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Submission Cover Sheet

Inquiry into Drugs of Dependence (Personal Cannabis
Use) Amendment Bill 2018

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ACT Legislative Assembly Inquiry into Drugs of Dependence (Personal Cannabis Use)

Amendment Bill 2018

Brief Submission from the National Drug Research Institute, Curtin University (NDRI)

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Summary of key points

- **The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 aims to address the supply side of the market by legalising the cultivation of four cannabis plants by self-supply. As NDRI noted in our submission on the exposure draft, most cannabis users will not grow their own and will otherwise be accessing their cannabis from the black market. We made suggestions as to how this could be addressed in the Bill namely by:**
 - **Allowing the gifting of cannabis**
 - **Structuring the amendment in such a way that it would not prohibit supply models such as Cannabis Social Clubs.**
- **The exclusion of ‘artificial cultivation’ and the definition of ‘artificial cultivation’ are problematic. We recommend how the draft can be improved to address these.**
- **The provision to ban consumption of cannabis within 20m of a child appears well intentioned, but may be problematic to interpret.**
- **We note Section 9a (1)(a) of the revised Amendment Bill which, by our reading, would allow herbal cannabis that has been self-grown to be supplied to oneself as a therapeutic agent.**
- **Public and targeted education about the details of the new law will be needed.**

NDRI’s previous involvement in research leading to cannabis law reform

The National Drug Research Institute’s (NDRI) mission is to conduct and disseminate high quality research that supports evidence informed policy, strategies and practice to prevent and minimise alcohol and other drug-related health, social and economic harms among individuals, families and communities in Australia.

NDRI, and Lenton in particular, has a long history of conducting research bearing on cannabis policy reform. We have previously documented the adverse impacts of a criminal conviction on individuals apprehended for a minor cannabis offence in Western Australia and compared these with the impacts of a civil penalty in South Australia (Lenton, Humeniuk, Heale, & Christie, 2000). We have provided evidence that less than 3 per cent of cannabis users in one year unlucky enough to be apprehended criminal charge (Lenton, 2000) and a conviction fails to provide a specific deterrent effect, doing very little to affect the cannabis use of those who are convicted (Lenton & Heale, 2000). On the basis of such evidence, we recommended the application of civil rather than criminal penalties for minor cannabis offences in Victoria (Lenton, Heale, et al., 2000) and Western Australia (Lenton, 2004), which led to the implementation of the Cannabis infringement Notice scheme in Western Australia in 2004 under the Gallop government (Lenton & Allsop, 2010) (the scheme was repealed by the Barnett government in 2011).

Beyond this, NDRI is involved in research on the implementation of the legal cannabis regime in Colorado (See Lenton & Allsop, 2010; Subritzky, Pettigrew, & Lenton, 2016, 2017) and in a large international study of small-scale cannabis growers in 15 countries (Lenton, Frank, Barratt, Dahl, & Potter, 2015; Lenton, Frank, Barratt, Potter, & Decorte, 2018) [See: <https://worldwideweeder.nl/>].

With the developments in legal medical and ‘recreational’ cannabis markets internationally, consideration of cannabis policy options for which we have evidence of implementation and effects has moved beyond the comparison of strict criminal penalties schemes versus civil penalty schemes to consider both commercial and non-commercial models of cannabis regulation post prohibition (Kilmer & Pacula, 2017).

Australia as a venue for cannabis policy experiments

The fact that drug possession and supply law has effectively been state and territory law has meant Australia has provided an opportunity for natural policy experiments, such as those studies referred to above. Consistent with that, a number of Australian states and territories have implemented various civil and cautioning schemes for cannabis, while maintaining prohibition. Prohibition with civil penalties schemes were introduced for minor cannabis offences in South Australia in 1987, the Australian Capital Territory in 1992, the Northern Territory in 1996 and in Western Australia from 2004 to 2011. Furthermore, prohibition with cautioning and diversion schemes were introduced for cannabis in the non-civil penalty jurisdictions and for all other illegal drugs (heroin, amphetamine-type stimulants, cocaine, LSD, ecstasy, etc.) for all Australian states and territories under the Illicit Drug Diversion Initiative (IDDI) introduced under the Howard Government in 1999. However, the federal prohibition on cannabis has provided a legislative impediment on non-prohibition policy reforms at a state and territory level; even if to date, none have been actively proposed or implemented. The current proposal would be a first.

Models for addressing the supply side of the cannabis market

By legalising the possession and cultivation of a limited amount of cannabis, the proposed ACT Bill aims to address both the demand and, to a lesser extent, the supply side of the market; the latter it seems being effectively self-supply through self-cultivation.

However, if the Bill is going to undermine the black market and separate cannabis users from criminal elements, then the proposal needs to have a mechanism to meet the cannabis supply needs of the bulk of cannabis users, who will not grow their own cannabis. Indeed, having done research on cannabis users and growers for some 30 years, we believe this describes the vast majority of cannabis users. For example, studies with first time minor cannabis offenders suggested that less than 30 per cent grow their own cannabis as their main source of the drug (Chanteloup, Lenton, Fetherston, & Barratt, 2005) and in 2010, the last time the question was reported in the National Drug Strategy Household Survey, only 3 per cent of respondents who used cannabis in the past 12 months said they grew the drug themselves as their main source of supply (Australian Institute of Health and Welfare, 2011). Even if more people decide to grow the drug within a legalised regime, it is likely they will only be a small proportion of cannabis users and the majority will be left to obtaining cannabis from others.

One approach may be not to prohibit the gifting of cannabis, i.e. supply at no financial cost. While the proposal prohibits sale of cannabis, it remains silent on the gifting of cannabis. This could be a deliberate omission, however, there may be some benefit in being explicit about this kind of transaction, which is common among small scale cannabis users (Lenton, Grigg, Scott, Barratt, & Eleftheriadis, 2015; Scott, Grigg, Barratt, & Lenton, 2017) and growers (Potter et al., 2015), and may be necessary if the proposed market is to function.

Beyond this, it is noted there are a number of jurisdictions internationally that have embarked, or are embarking on, a variety of legalisation measures which have gone further in addressing the supply side of the market as well as the demand side and thus have legalised commercial markets of production and sale (Drug Abuse Control Commission Organization of American States, 2014; Health Canada, 2016; Homel & Brown, 2017; Kilmer, 2017; Parliament of Canada, 2017). Evidence on the resulting benefits and costs is starting to accrue but it may take 10 years (Homel & Brown, 2017) or up to a generation (J.P. Caulkins & Kilmer, 2016) before all the evidence is in. However, from a public health standpoint it is far from clear that a fully commercialised model is the ideal supply model (consider alcohol and tobacco) (J.P. Caulkins, 2014).

Furthermore, there are other ‘mid-range’ models such as the Cannabis Social Clubs operating in Spain, Belgium, U.K., Italy, Slovenia, the Netherlands and Uruguay (Queirolo, Boidi, & Cruz, 2016). Such schemes are likely to have less adverse impacts on public health, and even though revenue to the government through GST and sales taxes are likely to be far less than that generated by a fully commercialised model, there are examples of how potential revenue flows may be generated, managed and used for community benefit (Wilkins, 2018). Australia is well placed to learn from international examples, yet the evidence is still accruing.

Given the above, we believe the proposed ACT legislation is pitched at the right level in that it is a relatively modest step down the cannabis legalisation path, which is unlikely to have regulatory complexities and adverse effects on rates of use and harm that are now starting to emerge in the North American commercialisation examples (e.g. Parnes, Bravo, Conner, & Pearson, 2018).

Furthermore, and importantly, the proposed ACT scheme is modifiable and potentially reversible should the proposal result in significant unintended effects, which we judge, based on available evidence, is unlikely.

The problem of self-supply and a possible solution: the Cannabis Social Club Model

However, we are concerned the current Bill may be a lost opportunity. As it is currently framed, it would preclude the establishment and evaluation of mid-range strategies such as Cannabis Social Clubs (CSCs). CSCs have been shown to be viable, low-risk and self-sustaining and address the cannabis needs of regular users whom, because of their lack of knowledge, time, suitable physical space or interest, are unwilling or unable to cultivate their own cannabis for personal use. Further, the CSC model is very applicable to small geographic locations such as Canberra and the ACT.

Decorte (2018) outlines what he sees should be some of the key features of CSCs, while noting that in practice there is also a great deal of difference between how clubs have evolved and operate in the countries where they currently exist. Some of the key elements are:

- Cannabis users who are unable or unwilling to grow their own cannabis for personal use can give the responsibility for taking care of their plant(s) to a Cannabis Social Club (CSC).
- CSCs produce cannabis exclusively for their members’ personal consumption.
- CSCs are non-profit organisations that must be established and registered as such and are subject to transparent record keeping and auditing requirements.
- The Board and employees of a CSC are subject to conditions regarding their probity (e.g. no criminal or commercial associations).
- CSCs are required to meet a number of strict conditions to hold a licence to operate and these are monitored and regulated by an appropriately constituted and knowledgeable regulatory body.
- These regulations include but are not limited to conditions on its organisational structure and aspects of its cannabis growing processes and system for product quality, storage, and distribution to members.
- CSC members must be over 18, residents of the jurisdiction, subject to an intake interview, which includes agreement with the rules of the CSC (e.g. no secondary distribution), and an assessment of their current cannabis use, a willingness for this to be monitored in an ongoing way, and be willing to receive advice about use and harm reduction as appropriate.
- There are limits on the maximum number of members (e.g. 250) that a CSC can have and the maximum number of plants per member (e.g. 6).

- Individual plants are owned by individual CSC members and are cared for by the CSC. Using a bar code or similar system, it must be clear which plants are owned by which members throughout the whole production and distribution process.
- Production must be undertaken consistent with public health goals including:
 - Utilising organic methods using only organic nutrients and pesticides.
 - Producing products of known THC concentration and THC:CBD ratio.
 - Production facilities should be secure and produce no disruption to surrounding areas.
 - Production facilities should be fireproof with approved electrical wiring.
 - Cannabis products should meet strict labelling requirements including health warnings, information on THC/CBD content and should not include branding or design.
- CSCs can take one of two forms: with, or without, cannabis consumption facilities. Those with, are subject to specific rules pertaining to this.

The current draft is incompatible with the CSC model because under it ‘a person commits an offence if the person cultivates (artificially or otherwise) 5 or more plants’. This would preclude the CSC model where individual’s plants are collectively grown by a club’s grower(s) on their behalf. To allow the implementation, or trial, of a CSC model in the ACT, the wording would have to be amended to something like: ‘a person commits an offence if they own/possess 5 or more growing cannabis plants’. This would not prohibit a CSC as the plants are not owned/possessed by the grower who simply tends the plants on behalf of their documented owner and member of the CSC.

The exclusion of ‘artificial cultivation’ and the definition of the term ‘artificial cultivation’ should be reconsidered

Section 162(2) of the Bill defines artificial cultivation as to ‘hydroponically cultivate or cultivate with the application of an artificial source of light or heat’, consistent with the Drugs of Dependence Act 1989 (Parliament of the Australian Capital Territory, 1989).

Exclusion of ‘artificial-cultivation’

The reason for excluding ‘artificial’ cultivation of cannabis is not articulated in the Bill or the supporting Explanatory statement but seems to stem from the original provisions allowing a Simple Cannabis Offence (SCON) notice to be issued under the Drugs of Dependence Act 1989 (Parliament of the Australian Capital Territory, 1989).

Although we have been unable to locate explanatory notes for the original version of the Act, where ‘artificial’ or ‘hydroponic cultivation’ has been excluded from legislative cannabis reforms in other jurisdictions this has tended to be due to:

- A belief that hydroponic cannabis is less healthy because it is not natural, contains harmful chemicals or is more potent;
- A belief that hydroponic cultivation methods are seen as producing a larger yield of smoke-able cannabis heads per plant; or
- Police have typically associated the presence of ‘sophisticated growing equipment’ as indicative of more serious, organised or criminal growing networks.

Taking each of these in turn:

Even though we have shown that potentially harmful chemicals more likely to be used by hydroponic growers can be harmful, hydroponic growing can be done in a way that is less harmful

(Lenton et al., 2018). Having a healthier cannabis product is possible when the consumer knows what has happened from seed to cultivation, to preparation for consumption. Whether cultivation is in soil or non-soil or under natural or artificial light is a spurious issue.

If the intention of excluding 'hydroponic cultivation' is to limit total yield, then this may not work as intended. We have previously found in our study of largely 'small time' cannabis growers in 11 countries, including Australia, that the medium yield of usable dried cannabis heads was 1.4 ounces (40 grams) per plant. Interestingly, however, the median yield among Australian growers was 3 ounces (85 grams), probably due to outdoor (non-hydroponic) growing of large plants. Across all countries the outdoor median was 1.8 ounces (51 grams) per plant compared to 1.2 ounces (34 grams) for indoor plants (Potter et al., 2015).

While the use of sophisticated equipment may have at one time been a marker for the involvement of organised crime networks in cannabis growing operations, over the past two decades the expansion of information and availability of equipment for the growing of cannabis has spread worldwide, largely through the internet, and is relatively cheap and accessible to even the most novice growers (T. Decorte & Potter, 2015).

Thus, use of such equipment can no-longer be seen as a marker for criminal involvement or career involvement in cannabis cultivation (Tom Decorte, 2010). This was evident in our own survey of largely small-scale cannabis cultivators, where, for example, among the 489 Australian cannabis growers we accessed, 46 per cent used a timer unit, 36 per cent an oscillating fan, 35 per cent used sodium lamps, 18 per cent florescent lamps, and 13 per cent used metal halide lamps (Lenton et al., 2018).

The definition of 'artificial growing'

Regardless of the sense of excluding 'artificial cultivation' as dealt with above, the definition of artificial cultivation in the proposed legislation is problematic on a number of counts:

- We recently found that 28.5 per cent of 403 Australian growers who we surveyed said that they grew indoors with plants in soil (not hydroponics) but under artificial light (Lenton et al., 2018). This would be prohibited under the current Bill. It is not clear to us, from a public safety perspective, that such indoor growing should be discouraged. It certainly is likely to be more secure in terms of crop theft and diversion, and less likely to be seen or accessed by minors.
- Furthermore, many cannabis users may live in accommodation such as apartments or flats where there is not an option for outdoor growing. Excluding growing of cannabis indoors in soil, under lights would therefore discriminate against such individuals and be contrary to the intention of the scheme as many of these individuals would either be excluded from legal self-supply.

Thus if hydroponic cultivation is the issue that the Bill aims to exclude we would suggest a more appropriate definition would be that used under the WA Cannabis Enforcement Notice (CEN) Scheme namely: 'cultivation by placing the roots of the plant in a liquid nutrient solution rather than in soil.' (Parliament of Western Australia, 2003, p. 5697). This would allow indoor cultivation of cannabis in soil under lights but not hydroponic cultivation.

The ban on consumption within 20m of a child

Under Section 171AB (2) a person commits an offence if they smoke cannabis and a child is within 20m of that person.

The explanatory note states that ‘These offences are a justifiable limitation on individual liberty to protect against health impacts on members of the public who choose not to smoke and children.’

While this rationale is a noble one, there needs to be some thought as to how this provision will be applied by police.

The way the clause is written suggests the cannabis smoker could not be within a 20m radius of a child. In theory, a person smoking cannabis in their living room could be guilty of an offence if their children were asleep in their bedrooms, or even a neighbour’s children asleep next door.

Is this what is intended by this section of the Bill? If not, it needs amending or clear regulatory guidelines regarding its interpretation and application.

Legalisation of self-supply of herbal cannabis for medical use

By our reading, Section 9a (1)(a) of the revised Amendment Bill, which relates to provisions of the Medicines, Poisons and Therapeutic Goods Act 2008, would allow adults to self-supply to themselves as a therapeutic agent not more than 50 grams of herbal cannabis that has been self-grown.

To our knowledge, this would make it the first such legislation in Australia. Existing medical cannabis laws in Australia only relate to medicines containing extracts of cannabis and in the ACT, as elsewhere, it is currently not legal for patients to self-supply their own cannabis for medical use (see: <https://www.health.act.gov.au/health-professionals/pharmaceutical-services/controlled-medicines/medical-cannabis>). This contrasts with the USA where, as of March 2019, 34 states (plus DC, Guam, Puerto Rico and the US Virgin Islands) allow herbal cannabis to be accessed as medicine (see <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>).

Many people using medical cannabis say they prefer the herbal form not least because they say it enables them to titrate their dose, which is harder to do with many pharmaceutical products containing cannabis extracts.

Our previous research with cannabis growers indicates that some 54 per cent of our Australian growers sample said that they grew to provide medical cannabis for their own use and 20 per cent said they grew to supply others with cannabis as a medicine (Hakkarainen et al., 2015).

Public and targeted education about the details of the new law

Should the Bill be passed in some form, it is crucial that it is accompanied by an adequately funded program of public education, not only about the health effects of cannabis, but importantly about the provisions of the new laws and regulations and what they mean.

Without this there is likely to be confusion, people needlessly operating outside the law and being prosecuted, and a potential to bring the laws and law enforcement into disrepute. Any such communications strategy should target multiple groups including all Adults in the ACT, young people, cannabis users, the media and key professional groups such as medical practitioners, lawyers, police and health care providers (see Prior et al., 2002)

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