



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES

Ms Bec Cody MLA (Chair), Mrs Vicki Dunne MLA (Deputy Chair)

Ms Caroline Le Couteur MLA

Submission Cover Sheet

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

Submission Number: 29

Date Authorised for Publication: 21.03.2019



The Committee Secretary
Standing Committee on Health, Ageing and Community Services
Legislative Assembly for the ACT
GPO Box 1020, Canberra, ACT, 2601
By email: LACommitteeHACS@parliament.act.gov.au

**Submission to the Inquiry into the
*Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

Dear Committee Secretary,

1. Introduction

Thank you for engaging in an Inquiry into the Bill that aims to legalise some minor cannabis offences in the ACT, and inviting submissions on this from the public. We note that the terms of reference of the Inquiry, as per the Legislative Assembly's resolution of 20 February 2019, are simply its referral to the Standing Committee. This suggests to us that the focus of the Inquiry will be the health and social aspects of the proposed amendments, rather than primarily the criminal justice and law enforcement aspects, which would be the emphasis of an Inquiry conducted by the Standing Committee on Justice and Community Safety. While noting that, we are conscious of the interactions between health and well-being, on the one hand, and drug law and its enforcement, on the other, so will address elements in both domains.

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing the alcohol, tobacco and other drug (ATOD) sector in the ACT. ATODA seeks to promote health in the ACT through the prevention and reduction of the harms associated with ATOD use. ATODA works collaboratively to provide expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, information and resources.

2. Expression of support for the focus of the Bill

ATODA is encouraged that Members of the ACT Legislative Assembly are focusing attention on aspects of drug law reform.

ATODA supports the intent behind the proposed reforms, in particular to ensure that Canberrans, especially young adult Canberrans, do not become involved in the criminal justice system in ways that can have adverse consequences throughout life,

ATODA submission to the Legislative Assembly Inquiry into the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* 20 March 2019

for behaviour that the community believes should not have such severe sanctions. Cannabis consumers (those who use cannabis but do not sell it) are still arrested in the ACT in the hundreds. For example, in the ACT in 2016-17¹ there were 386 arrests for cannabis (half of all illicit drug arrests made in the ACT). Of the cannabis arrests, 84% were classified as cannabis consumers while the remaining 16% were cannabis providers (those who sell cannabis). Some 25% (82) of the cannabis consumer arrests were occasions in which people were issued with a Simple Cannabis Offence Notice. In the remaining 75% (241) of cases, the consumers were charged with a cannabis offence and would have had to appear before a court to answer the charge.

The proposed amendments to the *Drugs of Dependence Act* closely accord with the views of a significant proportion of the ACT population. As you know, at present Canberra and Australia are seeing a significant, mainstream driven, groundswell for drug law reform to decriminalise or legalise the current consumer-level drug offences. For example, in response to the ACT Government's public opinion survey in October 2018 which asked the question 'To what extent would you support or oppose the personal use of Cannabis (*sic*) being made legal?', the topline finding was that 24% responded 'strongly support', 30% 'support', 11% 'oppose', 15% 'strongly oppose', and 19% 'neither support nor oppose'. In other words, 54% supported the proposal to some degree. When we remove the 'neither support nor oppose' responses we find that 68% either 'support' or 'strongly support' the legalisation of cannabis use, and 32% 'oppose' or 'strongly oppose' the initiative.²

ATODA welcomes non-prohibitionist approaches to drugs. A key area of ATODA's policies on drug law reform focus on Canberra becoming a community where people who use drugs are no longer criminalised for doing so. Committee members may be aware that ATODA, in collaboration with the School of Sociology at The Australian National University and Uniting, last year ran The Canberra Drug Policy Series of lectures and discussions presented by global leaders in the drug policy and law reform effort.

In ATODA's view, the proposed amendments are a welcome component of the groundswell of calls for more rational, evidence-informed, cost-effective, and non-prohibitionist policies relating to drugs. ATODA calls for the repeal of the criminal offences covering the self-administration of all drugs, the possession of consumer-level quantities of all drugs, and the cultivation of a small number of cannabis plants.

¹ Australian Criminal Intelligence Commission 2018, *Illicit drug data report 2016-17*, ACIC, Canberra

² Orima Research & ACT Government 2018, Community Views Survey, Cycle 3 (part D), November 2018, ACT Government, Canberra, CMTEDDFOI 2018-0354.

There is no reason to believe that legalising minor cannabis offences will lead to increased incidence of health-related harms

ATODA notes the claims by some that legalising minor cannabis offences would increase the availability of the substance within Canberra, and as a consequence produce serious adverse impacts (including health impacts) on our community.³ This claim does not stand up to scrutiny. People who use cannabis in the ACT have long reported to researchers that black-market cannabis is readily available within our city, and remains inexpensive.⁴ This has been confirmed by ACT Policing and the Australian Criminal Intelligence Commission.⁵ The existing body of international research shows that 'Changing the severity of statutory penalties for cannabis use offences does not appear to have a consistent impact on cannabis use by young adults'.⁶⁷

The ACT Shadow Attorney-General, Mr Jeremy Hanson MLA, has argued that cannabis use '...has a significant impact on psychosis, particularly for younger people in disadvantaged groups' (*Canberra Times*, 26 November 2018), and that 'Our principal concern is that of the links between marijuana and psychosis' (*Canberra Times*, 27 November 2018). Again, this is a misunderstanding of the scientific evidence on the topic. While there are associations between cannabis use and transient psychotic-like states ('cannabis psychosis'), and between cannabis and other psychoses, the research evidence does not demonstrate a strong causal relationship. Rather, cannabis use and some adverse health consequences are confounded by common antecedents. People with a history of psychosis are always advised not to use cannabis, but that is not because cannabis causes psychosis. Rather, it is because the substance can precipitate psychotic episodes in already susceptible people.⁸

In other words, there is no reason to believe that legalising minor cannabis offences will lead to increased incidence of health-related harms. On the other hand, it will lead to benefits in removing a large number of young people from the risk of contact with criminal justice system.

³ E.g. Hanson, J 2019, 'Easing cannabis laws: will it help or harm? [Online version title 'Will relaxing laws on cannabis use help or harm us?]', *Canberra Times*, 9 February 2019, p. 11.

⁴ Uporova, J & Peacock, A 2018, *Australian Capital Territory Drug Trends 2018: key findings from the Ecstasy and Related Drugs Reporting System (EDRS) interviews*, Australian Drug Trends Series, National Drug and Alcohol Research Centre, UNSW Australia, Sydney.

⁵ Australian Criminal Intelligence Commission 2018, *Illicit drug data report 2016-17*, ACIC, Canberra.

⁶ Hughes, B, Matias, J & Griffiths, P 2018, 'Inconsistencies in the assumptions linking punitive sanctions and use of cannabis and new psychoactive substances in Europe (editorial)', *Addiction*, vol. 113, no. 12, pp. 2155-7.

⁷ Stevens, A 2019, 'Is policy 'liberalization' associated with higher odds of adolescent cannabis use? A re-analysis of data from 38 countries', *International Journal of Drug Policy*, vol. 66, pp.94-99

⁸ E.g. World Health Organization 2016, *The health and social effects of nonmedical cannabis use*, WHO, Geneva; Caulkins, JP, Kilmer, B & Kleiman, MAR 2016, *Marijuana legalization: what everyone needs to know*, 2nd rev. edn, Oxford University Press, New York.

Road safety: recent research evidence casts doubt on the claim that a high relative risk exists between recent use of cannabis and road crash incidence

In previous decades, a body of research evolved that led many to conclude that cannabis is highly implicated as a risk factor in road crashes, and that the level of risk is significantly increased when drivers have both cannabis and alcohol in their bodies concurrently. In recent years, however, a significant and strong body of research, using far more sophisticated methodologies and statistical techniques than were used in the past, has cast significant doubt on these claims.

The current understanding from the best research⁹ is that the level of risk of a crash for somebody who has recently smoked cannabis is only slightly higher, and is approximately the same as for somebody driving with a blood alcohol concentration of approximately 0.03 (that is, under the prescribed alcohol concentration in the ACT of 0.05g per 210 L of breath or 100 mL of blood). Our society does not criminalise people for driving with that level of blood alcohol concentration because the relative risk of a crash, hence the absolute risk, is very small.

3. Comments on specific elements of the Bill, and noting some omissions

Repeal artificial distinctions between methods of cannabis cultivation

ATODA is keen to see the repeal of the artificial distinction made in the Bill between the cultivation of cannabis by hydroponic means and/or using artificial light sources, on the one hand, and the more 'natural' cultivation of the bush form of cannabis, outdoors, on the other. This is because most of the cannabis consumed in the ACT is cultivated hydroponically, under lights. The most recent research reveals that, among a sentinel population of Canberra people who have recently used drugs, '...hydroponic cannabis remained the form most commonly used in the preceding six months (83%), followed by bush cannabis (16%)'.¹⁰ This means the law, as proposed, would not apply to most cannabis users. People who use cannabis would need to continue to source their preferred form of cannabis from the black market where the drug is now, under a prohibition policy that is heavily enforced by ACT Policing against cannabis users in Canberra.¹¹

Furthermore, Committee members will be aware that, for many months of the year, it is difficult to grow plants such as cannabis outdoors, owing to the prevailing temperatures and relatively low light levels. It would be problematic were the Act to

⁹ E.g. White, M 2017, *Cannabis and road crashes: a close look at the best epidemiological evidence*, School of Psychology, University of Adelaide, Adelaide; Kleiman, MAR, Jones, T, Miller Celeste, J & Halperin, R 2018, 'Driving while stoned: issues and policy options', *Journal of Drug Policy Analysis*, online ahead of print; Rogeberg, O & Elvik, R 2016, 'The effects of cannabis intoxication on motor vehicle collision revisited and revised', *Addiction*, vol. 111, no. 8, pp. 1348-59; Lacey, JH *et al.* 2016, *Drug and alcohol crash risk: a case-control study*, Report No. DOT HS 812 355, National Highway Traffic Safety Administration, Washington, DC.

¹⁰ Uporova, J., & Peacock, A. (2018). Australian Capital Territory Drug Trends 2018: Key findings from the Illicit Drug Reporting System (IDRS) Interviews. Sydney, National Drug and Alcohol Research Centre, UNSW Australia.

¹¹ Australian Criminal Intelligence Commission 2018, *Illicit drug data report 2016-17*, ACIC, Canberra.

force people legally growing cannabis in the summer to illegally stock-pile the substance for winter.

In summary, we are not aware of logical or practical reasons for retaining an offence of ‘artificial cultivation’ of cannabis, whilst legalising other forms of cultivation, and have drawn attention to potential unintended but predictable consequences of doing so.

Enabling not-for-profit alternatives to black market supply

As stated above, the majority of people who use cannabis do not grow their own cannabis. This means that, as currently drafted, most cannabis users would be required to continue to access the black market for their supply of cannabis for personal use.

Internationally, Cannabis Social Clubs are associations of adult cannabis users, often registered in the relevant national registries, which seek to establish a closed system of cannabis supply for the personal use of their members – based on cooperative and non-profit principles. As such, Cannabis Social Clubs can be understood as an alternative (and ‘middle ground’) model for the supply of cannabis. We encourage consideration of how not-for-profit supply approaches alternative to the black market could be enabled¹² through amendments to the current draft, and note that Australia is home to many world-leading cannabis researchers who could assist with this, such as those who are members of the Global Cannabis Cultivation Research Consortium (which includes Professor Simon Lenton from the National Drug Research Institute, Curtin University, and Dr Monica Barratt from the National Drug and Alcohol Research Centre, University of New South Wales).

Consistency with existing smoke-free legislation

ATODA supports the prohibition of smoking cannabis in public places or near children but suggests that, instead of specifying ‘public place’, the prohibition applies to smoking cannabis in all locations where it is illegal to smoke tobacco products. This would include motor vehicles, etc., and would align with the dominant Australian approach to restricting the locations where people can use electronic nicotine delivery devices.

Embedding evaluation within the Bill

ATODA suggests that the Bill include a provision for stringent evaluation. This is because the proposal is, in an Australian context, an innovative public policy reform. Careful evaluation of its program theory, implementation and outcomes (including identifying any unintended consequences – positive and negative) would produce information that would improve this initiative and inform similar initiatives in other Australian jurisdictions, and elsewhere. It would also identify achievements and

¹² Decorte, T 2018, *Regulating cannabis: a detailed scenario for a nonprofit cannabis market*, Archway Pub., Bloomington, IN.

opportunities for improvements in the ACT drug policy settings more broadly. Mandating the evaluation in the legislation would constitute sound public policy.

We note that the November 2018 Scientific Conference of the Australasian Professional Society for Alcohol and Other Drugs (APSAD) highlighted the importance of legislating evaluation within drug law reform initiatives.¹³

Removal of the self-administration offence

We note that the Bill now proposes repealing the prohibition of the self-administration of cannabis included in the ACT *Medicines, Poisons and Therapeutic Goods Act 2008*, s. 37 and s. 25. This is an improvement over the Exposure Draft. ATODA urges the Committee to maintain the Bill's provisions to legalise self-administration of cannabis, as well as the possession and cultivation offences that are its focus. Over the years, various high-level policy reviews have recommended the repeal of the self-administration offence, on public health grounds. The intent of the Bill, and the expressed preferences of the Canberra community, is to permit the self-administration of cannabis albeit with some limitations.

National and international aspects

We are aware that the Committee is considering the possibility of inconsistencies between the Bill and provisions of the Commonwealth *Poisons Standard* and the Commonwealth *Criminal Code*. Furthermore, some might argue that the Bill is inconsistent with Australia's international treaty obligations under both the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. That said, ATODA is conscious that many other countries have legislated in a manner inconsistent with the conventions, legalising consumer-level cannabis offences - for example Canada's national legal framework for cannabis came into effect in October 2018. While these impediments may exist, we encourage them to be challenged so that ACT, Commonwealth and international drug laws become fit-for-purpose, and have a stronger emphasis on public health and human rights rather than on criminalising common behaviour.

4. Alternative ways forward, if required

We reiterate our support for the broad direction of the Bill and for most of its contents, and hope that the impediments that we have referred to above can be overcome, and that the ACT can give national leadership by legalising the three categories of consumer-level cannabis offences, namely self-administration, possession of consumer-level quantities and cultivating a consumer-level quantity of cannabis.

ATODA draws attention to the fact that the treaty obligations, and advice provided to the Commonwealth in earlier years, make it perfectly legal for jurisdictions to not

¹³ <http://www.apsadconference.com.au/program/>

impose penal penalties for the consumer-level cannabis offences. This is the basis upon which the ACT and some other Australian jurisdictions have decriminalised some minor drug offences, e.g. through the introduction of Simple Cannabis Offence Notice in the ACT, and the ACT's police and court drug diversion initiatives. The possession offences remain, but the negative sanctions applied are significantly reduced.

The ACT Attorney-General could issue a directive

If the approach taken in the Bill is found to be invalid in law, or is not acceptable to the ACT Legislative Assembly, it will be useful to reflect on the intended objectives of the amendments and to identify other ways of achieving those objectives.

One approach is for the ACT Attorney-General to issue a directive to ACT Policing and/or the ACT Director of Public Prosecutions that it is inexpedient to prosecute people for consumer-level drug offences generally, or consumer-level cannabis offences only (ATODA prefers the former to the latter.)

ATODA understands (but has not seen documentary evidence) that this approach has been used in the past in the ACT, for example when the ACT Attorney-General directed that commercial sex workers not be prosecuted, back in the days when commercial sex work was a criminal offence in the ACT. Another example was in 2012 when the Commonwealth Attorney-General issued a directive to the Commonwealth DPP not to charge low-level people smugglers with offences that entailed harsh mandatory penalties of imprisonment.

Ceasing to prosecute people for consumer-level cannabis offences would be very much in step with community sentiment, and represent an evidence-informed, cost-effective and rational approach to drug policy.

5. Other considerations

Establishment of an independent expert committee on drug policy and law reform

On 22 November 2018, Dr Nuno Capaz, Vice President of the Dissuasion Commission, Lisboa, Portugal spoke at The Canberra Drug Policy Series convened by ATODA, The Australian National University School of Sociology and Uniting.¹⁴

Amongst many things, the audience learnt that Portuguese drug law reform to cease criminalising people who use drugs was based on recommendations made by a committee of experts tasked with identifying how best to reform drug policies, and resulted in the drug law reform approach taken by Portuguese legislators.

There may be merit in implementing such an approach in the ACT, as Australia is fortunate to have some of the best drug policy researchers in the world. The remit of such a Committee could include, for example, providing expert advice to Ministers

¹⁴ A recording of The Canberra Drug Policy Series event with Dr Capaz is available here: <https://www.facebook.com/TCDPS/>

and the ACT Government, developing an evaluation and monitoring framework, and providing oversight to implementation.

ATODA has strong networks in Canberra's specialist ATOD sector and the criminal justice sector, as well as nationally and internationally, and stands ready to assist with this initiative, offering our expertise in the area.

It would be essential that the expertise on this committee included representation from people who use cannabis.

Interrelationships between drug law reform and drug treatment

There are essential intersections and interrelationships between drug law reform and drug treatment, in particular diversion programs; and there are important opportunities to enhance the ACT's current diversion programs and practices. It is foreseeable that as cannabis use becomes less stigmatised over time, help-seeking behaviour will increase, causing more people to seek specialist alcohol and other drug treatment. This will put pressure on an already under-resourced specialist sub-sector of the health system. Expertise from the ACT's specialist drug treatment and diversion programs should be sought to inform discussions related to necessary linkages or enhancement of existing systems in the ACT.

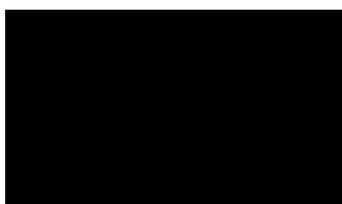
Communications strategies

There has already been significant public interest and community debate regarding the Bill. This has included, in some instances, the proliferation of misinformation within the media. Given the complexity of the proposed amendments, a comprehensive and responsive communications strategy will need to be developed and properly resourced. This should provide timely communications that are sourced from cannabis experts and informed by people with lived experience. ATODA would be happy to provide further advice to the Committee and will be developing a paper on how such a strategy could be enacted, based on experiences from other areas of drug policy and evidence-informed information dissemination.

Thank you again for undertaking this important Inquiry. We would be happy to discuss with you, the contents of this submission, and related matters, if you would find that helpful.

Please do not hesitate to contact ATODA if you have any queries or require further information in support of this submission.

Yours sincerely



Carrie Fowle
Chief Executive Officer
Alcohol Tobacco and Other Drug Association ACT (ATODA)
[REDACTED]
Telephone: 02 6249 6358

20 March 2019