



# LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES

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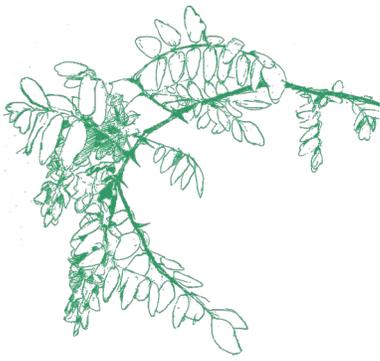
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## Submission Cover Sheet

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

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**Families and Friends for Drug Law Reform  
(ACT) Inc.**

*committed to preventing tragedy that arises from illicit drug use*

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

**BEFORE THE  
STANDING COMMITTEE ON HEALTH, AGEING  
AND COMMUNITY SERVICES OF THE  
LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN  
CAPITAL TERRITORY**

**SUBMISSION OF  
FAMILIES AND FRIENDS FOR DRUG LAW  
REFORM**

# PERSONAL CANNABIS USE BILL

## TABLE OF CONTENTS

The ACT is teeming with criminals!	1
About Families and Friends for Drug Law Reform	3
Devising a drug policy of maximum effect and minimum harm	4
In terms of its own objectives, prohibition is a failure	7
Loss of control – the paradox of prohibition	7
Prohibition stimulates the development and marketing of new drugs	8
Why law enforcement cannot suppress drug use.	8
Claimed harms of cannabis	9
Mental health problems	9
Cannabis is a gateway to harder drugs?	11
Negative effects upon users of coercive drug policies	11
Social harms associated with criminalisation of cannabis use	12
Medicinal cannabis	13
Inaccessibility	13
Impediment of research, treatment and advocacy	15
What the Personal Cannabis Use Bill does.	16
Where the Bill falls short	16
Retention of offences for those under 18	16
The application of the SCON procedure continues to be subject to police discretion	16
The criminal law continues to underpin the response to young people who happen to use cannabis	16
Establishment of an administrative tribunal to which apprehended underage drug users may be referred	17
Continued imposition of severely punitive penalties on Good Samaritans providing cannabis to those seeking relief.	20
Artificially cultivated cannabis not eligible for SCON procedure	20
The gateway drug hypothesis	21
How to respond to youth drug use	22

## FAMILIES AND FRIENDS FOR DRUG LAW REFORM

Flexibility through regulations	23
Cost savings	23
Interaction with Federal Law	24
REFERENCES	25

## RECOMMENDATIONS

- Recommendation 1: If Recommendation 5 (p. 2) is not accepted and the SCON procedure is to be retained for underage cannabis users or growers, the Bill should be amended to remove the police discretion in s. 171A(1) of the current *Drugs of Dependence Act 1989* in relation to underage people. .... 17**
- Recommendation 2: Provision be made in the Bill for underage people apprehended with the smallest quantity of cannabis or cannabis plants to be referred to a civil administrative tribunal for assessment and referral rather than be prosecuted or processed under the SCON system. .... 19**
- SOURCE: overhead displayed by Dr Manuel Cardoso at his address in Sydney on 5 June 2018. .... 20**
- Recommendation 3: That the Bill be amended to embrace artificially cultivated cannabis so long as it is cultivated in the private residence of the cultivator. .... 21**
- Recommendation 4: Cl. 177AA(1) of the Bill should be amended to permit the supply on non-commercial terms of cannabis to meet the health needs of the person supplied..... 21**
- Recommendation 5: Rather than being subject to the SCON system, underage Canberrans should be required to present themselves to an administrative panel made up of social workers, drug and alcohol service providers and educators. .... 23**
- Recommendation 6: Substantive provisions of the Bill should be subject to a broad regulation making power directed at ensuring that the principles and purposes of the legislation are promoted and not undermined..... 23**

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

before the

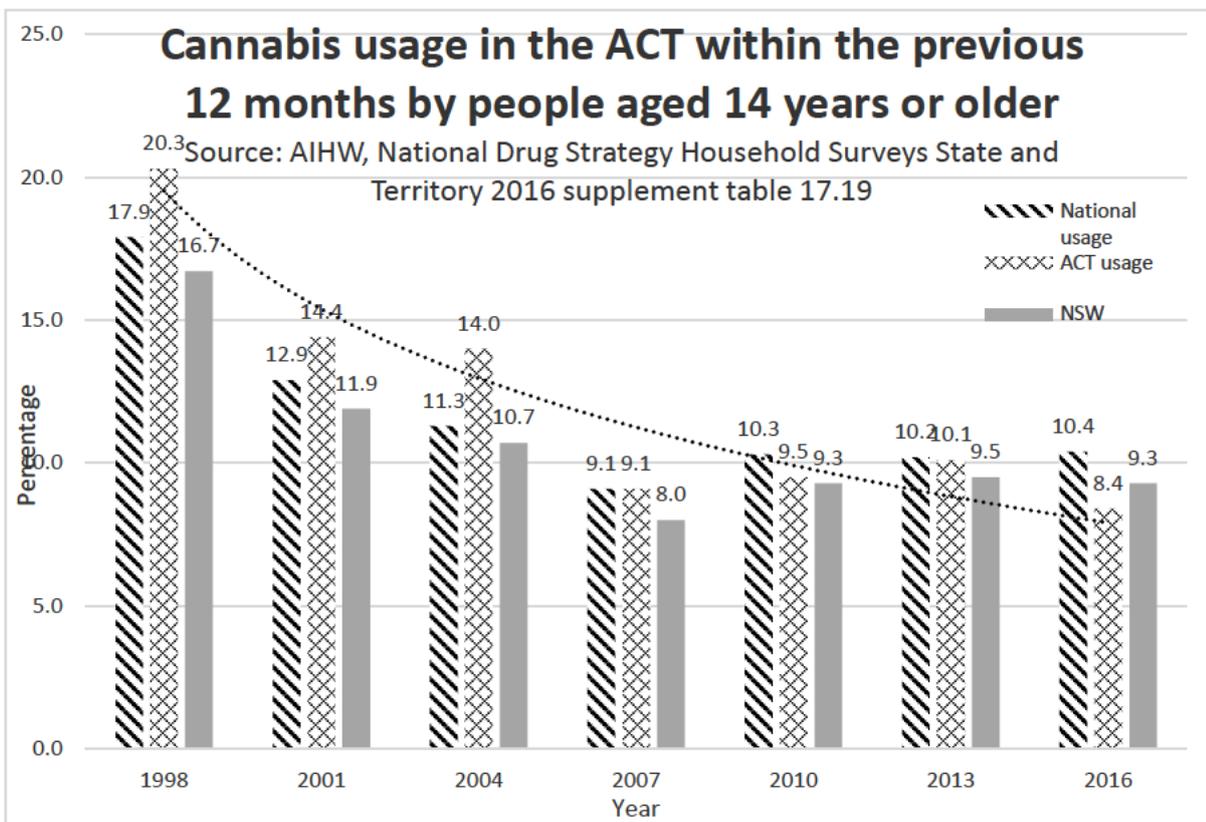
**Standing Committee on Health, Ageing and Community Services of the Legislative Assembly of the Australian Capital Territory**

**Submission of**

**Families and Friends for Drug Law Reform**

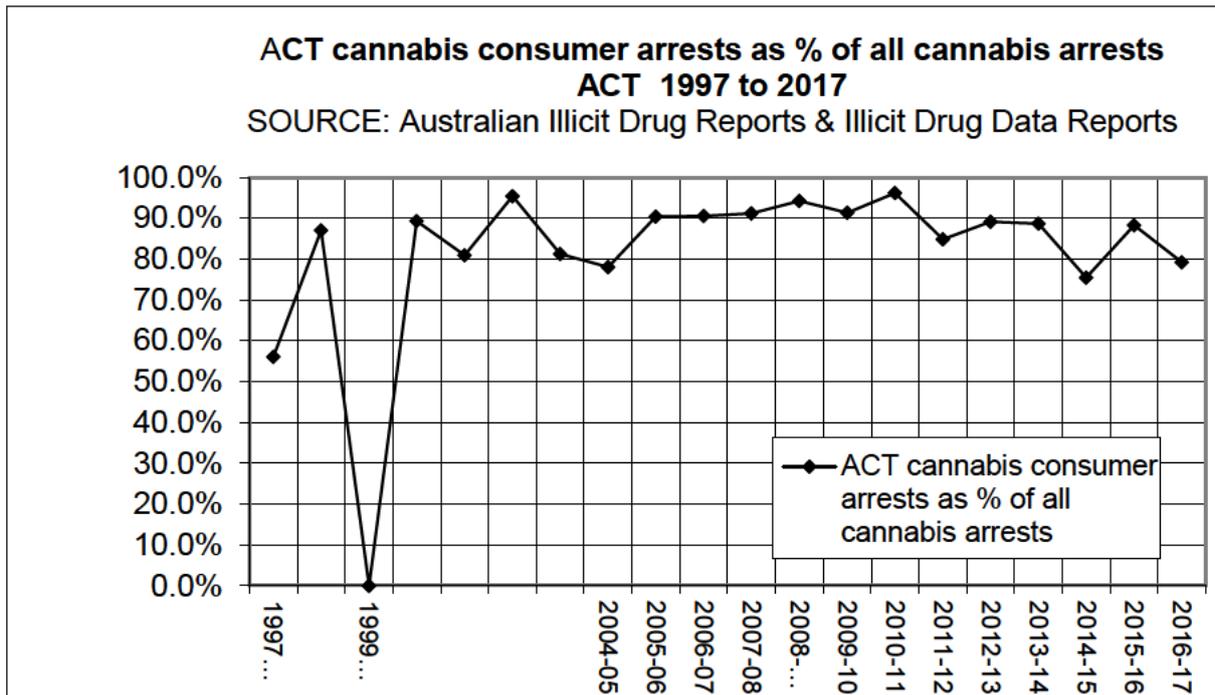
***The ACT is teeming with criminals!***

1. Families and Friends for Drug Law Reform welcomes the willingness of the Legislative Assembly to remove the stigma of criminality from the 35,000 (10.9% of the ACT population) who have tried cannabis at some point in their life and from the shoulders of the 26,400 or so (or 8.4% of the population) who have used cannabis recently.

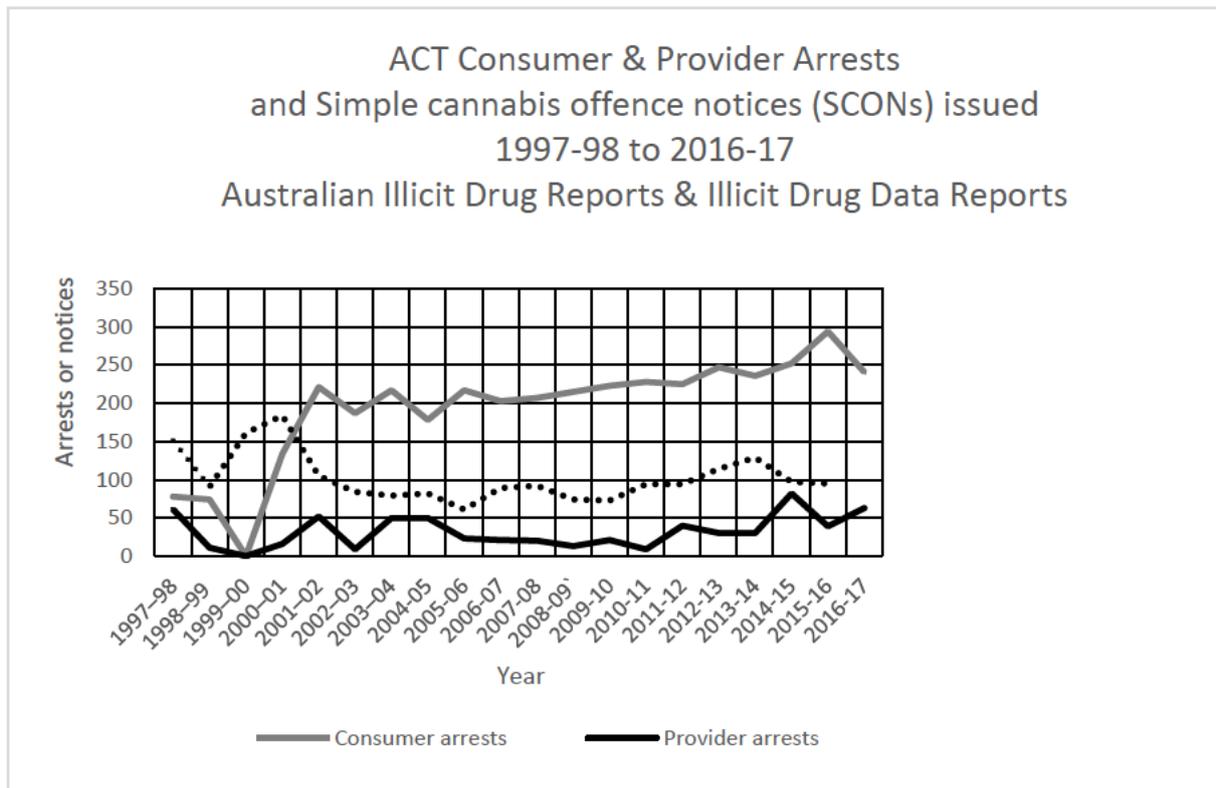


2. Cannabis, like any drug, may not be entirely harmless but such harms as it causes pale into insignificance compared to the harms that follow from the utter disruption of the life that typically befalls someone who is arrested and prosecuted for a crime. The legislation will get police off the back of otherwise law-abiding Canberrans and thus free expensive police resources to concentrate on crime of more concern to the life of the people of the ACT. In spite of what the police and the Department of Justice and Community Safety may assert, the following chart shows that cannabis law enforcement has overwhelmingly focused upon consumers rather than suppliers.

## PERSONAL CANNABIS USE BILL



3. A comparison between the foregoing chart of cannabis usage and the following one about arrests and thus police priorities shows little correlation between law enforcement effort and the level of use of cannabis. Indeed, as is discussed below, the criminalisation of drug use seems to stimulate supply.



4. The conclusion to be drawn is that a Bill that legalises cannabis usage is likely to establish a framework conducive to far more effective regulation of access to the drug than is presently possible under a regime of prohibition that effectively hands its production and distribution to criminals.

### ***About Families and Friends for Drug Law Reform***

5. Families and Friends for Drug Law Reform was an aberration when it was formed 23 years ago. As best we know, we were the first grouping of families in the world that questioned prohibition as the factor that caused more harm than the drugs themselves. This was contrary to the typical tendency for families to call for ever tougher law enforcement action. Like the parents, brothers and sisters who met 24 years ago, this Committee needs to confront the given wisdom that prohibition was the obvious way to go. The stakes were higher then because the substance at the top of the mind of those at that public meeting was heroin, which is far more dangerous than cannabis. What made the founders at that public meeting in April 1995 question the given wisdom was the death of a 16-year-old daughter in a drain across the road from the Canberra Hospital, of a brother found dead in the living room of the family home and of a son who regained consciousness from an overdose in a hospital bed to the sight of police at the end of it demanding to know where he got the drugs he had overdosed on, police who barred his parents from comforting him; the police who interrogated them and his sister, police who so scared him that he took off by himself on a hurried holiday. In a lonely motel room he used alone and died this time there was without a friend with him to call an ambulance and no family anywhere near. The police of course were only doing their duty enforcing the law for which you are responsible. The grief that that meeting shared turned to frustration and anger at the realisation that those lives should and could have been saved: all would be alive today if drug use and addiction had been treated as a social and medical problem and not a law and order one. The criminal law and how it was enforced contributed to the death of a child, sibling or friend of many of our members.

6. Leading British, American and Australian researchers of drug policy have summarised the futile harmfulness of criminal law enforced drug policy in the following terms:

"Drug prohibition increases the price of drugs, stigmatizes drug use, and prevents large-scale corporate entities from promoting drug sales through modern marketing techniques. After these structural consequences of illegality are attained and maintained through routine levels of enforcement, increased enforcement against drug dealers produces diminished returns. That is, even if very large numbers of people are incarcerated, drug prices do not rise and availability does not decline much beyond what could be expected from routine enforcement of drug laws. Further, there may be perverse effects if law enforcement resources are diverted to arresting and incarcerating drug dealers when other crimes that would otherwise claim police attention are neglected" (Babor *et al* 2010, p. 255).

7. In its [Charter](#), Families and Friends for Drug Law Reform is committed to promote the "removal of criminal sanctions for personal use of currently illegal drugs." We regard the Bill before the committee as consistent with that objective. We only wish it applied to all illicit drugs.

8. So yes, from the very beginning Families and Friends harboured grave doubts about the effectiveness of drug policy. With the accumulation since of knowledge, and the strikingly different results of countries that have taken a different approach, Families and Friends sees itself as vindicated. Its initial impressions of the unjust ineffectiveness of drug policy was correct. We are motivated by a deep-seated wish

## PERSONAL CANNABIS USE BILL

to secure the changes that would ensure other families do not suffer as so many of ours have done. If suffering alone does not move politicians to do what is right, it remains for rigorous, rational evidence-based analysis to bring enlightenment. Evidence-based policy is for us not just a platitudinous slogan but the bedrock on which public policy should be built in any society that claims to be just and compassionate.

9. The stakes may not be as high for cannabis as it was for our founders. Cannabis is not known to cause death as heroin does. According to the United States Drug Enforcement Administration “No *death* from overdose of *marijuana* has been reported” and [suggestions to the contrary seem to have been discredited](#). Even so, cannabis use has been associated with serious harms though these can be minimised if not entirely avoided by different drug policies. The harms commonly claimed for cannabis by those opposing any relaxation of criminal prohibition include the following:

- mental health problems like schizophrenia, psychoses and depression;
- addiction to other so-called “harder” drugs; and
- social harms.

These claimed harms are either exaggerated or are influenced more by the policy response of prohibition than the drugs themselves.

### ***Devising a drug policy of maximum effect and minimum harm***

10. The [Charter](#) of Families and Friends for Drug Law Reform commits us to the promotion of “cautious and well-researched steps toward changing laws so that they cause less harm.”

11. When it comes to a commodity, there are two regulatory extremes available to a government. It might leave manufacture, and distribution entirely to the market. That is the obvious choice and the default position of libertarians and advocates of free trade. With this approach there would be no fetter on advertising and other promotion and no restriction on access to the commodity by any members of the society of full competence. It is for individuals to decide what is best for themselves and not a nanny state. The prohibition of drugs is anathema to this perspective. There is no more extreme nanny state intervention than to engage the coercive powers of the state to prescribe what people may or may not ingest in their own bodies. At most where the commodity is dangerous, the state is under an obligation merely to ensure that people are aware of the danger. Even so, in this environment that maximises individual choice and liberty, there may still need to be regulatory intervention by the State to protect those like children who are not fully competent. Leaving that qualification aside, the libertarian marketplace supercharged by the power of persuasion might well maximise the harm inherent from consumption of the commodity. Before a large raft of restrictions were placed on its marketing, the availability and consumption of tobacco by wealthy corporations, was such a free-for-all. So minimal control can maximise harm. Prohibition enforced by the criminal law is at the other extreme.

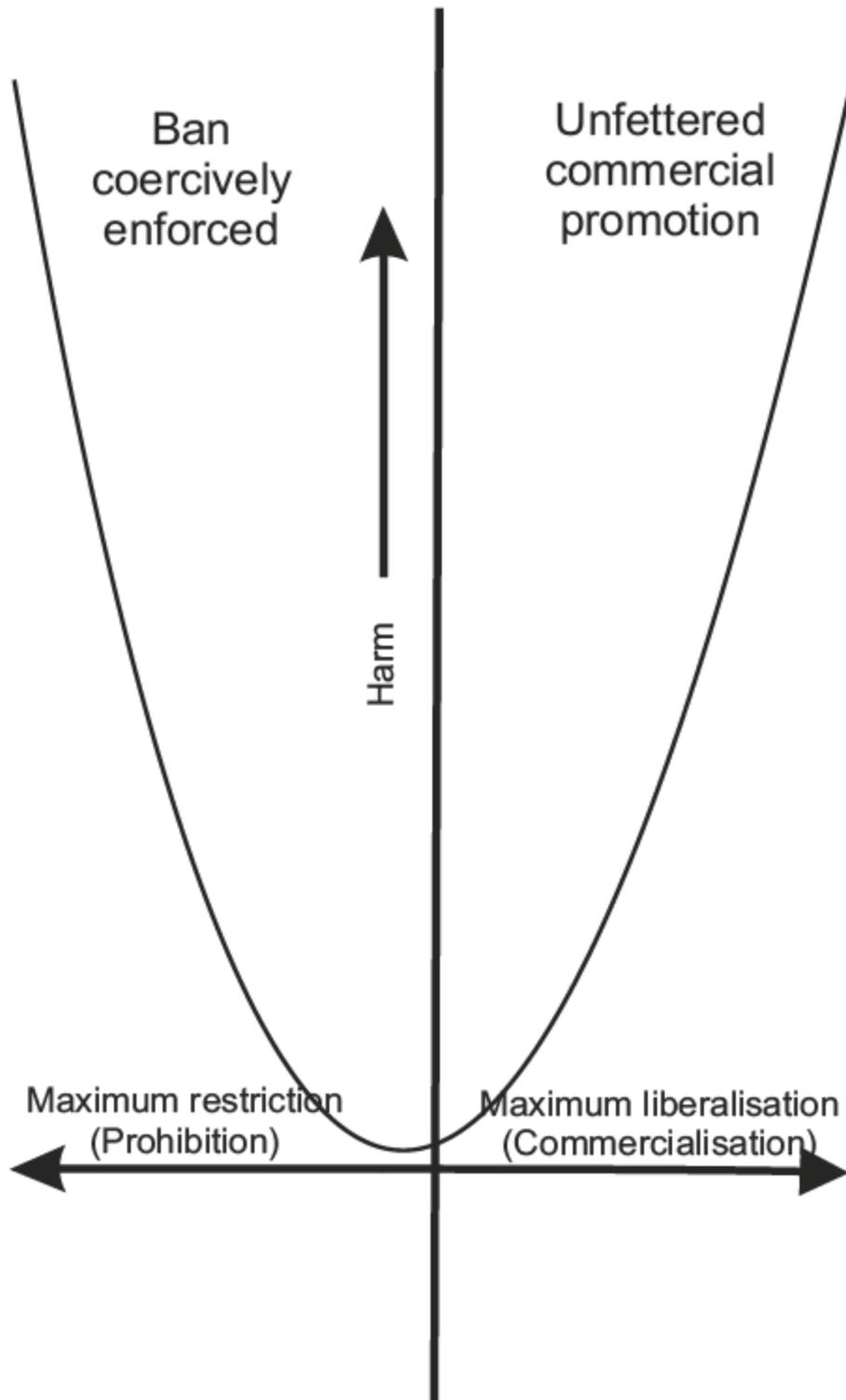
12. Where prohibition is secured by the coercive powers of the state through the processes of the criminal law control is ceded to criminals. A tobacco corporation

## FAMILIES AND FRIENDS FOR DRUG LAW REFORM

may not be particularly benign but is probably preferable to the crueler mercies of organised crime which control the illicit drug trade.

13. So in formulating the optimal public policy for drugs one must have regard not just to the intrinsic harm of the drugs but to any possible harms of the policy itself and thus to harms that may magnify or supplement those of the drugs. This is graphically expressed in the following parabola which recognises that least harm will lie somewhere between maximum restriction epitomised by criminal prohibition and maximum liberalisation represented by unfettered commercialisation.

**DRUG POLICY  
FINDING THE SWEET SPOT OF MINIMUM HARM**



14. We welcome the Bill in that it limits the scope of harsh coercive action on drug users but urge the Committee to fashion a regime that avoids the harms that can flow from a free-for-all commercial approach.

15. Action taken to reduce the harm of a very dangerous drug like tobacco has proceeded successfully by imposing restrictions on what had been unfettered commercialisation which saw the product enticingly advertised. Whether current regulations have established a “sweet spot” for that product is subject to debate. If, on the basis of further information, more could be done to reduce the harm then it should be open to adjust the degree of regulation. The present Bill proceeds from the opposite direction of outright prohibition enforceable under the criminal law. This status gifts the distribution of cannabis to organised crime which pays no regard for the well-being of the punters to whom it is flogged. Conceivably cannabis might be taxed but one must be careful to ensure that it is set at a level that does not provide an incentive for organised crime as it has happened in a big way with chop chop tobacco.

***In terms of its own objectives, prohibition is a failure***

16. With its prime focus on supply reduction, the acid test of prohibition is its success in substantially reducing the availability of the prohibited drugs. In that it has been a lamentable failure. Indeed, it has stimulated supply.

17. In 1938 *Smith’s Weekly* reported the “first appearance in Australia” of cannabis (Manderson 1993 p. 63). The 2016 household survey found that 10.4% of the population over 14 years old (over 2 million Australians) had used it in the last year.

18. Australia consumed 5 kg of heroin (all of it legal) on the eve of the imposition in 1953 of a ban on its importation (Manderson 1993 p. 63). By the end of the century the National Crime Authority estimated Australians were using 350 kg per million (all of it illegal) (NCA 2001 p. 21).

19. The National Drug and Alcohol Research Centre reported in 2004 that crystal methamphetamine, the purest and most potent form of that drug, was “very rare in Australia until several years ago” (McKetin & J.McLaren 2004 p. 7).

20. The 2016 household survey reported that 0.8% of the population (about 160,000 people) had used it in their lifetime. Recent usage of cocaine grew from 0.5% in the 1993 to 2.7% in 2016.

21. In 2012 the Bureau of Statistics researchers came up with an estimate of the total value of domestic and imported drugs in 2010 was \$7.574 billion (Gajewski and Cullen 2012b). Using a different approach, the Australian Crime Commission estimated that in 2013 – 14 illicit drugs constituted \$4.4 billion of the cost to Australia of serious and organised crime. The amount was said to take “into account health impacts, money lost to the economy through international payments made for illicit importations, and estimates of the size of the illicit drug markets and lost productivity output of drug users” (ACC 2015).

**Loss of control – the paradox of prohibition**

22. It is paradoxical that loss of control by the State is the consequence of prohibition enforced by the criminal law. Common sense might suggest that nothing could be more effective to eliminate or reduce supply than making its possession a punishable offence but that is not the case.

## PERSONAL CANNABIS USE BILL

### **Prohibition stimulates the development and marketing of new drugs**

23. The impact of prohibition on demand is only part of the story. The psychology of drug users and user dealers and the practical limitations facing law enforcement such as the influence at the disposal of staggeringly wealthy criminals to corrupt and otherwise smooth the way to facilitate their evil trade, served as additional stimulants of it. One evidence of this is the agility and responsiveness of the market to demand and how it may even expand and diversify by promoting and offering new products including the breeding of new strains of cannabis with high levels of THC.

### **Why law enforcement cannot suppress drug use.**

24. For all the very considerable effort that is put into drug law enforcement, it is a fantasy to believe that it would ever be successful in suppressing the drug trade. The reasons for this are clear:

(i) With two willing parties to drug transactions, drug dealing is not reported. Transactions in the marketing of illicit drugs are unlike most crimes where there is a willing perpetrator and unwilling victim. In the trading of drugs both parties have a strong interest in keeping the transaction secret. Like corruption and in contrast to the victims of most crimes, those engaged in drug dealing are unlikely to report the offence. In other words, the drug trade exists under the radar.

(ii) The direct peer to peer marketing system of the retail and other lower levels of the drug trade (Windle & Daniel Briggs 2015) replicate the persuasive person-to-person retailing strategy of [enterprises like Amway which in 2016](#) engaged “107 million people around the world . . . with direct selling, driving more than US \$182.6 billion in direct retail sales. Based on 2016 revenues, Amway, Avon, Herbalife, Vorwerk and Mary Kay are the top five global direct selling companies. [This] shows, a highly effective marketing strategy”;

(iii) Consensual direct marketing schemes of addictive substances are highly resistant to police penetration.

(iv) Higher prices brought about by drug law enforcement fail to deter most dependent users whose demand for substances to which they are addicted is largely inelastic.

(v) The very high profit margins allow criminal enterprises to outspend law enforcement agencies in hiding their tracks and facilitating their trade by money laundering, corruption and violence to intimidate witnesses and competitors (ACC 2015 pp. 8 & 9). Thus, money laundering, violence and corruption support and conceal “serious and organised activity” (ACC 2015 p. 5). It is therefore very hard to detect and catch those near the top of the distribution pyramid. In the words of a retired Tasmanian Police Commissioner and member of the Board of Control of the Australian Bureau of Criminal Intelligence, Mr John Johnson:

“I don't think [police action is] having any effect on the supply in Australia. I think that [what] we do quite regularly when we catch some of the Mr Bigs is that we make life much easier for some of the other Mr Bigs who haven't been prosecuted and caught. We've put their competition in prison and left the world open for them and they're

## FAMILIES AND FRIENDS FOR DRUG LAW REFORM

extremely difficult to catch and they go on with their business . . . .”  
(APGDLR 1997).

(vi) Motivated by the prospect of quick and easy money, there is an endless supply of middle level dealers prepared to run the risk of apprehension in return for wealth. The addicted user who deals to feed a habit is the disposable bottom layer of the distribution pyramid, the cannon fodder of the drug war. At most, local policing merely displaces the market.

(vii) There is only a small chance that drug users will ever be arrested. For a deterrence to be effective, it should be swift and certain. Drug law enforcement is neither (Kleiman, 2009). Based on the most recent Australian usage and arrest rates, there is less than a 2% chance of ever being caught;

(viii) Drug law enforcement and drug dealers both aim to maximise the price of drugs, law enforcement in order to put them out of reach of drug users and dealers in order to maximise their profit. In other words the objectives of law enforcement and dealers coincide, ensuring a continuing supply of drugs.

(ix) In addition to deterrence, drug law enforcement aims to put drugs out of reach of consumers by raising their price. Given that demand from dependent drug users is relatively inelastic, raising the price of drugs, far from moderating demand and thus supply, serves as an incentive to supply. The Australian Crime Commission is well aware that profit attracts further supply:

“ . . . the price paid for methylamphetamine in Australia is among the highest in the world, making the importation of the drug and its precursor chemicals an attractive target for transnational crime groups”  
(ACC 2015, p.3);

(x) law enforcement is never able to seize more than a small proportion of the profits of the drug trade. The Australian Bureau of Statistics has supported research into the estimation of the size of the Australian illicit drug trade. This study estimated that in 2010 the trade in illicit drugs was worth \$7,574 million of which “cannabis” represented \$4,889 million (Cullen & Gajewski 2012 p. 12). Even if all the \$93.3 million that the AFP confiscated in 2016 – 17 (AFP 2016-17 p. 30) represented drug proceeds, this would be a mere 1.23 percent of the estimated annual value six years before of the black market economy for all illicit drugs and 1.91 percent of the cannabis market.

(xi) For risk taking young people the illicit status of certain substances is a challenge that they rise to. Drugs have the attraction of forbidden fruit. Other countries with a better grasp of adolescent psychology have successfully made illicit drugs boring.

(xii) Other less confident young people try drugs to avoid pain or, in the words of the household survey, to “improve [their] mood/to stop feeling unhappy” – This is a form of self medication combating unhappiness or social awkwardness.

### ***Claimed harms of cannabis***

#### **Mental health problems**

25. This Committee will certainly meet, from objectors to the Bill, assertions that cannabis causes mental health problems including very serious ones like

## PERSONAL CANNABIS USE BILL

schizophrenia and psychoses. The committee should be very careful not to confuse correlation between mental health conditions and cannabis and the question of causation. What is the evidence that cannabis actually causes mental health problems? Are there other causative factors? Families and Friends for Drug Law Reform considers that the evidence points to the stresses of the criminal law underpinning existing drug policy being far more potent.

26. Based on its 2006 study, the Mental Health Council of Australia summarises the connections in the following terms:

A landmark report released by the MHCA found strong associations between mental illness and cannabis, although this is not the same as a causal link. Evidence suggests that regular cannabis use, particularly by those who begin using at a young age, increases the risk of mental illness. There is also evidence of a genetic vulnerability to psychosis being, in effect, triggered by cannabis use. Nonetheless, the social context in which cannabis use occurs clearly contributes to the strong association between cannabis use and mental illness (MHCA nd).

Even so, the Mental Health Council noted that:

“Cannabis can induce schizophrenia like symptoms in otherwise healthy individuals.”

27. The summary added of depression and other conditions that:

“There is no clear causal link between cannabis and depression; however, there appears to be a link between early and regular cannabis use and later depression. The link between suicide and cannabis has yet to be clarified. There has been too little research into the links between cannabis and other mental illnesses such as bipolar disorder and personality disorders to draw conclusions. There is no doubt that heavy cannabis users suffer significant cognitive impairment for up to a week after cessation of use but there does not appear to be either lasting or irreversible cognitive impairment.”

28. The lack of a causal link between cannabis and schizophrenia is consistent with a large British review of diagnosed schizophrenia and psychoses from 1996 to 2005 carried out against a background of a substantial rise in UK cannabis use from the mid-1970s and an elevated risk of 20 years from first use of cannabis. The review investigated whether an increase in prevalence and incidence had occurred:

...in the UK by examining trends in the annual prevalence and incidence of schizophrenia and psychoses, as measured by diagnosed cases from 1996 to 2005. Retrospective analysis of the General Practice Research Database (GPRD) was conducted for 183 practices in England, Wales, Scotland and Northern Ireland. The study cohort comprised almost 600,000 patients each year, representing approximately 2.3% of the UK population aged 16 to 44. Between 1996 and 2005 the incidence and prevalence of schizophrenia and psychoses were either stable or declining. Explanations other than a genuine stability or decline were considered, but appeared less plausible. In conclusion, this study did not find any evidence of increasing schizophrenia or psychoses in the general population from 1996 to 2005” (Frisher *et al.* 2009).

**Cannabis is a gateway to harder drugs?**

29. It is frequently said that cannabis is a gateway drug to other more dangerous ones. This idea is commonly bandied around by those who defend criminal prohibition. Cannabis often does come before use of harder drugs like methamphetamine and heroin but so does alcohol and tobacco. The link is not pharmacological but sociological and psychological.

30. Peers who flog cannabis to their mates will typically have access to a smorgasbord of other illicit drugs and peer pressure from one drug using mate to another. Indeed the 2016 household survey revealed that first use of 50% was through being offered a drug by friends or family. (This includes peer group pressure and wanting to belong.) The influence of friends and family was exceeded only by curiosity at 65%. 14–19 year olds were more influenced by friends and family than those in other age groups (AIHW 2016 p. 74).

31. These findings point the way to more effective strategies to reduce drug use – strategies that legalisation as enabled by the Bill will facilitate. What is clear from the household survey findings is that fear of breaking the law is only a minor influence. Only “1 in 3 (31%) were worried about the legal consequences and did not want to break the law.” Given the very small likelihood of ever being caught that is an understandable attitude.

32. Curiosity and risk-taking are important factors that influence first use of any illicit drug. The influence that these prevalent normally commendable adolescent characteristics place at high risk a high percentage of young Australians (Blue Moon 2000).

33. The Howard government in a pamphlet drew these influences to the attention of the nation in warning parents not to be complacent about the likelihood of their children dabbling in illicit drugs. The influences challenge the common assumption that young people use drugs only if they are having problems at home or at school. At the top of the list was "Availability and acceptability of the drug" which points to peer group pressure as much as existing drug use in the family. Otherwise the factors listed in the pamphlet were common psychological characteristics:

- Curiosity and experimentation.
- Wanting to be accepted by peer groups.
- Rebellion.
- Depression.
- As a way to relax to cope with stress, boredom or pain.
- To experience a high or a rush” (Abetz 2001).

***Negative effects upon users of coercive drug policies***

34. There is a high correlation between heavy cannabis use and social contexts of disadvantage like homelessness. As the next section on social harms argues, the stresses and disruption associated with the application of coercive measures are potent risk factors for these social harms. It is thus distinctly likely that the removal of the threat and exposure to coercive processing that the Bill will bring about, will

## PERSONAL CANNABIS USE BILL

alleviate a range of intractable, chronic and costly social problems: the report of the Mental Health Council of Australia noted that

“Along with these findings, there is also a social context for those using cannabis with a serious mental illness. They are often in a highly vulnerable state – that is, unemployed, homeless and unable to access MBS and PBS services. Of all homeless Australians, half are estimated to have a drug dependence problem and half are estimated have a mental disorder (Loxley et al., 2004). According to the Australian Federation of Homelessness Organisations (AFHO) this is likely to be a significant under-estimate (consultation with AFHO, May 2006).

“There is good evidence that people with psychosis report using cannabis in an attempt to alleviate the emotional and psychological distress associated with their illness” (MHCA 2006).

### **Social harms associated with criminalisation of cannabis use**

35. The application of the criminal processes will bring into being or intensify risk factors precipitating more intense and other drug use while at the same time destroying the young person’s life chances. Research on different strategies used to counter the availability of cannabis show how misguided attempts to combat cannabis can have this effect. The standard processes of the criminal law have been varied. Some jurisdictions have an expiation notice process for minor cannabis offences similar to on-the-spot parking tickets. The ACT with its system of Simple Cannabis Offence Notices (SCONs) is one such jurisdiction. Under this system the drug remains prohibited but minor offences incur a civil rather than a criminal penalty.

36. A comparison was made between South Australia which had pioneered the expiation system in Australia and Western Australia before a similar system was introduced there. The study found that those prosecuted in Western Australia were more likely to report negative employment consequences than those who received an expiation notice in South Australia. The difference was marked. Of the Western Australia group 32% identified at least one negative employment consequence and 16% of these were sacked as a result of the offence. In South Australia only 1.7% reported such a negative consequence.

37. In personal relationships only 5% of the South Australian group reported negative consequences compared to 20% of the Western Australian group. Whereas 16% of the West Australian group reported negative consequences in their accommodation, none of the South Australian group did so.

38. In contrast to the marked negative impact of the application of the traditional criminal processes in Western Australia compared to South Australia, the Western Australian process did not serve as a stronger deterrent against actual cannabis usage. This aspect is mentioned further below (Lenton *et al.* 1998, x).

39. The study thus found that the different strategies used to combat cannabis usage had significantly different levels of negative impacts on cannabis users. These impacts have been known to heighten known risk factors for mental illness and drug use such as unemployment, poverty, homelessness, insecurity, divorce and family break-up.

40. Legalisation of use and possession of small quantities of cannabis for personal use as proposed in the Bill before the Assembly takes the SCON system an important step further. Under the SCON system the processes of the criminal law as represented by the police are still at the fore: it is the police exercising their coercive powers who arrest, decide whether to impose a SCON or prosecute and then whether to pursue unpaid fines. Under the Bill before the Committee the criminal law will no longer be the gatekeeper and ultimate guarantor of cannabis use and possession in the territory.

41. Families and Friends for Drug Law Reform welcomes this Bill as a modest but significant step towards the objective of ameliorating the rigours of the criminal law for Canberrans apprehended with small quantities of drugs. We recognise that cannabis is associated with some harm but these are insignificant compared to the harms flowing from the threat of the criminal law and its application to cannabis users.

### ***Medicinal cannabis***

42. This inquiry and this Bill should not be about medicinal cannabis but it is. Why it reflects very badly on the political, administrative and professional establishment of this Territory. Every entity on the supply chain has looked to its own little area of responsibility with no one appreciating that all the various parts are not integrated to ensure that the people standing in need of cannabis for a medical condition are able to access it. No one is taking overall responsibility to ensure that all the parts of the system work together so as to deliver what the system was meant to provide. The Bill while a second best to a professionally informed, quality controlled functioning system will plug on an interim basis a scandalous gap.

### ***Inaccessibility***

43. In short, because people in the ACT in need of cannabis for a medical condition cannot legally access it, they have no choice but to access it on the illicit market with the result that under existing law both they and their carers who facilitate that access are criminals. This is unconscionable and a cogent reason why this Bill should be progressed as a matter of urgency.

44. The new 2018 – 2021 ACT drug strategy excludes medicinal cannabis:

Medicinal cannabis is not included as an illicit drug as it is now legal in the ACT. For further information on the ACT Medicinal Cannabis Scheme visit <https://www.health.act.gov.au/health-professionals/pharmaceutical-services/controlled-medicines/medical-cannabis> (ACT Health Directorate 2018).

45. With the rescheduling on 1 November 2016, by the Therapeutic Goods Administration of medicinal cannabis as a Schedule 8 (controlled drug) rather than a from Schedule 9 (prohibited substance) medicinal cannabis was permitted to be prescribed in the ACT with approval of the Chief Health Officer (ACT Hansard, *CT: 2017 Week 3 Hansard (21 March) p. 743ff*). As a result, registered medical practitioners may apply to the Chief Health Officer for an authority to prescribe medicinal cannabis for one of their patients. Prescribers must have approval from the TGA as well as the ACT Chief Health Officer (CHO) to prescribe medicinal cannabis as a controlled medicine (ACT Health, Medicinal cannabis prescriber approval).

## PERSONAL CANNABIS USE BILL

46. Under the [ACT Controlled Medicines Prescribing Standards](#), medicinal cannabis may be prescribed for just four conditions namely:

- spasticity in Multiple Sclerosis
- nausea and vomiting from Cancer chemotherapy
- pain and anxiety related to active malignancy from a life limiting disease with a prognosis of 12 months or less
- refractory paediatric epilepsy.

These cumbersome ACT prescriber approval guidelines add a further hurdle. In the case of other conditions “applications will also be considered on a case by case basis”.

47. Department of Health officials have told forums that these procedures are operating smoothly, that approval for a specified condition is approved promptly though a longer approval time might be expected for nonlisted conditions.

48. We understand though that the reality differs from this rosy picture. We believe that only five prescriptions have so far been written for cannabis and these from a single medical practitioner. We know of the case of a young woman suffering pain so disabling that she was unable to live independently of her parents until she discovered that cannabis oil immediately relieved her condition. Her family was able to procure it only from illicit sources but so effective was it that she was able to move to Sydney and obtain it there through legal medical channels. Back in Canberra now, her nightmare and that of her family is resurrected. In spite of the most energetic ferreting they have been unable to identify an ACT medical practitioner willing to prescribe it. Her predicament is complicated by the fact that her conditions, autoimmune inflammatory arthritis and endometritis, are not among the listed conditions. The parlous situation in which she and her family find themselves were described in *The Canberra Times* on 21 January (White 2019). In her mother’s words, her daughter’s access to cannabis “is the difference between being able to function and not function . . . The medication was approved and yet there are still these enormous hurdles that need to be negotiated.”

49. That there are barely any medical practitioners in the ACT authorised to prescribe cannabis reflects badly on the profession and bodies like the Primary Health Network and the Australian Medical Association that coordinate care or represent the profession. In this case, the Primary Health Network of the ACT has clearly failed to deliver on its professed core objectives, of:

- Increasing the efficiency and effectiveness of health services for consumers, particularly those at risk of poor health outcomes; [and]
- Improving the co-ordination of care to ensure consumers receive the right care at the right place at the right time (CHN).

50. For all that, the willingness of the Department of Health to claim credit for an efficient operating medical cannabis scheme is most galling and hypocritical. The agency of government responsible for healthcare services in this jurisdiction misleadingly proclaims that all is well when there is a yawning chasm that patients cannot bridge.

51. So Families and Friends for Drug Law Reform reiterates its regret that this submission about recreational use of cannabis strays onto the subject of medicinal

cannabis but it necessarily must do so as long as people like this young woman suffering from debilitating pain and her family may be forced to access the drug from illicit sources. The ABC has reported that this situation is widespread across the country. In a report on parents prosecuted for growing cannabis to relieve the epilepsy of a child, Carole Ireland, the Managing Director at Epilepsy Action Australia said:

“Unfortunately we know of more families that are using illicit cannabis than have accessed it through legal pathways. They're not hippies! The families are in between a rock and a hard place” (Bali 2019).

52. Families and Friends for Drug Law Reform accordingly supports the changes proposed by Shane Rattenbury:

“ . . . People who use black-market cannabis medicinally, but not through a prescription, [should be] allowed to possess a larger quantity legally. . . . The changes were needed because of the difficulties in assessing ACT's medicinal cannabis scheme. . . . The multiple layers of approval through both ACT Health and the Therapeutic Goods Administration and difficulties finding an authorised a doctor meant many patients simply gave up.

That's why we'll be seeking to increase the allowable amount of possession for people who use cannabis medicinally to recognise that people with a medical need may need to stockpile larger quantities than recreational users and the current avenues for accessing it under prescription are overly restrictive” (White 2019).

53. The bottom line, though, is the need for the rapid enactment of the present Bill.

### **Impediment of research, treatment and advocacy**

54. In other respects the present Bill will remove obstacles that have impeded application of the medical benefits of cannabis. In other words, the criminalisation of drug use has also undermined the potential medical use of the drug that may now be prescribed around the country.

- Criminalising cannabis has impeded research on its medical benefits; and
- Criminalisation has distorted the focus of research with research effort directed at the identification of its harms rather than its likely benefits.
- It has led to the existing cumbersome, bureaucratic procedure that encumbers access to the drug across Australia. The illegality of cannabis creates stigma, disapproval and judgement that constrains the legal channel for access to it.
- It contributes to the refusal of doctors to educate themselves about the benefits of cannabis for their patients.

In the words of Dr David Caldicott there has been "a century of missed scientific research to be conducted before allowing access."

55. In spite of the legalisation of access to cannabis through the medical profession, its criminalisation still impedes access to it by those who stand to benefit from it. We are aware that the stigma in New South Wales has constrained the public advocacy of a group representing people suffering from conditions like epilepsy for which cannabis is recognised by medical science as therapeutic.

***What the Personal Cannabis Use Bill does.***

56. The Bill's ground breaking change would be to remove ACT criminal sanctions altogether on people possessing up to 50 g of cannabis or who cultivate up to 4 cannabis plants. It does this by implication in spelling out when that possession or cultivation does constitute an offence (cls. 162 and 171AA). In common law, conduct that is not specified to be an offence is permitted.

57. The quantities of drugs that, henceforth, are eligible for processing under the expiation notice system of simple cannabis offence notices or SCONs are broadened. Under the existing law the SCON on the spot fine system was limited to possession of up to only 25g and being caught growing cannabis plants limited to just two (s. 171A(7)). The bill would thus:

- legalise the possession and cultivation of cannabis; and
- expand the SCON system by doubling the existing upper limits eligible for consideration by that process of decriminalisation.

58. The SCON expiation notice system had been introduced by the *Drugs of Dependence (Amendment) Act* 1992 (no. 52 of 1992) (possession of up to 25g & cultivation of not more than 5 cannabis plants). The **Error! Reference source not found.** reduced the number of plants to 2 and excluded artificially grown ones.

***Where the Bill falls short***

**Retention of offences for those under 18**

59. In terms of what it does not do, the Bill retains an offence for those under 18 to possess or cultivate any amount of cannabis or any number of cannabis plants. Cls. 162 & 171A thus make underage users and growers subject to the SCON expiation notice process for conduct that is legal for adults. Families and Friends for Drug Law Reform believes that this is a misguided effort to promote the well-being of under age Canberrans. Below, we explain why.

**The application of the SCON procedure continues to be subject to police discretion**

60. Whether the SCON procedure will be applied remains at the discretion of the police and more particularly the constable on the beat. In the words of s. 171A(1): "If a police officer reasonably believes that a person has committed a simple cannabis offence, he or she may serve an offence notice on that person." This creates an unconscionable anomaly. An adult Canberran caught with the same quantity of cannabis or plants will face no legal consequences whereas an underage Canberran might be given an on the spot fine or even prosecuted in the Children's Court for an offence that would not exist when he or she turned 18.

**The criminal law continues to underpin the response to young people who happen to use cannabis**

61. The criminal law remains the ultimate guarantor and enforcer of the SCON system in the event that the person is handed an on the spot fine does not expiate it. In the past this has led to criticism of the SCON system and pressure to wind it back to nothing. In 2000 the Select Committee on Health and Community Care [inquiring into cannabis use in the ACT](#) had before it evidence that:

## FAMILIES AND FRIENDS FOR DRUG LAW REFORM

“Since the introduction of the SCON scheme in the ACT there have been 1275 SCONs issued to July 30 1999. Of this number, only 667 had been paid (47% went unpaid).”

62. An [evaluation undertaken in 2014](#) by the Drug Policy Modelling Programs outlined the procedure police have adopted to chase up unpaid fines. It is worrying that the police support for the scheme was tepid if not antagonistic:

Of perhaps greater concern is that the roundtables and stakeholder interviews revealed low support within police for the scheme, due to the perception it creates extra work. Indeed, our discussions revealed that SCONS are now seen as a last resort for some Sergeants and that they actively discourage their use by their teams. This is a real concern if the scheme is to be maintained.

63. That same committee observed that: “It is important that a policy does not allow excessive discretion in its application that may result in unequal treatment for various people found to have infringed the policy.” Accordingly it is recommended that “. . . the provisions in the legislation which allow police to charge a person with a criminal offence for simple cannabis offences be removed.” (Recommendation 9)

64. To give effect to that proposition, Families and Friends for Drug Law Reform, therefore, recommends that:

Recommendation 1: If Recommendation 5 (p. 23) is not accepted and the SCON procedure is to be retained for underage cannabis users or growers, the Bill should be amended to remove the police discretion in s. 171A(1) of the current *Drugs of Dependence Act* 1989 in relation to underage people.

65. Families and Friends for Drug Law Reform also urges that a slightly more ambitious approach be taken to the Bill eliminating the residual but substantial overshadow by the criminal law of underage Canberrans. It is unjust and inconsistent with the approach to drug policy enunciated by the Attorney General, Mr Gordon Ramsay, at their 23<sup>rd</sup> annual Remembrance Ceremony on 29 October. There he stated to a gathering of grieving families and friends that:

“the government’s approach will be seeking how it is that we can bring a health-based approach and support people in that rather than a criminal justice approach.”

66. We wholeheartedly embrace those sentiments, merely adding that the social harms correlated with drug use be considered in company with the harms to the health of drug users. Drug policy is implicated in virtually all of Australia’s most costly, intractable social problems. In submissions or articles over the years we have drawn the attention of the ACT Assembly, the Commonwealth Parliament and State governments to links between drug policy and harms as various as [child protection](#), [mental health](#), [suicide](#) and [delinquency](#), [poverty](#) and [school dropout](#). Such social harms are the subject of an Australia 21 report, *We All Pay the Price*, launched at the Assembly on 2 November. The report was the result of a high level national Roundtable at Parliament House in Melbourne on 21 March 2018. Its full title is: [We all Pay the Price: Our drug laws are tearing apart Australia’s social fabric, as well as harming drug users and their families](#).

### **Establishment of an administrative tribunal to which apprehended**

## PERSONAL CANNABIS USE BILL

### **underage drug users may be referred**

67. Families and Friends accepts that there should be consequences for the consumption of potentially dangerous substances but firmly maintains these should not have anything to do with the criminal law and its deliberately stressful procedures. From that point of view we suggest that in place of the SCON system with its on the spot fines, under age drug users should be referred to a specially established administrative tribunal answerable to the Department of Health and Children, Youth and Families consisting of drug treatment service providers, health workers and youth and social workers. Such a tribunal has the potential to transform the often dysfunctional relationship between teenagers and the police who are equated with the threat of punishment fanning. Instead there would be the possibility of referral for engagement and assistance. The threat of punishment tends to consolidate dysfunctional peer groups whereas engagement has more chance of loosening unhelpful associations. In that way there would be a positive return on the vast effort spent in futilely chasing cannabis. In its place the ACT may harvest the sort of benefits that Portugal has experiences with its commissions of dissuasion. An audience at the Academy of Science Shine dome heard about these on Friday 16 November from Dr Nuno Capaz of the Lisbon Commission. Portugal, of course, guides users of any illicit drug through this system. The anomalous and unfair situation created by the Bill of underage cannabis users subject to an on the spot fine for what is legal for their elders provides an excellent opportunity to try out in the ACT an adaptation of the much praised Portuguese approach.

68. In the course of a conversation with Carrie Fowle, Executive Officer of ATODA, and Dr Caitlin Hughes of the Drug Policy Modelling Program at the University of New South Wales, Dr Capaz had this to say of the reaction of police in Portugal to the rather different system there.

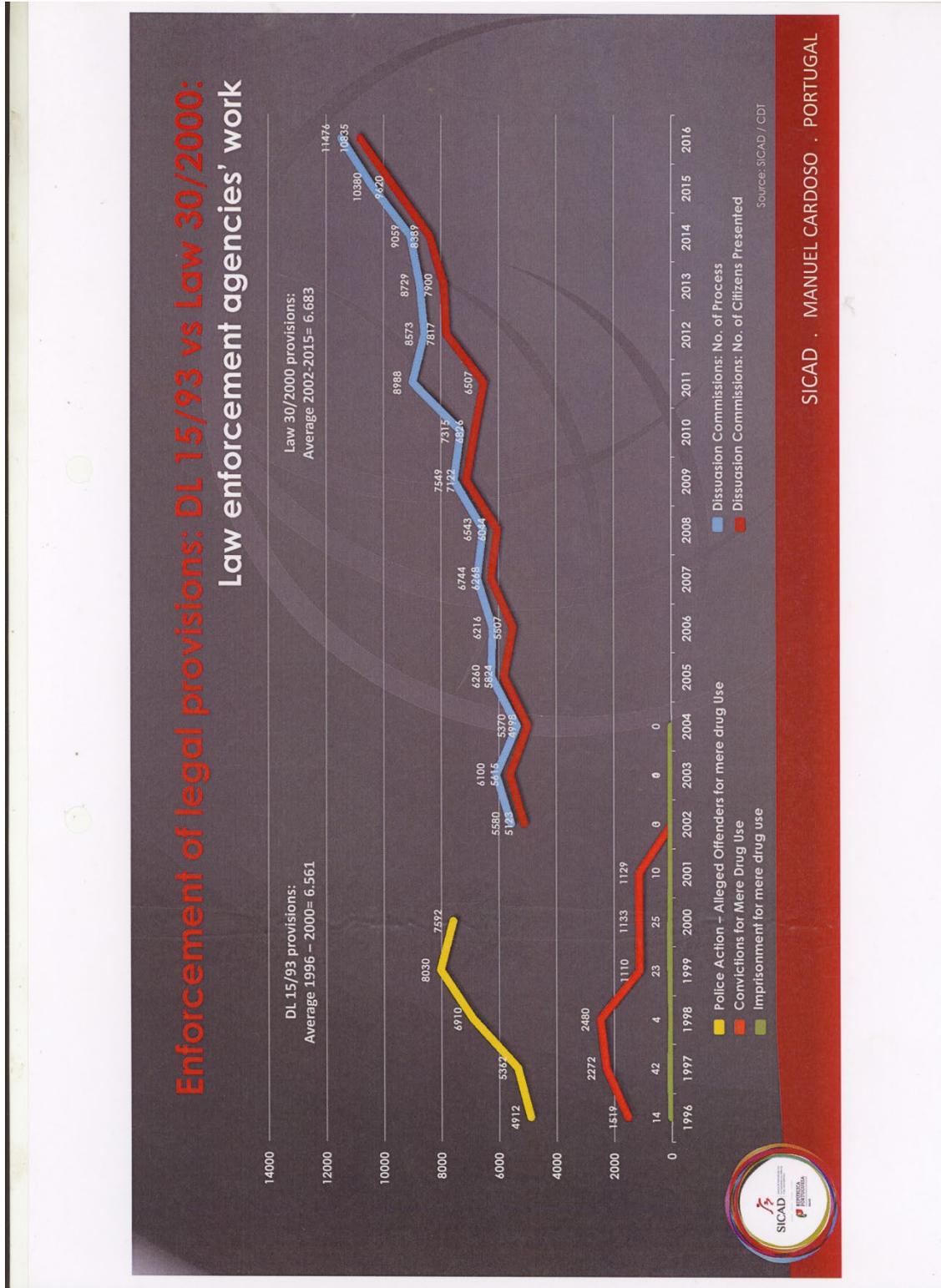
“For the police officers the job is basically the same as it was before. If they catch someone on the street in possession of an illicit substance then the substance is apprehended and they notify them to the commission . . . It is as simple as that. In terms of what they were expecting, the police were not happy in the beginning because what was happening in Portugal before 2001 was that the criminal law was not actually enforced. People were not being sent to court just for the possession of an illicit substance. They might be caught by a police officer but there was no point in sending a 17 or 18 year old kid to court. It was as simple as that. So basically police used drug users as a source of information about drug dealers. At the beginning they thought that they were going to lose that source but they didn't because it's still illegal. The substance is still apprehended.

“Now the police are much happier with this system. Because it is an administrative offence, normally people are much more willing to provide information about drug dealers than they were. Before if it was a criminal offence, you arrested and went to the police station. They will write down your statement, you will sign it. In the end it will show up in court to show that someone sold a substance to you. So with lawyers involved it would be much harder to get that information. So what happens now is that the police get that information informally on the street. So it was a change. People tend to be not very comfortable with big changes. Police forces are normally very well

**FAMILIES AND FRIENDS FOR DRUG LAW REFORM**

structured hierarchical so they are even more afraid of changing. They weren't very happy in the beginning but now they are happy; they are fine.”

Recommendation 2: Provision be made in the Bill for underage people apprehended with the smallest quantity of cannabis or cannabis plants to be referred to a civil administrative tribunal for assessment and referral rather than be prosecuted or processed under the SCON system.



## PERSONAL CANNABIS USE BILL

SOURCE: overhead displayed by Dr Manuel Cardoso at his address in Sydney on 5 June 2018.

### **Continued imposition of severely punitive penalties on Good Samaritans providing cannabis to those seeking relief.**

69. As the [draft explanatory statement](#) explains: “This Bill does not affect the prosecution or enforcement of Commonwealth and Territory laws relating to the sale or trafficking of cannabis . . . “ The Bill thus continues to expose to very high penalties those who provide cannabis for a medical purpose.” This puts people who can benefit from access to cannabis in an unconscionable position that was mentioned in a recent [report of the Senate Legal and Constitutional Affairs Committee](#):

“2.16 A number of submitters spoke very favourably about the benefits of cannabis for managing medical conditions, including for chronic pain, cancer, and other conditions. However, in support of the Bill, some of these submitters told the Committee that it was difficult for individuals to access medicinal cannabis legally, which meant that many of them turned to the unregulated illicit market to self-medicate.

“2.17 A submitter whose name was withheld told the Committee that he and his wife successfully used cannabis to manage their conditions, and observed:

The TGA's [Special Access Scheme] is a complete and utter joke and I can't stress enough how useless and uncompassionate the system is. With now only 1000 people getting access to medicinal cannabis since the scheme started, with estimated hundreds of thousands of Australians trying to get on the scheme is outrageous and should be overturned immediately. It causes the black market to flourish and would be even cheaper still than to get a legal prescription. If [you're] desperate, like us, it's a no brainer. The TGA does more harm [than] good on this issue.

“2.18 This was confirmed by Professor Webster AO, who suggested that current health services supporting chronic pain conditions were 'inadequate', and so many turned to non-medicinal cannabis to manage chronic conditions.” (Senate 2018).

70. Under section 165 of the Drugs of Dependency Act, a person who sells or supplies a drug of dependence or a prohibited substance may be punished by “500 penalty units, imprisonment for 5 years or both.” Under s. 133 of the [Legislation Act](#) a penalty unit is currently \$160 for an individual and \$810 for a corporation” thus exposing a good Samaritan to a hefty fine of \$80,000.

### **Artificially cultivated cannabis not eligible for SCON procedure**

71. There is no leniency for artificially cultivated cannabis; the adults who grow their own indoors remain subject to the full rigour of the pre-existing law and underage cultivators are not eligible to be processed under the expiation notice system. This is a big barrier to Canberra residents who seek access to a supply throughout the year of cannabis to meet their health needs and those of their family. Families and Friends for Drug Law Reform understands that it is impossible to grow cannabis outside in the frosty ACT winter. Now, it might be objected that those who

require cannabis for health purposes should be able to access it through medical channels. All we can say, though, is that for some this has not been possible. It is worth recalling in this context the insightful actions of the still very relevant 1996 Pennington report to the Victorian government. Indeed the Bill implements Pennington's recommendation 7.1 making the use and possession of a small quantity of marijuana . . . no longer . . . an offence." (Victoria 1996 p. 129) Pennington saw cannabis best supplied as a cottage occupation rather than as a commercial transaction. He thus recommended that "cultivation of up to 5 cannabis plants per household for personal use should no longer be an offence." He went on to recommend that be defined to exclude everything other than private residences." (Victoria 1996 rec. 7.2, p. 129)

Recommendation 3: That the Bill be amended to embrace artificially cultivated cannabis so long as it is cultivated in the private residence of the cultivator.

Recommendation 4: Cl. 177AA(1) of the Bill should be amended to permit the supply on non-commercial terms of cannabis to meet the health needs of the person supplied.

### ***The gateway drug hypothesis***

72. Families and Friends do not wish to downplay the worrying significance of the [high level of cannabis use by Australian schoolchildren](#). Having said that, the direct harms associated with cannabis are less than those resulting from the consumption of alcohol and tobacco. Effective measures should be put in place to dissuade children people from trying any addictive substance.

73. One can say with confidence, though, that the illicit status of cannabis does little if anything to dissuade young people from trying it.

74. It is frequently said that cannabis is a gateway drug to other more dangerous ones. This idea is commonly bandied around by those who defend criminal prohibition. Cannabis often does come before use of harder drugs like methamphetamine and heroin but so does alcohol and tobacco. The link is not pharmacological but sociological and psychological:

75. Peers who flog cannabis to their mates will typically have access to a smorgasbord of other illicit drugs and peer pressure from one drug using mate to another.

76. Indeed as the household survey has revealed, peer pressure was a factor that influenced first use of 54.5% of those who have ever used a illicit drug (AIHW 2004: table 6.2, p. 37).

77. Curiosity and risk-taking are important factors that influence first use of any illicit drug. The influence that these prevalent normally commendable adolescent characteristics place at high risk a high percentage of young Australians.

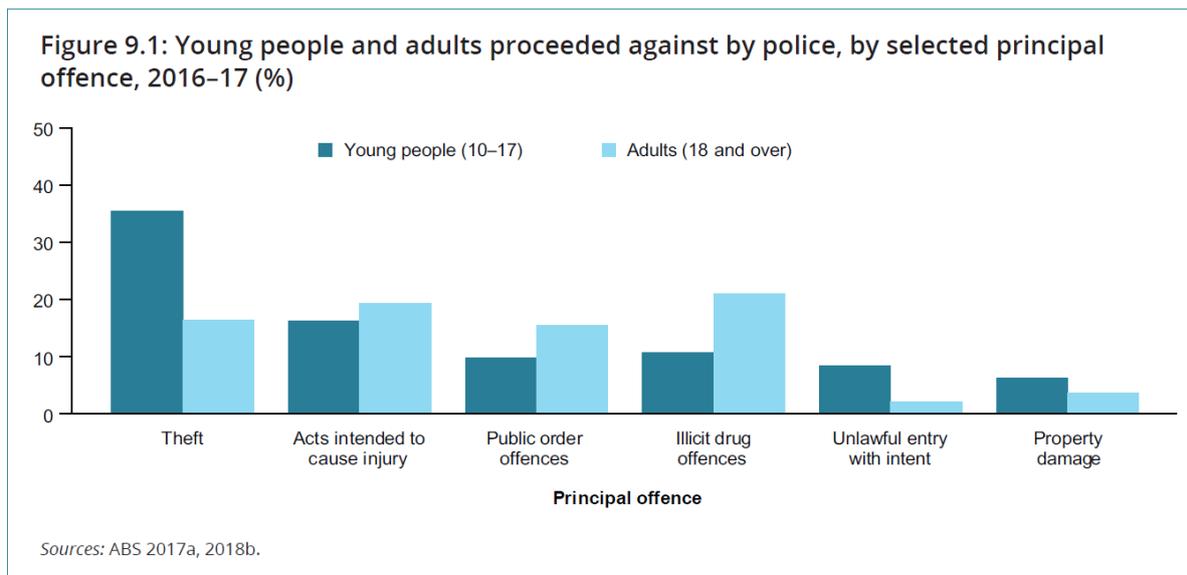
78. The Howard government in a pamphlet drew these influences to the attention of the nation in warning parents not to be complacent about the likelihood of their children dabbling in illicit drugs. The influences challenge the common assumption that young people use drugs only if they are having problems at home or at school. At the top of the list was "Availability and acceptability of the drug" which points to peer group pressure as much as existing drug use in the family. Otherwise the factors listed in the pamphlet were common psychological characteristics:

## PERSONAL CANNABIS USE BILL

- Curiosity and experimentation.
- Wanting to be accepted by peer groups.
- Rebellion.
- Depression.
- As a way to relax to cope with stress, boredom or pain.
- To experience a high or a rush” (Abetz 2001).

### ***How to respond to youth drug use***

79. Using national figures as a guide (because a breakdown in ages is not available for the ACT) 4.4% of children between 12 and 17 and 12.2% of those between 14 and 19 admit to using cannabis in the previous 12 months (AIHW 2016 table 28). It is worrying these children and youth should be able to be pursued by the police for an offence that no longer exists for their elders. For the 6.9 million Australians (or 35% of the population) that have used cannabis at least once in their life (AIHW 2016 p. 61) the experience was something from which they moved on leaving no untoward impact.



SOURCE: AIHW 2018 p.34.

The situation would have been altogether different if they had become caught up in the criminal justice system. A dynamic of mutually reinforcing factors would very likely shivel their life chances:

association with a criminal, dysfunctional peer group that may have motivated them to make a quick buck on the side by dealing to their mates and engaging in property and other offences;

exclusion from school thus depriving them of the capacity to fully participate in the economy and society

experience in the juvenile justice system enhancing the likelihood that they will graduate to an adult prison.

Recommendation 5: Rather than being subject to the SCON system, underage Canberrans should be required to present themselves to an administrative panel made up of social workers, drug and alcohol service providers and educators.

### ***Flexibility through regulations***

80. To avoid the need to enact amending legislation to fine tune the regime established by the Bill, we suggest that it would be prudent for the legislation to include a broad regulation making power to enable it to be adapted to the different circumstances that may arise. Such circumstances may include provision to enable those requiring cannabis for bone fide medical reasons to have sufficient for their needs, to regulate entitlements of possession and cultivation in group households and apartment blocks, where cannabis may be grown and generally to impose restrictions that may be required to circumvent the continuing prohibition on sale and commercialisation of cannabis.

81. While a regulation making power may avoid the need for the Legislative Assembly to enact amendments, it would not exclude the Assembly from oversight of the implementation of the new legislation given that regulations are subject to disallowance.

Recommendation 6: Substantive provisions of the Bill should be subject to a broad regulation making power directed at ensuring that the principles and purposes of the legislation are promoted and not undermined.

### ***Cost savings***

82. The explanatory statement mentions a 2013 evaluation by the Department of Health of the ACT Diversion Programs that mentioned that an aim of the program had been to ‘reduce cost to the [criminal justice system] CJS and reduce social cost of [Alcohol and other drugs] AOD’. We have not made an analysis of the financial and economic impacts of the Bill but, on the basis of Victorian and Commonwealth Parliamentary budget office estimates, we would expect the changes to have substantial impact on the ACT budget position.

83. Last year the [Victorian budget office](#), in response to a request by the Reason Party leader, Fiona Patten, to consider the cost implications of a proposal to decriminalise illicit drugs and legalise and regulate cannabis projected that savings in Victoria of \$60 million would come from a reduction in policing and prosecution, and another \$144 million will come from a rise in revenue (Victoria 2018).

84. For its part, a [Commonwealth Parliamentary Budget Office costing](#) of Senator Lyonhjelm’s proposal to remove Commonwealth restrictions on cannabis projected net law enforcement savings of \$292 million between 2017 and the financial year 2019-2020. The office noted that this estimate “reflects the net impact of an increase in Goods and Services Tax (GST) revenue and a decrease in federal law enforcement expenses over this period”.

85. Some idea of the potential for reduction in social and crime costs can be gathered from the careful Swiss analysis of these benefits flowing from its program of heroin assisted treatment which demonstrated reductions in the region of 90% for property related crime from those receiving that treatment and significant

## PERSONAL CANNABIS USE BILL

improvements in mental health and other social costs and bigger gains in employment, social integration and housing stability. Families and Friends for Drug Law Reform summarised these in a [paper seeking a Productivity Commission inquiry](#) into the savings that could be expected from better drug policies. Funds devoted to addressing the many chronic and severe social problems correlated with illicit drug use can reasonably be expected to have more effective impact when operating the context of a health centred approach to drug policy. The recent Australia21 paper mentioned above on social harms of drug policy also bears upon these issues.

### ***Interaction with Federal Law***

86. In considering the proposed bill one should recognise that there is more at play regarding federal law than is outlined in the draft explanatory statement. While Families and Friends for Drug Law Reform considers that there is a way around existing Commonwealth law, it is as well to recognise that the Criminal Code Act 2005 purports to criminalise drug dealings down to the street level. This was effected by the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 that for the first time extended Commonwealth criminal law into areas dealt till then exclusively by state and territory law. In extending this to states it relied, for constitutional authority on the external affairs power and the 1998 United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances. Thus, by s.306.1(1) of the Code:

“A person commits an offence if:

- (a) the person cultivates a plant for a commercial purpose; and
- (b) the plant is a controlled plant.

The maximum penalty prescribed is a gigantic “ Imprisonment for 10 years or 2,000 penalty units or both.” According to the Crimes Act a penalty unit is currently set at \$210 making for a maximum fine of \$420,000.

87. The Code effectively designates transactions at the retail level as serious drug crimes. By s. 308(1) the mere possession of a controlled drug is an offence under the code. A drug user who sells any amount of a drug no matter how small is said to “traffic” in it (s. 302.1). The term “sell” is broadly defined to include barter, exchange and agreement to sell (s. 300.2).

88. In 2005 Families and Friends for Drug Law Reform strongly objected to this extravagant extension of Commonwealth criminal authority and the grossly inflated designation of street level drug crimes as “Serious Drug Offences”. We pointed out that retail level, transactions between users are very common. Indeed, the marketing power of the peer group combined with the addictive qualities of the commodity are the underpinnings of the strong illicit drug economy. At the same time, it is largely young people who are attracted to and participate in this retail market. These are the very people whom we should seek to help. The particular challenge for policy is to weaken these underpinnings of the drug economy without causing significant harm to these same people.

89. S. 300.4 specifies that the Criminal Code drug offences are “not intended to exclude or limit the concurrent operation of any law of a State or Territory.” The section adds that “Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes: (a) an

## FAMILIES AND FRIENDS FOR DRUG LAW REFORM

act or omission that is an offence against a provision of this Part; or (b) a similar act or omission.” The Legislation provides several other savings for State and Territory law. The rule against double jeopardy in s. 4C(2) of the Crimes Act will operate so that someone punished under a State or Territory law may not be prosecuted under the proposed legislation for the same matter. The Code also allows as a defence conduct justified or excused (or reasonably thought to be justified or excused) under the law of a State or Territory (ss. 313.1 & 313.2). Finally, provision is made for people charged with possession of a drug under s. 308.1 to be dealt with under procedures of State or Territory law. A note explains that this “allows for drug users to be diverted from the criminal justice system to receive the same education, treatment and support that is available in relation to drug offences under State and Territory laws.” This is a saving for court diversion schemes.

90. As far as we understand it, the Commonwealth has never sought to apply criminal code’s drug provisions to offences dealt with by the state or territory law.

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