LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE DRUGS OF DEPENDENCE (PERSONAL USE) AMENDMENT BILL 2021
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Submission Cover Sheet

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

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Canberra Alliance for Harm Minimisation and Advocacy (CAHMA) Inc.

SUBMISSION

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

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

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CAHMA and The Connection acknowledge the traditional custodians of the lands on which we operate and pay our respects to Elders past, present and emerging.

Executive Summary

CAHMA wishes to thank the ACT Legislative Assembly for progressing this bill, the Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021. CAHMA believes that this represents a huge step forward in drug law reform and drug treatment and commends the Assembly for prioritising this work.

In the following submission CAHMA adds its support to the bill in question while asking that the bill be altered in several ways which CAHMA believe will enhance the bill and provide added benefit to the issues that the bill seeks to address. It must be noted that CAHMA's submission deals mainly with the issue of the Simple Drug Offence Notice part of the bill. Although CAHMA does make several recommendations with regards to the other issues raised in the bill, in general CAHMA refers the committee to ATODA's submission sections covering issues related to increasing drug treatment and harm reduction options.

In short, CAHMA and the community that we represent is hopeful that this bill will be passed in order to:

- allow people who use drugs to become less marginalised in the community.
- decrease the criminalisation of people who use drugs.
- decrease the stigma and discrimination of people who use drugs.
- allow support rather than punishment of PWUD at the pivotal moment where law enforcement becomes involved in that person's life.
- Increase the rate and efficacy at which people who use drugs access treatment.
- Provide increased capacity for existing ATOD services and provide resourcing for the development of long anticipated low threshold services including fixed site drug testing, a peer or nurse led supervised injecting centre and a hydromorphone assisted treatment trial.

With Regards to the Simple Drug Offence Notice

Summary of Recommendations:

RECOMMENDATION: Pass the bill in an altered form mirroring the ACT Cannabis legislation of 2019.

RECOMMENDATION: If CAHMA's first recommendation is not possible then pass the bill with an alternative to a fine. CAHMA's preference is that a simple untied referral be provided by the police to a drug treatment provider.

RECOMMENDATION: Removal of S8 drugs by name and inclusion instead of "catch-all phrase" which deals with S8s without naming individual substances. Insertion of gamma hydroxybutyrate (GHB), carfentanyl and other fentanyl derivatives. Insertion of a future-proofing clause dealing with future analogues of drugs contained on the list.

RECOMMENDATION: Thorough discussion of the concept of police discretion as it relates to marginalised and cirminalised PWUD and supply ATOD training for police.

RECOMMENDATION: Ensure governance mechanisms and evaluation mechanisms are put in place to safeguard and monitor the bill.

RECOMMENDATION: remove the self-administration of drugs offence.

RECOMMENDATION: Change the personal limits used in the bill to the ACT personal possession limits.

RECOMMENDATION: That drug driving testing should be conducted based on impairment or not at all.

RECOMMENDATION: That the committee follows the recommendations of the ATODA submission with regards to proposed changes to the ATOD sector as a whole.

With Regards to Systemic Issues around the ATOD Sector

Additionally CAHMA hopes that this bill will shed light into the systemic changes that are required in the ATOD sector to support people who use drug treatment services to access treatment in a more effective and timely manner – especially given a policy environment where people with problematic drug use are viewed as needing health treatment as opposed to criminal sanctions.

CAHMA points the committee to the ATODA submission which deals with this section. In addition to the points raised by the ATODA submission CAHMA recommends:

RECOMMENDATION: That the committee follows the recommendations of the ATODA submission with regards to proposed changes to the ATOD sector as a whole.

RECOMMENDATION: That the government invests in fixed site drug testing and a supervised injection facility.

RECOMMENDATION: Conduct work into the nexus of ATOD and Mental health issues and tailor programs which can progress treatment of both issues concurrently.

RECOMMENDATION: That the ACT Government prioritises a Hydromorphone Assisted Treatment program in the ACT.

Canberra Alliance for Harm Minimisation & Advocacy

Acknowledgement

CAHMA would like to thank MLA Michael Petersen for introducing this bill and to the Legislative Assembly for taking the bill seriously and sending it to select committee for due diligence. CAHMA has worked hard with the community of people who use drugs and drug treatment services in the ACT and more broadly, many alcohol, tobacco and other drug organisations and community organisations as well as many other individuals to discuss and analyse the potential consequences of this bill as well as advocate for continued work along this highly important path of drug law reform.

This submission is the product of these extensive discussions. The submission was written by committee of people who use drugs. CAHMA would like to thank the community of people who use drugs and drug treatment services in the ACT and across Australia for input into this submission. CAHMA would also like to thank Dr. David McDonald, Families and Friends of Drug Law Reform (FFDLR) (especially Bill Bush and Marion McConnell), the Alcohol Tobacco and Other Drug Association of the ACT (ATODA) especially Dr. Devin Bowles and Adam Poulter, the ACTCOSS Justice Reform Group, Harm Reduction Victoria (HrVic) especially Sione Crawford, NSW Users and AIDS Association (NUAA) especially Dr. Mary-Ellen Harrod. Finally many thanks to the authors of this submission Oscar Wilson, Julian Juhas, Geoff Ward and Sam McKinnon and Chris Gough.

Information about CAHMA

The Canberra Alliance for Harm Minimisation and Advocacy (CAHMA) Inc. is a community-controlled, peer-based, alcohol, tobacco, and other drug (ATOD) consumer organisation funded by ACT Health and the Capital Health Network (CHN). We represent and provide treatment, advocacy and support for people who use drugs and people who use drug treatment services in the ACT. CAHMA is staffed and directed by people who have lived experience of illicit drug use and/or ATOD treatment services. From its community space in Belconnen, CAHMA provides drug treatment services, health and wellbeing education and information as well as support and advocacy. CAHMA also provides intensive case management (peer treatment support) and harm reduction services, which includes naloxone training and provision (1). CAHMA operates an Aboriginal and Torres Strait Islander program — The Connection — that focuses on the needs of Aboriginal and Torres Strait Islander people who use drugs. The Connection is the only culture-specific peer-based ATOD program in Australia. We strive to provide support with a person-centred, harm reduction ethic: every client has control over the treatment they receive and drug use is neither condoned or condemned. All services provided are evidence-based and informed by local community need.

As part of the ACT ATOD sector CAHMA works closely with the Alcohol Tobacco and Other Drug Association ACT (ATODA) and ACT's drug treatment services to ensure that people who use drugs (PWUD) have access to the widest and finest range of ATOD treatment support possible. CAHMA is also involved in teaching emerging cohorts of healthcare professionals through guest lectures at the Australian National University, the University of Canberra, and Canberra Hospital across the fields of psychiatry, nursing, counselling, and

criminology. We work together with healthcare providers to support peoples' journey through ATOD treatment in a way that promotes health literacy and is truly people-centred and -focused. Our services are designed and implemented to empower people to take control of their health and wellbeing by reducing the harms intrinsically related to drug use and as a result of drug criminalisation. CAHMA strongly believes in the principle of "nothing about us without us" — that people with lived experience of drug use and using drug treatment services should be central to policy and system changes. Through inclusion of people with lived experience in design and implementation, appropriate policy and person-centred programming is reached. Inclusion of lived experience allows enhanced governance and evaluation by leveraging links to the community of people experiencing the policy or program.

CAHMA's ethic and values system is derived from the principles outlined in The Ottawa Charter and Vancouver Convention (2,3). These principles include the social determinants of health, which are defined by the World Health Organisation (WHO) as "the non-medical factors that influence health outcomes"(3). These factors include education, wealth, food security, relationships and social networks, housing, and of particular importance to this bill, social policies, including drug policies. CAHMA combines the Ottawa Charter principles with the principles of person-centred healthcare and the "nothing about us without us" consumer movement (4). CAHMA's objective is to support the community of drug treatment service consumers in Canberra with the mission to expand and protect their human rights. Our unique connection to this community confirms that the most effective way to improve health outcomes is with consumer's full engagement.

History and Current State of Drug Use in Society

Across the world the use of psychoactive drugs by people has a long tradition dating back to the beginning of human history. Archaeological evidence shows that some of humankind's longest associations are with plants and fungi that have religious, medicinal and recreational uses (5). Each culture on earth has different associations with different drugs and different culturally accepted usages. It is only in the last 100 years or so that there has been a global ban on the use of drugs and a worldwide definition of what drugs are acceptable and what are not (6). It is not surprising, given the unique usage of drugs by different cultures in the world and the powerful force of colonialism followed by the United States and the United Nations, that it is now accepted that these global drug laws roots are founded in racism and xenophobia (7). What has now become obvious is that these laws have failed to reduce rates of drug use and additionally have many deadly and profound impacts on people across the world including:

- The murder of thousands of people across the world but particularly in drug producing countries
- Causing health inequities and deterring people from accessing healthcare services
- Increasing marginalisation and poverty while allowing international criminal networks to thrive
- Causing stigma and discrimination
- Causing increased rates of overdose deaths
- Causing un-reasonably harsh and disproportionate penalties including the death penalty for drug related offenses
- Causing human rights abuses including mandatory treatment

For these reason's drug law reform has been on the global agenda for several decades Today there is an ever-increasing number of countries and jurisdictions that have decriminalised some if not all drugs with 21 countries having decriminalised drugs in some form (8). These include Portugal, The Netherlands, Switzerland, Canada, Bolivia, Uruguay, Chile, The Czech Republic and many US States that have now legalised Cannabis including legalising the sale and distribution of Cannabis, while Oregon has just decriminalised all drugs and introduced a civil fine instead of criminal sanctions).

Australian Context

In Australia, the opinion that personal drug use is, if it becomes problematic, a health issue and not a criminal justice issue is rapidly gaining support. This growing change has manifested in the Uniting Church and Uniting (formerly Uniticare) Discussion Paper *"Possession and use of Drugs. Options for to changing the law"* which decisively supports decriminalisation of personal drug use while providing greater treatment options for PWUD. This paper succinctly defines the issue:

"Only a small proportion of people who use drugs experience drug dependency (i.e. use that causes social, financial, psychological or physical problems). For those who do not develop drug dependency, the current reliance on criminal sanctions puts at risk careers and opportunities. For those who do develop drug dependency, the current approach creates barriers to help and support." (9)

In other words there are 2 issues at play here:

- Drug use as a health concern (which is estimated to occur in 10-30% of PWUD)
- Criminalisation as a harm in and of itself (which affects 100% of PWUD)

The desire to prevent health problems and deaths is universal, especially when accounting for the associated burden on the healthcare sector. The public and the police force would also benefit from freeing resources that could be spent on fighting serious and unfortunately common crimes such as violent crime, domestic violence and sexual assault. In fact, the AFP in the ACT do not target personal drug use but rather marshal their resources to prevent the supply and trafficking of drugs. The ACT has well established diversion mechanisms and has recently formalised a drug court for more serious offenses. There is also anecdotal evidence from experiences of the community in the ACT that in some instances the AFP is already confiscating personal amounts of drugs and referring people to treatment rather than charging them with a criminal offence. Likewise, the public does not want individuals whose only perceived transgression is personal drug use to be forced into further disadvantage that can trap them in poverty, mental health issues, and/or drug dependency. This widespread consensus on these goals has caused a focus on drug law reform and in particular decriminalisation of personal drug use. Wider society shares the goal of improving health and quality-of-life outcomes for everyone. There is more and more recognition that the "Support don't Punish" mantra is the practical way to proceed in terms of drug policy. This mantra states that whatever people's personal drug consumption choices there should be access to supportive non-judgemental services to help those who desire it as opposed to punitive, harsh and judgemental punishments.

In the ACT, there is also a growing understanding that the harms of drug criminalisation is more acute for different groups in society, with the majority of the harms focused on groups where other forms of marginalisation exist. As an example it is easy to prove that a white middle class person is less likely to be subjected to the criminal justice system than a lower class person or an Aboriginal person.

The broad social understanding of the harms of the criminalisation of drug use has formed into a step wise progression of drug law reform in the ACT. The Simple Cannabis Offense Notice was first introduced in 1992. This was followed by the decriminalisation of personal cannabis use (up to 50 grams and 2 plants per person) in January 2020 (bill passed in 2019). The contemplated step to progress a SDON is therefore a stepwise progression and a logical step forward.

Historical Summary

The aim of global prohibition was to minimise rates of drug usage in the human population, but all it has achieved is the development of self-sustaining cycles of marginalisation and harm.

We have seen evidence of how ineffective criminalisation is at decreasing rates of usage across the world however it is not commonly appreciated that we now have compelling evidence that the decriminalisation of drug use does not increase rates of drug use and actually has the ability when coupled with health programs to decrease drug related harms such as overdose as seen in Portugal and heroin use in Switzerland (10).

In the ACT we have just undergone Cannabis law reform making the possession of up to 50 grams of Cannabis and the growing of 2 cannabis plants per person legal. Many believed that this was going to lead to an increase in cannabis use in society however wastewater analysis shows that this is not the case. In fact by every measurement applied there has been no increase in cannabis use in the ACT(11). CAHMA's preliminary data from its National Minimum Data Set shows that in the first year after this legal change there was a 4 times increase in the number of people presenting for help with cannabis use as their primary drug of concern. This data indicates that legality is not a major contributing factor to an individual's choice whether or not to take illicit substances and therefore legal condemnation of any substance will not decrease its usage and only serves to impose punishment, discrimination and stigma.

The successive reforms that decriminalised the personal possession and cultivation of cannabis have been an undeniable success. Even though the risk of criminal punishment for cannabis possession was minimal, it had the effect of denying cannabis users equitable access to public services, with cannabis users previously facing discrimination from healthcare professionals and a strong incentive to avoid all interaction with police, even where they were victims of crime. Although the federal government derided this law and even asserted that it was not within our territory's power to overturn criminalisation, it has since become resoundingly clear they were out-of-touch with those actually enforcing the law. The electorate, government, and ACT AFP were all in agreement that this bill was a necessary and positive reform; the AFP did not hesitate to immediately adopt the ACT

legislation in their operational policy. Like wider Canberra, our police recognised that punishing cannabis users was pointless and inconsistent with the values our society holds. Even federally, this change was uncontroversial, with 62% of Australians against the law being overturned. Since the 2019 reform took force, the major concerns of sceptics that rates of cannabis use, drug-driving, or harm that led to hospitalisation would increase have all been disproven, while the subtle yet important benefits have been welcomed by the community. It is already clear this bill will have an unblemished legacy and serves as excellent precedent for the current proposal to extend the repeal of prohibition to all illicit substances. As an organisation representing the biggest stakeholders in the cannabis reforms and the current proposal, the most recent legal change utilised the model that we see as being the most effective to realise its full potential benefit, and if this model is adopted for the current proposal, it will result in similar success.

The Drugs of Dependence Bill 2021

First and foremost, CAHMA applauds the bravery and commitment to the health and wellbeing of people who use drugs and/or drug treatment services displayed by the ACT government in progressing this piece of legislation. This bill is an opportunity for our territory to lead the way in public policy, introducing to the rest of Australia what steps towards a comprehensive drug policy approach should look like. Across the world there are many examples of such approaches. The evidence is now in that decriminalisation is an effective tool to reduce the harms of criminalisation and increase access to treatment. The benefits from the introduction of decriminalisation are:

- Minimisation of harms associated with criminalisation including reducing PWUD contact with the criminal justice system.
- Reduction in stigma and discrimination.
- Increased ability to discuss issues of drug use amongst friends and family.
- Increased utilisation of drug treatment services
- Improved relationships between people who use drugs and healthcare services.
- Improved relationships between people who use drugs and law enforcement services.
- Reduced costs to the taxpayer across justice and health sectors.
- Decreased workload for the court system.
- A shift from acute to prevention focused healthcare with associated cost benefits.
- Ability of law enforcement to focus on serious crime.
- Reduced socioeconomic disadvantage for personal drug users.

CAHMA has several recommendations for the committee to consider with regards to the bill in the hopes of strengthening the legislation and the wider approach to drug reform. In addition, we have several suggestions as to the necessary drug and alcohol sector reforms that should accompany any shift to a health-focused model.

Recommendations with regard to the bill:

1. **Removal of fine:**

RECOMMENDATION: Pass the bill in an altered form mirroring the ACT Cannabis legislation of 2019.

CAHMA asks why it is necessary to still have a punitive function of personal possession laws? When CAHMA asked this question of politicians, interested parties and experts involved in considering this legislation there was only one answer that was forthcoming – it is about politics. Answers involved concerns that the general public still believed that drug use was fundamentally wrong and immoral and therefore there needed to be some type of punishment and that the federal government would quash such a move with more certainty than is feared with even the proposed SDON legislation.

Against these political arguments CAHMA puts our reasons for preferring decriminalisation with no penalty:

- We have seen that the Simple Cannabis Offense Notice, although useful in steering many people away from the criminal justice system, did not have sizeable impacts on the stigma and discrimination that PWUD endure and therefore did not have many positive gains in terms of bringing people with problematic drug use into treatment.
- One of the underlying principles of decriminalisation is to support not punish people who use drugs. Through support of people who use drugs people with problematic drug use are brought into treatment and can be put back in control of their health and wellbeing.
- the fine would be a financial burden to those coming from a lower socio-economic background. For people who have financial stability, a fine is probably not particularly onerous but for more marginalised people, who may also struggle with dependency, a fine could:
    - Jeopardise their food, utilities, or accommodation security.
    - Direct them back to the legal system through non-payment of fines.
    - Detract from the goal of lessening stigma and discrimination and promoting discussion in treatment options.
    - Do nothing to increase trust in social structures and law enforcement.

- A fine still entertains the notion that what the person is doing is an illegal act. This is most concerning when considering that police integration into drug-using communities should be a major goal of any decriminalisation legislation. Drug-related crime - such as domestic violence, theft, and assault - often goes unreported because there is a perception amongst PWUD (often the victims of these crimes) that they themselves are criminals, and cannot utilise the police as any member of society should be able to do. Maintaining a fine still communicates to PWUD that they are criminals performing a fundamentally unlawful act by using or possessing a small amount of drugs. In removing any penalty altogether, an attitudinal shift will occur amongst the drug-using community. Where PWUD feel that they are now law abiding citizens and will feel more compelled to report crimes they experience under the view

that they themselves are not criminals for simply using drugs. This, in turn, will allow police to begin establishing themselves and engaging in these historically difficult to
- police communities and foster a sense of trust between the two traditionally opposed groups.
- Perhaps the greatest benefit from legislation to decriminalise drug possession is that parents, particularly mothers who use drugs may begin to receive equitable treatment by Child and Youth Protection Services (CYPS). However as long as possession is punished financially through an SDON, it is uncertain whether parents who use drugs will be encouraged to come forward to willingly seek treatment. There is a strong link between child removal by CYPS and drug use. Unfortunately CAHMA has seen many instances recently where CYPS has conflate drug use with parental neglect and abuse. Decriminalisation offers an opportunity to untangle the relationship between parenting and drug use and offer strong support to parents who use drugs in order to maintain their children in the family and break the hold of intergenerational trauma that comes with removal of children.

For these reason's CAHMA believes that the correct legislation to be contemplated in this bill is the decriminalisation of all drugs in line with the Cannabis legislation of 2019. The addition of a fine equivalent to 1 penalty unit ($160) to those caught carrying drugs under the personal possession limit is an unnecessary and ultimately self-defeating choice considering the intended purpose of the bill.

Nevertheless CAHMA understands that the decriminalisation achieved in Canberra over the last decade has been done so through step-wise progression and that the addition of a SDON does go another step forwards on the journey of treating PWUD with compassion and health based approaches.

2. Alternative to a fine

RECOMMENDATION: If CAHMA's first recommendation is not possible then pass the bill with an alternative to a fine. CAHMA's preference is that a simple untied referral be provided by the police to a drug treatment provider.

If CAHMA's first option of full decriminalisation along the lines of Canberra's Cannabis legislation 2019 is not possible, CAHMA believes that there are better pathways than using a fine as a "stick" to reduce drug use and attend treatment. Alternatives are given in rank of preference below:

1. CAHMA's preferred alternative to a fine is for the Police to simply provide a referral for people to seek treatment. CAHMA notes that this approach is already used in a defacto manner by some front line Police in the ACT with some success. This would involve drug treatment services working with the Police in a more structured manner by perhaps liaising with Police and providing training on referral pathways for PWUD. It is crucially important however that any referral given by the Police is non-mandatory and does not have any strings attached. This is because one of the ATOD sector's ethical principles and key reason's for success is that treatment and engagement is voluntary.

2. If a fine is applied it is incumbent on the ACT Government to allow a system to be put in place so that the person has options to pay the fine off. Such options could include installment systems or inclusion of the fine in a workplace development order scheme.

3. CAHMA notes that there have been schemes in the ACT to decrease fines for marginalised groups. This concept is dealt with more fully in ATODA's submission.

3. Introduction of a coverall and future-proof for the included drug list:

RECOMMENDATION: Removal of S8 drugs by name and inclusion instead of "catch-all phrase" which deals with S8s without naming individual substances. Insertion of gamma hydroxybutyrate (GHB), carfentanyl and other fentanyl derivatives. Insertion of a future-proofing clause dealing with future analogues of drugs contained on the list.

The current list of drugs in the Bill includes both prohibited drugs and Schedule 8 drugs. The list should be expanded according to three criteria, which reflect the drugs: a) which people use or may use in future; b) for which they seek treatment; and c) for which people in the ACT are arrested. Based on the first criterion, CAHMA recommends that a "catch-all" clause be inserted into the legislation to ensure that Schedule 8 drugs which are used illicitly by people are included in the Simple Drug Offence Notice (SDON). As this list is large and changes regularly, ATODA suggests that these drugs are not named specifically but included in a "catch-all" statement to future proof this list. This would result in explicit mention of methadone being removed from the list, noting that it would come under the catchall statement.

Based on the second criterion, CAHMA recommends the addition of gamma hydroxybutyrate (GHB), carfentanyl and other fentanyl derivatives to the list. For the third criterion, ATODA notes that the Justice and Community Safety Directorate ceased its regular, frequent publication of drug arrest data with the June 2019 issue of its Criminal Justice Statistical Profile. This inhibits rational and evidence-based community discussion about drug laws, and CAHMA urges the resumption of quarterly publication of such data. In the meantime, CAHMA encourages the Committee to seek these data to ensure that any drug which has led to more than three arrests in the last two years is added to the list.

CAHMA also notes that the Bill needs to be 'future-proofed' against evolving manufacture and distribution patterns for illicit drugs. It suggests that language is included to indicate that future analogues of the drugs listed in the Bill should be subject to its provisions.

For example, while MDMA remains a popular illicit substance that Australians consume, there has been a decrease compared to use rates in previous years. The advent of substances such as 2C-type psychedelics, APBs, and cathinones may be responsible for that disparity and these 'new psychoactive substances' (NPSs) or 'research chemicals' are only growing in popularity. By "future proofing" the drug list in the bill, as NPSs are created faster than any legislation could cover them and as the population shifts away from using

"classical" substances to a menagerie of novel chemicals, CAHMA therefore suggests a cover-all to future proof the list. CAHMA suggests the use of the word "analogues" in this catch-all as this parallels the wording of other legislation which seeks to cover future drug trends.

4. Police Discretion and Police as Health Workers

RECOMMENDATION: Thorough discussion of the concept of police discretion as it relates to marginalised and cirminalised PWUD and supply ATOD training for police.

One issue that the community was particularly vocal about was the issue of police discretion. The feeling amongst the community of PWUD is that police discretion is problematic as it relies on the relationship between the police and the person in possession of drugs. In many cases PWUD have been highly criminalised for decades and this means that they perceive the police as a threat as opposed to a protector of their peace and safety. Of particular note to the community is that people who are more marginalised and criminalised often have worse relationships with the police and therefore are less likely to be given the benefit of discretion than more affluent and influential members of the community.

The other issue involved in this area of discretion is police training. Essentially under this bill police are being asked to make judgement calls as healthcare workers. That is, to approach the issue of possession of drugs as a health issue instead of a criminal issue. Therefore CAHMA would strongly advise that police officers are trained in drug and alcohol referral pathways and that structures are put in place so that police have the knowledge and support to make accurate health referrals when dealing with a person in possession of drugs.

5. Governance and Evaluation

RECOMMENDATION: Ensure governance mechanisms and evaluation mechanisms are put in place to safeguard and monitor the bill.

CAHMA advises that the ACT Government puts in suitable governance structures which include people with lived experience to oversee the rollout of this legislation. Governance structures are crucial in order to track and respond to issues as they arise. CAHMA suggests that governance structures for this legislation are put in place, with the reporting mechanism being to the Drug Strategy Action Plan Committee (or similar) and that the membership of the governance group includes people who use drugs. Likewise evaluation of this legislation is important to understand its effects on society and to make recommendations for alterations or further steps as time progresses.

6. Removal of the Self-administration of Drugs Offence

RECOMMENDATION: remove the self-administration of drugs offence.

As both ATODA and CAHMA have stated in previous submissions, it is necessary to rescind the ACT criminal offense which deals with the administration of drugs. The self-administration offence is found in the Medicines, Poisons and Therapeutic Goods Act 2008, s. 37. Throughout the discussion of this bill it has been stated by authorities that the provision has not been used in the last 5 years. Because it is inconsistent to move to

decriminalise possession of drugs while keeping the self-administration of drugs illegal and because the law is not used within the ACT CAHMA strongly suggests the removal of this offence. The removal of this offence is a simple and effective way of continuing the de-criminalisation of people who use drugs with no political or social ramifications. This move simply clears the way for a more consistent and health based approach to drug law and policy.

7. Changing the Personal Possession Limits to be in Line with Evidence Based ACT Legislation

RECOMMENDATION: Change the personal limits used in the bill to the ACT personal possession limits.

Under the proposed legislation possession limits are set at the Commonwealth and not ACT personal drug possession limits. The ACT has personal possession limits which are based on community consultation and reflect the real and actual quantities of drugs that people possess for personal use (12). Dr. David McDonald worked in collaboration with CAHMA, ATODA and other community organisations to form these limits and these therefore should be the limits set in this legislation. Community members have also commented that they would be confused as to the limits which apply to the law as current policing methods use the ACT personal possession limits not the Commonwealth limits.

Clarity must be given to the issue of total mixed weight versus pure weight.

8. Drug Driving Laws – by Impairment or not at all

RECOMMENDATION: That drug driving testing should be conducted based on impairment or not at all.

This bill is an excellent opportunity to give some thought to the fact that current drug driving law breaches the ACT's human rights legislation. In fact there are a myriad of different issues with drug driving laws in the ACT including:

- Not based on impairment but based on presence of substance only.
- Not conducted randomly but rather are targeted at a certain population of marginalised people causing repeated criminalisation.
- Breach a person's right not to self-incriminate.

The big issue for the drug driving laws in the ACT is that unlike random breath testing the test do not measure an amount of substance in the body but rather its presence or absence. For this reason the law is not based around the idea of impairment which governs drink driving laws. In the past this legal issue was overlooked because the test was showing use of an illegal substance and therefore there was proof that a crime had been committed – even if the crime was not driving under the influence of drugs. With the Cannabis legislation 2019 the situation has changed. It is no longer a criminal offense to possess Cannabis and its use is accepted as within the law. So we now have a situation where people are being charged for driving because of the presence of a legal substance. Over the past year and a half CAHMA has had a string of people seeking advocacy because they are being charged

with drug driving for cannabis where impairment has not been proven. CAHMA has seen many cases where people deny usage of Cannabis on the day of their drug driving offense. With the introduction of this bill this situation becomes worse as now all drugs will fall into this same category. CAHMA believes that our current drug driving process should be replaced with a test that is based on impairment. CAHMA believes that the approach to drug driving should mirror the ACT's policing approach to drink driving.

Improvements to the sector as a whole

RECOMMENDATION: That the committee follows the recommendations of the ATODA submission with regards to proposed changes to the ATOD sector as a whole.

In General

As a member of the Alcohol Tobacco and Other Drug Association of the ACT (ATODA) CAHMA has had significant input into ATODA's submission in particular to issues of how to improve the ATOD sector as a whole. For this reason CAHMA points the committee to the ATODA submission and asks the committee to follow ATODA's recommendations. In addition to ATODA's submission CAHMA makes the following points:

RECOMMENDATION: That the government invests in fixed site drug testing and a supervised injection facility.

One of the main effects of this legislation should be that people are more willing to come forward to seek treatment. Of particular importance is those members of the community who are highly marginalised and require "low threshold" services (services where they are not expected to change their behaviour but simply to engage) such as fixed site pill testing and supervised injection facilities. CAHMA partnered with The Burnet Institute in 2020 to complete a study on whether it was feasible to build a SIF in Canberra. The outcome of the study was an emphatic yes – PWUD want a SIF, yes – the community wants a SIF and yes – there is as much need for a SIF as was present in Sydney and Melbourne when SIF's were funded. The suggested model was a peer based or nurse led model integrated into an existing service in the Civic area (13). This bill represents an opportunity to advance these plans in order to fill gaps present in our ATOD low threshold services and to support PWUD coming forward for treatment.

RECOMMENDATION: Conduct work into the nexus of ATOD and Mental health issues and tailor programs which can progress treatment of both issues concurrently.

Mental health issues and drug use are often seen hand in hand, but there is very little specialised specific treatment for this. Many people will struggle to find a residential rehab who can support and treat their problematic drug use and also their mental health at the same time, and often bounce between drug rehabilitation centres, and mental health wards, never quite receiving the support they need.

RECOMMENDATION: That the ACT Government prioritises a Hydromorphone Assisted Treatment program in the ACT.

The ACT has a history of fighting for broader opioid maintenance treatment (OMT) options. CAHMA recommends that this is an opportune time to revisit the idea of hydromorphone assisted treatment (HAT). At present OMT options include methadone and buprenorphine based treatment – both are oral/sublingual preparations (with buprenorphine now available as a long acting injection). OMT has been shown to be an incredibly effective drug treatment especially for those who cannot or do not want to achieve abstinence. However for some people methadone or buprenorphine treatment does not work. For this reason heroin assisted treatment has been trialled in Switzerland and England and it has been shown to be very effective at reducing harms associated with drug use and even in transitioning people to abstinence from drug use (10). In Australia heroin assisted treatment is less accessible and so practitioners have begun trials in Sydney with Hydromorphone (the TGA approved Australian opioid with similar properties). CAHMA recommends that these trials are extended to the ACT in order to support those PWUD for whom current OMT choices are not successful.

Conclusion

We commend the ACT Government for taking action with this evidence-based approach, and just as with former drug law reforms in the ACT, we believe that with the appropriate preparation, planning and development of this bill we will see a significant reduction in stigma, discrimination and harms associated with drug use and the crominalisation of drug use. This will have a benefit on not only the people using drugs themselves, but also provide a more open line of communication between services and their community, police and their community, and an improvement in the general wellbeing of the community as a whole.

This bill is of extreme importance to ACT society because it is focused on reducing the harms from both different harms associated with the use of drugs in our society the harms that drugs cause to people and the harms that the criminalisation of drugs cause to people. It must be understood that these 2 harms are intricately linked, with the criminalisation of drugs shutting down support and timely treatment of people and causing long term social exclusion in areas such as employment. Criminalisation is also key in driving discrimination and stigma as while drugs are illegal it is legal to discriminate against a person for the use of drugs. It is for this reason that changing the legal status of the possession of drugs from a criminal offence to a civil offence is very important. It is an important step along the path to supporting and not punishing people who use drugs. As society changes its approach from punitive to health based approach more people are likely to come forward, out of the shadows as it were, for treatment. The second issue covered in this bill is therefore of crucial importance as it asks the question what services do we need to support people who seek to reduce the harms that drugs are having on their lives. It is for this reason that this bill is an integral step in forming a supportive and healthy policy and legal environment to reduce the harms associated by drug use in society.

As CAHMA is a front line service and the scope of the bill was very broad, CAHMA has not been able to cover all sections of this bill with the rigor which we would have liked. For this reason there may be parts of this submission which are unclear or need further explanation. CAHMA would like very much to give verbal evidence to add to the evidence within this submission and we encourage the committee to write to us if there is anything within this submission which is not clear.

Finally CAHMA cannot complete this submission without a plea that now is the time to be bold and to make a large step towards equality of health and human rights for people who use drugs. CAHMA implores the committee that this is the time to go forward and make parallel legislation for all drugs – to the legal changes created in 2019 and put into practice in 2020 for Cannabis. If the committee decides that a fine is appropriate, CAHMA will of course understand this stepwise progression, however CAHMA and the community of people who use drugs and who use drug treatment services will not be able to help but feel help but feel that an important opportunity has been missed here in order to step a little further down the path to support not punish.

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