



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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

Mr Peter Cain MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair),  
Mr Johnathan Davis MLA

## Submission Cover Sheet

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

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**AFPA**

Australian Federal  
Police Association

***Drugs of Dependence (Personal Use) Amendment  
Bill 2021***

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

Submission by the Australian Federal Police Association

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## ***Introduction***

1. The Australian Federal Police Association (AFPA) welcomes the opportunity to make a submission to the Select Committee on the *Drugs of Dependence (Personal Use) Amendment Bill 2021* ("**the Bill**").
2. We thank the Select Committee for their time in considering this submission and for the opportunity to furnish our views regarding the Bill.
3. The AFPA congratulates the Select Committee and, in particular, Mr Pettersson MLA for the consultation process around the Bill. It is a courageous move, and this Bill should be seen as an early and holistic opportunity to address shortfalls in the health and education space of drug education and rehabilitation.
4. The AFPA looks forward to working with the Select Committee, ACT Government and sector stakeholders to improve harm-minimisation and divert people towards a health-led outcome.
5. The AFPA supports harm-minimisation when undertaken in a tri-method approach of health, education and law enforcement.
6. Policing of drug laws and drug treatment need not be mutually exclusive – drug law enforcement may lead drug consumers into appropriate treatment programs. For this to occur, there needs to be the right mix of law enforcement and treatment programs, including education, that results in drug users wanting to stop, or seek information about, their addiction rather than leading them into further drug dependency.
7. The AFPA has reviewed ACT Policing's submission and fully supports its position on the Bill.
8. The AFPA would welcome any opportunity to appear before the Select Committee to discuss our position further.

## ***The AFPA***

9. The AFPA is a registered organisation and an autonomous sub-branch of Police Federation of Australia. The AFPA represents the industrial, political and professional interests of members of the Australian Federal Police ("**the AFP**") and law enforcement officials in the Australian Criminal Intelligence Commission and members of the Department of Parliamentary Services.
10. Our members provide an essential service to Australia. It is the Commonwealth's principal law enforcement agency, performing crucial investigative, intelligence and national security functions. The AFP is responsible for:
  - providing community policing services to the Australian Capital Territory and Australia's territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay;

- enforcing Commonwealth laws, such as complex, transnational, serious and organised crime, child exploitation, fraud and corruption, and cybercrime;
- protecting Australians and Australian interests from terrorism and violent extremism;
- removing wealth and property from criminals that have been illegally obtained;
- protecting Commonwealth infrastructure, including designated airports, Parliament House and embassies;
- protecting domestic and foreign dignitaries, including the Governor-General, Prime Minister and ambassadors;
- protecting at-risk individuals;
- representing Australian police and law enforcement on an international level; and
- developing unique capabilities and exploiting advanced technology to support Australia's national interests.

## ***AFPA assessment and thoughts on the Drugs of Dependence (Personal Use) Amendment Bill 2021***

- 11.** The AFPA does not support the Bill in its current form. However, we do see scope for implementing a trial that mirrors the Bill specifically in relation to MDMA. The trial will allow data to be collected and provide the health, welfare, and mental health sector time to build resources and capabilities. The trial would then inform 'if' and 'how' a broader regime may be implemented.
- 12.** The AFPA challenges the belief that many people are prosecuted for 'personal use' amounts of drugs when located on their person. ACT Policing's operational focus concerning drugs has always been towards traffickers and distributors.
- 13.** An essential element of drug testing is determining what chemicals and other agents are used to manufacture the drug. This must continue, and the Bill requires clarity on what is expected for the testing process.
- 14.** Often, 'bad drugs' or high purity drugs are detected during testing. This information is critical to ensure the safety of users and drives information and education campaigns that can be put in place to alert the community of these 'bad drugs'. This information will also assist first responders, primarily ACT Ambulance and hospital staff, when treating someone that has possibly overdosed.
- 15.** The AFPA has significant concerns about the scheduled illicit substances within the Bill, particularly the decriminalisation of amphetamine, cocaine, heroin, and methylamphetamine. If decriminalisation occurs, it must be paired with appropriate rehabilitation via law enforcement diversions which must be mandatory.

- 16.** We are not convinced the ACT is equipped with the resources, funding, programs, organisations and facilities to ensure timely diversions for people seeking assistance. If a person seeks help, they should not be forced to wait for weeks and months before that assistance is provided.
- 17.** Likewise, the AFPA sees the need for specific initiatives tailored to the changes proposed in the Bill. These initiatives should be funded, in place and available before any changes like those proposed in the Bill.
- 18.** In addition to new tailored initiatives focused on education and diversion into the health system, there needs to be a significant increase in current resources available to current and existing services for people seeking assistance in the ACT. The AFPA does acknowledge the excellent work that present organisations and personnel do with minimal budgets, resources and facilities.
- 19.** The ACT Government must heavily invest in this sector, including long-term treatment and recovery services, ongoing welfare support, additional mental health services, and establishes a network that connects and engages with the community and their clients promptly.
- 20.** The Portugal model of decriminalisation is regarded as the type of policy that could benefit the ACT.
- 21.** The primary reason why the Portugal model has been successful was due to the significant investment made by the Portuguese Government in the health and rehabilitation framework in the led-up to the decriminalisation of drugs.
- 22.** Given the current priorities of the ACT Government, we would question if the finance would be available for such a heavy investment.
- 23.** The AFPA agrees that there is an excellent initiative within the Portuguese model - the Commission for Dissuasion of Drug Addiction. These commissions would meet the person detained by police for possession of drugs and discuss the issue. The Commission would then hand down various options to divert the person away from illicit drug use.
- 24.** The Commission can also impose other civil sanctions on people caught in possession of drugs. These can range from a monetary fine to the suspension of a professional licence (like that of a teacher, doctor, or truck driver) or a ban on visiting certain places and people.
- 25.** The AFPA would support a similar model for implementation in the ACT even if the Bill were not enacted. This would allow officers to formally divert people into a system and environment to seek medical and health assistance.

26. One issue that ACT Policing and AFP officers have faced with the introduction of the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* is that a formal drug diversion for personal possession of cannabis was removed as an option. Under the previous legislation, officers could use diversion as a method to resolve the matter, meaning that people were diverted away from the judicial process and into the health environment where they could receive help.
27. The AFPA believes that the Bill is unclear as to the evidence basis for the quantities of drugs allowed. We believe the weights within the Bill should be halved to create a clear distinction between personal use and trafficking.
28. Under the Portuguese model, the weights provide an individual with up to 10 days of usage of illicit substances. The AFPA believes that this is excessive without a trial period to find a balance determined by locally produced data.
29. The Portuguese model also has a limit of one gram of heroin, while this Bill has two grams.

### ***Operational policing considerations***

30. Under the proposed Bill, police would still have to seize the substance, weigh it, and determine the type of potential illicit substance while holding the person in custody. There is unlikely to be a significant reduction in our members' work in ACT Policing by implementing the Bill.
31. Police officers, especially General Duties officers, are not drug experts, nor should they be forced to carry devices to measure weight or determine substance type. This is impracticable and untimely in an operational policing environment.
32. ACT Policing officers also do not have drug testing facilities to determine what the substance they locate on a person is. This function is undertaken by the ACT Government Analytical Laboratory (ACTGAL). This will place an additional burden on ACTGAL, which will require more funding and staff to ensure that drug testing is done promptly.
33. The Bill also does not explore whose responsibility it would be to locate people who default on paying the monetary fine. Will ACT Policing officers be expected to find these people, and if they do, what occurs?

### ***Compliance with Commonwealth Legislation***

34. There remains some conjecture as to whether the Bill could be struck down as invalid under *section 109* of the *Australian Constitution*. The amendments sought by the Bill, *prima facie*, seem not to be compatible with the *Criminal Code Act 1995 (Cth)*, specifically *division 308*.
35. All of the substances listed in the Bill are currently on the *Poisons Standard June 2021 (Cth)*, which applies to the ACT. Methylendioxyethyl amphetamine (MDMA), amphetamine, cannabis, cocaine, heroin, lysergic acid, lysergide, methadone, methylamphetamine and psilocybin are all listed against *schedule 9* within the standard.
36. If the Bill were passed, ACT Policing and AFP officers are placed in a complex legal situation as legislation hierarchy places Commonwealth legislation above State or Territory legislation, and Commonwealth possession charges would still be applicable.

37. The passing of this Bill would put ACT Policing and AFP officers at risk of AFP Professional Standard investigations for misconduct and failure to execute their duties, noting their role also to enforce the criminal law of the Commonwealth.

### ***Compliance with the Road Transport (Alcohol and Drugs) Act 1977 and Road Safety***

38. ACT Policing cannot random roadside drug test for the substances in the Bill apart from cannabis, methamphetamine and MDMA as per *Division 2.4, section 13A to 13CA* of the *Road Transport (Alcohol and Drugs) Act 1977 (ACT)*.
39. All other substance would require the police to take the person into custody for a blood test. Police officers cannot draw blood from an individual, meaning that the person will be taken into custody and transported to a hospital for testing. The ACT Health system is already stressed, and this would put extra pressure on hospital staff.
40. The AFPA acknowledges that the Bill does not change any current legislation or criminal activity of driving with a prohibited substance in your system.

## **Recommendations**

- The AFPA sees no purpose in rushing the entire Bill through in its current format and suggests a 12-month MDMA trial and not progressing the other listed substances in the Bill at this stage. This trial would allow for data collection and triage to further expand the range of drugs in the future. This would also allow the health and support agencies time to build resources, funding and facilities towards the possibility of a full roll-out.
- In partnership with a trial for MDMA, the ACT Government should commit to establishing a pill testing facility in the ACT that is easily accessible and supports harm minimisation and education
- The AFPA would like to see the ACT Government heavily commit and invest in the treatment and rehabilitation framework to ensure that people seeking treatment would not be left behind and they can seek readily available assistance via different processes.
- While this trial is underway, the AFPA strongly encourages the ACT Government to petition the Commonwealth to amend the *Criminal Code Act 1995 (Cth)* and the *Poisons Standard June 2021 (Cth)* to alleviate the conflict faced by ACT Policing officers and AFP officers executing their duties within the ACT and/or some other certainty is provided to ACT Policing and AFP officers.
- If this Bill is introduced, the AFPA recommends an extensive community education campaign informing people of the difference between legality and decriminalisation, the possible civil penalties that would still apply, and re-affirming that drug-driving legislation will be enforced.