



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2019-229

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	35
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [REDACTED]  
**To:** [ACT Health FOI](#)  
**Cc:** [REDACTED]  
**Subject:** RE: FOI Request - Cannabis advice  
**Date:** Thursday, 3 October 2019 3:41:36 PM

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Hi Jonas

Apologies for the delay in getting back to you, thank you for your time and patience.

I have discussed the proposed rescoping with [REDACTED], and I can advise we agree to narrow the scope to documents related to the harms and risks of cannabis use, legalisation or decriminalisation of cannabis, and the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill). [REDACTED] would still like the search to be conducted from 2016 to date.

Documents include:

- Final briefs and minutes for any Minister, Minister's office, and executive level staff including those in other directorates (e.g. JACS in relation to the Bill)
- Requests for information on cannabis or the Bill from any Minister or Minister's office, and the response to the request
- In relation to the Bill, we would also like final advice (e.g. minutes, briefs, policy documents) provided across directorates or to any Ministers or Minister's office, correspondence to or from any Ministers or Ministerial offices, correspondence at executive level or higher, and meeting notes

We are not seeking drafts, documents solely involving lower level administrative officers, and administrative documents (e.g. correspondence confirming receipt of an email or meeting).

Thank you again for patience and your efforts on this request.

Kind regards,



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**Sent:** Tuesday, 24 September 2019 7:32 PM  
**To:** ACT Health FOI <HealthFOI@act.gov.au>  
**Cc:** [REDACTED]  
**Subject:** FOI Request - Cannabis advice

Good evening

I write to request under the *Freedom of Information Act 2016* advice produced by ACT Health and Canberra Health Services about cannabis since 2016.

Should you require any further information or clarification about my request, please contact my office on [REDACTED].

Kind regards,





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI2019-229



## **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), to ACT Health Directorate on 8 October 2019, in which you sought access to:

- *Documents related to the harms and risks of cannabis use, legislation or decriminalization of cannabis, and the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (the Bill) from 2016 to date*

It is noted that you have requested that drafts, documents solely involving lower level administrative officers, and administrative documents are not included in the scope of your request.

On 8 October 2019 your request was transferred by ACT Health Directorate to Chief Minister, Treasury and Economic Development Directorate (CMTEDD). To ensure all relevant information is provided in this release, any documents that were held by ACT Health have also been included in this request.

### **Authority**

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

### **Timeframes**

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 5 November 2019. On 24 October 2019, you were advised that third party consultation was under way and that the due date for your application had been extended by a period of 15 working days to 26 November 2019.

### **Decision on access**

Searches were completed for relevant documents and 134 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access in full to 73 documents and partial access to 26 documents relevant to your request. I have decided to refuse access to 35 documents as I consider them to be:

- contrary to the public interest information under schedule 1; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

### **Statement of Reasons**

In reaching my access decisions, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the *Human Rights Act 2004*.

### **Exemption claimed**

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

#### Contrary to the public interest information under schedule 1 of the Act

Folios 253-256 and 258-591 of the identified documents are entirely composed of, or contain information that is considered to be contrary to the public interest under the following sub sections of Schedule 1 of the Act.

#### Legal Professional Privilege (Schedule 1 of the Act)

Folios 258-307 contain advice provided by the Government Solicitor Office (GSO). I consider the advice is subject to legal professional privilege as it was brought into existence for the dominant purpose of providing a legal opinion in relation to the operation of the Bill. I am satisfied that the communications were made in circumstances of confidentiality and were provided by an independent legal adviser satisfying the requirements to attract legal professional privilege.

In making this decision, I note Clause 5.1 of the *Law Officers (General) Legal Service Directions 2012 NI 2012-292*, which states 'legal professional privilege, including client legal privilege under the *Evidence Act 2011*, in relation to any document or advice provided in the course of any Territory legal work belongs to the Territory and may not be waived, except with the express approval of the Attorney General or the Chief Solicitor on behalf of the Attorney General'. In this case, privilege has not been waived. For this reason, I have decided to exempt from release this information.

### Cabinet Information (Schedule 1 of the Act)

Folios 308-520 contain information that was prepared and brought into existence for consideration by Cabinet. The information in this document was the subject of Cabinet deliberations.

In reviewing the document, I note the requirements of schedule 1 section 1.6(2) of the Act which states that the exemption for Cabinet Information does not apply to 'purely factual information' unless the disclosure of the information would involve the disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published. In the case of *Parnell & Dreyfus and Attorney-General's Department* [2014] AICmr 71, the Australian Information Commissioner stated that the term 'purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content in such a manner that it is impractical to separate it from the other content.

Having reviewed the document, I consider that the purely factual information within the document identified is an integral part of the deliberative content and as stated by the Commissioner, the analysis and views in the [documents] would be robbed of their essential meaning without incorporation of this material. I am satisfied that disclosure of this purely factual information would involve the disclosure of a deliberation or decision of Cabinet.

Having considered the information contained in the documents, I am satisfied that disclosure of such information contained in folios 308-520 would be contrary to public interest pursuant to schedule 1 section 1.6 of the Act.

### Law enforcement or public safety information (Schedule 1 of the Act)

The information that falls within the scope of your request in respect of folios 253 and 255 could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law and as such falls within section 1.14(1)(f) of Schedule 1 of the Act. As such it is deemed 'Information disclosure of which is taken to be contrary to the public interest' and will not be released at this time.

### Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

#### Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure in the public interest under Schedule 2.1 of the Act:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

*(i) promote open discussion of public affairs and enhance the government's accountability; and*

*(ii) contribute to positive and informed debate on important issues or matters of public interest.*

Factors favouring nondisclosure in the public interest under Schedule 2.2 of the Act:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

*(ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004; and*

*(iii) prejudice security, law enforcement or public safety.*

Having considered the factors identified as relevant in this matter, I consider that release of information contained in these documents may promote open discussion and contribute to positive debate by allowing you to have a complete record of the documents associated with the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*.

However, when considering this finding against the factors favouring non-disclosure, I am satisfied that the protection of an individual's right to privacy, especially in the course of their employment, is a significant factor as the parties involved have provided their personal information (including, names, email addresses and private mobile numbers) for the purposes of constructive and collaborative governance. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of these individuals. These individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy.

The second factor considered is in relation to the prejudice to law enforcement that could occur if AFP methodologies in relation to the illegal cultivation of cannabis were made public. The information in document Ref No. 97 outlines current known issues that would reveal AFP target points and other intelligence related to this enforcement. I am satisfied that this factor favouring non-disclosure carries very significant weight.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information and information that may prejudice law enforcement in the ACT contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met

and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Folios 2, 7, 9-10, 18-19, 25, 29, 31, 39, 51, 53, 57, 66, 68, 75-76, 78-79, 92, 100, 143, 150, 153, 178, 187-188, 206-209, 219, 240, 250-252 and 255 of the identified documents contain information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act or they contain information which is out of scope.

### **Charges**

I have waived fees associated with your access application because you are a member of the Legislative Assembly as described in s107(2)(e) of the Act.

### **Online publishing – Disclosure Log**

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 29 November 2019. Your personal contact details will not be published.

You may view CMTEDD disclosure log at  
<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>



Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,

A handwritten signature in black ink, appearing to be 'DR', written in a cursive style.

Daniel Riley  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

26 November 2019



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
[REDACTED]	Documents related to the harms and risks of cannabis use, legislation or decriminalisation of cannabis, and the <i>Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018</i> (the Bill) from 2016 to date.	CMTEDDFOI 2019-229

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-7	Email chain	October 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
2	8	Email chain	October 2019	Full release	N/A	Yes
3	9-10	Email chain	October 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
4	11-12	Email chain	October 2019	Full release	N/A	Yes
5	13-14	Email chain	October 2019	Full release	N/A	Yes
6	15	Email chain	October 2019	Full release	N/A	Yes
7	16-17	2 x Letters as attachment to above email	October 2019	Full release	N/A	Yes
8	18-20	Email chain	September 2019	Full release	N/A	Yes
9	21	Letter as attachment to above email	September 2019	Full release	N/A	Yes
10	22	Email chain	September 2019	Full release	N/A	Yes
11	23-24	Letter as attachment to above email	September 2019	Full release	N/A	Yes
12	25-26	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
13	27-28	Email chain	September 2019	Full release	N/A	Yes

14	29-30	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
15	31	Email	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
16	32-37	Talking points	September 2019	Full release	N/A	Yes
17	38	Email chain	September 2019	Full release	N/A	Yes
18	39-40	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
19	41-49	Debate speech as attachment to above email chain	September 2019	Full release	N/A	Yes
20	50	Email	September 2019	Full release	N/A	Yes
21	51-52	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
22	53-58	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
23	59-60	Email chain	September 2019	Full release	N/A	Yes
24	61	Email	September 2019	Full release	N/A	Yes
25	62	Email	September 2019	Full release	N/A	Yes
26	63-64	Email chain	September 2019	Full release	N/A	Yes
27	65	Email chain	September 2019	Full release	N/A	Yes
28	66-67	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
29	68	Email	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
30	69	Email	September 2019	Full release	N/A	Yes
31	70-71	Email chain	September 2019	Full release	N/A	Yes
32	72-73	Email chain	September 2019	Full release	N/A	Yes
33	74	Email	September 2019	Full release	N/A	Yes

34	75-77	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
35	78-79	Email chain	September 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
36	80-81	Email chain	September 2019	Full release	N/A	Yes
37	82	Email chain	September 2019	Full release	N/A	Yes
38	83-84	Email chain	September 2019	Full release	N/A	Yes
39	85	Email	September 2019	Full release	N/A	Yes
40	86	Meeting – Drugs of Dependence	September 2019	Full release	N/A	Yes
41	87	Email chain	September 2019	Full release	N/A	Yes
42	88-89	Letter as attachment to above email chain	September 2019	Full release	N/A	Yes
43	90-92	Email chain	August 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
44	93-96	Ministerial brief	August 2019	Full release	N/A	Yes
45	97-99	Letter as attachment to above Ministerial brief	August 2019	Full release	N/A	Yes
46	100	Email chain	August 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
47	101-102	Letter to Attorney-General's Department	August 2019	Full release	N/A	Yes
48	103-117	Private Member's Bill and letter as attachments to above letter	August 2019	Full release	N/A	Yes
49	118-119	Letter Commonwealth Director of Public Prosecutions	August 2019	Full release	N/A	Yes
50	120-134	Private Member's Bill and letter as attachments to above letter	August 2019	Full release	N/A	Yes
51	135-136	Email chain	August 2019	Full release	N/A	Yes
52	137-141	Table of Contents as attachment to above email	August 2019	Full release	N/A	Yes
53	142	Email	August 2019	Full release	N/A	Yes

54	143	Email	August 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
55	144-145	Email chain	August 2019	Full release	N/A	Yes
56	146-147	Email chain	August 2019	Full release	N/A	Yes
57	148-151	Email chain	August 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
58	152-153	Email chain	August 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
59	154-155	Email chain	August 2019	Full release	N/A	Yes
60	156-158	Email chain	August 2019	Full release	N/A	Yes
61	159	Email	August 2019	Full release	N/A	Yes
62	160-163	Ministerial Brief	August 2019	Full release	N/A	Yes
63	164	Letter as attachment to above Ministerial Brief	August 2019	Full release	N/A	Yes
64	165-172	Government Amendments as attachment to above Ministerial Brief	August 2019	Full release	N/A	Yes
65	173-177	Statement as attachment to above Ministerial Brief	August 2019	Full release	N/A	Yes
66	178-179	Meeting – Drugs of Dependence	July 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
67	180-182	Ministerial Brief	June 2019	Full release	N/A	Yes
68	183-186	Recommendations as attachment to above Ministerial Brief	June 2019	Full release	N/A	Yes
69	187	Email	June 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
70	188	Email chain	June 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
71	189	Email	June 2019	Full release	N/A	Yes
72	190	Email chain	May 2019	Full release	N/A	Yes
73	191-197	Letter and QON's as attachments to above email chain	May 2019	Full release	N/A	Yes

74	198-199	Email chain	May 2019	Full release	N/A	Yes
75	200-201	QON as attachment to above email chain	May 2019	Full release	N/A	Yes
76	202	Email chain	May 2019	Full release	N/A	Yes
77	203	Email	May 2019	Full release	N/A	Yes
78	204	Email	May 2019	Full release	N/A	Yes
79	205	Meeting – Cannabis Inquiry brief	May 2019	Full release	N/A	Yes
80	206-209	Email chain	May 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
81	210-211	Charges by detailed offence and clearance type as attachment to above email chain	May 2019	Full release	N/A	Yes
82	212-217	AFP Functional Governance Standard Operating Procedure as attachment to above email chain	May 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
83	218	Email	May 2019	Full release	N/A	Yes
84	219-220	Email chain	May 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
85	221-222	Email chain	May 2019	Full release	N/A	Yes
86	223-227	Ministerial Brief	May 2019	Full release	N/A	Yes
87	228-229	Letter as attachment to above Ministerial Brief	May 2019	Full release	N/A	Yes
88	230-233	Ministerial brief	May 2019	Full release	N/A	Yes
89	234-237	Letter and recommendations as attachment to above Ministerial brief	May 2019	Full release	N/A	Yes
90	238	Email	April 2019	Full release	N/A	Yes
91	239	Meeting – Drugs of Dependency committee inquiry	April 2019	Full release	N/A	Yes
92	240-241	Email chain	April 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
93	242-244	Ministerial brief	March 2019	Full release	N/A	Yes

94	245-248	Letter as attachment to above Ministerial brief	March 2019	Full release	N/A	Yes
95	249	Letter	February 2019	Full release	N/A	Yes
96	250-252	Email chain	January 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
97	253-256	ACT Policing input as attachment to above email	January 2019	Partial release	Sch 1 s1.2 Sch 1 s1.14 Sch 2 s2.2(a)(iii)	Yes
98	257	Email	January 2019	Full release	N/A	Yes
99	258-262	Email chain	July 2019	Exempt	Sch 1.2	No
100	263-270	Email chain	July 2019	Exempt	Sch 1.2	No
101	271-277	Email chain	July 2019	Exempt	Sch 1.2	No
102	278-282	Email chain	June 2019	Exempt	Sch 1.2	No
103	283-291	Letter	June 2019	Exempt	Sch 1.2	No
104	292-299	Letter as attachment "A" to above letter	June 2019	Exempt	Sch 1.2	No
105	300-302	Email chain as attachment "B" to above letter	June 2019	Exempt	Sch 1.2	No
106	303-306	Email chain as attachment "C" to above letter	June 2019	Exempt	Sch 1.2	No
107	307	Email	May 2019	Exempt	Sch 1.2	No
108	308-312	Email chain	October 2019	Exempt	Sch 1.6	No
109	313-315	Email chain	September 2019	Exempt	Sch 1.6	No
110	316-317	Email chain	September 2019	Exempt	Sch 1.6	No
111	318-322	Email chain	September 2019	Exempt	Sch 1.6	No
112	323-328	Email chain	September 2019	Exempt	Sch 1.6	No

113	329-331	Ministerial Brief	September 2019	Exempt	Sch 1.6	No
114	332-344	Cabinet Submission as attachment to above Ministerial Brief	September 2019	Exempt	Sch 1.6	No
115	345-380	Attachments to above Cabinet submission	September 2019	Exempt	Sch 1.6	No
116	381-387	Email chain	August 2019	Exempt	Sch 1.6	No
117	388-394	Email chain	August 2019	Exempt	Sch 1.6	No
118	395-413	Cabinet Submission	July 2019	Exempt	Sch 1.6	No
119	414-455	Attachments to Cabinet Submission	July 2019	Exempt	Sch 1.6	No
120	456-470	Ministerial Brief x5 (1 original, 4 signed copies)	July 2019	Exempt	Sch 1.6	No
121	471	Email	July 2019	Exempt	Sch 1.6	No
122	472-475	Cannabis Amendment Bill Communications Strategy Meeting as attachment to above email	July 2019	Exempt	Sch 1.6	No
123	476-478	Email chain	July 2019	Exempt	Sch 1.6	No
124	479-486	Considerations as attachment to above email chain	July 2019	Exempt	Sch 1.6	No
125	487	Drugs of Dependence meeting	June 2019	Exempt	Sch 1.6	No
126	488-490	Email chain	June 2019	Exempt	Sch 1.6	No
127	491	Meeting agenda	June 2019	Exempt	Sch 1.6	No
128	492-495	Email chain	June 2019	Exempt	Sch 1.6	No
129	496-497	Email chain	May 2019	Exempt	Sch 1.6	No
130	498-499	Email	May 2019	Exempt	Sch 1.6	No
131	500-503	Email chain	May 2019	Exempt	Sch 1.6	No
132	504	Email chain	February 2019	Exempt	Sch 1.6	No



133	505	Letter as attachment to email chain	February 2019	Exempt	Sch 1.6	No
134	506-520	Ministerial brief x4 (1 original, 3 signed copies)	January 2019	Exempt	Sch 1.6	No
<b>Total No of Docs</b>						
134						

## Delahaye, Angelique

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**From:** McKinnon, Gabrielle  
**Sent:** Friday, 11 October 2019 11:42 AM  
**To:** Judd, Keziah  
**Subject:** FW: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

UNCLASSIFIED For-Official-Use-Only

fyi

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**From:** Lee, Keegan <Keegan.Lee@act.gov.au>  
**Sent:** Monday, 9 September 2019 12:36 PM  
**To:** James, David <David.James@act.gov.au>  
**Cc:** McKinnon, Gabrielle <Gabrielle.McKinnon@act.gov.au>  
**Subject:** RE: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

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Hi David,

Please see below response from the civil/human rights team:

2. **If medical practitioners are required to provide medical approval for an individual to be eligible for the exception to the possession/cultivation offence:**
  - a. **Would this raise medical liability issues for practitioners and/or human rights issues?**

*If medicinal cannabis has been prescribed by a medical practitioner it is not clear that this would raise any novel medical liability issues, provided that the practitioner has conducted an appropriate assessment and has warned the patient about any side effects such as drowsiness and affect on driving etc. It is arguable that the human right to freedom of conscience could be engaged in a situation where a medical practitioner is required to prescribe cannabis in situations where they had a conscientious objection to the legalisation of cannabis. However, if this is a legal prescription drug it is not clear how it would be different from prescription opioid painkillers or other medications that may also be used illegally for recreational purposes. Provided that a provider is not compelled to prescribe cannabis and that there are appropriate referral mechanisms in place it is unlikely that human rights issues would be raised.*

As noted below, question 2(b) is a matter for Health, not the crim or civil team.

Yours faithfully,

**Keegan Lee | A/g Director**

**Criminal Law Team**

Phone 02 6207 5244 | Fax 02 6205 0937

Legislation, Policy and Programs | Justice and Community Safety Directorate | ACT Government

Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)



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**From:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Sent:** Friday, 6 September 2019 4:05 PM  
**To:** Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>  
**Subject:** FW: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

**UNCLASSIFIED For-Official-Use-Only**

Hi Keegan – where are we placed this answer? – CMO are putting pressure on

Happy to discuss – cheers David

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** James, David  
**Sent:** Tuesday, 3 September 2019 10:59 AM  
**To:** Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>  
**Subject:** RE: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

**UNCLASSIFIED For-Official-Use-Only**

Thanks Keegan – Maybe tomorrow cob if you can

cheers

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>  
**Sent:** Tuesday, 3 September 2019 8:36 AM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Subject:** RE: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

**UNCLASSIFIED For-Official-Use-Only**

Hi David,

Further to the below, what timing are you looking at for a response?

Yours faithfully,

**Keegan Lee | A/g Director**  
**Criminal Law Team**

Phone 02 6207 5244 | Fax 02 6205 0937

Legislation, Policy and Programs | Justice and Community Safety Directorate | ACT Government

Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)



---

**From:** Lee, Keegan  
**Sent:** Monday, 2 September 2019 10:48 PM  
**To:** Emerson, Marc (Health) <[Marc.Emerson@act.gov.au](mailto:Marc.Emerson@act.gov.au)>; James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Cc:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** RE: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

**UNCLASSIFIED For-Official-Use-Only**

Hi David,

Questions 2(a) and 2(b) do not seem to be matters for the Crim team. However, I will forward your email to our Civil and Human Rights team for their input into question 2(a) and will advise you of their response.

Yours faithfully,

**Keegan Lee | A/g Director**

**Criminal Law Team**

Phone 02 6207 5244 | Fax 02 6205 0937

Legislation, Policy and Programs | Justice and Community Safety Directorate | ACT Government

Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)



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**From:** Emerson, Marc (Health) <[Marc.Emerson@act.gov.au](mailto:Marc.Emerson@act.gov.au)>  
**Sent:** Monday, 2 September 2019 4:29 PM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>; Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>  
**Cc:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** RE: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

**UNCLASSIFIED For-Official-Use-Only**

Hi David,

I'm will consult with people about this, but I suspect question two is a bit of a red herring in relation to medicinal cannabis which makes it difficult to answer as it doesn't really relate to the medicinal cannabis scheme.

Medicinal Cannabis in the ACT is not similar to other liked named schemes in the US. A prescription from a doctor is for a named pharmaceutical product, it is not a licence to grow or possess "botanical" cannabis.

Happy to talk via phone.

Marc

---

**From:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Sent:** Monday, 2 September 2019 3:55 PM  
**To:** Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>; Emerson, Marc (Health) <[Marc.Emerson@act.gov.au](mailto:Marc.Emerson@act.gov.au)>  
**Cc:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** FW: Advice on possible non-government amendments to the Drugs Amendment Bill 2018

**UNCLASSIFIED For-Official-Use-Only**

Keegan/Marc

Thanks for your input to date – a consolidated version is FYI below – *Question 2 has implications for both your directorates that to my mind may require you both to work on the answer together, now you have each other's responses.*

Let me know if this is an issue – happy to have a phone hookup if needed

Thanks

- 1. Could PCD and Health please pull together some dot points on how the effect of the Government amendments to the Drugs Amendment Bill and the ACT's medicinal cannabis scheme are different, specifically:**

**(a) What makes medicinal cannabis 'medicinal'?**

*The term medicinal cannabis refers to a cannabis product that is intended for therapeutic use and is regulated as a prescription pharmaceutical formulation. Medicinal cannabis has a known concentration, different formulations for different treatments and must meet high standards of manufacturing quality. This ensures that medicinal cannabis is of an acceptable standard and is safe for people to take.*

*The term 'medicinal cannabis' is to be distinguished from recreational cannabis and raw botanical cannabis for purported 'medical use'. Medicinal cannabis does not include raw botanical plant material intended for smoking, as occurs with recreational use and even where it is used for medicinal purposes. Debate surrounding the legalisation of recreational cannabis and raw botanical cannabis for medical use in the ACT is best kept separate from discussion around access to medicinal cannabis, as medicinal cannabis can already be supplied legally in the ACT.*

**(b) How does the scheme work?**

*The ACT medicinal cannabis scheme has been in operation since November 2016. Under the scheme, ACT prescribers are able to apply to the ACT Chief Health Officer (CHO) to obtain approval to prescribe medicinal cannabis to their patients for certain conditions. Prescribers also need to seek approval from the Therapeutic Goods Administration (TGA) which regulates medicinal cannabis nationally. The ACT Government has adopted a single online application pathway for prescribers to access medicinal cannabis via the ACT and Australian Government schemes concurrently. A consolidated application form was published by the TGA on its website on 25 February 2019.*

**(c) How is recreational and medicinal cannabis treated differently under Commonwealth law?**

*Medicinal Cannabis is regulated under the Commonwealth Therapeutic Goods Act 1989. ACTHD is unable to comment on Commonwealth Legislation applying to recreational cannabis use. Within the ACT, cannabis may only be prescribed where its use has been approved under Commonwealth and ACT laws. Currently,*

possession and supply of all other cannabis, whether for purported medicinal or recreational use, remains illegal in the ACT.

**(d) Why do patients require strict medical supervision if they are using cannabis for medicinal purposes?**

*Under the ACT Medicinal cannabis scheme, medicinal cannabis needs to be prescribed by medical or nurse practitioner with Chief Health Officer approval. This ensures that patients are only prescribed medicinal cannabis for appropriate medical conditions, taking into account other potential risk factors such as contraindications, precautions, drug-drug interactions and potential adverse effects. The need for medical or nurse practitioner supervision also helps to ensure patients are commenced on the right dose and formulation to suit their medical condition, and that follow up monitoring occurs after commencing treatment.*

- 2. If medical practitioners are required to provide medical approval for an individual to be eligible for the exception to the possession/cultivation offence:**
- a. Would this raise medical liability issues for practitioners and/or human rights issues?**

**b. Would this measure be at all effective in addressing the health impacts of cannabis use?**

- 3. What would be the human rights implications of excluding those with convictions for serious drug offences (i.e trafficking) from the exception to the possession/cultivation offence? Would there be any other unintended consequences of such an amendment?**

*This approach would impose a significant limitation on the right to equality as it would impose criminal liability on a group of people for conduct (possession or cultivation of small amounts of cannabis) which would be lawful for others. It is not clear what the justification for this proposal is, and why it should not be lawful for people who have previous convictions for serious offences to possess small amounts of cannabis for personal use. There are already offences for trafficking and possession of larger quantities which could be used if there is evidence that the person is engaging in that activity.*

- 4. Similarly, what would be the human rights and other implications of excluding those that work in dangerous/hazardous occupations, or any other occupation that could be 'prescribed', from the exception to the possession/cultivation offence? To what extent can employers already require restrictions such as maintaining a zero alcohol/drug concentration?**

*This proposal would also impose a significant limitation on the right to equality based on a person's occupation and would not necessarily be clearly tailored to the harm sought to be prevented. For example a person in a dangerous occupation may choose to smoke cannabis during a period of annual leave, when there is no effect on their work performance. The ability to include occupations in regulations would be of further concern as there would be no certainty about the occupations that might later be included.*

*It would be preferable to deal with this issue through employment policies and requirements rather than through criminal sanctions. Employers can already require that employees are not intoxicated at work and can take disciplinary action if a person fails to comply with this requirement. In some circumstances it may be a reasonable limitation on the right to privacy for employers to require as a condition of employment that employees submit to drug/alcohol testing where they are carrying out a high risk/dangerous occupation (for example pilots or crane drivers).*

- 5. Could JACS please provide advice on the types of roadside impairment tests that meet the standard of evidence required in court?**

*Australia has a zero-tolerance approach to drug driving.*

*The ACT drug driving regime does not include a prescribed roadside impairment test. The ACT drug driving regime consists of both a presence offence and an impairment offence. The presence offence is proven in court by submission of evidence of a positive drug test for a prescribed drug. The roadside test must have undergone the confirmatory testing process. The 'impairment offence' requires presence of any of the drugs that fall within the definition of drug in the Road Transport (Alcohol and Drugs) Act 1977 and is proven in court by submission of evidence of a positive drug test that has undergone confirmatory testing and evidence of the person's behaviour that indicated that they were not capable of having proper control of the motor vehicle due to being under the influence of a drug. Evidence of the person's behaviour is based on evidence from the officers who were present of their observations of the person's behaviour, for example, erratic driving, the person was involved in an accident.*

*Australia as a whole does not undertake impairment testing. Some jurisdictions, however, have the ability to undertake some form of prescribed impairment testing in very specific circumstances. These types of impairment testing are undertaken in addition to any testing undertaken with a testing device.*

- *A police officer in NSW can require a person to undertake a sobriety test if their breath test comes back clean. A driver can only be required to undertake a sobriety test if:*
  - o *The police officer has a reasonable belief that the person may be under the influence of a drug by the way in which the person is or was driving a motor vehicle on a road; or is or was occupying the driving seat of a motor vehicle on a road and attempting to put the vehicle in motion; or the behaviour, condition or appearance of the person at the time of or after the person is or was driving a motor vehicle on a road, or the person is or was occupying the driving seat of a motor vehicle on a road and attempting to put the motor vehicle in motion;*

*The assessment must be carried out by a police officer at or near the place where the person underwent the breath test*

- *In Victoria, in proceedings for an offence of driving while impaired by a drug, proof of the following, in the absence of evidence to the contrary is proof that the accused drove or was in charge of a motor vehicle while impaired by a drug:*
  - o *the person drove or was in charge of a motor vehicle; and*
  - o *one or more drugs were present in the person's body at the time at which he or she drove or was in charge of the motor vehicle; and*
  - o *the behaviour of the person on an assessment of drug impairment carried out under the Act was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and*
  - o *the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable to drive properly.*

*An assessment of drug impairment under the relevant Victorian legislation, may be carried by a police officer, in prescribed circumstances (for example, the person is found driving or in charge of a motor vehicle), if the police officer has formed an opinion, that the person's behaviour or appearance indicates that he or she may be impaired for a reason other than alcohol alone. It must be conducted by a police officer authorised by the Chief Commissioner of Police and conducted within 3 hours of the person having driven, been an occupant or in charge of a motor vehicle.*

- *In Western Australia, to prove that a person drove or attempted to drive a motor vehicle while impaired by a drug, the prosecution must prove the following:*
  - o *The accused drove or attempted to drive a motor vehicle; and*
  - o *One or more drugs were present in the accused's body at the time of that driving or attempted driving; and*
  - o *The conduct, condition or appearance of the accused at or after the time of that driving or attempted driving, or during a driver assessment, was consistent with the conduct, a condition or an appearance associated with a person who has consumed or used that drug or those drugs; and*
  - o *The conduct or condition associated with a person who has consumed or used that drug or those drugs would be inconsistent with the person being capable of having proper control of a motor vehicle.*

*To carry out an assessment of drug impairment, the officer must have reasonable grounds to believe that the person, is or was at the time of driving, impaired by something, other than alcohol alone. The assessment must be conducted within 4 hours.*

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)



**From:** "Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:** 10/10/2019 6:28 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Subject:** RE: ACT Health Directorate Input regarding Drugs of Dependence (Personal Use) Amendment Act 2019 for CMTEDD

UNCLASSIFIED

First I've seen of it, so thanks for sending it through. Will let you know if the office needs anything further.

Cheers, Max

---

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Sent:** Thursday, 10 October 2019 5:21 PM  
**To:** CMCD DLO <CMCDDLO@act.gov.au>  
**Subject:** FW: ACT Health Directorate Input regarding Drugs of Dependence (Personal Use) Amendment Act 2019 for CMTEDD

UNCLASSIFIED

Max,  
FYI it looks like this has gone straight to CMO. This might be more down in the detail than what the office was looking for. I could probably put something together quickly from pre-cleared materials if they want?  
-Andrew

---

**From:** Emerson, Marc (Health) <[Marc.Emerson@act.gov.au](mailto:Marc.Emerson@act.gov.au)>  
**Sent:** Thursday, 10 October 2019 5:17 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** ACT Health Directorate Input regarding Drugs of Dependence (Personal Use) Amendment Act 2019 for CMTEDD

UNCLASSIFIED

Hi Andrew,

I understand our Ministerial area has provided this input direct to the CMO.

Marc

**From:** "Nock, Thomas" <Thomas.Nock@act.gov.au>

**Sent:** 08/10/2019 12:19 AM

**To:** "Dynon, Kaarin" <Kaarin.Dynon@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "Dolan, Fiona" <Fiona.Dolan@act.gov.au>; "CMTEDDMedia" <CMTEDDMedia@act.gov.au>; "Pulli, Tracey (Health)" <Tracey.Pulli@act.gov.au>; "Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>

**Subject:** RE: Request for comment for The Australian newspaper

Do you reckon it might also be worth reaching out to Family and Friends for Drug Law Reform, ATODA ect to get their perspectives? Since they have already spoken to some in the community?

Tom

---

**From:** Dynon, Kaarin <Kaarin.Dynon@act.gov.au>

**Sent:** Tuesday, 8 October 2019 11:11 AM

**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Cc:** Dolan, Fiona <Fiona.Dolan@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>; Pulli, Tracey (Health) <Tracey.Pulli@act.gov.au>; Nock, Thomas <Thomas.Nock@act.gov.au>; Strachan, Julieanne <Julieanne.Strachan@act.gov.au>

**Subject:** FW: Request for comment for The Australian newspaper

Hi Andrew,

Please see a media request below. Tom Nock suggests the answers should have a harm minimisation angle. Assuming Health and possibly JACS will need to input into this?

I'll need something to run past the Chief Minister asap.

Thanks,

Kaarin Dynon

Deputy Director, ACT Government Communications Unit

Communications Adviser to Andrew Barr MLA

Chief Minister | Treasurer | Minister for Social Inclusion and Equality | Minister for Tertiary Education | Minister for Tourism and Special Events | Minister for Trade, Industry and Investment

Mobile: [Sch 2.2\(a\)\(ii\)](tel:0800137322) Email: [kaarin.dynon@act.gov.au](mailto:kaarin.dynon@act.gov.au)

[www.andrewbarr.com.au](http://www.andrewbarr.com.au)



**From:** Ritchie, Emily <[ritchiee@theaustralian.com.au](mailto:ritchiee@theaustralian.com.au)>

**Sent:** Tuesday, 8 October 2019 10:40 AM

**To:** Dynon, Kaarin <[Kaarin.Dynon@act.gov.au](mailto:Kaarin.Dynon@act.gov.au)>

**Subject:** re: Request for comment for The Australian newspaper

Good morning Kaarin!

Emily Ritchie here from The Australian newspaper. I hope all is well with you.

Just wondering if the chief minister's office could please provide comment for a story?

We've spoken to a few people and families of people who have experienced the negative effects of recreational cannabis and wanted to get comment from you about how your recent legislation might combat such negative effects.

Might it be possible to get a response on the following questions by this afternoon?

1. Cannabis is sometimes referred to as the 'gateway drug' to harder substances, are there enough safeguards in your legislation to prevent this occurring? If so, what are they?
2. How many experts were consulted during the legalisation process and what was the overwhelming advice that influenced your legislation?
3. What would you say to families who are concerned they may fall victim to the negative side effects of recreational cannabis now it is legal?

Let me know! I'm on **Sch 2.2(a)(ii)** if you want to call.

Thanks and talk soon,

Emily

--

**EMILY RITCHIE**

Reporter

2 Holt Street Surry Hills NSW 2010

T +61 2 9288 2337 M +61 **Sch 2.2(a)(ii)**

E [ritchiew@theaustralian.com.au](mailto:ritchiew@theaustralian.com.au) W [NewsCorpAustralia.com](http://NewsCorpAustralia.com)

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**From:**"Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Sent:**04/10/2019 4:53 AM  
**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Subject:**Re: Act notification  
**Attachments:**image001.png, image002.jpg

Just checked with RSS office, doesn't look like they have received anything recently.

Sent from my iPhone

On 4 Oct 2019, at 14:48, Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)> wrote:

UNCLASSIFIED

One other thought – would they have sent it to Stephen-Smith's office, given the Act belongs to the Min for Health?

---

**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Sent:** Friday, 4 October 2019 2:37 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** RE: Act notification

Yes apparently the Commonwealth AG has requested the ACT Government provide him with a copy of the bill as amended. Do you know if that is the case?

We haven't received anything in the Office, neither has Minister Ramsay's Office. Maybe it went straight from AGD to JACS?

Tom

---

**From:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Sent:** Friday, 4 October 2019 2:32 PM  
**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Subject:** RE: Act notification

UNCLASSIFIED

Hey I think our media team are responding to this too now.

I understand it's still with Chamber Support, then it has to go to the Speaker then to PCO to be notified. Trying to get some advice on how long it'll take for that to happen.

-Anderw

---

**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Sent:** Friday, 4 October 2019 1:59 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** Act notification

Hi Andrew – do you know when the drugs of dependence amendment act will be notified?  
Thanks,

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)

<image001.png>

<image002.jpg>



**From:**"Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Sent:**04/10/2019 4:57 AM  
**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Subject:**Re: Act notification  
**Attachments:**image001.png, image002.jpg

Ok just spoke to ACT AG office again, Min Ramsay sent Porter a letter saying they would provide a copy when it's notified, that is what he is referencing.

Sent from my iPhone

On 4 Oct 2019, at 14:48, Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)> wrote:

UNCLASSIFIED

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**Sent:** Friday, 4 October 2019 2:32 PM  
**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Subject:** RE: Act notification

UNCLASSIFIED

Hey I think our media team are responding to this too now.

I understand it's still with Chamber Support, then it has to go to the Speaker then to PCO to be notified. Trying to get some advice on how long it'll take for that to happen.

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**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Sent:** Friday, 4 October 2019 1:59 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** Act notification

Hi Andrew – do you know when the drugs of dependence amendment act will be notified?  
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Tom

**Tom Nock** | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)

<image001.png>

<image002.jpg>



**From:** [Murdoch, Max](#) on behalf of [CMCD DLO](#)  
**To:** [Mehrton, Andrew](#)  
**Subject:** RE: Letter to the Hon Christian Porter from ACT Attorney-General Gordon Ramsay MLA  
**Date:** Tuesday, 15 October 2019 8:59:54 AM  
**Attachments:** [Letter to the Hon Christian Porter MP - ACT Cannabis Bill.pdf](#)

---

UNCLASSIFIED

There you go

---

**From:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Sent:** Monday, 14 October 2019 5:42 PM  
**To:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>  
**Subject:** RE: Letter to the Hon Christian Porter from ACT Attorney-General Gordon Ramsay MLA

UNCLASSIFIED

Thanks, Max.

Are you able to get a copy of the letter on 26 Sep also referred to? I don't think I have that on record.

And if you could get a copy of the letter to Minister Hunt once that is sent too please.

Cheers.

-Andrew

---

**From:** Murdoch, Max <[Max.Murdoch@act.gov.au](mailto:Max.Murdoch@act.gov.au)> **On Behalf Of** CMCD DLO  
**Sent:** Monday, 14 October 2019 5:37 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** Letter to the Hon Christian Porter from ACT Attorney-General Gordon Ramsay MLA

UNCLASSIFIED

FYI – a copy of the AG's letter to Porter on Cannabis is attached





## Gordon Ramsay MLA

Attorney-General  
Minister for the Arts, Creative Industries and  
Cultural Events  
Minister for Building Quality Improvement  
Minister for Business and Regulatory Services  
Minister for Seniors and Veterans  
Member for Ginninderra

The Hon Christian Porter MP  
Attorney-General  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear <sup>Christian</sup> Attorney-General

I write in relation to the recently passed Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (the Bill).

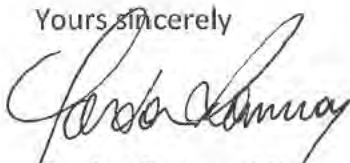
I understand from comments you made publicly that you wish to inspect the Bill as passed in the Assembly yesterday afternoon.

The Bill was subject to amendments by both the Government and a private member. I trust you understand this will take a short while to consolidate, and I expect that the final legislation will be available in approximately a week. I will provide you with a copy when the Bill is finalised.

The ACT Government consulted broadly and comprehensively in relation to these reforms. The Bill reflects the values of the ACT community by taking a harm minimisation approach and recognising that cannabis use should be treated as a health issue. The Bill does not, contrary to numerous inaccurate public comments, reduce prohibitions on selling or sharing cannabis. The Bill was drafted carefully to ensure its valid operation in the context of the *Criminal Code Act 1995* (Cwlth).

I appreciate your interest in this matter and I urge you to respect the wishes of the people of the ACT, as democratically expressed through the Legislative Assembly.

Yours sincerely

  
Gordon Ramsay MLA

26 SEP 2019

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### ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia  
Phone +61 2 6205 2615 Email [ramsay@act.gov.au](mailto:ramsay@act.gov.au)



@Gordon\_R\_Ramsay



Gordon Ramsay MLA





**Australian Government**  
**Attorney-General's Department**  
**Deputy Secretary**  
**Integrity and International Group**

Mr Richard Glenn  
Acting Director-General  
Justice and Community Safety Directorate  
PO Box 158  
CANBERRA ACT 2601

Dear Mr Glenn

I refer to your letter of 30 August 2019 regarding the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 and its interaction with Commonwealth law.

Your letter outlines proposed amendments by the ACT Government to the Bill intended to resolve potential incompatibilities with Commonwealth laws, including the *Criminal Code Act 1995* (Commonwealth Criminal Code). Specifically, your letter seeks advice on whether proposed amendments would effectively excuse relevant conduct from offences in Division 308 of the Commonwealth Criminal Code. I understand the ACT Government proposes to retain existing offences in the *Drugs of Dependence Act 1989* (ACT) for possession and cultivation of cannabis over prescribed limits, with the inclusion of an exception such that those offences do not apply to anyone over 18 years of age.

Section 313.1 of the Commonwealth Criminal Code provides an exemption where conduct is justified or excused under the law of a State or Territory. The requirement for the conduct to be justified or excused by or under a law requires some positive basis in the law for the conduct that constitutes the offence. The department has not seen the proposed terms of the ACT Government's proposed amendments, but there is a question about whether an exception of the kind you describe would satisfy this requirement. The justification or excuse may need to be more explicitly identified as such in the terms of the Act. I note that while it may be possible for such a provision to enliven a defence under section 313.1 of the Commonwealth Criminal Code, the interaction between any new provision and other relevant Commonwealth laws would need to be considered.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'S Chidgey', enclosed in a rectangular box.

Sarah Chidgey  
23 September 2019

**From:** [Engele, Sam](#)  
**To:** [Nock, Thomas](#)  
**Subject:** FW: re: Letter from Richard Glenn Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 [SEC=OFFICIAL]  
**Date:** Monday, 23 September 2019 1:02:00 PM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[Further Letter Richard Glenn JCSD 20190922 Director signed \(002\).docx](#)

---

UNCLASSIFIED

FYI.

---

**From:** Glenn, Richard <[Richard.Glenn@act.gov.au](mailto:Richard.Glenn@act.gov.au)>  
**Sent:** Monday, 23 September 2019 12:25 PM  
**To:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Williams, Kelly <[Kelly.Williams@act.gov.au](mailto:Kelly.Williams@act.gov.au)>; Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>  
**Subject:** Fwd: re: Letter from Richard Glenn Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 [SEC=OFFICIAL]  
FYI  
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---

**From:** Cowan, Nicola <[Nicola.Cowan@act.gov.au](mailto:Nicola.Cowan@act.gov.au)>  
**Sent:** Monday, September 23, 2019 12:23:46 PM  
**To:** Glenn, Richard <[Richard.Glenn@act.gov.au](mailto:Richard.Glenn@act.gov.au)>  
**Subject:** FW: re: Letter from Richard Glenn Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 [SEC=OFFICIAL]

UNCLASSIFIED

Richard – further letter from DPP attached as discussed.  
Nikki

---

**From:** West Lisa <[lisa.west@cdpp.gov.au](mailto:lisa.west@cdpp.gov.au)> **On Behalf Of** LBI  
**Sent:** Monday, 23 September 2019 8:35 AM  
**To:** Cowan, Nicola <[Nicola.Cowan@act.gov.au](mailto:Nicola.Cowan@act.gov.au)>  
**Cc:** LBI <[LBI@cdpp.gov.au](mailto:LBI@cdpp.gov.au)>; Drumgold, Shane <[Shane.Drumgold@act.gov.au](mailto:Shane.Drumgold@act.gov.au)>  
**Subject:** RE: re: Letter from Richard Glenn Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 [SEC=OFFICIAL]

OFFICIAL

Dear Nicola

I refer to our letter to Mr Richard Glenn emailed to you on 17 September 2019.

I would be grateful if you bring the attached further letter, signed by the Director of Public Prosecutions, Ms Sarah McNaughton SC, to the attention of Mr Glenn as soon as possible,

Regards



**Lisa West**

*Assistant Director  
Legal Business Improvement  
Commonwealth Director of Public Prosecutions*

Direct line 03 9605 4460  
Fax 03 9670 4295  
[lisa.west@cdpp.gov.au](mailto:lisa.west@cdpp.gov.au)  
Mobile **Sch 2.2(a)(ii)**

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[www.cdpp.gov.au](http://www.cdpp.gov.au)

Classification: OFFICIAL

---

**From:** West Lisa <[lisa.west@cdpp.gov.au](mailto:lisa.west@cdpp.gov.au)>  
**Sent:** Tuesday, 17 September 2019 9:36 AM  
**To:** [Nicola.Cowan@act.gov.au](mailto:Nicola.Cowan@act.gov.au)  
**Cc:** LBI <[LBI@cdpp.gov.au](mailto:LBI@cdpp.gov.au)>; [Shane.Drumgold@act.gov.au](mailto:Shane.Drumgold@act.gov.au)  
**Subject:** re: Letter from Richard Glenn Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 [SEC=OFFICIAL]

**OFFICIAL**

Dear Nicola

Please find attached a letter from Ms Sarah McNaughton SC, for the attention of Mr Richard Glenn.

Regards



**Lisa West**

*Assistant Director  
Legal Business Improvement  
Commonwealth Director of Public Prosecutions*

Direct line 03 9605 4460  
Fax 03 9670 4295  
[lisa.west@cdpp.gov.au](mailto:lisa.west@cdpp.gov.au)  
Mobile **Sch 2.2(a)(ii)**

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**From:** Cowan, Nicola <[Nicola.Cowan@act.gov.au](mailto:Nicola.Cowan@act.gov.au)> **On Behalf Of** Glenn, Richard  
**Sent:** Monday, 2 September 2019 11:36 AM  
**To:** McNaughton Sarah <[Sarah.McNaughton@cdpp.gov.au](mailto:Sarah.McNaughton@cdpp.gov.au)>  
**Cc:** Drumgold, Shane <[Shane.Drumgold@act.gov.au](mailto:Shane.Drumgold@act.gov.au)>  
**Subject:** Letter from Richard Glenn re: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

UNCLASSIFIED

Dear Ms McNaughton

Please find attached a letter from Richard Glenn regarding the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*.

Kind regards

**Nicola Cowan**

Executive Assistant to Richard Glenn  
A/G Director-General  
Justice and Community Safety Directorate  
GPO Box 158, Canberra ACT 2601  
e [nicola.cowan@act.gov.au](mailto:nicola.cowan@act.gov.au) w [www.justice.act.gov.au](http://www.justice.act.gov.au)  
T (02) 6207 0501

cid:image003.jpg@01CF2E1F.6AC457B0



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**CDPP**

*Australia's Federal Prosecution Service*

**Sarah McNaughton SC**  
Director

**Commonwealth Director  
of Public Prosecutions**

Level 11, 175 Liverpool Street  
Sydney NSW 2000

Telephone **02 6206 5666**  
[www.cdpp.gov.au](http://www.cdpp.gov.au)

24 October 2019

Mr Richard Glenn  
A/g Director-General  
Justice and Community Safety Directorate  
GPO Box 158  
CANBERRA CITY ACT 2601

Dear Mr Glenn

**Private Member's Bill – Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)**

I refer to my previous letter. This office has since given the matter some further consideration.

It is now apparent that the issues you raise are attended by legal complexities that we had not initially appreciated in formulating our response. On that basis, I have concluded that it would not be appropriate to provide a view on the proposed legislation.

I apologise for any inconvenience caused.

Yours sincerely,

Sarah McNaughton SC  
Commonwealth Director of Public Prosecutions

**From:** [Engele, Sam](#)  
**To:** [Mehrton, Andrew](#)  
**Subject:** Re: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018: DG letters to CDPP and AGD  
**Date:** Wednesday, 18 September 2019 3:21:04 PM  
**Attachments:** [image002.jpg](#)  
[image003.jpg](#)

---

Yep, I agree that is good news.

Sam

---

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Sent:** Wednesday, September 18, 2019 2:24 pm  
**To:** Engele, Sam  
**Subject:** Fwd: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018: DG letters to CDPP and AGD

This reads like pretty good news to me?

Sent from my mobile. Please excuse any typos.

---

**From:** Lee, Keegan <Keegan.Lee@act.gov.au>  
**Sent:** Wednesday, September 18, 2019 2:17:09 PM  
**To:** James, David <David.James@act.gov.au>  
**Cc:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; Sparke, Megan <Megan.Sparke@act.gov.au>; Shaw, Bianca <Bianca.Shaw@act.gov.au>; Greenland, Karen <Karen.Greenland@act.gov.au>; Marson, Katrina <Katrina.Marson@act.gov.au>  
**Subject:** RE: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018: DG letters to CDPP and AGD

UNCLASSIFIED Sensitive: Legal

Hi David,

Please see attached letter from CDPP in response to the correspondence referred to below.

Yours faithfully,

**Keegan Lee | A/g Director**

**Criminal Law Team**

Phone 02 6207 5244 | Fax 02 6205 0937

Legislation, Policy and Programs | Justice and Community Safety Directorate | ACT Government

Level 4, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** James, David <David.James@act.gov.au>



# CDPP

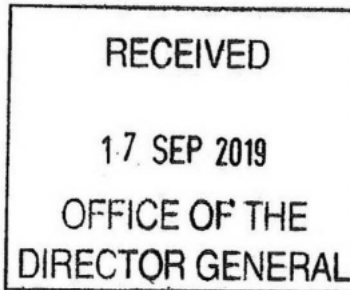
Australia's Federal Prosecution Service

Sarah McNaughton SC  
Director

Commonwealth Director  
of Public Prosecutions

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Sydney NSW 2000

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17 September 2019

Mr Richard Glenn *17/9*  
A/g Director-General  
Justice and Community Safety Directorate  
GPO Box 158  
CANBERRA CITY ACT 2601

Dear Mr Glenn

**Private Member's Bill – Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)**

Thank you for your letter dated 30 August 2019 regarding the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)*, (*Personal Cannabis Use Bill*) which is being considered by the ACT Legislative Assembly. As you note in your letter, the purpose of the Bill is to allow for the personal use and possession of cannabis up to 50 grams and for the cultivation of up to four plants. You have also provided me with the ACT Government's drug policy and proposed amendments set out in a letter dated 18 March 2019 (**proposed amendments**).

In particular, you seek our view as to whether the introduction of the *Personal Cannabis Use Bill* and the proposed amendments, will operate as an excuse to an offence under section 308.1 of the Criminal Code (Cth) (**the Code**) by virtue of section 313.1 of the Code, and whether there is any inconsistency with Commonwealth Legislation.

The offence of possessing a controlled drug contrary to section 308.1 of the Code came in operation on 6 December 2005, and its purpose was to capture the possession of small amounts of drugs. Subsections 308.1(3) – (5) were included to pick up any State and Territory sentencing options available such as drug diversion programs, which provide education, treatment and support for drug users.

Section 313.1 of the Code provides the mechanism for recognising the "many legitimate uses of controlled substances in our community"<sup>1</sup> through available defences where a person engages in conduct in a State or Territory and the conduct is justified or excused by or under a law of that State or Territory.

<sup>1</sup> Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 Explanatory Memorandum page 100



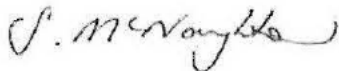
These sections were introduced with the specific intention to operate in conjunction with State and Territory laws.

If the ACT government passes a law that legalises the possession and use of small amounts of cannabis, then it would be open for a person charged with section 308.1 of the Code in the ACT, to rely on this fact for the purpose of establishing a defence under section 313.1 of the Code. In this regard, the proposed amendments would appear consistent with the object and terms of section 308.1 of the Code.

I further note that any available defence would also be a relevant consideration in assessing whether there are reasonable prospects of conviction under the Prosecution Policy of the Commonwealth should such a matter be referred to this office for prosecution<sup>2</sup>.

I hope this has been of assistance to you. Please do not hesitate to contact me should you wish to discuss this further.

Yours sincerely,



Sarah McNaughton SC  
Commonwealth Director of Public Prosecutions

---

<sup>2</sup> See paragraph 2.6 of the Prosecution Policy

**From:** "Croke, Leesa" <Leesa.Croke@act.gov.au>

**Sent:** 30/09/2019 8:57 AM

**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>

**Cc:** "Kalleske, Sarah" <Sarah.Kalleske@act.gov.au>

**Subject:** Re: HoS Meeting with CPO tomorrow

Thanks Andrew

Sarah , pls include

Leesa Croke

**Sch 2.2(a)(ii)**

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Sent:** Monday, September 30, 2019 6:43:12 PM

**To:** Croke, Leesa <Leesa.Croke@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>

**Cc:** Kalleske, Sarah <Sarah.Kalleske@act.gov.au>

**Subject:** RE: HoS Meeting with CPO tomorrow

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No nothing other than cannabis and there's no change or surprises from ACT Policing.

I'd just reiterate I've appreciated the way ACT Policing have engaged with us throughout the cannabis work and that even though they've had a different to position to the government it's always been a constructive conversation with them about how we navigate these reforms.

-Andrew

---

**From:** Croke, Leesa <Leesa.Croke@act.gov.au>

**Sent:** Monday, 30 September 2019 12:03 PM

**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Subject:** Fwd: HoS Meeting with CPO tomorrow

Is there anything we want Kathy to raise? I would have thought we know where the CPO is at on the issue but anything new from the media last week?

Leesa Croke

**Sch 2.2(a)(ii)**

---

**From:** Kalleske, Sarah <[Sarah.Kalleske@act.gov.au](mailto:Sarah.Kalleske@act.gov.au)>

**Sent:** Monday, September 30, 2019 12:01:01 PM

**To:** Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>

**Subject:** HoS Meeting with CPO tomorrow

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Hi Leesa

Kathy has a meeting with the CPO tomorrow – is there anything from PCD Kathy needs to know or raise other than Cannabis?

Sarah

Sarah Kalleske | Executive Assistant to Kathy Leigh, Head of Service and Director-General

Phone: 02 6205 0241 | Email: [sarah.kalleske@act.gov.au](mailto:sarah.kalleske@act.gov.au)

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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**From:**"Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Sent:**26/09/2019 2:01 AM  
**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:**"Engele, Sam" <Sam.Engele@act.gov.au>;"Dolan, Fiona" <Fiona.Dolan@act.gov.au>;"Wilkie, Rachel" <Rachel.Wilkie@act.gov.au>;"Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>  
**Subject:**RE: Cannabis in JBT

Thanks Andrew that is great – we are going with:

*The ACT Legislative Assembly has passed a Bill that will further decriminalise the personal possession of cannabis in the ACT. As of 31 January, adults possessing under 50 grams of cannabis in the ACT are exempt from possession offences.*

*The exemption only operates for cannabis possessed in the confines of the ACT. At this time, it will not be implemented in the Jervis Bay Territory. This is due to the increased complexity in applying these laws, and how they would interact with Commonwealth Law, in the Jervis Bay Territory. The ACT Government has also committed to closely monitor the implementation of these Laws in the ACT, which would be challenging to do in Jervis Bay.*

*The ACT Government will work with relevant authorities in the Jervis Bay Territory to ensure that residents are aware of the laws regarding the possession of cannabis that will continue to apply in the area.*

---

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Sent:** Thursday, 26 September 2019 11:57 AM  
**To:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Cc:** Engele, Sam <Sam.Engele@act.gov.au>; Dolan, Fiona <Fiona.Dolan@act.gov.au>; Wilkie, Rachel <Rachel.Wilkie@act.gov.au>; Strachan, Julieanne <Julieanne.Strachan@act.gov.au>  
**Subject:** RE: Cannabis in JBT

UNCLASSIFIED

Hi Tom,

Sam usefully just pointed out that JBT doesn't actually encompass that much of what most people would consider Jervis Bay either.

The JBT itself really only has HMAS Creswell and the Wreck Bay Aboriginal community. There are a few camping grounds but without having looked at them, it's not clear whether they would be considered a public place in which case the possession and use exceptions wouldn't apply anyway.

-Andrew

---

**From:** Mehrton, Andrew  
**Sent:** Thursday, 26 September 2019 11:46 AM  
**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Cc:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Fiona Dolan ([Fiona.Dolan@act.gov.au](mailto:Fiona.Dolan@act.gov.au)) <[Fiona.Dolan@act.gov.au](mailto:Fiona.Dolan@act.gov.au)>; Wilkie, Rachel <[Rachel.Wilkie@act.gov.au](mailto:Rachel.Wilkie@act.gov.au)>; Strachan, Julieanne <[Julieanne.Strachan@act.gov.au](mailto:Julieanne.Strachan@act.gov.au)>  
**Subject:** Cannabis in JBT

UNCLASSIFIED

Hi Tom,

We're looking back through the GSO advice, but I'm not sure if we have much in writing about the *why* of excluding – it's more on the *how*.

However, a suggested response on the JBT:

- The amendments moved by the Government are intended to apply within the ACT (i.e. not in the JBT).
- There are a number of complications with allowing the law to apply in the JBT, arising from the fact that some other Commonwealth laws 'pick up' offences that apply in the JBT.
- For example:
  - the Defence Force Discipline Act 1982, picks up certain offences punishable by any law in force in the JBT.
  - The Australian Antarctic Territory Act also picks up certain criminal laws of the JBT in so far as they are applicable in the Australian Antarctic Territory.
- For these reasons, the decision was taken to only apply these amendments in the ACT, so that they didn't not create further complications that might force the Commonwealth to intervene.

On a slightly technical note, the ACT has no power to apply or not apply its laws to the JBT. That is solely a matter for the Commonwealth. However, given our understanding of the test for what laws are picked up by the Commonwealth and applied, it is possible to craft Territory laws in a manner so that they "fail" that test and therefore are not picked up. The simplest approach was to confine the law to a place in the ACT so that it is not 'applicable' to the JBT. This means it would "fail" that test and is therefore are not picked up.

**ANDREW MEHRTON** | Executive Branch Manager  
Social Policy and Commonwealth State Relations | Policy and Cabinet Group  
Chief Minister, Treasury and Economic Development Directorate | **ACT Government**  
GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)  
Phone: 02 6205 8507 | email: [andrew.mehrton@act.gov.au](mailto:andrew.mehrton@act.gov.au)

**From:** "Dolan, Fiona" <Fiona.Dolan@act.gov.au>

**Sent:** 26/09/2019 11:28 PM

**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>; "CMTEDDMedia" <CMTEDDMedia@act.gov.au>

**Subject:** FW: Personal Cannabis Use Amendment Bill - Alcohol, Tobacco and Other Drug Sector & Public Comms

UNCLASSIFIED

Hi Andrew

Please see below – my understanding was that comms for the sector would be part of the approach from Health on commencement, but the below seems to indicate a more urgent need for these materials.

Perhaps a quick fact sheet that can be provided from ATODA to the sector via email, pointing to the new website for more information would be suitable?

Thanks

Fiona

---

**From:** Carrie Fowlie <carrie@atoda.org.au>

**Sent:** Thursday, 26 September 2019 3:04 PM

**To:** Dolan, Fiona <Fiona.Dolan@act.gov.au>

**Cc:** Engele, Sam <Sam.Engele@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>

**Subject:** Personal Cannabis Use Amendment Bill - Alcohol, Tobacco and Other Drug Sector & Public Comms

Hi Fiona,

Hope you've all been able to catch your breath after the passing of the Personal Cannabis Use Amendment Bill yesterday! Congratulations to everyone involved!

Throughout ATODA's engagement with the development of the Bill we expressed the importance of public and targeted communication including the central role that drug experts - including people who use cannabis - need to play in the development and distribution of key messages and responsive fit-for-purpose information.

I'm writing to request some comms about the Personal Cannabis Use Amendment Bill for the ACT alcohol, tobacco and other drug sector. Within the ACT sector there are 38 specialist alcohol and other drug programs that see approximately 500 people who use drugs each day. These programs are delivered by a workforce of about 300 people. As you can imagine, it is essential that our sector has access to accurate information about, and an understanding of what the Personal Cannabis Use Amendment Bill is (and isn't). Our sector will be relied upon heavily to relay accurate information and to challenge misinformation about the legal status of cannabis (of which there is already a considerable amount in the community). We will be required to answer questions about the change in the legal status of cannabis every day.

FYI, both yesterday and today I have been contacted by the public, the media & our field nationally and internationally asking for information about the Bill.

Could you please advise when some comms about the Personal Cannabis Bill will be available for the ACT alcohol, tobacco and other drug sector? - when some comms will be available for the public? - and if there are processes to engage drug experts around developing these comms?

Thanks so much for your help,

Carrie

Sch 2.2(a)(ii)

Carrie Fowlie  
Chief Executive Officer  
Alcohol Tobacco and Other Drug Association ACT (ATODA)

email: [carrie@atoda.org.au](mailto:carrie@atoda.org.au)

post: PO BOX 7187 Watson ACT 2602

visit: 11 Rutherford Cres, Ainslie, ACT

phone: (02) 6249 6358

web: [www.atoda.org.au](http://www.atoda.org.au)

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing the non-government and government alcohol, tobacco and other drug (ATOD) sector in the Australian Capital Territory (ACT). ATODA seeks to promote health through the prevention and reduction of the harms associated with ATOD.

ATODA works collaboratively to provide expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, information and resources. ATODA is an evidence informed organisation that is committed to the principles of reconciliation, population health, human rights and social justice.

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**From:**"Dolan, Fiona" <Fiona.Dolan@act.gov.au>  
**Sent:**25/09/2019 4:57 AM  
**To:**"carrie@atoda.org.au" <carrie@atoda.org.au>  
**Cc:**"Engele, Sam" <Sam.Engele@act.gov.au>;"CMTEDDMedia" <CMTEDDMedia@act.gov.au>  
**Subject:**ACT Government TPs  
**Attachments:**8. Talking Points and QAs.DOCX

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Hi Carrie

Good speaking with you just now. As discussed, please find attached the ACT Government TPs re Private Member's Bill - Drugs of Dependence.

These are supplied in confidence, not for circulation.

Please let me know if you need anything further from me this afternoon, details below.

Thanks  
Fiona

Fiona Dolan | Executive Branch Manager

P: 02 6207 1757 | M: **Sch 2.2(a)(ii)**

Communications and Engagement | Chief Minister, Treasury and Economic Development Directorate

ACT Government

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[CMTEDDMedia@act.gov.au](mailto:CMTEDDMedia@act.gov.au) | CMTEDD media number: 0466 937 557



**Minister:**

**Date:** 23 September 2019

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**SUBJECT:** Potential passage of new cannabis legislation

**ISSUE:** The Private Member’s Bill proposes decriminalising cannabis cultivation, personal possession and use under certain circumstances in the ACT

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### **KEY MESSAGES**

- Personal possession of small amounts of cannabis will be effectively permitted for persons over 18 years old in the ACT if the Government’s amendments are agreed. It will make it easier for cannabis users to get support when they need it, without fear of criminal punishment.
- The ACT Government does not condone or encourage the recreational use of cannabis. Drugs such as cannabis present risks to people’s physical and mental health and can result in users finding themselves in dangerous or ill-advised situations which would not have occurred without drugs.
- We will continue to send a clear message to the community – particularly young people and other vulnerable groups – that cannabis is bad for your health and wellbeing.
- Existing ACT laws, in place since 1992, have allowed adults who grow two cannabis plants at home to be issued with an infringement notice by police, rather than being prosecuted as a criminal for the possession of small amounts of cannabis.
- The changes create an exception to the existing offences for persons 18 years and older that will allow them to have two plants at home and 50 grams of cannabis without committing an offence under ACT laws.
- The changes will also enable police resources, court resources and administrative processes that are currently focused on cannabis offences to be dedicated to the prosecution of more serious criminal activity.
- The changes will:
  - Allow the possession and use of up to 50 grams of cannabis, or up to 150 grams if the cannabis has been harvested but not yet dried.
  - Keep cultivation limits at two plants per person and no more than four plants per household. No hydroponics or artificial cultivation will be allowed.

- These changes apply only to people 18 years and older and only on private premises.
- It will still be illegal for people under 18 years old to cultivate, possess or use cannabis.

It will remain illegal:

- To sell, share or gift cannabis to another person
  - For people under 18 year of age to cultivate, possess or use cannabis (although Simple Cannabis Offence Notices will remain available for people under 18).
  - To have or use cannabis in a public place
  - To drive with any cannabis in your system
  - To smoke or vape cannabis near children
- The ACT is the first jurisdiction in Australia to take these progressive steps to removing penalties for personal possession of cannabis, but it is by no means blanket legislation. It will not create a new commercial industry like some states in the US or Canada.
  - The amendment strikes the right balance between our community's expectations and our community's safety, when it comes to small amounts of cannabis for adults in the ACT.

## QUESTIONS AND ANSWERS

### The Bill

#### **What does the Private Member's Bill do?**

- The intent of the Private Member's Bill (PMB) is to legalise the personal possession and use of small amounts of cannabis.
- The PMB attempted to legalise the possession and use of up to 50 grams of cannabis, and possession and cultivation of up to four cannabis plants by adults.

#### **What are the Government's amendments?**

- The Government has moved a number of amendments to add additional safeguards and address a number of practical issues with the Private Member's Bill.
- It will remain an offence to possess and cultivate small amounts of cannabis; however, an exception will mean the offence does not apply to anyone over 18 years of age. This is intended to deal with potential inconsistencies with Commonwealth laws.
- The Government will retain a limit of two cannabis plants per person will be allowed, rather than increasing it to four as was proposed in the PMB. Plants cannot be cultivated artificially and can only be grown at the owner's home in an area not accessible to the public.
- There will be a new offence for cultivating more than four plants at any one household. This is intended to prevent multi-resident homes being used as 'grow houses'.

- A safeguard will be added requiring that cannabis must be kept securely when not in an individual's possession, to restrict access by children and young people.
- Similarly, smoking near children will be prohibited through an offence involving a mental element rather than a 20 metre distance rule. This means that it will be an offence to knowingly use cannabis in a way that a person less than 18 years old is exposed to it.
- The Government's amendments also add a new distinction between dry cannabis and cannabis that has been freshly taken from a plant, acknowledging that cannabis from a personal plant will weigh more before it dries.

### **Will cannabis be legal in the ACT if this bill passes?**

- These reforms technically do not legalise cannabis. However, they effectively deliver the same outcome for individuals in possession of small amounts of cannabis or that grow 1-2 plants for personal use.
- The Government has taken this approach to manage potential issues that may arise regarding consistency with Commonwealth laws.

### **How does the bill interact with Commonwealth law?**

- No other Australian state or territory has attempted to legalise the personal possession of (non-medicinal) cannabis. As such there are no Australian legislative precedents to follow on these reforms.
- We consider the ACT has the right to legislate on this issue but there is a possibility that the Commonwealth will try to test the ACT's laws in the courts.
- The Government has taken steps to minimise this risk in the way we have structured our amendments, which is why there will still be an offence, but with an exception for persons over 18 years of age.

### **Are the laws relating to the supply of cannabis changing?**

- No. The laws remain the same.

## **Possession and use**

### **How are fresh and dry cannabis defined?**

- "Dried cannabis" is a specific type of cannabis in the Bill and refers to cannabis that is ready to be smoked. In the Bill it is defined as "cannabis that has been subjected to a drying process".
- Cannabis in other states, including freshly picked cannabis, falls under the general umbrella of "cannabis"

### **What will people need to do to meet the storage requirements?**

- People will be required to keep cannabis 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's amendments are not prescriptive with regards to how or in what cannabis should be stored. However, individuals in possession of cannabis will be required to take reasonable steps to ensure children do not have access to cannabis.
- This reflects existing community standards and expectations around similar substances such as prescription medication.

### **If someone is smoking in their backyard with a child inside the house less than 20 metres away, does this infringe the smoking rules?**

- The Government supports restrictions on smoking near children but knows a strict distance-based rule is impractical for most parts of Canberra. In many cases it will be impossible to know if there is a child within 20 metres.
- Instead, it will be an offence to knowingly use cannabis in a way that exposes a person less than 18 years old to smoke or vapour. An individual will be required to prove they took all reasonable steps to ensure the child was not exposed.

### **Will people be allowed to smoke cannabis on apartment balconies?**

- In most circumstances people will be able to smoke on apartment balconies if they meet the requirements of the legislation in regard of not smoking near children, and smoking in a private residential setting.

### **Does the bill change any of the current laws relating to drug driving?**

- No - the laws affecting drug driving remain the same. It will remain illegal to drive with cannabis in your system.
- The ACT has a zero-tolerance approach to drug-driving in line with other Australian jurisdictions.

### **How do police determine if someone is driving under the influence of cannabis?**

- ACT Policing's random roadside drug testing detects the 'presence' of a drug. Testing is a three-step process before the driver could be charged with an offence. The first two steps are undertaken by police on the roadside.
- First an oral test is used, followed immediately by a 'preliminary oral fluid analysis' using an instrument called a Drug Detection System.
- If the person is unable to provide a saliva swab, a blood test may be used. A third 'confirmative' positive laboratory test is required before a driver is charged.

## **Cultivation**

### **Why is the Government proposing to decrease the limit of personal plants for an individual from four plants as specified in the Private Member's Bill (PMB) to two plants?**

- A limit of two plants is consistent with the settings of the current Simple Cannabis Offence Notice (SCON) scheme which has been in operation since 1992 and is considered a reasonable limit for personal use.

### **Why does the Government consider that a limit is needed of four plants per household?**

- The PMB does not propose a limit of plants per household. However, the Government considers this creates a possibility that share houses or multiple resident dwellings could effectively be used as "grow houses".

### **How will police determine if cannabis is being grown at someone's usual residence?**

- This may come to the attention of police a range of different ways. ACT Policing does not comment on specific aspects of police tradecraft and practices for operational reasons.

### **Why won't the Government allow the hydroponic cultivation of cannabis?**

- The artificial cultivation of cannabis is currently prohibited, and the Private Members Bill did not propose changes in this regard.
- Noting that natural cultivation of cannabis is difficult in Canberra's climate, the Government does not support artificial cultivation to ensure excessive amounts of cannabis are not produced by individuals or households.

### **Why won't the Government allow grow clubs or other collective growing arrangements? Will the Government consider establishing a legal supply chain in the future?**

- The sharing of cannabis plants or plant material, whether for money or free, will still be an offence. Users participating in grow clubs would be at high risk of being with offences of supply.
- Furthermore, it is important that the owner of a plant is readily identifiable to ensure that limits on individual and household plants are being adhered to. In a grow club situation, it would be impractical to verify the owner of each individual plant, particularly if the owner does not reside where the plants are grown.

### **How will people acquire cannabis in order to cultivate it, if supply of seeds, plants and materials remains an offence?**

- The Government's amendments are aimed at reducing legal risks and providing a health response for individuals that already use cannabis, not encouraging its use.
- People that already grow cannabis will be able to do so with fewer risks but supplying cannabis and cannabis related materials will remain an offence. Changes are not being considered to this aspect of the legislation.

**If there are more than two people living in a household, how will police determine who four cannabis plants belong to?**

- This may depend on the details of the case in question but is not expected to be a common occurrence.
- The Government's amendments include a defence for individuals that may find themselves in this situation if they can prove they could not reasonably know more than four cannabis plants were being grown in the house.

**Engagement**

**What engagement has the Government had with ACT Policing on this Bill?**

- ACT Government officials and ACT Policing have met and discussed the proposed amendments.
- There has been a positive working relationship that comes from a shared commitment to improving safety in our community.
- Everyone acknowledges this is a complex issue and requires that we work together in the best interest of Canberrans.

**What engagement has the Government had with ACT Policing on this Bill?**

- The ACT proactively wrote to the Commonwealth Attorney General's Department and Director of Public Prosecutions on these amendments. Their current position is to decline to express a definitive view.

**Would the Government seek to intervene in policing matters or prosecutions if they arise?**

- Police officers have discretion in how they respond to possible offences. This is already the case with the current Simple Cannabis Offence Notice scheme.
- The Government does not intervene in police matters and doesn't interfere with the independence of the public prosecutors.
- Nonetheless we believe strongly in the issue of Territory rights and will consider any issues that arise on a case by case basis.

**From:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Sent:** 25/09/2019 10:02 AM  
**To:** "Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "Dolan, Fiona" <Fiona.Dolan@act.gov.au>; "Wright, Lincoln" <Lincoln.Wright@act.gov.au>; "Brennan, Bernadette" <Bernadette.Brennan@act.gov.au>  
**Subject:** RE: For approval: draft web content - cannabis legislation  
**Attachments:** Draft - web content - cannabis legislation.docx

UNCLASSIFIED Sensitive

Thanks, Julieanne.

I made a few changes in the attached mainly around some of the technical aspects of the changes.

I added one bit right at the top. It's clunky and we can change it, but I think we need to be really upfront with a statement about health risks and when the changes take effect, given the type of media coverage this has been receiving.

Happy to talk in the morning.

Thanks.  
-Andrew

---

**From:** Strachan, Julieanne <Julieanne.Strachan@act.gov.au>  
**Sent:** Wednesday, 25 September 2019 6:46 PM  
**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>  
**Cc:** Dolan, Fiona <Fiona.Dolan@act.gov.au>; Wright, Lincoln <Lincoln.Wright@act.gov.au>; Brennan, Bernadette <Bernadette.Brennan@act.gov.au>  
**Subject:** For approval: draft web content - cannabis legislation

UNCLASSIFIED Sensitive

Hi Andrew and Sam,

As previously flagged, I have drafted some content for our new webpage: [www.act.gov.au/cannabis](http://www.act.gov.au/cannabis)

The information is from the approved media release and talking points/ Q&As.

The style is quite different to the media release. The release was written for journalists and the web content is for ACT residents and in keeping with the tone we use on information pages of our website.

Kind regards,  
Julieanne

Julieanne Strachan | Strategic Communication Officer  
Ext: 79369

Communications and Engagement | Chief Minister, Treasury and Economic Development Directorate  
ACT Government

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**From:** "James, David" <David.James@act.gov.au>  
**Sent:** 20/09/2019 3:45 AM  
**To:** "AGDLO" <AGDLO@act.gov.au>; "CMCD DLO" <CMCDDLO@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Shaw, Bianca" <Bianca.Shaw@act.gov.au>; "Marson, Katrina" <Katrina.Marson@act.gov.au>; "Lee, Keegan" <Keegan.Lee@act.gov.au>  
**Subject:** RE: Confirming approach - A-G's speech  
**Attachments:** CM19 183860 1. Debate speech - Pettersson PMB - Drugs of Dependence Bill.docx

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All – copy of speech with Cmwlth sections marked up in yellow

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
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---

**From:** AGDLO <AGDLO@act.gov.au>  
**Sent:** Friday, 20 September 2019 12:33 PM  
**To:** CMCD DLO <CMCDDLO@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; James, David <David.James@act.gov.au>  
**Cc:** Engele, Sam <Sam.Engele@act.gov.au>; Shaw, Bianca <Bianca.Shaw@act.gov.au>; Marson, Katrina <Katrina.Marson@act.gov.au>; Lee, Keegan <Keegan.Lee@act.gov.au>  
**Subject:** RE: Confirming approach - A-G's speech

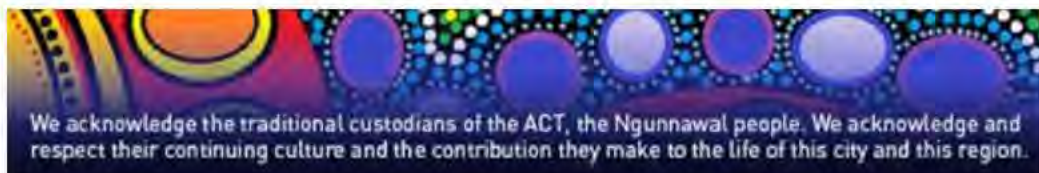
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Thank you Max

The writing team is Bianca, Katrina and Keegan (all cc'd in) but yes please keep me copied in on this. Thanks for helping sort this!

Regards

**Lewis Pope**  
Attorney-General Directorate Liaison Officer  
Justice and Community Safety Directorate | ACT Government  
Ph: 620 53044 | [AGDLO@act.gov.au](mailto:AGDLO@act.gov.au)



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**From:** Murdoch, Max <Max.Murdoch@act.gov.au> **On Behalf Of** CMCD DLO  
**Sent:** Friday, 20 September 2019 12:28 PM  
**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; James, David <David.James@act.gov.au>  
**Cc:** AGDLO <AGDLO@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>  
**Subject:** Confirming approach - A-G's speech



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Hi Andrew and David

I've confirmed the proposed approach with CMO and Lewis (AG DLO, cc'd).

Could we provide JACS a copy of the current draft of the CM's speech, noting the paragraphs/sections that refer to the intersection with Commonwealth Law will be removed and could form the base for the Attorney's speech.

It would be good if this could happen soon as possible to give JACS time to draft the speech. Happy for this to be emailed directly to JACS officers if we know who's going to be writing it, but could we please copy in Lewis when it goes across.

Lewis – appreciated if your team kept PCD in the loop with any developments regarding the CDPP's letter.

Happy to discuss if any questions

Thanks

Max

**Max Murdoch | Directorate Liaison Officer – Chief Minister's Office  
Office of the Chief Minister**

Chief Minister, Treasury and Economic Development Directorate & Major Projects Canberra | ACT Government

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**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

Madam Speaker, the ACT Government supports sensible drug law reform which reduces the harm drugs cause in our community and allows the resources of police, our courts and other agencies to be focused where they are most needed.

That's been the Government's starting point for considering this Private Members Bill – to achieve further drug law reform in the Territory if we can. This is not a perfect bill; as I will outline in a minute the Government believes it needs a series of significant amendments to better balance the community's interests and those of cannabis users.

But our approach has been to consult widely across government, with the Commonwealth and the AFP, to try and find ways to make it work – not to come up with a dozen reasons why it can't. I want to acknowledge the thoughtful input and advice we have received from all of the agencies who contributed to the Government's deliberations. This process has been a great example of what's possible when agencies bring their diverse perspectives and expertise together in a spirit of reform and goodwill.

There is a difference between supporting sensible drug reform and condoning drug use, and I want to make that very clear. **The ACT Government does not condone or encourage the recreational use of cannabis – or any other drug.** Using drugs presents risks to people's physical and mental health, and can result in users finding themselves in dangerous or ill-advised situations which would not have occurred without drugs. We will continue to send a clear message to the community – and particularly young people – that drugs are bad for your health and wellbeing.

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

Madam Speaker, that message has been delivered to young people and the broader community continuously for quite some time. Adults know drugs are bad for them – yet decisions are made to take drugs anyway. About 8 per cent of Canberrans report having used cannabis in the past 12 months. The prohibition approach to drug laws hasn't stopped, and will not stop, the use of drugs in the community.

In that context, governments have a responsibility to focus on minimising the harm drugs can cause in our community. The ACT has a long history of taking progressive steps and trying new ideas to achieve this. We were one of the first jurisdictions in Australia to decriminalise the personal possession of small amounts of cannabis, and our more recent work with event promoters to pilot pill testing at music festivals shows our ongoing commitment to reducing drug harm – instead of burying our heads in the sand about the fact it is happening.

We believe that taking further steps to reform the ACT's laws on cannabis can help address a number of harms. In particular, the stigma and risk of punishment associated with illegal drug use likely means some people are not seeking medical or other types of help when they need it. Removing penalties for the use and personal possession 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.

The impact on justice outcomes has also been a focus of our thinking. Currently, possessing even small amounts of cannabis for personal use can bring people into contact with the justice system, with lasting and serious consequences. The reforms proposed by this bill will help individuals avoid these negative outcomes. The Government also has a responsibility to focus our

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

justice resources where they're needed the most: on disrupting serious and organized crime, protecting our community from individuals or groups who might wish to do us harm, and helping women and children dealing with domestic and family violence. Removing penalties for small-scale, personal cannabis users means more of the ACT's police and court resources can be focused in these areas where they are needed most.

So the Government will be supporting this bill as long as the amendments we have proposed are supported by this chamber.

One of the most complex questions to resolve has been the interaction between what's proposed in this bill and the Commonwealth Criminal Code, which prohibits possession of any amount of cannabis outside of prescribed medicinal schemes. The Commonwealth law says that where there is a state or territory law which covers the same ground on drug matters, police and the courts may defer to that law in deciding how to deal with an offender. This is how the ACT and other jurisdictions have been able to decriminalise personal cannabis possession; it also provides the basis of our current Simple Cannabis Offence Notice scheme.

Through engagement with the Commonwealth, the AFP and our legal advisers it has become clear that removing an offence for cannabis possession from ACT law entirely would simply mean that the prohibitions on possession in the Commonwealth criminal code would then apply as the primary law here. This would potentially put Canberrans at risk of being arrested and prosecuted under Commonwealth law with limited defences available to them.

So the Government's proposed amendments will instead see the ACT maintain an offence in our law for cannabis possession while providing an exception for

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

people who are aged 18 or over, possess amounts of cannabis consistent with the bill and do so in the ACT.

In practice, this means there will no longer be any penalties – financial or legal – for adults who possess small amounts of cannabis for personal use in the ACT. But the approach we are proposing maintains an ACT-specific legal framework for dealing with cannabis possession, and therefore avoids the Commonwealth law being applied by default.

This does not entirely remove the risk of people being arrested under Commonwealth law, and we need to be upfront with the community about that. The ACT's legislation will provide a clear and specific legal defence if someone is prosecuted under the Commonwealth law. But unfortunately it cannot stop someone being arrested and charged if Commonwealth officials were minded to do so – the use of the defence provided by ACT law would then be a matter for the court to consider.

Now, there are many steps the Commonwealth must take between arresting someone and successfully prosecuting them in court. We hope that the time and resources of our federal police and courts will not be wasted pursuing individual cannabis users who are acting in line with ACT law.

Beyond this threshold issue of how the bill will interact with Commonwealth law, there are a number of other amendments the Government believes are needed to ensure the broader Canberra community is protected and ACT Policing are supported to do their important work as we implement the changes proposed here.

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

The Government proposes to amend the bill to reduce the number of cannabis plants an adult can possess to two, down from the four currently proposed. This is consistent with the settings of the current Simple Cannabis Offence Notice scheme and we believe it is a reasonable limit for personal use. Given the legislation limits personal possession of dried cannabis to 50 grams, allowing a larger number of plants would place the owner at risk of ending up with substantially more product than they are legally allowed to possess.

Similarly, we propose a new limit of a maximum of four cannabis plants per household, regardless of how many people live there. The Bill does not currently include a limit on the number of plants that would be allowed in any single home. This potentially gives rise to situations where sharehouses or other properties with multiple residents could be used as larger scale 'grow houses' by criminal groups. The Government believes it is critically important to maintain ACT Policing's ability to identify and disrupt criminal activity, including the commercial production of cannabis. Having an absolute limit on the number of plants that can be cultivated in a home is an important way to make clear the distinction between individual users and criminals cultivating cannabis for profit.

The Government will move further amendments to restrict where personal cannabis plants can be grown – something which is also not currently considered by the bill.

Our amendments will address two separate issues. First, cannabis plants will only be able to be legally cultivated on parts of a residential property not generally accessible by the public. This will prevent cannabis being grown in areas such as front yards, verges or community gardens. This restriction is intended to minimise access to cannabis plants by anyone other than the legal

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

owner. This would also have the effect of preventing cannabis being legally cultivated on commercial or community property. Second, cannabis plants will only be able to be legally cultivated by a person usually residing at that residential property. This is intended to assist in making clear who owns the cannabis plants, again helping the AFP make a distinction between personal users and criminals cultivating commercial crops.

Additional government amendments will clarify storage requirements, requirements in relation to smoking cannabis around children and deal with wet versus dry weights – we will step through each of these in the coming detail stage of the debate.

Finally, we propose to that the legislation take effect on a date declared by the Minister for Health, rather than taking immediate effect upon its passage by the Assembly. This will allow time to communicate to Canberrans what the new legal framework is, and make sure people understand the continuing restrictions and risks when it comes to using cannabis. Assuming the legislation passes in this sitting period, we propose the new laws will take effect on 1 December 2019.

---

I want to speak directly now to any adult in this community who uses cannabis or is considering doing so once this bill is passed.

If you need help with the physical or mental health effects of using cannabis, one phone call is all it takes - (02) 5124 9977.

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

All referrals and initial contact with Canberra Health Services' Alcohol and Other Drugs Services can be made by calling this 24 Hour Helpline which is staffed by professional workers from the Government's Alcohol and Drug Program.

All residents of the ACT who think they, or a family member or friend may have an alcohol or drug problem can use this service.

If you don't want to talk to someone but want to find out more the following sites may be of help: <https://health.act.gov.au/services/alcohol-and-drug-services> and the Alcohol Tobacco and Other Drugs Association ACT Services Directory at <http://www.atoda.org.au/publications/directory/>

I would also add, that anyone who has concerns about their substance use, cannabis or any other, can also talk to their GP or other healthcare provider.

If you possess amounts of cannabis beyond those authorised by this legislation, you can be charged and prosecuted.

If you supply cannabis to other people in any form, you can be charged and prosecuted.

If you drive while you are under the influence of cannabis or have cannabis in your system, you can be charged and prosecuted.

Using cannabis will still carry risks, even after this legislation takes effect. Make sure you understand all the ACT's relevant laws so that you can do the right thing.



**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***  
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Madam Speaker, Canberrans are open-minded people. We are a community that embraces possibility and has often been prepared to go first in attempting progressive reforms that move the national agenda forward. Drug law reform to support harm minimisation is an important agenda, and removing penalties for personal possession and use of cannabis is another way we can progress it.

This is an area of the law with lots of complexities and interactions. We acknowledge there may be amendments we need to make to this legislation in the future, or further related reforms we need to pursue, to fully deliver on the community's expectations and minimise associated harms.

That is why the Government has committed to undertake a full review of the impacts of these reforms within three years of them taking effect. We are also very open to further engagement with the Commonwealth on amendments which could be made – either of their end or ours – to provide more certainty on how our legislative frameworks will interact going forward.

But fundamentally, Madam Speaker, we support sensible progressive drug law reform and we know a significant majority of the Canberra community does too. So we are going to get on with delivering it through this bill.

**Debate speech – *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

**From:**"Mehrton, Andrew"

**Sent:**17/09/2019 10:01 AM

**To:**"Nock, Thomas" <Thomas.Nock@act.gov.au>;"CMCD DLO" <CMCDDLO@act.gov.au>

**Cc:**"James, David" <David.James@act.gov.au>;"Engele, Sam" </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6d22608f751d4b2e814db0281b6b2c63-Engele, Sam>

**Subject:**Tabling statement for Drugs of Dependence response

**Attachments:**Tabling Statement Govt Response.docx

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Hi Tom and Max,

A brief speech for tabling of the Govt Response to the inquiry into the Drugs of Dependence PMB is attached.

Pretty straight-bat – just outlining the government's response. Let me know if you're after some more content in there or anything else.

Cheers.

-Andrew

**ANDREW MEHRTON** | Executive Branch Manager

Social Policy and Commonwealth State Relations | Policy and Cabinet Group

Chief Minister, Treasury and Economic Development Directorate | **ACT Government**

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**From:** "James, David" <David.James@act.gov.au>  
**Sent:** 13/09/2019 7:31 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>; "Dolan, Fiona" <Fiona.Dolan@act.gov.au>  
**Subject:** RE: Drugs of Dependence Timelines

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Draft Detailed Timelines for Cannabis Subs

Tuesday September 17	Green Amendments Cab Sub to CMO
Wednesday September 18	Green Amendments Cab Sub on circulation
Thursday September 19	CM to table Government Response To Committee Inquiry (Speech needed/Media?)
Friday September 20	Green Amendments Cab Sub to be lodged
Monday September 23	Cabinet Consideration of Greens Amendments Cab Sub
Wednesday September 25	PMB to be debated. Website goes live. (Speech/amendments/media)
Mid October	Legislation notified (usually 2-3 weeks after Assembly passes) – deferral period commences?
October - November	Guidance material posted as notifiable instrument
Mid April 2020	6 months deferral period ends. Legislation commences? (could be earlier)

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
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**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Sent:** Friday, 13 September 2019 1:22 PM  
**To:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Cc:** CMCD DLO <CMCDDLO@act.gov.au>; Paviour, Mark <Mark.Paviour@act.gov.au>; ODonoghue, Yersheena <Yersheena.ODonoghue@act.gov.au>; James, David <David.James@act.gov.au>  
**Subject:** RE: Drugs of Dependence Timelines

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Thanks, Tom. No worries.  
-Andrew

---

**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Sent:** Friday, 13 September 2019 1:21 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Cc:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Paviour, Mark <[Mark.Paviour@act.gov.au](mailto:Mark.Paviour@act.gov.au)>; ODonoghue, Yersheena <[Yersheena.ODonoghue@act.gov.au](mailto:Yersheena.ODonoghue@act.gov.au)>; James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Subject:** Drugs of Dependence Timelines

Hi Andrew,

Just confirming timelines of a couple of milestones coming up as we approach debate day, as discussed this morning:

Thursday 19 September (after question time)	Tabling of Government Response to HACS Inquiry <ul style="list-style-type: none"><li>• Should be prepared for questions from media on proposed gov amendments.</li></ul>
Monday 23 September	Cabinet considers position on Greens Amendments via an Assembly Business Paper.
Wednesday 25 September	Debate

Cheers,

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:** "James, David" <David.James@act.gov.au>  
**Sent:** 13/09/2019 6:51 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:** "Engele, Sam" <Sam.Engele@act.gov.au>  
**Subject:** FW: In confidence - FW: Greens Amendments - Drugs of Dependence Bill

UNCLASSIFIED

Andrew – JACS advice on the amendments – Health’s should come on Monday – Marc just needs to get clearance. – I told him about the sub

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
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---

**From:** Lee, Keegan <Keegan.Lee@act.gov.au>  
**Sent:** Friday, 13 September 2019 4:30 PM  
**To:** James, David <David.James@act.gov.au>; Nixon, Erica (Health) <Erica.Nixon@act.gov.au>; Emerson, Marc (Health) <Marc.Emerson@act.gov.au>; Sparke, Megan <Megan.Sparke@act.gov.au>; Lumley, Cassandra <Cassandra.Lumley@afp.gov.au>  
**Cc:** Wilkie, Rachel <Rachel.Wilkie@act.gov.au>; Marson, Katrina <Katrina.Marson@act.gov.au>; Shaw, Bianca <Bianca.Shaw@act.gov.au>  
**Subject:** RE: In confidence - FW: Greens Amendments - Drugs of Dependence Bill

UNCLASSIFIED

Dear David,

Please find below LPP advice about the proposed amendments:

Greens Amendment Number	General Effect	Position/Comments
1	Amends commencement provisions to only allow commencement of the amendments after guidance material required to be	Subject to amendment 5 (see comments below) – suggest delayed commencement of up to 12 months – this timeframe would depend primarily on how readily Health could produce guidance material and obtain GSO advice.

	published under the Act is published (see Greens amendment 5)	
2	Insert an Objects section into the Act stating the objects include promoting a harm minimisation approach to Drugs of Dependence.	This is primarily a matter for ACT Health to consider. Provided that the Objects do not affect the existing or proposed offences, LPP does not oppose this.
3	Insert definition of 'cultivates' to be same as in s 615 <i>Criminal Code</i> .	<p>Greens' amendments describe s 162(2) of the PMB as 'new' when (2) mirrors the current provision in the DODA. The PMB amendments lie in (1) which the Greens' amendments do not refer to.</p> <p>The Greens' proposed amendment to s 162(2) would mean that artificial (which includes hydroponic) cultivation would be treated the same as non-artificial cultivation.</p> <p>It would also mean that a Simple Cannabis Offence Notice (under s 171A) could be given to a person who artificially cultivates cannabis.</p> <p>If this amendment is accepted, the note to proposed s 171A(7) would need to be amended.</p> <p>Whether this proposed amendment should be accepted turns on a policy decision about whether artificial cultivation should be treated as more serious than non-artificial cultivation. ACT Policing has indicated their preference is to retain the distinction in seriousness, because artificial cultivation can manipulate the yield of cannabis (for example, by generating multiple growths per year out of one plant) and can manipulate the strength of THC (and is generally the kind of cannabis organisations would seek to move). ACTP also expressed concerns that artificial</p>

		<p>cultivation (e.g. relying on hydroponics) can promote electricity theft. If the decision is made to treat artificial cultivation as more serious than non-artificial cultivation, this amendment should be opposed.</p> <p>This proposed amendment is related to Greens' amendment 8, and if this amendment were accepted, amendment 8 would also have to be accepted. Likewise, if this were opposed, amendment 8 should also be opposed.</p>
4	Provides for a higher permissible possession amount if the person has a certain 'relevant diagnosis'.	This amendment is a matter for Health for comment/input.
5	Government must publish guidance material on the legal and health implications of the Bill's amendments.	<p>Guidance material regarding the health implications is a matter for Health for comment/input.</p> <p>Guidance material on the legal implications of the Bill's amendment should be prepared in consultation with GSO. LPP could provide input on the legal implications to guidance material produced by Health following GSO advice,</p>
6	Establishment of a Cannabis Advisory Council to provide advice to the Minister (for Health) on matters of Cannabis policy.	This amendment a matter for Health for comment/input.
7	Institute a review of the amendments made to the Act	LPP notes the DODA is administered by the Minister for Health and the Health Directorate; on the basis that a review would be conducted within the Health portfolio, LPP does not see issue with a review. If the review were to fall to LPP, additional



	after 3 years of operation.	resources would be required.
8	Aims to treat artificial cultivation (hydroponics) consistently with non-artificial cultivation.	<p>This proposed amendment seeks to treat artificial cultivation consistently with non-artificial cultivation.</p> <p>This proposed amendment would mean cultivation (artificial or otherwise) of 1 – 4 cannabis plants would no longer be an offence under s 618(2) of the Criminal Code. (It would however still be an offence under s 162(1) of the DODA for a person under 18 to cultivate (artificially or otherwise) 1-4 cannabis plant, though such a person could receive a SCON).</p> <p>Like proposed amendment 3, this amendment turns on a policy decision about whether artificial cultivation should be treated as more serious than non-artificial cultivation. As noted above, ACT Policing has indicated their preference is to retain the distinction in seriousness. See above for further detail.</p>

Yours faithfully,

**Keegan Lee | A/g Director**

**Criminal Law Team**

Phone 02 6207 5244 | Fax 02 6205 0937

Legislation, Policy and Programs | Justice and Community Safety Directorate | ACT Government

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**From:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>

**Sent:** Thursday, 12 September 2019 9:16 AM

**To:** Nixon, Erica (Health) <[Erica.Nixon@act.gov.au](mailto:Erica.Nixon@act.gov.au)>; Emerson, Marc (Health) <[Marc.Emerson@act.gov.au](mailto:Marc.Emerson@act.gov.au)>; Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>; Sparke, Megan <[Megan.Sparke@act.gov.au](mailto:Megan.Sparke@act.gov.au)>; Lumley, Cassandra <[Cassandra.Lumley@afp.gov.au](mailto:Cassandra.Lumley@afp.gov.au)>

**Cc:** Wilkie, Rachel <[Rachel.Wilkie@act.gov.au](mailto:Rachel.Wilkie@act.gov.au)>

**Subject:** In confidence - FW: Greens Amendments - Drugs of Dependence Bill

UNCLASSIFIED

All – FYI in confidence - greens amendments and CMTEDD initial response – any other thoughts let me know today if you can.

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division

Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Sent:** Wednesday, 11 September 2019 5:25 PM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Subject:** FW: Greens Amendments - Drugs of Dependence Bill

UNCLASSIFIED

FYI

---

**From:** Mehrton, Andrew  
**Sent:** Wednesday, 11 September 2019 5:24 PM  
**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Cc:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>  
**Subject:** RE: Greens Amendments - Drugs of Dependence Bill

UNCLASSIFIED

Thanks, Tom.

We'll start updating the debate pack and I'll set up a time on Friday morning to discuss.

At a quick glance:

- Amendment 5 – I see the intent is to ensure there's guidance published before the changes commence but it's a bit unusual to release that sort of guidance via the legislation register.
- Amendment 6 - I think we've previously said the Advisory Council is unnecessary given the scope of the reforms;
- Amendment 7 – Government has committed to a review of the changes, so no major issue there. Previously there has been a view it wasn't necessary to embed it in legislation, but I don't think there's a particularly strong view here one way or the other.

Regards.  
-Andrew

---

**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Sent:** Wednesday, 11 September 2019 5:04 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Cc:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>  
**Subject:** Greens Amendments - Drugs of Dependence Bill

Hi Andrew,

See attached Greens amendments to the Drugs of Dependence Amendment Bill.

On initial glance the Government will not be supportive of Greens amendment number 4 and tomorrow we will consider all other amendments. Could your team start putting these amendments into the debate pack and provide advice on each?

And can we set up a catch up on Friday morning to discuss? I'm free any time Friday morning.

Thanks,

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

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**From:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Sent:** 12/09/2019 7:40 AM  
**To:** "Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Cc:** "CMCD DLO" <CMCDDLO@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Subject:** RE: Status of the SCON

UNCLASSIFIED

Hi Tom,

Sorry for the time taken to get back to you – we're making sure we get JACS and/or Health to confirm advice on these issues.

The interpretation you've set out is correct, with one clarification. The use of SCONs will continue to be at the discretion of police, as they currently are. That is offenders "may" receive a SCON, rather than "will" receive a SCON.

Regards.  
-Andrew

---

**From:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Sent:** Wednesday, 11 September 2019 9:38 AM  
**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** CMCD DLO <CMCDDLO@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>  
**Subject:** Status of the SCON

Hi Andrew,

We have got a question about the status of the Simple Cannabis Offence Notice as it would operate in the Governments amendments. Regarding possession (as the way I've read it there are parallel provisions for cultivation of 1-2 plants) I understand the legislation would operate as follows:

Possession:

*Proposed gov amendment 5 amends proposed s 171AA – Possessing Cannabis Offence.*

*Sub-section 171AA(1) states "A person commits an offence if the person possesses: (a) 50g of less of dried cannabis." Sub-section 171AA(3) operates so the offence does not apply if the person (a) is 18 years or older; and (b) possesses the cannabis in the ACT.*

*Proposed gov amendment 8 amends the definition of simple cannabis offence notice in clause 7 of the PMB (sub-section 171A(7)), stating that a Simple Cannabis Offence Notice applies to offences in sub-section 171AA(1).*

*On possession - A Simple Cannabis Offence Notice remains for offences against sub-section 171AA(1). If the offender is not exempt from 171AA(1) by operation of 171AA(3) the offender will receive a SCON.*

If you could fact check that and get back to me that would be great.

Cheers,

Tom

**Tom Nock** | Adviser  
**Office of Andrew Barr MLA**  
Chief Minister  
Treasurer  
Minister for Tertiary Education  
Minister for Social Inclusion and Equality

Minister for Tourism and Special Events  
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Member for Kurrajong  
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**From:**"Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Sent:**10/09/2019 11:38 PM  
**To:**"Meherton, Andrew" <Andrew.Meherton@act.gov.au>  
**Cc:**"CMCD DLO" <CMCDDLO@act.gov.au>;"Engele, Sam" <Sam.Engele@act.gov.au>  
**Subject:**Status of the SCON

Hi Andrew,

We have got a question about the status of the Simple Cannabis Offence Notice as it would operate in the Governments amendments. Regarding possession (as the way I've read it there are parallel provisions for cultivation of 1-2 plants) I understand the legislation would operate as follows:

Possession:

*Proposed gov amendment 5 amends proposed s 171AA – Possessing Cannabis Offence.*

*Sub-section 171AA(1) states "A person commits an offence if the person possesses: (a) 50g of less of dried cannabis."  
Sub-section 171AA(3) operates so the offence does not apply if the person (a) is 18 years or older; and (b) possesses the cannabis in the ACT.*

*Proposed gov amendment 8 amends the definition of simple cannabis offence notice in clause 7 of the PMB (sub-section 171A(7)), stating that a Simple Cannabis Offence Notice applies to offences in sub-section 171AA(1).*

*On possession - A Simple Cannabis Offence Notice remains for offences against sub-section 171AA(1). If the offender is not exempt from 171AA(1) by operation of 171AA(3) the offender will receive a SCON.*

If you could fact check that and get back to me that would be great.

Cheers,

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

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**From:** "Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Sent:** 09/09/2019 1:53 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:** "Engele, Sam" <Sam.Engele@act.gov.au>; "CMCD DLO" <CMCDDLO@act.gov.au>  
**Subject:** Supp Explanatory Statement - Drugs of Dependence Bill

Hi Andrew,

As briefly discussed could you please investigate amending the Supplementary Explanatory Statement for the Drugs of Dependence (Amendment) Bill along the following lines:

- Michael Pettersson's original Explanatory Statement includes the following paragraph about the Bill's interaction with Commonwealth law:

***"Interaction with Federal Law:***

*This Bill does not affect the prosecution or enforcement of Commonwealth and Territory laws relating to the sale or trafficking of cannabis, including laws prohibiting the possession of amounts of cannabis over 50g and the cultivation of 5 or more cannabis plants."*

Could we please insert a line or paragraph in the Supplementary Explanatory Statement stating that this is not the Government's view? And explain what the Government's view/intention is in regard to the Bill's interaction with Commonwealth law?

Understand there are certain parameters around what can go in explanatory statements, especially statements tabled by the Government. Any advice on how to achieve the above is appreciated.

Thanks,

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

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Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

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**From:** "Engele, Sam"

**Sent:** 05/09/2019 8:11 AM

**To:** "Nock, Thomas" <Thomas.Nock@act.gov.au>

**Cc:** "Cook, Michael" <Michael.Cook@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "CMCD DLO" <CMCDDLO@act.gov.au>

**Subject:** RE: Drugs of Dependence - Explanatory Statements - draft email

UNCLASSIFIED

Hi Tom

Coming back to you on the question about amending Mr Pettersson's explanatory statement once the bill has been passed.

PCO advise that there is no precedent for issuing a revised Explanatory Statement (ES) after a bill has been debated and passed. The ES is provided for Legislative Assembly Members to have information for debate of the bill (and separately any amendments), so the ES to the Government amendments are only intended to explain how those amendments change the PMB, rather than provide an explanation to the final Act. The [Motor vehicle accident ES](#) is a good example – it had both government and private member amendments.

This isn't normally an issue with opposition PMB's. As the approach (when there are substantive amendments) has normally been to vote down the opposition PMB and introduce a Government Bill (and associated ES) – the Government could also do this with the Pettersson PMB but we would need a bit more time to draft a new holistic Government Bill.

Noting the objective is to provide a single and clear explanation of the operation of the final consolidated Act, PCO advised that they could add a 'note link' to the Act that provides details on the intent and operation of the final Act on the legislation register. It couldn't be called an ES and also could not contain political content or reference to communication strategies etc – PCO would want to vet the content of the note. But this process could happen concurrently with notification of the Act which usually occurs a couple of weeks after the Bill is passed in the Assembly.

As an alternative suggestion we could work with Comms to prepare a "guide to the Act" which could be developed using an easy to digest format (such as including illustrative examples) and then make this accessible on the Government web site used for communicating the new legislation.

Let me know if you want us to progress any of the above, and happy to discuss further.

Sam

---

**From:** Engele, Sam

**Sent:** Wednesday, 4 September 2019 5:20 PM

**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>

**Cc:** Cook, Michael <[Michael.Cook@act.gov.au](mailto:Michael.Cook@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>

**Subject:** RE: Drugs of Dependence - Explanatory Statements

UNCLASSIFIED

Thomas,

That is a good question to which, off the top of my head, I don't know the answer. The ES links to the Bill or amendments rather than the final Act, so the Drugs of Dependence PMB ES is already published – I'll have to check whether it can be amended.



I'll task our Assembly team to prepare some advice on whether it is possible, and if so the procedural steps.

Will come back to you tomorrow – probably in the afternoon if we have to check with the clerk.

Sam

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**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>

**Sent:** Wednesday, 4 September 2019 4:46 PM

**To:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>

**Cc:** Cook, Michael <[Michael.Cook@act.gov.au](mailto:Michael.Cook@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>

**Subject:** Drugs of Dependence - Explanatory Statements

Hi Sam,

I was hoping you could provide some advice around amending the explanatory statement of the Drugs of Dependence Amendment Private Member's Bill - assuming the Government's amendments to the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* are agreed to by the Assembly, the Explanatory Statement to the Bill as tabled by Mr Pettersson will be inconsistent with the Bill as amended – Mr Pettersson's ES is here - [https://legislation.act.gov.au/View/es/db\\_59297/current/PDF/db\\_59297.PDF](https://legislation.act.gov.au/View/es/db_59297/current/PDF/db_59297.PDF) An inconsistent ES would compromise the complex comms campaign the government would need to undertake on passage of the Bill.

As I understand it, the Government will table an explanatory statement to the Government Amendments, but this statement does not replace the original ES as tabled by Mr Pettersson. If the Bill were a Government bill I understand we would simply table an amended explanatory statement incorporating the effect of the agreed amendments.

Could you please provide advice on if, and how, we can amend the ES of the private members bill to reflect the contents of the Bill as passed? I know this is a bit tricky since we will not know the final composition of the bill until after it is passed – any advice on this matter is appreciated.

Thanks,

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

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Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

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**From:** "Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>  
**Sent:** 25/09/2019 7:11 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Wright, Lincoln" <Lincoln.Wright@act.gov.au>  
**Subject:** Content for the website: act.gov.au/cannabis

UNCLASSIFIED

Hi Andrew and Sam,  
A webpage was created (in line with the COAP) in the event the amendments were passed. The address is [www.act.gov.au/cannabis](http://www.act.gov.au/cannabis)  
I'm drafting the content and will have it to you tonight.  
The information will be drawn from the approved media release and talking points so there shouldn't be any surprises.  
Kind regards,  
Julieanne

---

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Sent:** Wednesday, 25 September 2019 4:34 PM  
**To:** Emerson, Marc (Health) <Marc.Emerson@act.gov.au>; Nixon, Erica (Health) <Erica.Nixon@act.gov.au>; Lumley, Cassandra <Cassandra.Lumley@afp.gov.au>; Lee, Keegan <Keegan.Lee@act.gov.au>; Martin, Victor <Victor.Martin@act.gov.au>; Greenland, Karen <Karen.Greenland@act.gov.au>; James, David <David.James@act.gov.au>; Wilkie, Rachel <Rachel.Wilkie@act.gov.au>; Dolan, Fiona <Fiona.Dolan@act.gov.au>; Strachan, Julieanne <Julieanne.Strachan@act.gov.au>  
**Subject:** Drugs of Dependence amendments passed

UNCLASSIFIED

Hi everyone,  
You may have seen that the Drugs of Dependence amendments were passed in the Legislative Assembly (and are generating quite a bit of national attention). The debate went very smoothly.  
I wanted to say a quick thank you to everyone who has been involved in this work for the last nine or so months. We were all pretty green going in to this and at times it looked like it might all go up in smoke, but I feel like we're budding experts now.

There's a bit more work to be done between now and commencement, which is likely to be 31 January 2020. This includes preparation of the guidance material per the Greens' amendments, which will become a Notifiable Instrument.

I'll reconvene our working group in the next week or so we can touch base on comms as well as the process for preparing guidance material.

Thanks again.  
-Andrew

**ANDREW MEHRTON** | Executive Branch Manager  
Social Policy and Commonwealth State Relations | Policy and Cabinet Group  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)  
Phone: 02 6205 8507 | email: [andrew.mehrton@act.gov.au](mailto:andrew.mehrton@act.gov.au)

**From:** "James, David" <David.James@act.gov.au>

**Sent:** 06/09/2019 7:26 AM

**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>

**Subject:** FW: Cannabis enquiries

UNCLASSIFIED

FYI

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division

Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(i)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)

**Chief Minister, Treasury and Economic Development Directorate**

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---

**From:** Murdoch, Max <Max.Murdoch@act.gov.au> **On Behalf Of** CMCD DLO

**Sent:** Friday, 6 September 2019 5:24 PM

**To:** James, David <David.James@act.gov.au>

**Subject:** RE: Cannabis enquiries

UNCLASSIFIED

Thanks David.

I've been advised the AG will want to speak but MPES will not. Waiting to hear from Health.

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**From:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>

**Sent:** Friday, 6 September 2019 2:57 PM

**To:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>

**Subject:** RE: Cannabis enquiries

UNCLASSIFIED

Thanks Max

Other directorates may need a steer on what to say in their speeches as soon as practicable

Yes – I'm preparing talking points on the amendments

Thanks on the heads up re the timing of debate

Ta D

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division

Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)

**Chief Minister, Treasury and Economic Development Directorate**

Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Murdoch, Max <[Max.Murdoch@act.gov.au](mailto:Max.Murdoch@act.gov.au)> **On Behalf Of** CMCD DLO  
**Sent:** Friday, 6 September 2019 2:44 PM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Subject:** Cannabis enquiries

UNCLASSIFIED

Hi David

In response to your questions earlier:

1. Most likely to be called in the second sitting week. First order of business on the Wednesday.
2. CMO will manage the speech for the CM. I'll confirm with relevant DLOs but I assume all co-sponsoring Minsiters would want to speak. I also understand the team is pulling together a table with talking points against all the amendments. Is that correct?
3. No action required regarding relationship with the committee.

I understand Tom's going to meet with Andrew and Sam this afternoon. Possibly at 3

Feel free to call if any questions

Thanks  
Max

**From:**"James, David" <David.James@act.gov.au>

**Sent:**10/09/2019 5:23 AM

**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>;"Engele, Sam" <Sam.Engele@act.gov.au>

**Cc:**"Nock, Thomas" <Thomas.Nock@act.gov.au>;"Emerson, Marc (Health)" <Marc.Emerson@act.gov.au>;"Nixon, Erica (Health)" <Erica.Nixon@act.gov.au>;"Greenland, Karen" <Karen.Greenland@act.gov.au>;"Lee, Keegan" <Keegan.Lee@act.gov.au>;"Wilkie, Rachel" <Rachel.Wilkie@act.gov.au>;"Croke, Leesa" <Leesa.Croke@act.gov.au>;"Lumley, Cassandra" <Cassandra.Lumley@afp.gov.au>

**Subject:**FW: SCRUTINY REPORT 34 Drugs of Dependence Act Amendments

**Attachments:**Report 34.pdf

UNCLASSIFIED

Dear all

The Legal Scrutiny Committee had no comments on the Government's proposed amendments to the Drugs of Dependence Act – see p12 of attachment

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division

Phone: (02) 6207 2002 | Mobile **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)

**Chief Minister, Treasury and Economic Development Directorate**

Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

**From:**"Nock, Thomas" <Thomas.Nock@act.gov.au>

**Sent:**08/09/2019 11:42 PM

**To:**"Engele, Sam" <Sam.Engele@act.gov.au>;"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:**"CMCD DLO" <CMCDDLO@act.gov.au>

**Subject:**Cannabis Debate Speech

**Attachments:**Debate speech - Pettersson PMB - Drugs of Dependence Bill v1.1 9 September 9.30am.docx

Hi Sam and Andrew,

Thanks for the catch-up last week, it was very helpful to get my head around the area and the work you are doing.

As discussed see attached the CM's debate speech for the Drugs of Dependence Amendment PMB. It was drafted by Jen – it would be great if your teams could look over it to fact check and sense check it/add anything you think is needed.

Cheers,

Tom

**Tom Nock** | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:** "Mehrton, Andrew"  
**Sent:** 10/09/2019 11:46 PM  
**To:** "Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Cc:** "CMCD DLO" <CMCDDLO@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Subject:** RE: Status of the SCON

UNCLASSIFIED

Hi Tom,  
Will do.  
Cheers.  
-Andrew

---

**From:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Sent:** Wednesday, 11 September 2019 9:38 AM  
**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** CMCD DLO <CMCDDLO@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>  
**Subject:** Status of the SCON

Hi Andrew,

We have got a question about the status of the Simple Cannabis Offence Notice as it would operate in the Governments amendments. Regarding possession (as the way I've read it there are parallel provisions for cultivation of 1-2 plants) I understand the legislation would operate as follows:

Possession:

*Proposed gov amendment 5 amends proposed s 171AA – Possessing Cannabis Offence.*

*Sub-section 171AA(1) states "A person commits an offence if the person possesses: (a) 50g of less of dried cannabis." Sub-section 171AA(3) operates so the offence does not apply if the person (a) is 18 years or older; and (b) possesses the cannabis in the ACT.*

*Proposed gov amendment 8 amends the definition of simple cannabis offence notice in clause 7 of the PMB (sub-section 171A(7)), stating that a Simple Cannabis Offence Notice applies to offences in sub-section 171AA(1).*

*On possession - A Simple Cannabis Offence Notice remains for offences against sub-section 171AA(1). If the offender is not exempt from 171AA(1) by operation of 171AA(3) the offender will receive a SCON.*

If you could fact check that and get back to me that would be great.

Cheers,

Tom

**Tom Nock** | Adviser  
**Office of Andrew Barr MLA**  
Chief Minister  
Treasurer  
Minister for Tertiary Education  
Minister for Social Inclusion and Equality  
Minister for Tourism and Special Events  
Minister for Trade, Industry and Investment  
Member for Kurrajong  
P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)





**From:** "Mehrton, Andrew"  
**Sent:** 12/09/2019 7:40 AM  
**To:** "Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Cc:** "CMCD DLO" <CMCDDLO@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Subject:** RE: Status of the SCON

UNCLASSIFIED

Hi Tom,

Sorry for the time taken to get back to you – we're making sure we get JACS and/or Health to confirm advice on these issues.

The interpretation you've set out is correct, with one clarification. The use of SCONs will continue to be at the discretion of police, as they currently are. That is offenders "may" receive a SCON, rather than "will" receive a SCON.

Regards.  
-Andrew

---

**From:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Sent:** Wednesday, 11 September 2019 9:38 AM  
**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** CMCD DLO <CMCDDLO@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>  
**Subject:** Status of the SCON

Hi Andrew,

We have got a question about the status of the Simple Cannabis Offence Notice as it would operate in the Governments amendments. Regarding possession (as the way I've read it there are parallel provisions for cultivation of 1-2 plants) I understand the legislation would operate as follows:

Possession:

*Proposed gov amendment 5 amends proposed s 171AA – Possessing Cannabis Offence.*

*Sub-section 171AA(1) states "A person commits an offence if the person possesses: (a) 50g of less of dried cannabis." Sub-section 171AA(3) operates so the offence does not apply if the person (a) is 18 years or older; and (b) possesses the cannabis in the ACT.*

*Proposed gov amendment 8 amends the definition of simple cannabis offence notice in clause 7 of the PMB (sub-section 171A(7)), stating that a Simple Cannabis Offence Notice applies to offences in sub-section 171AA(1).*

*On possession - A Simple Cannabis Offence Notice remains for offences against sub-section 171AA(1). If the offender is not exempt from 171AA(1) by operation of 171AA(3) the offender will receive a SCON.*

If you could fact check that and get back to me that would be great.

Cheers,

Tom

**Tom Nock** | Adviser  
**Office of Andrew Barr MLA**  
Chief Minister  
Treasurer  
Minister for Tertiary Education  
Minister for Social Inclusion and Equality

Minister for Tourism and Special Events  
Minister for Trade, Industry and Investment  
Member for Kurrajong  
P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:**"Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:**17/09/2019 2:05 AM  
**To:**"Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Subject:**Request for briefing - Mr Pettersson - govt amendments to Drugs of Dependence Bill

UNCLASSIFIED

Hi Sam

Mr Pettersson has requested briefing on legal matters arising from the government to his PMB.

Would you/Andrew and someone from GSO be available early next week – perhaps Monday? 30 mins would be fine

Thanks  
Max

**Max Murdoch | Directorate Liaison Officer – Chief Minister's Office**  
**Office of the Chief Minister**

Chief Minister, Treasury and Economic Development Directorate & Major Projects Canberra | ACT Government  
☎ (02) 6205 3029 | ✉ [CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au) | ACT Legislative Assembly, 196 London Circuit Canberra City ACT 2601

**From:** "Junakovic, Georgia" <Georgia.Junakovic@act.gov.au>  
**Sent:** 18/09/2019 4:33 AM  
**To:** "CMCD DLO" <CMCDDLO@act.gov.au>; "James, David" <David.James@act.gov.au>  
**Cc:** "Darville, Pam" <Pam.Darville@act.gov.au>; "Meherton, Andrew" <Andrew.Meherton@act.gov.au>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS  
**Attachments:** 20190918 1431 Government Response to the HACS Committee Inquiry - Drugs of Dependence - TS.pdf, 20190918 1431 Government Response to the HACS Committee Inquiry - Drugs of Dependence.pdf

UNCLASSIFIED

Hi

Final copies that will be printed for tabling are attached for your records.

Georgia

---

**From:** Murdoch, Max <Max.Murdoch@act.gov.au> **On Behalf Of** CMCD DLO  
**Sent:** Wednesday, 18 September 2019 1:01 PM  
**To:** James, David <David.James@act.gov.au>; Junakovic, Georgia <Georgia.Junakovic@act.gov.au>  
**Cc:** Darville, Pam <Pam.Darville@act.gov.au>; Meherton, Andrew <Andrew.Meherton@act.gov.au>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

Hi David, Georgia

Final tabling statement is attached. Only minor edits to the version provided.

Thanks  
Max

---

**From:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Sent:** Wednesday, 18 September 2019 12:30 PM  
**To:** Junakovic, Georgia <[Georgia.Junakovic@act.gov.au](mailto:Georgia.Junakovic@act.gov.au)>  
**Cc:** Darville, Pam <[Pam.Darville@act.gov.au](mailto:Pam.Darville@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Meherton, Andrew <[Andrew.Meherton@act.gov.au](mailto:Andrew.Meherton@act.gov.au)>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

Hey Georgia

Here is the cleared govt response (amended as per the Cabinet Decision re Rec 12 ) for you to copy

The tabling statement is with CMO for clearance.

Cheers DJ

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Junakovic, Georgia <[Georgia.Junakovic@act.gov.au](mailto:Georgia.Junakovic@act.gov.au)>  
**Sent:** Wednesday, 18 September 2019 12:26 PM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Cc:** Darville, Pam <[Pam.Darville@act.gov.au](mailto:Pam.Darville@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

Hi David – just checking in on how these are progressing?

Thanks

Georgia

---

**From:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Sent:** Tuesday, 17 September 2019 10:20 AM  
**To:** Junakovic, Georgia <[Georgia.Junakovic@act.gov.au](mailto:Georgia.Junakovic@act.gov.au)>  
**Cc:** Darville, Pam <[Pam.Darville@act.gov.au](mailto:Pam.Darville@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

Hi Georgia

Just writing the speech now – the response has been cleared by cabinet and has one amendment needed – thanks

Should be with you maybe late tonite or first thing tomorrow.

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Junakovic, Georgia <[Georgia.Junakovic@act.gov.au](mailto:Georgia.Junakovic@act.gov.au)>  
**Sent:** Tuesday, 17 September 2019 9:50 AM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Cc:** Darville, Pam <[Pam.Darville@act.gov.au](mailto:Pam.Darville@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>  
**Subject:** Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

Hi David

Just checking in on how that final government response and TS are coming along for tabling on Thursday?

Have the finals of both documents been agreed by the Chief Minister as yet? Ideally if I could have the final copies by 3pm tomorrow that would be great then I can make the required copies for Chamber Support and provide to them.

Thanks

Georgia

**Georgia Junakovic | Assistant Director | Assembly and Government Business Coordination | Policy and Cabinet Division**

Phone: 6207 0148 | Email: [georgia.junakovic@act.gov.au](mailto:georgia.junakovic@act.gov.au)

**Chief Minister, Treasury and Economic Development | ACT Government**

Level 5 Canberra Nara Centre | GPO Box 158, Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

**From:** "Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:** 18/09/2019 3:01 AM  
**To:** "James, David" <David.James@act.gov.au>; "Junakovic, Georgia" <Georgia.Junakovic@act.gov.au>  
**Cc:** "Darville, Pam" <Pam.Darville@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS  
**Attachments:** SpeechFinal\_Tabling Statement Govt Response DoD Bill.docx

UNCLASSIFIED

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**Sent:** Wednesday, 18 September 2019 12:30 PM  
**To:** Junakovic, Georgia <Georgia.Junakovic@act.gov.au>  
**Cc:** Darville, Pam <Pam.Darville@act.gov.au>; CMCD DLO <CMCDDLO@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

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**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**To:** James, David <David.James@act.gov.au>  
**Cc:** Darville, Pam <Pam.Darville@act.gov.au>; CMCD DLO <CMCDDLO@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

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Georgia

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**Sent:** Tuesday, 17 September 2019 10:20 AM  
**To:** Junakovic, Georgia <[Georgia.Junakovic@act.gov.au](mailto:Georgia.Junakovic@act.gov.au)>  
**Cc:** Darville, Pam <[Pam.Darville@act.gov.au](mailto:Pam.Darville@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Subject:** RE: Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

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Should be with you maybe late tonite or first thing tomorrow.

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** | Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** Junakovic, Georgia <[Georgia.Junakovic@act.gov.au](mailto:Georgia.Junakovic@act.gov.au)>  
**Sent:** Tuesday, 17 September 2019 9:50 AM  
**To:** James, David <[David.James@act.gov.au](mailto:David.James@act.gov.au)>  
**Cc:** Darville, Pam <[Pam.Darville@act.gov.au](mailto:Pam.Darville@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>  
**Subject:** Government Response to HACS Inquiry Into Drugs of Dependence + TS

UNCLASSIFIED

Hi David

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Thanks

Georgia

**Georgia Junakovic** | Assistant Director | Assembly and Government Business Coordination | Policy and Cabinet Division  
Phone: 6207 0148 | Email: [georgia.junakovic@act.gov.au](mailto:georgia.junakovic@act.gov.au)  
**Chief Minister, Treasury and Economic Development | ACT Government**  
Level 5 Canberra Nara Centre | GPO Box 158, Canberra ACT 2601 | [act.gov.au](http://act.gov.au)



**From:** "Engele, Sam" <Sam.Engele@act.gov.au>  
**Sent:** 05/09/2019 8:11 AM  
**To:** "Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Cc:** "Cook, Michael" <Michael.Cook@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "CMCD DLO" <CMCDDLO@act.gov.au>  
**Subject:** RE: Drugs of Dependence - Explanatory Statements - draft email

UNCLASSIFIED

Hi Tom

Coming back to you on the question about amending Mr Pettersson's explanatory statement once the bill has been passed.

PCO advise that there is no precedent for issuing a revised Explanatory Statement (ES) after a bill has been debated and passed. The ES is provided for Legislative Assembly Members to have information for debate of the bill (and separately any amendments), so the ES to the Government amendments are only intended to explain how those amendments change the PMB, rather than provide an explanation to the final Act. The [Motor vehicle accident ES](#) is a good example – it had both government and private member amendments.

This isn't normally an issue with opposition PMB's. As the approach (when there are substantive amendments) has normally been to vote down the opposition PMB and introduce a Government Bill (and associated ES) – the Government could also do this with the Pettersson PMB but we would need a bit more time to draft a new holistic Government Bill.

Noting the objective is to provide a single and clear explanation of the operation of the final consolidated Act, PCO advised that they could add a 'note link' to the Act that provides details on the intent and operation of the final Act on the legislation register. It couldn't be called an ES and also could not contain political content or reference to communication strategies etc – PCO would want to vet the content of the note. But this process could happen concurrently with notification of the Act which usually occurs a couple of weeks after the Bill is passed in the Assembly.

As an alternative suggestion we could work with Comms to prepare a "guide to the Act" which could be developed using an easy to digest format (such as including illustrative examples) and then make this accessible on the Government web site used for communicating the new legislation.

Let me know if you want us to progress any of the above, and happy to discuss further.

Sam

---

**From:** Engele, Sam  
**Sent:** Wednesday, 4 September 2019 5:20 PM  
**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Cc:** Cook, Michael <[Michael.Cook@act.gov.au](mailto:Michael.Cook@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>  
**Subject:** RE: Drugs of Dependence - Explanatory Statements

UNCLASSIFIED

Thomas,

That is a good question to which, off the top of my head, I don't know the answer. The ES links to the Bill or amendments rather than the final Act, so the Drugs of Dependence PMB ES is already published – I'll have to check whether it can be amended.

I'll task our Assembly team to prepare some advice on whether it is possible, and if so the procedural steps.

Will come back to you tomorrow – probably in the afternoon if we have to check with the clerk.

Sam

---

**From:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>

**Sent:** Wednesday, 4 September 2019 4:46 PM

**To:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>

**Cc:** Cook, Michael <[Michael.Cook@act.gov.au](mailto:Michael.Cook@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>; CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>

**Subject:** Drugs of Dependence - Explanatory Statements

Hi Sam,

I was hoping you could provide some advice around amending the explanatory statement of the Drugs of Dependence Amendment Private Member's Bill - assuming the Government's amendments to the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* are agreed to by the Assembly, the Explanatory Statement to the Bill as tabled by Mr Pettersson will be inconsistent with the Bill as amended – Mr Pettersson's ES is here - [https://legislation.act.gov.au/View/es/db\\_59297/current/PDF/db\\_59297.PDF](https://legislation.act.gov.au/View/es/db_59297/current/PDF/db_59297.PDF) An inconsistent ES would compromise the complex comms campaign the government would need to undertake on passage of the Bill.

As I understand it, the Government will table an explanatory statement to the Government Amendments, but this statement does not replace the original ES as tabled by Mr Pettersson. If the Bill were a Government bill I understand we would simply table an amended explanatory statement incorporating the effect of the agreed amendments.

Could you please provide advice on if, and how, we can amend the ES of the private members bill to reflect the contents of the Bill as passed? I know this is a bit tricky since we will not know the final composition of the bill until after it is passed – any advice on this matter is appreciated.

Thanks,

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:** "Mehrton, Andrew"  
**Sent:** 08/09/2019 11:43 PM  
**To:** "Nock, Thomas" <Thomas.Nock@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "CMCD DLO" <CMCDDLO@act.gov.au>  
**Subject:** RE: Cannabis Debate Speech

UNCLASSIFIED

Thanks for this Tom. Was good to catch up.  
We'll take a look at this and include with the rest of the debate pack shortly.

Thanks.  
-Andrew

---

**From:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Sent:** Monday, 9 September 2019 9:42 AM  
**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** CMCD DLO <CMCDDLO@act.gov.au>  
**Subject:** Cannabis Debate Speech

Hi Sam and Andrew,

Thanks for the catch-up last week, it was very helpful to get my head around the area and the work you are doing.

As discussed see attached the CM's debate speech for the Drugs of Dependence Amendment PMB. It was drafted by Jen – it would be great if your teams could look over it to fact check and sense check it/add anything you think is needed.

Cheers,

Tom

Tom Nock | Adviser  
**Office of Andrew Barr MLA**  
Chief Minister  
Treasurer  
Minister for Tertiary Education  
Minister for Social Inclusion and Equality  
Minister for Tourism and Special Events  
Minister for Trade, Industry and Investment  
Member for Kurrajong  
P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:** "Nock, Thomas" <Thomas.Nock@act.gov.au>  
**Sent:** 26/09/2019 2:01 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Dolan, Fiona" <Fiona.Dolan@act.gov.au>; "Wilkie, Rachel" <Rachel.Wilkie@act.gov.au>; "Strachan, Julieanne" <Julieanne.Strachan@act.gov.au>  
**Subject:** RE: Cannabis in JBT

Thanks Andrew that is great – we are going with:

*The ACT Legislative Assembly has passed a Bill that will further decriminalise the personal possession of cannabis in the ACT. As of 31 January, adults possessing under 50 grams of cannabis in the ACT are exempt from possession offences.*

*The exemption only operates for cannabis possessed in the confines of the ACT. At this time, it will not be implemented in the Jervis Bay Territory. This is due to the increased complexity in applying these laws, and how they would interact with Commonwealth Law, in the Jervis Bay Territory. The ACT Government has also committed to closely monitor the implementation of these Laws in the ACT, which would be challenging to do in Jervis Bay.*

*The ACT Government will work with relevant authorities in the Jervis Bay Territory to ensure that residents are aware of the laws regarding the possession of cannabis that will continue to apply in the area.*

---

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Sent:** Thursday, 26 September 2019 11:57 AM  
**To:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Cc:** Engele, Sam <Sam.Engele@act.gov.au>; Dolan, Fiona <Fiona.Dolan@act.gov.au>; Wilkie, Rachel <Rachel.Wilkie@act.gov.au>; Strachan, Julieanne <Julieanne.Strachan@act.gov.au>  
**Subject:** RE: Cannabis in JBT

UNCLASSIFIED

Hi Tom,

Sam usefully just pointed out that JBT doesn't actually encompass that much of what most people would consider Jervis Bay either.

The JBT itself really only has HMAS Creswell and the Wreck Bay Aboriginal community. There are a few camping grounds but without having looked at them, it's not clear whether they would be considered a public place in which case the possession and use exceptions wouldn't apply anyway.

-Andrew

---

**From:** Mehrton, Andrew  
**Sent:** Thursday, 26 September 2019 11:46 AM  
**To:** Nock, Thomas <[Thomas.Nock@act.gov.au](mailto:Thomas.Nock@act.gov.au)>  
**Cc:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Fiona Dolan (<[Fiona.Dolan@act.gov.au](mailto:Fiona.Dolan@act.gov.au)> <[Fiona.Dolan@act.gov.au](mailto:Fiona.Dolan@act.gov.au)>; Wilkie, Rachel <[Rachel.Wilkie@act.gov.au](mailto:Rachel.Wilkie@act.gov.au)>; Strachan, Julieanne <[Julieanne.Strachan@act.gov.au](mailto:Julieanne.Strachan@act.gov.au)>  
**Subject:** Cannabis in JBT

UNCLASSIFIED

Hi Tom,

We're looking back through the GSO advice, but I'm not sure if we have much in writing about the *why* of excluding – it's more on the *how*.

However, a suggested response on the JBT:

- The amendments moved by the Government are intended to apply within the ACT (i.e. not in the JBT).
- There are a number of complications with allowing the law to apply in the JBT, arising from the fact that some other Commonwealth laws 'pick up' offences that apply in the JBT.
- For example:
  - the Defence Force Discipline Act 1982, picks up certain offences punishable by any law in force in the JBT.
  - The Australian Antarctic Territory Act also picks up certain criminal laws of the JBT in so far as they are applicable in the Australian Antarctic Territory.
- For these reasons, the decision was taken to only apply these amendments in the ACT, so that they didn't not create further complications that might force the Commonwealth to intervene.

On a slightly technical note, the ACT has no power to apply or not apply its laws to the JBT. That is solely a matter for the Commonwealth. However, given our understanding of the test for what laws are picked up by the Commonwealth and applied, it is possible to craft Territory laws in a manner so that they "fail" that test and therefore are not picked up. The simplest approach was to confine the law to a place in the ACT so that it is not 'applicable' to the JBT. This means it would "fail" that test and is therefore are not picked up.

**ANDREW MEHRTON** | Executive Branch Manager  
Social Policy and Commonwealth State Relations | Policy and Cabinet Group  
Chief Minister, Treasury and Economic Development Directorate | **ACT Government**  
GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)  
Phone: 02 6205 8507 | email: [andrew.mehrton@act.gov.au](mailto:andrew.mehrton@act.gov.au)

**From:**"Nock, Thomas" <Thomas.Nock@act.gov.au>

**Sent:**08/09/2019 11:42 PM

**To:**"Engele, Sam" <Sam.Engele@act.gov.au>;"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:**"CMCD DLO" <CMCDDLO@act.gov.au>

**Subject:**Cannabis Debate Speech

**Attachments:**Debate speech - Pettersson PMB - Drugs of Dependence Bill v1.1 9 September 9.30am.docx

Hi Sam and Andrew,

Thanks for the catch-up last week, it was very helpful to get my head around the area and the work you are doing.

As discussed see attached the CM's debate speech for the Drugs of Dependence Amendment PMB. It was drafted by Jen – it would be great if your teams could look over it to fact check and sense check it/add anything you think is needed.

Cheers,

Tom

**Tom Nock** | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



# Drugs of Dependence

Tuesday, 17 September 2019  
11:05 AM

**Meeting Date:** 17/09/2019 11:15 AM

**Location:** Webex telecon

**Link to Outlook Item:** [click here](#)

**Invitation Message**

**Participants**

## Notes

- Response to inquiry - Thurs
- Greens amendments
- Cabinet
- Commencement

**From:** "Kalleske, Sarah" <Sarah.Kalleske@act.gov.au>

**Sent:** 19/09/2019 1:44 AM

**To:** "Burns, Sara (CMTEDD)" <Sara.Burns@act.gov.au>

**Subject:** FW: Scanned Letter from Sarah McNaughton - Private Members Bill

**Attachments:** Letter from Sarah McNaughton to Richard Glenn re Private Member's Bill Drugs of Dependence (personal Cannabis Use) Amendment Bill 2018 (ACT).pdf

UNCLASSIFIED For-Official-Use-Only

Hi Sara

Kathy asked if you can add this to the Cabinet agenda on Monday.

Sarah

---

**From:** Kalleske, Sarah

**Sent:** Thursday, 19 September 2019 11:42 AM

**To:** Cook, Michael <Michael.Cook@act.gov.au>

**Subject:** Scanned Letter from Sarah McNaughton - Private Members Bill

UNCLASSIFIED For-Official-Use-Only

Good morning Michael

Kathy asked me to scan a copy of the attached letter to you.

Sarah

Sarah Kalleske | Executive Assistant to Kathy Leigh, Head of Service and Director-General

Phone: 02 6205 0241 | Email: [sarah.kalleske@act.gov.au](mailto:sarah.kalleske@act.gov.au)

Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 5, Canberra Nara Centre, 1 Constitution Avenue Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)





# CDPP

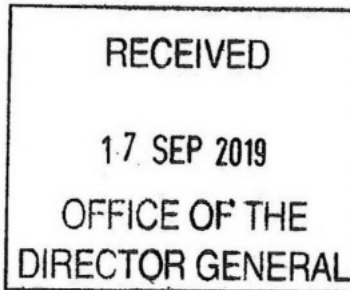
Australia's Federal Prosecution Service

Sarah McNaughton SC  
Director

Commonwealth Director  
of Public Prosecutions

Level 11, 175 Liverpool Street  
Sydney NSW 2000

Telephone 02 6206 5666  
www.cdpp.gov.au



17 September 2019

Mr Richard Glenn *17/9*  
A/g Director-General  
Justice and Community Safety Directorate  
GPO Box 158  
CANBERRA CITY ACT 2601

Dear Mr Glenn

**Private Member's Bill – Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)**

Thank you for your letter dated 30 August 2019 regarding the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)*, (*Personal Cannabis Use Bill*) which is being considered by the ACT Legislative Assembly. As you note in your letter, the purpose of the Bill is to allow for the personal use and possession of cannabis up to 50 grams and for the cultivation of up to four plants. You have also provided me with the ACT Government's drug policy and proposed amendments set out in a letter dated 18 March 2019 (**proposed amendments**).

In particular, you seek our view as to whether the introduction of the *Personal Cannabis Use Bill* and the proposed amendments, will operate as an excuse to an offence under section 308.1 of the Criminal Code (Cth) (**the Code**) by virtue of section 313.1 of the Code, and whether there is any inconsistency with Commonwealth Legislation.

The offence of possessing a controlled drug contrary to section 308.1 of the Code came in operation on 6 December 2005, and its purpose was to capture the possession of small amounts of drugs. Subsections 308.1(3) – (5) were included to pick up any State and Territory sentencing options available such as drug diversion programs, which provide education, treatment and support for drug users.

Section 313.1 of the Code provides the mechanism for recognising the "many legitimate uses of controlled substances in our community"<sup>1</sup> through available defences where a person engages in conduct in a State or Territory and the conduct is justified or excused by or under a law of that State or Territory.

<sup>1</sup> Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 Explanatory Memorandum page 100

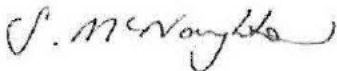
These sections were introduced with the specific intention to operate in conjunction with State and Territory laws.

If the ACT government passes a law that legalises the possession and use of small amounts of cannabis, then it would be open for a person charged with section 308.1 of the Code in the ACT, to rely on this fact for the purpose of establishing a defence under section 313.1 of the Code. In this regard, the proposed amendments would appear consistent with the object and terms of section 308.1 of the Code.

I further note that any available defence would also be a relevant consideration in assessing whether there are reasonable prospects of conviction under the Prosecution Policy of the Commonwealth should such a matter be referred to this office for prosecution<sup>2</sup>.

I hope this has been of assistance to you. Please do not hesitate to contact me should you wish to discuss this further.

Yours sincerely,



Sarah McNaughton SC  
Commonwealth Director of Public Prosecutions

---

<sup>2</sup> See paragraph 2.6 of the Prosecution Policy

**From:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Sent:** 14/08/2019 10:55 PM  
**To:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>  
**Subject:** RE: Further cannabis query

UNCLASSIFIED Sensitive

Thanks, Jen.  
Will make sure those Qs get incorporated.

Cheers.  
-Andrew

---

**From:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>  
**Sent:** Thursday, 15 August 2019 8:43 AM  
**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>  
**Subject:** RE: Further cannabis query

Great, thanks for clarifying. I don't think it's something we particularly need to specify in the main comms, but it's just one of those fiddly implementation points that we're likely to get asked about during the detail stage of the Assembly debate, so good to have the answer to hand.

Below is my brainstorm of the top-line things we'll need to include in an FAQs document – can this information please be added to that as well? Happy to chat through how we should answer any of these if you want a steer on the direction.

Thanks,

Jen

## FAQs

What does the bill do?

What are the government's amendments?

Will cannabis be legal in the ACT if this bill passes?

How does the bill interact with Commonwealth law?

How will police determine if cannabis is being grown at someone's usual residence?

If there are more than two people living in a household, how will police determine who four cannabis plants belong to?

How are wet and dry cannabis defined?

What will people need to do to meet the secure storage requirements?

If someone is smoking in their backyard with a child inside the house less than 20 metres away, does this infringe the smoking rules?

Will people be allowed to smoke cannabis on apartment balconies?

Does the bill change any of the current laws relating to drug driving?

How do police determine if someone is driving under the influence of cannabis?

Why won't the Government support allowing the hydroponic cultivation of cannabis?

Why won't the Government support allowing grow clubs or other collective growing arrangements?

Are the laws relating to the supply of cannabis changing?

How will people acquire cannabis in order to cultivate it, if supply of seeds, plants and materials remains an offence?

Will the Government consider establishing a legal supply chain in the future?

---

**From:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>

**Sent:** Wednesday, 14 August 2019 11:45 PM

**To:** Rayner, Jennifer <[Jennifer.Rayner@act.gov.au](mailto:Jennifer.Rayner@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

**Cc:** Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>

**Subject:** RE: Further cannabis query

UNCLASSIFIED Sensitive

Evening Jen,

Yes we have covered this off with JACS and PCO. The legislation is set up to allow for the possession of 50g dried (or 150g wet) and two plants. We can beef up this message in the comms material if it isn't clear.

The new amended s162 deals with cultivation separately to possession offences 171AA.

s162 creates an offence for having 1 or 2 plants, but does not apply to people over 18. The effect is that there are no penalties for over 18s.

S171AA creates an offence for having "more than 50g dried cannabis, or more than 150g of cannabis that has been harvested". The use of the words 'dried' and 'harvested' in this section is intended to make a distinction from the cultivation of 1 or 2 plants.

Sam

---

**From:** Rayner, Jennifer

**Sent:** Wednesday, 14 August 2019 4:07 PM

**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

**Cc:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>

**Subject:** Further cannabis query

Hi again,

Something that has occurred to me in putting stuff together for the cannabis debate today: are our materials explicit anywhere on whether this reform will allow people to have up to 50g of dried cannabis *and* two plants, or is the assumption that they will have *either* 50g of dried cannabis *or* two plants? i.e. if someone is at home with 50g of dried cannabis on the coffee table and two plants with buds on them that have not yet been harvested, is there a chance a zealous police officer could take a view that this exceeds the limits?

If we don't have a clear answer to this already, could you please engage with JACS to get one?

**From:**"James, David" <David.James@act.gov.au>

**Sent:**26/08/2019 7:24 AM

**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:**"Engele, Sam" <Sam.Engele@act.gov.au>;"Wilkie, Rachel" <Rachel.Wilkie@act.gov.au>;"Darville, Pam" <Pam.Darville@act.gov.au>;"Junakovic, Georgia" <Georgia.Junakovic@act.gov.au>

**Subject:**Package for CM to send to Committee re Cannabis amendments

**Attachments:**Brief.docx, Attachment A - LTR-to-scrutiny-chair.docx, J2019-440-Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018-AssAm-G-D09 Final.PDF, Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Supplementary Explanatory Statement.docx

UNCLASSIFIED Sensitive: Cabinet

Hi Andrew

As discussed – Yersheena spoke to Jen – CMO want to keep committee Inquiry response processes , and scrutiny committee referral processes separate from each other – Pam/Georgia concur with this approach

Attached is covering brief, letter to committee chair, govt amendments (presentation copy) and supplementary explanatory statement (thank you Rachel).

Thanks

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division

Phone: (02) 6207 2002 | Mobile **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)

**Chief Minister, Treasury and Economic Development Directorate**

Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

**Chief Minister, Treasury and Economic  
Development Directorate**

UNCLASSIFIED

**To:** Chief Minister

Tracking No.: CMTEDD2019/2883

**Date:** 26 August 2019

**From:** Executive Group Manager, Policy and Cabinet

**Subject:** Provision of Government amendments to the Drugs of Dependence (personal Cannabis Use) 2018 Private Members Bill to the Legislative Scrutiny Committee

**Critical Date:** As soon as practical

**Critical Reason:** The Committee requires the amendments by cob 2 September 2019 in order for their comments to be available prior to the September sittings

**Recommendations**

That you:

1. agree to sign the attached letter to the Chair of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role);

**Signed / Not signed / Please discuss**

Andrew Barr MLA ..... /...../2019

2. agree that the Government response to the Standing Committee on Health, Education Inquiry into the Private Members Bill be tabled in the Assembly in conjunction with any debate on Mr Petterson's Bill during the September sittings; or if this does not occur then out of session prior to the 6 October deadline.

**Agreed / Not agreed / Please discuss**

Andrew Barr MLA ..... /...../.....

Ministers' Offices Feedback

UNCLASSIFIED

## Background

1. On 28 November 2018, Michael Pettersson MLA introduced the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (the Bill) into the ACT Legislative Assembly. The intent of the Bill is to legalise the personal possession and use of small amounts of cannabis.
2. On 5 February 2019 Cabinet agreed to a policy position that it supported the Bill in principle, subject to several amendments aimed at making these changes safer and more practical to implement (ref: CAB2018/746).
3. On 20 February 2019, the Legislative Assembly for the ACT resolved that the Bill be referred to the Standing Committee on Health, Ageing and Community Services (the Committee) for inquiry and report by 6 June 2019 (the Inquiry).
4. The Government made a submission to the inquiry outlining several amendments that it proposed to make to the Private Member's Bill (ref: CMTEDD2019/1290). The Government subsequently made a further two submissions providing:
  - a. a draft Government Amendment Bill indicating how a number of those amendments might be made (ref: CMTEDD2019/1739); and
  - b. an updated draft Government Amendment Bill including an additional amendment regarding separate legal weights for wet/fresh cannabis and dry cannabis, which was not present in the first draft (ref: CMTEDD2019/2481).
5. The Chief Minister and officials from CMTEDD, Health Directorate and JACS, along with the Government Solicitor appeared before the inquiry. A number of questions on notice were also received after this appearance and have been responded to.
6. On Thursday 6 June 2019, the Committee released its *Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019 report* (the Report). A caveat brief was provided on Friday, 7 June 2019 with an initial summary of the Report and the Committee's recommendations (ref: CMTEDD2019/2802).
7. On 6 August 2019, Cabinet agreed (ref: CMTEDD2019/2883) to support the PMB with amendments, and agreed to a Government response to the Report of Inquiry of the Standing Committee. The Government agreed to four recommendations, noted eight and did not agree to four.
8. The Government is required to table the response within 4 months (6 October 2019).

## Issues

### Possible Debate of the Bill in the September sittings and referral to Legislative Scrutiny Committee.

9. It is understood that there is a possibility that the PMB may be brought on for further debate by Mr Pettersson during Private Members Business on either September 18 or September 25 2019.
10. Any Government amendments proposed to be introduced into the Assembly are required in accordance with Standing Order 182A to be provided to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) for consideration.
11. The latest date for consideration by the Committee in order for their comments to be

available for the September sittings is 2 September 2019.

12. A letter to Mrs Jones referring the Government amendments and supplementary explanatory statement is at Attachment A.

#### Tabling of Government Response to Inquiry Report

13. If debate of the PMB does occur during the September sittings it is proposed that the Government response to the Committee Inquiry be tabled concurrently. If debate does not occur during the September sittings, it is proposed that you write to the Speaker out of session tabling the response prior to 6 October 2019.

#### Minor Technical additions to the Government Amendments

14. Since Cabinet's agreement, a technical issue has been addressed in the final version to be presented to the Committee, following discussion with JACS and ACT Policing.
15. The offence has been amended in subsection 171AA(2) to mirror in reverse subsection 171AA(1) as follows:
  - (1) A person commits an offence if the person possesses-
    - a. 50g or less of dried cannabis; or
    - b. more than 50 g and less than 150g of cannabis and:
      - i. is not dried cannabis; or
      - ii. is a mixture of dried cannabis and cannabis that is not dried cannabis.
16. Since Cabinet's agreement, a technical issue has been addressed in the final version to be presented to the Committee, following discussion with JACS and ACT Policing.
17. This amendment has also necessitated a change to the definition of a simple cannabis offence to include all of new subsection 171AA (1).

#### Next Steps

18. Speeches and FAQs are being prepared for use during possible debate of the PMB in the September sittings.
19. CMTEDD is coordinating initial communications activities regarding the Government's position on the Bill and proposed amendments. This will be supported by Health Directorate, JACSD and ACT Policing in relation to specific health or legal questions that may need to be addressed during this phase.



**Financial implications**

20. Nil.

**Consultation**Cross directorate

21. These changes have been developed through a working group primarily consisting of CMTEDD, Health Directorate (primary representative Executive Branch Manager, Erica Nixon), JACSD (primary representative a/g Executive Branch Manager, Victor Martin) and ACT Policing (primary representative Cassandra Lumley).
22. Development of communications strategies has also included communications staff from Health Directorate and ACT Policing.
23. The Government's amendments have been drafted by Parliamentary Counsel's Office (Bianca Kimber/Phil Bibrowicz).

**Work health and safety**

24. Nil.

**Benefits/sensitivities**

25. Nil.

**Communications, media and engagement implications**

26. There is likely to be a high level of interest in these reforms due to this being the first attempt by an Australian jurisdiction to remove all penalties for personal cannabis possession and cultivation.
27. CMTEDD is coordinating initial communications activities regarding the Government's position on the Bill and proposed amendments. This will be supported by Health Directorate, JACSD and ACT Policing in relation to specific health or legal questions that may need to be addressed during this phase.
28. Health Directorate will implement a second phase of communications and engagement activities aimed at communicating to health stakeholders and the general public what the changes mean, the risks of cannabis use and where support can be sought. JACSD will support this work with regard to communicating the legal risks that individual users may face.

Signatory Name: Sam Engele

Phone: x50230

Action Officer: David James

Phone: x72002

**Attachments**

Attachment	Title
Attachment A	Letter to Mrs Gulia Jones



### Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mrs Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

By email: [committees@parliament.act.gov.au](mailto:committees@parliament.act.gov.au)

Dear Chair

I am writing to you about the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill) which was introduced by Mr Michael Pettersson MLA on 28 November 2018. The Government is intending to introduce amendments into the Legislative Assembly when the Bill is next brought on for debate, possibly in the September 2019 sittings.

As you are aware, on 20 February 2019 the Legislative Assembly resolved that the Bill be referred to the Standing Committee on Health, Education and Community Services (the committee) for inquiry and report by June 2019 (the inquiry). Submissions were requested by the Select Committee with public hearings being held in May 2019. The Government made a submission to the inquiry outlining several amendments that it proposed to make to Mr Pettersson's Bill. The Government subsequently made a further two submissions providing details of these proposed draft amendments. I also appeared as a witness before the Committee, along with officials from Chief Minister, Treasury and Economic Development Directorate, Health Directorate and Justice and Community Safety Directorate, including the Government Solicitor. The Select Committee released their report on 6 June 2019.

The Select Committee made sixteen recommendations, a number of which that applied specifically to the Bill, as well as recommendations that considered overall impacts relating to the legalisation of cannabis for personal use, some of which the Government has not publicly stated a position on. The recommendations have been considered against the policy intent of the Bill, the existing publicly stated Government position on the Bill, and advice received in respect of issues raised during the Inquiry.

In light of these positions, the Government has agreed to four recommendations, noted eight recommendations and not agreed to four recommendations.

### ACT Legislative Assembly

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Phone +61 2 6205 0011 Fax +61 2 6205 0157 Email [barr@act.gov.au](mailto:barr@act.gov.au)



@ABarrMLA



AndrewBarrMLA



actchiefminister



I am pleased to provide you with the proposed Government amendments, the Supplementary Explanatory Statement, and the Government Response to the Standing Committee Inquiry Report. I am seeking any comments on the proposed Government amendments and the Supplementary Explanatory Statement by your committee.

In summary the Government proposes to amend the Bill in the following manner:

- (i) it will remain an offence to possess and cultivate small amounts of cannabis; however, an exception will mean the offence does not apply to anyone over 18 years of age;
- (ii) a limit of two cannabis plants per person will be allowed, rather than four as proposed in the PMB;
- (iii) no more than four plants will be allowed at any one household;
- (iv) cannabis must be kept securely when not in an individual's possession, to restrict access by children and young people;
- (v) cannabis plants can only be cultivated on parts of residential property not generally accessible by the public and by persons usually residing at the premises;
- (vi) a 150 gram limit for fresh (or 'wet') cannabis will be introduced to account for cannabis that has been harvested but not yet dried;
- (vii) smoking near children will be prohibited through an offence involving a mental element rather than a 20 metre distance rule (i.e. knowingly or intentionally using cannabis in a way that a person less than 18 years old is exposed to it would be an offence); and
- (viii) a commencement date of six months from the date of passage (noting the Government amendments will include a provision for earlier commencement by notification of the Minister for Health);

In summary these reforms cannot be characterised as 'legalising' the personal use and possession of cannabis because offences will remain on the statute book but exemptions will be provided for conduct under certain circumstances. It is proposed that these reforms instead be characterised as: *Removing penalties for the use and possession of personal amounts of cannabis.*

The Government has explored a range of options to resolve potential incompatibilities with the Commonwealth Criminal Code, though no perfect solution has been identified. The strategy viewed as most likely to minimise the likelihood of a Commonwealth intervention is to adhere as closely as possible to existing acceptable policy settings and adopt a stance that does not provoke unnecessary attention.

- The approach recommended and reflected in the Government amendments is to retain offences in the Drugs Act for possession and cultivation of cannabis, but include an exception such that those offences do not apply to anyone over 18 years of age.
- This would mean the ACT has a relevant offence in legislation, meaning the ACT has not 'vacated the space' with regard to cannabis offences thereby reducing (though not eliminating) the likelihood of the Commonwealth Criminal Code being drawn on for possession offences in the ACT. Despite an offence still existing in ACT law, the practical outcome is that possession and cultivation of small amounts of cannabis would be effectively legal for individuals.

Following discussions between officials and the Standing Committee Secretariat, I understand that comments are likely to be received by Tuesday 10 September 2019. This timeframe will allow the

Government to consider any comments prior to further debate during the September sittings of the Legislative Assembly if the Bill is brought on during either scheduled Private Members Business days (either 18 September or 25 September 2019).

The Government is committed to working with the Legislative Assembly to finalise this legislation as soon as possible.

I look forward to your consideration of this important matter.

Yours sincerely

Andrew Barr MLA  
Chief Minister

**From:** "Mehrton, Andrew"

**Sent:** 14/08/2019 3:01 AM

**To:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Cook, Michael" <Michael.Cook@act.gov.au>

**Subject:** RE: Drugs of Dependence - debate pack

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Hi Jen,

Yes, we'll have those docs ready in advance of the debate.

We have Q&As in various places that we'll be pulling together and updating shortly, but we've also discussed a need to work up some news others, particularly around policing.

If you like we can get you a draft list of the Qs on Monday which you can add to? Or, if you already have some, feel free to send them across and we can incorporate.

Thanks.

-Andrew

---

**From:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>

**Sent:** Wednesday, 14 August 2019 12:17 PM

**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>; Cook, Michael <Michael.Cook@act.gov.au>

**Subject:** Drugs of Dependence - debate pack

Hi Sam and Andrew,

With the Government's position and amendments on the Petterson PMB having been confirmed by Cabinet, I just wanted to check that things are now in train to prepare the Chief's debate pack?

I'm doing a draft of his debate speech now, which I'll send across to you for checking and comments when complete. But as there are likely to be a range of amendments to this bill – both government and non-government, I wanted to make sure your team is also preparing a schedule of amendments like the attached to support the Chief's engagement in the debate?

We obviously don't have any specific amendments from the Greens or Liberals yet, but if this at least gets started with the individual government amendments then it will be quicker and easier to drop the further ones in later.

We'll need to do a Q&A document for the reference of all government members as well; I'll send over a list of the items this should cover shortly – unless there's already one in train?

Thanks for your help,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Member for Kurrajong

P. +61 2 6207 1201 | M. +61 **Sch 2.2(a)(ii) E.** [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)





**ACT**  
Government

Justice and Community Safety

Mr Chris Moraitis PSM  
Secretary  
Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600

Dear Mr <sup>Chris</sup>Moraitis

I am writing to you in order to seek the views of the Australian Government on legislation being considered by the ACT Legislative Assembly to remove penalties for the use and possession of personal amounts of cannabis.

A Private Member's Bill ([Attachment A](#)), presented in November 2018 proposes to allow for personal use of cannabis, including possession of up to 50 grams, cultivation of up to four plants per person and consumption of cannabis in private places for persons aged 18 years or older.

The Bill does not propose legalising the sale or supply of cannabis to others, legalising cultivation of more than four plants, or legalising the use of cannabis for those under 18 years of age.

In line with its drugs policy focussing on harm minimisation, the ACT Government has indicated it intends to support the Bill subject to a range of amendments ([Attachment B](#)) intended to add further safeguards and protections for the community.

The ACT Government's view is that the Bill is a logical next step of the Simple Cannabis Offence Notice (SCON) scheme that has been in operation since 1992. The SCONs scheme is intended to continue for individuals under 18 years old.

The ACT Government's amendments are also intended to resolve potential incompatibilities with Commonwealth laws, including the *Criminal Code Act 1995*. This would be achieved by retaining offences in the *Drugs of Dependence Act 1989* (ACT) for possession and cultivation of cannabis over prescribed limits with the inclusion of an exception such that those offences do not apply to anyone over 18 years of age. This is intended to operate as an excuse to an offence under s 308.1 of the Commonwealth Criminal Code (see s 313.1 of the Commonwealth Criminal Code).

I would appreciate your views on the issue of consistency with Commonwealth legislation, and whether the Bill with amendments to be proposed would operate as an excuse under

s 313.1 of the Commonwealth Criminal Code. I have also written to the Commonwealth Director of Public Prosecutions seeking her views on this matter.

Officers in ACT Government with responsibility for this matter are Mr Andrew Mehrton in the Chief Minister, Treasury and Economic Development Directorate available at [andrew.mehrton@act.gov.au](mailto:andrew.mehrton@act.gov.au) or 6205 8507 and Mr Keegan Lee in the Justice and Community Safety Directorate available at [Keegan.lee@act.gov.au](mailto:Keegan.lee@act.gov.au) or 6207 5244.

Yours sincerely



Richard Glenn  
A/g Director-General  
Justice and Community Safety Directorate

30 August 2019

Encl.

2018

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Michael Pettersson)

## Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

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2018

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Michael Pettersson)

## **Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**

---

### **A Bill for**

An Act to amend the *Drugs of Dependence Act 1989*, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Drugs of Dependence (Personal Cannabis Use)*  
3 *Amendment Act 2018*.

4 **2 Commencement**

5 This Act commences on 1 July 2019.

6 *Note* The naming and commencement provisions automatically commence on  
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the *Drugs of Dependence Act 1989*.

10 *Note* This Act also amends other legislation (see sch 1).

11 **4 Offences against Act—application of Criminal Code etc**  
12 **Section 4, note 1**

13 *substitute*

14 *Note 1 Criminal Code*

15 The Criminal Code, ch 2 applies to the following offences against this  
16 Act (see Code, pt 2.1):

- 17 • s 162 (Cultivation of 1 to 4 cannabis plants)
- 18 • s 171 (Possessing prohibited substances)
- 19 • s 171AA (Possessing cannabis)
- 20 • s 171AB (Smoking cannabis in public place or near child).

21 The chapter sets out the general principles of criminal responsibility  
22 (including burdens of proof and general defences), and defines terms used  
23 for offences to which the Code applies (eg *conduct*, *intention*,  
24 *recklessness* and *strict liability*).

1 **5 Section 162**

2 *substitute*

3 **162 Cultivation of 1 to 4 cannabis plants**

4 (1) A person commits an offence if the person—

5 (a) is under 18 years old; and

6 (b) cultivates 1 to 4 cannabis plants.

7 Maximum penalty: 1 penalty unit.

8 (2) In this section:

9 *artificially cultivate* means—

10 (a) hydroponically cultivate; or

11 (b) cultivate with the application of an artificial source of light or  
12 heat.

13 *cultivates* has the meaning given in the Criminal Code, section 615  
14 but does not include artificially cultivate.

15 **6 Section 171**

16 *substitute*

17 **171 Possessing prohibited substances**

18 (1) A person commits an offence if the person possesses a prohibited  
19 substance.

20 Maximum penalty: 50 penalty units, imprisonment for 2 years or  
21 both.

22 (2) Subsection (1) does not apply if the person is authorised under the  
23 *Medicines, Poisons and Therapeutic Goods Act 2008*, or another  
24 territory law, to possess the prohibited substance.

- 1 (3) In this section:  
2 *prohibited substance* does not include cannabis.

3 **171AA Possessing cannabis**

- 4 (1) A person commits an offence if the person—  
5 (a) is under 18 years old; and  
6 (b) possesses 50g or less of cannabis.

7 Maximum penalty: 1 penalty unit.

- 8 (2) A person commits an offence if the person possesses more than 50g  
9 of cannabis.

10 Maximum penalty: 50 penalty units, imprisonment for 2 years or  
11 both.

- 12 (3) Subsections (1) and (2) do not apply if the person is authorised under  
13 the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another  
14 territory law, to possess the prohibited substance.

15 **7 Offence notices**

16 **Section 171A (7), definition of *simple cannabis offence***

17 *substitute*

18 *simple cannabis offence* means—

- 19 (a) an offence against section 162 (Cultivation of 1 to 4 cannabis  
20 plants); or

21 *Note* Section 162 does not include artificial cultivation of cannabis  
22 plants.

- 23 (b) an offence against section 171AA (1) of a person under 18 years  
24 old possessing 50g or less of cannabis.

1 **8 New section 171AB**

2 *before section 171B, insert*

3 **171AB Smoking cannabis in public place or near child**

4 (1) A person commits an offence if the person smokes cannabis in a  
5 public place.

6 Maximum penalty: 30 penalty units.

7 (2) A person commits an offence if—

8 (a) the person smokes cannabis; and

9 (b) a child is within 20m of the person.

10 Maximum penalty: 30 penalty units.

11 (3) In this section:

12 *personal vaporiser*—see the *Tobacco and Other Smoking Products*  
13 *Act 1927*, section 3B.

14 *public place*—see the *Smoke-Free Public Places Act 2003*,  
15 dictionary.

16 *smoke cannabis* means—

17 (a) to directly puff smoke, or vapour, from cannabis, or a product  
18 that contains cannabis, whether or not a device for the inhalation  
19 of smoke, or vapour, is used; or

20 (b) to hold or to have control over—

21 (i) cannabis, or a product that contains cannabis, while it is  
22 ignited; or

1 (ii) a personal vaporiser that contains cannabis and that is  
2 activated.

3 **Examples—devices—par (a)**

- 4 • a personal vaporiser  
5 • a pipe (including a hookah, water pipe or bong)  
6 • a cigarette holder

7 **9 Dictionary, note 2**

---

8 *insert*

- 9 • territory law

1 **Schedule 1** **Consequential amendments**

2 (sec s 3)

3 **Part 1.1** **Criminal Code 2002**

4 **[1.1]** **Sections 605 and 614, note**

5 *substitute*

6 *Note* For additional offences relating to possessing controlled drugs, see the  
7 *Drugs of Dependence Act 1989*, ss 169, 171 and 171AA and the  
8 *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36.

9 **[1.2]** **Section 618 (2)**

10 *substitute*

11 (2) A person commits an offence if the person—

12 (a) cultivates (artificially or otherwise) 5 or more cannabis plants;  
13 or

14 (b) artificially cultivates 1 to 4 cannabis plants.

15 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
16 both.

17 *Note* Non-artificial cultivation of 1 to 4 cannabis plants by a person under 18  
18 years old is a summary offence under the *Drugs of Dependence Act 1989*,  
19 s 162.

20 **[1.3]** **New section 636A (3) (ba)**

21 *insert*

22 (ba) that Act, section 171AA; or



1 **Part 1.2 Medicines, Poisons and**  
2 **Therapeutic Goods Act 2008**

3 **[1.4] New section 9A**

4 *in chapter 2, insert*

5 **9A Application of Act to certain cannabis use not prohibited**  
6 **under Drugs of Dependence Act 1989**

7 (1) The following provisions of this Act do not apply to an adult to the  
8 extent that the substance is 50g or less of defined cannabis:

- 9 (a) section 26 (2) (Supplying declared substances);  
10 (b) section 33 (Manufacturing regulated substances);  
11 (c) section 35 (1) (Obtaining certain declared substances);  
12 (d) section 36 (Possessing certain declared substances);  
13 (e) section 37 (2) (Administering certain declared substances).

14 (2) In this section:

15 *defined cannabis*—

- 16 (a) means cannabis as defined in the *Drugs of Dependence*  
17 *Act 1989*; but  
18 (b) does not include a substance or medicine that is able to be  
19 prescribed under this Act.

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 28 November 2018.

**2 Notification**

Notified under the Legislation Act on 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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## Andrew Barr MLA

Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Bec Cody MLA  
 Chair  
 Standing Committee on Health, Ageing and Community Services  
 Legislative Assembly for the ACT  
 GPO Box 1020  
 CANBERRA ACT 2601

Dear Ms <sup>Bec</sup>Cody

Thank you for your letter of 27 February 2019 inviting the Government to provide an outline of intended amendments to the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018* that has been referred to the Standing Committee on Health, Ageing and Community Services for inquiry. The following information is provided for the information of the Committee.

### *The ACT Government's 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 has clearly proven not to 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.<sup>1</sup>

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, including supporting this Bill subject to appropriate amendments which are detailed later in this submission.

<sup>1</sup> 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>

### ACT Legislative Assembly

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AndrewBarrMLA



actchiefminister



CANBERRA

### *Matters to be considered*

As is to be expected with an issue as complex as this, the Government has identified a number of issues requiring further consideration before the Bill can be passed.

Even after the passage of this Bill, possessing and growing cannabis will carry a degree of risk arising from interaction 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.

There is also uncertainty as to how a Commonwealth Government may react to the ACT passing this Bill and we cannot guarantee a Commonwealth Government would not intervene to prevent reforms – as has occurred in the past.

There are also a range of health implications to 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. However, it must be noted that these health risks already exist for anyone who uses cannabis under current legislation.

Implementation of this Bill may be able to assist in addressing some of these health risks. For example, the stigma and risk of punishment associated with illegal drug use may mean that prohibition is preventing people from seeking medical or other types of help when it is needed. 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. The implications for justice outcomes are similarly complex. Currently, possessing small amounts of cannabis for personal use can bring people into contact with the justice system, with lasting and serious consequences. Moving from the decriminalisation to legalisation of small amounts of personal cannabis could avoid help individuals avoid these negative outcomes.

The Government also has a responsibility to focus our justice resource where they're needed the most: on disrupting serious and organized crime, protecting our community from individuals or groups who might wish to do us harm, helping women and children dealing with domestic and family violence. Legalisation means the ACT's police and court resources can be better focused in these areas where they are most needed.

There are also broader public safety effects to be considered. Under the current regime, the one-in-twelve Canberrans that use cannabis have no legal channel to obtain it. As a result, otherwise law-abiding individuals are required to interact with criminals in a way that exposes them to risks and may also increase the risk of further offending in our community.

By legalising the option for individuals to cultivate a small number of plants for their own use, there may be opportunities to reduce the market for illegal drugs – a market that would otherwise provide revenue to serious or organised criminals.

### *Proposed Government Amendments*

In light of these and other issues, the Government intends to move a number of amendments to the Private Members Bill. We have instructed the Parliamentary Counsel's Office to draft Government amendments which would give effect to the following safeguards and improvements:

1. Personal plant limits

Whereas the Bill would 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 Simple Cannabis Offence Notice 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 sharehouses (or dwellings that otherwise have multiple residents) could effectively be used as larger scale 'grow houses'

The Government amendments will introduce 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 front yards, verges or community gardens. This restriction is intended to minimise access to cannabis plants by persons other than the legal owner. This would also have the effect of prevent 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 each cannabis plant.

4. Secure storage

Government amendments will require cannabis to be kept securely when not in an individual's possession in order to restrict access by children and young people or other vulnerable individuals.

5. Distinguish 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 Simple Cannabis Offence Notice 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 would distinguish between dry cannabis (i.e. cannabis ready to be used) and 'wet' cannabis (i.e. harvest plant material that has not yet been dried).

Dry cannabis would still be subject to the 50 gram limit as included in the Bill. The Government will move to include a separate limit of 150 grams for fresh (or 'wet') cannabis that would be applicable 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 be, or 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 or intentionally* use cannabis in a way that exposes a person less than 18 years old to this.

#### *Other matters*

The Government acknowledges that legalisation of cannabis for personal use has not been tried in Australia before. Notwithstanding the above amendments, there remains a degree of uncertainty and risk associated with the proposed new approach. However, the ACT Government believes it is important to continue exploring new measures to reduce the harm from drugs in our community.

We will seek to collect relevant data to effectively evaluate the outcomes of legalisation, with a formal evaluation being conducted not 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.

Thank you again for your invitation to make a submission to this inquiry. We understand that these are reforms the Canberra community wants to see made, but also ones that must also be properly and carefully considered. The Government is now undertaking that work and will provide a detailed set of drafted amendments reflecting the points above to the Committee when these are available.

Yours sincerely



Andrew Barr MLA  
Chief Minister

10 MAR 2019



**ACT**  
Government

Justice and Community Safety

Ms Sarah McNaughton SC  
Director  
Commonwealth Director of Public Prosecutions  
GPO Box 3104  
CANBERRA ACT 2601

Dear Ms McNaughton

I am writing to you in order to seek your views on legislation being considered by the ACT Legislative Assembly to remove penalties for the use and possession of personal amounts of cannabis.

A Private Member's Bill (Attachment A), presented in November 2018 proposes to allow for personal use of cannabis, including possession of up to 50 grams, cultivation of up to four plants per person and consumption of cannabis in private places for persons aged 18 years or older.

The Bill does not propose legalising the sale or supply of cannabis to others, legalising cultivation of cannabis of more than four plants, or legalising the use of cannabis for those under 18 years of age.

In line with its drugs policy focussing on harm minimisation, the ACT Government has indicated it intends to support the Bill subject to a range of amendments (Attachment B) intended to add further safeguards and protections for the community.

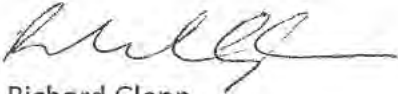
The ACT Government's view is that the Bill is a logical next step of the Simple Cannabis Offence Notice (SCON) scheme that has been in operation since 1992. The SCONs scheme is intended to continue for individuals under 18 years old.

The ACT Government's amendments are also intended to resolve potential incompatibilities with Commonwealth laws including the *Criminal Code Act 1995*. This would be achieved by retaining offences in the *Drugs of Dependence Act 1989* (ACT) for possession and cultivation of cannabis over prescribed limits with the inclusion of an exception such that those offences do not apply to anyone over 18 years of age. This is intended to operate as an excuse to an offence under s 308.1 of the Commonwealth Criminal Code (see s 313.1 of the Commonwealth Criminal Code).

I would appreciate your views on the issue of consistency with Commonwealth legislation, and whether the Bill with amendments to be proposed would operate as an excuse under s 313.1 of the Commonwealth Criminal Code. I have also written to the Secretary of the Australian Attorney-General's Department to seek his views on this matter.

Officers in ACT Government with responsibility for this matter are Mr Andrew Mehrton in the Chief Minister, Treasury and Economic Development Directorate, available at [andrew.mehrton@act.gov.au](mailto:andrew.mehrton@act.gov.au) or 6205 8507 and Mr Keegan Lee in the Justice and Community Safety Directorate, available at [Keegan.lee@act.gov.au](mailto:Keegan.lee@act.gov.au) or 6207 5244.

Yours sincerely



Richard Glenn  
A/g Director-General  
Justice and Community Safety Directorate

30 August 2019

Cc Mr Shane Drumgold  
Director  
The Office of the Director of Public Prosecutions

Encl.



2018

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Michael Pettersson)

## Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

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4 **2 Commencement**

5 This Act commences on 1 July 2019.

6 *Note* The naming and commencement provisions automatically commence on  
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the *Drugs of Dependence Act 1989*.

10 *Note* This Act also amends other legislation (see sch 1).

11 **4 Offences against Act—application of Criminal Code etc**  
12 **Section 4, note 1**

13 *substitute*

14 *Note 1 Criminal Code*

15 The Criminal Code, ch 2 applies to the following offences against this  
16 Act (see Code, pt 2.1):

- 17 • s 162 (Cultivation of 1 to 4 cannabis plants)
- 18 • s 171 (Possessing prohibited substances)
- 19 • s 171AA (Possessing cannabis)
- 20 • s 171AB (Smoking cannabis in public place or near child).

21 The chapter sets out the general principles of criminal responsibility  
22 (including burdens of proof and general defences), and defines terms used  
23 for offences to which the Code applies (eg *conduct*, *intention*,  
24 *recklessness* and *strict liability*).

1 **5 Section 162**

2 *substitute*

3 **162 Cultivation of 1 to 4 cannabis plants**

4 (1) A person commits an offence if the person—

5 (a) is under 18 years old; and

6 (b) cultivates 1 to 4 cannabis plants.

7 Maximum penalty: 1 penalty unit.

8 (2) In this section:

9 *artificially cultivate* means—

10 (a) hydroponically cultivate; or

11 (b) cultivate with the application of an artificial source of light or  
12 heat.

13 *cultivates* has the meaning given in the Criminal Code, section 615  
14 but does not include artificially cultivate.

15 **6 Section 171**

16 *substitute*

17 **171 Possessing prohibited substances**

18 (1) A person commits an offence if the person possesses a prohibited  
19 substance.

20 Maximum penalty: 50 penalty units, imprisonment for 2 years or  
21 both.

22 (2) Subsection (1) does not apply if the person is authorised under the  
23 *Medicines, Poisons and Therapeutic Goods Act 2008*, or another  
24 territory law, to possess the prohibited substance.

- 1 (3) In this section:  
2 *prohibited substance* does not include cannabis.

3 **171AA Possessing cannabis**

- 4 (1) A person commits an offence if the person—  
5 (a) is under 18 years old; and  
6 (b) possesses 50g or less of cannabis.

7 Maximum penalty: 1 penalty unit.

- 8 (2) A person commits an offence if the person possesses more than 50g  
9 of cannabis.

10 Maximum penalty: 50 penalty units, imprisonment for 2 years or  
11 both.

- 12 (3) Subsections (1) and (2) do not apply if the person is authorised under  
13 the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another  
14 territory law, to possess the prohibited substance.

15 **7 Offence notices**

16 **Section 171A (7), definition of *simple cannabis offence***

17 *substitute*

18 *simple cannabis offence* means—

- 19 (a) an offence against section 162 (Cultivation of 1 to 4 cannabis  
20 plants); or

21 *Note* Section 162 does not include artificial cultivation of cannabis  
22 plants.

- 23 (b) an offence against section 171AA (1) of a person under 18 years  
24 old possessing 50g or less of cannabis.

1 **8 New section 171AB**

2 *before section 171B, insert*

3 **171AB Smoking cannabis in public place or near child**

- 4 (1) A person commits an offence if the person smokes cannabis in a  
5 public place.

6 Maximum penalty: 30 penalty units.

- 7 (2) A person commits an offence if—

8 (a) the person smokes cannabis; and

9 (b) a child is within 20m of the person.

10 Maximum penalty: 30 penalty units.

- 11 (3) In this section:

12 *personal vaporiser*—see the *Tobacco and Other Smoking Products*  
13 *Act 1927*, section 3B.

14 *public place*—see the *Smoke-Free Public Places Act 2003*,  
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16 *smoke cannabis* means—

- 17 (a) to directly puff smoke, or vapour, from cannabis, or a product  
18 that contains cannabis, whether or not a device for the inhalation  
19 of smoke, or vapour, is used; or

- 20 (b) to hold or to have control over—

- 21 (i) cannabis, or a product that contains cannabis, while it is  
22 ignited; or

1 (ii) a personal vaporiser that contains cannabis and that is  
2 activated.

3 **Examples—devices—par (a)**

- 4 • a personal vaporiser  
5 • a pipe (including a hookah, water pipe or bong)  
6 • a cigarette holder

7 **9 Dictionary, note 2**

8 *insert*

- 9 • territory law



1 **Schedule 1** **Consequential amendments**

2 (sec s 3)

3 **Part 1.1** **Criminal Code 2002**

4 **[1.1]** **Sections 605 and 614, note**

5 *substitute*

6 *Note* For additional offences relating to possessing controlled drugs, see the  
7 *Drugs of Dependence Act 1989*, ss 169, 171 and 171AA and the  
8 *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36.

9 **[1.2]** **Section 618 (2)**

10 *substitute*

11 (2) A person commits an offence if the person—

12 (a) cultivates (artificially or otherwise) 5 or more cannabis plants;  
13 or

14 (b) artificially cultivates 1 to 4 cannabis plants.

15 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
16 both.

17 *Note* Non-artificial cultivation of 1 to 4 cannabis plants by a person under 18  
18 years old is a summary offence under the *Drugs of Dependence Act 1989*,  
19 s 162.

20 **[1.3]** **New section 636A (3) (ba)**

21 *insert*

22 (ba) that Act, section 171AA; or

1 **Part 1.2 Medicines, Poisons and**  
2 **Therapeutic Goods Act 2008**

3 **[1.4] New section 9A**

4 *in chapter 2, insert*

5 **9A Application of Act to certain cannabis use not prohibited**  
6 **under Drugs of Dependence Act 1989**

7 (1) The following provisions of this Act do not apply to an adult to the  
8 extent that the substance is 50g or less of defined cannabis:

- 9 (a) section 26 (2) (Supplying declared substances);  
10 (b) section 33 (Manufacturing regulated substances);  
11 (c) section 35 (1) (Obtaining certain declared substances);  
12 (d) section 36 (Possessing certain declared substances);  
13 (e) section 37 (2) (Administering certain declared substances).

14 (2) In this section:

15 *defined cannabis*—

- 16 (a) means cannabis as defined in the *Drugs of Dependence*  
17 *Act 1989*; but  
18 (b) does not include a substance or medicine that is able to be  
19 prescribed under this Act.

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 28 November 2018.

**2 Notification**

Notified under the Legislation Act on 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---

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## Andrew Barr MLA

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Bec Cody MLA  
 Chair  
 Standing Committee on Health, Ageing and Community Services  
 Legislative Assembly for the ACT  
 GPO Box 1020  
 CANBERRA ACT 2601

Dear Ms <sup>Bec</sup>Cody

Thank you for your letter of 27 February 2019 inviting the Government to provide an outline of intended amendments to the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018* that has been referred to the Standing Committee on Health, Ageing and Community Services for inquiry. The following information is provided for the information of the Committee.

### *The ACT Government's 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 has clearly proven not to 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.<sup>1</sup>

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, including supporting this Bill subject to appropriate amendments which are detailed later in this submission.

<sup>1</sup> 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>

### ACT Legislative Assembly

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@ABarrMLA



AndrewBarrMLA



actchiefminister



### *Matters to be considered*

As is to be expected with an issue as complex as this, the Government has identified a number of issues requiring further consideration before the Bill can be passed.

Even after the passage of this Bill, possessing and growing cannabis will carry a degree of risk arising from interaction 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.

There is also uncertainty as to how a Commonwealth Government may react to the ACT passing this Bill and we cannot guarantee a Commonwealth Government would not intervene to prevent reforms – as has occurred in the past.

There are also a range of health implications to 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. However, it must be noted that these health risks already exist for anyone who uses cannabis under current legislation.

Implementation of this Bill may be able to assist in addressing some of these health risks. For example, the stigma and risk of punishment associated with illegal drug use may mean that prohibition is preventing people from seeking medical or other types of help when it is needed. 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. The implications for justice outcomes are similarly complex. Currently, possessing small amounts of cannabis for personal use can bring people into contact with the justice system, with lasting and serious consequences. Moving from the decriminalisation to legalisation of small amounts of personal cannabis could avoid help individuals avoid these negative outcomes.

The Government also has a responsibility to focus our justice resource where they're needed the most: on disrupting serious and organized crime, protecting our community from individuals or groups who might wish to do us harm, helping women and children dealing with domestic and family violence. Legalisation means the ACT's police and court resources can be better focused in these areas where they are most needed.

There are also broader public safety effects to be considered. Under the current regime, the one-in-twelve Canberrans that use cannabis have no legal channel to obtain it. As a result, otherwise law-abiding individuals are required to interact with criminals in a way that exposes them to risks and may also increase the risk of further offending in our community.

By legalising the option for individuals to cultivate a small number of plants for their own use, there may be opportunities to reduce the market for illegal drugs – a market that would otherwise provide revenue to serious or organised criminals.

### *Proposed Government Amendments*

In light of these and other issues, the Government intends to move a number of amendments to the Private Members Bill. We have instructed the Parliamentary Counsel's Office to draft Government amendments which would give effect to the following safeguards and improvements:

1. Personal plant limits

Whereas the Bill would 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 Simple Cannabis Offence Notice 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 sharehouses (or dwellings that otherwise have multiple residents) could effectively be used as larger scale 'grow houses'

The Government amendments will introduce 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 front yards, verges or community gardens. This restriction is intended to minimise access to cannabis plants by persons other than the legal owner. This would also have the effect of prevent 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 each cannabis plant.

4. Secure storage

Government amendments will require cannabis to be kept securely when not in an individual's possession in order to restrict access by children and young people or other vulnerable individuals.

5. Distinguish 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 Simple Cannabis Offence Notice 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 would distinguish between dry cannabis (i.e. cannabis ready to be used) and 'wet' cannabis (i.e. harvest plant material that has not yet been dried).

Dry cannabis would still be subject to the 50 gram limit as included in the Bill. The Government will move to include a separate limit of 150 grams for fresh (or 'wet') cannabis that would be applicable 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 be, or 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 or intentionally* use cannabis in a way that exposes a person less than 18 years old to this.

#### *Other matters*

The Government acknowledges that legalisation of cannabis for personal use has not been tried in Australia before. Notwithstanding the above amendments, there remains a degree of uncertainty and risk associated with the proposed new approach. However, the ACT Government believes it is important to continue exploring new measures to reduce the harm from drugs in our community.

We will seek to collect relevant data to effectively evaluate the outcomes of legalisation, with a formal evaluation being conducted not 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.

Thank you again for your invitation to make a submission to this inquiry. We understand that these are reforms the Canberra community wants to see made, but also ones that must also be properly and carefully considered. The Government is now undertaking that work and will provide a detailed set of drafted amendments reflecting the points above to the Committee when these are available.

Yours sincerely



Andrew Barr MLA  
Chief Minister

18 MAR 2019

**From:**"Martin, Victor" <Victor.Martin@act.gov.au>

**Sent:**04/08/2019 11:37 PM

**To:**"Engele, Sam" <Sam.Engele@act.gov.au>;"James, David" <David.James@act.gov.au>

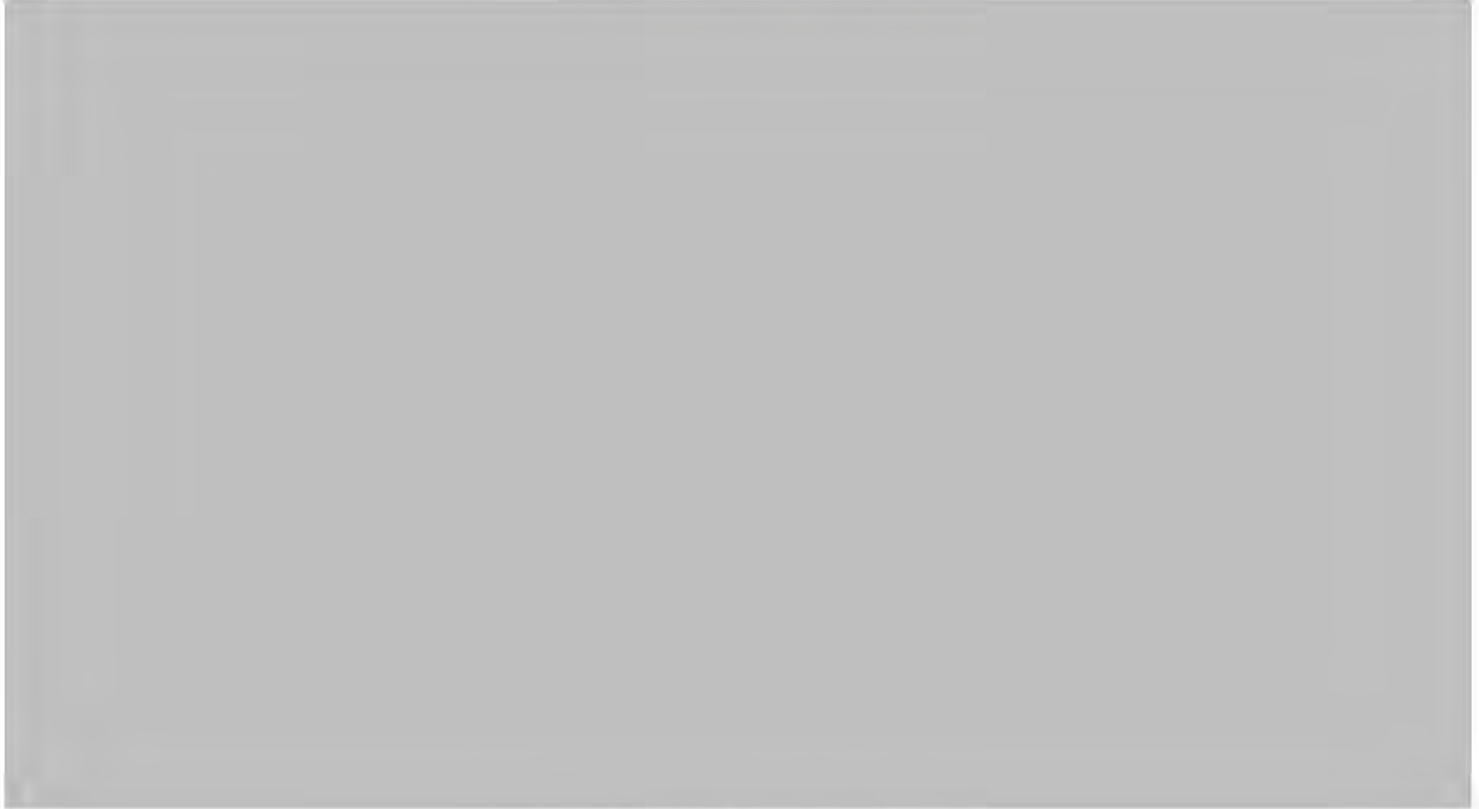
**Cc:**"Lee, Keegan" <Keegan.Lee@act.gov.au>;"Bibrowicz, Phil" <Phil.Bibrowicz@act.gov.au>

**Subject:**FW: FAC comments - Govt amendments to Drugs of Dependence PMB

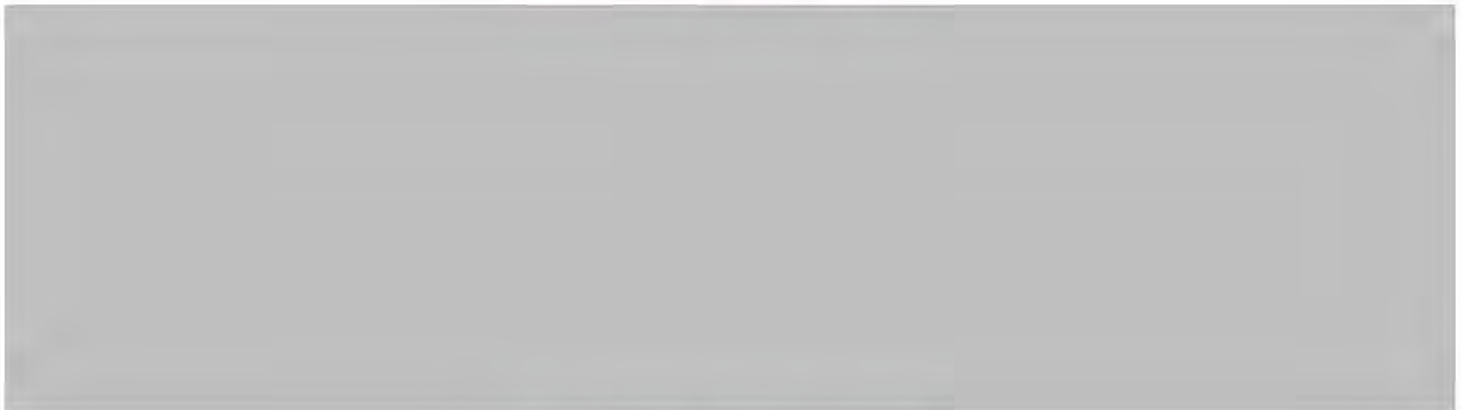
**Attachments:**Attach A - Table of comments 19-361.DOCX

**Importance:**High

UNCLASSIFIED Sensitive: Cabinet



UNCLASSIFIED Sensitive: Cabinet



UNCLASSIFIED Sensitive: Cabinet







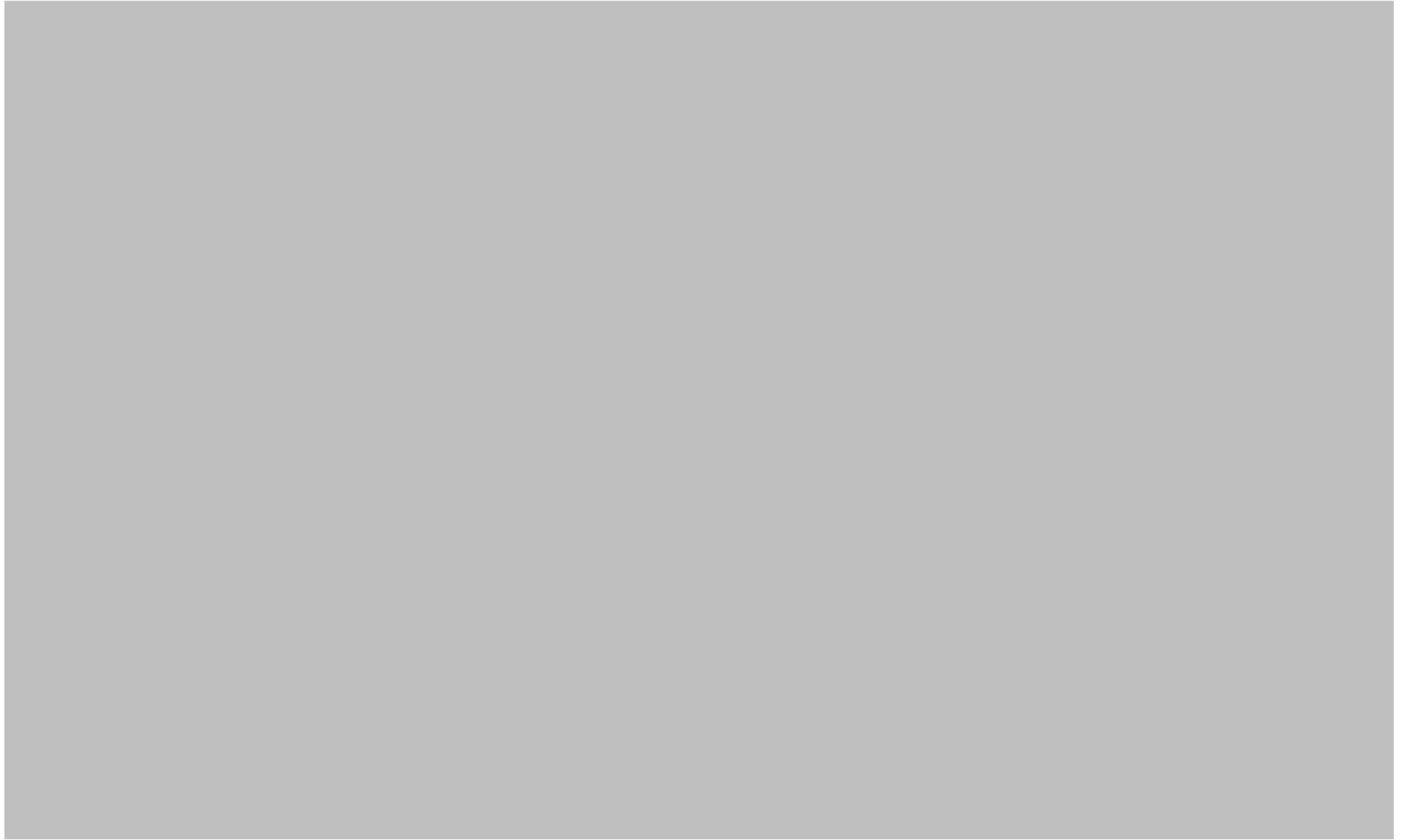
**SENSITIVE: CABINET**



**SENSITIVE: CABINET**

## TABLE OF FINAL COMMENTS









**From:**"Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:**14/08/2019 6:06 AM

**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:**"Engele, Sam" <Sam.Engele@act.gov.au>;"Croke, Leesa" <Leesa.Croke@act.gov.au>

**Subject:**Further cannabis query

Hi again,

Something that has occurred to me in putting stuff together for the cannabis debate today: are our materials explicit anywhere on whether this reform will allow people to have up to 50g of dried cannabis *and* two plants, or is the assumption that they will have *either* 50g of dried cannabis *or* two plants? i.e. if someone is at home with 50g of dried cannabis on the coffee table and two plants with buds on them that have not yet been harvested, is there a chance a zealous police officer could take a view that this exceeds the limits?

If we don't have a clear answer to this already, could you please engage with JACS to get one?

Thanks very much,

Jen

**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 14/08/2019 2:17 AM

**To:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Cook, Michael" <Michael.Cook@act.gov.au>

**Subject:** Drugs of Dependence - debate pack

**Attachments:** Amendment list and responses - for CMO.docx

Hi Sam and Andrew,

With the Government's position and amendments on the Petterson PMB having been confirmed by Cabinet, I just wanted to check that things are now in train to prepare the Chief's debate pack?

I'm doing a draft of his debate speech now, which I'll send across to you for checking and comments when complete. But as there are likely to be a range of amendments to this bill – both government and non-government, I wanted to make sure your team is also preparing a schedule of amendments like the attached to support the Chief's engagement in the debate?

We obviously don't have any specific amendments from the Greens or Liberals yet, but if this at least gets started with the individual government amendments then it will be quicker and easier to drop the further ones in later.

We'll need to do a Q&A document for the reference of all government members as well; I'll send over a list of the items this should cover shortly – unless there's already one in train?

Thanks for your help,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Member for Kurrajong

P. +61 2 6207 1201 | M. +61 **Sch 2.2(a)(ii)** E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)





**From:**"CMCD DLO"

**Sent:**28/08/2019 2:17 AM

**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:**"James, David" <David.James@act.gov.au>

**Subject:**Advice on possible non-government amendments to the Drugs Amendment Bill 2018

UNCLASSIFIED For-Official-Use-Only

Hi Andrew,

Thanks for our phone conversation just now. CMTEDD2019/4349 has now been provided to Jen Rayner.

Jen Rayner and Tom Nock have also requested that PCD coordinate some advice on possible non-government amendments to the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, the details of which are outlined in the email below.

Kind regards,  
Rachel

**Rachel Wilkie | A/g Directorate Liaison Officer – Chief Minister's Office  
Office of the Chief Minister**

Chief Minister, Treasury and Economic Development Directorate | ACT Government

☎ (02) 6205 3029 | ✉ [CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au) | ACT Legislative Assembly, 196 London Circuit Canberra City ACT 2601

---

**From:** Nock, Thomas <Thomas.Nock@act.gov.au>

**Sent:** Wednesday, 28 August 2019 10:51 AM

**To:** CMCD DLO <CMCDDLO@act.gov.au>

**Cc:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>

**Subject:** Advice on possible non-government amendments to the Drugs Amendment Bill 2018

Hi Rachel,

In preparation for the debate and possible opposition/greens amendments that may be proposed to the bill in the detail stage, could PCD please co-ordinate some advice on the following matters:

- Could PCD and Health please pull together some dot points on how the effect of the Government amendments to the Drugs Amendment Bill and the ACT's medicinal cannabis scheme are different, specifically:
  - What makes medicinal cannabis 'medicinal'?
  - How does the scheme work?
  - How is recreational and medicinal cannabis treated differently under Commonwealth law?
  - Why do patients require strict medical supervision if they are using cannabis for medicinal purposes?
- If medical practitioners are required to provide medical approval for an individual to be eligible for the exception to the possession/cultivation offence:
  - Would this raise medical liability issues for practitioners and/or human rights issues?
  - Would this measure be at all effective in addressing the health impacts of cannabis use?
- What would be the human rights implications of excluding those with convictions for serious drug offences (i.e trafficking) from the exception to the possession/cultivation offence? Would there be any other unintended consequences of such an amendment?
- Similarly, what would be the human rights and other implications of excluding those that work in dangerous/hazardous occupations, or any other occupation that could be 'prescribed', from the exception to the possession/cultivation offence? To what extent can employers already require restrictions such as maintaining a zero alcohol/drug concentration?
- Could JACS please provide advice on the types of roadside impairment tests that meet the standard of evidence required in court?

There may be some more requests for advice as our understanding of non-government amendments to the bill become clearer.

Happy to chat if any clarification is needed.

Thanks!

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:** "Wilkie, Rachel" <Rachel.Wilkie@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:** 28/08/2019 2:17 AM  
**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:** "James, David" <David.James@act.gov.au>  
**Subject:** Advice on possible non-government amendments to the Drugs Amendment Bill 2018

UNCLASSIFIED For-Official-Use-Only

Hi Andrew,

Thanks for our phone conversation just now. CMTEDD2019/4349 has now been provided to Jen Rayner.

Jen Rayner and Tom Nock have also requested that PCD coordinate some advice on possible non-government amendments to the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, the details of which are outlined in the email below.

Kind regards,  
Rachel

**Rachel Wilkie | A/g Directorate Liaison Officer – Chief Minister's Office**  
**Office of the Chief Minister**

Chief Minister, Treasury and Economic Development Directorate | ACT Government

☎ (02) 6205 3029 | ✉ [CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au) | ACT Legislative Assembly, 196 London Circuit Canberra City ACT 2601

---

**From:** Nock, Thomas <Thomas.Nock@act.gov.au>  
**Sent:** Wednesday, 28 August 2019 10:51 AM  
**To:** CMCD DLO <CMCDDLO@act.gov.au>  
**Cc:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>  
**Subject:** Advice on possible non-government amendments to the Drugs Amendment Bill 2018

Hi Rachel,

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- Could PCD and Health please pull together some dot points on how the effect of the Government amendments to the Drugs Amendment Bill and the ACT's medicinal cannabis scheme are different, specifically:
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There may be some more requests for advice as our understanding of non-government amendments to the bill become clearer.

Happy to chat if any clarification is needed.

Thanks!

Tom

Tom Nock | Adviser

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Tertiary Education

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

P. (02) 6207 5833 | E. [thomas.nock@act.gov.au](mailto:thomas.nock@act.gov.au)



**From:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Sent:** 14/08/2019 10:55 PM  
**To:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>  
**Subject:** RE: Further cannabis query

UNCLASSIFIED Sensitive

Thanks, Jen.  
Will make sure those Qs get incorporated.

Cheers.  
-Andrew

---

**From:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>  
**Sent:** Thursday, 15 August 2019 8:43 AM  
**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>  
**Subject:** RE: Further cannabis query

Great, thanks for clarifying. I don't think it's something we particularly need to specify in the main comms, but it's just one of those fiddly implementation points that we're likely to get asked about during the detail stage of the Assembly debate, so good to have the answer to hand.

Below is my brainstorm of the top-line things we'll need to include in an FAQs document – can this information please be added to that as well? Happy to chat through how we should answer any of these if you want a steer on the direction.

Thanks,

Jen

## FAQs

What does the bill do?

What are the government's amendments?

Will cannabis be legal in the ACT if this bill passes?

How does the bill interact with Commonwealth law?

How will police determine if cannabis is being grown at someone's usual residence?

If there are more than two people living in a household, how will police determine who four cannabis plants belong to?

How are wet and dry cannabis defined?

What will people need to do to meet the secure storage requirements?

If someone is smoking in their backyard with a child inside the house less than 20 metres away, does this infringe the smoking rules?

Will people be allowed to smoke cannabis on apartment balconies?

Does the bill change any of the current laws relating to drug driving?

How do police determine if someone is driving under the influence of cannabis?

Why won't the Government support allowing the hydroponic cultivation of cannabis?

Why won't the Government support allowing grow clubs or other collective growing arrangements?

Are the laws relating to the supply of cannabis changing?

How will people acquire cannabis in order to cultivate it, if supply of seeds, plants and materials remains an offence?

Will the Government consider establishing a legal supply chain in the future?

---

**From:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>

**Sent:** Wednesday, 14 August 2019 11:45 PM

**To:** Rayner, Jennifer <[Jennifer.Rayner@act.gov.au](mailto:Jennifer.Rayner@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

**Cc:** Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>

**Subject:** RE: Further cannabis query

UNCLASSIFIED Sensitive

Evening Jen,

Yes we have covered this off with JACS and PCO. The legislation is set up to allow for the possession of 50g dried (or 150g wet) and two plants. We can beef up this message in the comms material if it isn't clear.

The new amended s162 deals with cultivation separately to possession offences 171AA.

s162 creates an offence for having 1 or 2 plants, but does not apply to people over 18. The effect is that there are no penalties for over 18s.

S171AA creates an offence for having "more than 50g dried cannabis, or more than 150g of cannabis that has been harvested". The use of the words 'dried' and 'harvested' in this section is intended to make a distinction from the cultivation of 1 or 2 plants.

Sam

---

**From:** Rayner, Jennifer

**Sent:** Wednesday, 14 August 2019 4:07 PM

**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

**Cc:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>

**Subject:** Further cannabis query

Hi again,

Something that has occurred to me in putting stuff together for the cannabis debate today: are our materials explicit anywhere on whether this reform will allow people to have up to 50g of dried cannabis *and* two plants, or is the assumption that they will have *either* 50g of dried cannabis *or* two plants? i.e. if someone is at home with 50g of dried cannabis on the coffee table and two plants with buds on them that have not yet been harvested, is there a chance a zealous police officer could take a view that this exceeds the limits?

If we don't have a clear answer to this already, could you please engage with JACS to get one?

**From:** "James, David" <David.James@act.gov.au>  
**Sent:** 01/08/2019 12:58 AM  
**To:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Engele, Sam" <Sam.Engle@act.gov.au>  
**Subject:** FW: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018: DG letters to CDPP and AGD  
**Attachments:** Letter - To Commonwealth Director of Public Prosecutions (CDPP) - Seeking views on Cannabis PMB.DOCX, Letter - To Attorney-Generals Department - Seeking views on Cannabis PMB.DOCX  
**Importance:** High

UNCLASSIFIED Sensitive: Legal

FYI – letters still subject to clearance by AGs office

**David James** | Senior Director | Strategic Policy and Cabinet | Policy & Cabinet Division  
Phone: (02) 6207 2002 | Mobile: **Sch 2.2(a)(ii)** Email: [david.james@act.gov.au](mailto:david.james@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate**  
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Martin, Victor <Victor.Martin@act.gov.au>  
**Sent:** Thursday, 1 August 2019 10:43 AM  
**To:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; James, David <David.James@act.gov.au>  
**Cc:** Lee, Keegan <Keegan.Lee@act.gov.au>  
**Subject:** FW: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018: DG letters to CDPP and AGD  
**Importance:** High

UNCLASSIFIED Sensitive: Legal

Hi Andrew, David,

See attached for letters that I am progressing now for DG signature. Note a couple of amendments including indicating responsible officers.

Victor

---

**From:** Martin, Victor  
**Sent:** Thursday, 1 August 2019 10:42 AM  
**To:** Ferguson, David <[David.Ferguson@act.gov.au](mailto:David.Ferguson@act.gov.au)>  
**Cc:** Lee, Keegan <[Keegan.Lee@act.gov.au](mailto:Keegan.Lee@act.gov.au)>; Smith, Rebekah <[Rebekah.Smith@act.gov.au](mailto:Rebekah.Smith@act.gov.au)>; Glenn, Richard <[Richard.Glenn@act.gov.au](mailto:Richard.Glenn@act.gov.au)>; Williams, Kelly <[Kelly.Williams@act.gov.au](mailto:Kelly.Williams@act.gov.au)>  
**Subject:** Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018: DG letters to CDPP and AGD  
**Importance:** High

UNCLASSIFIED Sensitive: Legal

Hi David

As discussed, the attached are the draft letters to the Commonwealth DPP and the Attorney-General's Department seeking views on the PMB and the proposed government amendments. Let me know if you would like to see any changes and we will action them as this goes up for Richard's signature.

Victor

---

Victor Hugo Martin | A/g Executive Branch Manager |

Phone 02 6205 0245 | **Legislation, Policy & Programs**

Justice and Community Safety Directorate | **ACT Government**

Level 2, 12 Moore Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)





**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 14/08/2019 5:27 AM

**To:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Cook, Michael" <Michael.Cook@act.gov.au>

**Subject:** RE: Drugs of Dependence - debate pack

**Attachments:** Debate speech - Pettersson PMB - Drugs of Dependence Bill.docx

Thanks Andrew – yes, I'll send some thoughts on inclusions for the Q&A over so we can make sure these cover off everything government members will need.

Attached is a first draft of the Chief's debate speech, which aims to step through the rationale for each of our significant amendments and provide an overarching frame for our support for the bill. The intention in getting this done early is that this content can then guide the preparation of other comms and media materials.

Could you please get this looked over by the legal people to check if everything in it is correct?

Thanks for your help,

Jen

---

**From:** Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Sent:** Wednesday, 14 August 2019 1:02 PM

**To:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>; Engele, Sam <Sam.Engele@act.gov.au>

**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>; Cook, Michael <Michael.Cook@act.gov.au>

**Subject:** RE: Drugs of Dependence - debate pack

UNCLASSIFIED

Hi Jen,

Yes, we'll have those docs ready in advance of the debate.

We have Q&As in various places that we'll be pulling together and updating shortly, but we've also discussed a need to work up some news others, particularly around policing.

If you like we can get you a draft list of the Qs on Monday which you can add to? Or, if you already have some, feel free to send them across and we can incorporate.

Thanks.

-Andrew

---

**From:** Rayner, Jennifer <[Jennifer.Rayner@act.gov.au](mailto:Jennifer.Rayner@act.gov.au)>

**Sent:** Wednesday, 14 August 2019 12:17 PM

**To:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

**Cc:** Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>; Cook, Michael <[Michael.Cook@act.gov.au](mailto:Michael.Cook@act.gov.au)>

**Subject:** Drugs of Dependence - debate pack

Hi Sam and Andrew,

With the Government's position and amendments on the Pettersson PMB having been confirmed by Cabinet, I just wanted to check that things are now in train to prepare the Chief's debate pack?

I'm doing a draft of his debate speech now, which I'll send across to you for checking and comments when complete. But as there are likely to be a range of amendments to this bill – both government and non-government, I wanted to make sure your team is also preparing a schedule of amendments like the attached to support the Chief's engagement in the debate?

We obviously don't have any specific amendments from the Greens or Liberals yet, but if this at least gets started with the individual government amendments then it will be quicker and easier to drop the further ones in later.

We'll need to do a Q&A document for the reference of all government members as well; I'll send over a list of the items this should cover shortly – unless there's already one in train?

Thanks for your help,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Member for Kurrajong

P. +61 2 6207 1201 | M. +61 **Sch 2.2(a)(ii)** E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)



**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 14/08/2019 10:42 PM

**To:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>

**Subject:** RE: Further cannabis query

Great, thanks for clarifying. I don't think it's something we particularly need to specify in the main comms, but it's just one of those fiddly implementation points that we're likely to get asked about during the detail stage of the Assembly debate, so good to have the answer to hand.

Below is my brainstorm of the top-line things we'll need to include in an FAQs document – can this information please be added to that as well? Happy to chat through how we should answer any of these if you want a steer on the direction.

Thanks,

Jen

### **FAQs**

What does the bill do?

What are the government's amendments?

Will cannabis be legal in the ACT if this bill passes?

How does the bill interact with Commonwealth law?

How will police determine if cannabis is being grown at someone's usual residence?

If there are more than two people living in a household, how will police determine who four cannabis plants belong to?

How are wet and dry cannabis defined?

What will people need to do to meet the secure storage requirements?

If someone is smoking in their backyard with a child inside the house less than 20 metres away, does this infringe the smoking rules?

Will people be allowed to smoke cannabis on apartment balconies?

Does the bill change any of the current laws relating to drug driving?

How do police determine if someone is driving under the influence of cannabis?

Why won't the Government support allowing the hydroponic cultivation of cannabis?

Why won't the Government support allowing grow clubs or other collective growing arrangements?

Are the laws relating to the supply of cannabis changing?

How will people acquire cannabis in order to cultivate it, if supply of seeds, plants and materials remains an offence?

Will the Government consider establishing a legal supply chain in the future?

---

**From:** Engele, Sam <Sam.Engele@act.gov.au>  
**Sent:** Wednesday, 14 August 2019 11:45 PM  
**To:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>  
**Subject:** RE: Further cannabis query

UNCLASSIFIED Sensitive

Evening Jen,

Yes we have covered this off with JACS and PCO. The legislation is set up to allow for the possession of 50g dried (or 150g wet) and two plants. We can beef up this message in the comms material if it isn't clear.

The new amended s162 deals with cultivation separately to possession offences 171AA.

s162 creates an offence for having 1 or 2 plants, but does not apply to people over 18. The effect is that there are no penalties for over 18s.

S171AA creates an offence for having "more than 50g dried cannabis, or more than 150g of cannabis that has been harvested". The use of the words 'dried' and 'harvested' in this section is intended to make a distinction from the cultivation of 1 or 2 plants.

Sam

---

**From:** Rayner, Jennifer  
**Sent:** Wednesday, 14 August 2019 4:07 PM  
**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>  
**Cc:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>  
**Subject:** Further cannabis query

Hi again,

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If we don't have a clear answer to this already, could you please engage with JACS to get one?

Thanks very much,

Jen

**From:** "Mehrton, Andrew"

**Sent:** 14/08/2019 10:55 PM

**To:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>

**Subject:** RE: Further cannabis query

UNCLASSIFIED Sensitive

Thanks, Jen.

Will make sure those Qs get incorporated.

Cheers.

-Andrew

---

**From:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>

**Sent:** Thursday, 15 August 2019 8:43 AM

**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>

**Subject:** RE: Further cannabis query

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**Sent:** Wednesday, 14 August 2019 11:45 PM

**To:** Rayner, Jennifer <[Jennifer.Rayner@act.gov.au](mailto:Jennifer.Rayner@act.gov.au)>; Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

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Sam

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**Sent:** Wednesday, 14 August 2019 4:07 PM

**To:** Mehrton, Andrew <[Andrew.Mehrton@act.gov.au](mailto:Andrew.Mehrton@act.gov.au)>

**Cc:** Engele, Sam <[Sam.Engele@act.gov.au](mailto:Sam.Engele@act.gov.au)>; Croke, Leesa <[Leesa.Croke@act.gov.au](mailto:Leesa.Croke@act.gov.au)>

**Subject:** Further cannabis query

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**Sent:** 14/08/2019 1:45 PM

**To:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

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**Cc:** Engele, Sam <Sam.Engele@act.gov.au>; Croke, Leesa <Leesa.Croke@act.gov.au>

**Subject:** Further cannabis query

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If we don't have a clear answer to this already, could you please engage with JACS to get one?

Thanks very much,

Jen

**From:**"Meherton, Andrew" <Andrew.Meherton@act.gov.au>

**Sent:**26/08/2019 9:12 AM

**To:**"James, David" <David.James@act.gov.au>;"Engele, Sam" <Sam.Engele@act.gov.au>

**Subject:**Cannabis for scrutiny

UNCLASSIFIED

Hey,  
I've just cleared the brief to go across the road in container CMTEDD2019/4349.  
Had to make some edits on the fly though, so would appreciate it if you could both cast eyes over it in the morning just to be safe.

Cheers.  
-Andrew

**ANDREW MEHRTON** | Executive Branch Manager  
Social Policy and Commonwealth State Relations | Policy and Cabinet Group  
Chief Minister, Treasury and Economic Development Directorate | **ACT Government**  
GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)  
Phone: 02.6205 8507 | email: [andrew.meherton@act.gov.au](mailto:andrew.meherton@act.gov.au)





Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To: Chief Minister

Tracking No.: CMTEDD2019/4349

Date: 26 August 2019

From: Executive Branch Manager, Social Policy and Commonwealth State Relations

Subject: Provision of Government amendments to the Drugs of Dependence (personal Cannabis Use) 2018 Private Members Bill to the Legislative Scrutiny Committee

Critical Date: 30 August 2019

Critical Reason: Standing orders require amendments be provided to the Scrutiny Committee 14 days before the week in which amendments may be debated.

Recommendations

That you:

- 1. Sign the attached letter to the Chair of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role);

Signed / Not signed / Please discuss

- 2. Agree the Government response to the Standing Committee on Health, Ageing and Community Services Inquiry into the Private Members Bill will be separately tabled in the Assembly in conjunction with debate on the Private Members Bill during the September sittings; or if this does not occur then out of session prior to 6 October 2019.

Agreed / Not agreed / Please discuss

Andrew Barr MLA ..... Andrew Barr ..... 28/8/19...

Ministers' Offices Feedback

## Background

1. On 28 November 2018, Michael Pettersson MLA introduced the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (the Bill) into the ACT Legislative Assembly. The intent of the Bill is to legalise the personal possession and use of small amounts of cannabis.
2. On 5 February 2019 Cabinet agreed to a policy position supporting the Bill in principle, subject to several amendments aimed at making these changes safer and more practical to implement (ref: CAB2018/746).
3. On 20 February 2019, the Legislative Assembly for the ACT resolved that the Bill be referred to the Standing Committee on Health, Ageing and Community Services (HACS Committee) for inquiry and report by 6 June 2019 (the Inquiry).
4. On Thursday 6 June 2019, the HACS Committee released its *Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019 report* (the Report).
5. On 6 August 2019, Cabinet agreed (ref: CAB2019/361) to a set of Government amendments and agreed to a Government response to the Report of Inquiry of the HACS Committee.

## Issues

### Debate of the Bill

6. There is a possibility that the Private Members Bill (PMB) may be brought on for further debate in the Assembly by Mr Pettersson during Private Members Business on either 18 or 25 September 2019.
7. Any Government amendments proposed to be introduced into the Assembly are required by Standing Order 182A to be provided to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) for consideration.
8. The latest date Government amendments could be provided to the Scrutiny Committee in order for their comments to be available for the September sittings is 2 September 2019.
9. A letter to the Scrutiny Committee Chair providing the Government amendments and supplementary explanatory statement is at [Attachment A](#). The Government amendments and supplementary explanatory statement are at [Attachment B](#) and [Attachment C](#) respectively.

### Minor Technical additions to the Government Amendments

10. Subsequent to Cabinet's agreement, a minor technical issue has been addressed in the Government's amendments to be presented to the Scrutiny Committee based on further comments from ACT Policing.
11. The offence has been amended in subsection 171AA(2) to mirror in reverse subsection 171AA(1) as follows:
  - (1) A person commits an offence if the person possesses-
    - a. 50g or less of dried cannabis; or
    - b. more than 50 g and less than 150g of cannabis and:
      - i. is not dried cannabis; or

- ii. is a mixture of dried cannabis and cannabis that is not dried cannabis.
12. This amendment has also necessitated a change to the definition of a simple cannabis offence to include all of new subsection 171AA (1).

Tabling of Government Response to Inquiry Report

13. The Government is also required to table a response to the HACS Committee inquiry within four months (6 October 2019).
14. If debate of the PMB occurs during the September sittings it is proposed that the Government response to the HACS Committee inquiry be tabled at that time. If debate does not occur during the September sittings, it is proposed that you write to the Speaker separately out of session presenting the response prior to 6 October 2019.

Next Steps

15. Materials to support the debate of the Bill are being prepared in preparation for the September sittings. This will include a debate speech, references explaining the various amendments proposed in the PMB and Government amendments, and communications materials such as 'question and answer' sheets.
16. CMTEDD is coordinating initial communications activities regarding the Government's position on the Bill and proposed amendments. This will be supported by Health Directorate, JACSD and ACT Policing in relation to specific health or legal questions that may need to be addressed during this phase.

**Financial implications**

17. Nil.

**Consultation**

Cross directorate

18. These changes have been developed through a working group primarily consisting of CMTEDD, Health Directorate (primary representative Executive Branch Manager, Erica Nixon), JACSD (primary representative a/g Executive Branch Manager, Victor Martin) and ACT Policing (primary representative Cassandra Lumley).
19. Development of communications strategies has also included communications staff from Health Directorate and ACT Policing.
20. The Government's amendments have been drafted by Parliamentary Counsel's Office (Bianca Kimber/Phil Bibrowicz).

**Work health and safety**

21. Nil.

**Benefits/sensitivities**

22. Nil.

**Communications, media and engagement implications**

23. There is likely to be a high level of interest in these reforms due to this being the first attempt by an Australian jurisdiction to remove all penalties for personal cannabis possession and cultivation.
24. CMTEDD is coordinating initial communications activities regarding the Government's position on the Bill and proposed amendments. This will be supported by Health Directorate, JACSD and ACT Policing in relation to specific health or legal questions that may need to be addressed during this phase.
25. Health Directorate will implement a second phase of communications and engagement activities aimed at communicating to health stakeholders and the general public what the changes mean, the risks of cannabis use and where support can be sought. JACSD will support this work with regard to communicating the legal risks that individual users may face.

Signatory Name: Andrew Mehrton

Phone: x58507

Action Officer: David James

Phone: x72002

**Attachments**

<b>Attachment</b>	<b>Title</b>
Attachment A	Letter to Mrs Gulia Jones
Attachment B	Government amendments
Attachment C	Supplementary Explanatory Statement



## Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mrs Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

By email: [scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

Dear ~~Chair~~ *Giulia*

I am writing to you about the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill) which was introduced by Mr Michael Pettersson MLA on 28 November 2018. The Government intends to introduce amendments into the Legislative Assembly when the Bill is next brought on for debate.

As the Government noted in its submissions to the Standing Committee on Health, Ageing and Community Service's inquiry into this Bill, the Government's amendments are intended to add a number of important safeguards and improvements that are considered necessary.

In line with Standing Order 182A, I am pleased to provide you with the proposed Government amendments as well as a Supplementary Explanatory Statement.

I thank the Committee for their consideration of these amendments.

Yours sincerely

Andrew Barr MLA

Chief Minister

28 AUG 2019

### ACT Legislative Assembly

London-Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia

Phone +61 2 6205 0011 Fax +61 2 6205 0157 Email [barr@act.gov.au](mailto:barr@act.gov.au)



@ABarrMLA



AndrewBarrMLA



actchiefminister



## Government Amendments

### *Plant Limits*

- 1. Why is the Government proposing to decrease the limit of personal plants for an individual from four plants as specified in the Private Member's Bill (PMB) to two plants?**

A limit of two plants is consistent with the settings of the current Simple Cannabis Offence Notice (SCON) scheme which has been in operation since 1992 and is considered a reasonable limit for personal use.

- 2. Why does the Government consider that a limit is needed of four plants per household?**

The PMB does not propose a limit of plants per household. However, the Government considers this creates a possibility that share houses or multiple resident dwellings could effectively be used as "grow houses".

### *Storage and access*

- 3. Why are restrictions proposed for where cannabis can be grown on the premises?**

The Government is proposing amendments to the PMB that only permit plants to be cultivated on parts of a residential property not generally accessible by the public, and only permitting plants to be cultivated by a person who generally resides at that property.

The restriction is intended to minimise access to cannabis plants by persons other than the legal owner. It would also prevent cannabis being legally cultivated on commercial or community property, where it would be more difficult to establish who the plant belongs to.

- 4. Why are amendments being proposed for secure storage of cannabis?**

The PMB does not include a requirement for secure storage. The Government has proposed an amendment aimed at ensuring children cannot access it when stored.

### *Wet and dry cannabis*

- 5. Why is the Government considering making a distinction between fresh/wet and dried cannabis and a higher limit for wet cannabis? When will this amendment be available to the Committee?**

Cannabis loses a considerable amount of weight between being harvested and being dried and ready to use.

The PMB legalises the possession of 50 grams of cannabis. However, if this is taken to mean cannabis ready for use, then a different, higher limit is required to account for the stage

when cannabis is harvested and in the process of drying, after which it will weigh less than the 50 gram limit.

Constructing a practicable legal distinction between 'wet' and 'dry' cannabis, such that a larger amount of fresh ('wet') cannabis can be stored until it has dried or cured to the specified legal limit of 50 grams is an outstanding issue and is not reflected in the current draft of the government amendment bill.

Directorates and the Parliamentary Counsel's Office (PCO) are still working to determine a suitable way of addressing this element in legislation. In the absence of such a clause, if the PMB is passed the legal limit for cannabis material, whether wet or dry, would remain at 50 grams. This effectively means 50 grams of material could be harvested from a plant, which would dry to a lesser weight. Individuals would still be able to possess 50 grams of dried cannabis if obtained from other sources.

### *Children and young people*

#### **6. What is the Government proposing to protect children from passive smoking?**

The PMB currently provides an offence where a person smokes cannabis within 20 metres of a child. This could mean that a person could be legally smoking in their backyard but within 20 metres of a child in a neighbouring property.

The amendment proposes to make it an offence if a child is exposed to smoke or vapour from the cannabis the person is smoking. This provides a more realistic protection for children and avoids situations where an individual commits an offence inadvertently.

#### **7. What consequential legislative amendments may also be needed?**

The PMB retains the offence for a young person to possess less than 50 grams of cannabis (clause 6, new section 171AA) with a maximum penalty of 1 penalty unit (\$150). As the PMB proposes that the existing SCON scheme should be repealed, it will be important to allow police to impose an infringement notice to young people to divert them from the criminal justice system.

This would be achieved through a new regulation under the *Magistrates Court Act 1930*. An infringement notice amount of \$25 would allow police to issue an infringement without imposing financial hardship on young people who will generally have less capacity to pay a higher amount.

### *Drug driving*

#### **8. Does the Bill or the Government's proposed amendments propose any changes for drug driving laws?**

The PMB does not propose any changes to the Territory's existing drug driving laws. The Government is not proposing amendments in relation to drug driving at this time.

We acknowledge that if this Bill is passed as currently drafted, there will need to be community education to ensure there is no confusion around the relationship of the legal availability of cannabis and the ACT's drug driving offences.

The ACT Government is committed to the realisation of "Vision Zero" – a strategy outlined in the *ACT Road Safety Strategy 2011-20* and the *ACT Road Safety Action Plan 2016-2020*, which aims to achieve zero road fatalities by 2020.

Like all other Australian jurisdictions, the ACT has a zero-tolerance approach to drug driving.

### *Policing*

#### **9. What engagement has the Government had with ACT Policing on this Bill?**

ACT Government officials and ACT Policing staff have met and discussed the PMB and each organisation's perspective on a number of occasions. We are all committed to improving safety in our community and acknowledge this is a complex issue, particularly regarding how this legislation would interact with Commonwealth laws.

#### **10. Would the Government seek to direct ACT Policing not to enforce Commonwealth laws in relation to cannabis possession?**

This has not been considered. We acknowledge that police officers have discretion in how they respond to possible offences, including the discretion they exercise with the current Simple Cannabis Offence Notice scheme.

### **Health Issues**

#### **1. What are the immediate effects of cannabis intoxication on health?**

Cannabis is often used in social settings where in low doses it causes a 'high' that can include feelings of relaxation and happiness.

However, cannabis can also induce anxiety, paranoia and panic attacks, particularly in new or inexperienced users.

Cannabis can induce or cause a temporary psychotic state that clears within several days in individuals with no prior diagnosis of psychosis. In such acute psychotic episodes, cessation of cannabis use will generally result in resolution of the episode.

Other short-term effects of cannabis use include impaired cognition, impaired motor coordination and altered judgement.



## **2. Is it possible to overdose on cannabis?**

Cannabis consumption is not known to directly cause fatal overdoses — it does not suppress breathing like opioids or alcohol. However, non-fatal overdoses can occur.

## **3. What are the longer-term mental health impacts of cannabis use?**

While it can be difficult to establish causality between cannabis use and mental illness because of other confounding factors, long-term cannabis use is associated with a range of mental health conditions. Most commonly, long-term cannabis use is associated with depression, anxiety and psychotic conditions.

Depression is more common in people who use cannabis, with higher use associated with more severe depressive symptoms. However, it is not clear whether this association may be due to a range of common factors that both lead individuals to develop depression, and to use cannabis. There is currently little evidence to support the self-medication hypothesis of cannabis being used to relieve symptoms of depression.

## **4. What are the links between long-term cannabis use and schizophrenia?**

Long-term or heavy cannabis use is associated with an increased risk of chronic psychotic disorders. While it is difficult to establish causality, epidemiological studies make a consistent case that early and/or heavy cannabis use is linked to a significantly increased risk of schizophrenia. In addition, cannabis use can trigger or lead to the early onset of psychosis in people who are already at higher risk of developing psychosis, such as those with a family history.

Cannabis use can exacerbate or trigger psychotic symptoms in individuals who have a current diagnosis of psychosis. As a result, people with psychotic disorders should avoid cannabis and be counselled against using it.

## **5. How does cannabis use interact with mental health diagnosis or treatment?**

The cognitive and behavioural effects of cannabis intoxication can overshadow or be misinterpreted as symptoms of mental illness, including schizophrenia, during diagnosis or the delivery of clinical services. As a result, it can be difficult to accurately assess, diagnose and treat the mental state of someone using cannabis or during cannabis intoxication.

Consequently, the cessation of cannabis use is an important first step for the evaluation and formal diagnosis of mental health conditions, particularly for depression, anxiety and psychotic disorders.

In addition, regular cannabis use can disrupt typical clinical management of mental health conditions by exacerbating symptoms, decreasing or interfering with medication use and by affecting engagement with ongoing treatment.

## **6. What are the longer-term physical health effects of cannabis use?**

The main long-term effects of cannabis are dependence (addiction), symptoms of chronic bronchitis, and a probable increase in heart attack risk for middle-aged adults.

Cannabis smoke contains similar carcinogens to tobacco smoke, but the evidence that cannabis smoking causes cancer is less clear than for tobacco smoking. A complicating factor for research is that many cannabis users also smoke tobacco.

## **7. What are the health effects for people who are passively exposed to cannabis smoke?**

There has been very little research on this. However, some studies have shown that exposure to second-hand cannabis smoke in unventilated conditions produces detectable cannabinoid levels in blood and urine, and causes minor increases in heart rate, mild to moderate self-reported sedative and psychoactive drug effects, and impaired performance<sup>1,2</sup>.

The psychoactive component of cannabis (THC) may be retained in the body for more than four hours following exposure to passive cannabis smoking<sup>2</sup>.

It is not yet known how repeated or long-term exposure to cannabis smoke may affect health. High-quality research on the long- and short-term health effects of exposure to second-hand cannabis smoke is required<sup>2</sup>.

Cannabis smoke has chemical components like those of tobacco smoke, although they are present in different amounts. This makes it likely that repeated exposure to second-hand cannabis smoke will have negative health outcomes<sup>2</sup>.

Given the known harms associated with active cannabis use, such as mental illness, brain developmental changes, respiratory and cardiac disease, and poor prenatal outcomes a precautionary approach to limit passive exposure is recommended<sup>2</sup>.

## **8. How does passive cannabis smoking affect children?**

There has been very little research on this. However, some studies have shown that maternal exposure to cannabis smoke during pregnancy may negatively affect a child's cognitive development. THC (the psychoactive substance in cannabis that produces the

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<sup>1</sup> Herrman et al: *Drug and Alcohol Dependence*, 2015, Volume 151; Non-smoker exposure to secondhand cannabis smoke II: Effect of room ventilation on the physiological, subjective, and behavioral/cognitive effects.

<sup>2</sup> Holitzki et al: *Canadian Medical Association Journal* 2017 5(4) Health effects of exposure to second- and third-hand marijuana smoke: a systematic review.

feeling of being 'high') readily crosses into the placenta and breastmilk. Pregnant and breastfeeding women should avoid active or passive exposure to cannabis smoke<sup>3</sup>.

Children may be more vulnerable than adults to passive smoking of cannabis due to their higher breathing rates<sup>3</sup>.

Cannabis is often mixed with tobacco and cannabis smoke has chemical components like those of tobacco smoke<sup>2</sup>. It should be assumed that passive cannabis smoking is harmful to children.

#### **9. Is cannabis a 'gateway' to other illicit drugs?**

It is not clear that cannabis is a 'gateway' drug to other illicit drugs.

#### **10. How do the health effects of cannabis compare with other drugs?**

Based on current use patterns, alcohol and tobacco still pose much greater harms to individual and public health in Australia than cannabis. Opioids, including pharmaceutical opioids, pose a much greater overdose risk.

#### **11. Won't permitting cannabis smoking set back decades of anti-smoking campaigning?**

From a health perspective, any type of smoking can be harmful to individuals and those around them.

The Bill deliberately doesn't permit public use of cannabis, nor use in front of children. In this way it is intended that any smoking behaviour is not encouraged or normalised.

#### **12. Will the proposed legislation increase cannabis use?**

While research is limited, available evidence does not suggest a clear link between cannabis decriminalisation and increased rates of cannabis use.

The ACT largely decriminalised cannabis in the 1990s when Simple Cannabis Offence Notices and Illicit Drug Diversions were introduced. Cannabis use has fallen in the ACT since then.

For example, in 1998, 20 per cent of ACT residents aged 14 and older reported cannabis use in the past 12 months. In 2016 this figure had fallen to eight per cent.

The ACT legalisation approach is very different to commercial legalisation of cannabis production and sale, which has occurred in Canada and several US states.

The proposed ACT legislation represents a middle way between criminalisation of cannabis and full commercial legalisation. Many drug policy researchers believe this represents a

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<sup>3</sup> George Sam Wang: *Journal of Medical Toxicology*, 2017,13(1); Pediatric Concerns Due to Expanded Cannabis Use: Unintended Consequences of Legalization.

reasonable balance between the harms that result from criminalisation and the harms that result from drug consumption.

As part of the legalisation process it will be important to reaffirm to the community the health risks of cannabis use to reduce the perception that legalisation means cannabis is harmless.

**13. What impact could this legislation have on health or alcohol and other drug services?**

Removing the 'illicit' component of cannabis use contributes to reducing the stigma experienced by users.

The reduction in stigma makes it more likely that people will seek assistance from GPs or alcohol and other drug services if they experience any adverse outcomes from cannabis use or if their cannabis use becomes problematic. This could be through services run by the government, such as the 'Controlling Your Cannabis Use Group' or other counselling and treatment services run by ACT Health, or through trusted community groups that offer drug and other alcohol support services, like Directions ACT and the Canberra Alliance for Harm Minimisation and Advocacy.

This is a positive change for those individuals.

**14. How does medicinal cannabis differ from raw botanical cannabis and what is the impact of this legislation on the medicinal cannabis scheme?**

The term 'medicinal cannabis' should be distinguished from raw botanical cannabis for personal or medical use. The term medicinal cannabis is used to refer to pharmaceutical grade formulations or products, as opposed to raw botanical cannabis that is intended to be smoked or consumed.

The ACT medicinal cannabis scheme is limited to the prescribing of pharmaceutical grade formulations.

The ACT medicinal cannabis scheme will continue to operate irrespective of whether cannabis is legalised in the ACT.

**15. Will the laws around smoking cannabis be the same as for tobacco and other smoking products?**

No, there are differences.

The Cannabis Bill prohibits smoking of cannabis in all public places while the Smoke-Free Public Places legislation prohibits smoking of a smoking product in specified public places

including enclosed public places, outdoor eating and drinking locations, public play spaces and public transport stops and stations, including light rail stops.

The Cannabis Bill prohibits the exposure of a child to cannabis smoke or vapour under all circumstances. Other smoking products are only prohibited around children in specified places, including children's public play areas and in cars with children.

**16. Will the enforcement approach for smoking cannabis be the same as for tobacco and other smoking products?**

No, offences under the Cannabis Bill are only enforceable by a police officer, while the smoke-free public places legislation can be enforced by authorised officers from Access Canberra and the police.

## Opening Statement

- The Government takes a clear harm minimisation approach to drug use in our community.
- We do not condone personal use of cannabis and we know there are health risks for individuals who do use it. However, we also acknowledge the simple reality that it's happening in Canberra.
- We want to provide an appropriate scheme for those individuals who are already using cannabis and will continue to do so. Our approach acknowledges that outright prohibition can bring people into contact with the justice system unnecessarily and prevent people seeking help when they need it.
- The ACT has decriminalised personal use of small amounts of cannabis for some time, and the Private Members Bill is largely consistent with the scheme already in place.
- The Government supports the Private Members Bill in principle but notes this is a complex issue that requires proper consideration and debate.
- In our submission to this inquiry, we indicated we will move a number of amendments to improve the Bill. This includes limiting the number of legal plants to two per person, introducing a household limit and adding restrictions intended to prevent children and young people coming into contact with cannabis.
- These are included in our proposed amendments provided to the inquiry in a draft government amendment bill.
- The one outstanding government amendment not included in the draft government amendment bill is to distinguish between wet and dry cannabis. This continues to be considered by the Government as there is some complexity of creating a practicable legal distinction of the point at which 'wet' cannabis changes into 'dry'.

## **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.<sup>1</sup>

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

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<sup>1</sup> 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>



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).

# Drugs of Dependence (Cannabis) Amendment Bill - Comms Strategy

Thursday, 11 July 2019

8:38 AM

**Meeting Date:** 11/07/2019 9:00 AM

**Location:** Level 5 North, Nara Centre, Goodradigbee Room

**Link to Outlook Item:** [click here](#)

**Invitation Message**

**Content**

<<J2019-440-Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018-AssAm-G-D05.PDF>>	Added by <a href="#">James, David</a> Attachment from Outlook
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## Participants

[James, David](#) (Meeting Organizer)

[Mehrtton, Andrew](#)

[Nixon, Erica \(Health\)](#) (Accepted in Outlook)

[Dolan, Fiona](#)

[Faerber, Jen](#) (Accepted in Outlook)

[Martín, Victor](#) (Tentative in Outlook)

[Van Aalst, Sally](#) (Accepted in Outlook)

[Philp, Alan \(Health\)](#) (Accepted in Outlook)

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[Wilkie, Rachel](#)

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[Emerson, Marc \(Health\)](#) (Accepted in Outlook)

[Paternoster, Teagan \(Health\)](#)

## Notes

- Introductions
- Features of the Bill
- Timeframes for Cabinet and Assembly
- Proposed Response to Assembly Committee Report InquiryTier 2 Communications
- Strategy
- Other Business
- X

- - Police - how will it be enforced
    - Police need Q&As - e.g. are uni dorms one residence or many individuals
  - Health - public health, where to seek help
  - CMTEDD - what are the changes, law has passed,
- Who are the spokespeople for
- Broader harm min conversation
- Other campaigns
  - Party safe in summer
  - O week

Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

<b>To:</b>	Chief Minister	Tracking No.: CMTEDD2019/2802
<b>Date:</b>	11 June 2019	
<b>From:</b>	Executive Branch Manager, Social Policy and Commonwealth State Relations	
<b>Subject:</b>	Final Report of the Inquiry into the Drugs of Dependence Private members Bill	
<b>Critical Date:</b>	In the normal course of business	
<b>Critical Reason:</b>	To provide an initial summary of the Report and recommendations.	

EGM, PCD: 7/6/2019

**Recommendations**

That you:

1. Note the Information in the attached brief

*Noted* / Please Discuss

Andrew Barr MLA ..... *Andrew Barr* ..... 12/6/19

Minister's Office Feedback

UNCLASSIFIED

## Background

1. This brief is intended to provide a summary and preliminary advice regarding the report and recommendations by the Standing Committee on Health, Ageing and Community Services (the Committee) in its inquiry into a Private Member's Bill (PMB) to amend the *Drugs of Dependence Act* to legalise personal recreational use of cannabis (the Inquiry).
2. The Government made a submission to the Inquiry outlining several amendments that it proposed to make to the Private Member's Bill. The Government subsequently made a further two submissions providing
  - a. a draft Government Amendment Bill indicating how a number of those amendments might be made,
  - b. an additional amendment providing a clause that gives effect to separate legal weights for wet/fresh cannabis and dry cannabis.
3. The additional amendment was in response to a request from committee members when you appeared before the Committee on 8 May 2019. Ms Le Couteur also asked a number of questions on notice about the government's proposed amendments, which you have responded to. Question on Notice #2 (ref: CMTEDD2019/2395) was about the Government's proposed clauses regarding fresh and dry limits.

## Issues

4. The Committee recommended the PMB be supported, but with a number of further amendments. Ms Dunne disagreed with the majority of the recommendations and made a dissenting report.
5. The committee's 16 recommendations include:
  - Making four plants permissible for individuals ~~four~~ six for a household, to recognise that some plants may fail (recommendation 2).
  - Allowing artificial cultivation in order for plants to be grown in Canberra's shorter growing seasons (recommendation 3).
  - Government should work with police to bring in a new model of roadside drug testing that factored in levels of impairment, not just the presence of the drug (recommendation 9).
  - New amendments should be made to allow cannabis social clubs to be set up (recommendation 16).
6. A full list of the recommendations is at Attachment A.
7. A number of the recommendations are somewhat consistent with the Government's existing and publicly stated position and could be readily agreed to, including implementing a public health campaign and providing public information (recommendations 14 and 15), and ensuring that health resources are available to treat cannabis dependence (recommendation 13).
8. Some recommendations are inconsistent with the Government's current position, particularly allowing group grow houses and are unlikely to be agreed to. Others will

involve consultation with stakeholders including ACT Policing and the GSO to identify the implications of accepting the Committee's recommendations.

- 9. Directorates, with the Government Solicitor's Office and PCO are exploring options and refinements to the draft Government Amendment Bill that will address these recommendations.
- 10. The recommendations made by the Committee to resolve the issue of Commonwealth intervention in any proposed amendment to legalizing the personal use of cannabis will require further legal advice from the GSO and possible liaison with the Commonwealth Attorney-General's Department to seek a review of their position in light of new amendments. A
- 11. CMTEDD will coordinate advice regarding findings and recommendations made by the Committee alongside any further options or advice identified by directorates and proceed to develop a formal Government response for consideration by Cabinet, noting the next sitting in which the PMB could be debated is late July 2019.

**Financial Implications**

12. Nil.

**Consultation**

Internal

13. Nil.

Cross Directorate

14. The Cross Directorate working group will convene to develop a proposed Government response and further refine a set of amendments to the Bill.

External

15. Nil.

**Work Health and Safety**

16. Nil.

**Benefits/Sensitivities**

17. A public health campaign will require cross directorate work with CMTEDD and Health working closely to develop material for public use that will need to be nuanced and sensitive, yet also informative and not encourage cannabis use.

Signatory Name: Andrew Mehrton

Phone: x58507

Action Officer: David James

Phone: x72002

**Attachments**

Attachment	Title
Attachment A	Committee Recommendations

# RECOMMENDATIONS

<u>Recommendation</u>	Notes
<p><b><u>RECOMMENDATION 1</u></b></p> <p><b><u>2.10 The Committee recommends that, subject to the following comments and amendments, the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be supported.</u></b></p>	<p><b>Agreed</b> – the Government supports the Bill and will move amendments as outlined in this response to the Committee’s recommendations.</p>
<p><b><u>RECOMMENDATION 2</u></b></p> <p><b><u>4.13 The Committee recommends that consequential amendment [1.2] (Section 168(2) of the Criminal Code 2002), 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></b></p>	<p><b>Not agreed</b> – 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><b><u>RECOMMENDATION 3</u></b></p> <p><b><u>4.34 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></b></p>	<p><b>Not agreed</b> – 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><b><u>RECOMMENDATION 4</u></b></p> <p><b><u>4.57 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></b></p>	<p><b>Noted</b> – 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><b><u>RECOMMENDATION 5</u></b></p> <p><b><u>4.58</u></b> <b><u>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></b></p>	<p><b>Noted</b> – the Government is of the view that definitions in the Government’s amendments address this matter.</p>
<p><b><u>RECOMMENDATION 6</u></b></p> <p><b><u>4.59</u></b> <b><u>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></b></p>	<p><b>Not agreed</b> – the Government supports maintaining a clear distinction between allowable amounts for commercial and trafficable amounts under Commonwealth legislation.</p>
<p><b><u>RECOMMENDATION 7</u></b></p> <p><b><u>4.88</u></b> <b><u>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></b></p>	<p><b>Noted</b> – the Government believes the proposed amendments provide stronger and more workable protections for children and other members of the public.</p>
<p><b><u>RECOMMENDATION 8</u></b></p> <p><b><u>4.89</u></b> <b><u>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></b></p>	<p><b>Noted</b> – the Government believes the proposed amendments provide stronger and more workable protections for children and other members of the public.</p>
<p><b><u>RECOMMENDATION 9</u></b></p> <p><b><u>4.105</u></b> <b><u>The Committee recommends that the ACT Government collaborate with ACT Policing to adopt a cannabis drug driving test that determines impairment.</u></b></p>	<p><b>Noted</b> – 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><b><u>RECOMMENDATION 10</u></b></p> <p><b><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></b></p>	<p><b>Noted</b> – the Government will address this issue through our proposed amendments to the Bill.</p>
<p><b><u>RECOMMENDATION 11</u></b></p> <p><b><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></b></p>	<p><b>Noted</b> – The Government will consider appropriate steps to ensure the intent of the Bill is delivered on as it is implemented.</p>
<p><b><u>RECOMMENDATION 12</u></b></p> <p><b><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></b></p>	<p><b>Noted</b> – 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><b><u>RECOMMENDATION 13</u></b></p> <p><b><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></b></p>	<p><b>Agreed</b> – 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><b>RECOMMENDATION 14</b></p> <p><b><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></b></p>	<p><b>Agreed</b> – the Government intends to deliver a public information campaign following passage of the bill, which will include a public health component.</p>
<p><b>RECOMMENDATION 15</b></p> <p><b><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></b></p>	<p><b>Agreed</b> – 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><b>RECOMMENDATION 16</b></p> <p><b><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></b></p> <ul style="list-style-type: none"> <li>▪ <b><u>The number of people in the group is between two and 10;</u></b></li> <li>▪ <b><u>The cannabis must be cultivated on the premises of one of the members;</u></b></li> <li>▪ <b><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></b></li> <li>▪ <b><u>No one in the group can own more than the legal limit of plants for an individual;</u></b></li> <li>▪ <b><u>Cannabis product in the group is owned by the individual owner of the plant that produced it; and</u></b></li> <li>▪ <b><u>Cannabis product cannot be traded or exchanged with other individuals.</u></b></li> </ul>	<p><b>Not agreed</b> – 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>

**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 12/06/2019 3:26 PM

**To:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "CMCD DLO" <CMCDDLO@act.gov.au>

**Subject:** Cannabis - JACS advice

Hi Sam,

As discussed briefly yesterday, we're keen to get a handle on progress towards resolving or at least further clarifying the issues around interaction with Commonwealth law posed by the proposed Pettersson bill.

Can you please pass on any further advice and input JACS has provided on options to address this? Can you also please advise where things are up to in terms of engagement with the Commonwealth – the last I heard they had provided some informal advice at the officer level, but have things progressed further since?

Thanks for your help,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Member for Kurrajong

P. +61 2 6207 1201 | M. +61 **Sch 2.2(a)(ii)** E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)



**From:** "Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:** 12/06/2019 3:42 PM  
**To:** "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Subject:** FW: Cannabis - JACS advice

UNCLASSIFIED Sensitive: Cabinet

Hi Sam

Further to this, Yersheena's spoken with Cabinet office and has requested the Gov response to the report be placed on the Cabinet agenda for 6 August. They're looking to have this ready in case Mr Pettersson calls on debate in the August sitting fortnight.

Thanks  
Max

---

**From:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>  
**Sent:** Wednesday, 12 June 2019 3:27 PM  
**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
**Cc:** CMCD DLO <CMCDDLO@act.gov.au>  
**Subject:** Cannabis - JACS advice

Hi Sam,

As discussed briefly yesterday, we're keen to get a handle on progress towards resolving or at least further clarifying the issues around interaction with Commonwealth law posed by the proposed Pettersson bill.

Can you please pass on any further advice and input JACS has provided on options to address this? Can you also please advise where things are up to in terms of engagement with the Commonwealth – the last I heard they had provided some informal advice at the officer level, but have things progressed further since?

Thanks for your help,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget  
**Office of Andrew Barr MLA**  
Chief Minister  
Treasurer  
Member for Kurrajong  
P. +61 2 6207 1201 | M. +61 **Sch 2.2(a)(ii)** E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)



**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 13/06/2019 7:09 AM

**To:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Subject:** JACS meeting

Thanks for forwarding on the meeting invite to the cannabis meeting, we'll be in Treasury Estimates at that time unfortunately.

Perhaps if there are papers or anything you can pass on from that meeting, and we can catch up by phone about it afterwards?

Cheers,

Jen

**From:** "Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:** 21/05/2019 10:30 AM  
**To:** "Meherton, Andrew" <Andrew.Meherton@act.gov.au>; "James, David" <David.James@act.gov.au>  
**Subject:** FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Questions on Notice - 08.05.19 [SEC=UNCLASSIFIED]  
**Attachments:** QON 2.pdf, QON 5.pdf, QON 4.pdf, QON 1.pdf, QON 3.pdf

UNCLASSIFIED

Hi Andrew and David

FYI these QONs were submitted yesterday. Minor amendments to the answers on:

- mental health services: saying we didn't expect demand to increase immediately, and resourcing would be considered as part of future budget decisions
- out of reach of children

Thanks  
Max

---

**From:** Murdoch, Max **On Behalf Of** CMCD DLO  
**Sent:** Monday, 20 May 2019 3:36 PM  
**To:** Moa, Josephine <Josephine.Moa@parliament.act.gov.au>  
**Subject:** RE: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Questions on Notice - 08.05.19 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Josephine

Answers to Ms Le Couteur's QONs are attached to this email. Hard copies coming shortly.

Thanks  
Max

---

**From:** Moa, Josephine <[Josephine.Moa@parliament.act.gov.au](mailto:Josephine.Moa@parliament.act.gov.au)>  
**Sent:** Monday, 13 May 2019 2:29 PM  
**To:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>  
**Subject:** RE: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Questions on Notice - 08.05.19 [SEC=UNCLASSIFIED]

Hey Max,

I have attached the five QONs from Ms Le Couteur.

Thanks,  
Josephine

---

**From:** Moa, Josephine  
**Sent:** Monday, 13 May 2019 9:18 AM  
**To:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>  
**Subject:** Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Questions on Notice - 08.05.19 [SEC=UNCLASSIFIED]



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
MS BEC CODY MLA (CHAIR), MRS VICKI DUNNE MLA (DEPUTY CHAIR),  
MS CAROLINE LE COLTEUR MLA

Good Morning Ma

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

Please find attached documents need to respond to Questions on Notice from the Committee's inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, public hearing on Wednesday, 08 May 2019. The attached documents include:

- Supplementary questions on notice; and
- The correct template to use when answering QONs.

Answers to Questions on Notice must be provided on the correct template to the Committee Secretary within **five business days** of receipt of the Questions on Notice, with day one being the first business day after the Questions on Notices are received.

Answers to Questions on Notice for the Wednesday, 08 May 2018 public hearing are due to the Committee Secretary **COB Monday 20 May 2019**.

Please email a **signed PDF** and a **Word version** of all answers to Questions on Notice to [LACommitteeHACS@parliament.act.gov.au](mailto:LACommitteeHACS@parliament.act.gov.au).

Happy to discuss if you have any questions or require further information.

Kind Regards,  
Josephine

**Josephine Moa**

Committee Secretary | Committee Support | Office of the Legislative Assembly  
Phone: 02 6205 0136 | Email: [LACommitteeHACS@parliament.act.gov.au](mailto:LACommitteeHACS@parliament.act.gov.au)



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**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

**Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**  
**ANSWER TO QUESTION ON NOTICE**

---

Asked by [NAME OF MEMBER]:

In relation to:

[Insert details of question taken on notice]

The answer to the Member's question is as follows:—

[Insert answer to question taken on notice]

Approved for circulation to the Standing Committee on Health, Ageing and Community Services

Signature:

Date:

By the [insert title and name]



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

**Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**  
**QUESTION ON NOTICE**

---

Caroline Le Couteur: To ask the Chief Minister

In relation to: Supply Issues

1. How can ACT residents legally access cannabis plants or seeds to start growing their own plants under this Bill?
2. Does the Government support models such as cannabis social clubs or seed dispensaries so that people don't have to use the black market to obtain cannabis seeds for cultivation?
  - a. Would these kind of models count as a supply offence based on the legal advice you have received?
3. Why is the government proposing a 2 plant per person limit and 4 plants "per premises"?
4. How will the premises members be determined and will this mean that renters do not have the same rights as other residents of the ACT?
5. Why will the legislation not allow ACT residents to pool their resources and as a group cultivate plants at one location? The plants could be individually owned by ACT residents.

*Caroline Le Couteur*

Caroline Le Couteur  
13.05.19



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

**Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**  
**QUESTION ON NOTICE**

---

Caroline Le Couteur: To ask the Chief Minister

In relation to: The proposed government amendment on wet versus dry and 50g limit

1. Does the Government's amendment to distinguish between wet and dry cannabis apply only to plant material that has been harvested?
2. Is there a maximum weight that a person can have while still on the plant (i.e. would people have to limit the growth of their plants)?
3. Does the 50g limit only apply to dried leaf or also seeds?
4. What about oil?
5. What about where people are using larger quantities of the wet/green plant for medicinal purposes?

*Caroline Le  
Couteur*

Caroline Le Couteur  
13.05.19



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

**Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**  
**QUESTION ON NOTICE**

Caroline Le Couteur: To ask the Chief Minister

In relation to: Commonwealth versus ACT law

1. I understand that the Bill envisages that the new regime will start 30 days after the bill is passed. How does the government propose to solve the legal issues relating to Commonwealth jurisdiction in that time frame?
2. Does the government propose seeking assistance from the Commonwealth government to resolve the apparent conflict?
  - a. If so do they think that the result of the 18 May 2019 will be relevant to any request?
3. Noting the evidence provided by ACT Policing that officers would be in a position where they would have to decide whether to enforce ACT law or Commonwealth law in relation to cannabis, how does the Government propose to resolve this issue?
4. How can ACT residents have confidence they will not be prosecuted for an offence if they possess small quantities of cannabis?
5. Does the Government support the establishment of an MOU with ACT Policing on how cannabis laws should be enforced in the ACT?
  - a. Do you believe this mechanism would resolve the issue of the apparent conflict between Commonwealth and ACT law?
6. Can the government confirm that Simple Cannabis notices would no longer exist under this bill?

*Caroline Le Couteur*

Caroline Le Couteur  
13.05.19



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

**Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**  
**QUESTION ON NOTICE**

---

Caroline Le Couteur: To ask the Chief Minister

In relation to: The commencement of the bill

1. I understand that the Bill envisages that the new regime will start 30 days after the bill is passed. How does the government propose to educate the community in that time frame, given the legal uncertainty?
2. What additional mental health resources, if any, is the government planning for the commencement of the bill?

*Caroline Le Couteur*

Caroline Le Couteur  
13.05.19



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

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STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

**Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018**  
**QUESTION ON NOTICE**

---

Caroline Le Couteur: To ask the Chief Minister

In relation to: Children

1. How will "out of reach of children" be defined and how will places where you can smoke be defined to protect children but still allow cannabis to be smoked, for instance in apartment buildings?
2. What will be the situation for under 18 year olds, who I understand will not be permitted to possess cannabis under this bill, if they are found to have it?

Caroline  
Le Couteur

Caroline Le Couteur  
13.05.19

**From:**"Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:**13/05/2019 9:47 AM  
**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:**"James, David" <David.James@act.gov.au>;"Croke, Leesa" <Leesa.Croke@act.gov.au>;"Engele, Sam" <Sam.Engele@act.gov.au>;"CMTEDD Government Business and Coordination" <CMTEDD.GBC@act.gov.au>  
**Subject:**FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Questions on Notice - 08.05.19 [SEC=UNCLASSIFIED]  
**Attachments:**QON - Drugs of Dependence (Personal Cannabis) Amendment Bill - Le Couteur.doc, QON - Drugs of Dependence (Personal Cannabis) Amendment Bill - Le Couteur.pdf, HACS - template for QON responses.doc

UNCLASSIFIED

Hi Andrew

As flagged in last Wednesday's hearings, Ms Le Couteur has asked a number of questions on notice.

These are due to the Committee on Monday, but let me know if that's not feasible and I can speak to the Secretary about timelines. I note that they are due to report on 6 June and would need time to deliberate on the answers so they might not be able to be particularly flexible.

I'll check with the office when they would want the draft answers – I suspect they will say Thursday lunchtime.

Thanks  
Max

---

**From:** Moa, Josephine <Josephine.Moa@parliament.act.gov.au>  
**Sent:** Monday, 13 May 2019 9:18 AM  
**To:** CMCD DLO <CMCDDLO@act.gov.au>  
**Subject:** Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - Questions on Notice - 08.05.19 [SEC=UNCLASSIFIED]



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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MS BEC CODY MLA (CHAIR), MRS VICKI DUNNE MLA (DEPUTY CHAIR),  
MS CAROLINE LE COUTEUR MLA

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Happy to discuss if you have any questions or require further information.

Kind Regards,  
Josephine

**Josephine Moa**

Committee Secretary | Committee Support | Office of the Legislative Assembly  
Phone: 02 6205 0136 | Email: [LACommitteeHACS@parliament.act.gov.au](mailto:LACommitteeHACS@parliament.act.gov.au)



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# LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
BEC CODY MLA (CHAIR), VICKI DUNNE MLA (DEPUTY CHAIR), CAROLINE LE COUTEUR MLA

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

## QUESTION ON NOTICE

**Ms Le Couteur: To ask the Chief Minister**

### **In relation to: The proposed government amendment on wet v dry and 50g limit**

Does the Government's amendment to distinguish between wet and dry cannabis apply only to plant material that has been harvested? Is there a maximum weight that a person can have while still on the plant (i.e. would people have to limit the growth of their plants)? Does the 50g limit only apply to dried leaf or also seeds? What about oil? What about where people are using larger quantities of the wet/green plant for medicinal purposes?

### **In relation to supply issues**

How can ACT residents legally access cannabis plants or seeds to start growing their own plants under this Bill?

Does the Government support models such as cannabis social clubs or seed dispensaries so that people don't have to use the black market to obtain cannabis seeds for cultivation? Would these kind of models count as a supply offence based on the legal advice you have received?

Why is the government proposing a 2 plant per person limit and 4 plants "per premises"?

How will the premise members be determined and will this mean that renters do not have the same rights as other residents of the ACT?

Why will the legislation not allow ACT residents to pool their resources and as a group cultivate plants at one location? The plants could be individually owned by ACT residents.

### **In relation to Commonwealth v ACT law**

I understand that the Bill envisages that the new regime will start 30 days after the bill is passed. How does the government propose to solve the legal issues relating to Commonwealth jurisdiction in that time frame?

Does the government propose seeking assistance from the Commonwealth government to resolve the apparent conflict? If so do they think that the result of the 18 May 2019 will be relevant to any request?

Noting the evidence provided by ACT Policing that officers would be in a position where they would have to decide whether to enforce ACT law or Commonwealth law in relation to cannabis, how does the Government

propose to resolve this issue? How can ACT residents have confidence they will not be prosecuted for an offence if they possess small quantities of cannabis?

Does the Government support the establishment of an MOU with ACT Policing on how cannabis laws should be enforced in the ACT? Do you believe this mechanism would resolve the issue of the apparent conflict between Commonwealth and ACT law?

Can the government confirm that Simple Cannabis notices would no longer exist under this bill?

#### **In relation to children**

How will “out of reach of children” be defined and how will places where you can smoke be defined to protect children but still allow cannabis to be smoked for instance in apartment buildings?

What will be the situation of under 18 year olds, who I understand will not be permitted to possess cannabis under this bill, if they are found to have it?

#### **In relation to the commencement of the bill**

I understand that the Bill envisages that the new regime will start 30 days after the bill is passed. How does the government propose to educate the community in that time frame, in particular given the legal uncertainty?

What additional mental health resources, if any, is the government planning for the commencement of the bill?

Caroline Le Couteur 12/5/19

**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 07/05/2019 10:06 PM

**To:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Cook, Michael" <Michael.Cook@act.gov.au>

**Subject:** FW: CM's briefing pack - HACS Hearing - Cannabis

Good evening,

I was reading through the CM's briefing pack for tomorrow's HAC hearings, and was particularly drawn to this note in the advice from the Commonwealth Attorney-General's Department:

- Section 313.1 of the Criminal Code provides that certain serious drug offences do not apply where the conduct is justified or excused under the law of a State or Territory. This defence would not apply to the **proposed** decriminalisation provisions in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT). **This is because the amendments merely decriminalise conduct under ACT law and do not purport to justify or excuse the relevant conduct for the purposes of section 313.1.**

This seems to run counter to the advice we have previously received, that section 313.1 provides a defence against the Commonwealth drug offences. It also seems, however, to provide some discrete direction that we'd need to draft our amendments in such a way that they *both* decriminalise the conduct under ACT law and provide a justification/excuse for the relevant conduct which meets the test in the Commonwealth bill.

Is there already work underway with GSO/PCO to address this? If not, can you please get this moving with them and provide some advice on further possible avenues for amending the Pettersson bill in this way?

Thanks for your help,

Jen

---

**From:** Murdoch, Max **On Behalf Of** CMCD DLO

**Sent:** Tuesday, 7 May 2019 5:20 PM

**To:** Carter, Tania <TANIA.CARTER@act.gov.au>

**Cc:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>

**Subject:** CM's briefing pack - HACS Hearing - Cannabis

UNCLASSIFIED

Hi Tania

I have saved a soft copy of the pack I provided to the CM here: <K:\Barr\DLO\08 - additional info\20190508 - HACS hearing - personal cannabis use>

It's a similar location to the QTBs so should be accessible on the iPad.

Jen – the only new document in the pack is the email from Commonwealth A-G's to Andrew Mehrton expressing their position on the Bill.

We're still yet to receive Health officials' briefings. CMTEDD chased this afternoon and I'll follow up tomorrow.

Cheers

Max

**From:**"Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:**10/05/2019 9:25 AM  
**To:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Cc:**"James, David" <David.James@act.gov.au>  
**Subject:**Cannabis QTB - CM2018/4211

UNCLASSIFIED

Hi Andrew

CMO's requested a bit more info in the Cannabis QTB in light of the hearings on Wednesday.

- needs to address the discussion by the committee that our laws cannot be made consistent with Commonwealth laws – Peter Garrison had a good answer on this which highlighted that it's a matter of interpretation of the law and we need to continue to work through that with the Commonwealth A-G's department.
- should also mention drug driving: Gov does not propose to make any changes to ACT road rules in the context of this legislation and informing Canberrans of the risks of driving when they have used marijuana would be part of a future information campaign if legalisation succeeds.

Could you let me know when it's been updated?

Cheers  
Max

**From:**"Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:**03/05/2019 9:06 AM  
**To:**"James, David" <David.James@act.gov.au>;"Meherton, Andrew" <Andrew.Meherton@act.gov.au>  
**Cc:**"Engele, Sam" <Sam.Engele@act.gov.au>  
**Subject:**Cannabis brief

UNCLASSIFIED

Hi David/Andrew

Could we have the brief for the Cannabis hearing by lunchtime? CMO's keen to review asap in case they need more info.

Cheers  
Max

# Cannabis Inquiry brief

Monday, 6 May 2019  
9:36 AM

**Meeting Date:** 06/05/2019 9:30 AM

**Location:** Nara Level 5 North Cotter 6 People

**Link to Outlook Item:** [click here](#)

**Invitation Message**

**Participants**

[Croke, Leesa](#) (Meeting Organizer)

[Mehrton, Andrew](#)

[Engele, Sam](#)

[James, David](#)

## Notes

- For LC:
  - PMB
  - Cab sub
  - Committee inquiry
  - Brief for chief
  - Example of wet and dry limits
- Health Q 14:
  - Add a bit more detail about what those services
- For each amendment:
  - Table
-

**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 10/05/2019 5:21 PM

**To:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "CMCD DLO" <CMCDDLO@act.gov.au>

**Subject:** FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

**Attachments:** cannabis qton Cody.pdf, cannabis qton Dunne1.pdf, cannabis qton Dunne2.pdf, cannabis qton appendixA.PDF, cannabis qton appendixB.PDF

FYI

**Dr Jennifer Rayner** | Director of Policy and Budget

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Member for Kurrajong

P. (02) 6207 1201 | M. **Sch 2.2(a)(ii)** | E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)



---

**From:** Kandola, Shobaz

**Sent:** Friday, 10 May 2019 3:27 PM

**To:** Landon, Daniel <Daniel.Landon@act.gov.au>; Rayner, Jennifer <Jennifer.Rayner@act.gov.au>; Cook, Michael <Michael.Cook@act.gov.au>; Ferguson, David <David.Ferguson@act.gov.au>

**Subject:** FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

Hi All

The attached QTONS may be of interest to us. Note, that they remain confidential documents until such time as the Committee resolves to publish them. QTON Dunne 1 may be of interest in terms of the advice provided by the Commonwealth.

Kind regards

Shobaz

---

**From:** **Sch 2.2(a)(ii)** <[Sch 2.2\(a\)\(ii\)@afp.gov.au](mailto:Sch 2.2(a)(ii)@afp.gov.au)>

**Sent:** Friday, 10 May 2019 3:08 PM

**To:** Kandola, Shobaz <[Shobaz.Kandola@act.gov.au](mailto:Shobaz.Kandola@act.gov.au)>

**Subject:** FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

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**DETECTIVE SERGEANT** **Sch 2.2(a)(ii)**

COMMUNITY POLICING LIAISON OFFICER

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[www.afp.gov.au](http://www.afp.gov.au)



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A SAFER AUSTRALIA

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**From:** Sch 2.2(a)(ii)

**Sent:** Friday, 10 May 2019 3:07 PM

**To:** 'Moa, Josephine'

**Subject:** FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

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Hi Josephine

Please see the attached QTON's and associated documents. I will also send through 2 x pictures as they are too big to send with this.

Thanks

Sch 2.2(a)(ii)

**DETECTIVE SERGEANT** Sch 2.2(a)(ii)

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**From:** Sch 2.2(a)(ii) On Behalf Of CPLO

**Sent:** Friday, 10 May 2019 3:06 PM

**To:** CPLO; 'Moa, Josephine'

**Subject:** RE: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
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**DETECTIVE SERGEANT** Sch 2.2(a)(ii)

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**From:** Sch 2.2(a)(ii) On Behalf Of CPLO  
**Sent:** Friday, 3 May 2019 3:43 PM  
**To:** 'Moa, Josephine'  
**Cc:** ACT-MPP-Ministerial; ACT-MPP-Legislation-&-Policy  
**Subject:** FW: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

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No worries at all Josephine, I will send them through ASAP  
Thanks  
Kristy

**DETECTIVE SERGEANT** Sch 2.2(a)(ii)  
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**From:** Moa, Josephine [<mailto:Josephine.Moa@parliament.act.gov.au>]  
**Sent:** Friday, 3 May 2019 3:33 PM  
**To:** CPLO  
**Subject:** RE: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

Hi Sch 2.2(a)(ii)

I have attached the template for QTON response.

It would be great if I could get the QTON responses by COB Friday, 10 May (even better if I can get them earlier if you've got them) as I will need to finalise the report by that date to allow the Committee to deliberate before it is tabled in June

Thanks,  
Josephine

---

**From:** Sch 2.2(a)(ii) [redacted]@[afp.gov.au](mailto:afp.gov.au)] On Behalf Of CPLO  
**Sent:** Friday, 3 May 2019 3:22 PM  
**To:** Moa, Josephine <[Josephine.Moa@parliament.act.gov.au](mailto:Josephine.Moa@parliament.act.gov.au)>; CPLO (AFP) <[cplo@afp.gov.au](mailto:cplo@afp.gov.au)>; Sch 2.2(a)(ii) [redacted]@[afp.gov.au](mailto:afp.gov.au)>; Sch 2.2(a)(ii) [redacted]@[afp.gov.au](mailto:afp.gov.au)>  
**Cc:** ACT-MPP-Ministerial <[ACT-MPP-Ministerial@afp.gov.au](mailto:ACT-MPP-Ministerial@afp.gov.au)>; ACT-MPP-Legislation-&-Policy <[ACT-MPP-Legislation-&-Policy@afp.gov.au](mailto:ACT-MPP-Legislation-&-Policy@afp.gov.au)>  
**Subject:** RE: Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs  
[SEC=UNCLASSIFIED]

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Thanks Josephine,  
That gives the ACTP guys something to start working on (with the submission date of COB Friday 10 May 2019)

Can you please also send through the template they need to be completed on

Thanks

Kristy

**DETECTIVE SERGEANT** Sch 2.2(a)(ii)

COMMUNITY POLICING LIAISON OFFICER

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---

**From:** Moa, Josephine [<mailto:Josephine.Moa@parliament.act.gov.au>]

**Sent:** Friday, 3 May 2019 2:29 PM

**To:** CPLO

**Subject:** Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 - QTONs

[SEC=UNCLASSIFIED]

Hi Sch 2.2(a)(ii)

I jotted down the following questions, ACT Policing took on notice:

1. The overall cannabis offences within the defined period (I would say the past five years as that is what the ACT policing submission has).
  - a. Breakdown of the offences – diversion, court, SCONS, people with SCONS who went to court, etc.
  - b. Include percentage as well – e.g. 66 per cent diverted over 5 years
2. Written guidance of SCONS and Diversions
  - a. Can the committee receive a copy of the guidance (please advise if this is confidential or able to be published)
3. Advice from of AG's office on Commonwealth/Territory legislation (please advise if this is confidential or able to be published)

I'll double check the uncorrected proof Hansard when it comes in to confirm the wording of the QTONs, and I'll let you know.

Kind Regards,

Josephine

**Josephine Moa**

Committee Secretary | Committee Support | Office of the Legislative Assembly

Phone: 02 6205 0136 | Email: [LACcommitteeHACS@parliament.act.gov.au](mailto:LACcommitteeHACS@parliament.act.gov.au)



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## Charges by detailed offence and clearance type

Charge		Cleared By	2013-14	2014-15	2015-16	2016-17	2017-18	Total
Other Cannabis Offence	A.C.T. - AID/ABET CULTIVATE TRAFFICABLE QTY OF CANNABIS FOR SALE	CHARGED BEFORE COURT	1	0	0	0	0	1
	A.C.T. - ATTEMPT POSSESS PROHIBITED SUBSTANCE BY VIRTUE OF S.44 OF ACT	DRUG DIVERSION	1	0	0	0	1	2
	A.C.T. - ATTEMPT SUPPLY CANNABIS TO A CHILD	CHARGED BEFORE COURT	2	0	0	0	0	2
	A.C.T. - ATTEMPT TRAFFIC IN CONTROLLED DRUG OTHER THAN CANNABIS	CHARGED BEFORE COURT	0	0	2	0	0	2
		SUMMONS	0	0	2	0	0	2
	A.C.T. - CONSPIRACY TO TRAFFIC IN A CONTROLLED DRUG OTHER THAN CANNABI	CHARGED BEFORE COURT	0	0	0	1	0	1
		SUMMONS	0	0	0	4	0	4
	A.C.T. - CONSPIRACY TO TRAFFIC IN CANNABIS	SUMMONS	0	0	0	2	0	2
	A.C.T. - CULTIVATE COMMERCIAL QTY OF CONTROLLED PLANT FOR SALE	ARREST	3	3	0	0	0	6
		CHARGED BEFORE COURT	1	0	2	0	0	3
	A.C.T. - CULTIVATE CONTR. PLANT - ARTIFICIALLY/3 OR MORE CANNABIS PLAN	ARREST	2	0	1	2	2	7
		CAUTION	1	2	0	0	1	4
		CHARGED BEFORE COURT	2	3	3	6	1	15
		DRUG DIVERSION	3	0	0	2	0	5
		SUMMONS	15	18	9	10	9	61
	A.C.T. - CULTIVATE TRAFFICABLE QTY OF CANNABIS FOR SALE	ARREST	4	4	0	0	0	8
		CAUTION	1	0	0	0	0	1
		CHARGED BEFORE COURT	0	6	3	0	0	9
		SUMMONS	2	9	0	5	1	17
	A.C.T. - JOINT COMMISSION TRAFFIC IN TRAFFICABLE QTY OF CANNABIS	ARREST	0	0	0	0	2	2
		SUMMONS	1	0	0	0	0	1
	A.C.T. - KNOWINGLY CONCERNED CULTIVATE TRAFFICABLE QTY OF CANNABIS FOR	CHARGED BEFORE COURT	0	0	3	1	0	4
	A.C.T. - KNOWINGLY CONCERNED TRAFFIC IN CANNABIS	CHARGED BEFORE COURT	0	0	0	1	0	1
	A.C.T. - KNOWINGLY CONCERNED TRAFFIC IN TRAFFICABLE QUANTITY CANNABIS	CHARGED BEFORE COURT	0	0	0	0	1	1
		SUMMONS	0	0	0	0	1	1
	A.C.T. - MANUFACTURE CONTROLLED DRUG	CHARGED BEFORE COURT	0	1	0	0	0	1
	A.C.T. - MANUFACTURE CONTROLLED DRUG FOR SELLING	CHARGED BEFORE COURT	0	1	0	0	0	1
		SUMMONS	0	0	2	0	0	2
	A.C.T. - POSSESS DRUG OF DEPENDENCE	SUMMONS	0	0	0	2	2	4
	A.C.T. - POSSESS PLANT MATERIAL/EQUIP/INSTRUCTIONS - CULTIVATE CONTROL	SUMMONS	1	2	0	2	0	5
	A.C.T. - POSSESS PROHIBITED SUBSTANCE (OTHER DRUG OR GREATER THAN 25G	ARREST	8	0	0	3	16	27
		CAUTION	0	0	1	1	2	4
		CHARGED BEFORE COURT	6	6	1	3	19	35
DIVERSIONARY CONFERENCE		2	0	0	0	1	3	
DRUG DIVERSION		4	2	1	2	44	53	
SCON		1	3	0	1	1	6	
SUMMONS		14	16	9	9	22	70	

	A.C.T. - POSSESS TRAF/COMM QTY CANNABIS -SALE/SUPPLY	SCON	0	0	0	1	0	1
	A.C.T. - SUPPLY CANNABIS TO A CHILD	ARREST	2	0	1	0	0	3
	A.C.T. - SUPPLY CONTROLLED DRUG TO CHILD FOR SALE	DRUG DIVERSION	1	0	0	0	0	1
	A.C.T. - TRAFFIC IN CANNABIS	ARREST	0	1	1	1	2	5
		CHARGED BEFORE COURT	1	4	1	1	6	13
		DRUG DIVERSION	0	0	0	0	1	1
		SUMMONS	2	4	4	2	4	16
	A.C.T. - TRAFFIC IN COMMERCIAL QTY OF CONTROLLED DRUG	ARREST	0	2	0	0	0	2
	A.C.T. - TRAFFIC IN CONTROLLED DRUG OTHER THAN CANNABIS	ARREST	15	16	20	35	34	120
		CAUTION	0	0	0	1	1	2
		CHARGED BEFORE COURT	5	18	14	18	15	70
		SUMMONS	2	23	5	12	10	52
	A.C.T. - TRAFFIC IN TRAFFICABLE QTY OF CANNABIS	ARREST	3	2	4	4	6	19
		CHARGED BEFORE COURT	5	4	2	5	2	18
		SUMMONS	3	6	0	3	3	15
Simple Cannabis Offence	A.C.T. - CULTIVATE 1 OR 2 CANNABIS PLANTS	CAUTION	0	2	0	0	0	2
		CHARGED BEFORE COURT	0	2	1	0	0	3
		DRUG DIVERSION	0	2	1	0	0	3
		SCON	5	5	7	0	3	20
		SUMMONS	1	3	2	0	0	6
	A.C.T. - CULTIVATE A CANNABIS PLANT FOR SALE	ARREST	0	0	0	1	0	1
		CHARGED BEFORE COURT	0	0	0	1	0	1
		SUMMONS	0	0	0	0	1	1
	A.C.T. - POSSESS PROHIBITED SUBSTANCE (CANNABIS 50G OR LESS)	ARREST	30	27	46	43	64	210
		CAUTION	9	7	4	6	5	31
		CHARGED BEFORE COURT	12	16	22	24	20	94
		DIVERSIONARY CONFERENCE	7	3	4	13	3	30
		DRUG DIVERSION	85	95	97	71	118	466
		SCON	116	95	77	76	56	420
		SUMMONS	25	31	38	34	36	164
	A.C.T. - USE CANNABIS	DRUG DIVERSION	0	0	5	0	0	5
<b>Total</b>			404	444	395	409	516	2168

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## Functional Governance Standard Operating Procedure

### Alcohol and Other Drug Diversion Program referral procedure

Date of initial endorsement:	24 June 2014
Date of last review:	21 March 2017
Endorsed by:	Superintendent Intelligence, Community Safety and Family Violence
Owner:	Superintendent Intelligence, Community Safety and Family Violence
Contact:	Project Officer, Intelligence and Community Safety
Identifier:	DCPOC007
IPS Status	Full

### Disclosure and classification

This document is classified UNCLASSIFIED and is intended for internal AFP use. Disclosing any content must comply with Commonwealth law and the AFP National Guideline on information management.

### Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979 \(Cth\)](#).

This document is a functional governance instrument as defined under s.4 of the [AFP Commissioner's Order on Governance \(CO1\)](#).

### Definitions

AFP appointee	Deputy Commissioner, an AFP employee, special member or special
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	protective service officer and professional staff
Case officer	AFP appointee in charge of an investigation
Child	A person who is under 12 years old
Young Person	A person who is 12 years old, but not yet an adult
Adult	A person who is at least 18 years old
Parent of young offender	A person with parental responsibility for the child/young person within the meaning of the <i>Children and Young People Act 2008</i> (2008)
Intoxicated	As defined in the <i>Liquor Act 2010</i> , a person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor

## Introduction

This Standard Operating Procedure provides guidance for AFP appointees for the management of alcohol and other drug diversions.

## Background

ACT Policing and ACT Health have entered into a Memorandum of Understanding (MOU), which formalises the working relationship between ACT Policing and ACT Health regarding the planning, delivery and ongoing evaluation of alcohol and other drug diversion programs in the ACT including:

- Simple Cannabis Offence Notice
- Youth Alcohol Diversion
- Illicit Drug Diversion

ACT Policing receives funding from ACT Health to meet the service delivery requirements of the MOU.

## Diversion Options

To refer a person to one of the above diversion options, the person must have committed an offence against the *Liquor Act 2010*, or a minor drug possession offence. Before you proceed with a diversion option, you must have *prima facie* evidence that the offender has committed the offence; and the offender admits responsibility for the commission of the offence.

Participation in alcohol and other drug diversionary programs is voluntary – offenders have the right not to participate and may withdraw their consent at any stage of the process. In doing so, they should be made aware that the offence will be cleared by other means, at the case officer's discretion.

# Out of Scope

## Drug diversions

ACT Policing sworn members should consider the following eligibility criteria for drug diversion:

- the offender has committed a minor drug possession offence
- the quantity of drugs does not exceed the threshold for personal use<sup>1</sup>:
  - cannabis – 25g, and/or one or two hydroponically grown plants
  - all other drug types – approximately 25 per cent of the trafficable amount<sup>2</sup>; and/or

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<sup>1</sup> See Table 1 at the end of the document

<sup>2</sup> See Table 1 at the end of the document

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- the offender is in unlawful possession of pharmaceutical drugs, chemicals or poisons, for personal use, controlled under legislation
- the offender acknowledges ownership of the drug and admits to the offence
- the offender has not been previously referred to a drug diversion program more than twice.

### Issuing a Drug Diversion

- Inform the offender (or their parent/guardian in the case of a young person) that while the incident has been officially recorded by ACT Policing, it will not appear on a National Police check.
- The offender should be advised that the diversion involves assessment by an ACT Health clinician and that attendance is mandatory to satisfy the conditions of the diversion. The offender will be contacted directly by ACT Health to schedule an appointment.
- Enter incident details in the apprehension module in the PROMIS job within 48 hours of the incident and record the drugs in the property seizure module.
- Complete a statement of facts, ensuring that sufficient information is recorded to initiate a successful prosecution, if it becomes necessary.
- Clear the offence by 'drug diversion'.
- Enter all relevant details on the [SupportLink](#) portal
- Lodge the seized drugs in accordance with [AFP National Guideline on Property and Exhibits](#) – note 'diversion' on the [Drug seizure and lodgement form](#).



The case officer will be notified of the outcome of the drug diversion, If the offender complies, the case officer should then task the ACT Drug Registrar to destroy the seized drug, and the matter can be finalised. If the offender does not comply, the case officer should clear the offence by caution or initiate prosecution.

### Decision not to proceed to diversion

If one or more of the eligibility criteria are not met, the incident can be cleared at the case officer's discretion, as follows:

- If the incident involves cannabis and meets the criteria, consider the issue of a Simple Cannabis Offence Notice (SCON).
- By caution – see [Aide Memoire on Police Criminal Cautions](#).
- By prosecution.
- If the offender accepts the opportunity to participate in drug diversion but does not comply with the conditions, the case officer will be notified and will have to clear the offence by other means – caution or prosecution.

# Out of Scope



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## Out of Scope

### Legislation

Liquor Act 2010

Intoxicated People (Care and Protection) Act 1994

Children and Young People Act 2008

Crimes Act 1900 (ACT)

Drugs of Dependence Act 1989

Criminal Code 2002

Medicines, Poisons and Therapeutic Goods Act 2002 (ACT)

### Contact

Community Safety- Education and Diversion Team

Phone: 6245 7400

[ACT-CRED@afp.gov.au](mailto:ACT-CRED@afp.gov.au)

**TABLE 1 - Prohibited Substances and Drugs of Dependence**

Prohibited substance	Drug diversion threshold	SCON
Cannabis	25g 1 <b>or</b> 2 plants	50g 1 <b>or</b> 2 plants
Heroin	Amount for personal use	N/A
MDMA 3,4- methylenedioxymethamphetamine	1-2 tablets	N/A
LSD Lysergide	Amount for personal use (approximately 25% of the trafficable amount)	N/A
GHB 4-hydroxy butanoic-acid	Amount for personal use (approximately 25% of the trafficable amount)	N/A

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Drug of Dependence	Drug diversion threshold	SCON
Methylamphetamine	Amount for person use (approximately 25% of the trafficable amount)	N/A
Cocaine	Amount for person use (approximately 25% of the trafficable amount)	N/A
Ketamine	Amount for person use (approximately 25% of the trafficable amount)	N/A
Methadone	Amount for personal use (approximately 25% of the trafficable amount)	N/A

## Further Advice

Queries about the content of this document should be referred to OIC Community Safety.

**From:**"Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>  
**Sent:**21/05/2019 3:13 PM  
**To:**"Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:**"Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>;"James, David" <David.James@act.gov.au>  
**Subject:**FYI - Wet/Dry Cannabis letter to Committee has been sent  
**Importance:**Low

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Hi Sam

Just letting you know the CM signed the letter to the Ms Cody about wet & dry cannabis amendments. I've delivered the letter to the committee secretary. Scan should be in TRIM first thing tomorrow.

Cheers  
Max

**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>

**Sent:** 10/05/2019 11:52 AM

**To:** "Engele, Sam" <Sam.Engele@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>

**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "Cook, Michael" <Michael.Cook@act.gov.au>

**Subject:** RE: CM's briefing pack - HACS Hearing - Cannabis

Good morning,

Just throwing something into the mix – you may have seen that Denver in the US has just legalised magic mushrooms: <https://www.bbc.com/news/world-us-canada-48185366>

Relax, I'm not suggesting that's our next step; I just wanted to draw people's attention to the way they've gone about it because it might provide an alternative way of thinking about how we frame our amendments to the Petterson bill in order to deal with the Commonwealth inconsistency issue:

"Officials will now be barred from "spending resources to impose criminal penalties" for personal use and possession of the drug for residents over the age of 21, effectively preventing the city from prosecuting or arresting adults found with mushrooms."

For your further consideration and discussion with GSO.

Cheers,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget

**Office of Andrew Barr MLA**

Chief Minister

Treasurer

Member for Kurrajong

P. (02) 6207 1201 | M. **Sch 2.2(a)(ii)** | E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)



---

**From:** Rayner, Jennifer

**Sent:** Tuesday, 7 May 2019 10:06 PM

**To:** Engele, Sam <Sam.Engele@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>

**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>; Cook, Michael <Michael.Cook@act.gov.au>

**Subject:** FW: CM's briefing pack - HACS Hearing - Cannabis

Good evening,

I was reading through the CM's briefing pack for tomorrow's HAC hearings, and was particularly drawn to this note in the advice from the Commonwealth Attorney-General's Department:

- Section 313.1 of the Criminal Code provides that certain serious drug offences do not apply where the conduct is justified or excused under the law of a State or Territory. This defence would not apply to the **proposed** decriminalisation provisions in the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT). This is because the amendments merely decriminalise conduct under ACT law and do not purport to justify or excuse the relevant conduct for the purposes of section 313.1.

This seems to run counter to the advice we have previously received, that section 313.1 provides a defence against the Commonwealth drug offences. It also seems, however, to provide some discrete direction that we'd need to

draft our amendments in such a way that they *both* decriminalise the conduct under ACT law and provide a justification/excuse for the relevant conduct which meets the test in the Commonwealth bill.

Is there already work underway with GSO/PCO to address this? If not, can you please get this moving with them and provide some advice on further possible avenues for amending the Pettersson bill in this way?

Thanks for your help,

Jen

---

**From:** Murdoch, Max **On Behalf Of** CMCD DLO  
**Sent:** Tuesday, 7 May 2019 5:20 PM  
**To:** Carter, Tania <[TANIA.CARTER@act.gov.au](mailto:TANIA.CARTER@act.gov.au)>  
**Cc:** Rayner, Jennifer <[Jennifer.Rayner@act.gov.au](mailto:Jennifer.Rayner@act.gov.au)>  
**Subject:** CM's briefing pack - HACS Hearing - Cannabis

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Hi Tania

I have saved a soft copy of the pack I provided to the CM here: <K:\Barr\DLO\08 - additional info\20190508 - HACS hearing - personal cannabis use>

It's a similar location to the QTBs so should be accessible on the iPad.

Jen – the only new document in the pack is the email from Commonwealth A-G's to Andrew Mehrton expressing their position on the Bill.

We're still yet to receive Health officials' briefings. CMTEDD chased this afternoon and I'll follow up tomorrow.

Cheers  
Max

**From:**"Murdoch, Max" <Max.Murdoch@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>

**Sent:**03/05/2019 1:59 PM

**To:**"Engele, Sam" <Sam.Engele@act.gov.au>

**Cc:**"Meherton, Andrew" <Andrew.Meherton@act.gov.au>;"James, David" <David.James@act.gov.au>

**Subject:**RE: FOR ACTION - Cannabis CMTEDD2019/1739 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - CM to appear before Standing Committee on HACS - Cannabis

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Sensitive

The whole lot please.

I'm happy to request via DLOs but I'm thinking you/the team would have more luck going directly if there's been joint work to get us this far.

Could we have what's available before the exec briefing on Monday (12pm)?

-----Original Message-----

From: Engele, Sam <Sam.Engele@act.gov.au>

Sent: Friday, 3 May 2019 1:03 PM

To: CMCDDLO <CMCDDLO@act.gov.au>

Cc: Meherton, Andrew <Andrew.Meherton@act.gov.au>; James, David <David.James@act.gov.au>

Subject: RE: FOR ACTION - Cannabis CMTEDD2019/1739 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - CM to appear before Standing Committee on HACS - Cannabis

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Sensitive

Max,

Just to confirm do they want CMTEDD, Health Directorate, JACS, etc? Or just PCD?

Sam

-----Original Message-----

From: Murdoch, Max On Behalf Of CMCDDLO

Sent: Friday, 3 May 2019 12:53 PM

To: Engele, Sam <Sam.Engele@act.gov.au>

Cc: Meherton, Andrew <Andrew.Meherton@act.gov.au>; James, David <David.James@act.gov.au>

Subject: RE: FOR ACTION - Cannabis CMTEDD2019/1739 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - CM to appear before Standing Committee on HACS - Cannabis

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Sensitive

Also CMO's wondering if they could have copies of briefing prepared to support the various officials?

Happy to receive those early next week as I imagine they will also need to be refined following the hearings this morning.

Cheers

Max

-----Original Message-----

From: Murdoch, Max On Behalf Of CMCDDLO

Sent: Friday, 3 May 2019 12:41 PM

To: Engele, Sam <Sam.Engele@act.gov.au>

Cc: Meherton, Andrew <Andrew.Meherton@act.gov.au>; James, David <David.James@act.gov.au>

Subject: RE: FOR ACTION - Cannabis CMTEDD2019/1739 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - CM to appear before Standing Committee on HACS - Cannabis

UNCLASSIFIED

Sensitive

Thanks Sam. I'm packaging now and will give to Jen in a moment

-----Original Message-----

From: Engele, Sam <Sam.Engele@act.gov.au>

Sent: Friday, 3 May 2019 12:37 PM

To: CMCD DLO <CMCD DLO@act.gov.au>

Cc: Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; James, David <David.James@act.gov.au>

Subject: FOR ACTION - Cannabis CMTEDD2019/1739 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - CM to appear before Standing Committee on HACS - Cannabis

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Sensitive

Now cleared. Link attached.

Sam

-----< HPE Content Manager record Information >-----

Record Number : CMTEDD2019/1739

Title : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - CM to appear before Standing Committee on HACS - Cannabis

Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

<b>To:</b>	Chief Minister	Tracking No.: CMTEDD2019/1739
<b>Date:</b>	2 May 2019	
<b>From:</b>	Executive Branch Manager, Social Policy and Commonwealth State Relations	
<b>Subject:</b>	Chief Minister to appear before Standing Committee on Health, Ageing and Community Services inquiry into Drugs of Dependence Act amendments	
<b>Critical Date:</b>	6 May 2019	
<b>Critical Reason:</b>	The Chief Minister is appearing before the Committee on 8 May 2019	

**Recommendations**

That you:

1. Sign the attached letter to the Chair of the Standing Committee on Health, Ageing and Community Services tabling a copy of the proposed government amendments to the Drugs of Dependence (Personal Use of Cannabis) Bill 2019.

*Signed* / Not Signed / Please Discuss

2. Note the draft talking points provided, which will be updated and finalised following the hearings of the Committee inquiry on 3 May 2019.

*Noted* / Please Discuss

Andrew Barr MLA .....



6/5/19

Minister's Office Feedback

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## Background

1. On 20 February 2019, the Legislative Assembly referred the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill) to the Standing Committee on Health, Ageing and Community Services for inquiry. The Committee will report to the Assembly on 6 June 2019.
2. On 27 February 2019, the Chair of the Committee, Bec Cody MLA, wrote to you requesting an outline of amendments that the Government was intending to propose. You wrote to the Committee, outlining the Government's position and proposed amendments on 18 March 2018 (ref: #CMTEDD2019/1290).
3. You have agreed to appear at a hearing of the inquiry on 8 May 2019. Your office has requested a draft Bill reflecting the Government's proposed amendments be provided to the Committee prior to your appearance.

## Issues

### *Draft government amendment Bill*

4. A draft government amendment Bill has been prepared by Parliamentary Counsel's Office ([Attachment A](#)), in line with position previously agreed by Cabinet and outlined to the Committee.
5. This type of legislation has not previously been considered in Australia and there are relatively few comparable precedents elsewhere. This, combined with the timeframe in which the draft Bill has been prepared, means there are a number of risks still associated with the draft Bill. As such, the transmittal letter is appropriately caveated.
6. In particular, constructing a practicable legal distinction between 'wet' and 'dry' cannabis, such that a larger amount of fresh ('wet') cannabis can be stored until it has dried or cured to the specified legal limit of 50 grams is an outstanding issue and is not reflected in the current draft. This has been flagged in the transmittal letter as an outstanding matter.
7. Directorates and PCO are still working to determine a suitable way of addressing this change in legislation. In the absence of such a clause, if the Private Member's Bill is passed the legal limit for cannabis material, whether wet or dry, would remain 50 grams. This effectively means 50 grams of material could be harvested from a plant, which would dry to a lesser weight. Individuals would still be able to possess 50 grams of dried cannabis if obtained from other sources.
8. The limit on four cannabis plants per household is implemented as a strict liability offence, where a person cultivates cannabis plants at a premise where more than four cannabis plants are cultivated.
9. In practice it is likely to be difficult to prove which individual in a multi-resident home a fifth or subsequent plant belongs to. As a result, all residents could potentially be found liable in a situation where five or more cannabis plants are cultivated at a residence. The draft Bill deals with this through a defence where the defendant can provide they could not have reasonably been aware that more than four plants were being cultivated.

10. The other amendments the Government proposed to move are addressed as follows:
  - a. The limit on the number of plants per person of four in the Private Member's Bill has been amended to two.
  - b. Restrictions on where a person can cultivate cannabis have been implemented through an offence for cultivating a plant at a place other than where a person lives and an offence for cultivating a plant in an area lawfully accessible to a member of the public.
  - c. The requirement for cannabis to be stored in a way that limits access by children and young people has been implemented through an offence for possessing cannabis and not storing it "out of reach of children".
  - d. The offence for smoking cannabis within 20 metres of children is amended to apply if "a child is exposed to smoke or vapour from the cannabis the person is smoking". PCO advises this meets the intent of the amendment to include a mental element (for example that the individual was aware of or had a duty of care to the child).
11. A draft letter has been prepared to provide the draft government amendments to the Chair of the inquiry (Attachment B). The correspondence notes, as outlined above, that a suitable approach to distinguishing between wet and dry cannabis is still being considered. The letter also notes that the government will consider this as well as any other issues reported on by the inquiry before finalising the government amendments.

*Inquiry appearance*

12. A range of officials will be available as witnesses for your appearance at the inquiry to cover the range of health, justice and other questions that may arise.
13. Officials from CMTEDD will be available to answer questions regarding development of the Government response, including:
  - a. Leesa Croke, Deputy Director-General, Policy and Cabinet
  - b. Andrew Mehrton, Executive Branch Manager, Social Policy and Commonwealth State Relations
14. Health Directorate officials will be available to answer questions regarding drug policy and strategy and the health effects of cannabis use, including:
  - a. Leonie McGregor Deputy Director-General, Health Systems, Policy and Research
  - b. Erica Nixon, Senior Manager Preventative and Population Health
  - c. Kerry Coleman, A/g Chief Health Officer
  - d. Dinesh Arya, Chief Medical Officer
15. Justice officials will be available to respond to questions regarding community safety, justice and legal issues such as interaction with Commonwealth law, and will include:
  - a. Victor Martin, A/g Executive Branch Manager, Legislation, Policy and

Programs

b. Peter Garrison, Solicitor-General

16. Talking points have been provided should you wish to make introductory remarks. A set of draft 'questions and answers' has been prepared for topics that may be raised during the discussion. These are currently provided as draft and will be updated before your appearance to incorporate issues or questions raised during the appearance of the Chief Police Officer, AMA and Shane Rattenbury MLA on Friday, 3 May 2019.

*Post-inquiry*

17. The Inquiry is due to report by 6 June 2019, meaning the earliest that amendments to the Bill could be moved will be the July sitting (30 July 2019 - 1 August 2019).
18. Under Standing Orders, the Government's amendments would need to be provided to the Scrutiny Committee two weeks prior to the amendments being moved. Due to the timing of school holidays in July and thus the Cabinet meeting schedule, the Assembly Business Paper with the Government's final amendments will need to be considered by Cabinet on or around 2 July 2019 to be prepared to move amendments in the July sitting.

**Financial Implications**

19. Nil.

**Consultation**

Internal

20. Nil.

Cross Directorate

21. All directorates were consulted on the development of the Government's proposed amendments through Cabinet circulation processes.
22. The draft government amendment Bill has been prepared by PCO in consultation with officials from Health Directorate, CMTEDD and JACSD.
23. The talking points/question and answers have been prepared with input from Health Directorate and JACSD.

External

24. The Government has publicly stated its position on the Private Member's Bill, including in a submission to the Committee.
25. While ACT Policing have been involved in discussions regarding the government's position on the Private Member's Bill, a copy of the draft government amendments have not been provided to ACT Policing at this stage.

**Work Health and Safety**

26. Nil.

**Benefits/Sensitivities**

27. As above.

**Communications, media and engagement implications**

28. No additional media or communications is proposed in relation to this submission to the Committee. Question Time and Chief Minister Talkback briefs have been prepared on this issue.

Signatory Name: Andrew Mehrton

Phone: x58507

Action Officer: David James

Phone: x72002

**Attachments**

Attachment	Title
Attachment A	Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018
Attachment B	Correspondence to the Chair of the Standing Committee on Health, Ageing and Community Service
Attachment C	Draft Speaking Notes and Q&A



## Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Bec Cody  
Chair  
Standing Committee on Health, Ageing and Community Services  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

COPY

Dear Ms Cody

This letter relates to the Standing Committee on Health, Ageing and Community Services inquiry into the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*.

Enclosed with this letter is a draft of the Government Amendment Bill for the consideration of the Standing Committee.

The draft Bill addresses the issues raised in the Government's earlier submission. In brief, the Government proposes amendments to:

- decrease the limit of personal plants for an individual to two plants;
- limit the number of plants per household to four plants;
- only permit plants to be cultivated on parts of residential property not generally accessible by the public and only by a person generally residing at that property;
- require cannabis to be stored away from children when not in an individual's possession;
- distinguish between fresh and dried cannabis; and
- prevent children from being exposed to smoke or vapour from the cannabis.

The Bill has been developed to meet the timeframes of the Committee's inquiry, and as such, it may continue to be refined, including in response to issues that the Committee may report on at the end of its inquiry or consequential amendments that may be identified.

Furthermore, the attached draft Government Amendment Bill does not currently include amendments to address the distinction between freshly harvested and dried cannabis. Given the complexity of this amendment, discussions are continuing between directorates and Parliamentary Counsel's Office on how best to draft the amendment in a way that addresses the underlying intent.

### ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia  
Phone +61 2 6205 0011 Fax +61 2 6205 0157 Email barr@act.gov.au



@ABarrMLA



AndrewBarrMLA



actchiefminister



I look forward to the outcome of the Committee's inquiry and working to address this important issue for our community.

Yours sincerely

A handwritten signature in black ink that reads "Andrew Barr". The signature is written in a cursive, flowing style.

Andrew Barr MLA  
Chief Minister

06 MAY 2019

**Chief Minister, Treasury and Economic  
Development Directorate**

UNCLASSIFIED

<b>To:</b>	Chief Minister	Tracking No.: CMTEDD2019/2481
<b>Date:</b>	20 May 2019	
<b>From:</b>	Executive Branch Manager, Social Policy and Commonwealth State Relations	
<b>Subject:</b>	Further submission to the Inquiry into the Drugs of Dependence private Members Bill	
<b>Critical Date:</b>	24 May 2019	
<b>Critical Reason:</b>	To provide the Inquiry time to consider the material prior to reporting.	

EGM: 20 May 2019

**Recommendations**

That you:

1. Sign the attached letter providing a new Government Amendment Bill to the Chair of the Health, Ageing and Community Services committee

Signed /  Not Signed / Please Discuss

Andrew Barr MLA ..... *Andrew Barr* ..... 21 / 5 / 19

Minister's Office Feedback

UNCLASSIFIED

Tracking No.: CMTEDD2019/2481

## Background

1. The Legislative Assembly Standing Committee on Health, Ageing and Community Services (the Committee) is currently inquiring into a Private Member's Bill to amend the *Drugs of Dependence Act* to legalise personal recreational use of cannabis (the Inquiry).
2. The Government made a submission to the Inquiry outlining several amendments that it proposed to make to the Private Member's Bill. The Government subsequently made another submission providing a draft Government Amendment Bill indicating how a number of those amendments might be made.
3. One amendment had been outlined by the Government but was not included in the Government Amendment Bill: to include separate weight limits for possession of fresh cannabis and possession of dry cannabis. This clause was not included due to complexities associated with drafting that clause and the Committee was advised of this.

## Issues

4. You appeared before the Committee on 8 May 2019 at which time the you were asked "it is possible that this committee could have a look at what your thinking [regarding wet weights and dry weights] is?". You indicated you would endeavor to provide that information, noting the Committee will report on its inquiry by 6 June 2019.
5. CMTEDD, with JACS and Health Directorate have worked with Parliamentary Counsel's Office (PCO) to update the draft Government Amendment Bill with a clause that gives effect to separate legal weights for wet/fresh cannabis and dry cannabis (highlighted in Attachment A).
6. The draft clause (highlighted in the attached version), adds a new definition of "dried cannabis" which is cannabis that has been "subjected to a drying process". The Bill is further amended such that an offence applies if a person possesses more than 50 grams of dried cannabis or more than 150 grams of cannabis that has been harvested and is not dried cannabis.
7. The draft clause has been drafted based on definitions for fresh and/or dried cannabis as used in legislation in Canada and a number of states in the United States of America. Each of the definitions examined contains a degree of ambiguity as to when cannabis is considered dried, usable or prepared, and this is also reflected in the draft clause in Attachment A. For example, in a very practical sense it may be challenging for law enforcement to strictly determine and/or prove whether cannabis has been subjected to a drying process. Nonetheless, this is considered a more practical approach than to develop strict regulations that would specify a precise state in which cannabis transitions from fresh to dried.
8. As per the previous advice and submission to the Inquiry (ref: CMTEDD2019/1739), the timeframe in which the draft amendments have been developed for the Committee, combined with the lack of Australian precedents, means that various aspects of the Government Amendment Bill will continue to be refined, including in response to findings of the Inquiry where appropriate.



9. A letter to the Chair of the Inquiry is included at Attachment B, providing a copy of the updated draft Government Amendment Bill to the Committee for its consideration.

*Next steps*

10. Directorates, with the Government Solicitor’s Office and PCO, continue to explore options and refinements to the draft Government Amendment Bill that may address several identified issues. The Committee is due to report on the Inquiry by 6 June 2019. At this time the Government could consider any findings or recommendations made by the Committee alongside any further options or advice identified by directorates.

**Financial Implications**

11. Nil.

**Consultation**

Internal

12. Nil.

Cross Directorate

13. The new draft clause has been prepared by Parliamentary Counsel’s Office as discussed with CMTEDD, JACS and Health Directorate.

External

14. Nil.

**Work Health and Safety**

15. Nil.

**Benefits/Sensitivities**

16. Several questions on notice were received from Ms Le Couteur after your appearance at the Inquiry. Question on Notice #2 (ref: CMTEDD2019/2395) was about the Government’s proposed clauses regarding fresh and dry limits.

**Communications, media and engagement implications**

17. The Committee is expected to refer to the draft Government amendments in its report. While the Government has not publicly released its draft amendments, it has publicly explained its intended amendments.

Signatory Name: Andrew Mehrton

Phone: x58507

Action Officer: David James

Phone: x72002

**Attachments**

Attachment	Title
Attachment A	Updated Government Amendment Bill
Attachment B	Letter to Committee Chair

UNCLASSIFIED

UNCLASSIFIED

Tracking No.: CMTEDD2019/2481



**Andrew Barr MLA**

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Bec Cody MLA  
Chair  
Standing Committee on Health, Ageing and Community Services  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

COPY

Dear Ms ~~Cody~~ <sup>Bec</sup>

This letter relates to the Standing Committee on Health, Ageing and Community Services inquiry into the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*.


Enclosed with this letter is a further draft of the Government Amendment Bill for the consideration of the Standing Committee as was requested at the public hearing held on 8 May 2019. This draft contains draft amendments to distinguish between fresh and dry cannabis, as the Government outlined in its earlier submission to the inquiry.

The draft clause would allow for individuals to legally possess 150 grams of cannabis that has been harvested but not dried. A limit of 50 grams would remain in place for dried cannabis, regardless of whether it is harvested by the individual.

As noted in relation to the earlier draft Government Amendment Bill, this draft has been developed to meet the timeframes of the Committee's inquiry, and as such, it may continue to be refined, including in response to issues that the Committee may report on at the end of its inquiry or consequential amendments that may be identified.

I look forward to the outcome of the Committee's inquiry and working to address this important issue for our community.

Yours sincerely

  
Andrew Barr MLA  
Chief Minister

21 MAY 2019

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia

Phone +61 2 6205 0011 Fax +61 2 6205 0157 Email barr@act.gov.au



@ABarrMLA



AndrewBarrMLA



actchiefminister



Recommendation	Notes
<p><b>RECOMMENDATION 1</b></p> <p>2.10 The Committee recommends that, subject to the following comments and amendments, the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be supported.</p>	<p>Recommendation is consistent with Government's existing position.</p>
<p><b>RECOMMENDATION 2</b></p> <p>4.13 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.</p>	<p>Recommendation is inconsistent with Government's position that personal plants should be limited to two and four per household.</p>
<p><b>RECOMMENDATION 3</b></p> <p>4.34 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.</p>	<p>This recommendation is not considered within the PMB and the proposed government amendments. Consideration will be required.</p>
<p><b>RECOMMENDATION 4</b></p> <p>4.57 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.</p>	<p>This recommendation goes beyond what has been proposed by the PMB or government amendments. There are likely to be practical limitations to implementing this recommendation.</p>
<p><b>RECOMMENDATION 5</b></p> <p>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.</p>	<p>This recommendation is a technical matter that will be considered further.</p>
<p><b>RECOMMENDATION 6</b></p> <p>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.</p>	<p>This recommendation is unlikely to be consistent with the Government's position, particularly given the need to balance wet and dry weights under the threshold of trafficable quantities.</p>

<p><b>RECOMMENDATION 7</b></p> <p><b>4.88</b> 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.</p>	<p>This recommendation is a technical matter and will be further considered, but the basis of the recommendation may not be consistent with the Government’s existing position.</p>
<p><b>RECOMMENDATION 8</b></p> <p><b>4.89</b> 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.</p>	<p>This recommendation is a technical matter and will be further considered, but the basis of the recommendation may not be consistent with the Government’s existing position.</p>
<p><b>RECOMMENDATION 9</b></p> <p><b>4.105</b> The Committee recommends that the ACT Government collaborate with ACT Policing to adopt a cannabis drug driving test that determines impairment.</p>	<p>This recommendation goes beyond what has been proposed by the PMB or government. While not inconsistent with Government’s position, it has been suggested as a lower priority than other issues.</p>
<p><b>RECOMMENDATION 10</b></p> <p><b>4.127</b> 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.</p>	<p>This recommendation is being considered by directorates and further advice will be provided.</p>
<p><b>RECOMMENDATION 11</b></p> <p><b>4.128</b> 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.</p>	<p>The basis for this recommendation is unclear and requires further examination.</p>
<p><b>RECOMMENDATION 12</b></p> <p><b>4.140</b> 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.</p>	<p>This has not been previously considered. Advice will be prepared.</p>

<p><b>RECOMMENDATION 13</b></p> <p><b>4.152</b> 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.</p>	<p>This is consistent with the Government's existing position.</p>
<p><b>RECOMMENDATION 14</b></p> <p><b>4.166</b> The Committee recommends that the ACT Government develop a public health campaign about cannabis to be delivered on an on-going basis.</p>	<p>This is consistent with the Government's existing position.</p>
<p><b>RECOMMENDATION 15</b></p> <p><b>4.173</b> 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.</p>	<p>This is consistent with the Government's existing position.</p>
<p><b>RECOMMENDATION 16</b></p> <p><b>4.185</b> 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:</p> <ul style="list-style-type: none"> <li>▪ The number of people in the group is between two and 10;</li> <li>▪ The cannabis must be cultivated on the premises of one of the members;</li> <li>▪ 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;</li> <li>▪ No one in the group can own more than the legal limit of plants for an individual;</li> <li>▪ Cannabis product in the group is owned by the individual owner of the plant that produced it; and</li> <li>▪ Cannabis product cannot be traded or exchanged with other individuals.</li> </ul>	<p>This is inconsistent with the Government's existing position.</p>

**From:** [Murdoch, Max](#) on behalf of [CMCD DLO](#)  
**To:** [CMTEDD MLO](#)  
**Cc:** [James, David](#); [Meherton, Andrew](#); [CM Policy and Cabinet-Comms Executive Support](#); [ACT Health DLO](#); [AGDLO](#)  
**Subject:** Briefing papers - CM to appear before Standing Committee on HACS - Cannabis  
**Date:** Thursday, 4 April 2019 12:19:44 PM

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UNCLASSIFIED

Hi MLO team

Could the CM please have briefing papers for the following:

**What:** Hearing of the Standing Committee on Health, Ageing and Community Services' Inquiry into the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

**Date:** 8 May

**Time:** 3:30-4:00pm

**Adviser attending:** Dr Jen Rayner

**Due to CMO:** 1 May 2019

**Notes:** the CM will speak to the WoG position on this Bill. CMO's understanding is Minister Fitzharris will not appear before the committee. We do not have any advice as to Min Rattenbury's plans.

Could the following Directorates send officials to accompany the Chief Minister: CMTEDD, JACS and Health.

Thanks  
Max

# Discuss the CM's appearance at the Drugs of Dependence committee inquiry

Friday, 12 April 2019  
1:18 PM

**Meeting Date:** 12/04/2019 3:30 PM

**Location:** Nara Level 5 North Cotter 6 People

**Link to Outlook Item:** [click here](#)

**Invitation Message**

**Content**

## Participants

[Payne, Cassia](#) (Meeting Organizer)

[Mehrton, Andrew](#)

[Engele, Sam](#)

[Nixon, Erica \(Health\)](#)

[Martin, Victor](#)

[James, David](#)

[McGregor, Leonie \(Health\)](#)

## Notes

- Issues raised in hearings
  - Compatibility with Commonwealth Criminal Code
  - How police implement - e.g. can directions be issued not to prosecute
  - Artificial cultivation
  - Social clubs
  - Drug driving
  - Medicinal
- Responsibilities
  - Health
    - Health implications including mental health
    - Objects of DoD Act
  - Justice (inc GSO)
    - Organised crime implications
    - Interaction with Commonwealth law
  - CMTEDD
    - Strategy
    - Drafting bill
- Attendance
  - JACS
    - Victor
    - \*GSO
  - Health
    - Leonie
    - Erica
  - CMTEDD
    - Me
    - Sam?



**From:** "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>  
**Sent:** 30/04/2019 5:26 PM  
**To:** "Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:** "Croke, Leesa" <Leesa.Croke@act.gov.au>; "CMCD DLO" <CMCDDLO@act.gov.au>; "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>; "James, David" <David.James@act.gov.au>  
**Subject:** RE: Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

Thanks Sam.

Can you please send up a covering letter for the Chief to submit these to the Committee, which reiterates the policy intent of these and invites the Committee to consider them in the context of the issues being raised by their hearings/deliberations?

The Chief will need to sign and lodge these by COB Friday this week.

Thank you,

Jen

**Dr Jennifer Rayner** | Director of Policy and Budget  
**Office of Andrew Barr MLA**  
Chief Minister  
Treasurer  
Member for Kurrajong  
P. (02) 6207 1201 | M. **Sch 2.2(a)(ii)** | E. [jennifer.rayner@act.gov.au](mailto:jennifer.rayner@act.gov.au)



---

**From:** Engele, Sam  
**Sent:** Tuesday, 30 April 2019 11:32 AM  
**To:** Rayner, Jennifer <Jennifer.Rayner@act.gov.au>  
**Cc:** Croke, Leesa <Leesa.Croke@act.gov.au>; CMCD DLO <CMCDDLO@act.gov.au>; Mehrton, Andrew <Andrew.Mehrton@act.gov.au>; James, David <David.James@act.gov.au>  
**Subject:** Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

UNCLASSIFIED Sensitive

Jen,

Please find attached draft amendments for the PMB on Drugs of Dependence.

We will formally include these in the package we send up to the CM with the talking points.

Regards,

**SAM ENGELE** | Executive Group Manager

Phone 02 6205 0230 | Mobile **Sch 2.2(a)(ii)**  
Email [Sam.Engele@ACT.gov.au](mailto:Sam.Engele@ACT.gov.au)

Policy and Cabinet Division  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Lv 4 Nara Centre, 1 Constitution Av, Canberra



**ACT**  
Government

---

Chief Minister, Treasury and  
Economic Development

Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

To: Chief Minister

Tracking No.: CMTEDD2019/1290

Date: 14 March 2019

From: Director, Community Support and Safety

Subject: Government submission to Standing Committee on Health, Ageing and  
Community Services inquiry into Drugs of Dependence Act amendments

Critical Date: 20 March 2019

Critical Reason: To meet the Committee's deadline for submissions

**Recommendations**

That you:

1. Sign the attached letter to the Chair of the Standing Committee on Health, Ageing and Community Services.

Signed / Not Signed / Please Discuss

Andrew Barr MLA .....



18/3/19

Minister's Office Feedback

UNCLASSIFIED

### **Background**

1. On 20 February 2019, the Legislative Assembly referred the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (the Bill) to the Standing Committee on Health, Ageing and Community Services for inquiry.
2. On 27 February 2019, the Chair of the Committee, Bec Cody MLA, wrote to you requesting an outline of amendments that the Government was intending to propose (Attachment A). A response was requested by close of business on 20 March 2019.

### **Issues**

3. A Government submission to the Committee inquiry has been prepared for your signature at Attachment B.
4. The submission outlines the Government's proposed amendments as previously agreed by Cabinet with a brief explanation of the rationale for the amendments. A copy of the submission to the Committee will be provided to Cabinet for noting.
5. The Inquiry is due to report by 6 June 2019, meaning the earliest that amendments to the Bill can be moved and debate will be the July sitting (30 July 2019 - 1 August 2019).
6. Under Standing Orders, the Government's amendments would need to be provided to the Scrutiny Committee two weeks prior to the amendments being moved. Due to the timing of school holidays in July, the Assembly Business Paper with the Government's final amendments will need to be considered by Cabinet no later than 2 July 2019.

### **Financial Implications**

7. Nil.

### **Consultation**

#### Internal

8. Nil.

#### Cross Directorate

9. All directorates were consulted on the development of the Government's proposed amendments through Cabinet circulation processes.

#### External

10. Nil.

### **Work Health and Safety**

11. Nil.

### **Benefits/Sensitivities**

12. The Government has already announced the nature of its intended amendments during the initial debate of this issue in the Legislative Assembly.

### **Communications, media and engagement implications**

13. No additional media or communications is proposed in relation to this submission to the Committee. Question Time and Chief Minister Talkback briefs have been prepared on this issue and can be used in the event of media or public inquiries.

Signatory Name: Andrew Mehrton

Phone: x58507

Action Officer: David James

Phone: x72002

**Attachments**

<b>Attachment</b>	<b>Title</b>
Attachment A	Correspondence from Chair of the Standing Committee on Health, Ageing and Community Service
Attachment B	Government response to the Committee's inquiry



Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

COPY

Ms Bec Cody MLA  
Chair  
Standing Committee on Health, Ageing and Community Services  
Legislative Assembly for the ACT  
GPO Box 1020  
CANBERRA ACT 2601

Dear Ms <sup>Bec</sup>Cody

Thank you for your letter of 27 February 2019 inviting the Government to provide an outline of intended amendments to the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018* that has been referred to the Standing Committee on Health, Ageing and Community Services for inquiry. The following information is provided for the information of the Committee.

*The ACT Government's 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 has clearly proven not to 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.<sup>1</sup>

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, including supporting this Bill subject to appropriate amendments which are detailed later in this submission.

<sup>1</sup> 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>

**ACT Legislative Assembly**

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@ABarrMLA



AndrewBarrMLA



actchiefminister



### *Matters to be considered*

As is to be expected with an issue as complex as this, the Government has identified a number of issues requiring further consideration before the Bill can be passed.

Even after the passage of this Bill, possessing and growing cannabis will carry a degree of risk arising from interaction 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.

There is also uncertainty as to how a Commonwealth Government may react to the ACT passing this Bill and we cannot guarantee a Commonwealth Government would not intervene to prevent reforms – as has occurred in the past.

There are also a range of health implications to 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. However, it must be noted that these health risks already exist for anyone who uses cannabis under current legislation.

Implementation of this Bill may be able to assist in addressing some of these health risks. For example, the stigma and risk of punishment associated with illegal drug use may mean that prohibition is preventing people from seeking medical or other types of help when it is needed. 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. The implications for justice outcomes are similarly complex. Currently, possessing small amounts of cannabis for personal use can bring people into contact with the justice system, with lasting and serious consequences. Moving from the decriminalisation to legalisation of small amounts of personal cannabis could avoid help individuals avoid these negative outcomes.

The Government also has a responsibility to focus our justice resource where they're needed the most: on disrupting serious and organized crime, protecting our community from individuals or groups who might wish to do us harm, helping women and children dealing with domestic and family violence. Legalisation means the ACT's police and court resources can be better focused in these areas where they are most needed.

There are also broader public safety effects to be considered. Under the current regime, the one-in-twelve Canberrans that use cannabis have no legal channel to obtain it. As a result, otherwise law-abiding individuals are required to interact with criminals in a way that exposes them to risks and may also increase the risk of further offending in our community.

By legalising the option for individuals to cultivate a small number of plants for their own use, there may be opportunities to reduce the market for illegal drugs – a market that would otherwise provide revenue to serious or organised criminals.

### *Proposed Government Amendments*

In light of these and other issues, the Government intends to move a number of amendments to the Private Members Bill. We have instructed the Parliamentary Counsel's Office to draft Government amendments which would give effect to the following safeguards and improvements:

1. Personal plant limits

Whereas the Bill would 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 Simple Cannabis Offence Notice 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 sharehouses (or dwellings that otherwise have multiple residents) could effectively be used as larger scale 'grow houses'

The Government amendments will introduce 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 front yards, verges or community gardens. This restriction is intended to minimise access to cannabis plants by persons other than the legal owner. This would also have the effect of prevent 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 each cannabis plant.

4. Secure storage

Government amendments will require cannabis to be kept securely when not in an individual's possession in order to restrict access by children and young people or other vulnerable individuals.

5. Distinguish 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 Simple Cannabis Offence Notice 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 would distinguish between dry cannabis (i.e. cannabis ready to be used) and 'wet' cannabis (i.e. harvest plant material that has not yet been dried).

Dry cannabis would still be subject to the 50 gram limit as included in the Bill. The Government will move to include a separate limit of 150 grams for fresh (or 'wet') cannabis that would be applicable 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 be, or 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 or intentionally* use cannabis in a way that exposes a person less than 18 years old to this.

#### *Other matters*

The Government acknowledges that legalisation of cannabis for personal use has not been tried in Australia before. Notwithstanding the above amendments, there remains a degree of uncertainty and risk associated with the proposed new approach. However, the ACT Government believes it is important to continue exploring new measures to reduce the harm from drugs in our community.

We will seek to collect relevant data to effectively evaluate the outcomes of legalisation, with a formal evaluation being conducted not 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.

Thank you again for your invitation to make a submission to this inquiry. We understand that these are reforms the Canberra community wants to see made, but also ones that must also be properly and carefully considered. The Government is now undertaking that work and will provide a detailed set of drafted amendments reflecting the points above to the Committee when these are available.

Yours sincerely



Andrew Barr MLA  
Chief Minister

18 MAR 2019



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

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
Ms Bec Cody MLA (Chair), Mrs Vicki Dunne MLA (Deputy Chair),  
Ms Caroline Le Couteur MLA

Mr Andrew Barr MLA  
Chief Minister  
Legislative Assembly for the ACT  
GPO Box 1020  
Canberra ACT 2601

Dear Chief Minister

*Andrew*

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

On 20 February 2019, the ACT Legislative Assembly passed a motion to refer the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (Bill) to the Standing Committee on Health, Ageing and Community Services (Committee) for inquiry and report by 06 June 2019.

It is the understanding of the Committee that the Government, the Opposition and the Crossbench will be proposing amendments to the Bill as it currently stands. In order to assist the Committee in its consideration of the Bill, the Committee requests that each interested party submit, in writing, to the Committee an outline of their intended proposed amendments.

Please be advised that in addition to considering these documents as part of the Committee's inquiry process, the Committee will be making these documents publically available on the Committee's inquiry webpage.

The Committee requests that these documents be made available to the Committee, via the Committee Secretary, no later than **close of business, Wednesday, 20 March 2019**.

The Committee Secretary, Mrs Josephine Moa, can be contacted on (02) 6205 0136 or by email at: [LACommitteeHACS@parliament.act.gov.au](mailto:LACommitteeHACS@parliament.act.gov.au).

Yours sincerely

Ms Bec Cody MLA  
Chair  
27 February 2019

**From:**"Harper, Emily (Health)" <Emily.Harper@act.gov.au>  
**Sent:**22/01/2019 3:26 PM  
**To:**"Engele, Sam" <Sam.Engele@act.gov.au>  
**Cc:**"Meherton, Andrew" <Andrew.Meherton@act.gov.au>;"Dennis, Kathy (Health)" <Kathy.Dennis@act.gov.au>;"De'Ath, Michael (Health)" <Michael.De'Ath@act.gov.au>;"ACT Health, Director PPH Support" <DirectorPPHSupport@act.gov.au>;"Dal Molin, Vanessa (Health)" <Vanessa.DalMolin@act.gov.au>;"Croke, Leesa" <Leesa.Croke@act.gov.au>;"McNeill, Laura (Health)" <Laura.McNeill@act.gov.au>  
**Subject:**NOT-FOR-DISTRIBUTION: Status and Issues list - Cross directorate consultation on Cannabis Private Members Bill [SEC=UNCLASSIFIED]  
**Attachments:**ACT Policing - Cannabis input.docx  
**Importance:**High

UNCLASSIFIED Sensitive: Cabinet

Hi Sam,

As requested, please find attached the preliminary advice from ACT Policing for your information – not for further distribution at this stage.

Will touch base with you tomorrow as work on the Sub moves to fruition.

Thanks.

*Emily Harper*

**Executive Branch Manager, Preventive and Population Health**

**ACT Health Directorate**

PH 02 5124 9440 | **MOB** Sch 2.2(a)(ii) | **FAX** 6205 1884

2-6 Bowes Street, PHILLIP ACT 2606 | GPO Box 825, Canberra City ACT 2601

E emily.harper@act.gov.au



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**From:**Sch 2.2(a)(ii) @afp.gov.au **On Behalf Of** ACT-MPP-Legislation-&-Policy  
**Sent:** Monday, 21 January 2019 10:46 AM  
**To:** Harper, Emily (Health) <Emily.Harper@act.gov.au>; Dennis, Kathy (Health) <Kathy.Dennis@act.gov.au>; Ryan, Liam (Health) <Liam.Ryan@act.gov.au>  
**Cc:** ACT-MPP-Legislation-&-Policy <ACT-MPP-Legislation-&-Policy@afp.gov.au>  
**Subject:** RE: NOT-FOR-DISTRIBUTION: Status and Issues list - Cross directorate consultation on Cannabis Private Members Bill [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Emily, Kathy and Lewis,

I apologise for the delay in getting this to you. The Minister's office wanted to look at our submission prior to us sharing it and we've only just managed to get it cleared and to them. As you can imagine, there's a lot of interest in this. I've attached the input that has been cleared by CPO. We're working on some supplementary information to address the issues paper that was provided this morning which we will bring to the meeting. Please let me know if you have any questions or concerns, otherwise I'll see you this afternoon.

Thanks

Sch 2.2(a)(ii)



POLICING FOR  
A SAFER AUSTRALIA

UNCLASSIFIED

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**From:** McNeill, Laura (Health) [<mailto:Laura.McNeill@act.gov.au>] **On Behalf Of** Harper, Emily (Health)  
**Sent:** Monday, 21 January 2019 9:44 AM  
**To:** Harper, Emily (Health); Dennis, Kathy (Health); Arnold, Megan (Health); Ryan, Liam (Health); Bevan, Vivien (Health); Aloisi, Bruno (Health); Mehrton, Andrew; Starick, Kate; Emanuel, Jarrod; Martin, Victor; Barbaro, Fiona; Everest, Rebecca; Purdue, Brett (Health); Lumley, Cassandra; ACT-MPP-Legislation-&-Policy  
**Cc:** Bracher, Katrina (Health); Croke, Leesa; Engele, Sam; ACT Health, Director PPH Support  
**Subject:** NOT-FOR-DISTRIBUTION: Status and Issues list - Cross directorate consultation on Cannabis Private Members Bill

UNCLASSIFIED Sensitive

Dear all,

Please find attached a draft document, outlining a snapshot of status and issues as at 18.01.19, for discussion at today's meeting. Please note this is NOT for further distribution, and is a draft only.

Kind regards,  
Laura McNeill  
Obo  
Emily Harper

-----Original Appointment-----

**From:** Docherty, Tracey (Health) **On Behalf Of** Harper, Emily (Health)  
**Sent:** Friday, 18 January 2019 1:26 PM  
**To:** Harper, Emily (Health); Dennis, Kathy (Health); Arnold, Megan (Health); Ryan, Liam (Health); Bevan, Vivien (Health); Aloisi, Bruno (Health); Mehrton, Andrew; Starick, Kate; Emanuel, Jarrod; Martin, Victor; Barbaro, Fiona; Everest, Rebecca; Purdue, Brett (Health); Sch 2.2(a)(ii) @afp.gov.au; 'ACT-MPP-Legislation-&-Policy@afp.gov.au'  
**Cc:** Bracher, Katrina (Health); Croke, Leesa; Engele, Sam  
**Subject:** Cross directorate consultation on Cannabis Private Members Bill  
**When:** Monday, 21 January 2019 2:00 PM-3:00 PM (UTC+10:00) Canberra, Melbourne, Sydney.  
**Where:** ACTH-Bowes-Conf Room 3.05 (seats 12)

Dear all,

As you are aware the ACT Government is preparing a Cabinet Submission to inform the Government Position on the **Private Members Bill – Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018** which was introduced into the Assembly on 28 November 2018.

The cross directorate working group met to discuss the Bill on 11 December 2018 with the intention of identifying any issues/concerns as we develop the advice to go forth to Cabinet. I propose we meet this Monday to discuss the current status of this work and any ongoing concerns.

Grateful if you could please arrive at the reception at 4 Bowes Street, Woden five to ten mins before the meeting to sign in at the desk.

Kind regards,

*Emily Harper*

**Executive Branch Manager, Preventive and Population Health**

**ACT Health Directorate**

PH 02 5124 9440 | **MOB** **Sch 2.2(a)(ii)** | FAX 6205 1884

2-6 Bowes Street, PHILLIP ACT 2606 | GPO Box 825, Canberra City ACT 2601

E [emily.harper@act.gov.au](mailto:emily.harper@act.gov.au)



**ACT**  
Government

**ACT Health**

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AFP Web site: <http://www.afp.gov.au>

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ACT Policing continues to work with ACT Government partners, including ACT Health and the Justice and Community Safety Directorate (JaCS) to investigate and work through the ramifications of the proposed amendments. This requires extensive work and liaison with stakeholders across the ACT Government.

ACT Policing's analysis of the Bill since September 2018 has identified a number of issues, which are detailed below.

### Conflict with Commonwealth Legislation

# Sch 1.2

# Sch 1.14

The tension would not be removed by providing a policy direction. Whilst ACT Policing will continue a policy of focusing on those selling, supplying and profiting from drug crime, constables of police are individually accountable for decisions made on becoming aware of an offence.

# Sch 1.14

# Sch 1.14

## Regulatory Framework

Should the conflict with Commonwealth law be resolved, there are four key areas where the lack of a regulatory framework will affect ACT Policing:

### Number and size of plants

Based on the potential yield of a cannabis plant, one plant is sufficient for personal use (possession of even one plant could be construed as an offence under the Code). ACT Policing also recommends the restrictions apply to each residential premise as opposed to person. ACT Policing agrees in principle with a household limit, but the proposed amount of double the personal limit will allow potentially commercial quantities of cannabis to be grown in each household under the cover of personal use, facilitating legitimate cover for organised crime grow houses. This is particularly relevant as the *Criminal Code Regulations 2002 (Cth)* quantifies cannabis possession by number of plants **or** weight. Should the possession amount to a trafficable quantity it may be punishable under the Code by imprisonment of up to 10 years.

Establishing a weight limit would remain consistent with the Commonwealth, but presents enforcement challenges as a plant cannot be weighed without it first being seized.

### Supply

The Bill remains silent on how potential growers access seeds or cuttings in order to cultivate their plants. Currently, under the *Criminal Code 2002 (ACT)* it is an offence to traffic a controlled drug (including cannabis and its seeds). The definition of trafficking includes the supply with the intent or the belief someone else has the intent to sell. Without specific provisions in the Bill regarding seeds or the provision of cuttings for cultivation, this will cause significant enforcement issues for ACT Policing. It should also be noted, that the Code contains a trafficking offence, which will still include cannabis in all of its forms.

The potential to use SCONs to treat the trade of cannabis seeds and cuttings is problematic from a policing perspective. In order for a SCON to be applicable, the trade and trafficking of cannabis would need to be classified as a simple offence.

Such a change would require addressing by JaCS.

### Storage

Any requirements of this nature need to be regulated. If they are not effectively regulated, they cannot be enforced.

### Enforcement and Registration

ACT Policing supports, in principle, cannabis growers registering in a manner similar to owners under the *Firearms Act 1996 (ACT)*. This is consistent with the way cannabis has been regulated in other jurisdictions. This will allow the

Government to include licence obligations on growers, including requiring growers to agree to certain conditions. This can include allowing authorised government persons to enter a registered premises in order to inspect and assess adherence to the law.

ACT Policing is not currently resourced to undertake a regulatory role in regards to the Bill and the appropriate entity responsible for the execution of this function will need to be considered.

### Organised Crime

The commercial cultivation of cannabis in the ACT is currently a recognised crime problem and cannabis cultivation is a major funding mechanism for a number of organised crime groups. These groups rely on multiple small-scale growers to grow on their behalf (crop-sit). To grow cannabis in any other jurisdiction the crop-sitters carry a significant risk of detection for the entire growth cycle. The proposed allowance of legitimate growth of cannabis in the ACT will remove this risk, making the ACT more attractive to organised crime groups.

Sch 2.2(a)(iii)

Cash flow derived from such large multi-scale operations could be re-invested into the importation of illicit drugs and precursors into Australia, including the ACT.

Sch 2.2(a)(iii)

Due to the high profit potential of cannabis, these amendments could lead to a new market of growers.

Sch 2.2(a)(iii)

Sch 2.2(a)(iii) There have been many instances



where, due to false information, innocent Canberrans have been the victims of home invasions intended to steal drugs or collect drug debts.

Studies on the impact on crime and justice in Vermont, USA, were conducted when the state legalised cannabis. These studies found that there were significantly higher volumes of cannabis users in the areas surrounding Vermont and as such, there was the potential for Vermont to contribute significantly to illicit export of cannabis to other states. Due to the geographical size and location of the ACT, this is a real risk if the Bill is passed in its current format.

### Road Trauma

Drug driving is currently on an upwards trend in the ACT and cannot be ignored entirely in the context of the Bill. ACT Policing does not support any move to change drug driving to an impairment-based regime.

# Sch1.14

### Resourcing impact for ACT Policing

The Bill will not provide the resource savings anticipated for police. ACT Policing has historically been supportive of diverting people for possession of small quantities of cannabis, through SCONs and drug diversion schemes. The priority for ACT Policing has, and will continue to be disrupting the sale and supply of illicit substances and the activities of organised crime.

There is an anticipated increase in the impact on police and court resources following the introduction of the Bill, which include:

- increased activity by organised crime groups;
- minor thefts, particularly of plants grown outside;
- complaints from concerned citizens;
- potential offences linked to the trading of seed and plants; and
- potential offences due to cultivation of an excessive yield.

### Trial period

# Sch1.14

**From:** "Mehrton, Andrew" <Andrew.Mehrton@act.gov.au>  
**Sent:** 30/01/2019 10:42 AM  
**To:** "Croke, Leesa" <Leesa.Croke@act.gov.au>  
**Subject:** RE: Cannabis [SEC=UNCLASSIFIED]

Thanks. Have them now.  
Doesn't look like anything too major. Mainly clarifications and tweaking emphases.

-----Original Message-----

From: Croke, Leesa  
Sent: Wednesday, 30 January 2019 10:01 AM  
To: Mehrton, Andrew <Andrew.Mehrton@act.gov.au>  
Subject: Cannabis

JaCS def has comments on sub that are coming thru (AP just let me know)

Sent from my iPhone