

INQUIRY INTO DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY
SERVICES

JUNE 2019

REPORT 7

THE COMMITTEE

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Mrs Vicki Dunne MLA	Deputy Chair
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RESOLUTION OF APPOINTMENT

On 13 December 2016, the Legislative Assembly for the ACT agreed by resolution to establish legislative and general purpose standing committees to inquire into and report on matters referred to them by the Legislative Assembly or matters that are considered by the committees to be of concern to the community, including:

(b) a Standing Committee on Health, Ageing and Community Services to examine matters related to hospitals, community and public health, mental health, health promotion and disease prevention, disability matters, drug and substance misuse, targeted health programs and community services, including services for older persons and women, families, housing, poverty, and multicultural and indigenous affairs.¹

TERMS OF REFERENCE

On 20 February 2019, the Legislative Assembly for the ACT resolved:

That the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be referred to the Standing Committee on Health, Ageing and Community Services for inquiry and report by 6 June 2019.²

The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 and accompanying Explanatory Statement are available at: https://www.legislation.act.gov.au/b/db_59295

Intended proposed amendments from the Government, the Opposition and the Crossbench can be found under the '[other documents](#)' tab on the Legislative Assembly webpage.

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 13 December 2018, p. 13.

² Legislative Assembly for the ACT, *Minutes of Proceedings No. 87*, 20 February 2019, p. 1265.

ACRONYMS

Acronym	Meaning
AFP	Australian Federal Police
AFPA	Australian Federal Police Association
ATODA	Alcohol, Tobacco and other Drugs Association
AMA ACT	Australian Medical Association ACT Branch
Bill	Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018
Bill C-46	C-46: An Act to Amend the Criminal Code (Offences Relating to Conveyances) and to make Consequential Amendments to other Acts
CAHMA	Canberra Alliance for Harm Minimisation and Advocacy
Committee	Standing Committee on Health, Ageing and Community Services
Convention	United Nations Single Convention of Narcotic Dugs 1961
Law Society	Law Society of the ACT
Legislative Assembly	Legislative Assembly for the ACT
MOU	Memorandum of Understanding
SCON	Simple Cannabis Offence Notice
THC	tetrahydrocannabinol
United States	United States of America

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RECOMMENDATIONS

RECOMMENDATION 1

- 2.10 The Committee recommends that, subject to the following comments and amendments, the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be supported.

RECOMMENDATION 2

- 4.13 The Committee recommends that consequential amendment [1.2] (Section 168(2) of the *Criminal Code 2002*), in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, be amended to increase the number of plants an individual can cultivate to a maximum of four, and the number of plants a household can cultivate to a maximum of six.

RECOMMENDATION 3

- 4.34 The Committee recommends that an amendment be included in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, to allow for soil cultivation in a greenhouse and/or with artificial light.

RECOMMENDATION 4

- 4.57 The Committee recommends that Section 171AA(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill be amended to define plant weight, wet weight, dry weight and any other format in which cannabis can be possessed.

RECOMMENDATION 5

- 4.58 The Committee recommends that the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 should also clarify that, while growing a plant, it is counted as a plant and its weight is not relevant for the purposes of this legislation.

RECOMMENDATION 6

- 4.59 The Committee recommends that if artificial cultivation is not allowed, the dry weight (or equivalent) allowable be expanded to 100 grams as in South Australia.

RECOMMENDATION 7

- 4.88 The Committee recommends that Section 171AB(1) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the *Smoke-Free Public Places Act 2003*, as well as *Smoking in Cars with Children (Prohibition) Act 2011* for smoking cannabis in public places.

RECOMMENDATION 8

- 4.89 The Committee recommends that Section 171AB(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the *Smoke-Free Public Places Act 2003*, as well as *Smoking in Cars with Children (Prohibition) Act 2011* for smoking cannabis near a child.

RECOMMENDATION 9

4.105 The Committee recommends that the ACT Government collaborate with ACT Policing to adopt a cannabis drug driving test that determines impairment.

RECOMMENDATION 10

4.127 The Committee recommends that Section 171AA of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to include express authorisation for the cultivation and use of cannabis by individuals for personal use.

RECOMMENDATION 11

4.128 The Committee recommends that the ACT Government intervene in any prosecution by the Commonwealth of ACT residents who cultivate or possess cannabis in accordance with the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 to defend the intent of the Bill.

RECOMMENDATION 12

4.140 The Committee recommends that, should cannabis for personal use be legalised in the ACT, the ACT Government considers appropriate measures for overturning convictions relating to possession and cultivation of cannabis for personal use.

RECOMMENDATION 13

4.152 The Committee recommends that, regardless of whether or not the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 is passed, the ACT Government ensures that there are sufficient health resources available to treat cannabis dependence.

RECOMMENDATION 14

4.166 The Committee recommends that the ACT Government develop a public health campaign about cannabis to be delivered on an on-going basis.

RECOMMENDATION 15

4.173 The Committee recommends that strong public information about the provisions of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 proceed or coincide with the implementation of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

RECOMMENDATION 16

4.185 The Committee recommends Section 162 of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to include a provision that allows group cultivation where:

- The number of people in the group is between two and 10;
- The cannabis must be cultivated on the premises of one of the members;
- Every plant must be 'owned' by an individual ACT resident and the name and address of this individual must be made available to police if requested;
- No one in the group can own more than the legal limit of plants for an individual;

- Cannabis product in the group is owned by the individual owner of the plant that produced it;
and
- Cannabis product cannot be traded or exchanged with other individuals.

1 INTRODUCTION

- 1.1 On 20 February 2019, the Legislative Assembly for the ACT (Legislative Assembly) referred the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (Bill) to the Standing Committee on Health, Ageing and Community Services (Committee) for inquiry and report. The referral motion, passed by the Legislative Assembly reads:

Mr Hanson, pursuant to standing order 174, moved—That the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be referred to the Standing Committee on Health, Ageing and Community Services for inquiry and report by 6 June 2019.³

- 1.2 The Bill is a Private Member's Bill, introduced into the Legislative Assembly on 18 November 2018 by Mr Michael Pettersson MLA.⁴

CONDUCT OF THE INQUIRY

- 1.3 The Committee called for public submissions on 28 February 2019. The Committee issued a media release and the Inquiry was announced through the Legislative Assembly's webpage and social media channels. The Committee Secretary wrote directly to relevant parties, inviting them to consider making a submission. The Committee requested submissions by 20 March 2019. During the Inquiry period, the Committee received 36 submission. A list of submissions received is provided at [Appendix A](#) and have been published on the Legislative Assembly webpage at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-health,-ageing-and-community-services/inquiry-into-drugs-of-dependence-personal-cannabis-use-amendment-bill>.
- 1.4 The Committee also wrote directly to the Government, the Opposition and the Crossbench, requesting an outline of any intended proposed amendments to the Bill. Responses to the Committee's request have been published on the Legislative Assembly webpage, under the 'other documents' tab at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-health,-ageing-and-community-services/inquiry-into-drugs-of-dependence-personal-cannabis-use-amendment-bill>.
- 1.5 The Committee heard from witnesses during four public hearings, which were held on 26 March, 29 March, 03 May and 08 May 2019. A list of witnesses who appeared at public hearings is provided at [Appendix B](#).

³ Legislative Assembly for the ACT, *Minutes of Proceedings No. 87*, 20 February 2019, p. 1265.

⁴ Legislative Assembly for the ACT, *Minutes of Proceedings No. 81*, 18 November 2018, p. 1156.

- 1.6 The Committee also considered follow-up material provided in response to matters raised at the Committee's hearings. A list of Questions Taken on Notice and supplementary Questions on Notice are provided at [Appendix C](#).

STRUCTURE OF THE REPORT

- 1.7 The Committee has compiled a report which examines and reflects on the principal matters that were identified in submission and arose during the course of the Inquiry, based on evidence it received and on other source material of direct relevance published during the Inquiry period.
- 1.8 The Committee's report is in five chapters and covers the following issues:
- Chapter 1 – provides outline of the conduct of the Committee's Inquiry into the Bill;
 - Chapter 2 – provides an overview of the Bill. This chapter also provides background information regarding legislative provisions adopted by other jurisdictions, as well as cannabis trends within Australian and the ACT;
 - Chapter 3 – examines provisions adopted by other countries that have legalised cannabis for personal use. This includes Uruguay, Canada and relevant states within the United States of America;
 - Chapter 4 – explores key issues that were identified throughout the course of the Committee's Inquiry. This chapter specifically examines the amendments presented in the Bill; and
 - Chapter 5 – provides concluding remarks from the Committee.

RECOMMENDATIONS

- 1.9 Throughout the course of the Committee's Inquiry, a number of issues were raised, relating to amendments presented in the Bill. However, the Committee also acknowledges that a number of issues were also raised that were relevant to the legalisation of cannabis for personal use, but did not relate to a specific amendment.
- 1.10 Due to the varying issues raised, the Committee has made recommendations that apply specifically to an amendment, as well as recommendations that consider overall impacts relating to the legalisation of cannabis for personal use.

ACKNOWLEDGEMENTS

- 1.11 The Committee thanks Mr Michael Pettersson MLA for his assistance on the Bill during the course of the Inquiry. Information provided by Mr Pettersson MLA proved valuable to the Committee in the course of the Inquiry.
- 1.12 On 27 February 2019, the Committee wrote to the Government, the Opposition and the Crossbench requesting an outline of their intended proposed amendments. The Committee would like to thank Mr Andrew Barr MLA, in his capacity as Chief Minister, Mr Jeremy Hanson MLA, in his capacity as Shadow Attorney General, as well as Mr Shane Rattenbury MLA, in his capacity as Leader of the ACT Greens, for providing an outline of each party's proposed amendments. The information provided assisted the Committee in its consideration of the Bill.
- 1.13 The Committee wishes to again thank Mr Barr MLA, in his capacity as Chief Minister, for appearing before the Committee to discuss the Bill and how its amendments would likely impact ACT Government services. The Committee also thanks accompanying ACT Health Directorate, Canberra Health Services, Justice and Community Safety Directorate officials and the ACT Government Solicitor-General for providing their time and expertise.
- 1.14 The Committee wishes to thank Mr Rattenbury MLA, in his capacity as Leader of the ACT Greens, for appearing before the Committee to discuss the Bill and the party's proposed amendments.
- 1.15 The Committee thanks the Chief Police Officer and ACT Policing officials for providing a detailed submission and appearing before the Committee to provide evidence. The Committee acknowledges that ACT Policing services would be impacted by the adoption of the amendments presented in the Bill. The Committee appreciates the time taken by the Chief Police Officer to discuss the matters arising from this Bill with the Committee.
- 1.16 The Committee acknowledges the input received by individuals and organisations who provided submissions and appeared before the Committee to provide evidence. The Committee also acknowledges the time and effort taken by those who participated in the Inquiry's process and would like to thank each submitter and those who appeared before the Committee for their invaluable contributions to the Inquiry.

2 BACKGROUND AND PROVISIONS OF BILL

2.1 On 20 February 2019, pursuant to Standing Order 174, the Legislative Assembly referred the Bill to the Committee for inquiry and report by 6 June 2019.

2.2 The Shadow Attorney General, Mr Hanson MLA, moved that the Bill be referred to the Committee for inquiry and report for the following reasons:

[T]here are real problems with this bill, in its form and in the way it has been drafted. Even if you support it, it is a mess. There is a raft of amendments that need to be looked at in detail and that are still in the process of being drafted. There are legal complexities. More importantly, there are genuine health issues that this Assembly must be across before it makes a decision about something that could potentially be so damaging to young people's lives.⁵

2.3 The Leader of the ACT Greens, Mr Rattenbury MLA, supported Mr Hanson MLA's motion referring the Bill to the Committee for inquiry and report for the following reasons:

The reason we have agreed to the bill going to a committee is that there are now a significant number of amendments to the bill. Our experience of this place is that when you have a large number of amendments, it can be valuable to have a committee process because things get worked out by the committee. It is as simple as that.⁶

2.4 The question "That the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be referred to the Standing Committee on Health, Ageing and Community Services for inquiry and report by 6 June 2019" was subsequently resolved in the affirmative.⁷

PROVISIONS OF THE BILL

2.5 On 19 September 2018, Mr Pettersson MLA presented an Exposure Draft of the Bill in the Legislative Assembly.⁸ On 18 November 2018, following the presentation of the Exposure Draft, Mr Pettersson MLA presented the Bill, as a Private Member's Bill.⁹ The Bill was subsequently debated and referred to the Committee for inquiry and report on 20 February 2019.¹⁰

⁵ Mr Jeremy Hanson MLA, *Legislative Assembly Hansard*, 20 February 2019, p. 499.

⁶ Mr Shane Rattenbury MLA, *Legislative Assembly Hansard*, 20 February 2019, p. 500.

⁷ Legislative Assembly for the ACT, *Minutes of Proceedings No. 87*, 20 February 2019, p. 1265.

⁸ Legislative Assembly for the ACT, *Minutes of Proceedings No. 72*, 19 September 2018, p. 998.

⁹ Legislative Assembly for the ACT, *Minutes of Proceedings No. 81*, 18 November 2018, p. 1156.

¹⁰ Legislative Assembly for the ACT, *Minutes of Proceedings No. 87*, 20 February 2019, p. 1265.

2.6 The Bill would amend a number of ACT laws that currently prohibit and control cannabis, including the:

- *Drugs of Dependence Act 1989*;
- *Medicines, Poisons and Therapeutic Goods Act 2008*; and
- *Criminal Code (ACT) 2002*.

2.7 The Explanatory Statement outlines that the Bill “provides amendments to reform the *Drugs of Dependence Act 1989* in relation to personal possession of cannabis and consequential amendments to the *Criminal Code (ACT) 2002*.”¹¹

2.8 The Explanatory Statement further states that:

The Bill will amend criminal laws to allow for the personal use and carry of cannabis up to a limit of 50 grams. The Bill will also allow individuals to cultivate up to four cannabis plants (excluding artificial cultivation). This change will bring cannabis laws more in line with modern community standards and reflect global trends. The Bill will reduce the burden on our criminal justice system and bring us a step closer to a cannabis market.

The Bill will retain penalties for possession above 50 grams at current levels, cultivation of more than four plants will remain illegal, artificial cultivation will remain illegal, sale will remain illegal and sale and supply to minors will especially remain illegal.¹²

2.9 In his presentation of the Bill as an Exposure Draft, Mr Pettersson MLA provided an outline of how the Bill would amend these Acts. With regards to the *Criminal Code (ACT) 2002* and *Drugs of Dependence ACT 1989*, Mr Pettersson MLA stated that:

This bill will amend the *Drugs of Dependence Act 1989* and the *Criminal Code 2002*, with the effect of legalising cannabis for personal use. The bill will allow individual possession of up to 50 grams of cannabis and will also allow for the cultivation of up to four cannabis plants. It is time for a sensible approach to drug policy in this country and right here in the ACT.¹³

Recommendation 1

2.10 The Committee recommends that, subject to the following comments and amendments, the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* be supported.

¹¹ Explanatory Statement, *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, p. 2.

¹² Explanatory Statement, *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, p. 2.

¹³ Mr Michael Pettersson MLA, *Legislative Assembly Hansard*, 20 September 2018, p. 3746.

COMMONWEALTH

2.11 Under Commonwealth law, the control and prohibition of cannabis and cannabis products is legislated using a number of legal instruments, including:

- the *Therapeutic Goods Act 1989*, which regulates the availability of cannabis and other materials as therapeutic substances (cannabis is listed as a Schedule 9 Prohibited Substance under the Poisons Schedule);
- the *Narcotic Drugs Act 1967*, which regulates the manufacture of cannabis and other narcotic drugs;
- the *Customs Act 1901* and *Customs (Prohibited Imports) Regulations 1956* and *Customs (Prohibited Exports) Regulations 1958*, which controls the import and export of cannabis and other narcotic drugs in and out of Australia; and
- the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* and Part 9.1 of the *Criminal Code Act 1995*, which contains offences relating to the cultivation, import and export, and possession of controlled plants and drugs, which includes cannabis.¹⁴

2.12 With specific reference to the Commonwealth *Criminal Code Act 1995*, Division 308 classifies offences in regards to the possession of controlled drugs¹⁵ as:

(1) A person commits an offence if:

- (a) the person possesses a substance; and
- (b) the substance is a controlled drug, other than a determined controlled drug.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.¹⁶

2.13 However, Division 308 of the Commonwealth *Criminal Code Act 1995* also goes on to state:

(3) If:

- (a) a person is charged with, or convicted of, an offence against subsection (1); and
- (b) the offence is alleged to have been, or was, committed in a State or Territory; the person may be tried, punished or otherwise dealt with as if the offence were an offence against the law of the State or Territory that involved the possession or use of a controlled drug (however described).¹⁷

¹⁴ Parliament of Australia, Senate Standing Committee on Economics, *Interim Report: Sale and Use of Marijuana and Associated Produces (Terms of Reference C)*, 04 May 2016, p. 5.

¹⁵ Schedule One of the *Criminal Code Regulation 2019* identifies cannabis as a substance that is a controlled drug.

¹⁶ Commonwealth, *Criminal Code Act 1995*, Division 308 – Possession Offences, Section 308.1(1)(a) and (b).

¹⁷ Commonwealth, *Criminal Code Act 1995*, Division 308 – Possession Offences, Section 308.1(3)(a) and (b).

2.14 Additionally, Division 313 of the Commonwealth *Criminal Code Act 1995* states that:

This Part, other than Division 307, does not apply in relation to conduct if:

- (a) a person engages in the conduct in a State or Territory; and
- (b) the conduct is justified or excused by or under a law of that State or Territory.¹⁸

STATE AND TERRITORIES

2.15 The production, sale, possession or use of cannabis for recreational purposes is prohibited by the Commonwealth and all Australian states and territories. However, enforcement of cannabis-related offences are the responsibility of each individual state and territory. Each Australian jurisdiction addresses 'minor' cannabis offences differently. In particular, the ACT, South Australia and the Northern Territory have decriminalised minor cannabis offences, with possession of limited amounts of cannabis being subject to civil fines rather than criminal penalties. However, the other states approach cannabis offences through diversion programs for first-time offenders before criminal sanctions are imposed. Figure 1 provides a summary of the enforcement approaches taken by each state and territory, with regards to the possession of cannabis under that state and territory's law.

Figure 1: Treatment of Minor Cannabis Offences in Australian Jurisdictions¹⁹

Jurisdiction	Treatment of Minor Cannabis Offences
Australian Capital Territory	The ACT introduced a civil penalty system for the possession of 'small amounts' of cannabis in 1993. If someone is caught with up to two non-hydroponic cannabis plants, or up to 25 grams of marijuana (cannabis plant material), they receive a \$100 fine with 60 days to expiate (pay the fine) instead of a criminal charge. Instead of paying the fine, the person may choose to attend a drug assessment and treatment program.
South Australia	In 1987, South Australia was the first state to decriminalise minor cannabis offences. The possession of up to 100 grams of marijuana, 20 grams of hash, one non-hydroponic plant or cannabis smoking equipment leads to a fine from \$50 to \$150 with 60 days to expiate.
Northern Territory	Since 1996, adults found in possession of up to 50 grams of marijuana, one gram of hash oil, 10 grams of hash or cannabis seed, or two non-hydroponic plants can be fined \$200 with 28 days to expiate rather than face a criminal charge.

¹⁸ Commonwealth, *Criminal Code Act 1995*, Division 313 – Defences and Alternative Verdicts, Section 313.1(a) and (b).

¹⁹ Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs, *Regulator of Medicinal Cannabis Bill 2014*, 11 August 2015, p. 16.

Jurisdiction	Treatment of Minor Cannabis Offences
New South Wales	If someone is caught with up to 15 grams of cannabis, they may receive a 'caution' from the police officer, which includes information about the harms associated with cannabis use and a number to call for drug-related information or referral. Only two cautions are allowed to be given to the same person before criminal charges are laid.
Victoria	A police officer may give someone a caution and offer them the opportunity to attend a cannabis education program if they are caught with no more than 50 grams of cannabis. Like NSW, only two cautions are allowed to be given to the one person.
Tasmania	Someone found in the possession of up to 50 grams of cannabis can be given a caution up to three times in ten years. For the first caution, information and referral is provided. A brief intervention is given with the second caution. On the third and final caution, the offender must be assessed for drug dependence and attend either a brief intervention or treatment program.
Queensland	Police officers in Queensland offer someone the option of diversion, rather than prosecution, if they are found in possession of up to 50 grams of cannabis. The diversion includes a mandatory assessment and brief intervention program. Only one offer of diversion is allowed per person.
Western Australia	Individuals in possession of not more than 10 grams of harvested cannabis and/or a used smoking implement who have no prior cannabis offences will be required to attend a Cannabis Intervention Session within 28 days or receive a cannabis conviction for the offence. All cannabis cultivation offences will attract a criminal conviction.

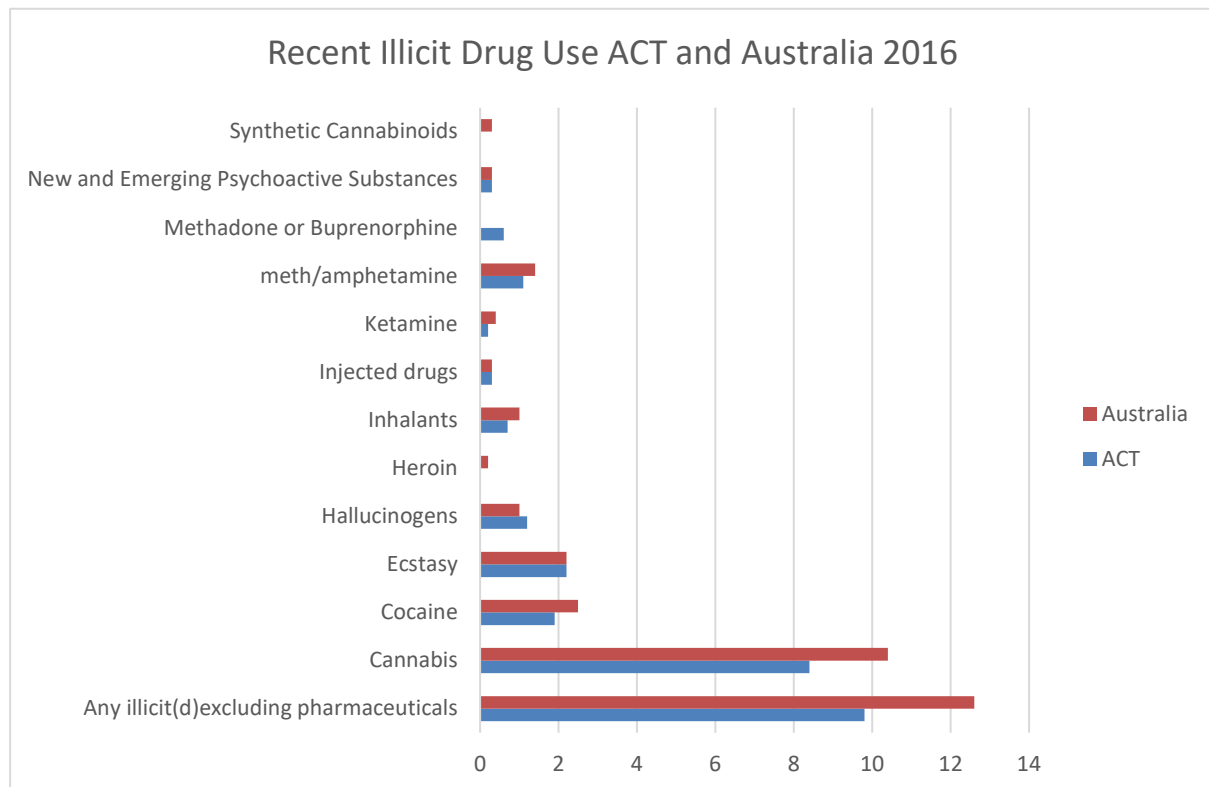
USE OF CANNABIS IN AUSTRALIA AND THE ACT

- 2.16 The Australian Criminal Intelligence Commission, *Organised Crime in Australia 2017* report identified cannabis as the most commonly used illicit drug in Australia. The Report goes on to note that almost all of the cannabis consumed in Australia is cultivated domestically. Cultivated cannabis includes indoor hydroponic cultivation, as well as outdoor cultivation.²⁰

²⁰ Australian Criminal Intelligence Commission, *Organised Crime in Australia 2017*, 2017, p. 20.

- 2.17 The Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016* found that 35 per cent (6.9 million) Australians aged 14 or older had used cannabis in their lifetime. Additionally, 10.4 per cent (2.1 million) had used cannabis in the last 12 months.²¹
- 2.18 The *National Drug Strategy Household Survey 2016* also highlighted that in 2016, 8.4 per cent of people, aged 14 or older, living in the ACT had used cannabis in the last 12 months. The Survey also noted that the ACT had the lowest recent illicit drug use at 12.9 per cent.²²
- 2.19 Data proved by the ACT Government to the *National Drug Strategy Household Survey 2016* highlighted that the ACT is below the national average for majority of illicit drug use, as shown in the Figure 2.

Figure 2: National Drug Strategy Household Survey 2016 - Recent Illicit Drug Use ACT and Australia 2016
(data presented in percentage)²³



- 2.20 The University of New South Wales National Drug and Alcohol Research Centre, *ACT Illicit Drug Reporting System 2018*, found that 79 per cent of participants reported recent use of cannabis. The data also found that in 2018, the median use and frequency of cannabis use in the past six

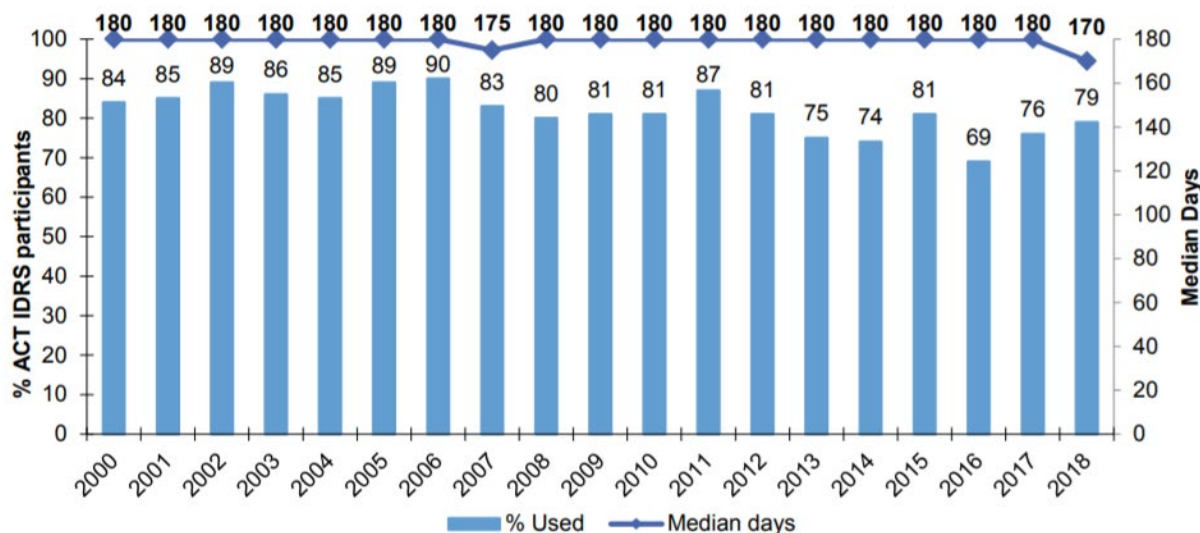
²¹ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016*, 2016, p. 61.

²² Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016*, 2016, pp. 89-91.

²³ ACT Government, *HealthStats ACT*, *National Drug Strategy Household Survey 2016, Recent Illicit drug use ACT and Australia 2016*, available at: <https://stats.health.act.gov.au/statistics-and-indicators/recent-illicit-drug-use>.

months was 170 days. The use and frequency of cannabis in the ACT between 2000 and 2018 is shown in Figure 3.

Figure 3: Past Six Month Use and Frequency of Use of Cannabis in the ACT 2000-2018²⁴



- 2.21 The Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2016-17* identified that the number of cannabis seizures in Australia had decreased by 2.2 per cent in the 2016-17 reporting period. However, in 2016-17, 765 cannabis seizures occurred in the ACT, which is an increase of 3.5 per cent from the 2015-16 seizure rate.²⁵
- 2.22 Consumer arrests continue to account for the greatest proportion of arrests, comprising of 91.2 per cent of national cannabis arrests in 2016-17. In 2016-17, 95 Simple Cannabis Offence Notices (SCONs) were issued in the ACT. This is a decrease of 13.7 per cent from the 2015-16 SCONs issued.²⁶
- 2.23 In their submission to the Inquiry, Penington Institute highlighted that in a 2010 United Kingdom study, Professor David Nutt scored various drugs according to the harms (to the user and others, as well as social, economic and environmental harms) associated with it. Out of a possible score of 100, cannabis scored 20 compared to 55 for heroin 72 for alcohol, and 26 for tobacco. Figure 4 outlines the personal and social harms associated to each drug.²⁷

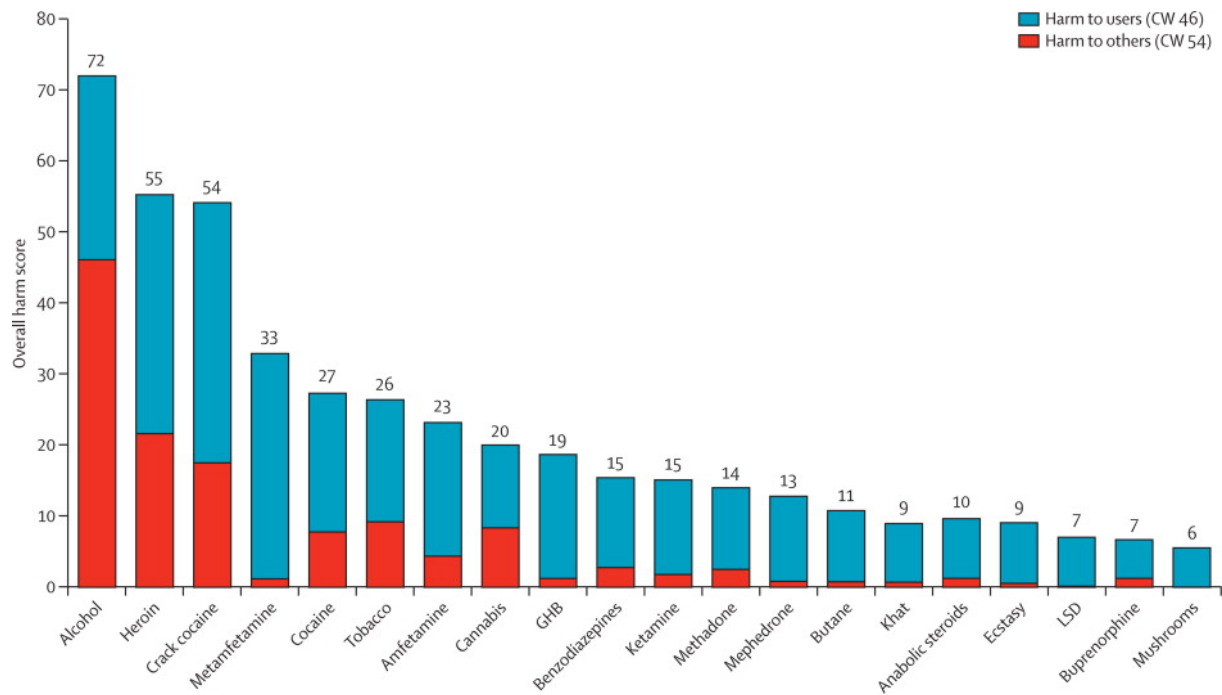
²⁴ Uporova, J. & Peacock, A., *ACT Drug Trends 2018: Key findings from the Illicit Drug Reporting System (IDRS) Interviews*, National Drug and Alcohol Research Centre, UNSW Australia, 2018, available at: <https://ndarc.med.unsw.edu.au/resource/australian-drug-trends-2018-key-findings-act-illicit-drug-reporting-system-idrs-interviews>.

²⁵ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2016-17*, July 2018, pp. 41-49, available at: https://www.acic.gov.au/sites/default/files/iddr_2016-17_050718.pdf?v=1536906944.

²⁶ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2016-17*, July 2018, pp. 41-49, available at: https://www.acic.gov.au/sites/default/files/iddr_2016-17_050718.pdf?v=1536906944.

²⁷ Penington Institute, *Submission 34*, 29 March 2019, p. 3.

Figure 4: Ranking of Common recreational Drugs in the United Kingdom - assessed by harm to user and harm to society.²⁸

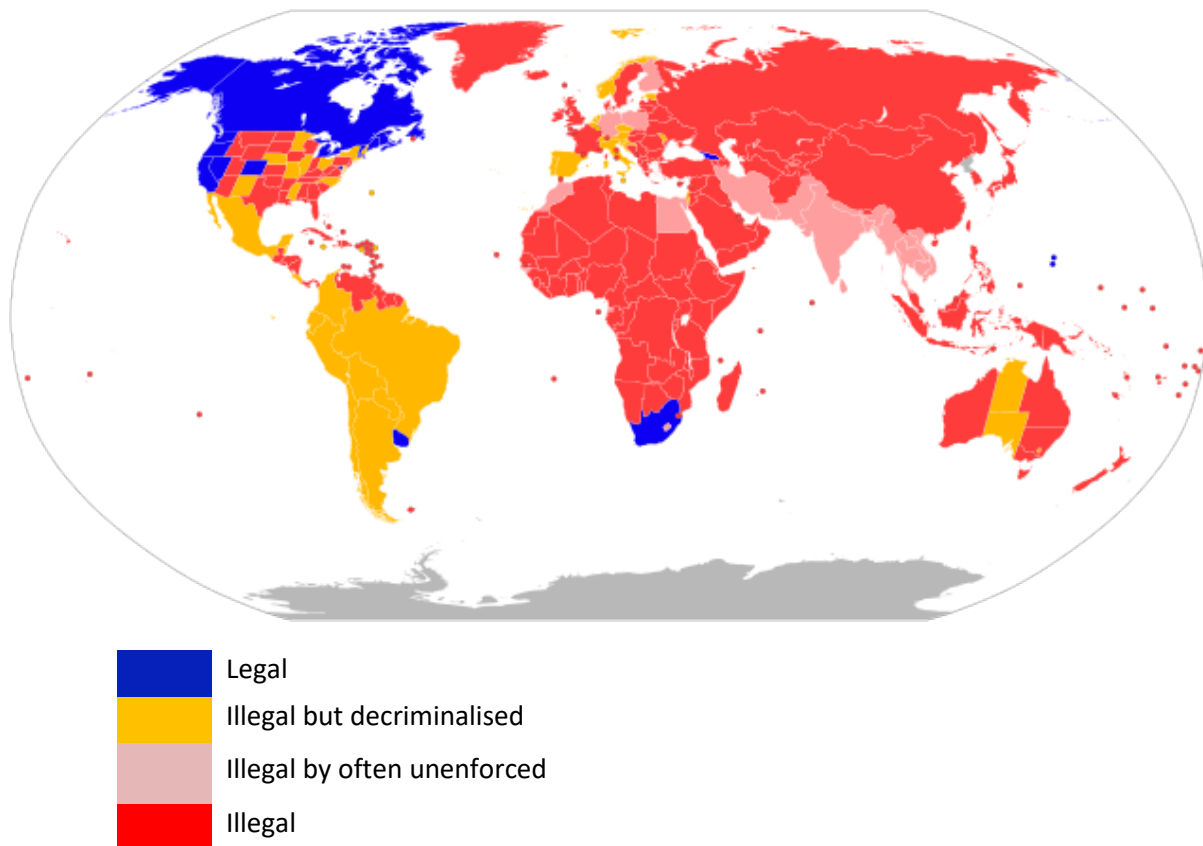


²⁸ Nutt, D. et al, *Drug Harms in the UK: a Multicriteria Decision Analysis*, The Lancet, Vol. 376(9752), 2010.

3 JURISDICTIONAL COMPARISON

- 3.1 The United Nations, Single Convention on Narcotic Drugs, 1961 (Convention) aims to combat drug abuse by coordinated international action. The first action is to limit the possession, use, trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes. The second action is to combat drug trafficking through international cooperation to deter and discourage drug traffickers.²⁹
- 3.2 The Committee notes that Australia is a participant of the Convention, in addition to a significant number of other countries. However, the Committee notes the growing trend of decriminalisation or legalisation of cannabis. Figure 5 provides a breakdown on the legal status of recreational cannabis use around the world.

Figure 5: Legal Status of Cannabis Possession for Non-Medical Use³⁰



²⁹ United Nations Office on Drugs and Crime, *Single Convention on Narcotic Drugs, 1961*, available at: <https://www.unodc.org/unodc/en/treaties/single-convention.html>.

³⁰ Wikipedia, *Legality Status of Cannabis Possession for Non-Medical Use*, 28 April 2019, available at: <https://en.wikipedia.org/wiki/File:Map-of-world-cannabis-laws.svg>.

URUGUAY

- 3.3 In December 2013, Uruguay was the first country to legalise the cultivation and possession of cannabis for recreational use by adult residents. In accordance with Uruguayan legislation, cannabis for recreational use can be obtained via registration with the national Institute for the Regulation and Control of Cannabis by choosing one of the three options: purchase in an authorised pharmacy, membership of a club or domestic cultivation. The quantity of cannabis permitted per person, obtained through any of the three mechanisms, cannot exceed 480 grams per year.³¹
- 3.4 Uruguayan legislation allows domestic cultivation for personal or shared use in a household, up to a maximum of six cannabis plants per household for personal consumption. As of the end of February 2018, 8,125 individuals had been registered for domestic cultivation, of whom 2,178 were authorised to grow cannabis in the period March 2017–February 2018.³²
- 3.5 Cannabis Clubs are also legalised in Uruguay. Each club can have a minimum of 15 and a maximum of 45 members and is allowed 99 plants in a flowering state. At the end of February 2018, the membership of cannabis clubs stood at 2,049 adults. Each club and its facilities are subject to the control of the Institute for the Regulation and Control of Cannabis.³³
- 3.6 Adults who are registered in the system can opt to buy quantities of cannabis from pharmacies of up to 10 grams per person, per week or 40 grams per month. Since July 2017, when the process of registering the pharmacies began, 16 pharmacies have been registered in the network of cannabis dispensing pharmacies.³⁴

CANADA

- 3.7 Under the Canadian *Cannabis Act 2018*, adults who are 18 years of age or older are able to:
- Possess up to 30 grams of legal cannabis, dried or equivalent in non-dried form in public;
 - Share up to 30 grams of legal cannabis with other adults;
 - Buy dried or fresh cannabis and cannabis oil from a provincially-licensed retailer;
 - In provinces and territories without a regulated retail framework, individuals are able to purchase cannabis online from federally-licensed producers;

³¹ United Nations Office on Drugs and Crime, *World Drug Report 2018, Booklet 3: Analysis of Drug Markets – Cannabis*, June 2018, p. 48, available at: <https://www.unodc.org/wdr2018/>.

³² United Nations Office on Drugs and Crime, *World Drug Report 2018, Booklet 3: Analysis of Drug Markets – Cannabis*, June 2018, p. 48, available at: <https://www.unodc.org/wdr2018/>.

³³ United Nations Office on Drugs and Crime, *World Drug Report 2018, Booklet 3: Analysis of Drug Markets – Cannabis*, June 2018, p. 48, available at: <https://www.unodc.org/wdr2018/>.

³⁴ United Nations Office on Drugs and Crime, *World Drug Report 2018, Booklet 3: Analysis of Drug Markets – Cannabis*, June 2018, p. 48, available at: <https://www.unodc.org/wdr2018/>.

- Grow, from licensed seed or seedlings, up to 4 cannabis plants per residence for personal use; and
 - Make cannabis products, such as food and drinks, at home as long as organic solvents are not used to create concentrated products.³⁵
- 3.8 The possession limits in the *Cannabis Act 2018* are based on dried cannabis. Equivalents were developed for other cannabis products to identify what the possession limit would be. One gram of dried cannabis is equal to:
- Five grams of fresh cannabis;
 - 15 grams of edible product;
 - 70 grams of liquid product;
 - 0.25 grams of concentrates (solid or liquid); and
 - One cannabis plant seed.³⁶
- 3.9 The *Cannabis Act 2018* has several measures that help prevent youth from accessing cannabis. These include both age restrictions and restricting promotion of cannabis. No person may sell or provide cannabis to any person under the age of 18. There are two criminal offences related to providing cannabis to youth, with maximum penalties of 14 years in jail:
- Giving or selling cannabis to youth; and
 - Using a youth to commit a cannabis-related offence.³⁷
- 3.10 The Government of Canada has committed close to \$46 million over the next five years for cannabis public education and awareness activities. These are to inform Canadians, especially youth, of the health and safety risks of cannabis consumption.³⁸
- 3.11 Although the *Cannabis Act 2018*, is a federal act, legalisation of cannabis use is still subject provincial or territorial restrictions. Figure 6 outlines the regulated retail framework by province.

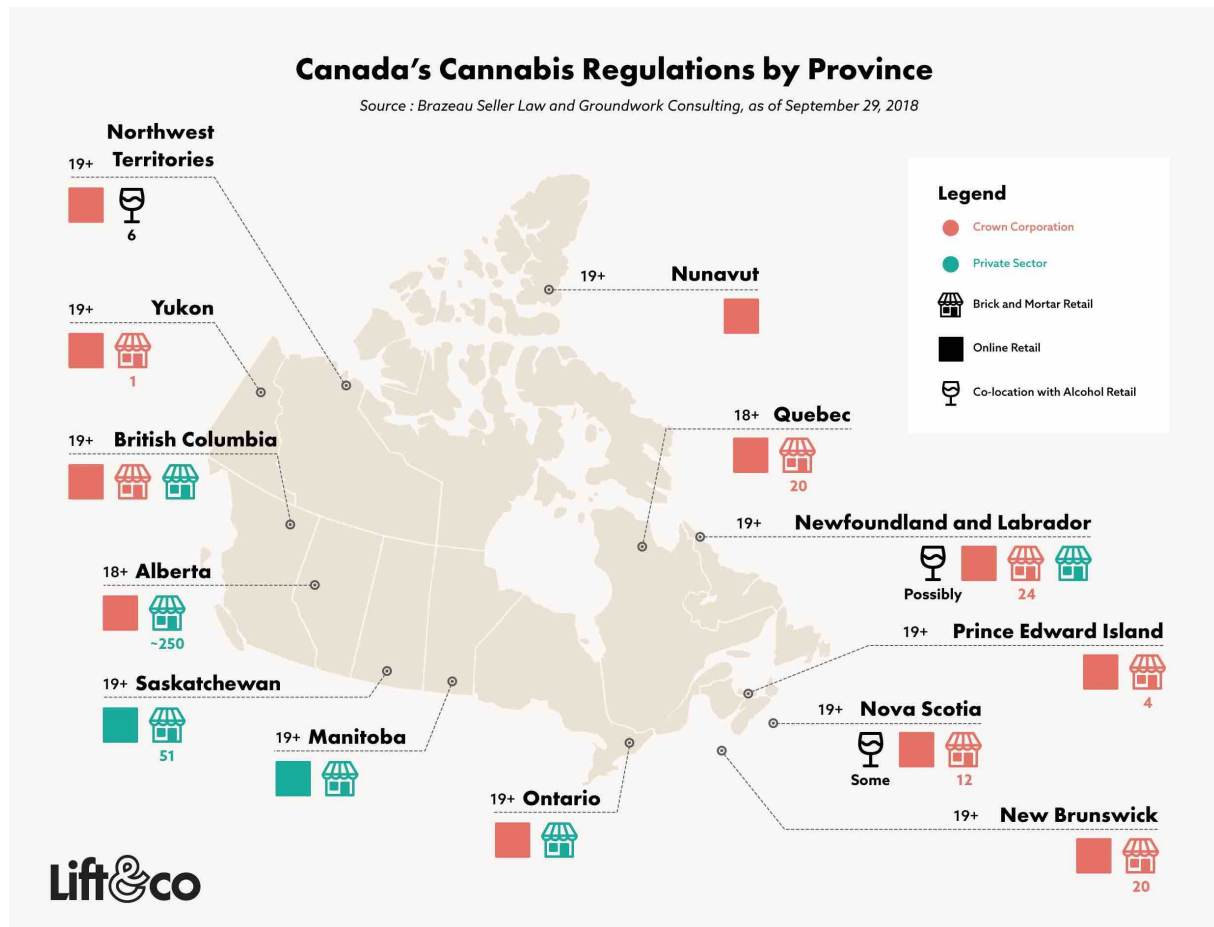
³⁵ Government of Canada, Department of Justice, *Cannabis Legalisation and Regulation*, 17 October 2018, available at: <https://www.justice.gc.ca/eng/cj-jp/cannabis/>.

³⁶ Government of Canada, Department of Justice, *Cannabis Legalisation and Regulation*, 17 October 2018, available at: <https://www.justice.gc.ca/eng/cj-jp/cannabis/>.

³⁷ Government of Canada, Department of Justice, *Cannabis Legalisation and Regulation*, 17 October 2018, available at: <https://www.justice.gc.ca/eng/cj-jp/cannabis/>.

³⁸ Government of Canada, Department of Justice, *Cannabis Legalisation and Regulation*, 17 October 2018, available at: <https://www.justice.gc.ca/eng/cj-jp/cannabis/>.

Figure 6: Canada's Cannabis Regulations by Province³⁹



3.12 The United Nations Office on Drugs and Crime, *World Drug Report 2018*, noted that comparatively high levels of cannabis use has been reported in Canada. In 2015, 14.7 per cent of the population aged 15 years and older reported using cannabis. This is up 10.7 per cent in 2013 and 9.1 per cent in 2011.⁴⁰

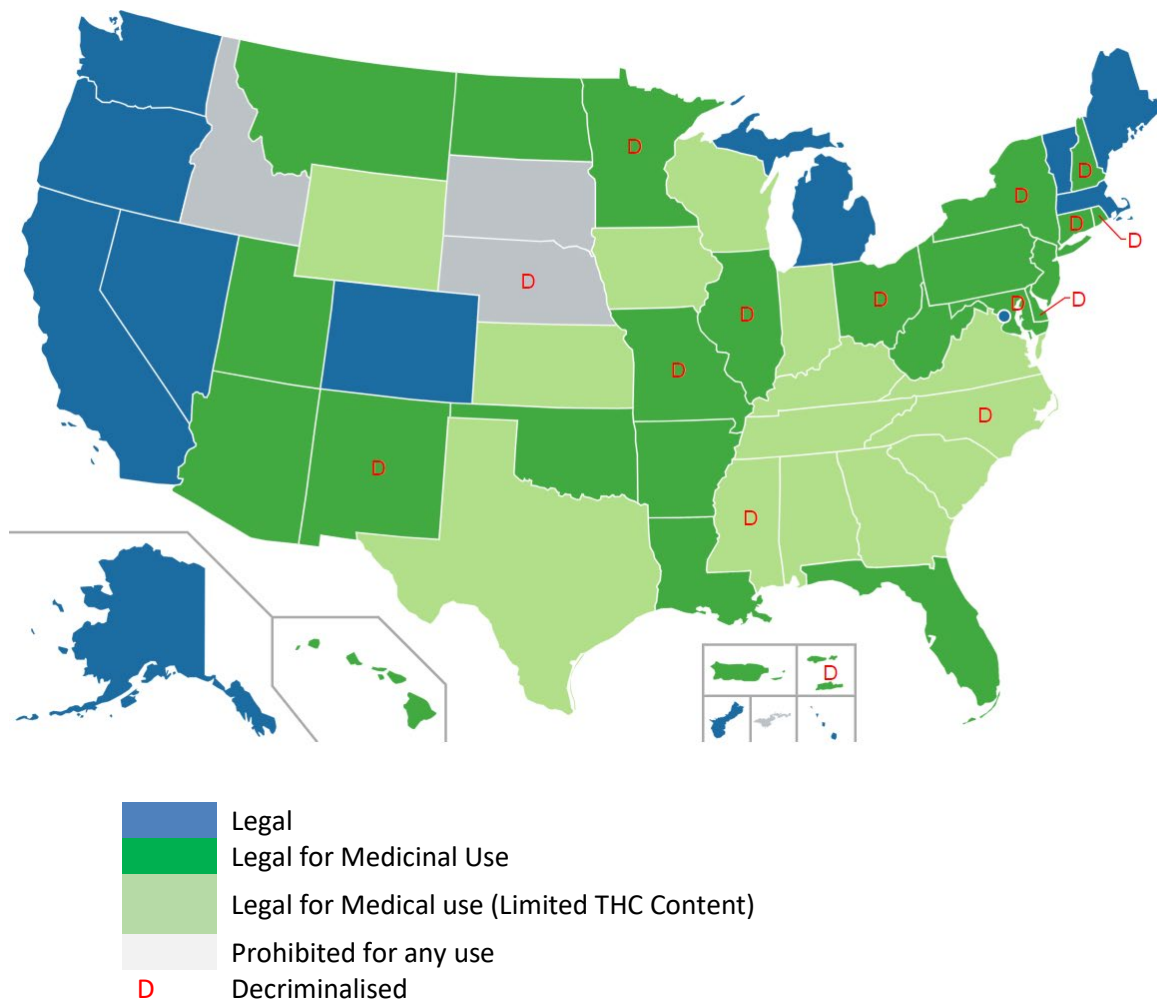
³⁹ Life&Co Magazine, *Guide to Canada's Cannabis Legalisation Laws by Province*, 15 August 2018, available at: <https://lift.co/magazine/cannabis-provincial-guidelines>.

⁴⁰ United Nations Office on Drugs and Crime, *World Drug Report 2018, Booklet 3: Analysis of Drug Markets – Cannabis*, June 2018, p. 43, available at: <https://www.unodc.org/wdr2018/>.

UNITED STATES OF AMERICA

3.13 As of 2018, 10 states within the United States of America (United States) and the District of Columbia have legalised small amounts of cannabis for adult recreational use, and 14 states have decriminalised small amounts of cannabis.⁴¹ In addition to the legalisation and decriminalisation of recreational cannabis, 34 states have legalised cannabis for medicinal purposes.⁴² Figure 7 provides an outline of state laws on cannabis within the United States.

Figure 7: Map of United States of America State Cannabis Laws⁴³



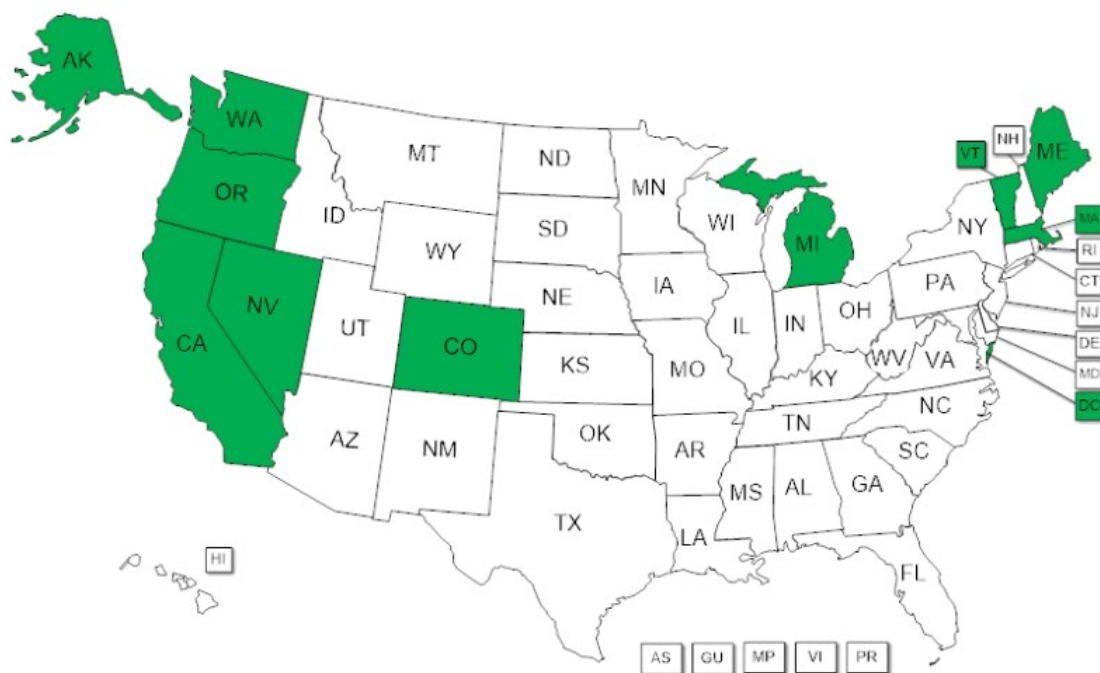
⁴¹ National Conferences of State Legislatures, *Marijuana Overview*, 14 December 2018, available at: <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

⁴² National Conference of State Legislatures, *State Medical Marijuana Laws*, 05 May 2019, available at: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

⁴³ Wikipedia, *Map of United States of America State Cannabis Laws*, 04 April 2019, available at: https://commons.wikimedia.org/wiki/File:Map_of_US_state_cannabis_laws.svg

3.14 The Committee noted that 10 states and the District of Columbia have legalised small amounts of cannabis for adult recreational use. Colorado and Washington approved adult-use recreational cannabis measures in 2012. Alaska, Oregon and the District of Columbia followed suit in fall of 2014. In 2015, Ohio voters defeated a ballot measure that addressed commercial production and sale of recreational cannabis. In 2016, voters in four states, California, Maine, Massachusetts and Nevada, approved adult-use recreational cannabis, while voters in Arizona disapproved. In 2018, Michigan voted to legalise, regulate, and tax cannabis in the state. In 2018, Vermont became the first state to legalise cannabis for adult use through the legislative process rather than a ballot initiative.⁴⁴ Figure 8 provides an outline of the states within the United States that have legalised cannabis for recreational purposes.

Figure 8: States that have Legalised Recreational Cannabis for Adults.⁴⁵



3.15 As stated in Mr Pettersson MLA's speech in the Legislative Assembly on 28 November 2018, the Committee noted that the Bill presented by Mr Pettersson MLA 'closely aligns with the Vermont model'.⁴⁶

⁴⁴ National Conference of State Legislatures, *Marijuana Overview*, no date, available at: <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

⁴⁵ National Conference of State Legislatures, *Marijuana Overview*, no date, available at: <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

⁴⁶ Mr Michael Pettersson MLA, *Legislative Assembly Hansard*, 28 November 2018, p. 4942.

3.16 The Vermont cannabis legislation, which was passed in January 2018, removes criminal penalties for:

- The possession of one ounce (28.4 grams) of cannabis and two mature and four immature cannabis plants by adults 21 years of age or older;
- Any cannabis harvested from the plants allowed does not count toward the one-ounce possession limit;
- Each dwelling unit is limited to two mature cannabis plants and four immature cannabis plants;
- Consumption of cannabis in a public place or in a vehicle is prohibited;
- Various crimes are related to dispensing cannabis to a person under 21 years of age, enabling cannabis consumption by a person under 21 years of age, and using cannabis in a vehicle while in the presence of a person under 18 years of age.⁴⁷

3.17 As quoted in the United Nations Office of Drugs and Crime, *World Drug Report 2017*, data from the *National Survey on Drug Use and Health*, highlighted that the past-month prevalence of cannabis use among the population aged 12 years and older in the United States increased from 6.2 per cent in 2002 to 8.3 per cent in 2015, with an estimated 22 million people aged 12 years and older being current (past-month) cannabis users in 2015.⁴⁸

3.18 Since 2008, there has been a consistent year-on-year increase in cannabis use among the population aged 12 years and older, particularly in those states that currently allow the production and sale of cannabis for recreational use among adults. The increase in cannabis use, although not in all states, can also be seen in those states that have not legalised recreational use of cannabis.⁴⁹

3.19 Overall, the increasing trend in cannabis use is considered to be associated with provisions of medical cannabis, with the evidence suggesting an overall reciprocal relationship between social attitudes and cannabis use patterns.⁵⁰

⁴⁷ H.511 (Act 86), *An Act Relating to Eliminating Penalties for Possession of Limited Amounts of Marijuana by Adults 21 years of age or Older*, Act Summary.

⁴⁸ United Nations Office on Drugs and Crime, *World Drug Report 2017, Booklet 3: Analysis of Drug Markets – Cannabis*, May 2017, pp. 49-50, available at: <https://www.unodc.org/wdr2017/>.

⁴⁹ United Nations Office on Drugs and Crime, *World Drug Report 2017, Booklet 3: Analysis of Drug Markets – Cannabis*, May 2017, pp. 49-50, available at: <https://www.unodc.org/wdr2017/>.

⁵⁰ United Nations Office on Drugs and Crime, *World Drug Report 2017, Booklet 3: Analysis of Drug Markets – Cannabis*, May 2017, pp. 49-50, available at: <https://www.unodc.org/wdr2017/>.

4 ISSUES RAISED

CULTIVATION OF CANNABIS PLANTS

- 4.1 *Cannabis: Evolution and Ethnobotany* highlights the key environmental factors influencing growth and development of cannabis plants as sunlight, temperature, moisture and soil condition. Cannabis plants are thermophilic (warmth-loving) and heliotropic (sun-loving), which thrive best in exposed places where it does not have to compete for available sunlight. Cannabis can become acclimated to high temperatures if sufficient water and nutrients are available but does not tolerate extreme cold. Seedlings and young plants are more frost resistant than plants nearing maturity.⁵¹
- 4.2 *Cannabis: Evolution and Ethnobotany* also noted that cannabis produces unisexual male or female flowers that develop on separate plants. However, co-sexual monoecious or hermaphrodite examples with both sexes produced on one plant can occasionally occur. Soon after pollen is shed, the male plant dies. The female plant may mature for up to five months after viable flowers are formed if little or no fertilization occurs and if it is not killed by frost, pests or disease. Fresh and full mature seeds approach 100 per cent viability, but this decreases with age. For example, usually at least 50 per cent of seeds will germinate after three to five years of storage at room temperature, but without refrigeration, viability of seeds rarely exceeds 10 years.⁵²
- 4.3 Consequential amendments to Section 618(2) of the *Criminal Code 2002* include:
- Substitute*
- (2) A person commits an offence if the person –
- a) Cultivates (artificially or otherwise) 5 or more cannabis plants; or
- b) Artificially cultivates 1 to 4 cannabis plants
- Maximum penalty: 200 penalty units, imprisonment for 2 years or both.⁵³
- 4.4 The Committee noted that in the Bill, there appears to be no specific distinctions made with regards to the plants. Particular determinations around male and female cannabis plants was noted as absent in the Bill. In response to this observation, Mr Pettersson MLA stated that as the Bill currently stands, an individual can possess four cannabis plants. This limit would allow an individual to cultivate both male and female plants.⁵⁴

⁵¹ Clarke, R. & Merlin, M. *Cannabis: Evolution and Ethnobotany*, University of California Press, 1 September 2013, pp. 13-17.

⁵² Clarke, R. & Merlin, M. *Cannabis: Evolution and Ethnobotany*, University of California Press, 1 September 2013, pp. 13-17.

⁵³ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Schedule 1, Part 1.1, Section 618(2).

⁵⁴ Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, p. 5.

4.5 Mr Pettersson MLA also noted that the proposed amendments by the Government recommend a limit of two cannabis plants per individual and a limit of four cannabis plants per household. Noting the proposed amendments, Mr Pettersson MLA suggested that people would not face limitations with a household limit of four plants.⁵⁵

4.6 A submission received by the Committee highlighted the specificity regarding numbers of plants an individual could grow was not a central point when considering legalisation of cannabis. The submission goes on to state:

Don't get hung up on the number of plants a person can grow. Recently a gentleman was sentenced for growing over 200 plants, but his use was totally compassionate. I don't believe he should have been prosecuted at all. He can no longer assist all the people who were using his medicine before he was caught. Is this a fair and reasonable outcome from the legislation?

How do you compare someone like the gentleman above, with someone who grows 4 plants and uses those to attract clients whom they then up-sell with methamphetamine. Obviously two extremely different outcomes, but the law doesn't distinguish between them. It is time for the law to have some intelligence.⁵⁶

4.7 Noting that Government's proposed amendment to reduce the limit to two plants per individual and four plants per household, ACT Policing also highlighted that more than two plants would have the potential to have commercial quantities of cannabis grown. ACT policing subsequently noted actions taken by the Commonwealth, *Criminal Code Regulations 2002*, where cannabis possession is quantified by number of plants or weight.⁵⁷

4.8 Families and Friends for Drug Law Reform also highlighted that in the 1996 Penington report to the Victorian Government, it was recommended that cultivation of up to five cannabis plants per household for personal use should no longer be an offence. The Penington report justified this number as cannabis was seen as best supplied as a cottage occupation rather than as a commercial transaction.⁵⁸

4.9 In a response to a supplementary questions, the ACT Government advised the Committee that the Government is proposing a two plant per person limit and four plant "per premises" limit because:

For individuals, a limit of two plants is consistent with the current threshold used in the Simple Cannabis Offence Notice scheme. The Government considers this to be a reasonable limit for an individual. The Government is proposing an additional

⁵⁵ Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, p. 5.

⁵⁶ Name withheld, *Submission 23*, 21 March 2019, p. 5.

⁵⁷ ACT Policing, *Submission 28*, 21 March 2019, p. 10.

⁵⁸ Families and Friends for Drug Law Reform, *Submission 30*, 21 March 2019, p. 25.

restriction of no more than four plants per household to prevent the possibility of legal 'grow houses' being formed.⁵⁹

- 4.10 Additionally, the ACT Government advised that the premise will be determined by where an individual lives. The ACT Government also reassured the Committee that legal cultivation on a person's premise will include renters.⁶⁰

COMMITTEE COMMENT

- 4.11 The Committee notes that the ACT Government will be presenting amendments to reduce the amount of plants that can be cultivated to a maximum of two per individual and four per resident. The Committee acknowledges that these restrictions have been proposed to reduce the risk of large scale 'grow houses' occurring. However, the Committee is of the opinion that increasing the number of plants an individual can cultivate to a maximum of four is more realistic given that not all cultivation of plants will be successful and that there is only a limited period which plants can be grown outside in Canberra.
- 4.12 The committee is also concerned about how the "per premises" limit would be interpreted and enforced and the potential that residents in share houses might not have the rights that other Canberra people do.

Recommendation 2

- 4.13 The Committee recommends that consequential amendment [1.2] (Section 168(2) of the *Criminal Code 2002*), in the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, be amended to increase the number of plants an individual can cultivate to a maximum of four, and the number of plants a household can cultivate to a maximum of six.**

CULTIVATION OF CANNABIS PLANTS IN PUBLIC

- 4.14 Consequential amendments to Section 618(2) of the *Criminal Code 2002* include:

Substitute

- (3) A person commits an offence if the person –
- c) Cultivates (artificially or otherwise) 5 or more cannabis plants; or
 - d) Artificially cultivates 1 to 4 cannabis plants

⁵⁹ ACT Government, *Answer to Supplementary Question on Notice No. 1*, 20 May 2019, p. 1.

⁶⁰ ACT Government, *Answer to Supplementary Question on Notice No. 1*, 20 May 2019, p. 1.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.⁶¹

4.15 The Law Society of the ACT (Law Society) noted in their submission, that in addition to limitation of the plants per household, the Bill should be revised to provided clarification on:

- The height and weight restrictions (if any) for cultivated cannabis plants; and
- The location(s) in which cannabis plants cannot be cultivated (if any) (i.e. a community garden or in the grounds of the Alexander Maconochie Centre).⁶²

4.16 With regards to the locations in which cannabis plants cannot be cultivated, a submission provided by the Canberra Organic Growers' Society, identified concern with the ambiguity around cultivation locations. Two key concerns were raised; the safety of children and the safety of Canberra Organic Growers' Society gardens.⁶³

4.17 The Canberra Organic Growers' Society advised the Committee that they have a number of families with small children that visit the gardens as a family. In the event that cannabis can be cultivated in these community gardens, the Canberra Organic Growers' Society believes there is a risk of children consuming cannabis while visiting a community garden.⁶⁴

4.18 Additionally, the Canberra Organic Growers' Society noted that their gardens have been intermittently broken into. With the option to cultivate in a community garden setting, there could be a perceived increase in theft of cannabis plants from community gardens.⁶⁵

4.19 However the Committee notes that Canberra Organic Growers' Society has an existing set of rules (<https://www.cogs.asn.au/gardens/garden-rules/>) and is of the belief that Canberra Organic Growers' Society will be able to prohibit cannabis growing if it chooses in the same way that it prohibits 'cultivation of canes and other invasive species, including prohibition of particular plants'.

4.20 Alternatively, Winnunga Nimmityjah Aboriginal Health and Community Services advocated for the availability of cannabis cultivation and personal use at the Alexander Maconochie Centre, stating that:

I really believe that we should be able to change the laws, but on the other hand we have tobacco. That is a legal substance that people do not want because of the health impacts. They are trying to stop that. They have stopped it in prisons around the country and it has had a disastrous impact. I think that what we would do is create another underbelly. That is what we have done in other jurisdictions, because tobacco has become contraband. I wrote to Minister Rattenbury when I first heard about this

⁶¹ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Schedule 1, Part 1.1, Section 618(2).

⁶² Law Society of the ACT, *Submission 26*, 21 March 2019, p. 5.

⁶³ Canberra Organic Growers' Society, *Submission 35*, 21 March 2019, pp. 1-2.

⁶⁴ Canberra Organic Growers' Society, *Submission 35*, 21 March 2019, pp. 1-2.

⁶⁵ Canberra Organic Growers' Society, *Submission 35*, 21 March 2019, pp. 1-2.

inquiry and suggested that we allow the detainees in the Alexander Maconochie Centre to grow two plants each for their own personal use.⁶⁶

COMMITTEE COMMENT

- 4.21 The Committee notes that there is ambiguity regarding where plants can and cannot be cultivated. The Committee further notes that the ACT Government has drafted amendments making it an offence if a person cultivates a cannabis plant and the cannabis plant is cultivated at a place other than where the person lives.⁶⁷ Further consideration of cultivation beyond the residence is discussed in the [Cannabis Social Club](#) section of the report.

ARTIFICIAL CULTIVATION OF CANNABIS PLANTS

- 4.22 Section 162 of the Bill states:

(1) In this section:

Artificially cultivate means –

- a) Hydroponically cultivate; or
- b) Cultivate with the application of an artificial source of light or heat.

Cultivates has the meaning given in the Criminal Code, section 615 but does not include artificially cultivate.⁶⁸

- 4.23 The Committee noted that Section 162 of the Bill does not include artificial cultivation of cannabis plants. Section 162 goes on to define artificial cultivation as hydroponically cultivate or cultivate with the application of an artificial source of light or heat.⁶⁹
- 4.24 A number of submission provided to the Committee highlighted that the prohibition placed on artificial cultivation is restrictive for individuals residing in apartments. Particular reference was made to apartments where limited lighting is available in the allocated outdoor space.⁷⁰
- 4.25 In particular, the Penington Institute noted that:

Not allowing indoor plants or those assisted with lamps seems unfair and unrealistic to the many Canberrans who live in apartments or do not have backyards, particularly from lower socio-economic backgrounds. Further, if those Canberrans living in an

⁶⁶ Mr John Stanhope, Winnunga Nimmitjyah Aboriginal Health and Community Services, *Proof Transcript of Evidence*, 29 March 2019, p. 64.

⁶⁷ ACT Government, Draft Amendments, *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019*, Section 171AAB.

⁶⁸ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 162.

⁶⁹ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 162.

⁷⁰ See, for Example, *Submission 19-21* and 29, 21 March 2019.

apartment wish to purchase cannabis (because they cannot grow it), they are liable to criminalisation for this.

Amending the Act to allow indoor cultivation while retaining a clear distinction between cultivating cannabis for personal use and commercial gain solves this problem.⁷¹

- 4.26 The National Drug Research Institute, advised the Committee that, as a result of a survey of 403 Australian growers, they found that 28.5 per cent grew indoor plants in soil (not hydroponics) but under artificial light.⁷²
- 4.27 The Alcohol, Tobacco and other Drug Association ACT (ATODA) also noted that recent research revealed that among a sentinel population of Canberra people who have recently used drugs, hydroponic cannabis remains the form most commonly used in the preceding month. 83 per cent of those surveyed identified as using hydroponic cannabis, whereas only 16 per cent identified as using outdoor cannabis.⁷³
- 4.28 With regards to artificial cultivation, the National Drug Research Institute informed the Committee of the characteristics of an artificially cultivated cannabis plant. The Committee was advised that the number of crops grown per year can be controlled through the amount of light provided to the plants. In addition to growth being controlled, artificial cultivation allows the grower to stop female plants being fertilised early, as well as female plants changing gender.⁷⁴
- 4.29 As indoor cultivation was identified as a more controlled environment which is more likely to produce more output as a total, the National Drug Research Institute recommended that if artificial cultivation is to be excluded it should simply be based on growing them in a non-soil medium, as there are clear benefits to artificial (indoor) cultivation.⁷⁵
- 4.30 Penington Institute also advocated for the inclusion of artificial cultivation, stating that:
- A positive amendment to the bill would be to allow indoor cultivation. Artificial light is an acceptable way of cultivating cannabis; I do not think it requires sunlight. Requiring people that live in congested circumstances near their neighbours to have access to sunlight is probably putting them at risk of break-in. Canberra weather being what it is, it leaves them with one crop cycle for the year, so it is just not feasible for people to maintain a supply over the year with only 50 grams.
- To my mind, the solution would be to allow indoor cultivation with artificial light. I am agnostic about whether that extends to hydroponic cultivation. Soil cultivation with

⁷¹ Penington Institute, *Submission 34*, 29 March 2019, p. 6.

⁷² National Drug Research Institute, *Submission 19*, 21 March 2019, p. 7.

⁷³ Alcohol, Tobacco and other Drug Association ACT, *Submission 29*, 21 March 2019, p. 4.

⁷⁴ Professor Simon Lenton, Director, National Drug Research Institute, *Transcript of Evidence*, 26 March 2019, p. 23.

⁷⁵ Professor Simon Lenton, Director, National Drug Research Institute, *Transcript of Evidence*, 26 March 2019, p. 24.

artificial light should be allowed partly for climatic reasons and partly for people living in highly dense areas. I am thinking of people living in public housing.⁷⁶

- 4.31 The ACT Greens proposed amendments also support the inclusion of artificial cultivation. The use of indoor growing methods such as hydroponics or artificial light was identified as a necessity due to Canberra's climate not being conducive to growing plants outside all year round.⁷⁷

COMMITTEE COMMENT

- 4.32 The Committee notes that evidence provided throughout the course of the Committee's Inquiry advocated for the inclusion of artificial cultivation in the Bill. Particular reference to Canberra's climate not being able to sustain outdoor cannabis, as well as the restrictions on individuals residing in apartments was brought to the Committee's attention.
- 4.33 The Committee further notes that the terminology of artificial cultivation includes a vast array of considerations including; soil, artificial light, as well as hydroponic. Due to the number of approaches that can be taken in regards to artificial cultivation, the Committee believes that artificial cultivation, consisting of soil cultivation with artificial light should be considered to ensure the needs of the ACT can be met.

Recommendation 3

- 4.34 The Committee recommends that an amendment be included in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, to allow for soil cultivation in a greenhouse and/or with artificial light.**

PROVISION OF CANNABIS SEEDS

- 4.35 A number of submission noted that the process in which an individual accesses cannabis seeds was not addressed in the Bill. An individual submission provided to the Committee suggested that the inclusion of a not-for-profit community exchanges could mitigate this issue. In addition this community exchange could also assist individuals seeking a specific strain or potency.⁷⁸

⁷⁶ Mr John Ryan, Chief Executive Officer, Penington Institute, *Transcript of Evidence*, 29 March 2019, p. 58.

⁷⁷ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 20 March 2019, p. 1.

⁷⁸ Name Withheld, *Submission 20*, 21 March 2019, p. 3.

- 4.36 The Alcohol and Drug Foundation noted that the Bill is silent on how an individual who wants to grow cannabis would gain access to cannabis seeds if they don't already have some. The Alcohol and Drug Foundation further stated that:

Technically the Bill is silent on how an individual who wants to grow cannabis but does not already possess seeds or plants can gain them; similarly, it is silent on how people who wish to consume legal cannabis without the knowledge and technical skills to cultivate a crop will source a supply.⁷⁹

- 4.37 Throughout the public hearing process, the Committee enquired into the provisioning of cannabis seeds, which would allow individuals to grow cannabis plants for personal use. During evidence provided in a public hearing, Mr Pettersson MLA advised the Committee that the process regarding the provisioning of cannabis seeds would remain the same. That being, through illegal means and subsequently, through the black market.⁸⁰

- 4.38 However, Mr Pettersson MLA stressed that although individuals would still need to purchase cannabis seeds illegally, the provisions within in the Bill "creates a pathway for individuals who do not wish to continue in the long run interacting with drug dealers to remove themselves from that cycle."⁸¹

- 4.39 The Committee noted that if the number of plants was restricted to two per individual, as proposed in the ACT Government amendments, then many individuals could find it hard to grow their own viable seeds.

- 4.40 The ACT Policing submission also noted that the Bill remained silent on how potential grower's access seeds or cuttings in order to cultivate their plants. Policing ACT stated that:

Currently, under the *Criminal Code 2002* (ACT) it is an offence to traffic a controlled drug, including cannabis and its seeds. Without specific provisions in the Bill regarding seeds or the provision of cuttings for cultivation, this will cause significant enforcement issues for ACT Policing.⁸²

- 4.41 The Law Society further noted that:

The other concern is that unless there is some legalisation in relation to obtaining seed, it seems that the legislation itself may be promoting criminal activity because there would have to be what would still constitute trafficking cannabis: the person receiving the drug is not the person guilty of that offence but they are at least promoting the

⁷⁹ Alcohol and Drug Foundation, *Submission 24*, 21 March 2019, p. 3.

⁸⁰ Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, p. 3.

⁸¹ Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, p. 3.

⁸² ACT Policing, *Submission 28*, 21 March 2019, p. 10.

offence by purchasing the drug to cultivate their own plants, which will be lawful for them to do.⁸³

- 4.42 Noting the ambiguity regarding the lawful access to cannabis seeds, the Committee asked the ACT Government how ACT residents can legally access seeds under this Bill. In response the ACT Government advised that:

There is no mechanism for the legal supply of cannabis plants or seeds provided for in the Private Member's Bill or the Government's proposed amendments. ACT residents that wish to legally cultivate their own cannabis plants would need to do so using plants or seeds they already possess.

- 4.43 In a response to a supplementary question, the ACT Government informed the Committee that they are not considering amendments that would legalise the supply of cannabis, whether through clubs, dispensaries or other channels. The ACT Government also asserted that supply offences will apply regardless of whether the exchange involves financial consideration.⁸⁴
- 4.44 In a submission provided by Mr John Savage, it was recommended that an amendment to the Bill be made to allow four plants over half a metre in height but also allow up to 12 seedlings under half a metre in height. This process, as well as the legalisation of artificial cultivation would allow adept growers to germinate seeds and prepare advanced seedlings that can be passed on to grow to maturity.⁸⁵
- 4.45 In their submission to the Inquiry, the Law Society recommended an amendment be made to consequential amendment [1.2] (section 618(2) of the *Criminal Code 2002*) to provide for a name of a legal supplier(s) of cannabis plant seeds or the name and location of a legal central seed depository. The law Society also noted that Mr Petterson's Bill did not include a provision for a legal seed depository because it would contravene Commonwealth laws.⁸⁶

COMMITTEE COMMENT

- 4.46 The Committee notes that the Bill, as it currently stands, is silent on the provisions of cannabis seeds. The Committee further notes that evidence provided by Mr Pettersson MLA highlights the need for individuals to illegally obtain cannabis seeds. The Committee believes that the illegal provision of cannabis seeds to legally grow cannabis is in direct conflict with the Bill's purpose. However given that provision of seed by one person to another person would be legally supply under commonwealth law, the Committee does not know how to resolve this issue.

⁸³ Mr Michael Kukulies-Smith, Chair, Criminal Law Committee, Law Society of the ACT, *Transcript of Evidence*, 29 March 2019, p. 49.

⁸⁴ ACT Government, *Answer to Supplementary Question on Notice No. 1*, 20 May 2019, p. 1.

⁸⁵ Mr John Savage, *Submission 27*, 21 March 2019, p. 1.

⁸⁶ Law Society of the ACT, *Submission 26*, 21 March 2019, p. 5.

POSSESSION OF CANNABIS

4.47 Section 171AA(2) of the Bill states that:

(2) A person commits an offence if the person possesses more than 50g of cannabis.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.⁸⁷

4.48 In their submission to the Committee's Inquiry, Street Law raised concern with the definition around possession. Specifically, Street Law noted that the Macquarie Dictionary (Fourth Edition) defines 'possess' as 'to have as property; to have belonging to one'. As such, Street Law believes that if someone were to grow up to five cannabis plants at their home, they would possess more the 50 grams of cannabis.⁸⁸

4.49 Uncertainty regarding the weight limit of 50 grams being applied to the legal cultivation of one to four cannabis plants was also raised by the Law Society. In particular, the Law Society noted that, as an individual plant can harvest more than 50 grams, the individual is unintentionally contravening Section 171AA(2).⁸⁹

4.50 The Committee notes that the proposed amendments provided by the Government stated that:

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

Dry cannabis would still be subject to the 50 gram limit as included in the Bill. The Government will move to include a separate limit of 150 grams for fresh (or 'wet') cannabis that would be applicable to cannabis that has been harvested but not yet dried. This limit has been selected primarily on the basis that it would limit individuals from potentially possessing amounts of dry and wet cannabis that would approach the threshold for a trafficable quantity.⁹⁰

4.51 While receiving evidence from Mr Pettersson MLA, the Committee enquired into the stages at which the 50 grams apply, when the cannabis plant stops being a plant and when the restriction of 50 grams apply. In response to these queries, Mr Pettersson MLA reiterated the Governments proposed amendments, noting that:

I am aware of amendments coming forward that would create a wet limit as well as a dry limit. At that point, you would have different categorisation. You would have the plant itself, which is not weighed. You would have the wet limit, which are cuttings that

⁸⁷ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 171AA(2).

⁸⁸ Street Law, *Submission 22*, 21 March 2019, p. 4.

⁸⁹ Law Society of the ACT, *Submission 26*, 21 March 2019, p. 3.

⁹⁰ Mr Andrew Barr MLA, Chief Minister, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 18 March 2019, p. 3.

have been prepared. Then you would also have the dry limit. I guess that you would have three different categories that would be used to get your total.⁹¹

4.52 The Committee noted that the position of the Government and information provided by Mr Pettersson MLA highlighted three stages of weighting. However, the Committee did note that there does not appear to be a clear distinction between the plant itself being unweighted and whether the weighting is applied when the plant is removed from the soil.

4.53 Evidence provided by Mr Rattenbury MLA, in his capacity as Leader of ACT Greens, also highlighted concerns with the weight considerations, noting that:

Clearly, there are some really important definitional questions to be sorted out about, whether it is 50 grams or 150 grams, what that is based on. Obviously, if you plucked a whole plant out of the ground and included the roots and all those sorts of things, the weight would be much more, versus if you are talking about dried parts and the like. That is an area in which I believe the government is preparing some amendments, and I think it is very important that we have that clarified as part of refining this legislation before the Assembly could pass it.⁹²

4.54 Similar concerns were raised by the Law Society, which identified issues with the 50 gram weight and the possibility that if a person had up to four plants they could easily exceed the 50 grams in harvested product from those plants. Additionally, the Law Society identified the potential for failed cultivation due to Canberra weather as another issue with the 50 gram limit. It was questioned if a plant or plants die, the leaves fall off and the person retains these leaves, would they be found criminally liable because the product they retained exceeds the 50 grams. Should an individual be found criminally liable when a plant or plants they were lawfully growing perish?⁹³

4.55 The Committee notes that draft amendments provided by the ACT Government distinguishes the difference between wet and dry cannabis. The Committee further notes that the draft amendments identify a limit of 50 grams for dried cannabis and 150 grams of cannabis that has been harvested from the plant, which is not dried or is a mixture of dried and not dried cannabis.⁹⁴

⁹¹ Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, pp. 5-6.

⁹² Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Proof Transcript of Evidence*, 03 May 2019, p. 88.

⁹³ Mr Michael Kukulies-Smith, Chair, Criminal Law Community, Laws Society of the ACT, *Transcript of Evidence*, 29 March 2019, p. 49.

⁹⁴ ACT Government, Draft Amendments, *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 171AA(2).

COMMITTEE COMMENT

- 4.56 The Committee notes that there does appear to be uncertainty around what the 50 gram possession limit includes. The Committee believes that plant weight, wet weight, as well as dry weight should be separately defined. It should also be clarified that these weights refer to harvested plant matter, in other words, a living plant is simply counted as one plant regardless of its size.

Recommendation 4

- 4.57 The Committee recommends that Section 171AA(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill be amended to define plant weight, wet weight, dry weight and any other format in which cannabis can be possessed.**

Recommendation 5

- 4.58 The Committee recommends that the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 should also clarify that, while growing a plant, it is counted as a plant and its weight is not relevant for the purposes of this legislation.**

Recommendation 6

- 4.59 The Committee recommends that if artificial cultivation is not allowed, the dry weight (or equivalent) allowable be expanded to 100 grams as in South Australia.**

SIMPLE CANNABIS OFFENCE NOTICES

- 4.60 Currently the *Drugs of Dependence Act 1989* stipulates that a SCON scheme allows police to issue a penalty order fine to a person to possess up to 50 grams of dried cannabis, or two naturally cultivated cannabis plants, where the police deem the cannabis to be for personal use only. If the fine is paid within 60 days, no criminal record will be recorded.⁹⁵ In relation to a simple cannabis offence, the prescribed penalty is \$100.00.⁹⁶

⁹⁵ ACT Policing, *Drugs and the Law*, no date, available at: <https://police.act.gov.au/safety-and-security/alcohol-and-drugs/drugs-and-law>.

⁹⁶ *Drugs of Dependence Act 1989*, Section 171A(8).

- 4.61 Over the past five financial years, 441 cannabis offences were cleared by SCONs. ACT Policing advised the Committee that passage of the Bill in its current state will remove this option for the diversion of simple cannabis offenders away from the criminal justice system.⁹⁷
- 4.62 However, evidence provided by Families and Friends for Drug Law Reform noted that:
- 25 per cent of the cannabis consumer arrests were occasions on which people were issued with a simple cannabis offence notice. Only 25 per cent were given that notice. The remaining 75 per cent were charged with a criminal offence. So we would certainly see that the SCON system is not working as well as it should.⁹⁸
- 4.63 The ACT Greens also noted the statistics regarding SCONS. In particular, the ACT Greens noted that a significant proportion of those who are interacting with the criminal justice system due to cannabis possession, are in fact going through the more serious side of the system. Such actions put people into a criminal frame, which the ACT Greens believe should not be dealt with in a criminal way.⁹⁹
- 4.64 In an answer to a question taken on notice, ACT Policing advised the Committee that 67.1 per cent of simple cannabis offences were diverted from the criminal justice system. Specifically:
- 2.3 per cent received cautions;
 - 2.1 per cent received a diversionary conference;
 - 32.5 per cent received drug diversions; and
 - 30.2 per cent received a SCON.¹⁰⁰
- 4.65 ACT Policing also advised, that of the 32.9 per cent of simple cannabis offences that went through the criminal justice system:
- 14.5 per cent resulted in arrest;
 - 6.7 per cent resulted in being charged before the court; and
 - 11.7 per cent resulted in a summons.¹⁰¹
- 4.66 Evidence provided by the Canberra Alliance for Harm Minimisation and Advocacy (CAHMA) also highlighted that under the current SCON system, individuals who have been caught with cannabis more than once find it increasingly difficult to stay out of the criminal justice system. Concern was raised with the lack of criteria used by the police to determine if a person is ineligible for a SCON.¹⁰²

⁹⁷ ACT Policing, *Submission 28*, 21 March 2019, p. 5.

⁹⁸ Ms Marion McConnell, Founding Member, Families and Friends for Drug Law Reform, *Transcript of Evidence*, 26 March 2019, p. 15.

⁹⁹ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Proof Transcript of Evidence*, 03 May 2019, p. 87.

¹⁰⁰ Commander Michael Chew, Acting Chief Police Officer, ACT Policing, *Answer to Question Taken on Notice*, 09 May 2019.

¹⁰¹ Commander Michael Chew, Acting Chief Police Officer, ACT Policing, *Answer to Question Taken on Notice*, 09 May 2019.

¹⁰² Mr Christopher Gough, Manager, Canberra Alliance for Harm Minimisation and Advocacy, *Proof Transcript of Evidence*, 03 May 2019, p. 78.

4.67 ACT Policing clarified that there is a criteria that the police can use to determine if a person is ineligible for a SCON. Additionally, the Committee was advised that ACT Policing does have a Standard Operating Procedure for alcohol and other drug diversions. A procedure for a Formal Criminal Caution was provided to the Committee, which highlighted when a clearance of an offence by way of a formal warning for police was enacted: this included:

- An offender has not previously be charged with an offence;
- A warning is appropriate given the circumstances of the offending; and
- The offender has appropriate support processes or mechanisms in place, which are appropriate to address the criminal conduct.¹⁰³

4.68 Section 171A (7) of the Bill proposes to amend the *Drugs of Dependence Act 1989* to state that:

Simple cannabis offence means –

- a) An offence against section 162 (cultivation of 1 to 4 plants); or
- b) An offence against section 171AA(1) of a person under 18 years old possessing 50g or less of cannabis.¹⁰⁴

4.69 Families and Friends for Drug Law Reform advised the Committee that the inclusion of 18 year olds in the SCON process was not something they agreed with. In particular, Family and Friends for Drug Law Reform referred to tobacco and alcohol legislation. It was noted that there is no overriding rule that makes possession of either tobacco or alcohol illegal in the hands of a minor. The Committee was further informed that reduction of smoking has been achieved in an environment where criminal law has not leveraged the change.¹⁰⁵

4.70 Mr Michael Moore AM also compared cannabis offences to tobacco legislation, with regards to the criminalisation of an individual under 18. Mr Moore AM stated that:

At the personal use level, I would not make the distinction between an adult and not an adult at 18. I think our comparison there is with cigarettes. Yes, there is a limitation on who can buy and so on, but we do not actually criminalise somebody for using cigarettes.¹⁰⁶

The real question becomes: how do we make it so that it is socially unacceptable, just the same as we have made smoking unacceptable amongst our teenagers. How do we make cannabis unacceptable? In a counterintuitive way, making it a forbidden fruit is going to do the opposite.¹⁰⁷

¹⁰³ ACT Policing, *Proof Transcript of Evidence*, 03 May 2019, p. 98.

¹⁰⁴ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 171A(7).

¹⁰⁵ Mr Bill Bush, President, Families and Friends for Drug Law Reform, *Transcript of Evidence*, 26 March 2019, p. 14.

¹⁰⁶ Mr Michael Moore AM, Private Citizen, *Transcript of Evidence*, 26 March 2019, p. 27

¹⁰⁷ Mr Michael Moore AM, Private Citizen, *Transcript of Evidence*, 26 March 2019, p. 32.

- 4.71 CAHMA recommended that the SCON system be removed for underage use or cultivation of cannabis plants. In particular, CAHMA highlighted the negative aspects of continuing to criminalise youth.¹⁰⁸
- 4.72 The Committee noted that the Canadian *Cannabis Act 2018* has several measures that help prevent youth from accessing cannabis. These include both age restrictions and restricting promotion of cannabis. No person may sell or provide cannabis to any person under the age of 18. There are two criminal offences related to providing cannabis to youth, with maximum penalties of 14 years in jail:
- Giving or selling cannabis to youth; and
 - Using a youth to commit a cannabis-related offence.¹⁰⁹

COMMITTEE COMMENT

- 4.73 The Committee notes that under the *Tobacco and Other Smoking Products Act 1927*, it is an offence to sell cigarettes to a person under 18 years of age. The Committee further notes that the same offences stipulated in the *Smoke-Free Public Places Act 2003* and the *Smoking in Cars with Children (Prohibition) Act 2011* apply to persons under 18 years of age. However, the Committee does acknowledge that there is no legislated smoking age.

SMOKING CANNABIS IN PUBLIC PLACES OR NEAR CHILDREN

- 4.74 Section 171AB(1) of the Bill states that:
- 1) A person commits an offence if the person smokes cannabis in a public place.
Maximum penalty: 30 penalty units.¹¹⁰
- 4.75 In a submission provided by ATODA, they supported the prohibition of smoking in public places or near a child but suggested that the definition of ‘public place’ to be amended to reflect the same locations where it is illegal to smoke tobacco products.¹¹¹
- 4.76 In an opening statement, Street Law raised concern regarding section 171AB(1) of the Bill, which states that it is an offence if a person smokes cannabis in a public place. Street Law informed the Committee that this particular offence would affect people who are sleeping rough or homeless as they often spend a lot more time in public places.¹¹²

¹⁰⁸ Canberra Alliance for Harm Minimisation and Advocacy, *Submission 35*, 30 April 2019, p. 6.

¹⁰⁹ Government of Canada, Department of Justice, *Cannabis Legalisation and Regulation*, 17 October 2018, available at: <https://www.justice.gc.ca/eng/cj-jp/cannabis/>.

¹¹⁰ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 171AB(1).

¹¹¹ Alcohol, Tobacco and Other Drug Association ACT, *Submission 29*, 21 March 2019, p. 5.

¹¹² Ms Farzana Choudhury, Program Manager and Solicitor, Street Law, *Transcript of Evidence*, 29 March 2019, p. 43.

- 4.77 Street Law specifically noted issues around the maximum penalty unit of 30 penalties for an individual who is found to be smoking cannabis in a public place, stating that:

Our other concern with this specific proposed offence is that the maximum penalty is 30 penalty units, up to \$4,800 currently, and this seems disproportionately high compared to what the penalties are for other public space offences of a similar kind—things like drinking in public and smoking in certain public spaces. I also note that there does not seem to be a specific on-the-spot fine available for this, whereas that is an option for the drinking and smoking in public spaces. If this particular offence were to be created, we would be recommending that an option be available for police to issue a criminal infringement notice similar to the other public space offences.¹¹³

- 4.78 With regards to infringement notices, the Committee enquired into the legislative procedures required to enforce these notices. The Committee was advised that similar regulations to that of the *Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010* would need to be adopted.¹¹⁴

- 4.79 In addition to offences for smoking in public places, Section 171AB also proposes offences for those who smoke near children.

- 4.80 Section 171AB(2) of the Bill states that:

- 2) A person commits an offence if –
 - a) The person smokes cannabis; and
 - b) A child is within 20m of the person.¹¹⁵

- 4.81 The National Drug Research Institute noted the ambiguity around the 20 metre rule for smoking near children. In particular, the submission highlighted that a cannabis smoker could be in their living room smoking cannabis and be guilty of an offence if their child was asleep in their bedroom, or even with the neighbour's child sleeping next door.¹¹⁶

- 4.82 Mr Rattenbury MLA, in his correspondence outlining the ACT Greens proposed amendments, noted that:

The proposal for a 20 meter limit for smoking near a child is likely problematic for people living in apartment buildings. While the ACT Greens strongly support protecting children and all people from the health impacts of smoke, I believe this section of the

¹¹³ Ms Farzana Choudhury, Program Manager and Solicitor, Street Law, *Transcript of Evidence*, 29 March 2019, p. 43.

¹¹⁴ Ms Farzana Choudhury, Program Manager and Solicitor, Street Law, *Transcript of Evidence*, 29 March 2019, p. 46.

¹¹⁵ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 171AB(2).

¹¹⁶ National Drug Research institute, *Submission 19*, 21 March 2019, p. 8.

Bill needs to be redrafted to prevent people inadvertently committing offences due to building layout.¹¹⁷

- 4.83 Mr Rattenbury MLA further added that this proposed amendment has unintended consequences. For example, if an individual lives in an apartment, the person in the apartment next door may be three metres away but second hand smoke might not necessarily impact them. Mr Rattenbury advocated for the consideration of limiting and preventing second-hand exposure but suggested that the 20 metre rule was not the best approach.¹¹⁸
- 4.84 In response to a supplementary questions, the ACT Government advised the Committee that the ACT Government will be proposing amendments to keep cannabis out of reach of children. Specifically, the ACT Government stated that the proposed amendments will require that adults take reasonable steps to ensure cannabis is not accessible to children. For example, by storing it in a locked container or a place that is not accessible to children.¹¹⁹
- 4.85 The ACT Government further advised that a separate amendment is proposed to prevent children from being exposed to passive smoke of cannabis users. This will be achieved by amending the current 20 metre exclusion zone provided in the Bill to be an offence of knowingly exposing a child to cannabis smoke.¹²⁰

COMMITTEE COMMENT

- 4.86 The Committee notes that Section 171AB(1) of the Bill highlights that smoking cannabis in a public place is an offence. The Committee understands that these offences have been proposed to protect members of the public who choose not to smoke, as well as children. However, the Committee believes that similar restrictions as stipulated in the *Smoke-Free Public Places Act 2003*, as well as *Smoking in Cars with Children (Prohibition) Act 2011* would allow for consistency in restrictions and applicable offences.
- 4.87 The Committee notes that Section 171AB(2) of the Bill highlights that smoking cannabis within 20 metres of a child is an offence. The Committee considers this particular offence as ambiguous and difficult to monitor. However, the Committee does recognise that a proposed amendment will be presented by the ACT Government, which outlines that an “individual will be deemed to have committed an offence if they knowingly or intentionally use cannabis in a way that exposes a person less than 18 years old to this.”¹²¹

¹¹⁷ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 20 March 2019, p. 3.

¹¹⁸ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Proof Transcript of Evidence*, 03 May 2019, p. 84.

¹¹⁹ ACT Government, *Answer to Supplementary Question on Notice No. 05*, 20 May 2019, p. 1.

¹²⁰ ACT Government, *Answer to Supplementary Question on Notice No. 05*, 20 May 2019, p. 1.

¹²¹ Mr Andrew Barr MLA, Chief Minister, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 18 March 2019, p. 4.

Recommendation 7

4.88 The Committee recommends that Section 171AB(1) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the *Smoke-Free Public Places Act 2003*, as well as *Smoking in Cars with Children (Prohibition) Act 2011* for smoking cannabis in public places.

Recommendation 8

4.89 The Committee recommends that Section 171AB(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the *Smoke-Free Public Places Act 2003*, as well as *Smoking in Cars with Children (Prohibition) Act 2011* for smoking cannabis near a child.

ROAD TRANSPORT LEGISLATION

4.90 Section 20 of the *Road Transport (Alcohol and Drugs) Act 1977* stipulates that:

- 1) A person commits an offence if the person –
 - a) Has been –
 - i. The driver of a motor vehicle on a road or road related area; or
 - ii. The driver trainer in a motor vehicle on a road or road related area; and
 - b) Has, within the relevant period, a prescribed drug in the person's oral fluid or blood.¹²²

4.91 In his speech on 28 November 2018, Mr Pettersson MLA assured the Legislative Assembly that:

It will, as I have said previously, remain illegal to drive under the influence of cannabis, just as it is illegal to drive while drunk. As with the current drink-driving laws, these penalties dissuade most road users from driving while impaired by a substance.¹²³

4.92 In their Submission, the Law Society noted that the Bill had not presented any amendments to offences relating to driving under the influence of cannabis. The Law Society further noted that under the *Road Transport (Alcohol and Drugs) Act 1977*, section 20(1)(b) provides that it is illegal for a person to drive a motor vehicle with any amount of a prescribed drug, which includes cannabis. However, the Law Society recognised that there was a tiered structure of

¹²² *Road Transport (Alcohol and Drugs) Act 1977*, Section 20(1).

¹²³ Mr Michael Pettersson MLA, *Legislative Assembly Hansard*, 28 November 2018, p. 4942.

penalties for those caught driving under the influence of alcohol. As such the Law Society recommended that the Bill include consequential amendments to Section 20(1)(b) and Section 34 of the *Road Transport (Alcohol and Drugs) Act 1977* to account for levels of cannabis impairment and intoxication.¹²⁴

4.93 Mr Savage's submission to the Committee also supported the inclusion of a testing mechanism for impairment while driving under the influence of cannabis. Mr Savage goes on to encourage the consideration of procedures that test for actual driving impairment and not merely the presence of a substance.¹²⁵

4.94 In the submission provided by the Australian Federal Police Association (AFPA), the AFPA also noted that the Bill does not take into consideration current drug-driving legislation, with particular reference to section 20 of the *Road Transport (Alcohol and Drugs) Act 1977*. The AFPA noted that:

With alcohol we have a prescribed amount that equals inebriation or equals an amount that means a person is incapable of safely driving a motor vehicle. Currently under the legislation if we legalise cannabis use and then it gets tested, we are testing that they have cannabis in their system; we are not testing if they are safely able to drive a motor vehicle or impaired to drive a motor vehicle. Currently in the ACT the test is a pass or a fail: you have drugs in your system or you do not. We are not testing whether the person has enough of the substance in their body to impair them.¹²⁶

4.95 In an opening statement, the Law Society highlighted inconsistencies with drink driving offences and those that would apply to driving under the influence of cannabis. The Law Society advised the Committee that:

The Law Society has no difficulty with it being illegal. I make the point that the society has no difficulty with it being illegal to drive whilst impaired by cannabis. What we are simply saying is that if cannabis is going to be legal at some level, there needs to be thought to making the drug drive laws operate in a way more consistent with or more similar to the laws in relation to alcohol and driving. Alcohol is freely available to adults in our community and can be freely consumed by adults in our community, but we still, quite rightly, have drink-drive legislation that regulates and punishes people for the degree of impairment that they actually have rather than just that they have engaged in their lawful right to consume a single drink.¹²⁷

¹²⁴ Law Society of the ACT, *Submission 26*, 21 March 2019, p. 3.

¹²⁵ Mr John Savage, *Submission 27*, 21 March 2019, p. 1.

¹²⁶ Mr Alex Caruana, Vice-President, Australian Federal Police Association, *Transcript of Evidence*, 26 March 2019, p. 37.

¹²⁷ Mr Michael Kukulies-Smith, Chair, Criminal Law Community, Law Society of the ACT, *Transcript of Evidence*, 29 March 2019, p. 50.

- 4.96 Although the evidence provided to the Committee highlights the inconsistency with testing and offences applied between drink driving and drug driving, the Committee does acknowledge risks associated to driving under any type of influence.
- 4.97 The ACT Policing submission highlighted that in the United States, a *Colorado Rocky Mountain High Intensity Drug Trafficking Report* found that after the legalisation of cannabis, fatal crashes, where the operator had cannabis in their system, doubled despite fatal crashes decreasing over the same period.¹²⁸
- 4.98 The Committee enquired further into the availability of systems that have the capacity to test drug concentration and impairment. The Law Society advised the Committee that they believe Canada has a system in place. It was further noted that in Canada, impairment is criminalised, as opposed to the simple presence of the drug.¹²⁹
- 4.99 ACT Policing also advised the Committee that under the current system, road side drug testing measures approximately 30 nanograms per millilitre of blood. If a driver has less than 30 nanograms of cannabis per millilitre of blood, the test would not present with a positive reading. ACT Policing also noted that under the current Canadian system, the testing for cannabis is a much lower ratio of nanogram to millilitre.¹³⁰
- 4.100 The Committee is aware that in June 2018, the Canadian Parliament passed Bill C-46: An Act to Amend the Criminal Code (Offences Relating to Conveyances) and to make Consequential Amendments to other Acts (Bill C-46), which established new federal laws and penalties around driving under the influence of cannabis and other drugs. Within Bill C-46, new offences were created for having blood drug concentration above a prescribed limit within two hours of driving. The offences are presented in a tiered approach and include:
- Driving with 2 nanograms but less than 5 nanograms of tetrahydrocannabinol (THC) per millilitre of blood;
 - Driving with 5 nanograms or more of THC per millilitre of blood; and
 - Driving with a combination of 50 milligrams of alcohol (or more) plus 2.5 nanograms or more of THC per 1 millilitre of blood.¹³¹

¹²⁸ ACT Policing, *Submission 28*, 21 March 2019, p. 9.

¹²⁹ Mr Michael Kukulies-Smith, Chair, Criminal Law Community, Law Society of the ACT, *Transcript of Evidence*, 29 March 2019, p. 50.

¹³⁰ Assistant Commission Ray Johnson, Chief Police Officer, ACT Policing, *Transcript of Evidence*, 03 May 2019, pp. 93-94.

¹³¹ Government of Canada, Department of Justice, *Impaired Driving Laws*, 02 April 2019, available at: <https://www.justice.gc.ca/eng/cj-jp/sidl-rlcfa/>.

4.101 The Committee also notes that Bill C-46 outlines penalties for drug-impaired driving, which include:

- First offence: mandatory minimum \$1000 fine; maximum 10 years imprisonment.
- Second offence: mandatory minimum 30 days imprisonment; maximum 10 years imprisonment.
- Third offence: mandatory minimum 120 days imprisonment; maximum 10 years imprisonment.¹³²

4.102 Advice from ACT Policing acknowledges that the Canadian drug levels prescribed by regulation are based on the advice of the drugs and driving Committee of the Canadian Society of Forensic Science, which worked to consolidate existing science on drug-impaired driving and setting legal limits.¹³³

COMMITTEE COMMENT

4.103 The Committee acknowledges that in the second reading of Bill C-46, in the Canadian House of Commons, the Honourable Jody Wilson-Raybould, in her capacity of Justice and Attorney General of Canada, stated that:

In developing this approach, we were mindful of other jurisdictions. In the United Kingdom, where cannabis remains illegal, the legal limit is two nanograms of THC per millilitre of blood. In Colorado and Washington where cannabis is legalised, the legal limit is five nanograms. The approach in Bill C-46 to drug-impaired driving would be among the toughest in the world, particularly in jurisdictions where cannabis is legal.¹³⁴

4.104 The Committee does recognise the serious nature of determining impairment for drug driving and the challenges faced by those jurisdiction legalising cannabis. The Committee does not propose to recommend the determination of what constitutes impairment, nor does it propose to recommend penalties. However, the Committee believes that the adoption of an impairment test would be more aligned with the proposed legalisation of cannabis for personal use.

Recommendation 9

4.105 The Committee recommends that the ACT Government collaborate with ACT Policing to adopt a cannabis drug driving test that determines impairment.

¹³² Government of Canada, Department of Justice, *Impaired Driving Laws*, 02 April 2019, available at: <https://www.justice.gc.ca/eng/cj-jp/sidl-rlcfa/>.

¹³³ Commander Michael Chew, Acting Chief Police Officer, ACT Policing, *Answer to Questions Taken on Notice*, 09 May 2019.

¹³⁴ Parliament of Canada, *House of Commons Hansard*, 19 May 2019.

COMMONWEALTH AND TERRITORY CRIMINAL CODE

4.106 Many submissions were received during the Committee's inquiry, relating to inconsistencies between the Bill and provisions of commonwealth legislation and a number of international treaties that Australia has signed.

4.107 In a submission provided by the Commonwealth Department of Health, it was noted that under the Convention, Australia has an obligation to carefully control, supervise and report on various stages of cultivation, production and manufacture of controlled narcotic drugs. The *Narcotic Drugs Act 1967*, gives effect to Australia's obligations under the Convention.¹³⁵

4.108 The Solicitor-General for the ACT informed the Committee that the Convention remains operative and that Australia is a party to it. However, the Solicitor-General also noted that once the Convention has been accepted, then the Commonwealth had a moral obligation to the fulfilment of the Convention's obligations but is not bound by it.¹³⁶

4.109 During a public hearing, Mr Moore AM addressed the concerns presented by the Commonwealth Department of Health regarding the Convention. Mr Moore AM stated that:

[T]he submission by the federal Department of Health talks about international treaties and the single convention on narcotics drugs and our obligations under that. It was the United States that was the most strident in pushing for these treaties, or maintaining these treaties, over many years. Yet 10 or 12 states within the United States have legal regimes; actually, regimes that are way beyond what is in those treaties. I do not think we need to be concerned about that, either.¹³⁷

4.110 When asked, what would allow a jurisdiction to legalise cannabis even though they are signatories to the Convention, the Solicitor-General advised the Committee that:

Treaties and conventions, for example, are addressed in a range of fora around the world. Complaints of breaches of national obligations, for example, are raised in the International Court of Justice and a range of other places. But from the perspective of a sovereign state, if it chooses to legislate contrary to the terms of a treaty or convention that it is signed up to, it is not necessarily a good thing, but it is not something that would provide a basis for challenging it.

Of course, in the Australian courts, the fact that Australia is a signatory to an international convention means that the terms of that international convention can in fact be taken into account by a federal court in interpreting commonwealth legislation. It was a principle that was slow to emerge but it is now relatively well recognised. There is, if you will, not a particularly straight line in terms of determining how

¹³⁵ Commonwealth Department of Health, *Submission 31*, 21 March 2019, p. 1.

¹³⁶ Mr Peter Garrison, Solicitor-General for the ACT, *Proof Transcript of Evidence*, 08 May 2019, pp. 113-117.

¹³⁷ Mr Michael Moore AM, Private Citizen, *Transcript of Evidence*, 26 March 2019, pp. 31-32.

international treaties and conventions influence domestic law. What it does not do is tie the hands of a legislature to make a law that is otherwise within its constitutional power to make.¹³⁸

4.111 Similar conflicts between the Commonwealth and the ACT Criminal Codes was also raised, due to the amendments proposed in the Bill. The AFPA informed the Committee of their concerns regarding disconnect between Commonwealth legislation and the proposed amendments to the Territory's legislation. The Committee was advised that the Australian Federal Police (AFP) functions in both the Federal arena and the state/territory arena, but the AFP does have the option to use commonwealth legislation. When legislation is not available within the Territory, the next step for the AFP is to use commonwealth legislation as stipulated in Section 308 of the Commonwealth Criminal Code.¹³⁹

4.112 The Committee noted that the AFP were reported as saying that the legalisation of cannabis for personal cultivation and use in the ACT could pose some difficulties due to interactions with commonwealth legislation. Specifically, the ACT Policing submission stated that:

Inconsistencies between the Bill and the Code create ambiguity and uncertainty as to the legal framework within which community police officers of ACT Policing must operate. This situation currently does not exist as the ACT and the Commonwealth both make it an offence to possess cannabis. Simple cannabis offences in the ACT allow for flexibility in determining what is the most appropriate offence to be considered, and how that offence should most appropriately be cleared. The existence of ACT simple cannabis offences aligns with the Commonwealth law while also providing a practical framework to manage this form of offending outside of the criminal justice system in accordance with the principles of harm minimisation.

The removal of the ACT offences would remove access to the existing diversion framework for simple cannabis offences and result in Commonwealth criminal offences becoming the preeminent offence by default for simple cannabis offences.

This would create a tension between ACT Policing members' responsibility to implement ACT Government policy intent and to have regard for the relevant criminal law in effect at the time. If the Bill is passed, that will be Commonwealth law.¹⁴⁰

4.113 In response to these concerns, Mr Pettersson MLA advised the Committee that:

The states have sole and exclusive ownership of laws dealing with the treatment of individuals in possession of cannabis. Susan Lee, as health minister, stated that decriminalisation of cannabis for general cultivation or recreational use remains a law enforcement issue for individual states and territories.

¹³⁸ Mr Peter Garrison, Solicitor-General for the ACT, *Proof Transcript of Evidence*, 08 May 2019, p. 117.

¹³⁹ Ms Angela Smith, President, Australian Federal Police Association, *Transcript of Evidence*, 26 March 2019, p. 35

¹⁴⁰ ACT Policing, *Submission 28*, 21 March 2019, p. 4.

If you look at the Commonwealth Criminal Code, it is very clear in numerous instances that the commonwealth defers to states and territories on this matter. I refer, for example, to division 308, possession offences under commonwealth law. It allows for a person to be tried, punished or otherwise dealt with as if the offence were an offence against the law of the state or territory. Also, division 313 of the Commonwealth Criminal Code provides a defence for any non-trafficking commonwealth drug charge, provided that the use is justified or excused by territory law.¹⁴¹

4.114 With regards to the disconnect between Commonwealth legislation and the Territory's legislation, the Law Society noted that under the Commonwealth Criminal Code, Section 308(3) to (5) stipulates that if there is a comparable offence of diversionary scheme within the state or territory, the Commonwealth will not cover the field. However, it was acknowledged that under section 313(1) of the Commonwealth Criminal Code, there are defences that are required to recognise legitimate uses of controlled substances in the community. As such, the Commonwealth Criminal Code seems to be predicated on there being express authorisation rather than simply silence.¹⁴²

4.115 Advice received from the Director of the Criminal Law Section, within the Security and Criminal Justice Branch of the Commonwealth Attorney-General's Department, informed ACT Policing of their interpretation of the amendments proposed in the Bill. Specifically, it was advised that:

Various pieces of Commonwealth legislation relate to the control and prohibition of cannabis. These laws will continue to apply to relevant conduct even if it is decriminalised in the ACT. For example, Division 308 of the *Criminal Code Act 1995* {Cth} criminalises the possession of a 'controlled drug', including cannabis.

Section 313.1 of the *Criminal Code* provides that certain serious drug offences do not apply where the conduct is justified or excused under the law of a State or Territory. This defence would not apply to the proposed decriminalisation provisions in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT). This is because the amendments merely decriminalise conduct under ACT law and do not purport to justify or excuse the relevant conduct for the purposes of section 313.1.¹⁴³

4.116 To mitigate disconnect between Commonwealth legislation and the Territory's legislation, the Law Society suggested that the ACT Government could enter into a Memorandum of Understanding (MOU) with the AFP. This MOU could make it clear to the AFP that persons in the ACT will not be charged under Section 308.1(1) of the Commonwealth Criminal Code.¹⁴⁴

¹⁴¹ Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, p. 7.

¹⁴² Mr Michael Kukulies-Smith, Chair, Criminal Law Community, Law Society of the ACT, *Transcript of Evidence*, 29 March 2019, pp. 51-52.

¹⁴³ Commander Michael Chew, Acting Chief Police Officer, ACT Policing, *Questions Taken on Notice*, 09 May 2019.

¹⁴⁴ Law Society of the ACT, *Submission 26*, 21 March 2019, p. 2.

4.117 In response to the proposed MOU, ACT Policing informed the Committee that the Chief Police Officer does not have the power to direct members of the police force to take certain action or to not take certain actions. As such, a MOU would not address that issue.¹⁴⁵

4.118 The ACT Government also noted that they are not considering the introduction of a MOU between the ACT Government and ACT Policing. The ACT Government added that they are 'working toward a model that would give ACT residents confidence about the type of conduct and circumstances that would be lawful under the proposed amendments'.¹⁴⁶

4.119 Another option provided by the Law Society, to mitigate these concerns and the perceived disconnect between Commonwealth legislation and the Territory's legislation, suggested the inclusion of express authorisation, such as:

For example, where now we have that subsection (3) in the proposed legislation, looking again at 171AA, where it talks about that express authorisation it could also perhaps include a further subsection that says that this act authorises the use of cannabis by individuals for personal purposes or to possess cannabis for personal use or personal purposes at less than 50 grams. Expressly stating that it is an authorisation in the legislation would seem to at least avoid vacating the field. The commonwealth do not seem to have expressed a desire to cover the field themselves, but in the absence of any other law—and that seems to be the issue.¹⁴⁷

4.120 The Solicitor-General also recognised that under the Commonwealth Criminal Code, there is an exception that it is not an offence under the Commonwealth Criminal Code, and that the Commonwealth Criminal Code does not apply, where the conduct is justified or excused by or under a law of a state or territory.¹⁴⁸

4.121 The Law Society did note that even with the inclusion of express authorisation, there is always the threat of a 122 constitutional challenge, or use of power by the Commonwealth to overrule. However, the Law Society believes that to achieve this, it would require the Commonwealth to take legislative action. Whereas, under the current legislation, legislative action would not necessarily need the Commonwealth to do anything for individuals to be charged with the Commonwealth offence.¹⁴⁹

¹⁴⁵ Assistant Commissioner Ray Johnson, Chief Police Officer, ACT Policing, *Proof Transcript of Evidence*, 03 May 2019, p. 100.

¹⁴⁶ ACT Government, *Answer to Supplementary Question on Notice No. 03*, 20 May 2019, pp. 01-02.

¹⁴⁷ Mr Michael Kukulies-Smith, Chair, Criminal Law Community, Law Society of the ACT, *Transcript of Evidence*, 29 March 2019, p. 52.

¹⁴⁸ Mr Peter Garrison, Solicitor-General for the ACT, *Proof Transcript of Evidence*, 08 May 2019, p. 113.

¹⁴⁹ Mr Michael Kukulies-Smith, Chair, Criminal Law Community, Law Society of the ACT, *Transcript of Evidence*, 29 March 2019, p. 52.

4.122 However, in addition to the attitudes taken by the Commonwealth Government, the Solicitor-General also noted that such direct conflicts between Commonwealth and Territory legislation would not only be subject to the drafting of the legislation, but also depend on how the courts rule, if such a case is presented.¹⁵⁰

4.123 ACT Policing also clarified that disconnect between Commonwealth legislation and the Territory legislation is not something specific to the ACT. All police officers, by act of parliament in any jurisdiction in Australia is empowered by Commonwealth legislation. For example, if Western Australia would take the same path in legalising cannabis for personal use, Western Australian police officers would have the same power to activate Commonwealth legislation.¹⁵¹

4.124 In response to a supplementary question, regarding the disconnect between Territory and Commonwealth law, the ACT Government informed the Committee that:

The ACT Government is not currently proposing to seek changes to Commonwealth laws. Nonetheless, we will continue to work with stakeholders including the Australian Government to understand and resolve any differences in the interpretation of the Commonwealth law as much as possible.¹⁵²

COMMITTEE COMMENT

4.125 The Committee notes that there are concerns presented by ACT Policing that, in the event of cannabis related offences being removed from the ACT Criminal Code, the cultivation and possession of cannabis for personal use will still remain an enforceable offence under the Commonwealth Criminal Code.

4.126 The Committee further notes that evidence provided suggests that such disconnect is due to the lack of express authorisation in the Bill. As such, the Committee is advised that it is possible that the inclusion of a subsection, within section 171AA, that authorises the use of cannabis by individuals for personal purposes or to possess cannabis for personal use or personal purposes at less than 50 grams would mitigate any disconnection and conflict between the Commonwealth and Territory Criminal Codes.

¹⁵⁰ Mr Peter Garrison, Solicitor-General for the ACT, *Proof Transcript of Evidence*, 08 May 2019, p. 114.

¹⁵¹ Assistant Commissioner Ray Johnson, Chief Police Officer, ACT Policing, *Proof Transcript of Evidence*, 03 May 2019, pp. 99-100.

¹⁵² ACT Government, *Answer to Supplementary Question on Notice No. 03*, 20 May 2019, p. 2019.

Recommendation 10

4.127 The Committee recommends that Section 171AA of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to include express authorisation for the cultivation and use of cannabis by individuals for personal use.

Recommendation 11

4.128 The Committee recommends that the ACT Government intervene in any prosecution by the Commonwealth of ACT residents who cultivate or possess cannabis in accordance with the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 to defend the intent of the Bill.

CRIMINALISATION OF CANNABIS

4.129 A number of submission received by the Committee advocated for the legalisation of cannabis to remove undue pressure off the legal system. Mr Andrew Kennedy's submission specifically highlighted that the legalisation of cannabis would take pressure of an already burdened legal system.¹⁵³

4.130 Submission 10 also suggest that legalising cannabis for personal use would bring laws in line with community behaviour, expectations and usage. It was additionally highlighted that, the Bill will also bring the ACT in line with other countries around the world who have already introduced legalised cannabis.¹⁵⁴

4.131 CAHMA reiterated the need for law to reflect what society thinks and feels. Specifically, CAHMA noted that based on the number of people using cannabis recreationally, it is unfair to apply a fine to them and then, if they are caught again, push them further into the judicial system, even though society believes it should not be criminalised.¹⁵⁵

4.132 The National Drug Research Institute have previously documented the adverse impacts of a criminal conviction on individuals apprehended for minor cannabis offences in Western Australia and compared these with the impacts of a civil penalty in South Australia.¹⁵⁶

¹⁵³ Mr Andrew Kennedy, *Submission 02*, 12 March 2019, p. 1.

¹⁵⁴ Mr Stu Nulty, *Submission 10*, 21 March 2019, p.1.

¹⁵⁵ Mr Christopher Gough, Manager, Canberra Alliance for Harm Minimisation and Advocacy, *Proof Transcript of Evidence*, 03 May 2019, p. 79.

¹⁵⁶ The National Drug Research Institute, *Submission 39*, 21 March 2019, p. 3.

4.133 The Law Society also identified that subsequent amendments presented in the Bill seeks to both remove recreational cannabis users from the justice system, as well as allowing for the allocation of police resources towards more serious crime.¹⁵⁷

4.134 Penington Institute noted that evidence supports the shift away from an enforcement-based regulation of low-level cannabis possession, including:

- Enforcement-based approaches that focus on criminalisation have proven ineffective at reducing the availability of cannabis use and levels of cannabis use in Australia, as well as being extremely costly;
- Cannabis has a low harm profile compared to other licit and illicit drugs, and the harms of cannabis use are better managed through other mechanisms (social, health and community services); and
- Regulating low-level cannabis use through other means minimises cannabis users' contact with the criminal underworld (who now monopolise high-scale supply of cannabis) and the justice system, rebalancing criminal justice resources to more serious crime.¹⁵⁸

4.135 Families and Friends for Drug Law Reform stated that:

The overall thing for Family and Friends for Drug Law Reform is that you cannot treat this in a vacuum. The overall finish would be to improve people's lives. Keeping people out of the criminal justice system as much as we can is what we should all be wanting to do. We are criminalising people for the use of a drug that is readily available because of prohibition. We have this big market out here and what we are doing there is simply wrong: criminalising these people who are able to get drugs because of prohibition.

Removing the criminal sanctions for small quantities of cannabis possession surely should be looked on in this way: that we are improving people's lives by doing that. We are living in a world where we see hate having devastating effects. This is not a vacuum that we are in with this cannabis stuff. We are living in a world of hate at the moment, where we see increasing suicide rates, more homeless people, and the list can go on. Our objective today should be to take away the stigma and criminalisation response to drug use and replace it with connection and caring for people.¹⁵⁹

4.136 In addition to evidence advocating for the removal of personal cannabis use from the criminal justice system, evidence also highlighted the importance of viewing cannabis use as public health issue.

¹⁵⁷ Law Society of the ACT, *Submission 26*, 21 March 2019, p. 1.

¹⁵⁸ Penington Institute, *Submission 34*, 29 March 2019, p. 2.

¹⁵⁹ Ms Marion McConnell, Founding Member, Families and Friends for Drug Law Reform, *Transcript of Evidence*, 26 March 2019, pp. 15-16.

4.137 The Australian Medical Association ACT Branch (AMA ACT) considers that:

Cannabis use should be seen primarily as a health issue and not primarily as a matter for law enforcement. The most appropriate response to cannabis use should give priority to policies, programs and regulatory approaches that reduce the harms potentially associated with its use, particularly the health-related harms.¹⁶⁰

4.138 The ACT Greens also considers that cannabis use should be considered a health issue. In particular, the ACT Greens advised the Committee that ‘the best way to reduce harm is to deal with it as an issue of health, not as an issue of law and order.’¹⁶¹

COMMITTEE COMMENT

4.139 The Committee acknowledges that the evidence provided, throughout the course of the Inquiry, has advocated for cannabis related offences to be considered as a health issues rather than a criminal justice issue.

Recommendation 12

4.140 The Committee recommends that, should cannabis for personal use be legalised in the ACT, the ACT Government considers appropriate measures for overturning convictions relating to possession and cultivation of cannabis for personal use.

HEALTH AND MENTAL HEALTH

4.141 The Centre for Disease Control and Prevention noted a number of health effects associated to the use of cannabis including:

- When marijuana users begin using as teenagers, the drug may reduce attention, memory, and learning functions and affect how the brain builds connections between the areas necessary for these functions;
- Marijuana use, especially frequent (daily or near daily) use and use in high doses, can cause disorientation, and sometimes cause unpleasant thoughts or feelings of anxiety and paranoia; and
- Marijuana users are significantly more likely than nonusers to develop temporary psychosis (not knowing what is real, hallucinations and paranoia) and long-lasting mental disorders, including schizophrenia.¹⁶²

¹⁶⁰ Dr Antonio Di Dio, President, Australian Medical Association (ACT), *Proof Transcript of Evidence*, 03 May 2019, p. 70.

¹⁶¹ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Proof Transcript of Evidence*, 03 May 2019, p. 86.

¹⁶² Centre for Disease Control and Prevention, *Marijuana: How it can affect your Health*, 27 February 2018, available at: <https://www.cdc.gov/marijuana/health-effects.html>.

4.142 The Victorian Government also suggest that cannabis smoke has a higher concentration of certain carcinogenic agents than the smoke from tobacco, which may cause cancers of the lung and the aerodigestive tract.¹⁶³

4.143 Noting research conducted by the National Drug Research Institute, the Committee enquired into the health implications of regular and daily use of cannabis. In response, the National Drug Research Institute informed the Committee that:

People will be aware that the likelihood of psychosis roughly doubles when people are regular users particularly starting at an earlier age. But it doubles from one relatively low number—probably about 0.7 per cent—to about two per cent. So, for the majority of cannabis users, even those who start early, the evidence is they will not develop psychosis. But it is a very concerning effect and it does occur and we need to be aware of that.

The other thing we know is that probably one in 10 regular cannabis users develops some dependence on cannabis. We know that people who start earlier are more likely to develop a dependence. We also know all the problems associated with smoking a drug. The evidence suggests that many of the respiratory problems associated with tobacco are likely to be an issue for people who regularly smoke cannabis.

There are all those kind of effects: dependence, risk of mental health problems, and problems associated with smoking a drug. The evidence is that those problems are more likely with regular use and with early onset.¹⁶⁴

4.144 AMA ACT also acknowledges that cannabis use can lead to adverse chronic health outcomes, including dependence, withdrawal symptoms, early onset psychosis and the exacerbation of pre-existing psychotic symptoms. However, AMA ACT did recognise that the risk of these outcomes are low and those who use cannabis occasionally are unlikely to be affected.¹⁶⁵

4.145 In addition to health concerns, the AMA ACT also noted that Indigenous men and women have 3.3 to 4.5 times higher rate of admission to hospital for mental health-related conditions in relation to the use of drugs.¹⁶⁶

4.146 The ACT Greens acknowledged that there is medical evidence that identifies certain mental health conditions can be exacerbated by cannabis use. However, the ACT Greens further acknowledged that society in general is in a better place now to provided education and support around those risks. The Committee was further advised that:

¹⁶³ Victorian Government, *Better Health Channel - Cannabis (Marijuana)*, 2018, available at: <https://www.betterhealth.vic.gov.au/health/healthyliving/cannabis-marijuana>.

¹⁶⁴ Professor Simon Lenton, Director, National Drug Research Institute, *Transcript of Evidence*, 26 March 2019, pp. 22-23.

¹⁶⁵ Dr Antonio Di Dio, President, Australian Medical Association (ACT), *Proof Transcript of Evidence*, 03 May 2019, p. 70.

¹⁶⁶ Dr Antonio Di Dio, President, Australian Medical Association (ACT), *Proof Transcript of Evidence*, 03 May 2019, p. 73.

I obtained a fact sheet from headspace about cannabis use, and they are very clear in that. Again, I think it is better to be in a space where we are dealing with it through that health lens and having that conversation openly and trying to deal with the discussion in a mature way rather than saying, essentially, “If you use this you are a bad person.”¹⁶⁷

4.147 Noting the more increased accessibility to support services, the Committee enquired into the number of residents that seek assistance from ACT facilities for cannabis related issues. The Committee was subsequently advised that exact numbers are not available, however, statistics are showing that the number of Canberrans using cannabis has declined.¹⁶⁸

4.148 The decline in cannabis use was further equated to the decriminalisation of cannabis use. The ACT Government informed the Committee that in 1998, shortly after the ACT adopted the SCON system, 20 per cent of ACT residents aged 14 years and older used cannabis in the past 12 months. In 2016, this figure had fallen to eight per cent.¹⁶⁹

4.149 However, the ACT Government also acknowledged that there is still a stigma attached to the use of illicit drugs. Such stigmatisation can dissuade people from seeking the help that they need. As such, if cannabis is legalised, the barriers associated to the use of cannabis would no longer be present and individuals may start to seek help.¹⁷⁰

4.150 When asked if the ACT Government has prepared for this potential influx of people accessing help, the ACT Government stated that:

Yes, I think that is something we will have to monitor over time. We could not say hand on heart whether there will be an influx of people to our alcohol and other drug services as a result of this change. What we have looked at in other jurisdictions is that, while the evidence is limited, there is actually a little bit of offset. So where some people have been receiving involuntary treatment for their drug use in the past, they now might be seeking voluntary treatment. It is a matter of how much that is offsetting the voluntary treatment in the system.¹⁷¹

¹⁶⁷ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Proof Transcript of Evidence*, 03 May 2019, p. 86.

¹⁶⁸ Ms Erica Nixon, Senior Manager, Preventative and Population Health, ACT Health, *Proof Transcript of Evidence*, 08 May 2019, p. 107.

¹⁶⁹ Ms Erica Nixon, Senior Manager, Preventative and Population Health, ACT Health, *Proof Transcript of Evidence*, 08 May 2019, p. 107.

¹⁷⁰ Ms Erica Nixon, Senior Manager, Preventative and Population Health, ACT Health, *Proof Transcript of Evidence*, 08 May 2019, p. 108.

¹⁷¹ Ms Erica Nixon, Senior Manager, Preventative and Population Health, ACT Health, *Proof Transcript of Evidence*, 08 May 2019, p. 108.

COMMITTEE COMMENT

- 4.151 The Committee believes that the community needs to be aware of the health and mental health risks associated to the consumption of cannabis. Additionally, the Committee believes that there needs to be support services readily available and accessible for those seeking drug dependence support.

Recommendation 13

- 4.152 The Committee recommends that, regardless of whether or not the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 is passed, the ACT Government ensures that there are sufficient health resources available to treat cannabis dependence.**

EDUCATION

- 4.153 A number of submission highlighted the need for education around the legislation and public health. In particular, submission 20 highlighted that there needs to be discussion in the community about the dangers of allowing cannabis to be legal. A harm minimisation approach was further recommended, which could aim to prevent underage usage, deter driving under the influence, detecting signs of psychological dependence, as well as advising people on safe consumption methods.¹⁷²
- 4.154 The National Drug Research Institute recommended comprehensive and targeted education about the new law, how it is applied and how it relates to people. In addition to information about the health effects of cannabis.¹⁷³
- 4.155 As a result of the proposed Bill and potential removal of the SCON system, the Committee enquired into provisions available to refer individuals to the educational or health programs. The AFPA advised the Committee that there should always be an education program in place regardless of the legislation. To achieve this without the SCON system, the AFPA further advised that:
- It would move away from a policing power to a health power or a health benefit, I guess, similar to what we currently do with minimising alcohol and tobacco usage. With an education or health campaign it would move away from a police function so it would not be something our members would really be able to do. It is out of our control.¹⁷⁴

¹⁷² Name withheld, *Submission 20*, 21 March 2019, pp.2-3.

¹⁷³ Professor Simon Lenton, Director, National Drug Research Institute, *Transcript of Evidence*, 26 March 2019, p. 20.

¹⁷⁴ Mr Alex Caruana, Vice-President, Australian Federal Police Association, *Transcript of Evidence*, 26 March 2019, p. 39.

It is similar to the Foundation for Alcohol, Research and Education. They try to be out there a fair bit to educate the public about alcohol use and abuse. So it would be nice to have something similar in place.¹⁷⁵

4.156 AMA ACT also suggested that general practitioners, as well as medical professional should be considered an option to inform and educate people who might be either currently taking or planning to take an illicit drug. A similar educative and informative role taken by health professionals with pill testing was identified as an example that could be applied.¹⁷⁶

4.157 With regards to access to medical professionals, it was noted that it would be better to see people going to their doctor and having conversations about this. However, the ACT Greens highlighted that research has shown that people with drug and alcohol problems can wait up to 18 years before seeking treatment. Such delays are a result of the stigma attached to it due to the illegal nature.¹⁷⁷

4.158 A proposed outline of amendments provided by the ACT Greens also recognised the significant shift in the community the legalisation of cannabis would bring. To assist this shift, Mr Rattenbury MLA's proposed outline of amendments recommended:

[T]he establishment of an Independent Cannabis Advisory Council to provide expertise to Government on new issues that are likely to emerge as these changes come into effect. The Council is proposed to be made up of 5-7 members who would be chosen based on their expertise across a range of areas. The Council would be able to advise the Minister for Health and Wellbeing about:

- a) Issues arising from the legalisation of personal cannabis use in the ACT;
- b) Emerging or urgent cannabis issues;
- c) Cannabis service reforms and policy;
- d) Further cannabis legislative change; and
- e) Anything else in relation to cannabis requested by the Minister.

Membership would include someone who is or has been a personal user of a drug of dependence, as well as drawing from individuals with experience or expertise in the following fields:

- drug and alcohol treatment and support;
- Scientific, evidence-based cannabis research;
- Drug and alcohol policy and legislation;
- Law enforcement; and

¹⁷⁵ Ms Angela Smith, President, Australian Federal Police Association, *Transcript of Evidence*, 26 March 2019, p. 39.

¹⁷⁶ Mr Peter Somerville, Chief Executive Officer, Australian Medical Association (ACT), *Proof Transcript of Evidence*, 03 May 2019, p. 72.

¹⁷⁷ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Proof Transcript of Evidence*, 03 May 2019, p. 86.

- Mental health treatment, care and support.

The Council would be required to meet at least once a quarter and must report to the Minister at least once a year. That report would then be tabled in the Assembly.¹⁷⁸

4.159 CAHMA addressed the ACT Greens amendment to incorporate an independent cannabis advisory council. In response to this council, CAHMA suggested that with consumer representation, sometimes you need two people on advisory councils who have lived experience. Additional consideration for training was raised so that consumer representatives could effectively participate in meetings.¹⁷⁹

4.160 CAHMA also recommended the Committee consider education via the impacted community, stating that:

The reason that I wanted the committee to start thinking about this is that there is a danger here that the legislation, in trying to encapsulate all of the different ifs and buts, will become too complex and ungainly and people will walk away from it. I do think, however, that there will be a necessity to educate people about things like staged harvest and some of the considerations around growing a cannabis plant and cutting the cannabis plant down.¹⁸⁰

4.161 In addition to education via the community, the Committee enquired into public health promotion campaigns that may be facilitated by the ACT Government. The Chief Minister advised that the ACT Government already has access to available information, however, the way in which this information is to be packaged and made available to the public is still being determined.¹⁸¹

4.162 The ACT Government added that there is a whole-of-government communications and engagement team that has started to gather the publicly available information and developing a communications plan. Work between the ACT Health Directorate, as well as the Justice and Community Safety Directorate was also identified.¹⁸²

4.163 The National Drug Research Institute recommended that:

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.

¹⁷⁸ Mr Shane Rattenbury MLA, Leader of the ACT Greens, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 20 March 2019, p. 2.

¹⁷⁹ Mr Christopher Gough, Manager, Canberra Alliance for Harm Minimisation and Advocacy, *Proof Transcript of Evidence*, 03 May 2019, p. 79.

¹⁸⁰ Mr Christopher Gough, Manager, Canberra Alliance for Harm Minimisation and Advocacy, *Proof Transcript of Evidence*, 03 May 2019, p. 81.

¹⁸¹ Mr Andrew Barr MLA, Chief Minister, *Proof Transcript of Evidence*, 08 May 2019, p. 111.

¹⁸² Ms Leesa Croke, Deputy Director-General, Policy and Cabinet, Chief Minister, Treasury and Economic Development Directorate, *Proof Transcript of Evidence*, 08 May 2019, p. 112.

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.¹⁸³

COMMITTEE COMMENT

4.164 The Committee acknowledges the health and mental health impacts cannabis use can have on some people. The Committee further acknowledges the importance of having a support network and education readily available for those wishing to seek further information.

4.165 In addition to public health education, the Committee also notes the need for education around the laws of cannabis use and how they apply to an individual wishing to cultivate cannabis for personal use.

Recommendation 14

4.166 The Committee recommends that the ACT Government develop a public health campaign about cannabis to be delivered on an on-going basis.

IMPLEMENTATION AND COMMENCEMENT OF LEGISLATION

4.167 The Committee noted that, in accordance with section 75(1) of the *Legislation Act 2001*, the Bill as, an ACT, will commence of 1 July 2019.¹⁸⁴

4.168 The Committee further noted that draft amendments proposed by the ACT Government stipulates that the Bill, as an Act, will commence 30 days after its notification day.¹⁸⁵

4.169 During the public hearing with the Chief Minister, the Committee enquired further into the commencement date and how the Government plans to prepare and implement a public health campaign within the proposed 30 days. The Chief Minister advised the Committee that:

We do not have to prepare any new information. It is all there and available. It is just a case of how it would be packaged up and made more readily available to people should they wish to access that information. That is not a particularly onerous task and it would be one of the questions that the government would need to consider in terms of

¹⁸³ National Drug Research Institute, *Submission 19*, 21 March 2019, p. 7.

¹⁸⁴ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 02.

¹⁸⁵ ACT Government, *Draft Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, Section 02.

the timing of the debate on this legislation; it is a private member's bill; it is not a government bill.¹⁸⁶

4.170 The Deputy Director-General of Policy and Cabinet added:

The whole-of-government comms and engagement team have started to do work where we have gathered already what is publicly available information and are starting to pull a comms plan together. But as the Chief Minister said, it depends largely on where the bill lands in terms of exactly what goes in. However, some of that thinking has been done. We are working with Health and working with our JACS department as well. It is not a formed plan but certainly thought has gone into what those key elements would be.¹⁸⁷

4.171 In a supplementary question on notice, the Chief Minister was asked how the Government proposed to educate the community within the 30 day timeframe. In response, the Chief Minister advised the Committee that the Government 'will consider an appropriate commencement date subject to the timing and debate on the Bill and how long the Government considers is required to communicate with the public based on the final form of the legislation'.¹⁸⁸

COMMITTEE COMMENT

4.172 The Committee recognises that the passage of this legislation would be a significant policy change and it is important to ensure residents of the ACT are appropriately informed about the implications of this Bill.

Recommendation 15

4.173 The Committee recommends that strong public information about the provisions of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 proceed or coincide with the implementation of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

¹⁸⁶ Mr Andrew Barr MLA, Chief Minister, *Proof Transcript of Evidence*, 08 May 2019, p. 111.

¹⁸⁷ Ms Leesa Croke, Deputy Director-General, Policy and Cabinet, Chief Minister, Treasury and Economic Development Directorate, *Proof Transcript of Evidence*, 08 May 2019, p. 112.

¹⁸⁸ ACT Government, *Answer to Supplementary Question on Notice No. 04*, 20 May 2019, p. 2019.

CANNABIS SOCIAL CLUBS

4.174 The National Drug Research Institute advised the Committee that in one of their recent studies of 18 to 30-year-old cannabis users, they identified that only eleven per cent of respondents grew their own cannabis as their main source of supply. The National Drug Research Institute further highlighted a number of barriers to 80 per cent of cannabis users cultivating their own cannabis plants, which the Bill does not address.¹⁸⁹

4.175 To mitigate such barriers, the National Drug Research Institute informed the Committee of the processes around cannabis social clubs:

What happens is that people join what is called a closed cannabis social club. It is usually regulated after the same kind of non-profit organisation laws that apply to other non-profit organisations within the community. They have to provide their details: their drivers licence or some other identification. In that membership, they are able to have up to five—sometimes four, sometimes six—cannabis plants, which are barcoded. They belong to them. But they are cultivated; they are grown by the club.

The club employs a grower or growers who look after the cannabis plants that belong to its members.

What it means is that these people will then have their cannabis grown for them. At harvest time they come and collect their cannabis. They are not allowed to sell it to anyone. They are not allowed to have people who are not members of the club accessing the cannabis. They can lose their right to be a member of the club if they breach any of those conditions.

In that way, it provides an outlet, an access point, for the majority of people who really are not capable of growing or are not willing to grow their own cannabis, without the issues associated with a great deal of promotion of cannabis, increased access points, profit-driven motives. There is no profit here; there is no sale here; it is all kept within the bounds of that club. That, in essence, is the model.¹⁹⁰

4.176 Penington Institute also advocated for the inclusion of a cannabis social club model.

Specifically, Penington Institute advised that cannabis social clubs would reduce fear of and anxiety about the commercialisation of cannabis supply, similar to what happened with big tobacco and to some extent big alcohol in terms of marketing and promotion.¹⁹¹

4.177 However, the Committee noted that the limit to the number of plants a person can cultivate is problematic for adoption of cannabis social clubs, as the social club model has an individual who would grow the plants on behalf of the club members. In this instance, under section

¹⁸⁹ Professor Simon Lenton, Director, National Drug Research Institute, *Transcript of Evidence*, 26 March 2019, p. 19.

¹⁹⁰ Professor Simon Lenton, Director, National Drug Research Institute, *Transcript of Evidence*, 26 March 2019, p. 20.

¹⁹¹ Mr John Ryan, Chief Executive Officer, Penington Institute, *Proof Transcript of Evidence*, 29 March 2019, p. 59.

162(b) of the Bill, the grower would only be able to cultivate four plants, which is unsustainable for a club who would have 30 or more members.

4.178 The Committee heard evidence from a number of individuals and organisations relating to cannabis social clubs. In response to the Committee's questions regarding cannabis social clubs, Mr Pettersson MLA informed the Committee that he believed a legalised, regulated, commercial market that is taxed is the best model. However, due to Commonwealth legislative restrictions, this model is not an option. Alternatively, Mr Pettersson MLA suggested that there could be potential scope for cannabis social clubs under current Commonwealth legislation, however, it would need further analysis.¹⁹²

4.179 To mitigate the restriction on a grower of cannabis plants cultivated through a cannabis social club, the National Drug Research Institute recommended that the wording be amended to: 'a person commits an offence if they own/possess five or more cannabis plants'. This would not prohibit a cannabis social clubs 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 cannabis social club.¹⁹³

4.180 Another approach that has been adopted, is Uruguay's legalisation of cannabis clubs. This particular model allows between 15 to 45 members of a registered civil association to farm up to 99 cannabis plants in specific locations. Additionally, each club may not supply any individual with more than 480 grams of cannabis per year.¹⁹⁴

COMMITTEE COMMENT

4.181 The Committee notes that the ACT Government is to propose an amendment to the Bill making it an offence if a person cultivates a cannabis plant at a place other than where the person lives.¹⁹⁵ It is unclear how the amendment will specify 'where a person lives'. This could have a particular negative effect on younger renters who may be in a share house arrangement and not on the lease.

4.182 The Committee further notes that the ACT Government will not be considering amendments to allow for group cultivations. In response to a supplementary question on notice, the ACT Government advised the Committee that the ACT Government 'considers it important that, as much as practicable, access to a cannabis plant is restricted for persons under 18 years of age,

¹⁹² Mr Michael Pettersson MLA, *Transcript of Evidence*, 26 March 2019, p. 3.

¹⁹³ National Drug Research Institute, *Submission 19*, 21 March 2019, p. 6.

¹⁹⁴ Boidi, M., Cruz, J., Queirolo, R., & Bello-Pardo, E., *Marijuana Legalization in Uruguay and Beyond: Executive Summary*, no date, available at: [https://www.wilsoncenter.org/sites/default/files/Marijuana%20Legalization%20in%20Uruguay%20and%20Beyond_brief%20report_v3%20\(2\).pdf](https://www.wilsoncenter.org/sites/default/files/Marijuana%20Legalization%20in%20Uruguay%20and%20Beyond_brief%20report_v3%20(2).pdf).

¹⁹⁵ ACT Government, *Draft Amendments, Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*.

limited to the legal owner, who is also responsible for ensuring compliance with any conditions placed on ownership of a cannabis plant'.¹⁹⁶

4.183 The Committee acknowledges that there is a portion of the population who would use cannabis but do not necessarily want to, have the facilities or the expertise to cultivate their own cannabis plants. The Committee believes that restricting cultivating responsibilities to the owner, as well as restricting cultivation to where the individual resides, reduces the availability of cannabis to those wishing to access cannabis but not cultivate it.

4.184 The Committee recognises at present in Australia cannabis supply is illegal in all jurisdictions, including the ACT even after this Bill is passed. This means that there is a substantial criminal trade in cannabis. It is important that this Bill should not add to this trade. However, to realise the intent of the Bill of legalising individual use of cannabis it is important to provide options apart from individual, home based, cultivation. For that reason, the Committee recommends that the Bill be amended to allow group cultivation, also known as a cannabis social club.

Recommendation 16

4.185 The Committee recommends Section 162 of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to include a provision that allows group cultivation where:

- **The number of people in the group is between two and 10;**
- **The cannabis must be cultivated on the premises of one of the members;**
- **Every plant must be 'owned' by an individual ACT resident and the name and address of this individual must be made available to police if requested;**
- **No one in the group can own more than the legal limit of plants for an individual;**
- **Cannabis product in the group is owned by the individual owner of the plant that produced it; and**
- **Cannabis product cannot be traded or exchanged with other individuals.**

¹⁹⁶ ACT Government, *Answer to Supplementary Question on Notice No. 01*, 20 May 2019, p. 2.

5 MEDICINAL CANNABIS

- 5.1 Noting that the principal purpose of the Bill is to legalise the personal cultivation and use of cannabis, the Committee acknowledges that a number of submissions and evidence provided highlighted this Bill as a conduit for medicinal purposes.
- 5.2 A number of studies suggest that there is evidence which support the use of cannabis for therapeutic uses. In a specialist adviser report provided to the 8th Assembly Standing Committee on Health, Ageing, Community and Social Services, *Inquiry into Exposure Draft of the Drugs of Dependence (Cannabis Use for Medical Purposes) Amendment Bill 2014*, the therapeutic benefits of cannabis were explored.
- 5.3 In this evaluation, the specialist adviser, Associate Professor Jonathon Arnold suggested that there is evidence that pharmaceutical cannabinoid drugs can be effective for the following conditions:
- Treatment of a variety of pain including neuropathic pain, post-operative, chronic pain, fibromyalgia, rheumatoid arthritis and pain associated with multiple sclerosis and cancer;
 - Treat nausea and may prove useful where patients are resistant to conventional anti-emetic (anti-nausea) medications;
 - Stimulate appetite in conditions where there is loss of appetite, such as cancer patients;
 - Assist patients suffering spasticity, pain, muscle spasms, sleep and mobility as a result of Multiple Sclerosis;
 - Symptomatic relief in other neurological disorders such as Parkinson's disease, Huntington's disease, Tourette's syndrome, amyotrophic later sclerosis and Alzheimer's disease; and
 - Reducing seizures in treatment-resistant epilepsy patients.¹⁹⁷
- 5.4 Following the 8th Assembly's report, the ACT Medicinal Cannabis Scheme was established in 2016. Implementation of the ACT scheme followed the Therapeutic Goods Administration decision to list medicinal cannabis as a controlled (Schedule 8) medicine in the Commonwealth Poisons Standard.¹⁹⁸

¹⁹⁷ Legislative Assembly for the ACT, 8th Assembly Standing Committee on Health, Ageing and Social Services, *Inquiry into the Exposure Draft of the Drugs of Dependence (Cannabis use for Medical Purposes) Amendment Bill 2014, Appendix B: Report on the Medical Applications of Cannabis and the Cannabinoids*, August 2015, pp. 135-159.

¹⁹⁸ ACT Government, *Medicinal Cannabis*, 13 March 2019, available at: <https://health.act.gov.au/health-professionals/pharmaceutical-services/controlled-medicines/medical-cannabis>.

- 5.5 In order to be considered a Schedule 8 controlled medicine, medicinal cannabis products can be prescribed as controlled medicines in the ACT for medicinal use, when they are either:
- Manufactured in Australia in accordance with the Australian Government Department of Health legislation; or
 - Imported in accordance with a valid customs import licence issued by the Australian Government Department of Health.¹⁹⁹
- 5.6 All other forms of cannabis still face legal restrictions and cannot be prescribed. This includes a patient's own cannabis for personal medicinal use and medicinal products manufactured outside of Australia.²⁰⁰
- 5.7 As part of the Scheme, prescribers are able to apply for ACT Chief Health Officer approval to prescribe medicinal cannabis for certain indications. Indications are determined by Category 6 of the *Medicines, Poisons and Therapeutic Goods (Category Approval) Determination 2018 (No 2)*. Indications that are recognised under Category 6, include:
- Spasticity in multiple sclerosis.
 - Nausea and vomiting related to cancer chemotherapy.
 - Pain and/or anxiety in patients with active malignancy to a life limiting disease where (in either case) the prognosis might reasonably be expected to be 12 months or less.
 - Refractory paediatric epilepsy.²⁰¹
- 5.8 A number of individual submission highlighted the restrictive nature of the current Medicinal Cannabis Scheme, as well as the benefits of this Bill in not only providing access to cannabis for recreational purposes, but also medicinal purposes.
- 5.9 Submission three noted that due to the restrictive nature of accessing medicinal cannabis in Australia, this individual accessed cannabis oil internationally. The consumption of this cannabis oil assisted in the treatment of Parkinson disease related symptoms. Submission three further informed the Committee that the use of cannabis oil to treat Parkinson disease related symptoms has provided a quality of life that was not achievable before. Submission three reaffirms that 'people should have the choice on how to medicate their body and mind with this plant.'²⁰²

¹⁹⁹ *Medicines, Poisons and Therapeutic Goods (Category Approval) Determination 2018 (No 2)*, Schedule 1, 26 September 2018, p. 16.

²⁰⁰ ACT Government, *Medicinal Cannabis*, 13 March 2019, available at: <https://health.act.gov.au/health-professionals/pharmaceutical-services/controlled-medicines/medical-cannabis>.

²⁰¹ ACT Government, Health Protection Services, *ACT Medicinal Cannabis Scheme*, no date, available at: https://health.act.gov.au/sites/default/files/2018-09/Medicinal%20Cannabis%20Scheme%20-%20Frequently%20Asked%20Questions_0.pdf.

²⁰² Individual Submission, *Submission 03*, 12 March 2019, p. 1.

- 5.10 Access to cannabis for medically related illnesses was also a key concern presented in submissions. Specifically, submission seven noted that they had accessed cannabis oil internationally, to assist with the symptoms associated to stage four breast cancer. Submission seven advocated for the access to cannabis oil to assist patients with similar diagnosis.²⁰³
- 5.11 Submission 23 also advocated the benefits of cannabis to assist with medical conditions. Submission 23 informed the Committee that throughout his wife's journey with brain cancer, access and use of cannabis assisted greatly with a number of ailments and a quality of life she may not have had previously.²⁰⁴
- 5.12 The benefits of cannabis in assisting individuals with medical conditions was also highlighted in submission 36. Submission 36, who suffers from obsessive compulsive disorder, advised that Committee that they had suffered from this disorder for 10 years and had tried a number of medications throughout this period. However, after trying cannabis, submission 36 stated that:
- I did not expect what happened shortly after I began and was completely blown away. Three weeks into trialing cannabis, my OCD was almost entirely gone. It was like an absolute miracle. I actually jumped for joy when the realisation hit me.
- Going from over ten years with different pharmaceuticals that did next to nothing to help me, to three weeks with a plant and I was nearly completely free from my nightmare.
- It was truly like magic.²⁰⁵
- 5.13 However, the Committee noted that there were concerns raised by those currently accessing cannabis through the Medicinal Cannabis Scheme. In particular, Ms Laura Bryant, advised the Committee that she believed the legalisation of cannabis for recreational use would make it harder for patients who need cannabis for medical purposes. Ms Bryant highlighted that the current medicinal scheme is quite limited with regards to approval and access to cannabis. The legalisation of cannabis for recreational use would 'trigger a complete reversal of the hard work advocates and patients have done to access their medicine'.²⁰⁶
- 5.14 Ms Bryant added that she was required to attend a clinic in Sydney because the understanding of the current legislation around cannabis as a medicine is relatively limited in the ACT and no medical personnel is willing to prescribe cannabis.²⁰⁷
- 5.15 The restrictive nature of accessing medicinal cannabis was also highlighted in a submission provided by Mr Robert Barber. Mr Barber advised the Committee that he had been approved to use cannabis oil for the past seven months. Mr Barber went on to advise the Committee

²⁰³ Individual Submission, *Submission 07*, 21 March 2019, p. 1.

²⁰⁴ Individual submission, *Submission 23*, 21 March 2019, pp. 1-5.

²⁰⁵ Individual Submission, *Submission 36*, 03 May 2019, p. 2.

²⁰⁶ Ms Laura Bryant, *Submission 18*, 21 March 2019, pp. 1-3.

²⁰⁷ Ms Laura Bryant, *Submission 18*, 21 March 2019, pp. 1-3.

that costs associated with the purchase of medically approved cannabis oil is unsustainable. If the possession and cultivation of cannabis was to be legalised, the costs associated would be minute in comparison to those associated to the Medicinal Cannabis Scheme.²⁰⁸

- 5.16 Additionally, information provided by the Leader of the ACT Greens, Mr Rattenbury MLA, also noted that:

While the ACT currently has a Medicinal Cannabis Scheme, I have received feedback from the community that current arrangements are not working effectively to support those who use cannabis for medicinal purposes. I have been advised by patients that obtaining a prescription under the scheme is extremely difficult, and even when a prescription can be obtained the medications are prohibitively expensive for many people.²⁰⁹

- 5.17 Mr Moore AM noted that the Medicinal Cannabis Scheme was deliberately made to be very restrictive and the downside to this is that it has become very expensive. As a result, there is those who can afford to access the Scheme and those who cannot. Mr Moore AM advised the Committee that the option to acquire cannabis legally through the adoption of this Bill could be considered a 'halfway house' and supported this notion.²¹⁰

- 5.18 During evidence provided, Families and Friends for Drug Law Reform highlighted that prior to the regulation of medicinal cannabis, families were forced to purchase cannabis on the black market. However, the benefits of regulated medicinal cannabis were limited due the costs associated being prohibitive. As a result of the restrictions regarding access to medicinal cannabis, Families and Friends for Drug Law Reform highlighted that 'when you restrict the supply the black market proliferates'.²¹¹

- 5.19 With regards to the medicinal impacts of this Bill, Families and Friends for Drug Law Reform advised the Committee that:

If raw product is what people can get, that is what they will use while they are waiting for the medicinal cannabis legislation and access scheme to catch up. And there is great evidence that shows that the whole-plant medicine can be much more effective for a lot of things than the single element, the CBD or the THC. So there is a good argument for whole plant consumption. As I said, anything that can be done to distance caring families—caring, sensible, educated families—from the legal system is a job well done.²¹²

²⁰⁸ Mr Robert Barber, *Submission 06*, 12 March 2019, p. 1.

²⁰⁹ Mr Shane Rattenbury MLA, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 20 March 2019, p. 2.

²¹⁰ Mr Michael Moore AM, Private Citizen, *Transcript of Evidence*, 26 March 2019, p. 30.

²¹¹ Ms Bernadette Bryant, Member, Families and Friends for Drug Law Reform, *Transcript of Evidence*, 26 March 2019, pp. 13-14.

²¹² Ms Bernadette Bryant, Member, Families and Friends for Drug Law Reform, *Transcript of Evidence*, 26 March 2019, p. 17

COMMITTEE COMMENT

- 5.20 The Committee notes that the ACT Greens will be proposing an amendment to allow medicinal cannabis patients, with conditions for which medicinal cannabis can be approved under ACT Controlled Medicines and Prescribing Standards, to possess up to 150 grams of cannabis for personal use. The Committee acknowledges that this amendment will be presented to allow patients to stockpile large quantities of cannabis due the medical need for regular use.²¹³
- 5.21 The Committee acknowledges that under the current Medicinal Cannabis Scheme, it is difficult to be accepted into the Scheme. Additionally, the Committee notes that evidence provided highlighted the difficulty in accessing the medication and the excessive costs associated to the medication. The Committee believes that the Bill could be considered a sort of reprieve for people who are trying to access the Medicinal Cannabis Scheme.
- 5.22 The Committee acknowledges that evidence provided throughout this Inquiry has made reference to medicinal cannabis, and how this Bill may assist in a medicinal capacity. However, the Committee notes that the core purpose of this Bill is to legalise cannabis for personal use. As such, the Committee believes that medicinal cannabis is outside the scope of this Bill and will not be making any recommendations in regards to medicinal cannabis.

²¹³ Mr Shane Rattenbury MLA, *Outline of Intended Amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, 20 March 2019, p. 2

6 CONCLUSION

- 6.1 This report presents a summary of the Committee's Inquiry into Mr Pettersson MLA's private members bill; Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.
- 6.2 The Committee has 16 recommendations in response to its scrutiny of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.
- 6.3 The Committee would like to thank all those who provided a submission and those who appeared before the Committee. The Committee acknowledges the tight timeframe for contributions and appreciates the efforts taken by those who participated in the Committee's Inquiry.

Ms Bec Cody MLA

Chair

03 June 2019

APPENDIX A – SUBMISSIONS

Submission Number	Submitter	Received
01	Name Withheld	12.03.2019
02	A. Kennedy	12.03.2019
03	Name Withheld	12.03.2019
04	R. Inman	12.03.2019
05	J. Faust	12.03.2019
06	R. Barber	12.03.2019
07	Name Withheld	21.03.2019
08	J. Fox	21.03.2019
09	R. Roncan	21.03.2019
10	S. Nulty	21.03.2019
11	E. Munro-Ashman	21.03.2019
12	Drug Free Australia (Queensland Branch)	21.03.2019
13	Name Withheld	21.03.2019
14	Wildlife Carers Group	21.03.2019
15	Dalgarno Institute	21.03.2019
16	Name Withheld	21.03.2019
17	Name Withheld	21.03.2019
18	L. Bryant	21.03.2019
19	National Drug Research Institute	21.03.2019
20	Name Withheld	21.03.2019

Submission Number	Submitter	Received
21	Name Withheld	21.03.2019
22	Street Law	21.03.2019
23	Name Withheld	21.03.2019
24	Alcohol and Drug Foundation	21.03.2019
25	Canberra Organic Growers' Society	21.03.2019
26	Law Society of the ACT	21.03.2019
27	J. Savage	21.03.2019
28	ACT Policing	21.03.2019
29	Alcohol, Tobacco and Other Drugs Association	21.03.2019
30	Families and Friends for Drug Law Reform	21.03.2019
31	Australian Government Department of Health	21.03.2019
32	Australian Federal Police Association	26.03.2019
33	Australian Medical Association (ACT)	26.03.2019
33A	Australian Medical Association (ACT)	26.03.2019
34	Penington Institute	29.03.2019
35	Canberra Alliance for Harm Minimisation and Advocacy	30.04.2019
36	Name Withheld	03.05.2019

APPENDIX B - WITNESSES

26 MARCH 2019

- Mr Michael Pettersson MLA;
- Mr Bill Bush, President, Families and Friends for Drug Law Reform;
- Ms Bernadette Bryant, Member, Families and Friends for Drug Law Reform;
- Ms Marion McConnell, Founding Member, Families and Friends for Drug Law Reform;
- Mr Michael Moore AM, private citizen;
- Professor Simon Lenton, Director, National Drug Research Institute;
- Ms Angela Smith, President, Australian Federal Police Association;
- Mr Alex Caruana, Vice President, Australian Federal Police Association; and
- Mr Troy Roberts, Manager of Media and Government Relations, Australian Federal Police Association.

29 MARCH 2019

- Ms Farzana Choudhury, Program Manager and Solicitor, Street Law;
- Mr Michael Kukulies-Smith, Chair, ACT Law Society Criminal Law Committee, Law Society of the ACT;
- Mr John Ryan, Chief Executive Officer, Penington Institute;
- Ms Julie Tongs OAM, Chief Executive Officer, Winnunga Nimmityjah Aboriginal Health and Community Services; and
- Mr Jon Stanhope, Senior Advisor, Winnunga Nimmityjah Aboriginal Health and Community Services.

03 MAY 2019

- Dr Antonio Di Dio, President, Australian Medical Association ACT;
- Mr Peter Somerville, Chief Executive Officer, Australian Medical Association ACT;
- Mr Christopher Gough, Manager, Canberra Alliance for Harm Minimisation and Advocacy;
- Mr Shane Rattenbury MLA, Leader of the ACT Greens;
- Assistant Commissioner Ray Johnson, Chief Police Office, ACT Policing; and
- Commander Mark Walters, Deputy Chief Police Officer, Crime, ACT Policing.

08 MAY 2019

- Mr Andrew Barr, MLA, Chief Minister;
- Ms Leonie McGregor, Deputy Director-General, Health Systems, Policy and Research, ACT Health;
- Ms Erica Nixon, Senior Manager, Preventative and Population Health, ACT Health;
- Ms Leesa Croke, Deputy Director-General, Policy & Cabinet, Chief Minister, Treasury and Economic Development Directorate;
- Mr Peter Garrisson, Solicitor-General, Attorney-General;
- Mr Victor Martin, A/g Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate.

APPENDIX C – QUESTIONS TAKEN ON NOTICE/ QUESTIONS ON NOTICE

Questions taken on Notice 26.03.2019

No.	Asked by	Directorate/ Portfolio	Subject	Answer date
1	Ms Cody MLA	AFPA	Pill Testing legislation	05.04.19
2	Ms Cody MLA	Families and Friends for Drug Law Reform	Short supply of cannabis due to 2003 Bushfires	05.04.19
3	Mrs Dunne MLA	Mr Pettersson, MLA	Research identifying that legislation does not increase use	03.04.19

Questions taken on Notice 29.03.2019

No.	Asked by	Directorate/ Portfolio	Subject	Answer date
4	Ms Cody MLA	Penington Institute	Cannabis related research	10.04.19
5	Ms Cody MLA	Penington Institute	Cannabis related research	10.04.19
6	Ms Cody MLA	Penington Institute	Cannabis related research	10.04.19

Questions Taken on Notice 03 May 2019

No.	Asked by	Directorate/ Portfolio	Subject	Answer date
7	Ms Cody MLA	ACT Policing	Canada drug-driving testing	09.05.19

No.	Asked by	Directorate/ Portfolio	Subject	Answer date
8	Mrs Dunne MLA	ACT Policing	Advice regarding Commonwealth legislation	09.05.19
9	Mrs Dunne MLA	ACT Policing	Cannabis offences over 5 years	09.05.19
9A	Mrs Dunne MLA	ACT Policing	Cannabis offences over 5 years	09.05.19

Questions on Notice 08 May 2019

No.	Asked by	Directorate/ Portfolio	Subject	Answer date
1	Ms Le Couteur MLA	ACT Government	Supply Issues	20.05.19
2	Ms Le Couteur MLA	ACT Government	Wet vs. Dry Amendments	20.05.19
3	Ms Le Couteur MLA	ACT Government	Commonwealth vs. ACT law	20.05.19
4	Ms Le Couteur MLA	ACT Government	Commencement of the Bill	20.05.19
5	Ms Le Couteur MLA	ACT Government	Children	20.05.19

ADDITIONAL COMMENTS – MS LE COUTEUR MLA

ADDITIONAL COMMENTS – MS LE COUTEUR MLA

1. Cannabis cultivation

This legislation should be about cannabis, not about how it is grown. Recommendation 3 of the main report recommends that the bill should be amended to allow for soil cultivation in a greenhouse and/or with artificial light. I think we should go further and remove all references to methods of cultivation.

In Canberra with its poor soil and harsh climate many cannabis growers grow their plants indoors, probably using artificial light and certainly not using unimproved soil. I understand that hydroponics are used by many growers and that they can be used on a small scale as it envisaged in this bill. I believe that removing restrictions on how cannabis is grown would make it more workable for Canberrans those who wish to grow the plant legally for their own use.

2. Objects of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

Given the long-standing controversy about cannabis: should it be treated as something bad and people who use it penalized, should it be treated as a health issue or can it enjoyed by some people, it would be useful for the bill to state what the purpose of the bill is.

All the evidence before the committee supported away from a focus on law and order and instead treating drug possession and personal use as a health issue. We need to take a new approach to drug policy, one that prioritizes keeping people safe, alive and healthy, rather than punishing them. I support the ACT Greens proposed amendment to the bill to include harm reduction objectives:

(a) to minimise harm resulting from the use of drugs of dependence;

(b) to promote a harm minimisation approach that recognizes that personal use of drugs of dependence is fundamentally a health issue; and

(c) to reflect an evidence-based approach to drug policy, which puts the health and safety of the ACT community ahead of all other policy objectives.

Other pieces of our legislation, for example the Animal Welfare Act 1992, have a section for its objectives.

3. Ongoing governance - Independent Cannabis Advisory Council

The legalization of cannabis for personal use is a significant shift in approach for an Australian jurisdiction and it is unlikely that the initial legislation will be perfect. It will take time, good will and good evidence to create the best regulatory environment.

For this reason the ACT Greens have proposed an ongoing independent Cannabis Advisory Council. This was commented on by favorably by Canberra Alliance for Harm Minimisation and Advocacy and thus mentioned in the main report. I think that this would be a worthwhile amendment.

DISSENTING REPORT – MRS DUNNE MLA

DISSENTING REPORT – MRS DUNNE MLA

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

Dissenting Comments by Vicki Dunne MLA

Introduction

I dissent from Recommendations 1-6, 10-12 and 16 and from committee comments at paragraphs 4.11 and 4.12, 4.33, 4.56 and 4.181-4.184. I disagree with all the major conclusions of the report of the Standing Committee on Health and Community Services. The reasons for my dissenting can be summarised as follows:

- neither the bill as presented, nor the suggested amendments, are fit for purpose;
- cannabis is a dangerous drug and the proposals to legalise it anyway are not in the best interests of the community; and
- we do not understand the interaction of this legislation with Commonwealth law.

The Bill is not fit for purpose

In the Explanatory Statement for this Bill the proponent said that the purpose of the Bill, *inter alia*, was to “...reflect global trends... [and]...reduce the burden on our criminal justice system and bring us a step closer to a cannabis market.”¹ During hearings on this Bill the proponent added another reason: protecting individuals from organised crime by allowing them “... to grow their own legal supply ...[so]... that people do not need to interact with drug dealers anymore.”²

From the evidence presented to the Committee during its Inquiry, none of these objectives will be met.

Global Trends

The proponent sets great store by changes in legislation in Canada, South Africa, Uruguay and Spain and a hand full of states in the United States of America. Firstly, these changes do not constitute a “global trend”. Secondly, the approach taken in legislating is so diverse as not to throw up any trend.

¹ Explanatory Statement p. 2.

² Mr Michael Pettersson, Transcript from public hearings p. 2.

Relieving the burden on the criminal justice system

The ACT already has a system which decriminalises the personal use of cannabis as well as diverting people to drug programs. In evidence the Standing Committee heard that there had been an overall reduction in the cannabis use in the ACT since the decriminalisation of cannabis use.

Ms Nixon: ... What we do know is that the percentage of Canberrans who are using cannabis has actually been declining. I think the important point to note there is that it has been declining since we have decriminalised cannabis use.

Back in the mid-1990s we went to simple cannabis offence notices. This effectively decriminalised cannabis use. I have some statistics from the Australian Institute of Health and Welfare. In 1998, which is around the time that these changes were introduced, we had 20 per cent of ACT residents aged 14 years and older using cannabis in the past 12 months. In 2016 this figure had fallen to eight per cent.³

This indicates that current cannabis use is now a little more than a third of what it was before decriminalisation. Rather than a significant burden these figures would indicate a declining reliance on the criminal justice system.

Keeping people out of the black market

In a further justification for this legislation, the proponent indicates he would rather move towards “a cannabis market”, however he does not explain how a system that allows for legal possession and growing of small amounts of cannabis is a step along that path.

- cannabis is an annual plant that is quite frost sensitive and would have a restricted growing season in Canberra
- to produce fertile seeds for replanting a grower needs both male and female plants;
- very few people had the skills or interest in growing for their own supply; and
- acquiring the material to grow would still be illegal.

Overall the natural growing of cannabis plants in the ACT would not give a user a year-round supply.

In addition, it also became clear that any seeds or plants that an individual may like to grow could only be sourced by illegal means. The proponent himself admitted as much in questioning.

³ Ibid., p. 107.

MRS DUNNE: ... Mr Pettersson, where does a private grower obtain plants to grow? The seeds or the seedlings or whichever way you want to do it, where do they come from?

Mr Pettersson: ... It would be the same way that cannabis users are currently getting their cannabis: *through the black market* [emphasis added].⁴

Considering the already declining use of cannabis and on the basis that the proposed legislation does not follow a global trend and does not create a “grow your own” regime that would shield people from organised crime, I recommend that the bill not be passed.

Cannabis is a dangerous drug

*Cannabis is a harmful product. There is no denying that*⁵.

Throughout the hearings the Standing Committee was told by witnesses about the dangers associated with the use of cannabis. However, the Standing Committee did not look specifically at this issue nor did it undertake a literature search of any kind on the effects of the use of cannabis.

During questioning I raised issues of the mental health impact of the use of cannabis and none of the witnesses put forward a contrary view about the dangers of the use of cannabis.

In preparation for these dissenting comments I have not undertaken an extensive literature search as the resources available to a non-executive member do not extend to that. However, my general reading in this area over the years indicate that the use of cannabis increases:

- the risk of psychosis and related mental health problems even in light users; and
- the propensity to commit violent crime.

Set out below are some studies that have appeared in prestigious, peer-reviewed journals. I have not personally read these studies, but they are well known and referred to regularly in the literature. I have summarised them from the publication *Tell your Children: the truth about marijuana, mental illness and violence*⁶.

⁴ Ibid., p.3.

⁵ Mr Michael Moore, Ibid., p. 26

⁶ Berenson, Alex, *Tell your Children: the truth about marijuana, mental illness and violence*, Simon and Shuster, 2019, Kindle version.

Mental Illness

In 1978 the *Lancet* published a paper “Cannabis and Schizophrenia: A Longitudinal Study of Swedish Conscripts” by Sven Andréasson, a study which followed up on a single cohort of 45,000 Swedish conscripts from 1969-70. It found a strong association between cannabis use and schizophrenia, and “persistence of the association after allowance for other psychiatric illness and social background [that] indicated that cannabis is a persistent risk factor for schizophrenia...”⁷.

Andréasson’s work found that smoking cannabis, even only once, doubled the risk of schizophrenia, while persistent use meant the risk of later developing schizophrenia was six times as high as people who had never smoked.⁸

Andréasson conducted a follow-up research to study whether people who developed schizophrenia from smoking cannabis were different from other schizophrenia patients. He concluded that smokers were likely to have had a very sudden first onset of their illness, while non-smokers were more likely to have been ill from a much younger age.

In 2002 the *British Medical Journal (BMJ)* published the result of an analysis of data derived from a famous longitudinal study of about 1100 children born in Dunedin, New Zealand, in 1972-73. This paper found that “...using cannabis in adolescence increases the likelihood of experiencing symptoms of schizophrenia in adulthood”. The researchers specifically acknowledged that their “...findings agree with those of the Swedish study”.⁹

The same edition of the *BMJ* published other research about the link between cannabis and mental illness, and in its editorial wrote:

Although the number of these studies is small, these findings strengthen the argument that the use of cannabis increases the risk of schizophrenia and depression, and they provide little support for the belief that the association between marijuana and mental health problems is largely due to self-medication.¹⁰

Violent crime

It is well-known that there is a strong link between psychosis and violent crime.

Evidence out of the United States indicates an increase in violent crime in states where cannabis has been legalised. Alaska, Colorado, Oregon and Washington, which legalised cannabis use in 2014 and 2015, have seen a combined 35% increase in murder and 25% increase in assault in the period 2013-17. The national average increases in murder and

⁷ Ibid, p.54, Kindle version.

⁸ Ibid, p.52, Kindle version.

⁹ Ibid, p.93, Kindle version.

¹⁰ Quoted in Ibid., p. 93, Kindle version.

assault were 20% and 10% respectively¹¹. While at this stage there appears to be no good evidence about the about how much of this increase in crime is attributable to cannabis, such a statistical anomaly does require further study before following these states down the path of legalisation.

The interaction with Commonwealth law

In evidence a variety of witnesses spoke about the impact Commonwealth drug laws might have if the current Bill were passed. There is an extensive review of the evidence beginning at page 42 of the main report. It is clear that there is considerable uncertainty whether the passage of the Bill in any form would be effective or whether we would be leaving it open for Canberrans to be prosecuted under Commonwealth law.

During its deliberations the Standing Committee considered a recommendation that the commencement under any legislation be delayed until this matter was clarified. If the Legislative Assembly chooses to legislate to legalise cannabis use it should be confident that the law will do what it sets out to do.

Conclusion

Neither the Bill put forward by the proponent, nor the proposed Government or cross bench amendments will result in legislation which is fit for purpose. The Bill will not, despite the high hopes of the proponent, protect citizens from organised crime. In addition, a cursory review of the literature indicates that the implementation of the Bill will jeopardise mental health and compromise public safety.

It is unclear that even if this legislation passes it will be effective because of the interaction with Commonwealth law.

I recommend to the Legislative Assembly that it not pass the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

Vicki Dunne MLA
6 June 2019

¹¹ Ibid., p. 10, Kindle version.