



**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

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STREET LAW



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

Introduction

Street Law welcomes the opportunity to provide a submission to the Standing Committee on Health, Ageing and Community Services' (**the Committee**) Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill (**the Bill**).

About Street Law

Street Law (a program of Canberra Community Law) provides outreach legal assistance for people who are experiencing or are at risk of homelessness. Street Law provides legal advice and casework assistance and connects clients with other services.

Street Law assists clients with a range of legal issues, including but not limited to certain drug and alcohol related offences. A number of our clients have had experiences with the justice system and have had a range of health issues, including substance abuse issues. This submission takes into account the experiences of our clients, and our understanding of the laws that affect them in the criminal justice space.

Comments on the proposed amendments to the *Drugs of Dependence Act 1989 (ACT)*

Street Law generally supports the amendments to the *Drugs of Dependence Act 1989 (ACT) (Act)* in the Bill, in particular, the measures designed to reduce the interactions our clients (i.e. people experiencing or at risk of homelessness) have with the criminal justice system, which can have a significant impact on their lives and future opportunities.

Street Law also supports amendments to existing laws that aim to reduce the number of offences at the lower level, therefore reducing the number of fines, particularly in relation to our clients who are often already facing significant financial difficulties. However, we provide a number of general comments below that highlight the issues our clients face, and may face, if the Bill is passed as drafted.

Many of our clients are ‘sleeping rough’, either on the streets, in their cars, couch surfing, or in refuges or other shelters. Given the harsh realities of ‘sleeping rough’, and often in the case of our clients, the myriad of other difficult situations they may be facing, including physical disabilities, mental illness, alcohol and drug dependency, exposure to abuse and family/domestic violence, lack of sustainable income and support networks, it is not uncommon for our clients to use drugs (including cannabis) as a way of coping with, or escaping (even temporarily) their situations.

The following case study provides an example a client we assisted with a number of drug related charges, including cannabis possession:

Case study 1: John

John (not his real name) was charged with a number of offences including driving under the influence of prescribed drugs (cannabis and methylamphetamine) and possession of cannabis (2g). John did not receive an on-the-spot fine for cannabis possession and was instead charged with an offence and required to appear before the ACT Magistrates Court.

John was couch surfing with friends when we met him. He had had an extremely disrupted childhood, limited family support and was going through recent grief due to the loss of his partner before turning to substances as a coping mechanism. John suffered from anxiety and depression and was a Disability Support Pension (DSP) recipient due to his spinal injury and an acquired brain injury.

Street Law represented John in the ACT Magistrates Court for a number of criminal charges. With respect to the cannabis possession charge, the Magistrate noted it was a crime ‘no matter how common it may be in the community’. John was convicted with no additional penalty given his limited income as a DSP recipient and noting that cannabis possession of 50g or less is on the lower level of offences, which only attracts a maximum penalty of 1 penalty unit.¹

Public Place Offences

When our clients are ‘sleeping rough’, they seek shelter on the streets, in their cars, couch surf at the residences of friends and family, or in refuges or other shelters. Many of these places would be considered ‘public places’ for the purposes of the new section 171AB in the Bill.² As Dr Tamara Walsh explains in her book *Homelessness and the Law* ‘for people who experience primary homelessness in particular, all behaviours must necessarily be conducted in public, since there is no private space to retreat to.’³

While we understand section 171AB is drafted to protect members of the public who choose not to smoke and to protect children, as drafted, it prohibits the smoking of cannabis in public places, but not in private places.⁴ In our view, section 171AB does not consider the living circumstances of those who are experiencing homelessness, and contrary to its intent, it is unlikely it will reduce our clients’ interactions with the criminal justice system.

We also note that the maximum penalty of 30 penalty units for spoking cannabis in public or near a child would generally be unfeasible for our clients to pay, and if the fine is not withdrawn, the matter would likely be referred to the Magistrates Court for prosecution. This would only exacerbate their financial difficulties

¹ Drugs of Dependence Act 1989 (ACT) s 171(1)(a).

² Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, s 171AB(1) and (3); with reference to the Smoke-Free Public Places Act 2003 (ACT), Dictionary ‘public place’ and ‘enclosed public place’.

³ Tamara Walsh, *Homelessness and the Law* (2011, The Federation Press) 87 – 88.

⁴ Explanatory Statement, Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, 4.

and possibly prolong their time on the streets, and, in effect, punish them for behaviour that would be a consequence of their homelessness.

Driving Offences

Many of our clients, as an alternative to couch surfing or sleeping on the streets, sleep in/live in their cars, and rely on their cars to get to medical appointments and meet with their support services and family members. If they have used cannabis, under both the current legislation and the Bill, driving offences are often, and would be, when our clients are penalised for their cannabis use. The period in which cannabis use may be detected by drug screening tests (including testing of a saliva or blood sample) may vary depending on the length of time since taking/smoking cannabis, the frequency of use, as well as the quality and quantity of the cannabis used.⁵ It can be difficult to know, even if the physical effects have worn off, whether cannabis use will still be detected. In our experience, this is a situation our clients often find themselves in.

Unlike alcohol and the different levels of alcohol concentration which determine the severity of driving offences under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT), driving under the influence of drugs remains a zero-tolerance summary offence.⁶ The Bill is silent on, and does not propose any amendments to, laws relating to drug driving offences.⁷

If the Bill is passed as drafted, this may result in the same, if not increased, numbers of drug driving offences.

While we recognise that the cannabis use can impair driving even days after it has been consumed, noting the likely impact in the number of drug driving offences being committed, we consider that public awareness around driving under the influence of cannabis (and other prescribed drugs) should be prioritised.

Permitted amounts for cultivation and possession

There appears to be some inconsistency between the proposed number of cannabis plants that may be ‘cultivated’ and the amount that an individual may ‘possess’. In our view, it is unclear how the cultivation limitations and possession offences operate concurrently.

‘Possess’, ‘possesses’ or ‘possession’ is not defined in the Bill, the Act, or the *Crimes Act 1900* (ACT). The Macquarie Dictionary (Fourth Edition) definition of ‘possess’ is ‘to have as property; to have belonging to one.’ Accordingly, if someone were to grow up to five cannabis plants at their home, they technically may ‘possess’ over 50g.

We understand that it is the ACT Parliament’s intention that a person be permitted to ‘carry’ up to 50g of cannabis, meaning more may be cultivated (up to five plants, by non-artificial cultivation methods) but only 50g may be ‘carried’. This, however, is only noted in the Explanatory Memorandum to the Bill. We recommend that a definition of ‘possess’ should be added to the Bill, and, or in the alternative, that educational materials make operation of the cultivation and possession offences clear.

Penalties

The overwhelming majority of our clients face problems in relation to fines which, in our experience, only exacerbates their already difficult living situations and places significant financial pressures on their often already limited, or non-existent, incomes (often their sole source of income is Centrelink benefits). If clients

⁵ See ‘Drugs and Driving: Mobile Drug Testing’ *Transport for NSW – Centre for Road Safety* (updated 28 February 2019, accessed 15 March 2019) <<https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholdrugs/drugdriving/index.html>>.

⁶ *Road Transport (Alcohol and Drugs) Act 1977* (ACT) s 20.

⁷ See generally Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018; see also Sally Pryor ‘Police concerned cannabis bill doesn’t mention drug driving’ *The Canberra Times* (29 November 2018) <<https://www.canberratimes.com.au/national/act/police-concerned-cannabis-bill-doesn-t-mention-drug-driving-20181128-p50iym.html>>; Katie Burgess ‘The sky did not fall’: Vermont’s advice to ACT on legalising cannabis’ *The Canberra Times* (15 March 2019) <<https://www.canberratimes.com.au/politics/act/the-sky-did-not-fall-vermont-s-advice-to-act-on-legalising-cannabis-20190311-p5138t.html>>.

are fined, this compounds the difficulties they face in trying to find affordable accommodation, stable employment, and repayments of other debts (i.e. housing debts) while dealing with personal and welfare issues.

The following case study illustrates the ongoing challenges that one of our clients has experienced in dealing with her cannabis fine.

Case study 2: Mika

Mika had witnessed an alleged crime and decided to report it to the police. She contacted the police who attended her place of residence so that she could provide a statement. In the course of the interview, the police noticed that Mika had ‘a small amount’ of cannabis in her home on her table, and she was issued an on-the-spot fine of \$100 as a result.

Mika was a DSP recipient and on a good behaviour order for a separate drug-related offence.

Mika was unable to pay the fine due to financial hardship and dealing with multiple stressful circumstances, including her child’s ill health. If she did not pay the fine within 60 days of the fine notice, she faced much more serious consequences, including an increasing amount to be paid (due to late fees), the possession being recorded on her criminal record, and it could possibly affect her good behaviour order.

Mika had no option for dealing with the fine except to pay the Simple Cannabis Offence Notice (**SCON**) by instalments or in full (both of which were not feasible in Mika’s circumstances), and so in our last dealings with her she had not taken any further action in relation to the fine. We have since lost contact with Mika.

A typical situation experienced in our client group is where a client receives a fine or infringement notice for a driving infringement/offence and is unable to pay. This can result in the client incurring a significant debt, which may increase due to late fees, and may lead to suspension of their drivers’ licence or other penalties. As explained above, a drivers’ licence is often essential for our clients to secure employment and meet with their respective health and support services. This only serves as a further obstacle for the client to deal with, and decreases their ability to improve their circumstances. It is also not unusual for our clients to be facing a number of fines at one time.

By virtue of their difficult circumstances, it is more likely our client group could commit an offence under the Bill as drafted, in particular the public place offence under new s171AB. While we acknowledge that fines and infringement notices are an important and effective law enforcement mechanism we recommend that the penalty scheme in the Bill is amended to allow for those with ‘special circumstances’ to be able to enter into payment plans, apply for withdrawal of fines, or alternatively participate in work or development program arrangements to work off fines. Such options are available for traffic and parking fines in the ACT, where a person is unable to pay their fines.⁸ This should be considered particularly in relation to the Simple Cannabis Offence Scheme (**SCOS**).

⁸ E.g. See *Road Transport (General) Act 1999* (ACT) Pt 3, Divs 3.2A (Infringement notice management plans), 3.2B (waiver of infringement notice penalties) and 3.3AA (Withdrawal of infringement notices) and 3AA (Infringement notice management plans).

Recommendations

Street Law recommends the following amendments and inclusions in the Bill and/or any accompanying guidance materials:

1. **Flexible payment options for on-the-spot fines:** Our clients already face significant financial hardship and often struggle to pay fines for traffic and other offences. We recommend including mechanisms:
 - o allowing people with low income or who are socially disadvantaged to perform community work or participate in personal development or educational health programs to discharge fines (an option that is currently available for traffic and parking fines in the ACT); and
 - o allowing vulnerable people to seek a waiver of fines.
2. **Guided discretion for police officers regarding ‘public place’ offences:** We recommend that guidance materials should be developed to steer away from a ‘zero tolerance’ approach and should encourage consideration of ‘special circumstances’ which includes a persons’ living conditions, etc. and if such circumstances do exist, individuals should be referred to the appropriate support and/or health services.
3. **Driving offences:** We recommend that the Committee consider whether laws relating to drug driving offences require amendment, and/or educational materials developed to inform the public of the risks of driving after using cannabis, including how long after the use it may be detected by drug screening tests.
4. **Educating cannabis users or potential cannabis users about the legal limits:** We recommend that educational materials be developed and distributed to inform the general public about the legal limits of cannabis possession and cultivation, and the difference (if any) between the two.

Should you wish to discuss this submission further, please contact [REDACTED]

Warm regards,

[REDACTED]
[REDACTED]
[REDACTED]
Street Law