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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Government Response to Standing Committee
on Health, Ageing and Community Services Inquiry into the
Drugs of Dependence (Personal Cannabis) Amendment Bill 2018 Private
Members Bill**

**Presented by
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Government Response to the Standing Committee on Health, Ageing and Community Services Inquiry into the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018*

The Government thanks Committee members for the work and thought that has gone into the preparation of the Committee's final report. The Government appreciated the opportunity to make a submission to the inquiry and provide input through the public hearings.

The ACT Government does not condone or encourage the recreational use of cannabis or other drugs. This is a message we will continue to share with the Canberra community both in the context of this legislation, and more broadly.

We must acknowledge, though, that the outright prohibition model of drug policy is not working, as cannabis use is prevalent both across Australia and within the Canberra community. There is good evidence from drug law reform around the world that a harm minimisation approach delivers better outcomes both for individuals and communities.

This is why the ACT Government has indicated we intend to take a harm minimisation approach by supporting the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018* with a range of amendments to add further safeguards and protections for the community.

The Government's view is that the Bill is a logical next step of the Simple Cannabis Offence Notice (SCON) scheme rather than a revolutionary change. Its effect will be to remove penalties for the use and possession of small amounts of cannabis by individuals over 18 years, in line with the ACT's harm minimisation objectives. The SCON scheme is intended to continue for individuals under 18 years old.

In this context, the Government offers the following response to the Committee's report and recommendations. This re-states and expands upon a number of important points made in our original submission to the inquiry, as well as responding to the Committee's individual recommendations.

ACT drug policy

The ACT Government's policy regarding the harms caused by alcohol, tobacco and other drugs is clearly articulated in the *ACT Drug Strategy Action Plan 2018–21* (the ACT Action Plan). The Action Plan, which aligns with the National Drugs Strategy, outlines a commitment to evidence-based and practice-informed responses to drug use that minimise harm in our community.

The Government has been clear that we do not condone nor encourage the recreational use of cannabis, which we know presents health risks. However, outright prohibition clearly does not work as an effective strategy for dealing with drug use in our community. Despite currently being illegal, 8.4 per cent of Canberrans have reported using cannabis in the previous 12 months.¹

¹ Australian Institute of Health and Welfare's National Drug Strategy Household Survey (2016)
<https://www.aihw.gov.au/about-our-data/our-data-collections/national-drug-strategy-household-survey>

The ACT has a long history of taking progressive steps and trying new ideas to minimise the harm of drugs in our community. This includes being one of the first jurisdictions in Australia to decriminalise the personal possession of small amounts of cannabis. The Government intends to continue taking well considered steps to improve our drug laws.

It is important to note that, even after the passage of this Bill, possessing and growing cannabis will carry a degree of risk arising from interactions between Territory and Commonwealth law. We believe the ACT is able and entitled to make our own laws on this matter. However, we would be the first jurisdiction in Australia to legislate in this way, and the interaction with existing Commonwealth law remains untested. The amendments proposed by the Government aim to reduce the risk to individual Canberrans but cannot remove this entirely.

There is also uncertainty as to how a Commonwealth Government may react to the ACT passing this Bill. We cannot guarantee the Commonwealth Government would not intervene to prevent reforms – as has occurred in the past when the ACT has attempted nation-leading progressive reform on issues like marriage equality.

There are a range of health implications that must be considered. It is clear that some people experience adverse mental health effects from using cannabis, and that its use can become problematic over time. These health risks already exist for anyone who uses cannabis under current legislative settings, but it will be important to continue raising community awareness of these risks in parallel with the legislative process.

The Government believes implementation of this Bill may assist in addressing some of these health risks. For example, the stigma and risk of punishment associated with illegal drug use may mean that people do not seek medical or other types of help when they need it. Legalising the personal use of small amounts of cannabis will create opportunities to better reach people who are already using the drug and connect them with the services or supports they need.

Proposed Government amendments

In light of these and other issues, the Government will move a number of amendments to the Private Members Bill.

1. Personal plant limits

Whereas the Bill proposes to allow an individual to possess four cannabis plants, the Government will move amendments to limit this to a maximum of two plants. This is consistent with the settings of the current SCON scheme and is considered a reasonable limit for personal use.

2. Household plant limits

The Bill does not currently include a limit on the number of plants that would be allowable in any single dwelling. This gives rise to potential situations where share houses (or properties that otherwise have multiple residents) could effectively be used as larger scale 'grow houses'.

The Government will move amendments introducing a household limit of four cannabis plants, regardless of how many individuals are resident.

3. Restrictions on where cannabis can be grown

The Government will move amendments to restrict where personal cannabis plants can be grown. These amendments will address two separate issues.

First, cannabis plants will only be able to be legally cultivated on parts of residential property not generally accessible by the public. This would exclude cannabis being grown in areas such as verges or community gardens. This restriction is intended to minimise access to cannabis plants by people other than the legal owner or resident. This would also have the effect of preventing cannabis being legally cultivated on commercial or community property.

Second, cannabis plants would only be able to be legally cultivated by a person usually residing at that property. This is intended to establish a nexus of ownership for cannabis plants.

4. Storage

Government amendments will require cannabis to be kept out of reach of children when not in an individual's possession in order to restrict access by children and young people or other vulnerable individuals. The Government amendments will require a person in possession of cannabis to take reasonable steps to store the cannabis out of reach of children. Examples will be provided in the supplementary explanatory statement for the Government amendments, reflecting current approaches to storing dangerous chemicals or prescription drugs.

5. Distinction between fresh and dried cannabis

The Bill as drafted would legalise possession of 50 grams of cannabis, which is taken to refer to dry cannabis in line with the settings of the SCON scheme. This creates a practical issue due to freshly harvested cannabis plant material weighing more before it is dried.

To reduce ambiguity in the Bill, the Government intends to move amendments that will distinguish between 'dry' cannabis (ie. cannabis ready to be used) and 'wet' cannabis (ie. harvest plant material that has not yet been dried).

Dried cannabis would still be subject to a 50 gram limit as included in the Bill. The Government will move to include a separate limit of 150 grams for 'wet' cannabis that would apply to cannabis that has been harvested but not yet dried. This limit has been selected primarily on the basis that it would limit individuals from potentially possessing amounts of dry and wet cannabis that would approach the threshold for a trafficable quantity.

6. Smoking near children

The Government supports the intention of the Bill's restrictions on smoking near children, but considers there would be practical challenges to implementing this through the proposed 20 metre distance rule. For example, an individual legally smoking cannabis in their own open backyard could potentially be within 20 metres of a child in a neighbouring property without intending to, or even being aware this is the case.

To make this element more practical, the Government will move amendments to prohibit the smoking of cannabis near children through an offence involving a mental element, rather than a distance-based rule. That is, an individual will be deemed to

have committed an offence if they knowingly use cannabis in a way that exposes a person less than 18 years old to this. The Government amendments include a defence for situations in which the individual can prove they took all reasonable steps to ensure the child was not exposed to smoke or vapour.

7. Interaction with Commonwealth Government legislation

The Government will move amendments that are designed to resolve potential incompatibilities with Commonwealth laws. The approach the Government considers most closely achieves this objective is to retain offences in the Drugs of Dependence Act for possession and cultivation of cannabis over prescribed limits but include an exception such that those offences do not apply to anyone over 18 years of age.

This would mean the ACT still retains a relevant offence in legislation but with the practical outcome that possession and cultivation of small amounts of cannabis would be effectively legal for individuals.

While the Government notes that Recommendation 10 made by the Standing Committee seeks to address these issues, we consider these proposed amendments to be a preferable option to achieve compatibility.

Other matters

The Government acknowledges that changes to the legal framework for personal use of cannabis of this kind have not been tried in Australia before. Notwithstanding the above amendments, there remains a degree of uncertainty and risk associated with the proposed new approach.

We will seek to collect relevant data to effectively evaluate the outcomes of these reforms, with an evaluation being conducted no more than two years after the date of the Bill's implementation. This will help inform decisions about any necessary further reform or amendments to the legislative framework created through this Bill.

The Government's response to the Committee's individual recommendations is outlined below. In summary, the Government agrees to four recommendations (#1, #13, #14 and #15), notes eight recommendations (#4, #5, #7, #8, #9, #10, #11, #12) and does not agree to four recommendations (#2, #3, #6, #16).

RECOMMENDATIONS

<u>Recommendation</u>	<u>Notes</u>
<p><u>RECOMMENDATION 1</u></p> <p><u>2.10</u> <u>The Committee recommends that, subject to the following comments and amendments, the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be supported.</u></p>	<p>Agreed – the Government supports the Bill and will move amendments as outlined in this response to the Committee’s recommendations.</p>
<p><u>RECOMMENDATION 2</u></p> <p><u>4.13</u> <u>The Committee recommends that consequential amendment [1.2] (Section 168(2) of the <i>Criminal Code 2002</i>), in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, be amended to increase the number of plants an individual can cultivate to a maximum of four, and the number of plants a household can cultivate to a maximum of six.</u></p>	<p>Not agreed – the Government’s amendments aim to align the allowable plant limits with the current SCON regime. A larger number of plants is not consistent with the intent of allowing personal use only of cannabis.</p>
<p><u>RECOMMENDATION 3</u></p> <p><u>4.34</u> <u>The Committee recommends that an amendment be included in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, to allow for soil cultivation in a greenhouse and/or with artificial light.</u></p>	<p>Not agreed – the Government supports police being able to make a clear distinction between cultivation for personal use and cultivation for large scale or commercial purposes by criminal operators.</p>
<p><u>RECOMMENDATION 4</u></p> <p><u>4.57</u> <u>The Committee recommends that Section 171AA(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill be amended to define plant weight, wet weight, dry weight and any other format in which cannabis can be possessed.</u></p>	<p>Noted – the Government will move amendments that seek to differentiate between wet and dry cannabis for the purpose of the possession limits. It is not considered feasible to codify allowable weights for the range of other plant and cannabis products identified by the committee.</p>

<p><u>RECOMMENDATION 5</u></p> <p><u>4.58 The Committee recommends that the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 should also clarify that, while growing a plant, it is counted as a plant and its weight is not relevant for the purposes of this legislation.</u></p>	<p>Noted – the Government is of the view that definitions in the Government’s amendments address this matter.</p>
<p><u>RECOMMENDATION 6</u></p> <p><u>4.59 The Committee recommends that if artificial cultivation is not allowed, the dry weight (or equivalent) allowable be expanded to 100 grams as in South Australia.</u></p>	<p>Not agreed – the Government supports maintaining a clear distinction between allowable amounts for commercial and trafficable amounts under Commonwealth legislation.</p>
<p><u>RECOMMENDATION 7</u></p> <p><u>4.88 The Committee recommends that Section 171AB(1) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the <i>Smoke-Free Public Places Act 2003</i>, as well as <i>Smoking in Cars with Children (Prohibition) Act 2011</i> for smoking cannabis in public places.</u></p>	<p>Noted – the Government believes the proposed amendments provide stronger and more workable protections for children and other members of the public.</p>
<p><u>RECOMMENDATION 8</u></p> <p><u>4.89 The Committee recommends that Section 171AB(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the <i>Smoke-Free Public Places Act 2003</i>, as well as <i>Smoking in Cars with Children (Prohibition) Act 2011</i> for smoking cannabis near a child.</u></p>	<p>Noted – the Government believes the proposed amendments provide stronger and more workable protections for children and other members of the public.</p>
<p><u>RECOMMENDATION 9</u></p> <p><u>4.105 The Committee recommends that the ACT Government collaborate with ACT Policing to adopt a cannabis drug driving test that determines impairment.</u></p>	<p>Noted – In line with other Australian jurisdictions, the ACT has a zero-tolerance approach to drug driving.</p> <p>To date, no major international or technological developments have been able to categorically establish a direct causal link between specific levels of</p>

	<p>drugs and impairment, which can be consistently applied across the population.</p> <p>The ACT Government will continue to monitor developments elsewhere in this area and will continue to collaborate with ACT Policing.</p>
<p><u>RECOMMENDATION 10</u></p> <p><u>4.127 The Committee recommends that Section 171AA of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to include express authorisation for the cultivation and use of cannabis by individuals for personal use.</u></p>	<p>Noted – the Government will address this issue through our proposed amendments to the Bill.</p>
<p><u>RECOMMENDATION 11</u></p> <p><u>4.128 The Committee recommends that the ACT Government intervene in any prosecution by the Commonwealth of ACT residents who cultivate or possess cannabis in accordance with the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 to defend the intent of the Bill.</u></p>	<p>Noted – The Government will consider appropriate steps to ensure the intent of the Bill is delivered on as it is implemented.</p>
<p><u>RECOMMENDATION 12</u></p> <p><u>4.140 The Committee recommends that, should cannabis for personal use be legalised in the ACT, the ACT Government considers appropriate measures for overturning convictions relating to possession and cultivation of cannabis for personal use.</u></p>	<p>Noted – the Government will consider the appropriateness of actioning the recommendation taking into account how it would be achieved. The Government notes that it is not standard practice to backdate, adjust or compensate for prior legal and policy outcomes when a law or policy changes.</p>
<p><u>RECOMMENDATION 13</u></p> <p><u>4.152 The Committee recommends that, regardless of whether or not the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 is passed, the ACT Government ensures that there are sufficient health resources available to treat cannabis dependence.</u></p>	<p>Agreed – the Government will monitor demand for health services following the passage of the bill and adjust resourcing through future Budget rounds as necessary.</p>

<p>RECOMMENDATION 14</p> <p><u>4.166 The Committee recommends that the ACT Government develop a public health campaign about cannabis to be delivered on an on-going basis.</u></p>	<p>Agreed – the Government intends to deliver a public information campaign following passage of the bill, which will include a public health component.</p>
<p>RECOMMENDATION 15</p> <p><u>4.173 The Committee recommends that strong public information about the provisions of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 proceed or coincide with the implementation of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.</u></p>	<p>Agreed – the Government intends to deliver a public information campaign to be delivered after passage of the Bill, which will seek to inform the Canberra community of its provisions and the ongoing risks associated with cannabis possession or use.</p>
<p>RECOMMENDATION 16</p> <p><u>4.185 The Committee recommends Section 162 of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to include a provision that allows group cultivation where:</u></p> <ul style="list-style-type: none"> ▪ <u>The number of people in the group is between two and 10;</u> ▪ <u>The cannabis must be cultivated on the premises of one of the members;</u> ▪ <u>Every plant must be ‘owned’ by an individual ACT resident and the name and address of this individual must be made available to police if requested;</u> ▪ <u>No one in the group can own more than the legal limit of plants for an individual;</u> ▪ <u>Cannabis product in the group is owned by the individual owner of the plant that produced it; and</u> ▪ <u>Cannabis product cannot be traded or exchanged with other individuals.</u> 	<p>Not agreed – this proposal goes beyond the scope of the current legislation and would make it significantly more difficult for police to distinguish between legitimate personal users and commercial cultivation by criminal operators.</p>