform

Mr David Caldicott, Emergency Consultant, Drug Research Network, Australian National University

Dr Emma Campbell, Chief Executive Officer, ACT Council of Social Service

Commander Michael Chew, Deputy Chief Police Officer, Response, ACT Policing

Ms Rebecca Cross, Director-General, ACT Health Directorate

Professor Paul Dietze, Program Director, Behaviours and Health Risks, Burnet Institute

Mr Christopher Gough, Executive Director, Canberra Alliance for Harm Minimisation and Advocacy, and Manager, Justice Reform Group

Ms Jennifer Harland, Acting Operational Director, Alcohol and Drug Service, Canberra Health Service

Professor Helen Keane, Professor of Sociology, Drug Research Network, Australian National University

Dr Gemma Killen, Representative, Justice Reform Group, and Senior Policy Officer, ACT Council of Social Service

Dr Katerina Lagios, Acting Clinical Director, Alcohol and Drug Service, Canberra Health Service

Ms Jan Lee, Member, Families and friends for Drug Law Reform

Professor Desmond Manderson, College of Law and College of Arts and Social Sciences,
Australian National University

Associate Professor Anna Olsen, Social Foundations of Medicine, Medical School, Australian
National University

Mr Dave Pepper, Interim Chief Executive, Canberra Health Service

Ms Rachel Stephen-Smith, Minister for Aboriginal and Torres Strait Islander Affairs, Minister for
Families and Community Services, and Minister for Health

Miss Ashleigh Stewart, Research Assistant and PhD Candidate, Burnet Institute

Dr Alexander Wodak AM, Chair, Australia21

Ms Kathryn Wright, National General Manager, Alcohol and Other Drugs Services, Social Mission
Department, The Salvation Army Australia

Appendix B: Submissions

No.	Received date	Submitted by	Authorised for publishing
1	21.04.21	Joel Dignam	28.04.21
2	06.05.21	Amber Wang, President Australian Lawyers Alliance	26.05.21
3	17.05.21	Health Care Consumers Association	26.05.21
4	14.05.21	Philippa Moss, CEO, Meridian	26.05.21
5	26.05.21	Tony Trimmingham OAM, CEO and Founder Family Drug Support	09.06.21
6	28.05.21	Alison	09.06.21
7	01.06.21	Neil Gaughan, Chief Police Officer ACT Policing	09.06.21
8	01.06.21	Mind Medicine Australia	09.06.21
9	03.06.21	Genevieve Bolton, Executive Director/Principal Solicitor Canberra Community Law	09.06.21
10	03.06.21	Simone Carton CEO ACT Law Society	09.06.21
11	04.06.21	360Edge	09.06.21
12	05.06.21	Gino Vumbaca, President Harm Reduction Australia	09.06.21
13	05.06.21	Dr Suzanne Smallbane and Dr Lai Heng Foong Australian College for Emergency Medicine	09.06.21
14	08.06.21	Rebecca Lang, CEO Queensland Network of Alcohol and Other Drug Agencies Ltd	16.06.21
15	08.06.21	Minister for Health, Rachel Stephen-Smith MLA ACT Government—Health	16.06.21
16	08.06.21	Peter Taylor	16.06.21
17	09.06.21	Victorian Drug and Alcohol Association	16.06.21
18	09.06.21	Erika Unsworth, Dr Clara Tuck Meng Soo, Associate Professor Anna Olsen & Dr William Huang	16.06.21

No.	Received date	Submitted by	Authorised for publishing
19	09.06.21	Alcohol and Drug Foundation	16.06.21
20	10.06.21	Western Australian Network of Alcohol and Other Drug Agencies	16.06.21
21	10.06.21	Marion McConnell	16.06.21
22	11.06.21	The Drug Policy Modelling Program, UNSW	16.06.21
23	04.06.21	Dr Emma Campbell, CEO ACT Council of Social Service Inc	16.06.21
24	16.05.21	Judith Girdler and Lawrence Paul	16.06.21
25	18.05.21	Mrs and Mr Bingham	16.06.21
26	11.06.21	Justice Reform Group ACT	16.06.21
27	11.06.21	Dr Devin Bowles, CEO Alcohol Tobacco and Other Drug Association ACT	16.06.21
28	11.06.21	Australian Association of Social Workers	16.06.21
29	07.06.21	Toora Women Inc	16.06.21
30	11.06.21	Karralika Programs Inc	16.06.21
31	11.06.21	Drug Free Australia	16.06.21
32	11.06.21	Jenny Xue	16.06.21
33	11.06.21	Australian Federal Police Association	16.06.21
34	11.06.21	Professor Paul Dietze, Program Director Burnet Institute	16.06.21
35	11.06.21	Australian Psychedelic Society Canberra Chapter	16.06.21
36	11.06.21	Uniting NSW/ACT	16.06.21
37	11.06.21	Dr Will Tregonning, CEO Unharm	16.06.21
38	22.06.21	Bill Bush, President Families and Friends for Drug Law Reform	16.06.21
39	11.06.21	Canberra Alliance for Harm Minimisation Advocacy	16.06.21

No.	Received date	Submitted by	Authorised for publishing
40	11.06.21	Australian National University Drug Research Network	16.06.21
41	11.06.21	Confidential	16.06.21
42	15.06.21	Jennifer Duncan, CEO Australian Alcohol and Other Drugs Council	30.06.21
43	15.06.21	Bronwyn Hendry, CEO Directions Health Services	30.06.21
44	15.06.21	Major Paul Hateley, Head of Government Relations The Salvation Army Australia	30.06.21
45	15.06.21	Bill Stefaniak	30.06.21
46	15.06.21	Dr Adele Stevens and Suzanne Eastwood	30.06.21
47	15.06.21	National Drug Research Institute, Curtin University	30.06.21
48	15.06.21	Peter Somerville, CEO Australian Medical Association ACT Ltd	30.06.21
49	15.06.21	Carers ACT	30.06.21
50	05.05.21	Civil Liberties Australia Inc	30.06.21
51	15.06.21	Justice Action	30.06.21
52	24.06.21	Jonathan C	30.06.21
53	24.06.21	John Miller	30.06.21
54	24.06.21	Dr Alex Wodak	07.07.21
55	24.06.21	Stuart Smith, Crime Command NSW Police Force	07.07.21
56	24.06.21	The Pharmacy Guild of Australia	07.07.21
57	24.06.21	Lachlan Dean, ACT Regional Manager Ted Noffs Foundation	21.07.21
58	30.03.21	Drug Free Australia QLD	28.07.21
59	24.06.21	Jacob White (Confidential)	28.07.21

Appendix C: Dissenting report from Peter Cain MLA

Select Committee on the Drugs of
Dependence (Personal Use) Amendment
Bill 2021

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

**Dissenting report from
Peter Cain MLA**

Executive Summary

I dissent from Recommendations 1, 3, 4 and 17.

The following recommendations should be amended to apply to, or interpreted to apply to, the *Drugs of Dependence Act 1989* as amended by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*: Recommendations 2, 5 and 6.

I agree with the other Recommendations, 7-16, which relate to improving and better resourcing the drug support sector and advancing harm minimisation policies and practices. The only exception to this is that given my dissent from supporting the Bill, the 4th point in Recommendation 16 is redundant.

I agree with the content of both Chapters 1 and 3 of the Committee Report, “Background” and “The service sectors” respectively, except with regards to recommendations for which I have indicated my dissent or for those I would amend.

I present in the following pages an alternative to Chapter 2, “The Bill and other criminal justice matters” in support of my recommendation that the *Drugs of Dependence (Personal Use) Amendment Bill 2021* should not be passed.

The Bill and other criminal justice matters

Current possession offences

- 1 The *Drugs of Dependence Act 1989* (the Act) specifies penalties for the possession, sale, and supply of prohibited substances, drugs of dependence, and has a separate set of offences for cannabis. The Criminal Code Regulation 2005 (ACT) defines 185 prohibited substances, which include heroin, methylenedioxymethamphetamine (MDMA) and cannabis. The Regulation also defines 75 drugs of dependence (which it refers to as controlled medicines), which include amphetamine, cocaine and methylamphetamine.
- 2 Sections 169 and 171 of the Act have general offences for possessing drugs of dependence and prohibited substances respectively. The penalties comprise up to two years in prison or 50 penalty units, or both. The value of a penalty unit for an individual is \$160, setting the maximum fine in this case at \$8,000.¹
- 3 The Act has separate offences for cannabis:
 - the simple cannabis offence of cultivating one or two plants, where the person is under 18 years of age, with a maximum penalty of one penalty unit (section 162);
 - the simple cannabis offence of possessing a small amount of cannabis (such as up to 50 grams of dried cannabis), where the person is under 18 years of age, with a maximum penalty of one penalty unit (sub-section 171AA(1));
 - possession of larger amounts of cannabis (such as over 50 grams of dried cannabis), with a maximum penalty of 50 penalty units, imprisonment for 2 years, or both (sub-section 171AA(2));
 - cultivation of more than four cannabis plants at their premises, or any number of plants at other premises, with a maximum penalty of 50 penalty units, imprisonment for 2 years, or both (sections 171AAA and 171AAB);
 - stores cannabis that children can access, with a maximum penalty of 50 penalty units, imprisonment for 2 years, or both (section 171AAC); and
 - smoking cannabis in a public place or smoking cannabis and exposing a child to the vapour, with a maximum penalty of 30 penalty units (section 171AB).
- 4 Section 171A of the Act specifies a process for simple cannabis offences. The police officer must serve an offence notice on the person/child and their parents, or whoever has that role with whom they are residing. The notice must specify some processes, including that, if the person pays the prescribed penalty within 60 days, then all liability is discharged and there is no conviction for the offence. The prescribed penalty is \$100.
- 5 Since 2001, the Australian Capital Territory (ACT) has had a non-legislated approach to police diversion called the Illicit Drug Diversion Program. Its aim is to divert people away

¹ Section 133 of the *Legislation Act 2001* defines the value of a penalty unit.

from the criminal justice system to health and social services.² ACT Policing stated that its internal governance specifies various criteria for diversion, including the amount, the person's age, the context, and whether other offences are involved.³

- 6 In 2019–20, ACT Policing completed 192 referrals under the Illicit Drug Diversion Program.⁴ The drugs most involved were cocaine (68), cannabis (56), and MDMA (34). ACT Policing advised the Committee that it focuses on criminality rather than personal use:

ACT Policing very rarely criminalises the personal use of substances – resources are targeted at drug trafficking. However, criminality can often be driven by drug use. For instance, drug possession offences are regularly prosecuted alongside other more serious offences.

ACT Policing already adopts a harm minimisation approach to illicit drugs.⁵

Description of the Bill

- 7 The Bill seeks to decriminalise possession of certain drugs under personal possession limits for 11 prohibited substances and drugs of dependence. The drugs, and their personal possession limits, are in the table below.

Drug	Personal possession limit
Amphetamine	2 grams
Cannabis, dried	50 grams
Cannabis, harvested	150 grams
Cocaine	2 grams
Heroin	2 grams
LSD	0.002 grams
Lysergic acid	0.002 grams
MDMA	0.5 grams
Methadone	2 grams
Methylamphetamine	2 grams
Psilocybine	2 grams

² ACT Government-Health, *Submission 15*, pp 4, 22.

³ ACT Policing, *Submission 7*, p 6.

⁴ By way of context, there were 149 offences committed in the same year where drugs were also seized—ACT Policing, *Submission 7*, p 9.

⁵ ACT Policing, *Submission 7*, p 2.

- 8 It was uncontested that these substances are extremely harmful to the mental and physical health of the user and that the use of some would significantly increase the harm that a user would inflict on themselves and those around them, as well as consequential destruction of property.

Overview of evidence on the Bill

- 9 Broadly, there were three views on the Bill presented by those who engaged with the inquiry:

- to reject it or express strong reservations about it;⁶
- to modify it so that it would only apply to cannabis and MDMA/cocaine;⁷ and
- to support it, sometimes with changes around which drugs are listed and the settings of the personal possession limits.⁸

- 10 The submissions that rejected the Bill argued that the ACT already has an effective approach to drugs. Former Attorney-General for the ACT, Bill Stefaniak, argued ‘This Bill appears to be a reaction to a virtually non-existent problem.’⁹ Consistent with this, the ACT Law Society argued that the Bill would have a limited additional effect in diverting drug users away from the criminal justice system, noting that police are already doing this:

Although the Society supports a harm minimisation and therapeutic approach in dealing with drug users, we also expect that the Bill will have a minimal effect on diverting drug users from the criminal justice system. We observe that it is relatively uncommon for drug users to come before the courts charged only with drug possession...In cases where a police officer detects a person in possession of only a small quantity of an illicit drug for the first time, we understand that the Australian Federal Police is already adopting a diversionary approach.¹⁰

- 11 The ACT Government, ACT Policing and the AFP Association recommended a staged approach. ACT Policing was concerned about the practicalities of how the new law might be enforced; police can at least visually identify cannabis and MDMA with reasonable accuracy and test for these substances’ roadside. They also argued that the link between methylamphetamine and criminality also supported a staged approach.¹¹ The ACT Government stated that community confidence would be an important element in any expansion of the arrangements for cannabis:

The Select Committee could consider a phased approach to the introduction of a Simple Offence Notice, starting with drugs which have a lower overall level of health and social

⁶ Drug Free Australia, *Submission 31*; Mr Bill Stefaniak, *Submission 45*, ACT Law Society, *Submission 10*.

⁷ ACT Policing, *Submission 7*, pp 11, 14; ACT Government-Health, *Submission 15*, p 27; the Australian Federal Police Association supported the expansion to MDMA as a 12-month trial, *Submission 33*, p 6.

⁸ Examples are the Alcohol, Tobacco and Other Drug Association ACT, *Submission 27*, p 2; Canberra Alliance for Harm Minimisation and Advocacy, *Submission 39*, p 2; Burnet Institute, *Submission 34*, p 2.

⁹ Mr Bill Stefaniak, *Submission 45*, p 3.

¹⁰ ACT Law Society, *Submission 10*, p 2.

¹¹ ACT Policing, *Submission 7*, p 11.

harms (such as MDMA/ecstasy or cocaine) and potentially progressing to other drugs with a higher level of harm (such as heroin and methamphetamine) dependent on assessment/evaluation of the earlier phase. A phased approach of this type could address potential community concerns about the scope of drugs included in the legislation and build community knowledge and confidence in the operation of the scheme.¹²

- 12 Participants in the inquiry who supported the Bill emphasised the benefits of decriminalisation, such as reduced harm, reduced stigma and increased use of drug treatment services.¹³ The Alcohol, Tobacco and Other Drug Association ACT summarised this view as follows:

ATODA strongly endorses the Drugs of Dependence (Personal Use) Amendment Bill 2021 (the Bill) as a necessary step towards improving the health of the ACT community by re-setting the Territory's drug law on a firmer evidence base. The 'war on drugs' approach has failed. As a result, drug use is prevalent, with 43% of Australian adults having used illicit drugs. Similar human-rights and health focused reforms are occurring worldwide, and the overwhelming evidence is that decriminalisation does not increase drug use. This is well illustrated by decriminalisation and the partial legalisation of cannabis in the ACT.¹⁴

Analysis of the Bill

Simplistic approach to a complex problem

- 13 This is a complex matter involving justice, health, and social services where a change in one area will often have effects across government. Accordingly, drug policy requires a whole-of-government evaluation and response. This more comprehensive approach is far superior to that of a Member presenting an initiative that only addresses one aspect of government operations responding to the use of harmful drugs.
- 14 The Committee received evidence that the treatment sector needs significant additional resourcing and that a detailed planning process is required to ensure that it can meet demand.¹⁵ Decriminalisation will likely place further pressure on under-resourced drug support and health sectors. It is my view that the priority for the sector is resourcing. I am supportive of the claim for increased funding and this is discussed further in Chapter 3 of the Committee Report.
- 15 Generally, criminalising behaviour is a genuine disincentive to adoption of that behaviour. In this case, those who contemplate engaging in illicit drug taking, and who are influenced by whether their behaviour would amount to criminal conduct, would be less likely to try these substances.
- 16 Another potential effect of the Bill is drug tourism. This could lead to increased criminal activity by suppliers and distributors. Inquiry participants did not cover this possibility. It is

¹² ACT Government-Health, *Submission 15*, p 27.

¹³ Canberra Alliance for Harm Minimisation and Advocacy, *Submission 39*, p 8.

¹⁴ Alcohol, Tobacco and Other Drug Association ACT, *Submission 27*, p 2.

¹⁵ ACT Council of Social Service, *Submission 23*, p 2; Alcohol, Tobacco and Other Drug Association ACT, *Submission 27*, p 8.

my view that we should avoid the risk of drug producers, suppliers, distributors and users coming to the ACT from interstate and placing increased pressure on the police and health services.

- 17 The only source for these illicit drugs is criminal activity and this will not change if the Bill is passed. Those producing and trafficking these drugs may well be encouraged to increase their criminal activity in the ACT, placing further strains on the police and drug support sector.

The situation in the ACT has positive elements

- 18 As discussed earlier, ACT Policing have been conducting a diversion program since 2001. In 2019–20, there were 192 referrals under the Illicit Drug Diversion Program. ACT Policing calculated the compliance rate at 89 percent and advised that current diversions are ‘working reasonably well’.¹⁶ A 2013 evaluation of the diversion system in the ACT found that it is working well; an area for improvement is co-ordination.¹⁷

- 19 During the inquiry, there was debate around the effect of decriminalising certain drugs in Portugal.¹⁸ However, it is important to remember that Canberra’s contemporary circumstances do not reflect those of Portugal in the early 2000s, as Portugal wished to address heroin use.¹⁹ This limits the generalisability of the Portugal case study for the ACT.

- 20 A Commonwealth parliamentary enquiry also noted that with respect to the decriminalisation of illicit drugs in Portugal:

This legislative change was implemented alongside a substantial investment in drug treatment, harm reduction and social re-integration policies.²⁰

- 21 Further, the efficacy of decriminalisation in Portugal is disputed, and claims of success in Portugal are linked to ready access to treatment,²¹ which comes back to issues of resourcing. In my view, additional resourcing will deliver more benefits to the ACT than the proposed Bill.

- 22 Finally, although the ACT Government presented evidence that rates of drug use are decreasing, they focussed on non-medical use of prescription medicines, and only a cohort of secondary students:

The non-medical use of painkillers and opioids by people in the ACT in 2019 (1.5 per cent) was lower than the national average (2.7 per cent). There appears to be a trend towards a (non-significant) decline in reported non-medical use of opioid painkillers in the ACT (down

¹⁶ ACT Policing, *Submission 7*, pp 2, 6.

¹⁷ ACT Government-Health, *Submission 15*, p 16.

¹⁸ Drug Free Australia, *Submission 31*, pp 18–21, compared with the Alcohol, Tobacco and Other Drug Association ACT, *Submission 27*, p 2.

¹⁹ Parliamentary Joint Committee on Law Enforcement, Parliament of the Commonwealth of Australia, 2018, *Inquiry into crystal methamphetamine (ice), Final Report*, March 2018, p 157.

²⁰ *Ibid*, p 134.

²¹ Alcohol, Tobacco and Other Drug Association ACT, *Submission 27*, p 14.

from 2.9 per cent in 2016 to 1.5 per cent in 2019). This parallels a statistically significant national decline, down from 3.6 per cent in 2016 to 2.7 per cent in 2019.

Although ACT secondary students reported illicit drug use remained relatively stable between 2014 and 2017, there have been significant decreases over time. This is most obvious in the ‘used at least one illicit substance in their lifetime’ category, which dropped from 37.5 per cent in 1996 to 17.4 per cent in 2017. During the same period, the proportion of students who reported they had ‘used an illicit drug at least once in the past year’ decreased from 32.5 per cent to 15.7 per cent, respectively, ‘past month’ from 17.9 per cent to 5.1 per cent, respectively, and ‘past week’ from 11.7 per cent to 2.5 per cent, respectively.²²

Conflict with Commonwealth law

- 23 Part 9.1 of the Commonwealth Criminal Code creates various drug offences, including for possession. This raises the question whether the Commonwealth law would override the Bill if the Assembly passed it. It also raises the question of whether this would create significant risk or uncertainty for ACT Policing.
- 24 The Committee received a wide range of evidence on this point. The Explanatory Statement to the Bill did not address the issue directly, and instead focussed on trafficking.²³
- 25 The Australian National University Drug Research Network argued that the Commonwealth has not sought to cover the field in the Criminal Code, and so the Bill could result in valid law:

Inter-governmental practice in this area aims to shield the independence of State and Territory laws from the threat of a Commonwealth override. The High Court of Australia has determined that the Criminal Code does not attempt to ‘cover the field’ of drug laws in Australia. The Act explicitly provides for the concurrent operation of State and Territory laws, “even if the penalty, fault element or defence under the relevant State or Territory law differs from the corresponding matters provided for in the Code.”²⁴

- 26 Canberra Community Law believed there was sufficient uncertainty that the ACT Government should sign a Memorandum of Understanding with the Commonwealth Government to clarify that persons who commit a simple drug offence will not be charged under the Criminal Code:

Street Law notes the Commonwealth Government’s critical response to the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT) (Cannabis Act). The Cannabis Act amended the Act by permitting a person over the age of 18 to possess up to 50 grams of cannabis and to cultivate (non-artificially) 1 to 4 cannabis plants for personal use. More specifically, the Commonwealth Government responded to this legislation by stating that Commonwealth laws, namely section 308.1(1) of the Criminal Code, would still

²² ACT Government-Health, *Submission 15*, p 8.

²³ Explanatory Statement to the Bill

²⁴ ANU Drug Research Network, *Submission 40*, p.11.

apply in the ACT and that there was an expectation that the Australian Federal Police would enforce this Commonwealth Law in the ACT.²⁵

- 27 The Committee questioned the AFP Association about whether it had any concerns for its members that the Commonwealth might prosecute its offences despite ACT legislation:

it does not mean that it is not workable, but it does leave our members in a position where they are conflicted and potentially open to scrutiny from internal affairs, ACLEI and the other bodies that do scrutinise them.

- 28 They further added:

I will be honest; we will be lobbying the Commonwealth to act because a lot of those drugs, we would say, are not socially acceptable and they would not pass the pub test. You could argue that in Canberra cannabis was socially accepted, and it would pass the pub test. However, if you question the average punter down at the pub about whether they would find it acceptable that someone was carrying around X amount—two grams or one gram—of ice, after seeing what ice can do to somebody and the after-effect of what a person on ice can do to somebody else, the majority of people would say, I suggest, that it is not acceptable.²⁶

- 29 The amendments would conflict with the Commonwealth Criminal Code. It is fundamental to the rule of law that a jurisdiction should not enact legislation that is inconsistent with the laws of a superior jurisdiction. Further, the police would have different obligations under ACT and Commonwealth law and preferring the ACT approach with respect to these extremely harmful substances would place them at risk. The Legislative Assembly cannot conscionably place this burden on the police.

²⁵ Canberra Community Law, *Submission 9*, p. 9.

²⁶ Mr Alex Caruana, President, AFP Association, *Committee Hansard*, 9 July 2021, pp. 72, 73.

Conclusion on the Bill

30

The Bill fails to:

- i. offer a whole-of-government approach to this complex policy area;
- ii. consider the risks and unintended consequences involved in decriminalisation, including elevated risks of attracting drug tourism, further investment by drug producers and suppliers, and increased trafficking;
- iii. recognise that criminalising possession is for many a deterrent to adopting such behaviour;
- iv. recognise that diversion in the ACT is already working reasonably well; and
- v. satisfactorily resolve the issues around the conflict with Commonwealth law.

Mr Peter Cain MLA

29 November 2021